

STATEMENT OF JAMES M. BEGGS, UNDER SECRETARY, DEPARTMENT OF TRANSPORTATION, BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE ON THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT, MONDAY, JUNE 7, 1971.

Mr. Chairman and Members of the Committee:

I am most grateful for the opportunity to appear before this Committee to express the views of the Department of Transportation on the Convention which is before you. I am accompanied by Mr. Robert P. Boyle, Deputy Assistant Administrator for the Federal Aviation Administration, who was a member of the U.S. Delegation to the Diplomatic Conference at The Hague where this Convention was opened for signature.

As you know, the Department of Transportation is responsible for the safety and security of the air commerce of the United States. We strongly endorse the recommendations made by the Department of State that the United States Senate give its advice and consent to the ratification of the Convention for the Suppression of Unlawful Seizure of Aircraft. The safety and security of international air transportation is at issue.

This Convention is designed to supplement the Tokyo Convention which applies to the commission of all crimes aboard aircraft. The Tokyo Convention provides that in the case of aircraft in flight in international air transportation the law of the state of the flag of the aircraft applies to events occurring aboard that aircraft. That Convention gives certain powers and responsibilities to the commander of an aircraft with respect to crimes committed aboard his aircraft. Furthermore, it imposes on the state in which the aircraft lands following the commission of a crime certain obligations toward any alleged offenders which the aircraft commander asks it to

take into custody. In the case of a hijacked aircraft, these obligations include restoration of control of the aircraft to its lawful commander, to permit the passengers and crew to continue their journey as soon as practical, and return of the aircraft and its cargo to the lawful possessors. However, the Tokyo Convention does not oblige any state to establish jurisdiction over hijacking or to extradite or submit to prosecution hijackers in their custody. It is this gap in the international legal system which the Convention for the Suppression of Unlawful Seizure of Aircraft closes. This Convention would obligate its parties to establish jurisdiction over hijackers and agree to extradite or submit to prosecution offenders in its custody.

The Administration, including the Department of Transportation, in the exercise of its responsibilities to assure the safety and security of the air commerce of the United States, is endeavoring to establish a system of international public law dealing with crimes in and to international air transportation. The Tokyo Convention of 1963 was a first and a most significant step in this direction. However, it does not adequately cover today's problems. We now need the additional guarantees that states will establish jurisdiction over the offense of hijacking and will extradite or submit to prosecution the offenders without any exception. In fact, in order to complete a system of international public law which will cope fully and completely with the problem of criminal acts of violence in and to international air transportation, we believe two additional international agreements are necessary.

The first is one which takes appropriate measures against those persons who commit acts on the ground directed against international air transportation or its facilities such as acts of sabotage or other forms of unlawful interference. The International Civil Aviation Organization has been at work on

this particular problem for some time, and its Legal Committee has completed a draft convention which we expect will be finalized and opened for signature at a Diplomatic Conference to be convened in September of this year.

The second of these additional international agreements is one which will provide for the application of some form of concerted action against any country who does not comply with the international undertakings expressed in the Tokyo Convention, the Convention before us today, and, upon its agreement, the Convention dealing with ground activities interfering against aircrafts.

This second proposed convention resulted from the rash of hijackings that occurred over the Labor Day weekend last year. At that time the President called for international action to curb the major threat to international air transportation represented by the so-called Dawson Field incidents. Secretary Volpe went to Montreal at the request of the President and presented to the Council of the International Civil Aviation Organization (ICAO) a resolution calling for the development of an international agreement to apply sanctions against any country which would countenance the use of aircraft hijacking for international blackmail purposes. As a direct result of this request by the Secretary on behalf of the United States, the ICAO Council asked its Legal Committee to begin work on a Convention which would provide for the taking of concerted action in such a situation. While this work is not yet completed, substantial progress has been made, and we are hopeful that this international agreement will be reached. We then would have an integrated system of public law adequate to cope with the major

threat to safety and security of international air transportation that aircraft hijacking poses.

To summarize, our objective is to have four conventions on hijacking:

1. The Tokyo Convention on Crimes on Board Aircraft. This Convention has been ratified and is operative.
2. The Convention for Suppression of Unlawful Seizure of Aircraft. We are asking the Committee to give its advice and consent on this unratified Convention.
3. The Convention on Interference Against Aircraft. A diplomatic conference in September this year will complete the drafted convention, and it will be submitted to the Senate.
4. A Convention providing sanctions against states which detain aircraft. The ICAO Legal Committee is working on a draft convention.

In order to effectively implement the Convention for the Suppression of Unlawful Seizure of Aircraft for which we are asking the advice and consent of the United States Senate, some additional legislation will be needed. At this time I would like to give the Committee a brief description of the key provisions of this legislation which has been submitted to the Congress. Since the groundwork for our international public law on the subject of crimes in international transportation was accomplished with the passage by Congress of the implementing legislation connected with the Tokyo Convention, no major new legislation is required for the implementation of the Convention currently before the Committee.

However, we will, for example, have to amend our existing laws to extend jurisdiction by the United States over any aircraft outside the United States on which the offense as defined in the Convention is committed whenever that aircraft lands in the United States with the offender still on board. Additionally, we will have to establish jurisdiction over any aircraft, no matter what its registration, if it is leased without crew to an operator who has his principal place of business in the United States or who is a permanent resident of the United States.

In addition, in order to satisfy Article 4, paragraph 2 of the Convention our legislation proposes a special provision to establish jurisdiction over the offense of hijacking when it occurs anywhere outside the special aircraft jurisdiction of the United States but the alleged offender is found here. We are proposing that there be established a separate substantive offense to cover this situation, carrying its own penalty provision. The proposed penalty for this offense would be death or imprisonment for any term of years, or for life, whereas, under our existing law (and our proposed law as it relates to the extension of our special aircraft jurisdiction) the offense of aircraft piracy is punishable by death if the verdict of the jury so recommends or by imprisonment for not less than 20 years if the death penalty is not imposed. This separate offense of hijacking outside the special aircraft jurisdiction of the United States, however, would cover a wider variety of situations, ranging from the most flagrant case of hijacking by force and violence with the individual being ultimately overcome by a violent struggle to the situation where the offender even peacefully surrenders within the United States many years after the commission of a hijacking under extenuating circumstances which took place in

another country. To cope with this wide range of possible offenses which may be presented to courts, it is our judgment that flexibility in the penalties that may be applied is necessary. Simply stated, we do not wish to compel courts to apply the penalty of a minimum sentence of 20 years in the case of hijackers where special equities may be present. Thus, while the Convention imposes on the United States the obligation to undertake prosecution without exception whatsoever, we think it necessary that the courts be allowed to consider motivation and other special circumstances. These are the essential provisions of the implementing legislation which we are recommending.

The Convention on Suppression of Unlawful Seizure of Aircraft when combined with the implementing legislation I have just outlined, will significantly add to our integrated system of international public law designed to preserve and protect the safety and security of international air transportation. I urge this Committee to recommend to the Senate to give its advice and consent to the ratification of this Convention.