

STATEMENT OF NATHANIEL H. GOODRICH, GENERAL COUNSEL, FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS OF THE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE ON NOVEMBER 4, 1969, REGARDING H.R. 14301

Mr. Chairman and Members of the Committee:

My name is Nathaniel H. Goodrich. I am the General Counsel of the Federal Aviation Administration, Department of Transportation. I am accompanied by Mr. Knute Malmberg, Assistant Legal Adviser for Administration and Consular Affairs, Department of State, and by Mr. John T. Stewart, the Chief of our Airports and International Law Branch. I appreciate this opportunity to appear before you today to discuss H.R. 14301, a bill "To implement the Convention on Offences and Certain Other Acts Committed on Board Aircraft, and for other purposes". The Department of Transportation strongly supports this legislation, and recommends its favorable and prompt consideration.

I would like to begin, Mr. Chairman, with some background information about the Convention on Offences and Certain Other Acts Committed on Board Aircraft, known as the Tokyo Convention. In June 1950, the Legal Committee of the International Civil Aviation Organization began a study into the possible negotiation of a treaty that would establish rules respecting jurisdiction over crimes committed on board aircraft, and other related matters. Over the next 13 years, the United States of America actively participated in discussions of the many problems involved, and in negotiations to resolve them. On September 14, 1963, the Convention was opened for signature at Tokyo, and the United States (a major supporter of the Convention) signed.

The principal purpose of the Tokyo Convention is to promote aviation safety through establishment of continuity of jurisdiction over criminal acts occurring on board aircraft. Several features make the Tokyo Convention a desirable international agreement:

First, the Convention establishes a positive rule of international law respecting jurisdiction as between the contracting States. Under this rule, the State of registry of an aircraft may exercise jurisdiction over offenses committed on board that aircraft when it is: (1) In flight; (2) On the surface of the high seas; or (3) On any other area outside the territory of a State. Now, this is not a rule of exclusive jurisdiction. Rather, the Convention ensures that the State of registry of an aircraft, at least, is competent to exercise jurisdiction, and yet allows other States to exercise concurrent jurisdiction. The exercise of concurrent jurisdiction would depend on a State's interest in the offense, and the applicability of the traditional rules of international law regarding assertion of jurisdiction.

Second, the Convention makes more certain the powers and authority of an aircraft commander. Without these provisions, his actions to apprehend and "off-load" an offender would be subject to the laws of the State where he lands the aircraft. Also, the correctness of his decisions might be judged under the national law of a country overflown. Finally, if their actions are reasonable and comply with the Convention, each aircraft crew member and passenger, the aircraft owner or operator, and the person for whom the flight is made, all would have legal immunity. This immunity should enhance the proper attitudes and actions necessary to significantly contribute to safety of flight in international aviation.

Third, the Convention establishes rules and procedures to "off-load" an offender. The aircraft commander may use them in the territory of the State where he lands his aircraft. The Convention also authorizes the

aircraft commander to deliver certain persons to the competent authorities of the State where he lands the aircraft. When he does, the Convention obligates the receiving State to accept delivery and, if satisfied that the circumstances warrant, to take custody or other measures to ensure the suspected offender's presence. In this regard, the Convention has several provisions that are designed both to protect a suspected offender's rights and to ensure his case is handled legally and expeditiously.

Fourth, the Convention imposes a positive obligation on each contracting State to take every appropriate measure to restore control to, or preserve control in, the lawful commander of an aircraft. This measure minimizes the adverse impact that a hijacking has upon the passengers and crew of an aircraft. While not a complete solution to this serious problem, this provision does represent an important step toward a solution.

On May 12, 1969, the United States Senate gave its advise and consent to ratification of the Tokyo Convention. On September 5, 1969, the United States of America presented to the International Civil Aviation Organization the instrument of ratification of the Convention, being the twelfth Nation to do so. Under Article 21, paragraph 1, the Convention on Offences and Certain Other Acts Committed on Board Aircraft comes into force on December 4, 1969.

Turning now to H.R. 14301, the Secretary of Transportation forwarded substantially identical proposed legislation to the House on April 25, 1969. The proposal represents the cooperative effort of the Inter-Agency Group on International Aviation, including representatives of the Departments of State, Justice, Defense and Transportation, and the Civil Aeronautics Board. We understand that each of these Departments and the Board has communicated its support of H.R. 14301 to the Committee.

