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# CONVENTION ON OFFENSES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT

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## HEARING

BEFORE THE

## COMMITTEE ON COMMERCE UNITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

### S. 2176

TO IMPLEMENT THE CONVENTION ON OFFENSES AND  
CERTAIN OTHER ACTS COMMITTED ON BOARD AIR-  
CRAFT, AND FOR OTHER PURPOSES

MARCH 9, 1970

Serial 91-55

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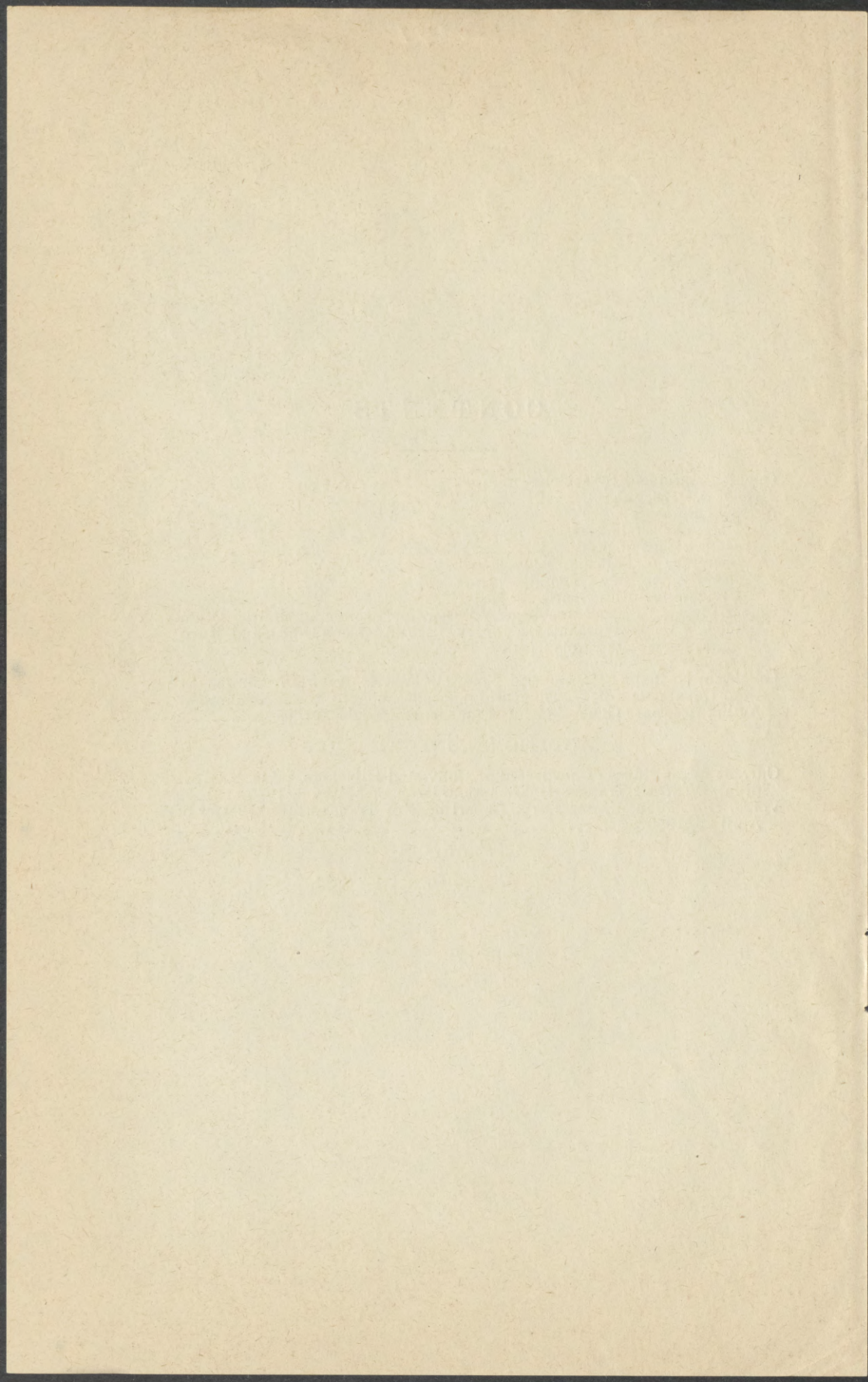
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# TO IMPLEMENT THE CONVENTION ON OFFENSES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT AND FOR OTHER PURPOSES

MONDAY, MARCH 9, 1970

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m. in room 5110, New Senate Office Building, Hon. Howard W. Cannon presiding.

Present: Senators Cannon, Cotton, and Pearson.

## OPENING STATEMENT BY THE CHAIRMAN

Senator CANNON. The committee will come to order. This is a hearing today on S. 2176, a bill to implement and bring the Tokyo Convention up to date with relation to acts committed on board aircraft.

I would like to submit Secretary Volpe's letter, the bill, and agency comments.

(The letter, bill, and agency comments follow.)

THE SECRETARY OF TRANSPORTATION,  
*Washington, D.C., April 25, 1969.*

HON. SPIRO T. AGNEW,  
*President of the Senate,*  
*Washington, D.C.*

DEAR MR. PRESIDENT: I have the honor to submit to the Senate a draft bill to amend the Federal Aviation Act of 1958, "To implement the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, and for other purposes".

The principal purpose of this draft bill is to provide the legislation necessary for the United States to implement the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft signed at Tokyo on September 14, 1963. For several years the United States has supported the development of a multilateral convention dealing with crimes, and other acts jeopardizing safety, committed on board aircraft engaged in international aviation. Since aircraft in international air transportation may traverse sovereign airspace at great speeds, and in some cases travel between national borders in a matter of a few minutes, continuity of jurisdiction with respect to crimes and offenses committed on such aircraft is particularly necessary. Presently, there is no widely accepted rule establishing such continuity of jurisdiction.

At its Sixth Session in June 1950, the Legal Committee of the International Civil Aviation Organization (ICAO) initiated a study regarding the possibility of negotiating a treaty which would establish jurisdictional rules in respect of treatment of crimes committed on board aircraft and related matters. During the ensuing 13 years the attendant problems were discussed fully and their resolutions negotiated. The United States of America was a major supporter of this Convention and when it was opened for signature in 1963, the United States Delegation was authorized to sign it. The Convention has been signed by 32 States and, to date, has been ratified by 8.

Staff member assigned to this hearing: Robert E. Ginther.

Several features make the Tokyo Convention a desirable international agreement. First, a positive rule of international law is established between contracting States which provides that the State in which an aircraft is registered is competent to exercise jurisdiction over offenses committed aboard that aircraft when it is in flight or on the surface of the high seas or any other area outside the territory of any State. The Tokyo Convention does not establish a rule of exclusive jurisdiction; rather, it assures that at least the State of registration will have the competence to exercise its jurisdiction while permitting the exercise of concurrent jurisdiction by other countries, depending upon their respective interest in the offense and the applicability of the traditional rules of international law regarding assertion of jurisdiction.

Second, the Convention provides for an element of certainty in the powers and authority of the aircraft commander. Without the applicable provisions, the actions of the commander in apprehending or "off-loading" an offender are subject to the laws of the country in which he lands; the correctness of his decisions also may be judged in accordance with the national law of the country overflown. Additionally, any other member of the crew, any passenger, the owner or operator of the aircraft and the person on whose behalf the flight was performed, will be immunized legally if their actions are reasonable and in accordance with the provisions of the Convention. Such immunity will create attitudes and actions, where necessary, that will significantly contribute to maintaining the safety of flight in international aviation.

Third, the Convention provides for rules and procedures for the disembarkation of an offender which may be utilized by the commander in the territory of any State in which the aircraft lands. Provision is also made in the Convention for the right of the aircraft commander to deliver certain persons to the competent authorities of a contracting State in which he lands. Further, the receiving State is obliged to take delivery of an offender and, upon being satisfied that the circumstances so warrant, to take custody or other measures to ensure the presence of such a suspected offender. The Convention contains several provisions designed to protect the rights of an alleged offender and to ensure expeditious legal disposition of the case.

