

Article 6

- 1 Upon being satisfied that the circumstances so warrant, any contracting state in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his 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 para 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the state of which he is a national.
- 4 When a state, pursuant to this article, has taken a person into custody, it shall immediately notify the state of registration of the aircraft, the state mentioned in Article 4, para 1(c), the state of nationality of the detained person and, if it considers it advisable, any other interested state of the fact that such person is in custody and of the circumstances which warrant his detention. The state which makes the preliminary enquiry contemplated in para 2 of this article shall promptly report its findings to the said states and shall indicate whether it intends to exercise jurisdiction.

Article 7

The contracting state in the territory of which the alleged offender is found, if it does not extradite him, shall 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 8

- 1 The offence shall be deemed to be included as an extraditable offence in any extradition treaty existing between contracting states. Contracting states undertake to include the offence as an extraditable treaty to be concluded between them.
- 2 If a contracting state which makes extradition conditional on the existence of a treaty receives a request for extradition from another contracting state 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 offence. Extradition shall be subject to the other conditions provided by the law of the requested state.
- 3 Contracting states which do not make extradition conditional on the existence of a treaty shall recognise the offence between themselves subject to the conditions provided by the law of the requested state.
- 4 The offence shall be treated, for the purpose of extradition between contracting states, as if it had been committed not only in the place in which it occurred but also in the territories of the states required to establish their jurisdiction in accordance with Article 4, para 1.

Article 9

- 1 When any of the acts mentioned in Article 1(a) has occurred or is about to occur, contracting states shall take all appropriate measures to restore control of aircraft to its lawful commander or to preserve his control of the aircraft.

- 2 In the cases contemplated by the preceding paragraph, any contracting state in which the aircraft or its 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 10

- 1 contracting states shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offence and other acts mentioned in Article 4. The law of the state requested shall apply in all cases.
- 2 The provisions of para 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 11

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

- (a) the circumstances of the offence;
- (b) the action taken pursuant to Article 9;
- (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.

The Hague Convention did not deal with the problem of aircraft sabotage. The ICAO convened a conference in 1971 to remedy this deficiency and the conference adopted the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation 1971. Following a series of attacks at airports a protocol to the Convention was agreed in 1988 – the Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation 1988.

MONTREAL CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION 1971

Article 1

- 1 Any person commits an offence if he 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 he knows to be false, thereby endangering the safety of an aircraft in flight.
- 2 Any person also commits an offence if he:
- (a) attempts to commit any of the offences mentioned in para 1 of this article; or
 - (b) is an accomplice of a person who commits or attempts to commit any such offence.

Article 2

For the purpose 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 para (a) of this article.

Article 3

Each contracting state undertakes to make the offences mentioned in Article 1 punishable by severe penalties.

Article 4

- 1 This Convention shall not apply to aircraft used in military, customs or police services.
- 2 In the cases contemplated in sub-paras (a), (b), (c) and (e) of para 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 registration of the aircraft;
 - (b) the offence is committed in the territory of a state other than the state of registration of the aircraft.
- 3 Notwithstanding para 2 of this article, in the cases contemplated in sub-paras (a), (b), (c) and (e) of para 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 registration of the aircraft.
- 4 With respect to the states mentioned in Article 9 and in the cases mentioned in sub-paras (a), (b), (c) and (e) of para 1 of Article 1, this Convention shall not apply if the places referred to in sub-para (a) of para 2 of this article are situated within the territory of the same state where that state is one of those referred to in Article 9, 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 sub-para (d) of para 1 of Article 1, this Convention shall apply only if the air navigation facilities are used in international air navigation.
- 6 The provisions of paras 2, 3, 4 and 5 of this article shall also apply in the cases contemplated in para 2 of Article 1.

Article 5

- 1 Each contracting state shall take such measures as may be necessary to establish its jurisdiction over 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 who has his principal place of business or, if the lessee has no such place of business, his permanent residence, on that state.
- 2 Each contracting state shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, para 1(a), (b) and (c), and in Article 1, para 2, in so far as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the states mentioned in para 1 of this article.
- 3 This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 6

- 1 Upon being satisfied that the circumstances so warrant, any contracting state in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his 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 para 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the state of which he is a national.
- 4 When a state, pursuant to this article, has taken a person into custody, it shall immediately notify the state of registration of the aircraft, the state mentioned in Article 5, para 1, the state of nationality of the detained person and, if it considers it advisable, any other interested state of the fact that such person is in custody and of the circumstances which warrant his detention. The state which makes the preliminary enquiry contemplated in para 2 of this article shall promptly report its findings to the said states and shall indicate whether it intends to exercise jurisdiction.

