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INTERNATIONAL ACTION TO
COMBAT AIRCRAFT HIJACKING*

ROBERT P. BOYLE**

In discussing the international aspects of hijacking it is necessary to start with some appreciation of the size of the problem. According to statistics compiled by the Office of Air Transportation Security of the U.S. Federal Aviation Administration issued 5 April 1972,¹ since 1930 there have been reported in all countries of the world 342 instances of hijacking or attempted hijacking. Of these, 137 involved U.S. aircraft while the balance of 205 involved aircraft of 58 other countries. Aircraft hijacking is world-wide and an international problem that has directly affected the aircraft of 59 countries of the world with numerous other countries involved in some indirect manner. For instance, many countries have found themselves the unwilling hosts to uninvited guests seeking political refuge or possibly only seeking fuel so that the crew of the aircraft could be compelled to go further. Others have found their airspace entered by uninvited intruders for whom they must take unusual air traffic and other safety regulation precautions. Hijacking is thus a crime that has a special impact on the international community because of its very nature and it is for this reason that the international community has in the relatively recent past taken action to combat this vicious crime and, at the urging of some, is contemplating additional measures.

Possibly this forum, the Inter-American Bar Association Meeting in Quito, Ecuador, is the most appropriate location for us to review what has been done by the international community to combat hijacking and to consider further steps which may be necessary.

*Originally presented at the XVII Inter-American Bar Association Biennial Conference held in Quito, Ecuador, April 24-29, 1972.

**Deputy Assistant Administrator for International Aviation Affairs, Federal Aviation Administration. B.A., Williams College; LL.B., Harvard. Mr. Boyle, an authority in International Aviation Law, has served as Chairman and Vice-Chairman of the U.S. delegation to many international aviation conferences including those of ICAO and others such as Guadalajara in 1960 and Tokyo in 1963.
The first recorded hijacking of which I am aware is one which involved Ecuador's neighbor to the south—Peru—when in 1930, unsuccessful revolutionaries seized control of an aircraft in order to flee the country. That was a very early forerunner and the crime was not repeated until after World War II when beginning in 1947 hijacking became much more frequent. Possibly the most well known and most frequent instances of hijacking have been those in which the aircraft is, successfully or unsuccessfully, ordered to divert to Cuba. Most but by no means all of these flights have originated in the U.S. Thus, the problem of hijacking is one in which the Western Hemisphere and this Association has a direct and major interest.

There have been several distinct sources or causes of hijackings. However most hijackings have been derived from the changing social and political climates of various areas of the world. The hijackings immediately following World War II in the late 1940's and early 1950's have been generally attributed to the social and political changes in Europe following the end of hostilities. According to statistics compiled by the International Civil Aviation Organization from the period 1947 through 1960 there were 25 recorded instances of hijackings, most of these in Europe. However in 1961 this circumstance changed and there began a new series of hijackings many of them involving the diversion of U.S. registered aircraft to Cuba. Even these were relatively rare and infrequent until approximately 1968. Beginning in 1968, there were 19 U.S. aircraft either successfully hijacked to Cuba or an attempt to do so was made. In 1969, this figure was 37; in 1970—fifteen; 1971—fourteen; and so far this year there have been four. The rise in the number of hijackings of U.S. registered aircraft to Cuba reflects generally a rise in the total number of hijackings worldwide. During the period 1930 through 1967, a total of 37 years, there were 65 hijackings. Beginning in 1968, there were 35 hijackings in that year alone; in 1969—87; in 1970—82; in 1971—59; and in 1972 to date—14. It may be significant to note that the number of hijackings peaked in 1969 with 87, began declining in 1970, and there was a marked drop in 1971. These lower rates of hijackings appear to be continuing on the basis of the first quarter of 1972 in which only 15 hijackings have occurred. The rise and fall of the incidents of hijackings are, at least in part, coincident with the activities of the international community in combating this crime. This gives some reason to hope that the actions already taken have had some influence on what appears to be a decline in the incidence of hijacking and gives us some reason to hope for the future. Let us examine what these actions have been.
The first action taken by the international community to combat hijacking was the Tokyo Convention of 1963. This Convention was originally designed to solve the problems of the commission of crimes on board aircraft while in flight where for any number of reasons the criminal might escape punishment. Its principal thrust was to assure that the law of the State of registry was always applicable to the commission of a crime on board an aircraft in flight and that the aircraft commander would have authority to deal with the offender while on board and to turn him over to the appropriate authorities upon landing. Thereafter, the fate of the individual would be determined by the application of normal legal process including extradition treaties but, in any event, the Convention made certain that the law of the State of registry of the aircraft applied to the crime in addition to whatever other State might, under their legal systems, find their law applying. The Convention was not originally directed at the problem of hijacking but because it dealt with the commission of crime on board aircraft in flight it was admirably suited to be the vehicle for international action on this subject. The U.S. made the initial proposal to amend the Tokyo Convention to include a provision dealing with the crime of hijacking. This was put forward at a meeting of the Legal Subcommittee of the International Civil Aviation Organization in Montreal in March 1962 and was ultimately incorporated in the draft Convention by the action of the full Legal Committee at its meeting in Rome in September of 1962 as the joint proposal of the United States and Venezuela. The following year, at the Diplomatic Conference in Tokyo, the Convention was adopted containing provisions dealing with the problem of hijacking in Article 11.

