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CONVENTION ON THE SUPPRESSION OF UNLAWFUL ACTS RELATING TO INTERNATIONAL CIVIL AVIATION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

CONVENTION ON THE SUPPRESSION OF UNLAWFUL ACTS RELATING TO INTERNATIONAL CIVIL AVIATION (THE "BEIJING CONVENTION"), ADOPTED BY THE INTERNATIONAL CIVIL AVIATION ORGANIZATION INTERNATIONAL CONFERENCE ON AIR LAW (DIPLOMATIC CONFERENCE ON AVIATION SECURITY) IN BEIJING ON SEPTEMBER 10, 2010, AND SIGNED BY THE UNITED STATES ON THAT SAME DATE

JUNE 18, 2020.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *June 18, 2020.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (the "Beijing Convention"), adopted by the International Civil Aviation Organization International Conference on Air Law (Diplomatic Conference on Aviation Security) in Beijing on September 10, 2010, and signed by the United States on that same date. I also transmit, for the information of the Senate, the report of the Department of State with respect to the Beijing Convention.

The Beijing Convention is an important component of international efforts to prevent and punish both terrorism targeting civil aviation and the proliferation of weapons of mass destruction. As between parties to the Beijing Convention, it replaces and supersedes the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal, September 23, 1971, and its supplementary protocol, the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal, February 24, 1988. It significantly strengthens the existing international counterterrorism legal framework and facilitates the prosecution and extradition of those who seek to commit acts of terror, including acts such as those committed on September 11, 2001.

The Beijing Convention establishes the first international treaty framework that criminalizes certain terrorist acts, including using an aircraft in a terrorist activity and certain acts relating to the transport of weapons of mass destruction or related materials by aircraft. The Beijing Convention requires States Parties to criminalize specified acts under their domestic laws and to cooperate to prevent and investigate suspected crimes under the Beijing Convention. It includes an "extradite or prosecute" obligation with respect to persons accused of committing, attempting to commit, conspiring to commit, or aiding in the commission of such offenses.

Some changes to United States law will be needed for the United States to implement provisions of the Beijing Convention obligating the United States to criminalize certain offenses, make those offenses punishable by appropriate penalties, and authorize the assertion of jurisdiction over such offenses. Proposed legislation is being separately transmitted by my Administration to the Congress.

I recommend that the Senate give early and favorable consideration to the Beijing Convention, subject to a reservation and cer-

tain understandings that are described in the accompanying report of the Department of State.

DONALD J. TRUMP.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, February 5, 2020.

The PRESIDENT,
The White House.

MR. PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, subject to a reservation and certain understandings set forth in the enclosed overview, the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation ("the Beijing Convention"), adopted by the International Civil Aviation Organization International Conference on Air Law (Diplomatic Conference on Aviation Security) in Beijing on September 10, 2010, and signed by the United States on that same date. The Beijing Convention is an important component of international efforts to prevent and punish both terrorism targeting civil aviation and the proliferation of weapons of mass destruction. It strengthens the legal basis for international cooperation in the investigation, prosecution, and extradition of those who commit or aid terrorist acts aboard or against aircraft and those who traffic in weapons of mass destruction aboard aircraft.

As of March 2, 2020, 33 States have deposited their instruments of ratification, acceptance, approval, or accession, and an additional 21 States have signed the Beijing Convention but not yet deposited an instrument of ratification, acceptance, or approval. An overview of the Convention, including a detailed article-by-article analysis, is enclosed with this Report. Recommended legislation necessary to implement the Beijing Convention is being prepared for separate submission to Congress. The Departments of Justice, Homeland Security, Defense, and Energy join in recommending that the Beijing Convention be transmitted to the Senate at an early date for its advice and consent to ratification, subject to a reservation pursuant to Article 20(2) and the understandings to Articles 6(2) and 11.

With the exception of the provisions that obligate the United States to criminalize certain offenses, make those offenses punishable by appropriate penalties, and authorize the assertion of jurisdiction over such offenses, the Beijing Convention is self-executing. Included among the self-executing provisions are those provisions obligating the United States to treat certain offenses as extraditable offenses for purposes of bilateral extradition treaties. None of the provisions of the Beijing Convention, including Articles 9 and 11, confer private rights enforceable in United States courts.

I recommend, therefore, that you transmit the Beijing Convention to the Senate for its advice and consent to ratification.

Sincerely,

MICHAEL R. POMPEO.

Enclosures: As stated.

Convention on the Suppression of Unlawful Acts Relating
to International Civil Aviation

OVERVIEW

The Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (the "Beijing Convention" or "Convention"), adopted by the International Civil Aviation Organization International Conference on Air Law in Beijing on September 10, 2010, is an important component of international efforts to prevent and punish both terrorism targeting civil aviation and the proliferation of weapons of mass destruction. As between parties to the Beijing Convention, it replaces and supersedes the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal September 23, 1971 ("Montreal Convention"), S. Treaty Doc, 92-1, and its supplementary protocol, the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal February 24, 1988 ("Montreal Protocol") (together, the "Montreal Convention and Protocol"), S. Treaty Doc. 100-19.

The Montreal Convention and Protocol and the International Civil Aviation Organization ("ICAO") counterterrorism treaties to which the United States is already a Party, require States Parties to criminalize certain terrorist acts affecting the safety of civil aviation. They also create a series of obligations relating to those offenses with the object of bringing the perpetrators to justice, including the "extradite or prosecute" obligation that is a common feature of counterterrorism instruments. The Montreal Convention and Protocol are widely ratified and have been an integral part of a broader international legal framework to counter terrorism.

Following the terrorist attacks of September 11, 2001, the international community recognized the need for additional international legal measures to address new and emerging threats involving civil aviation. The Montreal Convention was among the first international treaties to address the issue of terrorism, and many of its provisions do not adequately address the changes in the threats faced by civil aviation during the intervening four decades. To this end, the United States, along with close partners, helped lead the effort within ICAO to modernize the Montreal Convention and Protocol.

The resulting Beijing Convention fills several gaps in the existing international legal framework for combating global terrorism. It will significantly advance cooperation between States Parties in the prevention of the full range of unlawful acts relating to civil aviation and in the prosecution and punishment of offenders. The Beijing Convention substantially expands upon the primary criminal offenses currently covered by the Montreal Convention and Protocol. For example, the Beijing Convention requires States Parties to criminalize under their domestic laws conduct such as using civil aircraft as a weapon; using a biological, chemical, or nuclear weapon ("BCN weapon") from, against, or on an aircraft; and transporting BCN weapons, their means of delivery, and related materials on board an aircraft. These new offense provisions closely track many of the offense provisions included in the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at London October 14, 2005 ("2005 SUA Protocol") and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the

Continental Shelf, done at London October 14, 2005 ("2005 Fixed Platforms Protocol") (together, the "2005 SUA Protocols"), S. Treaty Doc. 110-8, for which the Senate provided its advice and consent to ratification in 2008, and which entered into force for the United States on November 26, 2015.

