

INTRODUCTORY NOTE TO THE CONVENTION ON THE SUPPRESSION OF UNLAWFUL ACTS
RELATING TO INTERNATIONAL CIVIL AVIATION AND THE PROTOCOL SUPPLEMENTARY TO
THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT
BY SAMUEL M. WITTEN*
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Introduction

The modern era of international counter-terrorism conventions providing for assistance in law enforcement matters began in 1970 and 1971 with the adoption of two major international instruments addressing terrorism against international civil aviation: the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (“Hague Convention” or “Hijacking Convention”)¹ and the 1971 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (“Montreal Convention” or “Sabotage Convention”).² These two instruments were negotiated under the framework of the International Civil Aviation Organization (“ICAO”) in the immediate wake of violent hijackings and sabotage of civil aircraft in the 1960s. Nearly every nation in the world is now a party to both conventions.

The Hague and Montreal Conventions

The Hague and Montreal Conventions established what has now become a familiar and reliable formula for multilateral instruments on terrorism. Parties have agreed to a definition of a category of heinous conduct that should be considered a terrorist act appropriate for international cooperation regardless of its motivation (e.g., attacks on international civil aviation). They have also agreed to criminalize the defined conduct in their territory and create jurisdiction over various categories of offenders (including those who commit crimes in their territory), provide mutual legal assistance relating to covered offenses, and extradite individuals accused of a covered offense or submit the case for prosecution (*aut dedere aut judicare*). While later terrorism conventions contain variations and embellishments, this structure has largely defined recent decades of experience in connection with international terrorism. Subsequent conventions using this general formula include, for example, agreements for international cooperation on attacks on diplomats,³ the taking of hostages,⁴ terrorist acts against ships in international waters,⁵ and bombings of public places and infrastructure.⁶

Until September 2011, the international community had not sought to amend or update the Hague Convention, which addresses hijackings of civil aircraft in international aviation. By contrast, the Montreal Convention, dealing with the sabotage of aircraft in flight, was amended by a Protocol in 1988 to enhance the international legal framework on terrorist acts affecting international civil aviation. This Protocol, negotiated in the aftermath of terrorist attacks in international airport terminals at the Rome and Vienna Airports in 1985, expanded the reach of the Montreal Convention to extend beyond aircraft in flight and include airports serving international civil aviation, where air passengers are assembled before and after travel.⁷

The Adoption of Two New Conventions

After the terrorist attacks of September 11, 2011, the international community began to consider whether any aspects of the legal framework for international cooperation on terrorist acts should be updated to address issues raised by the attacks. Because the terrorist acts were committed by persons piloting aircraft, the Assembly of the ICAO took a leading role and directed a study of existing international instruments.⁸ ICAO’s review of existing law and other international dialogue sparked a negotiating process spanning almost nine years and leading to a successful diplomatic conference in Beijing in September 2010, where two new legal instruments emerged: one, along with a new and detailed Protocol, amends the Hague Convention; and the other creates a new international instrument to supersede the Montreal Convention and its 1988 Protocol.

The two new legal instruments not only address the underlying conduct of the September 11 terrorist attacks but also deal with other illicit conduct that threatens the safety of international civil aviation and the protection of the

* Samuel M. Witten is counsel in Arnold & Porter LLP’s Washington, D.C. office. He worked at the U.S. Department of State for twenty-two years, including five years as Assistant Legal Adviser for Law Enforcement and Intelligence, six years as Deputy Legal Adviser, and three years as Principal Deputy Assistant Secretary of State for Population, Refugees, and Migration. He chaired the U.S. Government’s delegation in the negotiation of the 1997 United Nations Convention for the Suppression of Terrorist Bombings [cited below at footnote 7].

public. In addition, they enhance the underlying Hague and Montreal Conventions by incorporating now-standard provisions found in modern international counterterrorism conventions. For example, both the Beijing Convention and Protocol expand the jurisdictional provisions (e.g., by requiring States Parties to establish jurisdiction where the alleged offender is a national) and establish other optional grounds for jurisdiction. Both instruments also contain a now-standard provision, originating with the 1997 Convention on the Suppression of Terrorist Bombings, which states that the Convention does not govern the activities of armed forces during an armed conflict or the activities of military forces of a state in the exercise of their official duties.

