

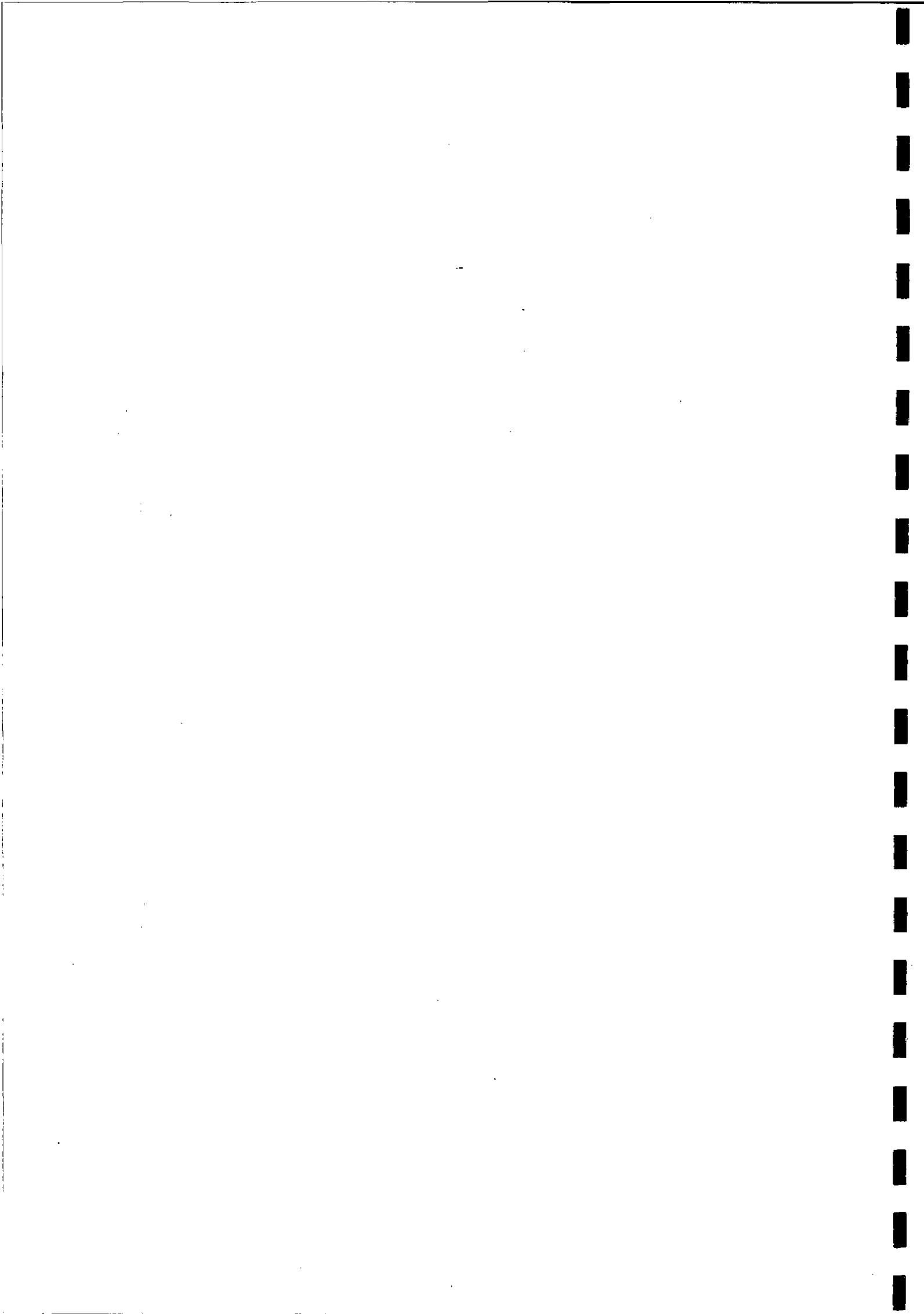
**International Court of Justice**

**CASE CONCERNING ARMED ACTIVITIES  
ON THE TERRITORY OF THE CONGO**

**(DEMOCRATIC REPUBLIC OF THE CONGO  
v. THE REPUBLIC OF RWANDA)**

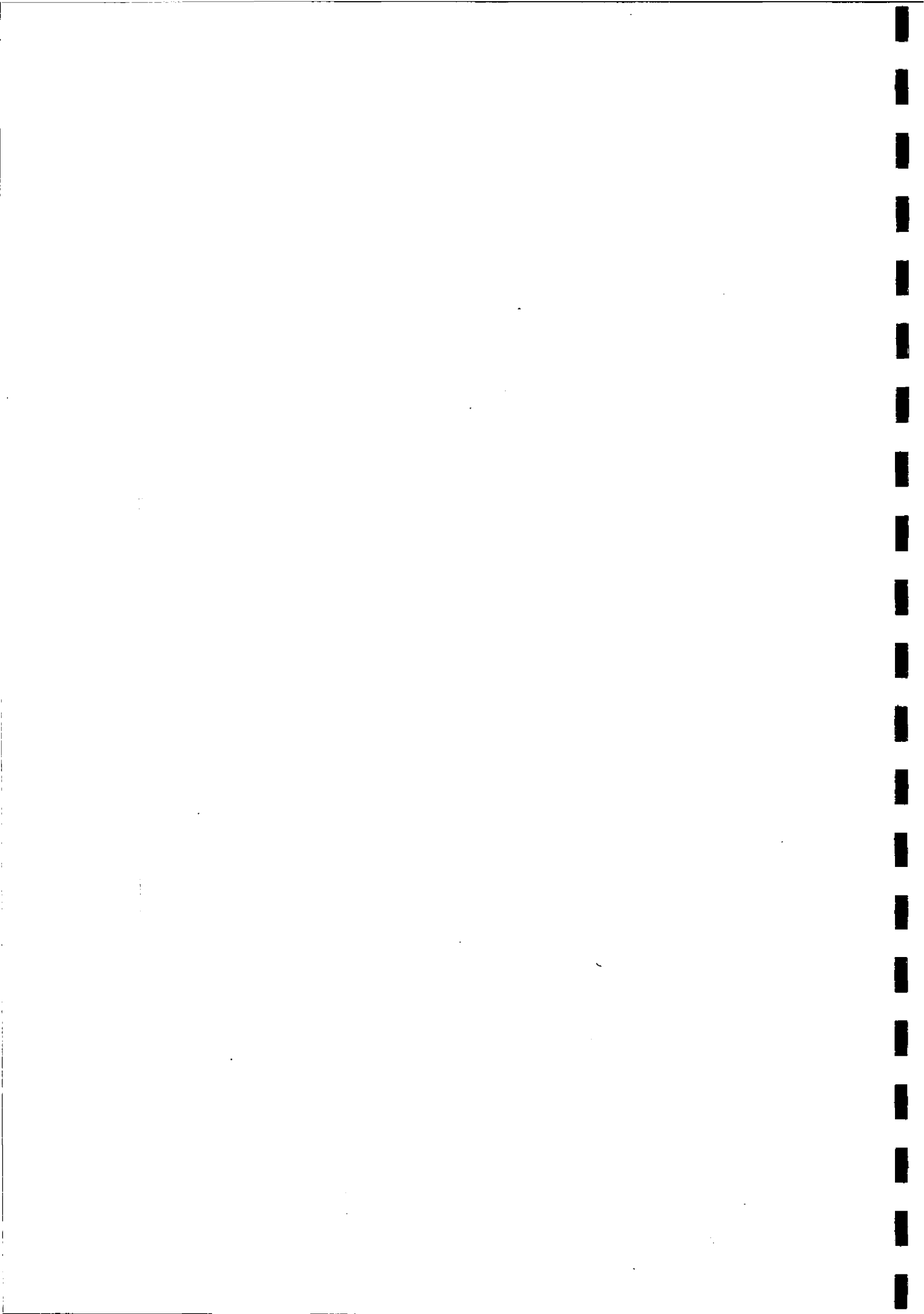
***MEMORIAL OF THE REPUBLIC OF RWANDA***

**21 April 2000**



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## PART I

### THE PROCEEDINGS AGAINST RWANDA

- 1.1 On 23 June 1999 the Democratic Republic of the Congo (hereinafter referred to as “Congo”) filed an Application instituting proceedings against the Republic of Rwanda (“Rwanda”). According to the Application, the Government of Congo instituted the proceedings “on account of acts of *armed aggression* perpetrated by Rwanda on the territory of the Democratic Republic of the Congo, in flagrant violation of the United Nations Charter and of the Charter of the Organization of African Unity.”<sup>1</sup>
- 1.2 The Application then accuses Rwanda of violations of the law relating to the use of force and non-intervention, the law of armed conflict and the law of human rights. Congo filed Applications in virtually identical terms against Uganda and Burundi on the same day.
- 1.3 At the meeting held between the President of the Court and the representatives of the Parties on 19 October 1999, the Agent of Rwanda indicated that the Government of Rwanda did not accept that the Court had jurisdiction in respect of Congo’s Application. Accordingly, by an Order dated 21 October 1999, the Court decided that the written proceedings should first be addressed to the questions of the jurisdiction of the Court to entertain the Application and to its admissibility. It fixed 21 April 2000 as the time-limit for Rwanda to file a Memorial dealing exclusively with those questions.
- 1.4 In accordance with that Order, the present Memorial deals exclusively with questions of jurisdiction and admissibility. Except where they bear upon these questions, Rwanda has not entered into any discussion of the factual allegations