The Beijing Convention also includes or builds upon many of the standard provisions developed in more recent counterterrorism conventions to which the United States is already a party, such as the 2005 SUA Protocols; the International Convention for the Suppression of Acts of Nuclear Terrorism, done at New York April 13, 2005 ("Nuclear Terrorism Convention"), S. Treaty Doc. 110-4; the International Convention for the Suppression of the Financing of Terrorism, done at New York December 9, 1999 ("Terrorism Financing Convention"), S. Treaty Doc. 106-49; and the International Convention for the Suppression of Terrorist Bombings, done at New York December 15, 1997 ("Terrorist Bombings Convention"), S. Treaty Doc. 106-6. For example, the Beijing Convention expands the types of inchoate and ancillary offenses States Parties must criminalize, and to which an "extradite or prosecute" obligation applies. Like other more recent counterterrorism conventions, the Beijing Convention also contains a military exclusion clause that clarifies the Convention does not apply to activities undertaken by State military forces in the exercise of their official duties.

As of March 2, 2020, 33 States have deposited their instruments of ratification, acceptance, approval, or accession, and an additional 21 States have signed the Beijing Convention but not yet deposited an instrument of ratification, acceptance, or approval. The Beijing Convention entered into force on July 1, 2018, following deposit of the twenty-second instrument of ratification, acceptance, approval, or accession. For each State that ratifies, accepts, approves, or accedes to the Beijing Convention after that date, it shall enter into force for that State on the first day of the second month following the deposit of that State's instrument of ratification, acceptance, approval, or accession with the ICAO Secretary General.

This report provides an article-by-article analysis of the Beijing Convention. Although the Beijing Convention takes the form of a new, standalone treaty, it builds upon the Montreal Convention and Protocol and replicates certain provisions of the Montreal Convention and Protocol with only minor technical modifications.

Article-by-Article Analysis of the Beijing Convention

Article 1:

Paragraph 1

Article 1 defines the offenses covered by the Beijing Convention. Paragraph 1 sets forth the primary offenses involving civil aircraft. The chapeau and subparagraphs (a) through (e) of Article 1(1) replicate the primary offenses included in the Montreal Convention, with the only modification being that the language has been made gender neutral. It is an offense for any person to unlawfully and intentionally (a) perform an act of violence against a person on board an aircraft in flight that is likely to endanger the aircraft's safety; (b) destroy an aircraft in service or cause damage to such an aircraft which renders it incapable of flight or which is likely to

endanger its safety in flight; (c) place or cause to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy the aircraft, cause it damage which renders it incapable of flight, or cause it damage which is likely to endanger its safety in flight; (d) destroy or damage or interfere with the operations of air navigation facilities, if such act is likely to endanger the safety of aircraft in flight; and (e) communicate information that the person knows to be false, thereby endangering the safety of an aircraft in flight.

"Unlawfully" is a term used in many international conventions, including the prior counterterrorism conventions, to make clear that States are not required to criminalize conduct that, under common principles of criminal law, is not considered unlawful (e.g., properly authorized use of force by its own law enforcement authorities in carrying out their official duties, or conduct permitted in responding to credible threats against persons or property, including in self-defense), even if those actions are otherwise described in the offense.

Subparagraphs (f) through (h) of Article 1(1) create three new primary offenses that focus not only on acts that endanger the safety of an aircraft itself, but more broadly on acts that make use of an aircraft to cause death, serious bodily injury, or serious damage to property or the environment. Subparagraph (f) makes it an offense to unlawfully and intentionally use an aircraft in service to cause death, serious bodily injury, or serious damage to property or the environment. Subparagraphs (g) and (h) make it an offense to unlawfully and intentionally release or discharge from an aircraft in service, or use against or on board an aircraft in service, any biological, chemical, or nuclear ("BCN") weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury, or serious damage to property or the environment. Article 4(5) of the 2005 SUA Protocol and Article 4(1) of the 2005 Fixed Platforms Protocol include similar offenses in the context of maritime navigation and fixed platforms, respectively.

Subparagraph (i) of Article 1(1) contains new primary offenses relating to nonproliferation and is similar to the maritime transport offense provisions in Article 4(5) of the 2005 SUA Protocol. Subparagraph (i) makes it an offense to unlawfully and intentionally transport, cause to be transported, or facilitate the transport of, on board an aircraft:

(1) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death, or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act; or

(2) any BCN weapon, knowing it to be a BCN weapon as defined in Article 2; or

(3) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to a safeguards agreement with the International Atomic Energy Agency; or

(4) any equipment, materials, or software or related technology that significantly contributes to the design, manufacture, or delivery of a BCN weapon without lawful authorization and with the intention that it will be used for such purpose.

These nonproliferation offenses make significant advances to counterterrorism efforts by strengthening the existing international treaty framework. In particular, the Beijing Convention's obligation to criminalize certain acts relating to the transport by aircraft of items associated with BCN weapons or explosive devices provides a complementary law enforcement element to the existing nonproliferation regime. The nonproliferation offenses also further the objectives of, and are complementary to, the nonproliferation obligations set forth in United Nations Security Council Resolution 1540 (2004).

The offenses in Article 1(1)(i) must be understood in the context of two savings clauses contained in the Convention (as well as the limitations on the Convention's scope contained in Article 5(1) and the exceptions contained in Article 6(2), discussed further below). First, subparagraph (i) of Article 1(1), which sets forth the transport-related offenses, itself concludes by specifying that activities involving a State Party, including those undertaken by a person or legal entity authorized by a State Party, shall not be an offense within the meaning of Articles 1(1)(i)(3) and 1(1)(i)(4)—which pertain to the transport of BCN-related items and materials on board an aircraft—if the transport of such items or materials is consistent with or is for a use or activity that is consistent with a State Party's rights, responsibilities, and obligations under the applicable multilateral nonproliferation treaty to which it is a party, including the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968 (the "NPT"), S. Treaty Doc. 90-24, the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, done at London, Moscow, and Washington April 10, 1972 (the "BWC"), S. Treaty Doc. 92-29, and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, done at Paris January 13, 1993 (the "CWC"), S. Treaty Doc 103-21. Additionally, Article 7 provides that the Convention shall not affect the rights, obligations, and responsibilities of States Parties under the NPT, BWC, or CWC, ensuring that the Convention is consistent with the nonproliferation regimes established by these treaties.

