U.S. DEPARTMENT OF TRANSPORTATION
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STATEMENT OF JOHN W. BARNUM, GENERAL COUNSEL, DEPARTMENT OF TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON AVIATION OF THE SENATE COMMERCE COMMITTEE RESPECTING S. 2280, MONDAY, MARCH 6, 1972.

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear before you today to discuss S. 2280. This is the bill submitted by the Department designed to implement for the United States the Convention for the Suppression of Unlawful Seizure of Aircraft (sometimes referred to as the Hijacking or Hague Convention).

The Hijacking Convention was signed by the United States and 49 other countries at The Hague on December 16, 1970. The Convention was designed to strengthen substantially the Tokyo Convention which applies to the commission of 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. In the case of a hijacked aircraft, contracting states are obliged to restore control of the aircraft to its lawful commander, permit the passengers and crew to continue their journey as soon as practical, and return 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 its custody. It is this gap in the international legal system which the Convention for the Suppression of Unlawful Seizure of Aircraft closes. This Convention obligates

its parties to establish jurisdiction over hijackers and agree to extradite or submit to prosecution offenders in its custody.

Current law already enables the United States to implement in many respects the Hijacking Convention. In 1961, Congress added to title IX of the Federal Aviation Act a number of provisions dealing with the commission of crimes aboard aircraft. These included provisions proscribing aircraft piracy, interference with the performance of the duties of a flight crew member, and a number of crimes of violence such as murder and manslaughter. In 1970, following the ratification of the Tokyo Convention, a number of amendments were made to those provisions to fulfill our responsibility to implement that Convention. Previous to the enactment of these amendments, most of the criminal provisions in title IX applied to acts committed aboard aircraft in flight "in air commerce." The 1970 amendments extended and clarified Federal jurisdiction over these crimes by establishing the "special aircraft jurisdiction of the United States" to include while in flight (1) all civil aircraft of the United States; (2) all aircraft of the U.S. national defense forces; and (3) all other aircraft (a) within the United States; or (b) outside the United States if the aircraft has its next scheduled destination or last point of departure in the United States, and next actually lands in the United States.

In order to implement effectively the Hijacking Convention, additional amendments to these provisions are required, and this is the purpose of S. 2280. First, the definition of the special aircraft jurisdiction of the United States is amended to include (1) any aircraft outside the United States aboard which the offense of air piracy is committed, if the aircraft lands

in the United States with the offender still aboard; and (2) any aircraft, no matter what its registration, 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.

Secondly, in order to satisfy Article 4, paragraph 2 of the Convention, the bill includes a special provision establishing jurisdiction over the offense of hijacking when it occurs anywhere outside the special aircraft jurisdiction of the United States but the alleged offender is later found in the United States. This is the so-called universal jurisdiction provision which makes hijackers outlaws wherever they are found. 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 under our proposed law as it relates to the extension of our special aircraft jurisdiciton), the offense of aircraft piracy is punishable by death or by imprisonment for not less than 20 years, or for life. Thus, the maximum penalty is the same for both provisions; only the minimum penalty is different. It should be noted, however, that the existing domestic law on air piracy provides for lesser included offenses such as interference with flight crew members, which is punishable by imprisonment "for any term of years," the same minimum penalty we recommend for the "international" offense. Consequently, the penalty structure for a "domestic" offender is in practice no different from that which would be applied by the proposed legislation to implement the universal jurisdiction provision of the Convention, since in some

domestic cases the offender may be prosecuted for a lesser included offense rather than air piracy because of lack of evidence, extenuating circumstances, or other reasons.

Before closing, I should mention that we have prepared an amendment which would preclude the interpretation that the provisions in the bill establishing the offense of hijacking outside the special aircraft jurisdiction of the United States applies to a hijacker of a purely domestic flight within a foreign country. The amendment conforms the provisions to article 3, section 3 of the Convention which states that the Convention applies only if the place of take-off or the place of actual landing of the aircraft is situated outside the territory of the State of registration of the aircraft. The amendment also incorporates into the new universal jurisdiction provision the definition of the term "in flight" as it is used in the Convention. The amendatory language we propose is attached to my statement. In addition, there is a change of a clerical nature which should be made to the bill. Section 4 contains effective date provisions which would have been appropriate had the bill been enacted before the Convention was ratified. Now, however, those provisions no longer are necessary and we recommend that they be deleted.

Mr. Chairman, the United States was an active participant in the development of the Hijacking Convention and was one of its original signatories. Last September the Senate gave its consent to ratification of the Convention. The United States was the tenth state to so act, thereby enabling the Convention to enter into force. The next official step needed to fulfill our

obligations with respect to the Convention is the enactment of legislation properly adjusting our domestic law to its provisions. In order to insure such action, we urge that the Committee act favorably on S. 2280.

Mr. Chairman, this concludes my prepared testimony. Now General Davis and I will be happy to answer any questions the Committee may have.

Attachment

Amendments to S. 2280

1. Insert between lines 6 and 7 on page 4 the following:

"(3) This subsection shall only be applicable if the place of take-off or the place of actual landing of the aircraft on board which the offense as defined in paragraph 2 of this subsection is committed is situated outside the territory of the state of registration of that aircraft.

"(4) For purposes of this subsection an aircraft is considered to be in flight from the moment when all the external doors are closed following embarkation until the moment when one such door is opened for disembarkation, or in the case of a forced landing, until the competent authorities take over responsibility for the aircraft and for the persons and property aboard."

2. Delete section 4 (line 15 of page 4 through line 5 of page 5).