

KAL007 - THE SEQUEL - ICAO ASSEMBLY RESOLUTIONAn Intelligence Mission?

The KAL007 disaster, and the subsequent investigation by the International Civil Aviation organisation have been the subject of previous comments in this publication: [1984] Australian I.L. News 36, 125. The ICAO report concluded that the USSR authorities assumed KAL007 was an intelligence aircraft. The Soviet investigation concluded that the aircraft was engaged "in a pre-planned intelligence-gathering and provocative mission". That investigation also reported that the identity of the aircraft "was received by the Soviet authorities from foreign sources only after its flight had been terminated by the Air Defence Command".

In concluding that the aircraft was engaged in U.S. intelligence service, the USSR report said: "the nature and timing of the intruder aeroplane's incursion into the air-space of the USSR dovetail with the activities of other United States reconnaissance units in the geographic area concerned.

On 31 August, at 17.45 Moscow time (02.45 Kamchatka time on 1 September) an RC-135 reconnaissance aircraft was flying southeast of Karaginski Island. In this area it closed with the aeroplane performing flight KAL007. Both aircraft were capable of monitoring the situation in the air with their airborne equipment. However, no reaction to the close approach of these aeroplanes to each other took place in the air and they continued to fly on parallel headings for 10 minutes. This confirms that the joint flight of the two aeroplanes was not coincidental, but was planned in advance.

KAL007 departed Anchorage in Alaska, where the stopover aerodrome was located, 40 minutes behind its normal schedule. This delay served precisely to synchronize the time of arrival of the intruder aeroplane at the coasts of Kamchatka and Sakhalin with the flight of the American reconnaissance satellite Ferret-D.

This satellite is designed to monitor a wide band of radio frequencies used by electronic facilities in the USSR. It is capable of detecting these facilities within a strip about 3,000 km wide on the earth's surface.

Ferret-D appeared over Chukotka at 18.45 Moscow time on 31 August and flew for about 12 minutes east of Kamchatka and the Kurile Islands. On this orbit the satellite was able, immediately prior to the incursion of the intruder aeroplane into Soviet airspace, to zero in on Soviet radio facilities on Chukotka and Kamchatka in a routine state of alert and pinpoint their location and level of activity, thus ensuring data collection in the first stage of the intruder aeroplane's flight.

On its second orbit Ferret-D appeared over the USSR at 20.24 Moscow time, and at 20.30 Moscow time - i.e. at the moment when the intruder aeroplane penetrated Soviet airspace - it was over the Kamchatka area. The aeroplane's violation of the State frontier forced Soviet monitoring facilities to step up substantially their level of operation. All of this was recorded by the Ferret-D spy satellite. At the same time the satellite was also able to monitor the functioning of the Soviet Air Defence Command's electronic facilities on the Island of Sakhalin and the Kurile Ridge in their normal, day-to-day status.

Finally, the ensuing orbit of Ferret-D coincided with the third and last stage of the intruder aeroplane's flight over Sakhalin. In this interval it was able to record the operation of all the additional Soviet Air Defence Command electronic facilities on Sakhalin Island the Kurile Ridge and in Primorski Kray.

It is noteworthy that the entire flight of the intruder aeroplane took place not merely in the area of the ATC radio facilities concerned, but within the area of coverage of the American Omega and Loran C radio navigation systems, which permit the true co-ordinates of the aeroplane to be determined at any moment with a high degree of precision. Moreover, the Shemya radar permits flights on route R20 to be monitored.

In the time-slot in which the aeroplane violated Soviet airspace, in addition to the RC-135 reconnaissance aircraft patrolling east of Kamchatka, there were other United States intelligence units in its area of activity. Reconnaissance aircraft were patrolling the Kurile Ridge and the Seas of Japan and Chukotsk. The United States frigate Badger was on patrol in the area of Vladivostok.

These facts testify unequivocally to the intelligence-gathering and provocative character of the intruder aeroplane's flight over Soviet territory and make it possible to assert with confidence that on the night of 31 August/1 September an entire intelligence-gathering task force, comprising the intruder aeroplane, several special intelligence aeroplanes, a number of warships of the United States Navy, the tracking stations in the Aleutian Islands, Hawaii, Japan and South Korea and, finally, the Ferret-D intelligence satellite, was deployed and set in motion. All these units were co-ordinated to obtain maximum data on the Soviet Air Defence System in the Far East, particularly in the region of important strategic centres situated on Kamchatka and Sakhalin, and on these centres themselves."

A British defence magazine, Defense Attache also argues that KAL007 was engaged in an intelligence mission, to "turn on" the Soviet defence system so that the resulting electronic missions could be recorded. It argues that the position of KAL007, the U.S. electronic surveillance aircraft RC-135, and the U.S. space shuttle Challenger was ideal for a well planned and co-ordinated intelligence operation. The article then claims that RC-135 revealed itself as a military aircraft and then passed close to KAL007 to trick the Soviet radars into believing the latter was also a military aircraft. The space shuttle then monitored the radar and radio emissions: The Australian 14 June 1984, p.5.

The Soviet view that KAL007 was on an intelligence mission was not accepted in the ICAO report. The arguments advanced in Defence Attache were probably not available to the ICAO; given their essentially circumstantial nature, it is doubtful whether they would have been accepted. The ICAO Assembly, 24 April 1984 held an Extraordinary Session of the Assembly of 151 Contracting States on 24 April 1984, to consider a proposed amendment to the Convention on International Civil Aviation involving an undertaking to abstain from the use of force against civil aircraft.

The Extraordinary Session of the Assembly had before it specific proposals submitted by France, Austria and the Union of the Soviet Socialist Republics. The draft amendment presented by France provided that "All Contracting States undertake to abstain from resorting to the use of force against civil aircraft subject to the provisions of the Charter of the United Nations and, in particular, Article 51 thereof concerning the exercise of the right of individual or collective self-defence."

The proposal presented by Austria specified, among others, that "if a Contracting State is entitled to require the landing of an aircraft and if such landing is not effected", that measures taken "shall not endanger the life and safety of the persons aboard the aircraft concerned".

The USSR proposed to refine and expand the provisions in the Preamble to the Chicago Convention of 1944 and Article 4 of the Convention according to which "Each Contracting State agrees not to use civil aviation for any purpose inconsistent with the aims of this Convention".

In related matters, the Air Navigation Commission was also considering a series of proposed amendments to the Annexes of the Chicago Convention relevant to the interception of civil aircraft. This also followed action by the Extraordinary Session of the Council for a review of rules and procedures to improve the co-ordination of communication systems between military and civil aircraft and air traffic control services and procedures involving the identification and interception of civil aircraft.

The Assembly met on 24 April 1984. The Acting President noted that this was the fifth extraordinary session. Of the amendments made to the Convention, only one, Article 83bis which is not yet in force, related to the charter of codified public international law. Consequently, he observed, it was evident that the Chicago Convention had stood well the scrutiny of experience years of practical application. At this session, 84 Contracting States had registered.

The debates at The Assembly were notable for their calm and reasonableness. Two divergent views emerged. On the one hand the Soviet delegate took the view that no amendments to the Chicago Convention were necessary. The Chief Soviet Delegate stated:-

"Unfortunately, the established system of international aeronautical ties more often than not runs into serious trials because of the cases of violation of States' sovereignty by aircraft and the use of aviation for purposes incompatible with the aims of the Chicago Convention".