The following are illustrative examples of transport of source material or special fissionable material (collectively, "nuclear material") and especially designed or prepared equipment or material that would not constitute offenses under the Beijing Convention by virtue of the savings clauses:

- Transport of nuclear material to an NPT nuclear-weapon State (NWS) Party, regardless of whether the nuclear material will be under safeguards in the NWS, because both the transport of the material and the use of it by the recipient NWS, even if not under safeguards, would be consistent with the NPT;
- Transport of nuclear material to an NPT non-nuclear-weapon State (NNWS) Party for use without safeguards where consistent with the provisions of the recipient country's comprehensive safeguards agreement with the International Atomic Energy Agency allowing for exemption of the nuclear material from safeguards or the non-application or termination of safeguards (*e.g.*, for specified *de minimis* amounts, or use in a non-proscribed military activity which does not require the application of IAEA safeguards or in a non-nuclear use such as the production of alloys or ceramics); and

- Transport of nuclear material or especially designed or prepared equipment, as described in Article 1(1)(i)(3) of the Beijing Convention, to a non-NPT party, so long as the material or equipment is for peaceful purposes and placed under IAEA safeguards or is subject to an INFCIRC/66 safeguards agreement or other IAEA safeguards arrangement but is not required by that agreement or arrangement actually to be under safeguards (*e.g.*, under an exemption for *de minimis* amounts or provision permitting safeguards termination for non-nuclear use).

Paragraph 2

The chapeau and subparagraphs (a) and (b) of Article 1(2) replicate additional primary offenses included in the Montreal Protocol involving airports serving international civil aviation, with the only modification being that the language has been made gender neutral. It is an offense to unlawfully and intentionally, using any device, substance or weapon, (a) perform an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or (b) destroy or seriously damage the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupt the services of the airport, if either such act endangers or is likely to endanger safety at that airport.

Paragraph 3

The Beijing Convention also provides for a range of expanded inchoate and ancillary offenses in line with other modern international counterterrorism treaties. Subparagraphs (a) and (b) of Article 1(3) provide that any person also commits an offense if that person threatens to commit an offense in subparagraphs (a), (b), (c), (d), (f), (g) and (h) of Article 1(1) or in Article 1(2), or if that person unlawfully and intentionally causes any person to receive such a threat, under circumstances which indicate that the threat is credible. The inclusion of "threats" as an ancillary offense can also be found in Article 2(2) of the Nuclear Terrorism Convention, as well as in Article 4(4) of the 2005 SUA Protocol and Article 3(3) of the 2005 Fixed Platforms Protocol. The inclusion of the new threat provision is fully warranted by the grave nature of the harm threatened and is formulated in a manner that is compatible with threat offenses in U.S. law.

Paragraph 4

Paragraphs 4 and 5 of Article 1 contain additional inchoate and ancillary offenses that will strengthen the ability of the international community to investigate, prosecute, and extradite those who conspire or otherwise contribute to the commission of offenses defined in the Beijing Convention.

Subparagraphs (a) through (c) of Article 1(4) contain additional offenses that are present in recent counterterrorism conventions, such as in Article 4(7) of the 2005 SUA Protocol, Article 4(2) of the 2005 Fixed Platforms Protocol, Article 2(5) of the Terrorism Financing Convention, Article 2(4) of the Nuclear Terrorism Convention, and Article 2(3) of the Terrorist Bombings Convention. Subparagraph (a) of Article 1(4) of the Beijing Convention provides that any person commits an offense if that person attempts to commit any of the offenses set forth in

Article 1(1) or Article 1(2). Subparagraph (b) of Article 1(4) provides that any person commits an offense if that person organizes or directs others to commit an offense set forth in paragraphs 1, 2, 3, or 4(a) of Article 1. Subparagraph (c) provides that any person commits an offense if that person participates as an accomplice in an offense set forth in paragraphs 1, 2, 3 or 4(a) of Article 1.

Subparagraph (d) of Article 1(4) creates a new type of accessory-after-the-fact offense, whereby any person commits an offense if that person unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offense set forth in paragraphs 1, 2, 3, 4(a), 4(b), or 4(c) of Article 1, or that the person is wanted for criminal prosecution by law enforcement authorities for such an offense or has been sentenced for such an offense. This provision is similar to Article 4(6) of the 2005 SUA Protocol, which prohibits the transport by ship of fugitives who have committed certain crimes, in that it criminalizes assisting a fugitive to avoid apprehension after a crime has been completed.

Paragraph 5

Paragraph 5 of Article 1 further addresses liability in the context of participation in an organized criminal group, which is not included in the Montreal Convention and Protocol; it builds upon similar provisions in Article 4(7) of the 2005 SUA Protocol, Article 4(2) of the 2005 Fixed Platforms Protocol, Article 2(5) of the Terrorism Financing Convention, Article 2(4) of the Nuclear Terrorism Convention, and Article 2(3) of the Terrorist Bombings Convention. Article 1(5) provides that each State Party shall also establish as offenses, when committed intentionally, whether or not any of the offenses set forth in paragraphs 1, 2, or 3 of Article 1 is actually committed or attempted, either or both of the following: (a) agreeing with one or more other persons to commit an offense set forth in paragraphs 1, 2, or 3 of Article 1 and, where required by national law, involving an act undertaken by one of the participants in furtherance of the agreement; or (b) contributing in any other way to the commission of one or more offenses set forth in paragraphs 1, 2, or 3 of Article 1 by a group of persons acting with a common purpose and when such contribution is either made with the aim of furthering the general criminal activity or purpose of the group, where such activity involves the commission of an offense set forth in paragraphs 1, 2, or 3 of Article 1, or made in the knowledge of the intention of the group to commit an offense set forth in paragraphs 1, 2, or 3 of Article 1.

Article 2:

Article 2 of the Beijing Convention contains definitions for a number of terms used with respect to the offenses established by the Convention.

Paragraph (a) of Article 2 defines an aircraft "in flight" and remains unchanged from the Montreal Convention's definition, providing that an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board.

Paragraph (b) of Article 2 defines an aircraft "in service" and remains unchanged from the Montreal Convention's definition, providing that an aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in subparagraph (a) of Article 2.