The following are highlights of these new instruments, which will go into force after twenty-two States deposit instruments of ratification, acceptance, approval, or accession with the Secretary General of the ICAO.

The 2010 Beijing Protocol, Intended to Supplement the 1970 Hague Convention

The Hague Convention focuses on a fairly specific offense, i.e., the unlawful seizure of an aircraft in international civil aviation. It achieved its original aim and quickly became one of the most subscribed international instruments addressing international terrorism.

The Beijing Protocol to the Hague Convention elaborates on the hijacking offense and strengthens its provisions in several specific but useful ways. Some highlights of the new instrument include:

- The Beijing Protocol significantly expands the scope of the hijacking offense to include hijackings that occur pre- or post-flight, as well as a wide variety of ancillary offenses, such as attempt to commit the offense, accomplice liability, conspiracy, and assistance after the fact. Whereas the Hague Convention limited the offense to individuals on board the flight, the Beijing Protocol eliminates such a requirement, recognizing that not all persons involved in airplane hijackings will physically board the aircraft.
- It includes more detailed extradition and legal assistance provisions than the underlying Hague Convention. Particularly, it provides that a request for extradition or legal assistance may not be denied on the sole ground that it is a political offense or an offense inspired by political motives. The Protocol also includes a savings clause which permits denial of assistance if the requested state has substantial grounds to believe that the request was made to prosecute a person on account of that person's race, religion, nationality, ethnic origin, political opinion, or gender.

Paragraph 19 of the Protocol provides that the Hague Convention and the Montreal Protocol will be read and interpreted together as one single instrument and will be known as "the Hague Convention as amended by the Beijing Protocol, 2010."

The Beijing Convention, Intended to Replace the 1971 Montreal Convention and its 1988 Protocol

As noted above, the 1971 Montreal Convention was already modified once—in 1988 at a Diplomatic Conference in Montreal—to address certain acts of terrorism at civil international airports. In the meantime, most States Parties to the 1971 Montreal Convention became parties to the 1988 Montreal Protocol. Rather than develop a second Protocol to the 1971 Convention, which would have led to unduly complicated treaty relationships among States Parties to the three instruments, the Diplomatic Conference at Beijing concluded an entirely new and freestanding instrument effectively amending both underlying Montreal-related instruments. Paragraph 24 of the new Beijing Convention provides that the Convention prevails over both earlier instruments.

Whereas the Beijing Protocol's changes to the Hague Convention were relatively modest, the Diplomatic Conference took a significantly more assertive and ambitious approach to amend the underlying two Montreal instruments. Specifically:

- Responding directly to the September 11 attacks, the Beijing Convention criminalizes the use of a civil aircraft to cause death, serious bodily injury, or serious damage to property or the environment.⁹
- A second new offense criminalizes the releasing of or the discharging from a civil aircraft any biological, chemical, or nuclear ("BCN") weapon or explosive, radioactive, or similar substances in a manner that is likely to cause death, serious bodily injury, or serious damage to property or

the environment. While these types of weapons were apparently not directly implicated in the September 11 attacks, the negotiators of the Beijing Convention took the opportunity to include these offenses in the new instrument to create a legal framework for international cooperation on this issue.

- The third new offense is related to the second and includes the use of inherently dangerous materials, but specifically criminalizes the use of the same dangerous items *against or on board* a civil aircraft. While the first two offenses concern using aircraft as a weapon, this offense specifically prohibits using of inherently dangerous materials against an aircraft.
- The new Convention has certain additional innovations that go beyond the structures of most prior terrorism conventions. It criminalizes the transport of dangerous materials—such as explosive or radioactive material, a BCN weapon, or source or special fissionable material—if a state can demonstrate specific mental elements in relation to the transport of each type of dangerous material. In addition to demonstrating that the transport of the dangerous materials was done illegally and intentionally, each of the four subsections of this new transport offense requires an additional showing of specific knowledge or intent. For example, an individual may be liable for transporting explosive or radioactive materials only if the person transported the materials *knowing* they were intended to be used for a terrorist purpose.¹⁰
- The Convention adds ancillary offenses similar to those in the Beijing Protocol to the Hague Convention.