Article 7

The contracting state in the territory of which the alleged offender is found, if it does not extradite him, shall 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 8

- 1 The offence shall be deemed to be included as an extraditable offence in any extradition treaty existing between contracting states. Contracting states undertake to include the offence as an extraditable offence in any extradition treaty to be concluded between them.
- 2 If a contracting state which makes extradition conditional on the existence of a treaty receives a request for extradition from another contracting state 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 offence. Extradition shall be subject to the other conditions provided by the law of the requested state.
- 3 Contracting states which do not make extradition conditional on the existence of a treaty shall recognise the offence between themselves subject to the conditions provided by the law of the requested state.
- 4 The offence shall be treated, for the purpose of extradition between contracting states, as if it had been committed not only in the place in which it occurred but also in the territories of the states required to establish their jurisdiction in accordance with Article 5, paras 1(b), (c) and (d).

Article 9

The contracting states which establish joint air transport operating organisations 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 registration for the purpose of this Convention and shall give notice thereof to the International Civil Aviation Organisation which shall communicate the notice to all State Parties to this Convention.

Article 10

- 1 Contracting states shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences mentioned in Article 1.
- 2 When, due to the commission of one of the offences mentioned in Article 1, a flight has been delayed or interrupted, any contracting state in whose territory the aircraft or passengers or crew are present shall facilitate the continuation of the journey as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 11

- 1 Contracting states shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offence and other acts mentioned in Article 4. The law of the state requested shall apply in all cases.
- 2 The provisions of para 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 12

Any contracting state having reason to believe that one of the offences mentioned in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those states which it believes would be the states mentioned in Article 5, para 1.

Article 13

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

- (a) the circumstances of the offence;
- (b) the action taken pursuant to Article 10, para 2;
- (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 14

- 1 Any dispute between two or more contracting states 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 organisation 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 or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other contracting states shall not be bound by the preceding paragraph with respect to any contracting state having made such a reservation.
- 3 Any contracting states having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary Governments.

PROTOCOL OF THE MONTREAL CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION 1971

Article I

This Protocol supplements the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971 (hereinafter referred to as 'the Convention'), and, as between the parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument.

Article II

- 1 In Article 1 of the Convention, the following shall be added as new para 1 *bis*:
'1 *bis* Any person commits an offence if he unlawfully and internationally, using any device, substance or weapon:
 - (a) performs an act of violence against a person at an airport serving international civil aviation which causes 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.'

- 2 In para 2(a) of Article 1 of the Convention, the following words shall be inserted after the words 'para 1': 'or para 1 *bis*'.

One of the problems with the conventions on aviation and airport security is they provide no enforcement measures which can be used against defaulting states. The Bonn Declaration on International Terrorism 1978 which was signed by Canada, France, the Federal Republic of Germany, Italy, Japan, the UK and the US provided that where a state refused to extradite or prosecute those who have hijacked an aircraft, action should be taken to cease all flights to and from that state and all flights by its airlines. The Tokyo, Hague and Montreal Conventions merely provide that in the case of a dispute arising over interpretation and application of the conventions resort should be had to international arbitration and, failing that, the ICJ.

12.5 The liability of airline companies

An issue of major importance as far as air law is concerned relates to the liability of civil airline companies for death or injury suffered by passengers. The Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air 1929 (Warsaw Convention) as amended at the Hague in 1955 establishes upper limits for liability and deals with issues of responsibility and insurance. Article 20 of the Convention provides that the airline is not liable if it proves that it and its agents have taken all necessary measures to avoid the damage or that it was impossible to take such measures. Article 22 puts a financial ceiling on compensation available, unless it can be proved that the damage resulted from wilful misconduct of the airline in which case liability is unlimited. As far as flights flying into and out of the USA are concerned, the position for passengers is much improved by the Montreal Agreement which was concluded in 1966. But for all other international flights the present law is heavily weighted in favour of the airlines, and this has resulted in passengers suffering loss or injury suing the manufacturers of the aircraft or the maintenance crew rather than going for the airline itself.