Paragraphs (c) through (j) of Article 2 provide definitions for new terms that did not appear in the Montreal Convention and Protocol, but most of which have appeared in other, more recent counterterrorism treaties. Subparagraph (c) states that "air navigation facilities" include signals, data, information or systems necessary for the navigation of the aircraft. Subparagraph (d) defines "toxic chemical" in the same manner as Article II(2) the CWC, which definition was also used in Article 2 of the 2005 SUA Protocol. Subparagraphs (e) through (g) define "radioactive material," "nuclear material," and "uranium enriched in the isotope 235 or 233" in the same manner as Article 1 of the Nuclear Terrorism Convention. Subparagraph (h) defines "BCN weapon" in the same manner as Article 2 of the 2005 SUA Protocol: as biological weapons, chemical weapons, and nuclear weapons and other nuclear explosive devices, where the definitions of biological and chemical weapons are drawn from the BWC and the CWC, respectively. Subparagraph (i) defines "precursor" in the same manner as Article 2 of the 2005 SUA Protocol. Subparagraph (j) defines "source material" and "special fissionable material" in the same manner as Article 2 of the 2005 SUA Protocol and as those terms are used in the Statute of the International Atomic Energy Agency.

Article 3:

Under Article 3, as in the Montreal Convention, States Parties undertake to make the offenses enumerated in Article 1 punishable by severe penalties.

Article 4:

Article 4 allows States Parties to establish liability for legal entities in addition to persons, a provision that was not included in the Montreal Convention and Protocol. It provides that each State Party, in accordance with its national legal principles, may take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offense set forth in Article 1. Such liability may be criminal, civil or administrative and is without prejudice to the criminal liability of individuals having committed the offenses. Further, States Parties that do hold legal entities liable for offenses under Article 1 are required to endeavor to ensure that the applicable criminal, civil or administrative sanctions are effective, proportionate and dissuasive. Such sanctions may include monetary sanctions.

Article 4 closely tracks Article 5(2) of the 2005 SUA Protocol. However, the language of Article 4 is permissive, while the 2005 SUA Protocol requires States Parties, in accordance with domestic legal principles, to take necessary measures to establish legal entity liability.

Article 5:

Article 5 delimits the scope and application of the Beijing Convention and tracks the existing language in Article 4 of the Montreal Convention while adding references to new offenses.

Under Article 5(1), the Beijing Convention, like the Montreal Convention and Protocol, does not apply to aircraft used in military, customs or police services.

Article 5(2) provides that, with respect to offenses enumerated in Article 1(1), other than destruction, damage, or interference with air navigation facilities (which is dealt with separately in Article 5(5)), the Beijing Convention, like the Montreal Convention and Protocol, applies irrespective of whether an aircraft is engaged in an international or domestic flight, only if the place of take-off or landing, actual or intended, is outside the aircraft's State of registry, or if the offense is committed in the territory of a State other than the aircraft's State of registry.

Article 5(3) provides that, notwithstanding Article 5(2), the Beijing Convention, like the Montreal Convention and Protocol, also applies (again with respect to the offenses enumerated in Article 1(1) other than destruction, damage, or interference with air navigation facilities) if the offender or alleged offender is found in the territory of a State other than the aircraft's State of registry.

Taken together, Article 5(2) and Article 5(3) set forth the types of international links that trigger application of the Beijing Convention with respect to cases concerning offenses in Article 1(1).

Article 5(4) concerns States Parties, mentioned in Article 15 of the Beijing Convention, that establish joint air transport operating organizations or international operating agencies, which operate aircraft subject to joint or international registration. Article 5(4) provides that the Beijing Convention, as with the Montreal Convention and Protocol, shall not apply (again with respect to the offenses enumerated in Article 1(1) other than destruction, damage, or interference with air navigation facilities) if the places of take-off and landing, actual or intended, are situated within the territory of the same State where that State is one of those referred to in Article 15, unless the offense is committed or the offender or alleged offender is found in the territory of a State other than that State.

Article 5(5) limits the application of the Beijing Convention in cases contemplated by subparagraph (d) of Article 1(1) to acts against air navigation facilities used in international air navigation.

Article 5(6) applies the limitations in scope enumerated by paragraphs 2, 3, 4 and 5 of Article 5 to the inchoate and ancillary offenses set forth in Article 1(4), in addition to the primary offenses in Article 1(1) as described above.

Article 6:

Article 6 of the Beijing Convention addresses the interaction of the Beijing Convention with other rights, obligations, and responsibilities of States and individuals. Article 6(1) provides that nothing in the Convention shall affect other rights, obligations, and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, the Convention on International Civil Aviation, and international humanitarian law. It is similar to provisions contained in Article 19(1) of the Terrorist Bombings Convention and Article 21 of the Terrorism Financing Convention.

Consistent with recent counterterrorism conventions, Article 6(2) contains two important exceptions to the applicability of the Beijing Convention. It states that the Convention does not apply to: (i) "[t]he activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law"; and (ii) "the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law." These exceptions are similar to those in Article 19(2) of the Terrorist Bombings Convention, Article 3 of the 2005 SUA Protocol, and Article 4(2) of the Nuclear Terrorism Convention.

The first exception is meant to exclude from the Convention's scope the activities of armed forces, so long as those activities are in the course of an "armed conflict." To ensure that suspected offenders cannot claim the benefit of the "armed conflict" exception in Article 6(2) to avoid extradition or prosecution under the Convention, it would be useful for the United States to articulate an understanding clarifying the scope of this exception, consistent with the understandings taken with respect to the similar provisions in Article 19(2) of the Terrorist Bombings Convention and Article 3 of the 2005 SUA Protocol, and with respect to the reference to the undefined term "armed conflict" in Article 2(1)(b) of the Terrorism Financing Convention. Those understandings were based upon the widely accepted provision in paragraph 2 of Article 1 of Protocol II Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protections of Victims of Non-International Armed Conflicts ("Additional Protocol II"), done at Geneva June 8, 1977, 1125 UNTS 609, S. Treaty Doc. 100-2, which states that "armed conflict" does not include "internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature." Including an understanding that specifies the scope of "armed conflict" in a manner consistent with Additional Protocol II would help to counter attempts by terrorists to claim protection from this exception in circumstances for which it is not intended. I therefore recommend that the following understanding to paragraph 2 of Article 6 of the Beijing Convention be included in the United States instrument of ratification:

> The United States of America understands that the term "armed conflict" in paragraph 2 of Article 6 of the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature.