Fourth, the Convention contains an important provision relating to "hijacked" aircraft. This provision imposes a positive obligation on contracting States to take all appropriate measures to restore control of the aircraft to its lawful commander, or to preserve his control of the aircraft.

The enclosed draft bill would amend the Federal Aviation Act of 1958 to permit the United States to implement certain provisions of the Tokyo Convention. Section 101 of the Act is amended to create the term "special aircraft jurisdiction of the United States" which would include, while in flight, all civil aircraft of the United States, aircraft of the National Defense Forces of the United States, and any other aircraft within the United States, or, under specified circumstances, outside the United States. Subsections 902(i), (j), and (k) of the Act (which provide criminal penalties for aircraft piracy, interference with flight crew members, and certain other acts) are then amended to substitute the "special aircraft jurisdiction" for the jurisdiction presently conferred by the term "in flight in air commerce". The effect of these amendments is to extend the criminal provisions to all aircraft within the special aircraft jurisdiction of the United States as defined by the amended section 101. While this redefinition of jurisdiction is necessary to conform with the purposes of the Tokyo Convention, it still falls wholly within the jurisdiction of the Federal Government under the Constitution.

Inclusion of aircraft of the National Defense Forces of the United States within the special aircraft jurisdiction is not essential to the legislative implementation of the Tokyo Convention. However, they are included at the request of the Department of Defense because such coverage is consistent with the spirit of that Convention and because it closes a jurisdictional gap. There would otherwise be serious doubt as to U.S. jurisdiction over crimes committed by individuals who are not subject to the uniform code of military justice (primarily U.S. military dependents and civilian employees of the Department of Defense in time of peace) while on board U.S. military aircraft flying over foreign territory.

The clause in the legislation referring to the period when the enumerated subsections are applicable is the statement usually employed internationally for similar purposes; i.e., "from the moment when power is applied for the purpose of take-off until the moment when the landing run ends".

The Bureau of the Budget advises that there is no objection to the submission of the legislation for the consideration of the Congress from the standpoint of the Administration's program.

Sincerely,

JOHN A. VOLPE.

91ST CONGRESS  
1ST SESSION

# S. 2176

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IN THE SENATE OF THE UNITED STATES

MAY 16, 1969

Mr. MAGNUSON (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce

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## A BILL

To implement the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That—

4       (1) A new subsection (32) be inserted in section 101  
5       of the Federal Aviation Act of 1958 (49 U.S.C. 1301) as  
6       follows:

7       “(32) The term ‘special aircraft jurisdiction of the  
8       United States’ includes the following aircraft while in flight—

9       “(a) civil aircraft of the United States;

1           “(b) aircraft of the national defense forces of the  
2       United States; and

3           “(c) any other aircraft—

4               “(i) within the United States, or

5               “(ii) outside the United States which has its  
6       next scheduled destination or last point of departure  
7       in the United States provided that in either  
8       case it next actually lands in the United States.

9       For the purpose of this definition, an aircraft is considered to  
10      be in flight from the moment when power is applied for the  
11      purpose of takeoff until the moment when the landing run  
12      ends.”

13           (2) Existing subsections (32), (33), (34), and (35)  
14      are renumbered (33), (34), (35), and (36), respectively.

15           (3) Subsections 902 (i), (j), and (k) of such Act  
16      (49 U.S.C. 1472 (i), (j), and (k)) are amended by deleting the words  
17      “in flight in air commerce” wherever they  
18      appear in those subsections and substituting therefor the  
19      words “within the special aircraft jurisdiction of the United  
20      States.”

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, D.C., May 27, 1969.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of May 20, 1969, transmitted a copy of S. 2176, entitled "A BILL To implement the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, and for other purposes," and requested our comments thereon.

We have no special information concerning the subject matter of the bill which would be of assistance to the committee in its consideration thereof. Hence, and since the bill, if enacted, would not affect the functions and responsibilities of our Office, we have no comments as to its merits or recommendations regarding its enactment.

S. 2177, which was also transmitted with your letter of May 20, 1969, is the subject of a separate report.

Sincerely yours,

R. F. KELLER  
(For the Comptroller General  
of the United States).

DEPARTMENT OF STATE,  
Washington, D.C., May 28, 1969.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Secretary has asked me to reply to your letter of May 20, 1969, enclosing for the Department's comments a copy of S. 2176, a bill to implement the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, and for other purposes.

The Department has an interest in this implementing legislation since Article 3(a) of the Convention, to which the Senate gave its advice and consent on May 13, 1969, requires a contracting State to take such measures as may be necessary to establish its jurisdiction as the State of registration consistently with the Convention. Though the Federal Aviation Act contains criminal provisions with a very broad reach, there may be situations in which a United States registered aircraft might be on a flight not falling within its terms. Therefore, this amendment to the Federal Aviation Act of 1958 appears necessary to ensure in every case that we have established jurisdiction over acts on board aircraft of U.S. registration no matter where they are in flight. The Department, therefore, supports this legislation and urges its prompt passage.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely yours,

WILLIAM B. MACOMBER, JR.,  
Assistant Secretary for Congressional Relations.

OFFICE OF THE SECRETARY OF TRANSPORTATION,  
Washington, D.C., June 3, 1969.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: You requested the views of the Department of Transportation on S. 2176, a bill "To implement the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, and for other purposes."

This bill is a Department of Transportation proposal which was submitted to the Congress on April 25, 1969. As you know, its purpose is to provide the legislation necessary for the United States to implement the provisions of the Convention signed at Tokyo on September 14, 1963, and consented to by the Senate on May 13, 1969. The Department recommends enactment of the legislation, and will welcome the opportunity to appear before the Committee to present oral testimony in support of the measure.

Sincerely,

CHARLES D. BAKER,  
Deputy Under Secretary.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
Washington, D.C., June 20, 1969.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 2176, a bill "To implement the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, and for other purposes."

The purpose of this bill is to implement the Tokyo Convention on crimes on board aircraft. In brief, the bill would amend the Federal Aviation Act of 1958 to create the "special aircraft jurisdiction of the United States." This jurisdiction would include all aircraft of United States registry while in flight anywhere. The bill would then make conforming amendments to certain provisions of the Act now dealing with crimes in flight "in air commerce" so that the conduct involved would be criminal if committed within such special aircraft jurisdiction. In this manner the intent of the Tokyo Convention to give the state of registration of an aircraft concurrent jurisdiction over crimes aboard it in flight anywhere would be carried out, so far as United States aircraft are concerned.

The Department of Justice recommends enactment of this legislation.

The Bureau of the Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,  
Deputy Attorney General.

CIVIL AERONAUTICS BOARD,  
Washington, D.C., August 27, 1969.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate,  
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the Board's views on S. 2176, a bill "To implement the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, and for other purposes."

The bill is identical in substance to a draft bill submitted by the Secretary of Transportation to the Congress on April 25, 1969. The principal purpose of the bill, as indicated by the Secretary, is to provide the legislation necessary for the United States to implement the provisions of the Convention, which was ratified by the President on June 30, 1969. As you know, the Convention requires each contracting State to take such measures as may be necessary to establish its jurisdiction as the State of registration over offenses committed on board aircraft registered in such State.

At the present time, the criminal jurisdiction of the United States extends to certain crimes (aircraft piracy, interference with flight crew members, and certain other acts) committed on board aircraft "in flight in air commerce" (49 USC 1472(i), (j) and (k)), and to specified offenses committed on board American aircraft while in flight in the "special maritime and territorial jurisdiction of the United States" (18 USC 7(5) *et seq.*). Thus, the United States is unable to assert jurisdiction over an offense committed on board an aircraft of its registry while such aircraft is on a flight not within the scope of one of these statutory provisions.

Under S. 2176, the criminal provisions of sections 902(i), (j) and (k) are made applicable to offenses committed on board U.S. aircraft and aircraft of the National Defense Forces of the United States. In the case of foreign aircraft, the criminal provisions of such sections are limited to offenses committed on board such aircraft when they are in the territorial airspace of the United States, or when the aircraft land in the United States as the result of schedules or as the result of being forced to do so after having last departed therefrom.

