

Department of External Affairs

CLASSIFIED

File No. 42-8-9-3-ICAO

REACTIVATED TO

DOMINANT

Subject: TRANSPORTATION-

CIVIL AVIATION- NAVIGATION AND AIR

SAFETY- UNLAWFUL INTERFERENCE (HIJACKING AND
ARMED AGGRESSION AGAINST AIRCRAFT)-

INTERNATIONAL CIVIL AVIATION ORGANIZATION.

Vol. 4

From 70/08/1

To 70/09/30

References to Related Files

File No.

Subject

PUBLIC ARCHIVES RECORDS CENTRE
DEPOT DES ARCHIVES PUBLIQUES
OTTAWA

CLOSED

ACCESS TO INFORMATION
L'ACCÈS À L'INFORMATION
EXAMINED BY / EXAMINÉ PAR:
[Signature]

DATE / DATE:
13 March 1989

DECLASSIFIED

L411-203

PUBLIC RECORDS ORDER

P.C. 1966 - 1749 - AUTHORITY

PUBLIC ARCHIVES APPROVALS

NOS 68/001 & 69/063

RETENTION PERIOD AND DISPOSITION

5 YRS. (243D)

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THEN TRANSFER TO P.A.C.
FOR SELECTIVE RETENTION

DIVISIONAL SYMBOL

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CLOSED VOLUME VOLUME COMPLET

DATED FROM
À CONTER DU

70/08/11

TO
JUSQU' AU

70/09/30

AFFIX TO TOP OF FILE — À METTRE SUR LE DOSSIER

DO NOT ADD ANY MORE PAPERS — NE PAS AJOUTER DE DOCUMENTS

FOR SUBSEQUENT CORRESPONDENCE SEE — POUR CORRESPONDANCE ULTÉRIEURE VOIR

FILE NO. — DOSSIER N°

42-8-9-3-1CA0

VOLUME

5

YOUR FILE NO.
VOTRE DOSSIER
OUR FILE NO.
NOTRE DOSSIER

23



LE REPRÉSENTANT DU CANADA AU CONSEIL DE
L'ORGANISATION DE L'AVIATION CIVILE
INTERNATIONALE

902 ÉDIFICE DE L'AVIATION INTERNATIONALE, MONTRÉAL

TÉLÉPHONE: 879-4788

THE REPRESENTATIVE OF CANADA ON THE COUNCIL OF
THE INTERNATIONAL CIVIL AVIATION
ORGANIZATION

902 INTERNATIONAL AVIATION BUILDING, MONTREAL

28 September 1970. TELEPHONE: 879-4788

The Director, International Relations Branch,
International Transport Policy Committee,
Canadian Transport Commission,
Congill Bldg.,
275 Slater St.,
Ottawa, Ont.

Dear Sir:

Attached, for information, is a copy of each
of the following:

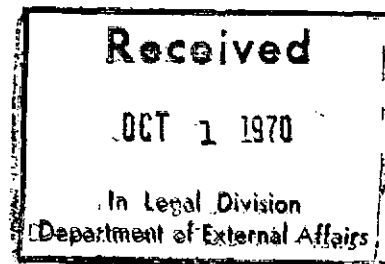
C-WP/5229 & 5232 - REVISED

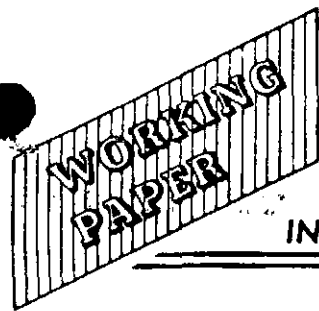
C-WP/5246 - Possible Supplementary Steps by ICAO to Prevent
and Deter Unlawful Interference.

Yours truly,

L.M.E. Brennan
L.M.E. Brennan,
Administrative Officer.

c.c.: The Under-Secretary of State for Ext. Affairs, (1)
Attention: Miss M. Loggie, U.N. Division (1)
→ Legal Division (1)
Director, Legal Services & Counsel, (1)
Ministry of Transport
Administrator, Canadian Air Transportation (1)
Administration, Ministry of Transport
Department of Justice, (1)
Attention: Advisory & Intl. Law Section
The Deputy Minister, Dept. of Finance, (1)
Attention: International Programmes Division





INTERNATIONAL CIVIL AVIATION ORGANIZATION

C-WP/5229

15/9/70

REVISED

25/9/70

COUNCIL - SEVENTY - FIRST SESSION

Subject No. 52: Unlawful Interference with International Civil Aviation and its Facilities

POSSIBLE SUPPLEMENTARY STEPS BY ICAO TO PREVENT
AND DETER UNLAWFUL INTERFERENCE

Resolution proposed by the Representative of the United States

THE COUNCIL,

Finding that a heightened threat to the safety and security of international civil air transport exists as a result of acts of unlawful seizure of aircraft involving the detention of passengers, crew and aircraft contrary to the principles of Article 11 of the Tokyo Convention, for international blackmail purposes, and the destruction of such aircraft;

Recognizing that Contracting States to the Convention on International Civil Aviation have obligated themselves to ensure the safe and orderly growth of international civil aviation throughout the world;

Calls upon Contracting States in order to ensure the safety and security of international civil air transport, upon request of a Contracting State and after appropriate consultation, to take joint action in accordance with international law, to suspend all international civil air transport services to and from any State which, after the unlawful seizure of an aircraft, detains passengers, crew or aircraft contrary to the principles of Article 11 of the Tokyo Convention, for international blackmail purposes, or any State which, contrary to 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;

Directs the Legal Committee to extend its Eighteenth Session in order to consider an international convention or other international instruments providing for:

- i) Joint action by States to suspend all international civil air transport services to and from any State which, after the unlawful seizure of an aircraft, detains passengers, crew or aircraft contrary to the principles of Article 11 of the Tokyo Convention for international blackmail purposes, or any State which, contrary to 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;

C-WP/5229
REVISED

- 2 -

- ii) Amendment of bilateral air transport agreements of contracting parties to remove all doubt concerning the authority to join in taking such action against any State.

- END -

WORKING
PAPER



REVISED

C-WP/5232
18/9/70
REVISED
25/9/70

INTERNATIONAL CIVIL AVIATION ORGANIZATION

COUNCIL - SEVENTY-FIRST SESSION

Subject No. 52: Unlawful Interference with International Civil Aviation and its Facilities

POSSIBLE SUPPLEMENTARY STEPS BY ICAO TO PREVENT AND DETER UNLAWFUL INTERFERENCE

Resolution on linking bilateral air agreements to international conventions and protocols relating to unlawful interference with international civil aviation

(Presented by the Representative of Canada)

THE COUNCIL,

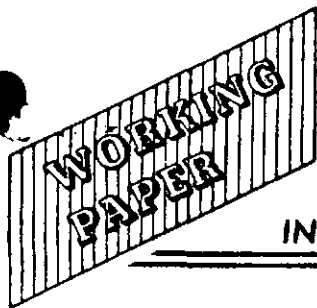
- ✓ RECALLING Assembly Resolution A16-37 on the subject of unlawful seizure of aircraft;
- [FURTHER RECALLING Assembly Resolution A17-23 concerning the Discussion Paper on Linking Bilateral Air Agreements to Certain ICAO International Conventions;
- ✓ NOTING that the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft came into force on 4 December 1969;
- ✓ NOTING that a Diplomatic Conference has been convened in The Hague, 1 - 16 December 1970 to consider the adoption of a Convention on Unlawful Seizure of Aircraft;
- [FURTHER NOTING that the 18th Session of the Legal Committee has been directed to draft a convention on acts of unlawful interference against international civil aviation (other than those covered by the draft Convention on Unlawful Seizure of Aircraft);
- ✓ CONSCIOUS that the framework of scheduled international civil air transport is based on bilateral air agreements between States;
- [DIRECTS the Legal Committee, at its 18th Session:
 - (1) to elaborate a Special Clause providing for the enforcement of international legal obligations relating to unlawful interference with international civil aviation which could be:

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REVISED

- 2 -

- (a) specifically incorporated in future bilateral air agreements between Member States; and
 - (b) inserted in existing bilateral air agreements at an appropriate time; and
- (2) to transmit the text of the Special Clause, together with its Report on the relevant discussions, to the ICAO Council at the earliest possible date, so that the Council may consider what recommendations to make to Member States with regard to the Clause.

- END -



C-WP/5246
28/9/70

INTERNATIONAL CIVIL AVIATION ORGANIZATION

COUNCIL - SEVENTY-FIRST SESSION

Subject No. 52: Unlawful Interference with International Civil Aviation and its Facilities

POSSIBLE SUPPLEMENTARY STEPS BY ICAO TO PREVENT AND DETER UNLAWFUL INTERFERENCE

Draft resolution presented by the Representative of Japan

THE COUNCIL,

Finding that a heightened threat to the safety and security of international civil air transport exists as a result of acts of unlawful seizure of aircraft involving the detention of passengers and crew as hostages and of aircraft in contravention of Article 11 of the Tokyo Convention;

Recognizing the urgent need for international joint action by States to suppress such acts;

Noting that a diplomatic conference has been convened at The Hague in December 1970 to formulate a convention on unlawful seizure of aircraft; and

Recognizing that the Contracting States to the Convention on International Civil Aviation have obligated themselves to ensure the safe and orderly growth of international civil aviation throughout the world;

- 1) Calls upon the Contracting States, in order to ensure the safety and security of international civil air transport, to be guided by the principles set out in Article 11 of the Tokyo Convention and to take appropriate legal actions in strict fairness against persons responsible for such acts of unlawful seizure of aircraft;
- 2) Calls upon the Contracting States to come to an agreement at the forthcoming Diplomatic Conference at The Hague for inclusion in the convention of provisions for effective measures against the acts of unlawful seizure of aircraft, including, in particular:
 - (a) provision for extradition and prosecution of persons responsible for committing such acts; and

C-WP/5246

- 2 -

- (b) provision for appropriate international joint actions for the purpose of ensuring the faithful observance by States of the obligations undertaken in the Convention, including actions which enable Contracting States to suspend air transport service to and from any State which, after occurrence of the unlawful seizure of aircraft, detains passengers, crew and aircraft or any State which fails to discharge its obligations for the extradition and prosecution of persons responsible for such acts;
- 3) Directs the Eighteenth Session of the Legal Committee to examine the subject mentioned in operative paragraph 2 (b) above and report on it to the forthcoming Diplomatic Conference at The Hague.

- END -

ACTION COPY

FLE

*new given
copy to Canada
Jin Park
OIR*

C O N F I D E N T I A L

FM HAGUE SEP28/70

TO TT EXTER 839 IMMED DE LDN

INFO LDN IMMED TT PRMNY IMMED DE OTT

REF YOURTELS FLE1397 AND FEL1374 SEP25

HUJACKING-ICAO COUNCIL MTG SEP29

*42-8-9-3-1CAO
2x46*

WE HAVE SPOKEN WITH RESPONSIBLE MFA OFFICIAL NIEUWENHUIJSEN
(COUNSELLOR FOR INNATL TRANSPORT) AND LEFT WITH HIM TEXT CDN DRAFT
RESLN.

2. NETHERLANDS ARE HOLDING DEPTL MTG PM SEP28 AND HOPE TO DESPATCH
INSTRUCTIONS THEIR REP ICAO COUNCIL MTG/MONTREAL SAME EVENING
OR FOLLOWING AM FOR PRESENT COULD ONLY GIVE SYMPATHETIC CONSIDER-
ATION TO REQUEST FOR SUPPORT FOR CDN RESLN.

not in
3. NIEUWENHUIJSEN NOTED ONE DRAWBACK CDN PROPOSAL FOR AMENDING
BILATERALS IE THAT IT WOULD ONLY BE EFFECTIVE IF MAJOR STATES
TO WHICH HUJACKING OCCURS (ARABS AND CUBA) WERE PREPARED TO AGREE
TO AMEND BILATERALS. WONDERED WHETHER THIS WOULD BE SO. WE CONSIDER
THIS RESERVATION SHOULD NOT/NOT, HOWEVER, AFFECT IMMED POSITION
NETHERLANDS SINCE PURPOSE OF DRAFT RESLN IS TO KEEP OPEN OPTIONS
FOR COUNCIL ACTION.

RFT 281643Z

44/28/9



YOUR FILE NO.
VOTRE DOSSIER
OUR FILE NO.
NOTRE DOSSIER

23

LE REPRÉSENTANT DU CANADA AU CONSEIL DE
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902 ÉDIFICE DE L'AVIATION INTERNATIONALE, MONTRÉAL

TÉLÉPHONE: 879-4788

THE REPRESENTATIVE OF CANADA ON THE COUNCIL OF
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ORGANIZATION

902 INTERNATIONAL AVIATION BUILDING, MONTREAL

TELEPHONE: 879-4788

25 September 1970.

The Director, International Relations Branch,
International Transport Policy Committee,
Canadian Transport Commission,
Congill Building,
275 Slater St.,
Ottawa, Ont.

Dear Sir:

Attached, for information, is a copy of the
following:

C-WP/5242 - Recommendation to the Diplomatic Conference
at The Hague for an Accession Clause to be
Included in the Convention on Unlawful Seizure.

Yours truly,

L.M.E. Brennan
L.M.E. Brennan,
Administrative Officer.

Encl.

c.c.: The Under-Secretary of State for Ext. Affairs, (1)
Attention: Miss M. Loggie, U.N. Division (1)
 → Legal Division (1)

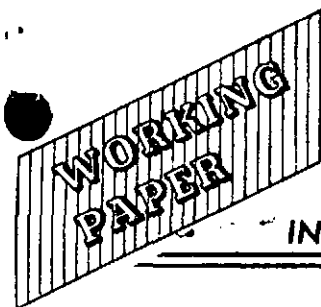
Director, Legal Services & Counsel, (1)
Ministry of Transport

Administrator, Canadian Air Transportation (1)
Administration, Ministry of Transport

Department of Justice, (1)
Attention: Advisory & Intl. Law Section

The Deputy Minister, Dept. of Finance, (1)
Attention: International Programmes Division

FLE



C-WP/5242
24/9/70

INTERNATIONAL CIVIL AVIATION ORGANIZATION
COUNCIL - SEVENTY-FIRST SESSION

Subject No. 16.3: International Air Law Conventions

RECOMMENDATION TO THE DIPLOMATIC CONFERENCE
AT THE HAGUE FOR AN ACCESSION CLAUSE TO BE INCLUDED
IN THE CONVENTION ON UNLAWFUL SEIZURE

(Presented by the Representative of the United States of America)

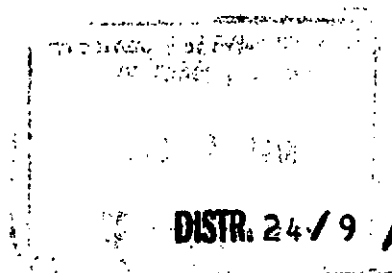
1. The extremely serious threat posed by the unlawful seizure of aircraft to the safety and, indeed, the continued viability of international civil air transport vastly increases the importance that the ICAO Council must attach to exploring all avenues in combating this threat. The convention on unlawful seizure which will be considered at the conference in The Hague in December 1970 is an important element in this battle and ICAO, as represented by the Council, should speak out on issues which it feels are important.

2. The effectiveness of any convention depends upon its broad acceptance and it must be recognized that this convention must also gain the widest possible acceptance to be an effective weapon against the crime of unlawful seizure. The President of the United States in his statement of 11 September 1970 stated

"It is imperative that all countries accept the multilateral convention providing for the extradition or punishment of hijackers which will be considered at the international conference which will be held under the auspices of ICAO".

3. At the Extraordinary Assembly held in June 1970, the United States indicated its belief that the widest possible adherence to the Convention on Unlawful Seizure was of great importance. My Government believes that this Council should recommend to the Diplomatic Conference that it consider a clause to be incorporated in the Convention which would permit the widest possible number of States to give consent to be bound by the Convention. For this reason, we propose that the Council adopt the Resolution set out below which will recommend such action to the Diplomatic Conference. We realize that the final decision rests with the Diplomatic Conference but that this does not, should not, and must not prevent this Council from speaking out on an issue of such importance.

(2 pages)



C-WP/5242

- 2 -

RESOLUTION

THE COUNCIL,

Having decided on 26 March 1970 that invitation to the Diplomatic Conferences on the Draft Convention on Unlawful Seizure of Aircraft and on the Revision of the Warsaw Convention of 1929 as amended by The Hague Protocol of 1955 should be extended to Contracting States and non-Contracting States that are members of the United Nations, another specialized agency or the International Atomic Energy Agency;

Mindful of the fact that the effectiveness of an international convention depends to a great extent on the widest possible number of adherents to the Convention;

Recommends that States invited to the Conference at The Hague, which will convene on 1 December 1970, agree to a final clause in the Draft Convention on Unlawful Seizure of Aircraft which would permit the widest possible number of States to become parties to that Convention.

- END -

Please replace pages 1 and 2 of the statement made by the Alternate Representative of the United States at the First Meeting of the Council's 71st Session, on Friday, 18 September 1970, by the attached.

000490



COUNCIL - SEVENTY-FIRST SESSION

First Meeting, Friday, 18 September 1970, at 1000 hours

STATEMENT BY THE HONORABLE JOHN A. VOLPE
ALTERNATE REPRESENTATIVE OF THE UNITED STATES

Thank you, Mr. President. I am honored to be here, and I consider it a personal privilege to be addressing the ICAO Council. I am well aware that my presence here is a departure from your usual procedures. President Nixon and I deeply appreciate your generosity in allowing me to address myself -- both personally and officially -- to this most serious problem. I met with President Nixon in Chicago yesterday. He re-emphasized to me his great personal concern and the need for international joint action.

Let me also express my personal appreciation to our regular United States Representative to ICAO, Mr. Charles Butler.

The United States of America requested last Friday that a special meeting of the Council be convened to respond to the most serious threat to international air transportation since its beginnings. President Nixon has described the threat of air piracy as an "international menace" --

I doubt whether any of us here concerned with international aviation would disagree.

The Contracting Parties to the International Civil Aviation Convention have obligated themselves to ensure the safe and orderly growth of international civil aviation. This basic mandate is now threatened by criminal acts which threaten the lives and well-being of passengers and crew and international air transport as a whole.

It is imperative that ICAO respond promptly, decisively and effectively to this threat.

In the past, ICAO has sought agreement on collective actions based on the recognition that the vital interests of all states are affected by air piracy.

- in September 1968, the Sixteenth Assembly adopted a resolution urging all states to give effect to Article 11 of the Tokyo Convention before it entered into force.

- in December 1968, this Council adopted a resolution urging all ICAO states to take all possible measures to prevent unlawful seizure of aircraft.

- in April 1969, this Council declared that acts of unlawful interference with international civil aviation

could not be tolerated and established a special committee of this Council to find ways to prevent unlawful interference.

- at the United Nations last December, the General Assembly called on states to develop their own legislation and to support the work of ICAO to deal effectively with acts of unlawful interference.

- also last December, this Council made a series of recommendations to ICAO states on measures to prevent unlawful interference.

- in June of this year, at the extraordinary session of the ICAO Assembly, attended by ninety-one states, a number of resolutions were adopted including the comprehensive and important resolution known as the Montreal Declaration which I will mention later.

- finally, the Security Council of the United Nations this month unanimously adopted a resolution calling on states to take all possible legal steps to prevent further hijackings or other interferences with international civil air travel.

These past attempts, while significant, are not sufficient to meet the grave threat posed by recent developments.

New and more drastic action is required. We have asked that this session of this Council be open to the public to demonstrate to the world that ICAO will now generate an international response to air piracy -- a cancer that requires swift and clean surgery -- to assure the safety of international air travel.

In times of emergency, it is clearly necessary for Contracting States to adopt national programs to thwart certain threats presented by air piracy and international blackmail involving the detention of passengers and crew and destruction of aircraft. Many countries, including the United States, have taken such actions in the past few weeks.

President Nixon, in announcing one week ago a seven-point program which the United States would undertake, directed that several actions be started at once. For instance, he directed that specially trained, armed government employees be placed on U.S. Flag carriers. He also directed U.S. Flag carriers to extend the use of electronic surveillance equipment and other surveillance techniques at U.S. gateway airports. He further directed the Secretary of State to consult with other governments and foreign carriers concerning the full range of techniques they use to prevent hijackings. These three programs are now underway.

However, while our government is taking action, it also seeks to establish a common front in the international community because it is through concerted action by that community that effective solutions can best be achieved.

The reasons for this heightened sense of emergency in the attitudes of our government and our public are clear:

- We have seen aircraft of four international carriers hijacked and destroyed and other attempts frustrated during the past two weeks.
- We have seen -- and still see -- innocent airline passengers held as pawns in an international political struggle. It would be impossible to exaggerate the feeling of agony and actual fear for their lives which these dreadful events have meant to not only the terrified passengers involved -- some infant children and pregnant women -- but also to their families filled with anxiety at home.

These feelings transcend the borders of all nations.

- We have seen hijackers and crew members shot on board aircraft.
- We have seen planes hijacked not only for political blackmail purposes but also by passengers seeking political asylum and for other reasons.

- We have also seen delays and inconvenience to passengers and airlines caused by stringent security measures adopted at most of the international airports of the world.

These events of the past two weeks have heightened the threat to the safety of the international travelling public to such an extent that it jeopardizes international air transport itself. While the United States first experienced a hijacking in 1961, the problem is now worldwide and of an entirely new dimension.

We believe that the most important action that the Council should and can -- in fact must -- now take, is the acceptance and establishment of certain basic principles directed to effective sanctions. This should be the overriding goal of this meeting.

Article 11 of the Tokyo Convention codified the principle of international law that a state in which a hijacked aircraft lands has the obligation to "permit its passengers and crew to continue their journey as soon as practicable, and shall return the aircraft and its cargo to the persons lawfully entitled to possession." This Council and the ICAO Assembly have adopted a resolution urging all Contracting States to give effect to this fundamental principle of international

aviation law, whether or not a party to the Tokyo Convention.

The existing draft convention on unlawful seizure of aircraft obligates States to extradite or prosecute all persons responsible for unlawful seizure of aircraft. We expect that draft will be strengthened, signed at the diplomatic conference in The Hague this December and promptly ratified by states. In this connection, the Montreal Declaration adopted by the Assembly this past June deals directly and forcibly with this point. Its text:

"URGENTLY CALLS UPON States, pending the coming into force of appropriate international conventions, to take effective measures to deter and prevent such acts [of violence directed against international civil air transport and airports and other facilities serving such transport] and to ensure, in accordance with their national laws, the prosecution of those who commit such acts...."

It is essential that the basic principles set forth in the Tokyo Convention and the draft Unlawful Seizure Convention be applied universally to be effective. However, there are

at the present time no agreed-upon sanctions to enforce them. Further efforts by ICAO are now plainly required.

That is why President Nixon called upon the international community "to take joint action to suspend airline services with those countries which refuse to punish or extradite hijackers involved in international blackmail". That is why he directed the Secretary of State of the United States to ask that this session be convened.

The United States believes that the principal action of this meeting should be the adoption of a resolution establishing the basis for application of sanctions where appropriate and has presented for your consideration a resolution for this purpose.

In order to avoid any misunderstandings, let me describe and explain briefly the resolution, paragraph by paragraph.

The first paragraph recites a finding of a heightened threat to the safety and security of international civil air transport. The principal -- though obviously not the only -- cause is identified as the detention for blackmail purposes of passengers, crew and aircraft and the failure of States to extradite or prosecute persons responsible for such acts.

We are aware that many hijackings are designed, planned and carried out for purposes other than international blackmail. We do not believe that any hijacking, whatever the motivation, should be condoned. We firmly believe, and have urged on others, that all hijackers should be prosecuted wherever they may be -- either following extradition to the State where the plane was registered, by the State where the hijacked plane lands, or by the State to which a hijacker has fled.

For these reasons, the United States urged in the ICAO Legal Committee last year that requests for the extradition of aircraft hijackers should not be denied on the ground of political asylum. This view received little support at that time in ICAO.

We believe, however, that hijacking for purposes such as seeking political asylum -- no matter how dangerous and reprehensible -- does not approach the threat to human life or criminality of hijacking of aircraft for international blackmail purposes. It is this latter practice which squarely challenges the obligations of ICAO members to take further action to ensure the safety of passengers and aircraft engaged in international air transport. It is to this threat that the second paragraph of the draft resolution is directed.

The third paragraph calls upon states to take joint action by suspending services to and from any state in two specific circumstances:

- The first set of circumstances is the detention for international blackmail purposes by a State of passengers, crew and aircraft, contrary to Article 11 of the Tokyo Convention, after the unlawful seizure of an aircraft.
- The second situation is the failure of any State to extradite or prosecute persons responsible for acts of unlawful seizure involving the detention of passengers, crew or aircraft for international blackmail purposes.

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 establish agreement to the general principle that concerted, multilateral sanctions are 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 to implement the sanction of suspension of service.

This third paragraph cannot, and does not, create any finding 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.

The fourth paragraph directs the Legal Committee to extend its session scheduled in London later this month in order to draft a sanctions convention at that meeting.

As you will note, the general principles of the sanctions convention as stated in the fourth paragraph of the resolution are identical to those recited in the third paragraph. We do not believe greater detail is needed at this time. The United States will be prepared to submit a draft sanctions convention, as a working paper, at the Legal Committee session in London.

We believe that a sanctions convention should be submitted to this Council by the Legal Committee as soon as possible and thereafter very promptly to a diplomatic conference.

When Secretary of State Rogers recommended, and President Nixon personally endorsed, my appearance here at this meeting, together with Mr. Shaffer, the Administrator of the Federal Aviation Administration, and Mr. Stevenson, the Legal Adviser of the Department of State, it was to make one fact clear -- the United States will act, and expects other states to act, in order to quarantine promptly and effectively any State which supports or condones air piracy for international blackmail purposes.

My government is confident that this Council will meet the challenge before it. On our part, our permanent representative, Mr. Butler, and other United States Government officials will work closely with all members of this Council to achieve this essential objective.

In closing, I want to emphasize our appreciation for your courtesy in hearing us so promptly. The work of ICAO is of extreme importance to the world aviation community --

indeed, the world at large. I admire and appreciate the
dedication of this organization.

###



LE REPRÉSENTANT DU CANADA AU CONSEIL DE
L'ORGANISATION DE L'AVIATION CIVILE
INTERNATIONALE

902 ÉDIFICE DE L'AVIATION INTERNATIONALE, MONTRÉAL

TÉLÉPHONE: 879-4788

THE REPRESENTATIVE OF CANADA ON THE COUNCIL OF
THE INTERNATIONAL CIVIL AVIATION
ORGANIZATION

902 INTERNATIONAL AVIATION BUILDING, MONTREAL

TELEPHONE: 879-4788

23 September 1970.

The Director, International Relations Branch,
International Transport Policy Committee,
Canadian Transport Commission,
Congill Building,
275 Slater St.,
Ottawa, Ont.

42-8-9-3-1CAO
21

Dear Sir:

Attached, for information, is a copy of each
of the following:

C-WP/5213 - REVISED

C-WP/5235 - Election of Members of the Committee on
Unlawful Interference.

FILE

Yours truly,

L.M.E. Brennan

L.M.E. Brennan,
Administrative Officer.

Encls.

McCluck

c.c.: The Under-Secretary of State for Ext. Affairs,
Attention: Miss M. Loggie, United Nations Div. (1)
 Legal Division (1)

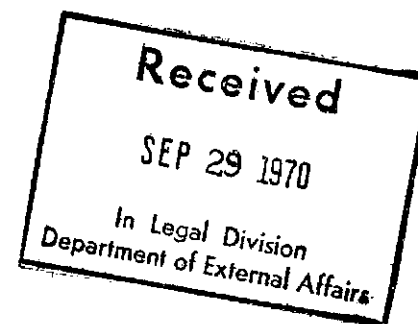
Director, Legal Services & Counsel, (1)
Ministry of Transport

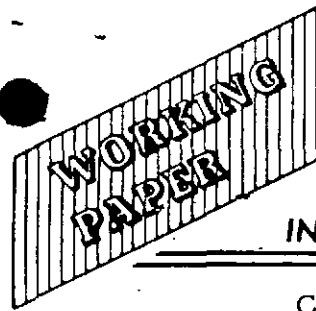
Administrator, Canadian Air Transportation (1)
Administration, Ministry of Transport

Department Of Justice, (1)
Attention: Advisory & Intl. Law Section

The Deputy Minister, Dept. of Finance, (1)
Attention: International Programmes Division

FILE





C-WP/5213
20/8/70
REVISED
18/9/70

INTERNATIONAL CIVIL AVIATION ORGANIZATION

COUNCIL - SEVENTY-FIRST SESSION

Subject No. 52: Unlawful Interference with International Civil Aviation and its Facilities

**RESOLUTION A17-24 - TIME SCHEDULE FOR WORK
RELATING TO UNLAWFUL INTERFERENCE**

(Presented by the Secretary General)

1. Resolution A17-24, Clause (3) invites the Council

"to request Contracting States to inform it, in whatever manner it shall decide and before the end of 1970, of the measures they have taken".

The preliminary action by the Council (LXX/14) on this clause of the Resolution was to request the Secretariat to present proposals to the Council on the manner in which States should present the information.