At this early stage of the development of international law on hijacking, it was not possible to either describe the crime or attempt to make the act an international crime. Thus, the Tokyo Convention was limited to creating an obligation on States party to the Convention to assume certain obligations in the case of a person on-board an aircraft in-flight who "unlawfully" commits by "force or threat thereof" an act of "interference, seizure or other wrongful exercise of control." This formulation left to the law of the State undertaking jurisdiction (usually the State of registry) to determine in accordance with its law what acts were "unlawful" or "wrongful." The obligations assumed by a State under the Tokyo Convention with respect to the disposition of the hijacker are also limited reflecting the fact that at this juncture in the development of the aircraft hijacking problem, the international community was not yet ready to attempt to
deal with the entire problem. Consequently, these obligations are "to take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft," "to permit the passengers and crew to continue their journey as soon as practicable" and "to return the aircraft and cargo to persons lawfully entitled to possession."\(^{10}\) The obligations of the State where the aircraft ultimately lands and the hijacker is in the custody of authorities are not significantly different from those which the Convention provides for the commission of other crimes on-board the aircraft. That State is obligated to take the alleged offender into custody (or to take other measures to insure his presence) for a sufficient length of time for extradition procedures to be initiated in the event that the custodial State does not undertake criminal action. It also must make a preliminary inquiry and communicate the results thereof to interested States which include the State of registry of the aircraft and the State of nationality of the offender.

Looking back from the vantage point of today, it is obvious that the Tokyo Convention left a major gap in the international legal system in attempting to cope with the scourge of aircraft hijacking. There was no undertaking by anyone to make aircraft hijacking a crime under its national law, no undertaking to see to it that the crime was one punishable by severe penalties and most important, no undertaking to either submit the case for prosecution or to extradite the offender to a State which would wish to prosecute. Thus, the door was left open so that a State holding an aircraft hijacker which, for whatever reason, did not wish to prosecute or extradite was under no obligation to do either. While such action might in some instances offend the moral sense of the international community it was not a violation of a legal obligation.\(^{11}\)

Another reason why the Tokyo Convention was, at least initially, ineffective was that the ratification of the Convention by a sufficient number of States to bring it into effect was unfortunately slow. In fact the U.S., one of the principal sponsors of the Convention, did not file its instrument of ratification until September 5, 1969. Following the U.S. ratification of the Convention it quickly acquired the requisite number of ratifications and came into effect on December 4, 1969. At this time some 51 States are party to the Tokyo Convention.

During the period before the Tokyo Convention came into effect the international community through the International Civil Aviation Organization noted the upsurge in the frequency of hijackings already mentioned and, in the hope that some amelioration of the problem could be obtained through the widespread application of the Tokyo Convention adopted, at
the 16th Session of the Assembly of ICAO in Buenos Aires in 1968, a resolution calling for all States to become party to the Tokyo Convention as soon as possible. In the meantime, this Resolution urged States to give effect to the provisions of Article 11 of the Tokyo Convention whether or not it had been ratified. The Assembly also requested the Council of ICAO to institute a study of other measures to cope with the problem of seizure of aircraft.