In the Board's view, S. 2176 provides the United States with the necessary jurisdiction for meeting its obligation under the Convention. The Board urges, therefore, enactment of the bill.

The Bureau of the Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

JOHN H. CROOKER, Jr.,  
Chairman.

Senator CANNON. Our first witness today will be Mr. Nathaniel H. Goodrich, General Counsel of the Federal Aviation Administration, Department of Transportation.

**STATEMENT OF NATHANIEL H. GOODRICH, GENERAL COUNSEL,  
FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION,  
ACCOMPANIED BY OSCAR SHIENBROOD, ACTING  
ASSOCIATE GENERAL COUNSEL FOR GENERAL LEGAL SERVICES**

Mr. GOODRICH. Good morning Senator Cannon and Senator Cotton. Senator Cannon, we are at your disposal. The State Department is represented here this morning. I don't know whether you would prefer to have Mr. Carter join me at the table or to take him later.

Senator CANNON. It would be fine, Mr. Carter, if you want to come up now and join Mr. Goodrich.

Mr. GOODRICH. Mr. Chairman and members of the committee, my name is Nathaniel H. Goodrich. I am the General Counsel of the Federal Aviation Administration, Department of Transportation. I am accompanied by Mr. Oscar Shienbrood, Acting Associate General Counsel for our General Legal Services.

I appreciate this opportunity to appear before you today to discuss S. 2176, a bill "To implement the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, and for other purposes." The Department of Transportation strongly supports this legislation and recommends its favorable and prompt consideration.

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

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

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

plicability of the traditional rules of international law regarding assertion of jurisdiction.

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

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

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

The United States has continued to press efforts to gain widespread international acceptance of the Tokyo Convention and to promote other efforts to deter and resolve hijackings. On May 13, 1969, the U.S. Senate gave its advice and consent to ratification of the Tokyo Convention. On September 5, 1969, the United States presented to the International Civil Aviation Organization the instrument of ratification of the convention, being the 12th nation to do so. As a result, under article 21, paragraph 1, the convention came into force on December 4, 1969. Following the U.S. ratification, 10 other countries ratified the convention, making a total of 22 of the 40 signatory nations that have become parties to the convention. As an additional measure to the Tokyo Convention, the Legal Committee of the International Civil Aviation Organization, with active U.S. participation,

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

S. 2176, the bill under consideration today, would fulfill our responsibility to implement the Tokyo Convention. Under article 3, paragraph 2 of the convention—

Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offenses committed on board aircraft registered in such State.

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

Section (3) of S. 2176 would substitute the term "within the special aircraft jurisdiction of the United States" for the term "in flight in air commerce" in sections 902(i), 902(j), and 902(k) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(i)-1472(k)). Section 902(i) provides criminal penalties for aircraft piracy. Section 902(j) provides criminal penalties for interference with flight crewmembers or flight attendants. Section 902(k) provides criminal penalties for certain other crimes aboard aircraft in flight. The acts covered under section 902(k) include: (1) certain criminal acts proscribed under sections of title 18, United States Code—assaults (sec. 113), maiming (sec. 114), theft (sec. 661), receiving stolen property (sec. 662), murder (sec. 1111), manslaughter (sec. 1112), attempted murder or manslaughter (sec. 1113), rape (sec. 2031), carnal knowledge (sec. 2032), and robbery or burglary (sec. 2111); and (2) acts prohibited by section 22-1112 of the District of Columbia Code (lewd, indecent, or obscene acts).

The reach of the jurisdiction of the United States under the term "in flight in air commerce" is not as extensive or as definitive as the reach of that jurisdiction under the newly defined term "special aircraft jurisdiction of the United States." This redefinition of the U.S. jurisdiction is needed to carry out the Nation's responsibility under article 3, paragraph 1, of the Tokyo Convention. The "special aircraft jurisdiction of the United States" falls wholly within the jurisdiction of the Federal Government under the Constitution. The phrase in the new definition, making clear when an aircraft is in flight, is the one usually employed internationally for that purpose. The amendments made by S. 2176 would extend the criminal provisions outlined to all aircraft within the newly defined "special aircraft jurisdiction of the United States."

The definition of "special aircraft jurisdiction of the United States" includes "aircraft of the National Defense Forces of the United States." This is not essential to the implementation of the Tokyo

Convention. But, the Department of Defense requested that these aircraft be included because inclusion both is consistent with the spirit of the Tokyo Convention and closes a gap in jurisdiction. In the absence of including these aircraft, doubts could arise respecting the jurisdiction of the United States over crimes committed on board U.S. military aircraft while in flight over foreign territory. If the individual committing the crime is subject to punishment under the Uniform Code of Military Justice (UMCJ), the question would not be serious. But if the individual committing the crime is not subject to punishment under the UCMJ (such as a military dependent or a civilian employee of the Department of Defense in peacetime), the jurisdictional question could be in doubt.

In conclusion, Mr. Chairman, we urge the committee to give prompt and favorable consideration to S. 2176. The efforts of the United States in support of the Tokyo Convention were instrumental in its development. The cooperative effort of the Interagency Group On International Aviation, including representatives of the Departments of State, Justice, Defense, and Transportation, and the Civil Aeronautics Board, led to the legislation embodied in S. 2176. This legislation will fulfill our obligation to implement the Tokyo Convention, which came into effect on December 4, 1969. We hope that prompt U.S. action to implement the convention may lead to favorable action by the 18 signatory states who have yet to ratify the convention, and other states as well.

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

Senator CANNON. Thank you very much, Mr. Goodrich.

Has the United States taken any action at all under the convention so far?

Mr. GOODRICH. Of what particular type, Senator?

Senator CANNON. Any type of prosecutions.

Mr. GOODRICH. There have been prosecutions in this country of hijackers who have been returned from abroad. Those prosecutions were taken under domestic criminal law because the hijackers were available in this country. To my knowledge, there has been no specific action under the Tokyo Convention.

Senator CANNON. Now what was the situation with respect to the problem in Italy that arose this last year?

Mr. GOODRICH. The Minichiello hijacking of the TWA aircraft?

Senator CANNON. Yes.

Mr. GOODRICH. The situation there is one in which the Italian Government, thus far, has not seen fit to arrange for the return of the hijacker. I am not aware whether the domestic Italian law covers hijacking as an offense in Italy, and whether Minichiello would be subject to extradition as a result.

Senator CANNON. Have they undertaken to prosecute him at the present time?

Mr. GOODRICH. The State Department might have more specific information on this. I haven't heard of any prosecution being initiated. He is in custody.

Senator CANNON. Is Italy presently a signatory to the convention, and if so, have they ratified it?

Mr. GOODRICH. Italy is a signatory and ratified the Tokyo Convention on October 18, 1968, about a year before the United States.

Senator CANNON. Now, they having ratified that convention, as I understand it, both Italy and United States could have concurrent jurisdiction. Is that correct?

Mr. GOODRICH. That is correct, yes, sir.

Senator CANNON. So that in a case where two signatories have concurrent jurisdiction, the one actually having the person, I presume, could proceed to exercise jurisdiction and would preclude the state requesting extradition from acting. Is that correct?

Mr. GOODRICH. That would be a matter to be determined under extradition treaties, by negotiation between the two countries. What I haven't stressed, of course, is that the Tokyo Convention itself does not provide for extradition, so the fact of ratification by both the United States and Italy does not invoke extradition.

Senator CANNON. Now I know this is a very difficult question, but the situations that normally occur are those which involve states that are not signatories to the Tokyo Convention.

Do you have any suggestions relating to those situations?

Mr. GOODRICH. The work underway now by the legal subcommittee of ICAO in Montreal is a constructive approach to the gap in the Tokyo Convention, which fails to provide for extradition. The Committee that is meeting in Montreal is considering a protocol to the Tokyo Convention that would provide either for extradition or for the state of landing to promptly consider prosecution. And as I understand it, the hope is that the protocol might afford a quicker path to more direct action both on the part of nations that are signatory to the Tokyo Convention and those that have not yet signed.