The United States made a substantially identical understanding with respect to the Terrorist Bombings Convention, the 2005 SUA Protocol, the Nuclear Terrorism Convention, and the Terrorism Financing Convention.

Given the importance of protecting the flexibility of the United States military to conduct legitimate activities against all lawful targets, the second exception in Article 6(2) was also an important objective of the United States when negotiating the Beijing Convention. This provision exempts from the Beijing Convention's application "the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law." This language is consistent with Article 19(2) of the Terrorist Bombings Convention, Article 3 of the 2005 SUA Protocol, and similar provisions in other recent counterterrorism instruments. It is intended to exclude all official acts undertaken by U.S. and other State military forces from the scope of criminal offenses. Because the Beijing Convention does not reach the official activities of State military forces, it similarly does not reach persons, including non-military, policy-making officials of States, who direct, organize, or otherwise act in support of the activities of State military forces. Recognizing the importance of this provision, I recommend that the following understanding to Article 6(2) of the Beijing Convention be included in the United States instrument of ratification:

> The United States of America understands that, pursuant to paragraph 2 of Article 6, the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation does not apply to:
>
> (a) the military forces of a State, which are the armed forces of a State organized, trained, and equipped under its internal law for the primary purpose of national defense or security, in the exercise of their official duties;
>
> (b) civilians who direct or organize the official activities of military forces of a State; or
>
> (c) civilians acting in support of the official activities of the military forces of a State, if the civilians are under the formal command, control, and responsibility of those forces.

The United States made a substantially similar understanding with respect to the Terrorist Bombings Convention, the 2005 SUA Protocol, and the Nuclear Terrorism Convention.

Article 7:

Article 7 states that nothing in the Convention shall affect the rights, obligations, and responsibilities of States Parties under the NPT, the BWC, or the CWC. This new provision is of particular importance in light of the new transport offenses in the Beijing Convention. It mirrors text in Article 3 of the 2005 SUA Protocol and provides an important assurance of consistency with respect to existing non-proliferation treaties.

Article 8:

Article 8 of the Beijing Convention sets forth mandatory and discretionary jurisdictional bases applicable to the offenses in Article 1. Under Article 8(1), each State Party must establish its jurisdiction over the offenses set forth in Article 1 when: (1) the offense is committed in its territory; (2) the offense is committed against or on board an aircraft registered in that State; (3) the aircraft on board which the offense is committed lands in its territory with the alleged offender still on board; (4) the offense is committed against or on board an aircraft leased

without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in that State; or (5) the offense is committed by a national of that State. These mandatory jurisdictional provisions mirror Article 5(1) in the Montreal Convention, with the addition of a new requirement to establish jurisdiction over offenses committed by nationals of a State. This new basis of jurisdiction is consistent with provisions in recent counterterrorism instruments, such as Article 9(1)(c) of the Nuclear Terrorism Convention.

Also consistent with recent counterterrorism instruments (for example, jurisdictional provisions in Article 6(2) of the Terrorist Bombings Convention and Article 9(2) of the Nuclear Terrorism Convention) is Article 8(2) of the Beijing Convention, which provides that each State Party has discretion to establish jurisdiction over offenses when the offense is committed against a national of that State or is committed by a stateless person whose habitual residence is in the territory of that State.

Article 8(3) and 8(4) replicate Articles 5(2), 5(2 *bis*), and 5(3) of the Montreal Convention and Protocol with only a few minor technical changes. Article 8(3) contains the so-called "universal jurisdiction" provision, obligating each State Party to establish jurisdiction over any alleged offender located on its territory regardless of where the offense takes place, if the State Party does not extradite that person pursuant to Article 12 of the Convention. Article 8(4) provides that the Beijing Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 9:

Article 9 replicates Article 6 of the Montreal Convention with only a few minor technical changes and, as in other counterterrorism instruments like the Terrorist Bombing Convention, the Terrorism Financing Convention, and the Nuclear Terrorism Convention, it includes provisions relating to offenders and alleged offenders arrested or detained for the purpose of extradition or prosecution. Article 9(1) requires any State Party on whose territory an offender or alleged offender is present to take that person into custody or take other measures to ensure that person's presence for criminal or extradition proceedings. Article 9(2) provides that such State shall immediately make a preliminary enquiry into the facts. Article 9(3) provides that any person taken into custody pursuant to Article 9(1) shall be assisted in communicating immediately with the appropriate representative of the State of which that person is a national. While the obligation to provide such assistance is independent of consular notification and access obligations under other treaties, such as the Vienna Convention on Consular Relations (VCCR) or any other applicable bilateral agreement on consular relations, compliance with the notification requirements set forth in VCCR Article 36(1)(b) would satisfy the separate obligation to assist under Article 9(3) of the Convention. Article 9(4) provides that, once a State Party has taken a person into custody pursuant to Article 9, that State shall immediately notify States Parties that have established mandatory jurisdiction under Article 8(1); States Parties that have established discretionary jurisdiction under Article 8(2) and notified the Depositary as required by subparagraph (a) of Article 21(4); and, if the State Party holding the person in custody considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant that person's detention. Article 9(4) further

provides that the State Party that makes the preliminary enquiry contemplated in Article 9(2) shall promptly report its findings to those same States Parties for which notification is required and shall indicate whether it intends to exercise its jurisdiction. Article 9, like the Beijing Convention as a whole, as well as other similar counterterrorism conventions, is not intended to create judicially enforceable private rights.

Article 10:

Article 10 of the Beijing Convention replicates Article 7 of the Montreal Convention with only a few minor technical changes. This Article sets out the "extradite or prosecute" obligation that is a common feature of counterterrorism instruments. Article 10 declares that a State Party that does not extradite an alleged offender found in its territory shall, without exception whatsoever and whether or not the offense was committed in its territory, submit the case to its competent authorities for the purpose of prosecution. Those authorities are obligated to take their decision in the same manner as in the case of any other offense of a serious nature under the law of that State.

Article 11:

Consistent with other recent counterterrorism instruments, Article 11 provides that any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to the Beijing Convention, shall be guaranteed fair treatment, including all rights and guarantees under the law of the State in which that person is present, as well as "applicable provisions of international law, including international human rights law." Similar or identical text also appears in Article 9 of the 2005 SUA Protocol, Article 12 of the Nuclear Terrorism Convention, Article 17 of the Terrorism Financing Convention, and Article 14 of the Terrorist Bombings Convention. Like Article 9, Article 11 is not intended to create judicially enforceable private rights. Additionally, to make clear the relationship between current United States law and the requirements of Article 11, I recommend that the following understanding be included in the United States instrument of ratification:

> The United States of America understands that the current United States law with respect to the rights of persons in custody and persons charged with crimes fulfills the requirements of Article 11 of the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, and accordingly, the United States does not intend to enact new legislation to fulfill its obligations under this Article.