It is worth noting that the question of liability for damage caused by aircraft to persons and property on the surface is covered by the Rome Convention 1952 and the Montreal Protocol 1978. It is the aircraft operator, presumed to be the registered owner, who is responsible for damage caused by an aircraft in flight or by any person or thing falling from it. The Convention provides for strict liability but the amount of compensation available in such situations is limited.

12.6 Outer space

New problems of international law have been created by the increase of activity in the upper strata of the atmosphere and beyond. The launching of the first satellite orbiting the earth by the Soviet Union in 1957 heralded the beginning of outer space exploration which has since rapidly expanded with landings on the moon and other planets and the possibility of permanent space stations all giving rise to territorial and jurisdictional problems.

It will be remembered that the traditional view of sovereignty over air space is that it extends above the territory of a state without limit. A strict application of this rule would mean that orbiting satellites would require prior authorisation for flight over the territory of foreign states. This would clearly be impractical and thus it has been accepted that satellites may pass above territory and such overflight does not constitute a violation of air space sovereignty. It follows from this that national sovereignty does cease at some upper limit. Where that limit is remains uncertain but what is clear is that outer space constitutes *res communis* or part of the common heritage of mankind.

In 1958 the UN Committee on the Peaceful Uses of Outer Space was established and it has been responsible for a number of measures adopted regulating outer space activity. All such measures recognise that outer space must be used for peaceful means and is the common heritage of mankind. Treaties governing use of outer space include:

The Treaty on Principles Governing the Activities of states in the Exploration and Use of Outer Space including the Moon and other Celestial Bodies (Space Treaty) which was signed in 1967 and affirms that space shall be the province of all mankind. No area of space may be appropriated by any state and exploration is to be conducted according to international law and the principles of the Charter of the UN. Under the Space Treaty jurisdiction over items launched into space remains with the registering state.

The Space Treaty has been revised and clarified by the Agreement Governing the Activities of states on the Moon and other Celestial Bodies 1979 (Moon Treaty) which provides that the natural resources of the moon and other celestial bodies should be exploited as the common heritage of mankind. The treaty entered into force in 1984.

The Space Treaty has been further supplemented by two further agreements – the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Space 1968 (Astronauts Treaty) and the Convention on International Liability for Damages Caused by Space Objects 1972 (Liability Convention). The latter convention is concerned with damage caused by space objects on the surface of the earth or to aircraft in flight. There is a strict liability imposed on the launching state. As regards damage caused in outer space fault liability applies. The nature of liability for damage caused by space objects was discussed in the Cosmos 954 Claim (1979) which arose after a Soviet satellite, which had a nuclear reactor, disintegrated through Canadian air space and crashed onto Canadian territory. Canada claimed six million dollars in compensation from the USSR although the dispute was settled by the Soviet Union making an *ex gratia* payment of three million dollars.

The Registration of Objects Launched into Space Convention 1975 provides that every launch of a space craft must be public and its purpose must be registered on a public register maintained by the UN Secretary General. The use of satellite communications is further governed by the various international telecommunications agreements and overseen by a UN Agency, the International Telecommunications Union.

OUTER SPACE

TREATY ON PRINCIPLES GOVERNING THE ACTIVITIES OF STATES IN THE EXPLORATION AND USE OF OUTER SPACE, INCLUDING THE MOON AND OTHER CELESTIAL BODIES 1967³

The States Parties to this Treaty,

Inspired by the great prospects opening up before mankind as a result of man's entry into outer space,

Recognising the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes,

Believing that the exploration and use of outer space should be carried on for the benefit of all peoples irrespective of the degree of their economic or scientific development,

Desiring to contribute to broad international co-operation in the scientific as well as the legal aspects of the exploration and use of outer space for peaceful purposes,

Believing that such co-operation will contribute to the development of mutual understanding and to the strengthening of friendly relations between states and peoples,

Recalling Resolution 1962 (XVIII), entitled 'Declaration of Legal Principles Governing the Activities of states in the Exploration and Use of Outer Space', which was adopted unanimously by the United Nations General Assembly on 13 December 1963,

Recalling Resolution 1884 (XVIII), calling upon states to refrain from placing in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction or from installing such weapons on celestial bodies, which was adopted unanimously by the United Nations General Assembly on 17 October 1963,

Taking account of United Nations General Assembly Resolution 110 (II) of 3 November 1947, which condemned propaganda designed or likely to provoke or encourage any threat to the peace, breach of the peace or act of aggression, and considering that the aforementioned Resolution is applicable to outer space,

Convinced that a Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, will further the Purposes and Principles of the Charter of the United Nations,

Have agreed on the following:

Article 1

The exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind.