Senator CANNON. What is the legal situation with respect to the issue of double jeopardy in cases like this?

Mr. GOODRICH. Senator Cannon, I am not sure that I know how the courts eventually would determine such an issue. But in my opinion, issues of double jeopardy need not necessarily arise. I don't know whether in practical fact we would ever have anyone who would be subject to double jeopardy. For example, that issue has not been raised to my knowledge in the case of any of the hijackers who took aircraft to Cuba and who, through one means or another, have returned or been returned to United States.

We understand that some of them, all of them in fact, were either held incommunicado or in prison or in effect assigned to some work detail in Cuba. But every single one who has returned to this country, has had his case referred to a U.S. attorney.

Senator CANNON. And none of them were actually tried in the foreign jurisdiction?

Mr. GOODRICH. We are not aware of any who were tried by any formal process in Cuba.

Senator CANNON. How many of those people have so far been returned to the United States?

Mr. GOODRICH. Senator Cannon, we would like to get the accurate number and supply it for the record. We don't have it handy. Quite a few have been returned.

Senator CANNON. Would you supply the number that have actually been involved in hijacking and of that number, the number that have actually been returned to the United States, and whether or not those that have been returned are in the active process of prosecution at the present time?

Mr. GOODRICH. We will do that, Senator.

(The subsequent information was received for the record.)

## CURRENT LEGAL STATUS OF SUSPECTED OR CONVICTED HIJACKERS

Defendant(s)	Date of incident	Aircraft	Flight	Indicated	Disposition
1. Ortiz, Artulio Ramirez	May 1, 1961	NAL	Marathon to Key West, Fla		Fugitive.
2. Oquendo, Wilfredo Roman	July 24, 1961	EAL	Miami to Tampa		Do.
3. Britt, Bruce McKae	July 31, 1961	PAC	Chico, Calif. to San Francisco		Convicted (illegal possession of firearms). Sentenced in Orville, Calif.
4. Bearden, Leon	1 Aug. 3, 1961	CAL	Phoenix to El Paso		Convicted—interruption of commerce on threats of violence, 20 years.
Bearden, Cody					Juvenile—Indeterminate sentence. Committed to correctional facility.
5. Cadon, Albert Charles	Aug. 9, 1961	PAA	Mexico City to Guatemala City		Convicted in Mexican Court on charges of robbery and illegal possession of firearms. Received 8 years 9 months sentence.
6. Healy, David Thomas	Apr. 13, 1962	General aviation	Miami local	Apr. 20, 1962 in Miami, Fla	Convicted Nov. 12, 1964 on charges of aircraft piracy and kidnapping. Received sentence of 20 years and 1 year to run concurrently.
Oeth, Leonard Malcolm				do.	Do.
7. Hernandez, Enrique Costella	Feb. 18, 1964	General aviation	Miami local		Fugitive.
Rodriguez, Reinaldo Juan Lopez	Aug. 31, 1965	Hawaiian Airlines	Honolulu to Kaula		Do.
8. Fergstrom, Harry F					Juvenile—Indeterminate sentence. Committed to juvenile correctional facility.
9. Heister, Lawrence D	Oct. 11, 1955	Aloha	Molokai to Honolulu		U.S. Navy general court-martial. Sentenced to 4 years confinement. Dishonorably discharged.
Boyd, Richard K	Oct. 26, 1955	NAL	Miami to Key West		Do.
10. Perez, Luis Medina aka Medina	Oct. 26, 1955	NAL	Miami to Key West		Acquitted June 24, 1966 of charges of aircraft piracy and assault. (Declared incompetent).
11. Robinson, Thomas Harvey	Nov. 17, 1965	NAL	Houston to New Orleans		Juvenile—Indeterminate Sentence—Committed to juvenile correctional facility.
12. Babler, Gabor Louis	Nov. 20, 1967	General Aviation	Hollywood, Fla. to Bimini	May 7, 1969 in Miami, Fla	Charged with aircraft piracy and kidnapping. Case pending.
13. Clark, William	Feb. 9, 1968	PAA	Saigon to Hong Kong		Court of military appeal dismissed charge of aircraft piracy as flight was not in air commerce.
14. Boynton, Thomas J	Feb. 17, 1968	General Aviation	Marathon to Miami	June 13, 1969 in southern district of Florida.	Charged with aircraft piracy and kidnapping. Case pending.
15. Rhodes, Lawrence M	Feb. 21, 1968	Delta	Tampa to West Palm Beach	June 12, 1968 in southern district of Florida.	Fugitive.
16. Gonzales, Gilberto Carrazana	Mar. 12, 1968	NAL	Tampa to Miami	do.	Do.
Armentoros, Jesus				do.	Do.
17. Carter, E. H.	June 29, 1968	SEA	Marathon to Key West		Do.
18. Fonseca, Mario V	July 1, 1968	NW	Chicago to Miami	Complaint filed in Miami on July 3, 1968.	Fugitive—No positive identification.
19. Morris John Hamilton	July 4, 1968	TWA	Kansas City to Las Vegas		Fugitive.
20. Bendix, Leonard S	July 4, 1968	General Aviation	Key West to Miami	Southern district of Florida	Pled guilty on June 16, 1969 to escape. Sentenced 5 years to run consecutively with present term.
21. Richards, Oran Daniel	July 12, 1968	Delta	Baltimore to Houston		Found competent to stand trial. Case pending. Charges dismissed on Sept. 3, 1969. Committed to State mental institution.

22. Leyva, Rogelio H.	July 17, 1968	NAL	Los Angeles to Miami.	Complaint filed July 19, 1968 in New Orleans.	Fugitive.
23. Jesse, Willis	Aug. 4, 1968	General Aviation	Naples, Fla. local.		Placed guilty on June 26, 1969 to charge of kidnapping. Received 10-year sentence.
24. McBride, Bill	Aug. 22, 1968	do	Nassau to Georgetown, Bahamas.		No positive identification.
25. Garcia, Jose Antonio Suarez	Sept. 20, 1968	EAL	San Juan to Miami.	Complaint filed in district of Puerto Rico on June 19, 1969.	Fugitive.
26. Truitt, Alben William Barkley	Oct. 23, 1968	General Aviation	Key West to Dry Tortugas Islands.		Convicted Aug. 13, 1969. Received 20 years for aircraft piracy and 20 years for kidnapping to run consecutively.
27. Pastorich, Roger C.	Nov. 2, 1968	EAL	Mobile to Chicago.		Charged with carrying a weapon aboard an aircraft. Placed on probation due to his minority; to continue under psychiatric care.
28. Johnson, Jr., Raymond	Nov. 4, 1968	NAL	Houston to Miami.	Complaint filed Jan. 19, 1969 in New Orleans.	Fugitive.
29. Garcia, Aramis Suarez	Nov. 23, 1968	EAL	Chicago to Miami.	Complaint filed Aug. 27, 1969 in western district of Kentucky.	Do.
Yelasques, Miguel Mayor			do	do	Do.
Quintero, Alberto Arroyo			do	do	Do.
Viera, Irardo Mendoza			do	do	Do.
Rodriguez, Moises Rodriguez			do	do	Do.
30. Cruz, Jose Rafael Rios	Nov. 24, 1968	PAA	New York to San Juan.	Dec. 20, 1968 in southern district of New York.	Do.
Soltren, Luis Armando Pena			do	do	Do.
Castro, Miguel			do	do	Do.
31. Sanchez, Miguel Montesino	Nov. 30, 1968	EAL	Miami to Dallas.	Complaint filed Jan. 2, 1969 in Miami.	Do.
32. Cantera, Eduardo	Dec. 3, 1968	NAL	Tampa to Miami.		No positive identification made.
33. Patterson, James Joseph	Dec. 11, 1968	TWA	Nashville to Miami.	Oct. 13, 1969 in northern district of Georgia.	Fugitive.
34. Washington, Thomas George	Dec. 19, 1968	EAL	Philadelphia to Miami.	Southern district of Florida.	Charged with aircraft piracy and kidnapping. Pleaded guilty to interfering with flight crew Mar. 24, 1970. Awaiting sentence.
35. Austin, Tyrone Ellington	Jan. 2, 1969	EAL	New York to Miami.	Mar. 25, 1969 in eastern district of New York.	Fugitive.
36. Bohle, Ronald Thomas	Jan. 9, 1969	EAL	Miami to Nassau.		Trial to be held in South Bend, Ind.
37. Hemley, Robert McRae	Jan. 11, 1969	UAL	Jacksonville to Miami.	Dec. 15, 1969	Acquitted Nov. 20, 1969 in southern district of Georgia.
38. McPeake, Kenneth Carl	Jan. 13, 1969	DL	do		Received 15-year sentence on July 31, 1969 for interfering with flight crew member.
39. Payano, Aristogarez Antonio Navarro	Jan. 19, 1969	EAL	New York to Miami.	Complaint filed Jan. 27, 1969	Fugitive.
40. Ayre.	Jan. 24, 1969	NAL	Key West to Miami.		No positive identification made.
41. Booth, Byron Vaughn	Jan. 28, 1969	NAL	New Orleans to Miami.	Jan. 28, 1970 in central district of California.	Fugitive.
Smith, Clinton Robert				Jan. 28, 1970 in central district of California.	Do.
42. Unknown subjects (2)	Jan. 28, 1969	EAL	Atlanta to Miami.		No positive identification made. Fugitives.
43. Jackson, L.	Jan. 31, 1969	NAL	San Francisco to Tampa.		Do.