Conclusion

The two new international instruments agreed upon in Beijing are the product of years of negotiations by nations around the world in the aftermath of the September 11 attacks. They constitute an important advancement in the ever growing number of legal measures implemented by the international community to prevent, investigate, and prosecute terrorist crimes.

ENDNOTES

- 1 United Nations Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, 12325 U.N.T.S. 860, *available at* <http://treaties.un.org/doc/db/Terrorism/Conv2-english.pdf>.
- 2 United Nations Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Sept. 23, 1971, 974 U.N.T.S. 178, *available at* <http://treaties.un.org/doc/db/Terrorism/Conv3-english.pdf>.
- 3 United Nations Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Dec. 14, 1973, 3166 U.N.T.S. 1035, *available at* <http://treaties.un.org/doc/db/Terrorism/english-18-7.pdf>.
- 4 United Nations Convention Against the Taking of Hostages, Dec. 17, 1979, 21931 U.N.T.S. 1316, *available at* <http://treaties.un.org/doc/db/Terrorism/english-18-5.pdf>.
- 5 United Nations Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Mar. 10, 1988, 29004 U.N.T.S. 1678, *available at* <http://treaties.un.org/doc/db/Terrorism/Conv8-english.pdf>.
- 6 United Nations Convention for the Suppression of Terrorist Bombings, Dec. 15, 1997, 37517 U.N.T.S. 2149, *available at* <http://treaties.un.org/doc/db/Terrorism/english-18-9.pdf>.
- 7 United Nations Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Feb. 24, 1988, 14118 U.N.T.S. 1589, *available at* <http://treaties.un.org/doc/db/Terrorism/Conv7-english.pdf>.
- 8 Assembly of the International Civil Aviation Organization Res. 33-1, 33rd Sess., Sept. 25–Oct. 5, 2001, *available at* http://www.icao.int/icao/en/assembl/a33/resolutions_a33.pdf.
- 9 The use of aircraft to destroy public buildings and infrastructure would probably have been considered an offense under the relevant definitions of terrorist acts under the Terrorist Bombings Convention. However, the Beijing Convention, negotiated under the framework of the International Civil Aviation Organization, makes this offense clear and explicit.
- 10 These offenses do not undermine the rights of States Parties to the Nuclear Nonproliferation Treaty (“NPT”) with regard to nuclear transport. Persons acting consistently with NPT provisions may not be prosecuted, for example, for transporting nuclear materials, where the resulting transfer is permitted by the NPT. These exceptions clarify that the transport offense is not meant to undermine or alter the existing legal requirements on these issues but rather to deter and punish movement of materials of proliferation around the world by air, where such movement would pose a threat to international peace and security. The offense parallels a similar transport offense contained in the 2005 Protocol to the Convention for the Suppression of Unlawful Acts. United Nations Convention for the Suppression of Acts of Nuclear Terrorism, Apr. 13, 2005, 44004 U.N.T.S. 2445, *available at* <http://treaties.un.org/doc/db/Terrorism/english-18-15.pdf>.

CONVENTION ON THE SUPPRESSION OF UNLAWFUL ACTS RELATING TO INTERNATIONAL
CIVIL AVIATION*

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CONVENTION
ON THE SUPPRESSION OF UNLAWFUL ACTS
RELATING TO INTERNATIONAL CIVIL AVIATION

Done at Beijing on 10 September 2010

THE STATES PARTIES TO THIS CONVENTION,

DEEPLY CONCERNED that unlawful acts against civil aviation jeopardize the safety and security of persons and property, seriously affect the operation of air services, airports and air navigation, and undermine the confidence of the peoples of the world in the safe and orderly conduct of civil aviation for all States;

RECOGNIZING that new types of threats against civil aviation require new concerted efforts and policies of cooperation on the part of States; and

BEING CONVINCED that in order to better address these threats, there is an urgent need to strengthen the legal framework for international cooperation in preventing and suppressing unlawful acts against civil aviation;

HAVE AGREED AS FOLLOWS:

