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## International Civil Aviation Organization - Draft Convention on Offences and Certain Other Acts Committed on Board Aircraft

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# INTERNATIONAL REVIEW

## INTERNATIONAL CIVIL AVIATION ORGANIZATION

### DRAFT CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT\*

#### Article 1

1. This Convention shall apply in respect of:
  - (1) offences against penal laws;
  - (2) acts which, whether or not they are an offence, may or do jeopardize the safety of the aircraft or persons or property therein or which jeopardize good order and discipline on board;when such offences are committed or such acts are done by a person on board any aircraft registered in a Contracting State, while that aircraft is:
  - (a) in flight in the airspace of a State other than the State of registration of the aircraft; or
  - (b) in flight between two points of which at least one is outside the State of registration of the aircraft; or
  - (c) in flight between two points in the territory of the State of registration of the aircraft if a subsequent landing is made in another Contracting State with the said person still on board; or
  - (d) on the surface of the high seas or of any other area outside the territory of any State.
2. For the purposes of this Convention, and subject to the provisions of Article 5, an aircraft is considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends.
3. (1) This Convention shall be applicable only to civil aircraft, and shall not be applicable to State aircraft.
  - (2) Aircraft used in military, customs and police services shall be deemed to be State aircraft.

#### Article 2

1. The State of registration of the aircraft is competent to exercise jurisdiction over offences committed on board the aircraft.
2. Each Contracting State shall take such measures as may be necessary:
  - (a) to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State, and
  - (b) with respect to offences committed on board aircraft registered in other States, to recognize the jurisdiction of the State of registration of the aircraft.
3. A Contracting State which is not the State of registration of the aircraft may not delay or interfere with aircraft in order to exercise its criminal jurisdiction in respect of an offence committed on board the aircraft except in one of the following cases:
  - (a) the offence has effect on the territory of such State;
  - (b) the offence has been committed by or against a national of, or permanent resident of, such State;
  - (c) the offence is against the national security of such State;
  - (d) the offence consists of a breach of any rules or regulations relating to the flight or manoeuvre of aircraft in force in such State;

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\* Prepared by Legal Committee of ICAO at its 14th Session, Rome 1962

- (e) the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under an international agreement.
4. This article does not supersede any basis for criminal jurisdiction which a State might have incorporated into its national laws.

### Article 3

1. Where a final judgment has been rendered by the competent authorities of one Contracting State in respect of a person for an offence, such person shall not be convicted in another Contracting State for the same act if he was acquitted, or if, in the case of a conviction, the punishment was remitted or fully carried out, or if the time for the carrying out of the punishment has expired.
2. The provisions of paragraph 1 of this article shall not apply if the person is a national or a permanent resident of the second State or if the act constituted an offence against the national security of such State, and its laws permit further trial.
3. Whenever, pursuant to the preceding paragraphs, a new punishment may be imposed by the competent authorities of another Contracting State, those authorities shall take into account the punishment or part of punishment already carried out in the first State.

### Article 4

1. Following the commission by violence of any act of interference, seizure, or other wrongful exercise of control of an aircraft in flight or threat thereof, Contracting States shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft. Each Contracting State in which the aircraft lands after such act or threat shall take custody, in accordance with its own law, of the person committing such act or threat. The Contracting State taking custody of such person shall immediately notify the State of registration of the aircraft, and, where applicable, also the State over whose territory the said act or threat occurred, of such action.
2. Each Contracting State shall permit the passengers and crew of any aircraft which has landed under conditions contemplated in paragraph 1 of this Article to continue their journey as soon as practicable, and shall return the aircraft and its cargo to the persons lawfully entitled to possession.

### Article 5

1. When the aircraft commander has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an act contemplated in Article 1, paragraph 1 (2), the aircraft commander may impose upon such person reasonable measures including restraint which are necessary:
- (a) to protect the safety of the aircraft, or persons or property therein; or
  - (b) to maintain good order and discipline on board; or
  - (c) to enable him to deliver such person to competent authorities pursuant to the provisions of Article 6, paragraph 2.
2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or persons or property therein.
3. The powers conferred by this Article on the aircraft commander, other crew members and passengers as well as those conferred on the aircraft commander by Article 6 may be exercised with respect to an act contemplated in Article 1, paragraph 1 (2), when committed at any time from the moment when embarkation begins until the moment when disembarkation is completed. In the case of a forced landing outside an airport, such powers of the aircraft commander, crew members and passengers shall continue as to acts committed on board until com-

petent authorities of the State of landing take over the responsibility for the aircraft, persons and property on board.