Article 12:

Article 12 of the Beijing Convention updates the extradition regime found in the Montreal Convention and Protocol. Article 12(1) amends existing extradition treaties between States Parties to include the offenses set forth in Article 1 as extraditable offenses and provides that States Parties shall undertake, in subsequent extradition treaties, to include the offenses set forth in Article 1 as extraditable offenses. Article 12(2) allows a State Party that makes extradition conditional on the existence of a treaty to use the Convention, at its option, as a legal basis for extradition to a State with which it has no extradition treaty, subject to other conditions

provided by the law of the requested State. Because it is longstanding United States policy to extradite fugitives only to States with which the United States has a bilateral extradition treaty, this option would not serve as an independent legal basis for extradition from the United States. Article 12(3) provides that the offenses in Article 1 shall be extraditable offenses between States Parties which do not make extradition conditional on the existence of a treaty, subject to the conditions provided by the law of the requested State. Article 12(4) provides that, for the purposes of extradition, offenses shall be treated as if they were committed not only in the places the offenses occurred but also in the territory of the States Parties required to establish the other mandatory bases of jurisdiction pursuant to Article 8(1) and the States Parties who established the discretionary bases of jurisdiction pursuant to Article 8(2). Article 12(5) provides that the offenses regarding participation in an organized criminal group set forth in subparagraphs (a) and (b) of Article 1(5) shall be treated as equivalent for the purpose of extradition between States Parties.

Article 13:

Consistent with recent counterterrorism instruments, Article 13 of the Beijing Convention provides that none of the offenses under the Convention shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offense. Accordingly, a request for extradition or mutual legal assistance may not be refused on the sole ground that it concerns a political offense or an offense connected with a political offense or an offense inspired by political motives. Article 13 thus provides a useful narrowing of the ability to invoke the political offense exception in response to requests for extradition for offenses under the Convention. Many modern U.S. bilateral extradition treaties already contain provisions that bar application of the political offense exception to extradition under multilateral conventions to which similar "extradite or prosecute" obligations apply. Like similar provisions in Article 10(2) of the 2005 SUA Protocol, Article 14 of the Terrorism Financing Convention, and Article 11 of the Terrorist Bombings Convention, Article 13 builds on this trend by making the restriction on the invocation of the political offense exception for requests based on offenses under Article 1 of the Beijing Convention a matter of general application, rather than dependent on the terms of individual bilateral law enforcement treaties between the States Parties. The Montreal Convention and Protocol does not contain such a provision.

Article 14:

Consistent with recent counterterrorism conventions, Article 14 of the Beijing Convention provides that the Convention does not impose an obligation to extradite or afford mutual legal assistance if the requested State Party has substantial grounds for believing that such request for extradition or mutual legal assistance has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion, or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons. This Article is similar to provisions included in a number of existing counterterrorism treaties, including Article 12 of the Terrorist Bombings Convention, Article 15 of the Terrorism Financing Convention, and Article 10(3) of the 2005 SUA Protocol. The Montreal Convention and Protocol does not contain such a provision.

Article 15:

Article 15 of the Beijing Convention, mirroring Article 9 of the Montreal Convention, with only a few minor technical changes, requires States Parties that establish joint air transport operating organizations or international operating agencies, which operate aircraft subject to joint or international registration, to designate for each aircraft a State among them to exercise jurisdiction and have the attributes of the State of registry for the purpose of the Convention.

Article 16:

Article 16 of the Beijing Convention mirrors the language of Article 10 of the Montreal Convention with only a few minor technical changes. Article 10(1) provides that States Parties shall, in accordance with international and national law, endeavor to take all practicable measures to prevent the offenses set forth in Article 1. Article 10(2) provides that, when a flight has been delayed or interrupted due to commission of an offense, any State Party in whose territory the aircraft or passengers or crew are present shall facilitate the continuation of the passengers' and crew's journey as soon as practicable, and shall return without delay the aircraft and cargo to the persons lawfully entitled to possession.

Article 17:

Article 17 of the Beijing mirrors the language of Article 11 of the Montreal Convention with only a few minor technical changes. Article 17(1) obligates States Parties to afford one another the greatest measure of assistance in connection with criminal proceedings brought for offenses set forth in Article 1, and specifies that the law of the requested State shall govern the furnishing of such assistance. Article 17(2) provides that the legal assistance provision in Article 17(1) shall not affect States Parties' obligations under any other international agreement which governs or will govern mutual legal assistance in criminal matters.

Articles 18 and 19:

Articles 18 and 19 of the Beijing Convention address information sharing between States Parties and between a State Party and ICAO, respectively, with regard to an offense or suspected offense set forth in Article 1. They mirror the language of Articles 12 and 13 of the Montreal Convention, with only a few minor technical changes.

Article 20:

Article 20(1) provides that disputes between two or more States Parties concerning the interpretation or application of the Beijing Convention shall, at the request of one of the States Parties, be submitted to *ad hoc* arbitration, or, failing agreement on the organization of such arbitration, to the International Court of Justice. Article 20(2) provides that a State may make a declaration excluding this dispute resolution obligation at the time of signature, ratification, acceptance, approval or accession. In October 1985, the United States withdrew its declaration under Article 36 of the Statute of the International Court of Justice accepting the compulsory

jurisdiction of the Court. Consistent with that decision, I recommend that the following reservation to Article 20(1) be included in the United States instrument of ratification:

> Pursuant to Article 20(2) of the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, the United States of America declares that it does not consider itself bound by Article 20(1) of the Convention.

Article 21:

Article 21(1) provides that the Beijing Convention opened for signature in Beijing on 10 September 2010 by States participating in the Diplomatic Conference on Aviation Security held at Beijing from 30 August to 10 September 2012. After 27 September 2010, the Beijing Convention remains open to all States for signature at the Headquarters of ICAO in Montreal until it enters into force. (The United States signed the Beijing Convention on September 10, 2010). Article 21(2) provides that States may express their consent to be bound by ratification, acceptance, or approval, with instruments of ratification, acceptance, or approval being deposited with the Secretary General of ICAO, who is designated as the Depositary. Article 21(3) provides that any State which does not ratify, accept, or approve the Beijing Convention in accordance with Article 21(2) may accede to it at any time with the instrument of accession being deposited with the Depositary. Article 21(4) provides that upon ratifying, accepting, approving, or acceding to the Beijing Convention, each State Party: (a) shall notify the Depositary of the jurisdiction it has established under its national law in accordance with Article 8(2), and immediately notify the Depositary of any change; and (b) may declare that it shall apply the provisions of subparagraph (d) Article 1(4) – defining the offense of providing assistance to evade investigation, prosecution, or punishment – in accordance with principles of its criminal law concerning family exemptions from liability.