Article 1

1. Any person commits an offence if that person unlawfully and intentionally:

- (a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or
- (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or
- (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or
- (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or
- (e) communicates information which that person knows to be false, thereby endangering the safety of an aircraft in flight; or
- (f) uses an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment; or
- (g) releases or discharges from an aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or
- (h) uses against or on board an aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or
- (i) transports, causes to be transported, or facilitates the transport of, on board an aircraft:
 - (1) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law,

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death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act; or

- (2) any BCN weapon, knowing it to be a BCN weapon as defined in Article 2; or
- (3) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to a safeguards agreement with the International Atomic Energy Agency; or
- (4) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon without lawful authorization and with the intention that it will be used for such purpose;

provided that for activities involving a State Party, including those undertaken by a person or legal entity authorized by a State Party, it shall not be an offence under subparagraphs (3) and (4) if the transport of such items or materials is consistent with or is for a use or activity that is consistent with its rights, responsibilities and obligations under the applicable multilateral non-proliferation treaty to which it is a party including those referred to in Article 7.

2. Any person commits an offence if that person unlawfully and intentionally, using any device, substance or weapon:

- (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or
- (b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at that airport.

3. Any person also commits an offence if that person:

- (a) makes a threat to commit any of the offences in subparagraphs (a), (b), (c), (d), (f), (g) and (h) of paragraph 1 or in paragraph 2 of this Article; or
- (b) unlawfully and intentionally causes any person to receive such a threat,

under circumstances which indicate that the threat is credible.

4. Any person also commits an offence if that person:

- (a) attempts to commit any of the offences set forth in paragraph 1 or 2 of this Article; or
- (b) organizes or directs others to commit an offence set forth in paragraph 1, 2, 3 or 4(a) of this Article; or
- (c) participates as an accomplice in an offence set forth in paragraph 1, 2, 3 or 4(a) of this Article; or
- (d) unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offence set forth in paragraph 1, 2, 3, 4(a), 4(b) or 4(c) of this Article, or that the person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence.

5. Each State Party shall also establish as offences, when committed intentionally, whether or not any of the offences set forth in paragraph 1, 2 or 3 of this Article is actually committed or attempted, either or both of the following:

- (a) agreeing with one or more other persons to commit an offence set forth in paragraph 1, 2 or 3 of this Article and, where required by national law, involving an act undertaken by one of the participants in furtherance of the agreement; or
- (b) contributing in any other way to the commission of one or more offences set forth in paragraph 1, 2 or 3 of this Article by a group of persons acting with a common purpose, and such contribution shall either:
 - (i) be made with the aim of furthering the general criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence set forth in paragraph 1, 2 or 3 of this Article; or
 - (ii) be made in the knowledge of the intention of the group to commit an offence set forth in paragraph 1, 2 or 3 of this Article.

Article 2

For the purposes of this Convention:

- (a) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board;
- (b) an aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this Article;
- (c) “Air navigation facilities” include signals, data, information or systems necessary for the navigation of the aircraft;
- (d) “Toxic chemical” means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere;
- (e) “Radioactive material” means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment;
- (f) “Nuclear material” means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;
- (g) “Uranium enriched in the isotope 235 or 233” means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;
- (h) “BCN weapon” means:
 - (a) “biological weapons”, which are:
 - (i) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or

- (ii) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.
- (b) “chemical weapons”, which are, together or separately:
 - (i) toxic chemicals and their precursors, except where intended for:
 - (A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or
 - (B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or
 - (C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or
 - (D) law enforcement including domestic riot control purposes, as long as the types and quantities are consistent with such purposes;
 - (ii) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (b)(i), which would be released as a result of the employment of such munitions and devices;
 - (iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b)(ii).
- (c) nuclear weapons and other nuclear explosive devices.
- (i) “Precursor” means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system;
- (j) the terms “source material” and “special fissionable material” have the same meaning as given to those terms in the Statute of the International Atomic Energy Agency, done at New York on 26 October 1956.

Article 3

Each State Party undertakes to make the offences set forth in Article 1 punishable by severe penalties.