The problem of protecting their sovereignty from incursions by foreign aircraft and preventing the illegal use of civil aviation are of serious concern to all countries. Incessant violations of this sort create the atmosphere of mistrust and tension in inter-State relations and cause a real danger to flight safety and human life.

In our opinion, the existing provisions of international law, including those of the UN Charter and the Chicago Convention contain a sufficient number of general norms which bind States to ensure the safety of flights and prevent the violation of States' sovereignty and the illegal use of civil aviation.

Ensuring international flight safety was considered a principal goal when the Chicago Convention on International Civil Aviation was worked out in 1944. Understandably, over half of the Convention articles in some measure or other deal with this problem.

In carefully studying the main proposals of some countries concerning an addition to the Chicago Convention we did not find any new provisions of principle as regards the Organization's tasks in ensuring flight safety. Rather than aiming at improving the safety of air services by way of creating conditions completely excluding the violation of the international flight rules, these proposals only deal with the consequences of a committed violation, e.g., non-

use of force against intruder aircraft, the right to demand landing, the improvement of communication facilities. Amendments of this sort only specify the existing norms and provide for the actions of States in exercising their rights and commitments under the Chicago Convention. The main thing, however, is that the strict observance of these rights and commitments largely ensures the safety of international flights. We support the position of countries which believe that the Chicago Convention is a perfect and balanced document duly meeting the interests of ensuring the safety of civil aviation as well as the protection of States' sovereignty.

As was justly noted by the ICAO Council President A. Kotaite, the Chicago Convention has well stood the test of experience and years of practical implementation. Therefore we are convinced that there is no urgent need to supplement the Convention on account of the questions considered by this Assembly. In this connection we believe that the adoption by this Assembly Session of a decision to make an amendment would be premature.

At the same time the analysis of documents and materials submitted to the Session for consideration and the positions of some ICAO Member States lead us to the conclusion that it is an amendment to the Chicago Convention that a member of States want this Assembly Session to adopt. We realize that political considerations dictate the position of these States, which does not correspond to the principal objectives of our Organization. This is why we oppose the adoption of an amendment."

At the same time, the Soviet delegate adopted a conciliatory stance. The Chief Soviet Delegate stated:

"However, if the majority of participants in the Assembly favour the adoption of an amendment to the Chicago Convention, the Soviet Delegation, striving constructively to participate in the Session's work, will make the corresponding proposals on the basis of our draft amendment. We proceed from the fact that the questions of ensuring the sovereign rights of States and improving the safety of international flights are as closely linked and important as to make it imperative for all ICAO Member States, especially the leading aeronautical nations of which the Soviet Union is one, to take part in looking for mutually acceptable solutions.

In our draft amendment we proceed from the fact that flight safety is jeopardized most in cases of the misuse of civil aviation or gross errors in planning and organizing flights, inadequate flight control and coordination between ATC units, and the failure of an aircraft crew to take the necessary corrective action in case of a violation.

Some proposals contained in documents submitted to the Assembly should, in our view, be considered in terms of supplementing the existing Annexes to the Chicago Convention or adopting a new one. This positive approach is revealed in the position of a number of countries represented at the Assembly. Their proposals concern the possibility of a quick and accurate identification of an intruder aircraft, uniform methods of communication to be used by ATC units and interceptor aircraft, on the one hand, and the intruder aircraft, on the other, in the event the latter does not comply with the corresponding requirements and others. Undoubtedly, these proposals need to be thoroughly analyzed by the ICAO working bodies. That is why we support what the Air Navigation Commission has been doing to this effect and believe that further work should be done."

The Soviet was supported by the delegations from Bulgaria, China, Czechoslovakia, Hungary, Poland, Vietnam, Syria, and Democratic Yemen. The Bulgarian delegate stated that

"incidents of civil aircraft being destroyed in peaceful operations are basically due to the following:

1. Inaccurate and incomplete interpretation and fulfilment of the individual articles of the Convention by a number of Contracting States. This leads to complications in the organization and execution of flights and creates conditions conducive to unintentional deviations by crews.
2. An insufficiently strict system for co-operation among national ATC units when control over civil aircraft in flight is lost, regardless of the reasons which have brought this situation about. There are gaps in the documents regulating the sequence of procedures applied by ATC units in such cases.
3. The existence of several defects in international flight standards and rules concerning interception, identification, the giving of signals and forced landing included in Annex 2 to the Convention with a view to assisting crews in emergency situations or preventing accidental and unintentional deviations by aircraft.

These rules and standards can be fully applied only in meteorological conditions appropriate to visual flights. In instrument flight several of them are inapplicable in practice. In our opinion, there is no complete answer to the problem of how to help a crew when it has not detected a deviation, has not assessed the situation as being critical, when its ATC unit has not so informed it and the next ATC point detects a deviation but has no communication with the aeroplane and the flight is being conducted by instruments in conditions in which even interceptors cannot help in identification and giving aid.

4. The accuracy and reliability of long-distance navigation aids and the responsibility of the crew. Any unintentional deviation by civil aircraft from authorized levels and routes endangers the flights of other civil aircraft on neighbouring routes, and a mid-air collision will lead to even greater casualties."

The comment of the Chinese delegate is of interest, given his governments relation with the USSR:-

"It is evident that if all parties concerned had strictly observed the provision of the Convention and acted in accordance with the relevant established procedures, tragic incidents such as those having seriously endangered the safety of civil aviation could have been avoided. Regrettably, there have been both events in which civil aircraft were used for purposes inconsistent with the aims of the convention and events in which force of arms was used against civil aircraft in violation of the provisions of the Convention and its relevant Annexes."

International Law and the Destruction of Civil Aircraft:

While the Soviet view was that existing air law was adequate, and that the KAL007 incident resulted from the use of the aircraft in an intelligence mission, the general Western view was that there was no evidence that the aircraft had engaged in an intelligence mission, a view confirmed in the ICAO investigation: [1984] Australian I.L. News 125. The British position that international law proscribes the use of force against a civil aircraft identifiable as such on a scheduled flight ([1984] Australian I.L. News 36) was expressly approved by the delegations of the USA, Cyprus, the Republic of Korea and Switzerland.

The Chief Delegate of the United Kingdom stated:

"In the coming days we shall be looking at legal texts, and discussing legal concepts and principles. It will be all too easy for us to forget that the reason we are here is not to discuss abstract ideas; we are here because we want to ensure the safety of innocent men, women and children. When we speak of the use of force against civil aircraft, we are concerned not only about the shooting down of machines; we are concerned to a much greater degree about the lives of the people on board them. In the words of the judgement of the International Court of Justice in the celebrated Corfu Channel Case we are concerned with 'elementary considerations of humanity'.

What I have just said may sound obvious, but sometimes the obvious has to be said. If it is not said, it may be forgotten. But if we keep in the forefront of our minds the fact that at this Assembly we are concerned -- all of us -- with the protection of human life, it may be easier for us all to see how best we can achieve that goal.

The UK is among those, Mr. President, who do believe that the development of international law, particularly during this century, has made it clear beyond doubt that in time of peace, the use of force against civil aircraft is subject to very severe limitations. But equally, the tragic events of last year have demonstrated that it is desirable for States to reaffirm, by an express provision in the Chicago Convention, the legal rules concerning the use of force against civil aircraft. We are here to try to codify the relevant international law so that it is made clear by this Assembly to the world community that no State is justified in using force against civil aircraft except in those wholly exceptional circumstances when it can be used in self-defence -- which I will mention later.

