

## PROTOCOL

Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft

*Done at Beijing on 10 September 2010*

Published by ICAO under the authority of the Secretary General of the  
INTERNATIONAL CIVIL AVIATION ORGANIZATION  
999 University Street, Montréal, Québec, Canada H3C 5H7

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**Doc 9959, *Protocol Supplementary to the Convention for the Suppression of  
Unlawful Seizure of Aircraft***

Order Number: 9959

ISBN 978-92-9231-781-2

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# PROTOCOL

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

THE STATES PARTIES TO THIS PROTOCOL,

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

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

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

HAVE AGREED AS FOLLOWS:

### Article I

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

### Article II

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

#### "Article I

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

3. Any person also commits an offence if that person:
- (a) attempts to commit the offence set forth in paragraph 1 of this Article; or
  - (b) organizes or directs others to commit an offence set forth in paragraph 1, 2 or 3 (a) of this Article; or
  - (c) participates as an accomplice in an offence set forth in paragraph 1, 2 or 3 (a) of this Article; or
  - (d) unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offence set forth in paragraph 1, 2, 3 (a), 3 (b) or 3 (c) of this Article, or that the person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence.
4. Each State Party shall also establish as offences, when committed intentionally, whether or not any of the offences set forth in paragraph 1 or 2 of this Article is actually committed or attempted, either or both of the following:
- (a) agreeing with one or more other persons to commit an offence set forth in paragraph 1 or 2 of this Article and, where required by national law, involving an act undertaken by one of the participants in furtherance of the agreement; or
  - (b) contributing in any other way to the commission of one or more offences set forth in paragraph 1 or 2 of this Article by a group of persons acting with a common purpose, and such contribution shall either:
    - (i) be made with the aim of furthering the general criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence set forth in paragraph 1 or 2 of this Article; or
    - (ii) be made in the knowledge of the intention of the group to commit an offence set forth in paragraph 1 or 2 of this Article.”

### **Article III**

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

#### **“Article 2**

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

#### **Article IV**

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

##### **"Article 2 *bis***

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

#### **Article V**

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

##### **"Article 3**

1. For the purposes of this Convention, an aircraft is considered to be in service from the beginning of the pre-flight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board."
2. In Article 3, paragraph 3, of the Convention, "registration" shall be replaced by "registry".
3. In Article 3, paragraph 4, of the Convention, "mentioned" shall be replaced by "set forth".
4. Article 3, paragraph 5, of the Convention shall be replaced by the following:  
"5. Notwithstanding paragraphs 3 and 4 of this Article, Articles 6, 7, 7 *bis*, 8, 8 *bis*, 8 *ter* and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registry of that aircraft."



## **Article VI**

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

### **"Article 3 *bis***

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, the Convention on International Civil Aviation and international humanitarian law.
2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.
3. The provisions of paragraph 2 of this Article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws."

## **Article VII**

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

### **"Article 4**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 and any other act of violence against passengers or crew committed by the alleged offender in connection with the offences, in the following cases:
  - (a) when the offence is committed in the territory of that State;
  - (b) when the offence is committed against or on board an aircraft registered in that State;
  - (c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;
  - (d) when the offence is committed against or on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in that State;
  - (e) when the offence is committed by a national of that State.

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

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

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

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

#### **Article VIII**

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

##### **"Article 5**

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

#### **Article IX**

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

##### **"Article 6**

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

## **Article X**

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

### **"Article 7 *bis***

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

## **Article XI**

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

### **"Article 8**

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

## **Article XII**

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



**"Article 8 bis**

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

**Article XIII**

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

**"Article 8 ter**

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

**Article XIV**

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

**"Article 9**

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

**Article XV**

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

**"Article 10**

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

#### **Article XVI**

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

#### **"Article 10 *bis***

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

#### **Article XVII**

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

#### **Article XVIII**

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

#### **Article XIX**

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

#### **Article XX**

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

#### **Article XXI**

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

#### **Article XXII**

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

- (a) shall notify the Depositary of the jurisdiction it has established under its national law in accordance with paragraph 2 of Article 4 of The Hague Convention as amended by the Beijing Protocol, 2010, and immediately notify the Depositary of any change; and
- (b) may declare that it shall apply the provisions of subparagraph (d) of paragraph 3 of Article 1 of The Hague Convention as amended by the Beijing Protocol, 2010 in accordance with the principles of its criminal law concerning family exemptions from liability.

#### **Article XXIII**

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

#### **Article XXIV**

1. Any State Party may denounce this Protocol by written notification to the Depositary.



2. Denunciation shall take effect one year following the date on which notification is received by the Depositary.

#### **Article XXV**

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

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

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