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Subcommittee on Resolution B of the Guadalajara Conference

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INTERNATIONAL REVIEW

SUBCOMMITTEE ON RESOLUTION B OF THE GUADALAJARA CONFERENCE†

Introduction

The Legal Committee at its Fourteenth Session decided to establish a subcommittee with the following terms of reference:

To study this subject, namely, legal problems affecting the regulation and enforcement of air safety which have been experienced by certain States when an aircraft registered in one State is operated by an operator belonging to another State. This subcommittee should also study in particular, the problems concerning charter on a barehull basis in relation to the Draft Convention on Offences and Certain Other Acts Occurring on Board Aircraft.¹

A meeting of this Subcommittee was called for March of 1963 in Montreal, Canada. Upon convening, the Subcommittee decided to prepare two separate reports on the questions before it. The two reports appear as Part I and Part II hereafter.

PART I: LEGAL PROBLEMS AFFECTING THE REGULATION AND ENFORCEMENT OF AIR SAFETY WHICH HAVE BEEN EXPERIENCED BY CERTAIN STATES WHEN AN AIRCRAFT REGISTERED IN ONE STATE IS OPERATED BY AN OPERATOR BELONGING TO ANOTHER

Basic Problem

The basic problem before the Subcommittee was that the absence of the aircraft from the State of registration and its operation by a foreign operator impeded adequate enforcement of its aviation laws and regulations concerning safety. The Subcommittee, in exploring possible solutions, examined various provisions of the Chicago Convention, which, it was thought, might give rise to the problem.

Consideration of Relevant Provisions of the Chicago Convention

The Subcommittee's examination of the Chicago Convention showed that the principal articles of the Convention requiring consideration for the purpose of this discussion are those which impose obligations on the State of registration, in particular, those concerned with: (1) airworthiness; (2) personnel licensing; (3) operations; and (4) accident inquiries. A discussion of the articles considered follows.

Article 12: This Article requires, among other things, compliance with the rules relating to flight and manoeuvre of aircraft applicable in the places where the aircraft might be. It imposes on the State of registration certain obligations which the State of the operator might be able to perform on behalf of the State of registration if there were an appropriate agreement between the two. But, in

† Montreal, Canada, March 1963.

¹ Para. 23: The Committee considered a proposal to include in the draft Convention a provision concerning chartered aircraft as follows: "An aircraft chartered on a barehull basis to an operator who is a national of a State other than the State of registration shall be treated for the purpose of this Convention as if throughout the period of the charter it was registered in that other State." The Committee decided not to include such a provision because, in its opinion, the problem in question needs to be more fully studied than was practicable at this session. The Committee decided that any solution which might be necessary should be sought in connection with the proposed study of the subject matter of Resolution B of the Guadalajara Conference.

any event, such an agreement could not relieve the State of registration of its obligations to third States.

Article 32: Here it was noted that the issuance or validation of the licenses of the operating crew by the State of registration of the aircraft permits in all cases compliance with the provisions of Article 32. The validation of the foreign crew's licences by the authorities of the State of registration should deal adequately with the problem of compliance with Article 32, but does not solve the enforcement problem.

Article 31: The solution for the problem of airworthiness certificates was basically the same as in the case of personnel licences. The Subcommittee did not consider that this kind of problem would arise in the case of the original issuance of the certificate of airworthiness but such a problem could arise in the case of observance of the maintenance schedule. In the latter case, the law of the State of registration might require the issuance of a certificate of maintenance by a licensed maintenance engineer. A similar problem might arise when the certificate of airworthiness came up for renewal. In practice, both of these problems could be solved by making arrangements for inspection and certification outside the State of registration.

Article 26: The Subcommittee noted that while this Article provided that the State of registration had the possibility of appointing observers to attend accident inquiries, the Article did not prevent that State from appointing among the observers representatives of the State of nationality of the operator.

Article 30(b): As regards Article 30(b) which requires that the personnel using radio transmitting apparatus be provided with licences issued by the State of registration, the Subcommittee noted that an examination should be made, at the same time, of Article 23, Section I, subsection 1(1) of the Radio Regulations annexed to the International Telecommunications Convention of Geneva, 1959, which provides that "The service of every . . . aircraft radio telegraph station shall be performed by an operator holding a certificate issued or *recognized* by the government to which the station is subject."² (Italics supplied). In the view of the Subcommittee, this possibility of "recognition" permits the solution of the problem that Article 30(b) of the Chicago Convention seems to raise. In this regard, it was also noted that the Geneva Convention is later in time than the Chicago Convention and that it would be only in rare instances that States parties to the Chicago Convention would not also be parties to the Geneva Convention.