Article 22:

Article 22(1) provides that the Beijing Convention will enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval, or accession. Article 22(2) provides that for any State that ratifies, accepts, approves, or accedes to the Beijing Convention after its entry into force, the Convention shall enter into force for that State on the first day of the second month following the date of deposit by such State of its instrument of ratification, acceptance, approval or accession. Article 22(3) provides that the Beijing Convention shall be registered with the United Nations by the Depositary as soon as it enters into force.

Article 23:

Article 23 of the Beijing Convention allows any State Party to denounce the Beijing Convention by written notification to the Depositary. It provides that denunciation shall take effect one year after notification is received by the Depositary.

Article 24:

Article 24 provides that, as between States Parties to the Beijing Convention, it prevails over (that is, supersedes) the Montreal Convention and Protocol.

Article 25:

Article 25 provides that the Depositary shall promptly inform all States Parties to the Beijing Convention and all signatory or acceding States of the date of each signature, the date of deposit of each instrument of ratification, approval, acceptance or accession, the date of coming into force of the Beijing Convention, and other relevant information.

Doc 9960

CONVENTION

on the Suppression of Unlawful Acts Relating to International Civil Aviation
Done at Beijing on 10 September 2010

CONVENTION

sur la répression des actes illicites dirigés contre l'aviation civile internationale
Faite à Beijing le 10 septembre 2010

CONVENIO

para la represión de actos ilícitos relacionados con la aviación civil internacional
Hecho en Beijing el 10 de septiembre de 2010

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2010年9月10日订于北京

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حررت في بيجين في ١٠ سبتمبر/أيلول ٢٠١٠

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ORGANISATION DE L'AVIATION CIVILE INTERNATIONALE
ORGANIZACIÓN DE AVIACIÓN CIVIL INTERNACIONAL
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CONVENTION

on the Suppression of Unlawful Acts Relating to International Civil Aviation

Done at Beijing on 10 September 2010

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CONVENTION

ON THE SUPPRESSION OF UNLAWFUL ACTS RELATING TO INTERNATIONAL CIVIL AVIATION

THE STATES PARTIES TO THIS CONVENTION,

DEEPLY CONCERNED that unlawful acts against civil aviation jeopardize the safety and security of persons and property, seriously affect the operation of air services, airports and air navigation, and undermine the confidence of the peoples of the world in the safe and orderly conduct of civil aviation for all States;

RECOGNIZING that new types of threats against civil aviation require new concerted efforts and policies of cooperation on the part of States; and

BEING CONVINCED that in order to better address these threats, there is an urgent need to strengthen the legal framework for international cooperation in preventing and suppressing unlawful acts against civil aviation;

HAVE AGREED AS FOLLOWS:

Article 1

1. Any person commits an offence if that person unlawfully and intentionally:

   (a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or

   (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or

   (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or

   (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or

   (e) communicates information which that person knows to be false, thereby endangering the safety of an aircraft in flight; or

(f) uses an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment; or

(g) releases or discharges from an aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or

(h) uses against or on board an aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or

(i) transports, causes to be transported, or facilitates the transport of, on board an aircraft:

(1) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act; or

(2) any BCN weapon, knowing it to be a BCN weapon as defined in Article 2; or

(3) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to a safeguards agreement with the International Atomic Energy Agency; or

(4) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon without lawful authorization and with the intention that it will be used for such purpose;

provided that for activities involving a State Party, including those undertaken by a person or legal entity authorized by a State Party, it shall not be an offence under subparagraphs (3) and (4) if the transport of such items or materials is consistent with or is for a use or activity that is consistent with its rights, responsibilities and obligations under the applicable multilateral non-proliferation treaty to which it is a party including those referred to in Article 7.

2. Any person commits an offence if that person unlawfully and intentionally, using any device, substance or weapon:

(a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

(b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at that airport.

3. Any person also commits an offence if that person:

(a) makes a threat to commit any of the offences in subparagraphs (a), (b), (c), (d), (f), (g) and (h) of paragraph 1 or in paragraph 2 of this Article; or

(b) unlawfully and intentionally causes any person to receive such a threat,

under circumstances which indicate that the threat is credible.

4. Any person also commits an offence if that person:

(a) attempts to commit any of the offences set forth in paragraph 1 or 2 of this Article; or

(b) organizes or directs others to commit an offence set forth in paragraph 1, 2, 3 or 4(a) of this Article; or

(c) participates as an accomplice in an offence set forth in paragraph 1, 2, 3 or 4(a) of this Article; or

(d) unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offence set forth in paragraph 1, 2, 3, 4(a), 4(b) or 4(c) of this Article, or that the person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence.

5. Each State Party shall also establish as offences, when committed intentionally, whether or not any of the offences set forth in paragraph 1, 2 or 3 of this Article is actually committed or attempted, either or both of the following:

(a) agreeing with one or more other persons to commit an offence set forth in paragraph 1, 2 or 3 of this Article and, where required by national law, involving an act undertaken by one of the participants in furtherance of the agreement; or

(b) contributing in any other way to the commission of one or more offences set forth in paragraph 1, 2 or 3 of this Article by a group of persons acting with a common purpose, and such contribution shall either:

(i) be made with the aim of furthering the general criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence set forth in paragraph 1, 2 or 3 of this Article; or

(ii) be made in the knowledge of the intention of the group to commit an offence set forth in paragraph 1, 2 or 3 of this Article.

Article 2

For the purposes of this Convention:

(a) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board;

(b) an aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this Article;

(c) "Air navigation facilities" include signals, data, information or systems necessary for the navigation of the aircraft;

(d) "Toxic chemical" means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere;

(e) "Radioactive material" means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment;

(f) "Nuclear material" means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;

(g) "Uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;

(h) "BCN weapon" means:

(a) "biological weapons", which are:

(i) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or

(ii) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

(b) "chemical weapons", which are, together or separately:

(i) toxic chemicals and their precursors, except where intended for:

(A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or

(B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or

(C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or

(D) law enforcement including domestic riot control purposes,

as long as the types and quantities are consistent with such purposes;

(ii) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (b)(i), which would be released as a result of the employment of such munitions and devices;

(iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b)(ii).