3 UKTS 10 (1968) 3519; 610 UNTS 205.

Outer space, including the moon and other celestial bodies, shall be free for exploration and use by all states without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies.

There shall be freedom of scientific investigation in outer space, including the moon and other celestial bodies, and states shall facilitate and encourage international co-operation in such investigation.

Article 2

Outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.

Article 3

States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations, in the interest of maintain international peace and security and promoting international co-operation and understanding.

Article 4

States Parties to the Treaty undertake not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner.

The moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military manoeuvres on celestial bodies shall be forbidden. The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited. The use of any equipment or facility necessary for peaceful exploration of the moon and other celestial bodies shall also not be prohibited.

Article 5

States Parties to the Treaty shall regard astronauts as envoys of mankind in outer space and shall render to them all possible assistance in the event of accident, distress, or emergency landing on the territory of another State Party or on the high seas. When astronauts make such a landing, they shall be safely and promptly returned to the state of registry of their space vehicle.

In carrying on activities in outer space and on celestial bodies, the astronauts of one State Party shall render all possible assistance to the astronauts of other State Parties.

State Parties to the Treaty shall immediately inform the other States Parties to the Treaty or the Secretary General of the United Nations of any phenomena they discover in outer space, including the moon and other celestial bodies, which could constitute a danger to the life or health of astronauts.

Article 6

States Parties to the Treaty shall bear international responsibility for national activities in outer space, including the moon and other celestial bodies, whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty. The activities of non-governmental entities in outer space, including the moon and other celestial

bodies, shall require authorisation and continuing supervision by the appropriate State Party to the Treaty. When activities are carried on in outer space, including the moon and other celestial bodies, by an international organisation, responsibility for compliance with this Treaty shall be borne both by the international organisation and by the States Parties to the Treaty participating in such organisation.

Article 7

Each State Party to the Treaty that launches or procures the launching of an object into outer space, including the moon and other celestial bodies, and each State Party from whose territory or facility an object is launched, is internationally liable for damage to another State Party to the Treaty or to its natural or juridical persons by such object or its component parts on the Earth, in air space or in outer space, including the moon and other celestial bodies.

Article 8

A State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over any personnel thereof, while in outer space or on a celestial body. Ownership of objects launched into outer space, including objects landed or constructed on a celestial body, and of their component parts, is not affected by their presence in outer space or on a celestial body or by their return to the Earth. Such objects or component parts found beyond the limits of the State Party to the Treaty on whose registry they are carried shall be returned to that State Party, which shall, upon request, furnish identifying data prior to their return.

Article 9

In the exploration and use of outer space, including the moon and other celestial bodies, State Parties to the Treaty shall be guided by the principle of co-operation and mutual assistance and shall conduct all their activities in outer space, including the moon and other celestial bodies, with due regard to the corresponding interests of all other States Parties to the Treaty. States Parties to the Treaty shall pursue studies of outer space, including the moon and other celestial bodies, and conduct exploration of them so as to avoid their harmful contamination and also adverse changes in the environment of the Earth resulting from the introduction of extraterrestrial matter and, where necessary, shall adopt appropriate measures for this purpose. If a State Party to the Treaty has reason to believe that an activity or experiment planned by it or its nationals in outer space, including the moon and other celestial bodies, would cause potentially harmful interference with activities of other States Parties in the peaceful exploration and use of outer space, including the moon and other celestial bodies, it shall undertake appropriate international consultations before proceeding with any such activity or experiment. A State Party to the Treaty which has reason to believe that an activity or experiment planned by another State Party in outer space, including the moon and other celestial bodies, would cause potentially harmful interference with activities in the peaceful exploration and use of outer space, including the moon and other celestial bodies, may request consultation concerning the activity or experiment.

Article 10

In order to promote international co-operation in the exploration and use of outer space, including the moon and other celestial bodies, in conformity with the purposes of this Treaty, the States Parties to the Treaty shall consider on a basis of equality any requests by other States Parties to the treaty to be afforded an opportunity to observe the flight of space objects launched by those states.