Pursuant to the resolution of the Assembly, the Council of ICAO in the latter part of 1968 requested its Air Navigation Commission, the Legal Committee and the Air Transport Committee to undertake an examination of the problem to determine what if anything could be done to further protect international aviation from hijacking. As a part of this general consideration, the Council adopted a resolution which reinforced the earlier resolution of the Assembly by calling on all contracting States to take all possible measures to prevent acts of unlawful seizure of aircraft and to cooperate with any State whose aircraft has been the subject of such a seizure. This action of the Council was almost immediately followed by an Extraordinary Session of the Council in January of 1969 convened to consider the complaint of Lebanon against Israel for action by its armed forces at Beirut Airport. The Council of ICAO was involved in almost daily sessions on that subject for many days. Partially as an outgrowth of these discussions, partly because of the continuing grave threat to the safety of international aviation, and partly because of the real possibility that the unabated continuation of crimes of violence directed against international aviation could undermine public confidence in international air transport, the Council decided to establish a Committee of the Council under Article 52 of the Chicago Convention.

The major purpose of this committee was to provide a means to give immediate and continued attention to future acts of unlawful interference with civil aviation. It consisted of 11 members and almost immediately began a general series of hearings in which organizations such as the International Air Transport Association, the International Federation of Air Line Pilots Association, INTERPOL and other organizations and, in some cases, governments presented recommendations for action to deter hijacking. As a consequence of these activities of the Committee on Unlawful Interference, numerous recommendations were made to the Council and circulated to contracting States.

The next significant act on the international scene designed to cope with hijacking was the Extraordinary Session of the Assembly of ICAO held in Montreal in June of 1970. This Assembly was convened at the
request of ten European States who had been motivated in making the request by acts of sabotage to aircraft belonging to Austria and to Switzerland which occurred early in 1970. The agenda of this Assembly was dedicated entirely to the problem of coping with unlawful interference of aircraft and included within its scope not only the problem of hijacking with which the international community up to that time had primarily been concerned, but also enlarged its scope to encompass the problem of sabotage. The agenda ultimately adopted called for the development of adequate security specifications and practices to prevent criminal action of any kind that might endanger the safety of air transport and included consideration of arrangements under which those responsible for criminal actions endangering civil air transportation could be brought to justice. As indicated by that agenda, the actions taken at the Extraordinary Assembly of ICAO ranged across the whole spectrum of preventive measures. For example, Resolution A17-5 called for the adoption by ICAO States of measures which, in large part, would implement the Tokyo Convention by all contracting States of ICAO not merely those who were party to the Tokyo Convention. Resolution A17-9 called upon contracting States to use the good offices of ICAO in cases of unlawful interference of aircraft wherever they considered it appropriate. In Resolution A17-1, popularly known as the Declaration of Montreal, the Assembly condemned all acts of violence directed against international aviation aircraft crews, passengers and facilities and called for concerted action on the part of States to suppress acts which jeopardize the safety and orderly development of international aviation. In Resolution A17-10 the Assembly drew up and recommended adoption of specific measures to be taken to protect aircraft, both on the ground and in the air, from any form of unlawful interference. Resolution A17-3 foreshadowed the next action of the international community by calling upon States to attend the Diplomatic Conference to be convened in December of 1970 to consider the draft Convention on hijacking which ultimately became the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, popularly referred to as the Hague Hijacking Convention. Additionally, in Resolution A17-20 the Extraordinary Session of the Assembly directed the Council to convene the Legal Committee if possible by November of 1970 in order to begin work on an international convention to deal with sabotage which was outside the scope of the Hague Hijacking Convention. This Resolution was, in fact, the beginning of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of September 1971.

In June of 1970 at the conclusion of the Extraordinary Session of the Assembly, it appeared as though the international community had done
everything that it could reasonably be expected to do in order to cope
with the problem of unlawful interference with aircraft. The Diplomatic
Conference on the Hijacking Convention was to be held at The Hague in
December and the Legal Committee was to begin drafting a convention
on sabotage at its London meeting in November. The Assembly had been
able through the hard work and cooperation of its members to develop
technical and operational measures that went into great detail and depth
as to the practical things that could be done to prevent hijacking and
sabotage. It was in effect a guide to prevention given to all.\textsuperscript{19} No one
believed that the problem was solved but the general consensus was that
the international community had acted forcibly and well and that matters
should soon improve. Such optimism as there may have been was short-
lived. In September of 1970 came the series of incidents which collectively
have become known as the Dawsons Field incident.