Article 4

1. Each State Party, in accordance with its national legal principles, may take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in Article 1. Such liability may be criminal, civil or administrative.
2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.
3. If a State Party takes the necessary measures to make a legal entity liable in accordance with paragraph 1 of this Article, it shall endeavour to ensure that the applicable criminal, civil or administrative sanctions are effective, proportionate and dissuasive. Such sanctions may include monetary sanctions.

Article 5

1. This Convention shall not apply to aircraft used in military, customs or police services.
2. In the cases contemplated in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall apply irrespective of whether the aircraft is engaged in an international or domestic flight, only if:

(a) the place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registry of that aircraft; or

(b) the offence is committed in the territory of a State other than the State of registry of the aircraft.

3. Notwithstanding paragraph 2 of this Article, in the cases contemplated in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall also apply if the offender or the alleged offender is found in the territory of a State other than the State of registry of the aircraft.

4. With respect to the States Parties mentioned in Article 15 and in the cases set forth in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall not apply if the places referred to in subparagraph (a) of paragraph 2 of this Article are situated within the territory of the same State where that State is one of those referred to in Article 15, unless the offence is committed or the offender or alleged offender is found in the territory of a State other than that State.

5. In the cases contemplated in subparagraph (d) of paragraph 1 of Article 1, this Convention shall apply only if the air navigation facilities are used in international air navigation.

6. The provisions of paragraphs 2, 3, 4 and 5 of this Article shall also apply in the cases contemplated in paragraph 4 of Article 1.

Article 6

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, the Convention on International Civil Aviation and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

3. The provisions of paragraph 2 of this Article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

Article 7

Nothing in this Convention shall affect the rights, obligations and responsibilities under the Treaty on the Non-Proliferation of Nuclear Weapons, signed at London, Moscow and Washington on 1 July 1968, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, signed at London, Moscow and Washington on 10 April 1972, or the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, signed at Paris on 13 January 1993, of States Parties to such treaties.

Article 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 in the following cases:

(a) when the offence is committed in the territory of that State;

(b) when the offence is committed against or on board an aircraft registered in that State;

(c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;

(d) when the offence is committed against or on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in that State;

(e) when the offence is committed by a national of that State.

2. Each State Party may also establish its jurisdiction over any such offence in the following cases:
 - (a) when the offence is committed against a national of that State;
 - (b) when the offence is committed by a stateless person whose habitual residence is in the territory of that State.
3. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1, in the case where the alleged offender is present in its territory and it does not extradite that person pursuant to Article 12 to any of the States Parties that have established their jurisdiction in accordance with the applicable paragraphs of this Article with regard to those offences.
4. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 9

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present, shall take that person into custody or take other measures to ensure that person's presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary enquiry into the facts.
3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which that person is a national.
4. When a State Party, pursuant to this Article, has taken a person into custody, it shall immediately notify the States Parties which have established jurisdiction under paragraph 1 of Article 8 and established jurisdiction and notified the Depositary under subparagraph (a) of paragraph 4 of Article 21 and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State Party which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States Parties and shall indicate whether it intends to exercise jurisdiction.

Article 10

The State Party in the territory of which the alleged offender is found shall, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 11

Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 12

1. The offences set forth in Article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in Article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in Article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with subparagraphs (b), (c), (d) and (e) of paragraph 1 of Article 8, and who have established jurisdiction in accordance with paragraph 2 of Article 8.

5. The offences set forth in subparagraphs (a) and (b) of paragraph 5 of Article 1 shall, for the purpose of extradition between States Parties, be treated as equivalent.

Article 13

None of the offences set forth in Article 1 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 14

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in Article 1 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 15

The States Parties which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registry for the purpose of this Convention and shall give notice thereof to the Secretary General of the International Civil Aviation Organization who shall communicate the notice to all States Parties to this Convention.

Article 16

1. States Parties shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences set forth in Article 1.

2. When, due to the commission of one of the offences set forth in Article 1, a flight has been delayed or interrupted, any State Party in whose territory the aircraft or passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 17

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 1. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 18

Any State Party having reason to believe that one of the offences set forth in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States Parties which it believes would be the States set forth in paragraphs 1 and 2 of Article 8.