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<sup>1</sup> Application, p. 4 (French text), p. 5 (English text) (emphasis in the original).

set forth in the Application. Rwanda merely places on record that it does not accept the truth of the allegations made by Congo.

- 1.5 Rwanda submits that the issues before the Court at the present stage of the proceedings are very simple and can be dealt with quite shortly. Rwanda contends that the Court lacks jurisdiction under any of the grounds of jurisdiction advanced in Part II of the Application.
- 1.6 In the case of two of these grounds of jurisdiction – the invitation by Congo to Rwanda to accept the jurisdiction for the purpose of the case and the provisions of Article 30(1) of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (“the Torture Convention”)<sup>2</sup> – the lack of jurisdiction is manifest. Rwanda does not accept the jurisdiction of the Court for the purposes of the present case. The Torture Convention is not a treaty in force between Congo and Rwanda.
- 1.7 The third ground on which Congo seeks to rely is the provisions of Article 14(1) of the Montreal Convention for the Suppression of Unlawful Acts against Civil Aviation, 1971 (“the Montreal Convention”).<sup>3</sup> The Montreal Convention is a treaty in force between Congo and Rwanda. Article 14(1), however, confers jurisdiction only in respect of disputes concerning the interpretation or application of the Montreal Convention and only if certain essential procedural steps have first been taken. This Memorial will demonstrate that the dispute characterized by Congo as the subject of the proceedings is not one concerning the interpretation or application of the Montreal Convention. Moreover, the individual factual allegations made by Congo, for the most part, have nothing whatever to do with the Convention, which cannot, therefore, furnish a basis for jurisdiction in respect of them. The Memorial will also show that, with respect to any specific allegation

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<sup>2</sup> Annex 2.