The position in international law is so important that I hope it will not be regarded as taking up unnecessarily the valuable time of the Assembly if I refer to it in some detail. The main sources of international law are listed in Article 38 of the Statute of the International Court of Justice. These can be summarized as:

- international conventions;
- customary international law, as evidenced by State practice;
- judicial decisions and the teachings of jurists; and
- general principles of law recognized by the international community.

There are two international conventions which are directly relevant: the Chicago Convention and the United Nations Charter. In so far as a State's military aircraft are concerned, Article 3 (d) of the Convention places an

obligation on the State when issuing regulations for such aircraft to have 'due regard for the safety of navigation of civil aircraft'. This is of course fully consistent with one of the basic objectives and purposes of the Convention, which (as you said this morning, Mr. President) is the safety of international civil aviation. Indeed the Preamble refers to the 'safe' development of international civil aviation and this objective of safety is evident from even the most cursory study of its provisions. I need only refer to Article 12 (Rules of the Air), Article 25 (Aircraft in Distress), Article 26 (Investigation of Accidents), Article 28 (Air Navigation Systems), Chapter V dealing with airworthiness and pilots' competence, and the international standards and recommended practices contained in the eighteen detailed Annexes. All of these provisions attest to the fact that safety is a fundamental purpose of the Convention. Indeed one need only refer to Articles 44 (a), 44 (d) and 44 (h) to see that a fundamental purpose of this Organization is the safety of international civil aviation. And this, as I said earlier, means primarily the safety of airline passengers and crews. The use of force against a civil aircraft amounts to a fundamental breach of the Convention on which international civil aviation is founded and runs wholly counter to the objectives of this Organization.

In so far as the use of force against civil aircraft could be regarded as an exercise of force in international relations, it is also prohibited under the United Nations Charter. Article 2 (4) of the Charter, which reflects the pre-existing rule of customary international law, prohibits States from the threat or use of force in any manner inconsistent with the Purposes of the United Nations. One of these Purposes is the promotion of human rights, one of the most important of which is the right to life.

In contrast to these Conventions, there is no Convention which authorizes the use of force against civil aircraft in flight.

As regards the practice of States, since the Chicago Convention there have been a number of attacks on civil aircraft which have strayed into the air-space of another State. It is sufficient to refer briefly to three cases. In 1954, when a British airliner was shot down, the State responsible apologized and paid compensation. In 1955, when an El Al airliner was shot down, the State responsible acknowledged, at least initially, the wrongfulness of its action. The shooting down of a Libyan airliner in 1973 was strongly condemned by more than 100 States in the ICAO Assembly. In other cases where a State did not admit liability, the States in which the aircraft were registered and whose nationals were on board protested the illegality of the action.

The several arbitral decisions concerning transfrontier incidents, such as those made by the US/Mexico Claims Commission in the 1920s, and in the case of the vessel the 'I'm Alone' which involved actions by the United States Coast Guard, demonstrate most clearly that it is wrongful under international law to kill foreign nationals even if they deliberately trespass into your territory or violate your law. The only significant difference between these cases and intrusion by civil aircraft is that the numbers of human lives at risk if force is used against a civil aircraft like a wide-bodied jet are likely to run into hundreds.

In the Corfu Channel Case, although it was not concerned with an intrusion into the territory of another State, the International Court of Justice condemned action by States which in time of peace unnecessarily or recklessly involves risk to the lives of nationals of other States.

In national laws the undue respect and protection given to property rights, which was a feature of many legal systems in the nineteenth century, has long given way to a proper recognition that sanctity of life is more important

than the protection of property; and that you cannot kill a trespasser unless he poses an imminent threat to your life. And even then, the amount of force you are entitled to use must be reasonable and not out of proportion. Since the use of any force against a civil aircraft is likely to endanger it, and therefore its occupants, such use of force cannot be regarded as reasonable.

The position in international law has been most recently recognized in the Resolution of the Council of 6 March 1984 which reaffirmed that the use of armed force against civil aircraft is a violation of international law.

Thus, after examining all sources of international law, it is clear that the use of force against a civil aircraft in flight in time of peace is prohibited. The only exception to this rule is when force can be justified as a legitimate exercise of a State's inherent right of self-defence.

The inherent right of self-defence (which is recognized in Article 51 of the United Nations Charter) is confined within strict limits. Under general international law, as under national law, a minimum condition of resort to armed force in self-defence is 'an instant and overwhelming necessity for self-defence, leaving no choice of means, and no moment for deliberation'. Furthermore, the action taken must involve 'nothing unreasonable or excessive, since the act justified by the necessity of self-defence must be limited by that necessity and kept clearly within it'. That is to say, the degree of force must be proportionate to the danger. The criteria I have just quoted were first enunciated in relation to the incident of the steamer Caroline as long ago as 1837, which involved the use of force by British soldiers. These criteria have met with general acceptance ever since. They were specifically endorsed by the Nuremberg Tribunal.

Applying these principles to a civil aircraft which has entered without permission the airspace of another State in the time of peace, can the use of force in self-defence ever be legitimate? Clearly it could be legitimate if the aircraft is making, or is about to make, an attack or is, for example, dropping paratroops. The aircraft would then in effect be operating as a military aircraft. Lives of persons not on board would be endangered. The State would be entitled to use force against it.

But if the aircraft merely enters the State's airspace without permission, whether by mistake or deliberately, there can be no justification for using force against it, even if it is being used for activities inconsistent with its status as a civil aircraft. Provided it is not endangering the lives of persons not on board, the use of force against it cannot be regarded as permissible. However reprehensible it may be to use civil aircraft to gather intelligence, international law requires that the right of a State to protect itself against such activities must be balanced against (as the International Court said) 'elementary considerations of humanity'. There are some who assert that endangering the lives of hundreds of civilian passengers is justifiable because the sovereignty of a State has been infringed. They have a most difficult (and we would say impossible) task to justify that assertion, not only morally, but legally.

Unfortunately, some States have attempted to claim just such a right. Therefore, despite the weighty corpus of law which says that they are wrong, the United Kingdom will support to the full in this Assembly any proposal to amend the Convention which reaffirms in formal and specific terms the existing position in international law in relation to the particular circumstances of international civil aviation."

The Chief Delegate of Australia stated:

"Let there be no doubt about Australia's position in this regard. The indiscriminate and illegitimate use of force against civilian aircraft cannot be justified under any circumstances, and represents a clear and flagrant violation of international law.

We make no attempt to deny that there are complex issues involved in strengthening the Convention. As can be seen from some of the proposed amendments to the Convention a fine balance will need to be struck between the rights and obligations of States in regard to non-use of force, to require an intruding aircraft to land and the need to safeguard the safety and lives of persons aboard a civilian aircraft.

However, we are confident that these issues will be considered fully and that this Assembly will spare no effort in its endeavours to achieve a positive and constructive outcome. The Australian Delegation will do its utmost to ensure that this Extraordinary Session of the Assembly will give rise to greater safety in international civil aviation and we trust that all delegations will cooperate in good faith to achieve a successful conclusion.

The Chicago Convention has been the blue-print for the operation and development of international civil aviation for almost 40 years. All Contracting States have a responsibility to ensure the continuing integrity and application of the Convention. We owe this not only to the innocent victims of this tragedy, but also to the international aviation community as a whole."