Article 19

Each State Party shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

- (a) the circumstances of the offence;
- (b) the action taken pursuant to paragraph 2 of Article 16;
- (c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

Article 20

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

Article 21

1. This Convention shall be open for signature in Beijing on 10 September 2010 by States participating in the Diplomatic Conference on Aviation Security held at Beijing from 30 August to 10 September 2010. After 27 September 2010, this Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montréal until it enters into force in accordance with Article 22.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the International Civil Aviation Organization, which is hereby designated as the Depositary.

3. Any State which does not ratify, accept or approve this Convention in accordance with paragraph 2 of this Article may accede to it at any time. The instrument of accession shall be deposited with the Depositary.

4. Upon ratifying, accepting, approving or acceding to this Convention, each State Party:

- (a) shall notify the Depositary of the jurisdiction it has established under its national law in accordance with paragraph 2 of Article 8, and immediately notify the Depositary of any change; and
- (b) may declare that it shall apply the provisions of subparagraph (d) of paragraph 4 of Article 1 in accordance with the principles of its criminal law concerning family exemptions from liability.

Article 22

1. This Convention shall enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession.

2. For each State ratifying, accepting, approving or acceding to this Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the second month following the date of the deposit by such State of its instrument of ratification, acceptance, approval or accession.

3. As soon as this Convention enters into force, it shall be registered with the United Nations by the Depositary.

Article 23

1. Any State Party may denounce this Convention by written notification to the Depositary.
2. Denunciation shall take effect one year following the date on which notification is received by the Depositary.

Article 24

As between the States Parties, this Convention shall prevail over the following instruments:

- (a) the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Signed at Montreal on 23 September 1971; and
- (b) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Done at Montreal on 23 September 1971, Signed at Montreal on 24 February 1988.

Article 25

The Depositary shall promptly inform all States Parties to this Convention and all signatory or acceding States to this Convention of the date of each signature, the date of deposit of each instrument of ratification, approval, acceptance or accession, the date of coming into force of this Convention, and other relevant information.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Beijing on the tenth day of September of the year Two Thousand and Ten in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Convention.

PROTOCOL SUPPLEMENTARY TO THE CONVENTION FOR THE SUPPRESSION OF
UNLAWFUL SEIZURE OF AIRCRAFT*

[September 10, 2010]

+Cite as 50 ILM 153 (2011)+

PROTOCOL

**SUPPLEMENTARY TO THE CONVENTION FOR THE
SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT**

Done at Beijing on 10 September 2010

THE STATES PARTIES TO THIS PROTOCOL,

DEEPLY CONCERNED about the worldwide escalation of unlawful acts against civil aviation;

RECOGNIZING that new types of threats against civil aviation require new concerted efforts and policies of cooperation on the part of States; and

BELIEVING that in order to better address these threats, it is necessary to adopt provisions supplementary to those of the *Convention for the Suppression of Unlawful Seizure of Aircraft* signed at The Hague on 16 December 1970, to suppress unlawful acts of seizure or exercise of control of aircraft and to improve its effectiveness;

HAVE AGREED AS FOLLOWS:

Article I

This Protocol supplements the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970 (hereinafter referred to as “the Convention”).

Article II

Article 1 of the Convention shall be replaced by the following:

“Article 1

1. Any person commits an offence if that person unlawfully and intentionally seizes or exercises control of an aircraft in service by force or threat thereof, or by coercion, or by any other form of intimidation, or by any technological means.
2. Any person also commits an offence if that person:
 - (a) makes a threat to commit the offence set forth in paragraph 1 of this Article; or
 - (b) unlawfully and intentionally causes any person to receive such a threat,under circumstances which indicate that the threat is credible.
3. Any person also commits an offence if that person:
 - (a) attempts to commit the offence set forth in paragraph 1 of this Article; or
 - (b) organizes or directs others to commit an offence set forth in paragraph 1, 2 or 3 (a) of this Article; or
 - (c) participates as an accomplice in an offence set forth in paragraph 1, 2 or 3 (a) of this Article; or

* This text was reproduced and reformatted from the text available at the International Civil Aviation Organization website (visited Mar. 30, 2011) http://www.icao.int/DCAS2010/restr/docs/beijing_protocol_multi.pdf.

- (d) unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offence set forth in paragraph 1, 2, 3 (a), 3 (b) or 3 (c) of this Article, or that the person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence.