2. The "measures" referred to in Clause (3) are the "security measures" mentioned in the third Whereas clause and, therefore, the resolutions on which information should be requested are Resolutions A17-10, 11, 12, 13 and 14.

3. State letters have already been sent requesting implementation of those resolutions and asking for information as follows:

Resolutions A17-10 and 11

State letter EC 6/10 - 70/161, dated 18 August 1970, indicates that ICAO would welcome any information the States might wish to submit by 1 December 1970 on the steps taken to put into effect the specifications in Appendices A and B to Resolution A17-10. It also asks information about the willingness of the States to implement Resolution A17-11.

Resolution A17-12

State letter EC 6/11 - 70/158, dated 14 August 1970, asks for information, by 1 December 1970, on the extent to which the respective governments have been able or are planning to put into effect the measures mentioned in Clauses (1) and (2) of the Resolution.

Resolution A17-14

State letter E 1/6 - 70/157, dated 14 August 1970, asks for the governments' initial material for exchange or plans concerning future exchanges, by 1 December 1970.

C-WP/5213
REVISED

- 2 -

No request was included in State letter R 3/1 - 70/167, dated 13 August 1970, regarding Resolution A17-13.

4. It is suggested that, concerning A17-10, 11 and 14, States should be asked to provide more detailed information, and that regarding A17-13 information should now be requested. On the other hand, it does not appear necessary to ask further questions in the case of A17-12. A questionnaire sent to States would help them to reply and would facilitate the analysis of the replies by the Secretariat. A draft questionnaire is attached hereto.

Action by the Council

5. The Council is invited:

- a) to agree that a questionnaire should be sent to States asking for their replies before 1 December 1970; and
- b) to consider the attached questionnaire for any changes it may wish to introduce.

- - - - -

ATTACHMENT

Questionnaire

(To be read in conjunction with the text of the resolutions)

A17-10: Implementation of security specifications and practices

1. Has your Government taken the necessary action to introduce and maintain in being some or all of the specifications and practices set out in Appendices A and B of the Resolution? (If only some have been introduced, identify them by the numbers in Appendices A and B.)
2. If your Government has not yet introduced all the specifications and practices set out in Appendices A and B, when does it expect to do so? (If only some will be introduced, identify them by the numbers in Appendices A and B.)

A17-11: Application, upon request, of Appendix B to A17-10

3. Does your Government intend to comply with this Resolution if it receives a request from the competent authority of another State?

A17-12: Establishment of Airport Security Committees

4. Has your Government established or does it intend to establish the local airport security committees described in Clause (1) of this Resolution?
5. Has your Government designated or does it intend to designate a person or persons responsible for co-ordination, as suggested in Clause (2)?

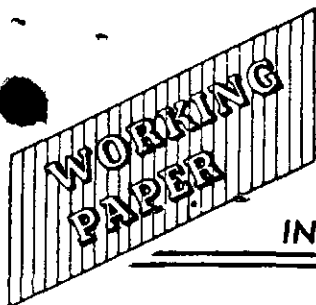
A17-13: Assistance to States

6. Has your Government given any assistance as mentioned in Clause (1) of the Resolution and/or will it be ready to do so if requested by another State?

A17-14: International co-operation and exchange of information

7. Has your Government exchanged or does it intend to exchange with other States information of the type described in Clause (2) of this Resolution? (If affirmative, describe briefly.)
8. Is your Government undertaking or does it intend to undertake joint efforts with other States in the development and refinement of promising concepts in detection of weapons and explosives? (If affirmative, list them.)

- END -



C-WP/5235
21/9/70

INTERNATIONAL CIVIL AVIATION ORGANIZATION

COUNCIL - SEVENTY-FIRST SESSION

Subject No. 6.3: Election of Chairmen and of members of Committees

Election of Members of the Committee on Unlawful Interference

(Presented by the President of the Council)

References: C-Min. LXVI/26 - Closed
C-Min. LXVII/2 - Closed
C-WP/5151
Doc 7559/4, Revision 4

1. On 10 April 1969 (LXVI/26-Closed), the Council decided to establish a committee of eleven members chosen from among the Members of the Council to deal with the question of unlawful interference with international civil aviation. At the same meeting the Council approved, as a guideline to me, a certain geographical representation for the composition of the Committee. On 13 May 1969 (LXVII/2 - Closed), the Council appointed as members of the Committee: Australia, Colombia, France, Guatemala, Indonesia, Lebanon, Nigeria, Senegal, Spain, United Kingdom and United States.

2. In C-WP/5151 the question of continuation and membership of the Committee is discussed. On the assumption that the Council will agree that the Committee should continue and be composed of eleven members, I present below the list which I have prepared after consultations with Council Members and keeping in mind the guideline regarding geographical representation:

Australia	Lebanon
Colombia	Senegal
Congo (People's Republic of)	Spain
France	United Kingdom
Guatemala	United States
Japan	

3. I invite the Council to proceed to the election of the members of the Committee in accordance with Rule 18 of the Rules of Procedure for the Council. The term of office of the members will be for one year.

4. In accordance with the previous Council decisions, since the Committee on Unlawful Interference is a committee of States, each member should be represented on it by its Representative on the Council or by a person designated as an Alternate. The Committee will elect its own chairman.

42-89-1CAO

Sept 21-70

File
Mr

DRAFT MINUTES OF INTERDEPARTMENTAL MEETING

Re 18th SESSION OF LEGAL COMMITTEE OF ICAO

1. In response to a letter from Mr. John Gray, Counsel, a meeting was convened by Mr. Norville Norton, CTC, Legal Branch, in Room 1700 of the Congill Building on September 17, 1970, at 14:00 to brief Canadian delegates to the meeting of the Legal Committee of ICAO in the United Kingdom from September 29th to October 13th, 1970, and to study the draft position paper prepared by Mr. Peter Sorokan of the Justice Department in collaboration with Messrs. McLeish and McNutt of the Department of Transport.

2. In attendance were:

N.C. Norton, C.T.C. (Chairman)
W.M. McLeish, D.C.A. M.O.T.
Peter Sorokan Justice
John T. Gray, Counsel, M.O.T.
Cliff Kennedy, Asst/Counsel, M.O.T.
Ian E. McPherson, Air Canada, Legal
J.E. Wells, A.T.A.C. Legal
John Keenan, C.A.L.P.A. Legal
✓Lorne Clark, External, Legal
John Sharpe, U.N. Legal (External)
Allan MacNutt, M.O.T.

C.P. Air were invited but did not attend.

3. DELEGATION

Four delegates will attend the meeting to be held in Lancaster House, London.

Peter Sorokan (Justice) representing M.O.T.
Allan MacNutt M.O.T.
Ted Powell M.O.T. (London)
David Miller External (London)
Lorne Clark will possibly attend also
Head of delegation to be named later

Accommodations have been arranged (by External) at Britannia Hotel from Sunday September 27th onward, and a delegation meeting will be held on Monday, September 28th at the M.O.T. Office in London.

4. Mr. Clark and Mr. Sharpe briefed the meeting on the agenda of ICAO in Montreal next day (September 18) for about one hour and discussed the Canadian Initiative on Bilateral Agreements with members of the Government and industry present.

- 2 -

5. Mr. Clarke commented briefly on the following points of Mr. Sorokan's Paper:
- (a) Type of instrument. Mr. Clarke disagreed with the proposition that a single instrument dealing with all forms of interference would be preferable and suggested the delegation seek a separate instrument in this case.
 - (b) Item B (VI). Insert "or are about to be" before committed.
 - (c) Item D. Scope of the Convention suggests redrafting first para.
 - (d) With regard to Item G, he discussed probability of Art 7 of the (Draft) Convention on Unlawful Seizure being strengthened (in view of recent developments) to make prosecution mandatory. In reply to the 4 questions at the end of the draft position paper, Mr. Clark suggested...
 - 1. add "from the air" to item 1. (not agreed subsequently)
 - 2. item 4, External feels that even though the motivation is political, the crime should not be exempt from prosecution.

As Mr. Clark and Mr. Sharpe left at this point for other obligations before the above matters were discussed fully, the above items are not to be considered as instructions unless confirmed below.

6. At this point the Chairman (requested) Mr. Sorokan to present his paper for general discussion.

PREAMBLE -

ITEM A. THE INSTRUMENT

Discussion of the advantages of a single agreement to deal with the two subjects. All concurred their preference for one instrument. Gray, Norton, Keenan and Sorokan all felt however this would be virtually impossible and agreed to instruct delegates to accept separate instruments if this would appear to expedite ratification.

Mr. Wells asked for clarification of the link between instruments and Mr. Keenan felt that a general reference to Tokyo or other conventions in the preambulatory paragraph was insufficient. Mr. Wells agreed.

Mr. Wells emphasized the fact that since the (Draft) Convention on Unlawful Seizure was not yet adopted, it would make a good vehicle in which to include this legislation.

. . . 3

- 3 -

Mr. Kennedy felt the present instruments were not being sufficiently forward looking in not planning for the future. Mr. McLeish felt the items such as aircraft remote control from the ground as referred to by Mr. Kennedy would be covered by the civil code of the State.

7. ITEM B. THE OFFENCE

Keenan, McPherson, Wells and others discussed the advisability of not including "property" and "aircraft". Mr. McLeish supported Mr. McPherson that "aircraft" should remain. In (i) (ii) (iii) and (iv) "Device" was deleted because it was not considered broad enough to include all hazardous things, i.e. oxygen, gasses, chemicals, etc.

In (i) Keenan suggested "likely" be changed to "could be used to".

This change was not approved.

(iii) (iv) and (v) acceptable as is.

(vi) Mr. Wells subsequently started a discussion dealing with the "bluffer" who pretends to have a weapon and his difficulty was resolved by Mr. Gray who suggested that "or threatening" be included after reporting. Also "or are about to be" was added before committed as per Mr. Clark's earlier suggestion.

Mr. McPherson would like to include domestic acts but Mr. McLeish feels they are covered in the Criminal Code. Discussions were held on the type flights, i.e. international or domestic for possible additions to the offence. Also if airports should be included. Much general discussion took place on what effect international conventions would have on a National crime, i.e. a crime within a State in respect of an aircraft on a domestic flight.

8. C. PUNISHMENT

Agreed.

9. D. SCOPE

As the Tokyo Convention does not directly impose obligations on States to punish or extradite an offender, and the proposed Convention does, an overlap in other areas is not undesirable.

. . 4

- 4 -

10. E. JURISDICTION

1. As is
2. (a) as is
- (b) Mr. McPherson would prefer the "piracy" approach and the consequent vesting of jurisdiction in all States Parties. Several emphasized that meaningless penalties such as house arrest and other minor penalties could not be tolerated. Mr. Keenan advised that IFALPA are attempting to have penalties extended. The meeting disagreed with a statement made earlier by Mr. Clark that there would be no provisional (in primary and secondary) jurisdiction. Mr. McPherson pointed out that to define an international crime is pointless if we have no international jurisdiction.

INSTRUCTION

Support broad jurisdiction if delegations in general show a tendency to support the idea of an "international crime". Otherwise support the narrower areas of jurisdiction.

3. Insert in third line before the word conspiracy "subject of the" and after to "or is".

11. F. PROCEDURE

No conflict seen - OK as is.

12. G. PROSECUTION

Several had difficulty with the term "appropriate authority", i.e. in foreign state the person might not be held. The meeting felt the offender should be held if there is any evidence to warrant a prosecution.

Mr. Gray emphasized that any State should be forced to prosecute or be prepared to extradite. Mr. McPherson wanted charter flights covered and explained the difficulty the airlines are faced with by lack of a right to search. He does not want the airlines to do the searching - but have legislation to enable the police to do so. He also pushed for a speedy ratification of the convention in his closing remarks.

. . 6

- 5 -

13. E. EXTRADITION

No change.

14. 4 QUESTIONS

In discussing Point #2, reference was made to Barbados and the Guadalajara supplement to the Warsaw Convention. Mr. Wells, Mr. Gray and Mr. Sorokan discussed the Canadian position should the situation be reversed against the Canadian interest. Mr. Keenan pointed out a study group is working on this subject at this time. Due to a previous obligation Mr. McLeish had left just prior to this point in the discussion.

Mr. Sorokan expressed the opinion he would welcome further discussion on the 4 questions next week.

15. Meeting adjourned at 17:10.

Attached to these minutes is a revised set of instructions for the Canadian Delegation. It would be appreciated if recipients would kindly point out any errors or omissions to Mr. Sorokan or the undersigned no later than Wednesday, September 23rd, 1970.

Allan MacNutt.

Attach

CONFIDENTIAL

September 18, 1970.

POSITION PAPER FOR USE BY CANADIAN DELEGATION

AT THE EIGHTEENTH SESSION OF THE LEGAL COMMITTEE OF ICAO

1. INTRODUCTION -

On July 2nd, 1970, the Council of the International Civil Aviation Organization in accordance with the direction of the Seventeenth Session (Extraordinary) of the Assembly in Resolution B/6, decided to convene a special session of the Legal Committee of the Organization.

The operative words of Assembly Resolution B/6 are:

"The Assembly:

1. directs the Council of ICAO to convene the Legal Committee, if possible not later than November 1970, in order to prepare, as the matter of first priority on its work program, a Draft Convention on acts of Unlawful Interference against International Civil Aviation (other than those covered by the Draft Convention on Unlawful Seizure of Aircraft) with a view to adoption of the Convention at a Diplomatic Conference as soon as practicable, and if possible not later than the summer of the Northern Hemisphere in 1971;
2. directs the Legal Committee, in preparing the Draft Convention, to take into account "the opinions expressed at this Assembly."

The meeting of the Legal Committee will be held at Lancaster House, St. James's London, SW1, England, from September 29th, 1970 to October 13th, 1970.

2. OBJECTIVE -

The objective of the Legal Committee as stated in the said Assembly Resolution B/6 shall be to prepare a Draft Convention on acts of Unlawful Interference against International Civil Aviation other than those covered by the Draft Convention on Unlawful Seizure of Aircraft with a view to adoption of the Convention at a Diplomatic Conference as soon as practicable.

3. INSTRUCTIONS TO DELEGATION -

The Canadian delegation at the said meeting of the Legal Committee should encourage and support the development of a Draft Convention which would deal effectively with acts of violence and unlawful interference directed against International Civil Aviation.

- 2 -

The delegation should be guided generally by the following specific instructions and should feel free to communicate with appropriate officials in Ottawa in the event a decision is required to be made on a matter in respect of which clarifying instructions are necessary or desirable.

A. Type of Instrument

The Canadian delegation should if prior informal exploration warrants it, indicate its preference for a single instrument to deal with Unlawful Seizure of Aircraft and other forms of interference with the safety of International Civil Aviation.

It is nevertheless conceivable and indeed, probable, that certain States may not be able to become parties to such an instrument, although they might become parties to the (Draft) Convention on Unlawful Seizure or to the proposed Convention on Unlawful Interference individually. Therefore, the Canadian delegation should not object if it becomes clear that a majority of delegations at the meeting prefer to have the instrument drawn up in such a way that States which wish to become parties to any one instrument may be able to do so without difficulty. If this latter course is to be followed, there should be some adequate and sufficient link between the instruments.

B. The Offence

Generally speaking, the act(s) should be unlawful and directed against the safety of International Civil Aviation and towards injury or death to persons on board aircraft. The following acts or omissions, if done without lawful authority should probably constitute the offence.

- (i) taking or placing on board an aircraft any inherently dangerous thing (including chemicals and gases) likely to cause damage to the aircraft or death or bodily harm to any person therein;
- (ii) causing such a thing to be taken or placed on board an aircraft;
- (iii) activating such a ^{thing}~~device~~ (including discharging a firearm) or causing such a device to be activated on board an aircraft;
- (iv) placing or activating any such thing (including discharging a firearm) or causing any such thing to be placed or activated in such a position or manner as to be likely to cause damage to an aircraft or death or bodily harm to any person on board an aircraft;

- 3 -

- (v) any other act or omission, whether or not of a similar nature to the foregoing, with intent to cause damage to an aircraft or death or bodily harm to any person on board an aircraft;
- (vi) falsely reporting or threatening that any of the acts or omissions set out in (i) to (v) above have been committed or are about to be committed;
- (vii) attempting or conspiring to commit any of the acts or omissions set out in (i) to (vi) above.

C. Punishment

The Canadian delegation should urge or support any move that would require parties to the Convention to make the offence punishable by severe penalties.

D. Scope of the Convention

The Convention should apply in respect of aircraft engaged in international civil aviation (including charter flights) regardless of whether the aircraft is in flight or on the ground, and regardless of the location of the offender, i.e. he need not be on board the aircraft. It should not apply to acts of Unlawful Seizure as defined in the (Draft) Convention on Unlawful Seizure. If there is a conflict between the Convention and the Tokyo Convention, the provisions of this Convention should apply.

A potentially difficult area in applying the Convention may arise when an offence has been committed contrary to the provisions of the (Draft) Convention on Unlawful Seizure as well as the provisions of the proposed Convention on Unlawful Interference. For example, a person on board an aircraft in flight who has a bomb in his possession will have committed an offence under the proposed Convention on Unlawful Interference. If he later unlawfully seizes the aircraft or attempts to do so, he will have committed an offence contrary to the (Draft) Convention on Unlawful Seizure. A problem may develop if the States involved in a situation such as the foregoing, are not parties to the same Convention. This matter might be raised by the Canadian delegation, and an effort should be made to find a solution to it, if possible.

Of course, the Convention should apply only to Civil Aircraft, i.e. Military, Customs and Police Aircraft ought to be excluded.

. . . 4

- 4 -

E. Jurisdiction

If there is an indication that delegations are generally in favour of treating the offence as an 'international crime' the delegation should support the establishment of broad jurisdiction.

Otherwise, the following States should establish jurisdiction over the offence:

1. The State where the offence is committed;
2. The State of registration of the aircraft in respect of which the offence is committed, if the offence is committed:
 - (a) in any zone situated outside the territory of a State; or
 - (b) over or within the territory of a State, and the said State fails to exercise its jurisdiction.
3. In the case of conspiracy, the State where the conspiracy is made and the State where the offence is to be, or is carried out;
4. If the offence is committed in one State, but injury or death is caused in another, both States.

Any penal jurisdiction exercised in accordance with national laws would of course not be affected by the Convention.

F. Procedure of Arrest and Detention and Preliminary Investigation

The provisions of Article 6 of the (Draft) Convention on Unlawful Seizure (based upon Article 13 of the Tokyo Convention) should probably suffice here.

G. Prosecution

The Convention should oblige a State in which an alleged offender is present to submit the matter to its appropriate authority for a decision on the question whether prosecution should be instituted or to extradite the alleged offender in accordance with its national laws. The former decision should be made in the same way as ordinary criminal matters are dealt with by the State. If there is sufficient evidence to prosecute, prosecution should be instituted.

- 5 -

H. Extradition

The offence should be extraditable, but extradition should not be available in all cases. For example, a country claiming jurisdiction on the basis that it is the State of registry of an aircraft which has been bombed while in flight over the territory of another State should not be entitled to seek extradition of the alleged offender unless the State in which the bombing occurred fails to exercise its jurisdiction.

The following specific instructions for the Canadian delegation are also given:

1. Should obstruction or interference with airports, installations, and air navigation services constitute an offence;

Only to the extent that it is already covered by earlier instructions.

2. Should we accept the jurisdiction of the State in which a carrier has its head office if an offence has been committed in respect of an aircraft operated by such carrier, even if the aircraft is not registered in that State;

The Canadian delegation should resist such extension of jurisdiction.

3. Should we accept any move to make the offence an "International Crime";

Yes but delegation should not initiate such a move.

4. Should the offence be deemed not to be a "Political Offence";

The delegation should not depart from the principle that a Sovereign State may, in appropriate cases grant political asylum to a person seeking it. However, we could support a provision which would obligate States to prosecute and punish an offender to whom it grants asylum.

42-8-9-3-ICAO
21-

CONFIDENTIAL

September 21, 1970

SEEN BY THE MINISTER

MEMORANDUM FOR THE MINISTER

ICAO: Representation of Divided Countries

One of the issues on the agenda of the regular ICAO Council meeting tomorrow afternoon is that of invitations to be issued to divided countries. The Czech Delegation has formally proposed that invitations be issued to East Germany, North Korea and Mainland China for the following conferences:

- a) a conference to draft a Convention on the Unlawful Seizure of Aircraft scheduled for December 1970 in The Hague;
- b) a conference on the extension and amendment of the Warsaw Agreement of 1929 relating to international transportation by air scheduled for February - March 1971 in Montreal.

2. We have been endeavouring to develop an agreed Western position on the question through consultations with other NATO Delegations but thus far this has not proven possible. The U.K. and Italians have informed us that their representatives will adhere to the Vienna formula when the issue is raised (i.e., invitations restricted to members of the U.N., members of the specialized agencies and members of IAEA). The French position is different. The French point out that while the Hague conference will be concerned merely with the drafting of a new convention, the Montreal conference will be held for the purpose of amending an existing agreement, namely the Warsaw Convention to which Mainland China is a party. They therefore consider it illogical to refuse to invite Mainland China to a conference intended to amend a multilateral treaty to which it is a party.

3. The French intend therefore to request a separate vote on the two conferences, and, if successful in the request for a separate vote, will vote in favour of the Vienna formula for the conference in The Hague and abstain with respect to the Montreal conference.

4. The USA position is not yet known but there are some signs that the USA may adopt a soft position on these issues because of the importance they attach to having rules prohibiting hijacking agreed and applied on as wide a basis as possible.

5. There is, in my view, some logic to the French position, as evidenced by the fact that all parties to the Warsaw convention were invited to the last amending conference in 1954 (prior to the purported accession by the divided states.) When Mainland China purported to adhere to the Warsaw Convention in 1958 few countries objected to its adherence. According to our treaty records,

....2

WWEA
we spoke -
and I spoke with
its representative
21.9.47 (us)

only three objected - Australia, El Salvador and South Africa. (We are checking further to ascertain whether or not the USA also entered a reservation but we understand that they did not do so.) Given the fact that Canada (and most other Western countries) did not register an objection or reservation to the accession by Mainland China, it would be, as the French point out, illogical to refuse to allow it to be invited to the Montreal conference. (Both North Korea and East Germany have also purported to accede to the Convention; in the case of North Korea as in the case of Mainland China, we did not register an objection or reservation; in the case of East Germany, we registered an objection, along with most other Western states, and take the position that East Germany is not a Party). From a strictly legal point of view, even had we entered a reservation it cannot be said with certainty that this would have affected Mainland China's status as a contracting party to the Warsaw Convention since there are no clear rules as to how many countries must object to accession by a party in order for the acceding country to be considered a non-party. Had we taken the position, however, that Mainland China was not then a party it would be more readily open to us to take the same position now. Insofar as recognition is concerned, from a strictly legal point of view there are no recognition aspects involved one way or another since accession to a multilateral treaty by a state does not automatically accord it recognition by the other contracting parties.

6. A major difficulty in following the French line on this issue tomorrow afternoon is that if, in spite of the fact that the Council will meet in closed session, our position is leaked, it could be misconstrued as an advance indication of the position we are proposing to take in the U.N. On the other hand, were we to vote the other way and this information were leaked the political difficulties might be more embarrassing, particularly since we can provide a logical reason for voting in favour of an invitation to Mainland China. A further, and perhaps more serious political difficulty, is that we might find ourselves with only the French of the Western Group taking a similar position, with other Western countries such as the U.K. and the Netherlands, although they recognize Mainland China, voting against the invitation to Mainland China (although present indications are that the Dutch are more likely to support the French than the U.K. position). In such event, however, it would seem to be the U.K. and other countries, in insisting on the Vienna formula (while recognizing Mainland China) for the Montreal conference, which would have difficulty explaining their position. It should be borne in mind, however, that we may end up somewhat isolated on the issue. From a strictly technical point of view it is of course desirable to have as many parts of the world as possible made subject to the provisions of the Warsaw Convention and its amendments.

7. Another consequential aspect is that if the vote results in Mainland China and North Korea being invited to the Montreal conference we could be faced (as host country) with the problem of two sets of representatives of China and Korea. While Taiwan is not a party to the Warsaw Convention, it might accede before the conference, and in any event would be entitled to attend as a member state of the U.N. pursuant to the Vienna formula. In the case of the Koreas, both North and South have acceded to the Convention. (Conceivably this situation could also arise with Germany although it is less likely that the Eastern Europeans will have enough votes). However, the

*conference will
most likely be
held in Taiwan
America not
in Montreal!*
per
6/10/50

Canadian vote is not likely to be determinative of this issue, and we should therefore, in my view, base our position on the other considerations discussed above.

8. In these circumstances I recommend that our representative to the ICAO Council tomorrow be instructed to vote as follows on this issue:

- a) to vote affirmatively on a proposal for a separate vote on each of the two conferences;
- b) to vote in favour of the Vienna formula with respect to invitations to the conferences at The Hague, (i.e. vote against invitations being issued to Mainland China, North Korea and East Germany);
- c) to abstain on the question of invitations to the three divided states to the Montreal conference if the three divided states are lumped together when the issue is raised;
- d) should separate votes be taken on invitations to Mainland China, North Korea and East Germany to the Montreal conference, to vote against an invitation to East Germany but vote in favour of invitations to North Korea and Mainland China, assuming that the French and others sharing their position take this line, which would appear to be consistent with the request for separate votes on the two meetings.


A.E.R.



DEPARTMENT OF TRANSPORT
MINISTÈRE DES TRANSPORTS

IN REPLY QUOTE
RÉF. À RAPPELER:

602-2
602-10 (XL)

42-8-9-3-18A0
21

September 21, 1970.

Mr. P.A. Bissonnette,
Assistant Under-Secretary of State for External Affairs,
East Block,
Wellington Street,
Ottawa, Ontario.

Dear Sir:

The Deputy Minister of Transport has asked me to discuss with you the composition and leadership of the Canadian Delegation to the forthcoming meeting of the Legal Committee of ICAO at London, England. In my letter of August 27th. to Mr. T.B. Smith, Director of the International and Advisory Section of the Department of Justice, I indicated that the Ministry of Transport would expect Mr. MacNutt to head the Canadian Delegation and be accompanied by Mr. Peter Sorokan of the Justice Department. I indicated the Ministry would expect to head the Delegation in accordance with past practice because the subject matter of the meeting is one of concern primarily to the Ministry. The subject matter of the Legal Committee meeting has assumed much greater importance as a result of recent events in the Middle East and the Ministry has consulted with the Department of Justice and the Canadian Transport Commission with a view to suggesting a more senior officer to lead the Canadian Delegation. Following the discussions it has been agreed to suggest that Mr. Peter Sorokan of the Department of Justice should head the Delegation. Mr. Sorokan would not head the Delegation as a Department of Justice representative but would act as a representative of the Ministry of Transport. I might advise, in this respect, that

...

22.9.9(us)

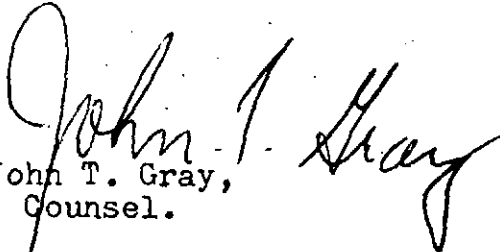
-2-

he has been consulting with officials of the Ministry for approximately one month preparing for the Legal Committee meeting and has prepared a Position Paper which is now being redrawn as instructions to the Canadian Delegation. I would appreciate being advised if you concur in the appointment of Mr. Sorokan as head of the Delegation.

I wish to add that in the course of the discussions concerning the leadership of the Delegation everyone agreed that should you wish to attend the meeting, you should lead the Delegation.

I would appreciate it very much, therefore, if you would also advise whether it is your intention to attend the meeting. As the Delegation will no doubt be leaving Canada next Friday, I would appreciate hearing from you as soon as possible.

Yours very truly,


John T. Gray,
Counsel.



YOUR FILE NO.
VOTRE DOSSIER
OUR FILE NO.
NOTRE DOSSIER 153-1/2

LE REPRÉSENTANT DU CANADA AU CONSEIL DE
L'ORGANISATION DE L'AVIATION CIVILE
INTERNATIONALE

902 ÉDIFICE DE L'AVIATION INTERNATIONALE, MONTRÉAL

TÉLÉPHONE: 879-4788

THE REPRESENTATIVE OF CANADA ON THE COUNCIL OF
THE INTERNATIONAL CIVIL AVIATION
ORGANIZATION

902 INTERNATIONAL AVIATION BUILDING, MONTREAL

21 September 1970. TELEPHONE: 879-4788

The Director, International Relations Branch,
International Transport Policy Committee,
Canadian Transport Commission,
Congill Building,
275 Slater St.,
Ottawa, Ont.

42-89-3-1CAO
21-

TO: FLE
FROM: ACRD
SEP 24 1970
ATTN: [Signature]

Dear Sir:

Attached are two copies of State Letter LM
1/2.2 - 70/188 of 17 September 1970, furnishing general
information concerning the International Conference of
Plenipotentiaries on Unlawful Seizure of Aircraft which
is to be held in The Hague, Netherlands, from 1 to 16
December 1970.

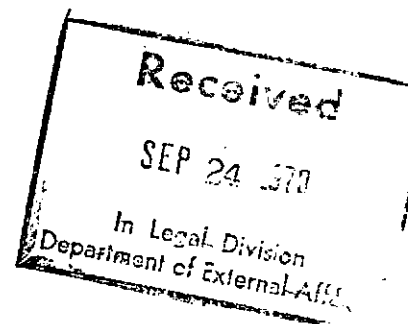
L.M.E. Brennan
L.M.E. Brennan,
Administrative Officer.