(c) nuclear weapons and other nuclear explosive devices.

(i) "Precursor" means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system;

(j) the terms "source material" and "special fissionable material" have the same meaning as given to those terms in the Statute of the International Atomic Energy Agency, done at New York on 26 October 1956.

Article 3

Each State Party undertakes to make the offences set forth in Article 1 punishable by severe penalties.

Article 4

1. Each State Party, in accordance with its national legal principles, may take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable

when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in Article 1. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. If a State Party takes the necessary measures to make a legal entity liable in accordance with paragraph 1 of this Article, it shall endeavour to ensure that the applicable criminal, civil or administrative sanctions are effective, proportionate and dissuasive. Such sanctions may include monetary sanctions.

Article 5

1. This Convention shall not apply to aircraft used in military, customs or police services.

2. In the cases contemplated in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall apply irrespective of whether the aircraft is engaged in an international or domestic flight, only if:

(a) the place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registry of that aircraft; or

(b) the offence is committed in the territory of a State other than the State of registry of the aircraft.

3. Notwithstanding paragraph 2 of this Article, in the cases contemplated in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall also apply if the offender or the alleged offender is found in the territory of a State other than the State of registry of the aircraft.

4. With respect to the States Parties mentioned in Article 15 and in the cases set forth in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall not apply if the places referred to in subparagraph (a) of paragraph 2 of this Article are situated within the territory of the same State where that State is one of those referred to in Article 15, unless the offence is committed or the offender or alleged offender is found in the territory of a State other than that State.

5. In the cases contemplated in subparagraph (d) of paragraph 1 of Article 1, this Convention shall apply only if the air navigation facilities are used in international air navigation.

6. The provisions of paragraphs 2, 3, 4 and 5 of this Article shall also apply in the cases contemplated in paragraph 4 of Article 1.

Article 6

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, the Convention on International Civil Aviation and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

3. The provisions of paragraph 2 of this Article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

Article 7

Nothing in this Convention shall affect the rights, obligations and responsibilities under the Treaty on the Non-Proliferation of Nuclear Weapons, signed at London, Moscow and Washington on 1 July 1968, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, signed at London, Moscow and Washington on 10 April 1972, or the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, signed at Paris on 13 January 1993, of States Parties to such treaties.

Article 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 in the following cases:

(a) when the offence is committed in the territory of that State;

(b) when the offence is committed against or on board an aircraft registered in that State;

(c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;

(d) when the offence is committed against or on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in that State

(e) when the offence is committed by a national of that State.

2. Each State Party may also establish its jurisdiction over any such offence in the following cases:

(a) when the offence is committed against a national of that State;

(b) when the offence is committed by a stateless person whose habitual residence is in the territory of that State.

3. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1, in the case where the alleged offender is present in its territory and it does not extradite that person pursuant to Article 12 to any of the States Parties that have established their jurisdiction in accordance with the applicable paragraphs of this Article with regard to those offences.

4. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 9

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present, shall take that person into custody or take other measures to ensure that person's presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which that person is a national.

4. When a State Party, pursuant to this Article, has taken a person into custody, it shall immediately notify the States Parties which have established jurisdiction under paragraph 1 of Article 8 and established jurisdiction and notified the Depositary under subparagraph (a) of paragraph 4 of Article 21 and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State Party which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States Parties and shall indicate whether it intends to exercise jurisdiction.

Article 10

The State Party in the territory of which the alleged offender is found shall, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 11

Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 12

1. The offences set forth in Article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in Article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in Article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with subparagraphs (b), (c), (d) and (e) of paragraph 1 of Article 8, and who have established jurisdiction in accordance with paragraph 2 of Article 8.

5. The offences set forth in subparagraphs (a) and (b) of paragraph 5 of Article 1 shall, for the purpose of extradition between States Parties, be treated as equivalent.

Article 13

None of the offences set forth in Article 1 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 14

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in Article 1 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 15

The States Parties which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by

appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registry for the purpose of this Convention and shall give notice thereof to the Secretary General of the International Civil Aviation Organization who shall communicate the notice to all States Parties to this Convention.

Article 16

1. States Parties shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences set forth in Article 1.

2. When, due to the commission of one of the offences set forth in Article 1, a flight has been delayed or interrupted, any State Party in whose territory the aircraft or passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 17

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 1. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 18

Any State Party having reason to believe that one of the offences set forth in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States Parties which it believes would be the States set forth in paragraphs 1 and 2 of Article 8.

Article 19

Each State Party shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

(a) the circumstances of the offence;

(b) the action taken pursuant to paragraph 2 of Article 16;

(c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

Article 20

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

Article 21

1. This Convention shall be open for signature in Beijing on 10 September 2010 by States participating in the Diplomatic Conference on Aviation Security held at Beijing from 30 August to 10 September 2010. After 27 September 2010, this Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montréal until it enters into force in accordance with Article 22.

2 This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated as the Depositary.

3. Any State which does not ratify, accept or approve this Convention in accordance with paragraph 2 of this Article may accede to it at any time. The instrument of accession shall be deposited with the Depositary.

4. Upon ratifying, accepting, approving or acceding to this Convention, each State Party:

(a) shall notify the Depositary of the jurisdiction it has established under its national law in accordance with paragraph 2 of Article 8, and immediately notify the Depositary of any change; and

(b) may declare that it shall apply the provisions of subparagraph (d) of paragraph 4 of Article 1 in accordance with the principles of its criminal law concerning family exemptions from liability.

Article 22

1. This Convention shall enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession.

2. For each State ratifying, accepting, approving or acceding to this Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the second month following the date of the deposit by such State of its instrument of ratification, acceptance, approval or accession.

3. As soon as this Convention enters into force, it shall be registered with the United Nations by the Depositary.

Article 23

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one year following the date on which notification is received by the Depositary.

Article 24

As between the States Parties, this Convention shall prevail over the following instruments:

(a) the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Signed at Montreal on 23 September 1971; and

(b) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Done at Montreal on 23 September 1971, Signed at Montreal on 24 February 1988.

Article 25

The Depositary shall promptly inform all States Parties to this Convention and all signatory or acceding States to this Convention of the date of each signature, the date of deposit of each instrument of ratification, approval, acceptance or accession, the date of coming into force of this Convention, and other relevant information.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Beijing on the tenth day of September of the year Two Thousand and Ten in the English, Arabic, Chinese French Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Convention.

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