Under Article 3, paragraph 2, of the Tokyo Convention, "Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offenses committed on board aircraft registered in such State." When enacted, H.R. 14301 would carry out our responsibility to implement the Tokyo Convention.

Section 1 of H.R. 14301 would add to section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301) the definition of a new term "Special aircraft jurisdiction of the United States". The term would include, while in flight, each of the following: (1) A civil aircraft of the United States, defined in section 101(15) as one registered under the Act (49 U.S.C. 1401-1406); (2) An aircraft of the National Defense Forces; and (3) An aircraft that is either within the United States, or outside the United States when its next scheduled destination or last point of departure is in the United States and its next landing is in the United States. The definition also makes clear that an aircraft is in flight "from the moment when power is applied for the purpose of take-off until the moment when the landing run ends."

Section 2 of H.R. 14301 would amend sections 902(i), 902(j), and 902(k) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(1)-1472(k)) to substitute the term "special aircraft jurisdiction of the United States" for the term "in flight in air commerce". The reach of the jurisdiction of the United States under the term "in flight in air commerce" is not as extensive or as definitive as the reach of that jurisdiction under the newly defined term "special aircraft jurisdiction of the United States". Section 902(i) provides criminal penalties for aircraft piracy. Section 902(j) provides criminal penalties for interference with flight crew members or flight attendants.

Section 902(k) provides criminal penalties for certain other crimes aboard aircraft in flight. The acts covered under section 902(k) include certain other criminal acts prohibited under title 18, United States Code (assaults (§113), maiming (§114), theft (§661), receiving stolen property (§662), murder (§1111), manslaughter (§1112), attempted murder or manslaughter (§1113), rape (§2031), carnal knowledge (§2032), and robbery or burglary (§2111)), and the District of Columbia Code (lewd, indecent, or obscene acts (D. C. Code, section 22-1112)).

The amendments made by H.R. 14301 would extend the criminal provisions, which I just outlined, to all aircraft within the newly defined "special aircraft jurisdiction of the United States". This redefinition of jurisdiction is needed to carry out the Nation's responsibility under Article 3, paragraph 1, of the Tokyo Convention. The "special aircraft jurisdiction of the United States" falls wholly within the jurisdiction of the Federal Government under the Constitution. The phrase in the new definition, making clear when an aircraft is in flight, is the one usually employed internationally for that purpose.

The definition of "special aircraft jurisdiction of the United States" includes "aircraft of the National Defense Forces of the United States". This is not essential to the legislation implementing the Tokyo Convention. But, the Department of Defense requested that these aircraft be included because inclusion both is consistent with the spirit of the Tokyo Convention and closes a gap in jurisdiction. In the absence of including these aircraft, serious doubts would arise respecting the jurisdiction of the United States

over crimes committed on board U. S. military aircraft while in flight over foreign territory. If the individual committing the crime is subject to punishment under the Uniform Code of Military Justice, the question would not be serious. But, if the individual committing the crime is not subject to punishment under the UCMJ (such as a military dependent or a civilian employee of the Department of Defense in peacetime), the jurisdictional question would be in serious doubt.

In conclusion, Mr. Chairman, we urge the Committee to give prompt and favorable consideration to H.R. 14301. The efforts of the United States of America in support of the Tokyo Convention were instrumental in its development. The cooperative effort of interested Departments and agencies lead to the legislation embodied in H.R. 14301. This legislation will carry out our obligation under the Tokyo Convention, which comes into effect on December 4, 1969. We hope that prompt action by the United States may lead to favorable action by the 26 signatory States who have yet to ratify the Convention, and other States as well.

Mr. Chairman, that concludes my prepared statement. I would be happy now to try to answer any questions that the Committee may have.

STATEMENT OF NATHANIEL H. GOODRICH, GENERAL COUNSEL, FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON AVIATION OF THE SENATE COMMITTEE ON COMMERCE ON 9 MARCH 1970, REGARDING S. 2176

Mr. Chairman and Members of the Committee:

My name is Nathaniel H. Goodrich. I am the General Counsel of the Federal Aviation Administration, Department of Transportation. I am accompanied by Mr. Oscar Shienbrood, Acting Associate General Counsel of our General Legal Services. I appreciate this opportunity to appear before you today to discuss S. 2176, a bill "To implement the Convention on Offences and Certain Other Acts Committed on Board Aircraft, and for other purposes". The Department of Transportation strongly supports this legislation, and recommends its favorable and prompt consideration.