Encls.

c.c.: The Under-Secretary of State for Ext. Affairs, (2)-
Attention: United Nations Division
→ Legal Division
Director, Legal Services & Counsel, (2)
Ministry of Transport
Administrator, Canadian Air Transportation (2)
Administration, Ministry of Transport
Department of Justice, (2)
Attention: Advisory & Intl. Law Section
The Deputy Minister, Dept. of Finance, (2)
Attention: International Programmes Division

*relaxed
Brennan
Clark*

FLE





YOUR FILE NO.
VOTRE DOSSIER
OUR FILE NO. 23
NOTRE DOSSIER

LE REPRÉSENTANT DU CANADA AU CONSEIL DE
L'ORGANISATION DE L'AVIATION CIVILE
INTERNATIONALE

902 ÉDIFICE DE L'AVIATION INTERNATIONALE, MONTRÉAL

TÉLÉPHONE: 879-4789

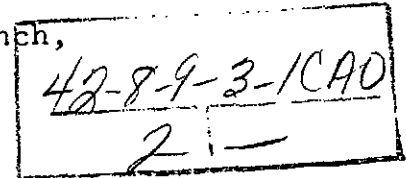
THE REPRESENTATIVE OF CANADA ON THE COUNCIL OF
THE INTERNATIONAL CIVIL AVIATION
ORGANIZATION

902 INTERNATIONAL AVIATION BUILDING, MONTREAL

TELEPHONE: 879-4789

21 September 1970.

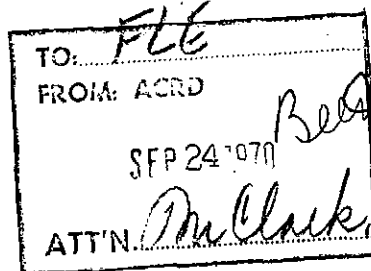
The Director, International Relations Branch,
International Transport Policy Committee,
Canadian Transport Commission,
Congill Building,
275 Slater St.,
Ottawa, Ont.



Dear Sir:

Attached, for information, is a copy of the
following:

C-WP/5232 - Possible Supplementary Steps by ICAO to Prevent
and Deter Unlawful Interference.



Yours truly,

L.M.E. Brennan
L.M.E. Brennan,
Administrative Officer.

Encl.

c.c.: The Under-Secretary of State for Ext. Affairs,
Attention: Miss M. Loggie, United Nations Div. (1)
→ Legal Division (1)

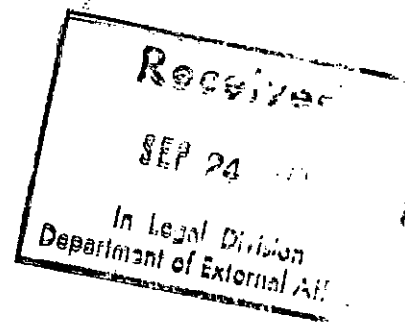
Director, Legal Services & Counsel, (1)
Ministry of Transport

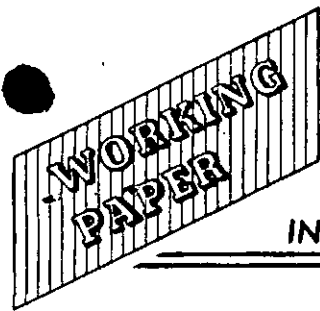
Administrator, Canadian Air Transportation (1)
Administration, Ministry of Transport

Department of Justice, (1)
Attention: Advisory & Intl. Law Section

The Deputy Minister, Dept. of Finance, (1)
Attention: International Programmes Division

FLE





C-WP/5232
18/9/70

INTERNATIONAL CIVIL AVIATION ORGANIZATION

COUNCIL - SEVENTY-FIRST SESSION

Subject No. 52: Unlawful Interference with International Civil Aviation
and its Facilities

POSSIBLE SUPPLEMENTARY STEPS BY ICAO TO PREVENT
AND DETER UNLAWFUL INTERFERENCE

Resolution on linking bilateral air agreements to
international conventions and protocols relating to
unlawful interference with international civil aviation

(Presented by the Representative of Canada)

THE COUNCIL,

RECALLING Assembly Resolution A16-37 on the subject of unlawful seizure of aircraft;

NOTING that the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft came into force on 4 December 1969;

NOTING that a Diplomatic Conference has been convened in The Hague, 1 - 16 December 1970 to consider the adoption of a Convention on Unlawful Seizure of Aircraft;

CONSCIOUS of the fact that the framework of scheduled international civil air transport is based on bilateral air agreements between States;

CALLS on all States:

- (1) With respect to all future bilateral air agreements, to incorporate a Special Clause which:
 - (a) explicitly sets out the provisions relating to unlawful interference with civil aviation contained in the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft and any other ICAO Convention or Protocol in force at the time of conclusion of such bilateral air agreements;
 - (b) notwithstanding any other provision concerning termination, shall permit either party to suspend operation of the bilateral air agreement one month after communication of notice, if the other party fails to implement the obligations set out in the Special Clause;

DISTR. 18/9 /70

C-WP/5232

- 2 -

- (2) With respect to existing bilateral air agreements, to amend them, at the earliest possible time, by means of a Special Clause which:
- (a) explicitly sets out the provisions relating to unlawful interference with civil aviation contained in the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft and any other ICAO Convention or Protocol in force at the relevant time;
 - (b) notwithstanding any other provision concerning termination, shall permit either party to suspend operation of the bilateral air agreement one month after communication of notice, if the other party fails to implement the obligations set out in the Special Clause.

- END -

File

Embargoed for Release Prior to 10 A.M. EDT, September 18

Statement by
Honorable John A. Volpe
Secretary of Transportation
Before a Special Meeting of the ICAO Council
Montreal, Canada
September 18, 1970

42-8-9-3-ICAO
21 -

Thank you, Mr. President. I am honored to be here, and I consider it a personal privilege to be addressing the ICAO Council. I am well aware that my presence here is a departure from your usual procedures. President Nixon and I deeply appreciate your generosity in allowing me to address myself -- both personally and officially -- to this most serious problem. I met with President Nixon in Chicago yesterday. He re-emphasized to me his great personal concern and the need for international joint action.

Let me also express my personal appreciation to our regular United States Representative to ICAO, Mr. Charles Butler.

The United States of America requested last Friday that a special meeting of the Council be convened to respond to the most serious threat to international air transportation since its beginnings. President Nixon has described the threat of air piracy as an "international menace" --

I doubt whether any of us here concerned with international aviation would disagree.

The Contracting Parties to the International Civil Aviation Convention have obligated themselves to ensure the safe and orderly growth of international civil aviation. This basic mandate is now threatened by criminal acts which threaten the lives and well-being of passengers and crew and international air transport as a whole.

It is imperative that ICAO respond promptly, decisively and effectively to this threat.

In the past, ICAO has sought agreement on collective actions based on the recognition that the vital interests of all states are affected by air piracy.

- in September 1968, the Sixteenth Assembly adopted a resolution urging all states to give effect to Article 11 of the Tokyo Convention before it entered into force.

- in December 1968, this Council adopted a resolution urging all ICAO states to take all possible measures to prevent unlawful seizure of aircraft.

- in April 1969, this Council declared that acts of unlawful interference with international civil aviation

could not be tolerated and established a special committee of this Council to find ways to prevent unlawful interference.

- at the United Nations last December, the General Assembly called on states to develop their own legislation and to support the work of ICAO to deal effectively with acts of unlawful interference.

- also last December, this Council made a series of recommendations to ICAO states on measures to prevent unlawful interference.

- in June of this year, at the extraordinary session of the ICAO Assembly, attended by ninety-one states, a number of resolutions were adopted including the comprehensive and important resolution known as the Montreal Declaration which I will mention later.

- finally, the Security Council of the United Nations this month unanimously adopted a resolution calling on states to take all possible legal steps to prevent further hijackings or other interferences with international civil air travel.

These past attempts, while significant, are not sufficient to meet the grave threat posed by recent developments.

New and more drastic action is required. We have asked that this session of this Council be open to the public to demonstrate to the world that ICAO will now generate an international response to air piracy -- a cancer that requires swift and clean surgery -- to assure the safety of international air travel.

In times of emergency, it is clearly necessary for Contracting States to adopt national programs to thwart certain threats presented by air piracy and international blackmail involving the detention of passengers and crew and destruction of aircraft. Many countries, including the United States, have taken such actions in the past few weeks.

President Nixon, in announcing one week ago a seven-point program which the United States would undertake, directed that several actions be started at once. For instance, he directed that specially trained, armed government employees be placed on U.S. Flag carriers. He also directed U.S. Flag carriers to extend the use of electronic surveillance equipment and other surveillance techniques at U.S. gateway airports. He further directed the Secretary of State to consult with other governments and foreign carriers concerning the full range of techniques they use to prevent hijackings. These three programs are now underway.

However, while our government is taking action, it also seeks to establish a common front in the international community because it is through concerted action by that community that effective solutions can best be achieved.

The reasons for this heightened sense of emergency in the attitudes of our government and our public are clear:

- We have seen aircraft of four international carriers hijacked and destroyed and other attempts frustrated during the past two weeks.
- We have seen -- and still see -- innocent airline passengers held as pawns in an international political struggle. It would be impossible to exaggerate the feeling of agony and actual fear for their lives which these dreadful events have meant to not only the terrified passengers involved -- some infant children and pregnant women -- but also to their families filled with anxiety at home. These feelings transcend the borders of all nations.
- We have seen hijackers and crew members shot on board aircraft.
- We have seen planes hijacked not only for political blackmail purposes but also by passengers seeking political asylum and for other reasons.

- We have also seen delays and inconvenience to passengers and airlines caused by stringent security measures adopted at most of the international airports of the world.

These events of the past two weeks have heightened the threat to the safety of the international travelling public to such an extent that it jeopardizes international air transport itself. While the United States first experienced a hijacking in 1961, the problem is now worldwide and of an entirely new dimension.

We believe that the most important action that the Council should and can -- in fact must -- now take, is the acceptance and establishment of certain basic principles directed to effective sanctions. This should be the overriding goal of this meeting.

Article 11 of the Tokyo Convention codified the principle of international law that a state in which a hijacked aircraft lands has the obligation to "permit its passengers and crew to continue their journey as soon as practicable, and shall return the aircraft and its cargo to the persons lawfully entitled to possession." This Council and the ICAO Assembly have adopted a resolution urging all Contracting States to give effect to this fundamental principle of international

aviation law, whether or not a party to the Tokyo Convention.

The existing draft convention on unlawful seizure of aircraft obligates States to extradite or prosecute all persons responsible for unlawful seizure of aircraft. We expect that draft will be strengthened, signed at the diplomatic conference in The Hague this December and promptly ratified by states. In this connection, the Montreal Declaration adopted by the Assembly this past June deals directly and forcibly with this point. Its text:

"URGENTLY CALLS UPON States, pending the coming into force of appropriate international conventions, to take effective measures to deter and prevent such acts [of violence directed against international civil air transport and airports and other facilities serving such transport] and to ensure, in accordance with their national laws, the prosecution of those who commit such acts...."

It is essential that the basic principles set forth in the Tokyo Convention and the draft Unlawful Seizure Convention be applied universally to be effective. However, there are

at the present time no agreed-upon sanctions to enforce them. Further efforts by ICAO are now plainly required.

That is why President Nixon called upon the international community "to take joint action to suspend airline services with those countries which refuse to punish or extradite hijackers involved in international blackmail". That is why he directed the Secretary of State of the United States to ask that this session be convened.

The United States believes that the principal action of this meeting should be the adoption of a resolution establishing the basis for application of sanctions where appropriate and has presented for your consideration a resolution for this purpose.

In order to avoid any misunderstandings, let me describe and explain briefly the resolution, paragraph by paragraph.

The first paragraph recites a finding of a heightened threat to the safety and security of international civil air transport. The principal -- though obviously not the only -- cause is identified as the detention for blackmail purposes of passengers, crew and aircraft and the failure of States to extradite or prosecute persons responsible for such acts.

We are aware that many hijackings are designed, planned and carried out for purposes other than international blackmail. We do not believe that any hijacking, whatever the motivation, should be condoned. We firmly believe, and have urged on others, that all hijackers should be prosecuted wherever they may be -- either following extradition to the State where the plane was registered, by the State where the hijacked plane lands, or by the State to which a hijacker has fled.

For these reasons, the United States urged in the ICAO Legal Committee last year that requests for the extradition of aircraft hijackers should not be denied on the ground of political asylum. This view received little support at that time in ICAO.

We believe, however, that hijacking for purposes such as seeking political asylum -- no matter how dangerous and reprehensible -- does not approach the threat to human life or criminality of hijacking of aircraft for international blackmail purposes. It is this latter practice which squarely challenges the obligations of ICAO members to take further action to ensure the safety of passengers and aircraft engaged in international air transport. It is to this threat that the second paragraph of the draft resolution is directed.

The third paragraph calls upon states to take joint action by suspending services to and from any state in two specific circumstances:

- The first set of circumstances is the detention for international blackmail purposes by a State of passengers, crew and aircraft, contrary to Article 11 of the Tokyo Convention, after the unlawful seizure of an aircraft.
- The second situation is the failure of any State to extradite or prosecute persons responsible for acts of unlawful seizure involving the detention of passengers, crew or aircraft for international blackmail purposes.

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 establish agreement to the general principle that concerted, multilateral sanctions are 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 to implement the sanction of suspension of service.

This third paragraph cannot, and does not, create any finding 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.

The fourth paragraph directs the Legal Committee to extend its session scheduled in London later this month in order to draft a sanctions convention at that meeting.

As you will note, the general principles of the sanctions convention as stated in the fourth paragraph of the resolution are identical to those recited in the third paragraph. We do not believe greater detail is needed at this time. The United States will be prepared to submit a draft sanctions convention, as a working paper, at the Legal Committee session in London.

We believe that a sanctions convention should be submitted to this Council by the Legal Committee as soon as possible and thereafter very promptly to a diplomatic conference.

When Secretary of State Rogers recommended, and President Nixon personally endorsed, my appearance here at this meeting, together with Mr. Shaffer, the Administrator of the Federal Aviation Administration, and Mr. Stevenson, the Legal Adviser of the Department of State, it was to make one fact clear -- the United States will act, and expects other states to act, in order to quarantine promptly and effectively any State which supports or condones air piracy for international blackmail purposes.

My government is confident that this Council will meet the challenge before it. On our part, our permanent representative, Mr. Butler, and other United States Government officials will work closely with all members of this Council to achieve this essential objective.

In closing, I want to emphasize our appreciation for your courtesy in hearing us so promptly. The work of ICAO is of extreme importance to the world aviation community --

indeed, the world at large. I admire and appreciate the
dedication of this organization.

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FLE



The Secretary of State for External Affairs

Canada

Secrétaire d'Etat aux Affaires extérieures

Ottawa,

42-8-9-3-10 AC
2

Dear Ian,

Thank you for your helpful letter of September 17
on the subject of hijackings.

Enclosed is a copy of the full press release
of September 17, which I assume forms the basis of the
newspaper reports you have seen.

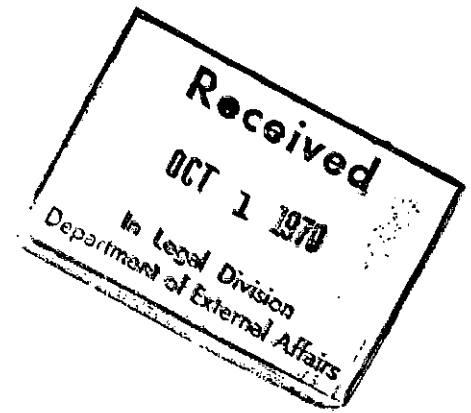
The Canadian Government would, of course, have to
be prepared to act against any offending state - in the
context of our own proposals or under any other workable
provisions against unlawful interference with aircraft which
may be adopted by the ICAO Council. At present, no Canadian
air carriers operate scheduled services to the Middle East
region, or to Cuba.

I am fully in accord with your urging that the
Government continue to press for effective measures to check
this pervasive menace to the security of air travel. Our
consultations with the governments of other countries having
major interests in international air traffic are continuing,
and I earnestly hope that progress toward an effective solution
can be accelerated.

Yours sincerely,
MITCHELL SHARP

Mitchell Sharp

Mr. Ian Wahn, M.P.,
House of Commons,
Ottawa, Ontario.



100-100000-100000

FROM: OUN

TO: *FLE*

C O N F I D E N T I A L

FM LDN SEP17/70 NO/NO STANDARD

TO EXTER 3156 IMMED

INFO TT WSHDC IMMED DE OTT

REF YOURTEL FLE1347 SEP16

AIRCRAFT HYJACKINGS-ICAO COUNCIL SESSION SEP18.

CROMARTIE, AVIATION AND COMMUNICATIONS DEPT, FCO, INFORMED US THAT BRITS DID NOT/NOT EXPECT NOR DID THEY REALLY WANT COUNCIL TO ADOPT ANYTHING MORE THAN A PROCEDURAL RESLN AT URGENT SESSION SEP18. HE THOUGHT THAT WHEREAS MOST REPS WOULD BE WITHOUT DETAILED INSTRUCTIONS AND HENCE UNABLE TO TAKE SUBSTANTIVE DECISION, BRIT REP WOULD PROBABLY BE TOLD TO OPPOSE COUNCIL DECIDING ON, WITHOUT PROPER CONSIDERATION, ANY SUBSTANTIVE SANCTION AGAINST COUNTRY WHO FAILS TO ACT SEVERELY WITH HYJACKERS.

2. CROMARTIE CONFIRMED THAT FCOS MAIN CONCERN AT THE MOMENT IS TO SECURE RELEASE OF HYJACKED HOSTAGES IN JORDAN AND THAT CONSEQUENTLY UK CANNOT/NOT AFFORD TO DO ANYTHING WHICH MIGHT MAKE THIS TASK MORE DIFFICULT, PARTICULARLY IF IT INVOLVES A SUBSTANTIVE CLASH WITH ARAB COUNTRIES WHICH HAVE IN FCOS OPINION RALLIED AROUND QUITE WELL AGAINST RECENT HYJACKINGS.

3. CROMARTIE REVEALED ALSO BRIT CONCERN WITH OUR PROPOSAL FOR ADOPTION BY COUNCIL OF RESLN CALLING ON ICAO MEMBER STATES TO INCLUDE IN THEIR BILATERAL AIR AGREEMENTS CERTAIN BASIC INNATL LEGAL OBLIGATIONS RELATING TO ACTS OF LAWFUL INTERFERENCE WITH CIVIL AVIATION, TOGETHER WITH THE CONSEQUENCES OF FAILING TO DO SO.

...2

*This mines
the point*

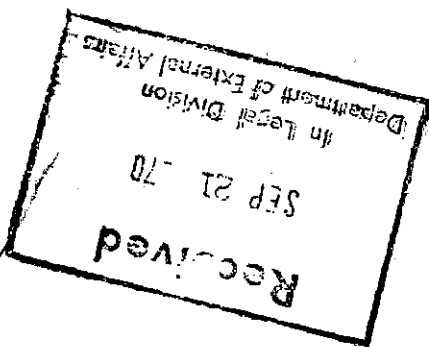
PAGE TWO 3156 CONFD

THIS APPEARS TO FCO TO INVITE CONFUSION OF PIECEMEAL SOLUTION IN WHICH SOME MEMBER STATES, PROBABLY ARABS AND THEIR SYMPATHIZERS, WOULD FAIL TO ACT NOW BECAUSE THERE IS NO/NO INATL AGREEMENT ON WHAT ARE BASIC INATL LEGAL OBLIGATIONS.

4. NEVERTHELESS, BRIT REP WILL PROBABLY BE INSTRUCTED TO SUPPORT ANY PLAN TO DISCUSS SANCTIONS SOON, EITHER AT EXTENDED SESSION OF LEGAL CTTEE IN LDN LATER THIS MONTH OR AT HAGUE DIPLO CONFERENCE IN DEC OR EARLIER.

5. OVERRIDING BRIT CONCERN, APART FROM INHIBITION DUE TO BRIT HOSTAGES, IS TO HAVE SUBJ OF SANCTIONS DEALT WITH CAREFULLY AND THOROUGHLY, PREFERABLY AFTER THERE HAS BEEN SOME GREATER INATL UNDERSTANDING OF LEGAL OBLIGATIONS WHICH ICAO MEMBER STATES MUST DISCHARGE IN CONNECTION WITH UNLAWFUL SEIZURE OF AIRCRAFT.

RFT 171706Z



MESSAGE

FM/DE EXTEROTT

TO/A

WSHDC, LDN, BONN, BERN, CANBRA
TAVIV, CAIRO, BEIRUT, HAVANA

INFO PERMISNY, PARIS

BAG TO: BRU, COPENHAGEN, TOKYO, HAGUE, MADRID

DATE	FILE/DOSSIER	SECURITY
CONCERN	42-8-9-3-ICAO	SECURITE
EXTERNA		CONFIDENTIAL
SEPT 16		
IMMEDIATE	NO	PRECEDENCE
ROUTINE	FILE-1346	

REF

SUB/SUJ AIRCRAFT HIJACKINGS: CDN INITIATIVE AT ICAO.

AT REQUEST OF USA, SPECIAL SESSION OF ICAO COUNCIL CONVENED FOR SEPT 18 IN MTL TO CONSIDER ACTION TO BE TAKEN BY ORG IN LIGHT OF RECENT DEVELOPMENTS.

FOLLOWING UP CDN INITIATIVE AT ICAO (EXTRAORDINARY) ASSEMBLY HELD IN MTL IN JUNE (REPORT OF WHICH SENT UNDER COVER T/S JULY 14), SSEA INSTRUCTED THAT APPROACHES BE MADE TO GOVTS OF USA, U.K., FRG AND SWITZERLAND (LATTER BECAUSE OF DIRECT INVOLVEMENT IN CURRENT CRISIS THOUGH NOT/NOT REPRESENTED ON COUNCIL) AND AUSTRALIA (BECAUSE OF RESERVATIONS TO ORIGINAL CDN PROPOSAL) TO SEEK COOPERATION AT COUNCIL MTG REGARDING POSSIBILITY OF ADOPTING RESLN BASED ON PARTICULAR CDN PROPOSALS.

2. FOLLOWING TEL PROVIDES RELEVANT INFO CONCERNING THESE APPROACHES.

3. FOR CANBERRA: REPORT TO SSEA ON ASSEMBLY GOING FORWARD BY BAG.

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DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG

L.S. Clark/oh

FILE - LEGAL

2-7738

SIG

J.A. Beesley

MESSAGE

DATE SEPT 16		FILE/DOSSIER 42-8-9-3-1CAO		SECURITY SECURITE	
EXTERIOR SEP 16 23 10 70				CONFIDENTIAL	
FM/DE	EXTEROTT	NO		PRECEDENCE	
TO/A	WSHDC, LDN, BONN, BERN, CANBERRA TAVIV, CAIRO, BEIRUT, HAVANA	FILE 1349			
INFO	PERMISNY, PARIS				
BAG TO: BRU, COPENHAGEN, TOKYO, HAGUE, MADRID					

REF

SUB/SUJ AIRCRAFT HIJACKINGS: CDN INITIATIVE AT ICAO.

FOLLOWING IS TEXT OF AIDE MEMOIRE DELIVERED TO AMBS OF USA, FGR, SWITZERLAND AND ACTING BRITISH HIGH COMMISSIONER SEPT 16 (SIMILAR AIDE MEMOIRE GIVEN TO AUSTRALIAN HIGH COMMISSIONER SEPT 15). TEXT BEGINS:

QUOTE GOVT OF CDA HAS BEEN GRAVELY CONCERNED ABOUT RECENT WAVE OF AIRCRAFT HIJACKINGS AND DESTRUCTION OF CIVIL AIRLINERS WHICH HAVE PLACED MORE CIVILIAN LIVES IN JEOPARDY AND UNDERMINED CONFIDENCE OF PUBLIC IN AIR TRAVEL TO GREATER EXTENT THAN AT ANY TIME IN PAST. IT IS VIEW OF CDN GOVT THAT TO COMBAT SUCH FLAGRANTLY ILLEGAL ACTS, ALL RESPONSIBLE GOVTS MUST IMMEDIATELY DIRECT URGENT EFFORTS TOWARDS ESTABLISHING AN EFFECTIVE SYSTEM FOR ENSURING IMPLEMENTATION OF BASIC INTERNATL LEGAL OBLIGATIONS RELATED TO THE PREVENTION AND DETERRENCE OF ALL FORMS OF UNLAWFUL INTERFERENCE AGAINST INTERNATL CIVIL AIR TRANSPORT.

IT WILL BE RECALLED THAT CDN DEL TO XVII (EXTRAORDINARY) ASSEMBLY OF INTERNATL CIVIL AVIATION ORG (ICAO) IN MTL IN JUNE SUBMITTED A QUOTE CDN DISCUSSION PAPER ON LINKING BILATERAL AIR AGREEMENTS TO ICAO INTERNATL CONVENTIONS RELATING TO UNLAWFUL INTERFERENCE WITH CIVIL AVIATION UNQUOTE. THIS PAPER IS CONTAINED IN ICAO DOCU A17-WP/49 OF JUNE 15/70. IT WILL BE FURTHER.....2

DISTRIBUTION LOCAL/LOCALE	NO STD	OUN ECT	GAF GEU	CCO PDF	PDE PDG	PDM
ORIGINATOR/REDACTEUR		DIVISION		TELEPHONE		APPROVED/AUTORISE
SIG..... L.S. Clark/oh		FILE - LEGAL DIV		2-7738		SIG..... J.A. Beesley

DECLARED THAT ASSEMBLY UNANIMOUSLY ADOPTED RESLN A17-23 WHICH, INTER ALIA, REQUESTED ICAO COUNCIL TO REFER IT TO APPROP BODIES FOR THOROUGH CONSIDERATION. ON JULY 2 COUNCIL BRIEFLY DISCUSSED THIS RESLN WITHOUT TAKING ANY SUBSTANTIVE ACTION ON IT.

ICAO COUNCIL HAS NOW BEEN CONVENED TO MEET ON SEPT 18 TO URGENTLY TAKE UP MATTERS ARISING FROM SERIOUS THREAT TO INTERNATL AIR SAFETY POSED BY INCREASING NUMBER AND GRAVITY OF AIRCRAFT HIJACKINGS AND DESTRUCTION OF CIVIL AIRLINERS. CDN REPS WHO WILL BE PARTICIPATING IN COUNCIL SESSION WILL RAISE ISSUES COVERED IN DISCUSSION PAPER SUBMITTED AT XVII ASSEMBLY AND EXPLORE ~~THE~~ POSSIBILITY OF ADOPTION BY COUNCIL OF RESLN RELATING TO SUBJECT MATTER OF PAPER. IN PARTICULAR, COUNCIL WILL BE ASKED TO CALL ON ALL ICAO MEMBER STATES TO AMEND, AT ~~THE~~ EARLIEST POSSIBLE DATE, ALL EXISTING BILATERAL AIR AGREEMENTS TO INCLUDE A SPECIAL CLAUSE SETTING OUT CERTAIN BASIC INTERNATL LEGAL OBLIGATIONS RELATING TO PREVENTION AND DETERRENCE OF ACTS OF UNLAWFUL INTERFERENCE WITH CIVIL AVIATION. THIS SPECIAL CLAUSE WOULD ALSO STIPULATE THAT, NOTWITHSTANDING ANY OTHER TERMINATION OR SUSPENSION PROVISION IN BILATERAL AIR AGREEMENT, IN EVENT THAT ONE PARTY FAILED TO IMPLEMENT INTERNATL OBLIGATIONS SET OUT IN CLAUSE, OTHER PARTY WOULD BE PERMITTED TO SUSPEND OPERATION OF AGREEMENT ON SHORT NOTICE. RESLN COULD ALSO CALL ON ALL ICAO MEMBER STATES TO SPECIFICALLY INCORPORATE SUCH SPECIAL CLAUSE IN ALL FUTURE BILATERAL AIR AGREEMENTS TO BE CONCLUDED BY THEM.

BASIC INTERNATL LEGAL OBLIGATIONS WHICH CDN GOVT HAS IN MIND ARE:

- (A) OBLIGATION TO IMMEDIATELY RELEASE ALL CREW, PASSENGERS AND BAGGAGE ON BOARD HIJACKED AIRCRAFT AND TO IMMEDIATELY RETURN TO LAWFUL OWNERS AIRCRAFT AND CARGO (BASED ON ART 11 OF 1963 TOKYO CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT);
- (B) OBLIGATION TO TAKE INTO CUSTODY - OR TAKE OTHER MEASURES TO ENSURE HIS OR THEIR PRESENCE - ~~THE~~ PERSON OR PERSONS ALLEGED TO BE RESPONSIBLE FOR HIJACKING OR OTHER UNLAWFUL ACT, FOR SUFFICIENT TIME AS IS REASONABLY NECESSARY TO ENABLE ANY CRIMINAL OR EXTRADITION PROCEEDINGS TO BE

INSTITUTED. (BASED ON ART 6 OF DRAFT CONVENTION ON UNLAWFUL SEIZURE OF AIRCRAFT);

(C) OBLIGATION TO EXTRADITE, TO STATE OF REGISTRATION OF AIRCRAFT OR OTHER STATE DESIRING TO EXERCISE JURISDICTION, PERSON OR PERSONS ALLEGED RESPONSIBLE FOR HIJACKING OR OTHER ACT OF UNLAWFUL INTERFERENCE; IF EXTRADITION IS NOT/NOT EFFECTED, OBLIGATION TO PROSECUTE SUCH PERSON OR PERSONS FORTHWITH;

(D) SUCH OTHER BASIC OBLIGATIONS AS MAY BE AGREED UPON BY COUNCIL.