In September of 1970 political blackmail entered the hijacking scene
when three planes, one belonging to TWA, one to Swissair and one to
BOAC were hijacked and taken to an abandoned air strip in Jordan's
Dawsons Field by persons stating that they acted on behalf of the Popular
Front for the Liberation of Palestine. A fourth aircraft, a Pan American
747 was hijacked to Cairo and blown up at the airport. An attempt was
made to hijack a fifth aircraft belonging to El Al but this attempt was
unsuccesful. This action naturally provoked intense activity in the inter-
national community. On 9 September 1970, the Security Council of the
United Nations appealed to all parties concerned for the immediate release
of all passengers and crews, without exception, who were being held as
a result of hijacking and called on States to take all possible legal steps
to prevent additional hijackings.\textsuperscript{20}

At almost the same time, the President of the United States issued a
statement condemning detention for international blackmail purposes of
passengers, crew and aircraft contrary to Article 11 of the Tokyo Conven-
tion and calling for joint action by the international aviation community
to suspend airline services with countries which refuse to punish or extra-
dite hijackers involved in international blackmail. This was followed by a
request to the Council of ICAO to convene an Extraordinary Session of the
Council to consider the problem presented by the Dawsons Field incident.
At this Extraordinary Session of the Council, the United States, through its
Secretary of Transportation, proposed that the Council adopt a resolution
establishing the basis for concerted action by the international community
to suspend service in any case where an aircraft has been hijacked for
international blackmail purposes. The resolution thus proposed was adopted
on October 1, 1970.\textsuperscript{21} The pertinent portion of this text is as follows:
Calls upon Contracting States, in order to ensure the safety and security of international civil air transport, upon request of a Contracting State to consult together immediately with a view to deciding what joint action should be undertaken, in accordance with international law, without excluding measures such as the suspension of international civil air transport services to and from any State which, after the unlawful seizure of an aircraft, detains passengers, crew of aircraft contrary to the principles of Article 11 of the Tokyo Convention, for international blackmail purposes, or any State which, contrary to the principles of Articles 7 and 8 of the Draft Convention on Unlawful Seizure of Aircraft, fails to extradite or prosecute persons committing acts of unlawful seizure for international blackmail purposes.\textsuperscript{22}

The resolution further directed the Legal Committee to study the problem and to consider an international convention or other international instrument to give effect to the purposes set out in the paragraph just quoted. Work on this matter was undertaken by the Legal Committee at its session in London in November of 1970, and further work was accomplished by a Subcommittee in the early part of 1971. During this study legal problems arose, among them a question as to the competence of ICAO to deal with the subject which, in essence, called for the application of sanctions on the theory that this was a matter within the exclusive competence of the Security Council of the United Nations under Article 41 of the U.N. Charter. On this question there was a substantial divergence of views which verged into political as well as legal areas. In any event, as a result of the controversy, the 18th Assembly of ICAO meeting in June and July of 1971 decided to instruct the Legal Committee to suspend work on this particular problem and while it still remains on the work program of the Legal Committee it is not now under active consideration.

The so-called Hague Hijacking Convention had a much happier ending. Probably due to the impetus arising from the Extraordinary Session of the ICAO Assembly in June of 1970, the Dawsons Field incident of September 1970 and the Council's resolution on concerted action in October 1970, the countries meeting in the Hague in December of 1970 to conclude at a Diplomatic Conference an international convention on the problem of hijacking, found it relatively easy to reach agreement. The Hague Convention in essence fills the gaps in the legal system created by the Tokyo Convention. As earlier noted, the Tokyo Convention did not make hijacking an international crime, did not require severe penalties for hijacking, did not call for either extradition or submission of the offender to prosecution. The Hague Convention does all of these. In
Article 1, the offense is defined. Article 2 contains an undertaking by parties to the Convention to make the offense punishable by severe penalties. Article 7 tackles the difficult problem of extradition or prosecution. It provides that the contracting State having the offender in custody “shall, if it does not extradite him, be obliged without exception whatsoever and whether or not the offense was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution.”