The Chief Delegate of Israel, a country which has been involved in other aerial incidents (see [1984] Australian I.L. News 36) noted that "... today there exists what may be termed a lacuna in the norms of conduct in the sphere of international civil aviation - a lacuna which has rendered somewhat vague and cloudy that vital area dealing in matters of intervention in civil aviation, including the use of force against civil aircraft. The urgency thus lies in the necessity that we formulate the requisite formula in order to clarify the ambiguity, reduce the sphere of human discretion and possible error, and indicate a set of norms which will prevent tragedies and loss of human life." He stated the following principle which guided Israel:

"In preparing ourselves for this extraordinary session, the various authorities responsible for transport and safety of aviation in Israel have based themselves on the basic premise or assumption that in any given situation, a bona fide civil aircraft in flight is solitary, defenceless and fragile, and not only given to the powers of the universe but as we have become aware, is given also to the powers and discretion of a State into whose airspace it flies; or into whose airspace it has mistakenly wandered; or even into whose airspace it has been obliged or compelled to fly."

The Chief Delegate of the Republic of Korea, a country particularly affected by the issue, proposed that the Chicago Convention be amended to reflect an existing rule of international law. Indeed, the Chief Delegate categorized the rule as jus cogens. He said:

"In our proposal for the Amendment of the Chicago Convention, we have referred to the principle that the use of force against the innocent human lives in the air is in violation of the peremptory norm of international law. We have made that reference with the conviction that the rule of international law prohibiting the use of force against States and individuals on land and at sea, such as genocide and piracy, is generally accepted as a peremptory norm of inter-

national law and an application of such a rule in the air should be no different from its application on land and at sea. Prohibition of the use of force against civilian aircraft has already been declared as a rule of international law by this organization. The validity of such a rule should require no further reflection. Thus I can see with clarity, that the legal basis for banning the use of force is so firmly established that we do not have to indulge in debating the legality of such a ban. As to the validity of the proposition that the use of force against civil aviation is contrary to international law, the distinguished representative of the United Kingdom has ably summed up an argument in support of such a proposition. There is no need for me to elaborate further on that point. Furthermore, it should be noted that an act of violence against innocent lives on board civil aircraft has already been prohibited under paragraph (a), Article 1 of the Montreal Convention. It should be no surprise to us that a same rule is applied to a State for the commission of the same offence."

On the question of the need to reconcile the security interests of the territorial sovereign for protecting its airspace and the interest of international civil aviation, the Korean delegate said "Let us be crystal clear, that the issue of reconciling these two interests is not to safeguard one interest at the expense of the other. But rather, the issue is how to balance these two interests without sacrificing one for the other. How can we achieve such an objective? To achieve such an objective, I suggest that we should embrace a concept of presumption of innocence for the civil aircraft found in the airspace of another State. You may call it the concept of innocent presence if you wish. Presence of such aircraft in the airspace of another State, particularly the aircraft engaged in international air service, could have been caused either by straying or distress, and such an aircraft should not be subject to the use of force by the territorial sovereign. An analogy of this concept is the doctrine of innocent passage in maritime international law. But unlike the doctrine of innocent passage, the concept of innocent presence merely allows a presumption of innocent presence for the aircraft engaged in civil aviation for its unauthorized entry into airspace of another State until proven otherwise. The territorial sovereign has every right to bring down the aircraft for the purpose of investigation, but has no right to destroy the aircraft, thus endangering the innocent human lives on board such aircraft. It must be reminded that whenever a violation of the airspace of another State is committed, such an offense is caused by force majeure, the negligence of the pilot, or mechanical failure of the aircraft, certainly not by the innocent passengers on board such aircraft. Furnishing the innocent passengers with imminent danger of death under such circumstances is not warranted under any rules of either municipal or international law."

Then the Korean delegate spoke on the matter of responsibility for the innocent victims who have been subject to the illegal use of force by States. He said: "We have witnessed six instances of the use of force against passenger airliners in the past, and in none of those six instances have we had satisfactory settlement of the incidents. If the use of force against the international civil aviation is contrary to international law, a party who is found to be in default of its obligation under international law must not be left unaccounted for its act. I would like to remind you in this connection that a well accepted rule of international jurisprudence requires a compensation from the State who is found to be in violation of its obligation under international law, where the compensation is due. Here again, instead of recourse to the customary rule of international law, I would like to see that the matter of compensation is codified under the auspices of the Chicago Convention."

Finally, the Korean delegate raised the issue of sanctions against the State who has been found to have acted against the prohibition of the use of

force against the international passenger airliner. He said: "Mr. President, I realize that the practice of imposing sanctions upon States has not proved to be effective. Furthermore, the reality of international relations is such that States are often unwilling to impose sanctions against big powers. But if any rule of law is to prevail in international civil aviation, a heinous offense against humanity and a crime against international law must not be left unaccounted for. There must be some form of sanction that should be imposed upon States who have committed acts of such international delinquency. In this connection, we would all recall what some of you have done in imposing sanctions in the aftermath of the KAL tragedy last year. But such sanctions have been undertaken individually and voluntarily. It should be institutionalized as a matter of the rule of law. I feel that ICAO should also have been able to impose sanctions which is not unknown under Article 88 of this Convention. For the category of sanctions that ICAO could impose on the party who uses force against international civil aviation, I would like to propose that such a party be either suspended from its right to vote in the ICAO Council, and in the Assembly of ICAO, or be expelled from the membership of ICAO depending on the gravity of the offense. I would like to remind you that an expulsion from the membership of an international organization is neither unknown, as it is provided for under Article 6 of the UN Charter, nor is it unprecedented, as the League of Nations expelled one of its members for the illegal use of force against another sovereign State."

The Chief Delegate of New Zealand also expressed the view that international law already condemned the use of force against civil airliners, and that the Chicago Convention should contain a provision to cover this. He stated:

"But in approaching the matter of ruling out the use of force against aircraft engaged in civil aviation, it becomes necessary to somehow accommodate the perceived needs of some States to safeguard their security

New Zealand takes the position that such an accommodation should not be made in the Chicago Convention itself. The Preamble to the Convention tells us plainly that civil aviation is to be promoted as an instrument for achieving world peace through the creation of friendship and understanding between nations. Article 4 of the Convention commits all Contracting States not to use civil aviation for purposes inconsistent with those aims. The Convention is not applicable to aircraft used in military services. The true interpretation of the Convention is that by definition civil aviation is aviation for peaceful purposes. Therefore, civil aviation can not represent a threat to security.

Accordingly, it is not necessary to qualify anything the Chicago Convention might say about ruling out the use of force against civil aviation, by reference to the right of self defence. The right of self defence against armed attack is enshrined in Article 51 of the United Nations Charter is undeniable, but New Zealand says what has that got to do with international civil aviation? If an aircraft registered in a Contracting State is used to mount an armed attack it is simply not engaged in civil aviation and nothing in the Chicago Convention applies to it ...

It is not an aircraft with which the Convention is concerned. Therefore it is unnecessary, and considered by New Zealand to be less than ideal for any amendment outlawing the use of force against civil aircraft to be linked to or qualified in any way by reference to rights of self defence. 'Force must not be used against aircraft engaged in civil aviation' is what the Convention should say. It should say that, because that is the present position in International Law.