As a result of the examination of the foregoing Articles of the Chicago Convention, the Subcommittee concluded that there were several possible ways of solving the problems arising under these Articles where an aircraft registered in one State was operated by an operator belonging to another State. The Subcommittee also noted that the principal problems which arise in relation to the subject-matter of these Articles appear to be related to the enforcement of air safety on the level of domestic legislation. As to this latter point, the Subcommittee noted that the dilemma was that, while the State of registration is entitled to enforce its safety legislation against the operator and crew of its aircraft operated by a national of another State, it is, in practice, likely to be unable to bring before its court witnesses, evidence and when extradition is unavailable or inappropriate, the offender.³ On the other hand, the State of the operator may not have legal jurisdiction over offences respecting foreign-registered aircraft, unless committed in the territory of such State.

² The Subcommittee understands this to mean the State of registration.

³ Secretariat Note: It is assumed that, due to the absence of the aircraft from the State of registration, the witnesses, evidence and the offender would also be outside the State of registration.

Transfer of Registration of Aircraft

Some members of the Subcommittee considered that the report should mention a suggestion that the basic problem contemplated by Resolution B could be avoided by the agreement of the States concerned to change the registration of the aircraft from one State to the other. This is possible, but only in those cases where entry of the aircraft on a register was not constitutive of property rights in the aircraft.

An objection to this suggestion was that the whole system of the regulation of international air navigation was founded on the concept that the registration of aircraft had a certain stability, and that this system should not be disturbed without good reason. Secondly, although somewhat less than one quarter of the ICAO Contracting States had become parties to the Geneva Convention on the International Recognition of Rights in Aircraft, more States might do so; and this Convention was founded on the recording of property rights in national aircraft registers. Moreover, even if there were no question of affecting the Geneva Convention, persons lending funds to finance the purchase of aircraft would be reluctant to consider as good security an aircraft of which the State of registration might not be readily ascertainable or might be subject to frequent change.

Solutions

The Subcommittee considered a number of solutions for the basic problem raised by Resolution B. The paragraphs which follow describe the solutions and indicate the discussions relating to each of the solutions. The presentation of these solutions as given below is not meant to be construed as an endorsement of any or all of them by the Subcommittee. The solutions examined were:

1. Amendment of the Chicago Convention;
2. Delegation of functions of the State of registration to the State of the operator;
3. Inclusion in Annex 13 of a standard providing for representation of the State of the operator at accident inquiries.

Solution 1: Amendments of the Chicago Convention

If a proposal for amending the Chicago Convention were contemplated, the aim of such an amendment would be to permit a State of registration to be relieved of its responsibility under the Convention when delegating certain functions to be exercised in relation to its aircraft to the State of the operator. However, the Subcommittee considered that the problem was not of such importance, or so incapable of solution by other means as to warrant the amending of the Convention, which procedure some States might be reluctant to undertake.

Solution 2: Delegation of the Functions of the State of Registration to the State of the Operator

It was suggested that one solution for the problem described in Resolution B would be for the State of registration to delegate its functions in respect of air safety to the State of the operator. Such delegation would be by positive action of the State of registration and would not be an automatic consequence of the fact that a person in the State of registration had leased an aircraft to a person belonging to another State, who would operate the aircraft outside the State of registration. In this regard, the Subcommittee noted that the concept of delegation of functions on an international basis was not unknown in aviation, since there was recognition of this concept in the Note at the beginning of Chapter 3 of Annex 6 to the Chicago Convention.⁴

⁴Text of the Note:

The Convention specifies in a number of respects the fundamental responsibility of a Contracting State for aircraft of its nationality. The responsibility of a State of

The possibility of a delegation of functions would help those States which had difficulties in law enforcement in the situation described in Resolution B, since it enabled such States to secure the assistance of another State which would agree to undertake enforcement action. Thus the State of registration would be assisted in discharging its responsibilities under the Chicago Convention.

It was apparent to the Subcommittee that a solution consisting in the delegation of functions could not be considered solely in relation to the transfer of the functions themselves, since such delegation inevitably involved the related question of the extent to which a State of registration, which had a certain responsibility placed on it by the Chicago Convention, could be released from such responsibility. Here the Subcommittee noted that States other than the States directly involved in the delegation of functions would not be bound to agree that such delegation would so operate as to relieve the State of registration of its responsibility under the Chicago Convention.