See footnotes at end of table p. 15.

CURRENT LEGAL STATUS OF SUSPECTED OR CONVICTED HIJACKERS—Continued

Defendant(s)	Date of incident	Aircraft	Flight	Indicated	Disposition
44. Pepraro, Michael Anthony	Feb. 3, 1969	EAL	New York to Miami	On May 7, 1969 sentenced to custody of Attorney General under provisions of Youth Correction Act.	Do.
Fitzgerald, Tamsin Rebecca	Feb. 3, 1969	EAL	Newark to Miami	Complaint filed Feb. 27, 1969 in district of New Jersey.	Fugitive.
45. Garcia, Wilfredo Hernandez	Feb. 3, 1969	EAL	Newark to Miami	do.	Do.
Estrada, Joaquin Babin	Feb. 10, 1969	EAL	San Juan to Miami	Complaint filed June 18, 1969 in San Juan, P.R.	Do.
46. DeQuessada, Pedro Pablo Alvarez	Feb. 25, 1969	EAL	Atlanta to Miami	Mar. 5, 1969 in northern district of Georgia.	Do.
47. Ervin, Jr. Lorenzo Edward	Feb. 25, 1969	EAL	New York to Miami	Mar. 25, 1969 in eastern district of New York.	Case pending. Subject undergoing mental examinations.
48. Bryant, Anthony Garnet	Mar. 5, 1969	NAL	Dallas to Augusta	July 14, 1969 in southern district of Georgia.	Fugitive.
49. Sandlin, Bobby	Mar. 17, 1969	DL	Las Vegas to New Orleans	Mar. 25, 1969 in New Orleans.	Trial set for Apr. 13, 1970.
50. Dickey, Douglas Alton	Mar. 19, 1969	DL	New York to San Diego	June 2, 1969 in western district of Texas.	Case pending. Subject undergoing mental examinations. Charged with aircraft piracy, kidnapping, escape, and violation of gun code. Case pending.
51. Frese, Luis Antonio	Mar. 25, 1969	DL	New York to San Diego	July 16, 1969 in San Juan, P.R.	Fugitive.
52. Sanchez, Hiran Courouneaux	Apr. 13, 1969	PAA	San Juan to Miami	do.	Do.
Agüero, Manuel Vargas	Apr. 13, 1969	PAA	San Juan to Miami	do.	Do.
Claro, Jose Diaz	Apr. 13, 1969	PAA	San Juan to Miami	do.	Do.
Gastaneda, Esmeraldo Ramirez	Apr. 13, 1969	PAA	San Juan to Miami	do.	Do.
53. Charrette, Jean Pierre	May 5, 1969	NAL	New York to Miami	Complaint filed June 30, 1969 in southern district of Florida.	Do.
Allard, Alain	May 26, 1969	NEA	Miami to New York	do.	Do.
54. Zamora, Crencencio Parra	May 26, 1969	NEA	Miami to New York	Complaint filed June 29, 1969 in southern district of Florida.	Do.
Gracial, Roberto Romero	May 30, 1969	TWA	Alexandria to Louisiana, New Orleans. <sup>1</sup>	do.	Do.
Bolivar, Samon Marino	May 30, 1969	TWA	Oakland to New York	Complaint filed eastern district of Louisiana.	Do.
55. Neimyer, Terrence	June 17, 1969	TWA	Oakland to New York	June 24, 1969 in Las Vegas, Nevada.	Found to be insane.
56. Brent, William Lee	June 17, 1969	TWA	Newark to Miami	August 25, 1969 in eastern district of North Carolina.	Fugitive.
57. Esquivel, Medrano Augustin	June 22, 1969	EAL	Los Angeles to New York	January 14, 1970 in central district of California.	Do.
58. Marques, John Gerard	June 25, 1969	UAL	Baltimore to Miami	August 5, 1969 in district of Maryland.	Do.
59. Anthony, Ray	June 28, 1969	EAL	Los Angeles to Miami	December 17, 1969	Case pending. Subject undergoing mental examinations.
60. Crawford, J.C.	July 27, 1969	CAL	Los Angeles to Miami	Complaint filed August 1, 1969 in district of Kansas.	Fugitive.
61. Perry, Lester Ellsworth	July 31, 1969	TWA	Philadelphia to Los Angeles	do.	Do.
62. McCreery, John Scott	Aug. 5, 1969	EAL	Charlotte to Tampa	Charges dismissed Jan. 12, 1970. Committed to mental institution.	Charges dismissed Jan. 12, 1970. Committed to mental institution.

63. Diaz, Domingo Torres	Aug. 14, 1969	NFA	Ecstion to Miami	Dec. 10, 1969 in district of Mass.	Fugitive.
Perez, Julio Lezaro Menea					
64. Isawi, Salim	Aug. 29, 1969	TWA	Los Angeles to Tel Aviv	Dec. 10, 1969 in district of Massachusetts.	Do.
Khaled, Leila Ali	do.			Complaint filed Jan. 16, 1970 in District of Columbia.	Do.
65. Delgado, George Carabelle	do.	NAL	Miami to New Orleans	Columbia Jan. 16, 1970.	Do.
66. Coplin, Felix Rolando P.	Sept. 7, 1969	EAL	New York to San Juan	Nov. 6, 1969 in middle district of Florida.	Do.
67. Medina, Jose Lewis Gonzales	Sept. 10, 1969	EAL	do.	Sept. 18, 1969 in San Juan, P.R.	Committed to mental institution on Jan. 30, 1970.
68. Hernandez, Alfred A.	Sept. 24, 1969	NAL	Newark to Jacksonville	Nov. 19, 1969 in middle district of Florida.	Fugitive.
69. Perez, Francisco Riveria	Oct. 9, 1969	NAL	Los Angeles to Miami	Complaint filed Oct. 10, 1969 in western district of Texas.	Do.
70. Chorr, Henry	Oct. 21, 1969	PAA	Mexico City to Merida, Mexico	Complaint filed Oct. 24, 1969 in eastern district of Michigan.	Do.
71. Minichiello, Raphael	Oct. 31, 1969	TWA	Los Angeles to San Francisco	Dec. 3, 1969 in eastern district of New York.	In custody in Italy. Awaiting trial.
72. Booth, David Lawrence	Nov. 10, 1969	DL	Cincinnati to Chicago	Complaint filed Dec. 8, 1969 in Omaha, Nebr.	Fugitive.
73. Hamilton, Benny Ray	Dec. 2, 1969	TWA	San Francisco to Philadelphia	Complaint filed Dec. 29, 1969 in southern district of New York.	Do.
74. Martinez, A.	Dec. 26, 1969	UAL	New York to Chicago		Do.
75. Fojtek, Anton	Jan. 6, 1970	DL	Orlando to Jacksonville	Complaint filed Jan. 16, 1970 in District of Columbia.	Do.
76. Belon, Christian Remi	Jan. 8, 1970	TWA	New York to Rome	Complaint filed Feb. 24, 1970 in district of New Jersey.	Do.
77. Abad, Daniel Lopez	Feb. 16, 1970	EAL	Newark to Miami		Do.
78. Studds, Clemmie	Mar. 11, 1970	UAL	Cleveland to Atlanta	Complaint filed in Boston on Mar. 18, 1970 charging murder.	Do.
79. Divvivo, John	Mar. 17, 1970	EAL	Newark to Boston		Awaiting trial in Boston.