The New Zealand delegate then spoke to the Soviet amendment:

"The Soviet Union draft amendment proceeds from the starting point that States must ensure that aircraft for which they are responsible do not violate the sovereignty of other States. I question whether that starting point is appropriate, because the vast majority of civil aviation flights over sovereign airspace are authorized - specifically or generally - by the State overflown and therefore inherently cannot be violations of sovereignty. Indeed, civil aviation conducted fully in accordance with the Convention is never and can never be a violation of sovereignty. As States are already obliged to give effect to the Convention in their domestic law, and have done so, it is difficult to see what additional action could or should be taken to ensure that violations do not occur.

But the practical difficulties involved in giving effect to the Soviet proposal are enormous especially for small States with limited means and wide oceanic airspace responsibilities. In paragraph (b) of the Soviet proposal there is the suggestion that States must inform aircraft of any deviation from their assigned route and also inform the State in whose direction any such deviation is taking place. This proposal assumes radar coverage over the entire airspace for which each State is responsible for providing air traffic control services. Many States - and New Zealand is among them - do not have radar coverage over such a wide area and would simply not be able to comply. (Even Flight KE 007 was not within civilian radar coverage for much of its journey). Then if the deviation is detected by the unit in control of the flight the proposal would unnecessarily burden every air traffic control unit with an obligation to notify the aircraft and other States of the deviation whether such deviation was of any significance or not, bearing in mind that the number of times and the reasons why aircraft move off their assigned track are many ..."

On the question of interception procedures, the New Zealand delegate said:

"I wish to turn now to the question of the interception procedures themselves. New Zealand supports any moves to ensure that interception procedures, when they are necessary, are non-violent, as uniform as possible and are carried out so that the safety and lives of persons on board are not endangered. To that end, New Zealand will support an appropriate amendment that provides for States to ensure that aircraft for which they are responsible are required by law to comply with properly laid down and acceptable interception procedures. The French Austrian Draft is a useful starting point. However, the emphasis in tabled drafts is on requiring aircraft to land. While ultimately a State must be entitled to call upon a straying aircraft to land, the emphasis on the landing obligation overshadows the important steps leading up to it. That is, the establishment of communications and the giving of a warning. Given that deviations by aircraft engaged in civil aviation calling for some form of interception will be innocent, and that these will be able to be averted by a warning, it would be unfortunate if the Chicago Convention failed to take account of that fact. Accordingly, New Zealand considers that the Chicago Convention should give express recognition to the concept that interception is a process rather than a single event and that in most cases it will not be necessary to carry the process through completely to a directed landing. The paramount consideration where interception procedures are concerned, is the need to ensure the safety of the aircraft involved and their occupants. New Zealand cannot support a proposal which does not take due account of that consideration."

Amending the Chicago Convention:

We have noted above the specific proposals for the amendment of the Convention. From the Western viewpoint the amendment proposed by France and Austria enjoyed widespread support. While commending the general view that the Chicago Convention had stood the test of time, the Chief Delegate of France raised the problem that the Convention was not explicit on the issue of force. He explained this absence in these words:

"But there is one point that the authors of the Chicago Convention had not explicitly dealt with, that of the possible use of force against civil aircraft. This discretion is easily explained and I have verified this with persons who were present at the Chicago Conference, since, in reality, such a use of force is normally prohibited by general international law and thus it was not, a priori, considered necessary to recall this prohibition in the Convention. The most that was done by the authors of this text was, in passing, to stress in Article 3 (d) that the regulations established by the Contracting States for State aircraft shall have due regard for the safety of navigation of civil aircraft. This of course means a fortiori that State aircraft must not deliberately endanger this safety.

Thus for the authors of the Chicago Convention the use of force against civil aircraft, their passengers and their crew without regard to their safety was certainly excluded.

This approach was justified by general international law prior to the Chicago Convention, as was mentioned at this rostrum by one of the previous speakers. Furthermore, the accuracy of this view has been confirmed since then by the incorporation in the Charter of the United Nations of Article 2, paragraph 4 forbidding the use of force in international relations. It has also been forbidden by the International Court of Justice in the Straits of Corfu case when the court recalled that the action of States is subject to 'elementary considerations of humanity'.

On the question of the need for amendment, the French delegate observed:

"France for its part, has for ten years considered that it is indispensable to proceed to make such an amendment. In the first place, as you said Mr. President, following the Secretary-General of the United Nations who spoke here in Montreal, written law is always preferable, in the international field at least, to customary law. It brings precision to the abstract and general principles recognised by the international community and determines the ways and means of application. In addition, as was stated some 200 years ago by one of our illustrious predecessors in the art of diplomacy, what goes without saying goes even better when it is said. This rule is valid in relations between persons and all the more valid in relations between States.

Furthermore, the history of civil aviation over the last 30 years shows that several aircraft have, unfortunately, been destroyed in tragic conditions. Therefore, and without delving into the past, it seems to us essential to derive a lesson from experience to prevent the recurrence of such tragedies. The Assembly of ICAO would, we think, be failing in its duty if it did not do so. --

The French Government, which originally called for this meeting, is of course pleased that it is being held today, but I should like to stress that we are not conducting a prestige operation in this matter: France is essentially

desirous of associating itself with all those who share our conviction and our objective to bring all members of the international community to subject themselves to the rule of law which it is our task to develop.

In this perspective, the French Government proposed an amendment to the Chicago Convention a few years ago and our proposal obtained wide support but at that time failed to be adopted, by two votes. We were, however, not discouraged and we wish to make every effort today to obtain the required majority in this Assembly in order to develop a satisfactory text.

On 8 September last, we proposed a text and we were happy to join forces with the Austrian Government to prepare the document which was distributed as A25-WP/2. This paper is certainly not perfect and we are open, without pride of authorship, to any attempt to improve it so long as the two basic principles remain:

- first, the principle of not resorting to force against civil aircraft,
- and secondly, the principle of respecting national sovereignty which is reflected in the right to order any offending aircraft to land,

all this of course must respect the principles enshrined in the Charter of the United Nations. --"

The Chief Delegate of Austria stated:

"The amendment reaffirms the prohibition of the use of force against civil aircraft, already prohibited under present international law, and clearly spells out the obligation of the Contracting States not to endanger the safety and lives of persons on board when intercepting such aircraft. This prohibition should remain subject to the relevant provisions of the Charter of the United Nations, and in particular, to its Article 51 concerning the exercise of the right of individual or collective self-defence. I should like to recall that the wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act constitutes a lawful measure of self-defence as carefully defined by the Charter of the United Nations. Undoubtedly the prohibition of the use of force against civil aircraft constitutes the underlying philosophy of the Chicago Convention. However, we have every reason to believe that those who in 1944 elaborated this valuable legal instrument never thought that armed force against civil aircraft could one day actually be used. Be it as it may, events which have since taken place have alerted governments and public opinion to the necessity of providing for specific provisions in international law explicitly prohibiting the use of armed force against civil aircraft. At the same time our proposal, in keeping with the inherent balance of the Chicago Convention, also recognizes the necessity to protect the territorial sovereignty of States from violations and activities inconsistent with the aims of the Convention. The draft amendment therefore contains provisions on the right of States to require the landing of an aircraft engaged in such unlawful activities.

The Chicago Convention on International Civil Aviation has proven its great value over a period of forty years. We realize that any amendment to this Convention would be of considerable importance to all Member States of ICAO. For this reason Austria and France over the past months had many informal contacts with interested countries. In the course of these contacts valuable suggestions have been made with a view to enhance the acceptability of our proposal. The authors of the Austrian-French draft amendment consequently are prepared to accept certain changes to the text as presently contained in A25-WP/2. Let me point

out at this juncture that one of the changes we would be ready to contemplate relates to sub paragraph (b) of the draft amendment. Instead of referring to the Annexes of the Chicago Convention we would be prepared, if deemed appropriate by this Assembly, to make a cross-reference to sub paragraph (a) of the proposed new article - that is to the prohibition regarding the use of force. Furthermore the drafting of sub paragraph (a) should unequivocally reflect the fact that we are merely restating an existing rule of international law as regards the prohibition of the use of force."