<sup>3</sup> Annex 1.

that may be held to fall within the scope of the Convention (if any), Congo has not satisfied the preconditions for jurisdiction laid down in Article 14(1).

- 1.8 Alternatively, Rwanda contends that, even if the Montreal Convention confers jurisdiction in respect of any part of the Application, the Application is inadmissible.





**PART II**

**THE COURT LACKS JURISDICTION  
OVER THE APPLICATION**

*A. The Principles of Jurisdiction*

- 2.1 It is well established in the jurisprudence of the Court that “one of the fundamental principles of its Statute is that it cannot decide a dispute between States without the consent of those States to its jurisdiction” (*Case concerning East Timor*).<sup>4</sup> That principle was recently applied by the Court in its Orders on the request for Provisional Measures in the *Cases concerning Legality of Use of Force*.<sup>5</sup>
- 2.2 Moreover, when that consent has been given, the jurisdiction of the Court is limited to matters falling within the scope of the provision in which that consent is expressed. It is for that reason that when the Court has found that it has jurisdiction only on the basis of a treaty provision, such as Article 14(1) of the Montreal Convention or Article IX of the Genocide Convention, it has held that it lacks jurisdiction over any allegation contained in the Application which falls outside the scope of that treaty.<sup>6</sup> As Judge *ad hoc* Lauterpacht put it,

The Court can only act in a case if the parties, both applicant and respondent, have conferred jurisdiction upon it by some voluntary act of consent. ... Whatever form the consent may take, the range of matters that

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<sup>4</sup> *Case concerning East Timor (Portugal v. Australia)* ICJ Reports, 1995, p. 90, at para. 26.

<sup>5</sup> See, e.g., *Yugoslavia v. Spain*, Order of 2 June 1999, para. 19.

<sup>6</sup> See, e.g., *Case concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) (Preliminary Objections)*, ICJ Reports, 1998, p. 8 at para. 36 and Joint Declaration of Judges Guillaume and Fleischhauer at p.50 (Article 14(1) of the Montreal Convention), and *Case concerning the Application of the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Federal Republic of Yugoslavia) (Further Provisional Measures)*, ICJ Reports, 1993, p. 325, at para. 26 (Article IX of the Genocide Convention).

the Court can then deal with is limited to the matters covered by that consent.<sup>7</sup>

In accordance with that principle, the Court has held (most recently in the *Oil Platforms*<sup>8</sup> and *Lockerbie*<sup>9</sup> cases) that when an applicant asserts that jurisdiction is based upon a dispute settlement provision in a treaty dealing with a specific subject-matter, the Court must examine the application and the treaty provision in question at the stage of preliminary objections, in order to determine whether the dispute, as pleaded by the applicant, falls within the scope of the jurisdictional provision of the treaty.

*B. The Grounds of Jurisdiction advanced by Congo*

2.3 In Part II of its Application, Congo advances three grounds for the jurisdiction of the Court. First, Congo refers to its declaration accepting the compulsory jurisdiction of the Court under Article 36(2) of the Statute. While acknowledging that Rwanda has not made such a declaration, Congo invites Rwanda, in accordance with Article 38(5) of the Rules of Court, to accept the jurisdiction of the Court for the purpose of the present case. Rwanda has already made clear that it does not intend to accept this invitation.<sup>10</sup> Rwanda repeats now that it does not accept the jurisdiction of the Court on this basis and that nothing said or done by Rwanda is to be taken as implying such acceptance. It follows that, as Article

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<sup>7</sup> *Case concerning the Application of the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Federal Republic of Yugoslavia) (Further Provisional Measures)*, ICJ Reports, 1993, p. 325, at p. 412.

<sup>8</sup> *Case concerning Oil Platforms (Islamic Republic of Iran v. United States of America) (Preliminary Objections)*, ICJ Reports, 1996, p. 803, at para. 16.

<sup>9</sup> *Case concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) (Preliminary Objections)*, ICJ Reports, 1998, p. 8; *Case concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America) (Preliminary Objections)*, ICJ Reports, 1998, p. 114.

<sup>10</sup> See the Court's Order of 21 October 1999.

38(5) of the Rules of Court recognizes, there is manifestly no jurisdiction under this ground.

2.4 Secondly, Congo refers to the Torture Convention, 1984, Article 30(1) of which contains a provision for the reference to the Court of disputes concerning the interpretation or application of the Convention.<sup>11</sup> Rwanda is not a party to this Convention. Accordingly, the Torture Convention manifestly cannot provide a basis for the jurisdiction of the Court.

2.5 Thirdly, Congo invokes Article 14(1) of the Montreal Convention,<sup>12</sup> which provides:

Any dispute between two or more Contracting States 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.

2.6 The Montreal Convention is a treaty in force between Congo and Rwanda.<sup>13</sup> The Convention is, therefore, capable of constituting a basis for the jurisdiction of the Court in proceedings between Congo and Rwanda. It can do so, however, only in respect of a dispute concerning the interpretation or application of the Montreal Convention and, even then, only provided that the procedural conditions laid down in the Article have been met.