1 Unsuccessful.

Senator CANNON. Senator Pearson?

Senator PEARSON. Mr. Goodrich, as I look at your testimony on this issue before us, what we have here is a declaration of laws on an international basis so far as those 22 nations that have signed this convention are concerned. Is that it?

Mr. GOODRICH. To a large extent that is true, Senator.

Senator PEARSON. Cuba of course—are any of the Middle East countries signatories to this convention?

We probably ought to have a list of the 22 nations.

Mr. GOODRICH. We do have a list here and we would be glad to submit it for the record.

Senator PEARSON. We would be glad to have it. Are any of the Middle East countries signatories to the convention?

Mr. GOODRICH. Yes; Saudi Arabia is a signatory.

Senator CANNON. Why don't you just read the list of those that are signatories now?

Mr. GOODRICH. Right. China, Congo (Brazzaville), Federal Republic of Germany, Guatemala, Holy See, Indonesia, Italy, Japan, Liberia, Panama, The Philippines, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Yugoslavia, Belgium, Canada, Denmark, Ireland, Israel, Korea, Mexico, the Netherlands, Nigeria, Norway, Pakistan, Portugal, Saudi Arabia, Senegal, Spain, Venezuela, Colombia, Brazil, Niger, Barbados, Equador, France, Greece, and the Malagasy Republic.

Those are the signatories.

Senator CANNON. How many signatories are there now?

Mr. GOODRICH. There are 40 signatories to date.

Senator CANNON. Would you list the states which have ratified now?

Mr. GOODRICH. There are 22 ratifications. Twelve ratifications were required to bring the convention into effect, and the United States was the 12th Nation that undertook ratification. The convention went into effect 90 days after that ratification. Since the date of ratification by United States, on September 5 of last year, 10 other countries have ratified.

Senator CANNON. Would you read us the 12 and then the 10?

Mr. GOODRICH. Surely. The first 12 countries that ratified, beginning on February 28, 1966, were China, and thereafter Denmark, Italy, Norway, the Philippines, Portugal, Sweden, United Kingdom of Great Britain and Northern Ireland, Mexico, Upper Volta, Niger, and the United States. The next 10 were Israel, Spain, Canada, the Netherlands, Malagasy Republic, Saudi Arabia, Equador, Federal Republic of Germany, Brazil, and the Republic of Gabon.

(The subsequent information was received for the record:)

*List of ratifiers*

The Convention was ratified by the following countries on the dates indicated:

China.....	Feb. 28, 1966
Denmark.....	Jan. 17, 1967
Italy.....	Oct. 18, 1968
Norway.....	Jan. 17, 1967
Philippines.....	Nov. 26, 1965
Portugal.....	Nov. 25, 1964
Sweden.....	Jan. 17, 1967
United Kingdom of Great Britain and Northern Ireland <sup>1</sup> .....	Nov. 29, 1968
Mexico.....	Mar. 18, 1969
Upper Volta.....	June 6, 1969
Niger.....	June 27, 1969
United States.....	Sept. 5, 1969
Israel.....	Sept. 19, 1969
Spain.....	Oct. 1, 1969
Canada.....	Nov. 7, 1969
The Netherlands.....	Nov. 14, 1969
Malagasy Republic.....	Dec. 2, 1969
Saudi Arabia.....	Nov. 21, 1969
Ecuador.....	Dec. 3, 1969
Fed. Republic of Germany.....	Dec. 6, 1969
Brazil.....	Jan. 14, 1970
Republic of Gabon.....	Jan. 14, 1970

<sup>1</sup> At the time of ratification the Representative of that Government stated "On depositing the instrument of ratification I have to declare on behalf of the Government of the United Kingdom that the provisions of the Convention shall not apply in regard to Southern Rhodesia unless and until the Government of the United Kingdom inform the International Civil Aviation Organization that they are in a position to ensure that the obligations imposed by the Convention in respect of that territory can be fully implemented."

*List of signatories*

The Tokyo Convention was signed on September 14, 1963, by the following countries:

China	Panama
Congo (Brazzaville)	Philippines
Germany (Federal Republic)	Sweden
Guatemala	United Kingdom of Great Britain and Northern Ireland
Holy See	United States of America
Indonesia	Upper Volta
Italy	Yugoslavia
Japan	
Liberia	

Since September 14, 1963, it has also been signed by:

Belgium	Nigeria	Colombia
Canada	Norway	Brazil
Denmark	Pakistan	Niger
Ireland	Portugal	Barbados
Israel	Saudi Arabia	Ecuador
Korea	Senegal	France
Mexico	Spain	Greece
Netherlands	Venezuela	Malagasy Republic

Senator PEARSON. I want to thank the chairman. That is precisely what we need for the record.

I just assume now that is a rather significant step in the development of international aviation law. I think we ought to emphasize in these hearings that it really doesn't make any sort of a substantial step toward the solution of the hijacking problem; is that correct?

Mr. GOODRICH. The Tokyo Convention is not a physical deterrent to hijacking, Senator Pearson, and it does not provide for extradition. It does, however, very clearly continue the jurisdiction of any state of registry of an aircraft regardless of where that aircraft happens to be.

Senator PEARSON. I take it unless it is supplemented by extradition agreements, it really doesn't act as a legal deterrent either?

Mr. GOODRICH. The convention, however, would provide a basis for extradition on a bilateral basis among signatory powers, if such bilaterals are in existence.

Senator PEARSON. By virtue of concurrent jurisdiction?

Mr. GOODRICH. Well, the concurrent jurisdiction would be an added incentive to countries that are signatory powers to enter into bilaterals providing for extradition. To a large extent, seeking bilaterals might be more feasible than waiting for the convention itself to be amended to provide for extradition as a matter of international treaty. However, as I mentioned a few moments ago, a proposed international agreement is being discussed right now in Montreal, and we will have to see how that develops.

Senator PEARSON. Thank you very much.

Senator CANNON. Mr. Carter, we will be very glad to hear from you at this time.

**STATEMENT OF JARED G. CARTER, ASSISTANT LEGAL ADVISOR FOR ECONOMIC AFFAIRS, STATE DEPARTMENT, WASHINGTON, D.C., ACCOMPANIED BY LOUIS GEORGANTAS, ATTORNEY, LEGAL ADVISER'S OFFICE, AND HARRY FEEHAN, ECONOMIC BUREAU, STATE DEPARTMENT**

Mr. CARTER. Thank you, Mr. Chairman. If desirable and appropriate, since my statement really adds nothing of substance to Mr. Goodrich's statement, I might merely submit it for the record and with the help of Mr. Georgantas and Mr. Feehan answer any questions the committee may have.

Senator CANNON. Fine. Your statement will be made a part of the record.

I wonder if you could tell us, Mr. Carter, which of these signatory countries that have ratified that we have extradition agreements with?

Mr. CARTER. I am sorry, Mr. Chairman, I am not in a position to give you at this time a complete answer to that question.

Senator CANNON. You will supply that for the record?

Mr. CARTER. Yes, sir, we will.