The Position of the Non-Aligned Countries:

Overall, the position of the non-aligned countries was one which maintained an open attitude to the different amendments and proposals. This reasonableness no doubt contributed to the successful outcome of the conference. For example, the Chief Delegate of Indonesia stated:

"My Delegation feels those proposals contain several similar principles. For instance the Austria/France and the USA proposals contain the principle of non-use of force against civilian aircraft, the principle of non-endangering the safety of lives, the non-prejudicial clause to Article 51 of the UN Charter, the right of States to require landing of a violating aircraft, and the mandatory national legislation to obligate its aircraft to comply with order to land given by the authority of States it overflies. In general, we are sympathetic to all these principles.

We notice different elements in the Austria/France and the USA proposals regarding the right to resort to "any appropriate means" in the Austrian/France proposals with regard to any violating civil aircraft. My Delegation would need further clarification as to the meaning and the scope of the phrase "any appropriate means" in dealing with a violating civil aircraft. We do not find this paragraph in the USA proposal. On the other hand, the proposal of the USA contains obligation of States to inform ICAO of their regulations on interception.

To a lesser degree we also find the principle of non-use of force or weapons in the USSR proposal, although it is being subjected to the need to protect national sovereignty and security. While the USSR proposal does not speak specifically on the principle of non-endangering the safety of lives of persons on board the civilian aircraft, it does speak on the principle of non-use of weapons, although in this case, the principle to protect the sovereignty or safeguard the security of the subjacent State is regarded to be more important. For us, the safety of lives of civilian passengers is no less important.

The USSR proposal contains other principle such as the obligation of all States not to use the airspace of other States for purposes inconsistent with the aims of the Convention. We have no serious difficulty with this principle. It also speaks of the obligation of all States to inform other States of any deviation by any aircraft from its assigned route. We find this principle somewhat difficult to apply due to technical problems. It would be ideal if ATCs, in certain areas, could develop technical cooperation on this matter and to exchange information involving trans-boundary over-flight. The USSR proposal also speaks on the obligation of States to keep their own regulations uniform with the Chicago Convention, but only "to the greatest extent possible". This proviso in our mind opens up a loophole for States to deviate from the regulation established by the Chicago Convention. Finally, the USSR proposal as we understand it also obligates an aircraft to establish communication on the emergency frequency and to respond to the ATC unit and intercepting aircraft. Like communication between ATCs of different countries, the communication between

intercepted aircraft and intercepting aircraft may also pose technical problems which may not be easy to overcome.

The Ecuadorian proposal on the other hand contains another additional principal, namely on obligation of States to assume responsibility that designated airport for required landing shall meet requirements of operations of the intercepted aircraft in order to guarantee the safety of lives. This principle, although attractive, may prove burdensome for developing countries to apply."

The Chief Delegate of India stated:

"On behalf of the Government of India it is my honour and privilege to address this Extraordinary Session of the Assembly of ICAO. I take this opportunity to extend my greetings to all of you.

India is deeply wedded to the principles enshrined in the Chicago Convention to create and preserve friendship and understanding among the nations and peoples of the world. We firmly believe in the need to promote peace and cooperation between nations. We would view with abhorrence and dismay the use of force against unarmed civil aircraft. On the other hand we would view with equal dismay the violation of the territorial sovereignty of States for activities incompatible with the aims and objectives of the Chicago Convention. The Chicago Convention has served us well over the last four decades. Appropriately, it recognises, in Art. 1, the sovereignty of every State over the airspace above its territory. In Art. 3(d) it calls for due regard for the safety of navigation of civil aircraft. In Art. 4, the Convention bars the misuse of civil aviation or the use of civil aviation for any purpose inconsistent with the Convention. We believe that these Articles and indeed the entire Convention prohibits the use of force against civil aircraft.

At the last Session of the General Assembly I had said that we believe that it is within the framework of the aims, objectives and procedures of the Chicago Convention that the safety of civil aviation has to be considered and specific measures devised to prevent any occurrence of tragic incidents.

In the months that have followed the last regular Session of the General Assembly, India as a member of the ICAO Council has actively participated in all the deliberations relating to devising measures for making civil aviation safer. We have studied with the utmost care the various documents that have been brought out by the Secretary General and his colleagues, as well as by the technical organs who have reported to the ICAO Council.

My Delegation would wish to place on record our deep appreciation of the report of the Secretary General. He and his team of investigators were entrusted with an arduous task. Within the constraints under which the investigating team was operating, they have commendably discharged their responsibility. The Secretary General's report has provided us with vital information for devising measures for investing civil aviation with greater safety."

The Chief Delegate of India specified four problems which needed attention. These were -

"... The four problems are:-

- a) the problem of identification, i.e., how to ensure positive identification of an aircraft in all conditions of weather, at all times of day and night, with the speed and accuracy needed;

- b) the problem of communication, i.e., proper coordination between all military and civilian air traffic controllers concerned, within countries and between countries, as well as technical means of cross-checking from the ground whether flight information emanating from the air is accurate.
- c) the problem of interception, i.e. formulation of an interception procedure that is commonly accepted and leaves not even an iota of doubt in the mind of the crew of the intercepted aircraft that it is being intercepted. Concomitantly, we must address ourselves to the fundamental question: What should be done if the intercepted aircraft flagrantly, wilfully and wontonly disregards the commands of the intercepting aircraft. It is indeed most gratifying to note, that at the initiative of our host country, Canada, the Legal Committee has taken cognisance of the need to develop a draft legal instrument on the interception of civil aircraft and a sub-committee has been constituted;
- d) the problem of misuse: This is a serious problem, and has many ramifications. The problem of misuse of civil aircraft has to be considered and addressed with great care. Answers have to be found to several questions. What needs to be done when a civil aircraft in engaging in activities incompatible with the aims and objectives of the Chicago Convention?"

Finally, on 10 May the Assembly unanimously adopted a Protocol relating to the amendment of the Convention. The Protocol, the text of which is set out below, was drawn up by the Secretary General. It is a single document in the English, French, Russian and Spanish languages, each text being equally authentic. It will come into effect after ratification by 102 States, the number specified by the Assembly under Article 94(a) of the Convention. The Protocol amends the Chicago Convention by inserting a new article, Article 3 bis.