This solution of the problem of political asylum was the matter on which the Diplomatic Conference had the greatest difficulty in reaching agreement. As finally drafted, the Convention walks a very narrow ledge between compulsory extradition on the one hand and complete freedom of political asylum on the other. It recognizes that some States may wish to permit political asylum in some form for whatever purposes despite the gravity of the offense. Thus compulsory extradition was rejected at the Hague Conference. However, because of the very gravity of the offense even though the State elects to allow the offender to remain within its borders the Convention requires contracting States to submit the offender to its competent authorities for prosecution. I am sure that there will be some cases in which there will be disagreement among States as to whether the punishment meted out in cases where the offender is not extradited is commensurate with the gravity of the crime. Yet, on the whole, it seems that this is a reasonable compromise of a very difficult problem. In my own view, I consider that by and large the courts of most countries in considering cases of this type will act responsibly and protect the public interest in determining an appropriate sentence.

The Hague Hijacking Convention has a unique feature which deserves special mention. By Article 14 it requires contracting States to take such measures as may be necessary to establish their jurisdiction over the offense under certain circumstances. The normal circumstances under which a contracting State would exercise jurisdiction are, of course, those where the offense is committed on board an aircraft of that State or where the aircraft on board which the offense is committed lands in its territory with the offender still on board. Article 4, in paragraph 2, however, goes further and requires contracting States to take such measures as may be necessary to establish jurisdiction over the offense in the case where the alleged offender is present in its territory and it does not extradite him. This has been referred to as the universal jurisdiction provision of the Hague Hijacking Convention and in that respect harks back to the law of piracy to which this offense, in the opinion of many, is closely related. The Hague Convention became effective on 14 October 1971 and now (25 April 1972) has 27 States parties to it.
The Hague Hijacking Convention takes care of the problems of unlawful interference with aircraft undertaken by persons on board the aircraft. The Montreal Convention drawn up and signed in September of 1971 takes account of those acts of unlawful interference with international civil aviation which occur while the aircraft is on the ground or are committed by persons not on board the aircraft. Article 1 of the Montreal Convention defines this offense as destruction of aircraft in service, or causing damage to such an aircraft which renders it incapable of flight, or which is likely to endanger its safety in flight. The convention offense includes the placing or causing to be placed on an aircraft a device or substance likely to destroy the aircraft or render it either incapable or unsafe for flight. It also includes endangering or destroying air navigation facilities when such action is likely to endanger the safety of aircraft in flight. It also includes the communication of information known to be false which could endanger the safety of aircraft in flight.

The Montreal Convention is designed to parallel the Hague Convention on Hijacking and as such incorporates the same legal system. In other words, the State having the offender in its custody must either extradite him or submit him to its competent authorities for prosecution. The offenses mentioned must be punishable by severe penalties. A contracting State is required to establish jurisdiction if the offense is committed in its territory, against one of its aircraft or if an aircraft on board which the offense is committed lands in its territory with the offender on board. The Montreal Convention also calls for the establishment of so-called universal jurisdiction. The Convention is not yet in effect although there are 40 States who have signed.

In summary, the international community has through multilateral conventions, two of which are in effect, created a legal system which should go far to ending the scourge of hijacking and sabotage to aircraft. If enough States of the world become party to these conventions there will no longer be so-called safe havens for the hijacker or saboteur, assuming, of course, that States are responsive to the obligations created in the multilateral conventions to which they have become party. However, until there is virtually universal adoption and application of these conventions, the potential of safe havens exists. For that reason, the United States at least has not been satisfied with the action of the ICAO Assembly in relegating to the inactive portion of its program the subject of possible concerted action by interested States in the event that some State does not promptly and effectively deal with a hijacker within its territory. The U.S. considers this further step to be necessary and desirable and intends to press forward with it. Other than that, it appears to me that there can only be praise for
the way in which the international community, particularly the International Civil Aviation Organization has responded to the grave threat to international aviation posed by hijacking and sabotage and with the good will so far displayed there is every reason to believe that we can collectively end this menace.
### WORLDWIDE REPORTED HIJACKING ATTEMPTS

As of: 1 May 1972

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<td>40 (5)</td>
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<td>70 (58)</td>
<td>56 (31)</td>
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<td>(36)</td>
<td>59 (23)</td>
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*Figures in parentheses represent attempted hijackings to Cuba.

**An incomplete hijacking is one in which the hijacker is overcome, captured or surrenders after having gained temporary control of an aircraft.
NOTES

1The Appendix at the end of this article gives the status as of 1 May 1972.


5FAA Statistics supra Note 3.

6FAA Statistics supra Note 3.