CDN GOVT SEEKS COOPERATION OF GOVTS OF ALL OTHER STATES REPRESENTED ON ICAO COUNCIL FOR ELABORATION OF APPROP RESIN INCORPORATING ABOVE-MENTIONED PROVISIONS. GOVT OF CDA WOULD BE ESPECIALLY INTERESTED IN VIEWS OF GOVT OF (USA, U.K., FGR, AUSTRALIA) REGARDING THIS PROPOSAL PRIOR TO ICAO COUNCIL MTG AND WOULD WELCOME CLOSE COLLABORATION BETWEEN REP ON THE ICAO COUNCIL OF (USA, U.K., FGR, AUSTRALIA) AND CDN REPR AT SEPT 18 COUNCIL MTG.

AS INDICATED IN CDN DISCUSSION PAPER SUBMITTED TO XVII ASSEMBLY, IT IS CONSIDERED VIEW OF GOVT OF CDA THAT A DECISION BY ICAO TO ACCEPT AND ENDORSE RESIN ALONG THE LINES PROPOSED COULD CONSTITUTE IMPORTANT STEP TOWARDS DEVELOPING EFFECTIVE INTERNATL LEGAL FRAMEWORK TO DETER AND PREVENT ACTS OF UNLAWFUL INTERFERENCE WITH INTERNATL CIVIL AVIATION AND SIGNIFICANTLY CONTRIBUTE TOWARDS MAINTENANCE OF INTERNATL AIR SAFETY. TEXT ENDS. UNQUOTE.

2. (TEXT FOR SWISS AMB MODIFIED SLIGHTLY TO TAKE INTO ACCOUNT FACT THAT SWISS NOT/NOT REPRESENTED ON ICAO COUNCIL.)

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

File 12

TO
A Under-Secretary (through Mr. Collins) *for* *MB.*

FROM
De FLE - Legal Division

REFERENCE
Référence Two Memoranda for the Minister of September 11 on Aircraft Hijackings.

SUBJECT
Sujet Aircraft Hijackings: ICAO Council Meeting September 18- Canadian Initiative.

SECURITY
Sécurité CONFIDENTIAL

DATE September 15, 1970

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	42-8-9-3-1 CAO
MISSION	<i>2</i>

ENCLOSURES
Annexes

DISTRIBUTION

Mr. Langley-PLE
M. Bissonnette
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At a meeting with Messrs. Beesley, Lee and Clark of Legal Division last night in New York, the Minister confirmed his approval of the recommendations set out in the September 11 Memorandum (copy attached) concerning a Canadian initiative at the special ICAO Council meeting which will take place in Montreal on September 18. Mr. Sharp indicated that approaches should be made at the earliest possible time to the Governments of the U.S.A., U.K., F.G.R., Switzerland (and any others deemed appropriate) with respect to the Canadian Discussion Paper submitted at the ICAO Extraordinary Assembly in June and the proposed Canadian initiative at the forthcoming Council meeting. In addition, inter-departmental consultations to consider ~~unilateral~~ Canadian action regarding amendment of Canadian bilateral air agreements should be initiated immediately.

2. The inter-Departmental Task Force on aircraft hijacking met this morning to review the current situation concerning the Middle East hijacking crisis; to discuss the Canadian position at the Council meeting; to make recommendations regarding the proposed Canadian initiative; and to exchange views on the question of possible Canadian unilateral action. In connection with the Canadian initiative, it was agreed that, in accordance with the Minister's instructions, the attached Aide-Memoires should be handed over to the Heads of Mission in Ottawa of the U.S.A., U.K., F.G.R., Switzerland and Australia.

3. We would suggest, if you agree, that the approaches to the U.S.A., U.K., F.G.R., and Switzerland be made at the same time at a meeting between the respective Heads of Mission and yourself at your earliest convenience. (You will recall that these four countries - plus Israel - are directly involved in the current crisis and are members of the so-called "Bernegroup" which is co-operating and concerting action vis-à-vis the PFLP hijackers. Accordingly, in our view, it would be appropriate for you to meet with all four Representatives at the same time.) If you wish, Mr. L.S. Clark of our Division will be available to attend the meeting. (Mr. Collins and/or Mr. Bissonnette would also be available if their presence is required.) If you further agree, we recommend that Mr. Collins call in the Australian Head of Mission to make a similar approach. (Since the Australian Delegation at the ICAO Assembly in June had serious reservations about the Canadian Discussion Paper, we believe it would be useful to inform the Government of Australia of our proposal and to exchange views regarding the Council meeting.)

4. You will note that the Aide-Memoire to be given to the Swiss Representative is worded slightly differently than the other four because of the fact that Switzerland is not a member of the ICAO Council. However, it seems likely that the Swiss may well be represented by an official observer.

5. The specific proposals to be put forward and the tactics to be adopted by the Canadian Delegation at the ICAO Council Session will have to be decided on in light of reactions from the Governments approached. If an acceptable measure of cooperation is forthcoming, the text of a draft resolution along the lines indicated in the Aide-Memoire could be formally submitted - if possible with other co-sponsors. We shall keep you informed of developments in this regard.

6. If you agree, it is proposed that Mr. J.R. Sharpe of United Nations Division and Mr. Clark (and possibly a technical officer from the Ministry of Transport who is familiar with airport safety procedures and devices) attend the ICAO Council meeting to assist and advise the Canadian Representative.



Legal Division

MEMORANDUM

CLASSIFICATION
CONFIDENTIAL

*Mr. St. Pierre to see
to B*

YOUR FILE No.
Votre dossier

OUR FILE No. 602-4-17 (CARO)
Notre dossier

42-8-9-3-1CAO

DATE Sept. 11, 1970.

file 42-8-9-3-1CAO
21 - [initials]

Mr. Allan MacNutt

Notes on Technical Resolutions from
17th Assembly to Task Force on Hijacking

1. The recent escalation of the threat of hijacking to Canadian carriers (i.e. Schipol on Thursday) is causing great emphasis on security measures and, therefore, our position in Transport has been moving to a higher degree of alert with each passing day.
2. Transport reaction in the event of a Canadian aircraft being hijacked would depend on where, when, how, by whom and the purpose of the hijacker in addition to the degree to which lives were endangered. For instance, if CP Air's Rome/Athens flight was hijacked to the Jordan desert and passengers held, we would contemplate a different response than if a Quebecair charter were taken from Montego Bay to Havana to let off a Cuban national, then to depart unharmed.
3. We do not agree with the American plan to use armed guards on board aircraft in flight.
4. CALPA's position as reported to be in favour of the death penalty for hijackers was, we believe, quoted out of context.
5. Electronic detectors are being actively investigated. An official from MOT has attended briefings in USA on this subject and portable units could be installed in Montreal, Toronto and Vancouver very quickly should they appear justified.
6. Airport security committees are being formed at this time.
7. Meetings have been held at Branch level preparatory to an inter-Departmental meeting next week to brief delegates to the legal meeting of ICAO later this month. Technical support for our legal delegate is anticipated.

Allan MacNutt
Allan MacNutt.

AM:MLL
c.c. D.C.A.
A/C.A.R.

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CONFIDENTIAL

September 11, 1970

MEMORANDUM FOR THE MINISTER

42-8-9-3-1CAO

Sanctions in Respect of Aircraft Hijackings:
Linking of Bilateral Air Agreements to
International Conventional Provisions.

You will recall that in accordance with the instructions approved by Cabinet early in June, the Canadian Delegation to the Extraordinary Session of the ICAO Assembly submitted a Discussion Paper on Linking Bilateral Air Agreements to ICAO International Conventions Relating to Unlawful Interference with Civil Aviation. The essence of the proposal set out in the Paper is that ICAO Member States should amend all their bilateral air agreements to include a special clause setting out the relevant articles of the appropriate international conventions. Such a clause would also permit, notwithstanding any termination or suspension provision in the agreement itself, suspension of operation of agreement on short notice by either party in the event the other party failed to implement its international obligations under the clause.

Because of the many problems and complexities which would be involved in amending all bilateral air agreements, several Governments, including those of the USA, Australia and the Scandinavian countries, had serious reservations about the Canadian initiative. Accordingly, the Delegation proposed a resolution to the Assembly which (a) recognized the primary role of bilateral air agreements in scheduled international air transport; (b) referred to the contribution to law and order in the air made by the Tokyo Convention and other ICAO unlawful interference conventions; (c) noted the Canadian Discussion Paper; (d) requested the Secretariat to circulate the Paper to ICAO Member States for study; and (e) requested the Council to refer it to the appropriate body for thorough consideration. The Resolution was eventually adopted unanimously by the Assembly, though the USA and Danish Representatives expressed for the record their continuing doubts as to the usefulness of the kind of approach being promoted by Canada.

In view of the present grave situation caused by the recent hijackings on the part of Palestinian guerrillas, it is quite possible that the USA and other Governments would be willing to take a fresh look at the Canadian proposal and reexamine their earlier positions. In my view, it would be appropriate for us now to raise this matter with the USA, U.K., F.G.R., and Switzerland (the Western countries directly involved in the current crisis) as a medium-term method of deterring and preventing acts of unlawful interference against international civil aviation and securing implementation of the most important international treaty provisions.

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Canadian bilateral air agreements (of which there are 18 at present in force) generally provide that modifications to the agreements can be effected at any time by agreement and brought into force by an Exchange of Notes. Some also state that when both parties become bound by a multilateral convention concerning air transport, the relevant bilateral agreement is to be amended to conform with the said convention. In addition, all agreements allow either party to terminate the bilateral air agreement at any time by notification, termination to become effective after twelve months.

If you agree, I recommend the following action: (1) that we approach the Governments of the U.S.A., U.K., F.G.R., and Switzerland to review the Canadian Discussion Paper on Linking Bilateral Air Agreements to ICAO International Conventions Relating to Unlawful Interference with Civil Aviation and to seek their agreement to Canada raising the subject at the forthcoming ICAO Council meeting which we understand might be convened the week of September 14; and (2) that we immediately begin inter-Departmental consultations to consider whether Canada should officially advise a number of countries with which we have bilateral air agreements that we wish to amend the agreements. Initially, we would of course have to decide how many and which particular countries should be so advised but it could be made clear that our ultimate objective will be to amend all bilateral agreements.

A.E.R.
A.E.R.

N.B. I have just been informed that one of the items on the agenda of next week's ICAO Council meeting will be concerned with extending the London Legal Committee Session (scheduled for September 29-October 13) to consider "international measures on joint suspension of air services".

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Mr. Langley - PDE
M. Bissonnette
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A I D E - M E M O I R E

The Government of Canada has been gravely concerned about the recent wave of aircraft hijackings and destruction of civil airliners which have placed more civilian lives in jeopardy and undermined the confidence of the public in air travel to a greater extent than at any time in the past. It is the view of the Canadian Government that to combat such flagrantly illegal acts, all responsible governments must immediately direct urgent efforts towards establishing an effective system for ensuring the implementation of basic international legal obligations related to the prevention and deterrence of all forms of unlawful interference against international civil air transport.

It will be recalled that the Canadian Delegation to the 17th (Extraordinary) Assembly of the International Civil Aviation Organization (ICAO) in Montreal in June submitted a "Canadian Discussion Paper on Linking Bilateral Air Agreements to ICAO International Conventions Relating to Unlawful Interference with Civil Aviation". This Paper is contained in ICAO Document A17-WP/19 of June 15, 1970. It will be further recalled that the Assembly unanimously adopted Resolution A17-23 which, inter alia, requested the ICAO Council to refer it to the appropriate bodies for thorough consideration. On July 2 the Council briefly discussed this Resolution without taking any substantive action on it.

The ICAO Council has now been convened to meet on September 18 to urgently take up matters arising from the serious threat to international air safety posed by the increasing number and gravity of aircraft hijackings and

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destruction of civil airliners. The Canadian Representatives who will be participating in the Council session will raise the issues covered by the Discussion Paper submitted at the 17th Assembly and will explore the possibility of the adoption by the Council of a Resolution relating to the subject matter of the Paper. In particular, the Council could be asked to call on all ICAO Member States to amend, at the earliest possible date, all existing bilateral air agreements to include a special clause setting out certain basic international legal obligations relating to the prevention and deterrence of acts of unlawful interference with civil aviation. This special clause would also stipulate that, notwithstanding any other termination or suspension provision in the bilateral air agreement, in the event that one party failed to implement the international obligations set out in the clause, the other party would be permitted to suspend operation of the agreement on short notice. The Resolution could also call on all ICAO Member States to specifically incorporate such a special clause in all future bilateral air agreements to be concluded by them.

The basic international legal obligations which the Canadian Government has in mind are:

- (a) the obligation to immediately release all crew, passengers and baggage on board the hijacked aircraft and to immediately return to the lawful owners the aircraft and cargo (based on Article 11 of the 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft);

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- (b) the obligation to take into custody - or take other measures to ensure his or their presence - the person or persons alleged to be responsible for the hijacking or other unlawful act, for sufficient time as is reasonably necessary to enable any criminal or extradition proceedings to be instituted. (Based on Article 6 of the Draft Convention on Unlawful Seizure of Aircraft);
- (c) the obligation to extradite, to the state of registration of the aircraft or other states desiring to exercise jurisdiction, the person or persons alleged responsible for the hijacking or other act of unlawful interference; if extradition is not effected, the obligation to prosecute such person or persons forthwith;
- (d) such other basic obligations as may be agreed upon by the Council.

The Canadian Government seeks the cooperation of the governments of all other states represented on the ICAO Council for the elaboration of an appropriate Resolution incorporating the above-mentioned provisions. The Government of Canada would be especially interested in the views of the Government of Switzerland regarding this proposal prior to the ICAO Council meeting and would welcome close collaboration between any official Representative of Switzerland who may attend the September 18 Council meeting and the Canadian Representatives.

As indicated in the Canadian Discussion Paper submitted to the 17th Assembly, it is the considered view of the Government of Canada that a decision

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by ICAO to accept and endorse a Resolution along the lines proposed could constitute an important step towards developing an effective international legal framework to deter and prevent acts of unlawful interference with international civil aviation and significantly contribute towards the maintenance of international air safety.

OTTAWA, September 16 1970.

A I D E - M E M O I R E

The Government of Canada has been gravely concerned about the recent wave of aircraft hijackings and destruction of civil airliners which have placed more civilian lives in jeopardy and undermined the confidence of the public in air travel to a greater extent than at any time in the past. It is the view of the Canadian Government that to combat such flagrant illegal acts, all responsible governments must immediately direct urgent efforts towards establishing an effective system for ensuring the implementation of basic international legal obligations related to the prevention and deterrence of all forms of unlawful interference against international civil air transport.

It will be recalled that the Canadian Delegation to the 17th (Extraordinary) Assembly of the International Civil Aviation Organization (ICAO) in Montreal in June submitted a "Canadian Discussion Paper on Linking Bilateral Air Agreements to ICAO International Conventions Relating to Unlawful Interference with Civil Aviation". This Paper is contained in ICAO Document A 17-WP/49 of June 15, 1970. It will be further recalled that the Assembly unanimously adopted Resolution A 17-23 which, inter alia, requested the ICAO Council to refer it to the appropriate bodies for thorough consideration. On July 2 the Council briefly discussed this Resolution without taking any substantive action on it.

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The ICAO Council has now been convened to meet on September 18 to urgently take up matters arising from the serious threat to international air safety posed by the increasing number and gravity of aircraft hijackings and destruction of civil airliners. The Canadian Representatives who will be participating in the Council session will raise the issues covered in the Discussion Paper submitted at the 17th Assembly and explore the possibility of the adoption by the Council of a Resolution relating to the subject matter of the Paper. In particular, the Council will be asked to call on all ICAO member states to amend, at the earliest possible date, all existing bilateral air agreements to include a special clause setting out certain basic international legal obligations relating to the prevention and deterrence of acts of unlawful interference with civil aviation. This special clause would also stipulate that, notwithstanding any other termination or suspension provision in the bilateral air agreement, in the event that one party failed to implement the international obligations set out in the clause, the other party would be permitted to suspend operation of the agreement on short notice. The Resolution could also call on all ICAO member states to specifically incorporate such a special clause in all future bilateral air agreements to be concluded by them.

The basic international legal obligations which the Canadian Government has in mind are:

- (a) the obligation to immediately release all crew, passengers and baggage on board the hijacked aircraft and to immediately return to the lawful owners the aircraft and cargo (based on Article 11 of the 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft);

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- (b) the obligation to take into custody -- or take other measures to ensure his or their presence -- the person or persons alleged to be responsible for the hijacking or other unlawful act, for sufficient time as is reasonably necessary to enable any criminal or extradition proceedings to be instituted. (based on Article 6 of the Draft Convention on Unlawful Seizure of Aircraft);
- (c) the obligation to extradite, to the state of registration of the aircraft or other state desiring to exercise jurisdiction, the person or persons alleged responsible for the hijacking or other act of unlawful interference; if extradition is not effected, the obligation to prosecute such person or persons forthwith;
- (d) such other basic obligations as may be agreed upon by the Council.

The Canadian Government seeks the cooperation of the governments of all other states represented on the ICAO Council for the elaboration of an appropriate Resolution incorporating the above-mentioned provisions. The Government of Canada would be especially interested in the views of the Government of Australia regarding this proposal prior to the ICAO Council meeting and would welcome close collaboration between the representative on the ICAO Council of Australia and the Canadian Representatives at the September 18 Council meeting.

As indicated in the Canadian Discussion Paper submitted to the 17th Assembly, it is the considered view of the Government of Canada that a decision by ICAO to accept and endorse a Resolution along the lines proposed could constitute an important step towards developing an effective international

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legal framework to deter and prevent acts of unlawful interference
with international civil aviation and significantly contribute towards
the maintenance of international air safety.

OTTAWA, September 16, 1970

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Diary

A I D E - M E M O I R E

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The ICAO Council has now been convened to meet on September 18

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- (b) the obligation to take into custody — or take other measures to ensure his or their presence — the person or persons alleged to be responsible for the hijacking or other unlawful act, for sufficient time as is reasonably necessary to enable any criminal or extradition proceedings to be instituted (based on Article 6 of the Draft Convention on Unlawful Seizure of Aircraft);
- (c) the obligation to extradite, to the state of registration of the aircraft or other state desiring to exercise jurisdiction, the person or persons alleged responsible for the hijacking or other act of unlawful interference; if extradition is not effected, the obligation to prosecute such person or persons forthwith; and
- (d) such other basic obligations as may be agreed upon by the Council.

The Canadian Government seeks the cooperation of the governments of all other states represented on the ICAO Council for the elaboration of an appropriate Resolution incorporating the above-mentioned provisions. The Government of Canada would be especially interested in the views of the Government of the United Kingdom regarding this proposal prior to the ICAO Council meeting and would welcome close collaboration between the Representative on the ICAO Council of the United Kingdom and the Canadian Representatives at the September 18 Council meeting.

As indicated in the Canadian Discussion Paper submitted to the 17th Assembly, it is the considered view of the Government of Canada that a decision by ICAO to accept and endorse a Resolution along the lines proposed could constitute an important step towards developing an effective international

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OTTAWA, September 16, 1970.

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The ICAO Council has now been convened to meet on September 18 to urgently take up matters arising from the serious threat to international air safety posed by the increasing number and gravity of aircraft hijackings and destruction of civil airliners. The Canadian Representatives who will be participating in the Council session will raise the issues covered in the Discussion Paper submitted at the 17th Assembly and explore the possibility of the adoption by the Council of a Resolution relating to the subject matter of the Paper. In particular, the Council will be asked to call on all ICAO member states to amend, at the earliest possible date, all existing bilateral air agreements to include a special clause setting out certain basic international legal obligations relating to the prevention and deterrence of acts of unlawful interference with civil aviation. This special clause would also stipulate that, notwithstanding any other termination or suspension provision in the bilateral air agreement, in the event that one party failed to implement the international obligations set out in the clause, the other party would be permitted to suspend operation of the Agreement on short notice. The Resolution could also call on all ICAO member states to specifically incorporate such a special clause in all future bilateral air agreements to be concluded by them.

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of the 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft);

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The Canadian Government seeks the cooperation of the governments of all other states represented on the ICAO Council for the elaboration of an appropriate Resolution incorporating the above-mentioned provisions. The Government of Canada would be especially interested in the views of the Government of the Federal Republic of Germany regarding this proposal prior to the ICAO meeting and would welcome close collaboration between the Representative on the ICAO Council of the Federal Republic of Germany and the Canadian Representative at the September 19 Council meeting.

As indicated in the Canadian Discussion Paper submitted to the 17th Assembly, it is the considered view of the Government of Canada that a decision by ICAO to accept and endorse a Resolution along the lines

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Ottawa, September 16, 1970

Diary
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A I D E — M E M O I R E

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the 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft);

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The Canadian Government seeks the cooperation of the governments of all other states represented on the ICAO Council for the elaboration of an appropriate Resolution incorporating the above-mentioned provisions. The Government of Canada would be especially interested in the views of the Government of the United States of America regarding this proposal prior to the ICAO Council meeting and would welcome close collaboration between the Representative on the ICAO Council of the United States of America and the Canadian Representatives at the September 18 Council meeting.

As indicated in the Canadian Discussion Paper submitted to the 17th Assembly, it is the considered view of the Government of Canada

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that a decision by ICAO to accept and endorse a Resolution along the lines proposed could constitute an important step towards developing an effective international legal framework to deter and prevent acts of unlawful interference with international civil aviation and significantly contribute towards the maintenance of international air safety.

OTTAWA, September 16, 1970.

CONFIDENTIAL

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Document disclosed under the Access to Information Act -
Document divulgué en vertu de la Loi sur l'accès à l'information
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September 10, 1970.

POSITION PAPER FOR USE BY CANADIAN DELEGATION

AT THE EIGHTEENTH SESSION OF THE LEGAL COMMITTEE OF ICAO

1. INTRODUCTION -

On July 2nd, 1970, the Council of the International Civil Aviation Organization in accordance with the direction of the Seventeenth Session (Extraordinary) of the Assembly in Resolution B/6, decided to convene a special session of the Legal Committee of the Organization.

The operative words of Assembly Resolution B/6 are:

"The Assembly:

1. directs the Council of ICAO to convene the Legal Committee, if possible not later than November 1970, in order to prepare, as the matter of first priority on its work program, a Draft Convention on acts of Unlawful Interference against International Civil Aviation (other than those covered by the Draft Convention on Unlawful Seizure of Aircraft) with a view to adoption of the Convention at a Diplomatic Conference as soon as practicable, and if possible not later than the summer of the Northern Hemisphere in 1971;
2. directs the Legal Committee, in preparing the Draft Convention, to take into account the opinions expressed at this Assembly."

The meeting of the Legal Committee will be held at Lancaster House, St. James's London, SW1, England, from September 29th, 1970 to October 13th, 1970.

2. OBJECTIVE -

The objective of the Legal Committee as stated in the said Assembly Resolution B/6 shall be to prepare a Draft Convention on acts of Unlawful Interference against International Civil Aviation other than those covered by the Draft Convention on Unlawful Seizure of Aircraft with a view to adoption of the Convention at a Diplomatic Conference as soon as practicable.

3. INSTRUCTIONS TO DELEGATION -

The Canadian delegation at the said meeting of the Legal Committee should encourage and support the development of a Draft Convention which would deal effectively with acts of violence and unlawful interference directed against International Civil Aviation.

The delegation should be guided generally by the following specific instructions and should feel free to communicate with appropriate officials in Ottawa in the event a decision is required to be made on a matter in respect of which clarifying instructions are necessary or desirable.

A. Type of Instrument

The Canadian delegation should indicate its preference for a single instrument to deal with Unlawful Seizure of Aircraft and other forms of interference with the safety of International Civil Aviation.

It is nevertheless conceivable and indeed, probable, that certain States may not be able to become parties to such an instrument, although they might become parties to the (Draft) Convention on Unlawful Seizure or to the proposed Convention on Unlawful Interference individually. Therefore, the Canadian delegation should not object if it becomes clear that a majority of delegations at the meeting prefer to have the instrument drawn up in such a way that States which wish to become parties to any one instrument may be able to do so without difficulty. If this latter course is to be followed, there should be some link between the instruments.

B. The Offence

Generally speaking, the act (s) should be unlawful and directed against the safety of International Civil Aviation and towards injury or death to persons on board aircraft. The following acts or omissions, if done without lawful authority should probably constitute the offence.

- (i) taking or placing on board an aircraft any device likely to cause damage to the aircraft or death or bodily harm to any person therein;
- (ii) causing such a device to be taken or placed on board an aircraft;
- (iii) activating such a device (including discharging a firearm) or causing such a device to be activated on board an aircraft;
- (iv) placing or activating any device (including discharging a firearm) or causing any device to be placed or activated in such a position or manner as to be likely to cause damage to an aircraft or death or bodily harm to any person on board an aircraft;

- 3 -

- (v) any other act or omission, whether or not of a similar nature to the foregoing, calculated to cause damage to an aircraft or death or bodily harm to any person on board an aircraft;
- (vi) falsely reporting that any of the acts or omissions set out in (i) to (v) above have been committed;
- (vii) attempting or conspiring to commit any of the acts or omissions set out in (i) to (vi) above.

C. Punishment

The Canadian delegation should urge or support any move that would require parties to the Convention to make the offence punishable by severe penalties.

D. Scope of the Convention

The Convention should apply regardless of whether the aircraft is in flight or on the ground, and regardless of the location of the offender, i.e. he need not be on board the aircraft. It should not apply to acts of Unlawful Seizure as defined in the (Draft) Convention on Unlawful Seizure nor should it apply to Contracting States which are also parties to the Tokyo Convention, if the offence has been committed by a person on board an aircraft in flight, or on the surface of the high seas or on the surface of any other zone situated outside the territory of a State.

A potentially difficult area in applying the Convention may arise when an offence has been committed contrary to the provisions of the (Draft) Convention on Unlawful Seizure as well as the provisions of the proposed Convention on Unlawful Interference. For example, a person on board an aircraft in flight who has a bomb in his possession will have committed an offence under the proposed Convention on Unlawful Interference. If he later unlawfully seizes the aircraft or attempts to do so, he will have committed an offence contrary to the (Draft) Convention on Unlawful Seizure. A problem may develop if the States involved in a situation such as the foregoing, are not parties to the same Convention. This matter might be raised by the Canadian delegation, and an effort should be made to find a solution to it, if possible.

Of course, the Convention should apply only to Civil Aircraft, i.e. Military, Customs and Police Aircraft ought to be excluded.

- 4 -

E. Jurisdiction

The following States should establish jurisdiction over the offence:

1. The State where the offence is committed;
2. The State of registration of the aircraft in respect of which the offence is committed, if the offence is committed:
 - (a) in any zone situated outside the territory of a State; or
 - (b) over or within the territory of a State, and the said State fails to exercise its jurisdiction.
3. In the case of conspiracy, the State where the conspiracy is made and the State where the conspiracy is to be carried out;
4. If the offence is committed in one State, but injury or death is caused in another, both States.

Any penal jurisdiction exercised in accordance with national laws would of course not be affected by the Convention.

F. Procedure of Arrest and Detention and Preliminary Investigation

The provisions of Article 6 of the Draft Convention on Unlawful Seizure (based upon Article 13 of the Tokyo Convention) should probably suffice here.

G. Prosecution

The Convention should oblige a State in which an alleged offender is present to extradite the alleged offender in accordance with its national laws or to submit the matter to its appropriate authority for a decision on the question whether prosecution should be instituted. This latter decision should be made in the same way as ordinary criminal matters are dealt with by the State.

. . 5

- 5 -

H. Extradition

The offence should be extraditable, but extradition should not be available in all cases. For example, a country claiming jurisdiction on the basis that it is the State of registry of an aircraft which has been bombed while in flight over the territory of another State should not be entitled to seek extradition of the alleged offender unless the State in which the bombing occurred fails to exercise its jurisdiction.

Specific instructions for the Canadian delegation are required on the following points:

1. Should obstruction or interference with airports, installations, and air navigation services constitute an offence;
2. Should we accept the jurisdiction of the State in which a carrier has its head office if an offence has been committed in respect of an aircraft operated by such carrier, even if the aircraft is not registered in that State;
3. Should we accept any move to make the offence an "International Crime";
4. Should the offence be deemed not to be a "Political Offence";



VOTRE DOSSIER

OUR FILE NO.
NOTRE DOSSIER

File
ju

LE REPRÉSENTANT DU CANADA AU CONSEIL DE
L'ORGANISATION DE L'AVIATION CIVILE
INTERNATIONALE

902 ÉDIFICE DE L'AVIATION INTERNATIONALE, MONTRÉAL

TÉLÉPHONE: 879-4788

THE REPRESENTATIVE OF CANADA ON THE COUNCIL OF
THE INTERNATIONAL CIVIL AVIATION
ORGANIZATION

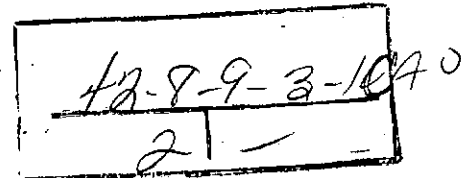
902 INTERNATIONAL AVIATION BUILDING, MONTREAL

TELEPHONE: 879-4788

10 September 1970.

PERSONAL AND CONFIDENTIAL.