4. For the purposes of this Convention, the aircraft commander is the individual on board an aircraft who is responsible for the operation and safety of that aircraft.

#### Article 6

1. The aircraft commander may, in so far as it is necessary for the purposes of subparagraphs (a) and (b) of paragraph 1 of Article 5, disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed, or is about to commit, on board the aircraft an act contemplated in Article 1, paragraph 1 (2).

2. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person upon whom he has imposed measures of restraint pursuant to Article 5, if he has reasonable grounds to believe that such person has committed on board the aircraft an act which, in his opinion, is a serious offence according to the penal laws of the State of registration of the aircraft.

3. Measures of restraint imposed upon a person pursuant to Article 5 shall not be continued beyond any point at which the aircraft lands unless:

- (a) such point is in the territory of a non-contracting State and its authorities refuse to permit disembarkation of the person concerned at such point;
- (b) the aircraft makes a forced landing outside an airport and the aircraft commander is unable to deliver the person concerned to competent authorities; or
- (c) such person agrees to onward carriage under restraint.

#### Article 7

1. The aircraft commander shall report to the authorities of the State in which he disembarks any person pursuant to the provisions of Article 6, paragraph 1, the fact of, and the reasons for, such disembarkation.

2. The aircraft commander shall transmit to the authorities to whom any suspected offender is delivered pursuant to the provisions of Article 6, paragraph 2, evidence and information which, in accordance with the law of the State of registration of the aircraft, are lawfully in his possession.

#### Article 8

The aircraft commander shall as soon as practicable, and if possible before landing in the territory of a State with a person on board who has been placed under restraint in accordance with the provisions of Article 5, notify the authorities of such State of the fact that a person on board is under restraint and of the reasons for such restraint.

#### Article 9

Neither the aircraft commander, another member of the crew, a passenger, the owner or operator of the aircraft nor the person on whose behalf the flight was performed, shall be liable on account of measures or actions taken in accordance with the provisions of this Convention unless he is the person who has committed the offence or act involved.

#### Article 10

1. Any Contracting State shall allow the commander of an aircraft registered in another Contracting State to disembark any person pursuant to Article 6, paragraph 1.

2. Any Contracting State shall take custody of any person whom the aircraft commander delivers pursuant to Article 6, paragraph 2, upon being satisfied that the circumstances warrant taking such person into custody and the Contracting State assumes such obligation pursuant to its regulations and laws. The State

taking custody shall promptly notify any State in whose airspace the offence was committed, the State of registration of the aircraft and the State of nationality of the suspended offender of the nature of the alleged offence and the fact that the suspected offender is in custody.

3. The Contracting State which takes custody of a person pursuant to paragraph 2 of this Article shall immediately make a preliminary investigation in order to establish whether any offence has been committed, and shall report its findings and such statements or other evidence as it may obtain to any State in whose airspace the offence was committed, the State of registration of the aircraft and the State of nationality of the person concerned.

4. On the expiry of a period, fixed by the law of the State which detains the person concerned, which period shall run from his disembarkation, such person shall be set at liberty unless within such period:

- (a) the competent authorities of that State have notified him that he is charged with an offence under its law and of the nature of that offence, or
- (b) some other State has made a demand for extradition justifying measures of arrest.

5. A person who has been disembarked pursuant to Article 6, paragraph 1, shall, unless he is detained by virtue of penal or extradition measures, be at liberty as soon as practicable to continue to his original destination or to any other destination of his choice.

6. Without prejudice to the preceding paragraph, the State in whose territory a person has been disembarked pursuant to Article 6, paragraph 1, may, if that person is not a national or permanent resident of that State, deport that person to the territory of the State of which he is a national or permanent resident, or, if there is no such State, to the territory of the State in which he began his journey by air.

7. Neither disembarkation nor delivery of the person concerned shall be considered as admission to the territory for the purposes of the laws of the Contracting State relating to entry or admission of aliens.

#### **Article 11**

In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offence committed on board an aircraft the Contracting States shall pay due regard to the safety and other interests of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.

#### **Article 12**

1. Offences committed on aircraft registered in a Contracting State shall be treated for the purpose of extradition treaties, as if they had been committed also in the territory of the State of registration of the aircraft.

2. Subject to the provisions of paragraph 1 of this Article, nothing in this Convention shall be deemed to create an obligation to grant extradition.<sup>1</sup>

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<sup>1</sup> For discussion of this Draft Convention, see ICAO Doc. 8266 LC/148, Sept. 15, 1962.