On the other hand, a delegation of functions along with a transfer of responsibility for the exercise of such functions could be envisaged. Thus, it is possible that the State of registration could be relieved, at least in part, of its responsibility for the performance of functions which it delegates to another State provided that a third State involved agreed to accept the substitution of the second State. Three kinds of agreements could be envisaged whereby the delegation of functions could also operate to relieve the State of registration of responsibility. Such agreements might take the form of: a general multilateral instrument, a limited multilateral agreement or a series of bilateral agreements.

(i) General multilateral instrument: There was the possibility of drawing up a general multilateral international instrument that would be entirely separate from the Chicago Convention. The parties to such an instrument could agree that when the State of registration and the State of the operator agreed to a transfer of the responsibility placed on the State of registration by the Chicago Convention, such parties would recognize the transfer of responsibility and among themselves would not hold the State of registration to its responsibility under the Chicago Convention.

If this solution were adopted, care would have to be taken to ensure that the responsibility of the State of the operator could be substituted for that of the State of registration, only if there were compliance with certain conditions.

Arguments against having a general multilateral instrument were that the basic problem before the Subcommittee was not of such importance as to warrant the conclusion of this kind of instrument and that the fact that such an instrument was legally possible did not mean that it was desirable to have it.

(ii) Limited multilateral agreement: Less difficulty was seen in having a limited multilateral agreement than in the case of a general multilateral instrument since States having common technical, economic and related interests might be more disposed to participate in such agreements.

(iii) A series of bilateral agreements: The solution by bilateral agreement, whereby the parties to such an agreement would recognize the delegation of functions and responsibilities by either of them to a third State, provided the

Registry is further expanded in this Annex. Methods of discharging such responsibility may vary among States but no particular method can in any way relieve the State of Registry of its basic responsibility. Subject to this basic responsibility, nothing in this Annex prevents:

(a) in the case of an aircraft being chartered and operated by an operator having the nationality of a Contracting State other than the State of Registry, the latter State delegating to the former State, in whole or in part, the exercise of the functions imposed by this Annex; and

(b) in the case of international operations effected jointly with aircraft not all of which are registered in the same Contracting State, the States concerned entering into an agreement for the joint exercise of the functions placed upon the State of Registry by provisions of the Annex,

advantage of flexibility in that it would enable these parties to stipulate in advance the conditions attaching to such recognition.

The Subcommittee considered that, as a complement to a possible solution based on the delegation of functions, States might be invited to examine the question of amending their national laws so as to permit the possibility of making such delegation and the acceptance thereof.

A suggested way of providing for a delegation of functions was to take material such as that found in the Note at the beginning of Chapter 3 of Annex 6 to the Chicago Convention⁵ and to give it the status of a standard which could be included in appropriate Annexes. Under the procedure established by the Chicago Convention, such a standard would be circulated to the States which could file deviations if they wished to do so.

The effect of the standard would be to require a State to amend its legislation so as to provide that it could delegate its functions to another State in the case of the lease of an aircraft without crew, although the standard could not go so far as to require that the legislation provide that a third State would be obliged to recognize the substitution of the responsibility of the State of the operator for that of the State of registration.

There were several objections to this solution. Firstly, it was doubtful that a standard which was concerned with the delegation of functions and the consequential adoption of national regulations in regard to enforcement of the law fell within the class of subjects (*e.g.*, substantive technical matters) contemplated by Article 37 of the Chicago Convention. Secondly, it was noted that Annex 6 contained only a Note in regard to the delegation of functions and that, in any event, the Note was careful not to provide for the transfer of responsibility. Thirdly, a standard would not in itself have binding effect, since States were free to file deviations, although if a State did not file deviations by a certain date, there might be a presumption that its national legislation would comply with the standard. Fourthly, such standard should not be used to bring about transfer of functions imposed on the State of registration by Article 12 of the Chicago Convention, since that would be tantamount to amending the Convention.

Solution 3: Inclusion in Annex 13 of a Standard Providing for Representation of the State of the Operator at Accident Inquiries

The Subcommittee examined the possibility of using the Annex machinery to bring about the delegation of functions from one State to another. It gave special consideration to the possibility of amending Annex 13 (Aircraft Accident Inquiry) to the Chicago Convention so as to include a standard providing for the participation of the State of the operator in accident inquiries. In this regard, the Subcommittee noted that what was involved was not a question of delegation but one of representation which was already possible under Annex 13.