Mr. O. G. Stoner,
Deputy Minister of Transport,
Ottawa, Ontario.



Dear Sir:

Attached, for your information, is a copy of a confidential memo just received by me from the President of the Council of ICAO, informing Council Members as to action taken by himself and the Secretary General regarding the recent rash of hijacking of aircraft into Jordanian territory.

Yours truly,

H. Gourdeau
H. Gourdeau.

Encl.

C.c. : Mr. A. E. Ritchie,
 ✓ The Under-Secretary of State for External Affairs. (1)

 Dr. G. A. Scott,
 Senior Assistant Deputy Minister,
 Ministry of Transport. (1)

 Mr. W.H. Huck,
 Administrator, Canadian Air Transportation Adminis-
 tration, Ministry of Transport (1)

TEL.: 866-2541



ORGANISATION DE L'AVIATION
CIVILE INTERNATIONALE



ORGANIZACIÓN DE AVIACIÓN
CIVIL INTERNACIONAL

INTERNATIONAL CIVIL AVIATION ORGANIZATION

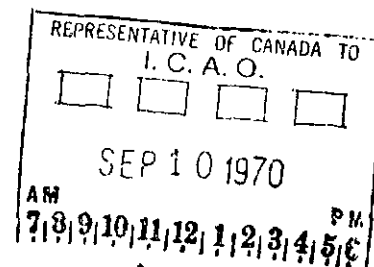
INTERNATIONAL AVIATION BUILDING
1080 UNIVERSITY STREET
MONTREAL 101, P.Q. CANADA

WHEN REPLYING, PLEASE QUOTE:
RÉFÉRENCE À RAPPELER DANS LA RÉPONSE:
INDÍQUESE EN LA RESPUESTA ESTA REFERENCIA:

9 September 1970

CONFIDENTIAL

To: Representatives on the Council
From: President of the Council



During the past weeks, several Representatives on the Council have asked me what actions the Secretary General or myself had taken regarding several acts involving unlawful diversion of aircraft, destruction of aircraft, and detention of passengers. I think it is desirable to inform you of our actions and this is the purpose of the present memorandum.

a) On 22 July, an Olympic Airways aircraft was unlawfully seized and upon landing at Athens Airport, the perpetrators requested, in exchange for the release of the passengers, the release by the Greek Government of seven persons who were in prison in Greece for having committed acts of unlawful interference with civil aviation. Under duress, the Greek Government agreed to the demands; the aircraft then left Athens without passengers and landed at Cairo Airport.

On that occasion, I sent a letter to the Greek Government expressing the hope that they would find the means to punish the perpetrators. Equally, I sent a letter to the UAR Government requesting that, in accordance with the resolutions of the Extraordinary Session of the Assembly, the perpetrators be punished. No replies to my communications have so far been received from either the Greek or UAR governments.

b) On 14 August, two passengers of Algerian nationality were detained by Israeli authorities when the BOAC aeroplane in which they were travelling made a scheduled landing in Tel Aviv. On 17 August, I sent a cable to Israel referring to the spirit of the resolutions of the Extraordinary Session of the Assembly and expressing my expectation that the two passengers would be released. That same day, shortly after the cable had been sent, the Secretary General received a cable from Algeria requesting that we obtain the release of the passengers. Later in the day, I reiterated my previous cable to Israel. On 20 August, Algeria reiterated its request. On both occasions, the Secretary General and myself replied to Algeria indicating that we were taking all the steps within our powers.

- 2 -

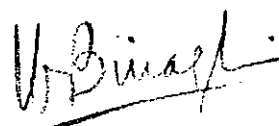
On 24 August, a communication from Israel received through the Consul General in Montreal (who is also the Representative of Israel to ICAO) indicated that an investigation was taking place. On 28 August, another cable was received from Algeria, again requesting action on our part; we replied, informing Algeria of our actions. On 31 August, I cabled Israel reiterating my request for the release of the two passengers. On 8 September, I received a communication from Israel (through the Consul General) stating that the two Algerian nationals hold official posts in their Government, that their detention was an act of a different category and there was no aggression against them, and that the Government of Israel had a right, on security grounds, to detain them for questioning.

c) On 6 September, a PANAM Boeing 747 was diverted to Cairo and immediately after the occupants disembarked the plane was blown up. On the same day, two other aircraft, one of Swissair and the other of TWA, were diverted to a landing strip in Jordan. At the time of writing, the situation of the passengers and crews is uncertain. On 8 September, the Secretary General and myself cabled the United Arab Republic indicating that we appreciated that, in conformity with ICAO Assembly resolutions, the passengers and crew had been permitted to continue their journey without delay.* We also expressed our expectation that the UAR Government will ensure that the perpetrators will be prosecuted and severely punished. On the same day, we cabled Jordan expressing our confidence that the Government will do all within its power to permit both aircraft and all their occupants to continue their journey and our expectation that, in conformity with ICAO Assembly resolutions, the perpetrators will be severely punished. At the time of writing, no replies have been received from the UAR or Jordan.

d) On 8 September, a statement for the press was made through our Public Information Office. The first four paragraphs of the statement appear in the Attachment; there were three additional paragraphs simply giving explanations on the Extraordinary Session of the Assembly, The Hague Diplomatic Conference and the Legal Committee meeting in London. The statement was given coverage in Montreal newspapers and through news agencies has reached the different regions of the world. Unfortunately, some of the press reports concerning the statement were incorrect.

e) For all the cases covered in this memorandum we have kept close contact with IATA and IFALPA. Additionally, we have been in contact with the Secretary-General of the United Nations regarding the case mentioned in b), and with the International Transport Workers' Federation regarding the cases mentioned in c).

I shall keep Representatives informed of any significant developments involving ICAO that may take place in the coming days.


Walter Binaghi

* PAA sent an aircraft to provide transportation for all passengers.
According to some press reports, five of them have not yet left Cairo.

STATEMENT BY ICAO

The unlawful diversion of four commercial aircraft last Sunday and the destruction of one of them, a Boeing 747, has cast a shadow over the world of international civil aviation and has shaken world opinion. The International Civil Aviation Organization, one of whose objectives is to ensure the safe and efficient development of international air transport, cannot but condemn those acts of violence that create chaos and undermine the confidence of the peoples of the world in the most vital means of transportation of our time.

The President of the ICAO Council and the ICAO Secretary General have stated that in order to prevent, deter and put an end to acts of violence in civil aviation, each government must take preventive measures and, when acts of that kind are committed, must prosecute and impose severe penalties on the perpetrators. They have voiced the hope that all governments of the world take concerted action to suppress all acts which jeopardize the safety of air transport.

Following the recent wave of unlawful acts, an ICAO spokesman has indicated that ICAO is following closely the present situation and is making all possible efforts so that the lives of passengers and crews be protected and that the two aircraft and their occupants may continue their journey. ICAO has addressed communications to Jordan and the United Arab Republic emphasizing the need to punish severely those responsible for the unlawful seizures and for the destruction of one of the aircraft at Cairo airport. It has also requested the Jordan government to do all in its power to secure the release of the passengers presently detained on Jordanian soil.

ICAO is an organization of States that can only act by addressing requests or recommendations to its members. It is not an enforcement agency; its constitution does not give it that power.

FROM: CUN

TO: FAE

UNITED NATIONS

Press Services
Office of Public Information
United Nations, N.Y.

(FOR USE OF INFORMATION MEDIA -- NOT AN OFFICIAL RECORD)

Press Release ICAO/572
9 September 1970

STATEMENT BY ICAO CONCERNING HIJACKING OF COMMERCIAL AIRCRAFT

(The following is reproduced as received from the International Civil Aviation Organization, Montreal.)

42-893-ICAO

The unlawful diversion of four commercial aircraft last Sunday and the destruction of one of them, a Boeing 747, has cast a shadow over the world of international civil aviation and has shaken world opinion. The International Civil Aviation Organization (ICAO), one of whose objectives is to ensure the safe and efficient development of international air transport, cannot but condemn those acts of violence that create chaos and undermine the confidence of the peoples of the world in the most vital means of transportation of our time.

The President of the ICAO Council and the ICAO Secretary-General have stated that in order to prevent, deter and put an end to acts of violence in civil aviation, each Government must take preventive measures and, when acts of that kind are committed, must prosecute and impose severe penalties on the perpetrators. They have voiced the hope that all Governments of the world take concerted action to suppress all acts which jeopardize the safety of air transport.

Following the recent wave of unlawful acts, an ICAO spokesman has indicated that ICAO is following closely the present situation and is making all possible efforts so that the lives of passengers and crews be protected and that the two aircraft and their occupants may continue their journey. ICAO has addressed communications to Jordan and the United Arab Republic emphasizing the need to punish severely those responsible for the unlawful seizures and for the destruction of one of the aircraft at Cairo airport. It has also requested the Jordan Government to do all in its power to secure the release of the passengers presently detained on Jordanian soil.

(more)

000586

- 2 -

Press Release ICAO/572
9 September 1970

ICAO is an organization of States that can only act by addressing requests or recommendations to its members. It is not an enforcement agency; its constitution does not give it that power.

Nevertheless, in June this year ICAO organized an extraordinary assembly of its 119 member States in Montreal and strongly urged delegations from 91 attending member States, the USSR, and 13 international organizations to act in concert against the growing threat of unlawful acts against civil aviation. ICAO also urged immediate organization and development of preventive security measures at international airports, co-operation between all national and international security forces to share information about individuals and groups which could threaten the safety of civil aviation, and urged adoption of legal measures in the form of international treaties and national legislation to deal with unlawful acts against international civil aviation.

ICAO has also scheduled a major diplomatic conference at The Hague in December of this year to conclude an international treaty on unlawful seizure of aircraft in which it is mandatory for States to severely prosecute or extradite any "hijackers" landing in their territory and to assure the safety and return of passenger and aircraft. Moreover, ICAO has also scheduled a meeting of its legal committee in London on 28 September to formulate a treaty dealing with all other unlawful acts against international civil aviation, including armed attacks and sabotage.

Thus, ICAO is taking an active and primary role in the fight against this growing trend of lawlessness. But it remains for Governments to achieve the degree of concern and co-operation necessary to enable ICAO, as an organization, to effectively bring to an end the continuing threats of unlawful seizure and sabotage against international civil aviation.

* *** *

MESSAGE

FM/DE	SEP 4 20 49 '70 EXTER OTT	DATE	FILE/DOSSIER	SECURITY SECURITE	
		SEPT 4/70	42-9-9-13-1CAO	UNCLASS.	
TO/A THE HAGUE			NO	PRECEDENCE	
			FILE-1313		
INFO					

REF YOURTEL 761 SEPT 3/70

SUB/SUJ HIJACKING: DIPLO CONFERENCE TO ADOPT ICAO CONVENTION

WE HAVE BEEN CONSIDERING THE QUESTION OF CANDEL TO DIPLO CONFERENCE AND ARE PLANNING TO SEND ~~AT LEAST ONE~~ OFFICER FROM LEGAL DIVISION, PROBABLY ALONG WITH OFFICERS FROM DEPT OF TRANSPORT AND JUSTICE. HOWEVER, UNTIL WE OBTAIN FURTHER INFO FROM ICAO ABOUT WHETHER THERE WILL BE MORE THAN ONE CTTEE MTG CONCURRENTLY DURING THE CONFERENCE, WE ARE UNABLE TO INDICATE WHETHER OR NOT ROBERTSON WOULD BE INCLUDED IN DEL. WE ^{NEED TO} ~~IF POSSIBLE~~ SUGGEST, HOWEVER, THAT FOR TIME BEING IT WOULD BE HELPFUL IF ROBERTSON DID NOT MAKE OTHER PLANS FOR PERIOD DEC 1 TO 16, EXCEPT POSSIBLY FOR SHORT OVERLAP PERIOD OF MTG OF IGGI, IF THIS IS PRACTICABLE.

DISTRIBUTION
LOCAL/LOCALE NO STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... E.G. LEE	FILE - LEGAL	2-2104	SIG..... E.G. Lee

ACTION COPY

OUN

Lee

~~Mr. [unclear]~~

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file
ICAO *Ek*

UNCLASSIFIED

FM HAGUE SEP3/70 NO/NO STANDARD

TO EXTER 761

HIJACKING:DIPLO CONFERENCE TO ADOPT ICAO CONVENTION

WE UNDERSTAND DIPLO CONFERENCE WILL BE CONVENED HAGUE DEC1-16/70.

2.AS THIS WILL BRIEFLY OVERLAP WITH MTG OF IGGI(INDONESIA

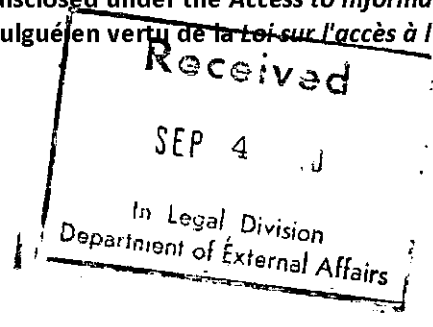
Fred Livingston
John Robertson

AID GROUP)ROTTERDAM MID-DEC,GRATEFUL TO KNOW WHETHER OR NOT/NOT

YOU CONTEMPLATE INCLUDING ROBERTSON IN DEL TO HIJACKING CONFERENCE.

*This is only a two day
Conference
if we are only observers.*

31/4/9



MESSAGE

FM/DE		EXTER OPT	SEP 3	DATE SEPT 3/70 7 5 2 '70	FILE/DOSSIER 40 7 9 3-1090	SECURITY SECURITE
						RESTRICTED
				NO		PRECEDENCE
TO/A				LONDON		FILE-1295
INFO				PRMNY (CLARK)		

REF YOURTEL 2972 SEPT 2/70

SUB/SUJ 18TH ICAO LEGAL CTTEE SESSION

MOST GRATEFUL FOR YOUR COOPERATION IN MAKING MILLER AVAILABLE FOR MTGS
SEPT 29 TO OCT 13. WE HAVE CONSULTED OTHER DIVISIONS AS YOU SUGGESTED
AND ALL ARE AGREEABLE TO UNDERSTANDINGS EMBODIED IN YOUR REFTTEL. CLARK
OF LEGAL DIVISION WILL BE FORWARDING BRIEFING MATERIAL DIRECT TO MILLER
AS SOON AS CLARK RETURNS FROM NEW YORK ON SEPT 15.

DISTRIBUTION NO STD.
LOCAL/LOCALE

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... E.G. Lee/mc	FILE - LEGAL	2-2104	SIG..... E.G. Lee

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TO EXTER 2972

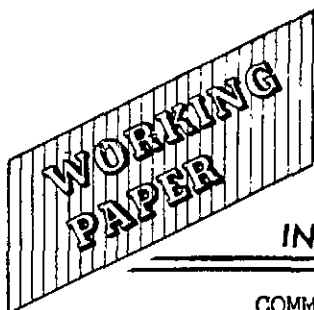
REF YOURTEL FLE1283 SEP1

18TH ICAO LEGAL CTTEE SESSION

WE ARE PREPARED IN SPIRIT OF COOPERATION TO MAKE MILLER AVAILABLE
FULL TIME FOR MTG IN LDN SEP29 TO OCT13 ON UNDERSTANDING THAT
ACCOUNT WILL BE TAKEN OF HIS ABSENCE IN MAKING OTHER REQUESTS OF
US. IT SHOULD BE UNDERSTOOD THAT HIS WITHDRAWAL FROM NORMAL
PARTICIPATION IN WORK OF CDA HOUSE COULD INTERFERE WITH ATTENDANCE
AT SOME MTGS ORGANIZED BY COMWEL SECRETARIAT, WILL INTERFERE WITH
OUR RESPONSE TO ENQUIRIES ON LEGAL QUESTIONS AND TO QUESTIONS ON
MIDEAST AND AFRICA. IF YOU DECIDE TO ASSIGN MILLER FOR THIS DUTY
PLEASE CONSULT OTHER DIVS INTERESTED TO ENSURE THAT THEY UNDERSTAND
SITUATION.

*we have
more now*
[no substantive reports
for 3 mos. on M.E.]

14/2/9



FILE to see
d/11/428-9-3-1/CAO
JS-WP/767
NAOS/184
2/9/70

INTERNATIONAL CIVIL AVIATION ORGANIZATION

COMMITTEE ON JOINT SUPPORT OF AIR NAVIGATION SERVICES

COUNCIL - SEVENTY-FIRST SESSION

DRAFT REPORT TO COUNCIL BY THE CHAIRMAN OF THE
COMMITTEE ON JOINT SUPPORT OF AIR NAVIGATION SERVICES
arising from its 1st Meeting, held September 1970

Subject No. 17.3: North Atlantic Ocean Stations Joint Financing Agreement

DISCONTINUANCE OF VOLUNTARY CASH CONTRIBUTION TO THE
NAOS SCHEME BY GOVERNMENT OF MEXICO FROM THE 17TH
NAOS YEAR

(Presented by the Secretary of the Committee)

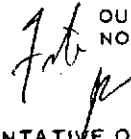
References: C-WP/4092 Doc 8845-JS/628
C-WP/5150

1. It will be recalled that the Council, at its meeting held on 2 November 1964 (53rd Session), accepted an offer by the Government of Mexico to make an annual voluntary contribution of £2,200 under the 1954 NAOS Agreement (C-WP/4092 d/23/10/64).
2. The Council Representative of Mexico, by letter dated 29 June 1970, notified the Secretary General that the Government of Mexico terminates its arrangement with the Council in respect of its annual voluntary contribution to NAOS and that its cash contribution will be discontinued commencing from 1 July 1970 (the 17th NAOS year).
3. The Joint Support Committee noted that the discontinuance of the voluntary contribution from Mexico means that there will be a slightly smaller Common Fund for allocation among Contracting Governments, i.e. £198,973 instead of £201,173 for the 17th NAOS year (1 July 1970 to 30 June 1971) and £206,567 rather than £208,767 for the 18th NAOS year (1 July 1971 to 30 June 1972). The Common Fund allocations referred to are governed by paragraph E on page 3 of both Supplements Nos. 10 and 11 of Doc 8845. A calculation of the original amount of money to be allocated to each Contracting Government (i.e. before Mexico's recent notice of discontinuance) is shown in Column 21 of Appendix 2 to Supplements Nos. 10 and 11.
4. In the light of the above, the Committee recommends that the Council a) note the discontinuance of the voluntary contribution from Mexico as of 1 July 1970, and b) request the Secretary General to write to the 17 NAOS Contracting Governments*, informing them of Mexico's discontinuance of its voluntary contribution and of the amounts that will now be allocated to each of them under the Common Fund for the 17th and 18th NAOS years.

Respectfully submitted on behalf
of the Joint Support Committee

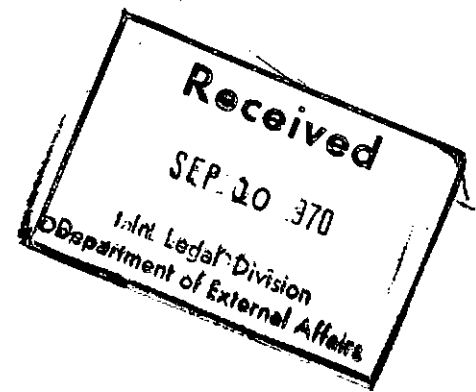
Chairman

* Australia, Belgium, Canada, Denmark, France, Germany, Ireland, Israel, Italy, Japan, Netherlands, Norway, Pakistan, Sweden, Switzerland, United Kingdom, United States.



OUR FILE NO.
NOTRE DOSSIER

14, 10.9





YOUR FILE NO.
VOTRE DOSSIER

OUR FILE NO. 153-2/2
NOTRE DOSSIER

LE REPRÉSENTANT DU CANADA AU CONSEIL DE
L'ORGANISATION DE L'AVIATION CIVILE
INTERNATIONALE

902 ÉDIFICE DE L'AVIATION INTERNATIONALE, MONTRÉAL

TÉLÉPHONE: 879-4788

THE REPRESENTATIVE OF CANADA ON THE COUNCIL OF
THE INTERNATIONAL CIVIL AVIATION
ORGANIZATION

902 INTERNATIONAL AVIATION BUILDING, MONTREAL

TELEPHONE: 879-4788

TO: *FLE*
FROM: ACRO
SEP 10 1970
ATTN: *Mr. Clark*

1 September 1970.

The Chairman,
International Transport Policy Committee,
Canadian Transport Commission,
Congill Building,
275 Slater St.,
Ottawa, Ont.

42-8-9-3-10AO
2

Dear Sir:

Further to our letter of 28 August 1970,
enclosing copies of Doc. 8877-LC/161, attached is
the reference letter LM 1/2.3 of 31 August 1970,
which has just been received.

It will be noted that in the near future
you may anticipate other documents for the International
Conference which is to meet at The Hague from 1 to 16
December 1970 to consider the Draft Convention on
Unlawful Seizure of Aircraft.

Yours truly,

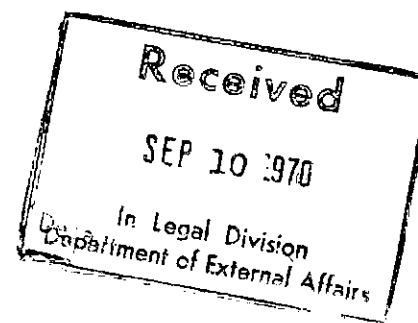
L.M.E. Brennan
L.M.E. Brennan,
Administrative Officer.

Encl.

c.c.: The Under-Secretary of State for Ext. Affairs,
→ Attention: Legal Division (1)
Administrator, Canadian Air Transportation
Administration, Ministry of Transport (1)
Department of Justice,
Attention: Advisory & Intl. Law Section (1)
Director, Legal Services & Counsel,
Ministry of Transport (1)

FLE

13.10.9



ORGANISATION DE L'AVIATION
CIVILE INTERNATIONALEORGANIZACIÓN DE AVIACIÓN
CIVIL INTERNACIONAL

INTERNATIONAL CIVIL AVIATION ORGANIZATION

INTERNATIONAL AVIATION BUILDING
1080 UNIVERSITY STREET
MONTREAL 101, P.Q. CANADAWHEN REPLYING, PLEASE QUOTE:
RÉFÉRENCE À RAPPELER DANS LA RÉPONSE:
INDIQUESE EN LA RESPUESTA ESTA REFERENCIA:

LM 1/2.3

31 August 1970

With reference to his letter LM 1/2.3, LM 1/3.3-70/53 dated 4 April 1970, the Secretary General of ICAO transmits herewith Doc 8877-LC/161 which constitutes the Minutes and Documents of the Seventeenth Session of the Legal Committee (Montreal, March 1970) in so far as concerns the subject of Unlawful Seizure of Aircraft. It is hoped to transmit in the near future certain other documents also in connection with the International Conference which is to meet at The Hague from 1 to 16 December 1970 to consider the Draft Convention on Unlawful Seizure of Aircraft (a copy of which draft was sent, together with the relevant Part of the Report of the Legal Committee, Doc 8865-LC/159, with the letter of 4 April 1970 mentioned at the outset).

for

TEL.: 866-2351

ORGANISATION DE L'AVIATION
CIVILE INTERNATIONALE



ORGANIZACIÓN DE AVIACIÓN
CIVIL INTERNACIONAL

INTERNATIONAL CIVIL AVIATION ORGANIZATION

INTERNATIONAL AVIATION BUILDING
1080 UNIVERSITY STREET
MONTREAL 101, P.Q. CANADA

(CS)

WHEN REPLYING, PLEASE QUOTE:
RÉFÉRENCE À RAPPELER DANS LA RÉPONSE:
INDÍQUESE EN LA RESPUESTA ESTA REFERENCIA:

LE 3/21) - 70/182
LE 4/31)

31 August 1970

Subject: Resolutions A17-22 and A17-23
Action Required: Follow-up on Resolutions A17-22
and A17-23

42-8-9-3-ICAO
11

Sir,

I have the honour to refer to the Seventeenth Session (Extraordinary) of the Assembly of this Organization, held between 16 and 30 June 1970 to deal with the subject of security in international civil aviation. The possible action which your Government may consider taking in respect of these Resolutions is indicated in the paragraphs below:

Resolution A17-22: Proposed simplification of convention-making procedures

... The Assembly adopted Resolution A17-22 (Proposed simplification of convention-making procedures) (copy attached) and, in the second Operative Clause of that Resolution, requested the Secretariat to circulate to Member States for study A17-WP/33 (Expeditious ratification of the convention on unlawful seizure of aircraft) and a more detailed document entitled "Proposed simplification of convention-making procedures", both of which were presented by the International Air Transport Association. Accordingly, copies of these papers are forwarded herewith for study.

Resolution A17-23: Circulation of paper on the linking of bilateral air agreements to ICAO international conventions relating to unlawful interference with civil aviation

... Resolution A17-23 of the Assembly, after noting the Canadian discussion paper on linking bilateral air agreements to ICAO international conventions relating to unlawful interference with civil aviation (see A17-WP/49 of which a copy is enclosed), requests, in Operative Clause(2), the Secretariat to circulate this paper

30 The Representative of Canada
on the Council of ICAO
International Aviation Building
MONTREAL

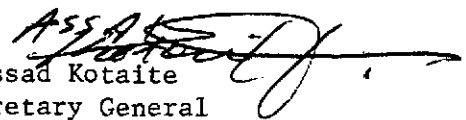
000599

- 2 -

to Member States for study. Accordingly, that paper is forwarded herewith together ... with that portion of the Report of Committee B of the Assembly which summarizes the Committee's discussion on the paper.

On 2 July 1970, the Council decided to defer action on Operative Clause (3) of Resolution A17-23, until more information was available, for example, in comments that might be received from States on A17-WP/49.

Please accept, Sir, the assurances of my highest consideration.


Assad Kotaite
Secretary General

Enclosures

Resolutions A17-22 and A17-23
A17-WP/33
Document entitled "Proposed simplification of
convention-making Procedures"
A17-WP/49
Extracts from Report of Committee B



ATTACHMENT to State Letter LE 3/21)
LE 4/31) - 70/182

A17-22: Proposed simplification of convention-making procedures

THE ASSEMBLY:

- (1) NOTES the recommendation submitted by IATA in A17-WP/33 under paragraph 4(b) to the effect that the proposed convention on unlawful seizure of aircraft should contain:
 - (a) a requirement for the signatory States to submit it within a specified period to the appropriate authority in each State, for ratification, parliamentary approval, or whatever other constitutional process is required in the State concerned to bring the convention into effect;
 - (b) a requirement to give notice to ICAO if States found it impossible to become parties to the convention within a specified period, and
- (2) REQUESTS the Secretariat to circulate to Member States for study A17-WP/33 and the more detailed document made available by IATA on the proposed simplification of convention-making procedures, and
- (3) REQUESTS the ICAO Council, through the appropriate body, to give further consideration to this subject in connection with the future development of draft international conventions on air law.

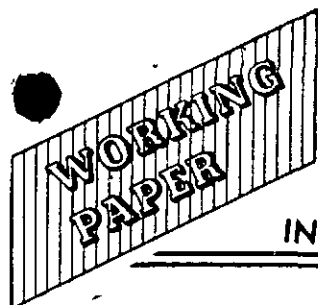
A17-23: Circulation of a paper on the linking of bilateral air agreements to ICAO international conventions relating to unlawful interference with civil aviation

THE ASSEMBLY:

RECOGNIZING that scheduled international air transport is generally regulated by bilateral air agreements between States; and

CONSCIOUS of the great contribution that the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft and future International Civil Aviation Organization conventions relating to unlawful interference with international civil aviation can make towards preventing and deterring such acts;

- (1) NOTES the "Canadian discussion paper on linking bilateral air agreements to ICAO international conventions relating to unlawful interference with civil aviation" contained in A17-WP/49;
- (2) REQUESTS the Secretariat to circulate it to Member States for study; and
- (3) REQUESTS the Council to refer it to the appropriate body for thorough consideration of the subject matter, in connection with the development of international law to deal with acts of unlawful interference with international civil aviation.