4. Each State Party shall also establish as offences, when committed intentionally, whether or not any of the offences set forth in paragraph 1 or 2 of this Article is actually committed or attempted, either or both of the following:

- (a) agreeing with one or more other persons to commit an offence set forth in paragraph 1 or 2 of this Article and, where required by national law, involving an act undertaken by one of the participants in furtherance of the agreement; or
- (b) contributing in any other way to the commission of one or more offences set forth in paragraph 1 or 2 of this Article by a group of persons acting with a common purpose, and such contribution shall either:
 - (i) be made with the aim of furthering the general criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence set forth in paragraph 1 or 2 of this Article; or
 - (ii) be made in the knowledge of the intention of the group to commit an offence set forth in paragraph 1 or 2 of this Article.”

Article III

Article 2 of the Convention shall be replaced by the following:

“Article 2

Each State Party undertakes to make the offences set forth in Article 1 punishable by severe penalties.”

Article IV

The following shall be added as Article 2 *bis* of the Convention:

“Article 2 *bis*

1. Each State Party, in accordance with its national legal principles, may take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in Article 1. Such liability may be criminal, civil or administrative.
2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.
3. If a State Party takes the necessary measures to make a legal entity liable in accordance with paragraph 1 of this Article, it shall endeavour to ensure that the applicable criminal, civil or administrative sanctions are effective, proportionate and dissuasive. Such sanctions may include monetary sanctions.”

Article V

1. Article 3, paragraph 1, of the Convention shall be replaced by the following:

“Article 3

1. For the purposes of this Convention, an aircraft is considered to be in service from the beginning of the pre-flight preparation of the aircraft by ground personnel or by the crew for a specific flight

until twenty-four hours after any landing. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board.”

2. In Article 3, paragraph 3, of the Convention, “registration” shall be replaced by “registry”.

3. In Article 3, paragraph 4, of the Convention, “mentioned” shall be replaced by “set forth”.

4. Article 3, paragraph 5, of the Convention shall be replaced by the following:

“5. Notwithstanding paragraphs 3 and 4 of this Article, Articles 6, 7, 7 *bis*, 8, 8 *bis*, 8 *ter* and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registry of that aircraft.”

Article VI

The following shall be added as Article 3 *bis* of the Convention:

“Article 3 *bis*

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, the Convention on International Civil Aviation and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

3. The provisions of paragraph 2 of this Article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.”

Article VII

Article 4 of the Convention shall be replaced by the following:

“Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 and any other act of violence against passengers or crew committed by the alleged offender in connection with the offences, in the following cases:

- (a) when the offence is committed in the territory of that State;
- (b) when the offence is committed against or on board an aircraft registered in that State;
- (c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;
- (d) when the offence is committed against or on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in that State;
- (e) when the offence is committed by a national of that State.

2. Each State Party may also establish its jurisdiction over any such offence in the following cases:

- (a) when the offence is committed against a national of that State;

(b) when the offence is committed by a stateless person whose habitual residence is in the territory of that State.

3. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 in the case where the alleged offender is present in its territory and it does not extradite that person pursuant to Article 8 to any of the States Parties that have established their jurisdiction in accordance with the applicable paragraphs of this Article with regard to those offences.

4. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.”

Article VIII

Article 5 of the Convention shall be replaced by the following:

“Article 5

The States Parties which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registry for the purpose of this Convention and shall give notice thereof to the Secretary General of the International Civil Aviation Organization who shall communicate the notice to all States Parties to this Convention.”

Article IX

Article 6, paragraph 4, of the Convention shall be replaced by the following:

“Article 6

4. When a State Party, pursuant to this Article, has taken a person into custody, it shall immediately notify the States Parties which have established jurisdiction under paragraph 1 of Article 4, and established jurisdiction and notified the Depositary under paragraph 2 of Article 4 and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant that person’s detention. The State Party which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States Parties and shall indicate whether it intends to exercise jurisdiction.”

Article X

The following shall be added as Article 7 *bis* of the Convention:

“Article 7 *bis*

Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.”