PART II: PROBLEMS CONCERNING CHARTER ON A BAREHULL BASIS IN RELATION TO THE DRAFT CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS OCCURRING ON BOARD AIRCRAFT

Basic Problem

The Subcommittee considers that it will be competent for every State ratifying the Convention to exercise its jurisdiction, as declared in Article 2(1) thereof, over offences committed on board aircraft of its registration wherever such aircraft may be, and that it would make no difference as a matter of law if such aircraft were leased without crew⁶ to a person who is not a national of such State.

However, certain members of the Subcommittee thought that there was a

⁵ *Ibid.*

⁶ The terms of reference of the Subcommittee speak of "charter on a barehull basis." The Subcommittee interprets this expression as meaning an aircraft leased without crew,

problem in that such jurisdiction might not in practice be effectively exercisable when the aircraft was in the hands of a foreign lessee and remained outside the State of registration for a substantial period. In such a case the State of registration might have great difficulty in taking effective enforcement measures in respect of offences committed on board the aircraft due to its inability to bring before its courts witnesses, evidence and when extradition is unavailable, the offender. Furthermore, it may be inappropriate for an offender to be tried and imprisoned in the State of registration which may be far removed from the place where the offence was committed or where the offender normally resides. In the circumstances, it was considered that the State of registration might not be willing to prosecute in all cases because, the aircraft having been leased without crew, that State might find its connection with, and responsibility for, the aircraft somewhat attenuated. Accordingly, the basic problem appeared to be that an offender could escape being tried because, on the one hand, the State of registration might not be able or wish to exercise jurisdiction, while, on the other hand, the State of which the operator was a national and in whose territory the aircraft would most probably have its base of operations would not have any right expressly conferred by the Convention to exercise jurisdiction.

Solutions

As stated above, the Subcommittee considered a number of possible solutions for the basic problem before it. However, it agreed that, in view of its special status as a study group reporting to a diplomatic conference, the most appropriate action it could take would be to make a systematic presentation of the various solutions suggested along with certain explanations in regard to each of the solutions. The statement of these solutions as given below is not meant to be construed as an endorsement of any or all of these solutions by the Subcommittee.

Solution 1: Proposal Before the Legal Committee at Its Fourteenth Session

The Subcommittee began with a discussion of the following proposal which had been submitted to the Legal Committee at its Fourteenth Session, such proposal being in effect the basic text referred to the Subcommittee for consideration: "An aircraft chartered on a barehull basis to an operator who is a national of a State other than the State of registration shall be treated for the purpose of this Convention as if throughout the period of the charter it was registered in that other State." One difficulty raised by this proposal was that it might appear to disturb the concept whereby an aircraft was considered to have only one nationality at a time. The introduction of anything resembling dual nationality might create problems of international law and in particular, might give rise to difficulties under the Chicago Convention. Another difficulty was that the effect of that solution would be to cut out the jurisdiction of the State of registration.

It was suggested to the Subcommittee that the solution for the difficulty just mentioned would be to provide for the jurisdiction of the State of the lessee, not through a device of fictitious or consructive registration, but by recognizing that a certain legal position would come into being upon the happening of a certain fact. Therefore, the subcommittee was presented with a proposal to the effect that the existence of a lease of an aircraft without crew to a national of a State other than the State of registration would render the State of that person, *i.e.*, the State of the lessee, competent to exercise jurisdiction over offences committed on board the aircraft. This principle will be discussed in some detail below and it has been mentioned at this point only to indicate that the Subcommittee did not retain the proposal placed before the Legal Committee at its Fourteenth Session.

Solution 2: No Action Should be Taken to Include in the Draft Convention Provision for Jurisdiction of the State of the Lessee

One view expressed was that it was unnecessary to provide expressly in Article 2 of the draft Convention that the State of the lessee would have jurisdiction over offences committed on board an aircraft leased without crew. The reason for this view was that Article 2(4) made it clear that Article 2 did not affect any jurisdiction established by national law, and the State of which the lessee was a national could so establish its jurisdiction.

There were two principal criticisms of this reliance on Article 2(4) as affording a solution of the problem before the Subcommittee.