(The information requested follows:)

The United States has extradition treaties with the following thirteen of the twenty-two countries that have ratified the Tokyo Convention: Canada, Federal Republic of Germany, Italy, Netherlands, Norway, Portugal, Spain, Sweden, United Kingdom, Israel, Mexico, Brazil, and Ecuador. Two of these treaties (with Brazil and Sweden) specify extraditable offenses which would encompass aircraft hijacking. We have reached preliminary agreement with the United Kingdom and Spain on new extradition treaties which would include the offense of hijacking, but have not yet concluded negotiations. With regard to the remaining treaties, there would be some question whether hijacking would be considered an extraditable offense. It would be necessary to bring hijacking under the offense of piracy, a question which has not yet been tested.

The State Department is also in the process of negotiating with ten other countries treaties that would specifically include hijacking as an extraditable offense.

Furthermore, the draft convention on hijacking which has just been approved by the ICAO Legal Committee would automatically extend existing extradition treaties to cover hijacking as an extraditable offense between Contracting States.

Senator CANNON. Do you have the facts there available—I asked Mr. Goodrich the question a few moments ago and he said he thought your people had it. So if you will, you may go ahead and respond to that question now.

Mr. CARTER. Yes, sir. I would like to ask Mr. Feehan to supply that information for you, Mr. Chairman.

Mr. FEEHAN. Mr. Chairman, if I recall your question correctly, it was the number of persons, hijackers, who have been returned to the United States and what has since happened to them.

Senator CANNON. The question was the number that have actually been involved in hijacking, the number of those that have now been returned or have returned to the United States, and whether they are now being prosecuted.

Mr. FEEHAN. As far as we know, there are between 80 and 100 people who since July 1968 have been parties to hijacking of American flag aircraft to Cuba.

Since this same date, July 1, 1968, 21 persons that either hijacked U.S.-flag aircraft to Cuba or attempted to do so, have been taken into Federal custody.

The successful hijackers returned to the United States via third countries, the unsuccessful ones were apprehended in this country. These people either are actually in Federal custody or in the instance of two minors, are on parole. Eight have been tried, convicted, and sentenced either for air piracy and/or kidnaping or related and lesser offenses.

Senator CANNON. Do you have the penalties that were imposed on those eight?

Mr. FEEHAN. I have them here, Mr. Chairman. I think it would take sometime to collate them. I will be glad to submit them as a supplementary memoranda.

Senator CANNON. If you will please, submit those for the record.

(The information requested follows:)

1. John H. Morris, who hijacked a TWA plane to Havana on July 4, 1968, was sentenced to 5 years in prison for the crime of escaping from custody on June 25, 1969. Morris already was facing lengthy prison terms for other offenses (U.S.D.C. for District of Nevada).

2. Willis Jesse, who hijacked a small charter airplane to Havana on August 4, 1968, pleaded guilty to the charge of kidnapping and was sentenced to 10 years in prison on June 26, 1969 (U.S.D.C. for S.D. of Florida).

3. Leonard Bendicks, who hijacked a small charter airplane to Havana on July 12, 1968, has been found competent to stand trial (after a trial on the issue of his sanity), and is awaiting the setting of a trial date on the counts of air piracy and kidnapping (U.S.D.C. for S.D. Florida).

4. Alben Barkley Truitt, who hijacked a small charter plane to Havana on October 23, 1968, was sentenced to 20 years in prison for kidnapping and 20 years in prison for air piracy (the sentences to run concurrently) on August 12, 1969 (U.S.D.C. for S.D. of Florida).

5. Roger C. Pastorcich, a minor, who attempted to hijack an Eastern Airlines plane to Havana on November 2, 1968, was sentenced to probation for his minority for carrying a deadly weapon on a plane on July 18, 1969 (U.S.D.C. for N.D. of Alabama).

6. Kenneth Earle McPeek, who attempted to hijack a Delta Airlines plane to Havana on January 12, 1969, pleaded guilty to the charge of interference with a member of a flight crew and was sentenced to 15 years in prison on July 31, 1969 (U.S.D.C. for S.D. Florida).

7-8. Tamsin Fitzgerald and Michael A. Preparo, who together attempted to hijack a National airlines plane to Cuba on February 3, 1969, pleaded guilty to the charges of assault on a member of the flight crew and were sentenced to 4-6 years in prison on March 28, 1969 (U.S.D.C. for S.D. of Florida).

Senator CANNON. Let me ask you this: Were the maximum penalties imposed in any of those cases?

Mr. FEEHAN. The maximum penalty of death has not been imposed in any case. The minimum penalty of 20 years in prison has been imposed in one case that I am sure of, the case of Allen Barkley Truitt. A penalty of 10 years for kidnaping was imposed on a man named Willis Jesse.

I think those are the maximum sentences which have been imposed to date.

Mr. GOODRICH. In 1961 a man named Leon Beardon and his son Cody, who attempted to hijack a Continental Airlines jet, were apprehended at El Paso, Tex., where the plane stopped to refuel. FBI agents and border patrol officers in cars chased the plane as it attempted takeoff and fired shots into the tires and engines to disable the plane and prevent it from becoming airborne. Then, while one FBI agent boarded the craft and negotiated with the hijackers, another agent sneaked aboard and seized young Beardon. An Immigration Service officer, a former college boxer being held hostage aboard the plane, jumped the father and knocked him to the floor with a blow to the jaw. The elder Beardon was prosecuted and received a 20-year sentence.

Mr. FEEHAN. Do you wish me to continue, Mr. Chairman?

Senator CANNON. Yes.

Mr. FEEHAN. Eight have been tried, convicted, and sentenced, either for air piracy, kidnaping or related offenses. Seven are in various pretrial stages before U.S. district courts around the country.

I might say that six of these seven are people who came back from Canada last November. Three are undergoing psychiatric examination. One is confined indefinitely to a State mental institution. Two have been tried for air piracy and found not guilty.

Senator CANNON. I wonder for the record if you would supply the names of the two that were found not guilty and what the facts were believed to be, that is, did they actually participate in the hijacking of an aircraft as far as we know?

Mr. FEEHAN. One of these men is named Richard Helmey. He was tried by a jury and found not guilty. He pleaded temporary insanity. The jury found him not guilty.

Senator CANNON. They found him not guilty by reason of temporary insanity or just not guilty?

Mr. FEEHAN. I think the jury just said not guilty, Mr. Chairman. What they thought, I don't know.

Senator CANNON. You will supply for the record the circumstances relating to the alleged hijacking in those two cases, will you?

Mr. FEEHAN. Yes, sir.

(The information requested follows:)

1. Robert McR. Helmey, who hijacked a United Airlines plane to Cuba on January 11, 1969, was tried for air piracy and kidnaping before a jury and found not guilty on November 20, 1969 (Y.S.D.C. for S.D. Florida).

2. James S. Pinekney, who attempted to hijack a British West Indies Airlines airplane to Cuba on February 11, 1969, was tried before a jury for attempted air piracy and attempted kidnaping and found not guilty on October 14, 1969 (U.S.D.C. for S.D. Florida).

Senator CANNON. Senator Pearson?

Senator PEARSON. Mr. Chairman, I don't think I have anything other than once again I want to make the point either by my ob-

servation or some comments of the witnesses that what we have here is a declaration of international law and I am concerned that it will be construed that we are making some very substantive affirmative step in relation to the hijacking problem. I don't think that is true by virtue of the legislation before us today. And I think the record ought to indicate that.

Mr. Carter, do you concur in that view?

Mr. CARTER. Senator Pearson, the clear statement of the basis on which a State may exercise jurisdiction is certainly a help. This convention, and certainly now this implementing legislation, is a step forward in the hijacking problem. There is perhaps some extended coverage in a few possible cases where our air piracy statute would be applicable under the amendment where it conceivably would not be applicable now.

But insofar as getting a hijacker back to the United States, neither the treaty nor the amendment we are now discussing provides a clear basis for extradition. The process now going forth in the meeting of the Legal Committee of ICAO, the draft there, as Mr. Goodrich pointed out, would require the contracting state to either extradite the hijacker or submit the case to its competent authorities for decision whether to institute legal proceedings against him that this convention would also make hijacking an extraditable offense under existing extradition treaties, a question which in many cases is far from clear today. And it would provide the basis for extraditing a hijacker for those nations who can extradite a person without a treaty.