I would like to begin, Mr. Chairman, with some background information about the Convention on Offences and Certain Other Acts Committed on Board Aircraft, known as the Tokyo Convention. In June 1950, the Legal Committee of the International Civil Aviation Organization began a study into the possible negotiation of a treaty that would establish rules respecting jurisdiction over crimes committed on board aircraft, and other related matters. Over the next 13 years, the United States of America actively participated in discussions of the many problems involved and in negotiations to resolve them. On September 14, 1963, the Convention was opened for signature at Tokyo, and the United States (a major supporter of the Convention) signed.

The principal purpose of the Tokyo Convention is to promote aviation safety through establishment of continuity of jurisdiction over criminal acts occurring on board aircraft. Several features make the Tokyo Convention a desirable international agreement:

First, the Convention establishes a positive rule of international law respecting jurisdiction as between the Contracting States. Under this rule, the State of registry of an aircraft may exercise jurisdiction over offenses committed on board that aircraft when it is: (1) In flight; (2) On the surface of the high seas; or (3) On any other area outside the territory of a State. This rule is analogous to the state-of-flag rule for jurisdiction over ships. This is not a rule of exclusive jurisdiction. Rather, the Convention ensures that the State of registry of an aircraft always is competent to exercise jurisdiction even though the aircraft leaves the State's territory, and yet allows other States to exercise concurrent jurisdiction. The exercise of concurrent jurisdiction would depend on a State's interest in the offense and the applicability of the traditional rules of international law regarding assertion of jurisdiction.

Second, the Convention makes more certain the powers and authority of an aircraft commander and establishes a uniform international standard for judging the actions of the commander. Without these provisions, his actions to apprehend and "off-load" an offender would be subject to the laws of the State where he lands the aircraft. Also,

the correctness of his decisions might be judged under the national law of a country overflow. Finally, if their actions are reasonable and comply with the Convention, each aircraft crew member and passenger, the aircraft owner or operator, and the person for whom the flight is made, all would have legal immunity. This immunity should enhance the proper attitudes and actions necessary to significantly contribute to safety of flight in international aviation.

Third, the Convention establishes rules and procedures to "off-load" an offender. Under the Convention, the commander may disembark in any State in which the aircraft lands any person he reasonably believes has committed, or is about to commit, an act on board which might jeopardize the safety of the aircraft, passengers, or cargo or jeopardize good order and discipline on the aircraft. Also, the commander may deliver to the authorities of any Contracting State in which the aircraft lands a person he reasonably believes to have committed on board a serious offense under the penal law of the State of registration of the aircraft. The Convention obligates any Contracting State to allow disembarkation or to accept delivery. If satisfied that the circumstances warrant, the State accepting a person "delivered" or one suspected of hijacking must take custody or other measures to ensure the suspected offender's presence. In this regard, the Convention has several provisions that are designed both to protect a suspected offender's rights and to ensure his case is handled legally and expeditiously in accordance with the generally accepted concept of due process of law.

Fourth, the Convention imposes a positive obligation on all Contracting States to take every appropriate measure to restore control to, or preserve control in, the lawful commander of an aircraft. A Contracting State in which a hijacked or threatened aircraft lands must permit passengers and crew to continue their journey as soon as practicable and return the aircraft and its cargo to the persons lawfully entitled to possession, thus minimizing the adverse impact that a hijacking has upon the passengers and crew. While not a complete resolution of this serious problem, this provision does represent an important step for the protection and convenience of passengers and aircraft and cargo.

The United States has continued to press efforts to gain widespread international acceptance of the Tokyo Convention and to promote other efforts to deter and resolve hijackings. On May 12, 1969, the United States Senate gave its advice and consent to ratification of the Tokyo Convention. On September 5, 1969, the United States of America presented to the International Civil Aviation Organization the instrument of ratification of the Convention, being the twelfth Nation to do so. As a result, under Article 21, paragraph 1, the Convention came into force on December 4, 1969. Following the United States' ratification, 10 other countries ratified the Convention, making a total of 22 of the 40 signatory nations that have become parties to the Convention. As an additional measure to the Tokyo Convention, the Legal Committee of the International Civil Aviation Organization (ICAO), with active

United States participation, is meeting now in Montreal to consider a draft protocol prepared by the Legal Subcommittee on Unlawful Seizure of Aircraft that, among other proposals, would require the state in which a hijacked aircraft lands either to extradite the hijacker to the aircraft's state of registry or else to consider prosecuting him under its own laws.