7Boyle and Pulsifer. The Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft, 30 Journal of Air Law and Commerce 305 et seq.

8Id. at 325.

9Id. at 345 and 353.


11Statement by James M. Beggs, Under Secretary, Department of Transportation to the Foreign Relations Committee; U.S. Senate, June 7, 1971.


13Id. at 2.

14Article 52 of the Convention on International Civil Aviation (61 Stat. 1180) provides “That the Council may delegate authority with respect to any particular matter to a committee of its members.” The Committee on Unlawful Interference was established as such a committee, distinguishing it from other committees established by the Council, specifically for the purpose of permitting delegation of Council authority to the Committee. As such the Committee could act during periods when the Council was not in session, would have substantially greater stature than other committees and, in fact, would be a committee of States (not individuals) represented either by their representatives on the Council or alternates to such representatives designated by the State as such. The author was serving as the U.S. Representative on the Council of the International Civil Aviation Organization at the time this action was taken and to the best of his knowledge this is the only Committee the Council has ever created under this special authority.

15Ltr. of ICAO Sec. Gen. of April 24, 1969 (LE 4/26-69/128) and enclosure thereto.


18ICAO Document 8966.

19ICAO Document 8849, Part IV.


21The Secretary of Transportation introducing to the Council of the International Civil Aviation Organization the United States proposal stated its purpose in the following language:

Let me make clear that this third paragraph of our proposed resolution is not self-implementing with respect to any particular situation. It is not intended to prejudge the existing situation. It is designed to estab-
lish agreement to the general principle that concerted, multilateral sanctions are not appropriate in certain circumstances. It would require a triggering mechanism for international action—probably a request by an individual State—followed by concerted action of the international aviation community of suspension of service.

This third paragraph cannot, and does not, create any binding legal obligation. However, it is intended to lay the basis for appropriate, concerted international action pending the entry into force of a new convention calling for the application of sanctions.


21ICAO Document 8920.


25Note that this obligation is only to submit the offender for prosecution. There is no obligation to prosecute. Many reasons for this careful distinction have been adduced. One obvious one is that in the case of universal jurisdiction, discussed later, the State having the hijacker in its custody may not have available to it proof of the crime since conceivably it was committed in distant States and thus the witnesses and other necessary evidence are not available to the State having custody of the offender. However, it is clear from the debates at the Hague Conference that the real issue was whether the prosecution authorities once seized of the case could exercise their normal discretion to decide whether or not to proceed and also to decide for which of several possible offenses they would prosecute in order to provide some means of accommodating the offender whose action was primarily politically motivated. (See Minutes, International Conference on Air Law, The Hague, December 1970, Volume I, ICAO Document LC/165-1 at pages 130 through 137 and pages 177 through 182). This same question is touched upon by the Committee on Foreign Relations in its report recommending ratification of the Hague Hijacking Convention (See Senate Executive Report, No. 92-8 at page 4).

26The matter of extradition which is touched on only briefly in the foregoing was also a difficult problem. Since hijacking is a relatively new offense very few (U.S. has only 5) extradition treaties include it. Thus at the Hague it was necessary to in effect amend existing treaties by including hijacking as an extraditable offense (Article 8, paragraph 1), and also to oblige contracting States in new extradition treaties to specifically include it. The Hague Convention also provides that for the purposes of extradition the offense shall be considered as having been committed not only where it in fact occurred but also as if it had been committed in territories of the States required by the Convention to establish jurisdiction over the offense (Art. 8, para. 4). To accommodate States whose laws permit extradition only on the basis of extradition treaties, the Netherlands proposed that the Hague Convention itself serve as an extradition treaty as far as hijacking was concerned (Minutes, International Conference on Air Law, The Hague, December 1970, at page 125 et seq.). However, this proved unacceptable as a mandatory obligation since it could be interpreted as forcing a State to conclude an extradition treaty with a State with which it did not wish to have such a treaty. As a compromise the Convention in Article 8, paragraph 2, leaves it to the contracting State to decide if it wishes to consider the Convention as the legal basis for extradition.

27Actually, of course, some form of mandatory jurisdiction in this as well as the normal cases is essential if the compromise reached on the problem of extradition is to be workable. A compromise to “extradite or submit for prosecution” is ineffective if contracting States are not obliged to establish jurisdiction over the offender (See debates at the Hague, ICAO Document 8979-LC/165-1, page 76 et seq.).