Senator PEARSON. Do you recall what the issue was in the United Nations last year in relation to hijacking? There was some resolution which failed to pass.

Mr. CARTER. I will ask Mr. Feehan to comment on that. I am personally not an expert on hijacking.

Mr. FEEHAN. Senator Pearson, the United Nations last December, December 16—I believe, the General Assembly by an overwhelming vote passed a resolution which in sort of broad terms stated the menace that hijacking and other acts of armed interference with civil aviation constituted. The resolution called upon member states to ratify the Tokyo Convention, pointing out the salutary aspects of article 11 thereof. It called upon member states to support the further efforts of ICAO to put together what has been called a protocol to the Tokyo Convention, which is the instrument Mr. Carter has been describing.

Now this was, as are most General Assembly resolutions, hortatory and merely declarative of the sense of the great great majority of the members of the General Assembly.

Senator PEARSON. I have no further questions. Thank you very much.

Senator CANNON. The House held hearings on this bill last year and has yet to report it. Can either of you tell us if there was a problem over there in connection with it, and if so, what it was?

Mr. GOODRICH. Both our Department and the State Department did testify before that hearing. We are not aware that there is any problem in the committee's handling of the bill. It simply has not yet been reported out.

Senator CANNON. Thank you very much.

(The statement follows:)

## STATEMENT OF JARED G. CARTER, ASSISTANT LEGAL ADVISER, DEPARTMENT OF STATE

Mr. Chairman and Members of the Committee: My name is Jared G. Carter, and I am an Assistant Legal Adviser in the Office of the Legal Adviser, Department of State. I am accompanied by Louis Georgantas, an attorney in the Legal Adviser's Office and Mr. Harry Feehan of the Economics Bureau, Department of State. I appreciate this opportunity to appear before you today to discuss S. 2176, a Bill "To Implement the Convention on Offenses and Certain Other Acts Committed on Board Aircraft and for other purposes," which is commonly referred to as the Tokyo Convention. S. 2176 amends certain sections of the Federal Aviation Act of 1958 to implement our obligations under the Tokyo Convention.

The Senate gave its advice and consent to ratification of the Tokyo Convention on May 12, 1969. On September 5, 1969 the United States submitted its instrument of ratification. The Convention went into force on December 4, 1969.

I would like to begin, Mr. Chairman, by briefly explaining the purposes of the Tokyo Convention. The main principle of the Tokyo Convention is to recognize the competence of the State of registration of an aircraft to exercise jurisdiction over in-flight crimes. It requires that States take steps to establish such jurisdiction so as to assure that civil aircraft of a State party to the Convention, their cargoes, passengers, and crew are never beyond the protection and deterrent effect of some State's laws.

The Convention also concerns the powers of the aircraft commander. It establishes standards for dealing with persons whose conduct threatens the safety or good order and discipline on board the aircraft; it authorizes the commander to restrain or off-load such a person; and it authorizes him to deliver to a Contracting State a person who he has reasonable grounds to believe has committed on board a serious offense under the laws of the State of registration. Neither the commander nor others shall be held responsible for actions taken in accordance with the Convention.

The Convention also specifies various powers and duties of Contracting States which accommodate the commander's authority to disembark persons whose conduct threaten the safety or good order and discipline on board the aircraft and his authority to deliver to a Contracting State any person who he has reasonable grounds to believe has committed a serious offense on board.

S. 2176 deals with the jurisdictional aspect of the Convention and is responsive to Article 3 (2) which requires a Contracting State to take such measures as may be necessary to establish its jurisdiction as the State of registration of the aircraft. This Bill will assure application of U.S. penal law to acts endangering air safety aboard all U.S. registered aircraft no matter where the aircraft may be in flight.

Section (1) of S. 2176 defines "special aircraft jurisdiction of the United States" to include civil aircraft of the United States, U.S. military aircraft, and foreign aircraft in situations presently included within the jurisdictional scope of the Federal Aviation Act. Section (3) of S. 2176 amends 902(i), 902(j), and 902(k) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(i)-1472(k)) by substituting the term "special aircraft jurisdiction of the United States" for the term "in flight in air commerce."

A specific example will illustrate the reason for these changes. Section 902(i) of the present Act spells out the crime of aircraft piracy and defines it as "any seizure or exercise of control, by force or violence, and with wrongful intent, of an aircraft in flight in air commerce." "Air commerce" is defined in section 101(4) (40 U.S.C. 1301(4)) and includes any operation or navigation of aircraft which may endanger safety in interstate, overseas, or foreign air commerce. Section 101(20)(e) of the Act (49 U.S.C. 1301(20)(e)) defines "foreign air commerce" as the carriage by aircraft of persons or property for compensation or hire, or the operation of aircraft in the conduct or furtherance of a business or vocation in commerce between a place in the United States and any place outside thereof.

Despite the apparent broadness of the above "air commerce" definition, it may be inadequate to cover all United States registered aircraft as Article 3(2) of the Convention requires. For example, there are at present charter flights conducted by U.S. supplemental air carriers operating only between two foreign points; an act of force or violence committed aboard such an aircraft may not fall within the definition of air commerce as an act which directly affects or endangers safety in the carriage of persons or property between the United States and a place outside the United States. Or a United States aircraft owned

and operated abroad purely for pleasure reasons by a private United States citizen living abroad is certainly not an aircraft used for the carriage of persons or property for hire and may not be considered to be "an aircraft in the conduct or furtherance of a business or vocation." The proposed amendment would clearly solve this situation since it applies to all "civil aircraft of the United States."

The proposed amendment also assures that the definition of "in flight" in U.S. legislation coincides with the Convention definition ("from the moment when power is applied for the purpose of take-off until the moment when the landing run ends").

Therefore, this amendment to the Federal Aviation Act of 1958 appears necessary to ensure in every case that we have established jurisdiction, in accordance with our obligations under the Tokyo Convention, over acts on board aircraft of United States registration no matter where they are in flight.

The Department of State supports this legislation and urges its prompt passage.

Senator PEARSON. Mr. Chairman, it was brought to my attention that the Air Transport Association wanted to be heard on this matter. Were they advised of the hearing?

Mr. GINTHER. Senator, they later declined.

Senator PEARSON. But they did have an opportunity to appear?

Mr. GINTHER. Yes, sir.

Senator CANNON. The hearings are adjourned at this time.

(Thereupon, at 10:45 a.m. the hearing was adjourned.)

AIR TRANSPORT ASSOCIATION,  
Washington, D.C., March 6, 1970.

Re S. 2176, Implementation of the Tokyo Convention.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Air Transport Association of America, on behalf of the scheduled, certificated airlines of the United States, takes this opportunity to express its support for S. 2176, the legislation designed to implement the Convention on Offenses and Certain Other Acts Committee on Board Aircraft, known as the "Tokyo Convention".

As the Committee knows, the problem of aircraft hijacking has plagued many of our member airlines during the last few years. Although the frequency of these incidents appears to have abated in recent months, we nevertheless view this problem with grave concern. Each incident brings with it the potential jeopardy of every life aboard the affected aircraft. No simple solution to hijacking has been developed, for the fundamental reason that no single step will bring these mindless acts of air piracy to an end. However, some progress has been made, and we believe the current efforts of world governments through the United Nations and the International Civil Aviation Organization hold the strongest promise for the future.

It is clear that neither the airlines nor the government can bring air piracy to an end through unilateral efforts. The solution must come through close cooperation between our government and the governments of those countries to which our aircraft are diverted. The airlines therefore vigorously support the participation of the United States in multilateral efforts such as the Tokyo Convention.

According to the Department of Transportation, S. 2176 will provide the domestic legislation necessary to implementation of the Tokyo Convention by the United States. We are satisfied that the bill establishes a basis of asserting U.S. jurisdiction over crimes committed aboard U.S. flag aircraft in flight anywhere in the world. This expansion of United States jurisdiction is in accord with the positive role of international law contemplated by the Tokyo Convention, establishing certain jurisdictional competence for the State of aircraft registry.

Again, Mr. Chairman, we support S. 2176, and urge its enactment.

Cordially,

S. G. TIPTON.