S. 2176, the bill under consideration today, would fulfill our responsibility to implement the Tokyo Convention. Under Article 3, paragraph 2, of the Convention, "Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offenses committed on board aircraft registered in such State."

Section (1) of S. 2176 would add to section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301) the definition of a new term "special aircraft jurisdiction of the United States". The term would include each of the following types of aircraft, while in flight: (1) a civil aircraft of the United States, defined in section 101(15) as one registered under the Act (49 U.S.C. 1401-1406); (2) an aircraft of the National Defense Forces; and (3) an aircraft that is either within the United States, or outside the United States if its next scheduled destination or last point of departure is in the United States, provided that it actually does next land in the United States. The definition also makes clear that an aircraft is in flight "from the moment when power is applied for the purpose of take-off until the moment when the landing run ends."

Section (3) of S. 2176 would substitute the term "within the special aircraft jurisdiction of the United States" for the term "in flight in air commerce" in sections 902(i), (j), and (k) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(i) - 1472(k)). Section 902(i) provides criminal penalties for aircraft piracy. Section 902(j) provides criminal penalties for interference with flight crew members or flight attendants. Section 902(k) provides criminal penalties for certain other crimes aboard aircraft in flight. The acts covered under section 902(k) include certain criminal acts proscribed under sections of title 18, United States Code - assaults (§113), maiming (§114), theft (§661), receiving stolen property (§662), murder (§1111), manslaughter (§1112), attempted murder or manslaughter (§1113), rape (§2031), carnal knowledge (§2032), and robbery or burglary (§2111) - and acts prohibited by section 22-1112 of the District of Columbia Code - lewd, indecent, or obscene acts.

The reach of the jurisdiction of the United States under the term "in flight in air commerce" is not as extensive or as definitive as the reach of that jurisdiction under the newly defined term "within the special aircraft jurisdiction of the United States." This redefinition of the United States' jurisdiction is needed to carry out the Nation's responsibility under Article 3, paragraph 1, of the Tokyo Convention. The "special aircraft jurisdiction of the United States" falls wholly within the jurisdiction of the Federal Government under the Constitution. The phrase in the new definition, making clear when

an aircraft is in flight, is the one usually employed internationally for that purpose. The amendments made by S. 2176 would extend the criminal provisions outlined to all aircraft within the newly defined "special aircraft jurisdiction of the United States."

The definition of "special aircraft jurisdiction of the United States" includes "aircraft of the National Defense Forces of the United States." This is not essential to the implementation of the Tokyo Convention. But, the Department of Defense requested that these aircraft be included because inclusion both is consistent with the spirit of the Tokyo Convention and closes a gap in jurisdiction. In the absence of including these aircraft, doubts could arise respecting the jurisdiction of the United States over crimes committed on board U. S. military aircraft while in flight over foreign territory. If the individual committing the crime is subject to punishment under the Uniform Code of Military Justice, the question would not be serious.

But, if the individual committing the crime is not subject to punishment under the UCMJ (such as a military dependent or a civilian employee of the Department of Defense in peacetime), the jurisdictional question could be in doubt.

In conclusion, Mr. Chairman, we urge the Committee to give prompt and favorable consideration to S. 2176. The efforts of the United States in support of the Tokyo Convention were instrumental in its development. The cooperative effort of the Inter-Agency Group

on International Aviation, including representatives of the Departments of State, Justice, Defense and Transportation, and the Civil Aeronautics Board led to the legislation embodied in S. 2176. This legislation will fulfill our obligation to implement the Tokyo Convention, which came into effect on December 4, 1969. We hope that prompt United States action to implement the Convention may lead to favorable action by the 18 signatory States who have yet to ratify the Convention, and other States as well.

Mr. Chairman, that concludes my prepared statement. I would be happy now to try to answer any questions that the Committee may have.