Firstly, it was said that Article 2(4) did not provide any basis for the establishment by a Contracting State of a jurisdiction over aircraft leased without crew and operated by its nationals because this was a novel kind of jurisdiction for which there was no existing precedent. Therefore, the Convention should contain a positive statement recognizing such a jurisdiction should a Contracting State desire to establish it in its laws. This would also have the effect of encouraging contracting States to exercise such jurisdiction and additionally such a specific provision would further bring desirable uniformity in the legal systems relating to international air transport. In addition, a statement of the kind envisaged emanating from an international body would have the effect of encouraging States to take the action necessary to fill the practical gap which, in the view of some, existed in the case of offences committed on board an aircraft leased by a national of a State other than the State of registration and operated outside the State of registration.

The second criticism of Article 2(4) was concerned with the language of the Rome Draft. Some members considered that it was unnecessary to include the new provision since, in their view, Article 2(4) already applied not only to existing jurisdictions, but also to jurisdictions that might be included in national laws in the future. However, other members considered that Article 2(4) could be construed in a more restrictive manner so as to apply only to those jurisdictions existing at the time the Convention was ratified. The Subcommittee agreed that, as this matter involved a possible ambiguity in the language of Article 2(4), it should be brought to the attention of the Diplomatic Conference.

Solution 3: To Include in Article 2 of the Draft Convention a Specific Provision Embodying the Principle of the Concurrent Jurisdiction of the State of the Lessee

During the discussion of the basic text referred to the Subcommittee by the Legal Committee previously outlined in paragraph 7 several suggestions as to alternative drafting were made by some members of the Subcommittee which finally resulted in an alternative text which meets some of the objections already noted. This text reads as follows: "When an aircraft without crew is leased to a person who is a national of a State other than the State of registration of that aircraft, the State of which such person is a national may also be competent to exercise jurisdiction over offences committed on board the aircraft."

Explanations of Certain Terms Used by the Committee

The authors of the above proposal gave certain explanations of some of the terms used in, and some of the omissions from, the principle thus outlined; and some of these explanations are summarized below. (See items (i) - (iv) below).

(i) Lease of the aircraft without crew: One view expressed was that the principle of the suggested solution should be extended to all leases of aircraft whether with or without crew and it was pointed out that, only in this manner, could interchange situations be satisfactorily covered by the Convention. How-

ever, it appeared that it was particularly in the case where an aircraft was leased without crew that the State of registration would find itself farthest removed from responsibility in relation to the event occurring on board the aircraft, and for this reason it was considered that the principle to be included in Article 2 should be restricted to the case of a lease of an aircraft without crew. The Subcommittee also considered that the inclusion of the case of the lease of an aircraft with crew would be outside its terms of reference.

(ii) French version of the English word "national" and the Spanish word "nacional": The Subcommittee draws the attention of the Diplomatic Conference to the fact that, although the English word "national" and the Spanish word "nacional" in the above-mentioned proposal have been rendered in the French text by the word "ressortissant," the French text of the Rome draft Convention sometimes also uses the expression "a la nationalité."

(iii) "may also be competent to": This part of the principle is stated in a permissive form, an original version of the principle having contained the words "shall also be competent to." The Subcommittee noted that, if the words "shall also be competent to" were used, the interpretation could be that every State ratifying the Convention would be obliged to take measures for establishing its jurisdiction for cases where its nationals took aircraft on lease and for recognizing similar jurisdiction of all other contracting States. However, the use of the words "may also be competent to" did not involve an obligation on the part of contracting States to establish jurisdiction of the State of the lessee, but only an undertaking on their part to recognize such jurisdiction if established by other States.⁷

(iv) Certain omissions from the proposed principle: The proposed principle does not refer expressly to the lease of the "entire" aircraft since it was felt that normally where there was a question of lease without crew it was implied that the entire aircraft was being leased.

The text of the proposed principle intentionally avoids the use of the expression "operator" due to the serious difficulty of defining this term. Thus, the Subcommittee was reminded that during one stage of the preparation of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, some fifty-two possible definitions of the term "operator" had been placed before the drafters of the Convention.

Relationship of Proposed Principle to Paragraphs 2(a) and 2(b) of Article 2 of the Draft Convention

The Subcommittee noted that, while the new paragraph proposed as Solution 3 was suggested as a separate paragraph in Article 2 and thus not subject to the provisions of paragraphs 2(a) and 2(b) of Article 2, nevertheless, if the proposed principle were adopted, the Diplomatic Conference would no doubt wish to consider independently the relationship of this paragraph to paragraphs 2(a) and 2(b) of Article 2.