Given the present state of international relations, and the KAL007 disaster itself, the unanimous support for the unanimous adoption of the Protocol was quite extraordinary. The Protocol is quite specific in its provisions, and clearly subordinates the misuse of civil aircraft paragraph, paragraph (d) to the paragraph clearly proscribing the use of weapons against civil aircraft in flight, paragraph (a). It will be noted that paragraph (a) protects civil aircraft simpliciter, without any qualification as to the civil aircraft being clearly identifiable, being on a scheduled flight etc. In the event of interception, neither the lives of persons on board (both crew and passengers) nor the safety of the aircraft are to be endangered. In the event of misuse, for example a civil flight illicitly also dedicated to intelligence work, presumably intelligence persons on board, as well as the aircraft itself would still be protected, unless one accepts an extreme extension of the New Zealand view. That view was that an aircraft engaged in "military services" is not a civil aircraft. The New Zealand delegate referred to an aircraft being used to mount an armed attack on a state. This would seem to be correct, but does this extend to a "mixed" flight, i.e., a civil aircraft carrying passengers which also engages in intelligence gathering. The danger to the state concerned is not so immediate, but the exposure of military secrets to intelligence gathering may be seen as particularly serious. The subordination of the "misuse" provision, paragraph (d) to paragraph (a) seems to provide the answer. That provision requires each State to take "appropriate measures" to prohibit deliberate use of any civil aircraft for any purpose inconsistent with the Convention. An example of an inconsistent purpose would obviously be intelligence gathering. Therefore, it would seem that a "mixed flight" would be protected by paragraph (a). Presumably, intelligence personnel

would also be protected, if only because it would be impossible to protect innocent passengers without also protecting intelligence personnel.

The needs of security conscious States are protected not only by the "misuse" provision, paragraph (d), but also by the recognition in paragraph (b) that States have the right in two situations to require a civil aircraft to land. First, when the aircraft is flying above its territory without authority. Second, where there are reasonable grounds to conclude that the aircraft is being used for any purpose inconsistent with the Convention. "Reasonable grounds" are to be judged objectively; otherwise the paragraph would provide "... if it has reasonable grounds" rather than "... if there are reasonable grounds". This is confirmed by the further provisions clearly referring to the States, to the effect that "it", i.e. the State, "may also give such aircraft any other instructions ...". In the French text, the words are "s'il y a des motifs raisonnables". The use of the words "il y a" confirms that "motifs raisonnables" are to be judged objectively.

The paragraph further provides that the State "... may resort to any appropriate means" to require landing or compliance with other instructions to put an end to "such violations". These "appropriate means" must be "consistent with relevant rules of international law". These include the "relevant provisions" of the Convention, and, expressly paragraph (a) of the Article. Thus interception cannot involve neither resort to the use of weapons, endangering the lives of persons on board nor endangering the safety of the aircraft.

There is a requirement that each State publish its interception regulations; this should ensure that interested persons know, or at least have the opportunity to become acquainted with the interception regulations of relevant States. Paragraph (c) creates an obligation on States to make mandatory compliance with instructions properly given by State authorities whose airspace is violated. The sanction for non compliance is to be the imposition of "severe penalties". The relevant state will be under an obligation to prosecute any violations. For the purposes of this paragraph, and the misuse provisions, paragraph (d), jurisdiction is enjoyed over any civil aircraft under three heads. First, the aircraft may be registered in that State. Second, a state has jurisdiction where the aircraft is operated by an operator who has his principal place of business in that state. Finally, the state has jurisdiction where the aircraft is operated by an operator who has his permanent residence in that state. The nationality of the operator does not, in itself, provide jurisdiction, nor does the place of incorporation or the registered office of the operator.

The Protocol goes a long way to providing clear rules where a civil aircraft violates the airspace of a State. It is balanced in that it takes into account the rights and obligations of the states concerned, as well as the relevant humanitarian considerations involved. That it was achieved indicates that there are common interests among the great and small powers, underlying common interests which are sufficient to unite them. This may augur well for future negotiations on even more important issues.

While this Protocol will not ensure that no further aerial incidents involving civil aircraft occur, it does provide a means to completely avoiding some, to solving others at an early stage, and to managing the more difficult ones along clearly defined lines.

PROTOCOL

relating to an amendment to the
Convention on International Civil Aviation

THE ASSEMBLY OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

HAVING MET in its Twenty-fifth Session (Extraordinary) at Montreal on 10 May 1984,

HAVING NOTED that international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to general security,

HAVING NOTED that it is desirable to avoid friction and to promote that co-operation between nations and peoples upon which the peace of the world depends,

HAVING NOTED that it is necessary that international civil aviation may be developed in a safe and orderly manner,

HAVING NOTED that in keeping with elementary considerations of humanity the safety and the lives of persons on board civil aircraft must be assured,

HAVING NOTED that in the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944 the contracting States

--recognize that every State has complete and exclusive sovereignty over the airspace above its territory,

--undertake, when issuing regulations for their state aircraft, that they will have due regard for the safety of navigation of civil aircraft, and

--agree not to use civil aviation for any purpose inconsistent with the aims of the Convention,

HAVING NOTED the resolve of the contracting States to take appropriate measures designed to prevent the violation of other States' airspace and the use of civil aviation for purposes inconsistent with the aims of the Convention and to enhance further the safety of international civil aviation,

HAVING NOTED the general desire of contracting States to reaffirm the principle of non-use of weapons against civil aircraft in flight,

1. DECIDES that it is desirable therefore to amend the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944,

2. APPROVES, in accordance with the provision of Article 94(a) of the Convention aforesaid, the following proposed amendment to the said Convention:

Insert, after Article 3, a new Article 3 *bis*:

“Article 3 bis

(a) The contracting States recognize that every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered. This provision shall not be interpreted as modifying in any way the rights and obligations of States set forth in the Charter of the United Nations.

(b) The contracting States recognize that every State, in the exercise of its sovereignty, is entitled to require the landing at some designated airport of a civil aircraft flying above its territory without authority or if there are reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of this Convention; it may also give such aircraft any other instructions to put an end to such violations. For this purpose, the contracting States may resort to any appropriate means consistent with relevant rules of international law, including the relevant provisions of this Convention, specifically paragraph (a) of this Article. Each contracting State agrees to publish its regulations in force regarding the interception of civil aircraft.

(c) Every civil aircraft shall comply with an order given in conformity with paragraph (b) of this Article. To this end each contracting State shall establish all necessary provisions in its national laws or regulations to make such compliance mandatory for any civil aircraft registered in that State or operated by a person having his principal place of business or permanent residence in that State. Each contracting State shall make any violation of such applicable laws or regulations punishable by severe penalties and shall submit the case to its competent authorities in accordance with its laws or regulations.

(d) Each contracting State shall take appropriate measures to prohibit the deliberate use of any civil aircraft registered in that State or operated by an operator who has his principal place of business or permanent residence in that State for any purpose inconsistent with the aims of this Convention. This provision shall not affect paragraph (a) or derogate from paragraphs (b) and (c) of this Article.”,

3. SPECIFIES, pursuant to the provision of the said Article 94(a) of the said Convention, one hundred and two as the number of contracting States upon whose ratification the proposed amendment aforesaid shall come into force, and
4. RESOLVES that the Secretary General of the International Civil Aviation Organization draw up a Protocol, in the English, French, Russian and Spanish languages, each of which shall be of equal authenticity, embodying the proposed amendment above-mentioned and the matter hereinafter appearing:
- a) The Protocol shall be signed by the President of the Assembly and its Secretary General.
 - b) The Protocol shall be open to ratification by any State which has ratified or adhered to the said Convention on International Civil Aviation.

“Article 3 bis

- c) The instruments of ratification shall be deposited with the International Civil Aviation Organization.
- d) The Protocol shall come into force in respect of the States which have ratified it on the date on which the one hundred and second instrument of ratification is so deposited.
- e) The Secretary General shall immediately notify all contracting States of the date of deposit of each ratification of the Protocol.
- f) The Secretary General shall notify all States parties to the said Convention of the date on which the Protocol comes into force.
- g) With respect to any contracting State ratifying the Protocol after the date aforesaid, the Protocol shall come into force upon deposit of its instrument of ratification with the International Civil Aviation Organization.