A17-WP/33
2/6/70

INTERNATIONAL CIVIL AVIATION ORGANIZATION

ASSEMBLY - SEVENTEENTH SESSION (EXTRAORDINARY)

Sub-item b): consideration of arrangements under which those responsible for criminal actions endangering civil air transport can be brought to justice

EXPEDITIOUS RATIFICATION OF THE CONVENTION ON UNLAWFUL SEIZURE OF AIRCRAFT

(Presented by the International Air Transport Association)

1. In March this year, the Legal Committee of ICAO finalized the Draft Convention on Unlawful Seizure of Aircraft. The urgency of having an effective international instrument to control and ultimately put an end to the scourge of air piracy, raises the question of when this Draft will come into force. Our attention has therefore been focussed on the difficulties involved in obtaining wide and rapid participation by States in international Conventions and Treaties which are of concern to the airline industry.
2. It seems clear that the present procedures for bringing an international Convention into force are cumbersome, uncertain and slow. Hijacking and armed aggression are only one area - though undoubtedly the most urgent - in which it is important that the draft international Convention be implemented rapidly. Another such area is the question of revision of the Warsaw/Hague system of air carriers' liability.
3. The adoption by ICAO of a Draft Convention is only the first step in the lengthy process of transmuting an agreed draft into an international convention binding upon States. Under international law, States have complete discretion as to the method each may prescribe for becoming party to a treaty. Signature is rarely enough. What is usually needed is ratification or accession, and the constitutional procedure for obtaining this may vary widely from one country to another. Apart from such legal considerations, political factors or the pressure of government business may indefinitely postpone ratification or accession by a particular State. The end result could be that the convention may never come into effect owing to insufficient ratifications, or that it may receive the minimum number of ratifications by States some of which have little aviation activity. In that case the practical effectiveness of the convention may be negligible.
4. Various procedures can be envisaged which would accelerate the adoption and implementation of air law Conventions by obviating some of the present difficulties. We have studied this problem and, with the assistance of the IATA Legal Committee, have developed two possible methods of approach, which are outlined below:

(4 pages)
E.F.S.

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A17-WP/33

- 2 -

(a) First Alternative

- i) One possibility would be to develop air law Conventions through a procedure which adapted the present ICAO machinery with respect to the Technical Annexes. The procedure assumes that a draft Convention on a particular topic has been prepared by the ICAO Legal Committee.
- ii) After a diplomatic conference had settled the final text of the convention and adopted it by a qualified majority (for example by the affirmative votes of two-thirds of the States represented) the convention would go into force on a date specified in the instrument itself between all member States of ICAO that have not within a prescribed time-limit, notified ICAO that they do not wish to become parties to the convention. This is an adaptation of the negative notification procedure of Article 38 of the Chicago Convention.
- iii) A variant of this procedure would be to submit the text to a vote of the ICAO Assembly (which might if necessary be convened in special session) instead of calling an ad hoc diplomatic conference. This approach would have some affinity with the ILO procedure which will be discussed later.
- iv) The convention would wherever practicable indicate certain Chapters or Articles that States can accept or reject with such qualifications as they think fit, so that objection to these provisions will not necessarily entail notification by a State that it rejects the whole convention. This should facilitate the adoption, even though only in part, of conventions on certain controversial matters. A State which had thus opted out of some provisions of a convention would remain free to adopt them at a later stage.

(b) Second Alternative

- i) Another possibility would be to insert in any convention an obligation for the signatory States to submit it within a specified period to the appropriate authority in each State, for ratification, parliamentary approval, or whatever other constitutional process is required in the State concerned to bring the Convention into effect.
- ii) Each State would also be required to give notice to ICAO if it found it impossible to implement the convention within the specified period. This procedure resembles that favoured by the ILO for international labour conventions and recommendations.

A17-WP/33

- 3 -

5. We should not minimize the fact that these suggestions are likely to encounter many objections. One of the international facts of life is that States are attached to their sovereignty and are suspicious of anything which appears to encroach upon it. Some may argue that the negative notification procedure, which is part of both the proposals outlined above, could in the short term prejudice wide adoption of a convention because many States will deposit such a notification as a matter of course, to avoid having to make up their minds about the convention in a hurry. Even if the negative notification is accompanied by a statement leaving the door open to future ratification, the damage will have been done and rapid adherence will not have been achieved. A system based on the idea that States are bound in principle, but may contract out of the convention if they so desire, might require constitutional amendments in certain countries.

6. It may also be objected that qualified or partial ratification (as suggested in paragraph iv of the first procedure outlined above) would create as many problems as it solves. Certain provisions will appear unacceptable to some States but not to others, and vice-versa. Much would depend on which Articles were stated to be optional. This could lead to a multiplication of legal régimes and consequent uncertainty as to the scope of the convention, comparable to the situation that presently exists under the Warsaw/Hague/Montreal system.

7. No one will deny that the obstacles are considerable. If ICAO is to be the chosen vehicle for the introduction of any procedures along the lines suggested (as in the variant to the first alternative), it would probably be necessary to review the Chicago Convention to determine whether a new chapter (specifying the area within which action of this kind could be taken) should be added. In this connection it is interesting to note that a study being undertaken by the Inter-governmental Maritime Consultative Organization (IMCO) apparently contemplates making a distinction between the "purely technical provisions" of the maritime conventions, which must be capable of rapid amendment, and provisions that involve questions of principle. It may be that accelerated procedures would be acceptable for public law conventions (such as a convention dealing with hijacking) but that private law conventions (such as a revised convention on air carriers' liability) would require different treatment.

8. While these proposals may seem somewhat radical, it is suggested that they are not incompatible with the recently adopted Vienna Convention on the law of treaties or with the present practice of several international organizations. Both the proposed methods preserve the right of sovereign States to make the final decision whether or not to implement a particular Convention. But the onus of action is shifted. At present, if States choose to remain inactive the Convention will not come into force. While our recommendations would not guarantee that the Convention would be implemented in any particular case, they would require an overt act by States which do not wish to participate (the procedures for negative notification or selective acceptance envisaged by the first alternative) or at least a notification by the States that it found it impossible to implement the convention (second alternative).

A17-WP/33

- 4 -

9. The Draft Convention on Unlawful Seizure of aircraft has been developed in the hope that it will provide a rapid solution to a most pressing problem. To reflect the present needs of the international air transport industry for a speedier process of international law-making the proposals contained in this paper are submitted for consideration, with a view to expediting the world-wide adoption of the Convention.

- END -

EXTERNAL AFFAIRS



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FROM ECT
De

DATE August 31, 1970

REFERENCE Your memorandum of August 26, 1970
Référence

NUMBER
Numéro

SUBJECT ICAO 18th Assembly: Initiative concerning automatic
Sujet election to the Council of first category states

FILE	DOSSIER
OTTAWA	
42-8-9-3-10	
MISSION	

ENCLOSURES
Annexes

DISTRIBUTION

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Miss Szlazak

We have discussed this question with Mr. Morisset and discovered that our approach is basically the same. For a number of reasons we believe it would be inappropriate for the Canadian representative at the forthcoming ICAO Assembly to take the initiative of proposing that Article 50 be amended to provide for the automatic election to the Council of first category states. It is possible that the interest of the U.S.A. in having this amendment made relates to the fact that the United States may in the future be excluded from election under this category due to the combined action of a substantial number of less developed countries. While this is a possibility, it would appear to us unlikely that this would in fact happen because of the important role which the United States plays in international civil aviation. Moreover, the less developed countries would have as much say in voting on the proposed amendment as they would in the elections to the Council itself. Indeed, they would be on stronger grounds in opposing the adoption of this amendment than they would be in opposing the election of the United States to the Council under this category. It would appear evident to them that the initiative in fact came from the United States and Canada was merely acting on her behalf. This could have repercussions relating to our own continued election to the Council under this category.

[Handwritten signature]

R.E. Reynolds
R.E. Reynolds, Head,
Transport, Communications
and Energy Division.

Received
AUG 31 1970

In Legal Division
Department of External Affairs

VOTRE DOSSIER

OUR FILE NO.

NOTRE DOSSIER

153-2/2

File



LE REPRÉSENTANT DU CANADA AU CONSEIL DE
L'ORGANISATION DE L'AVIATION CIVILE
INTERNATIONALE

THE REPRESENTATIVE OF CANADA ON THE COUNCIL OF
THE INTERNATIONAL CIVIL AVIATION
ORGANIZATION

902 ÉDIFICE DE L'AVIATION INTERNATIONALE, MONTRÉAL

902 INTERNATIONAL AVIATION BUILDING, MONTREAL

TÉLÉPHONE: 879-4788

TELEPHONE: 879-4788

TO: *FLE*
FROM: *Hand*
SEP 3 1970
ATTN: *McLaur*

28 August 1970.

The Chairman,
International Transport Policy Committee,
Canadian Transport Commission,
Congill Building,
275 Slater St.,
Ottawa, Ont.

42-89-3-10A0
21-

Dear Sir:

Enclosed, for information, are two copies
of Doc. 8377 -LC/161 - "Legal Committee, 17th Session"
Minutes and Documents relating to the subject of
Unlawful Seizure of Aircraft.

Yours truly,

L.M.E. Brennan

L.M.E. Brennan,
Administrative Officer.

Encls.

c.c.: The Under-Secretary of State for Ext. Affairs,
→ Attention: Legal Division (2)

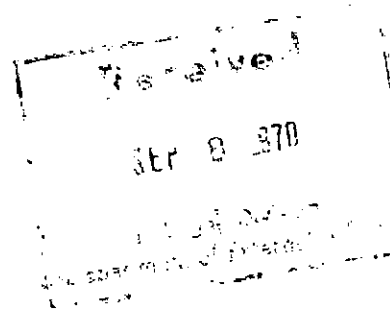
Administrator, Canadian Air Transportation (2)
Administration, Ministry of Transport

Department of Justice, (2)
Attention: Advisory & Intl. Law Section

Director, Legal Services & Counsel, (2)
Ministry of Transport

*Retained by
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CONFIDENTIAL

August 26, 1970

FILE

IAO 18th Assembly: Initiative Concerning Automatic
Election to the Council of First Category States.

12-8-9-3-10A0
21

TE (Morisset)
Justice (Gorham)

The USA Representative on the IAO Council, Mr. Butler, telephoned us on August 25 to raise the above question. We also understand that Mr. Collopy of the U.S. Embassy has recently been in touch with Miss Leggie of U.N. Division on this same matter. It would appear that some time before the 1968 Assembly in Buenos Aires, a Canadian official (the name of whom no one recalls) discussed with American authorities the question of proposing an amendment to the Chicago Convention (Article 50) which would have the effect of providing for the automatic election to the Council of first category states. As can be well understood, the USA strongly favours such an initiative but, for obvious reasons, could not themselves be directly involved in proposing such an amendment. The matter was not in fact raised at Buenos Aires and the USA is now interested in knowing if there is any chance it will be brought up at the 1971 Vienna Assembly.

2. It will be appreciated that this type of initiative would need careful study and, if such a decision is taken, should be proceeded with only after consultations with a number of other IAO Member States. In our view, this is a matter which might best be taken up by the Inter-Departmental Committee on Civil Aviation. We would, however, be grateful for your initial reaction to the possibility of Canada undertaking an initiative on this matter at the next Assembly, so as to enable us to give our interim comments to Mr. Butler.

EDWARD G. LEE

Legal Division

Mr. Smith

Can you examine the Chicago Convention (art 50) and discuss with me?

EXTERNAL AFFAIRS



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ICAO 18th Assembly: Initiative Concerning Automatic Election to the Council of First Category States.

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DATE August 26, 1970

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ENCLOSURES
Annexes

DISTRIBUTION

CTC (Morisset)
Justice (Soroka)

REC 1 Aug 28)

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EDWARD G. LEE

Legal Division

*B used
August
Morisset*

MESSAGE

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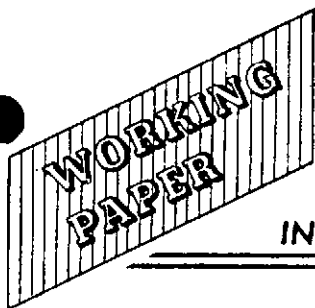
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SHORTLY.

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INTERNATIONAL CIVIL AVIATION ORGANIZATION

71ST SESSION OF THE COUNCIL

AIR TRANSPORT COMMITTEE

Subject No. 13: Work Programme of Council and its Subsidiary Bodies

SECOND ANNUAL REPORT ON THE STATUS OF IMPLEMENTATION OF THE
ORGANIZATION'S CURRENT WORK PROGRAMME IN THE AIR TRANSPORT FIELD

(Presented by the Director, Air Transport Bureau)

7
42-8-9-3-10A0
21

References: AT-WP/1016 (First Annual Report)
Doc 8723, A16-AD/1, pages 30-36 (Budget Estimates, 1969-1971)
Doc 8772, A16-EC (Report of the Economic Commission)
Doc 8770 (Assembly Resolutions in Force)
Doc 8675 (CARF) 1967 and Supplement 1 (Report of CARF Conference)
Doc 8718-C/975 (Council Statements on Charges)
Doc 8750-FAL/564 and Supplements 1 and 2 (Report of FAL VII)

Summary: This paper, in accordance with the Committee's decision of 8 November 1968 (AT-MIN.LXV-6), reports on the status of implementation of the Organization's current work programme in the air transport field.

Committee Action: The Committee may wish to take the action indicated in paragraph 5, page 12.

(12 pages)
E.F.S.

DISTR. 24/9 /70

AT-WP/1056

- 2 -

1. The Committee decided in November 1968 (cf. AT-MIN. LXV-6) that it would like to receive once a year, at its autumn session, a report on the Organization's work programme in the Air Transport field, describing what action had been taken or was planned. It was understood that such reports would be different from the regular progress reports presented at each session in that they would show items which were being kept under review or on which work had yet to be done as well as items on which progress had been made. At the same time it was recognized that the reports need only be on the specific items on the current work programme in the Air Transport field. Therefore this report makes no attempt to encompass all "continuing functions" contained in the broad three-year work programme set forth in the triennial budget estimates (Doc 8723) or to include items in the Joint Support field. The items in this report are shown under four main headings, i.e. General, Economic, Statistical and Facilitation Activities, but it should be recognized that the functions involved are not always completely separable (e.g. all General Activities relate to the other three subdivisions).

GENERAL ACTIVITIES

Inventory of Major Problems in the Air Transport Field (Origins: Economic Commission Report, Doc 8772, page 10, paragraph 23:6.3)

2. The Economic Commission at the Sixteenth Session of the Assembly agreed that the Inventory of Major Problems in the Air Transport Field, presented in A16-WP/33, should, with appropriate modifications, be presented to each Session of the Assembly. An up-dated version of this inventory is being submitted to the Committee, in the form of a draft Assembly working paper, at the present session (AT-WP/1057).

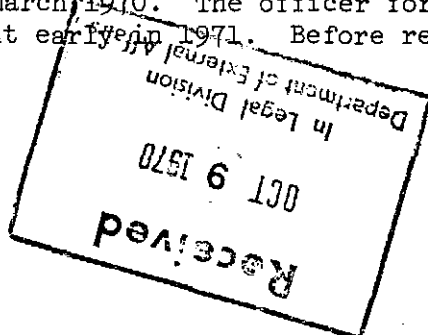
Air Transport Conferences (Origins: A15-18)

3. The Committee, at its 69th Session, considered a paper (AT-WP/1029) which examined the feasibility of implementing Resolution A15-18. It noted this paper, stating that it did not consider it appropriate to convene a worldwide air transport conference at that time, but nevertheless instructed the Secretariat to pursue its study of the Resolution and report on it later.

4. Also when considering AT-WP/1029 the Committee instructed the Secretariat to prepare a more detailed paper on air transport tariffs, one of the subjects suggested as a possible theme for an air transport conference under Resolution A15-18. Further action on this subject is reported in paragraph 11 below.

Regional Air Transport Officers (Origins: Clauses 2 and 3 of A16-23)

5. In accordance with clause 2 of Resolution A16-23 the functions of regional air transport officers were defined by Council (see Doc 8784-6, page 129) and officers were appointed to the Dakar and Lima offices in September 1969 and to Cairo in March 1970. The officer for the Bangkok office is expected to take up his appointment early in 1971. Before reporting to the regional office each officer has



spent two months at Headquarters for briefing and familiarization with the work of the Air Transport Bureau and the Organization as a whole. To meet the requirements of clause 3) of the Resolution a draft Assembly paper (AT-WP/1058), containing an evaluation of the effectiveness of all regional air transport officers and the extent to which their work conforms with the functions defined by the Council, will be presented to the Committee at the present session.

Relationship with ECAC (Origins: A10-5)

6. The Air Transport Bureau continues to maintain close liaison with ECAC and to provide secretariat and other services in accordance with the terms of Resolution A10-5. The Director of the Air Transport Bureau served as Secretary General of the Seventh Triennial Plenary Session of ECAC, which was held in Strasbourg from 29 June to 4 July 1970 (for the report of the session see Doc 8887, ECAC/7). At the request of ECAC, the Air Transport Bureau prepared a study of air freight for the Europe-Mediterranean region (Circular 97-AT/18) and participated in the meetings of the ECAC group of experts on air freight and Economic Committee/I when this study was examined.

Relationship with AFCAC (Origins: A16-23, Clause 1, Council LXVI-6)

7. Under Clause 1 of Assembly Resolution A16-23 action has been taken to support the creation of the African Civil Aviation Commission (AFCAC) which was established provisionally in January 1969 and assistance to AFCAC was authorized by Council on 28 February 1969 (LXVI-6). The air transport officer in the Dakar Office serves as Secretary of AFCAC and is helped in this task by the officer in the Cairo Office. He also receives any necessary expert advice from Headquarters on air transport, financial and administrative questions.

ECONOMIC ACTIVITIES

Development of International Air Passenger Travel (Origins: A15-17)

8. Three studies in this series have now been issued - the study for the African region (Circular 80-AT/13) in June 1967, that for the Latin American region (Circular 90-AT/16) in July 1968 and that for the Middle East region (Circular 93-AT/17) in September 1969. Work on the study for the Far East region will be initiated by the end of the year. AT-WP/1049, to be submitted to the Committee at the present session, contains a draft Assembly working paper suggesting guidelines and a future programme for both air passenger and air freight studies.

Regional Air Freight Studies (Origins: A14-34)

9. Under the terms of Resolution A14-34 regional air freight studies are undertaken at the request of a number of States. The first study conducted under these terms covered the Latin American Region and was issued in June 1965 (Doc 8487-AT/720). The study for the Europe-Mediterranean region was issued in

AT-WP/1056

- 4 -

May 1970 (Circular 97-AT/18) and the draft of the study for Africa, covering air mail as well as air freight, will be presented to the Committee at the present session (AT-WP/1046). In the working paper (AT-WP/1049) for the next session of the Assembly, it is suggested that additional freight studies be planned for preparation in 1973 and 1974.

Studies of the Economics of Route Facilities - SERF

(Origins: A14-31, CARF Recommendation 3, Council Statement: Doc 8718)

10. The programme of studies of the economics of route facilities has been completed and reviewed by the SERF Panel at its Fifth Meeting (20-31 July 1970). The report of this meeting and a Global Review of the Economic Situation of En Route Air Navigation Facilities and Services, will be submitted to the Committee at the present session (AT-WP/1053 and AT-WP/1054). The question of the economics of route facilities and services has been included in the draft provisional agenda for the 18th Session of the Assembly and will be suitably documented to permit the Assembly to review the results of the SERF programme.

Studies of tariffs in international air transport (Origins: ATC Decisions AT-LXIX-7, AT-LXX-2)

11. During the Committee's consideration of the feasibility of implementing Resolution A15-18, air transport conferences (see paragraphs 3 and 4 above), it examined the suggestion that one of the roles for a conference might be to establish the terms of reference of a programme of studies on tariffs. The Committee directed the Secretariat to submit a more detailed paper describing such studies and this paper (AT-WP/1039) was submitted to the Committee at the 70th Session. Recognizing that there might be interest among States in receiving ICAO assistance in the form of studies of international air transport tariffs, the Committee recommended to Council that this question be documented for the 18th Session of the Assembly. The Council agreed with this recommendation and the subject will be documented under the Assembly agenda item dealing with the tentative inventory of major problems associated with the development of air transport (see paragraph 2 above).

Airport and Route Facility Workshop Meetings

(Origins: CARF Recommendation 14; Council Decision C-LXIX-18)

12. During the 68th Session the Committee received a report (AT-WP/1014) on experience with informal workshop meetings on economic aspects of airport management and noted plans for a future programme of these meetings. An invitation has been received from the Government of Yugoslavia to hold a meeting in that country in November 1970 and it is also tentatively planned to hold one in the Dakar regional office towards the end of this year. Also the Council has agreed (C-LXIX/18) that the Committee should consider a programme of informal workshops on the economic aspects of the operating and cost management of en route facilities. The suggested future programme of both these types of workshop is presented in AT-WP/1047, the forecast of air transport meetings for the 1971-1974 period.

ICAO Council dated
August 24, 1970, distributed
September 24.

Development of Airport Revenues from Concessions, Rentals and Free Zones
(Origins: CARF Recommendation 13)

13. Information has been collected from States on the experience of their airports in administering concessions. A selection of such of this material as may be generally useful to airport authorities is being made by the Secretariat and is expected to be circulated to States as a Secretariat publication by the end of this year.

Economic Value of Facilities - Methods of Cost/Benefit Analysis
(Origins: A15-5)

14. Since the previous report in AT-WP/1016 (paragraph 15), additional material has been collected. As other higher priority commitments have prevented officers of the Air Transport Bureau from devoting much time to study of this question, the assistance of a consultant is being arranged in order to complete this task and prepare a report. It is hoped to issue this report as a Secretariat publication by the end of the year.

Forecasts and Forecasting Methods (Origins: A16-22)

15. Resolution A16-22, clause 2, calls for the collection and development of material on current forecasting methods and possibly an exchange of views among bodies concerned with air transport forecasting. As part of the planning for this work, including the possible holding of workshops, discussions have been held with a number of interested individuals in governments, airlines, aircraft manufacturing companies and universities. These individuals have unanimously favoured the undertaking. Working material is being collected but the project has been somewhat delayed as a result of difficulties experienced in recruiting the P-4 officer approved for this task. This officer is expected to report for duty soon. Further work on clause 1 of A16-22, which calls for the preparation of forecasts of future trends and developments in civil aviation, awaits the advancement of the work under clause 2.

International Air Mail (Origins: Resolution A16-26)

16. Liaison with the Universal Postal Union is maintained and an ICAO observer attended that part of the Sixteenth Universal Postal Congress (Tokyo, Oct/Nov. 1969) at which air mail questions were discussed. To meet the customary request of the UPU, in March 1970 the Secretariat sent them statistical tables containing financial and traffic information on scheduled international airlines for 1968. The Secretariat has also sought the comments of the UPU on the air mail portion of the African air freight and air mail study. A request from the UPU that ICAO be associated with the preparation of a UPU study on the future outlook of air mail is being submitted to the Committee at the present session (AT-WP/1059).

Triennial Review of the Economic Situation of Air Transport
(Origins: Report of the Economic Commission, 16th Session, Doc 8772, page 2)

17. The requirement of the Sixteenth Session of the Assembly that a Review of the Economic Situation of Air Transport similar to those issued as Circular 73-AT/10 (1965) and 89-AT/15 (1968) should be prepared for each Session of the Assembly is being kept under review. Work on the next review will begin early in 1971.

Economic Implications of the Introduction of Supersonic and Other New Aircraft Types (Origins: A14-7 (Clause 3(2)); A14-33; A16-5)

18. The economic implications of the introduction into commercial service of various new aircraft types are kept continually under review and are partially dealt with in some air transport publications. More concentrated treatment of this subject is not possible at the present time in view of the priorities assigned to other items on the work programme.

Tariff Enforcement (Origins: A16-24)

19. On the basis of the Council's decision of 5 June 1970 (C-LXX-11), draft Assembly documentation will be prepared by the Secretariat for submission to the Committee at the 72nd Session. In order to prepare the preliminary study on procedures for international co-ordination on tariff enforcement which is to be included in this documentation, a questionnaire has been sent to States (State Letter EC 2/20-70/136 of 29 June 1970). The Assembly is expected to consider this question under the agenda item of the Economic Commission dealing with the tentative inventory of major problems associated with the development of air transport.

International Air Services Transit Agreement (Origins: A16-25)

20. In Resolution A16-25 the Assembly requested the Secretary General to ask Contracting States to inform him of the measures taken or contemplated by them concerning participation in the International Air Services Transit Agreement. The appropriate letter (O 1/5-68/194) was sent to States on 21 November 1968. A number of replies have been received, some indicating the possibility of participation in the Agreement. A draft report to the Assembly on this matter will be submitted to the Committee at the 72nd Session.

Registration of Agreements and Arrangements (Origins: A16-32, Convention, Article 83)
Joint Ownership and Operation of International Air Services (Origins: A16-33)

21. Clause 4) of Resolution A16-32 directs the Council to distribute material received from States on various types of co-operative agreement and arrangement, while clause 1) of Resolution A16-33 invites Contracting States with experience in various forms of joint operation of international air services to submit information on their experience to Council. In accordance with these provisions:

- a) the Secretariat expects to publish, by the end of the year, information received with respect to three major international operating enterprises, Air Afrique (Circular 98-AT/19), SAS (Circular 99-AT/20) and East African Airways (Circular 100-AT/21);
- b) the Committee has instructed the Secretariat (AT-LXIX-1) to request from States information on existing forms of technical and commercial co-operation, believing that it would be desirable to undertake a study of this provided sufficient useful substantive material is received. State Letter EC 2/9-70/30, dated 17 March 1970, made this request to States and a paper on the feasibility of undertaking this study will be submitted to the Committee at the present session.

Commercial Rights in International Air Transport
(Origins: A7-15, A10-32, A12-18)

22. The various aspects of commercial rights in international air transport are being kept under review in accordance with the terms of Assembly Resolutions A7-15, A10-32 and A12-18. Apart from this, no action appears necessary at present.

Aircraft Noise in the Vicinity of Airports (Origins: A16-3)

23. The work programme on the question of aircraft noise adopted following the Special Meeting on Aircraft Noise of November-December 1969 includes certain items with important economic aspects. The Air Transport Bureau is expected to serve the first meeting of the Committee on Aircraft Noise (28 September - 2 October 1970) but staff resources do not allow it to assist in preparations for the meeting nor, without additional help, in any follow-up work emanating from the Committee.

Economic Information on Warsaw/Hague Liability Limits (Origins: Council LXII-19)

24. As mentioned in the previous report (AT-WP/1016, paragraph 25), economic data relating to the Warsaw/Hague liability limits was made available to the Legal Committee, as directed by the Council. It is expected that in the 1972-1974 Triennium the Secretariat will be requested to undertake some studies of the economic aspects of liability insurance.

STATISTICAL ACTIVITIES

25. Many recommendations which affect the Organization's statistical work programme were made by the Fifth Session of the Statistics Division in its report which is being presented to the Committee at the present session in AT-WP/1048. The following paragraphs cover items on which specific directives have been given by the Assembly.

AT-WP/1056

- 8 -

Statistics Division, Statistical Panel and other Statistical Meetings
(Origins: A16-34)

26. Recommendations of the Fifth Session of the Statistics Division regarding the next session of the Division and the work of the Statistical Panel will be presented to the Committee at the present session in AT-WP/1048. Since the previous report (AT-WP/1016, paragraph 28) two informal workshop meetings have been held in Africa, at the request of AFCAC and it is hoped to arrange one in either Central or South America early in 1971 or at the end of this year.

Filing and Processing of Air Transport Reporting Forms (Origins: A4-19)

27. In addition to the Secretariat's continuing efforts through correspondence, missions and workshop meetings to improve the filing of statistics in accordance with the terms of Resolution A4-19, increased use is being made of the services of the Regional Offices to promote timely and complete reporting. Each ICAO Representative regularly receives information on the state of reporting for all States, airports and airlines. As a complement to this, and as reported to the Committee during the 69th Session (AT-WP/1033), steps are being taken to expedite the processing of statistical publications within ICAO Recommendations of the Fifth Session of the Statistics Division, seeking to simplify filing and improve processing, will be presented to the Committee at the present session (AT-WP/1048).

Statistics on Non-scheduled Commercial Air Transport (Origins: A16-21)

28. The ad hoc statistical survey of non-scheduled commercial air transport with large aircraft, called for by clause 1) of Resolution A16-21, will be presented to the Committee at the present session (AT-WP/1055). Recommendations of the Fifth Session of the Statistics Division concerning the regular collection envisaged in clause 2) will be presented to the Committee in AT-WP/1048.

Information on Aviation Activities other than Commercial Air Transport
(Origins: Economic Commission Report, 16th Session, page 6, paragraph 23:4.3; A15-22)

29. In accordance with the request of the Sixteenth Session of the Assembly, information on general aviation has been included in Chapter 1 of the Annual Reports of the Council for 1968 and 1969. The question of statistics on non-commercial aviation as a whole, raised by Resolution A15-22, is the subject of a recommendation of the Statistics Division to be presented to the Committee in AT-WP/1048.

Passenger Origin and Destination Statistics (Origins: Budget Estimates 1969-1971, Doc 8723, page 33, paragraph 73(iii))

30. States in the Americas (North, Central and South America) have been consulted regarding their final decision on participation in a scheme for the collection and analysis of origin and destination statistics for this region. The replies received indicated that there is not sufficient interest in this scheme.

- 9 -

FACILITATION ACTIVITIES

The development of International Standards and Recommended Practices on Facilitation (Annex 9 to the Convention) to meet the changing needs of International Civil Aviation (Origins: Page 3-1 of Doc 8750; Doc 8723; etc.)

31. The Secretariat continues to collect relevant material and to follow up on developments in the FAL field in various countries so as to be in a position to suggest certain action to the Eighth Session of the FAL Division, expected to convene in 1972, e.g. amendments to Annex 9 and Recommendations not affecting the Annex.

Encouragement and provision of assistance to Contracting States in the implementation of Annex 9 - International Standards and Recommended Practices on Facilitation (Origins: Clause 6 of A16-30; Doc 8723; Recommendation No. B-21 of FAL/7; etc.)