Acceptance of Proposed Principle But Only If Convention Provides for Priority of Jurisdiction

One view in regard to the proposed principle was that it should be inserted in Article 2 of the draft Convention if the draft Convention provided for or established a system of priority of jurisdiction. However, the draft Convention prepared in Rome does not so provide.

⁷ A suggestion favoring the permissive form of such jurisdiction was also placed before the Subcommittee, thus: "Nothing in this article shall prevent the State of nationality of the lessee of the aircraft from exercising jurisdiction over an offence committed on board the aircraft."

Special Problem Arising Under Article 2(3)

It was pointed out to the Subcommittee that if either Article 2(4) were to be construed as not precluding the establishment of jurisdiction after the entry into force of the Convention or the proposed new principle were inserted in Article 2, there would still be a problem arising under Article 2(3). The latter provision, in effect, referred to all Contracting States which were not the State of registration and it might be necessary to refer to all Contracting States which were neither the State of registration nor the State of the lessee. Article 2(3) prevents States other than the State of registration from delaying or interfering with the aircraft in order to exercise their criminal jurisdiction except in the cases indicated in subparagraphs (a) to (e) of Article 2(3). Since the State of registration is allowed to delay or interfere with its aircraft under the provisions of Article 2(3), the State of the lessee might be put in the same position when it was exercising its jurisdiction over offences on board the aircraft.

Proposed Amendments to Articles 6(2) and 7(2)

Regardless of whether Article 2 was or was not amended to make a specific mention of the jurisdiction of the State of the lessee, it was considered desirable to amend certain Articles dealing with the powers of the aircraft commander, namely, Articles 6(2) and 7(2) for the following reasons.

In relation to Article 6(2), it was submitted that Article 1(1) of the Convention spoke of the Convention as applying to "offences against penal law" without making reference to the law of any specific State, while in Article 6(2), there was a reference to "a serious offence according to the penal laws of the State of registration of the aircraft." It seemed illogical to have no restriction in the one case and to have a restriction in the other. Moreover, in the case of an aircraft leased without crew, it would be difficult to expect a crew who would not generally have the nationality of the State of registration to know what was "a serious offence according to the penal laws of the State of registration of the aircraft." It was also suggested that since there were certain offences which were universally considered to be of a serious nature, this defect could be corrected by making no reference to the law of any particular State in Article 6(2) and deleting the words "of the State of registration of the aircraft." A similar difficulty arose in connection with Article 7(2) and a similar deletion was suggested. Such deletion, it was said, would give the aircraft commander greater flexibility in taking action under Articles 6(2) and 7(2).

An opposing view was that the deletion of the words in question would be much too broad a solution for the problem before the Subcommittee which was concerned merely with the particular cases where an aircraft would be leased without crew by an operator who was a national of a State other than the State of registration. It was felt that to recommend such a deletion would be beyond the terms of reference of the Subcommittee.

Miscellaneous Problems

Under paragraph (1) of Article 10 a Contracting State must allow the commander of an aircraft to disembark a suspected offender if the aircraft is registered in another Contracting State. Thus, if the airline of a Contracting State is operating an aircraft registered in the same State with its own crew, the obligation mentioned will not attach to that State. The situation would change, that is to say, the obligation would arise under the Convention, if the same operator had taken on lease an aircraft registered in another State and were operating it, the other conditions remaining the same as in the previous case, that is, without any change with respect to the operator, the commander of the aircraft, the suspected offender, the nature of the offence or the place of landing. The Subcommittee decided only to draw this matter to the attention of the Diplomatic Conference.

The Subcommittee points out that if Solution 3, the addition of a provision affirmatively providing for jurisdiction of the State of the lessee is adopted, or some variation thereof, the Diplomatic Conference may consider it desirable and reports should be respectively given under paragraphs (2) and (3) of Article 10.

A more difficult problem of the same type as that mentioned in the preceding paragraph arises in connection with Article 12(1). If the Diplomatic Conference should adopt some form of Solution 3, it would be necessary to consider whether to add in Article 12(1) the State of the lessee. However, since under Article 12(1), the offences were already to be treated as being committed also in the territory of the State of registration, a reference to the territory of the State of the lessee (in the case of offences committed on aircraft under lease) might be considered to be an extension of the concept of extradition to which many States would object because of the undesirability of complicating the application of extradition treaties.