Article XI

Article 8 of the Convention shall be replaced by the following:

“Article 8

1. The offences set forth in Article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in Article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in Article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with subparagraphs (b), (c), (d) and (e) of paragraph 1 of Article 4 and who have established jurisdiction in accordance with paragraph 2 of Article 4.
5. The offences set forth in subparagraphs (a) and (b) of paragraph 4 of Article 1 shall, for the purpose of extradition between States Parties, be treated as equivalent.”

Article XII

The following shall be added as Article 8 *bis* of the Convention:

“Article 8 *bis*

None of the offences set forth in Article 1 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.”

Article XIII

The following shall be added as Article 8 *ter* of the Convention:

“Article 8 *ter*

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in Article 1 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person’s position for any of these reasons.”

Article XIV

Article 9, paragraph 1, of the Convention shall be replaced by the following:

“Article 9

1. When any of the acts set forth in paragraph 1 of Article 1 has occurred or is about to occur, States Parties shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve the commander’s control of the aircraft.”

Article XV

Article 10, paragraph 1, of the Convention shall be replaced by the following:

“Article 10

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 1 and other acts set forth in Article 4. The law of the State requested shall apply in all cases.”

Article XVI

The following shall be added as Article 10 *bis* of the Convention:

“Article 10 *bis*

Any State Party having reason to believe that one of the offences set forth in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States Parties which it believes would be the States set forth in paragraphs 1 and 2 of Article 4.”

Article XVII

1. All references in the Convention to “Contracting State” and “Contracting States” shall be replaced by “State Party” and “States Parties” respectively.
2. All references in the Convention to “him” and “his” shall be replaced by “that person” and “that person’s” respectively.

Article XVIII

The texts of the Convention in the Arabic and Chinese languages annexed to this Protocol shall, together with the texts of the Convention in the English, French, Russian and Spanish languages, constitute texts equally authentic in the six languages.

Article XIX

As between the States Parties to this Protocol, the Convention and this Protocol shall be read and interpreted together as one single instrument and shall be known as The Hague Convention as amended by the Beijing Protocol, 2010.

Article XX

This Protocol shall be open for signature in Beijing on 10 September 2010 by States participating in the Diplomatic Conference on Aviation Security held at Beijing from 30 August to 10 September 2010. After 27 September 2010, this Protocol shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montréal until it enters into force in accordance with Article XXIII.

Article XXI

1. This Protocol is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated as the Depositary.
2. Ratification, acceptance or approval of this Protocol by any State which is not a Party to the Convention shall have the effect of ratification, acceptance or approval of The Hague Convention as amended by the Beijing Protocol, 2010.
3. Any State which does not ratify, accept or approve this Protocol in accordance with paragraph 1 of this Article may accede to it at any time. The instruments of accession shall be deposited with the Depositary.

Article XXII

Upon ratifying, accepting, approving or acceding to this Protocol, each State Party:

- (a) shall notify the Depositary of the jurisdiction it has established under its national law in accordance with paragraph 2 of Article 4 of The Hague Convention as amended by the Beijing Protocol, 2010, and immediately notify the Depositary of any change; and

- (b) may declare that it shall apply the provisions of subparagraph (d) of paragraph 3 of Article 1 of The Hague Convention as amended by the Beijing Protocol, 2010 in accordance with the principles of its criminal law concerning family exemptions from liability.

Article XXIII

1. This Protocol shall enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Depositary.
2. For each State ratifying, accepting, approving or acceding to this Protocol after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, this Protocol shall enter into force on the first day of the second month following the date of the deposit by such State of its instrument of ratification, acceptance, approval or accession.
3. As soon as this Protocol enters into force, it shall be registered with the United Nations by the Depositary.

Article XXIV

1. Any State Party may denounce this Protocol by written notification to the Depositary.
2. Denunciation shall take effect one year following the date on which notification is received by the Depositary.

Article XXV

The Depositary shall promptly inform all States Parties to this Protocol and all signatory or acceding States to this Protocol of the date of each signature, the date of deposit of each instrument of ratification, acceptance, approval or accession, the date of coming into force of this Protocol, and other relevant information.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.

DONE at Beijing on the tenth day of September of the year Two Thousand and Ten in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. This Protocol shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Protocol.