32. Close liaison is being maintained with Contracting States for the purpose of giving encouragement and assistance to their efforts towards greater implementation of Annex 9, Sixth Edition. This is done mainly through correspondence but also through visits from staff members of the regional offices and, where possible, FAL experts from Montreal. Since the beginning of September 1969, Facilitation field (implementation) work was carried out by Headquarters FAL experts in 14 Contracting States in Africa and Latin America. Differences notified to the Organization were published in the Supplement to Annex 9.

Encouragement to Contracting States in the implementation of FAL recommendations other than those affecting Annex 9 (Origins: Circular 67; Supplements to Doc 8750; Doc 8723, etc.)

33. Similar efforts to those mentioned in the preceding paragraph are being made to help States in their endeavours to achieve wider acceptance of FAL recommendations other than those affecting Annex 9. Replies received from a number of States and international organizations to some of these recommendations of the Seventh FAL Division were analyzed and may form the basis for possible further action by the next FAL Division.

Co-operation with other world-wide and regional organizations (Origins: A16-29; Doc 8723; etc.)

34. Co-operation is maintained on a continuing basis with other international organizations on FAL matters by correspondence and, where necessary, by attendance at meetings of such organizations where FAL subjects are discussed. Reports on attendance at such meetings are made to Council each quarter. As a result of ECAC's 1969 FAL Committee Meeting, replies were received from most ECAC Member States concerning the status of implementation of the Meeting's 16 FAL Recommendations, in their respective territories. These replies were compiled in an information paper for review at the next FAL Committee Meeting.

AT-WP/1056

- 10 -

Preparation for the 8th Session of the Facilitation Division (Origins: Doc 8723; AT-MIN. LXV-9)

35. Although detailed preparation for the 8th Session of the FAL Division will not take place until 1971, the Secretariat, as mentioned above, continues to collect and analyse material for eventual consideration by the next Session of the Division. The Secretariat has also been requested to report to the Air Transport Committee in due course so that the Committee might be in a position to draw up criteria for the next Session of the Facilitation Division by which it would determine what type of material should be included as Recommended Practices in Annex 9 and what type of material should be considered supplementary and placed in attachments to the Annex.

Unlawful Interference with International Civil Aviation (Origins: A17-14; A17-10; A17-18; A17-12; etc.)

36. A number of tasks have been added to the work programme as a result of the decisions of the Seventeenth Session (Extraordinary) of the Assembly. Letters to States and international organizations have been dispatched in connection with Resolutions A17-14, A17-10 and A17-12. In connection with Resolution A17-14, progress reports will be required for the Council's 72nd Session. Under Resolution A17-10 a Manual on Security will need to be developed and maintained (with assistance from ANB on OPS/AIR and AGA aspects). Also, action is required on the development and incorporation, as appropriate, of the material in Appendices A and B to that Resolution as Standards, Recommended Practices and Procedures in Annex 9 or in a new Annex or other regulatory documents or guidance material of the Organization. Further, work needs to be undertaken (in co-ordination with AGA) with respect to Resolution A17-18. Additionally, assistance will need to be given, as necessary, in connection with (a) Resolution A17-12 and (b) the Committee on Unlawful Interference.

Facilitation problems arising from the increase in traffic and the introduction of new types of aircraft (Origins: Doc 8723; A16-28; A16-31; Chapter 6 of Annex 9; etc.)

37. The Secretariat keeps close watch on developments particularly as regards facilities and services at international airports and, through correspondence, the provision of chapters on facilitation for regional economic studies, visits to States, etc., draws the attention of States to the need for special efforts to meet the problems arising from increasing traffic and the introduction of new types of aircraft.

Studies aimed at developing uniform signs and symbols for use at international airports (Origins: Doc 8723)

38. Following Council's action of 10 March 1970 (LXIX-9) on this subject, the Secretariat has taken all necessary steps for the publication, in the three ICAO languages, of a Document containing the signs and explanatory text thereto. This Document is expected to be ready for distribution by mid-September.

- 11 -

Measures aimed at obtaining maximum compliance with Council's 1966
Taxation Resolution and Recommendations (Origins: Doc 8723;
para. 23;2.3.1 of Economic Commission's Report, 16th Assembly)

39. Further efforts were made, by correspondence and on the occasion of visits to States, to obtain a higher degree of implementation of Council's Resolutions/Recommendation on Taxation as published in Doc 8632-C/968, as well as communications from those States which had not already notified ICAO concerning the extent to which they had complied with the Resolutions/Recommendation in question. All replies received were published in the Supplement to Doc 8632-C/968.

Special facilitation for non-scheduled and private flying operators
(Origins: Clause 11 of A16-28; Doc 8723; Chapter 2H of Annex 9; etc.)

40. The Secretariat continues to keep au courant with the growth of non-scheduled and private flying and the particular FAL problems experienced in these operations with a view to proposing ameliorative action to the next Session of the FAL Division.

Panel on Passport Cards (Origins: Recommendation No. B-2 of FAL/7)

41. The Panel on Passport Cards, which was established pursuant to Recommendation No. B-2 of the 7th Session of the FAL Division, is continuing its work by study and correspondence. The Panel held its second meeting in June 1970 and reported to the present Session of the Committee (AT-WP/1051) that it expects to meet on two more occasions before completing the tasks assigned to it.

ICAO Facilitation Area Meetings (Origins: Clause 7 of A16-30)

42. The Council approved the concept of ICAO FAL Area Meetings as a means of improving the FAL situation amongst neighbouring States. For planning purposes in the programme of meetings for 1971-1974 (AT-WP/1047) two meetings have been tentatively scheduled for 1973-1974, both of which will entail preparatory and follow-up action as well as ICAO's assistance during the meetings.

Review of the status of implementation of Annex 9 (Origins: Clause 4 of A16-27)

43. Pursuant to Clause 4 of Resolution A16-27, the Council is expected to review the status of implementation of Annex 9, 6th Edition, at its current Session. To assist the Council in this task, the Air Transport Committee will wish to give this matter prior consideration, on the basis of AT-WP/1052 which was prepared recently by the Secretariat for this purpose.

AT-WP/1056

- 12 -

Documentary requirements in relation to Article 29 of the Convention
(Origins: Para. 25:11 of Economic Commission's Report, 16th Assembly)

44. The Assembly agreed that Article 29 of the Convention should be amended at such time as the Convention as a whole was being generally amended. The Air Transport Committee has indicated that this subject should simply be kept under review by the Secretariat and brought to the attention of the Committee and Council when the need for action arises.

ACTION BY THE COMMITTEE

45. The Committee may wish to note the status of implementation of the Organization's current work programme in the Air Transport field, as reported above, and to offer its comments thereon.

- END -



YOUR FILE NO.
VOTRE DOSSIER
OUR FILE NO.
NOTRE DOSSIER

Handwritten initials and numbers: 123, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

LE REPRÉSENTANT DU CANADA AU CONSEIL DE
L'ORGANISATION DE L'AVIATION CIVILE
INTERNATIONALE

902 ÉDIFICE DE L'AVIATION INTERNATIONALE, MONTRÉAL

TÉLÉPHONE: 879-4788

THE REPRESENTATIVE OF CANADA ON THE COUNCIL OF
THE INTERNATIONAL CIVIL AVIATION
ORGANIZATION

902 INTERNATIONAL AVIATION BUILDING, MONTREAL

TELEPHONE: 879-4788

24 August 1970.

Handwritten file number: 42-89-3-1CAO
Handwritten number: 21

The Chairman,
International Transport Policy Committee,
Canadian Transport Commission,
Congill Bldg.,
275 Slater St.,
Ottawa, Ont.

Stamp: FILE
SEP 1 1970
Handwritten signature: M. Clark
Handwritten initials: OR

Dear Sir:

Enclosed, for information, are two copies of
the following:

C-WP/5206 - Participation of States in the diplomatic
Conferences related to Warsaw - The Hague
and Unlawful Seizure.

Yours truly,

Handwritten signature: L.M.E. Brennan

L.M.E. Brennan,
Administrative Officer.

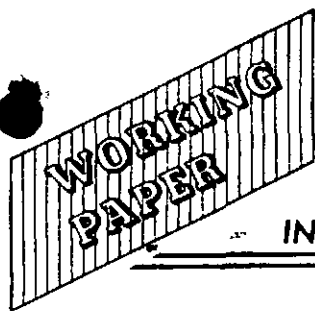
Encls.

c.c.: Administrator, Canadian Air Transportation (1)
Administration, Ministry of Transport

The Under-Secretary of State for Ext. Affairs,
Attention: Miss Loggie, United Nations Div. (1)
→ Legal Division (1)

Handwritten initials: FNE





C-WP/5206
19/8/70

INTERNATIONAL CIVIL AVIATION ORGANIZATION

COUNCIL - SEVENTY-FIRST SESSION

Subject No. 16.1: Reports from the Legal Committee

Subject No. 24.33. Action on Assembly Resolutions and Decisions

PARTICIPATION OF STATES IN THE DIPLOMATIC CONFERENCES RELATED TO WARSAW - THE HAGUE AND UNLAWFUL SEIZURE

(Presented by the Secretary-General)

References:

1. Revised Draft C-Min. LXX-12 (Closed)
2. And CORRIGENDUM
2. C-WP/5138,
and ADDENDUM
3. Documents on the attached list.

...

1. On 8 June 1970 the Council discussed the subject of additional invitations to the diplomatic conferences relating, respectively, to the revision of the Warsaw Convention and a convention on unlawful seizure of aircraft. The matter had been raised by the Czechoslovak Socialist Republic in C-WP/5138 and the Addendum thereto. Consideration of the subject was deferred until the beginning of the Seventy-first Session.

2. The Assembly at its Seventeenth Session (Extraordinary) also discussed the question of participation of States in the diplomatic conference which is to consider, with a view to adoption, a draft convention on unlawful seizure of aircraft. In this matter the Assembly adopted Resolution A17-3, the pertinent clause thereof, namely, Clause (1), reads as follows:

"REQUESTS the Council when further considering arrangements for the diplomatic conference to take account of the views expressed in the Assembly on the participation of States."

3. The views expressed in the Assembly on the participation of States in the diplomatic conference on the subject of unlawful seizure of aircraft will be found in the documents shown on the attached list.

DISTR. 18/8 /70

C-WP/5206
Attachment

- 3 -

ATTACHMENT

1. Resolution A17-3, Resolving Clause (1) - See Preliminary Edition of Resolutions of the Seventeenth Session (Extraordinary) of the Assembly.
2. A17-WP/109, Report of Committee B on Sub-item b): Topic B. III - Paras. B. III: 2 to B. III: 14.
3. A17-WP/21 USA.
4. A17-WP/73 Redrafted text of resolution.
5. A17-WP/76 Yugoslavia.
6. A17-WP/90 Memorandum from Chairman of Committee B to the President of the Assembly.
7. A17-WP/80 Proposal by the Yugoslav Delegation for amendment of the third "Whereas" and the third and last operative clauses.
8. A17-WP/82 Alternative proposal by the Japanese Delegation with regard to the second operative clause.
9. A17-WP/105 Joint proposal by Delegations of Federal Republic of Germany, France, Italy, United Kingdom and United States proposing three amendments to the operative clauses.
10. Draft A17-Min. P/4, paragraphs 58 - 95.
11. Draft A17-Min. P/4, Part 2, paragraphs 1 to 55.

- E N D -



VOUS
VOTRE DOSSIER
OUR FILE NO.
NOTRE DOSSIER 1-17

LE REPRÉSENTANT DU CANADA AU CONSEIL DE
L'ORGANISATION DE L'AVIATION CIVILE
INTERNATIONALE

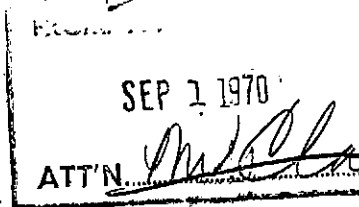
902 ÉDIFICE DE L'AVIATION INTERNATIONALE, MONTRÉAL

TÉLÉPHONE: 879-4788

THE REPRESENTATIVE OF CANADA ON THE COUNCIL OF
THE INTERNATIONAL CIVIL AVIATION
ORGANIZATION

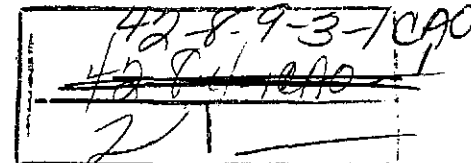
902 INTERNATIONAL AVIATION BUILDING, MONTREAL

TELEPHONE: 879-4788



21 August 1970.

The Chairman,
International Transport Policy Committee,
Canadian Transport Commission,
Congill Bldg.,
275 Slater St.,
Ottawa, Ont.



Dear Sir:

Attached are two copies of State Letter LE 4/30 -
70/181 of 14 August 1970, concerning Assembly Resolution
A17-9 and requesting that States note the possibility of
making use of the good offices of ICAO.

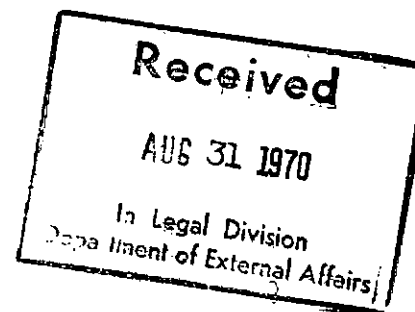
Yours truly,

L.M.E. Brennan,
Administrative Officer.

Encls.

c.c.: The Under-Secretary of State for Ext. Affairs, (2)
Attention: United Nations Division (2)
→ Legal Division
Director, Legal Services & Counsel, (2)
Ministry of Transport
Administrator, Canadian Air Transportation (2)
Administration, Ministry of Transport
Department of Justice, (2)
Attention: Advisory & Intl. Law Section
The Deputy Minister, Dept. of Finance, (2)
Attention: International Programmes Division

FILE



ORGANISATION DE L'AVIATION
CIVILE INTERNATIONALEORGANIZACIÓN DE AVIACIÓN
CIVIL INTERNACIONAL

INTERNATIONAL CIVIL AVIATION ORGANIZATION

INTERNATIONAL AVIATION BUILDING
1080 UNIVERSITY STREET
MONTREAL 101, P.Q. CANADA

(CS)

WHEN REPLYING, PLEASE QUOTE:
RÉFÉRENCE À RAPPELER DANS LA RÉPONSE:
INDÍQUESE EN LA RESPUESTA ESTA REFERENCIA:

LE 4/30 - 70/181

14 August 1970


Subject: Resolution A17-9
Action Required: Note possibility of making
use of the good offices of ICAO

Sir,

...

I have the honour to transmit herewith a copy of Resolution A17-9, entitled "Good Offices of ICAO", which was adopted by the Assembly at its Seventeenth Session (Extraordinary) held from 16 to 30 June 1970. It may kindly be noted that the Assembly, referring to the possibility of ICAO's extending its good offices in certain circumstances to States involved in an act of unlawful interference with international civil aviation, invites Contracting States to take advantage of such possibility when they consider that the Organization's good offices would be useful.

Please accept, Sir, the assurances of my highest consideration.


Assad Kotaite
Secretary General

Enclosure:
Copy of Resolution A17-9

ATTACHMENT to State letter LE 4/30 - 70/181

A17-9: Good offices of ICAO

WHEREAS in paragraph 6 of the Appendix to the Council's resolution of 10 April 1969 reference is made to the possibility of ICAO's extending its good offices in certain circumstances to the States involved in an act of unlawful interference with international civil aviation;

WHEREAS the good offices ICAO may make available in given cases may be extremely useful, on the understanding that they may not be made available in cases that may involve the Organization in questions of a political nature or in disputes between two or more States; and

WHEREAS advantage has not been taken so far of the possibility of using good offices;

THE ASSEMBLY:

- (1) DRAWS THE ATTENTION of Contracting States to the possibility of making use of the good offices of ICAO and invites them to take advantage of it whenever they consider the Organization's good offices would be useful;
- (2) REQUESTS the Council to urgently consider the circumstances in which good offices may be made available to Contracting States and the procedure to be followed when they are made available; and
- (3) EMPHASIZES that the decision on whether good offices should be made available in a specific case should be taken by the Council or by the President of the Council on delegated authority when the Council is not in session.

TEL.: 866-2551

ORGANISATION DE L'AVIATION
CIVILE INTERNATIONALE



ORGANIZACIÓN DE AVIACIÓN
CIVIL INTERNACIONAL

INTERNATIONAL CIVIL AVIATION ORGANIZATION

INTERNATIONAL AVIATION BUILDING
1080 UNIVERSITY STREET
MONTREAL 101, P.Q. CANADA

(CS)

WHEN REPLYING, PLEASE QUOTE:
RÉFÉRENCE À RAPPELER DANS LA RÉPONSE:
INDIQUESE EN LA RESPUESTA ESTA REFERENCIA:

LE 4/30 - 70/181

14 August 1970

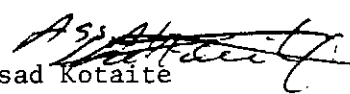
Subject: Resolution A17-9

Action Required: Note possibility of making
use of the good offices of ICAO

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Assad Kotaite
Secretary General

Enclosure:

Copy of Resolution A17-9

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- (2) REQUESTS the Council to urgently consider the circumstances in which good offices may be made available to Contracting States and the procedure to be followed when they are made available; and
- (3) EMPHASIZES that the decision on whether good offices should be made available in a specific case should be taken by the Council or by the President of the Council on delegated authority when the Council is not in session.

File ✓
Diary
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FIS - Information Division

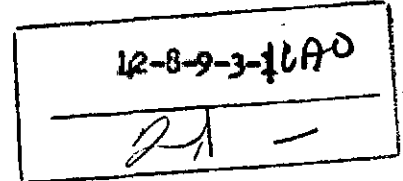
UNCLASSIFIED

FIE - Legal Division

August 17, 1970

Your Memorandum of August 11, 1970

Monthly Bulletin: Article on ICAO Assembly.



...

Attached herewith is the text of an article prepared in this Division on the subject of The XVIIth (Extraordinary) Assembly of the International Civil Aviation Organization.

CUN

M. D. COPITHORNE

Legal Division

File
Diary
Div

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THE XVIITH (EXTRAORDINARY) ASSEMBLY OF THE
INTERNATIONAL CIVIL AVIATION ORGANIZATION

At the request of 11 European Member States, (1) supported by a large number of other Members of the Organization - including Canada - ICAO convened the XVIth (Extraordinary) Assembly at its Montreal headquarters from June 16 to 30, 1970. This special Session of the Assembly was convened primarily for the purposes of taking up the serious problems which pose increasingly grave threats to international air safety. Canada and 91 other countries were represented, as were 13 inter-governmental and other international organizations. The Canadian Delegation was Headed by the Assistant Deputy Minister (General) of the Ministry of Transport, Mr. Gilles Sicotte, and was composed of officials from the Ministry of Transport, the Department of Justice and the Department of External Affairs.

The following Agenda was adopted by the Assembly:

Development of adequate security specifications and practices, for application by ICAO States in international civil aviation, aimed at the protection of air passengers, civil aviation personnel and civil aircraft by:

- a) preventing criminal action of any kind that may endanger the safety of air transport; and
- b) consideration of arrangements under which those responsible for criminal actions endangering civil air transport can be brought to justice.

.....2

(1) Austria, Belgium, Denmark, Federal Republic of Germany, Finland, Netherlands, Norway, Spain, Sweden, Switzerland, United Kingdom.

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In order to organize the volume of work before the Assembly in the most practical and effective manner, 3 committees of the whole were established at the outset - (a) an Executive Committee (which generally met in closed sessions) to deal with questions having political aspects; (b) a Legal Committee; and (c) a Technical Committee. After each individual item had been fully discussed in Committee and an agreed recommendation, in the form of a Resolution, had been arrived at, it was referred to Plenary for discussion and formal adoption. More than 150 Working Papers were submitted to the appropriate body for consideration by national Delegations, observer Delegations from international organizations, the ICAO Secretariat and the various Committees themselves.

The Canadian Delegation was particularly concerned with 3 major items: (1) the "Solemn Declaration" by the Assembly on unlawful interference with international civil aviation; (2) the return of hijacked aircraft and their crews, passengers and cargoes; and (3) consideration of the "Canadian Discussion Paper on Linking Bilateral Air Agreements to ICAO International Conventions Relating to Unlawful Interference with Civil Aviation".

(1) The Solemn Declaration

Canada and 6 other countries⁽²⁾ jointly introduced a Resolution, containing a Solemn Declaration, in the Executive Committee and cooperated closely in a successful effort to secure its unanimous adoption by the Assembly. The final text of the Resolution (which is generally becoming known as the "Montreal Resolution") is attached as Appendix A. It consists of two parts: (I) the first in standard resolution language condemns all acts of violence against (a) aircraft

.....3

(2) Guatemala, India, Japan, Senegal, Switzerland, Tanzania

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aviation personnel and passengers engaged in international civil air transport; and (b) against civil airports and facilities used by international civil air transport; and urgently calls upon States (c) not to use, under any circumstances, acts of violence against such transport, civil airports and other air transport facilities; and (d) pending the coming into force of appropriate international conventions, to take effective measures to deter and prevent acts of violence and prosecute those who commit them. (II) The second part is in the form of a Solemn Declaration which (1) deplores acts against international air safety; (2) expresses regret for loss of life, injury and damage; (3) condemns acts of violence; (4) recognizes the need for international cooperation; (5) requests concerted international action to suppress unlawful acts; and (6) requests application, as soon as possible, of the Assembly's decisions and recommendations to prevent and deter such acts.

(2) Return of Hijacked Aircraft, their Crews, Passengers and Cargoes.

Seven Delegations, (3) including the Canadian, submitted a Resolution on this question to the Executive Committee which subsequently recommended it to Plenary. As unanimously adopted by the Assembly, the Resolution - attached as Appendix B - urges that "all unlawfully seized aircraft and their cargoes be returned to the persons lawfully entitled to possession and all their passengers and crews be permitted

(3) Belgium, Canada, Japan, Korea, Malaysia, Sierra Leone, Switzerland

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to continue their journey as soon as practicable."

(3) Canadian Discussion Paper on Linking Bilateral Air
Agreements to ICAO Conventions

At the beginning of the Session, the Canadian Delegation requested that a working document setting out the text of a "Canadian Discussion Paper on Linking Bilateral Air Agreements to ICAO International Conventions Relating to Unlawful Interference with Civil Aviation" - attached as Appendix C - be made available to all Delegations participating in the Assembly. After discussion in the Legal Committee, the Resolution proposed by Canada - attached as Appendix D - was adopted unanimously by the Assembly. It requests the ICAO Secretariat to circulate the Discussion Paper to all Member States of the Organization for study, and requests the Council of ICAO to refer it to the appropriate body for thorough consideration of the subject matter, in connection with the development of international law to deal with acts of unlawful interference with international civil aviation.

Other Results of the Assembly

A number of substantive resolutions on security and safety procedures, initially considered in the Technical Committee, were also adopted by the Assembly. These will be receiving the careful attention of the Government departments and appropriate agencies of all Member States of the Organization which are concerned with these aspects of civil aviation. In addition another important Resolution, attached as Appendix E, directing the ICAO Legal Committee to prepare a new draft

convention on acts of unlawful interference against international civil aviation (other than hijacking) was proposed by the United Kingdom and 11 other States.⁽⁴⁾

Conclusions

Because of the large number of Delegations in attendance, the thorough discussion of the most serious forms of unlawful interference with international civil aviation which today prejudice international air safety, and the unanimous adoption of significant Resolutions, it is generally agreed that the Extraordinary Session of the Assembly achieved a fair measure of success. As a direct result of the work of the Assembly, progress is being made in several areas related to the general subject of unlawful interference with aviation. The 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft is continually gaining wider acceptance;⁽⁵⁾ the draft Convention on Unlawful Seizure of Aircraft (Hijacking), prepared by ICAO, is to be the subject of a Diplomatic Conference at the Hague December 1 to 16, 1970; the 18th Session of the ICAO Legal Committee is scheduled to meet in London⁽⁶⁾ September 29 to October 13 to draft a new convention on other forms of unlawful interference with civil aviation; and the ICAO Secretariat will be formally requesting information from the Governments of Member States as to the implementation of the Resolutions adopted by the 18th Assembly, sometime before the next regular Assembly which will be held in Vienna in June 1971.

.....6

(4) Argentina, Ethiopia, Guatemala, Ireland, Japan, Netherlands, New Zealand, Spain, Switzerland, the U.S.A., Zambia.

(5) Ratified by Canada on November 7, 1969. By August 1, 1970 26 States had become parties.

(6) or some other site in England.

BEST COPY AVAILABLE

-6-

All these activities on the international plane must, however, be supplemented by national efforts if air safety is to be maintained and strengthened. As the Delegate of Canada on the Assembly's Legal Committee emphasized in his June 26 statement introducing the Resolution on the Canadian Discussion Paper:

"It is the Canadian position that every effort must be made by this Organization to develop an effective international legal framework to deter and prevent acts of unlawful interference with international civil aviation."

the To this end the Government has made known its willingness to cooperate to the fullest extent with other States, and with agencies and organizations involved in civil aviation, and to participate actively in all international endeavours directed towards resolving grave problems which today threaten air safety throughout the world.

.....

000641

DECLARATION BY THE ASSEMBLY

WHEREAS international civil air transport helps to create and preserve friendship and understanding among the peoples of the world and promotes commerce between nations;

WHEREAS acts of violence directed against international civil air transport and airports and other facilities used by such transport jeopardize the safety thereof, seriously affect the operation of international air services and undermine the confidence of the peoples of the world in the safety of international civil air transport;

WHEREAS Contracting States, noting the increasing number of acts of violence against international air transport, are gravely concerned with the safety and security of such air transport;

THE ASSEMBLY

CONDEMNS all acts of violence which may be directed against aircraft, aircraft crews and passengers engaged in international civil air transport;

CONDEMNS all acts of violence which may be directed against civil aviation personnel, civil airports and other facilities used by international civil air transport;

URGENTLY CALLS

UPON States not to have recourse, under any circumstances, to acts of violence directed against international civil air transport and airports and other facilities serving such transport;

URGENTLY CALLS

UPON States, pending the coming into force of appropriate international conventions, to take effective measures to deter and prevent such acts and to ensure, in accordance with their national laws, the prosecution of those who commit such acts.

ADOPTS THE FOLLOWING DECLARATION:

The Assembly of the International Civil Aviation Organization

Meeting in Extraordinary Session to deal with the alarming increase in acts of unlawful seizure and of violence against international civil air transport aircraft, civil airport installations and related facilities;

Mindful of the principles enunciated in the Convention on International Civil Aviation;

Recognizing the urgent need to use all of the Organization's resources to prevent and deter such acts;

SOLEMNLY

- (1) Deplores acts which undermine the confidence placed in air transport by the peoples of the world.
- (2) Expresses regret for the loss of life and injury and damage to important economic resources caused by such acts.
- (3) Condemns all acts of violence which may be directed against aircraft, crews and passengers engaged in, and against civil aviation personnel, civil airports and other facilities used by, international civil air transport.
- (4) Recognizes the urgent need for a consensus among States in order to secure widespread international cooperation in the interests of the safety of international civil air transport.
- (5) Requests concerted action on the part of States towards suppressing all acts which jeopardize the safe and orderly development of international civil air transport.
- (6) Requests application, as soon as possible, of the decisions and recommendations of this Assembly so as to prevent and deter such acts.

.....

RETURN OF UNLAWFULLY SEIZED AIRCRAFT, THEIR CREWS, PASSENGERS AND CARGOES

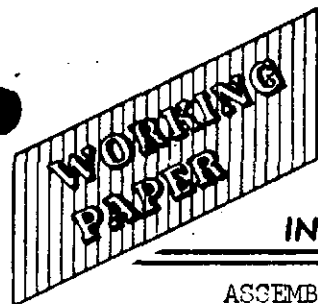
NOTING the principle that when an aircraft is unlawfully seized, the State in which the aircraft lands should permit its passengers and crew to continue their journey as soon as practicable and should return the aircraft and its cargo to the persons lawfully entitled to possession;

STRESSING the desirability of all aircraft and their cargoes unlawfully seized being returned to the persons lawfully entitled to possession and all their passengers and crews being permitted to proceed to their original destination;

THE ASSEMBLY URGES that all unlawfully seized aircraft and their cargoes be returned to the persons lawfully entitled to possession and all their passengers and crews be permitted to continue their journey as soon as practicable.

.....

A17-WP/49
15/6/70



INTERNATIONAL CIVIL AVIATION ORGANIZATION

ASSEMBLY - SEVENTEENTH SESSION (EXTRAORDINARY)

Sub-item b): consideration of arrangements under which those responsible for criminal actions endangering civil air transport can be brought to justice.

CANADIAN DISCUSSION PAPER ON LINKING BILATERAL AIR AGREEMENTS TO ICAO INTERNATIONAL CONVENTIONS RELATING TO UNLAWFUL INTERFERENCE WITH CIVIL AVIATION

(Presented by Canada)

1. The Extraordinary Session of the ICAO Assembly has been convened to take up the urgent and serious question of international air safety. It is the view of the Government of Canada that the growing concern with this matter on the part of the international community is encouraging a general climate of opinion conducive towards the consideration of new steps designed to prevent and deter acts of unlawful interference with international civil aviation. Nevertheless, it is recognized that, in the final analysis, only active international co-operation and a willingness on the part of all States involved in international civil aviation to accept and implement international legal obligations can lead to a resolution of the grave problems which are today threatening air transport throughout the world.