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<sup>11</sup> Annex 2.

<sup>12</sup> Annex 1.

<sup>13</sup> Congo became a party to the Convention on 6 July 1977. Rwanda became a party on 3 November 1987.

2.7 Congo has not, however, characterized the dispute which it seeks to bring before the Court as one regarding the interpretation or application of the Montreal Convention. It is manifest that most of the Application in the present case has nothing whatever to do with that Convention. As the opening paragraph of the Application states, the proceedings concern "acts of *armed aggression*". The "Statement of Facts" in Part I of the Application makes no mention of any conduct which could be regarded as falling within the scope of the Montreal Convention. Allegations of violations of Article 2(4) of the UN Charter, Articles 3 et seq. of the Charter of the Organization of African Unity, the International Covenant on Civil and Political Rights, the Geneva Conventions of 1949 and the Additional Protocols of 1977 cannot be brought within any jurisdiction which might be conferred by Article 14(1). They are nothing to do with the interpretation or application of the Montreal Convention. There is, therefore, a manifest absence of jurisdiction in respect of these allegations, which constitute by far the greater part of the Application.

2.8 Only that part of the Application which alleges a violation of the Montreal Convention *might* fall within the jurisdiction of the Court. Nevertheless, for the reasons given in Part 2(C), below, the conditions for the establishment of jurisdiction under Article 14(1) of the Montreal Convention have not, in fact, been met in the present case.

C. *The Absence of Jurisdiction under the Montreal Convention*

2.9 Article 14(1) of the Montreal Convention lays down a series of requirements, each of which must be met before that provision can confer jurisdiction upon the Court:-

- (1) there must be a dispute between the parties concerning the interpretation or application of the Montreal Convention;

- (2) the dispute must be one which cannot be settled by negotiation;
- (3) one of the parties must have requested that the dispute be submitted to arbitration and the parties must have been unable to agree upon the organization of the arbitration; and
- (4) six months must have elapsed from the date of the request for arbitration.

(1) *There must be a dispute between the parties concerning the interpretation or application of the Montreal Convention*

2.10 Whether there is, indeed, a dispute between Congo and Rwanda concerning the interpretation or application of the Montreal Convention is a question for objective determination.<sup>14</sup> As the Court held in the *Oil Platforms* case,<sup>15</sup> it is not enough that the applicant State asserts that a dispute exists under a treaty such as the Montreal Convention, while the respondent State denies that it does. The Court must ascertain whether the violations of the Convention pleaded by the applicant State do, or do not, fall within the provisions of the Convention and whether, as a consequence, the dispute is one which the Court has jurisdiction *ratione materiae* to entertain. The burden is on the applicant State to demonstrate that there is a dispute falling within the title of jurisdiction on which that State has chosen to rely.

2.11 The point was expressed in the following way by the Permanent Court in the *Mavrommatis Palestine Concessions* case.<sup>16</sup> There the Permanent Court had to consider Article 26 of the Mandate for Palestine which provided for jurisdiction

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<sup>14</sup> See, e.g., the Advisory Opinion of the Court on the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, ICJ Reports, 1988, p. 12 at p. 27.

<sup>15</sup> *Case concerning Oil Platforms (Islamic Republic of Iran v. United States of America) (Preliminary Objections)*, ICJ Reports, 1996, p. 803, at para. 16.

<sup>16</sup> (1924) PCIJ Series A. No.2.

over any dispute "relating to the interpretation or the application of the provisions of the Mandate". The Court indicated that bearing in mind that its jurisdiction was limited and based on consent, it needed to satisfy itself that "the suit before it, in the form in which it has been submitted and on the basis of the facts hitherto established, falls to be decided by application of the clauses of the Mandate".<sup>17</sup> More recently, in the *Case concerning Military and Paramilitary Activities in and against Nicaragua (Preliminary Objections)*,<sup>18</sup> this Court expressed the requirement in terms of the existence of "a reasonable connection"<sup>19</sup> between the treaty and the claims submitted to the Court.

- 2.12 These requirements are reinforced and strengthened where they are associated with specific procedural requirements such as those contained in Article 14 of the Montreal Convention. Article 14 clearly implies that a particular allegation will be identified with some precision in diplomatic exchanges between the parties, that a request will have been made that the dispute thereby generated be submitted to arbitration under the Convention, and that, after 6 months, the parties must have been unable to agree on the arrangements for the arbitration. This Court is not the primary forum for the resolution of disputes under the Convention: that forum is arbitration. The Court's role is as a guarantor in the event that the provisions for arbitration fail for any reason. The combination of the jurisdictional and procedural provisions of the Montreal Convention clearly implies that a dispute will have been characterized by the parties, or at least one of them, as one concerning the Montreal Convention, and that attempts to arbitrate the dispute, *in that character*, will have failed. Having regard to Article 14, it is not open to a Claimant, as it were incidentally, to put in issue the Montreal Convention in the course of proceedings raising a wider dispute or set of allegations. Yet that is what Congo has done here. It characterizes the dispute as

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<sup>17</sup> Ibid., p.16.

<sup>18</sup> ICJ Reports 1984, p.392.

<sup>19</sup> Ibid., p. 427 (para. 81).

one concerning "acts of armed aggression" and its "Statement of Facts" as pleaded reveals no allegation which, even if true, could raise a question under the Convention. Whatever the position may be in cases where this Court has primary jurisdiction under a treaty, it is not open to a party incidentally and indirectly to raise issues under the Montreal Convention in this way.