CONSEQUENTLY, pursuant to the aforesaid action of the Assembly,

This Protocol has been drawn up by the Secretary General of the Organization.

IN WITNESS WHEREOF, the President and the Secretary General of the aforesaid Twenty-fifth Session (Extraordinary) of the Assembly of the International Civil Aviation Organization, being authorized thereto by the Assembly, sign this Protocol.

DONE at Montreal on the 10th day of May of the year one thousand nine hundred and eighty-four, in a single document in the English, French, Russian and Spanish languages, each text being equally authentic. This Protocol shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Secretary General of the Organization to all States parties to the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944.

Assad Kotaite
President of the 25th Session
(Extraordinary) of the Assembly

Yves Lambert
Secretary General

a) Les États contractants reconnaissent que chaque État doit s'abstenir de recourir à l'emploi des armes contre les aéronefs civils en vol et qu'en cas d'interception, la vie des personnes se trouvant à bord des aéronefs et la sécurité des aéronefs ne doivent pas être mises en danger. Cette disposition ne saurait être interprétée comme modifiant de quelque manière que ce soit les droits et obligations des États en vertu de la Charte des Nations Unies.

b) Les États contractants reconnaissent que chaque État, dans l'exercice de sa souveraineté, est en droit d'exiger l'atterrissage, à un aéroport désigné, d'un aéronef civil qui, sans titre, survole son territoire ou s'il y a des motifs raisonnables de conclure qu'il est utilisé à des fins incompatibles avec les buts de la présente Convention; il peut aussi donner à cet aéronef toutes autres instructions pour mettre fin à ces violations. À cet effet, les États contractants peuvent recourir à tous moyens appropriés compatibles avec les règles pertinentes du droit international, y compris les dispositions pertinentes de la présente Convention, spécifiquement l'alinéa a) du présent article. Chaque État contractant convient de publier ses règlements en vigueur pour l'interception des aéronefs civils.

c) Tout aéronef civil doit respecter un ordre donné conformément à l'alinéa b) du présent article. À cette fin, chaque État contractant prend toutes les mesures nécessaires dans ses lois ou règlements nationaux pour faire obligation à tout aéronef immatriculé dans ledit État ou utilisé par un exploitant qui a le siège principal de son exploitation ou sa résidence permanente dans ledit État de se conformer à cet ordre. Chaque État contractant rend toute violation de ces lois ou règlements applicables passible de sanctions sévères et soumet l'affaire à ses autorités compétentes conformément à son droit interne.

d) Chaque État contractant prendra des mesures appropriées pour interdire l'emploi délibéré de tout aéronef civil immatriculé dans ledit État ou utilisé par un exploitant qui a le siège principal de son exploitation ou sa résidence permanente dans ledit État à des fins incompatibles avec les buts de la présente Convention. Cette disposition ne porte pas atteinte à l'alinéa a) et ne déroge pas aux alinéas b) et c) du présent article.”

"Artículo 3 bis

a) Los Estados contratantes reconocen que todo Estado debe abstenerse de recurrir al uso de las armas en contra de las aeronaves civiles en vuelo y que, en caso de interceptación, no debe ponerse en peligro la vida de los ocupantes de las aeronaves ni la seguridad de éstas. La presente disposición no se interpretará en el sentido de que modifica en modo alguno los derechos y las obligaciones de los Estados estipulados en la Carta de las Naciones Unidas.

b) Los Estados contratantes reconocen que todo Estado tiene derecho, en el ejercicio de su soberanía, a exigir el aterrizaje en un aeropuerto designado de una aeronave civil que sobrevuele su territorio sin estar facultada para ello, o si tiene motivos razonables para llegar a la conclusión de que se utiliza para propósitos incompatibles con los fines del presente Convenio; asimismo puede dar a dicha aeronave toda otra instrucción necesar a para poner fin a este acto de violación. A tales efectos, los Estados contratantes podrán recurrir a todos los medios apropiados compatibles con los preceptos pertinentes del derecho internacional, comprendidas las disposiciones pertinentes del presente Convenio y, específicamente, con el párrafo a) del presente Artículo. Cada Estado contratante conviene en publicar sus reglamentos vigentes en materia de interceptación de aeronaves civiles.

c) Toda aeronave civil acatará una orden dada de conformidad con el párrafo b) del presente Artículo. A este fin, cada Estado contratante incorporará en su legislación o reglamentación todas las disposiciones necesarias para que toda aeronave civil matriculada en él o explotada por un explotador cuya oficina principal o residencia permanente se encuentre en su territorio, tenga la obligación de acatar dicha orden. Cada Estado contratante tomará las disposiciones necesarias para que toda violación de esas leyes o reglamentos aplicables se castigue con sanciones severas, y someterá el caso a sus autoridades competentes de conformidad con las leyes nacionales.

d) Cada Estado contratante tomará medidas apropiadas para prohibir el uso deliberado de aeronaves civiles matriculadas en dicho Estado o explotadas por un explotador que tenga su oficina principal o su residencia permanente en dicho Estado, para cualquier propósito incompatible con los fines del presente Convenio. Esta disposición no afectará al párrafo a) ni derogará los párrafos b) y c) del presente Artículo."

a) Договаривающиеся государства признают, что каждое государство должно воздерживаться от того, чтобы прибегать к применению оружия против гражданских воздушных судов в полете, и что в случае перехвата не должна ставиться под угрозу жизнь находящихся на борту лиц и безопасность воздушного судна. Это положение не истолковывается как изменяющее каким-либо образом права и обязательства государств, изложенные в Уставе Организации Объединенных Наций.

b) Договаривающиеся государства признают, что каждое государство при осуществлении своего суверенитета имеет право требовать посадки в каком-либо указанном аэропорту гражданского воздушного судна, если оно совершает полет над его территорией без разрешения или если имеются разумные основания полагать, что оно используется в каких-либо целях, несовместимых с целями настоящей Конвенции, или может давать такому воздушному судну любые другие указания, чтобы положить конец таким нарушениям. С этой целью Договаривающиеся государства могут прибегать к любым соответствующим средствам, совместимым с надлежащими нормами международного права, включая надлежащие положения настоящей Конвенции, конкретно пункт a) данной Статьи. Каждое Договаривающееся государство соглашается опубликовать свои правила, действующие в отношении перехвата гражданских воздушных судов.

c) Каждое гражданское воздушное судно выполняет приказ, отдаваемый в соответствии с пунктом b) настоящей Статьи. С этой целью каждое Договаривающееся государство принимает все необходимые положения в своих национальных законах или правилах с тем, чтобы сделать его выполнение обязательным для любого гражданского воздушного судна, зарегистрированного для полета в государстве или эксплуатируемого эксплуатантом, основное место деятельности которого или постоянное местопребывание которого находится в этом государстве. Каждое Договаривающееся государство предусматривает суровые наказания за любое нарушение таких применимых законов или правил и передает дело своим компетентным органам в соответствии со своими законами или правилами.

d) Каждое Договаривающееся государство принимает надлежащие меры для запрещения преднамеренного использования любых гражданских воздушных судов, зарегистрированных в этом государстве или эксплуатируемых эксплуатантом, основное место деятельности которого или постоянное местопребывание которого находится в этом государстве, в каких-либо целях, несовместимых с целями настоящей Конвенции. Это положение не влияет на пункт a) и не затрагивает пункты b) и c) настоящей Статьи."