2. The Government of Canada has been considering the problems of enforcement of ICAO conventions relating to unlawful interference with civil aviation. To date, the only relevant treaty in force is the 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, to which Canada and 22 other States are parties at the present time. The draft Convention on Unlawful Seizure of Aircraft, which was approved by the Seventeenth ICAO Legal Committee meeting in February-March of this year, is scheduled to be the subject of a Diplomatic Conference at The Hague December 1 to 16, 1970. When this instrument comes into force, it too would fall into the category of ICAO treaties dealing with unlawful interference. Neither the Tokyo Convention nor the new draft Convention provide for legal sanctions in the event of non-compliance with their provisions. Refusal by Contracting States to implement their obligations under them would, of course, involve a breach in their international legal obligations; however, at present, no penalty is attached to such breach.

3. It is well known that scheduled international air transport is generally based on a framework of bilateral air agreements. These agreements govern air services by, and the landing rights of, designated air carriers. The Government of Canada is of the view, therefore, that directly linking bilateral air agreements to ICAO conventions relating to unlawful interference with civil aviation could provide a system of effective sanction for failure to implement international legal obligations under the conventions. This would also be an effective means of securing

(3 pages)
E.F.S.

DISTR. 15/6/70

the widest possible application of the provisions of these conventions, even with respect to States which, for special or particular reasons, do not wish to become parties to them.

4. This Discussion Paper is concerned with one class of ICAO conventions: those relating to unlawful interference with civil aviation, i.e. (a) unlawful seizure or hijacking and (b) armed attacks and sabotage. It is concerned with two classes of bilateral air agreements: (a) existing agreements and (b) future agreements. It is concerned with three classes of States: (a) ICAO Member States; (b) States which are or are likely to become parties to the Tokyo Convention (and which are likely to become parties to future relevant ICAO conventions) and (c) States which are not, and are not likely to become, parties to the Tokyo Convention (nor to future relevant ICAO conventions). While ICAO has competence only with regard to Member States of the Organization, implementation of ICAO decisions by Member States may well affect relations with non-Member States in the area with which the decisions are concerned.

A) Existing Bilateral Air Agreements

An ICAO decision to link bilateral air agreements to relevant conventions could require all Contracting States to provide for a special clause to be annexed (by Exchange of Notes) to all existing bilateral air agreements to which such a State was a party. This clause would set out the specific provisions - of the Tokyo Convention and any other relevant ICAO convention in force at the time of annexing the clause to the bilateral agreement - imposing obligations relating to unlawful interference with international civil aviation. The special clause would then stipulate that, notwithstanding any other provision in the bilateral agreement concerning termination or suspension, either party is permitted to suspend operation of the agreement one month after communication of notice to the other party, if the other party fails to implement its international legal obligations under the annexed clause.

B) Future Bilateral Air Agreements

An ICAO decision to link bilateral air agreements to relevant conventions could require all Contracting States to incorporate a special clause in all future bilateral air agreements to which such a State becomes a party setting out the provisions, of the Tokyo Convention and any other relevant ICAO convention in force at the time of conclusion of the bilateral agreement, imposing obligations relating to unlawful interference with international civil aviation. The special clause would then, as indicated above, permit suspension of operation of the bilateral agreement on one month's notice in the case of failure to implement international legal obligations under the clause.

5. Bilateral air agreements, between two States parties to the Tokyo Convention or to future relevant ICAO conventions which have annexed to them or incorporate conventional provisions would merely be re-affirming existing international legal obligations while, in accordance with the Canadian proposition, ensuring that a sanction is available for their breach. As regards Member States

which are not, and are not likely to become, parties to the Tokyo Convention and future relevant ICAO conventions, it should be noted that States may avoid becoming parties to this type of multilateral instrument not because they refuse in principle to accept certain obligations contained therein but because they do not want to undertake such obligations with respect to particular Contracting States. In this case, it would appear that incorporation of the pertinent multilateral provisions in bilateral air agreements with third States may well be acceptable.

6. It is hoped that after a thorough study has been made of the proposal set out in this Discussion Paper, it will be decided that ICAO should adopt a resolution calling on States to annex to existing bilateral air agreements and incorporate in future bilateral air agreements a special clause containing the provisions, of the Tokyo Convention and future relevant ICAO conventions, relating to unlawful interference and providing for the suspension of operation of the air agreements on short notice in the event of breach of the obligations set out in this clause. If such a resolution were adopted and implemented, any State which had a bilateral air agreement with an offending State - a State which was in breach of its international obligations as annexed to or incorporated in the air agreement pursuant to the resolution - would have the legal right to suspend operation of the air agreement on short notice. Thus, the sanction would be available not only to the State directly affected by the action of the offending State but to all States having bilateral air connections with the State in breach of its international obligations. It is clear that implementation of such a resolution even if only by the major providers of international air carriage could create a certain pressure to ensure an important degree of compliance with the conventional obligations. In any case, if the offending State takes steps to comply with its obligations during the period between communication of notice and the date of the suspension of operation of the air agreement becoming effective, the notice of suspension could always be withdrawn. The original decision to communicate notice that operation of the bilateral air agreement with the offending State will be suspended, must, of course, be left up to individual States; there can be no element of automaticity in the proposed ICAO resolution.

7. An eventual decision by ICAO to accept and endorse the proposal outlined above could constitute an important step towards further developing an effective international legal framework to deter and prevent acts of unlawful interference with international civil aviation and contribute significantly towards the maintenance of international air safety.

- END -

CIRCULATION OF PAPER LINKING BILATERAL AIR AGREEMENTS TO ICAO INTERNATIONAL
CONVENTIONS RELATING TO UNLAWFUL INTERFERENCE WITH CIVIL AVIATION, ADOPTED
BY THE ASSEMBLY JUNE 29, 1970

THE ASSEMBLY:

RECOGNIZING that scheduled international air transport is generally regulated by bilateral air agreements between States;

CONSCIOUS of the great contribution that the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft and future International Civil Aviation Organization conventions relating to unlawful interference with international civil aviation can make towards preventing and deterring such acts;

NOTES the "Canadian discussion paper on linking bilateral air agreements to ICAO international conventions relating to unlawful interference with civil aviation" contained in A17-WP/19;

REQUESTS the Secretariat to circulate it to Member States for study; and

REQUESTS the Council to refer it to the appropriate body for thorough consideration of the subject matter, in connection with the development of international law to deal with acts of unlawful interference with international civil aviation.

.....

PROPOSED CONVENTION ON ACTS OF UNLAWFUL INTERFERENCE AGAINST INTERNATIONAL
CIVIL AVIATION

WHEREAS acts of unlawful interference directed against international civil aviation jeopardize the safety of persons and property, seriously affect the operation of international air services and undermine the confidence of the peoples of the world in the safety of civil aviation;

THE ASSEMBLY:

CONSIDERING that the occurrence of such acts is a matter of grave concern;

CONSIDERING that for the purpose of deterring such acts, there is a need to provide for appropriate measures to facilitate prosecution of those who commit them;

CONSIDERING that it is necessary to adopt provisions additional to those of international agreements in force;

DIRECTS the Council of ICAO to convene the Legal Committee, if possible not later than November 1970, in order to prepare, as the matter of first priority on its Work Programme, a draft convention on acts of unlawful interference against international civil aviation (other than those covered by the draft convention on unlawful seizure of aircraft) with a view to adoption of the convention at a diplomatic conference as soon as practicable and if possible not later than the summer of the Northern Hemisphere in 1971;

DIRECTS the Legal Committee, in preparing the draft convention, to take into account the opinions expressed at this Assembly.

.....



VOTRE DOSSIER
OUR FILE NO.
NOTRE DOSSIER

1-17

LE REPRÉSENTANT DU CANADA AU CONSEIL DE
L'ORGANISATION DE L'AVIATION CIVILE
INTERNATIONALE

902 ÉDIFICE DE L'AVIATION INTERNATIONALE, MONTRÉAL

TÉLÉPHONE: 879-4788

THE REPRESENTATIVE OF CANADA ON THE COUNCIL OF
THE INTERNATIONAL CIVIL AVIATION
ORGANIZATION

902 INTERNATIONAL AVIATION BUILDING, MONTREAL

TELEPHONE: 879-4788

TO: *FLE*
FROM: ACRD
AUG 19 1970
ATTN: [Signature]

17 August 1970.

The Under-Secretary of State
for External Affairs,
Ottawa, Ontario.

Attention: United Nations Division

Dear Sir:

Attached are three copies of State Letter R 3/1 -
70/167 of 13 August 1970, relative to Assembly Resolution
A17-13 concerning assistance to States in the implementation
of technical measures for the protection of international
civil aviation.

Yours truly,

L.M.E. Brennan
L.M.E. Brennan,
Administrative Officer.

Encls.

- c.c.: The Under-Secretary of State for Ext. Affairs, (2)
→ Attention: Legal Division
- The Chairman, Intl. Transport Policy Committee, (3)
Canadian Transport Commission
- The Deputy Minister, Dept. of Finance, (3)
Attention: International Programmes Division
- Department of Justice, (3)
Attention: Advisory & Intl. Law Section
- Administrator, Canadian Air Transportation (3)
Administration, Ministry of Transport
- Ministry of Transport, (1)
Attention: Legal Services & Counsel
- The Assistant Deputy Minister, General, (1)
Ministry of Transport

FLE

13.21.8

ORGANISATION DE L'AVIATION
CIVILE INTERNATIONALEORGANIZACIÓN DE AVIACIÓN
CIVIL INTERNACIONAL

INTERNATIONAL CIVIL AVIATION ORGANIZATION

INTERNATIONAL AVIATION BUILDING
1080 UNIVERSITY STREET
MONTREAL 101, P.Q. CANADA

(CS)

WHEN REPLYING, PLEASE QUOTE:
RÉFÉRENCE À RAPPELER DANS LA RÉPONSE:
INDÍQUESE EN LA RESPUESTA ESTA REFERENCIA:

R 3/1 - 70/167

13 August 1970

Subject: Assembly Resolution A17-13
Action Required: To give consideration to
 clauses (1) and (2) of A17-13

Sir,

... I have the honour to refer to Resolution A17-13 adopted by the
 17th Session (Extraordinary) of the Assembly, the text of which is reproduced
 in the attachment to this letter.

The resolution recognizes the need for a number of States to
 receive assistance in implementing the technical measures recommended by the
 Assembly for the prevention of acts of unlawful interference with inter-
 national civil aviation and its facilities. Such assistance may be given by
 highly developed States or obtained through the United Nations Development
 Programme (UNDP).

Therefore, I invite your Government's attention to this reso-
 lution, for any assistance it may be in a position to offer to other States
 or for any assistance it may wish to receive through the UNDP; in this latter
 case, the usual procedure for submitting requests to the UNDP should be
 followed and ICAO would be prepared to act as the executing agency.

Accept, Sir, the assurances of my highest consideration.

Assad Kotaite
 Assad Kotaite
 Secretary General

Enclosure:
 Resolution A17-13

30 The Representative of Canada
 on the Council of ICAO
 International Aviation Building
 MONTREAL



ATTACHMENT to State letter R 3/1 - 70/167

A17-13: Assistance to States in the implementation of technical measures for the protection of international civil aviation

WHEREAS the implementation of technical measures for prevention of criminal acts and acts of unlawful seizure in international air traffic requires financial investment and training of personnel;

WHEREAS a number of Contracting States are not quite in a position to invest in the new and expensive devices for detection, checking, screening or searching for unauthorized weapons or explosives; and

WHEREAS the safety of air traffic is vital to all Contracting States for the proper operation of their airlines all around the world;

THE ASSEMBLY:

- (1) INVITES highly developed Contracting States to give assistance to the Contracting States which are not able to implement programmes of suggested technical measures for the protection of aircraft on the ground and in the processing of passengers, baggage, mail and freight; and
- (2) INVITES Contracting States to bear in mind the possibility offered by the United Nations Development Programme to meet their technical assistance requirements arising from the need to protect civil aviation.

ORGANISATION DE L'AVIATION
CIVILE INTERNATIONALEORGANIZACIÓN DE AVIACIÓN
CIVIL INTERNACIONAL

INTERNATIONAL CIVIL AVIATION ORGANIZATION

INTERNATIONAL AVIATION BUILDING
1080 UNIVERSITY STREET
MONTREAL 101, P.Q. CANADA

(CS)

WHEN REPLYING, PLEASE QUOTE:
RÉFÉRENCE À RAPPELER DANS LA RÉPONSE:
INDÍQUESE EN LA RESPUESTA ESTA REFERENCIA:

R 3/1 - 70/167

13 August 1970

Subject: Assembly Resolution A17-13
Action Required: To give consideration to
clauses (1) and (2) of A17-13

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Therefore, I invite your Government's attention to this reso-
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case, the usual procedure for submitting requests to the UNDP should be
followed and ICAO would be prepared to act as the executing agency.

Accept, Sir, the assurances of my highest consideration.


Assad Kotaite
Secretary General

Enclosure:
Resolution A17-13

30 The Representative of Canada
on the Council of ICAO
International Aviation Building
MONTREAL



ATTACHMENT to State letter R 3/1 - 70/167

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WHEREAS the safety of air traffic is vital to all Contracting States for the proper operation of their airlines all around the world;

THE ASSEMBLY:

- (1) INVITES highly developed Contracting States to give assistance to the Contracting States which are not able to implement programmes of suggested technical measures for the protection of aircraft on the ground and in the processing of passengers, baggage, mail and freight; and
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Attention: ICAO

TO:
FROM:

DATE 14 August 1970

The Office of the Canadian
Representative to ICAO.

SUBJECT
Sujet

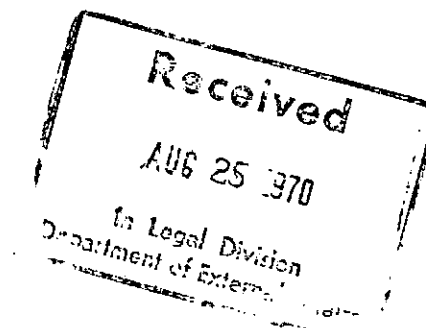
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by clerk

Encl.

Administrator, Canadian MET Service, (1)
Attention: Mr. R.R. Dodds

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THE REPRESENTATIVE OF CANADA ON THE COUNCIL OF

THE INTERNATIONAL CIVIL AVIATION
ORGANIZATION

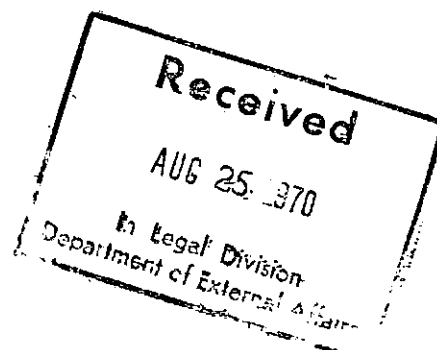
902 INTERNATIONAL AVIATION BUILDING, MONTREAL

~~TELEPHONE~~: 879-4788

TO FILE
FROM ACND
AUG 19 1972 ~~EX 2~~
ATTN: Mr. Clark

Yours truly,

000657



TEL.: 866-2551

ORGANISATION DE L'AVIATION
CIVILE INTERNATIONALE



ORGANIZACIÓN DE AVIACIÓN
CIVIL INTERNACIONAL

INTERNATIONAL CIVIL AVIATION ORGANIZATION

(CS, NCS, DIO)

INTERNATIONAL AVIATION BUILDING
1080 UNIVERSITY STREET
MONTREAL 101, P.Q. CANADA

WHEN REPLYING, PLEASE QUOTE:
RÉFÉRENCE À RAPPELER DANS LA RÉPONSE:
INDÍQUESE EN LA RESPUESTA ESTA REFERENCIA:

LM 2/3.1 - 70/183

11 August 1970

Subject: Eighteenth Session of Legal
Committee - Site of meeting
Action Required: For information

With reference to his letter LM 2/3.3-70 dated 14 July 1970, the Secretary General of the International Civil Aviation Organization has the honour to state that the Session of the Legal Committee will be held at LANCASTER HOUSE, St. James's, London, S.W.1, England. It may be noted that Lancaster House is next to St. James's Palace. The opening meeting will be held at 1100 a.m. on Tuesday, 29 September 1970.

Delegates and Observers coming to the meeting are requested to make their own arrangements for accommodation; it is advisable that they do so early, as the period of the meeting will be within the busy season for hotels in London.

30 The Representative of Canada
on the Council of ICAO
International Aviation Building
MONTREAL

000659

TEL.: 863-2551

ORGANISATION DE L'AVIATION
CIVILE INTERNATIONALE



ORGANIZACIÓN DE AVIACIÓN
CIVIL INTERNACIONAL

INTERNATIONAL CIVIL AVIATION ORGANIZATION

(CS, NCS, DIO)

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MONTREAL 101, P.Q. CANADA

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AK

30 The Representative of Canada
on the Council of ICAO
International Aviation Building
MONTREAL

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Diary
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United Nations Division - OUN

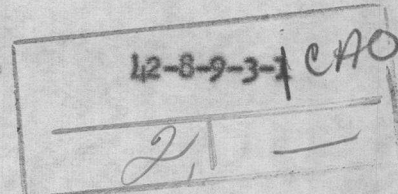
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August 11, 1970

Legal Division - FLE

Your Memorandum of July 16, 1970.

18th Session of ICAO Assembly: Draft Provisional Agenda.



BCT

The main interest of this Division regarding the draft Provisional Agenda is, of course, with the items allocated to the Legal Commission. In our view, the ICAO Secretariat have been unduly simplistic in enumerating only (a) future work of the Organization and (b) leases, charters and interchange of aircraft. As you are aware, the ICAO Legal Committee is scheduled to meet September 28 to October 13 to prepare a new international convention on acts of unlawful interference against international civil aviation other than hijacking. It would appear to us that the results of that Session could be usefully considered at the 18th Session.

2. We are aware that ICAO has been in touch with the Government of Austria - which will host the 1971 Assembly - with a view to holding the Diplomatic Conference for the new convention in conjunction with or, more likely, immediately after the Assembly. Until the Austrian Government and ICAO resolve this question, it is understandable that the Secretariat would wish to avoid making any reference to the Diplomatic Conference in official ICAO documentation. Nevertheless, leaving the matter of the Diplomatic Conference aside entirely, we would recommend that the Canadian comments on the draft Provisional Agenda include something along the lines of the following paragraph:

It is noted that the Agenda items allocated to the Legal Commission do not contain any reference to the work of the 18th Session of the ICAO Legal Committee, which is to take place September 28 to October 13. Canada would respectfully suggest that a substitute item (a) entitled "Review of the Work of the 18th Session of the Legal Committee" be included under the list of Legal Committee items. (The existing item (a) then become item (b); and the existing item (b) become item (c).) In the event that the Legal Committee is unsuccessful in elaborating a draft convention on acts of unlawful interference against international civil aviation (other than those covered by the draft Convention on Unlawful Seizure of Aircraft) and agreement is reached on the site and date for a 1971 Diplomatic Conference to adopt the new convention, this item could be conveniently disposed of by an Assembly resolution calling for support of the new instrument and its speedy adoption and entry into force. On the other

/would

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hand, if either (1) the Legal Committee does not succeed in drafting a generally acceptable convention; or (2) arrangements for the Diplomatic Conference will not have been finalized, the Assembly should be enabled, under an appropriate agenda item, to take up the question of the new international convention in order to resolve whatever difficulties are preventing its elaboration or adoption.

M. D. COFITHORNE

Legal Division.

File ✓
Diary
Div

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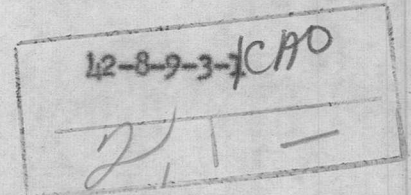
Transport, Communications & Energy Division - ECT

RESTRICTED

Legal Division - FLE

August 10, 1970

IATA Request concerning Canadian Government's
Attitude to Results of 17th (Extraordinary) IEAO
Assembly.



The General Counsel of Air Canada, Mr. Ian MacPherson, telephoned us August 4, to advise that IATA was circulating a document, through national airlines, requesting information from governments as to their attitude on a number of questions arising from the recently concluded IEAO Assembly.

FDS
OUN
Justice(Sorokan)
MCT(Kennedy)
CTC(Morisset)

2. The 7 points which IATA is putting to governments which attended the Assembly and on which governmental action is requested are as follows:

- 1) Publicly endorse the attached Declaration and Resolution.
- 2) Examine, and if necessary, amend its criminal code so that it carries severe penalties for any form of unlawful interference with international civil aviation and its facilities.
- 3) Give its support to IATA recommendation regarding expedited ratification in relation to the Convention on Unlawful Seizure of Aircraft.
- 4) Agree to participate at (a) the Diplomatic Conference at the Hague; and (b) where appropriate, the IEAO Committee meeting September 1970, London.
- 5) (a) Organize airport security committees at all international airports; and
(b) Appoint an international security coordinator for international civil aviation matters.
- 6) If necessary, amend national law to allow postal authorities the power of search of suspect mail.
- 7) If necessary, amend national law to give authority to law enforcement agencies and/or air carriers to take preventive measures such as screening and searching of passengers luggage and cargo.

3. Since we shall be receiving an official communication from Air Canada on this matter in the near future, we would suggest that representatives of the Department of Justice, Ministry of Transport, Canadian Transport

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-2-

Commission, your Division and this Division consult together as soon as possible to enable a speedy reply to be formulated. In this connection you may wish to arrange with Mr. L.S. Clark (telephone 2-7738) as to a suitable time and place for these consultations. By copy of this Memorandum, we are also suggesting that the information addressees of other Departments also contact Mr. Clark.

M. D. COPITHORNE

Legal Division

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

gates

TO
A Mr. P. Tremblay - PDS

SECURITY
Sécurité UNCLASSIFIED

FROM
De Legal Division - FLE

DATE August 10, 1970

REFERENCE
Référence

NUMBER
Numéro

SUBJECT
Sujet ICAO Legal Committee Meeting, September 29 - October 13
Canadian Participation.

FILE	DOSSIER
OTTAWA	42-8-9-3-1 CAO
MISSION	2 -

ENCLOSURES
Annexes

DISTRIBUTION

ECT
OUN
Justice
(Sorokan)
Min.of Tran.
(Kennedy)
CIC (Morriset)

.. We have received, through our Representative on the ICAO Council, the attached letter from the Secretary-General of ICAO inviting Canada to be represented at the 18th Legal Committee Session which will take place in London September 29 to October 13, 1970.

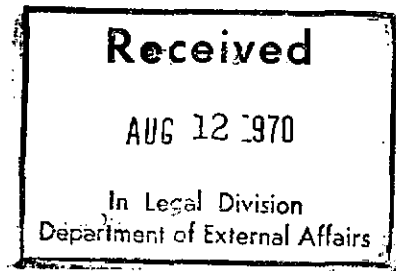
2. As host State to the Organization and a Member of the ICAO Council, Canada has generally played an active role in all the major ICAO Committees. The 18th Session of the Legal Committee has been convened primarily in order to prepare a draft convention on unlawful interference with international civil aviation, other than unlawful seizure (hijacking). A Canadian Delegation participated at the 17th Session and took a major part in its work which resulted in approval of the draft Convention on Unlawful Seizure of Aircraft which is to be the subject of a Diplomatic Conference at the Hague December 1 to 16, 1970.

.. 3. Attached for your signature, if you agree, is a letter to our Council Representative instructing him to advise the Secretary-General that Canada will be represented at the forthcoming Legal Committee Session. We would then propose to consult with the Ministry of Transport, the Department of Justice and the Canadian Transport Commission on the composition and size of the Canadian Delegation. When this has been agreed upon interdepartmentally we propose, in accordance with past practice, to request the approval of the Minister before notifying ICAO of the names of the Canadian delegates.

[Signature]

Legal Division

[Signature]



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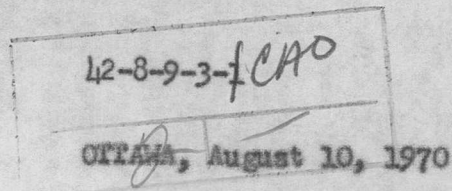
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Div Justice (Sorokan)
MOT (C.K.Kennedy)
CTC (Morisset)

FILE/ L.S. Clark/ oh

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Mr. H. Gourdeau,
Canadian Representative on the Council of ICAO,
International Civil Aviation Organization,
1080 University Street,
Montreal, Quebec.

Dear Sir,

This will refer to your letter of July 17 transmitting ICAO State Letter LM 2/3.3 - 70/154 of July 14 inviting Canada to be represented at the 18th Session of the ICAO Legal Committee.

We would be grateful if you would advise the Secretary-General that Canada will be represented at the forthcoming Legal Committee Session.

We shall advise as to the composition of the Canadian Delegation and transmit our comments concerning the preparation of a draft convention on acts of unlawful interference against civil aviation (other than unlawful seizure of aircraft) in the near future.

Yours sincerely,

PAUL TREMBLAY

Paul Tremblay,
Associate Under-Secretary.

File✓
Diary
Div

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Mr. P. Tremblay - PDS

UNCLASSIFIED

Legal Division - FLE

August 10, 1970

ICAO Legal Committee Meeting, September 29 - October 13:
Canadian Participation.

42-8-9-3-1CAO

2 /

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Justice
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M. D. CORITHORNE

Legal Division

Photocopy for WF

file
EL

Clark

INSTITUTE
OF
AIR AND SPACE LAW



McGILL UNIVERSITY
MONTREAL

ECT (Reynolds)
CC. can (Hopping)
CTC (Rouss)
D.J. (Snelgar)
CHANCELLOR DAY HALL
3644 PEEL STREET
MONTREAL 2, QUEBEC
CANADA
17/8/70
Lee o/R

August 6th, 1970.

Mr. E.L. Lee,
Deputy Head,
Legal Division,
Department of External Affairs,
Ottawa,
Ontario.

42-8-9-3-1090
2, 17

Dear Mr. Lee,

This is just a belated note to thank you for your letter of July 13th enclosing the documentary material resulting from the ICAO Special Assembly in Montreal from June 16th to 30th, 1970.

I have finished my Provisional Report for the Institut de Droit International, and it is at present with the Bureau of the Institut awaiting printing. As soon as it has been officially printed, which should be very soon, I will see if I can have a copy released for you.

I may say in private that my own thinking seems to run very closely along the lines of your own approach, as I understand it. I thought the Canadian statement on bilateral air agreements and their link to ICAO conventions was particularly helpful.

Sincerely yours,

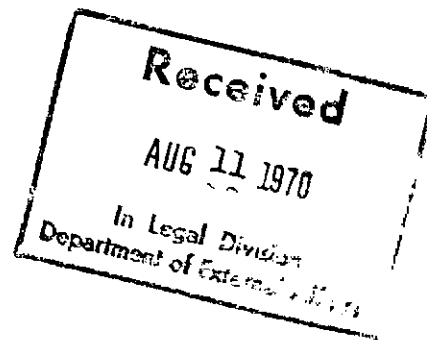
Edward McWhinney

(Edward McWhinney) Q.C.
Professor of Law and Director

EMCW/em

7.11.8

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YOUR FILE NO.
VOTRE DOSSIER
OUR FILE NO.
NOTRE DOSSIER

1-17



LE REPRÉSENTANT DU CANADA AU CONSEIL DE

L'ORGANISATION DE L'AVIATION CIVILE
INTERNATIONALE

902 ÉDIFICE DE L'AVIATION INTERNATIONALE, MONTRÉAL

TÉLÉPHONE: 879-4788

THE REPRESENTATIVE OF CANADA ON THE COUNCIL OF

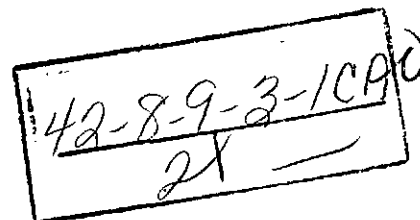
THE INTERNATIONAL CIVIL AVIATION
ORGANIZATION

902 INTERNATIONAL AVIATION BUILDING, MONTREAL

TELEPHONE: 879-4788

TO: *File*
FROM: *RCMP*
AUG 12 1970 *Cornthorne*
ATTN: *McClure*

5 August 1970.



The Under-Secretary of State
for External Affairs,
Ottawa, Ontario.

Attention: United Nations Division

Dear Sir:

Attached is a copy of Resolutions adopted by
the Seventeenth Session (Extraordinary) of the Assembly -
Montreal, 16-30 June 1970.

Yours truly,

L.M.E. Brennan

L.M.E. Brennan,
Administrative Officer

Encl.

c.c.: The Under-Secretary of State for Ext. Affairs, (1)
→ Attention: Legal Division

The Chairman, Intl. Transport Policy Committee, (1)
Canadian Transport Commission

The Deputy Minister, Dept. of Finance, (1)
Attention: International Programmes Division.

Department of Justice, (1)
Attention: Advisory & Intl. Law Section

Administrator, Canadian Air Transportation (1)
Administration, Ministry of Transport

Ministry of Transport, (1)
Attention: Legal Services & Counsel

The Assistant Deputy Minister, General, (1)
Ministry of Transport

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