2.13 The scope of the Montreal Convention is clearly and precisely defined. That Convention concerns the suppression of unlawful acts against the safety of civil aviation. As its Preamble and Article 1 make clear, the Convention establishes a mechanism for combatting terrorist offences against civil aircraft. Article 1 provides that:

1. Any person commits an offence if he 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 he knows to be false, thereby endangering the safety of an aircraft in flight.
2. Any person also commits an offence if he:
  - (a) attempts to commit any of the offences mentioned in paragraph 1 of this Article; or
  - (b) is an accomplice of a person who commits or attempts to commit any such offence.

2.14 Article 2 and Article 4 prescribe some of the circumstances in which the Convention applies. Article 4(1) provides that it “shall not apply to aircraft used in military, customs or police services”. Article 3 provides that each Contracting State undertakes to make the offences mentioned in Article 1 punishable by severe penalties. Articles 5, 6, 7 and 8 make provision for the establishment and exercise of criminal jurisdiction over persons accused of offences under Article 1. Article 7 lays down the principle *aut dedere, aut punire*. Article 9 deals with joint air transport operating organizations. Article 10(1) provides that “Contracting States shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences mentioned in Article 1.” Articles 10(2), 11 and 12 deal with various aspects of inter-State assistance in respect of offences. Article 13 deals with reporting to the International Civil Aviation Organization.

2.15 It follows that the range of disputes over which the Court can derive jurisdiction from Article 14(1) of the Montreal Convention is strictly confined.

2.16 It is for Congo, as the applicant State which seeks to found the jurisdiction of the Court on Article 14(1) of the Montreal Convention, to establish that there is a dispute between itself and Rwanda which falls within the scope of this provision. As the Court has held, in the *South West Africa* cases,

... it is not sufficient for one party to a contentious case to assert that a dispute exists with the other party. A mere assertion is not sufficient to prove the existence of a dispute any more than a mere denial of the existence of a dispute proves its non-existence. Nor is it adequate to show that the interests of the two parties to such a case are in conflict. It must be shown that the claim of one party is positively opposed by the other.<sup>20</sup>

2.17 The only attempt Congo has made to satisfy this requirement is the allegation in the Application that on 9 October 1998 “a Boeing 727 belonging to Congo

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<sup>20</sup> ICJ Reports, 1962, p. 319, at p. 328.



Airlines was shot down while taking off from Kindu airport by rebels supported by Rwanda troops causing the deaths of 37 women and children, and of the crew members.”<sup>21</sup>

2.18 No details are given, either in the Application or in the “Livre Blanc” which Congo has submitted to the Court.<sup>22</sup> It is not suggested that Rwandan forces themselves shot down the plane but that it was done by rebels “supported by Rwanda troops”. Congo does not explain what it alleges to be the relationship between Rwanda and the rebel forces in question. It does not say in which respects the rebels were “supported” by Rwandan troops. It makes not the slightest attempt to show that there was a relationship sufficiently close to satisfy the requirements identified by the Court in the *Case concerning Military and Paramilitary Activities in and against Nicaragua* for holding a State responsible for the acts of a rebel movement in another State.<sup>23</sup> Yet unless such a relationship exists, there could be no dispute between Congo and Rwanda regarding the Montreal Convention, whatever disputes Congo might have with any other entity.

2.19 Moreover, Rwanda notes that Congo has made identical allegations in respect of the same incident against both Burundi and Uganda in its separate applications against those two States. In its application against Burundi, Congo alleges that on 9 October 1998 “a Boeing 727 belonging to Congo Airlines was shot down while taking off from Kindu airport by rebels supported by *Burundian* troops causing the deaths of 37 women and children, and of the crew members.”<sup>24</sup> In its application against Uganda, Congo alleges that on 9 October 1998 “a Boeing 727 belonging to Congo Airlines was shot down while taking off from Kindu airport

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<sup>21</sup> Application, p. 18 (French text), p. 19 (English text).

<sup>22</sup> Livre Blanc, vol. I, para. 67 mentions the alleged incident but does not give any details beyond what is in the Application.

<sup>23</sup> ICJ Reports, 1986, p. 3 at pp. 64-5.

<sup>24</sup> Application in *Case concerning Armed Activities on the Territory of Congo (Democratic Republic of Congo v. Burundi)*, p. 16 (French text), p. 17 (English text) (emphasis added).

by rebels supported by *Ugandan* troops causing the deaths of 37 women and children, and of the crew members.<sup>25</sup>

2.20 The action of making identical – and, in the absence of a case that the troops of all three States were jointly involved in this operation, mutually inconsistent – allegations is an abuse of the process of the Court.<sup>26</sup> Having regard to the specific requirements of Article 14 of the Montreal Convention, it is not open to a State to broadcast the same allegation, severally against different States, in respect of conduct which might (or might not) constitute a breach of the Convention, in the course of an application bringing some wider dispute before the Court. Such a proceeding falls quite outside the careful and limited provisions of the Montreal Convention.

2.21 It may be noted that, when Congo complained to ICAO about the alleged shooting down of the aircraft at Kindu, it accused only Rwanda and Uganda and made no mention of any involvement by Burundi.<sup>27</sup> Although this complaint was discussed by the ICAO Council, Congo's representations to the Council do nothing to clarify its allegations. It is also noticeable that the Declaration adopted by the Council of ICAO on 10 March 1999<sup>28</sup> contains no specific reference to the incident at all, let alone any suggestion that there might have been any violation of the Montreal Convention by Rwanda, or even any dispute between Congo and Rwanda concerning the interpretation or application of the Convention.

2.22 Although the Council stated that there was an obligation under Article 3 *bis* of the Chicago Convention to refrain from the use of weapons against civil aircraft in

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<sup>25</sup> Application in *Case concerning Armed Activities on the Territory of Congo (Democratic Republic of Congo v. Uganda)* p. 16 (French text), p. 17 (English text) (emphasis added).

<sup>26</sup> The Court impliedly acknowledged the existence of a concept of abuse of process in its decision in the *Case concerning Certain Phosphate Lands in Nauru (Nauru v. Australia)*, ICJ Reports, 1992, p. 240 at paragraphs 37-38, although it found that there had been no abuse of process on the facts of that case.

<sup>27</sup> See Annexes 3 and 4.

<sup>28</sup> Annex 7 (declaration); Annexes 5 and 6 (minutes of ICAO Council meetings).

flight, the only mention of the Montreal Convention is the statement in paragraphs 5 and 6:

5. The protection of civil aviation from acts of unlawful interference has been enhanced by the Tokyo Convention (1963), the Hague Convention (1970), the Montreal Convention (1971) and the 1988 Protocol Supplementary to the Montreal Convention of 1971, as well as by Annex 17 to the Convention on International Civil Aviation.

6. The Council urges all States in exercising their authority under the Convention on International Civil Aviation and the aviation security conventions *to be guided by the principles, rules, standards and recommended practices laid down in these Conventions* and in the Annexes to the Convention on International Civil Aviation.

(emphasis added)

A statement at this level of generality (a) does not involve any endorsement whatever of the Congolese allegation; (b) does not involve any condemnation whatever of any specific State, and (c) lends no support to the claim that there exists a dispute regarding the interpretation or application of the Montreal Convention.

2.23 Indeed, the Council's statement does not appear to address Congo's allegation at all. Whatever the Rwandese troops might (or might not) have done to support the anonymous Congolese rebels who allegedly shot down a plane in the Congo, those troops were not exercising any "authority under the Convention on International Civil Aviation and the aviation security conventions". The Council addressed its resolution (using the terms "urges" and "guided") to *all* States. It may be inferred that it was embarrassed by the complete lack of specificity of the Congolese complaint and wished simply to reaffirm existing aviation standards for all States, so that the matter could be declared closed. The Council took no further action of any sort. Its conduct here compares markedly with its consideration of cases where a State was credibly alleged to have been involved in aggression against civilian aircraft and a real dispute did exist.

2.24 This is not, therefore, a case in which "the claim of one party is positively opposed by the other".<sup>29</sup> Despite the opportunity of the ICAO debate and the specific requirements of Article 14 of the Montreal Convention, Congo has not set out its claim with sufficient particularity for Rwanda to be able to oppose it. It has accordingly not satisfied the requirements for establishing the jurisdiction of the Court under Article 14(1) of the Montreal Convention.<sup>30</sup>

(2) *The dispute must be one which cannot be settled by negotiation*

2.25 Even if there existed between Congo and Rwanda a dispute regarding the interpretation or application of the Montreal Convention, Congo must still establish that the procedural requirements of Article 14(1) of the Convention have been met.

2.26 The first such requirement is that the dispute is one which *cannot* be settled by negotiation. Congo has failed to show that that is the case. In the Application, Congo makes the following comments:-

It would also appear that this dispute is one which cannot be settled through negotiation.

Thus, the various diplomatic efforts undertaken by the Democratic Republic of the Congo with a view to settling the conflict have systematically failed.<sup>31</sup>

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<sup>29</sup> *South West Africa case*, note 20, above.

<sup>30</sup> No doubt Congo might in its Observations on these Preliminary Objections seek to specify and particularise the allegations it makes which are said to raise issues under the Montreal Convention. But it is one thing to provide further detail in respect of an allegation sufficiently pleaded in advance so as to raise an issue under Article 14, and another to try to repair fatal defects in a pleading *en revanche*. Having regard to the terms of Article 14, the latter course is not open to Congo in respect of the Montreal Convention. This Court's jurisdiction under the Convention cannot be attracted solely by particulars provided only in the course of subsequent pleadings, if the Application itself fails to raise a specific allegation which enlivens the Court's jurisdiction.

<sup>31</sup> Application, p. 12 (French text), p. 13 (English text).

2.27 Congo has here confused the settlement of the armed conflict, the nub of the allegation it makes, with the settlement of the specific dispute which it asserts exists under the Montreal Convention. The reality is that Congo has made no attempt to negotiate with Rwanda on the allegations about the destruction of the Boeing 727. It has not lacked opportunity to do so. In the ten months which elapsed between the alleged incident of 9 October 1998 and the filing of the Application, representatives of the Congolese Government met with Rwandan representatives, *inter alia*, on 26-27 October 1998 in Lusaka, on 20-21 November 1998 in Gaborone, at the meeting of the OAU Central Organ on 15-18 December 1998 in Ougadougou, on 14-16 January 1999 in Lusaka and at the signing of the Lusaka Ceasefire Agreement on 10 July 1999. At none of these meetings was the question of an alleged breach of the Montreal Convention raised. In addition, Congo has addressed the United Nations Security Council, the General Assembly and the Human Rights Commission about the conflict without ever mentioning either the Montreal Convention or the alleged incident at Kindu. There have also been numerous opportunities for Congo to raise this issue bilaterally or in a multilateral forum, both before and since the Application was filed. It has not done so.

2.28 Nor does the fact that Congo raised this matter with ICAO alter the fact that Congo has made no attempt to settle its alleged dispute by negotiation. Congo is, of course, entitled to raise whatever issues it chooses in ICAO. However, ICAO was not, in this instance, a forum for negotiations. Congo did not use the occasion of the ICAO discussion of its complaint against Rwanda to propose bilateral negotiations or to suggest a negotiated settlement of any kind. Instead, it used ICAO as a forum in which to make a complaint against Rwanda. It did not invoke the ICAO dispute settlement mechanism, as it had done on a previous occasion when an aircraft was allegedly shot down in 1991.<sup>32</sup> As has been seen, the Council of ICAO neither established the facts nor identified a dispute between

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<sup>32</sup> See Annex 4, p. 100.

Congo and Rwanda concerning the application of the Montreal Convention. Its resolution was in the most anodyne terms.

2.29 It is true that in the *Lockerbie* case, the Court held that the dispute between Libya and the United Kingdom could not be settled by negotiation, even though the two countries had not held negotiations on the subject.<sup>33</sup> As the Court expressly noted, however, in that case the United Kingdom had:

... always maintained that the destruction of the Pan Am aircraft did not give rise to any dispute between the Parties regarding the interpretation or application of the Montreal Convention, and that, for that reason, in the [United Kingdom's] view, there was nothing to be settled by negotiation under the Convention.<sup>34</sup>

That is not the case here. Rwanda has at no time rejected negotiations.

(3) *One of the parties must have sought arbitration and the parties must have been unable to agree upon the organization of the arbitration*

2.30 Article 14(1) of the Montreal Convention also makes the jurisdiction of the Court contingent upon (a) one of the parties to the dispute having requested arbitration and (b) the Parties having been unable, within a six month period, to agree upon the organization of the arbitration.

2.31 In the present case, Congo has never suggested, either in bilateral communications, in ICAO, or before any other multilateral body that the dispute be referred to arbitration. It is apparent, therefore, that an essential requirement of Article 14(1) has not been satisfied.

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<sup>33</sup> *Libya v. United Kingdom*, ICJ Reports, 1998, p. 3 at para. 21; *Libya v. United States of America*, ICJ Reports, 1998, p. 115 at para. 20.

<sup>34</sup> *Libya v. United Kingdom*, ICJ Reports, 1998, p. 3 at para. 21; *Libya v. United States of America*, ICJ Reports, 1998, p. 115 at para. 20.

2.32 Congo attempts to avoid this obvious obstacle to jurisdiction in the Application by claiming that:

Inasmuch as arbitration during a period of armed conflict is vain and illusory, the Democratic Republic of Congo is accordingly justified in referring the matter directly to the Court so as to enable the latter to settle the differences between itself and Rwanda.<sup>35</sup>

2.33 Congo advances nothing in support of this arbitrary conclusion. It is not suggested that any arbitration that might be proposed would be held in the Congo, and in fact the parties found opportunities for structured discussions on other issues in the period after 9 October 1998. Congo evidently found it possible to have detailed discussions with Rwanda on issues involving the conflict, to make complaints against it and others before the ICAO (which the ICAO nonetheless did not sustain), and to commence proceedings before this Court. The one thing it did not do at any stage was to propose discussions on a possible arbitration of the dispute. Yet this is precisely what Article 14 requires.

2.34 Once again, the facts of the present case are markedly different from those of the *Lockerbie* case. In that case, the conclusion of the Court that the dispute was not one which could be referred to arbitration under the Convention was based upon a finding that Libya had written to the United Kingdom and the United States of America requesting arbitration under the Convention and had received no reply. Moreover, the two States had made clear, in the course of debates in the Security Council, that they had no intention of agreeing to arbitration.<sup>36</sup> In the present case, there was no request for arbitration by Congo and nothing in the conduct of Rwanda could be portrayed as a rejection of arbitration, in contrast to the stance adopted by the Respondents in the *Lockerbie* cases.

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<sup>35</sup> Application, p. 12 (French text), p. 11 (English text).

<sup>36</sup> *Libya v. United Kingdom*, ICJ Reports, 1998, p. 3 at para. 21 ; *Libya v. United States of America*, ICJ Reports, 1998, p. 115 at para. 20.

2.35 It is not enough for Congo to assert that any attempt to take the matter to arbitration would have been “vain and illusory”.<sup>37</sup> Congo has at no point tried to commence arbitration proceedings, or to raise any question with Rwanda about such proceedings.

2.36 It follows that the requirements set out in Article 14(1) of the Montreal Convention have not been met. Those requirements may be procedural but they are not formalities. They are essential preconditions to the creation of jurisdiction for the Court. Congo’s failure to satisfy them means that Article 14(1), which could, in any event, have conferred jurisdiction only in respect of a very small part of the Application, does not, in fact, provide a basis for the jurisdiction of the Court over any part of the Application.

*D. The Inadmissibility of the Application*

2.37 In the alternative, Rwanda submits that the Application is inadmissible. This is so on two distinct grounds.

2.38 First, Rwanda has already given an account of the complete failure of Congo to attempt to comply with the prerequisites for this Court’s jurisdiction laid down in Article 14 of the Montreal Convention. There has been no attempt to resolve the dispute by negotiation, and no attempt (within six months or at any time) to refer the matter to arbitration. To the extent that this failure may be considered to relate not to the jurisdiction of the Court but the admissibility of Congo’s application, it is in any event fatal. In accordance with the basic principle of consent, Congo can only seize this Court in the manner provided for in the relevant treaty, and this it has made no attempt to do. The claim, even if the Court were to be held to have jurisdiction over it, is accordingly inadmissible.

2.39 But there is a further and distinct basis for inadmissibility here, in that Congo has failed sufficiently to particularize its allegations regarding the only matter in the

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<sup>37</sup> Application, p. 12 (French text), p. 11 (English text).



entire Application which might possibly fall within the jurisdiction of the Court. As set out in its Application, the case is manifestly defective. As pleaded in Section III.E of Congo's Application, the claim is that the aircraft in questions "was shot down... by rebels supported by Rwandan troops". Since no further particulars are offered of this allegation, it can only be taken to be an allegation that the shooting down was the act of Congolese rebels. It is not suggested that the aircraft was shot down by Rwandan troops, nor is it alleged that the rebels were acting under the direction or control of Rwandan troops. All that is alleged is that Rwandan troops gave undefined and innominate "support" to rebels who, in fact and of their own volition, are said to have shot down the aircraft.

2.40 The Court is entitled to take into account the parallel and independent allegation simultaneously made by Congo that the very same plane was shot down by rebels supported, respectively, by the troops of Burundi and of Uganda.<sup>38</sup> No allegation of joint conduct having been made, it is clear from these parallel claims that Congo asserts that troops belonging to the three States separately supported, in unspecified ways, the same unidentified Congolese rebel group which is said to have shot down the plane.

2.41 Article 38 (2) of the Rules of Court provides as follows:

The application shall specify as far as possible the legal grounds upon which the jurisdiction of the Court is said to be based; it shall also specify the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based.

2.42 This provision is not merely a direction to the parties as to the desirability of specifying the claim and setting out the grounds on which it is based. It is an obligation or requirement, failure to comply with which must affect the validity of the Application itself. As the Court said, in the *Case concerning Certain Phosphate Lands in Nauru*, these provisions are "essential from the point of view

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<sup>38</sup> See paragraphs 2.19 to 2.20, above.

of legal security and the good administration of justice.”<sup>39</sup> The Court and the Respondent should be able to tell, from the Application, the essential basis of the claim, not only so far as it concerns jurisdiction but also so far as it concerns the substance. It should be possible by reading the Application to determine what is the basis of claim. It is true that the requirement laid down by Article 38 (2) is qualified by the phrase “as far as possible”, and deficiencies in the specification of the factual and legal basis of claim can thus be remedied, and further particulars supplied, in subsequent pleadings. But the license given by the phrase “as far as possible” is a limited one. It does not excuse an Application which totally fails to set out any statement of the facts and the grounds on which the claim is based, especially where, as is the case here, the Applicant had a period of more than a year between the occurrence of the alleged incident and the filing of its Application. In such a case there is no possibility for the Court to say (without questioning the facts asserted by the Applicant) that there *may* exist a valid claim.

2.43 This requirement has been affirmed in the cases. For example in their Joint Dissenting Opinion in the *Nuclear Tests Cases*, Judges Onyeama, Dillard, Jiménez de Arechaga and Sir Humphrey Waldock said:

...we recognize that, if an applicant were to dress up as a legal claim a case which to any informed legal mind could not be said to have any rational, that is, reasonably arguable, legal basis, an objection contesting the legal character of the dispute might be susceptible of decision *in limine* as a preliminary question. This means that in the preliminary phase of proceedings, the Court may have to make a summary survey of the merits to the extent necessary to satisfy itself that the case discloses claims that are reasonably arguable or issues that are reasonably contestable; in other words that these claims or issues are rationally grounded on one or more principles of law, the application of which may resolve the dispute. The essence of this preliminary survey of the merits is that the question of jurisdiction or admissibility under consideration is to be determined not on the basis of whether the applicant's claim is right but exclusively on the basis whether it discloses a right to have the claim adjudicated. An

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<sup>39</sup> ICJ Reports, 1992, p. 240, at paragraph 69.

indication of the merits of the applicant's case may be necessary to disclose the rational and arguable nature of the claim.<sup>40</sup>

2.44 In order for the Court to fulfil this role, Article 38 (2) of its Rules specifies the minimum elements that have to be contained in the Application. But Article 38 (2) has a further function, in tying the Applicant down to a particular case or claim against the Respondent. It is settled that the Applicant cannot, in subsequent pleadings, introduce a new claim or demand (even if it is in some sense related to the original claim or demand), which was not included in the original Application.<sup>41</sup> If Article 38 (2) could be satisfied by a merely formal or trivial assertion of a breach of international law, this important safeguard could be circumvented by a pleading device.

2.45 Thus for a claim to be admissible, the Court must be able to say (without entering into issues of evidence or of the merits) that, at least on the Applicant's own statement as set out in the Application, the claim has "a rational and arguable basis". And that basis is completely lacking here. The alleged act is admitted not to be an act either of Rwanda, or of Burundi, or of Uganda, but of unidentified "rebels". No facts whatever are alleged or particularised which could lead to the rational or arguable conclusion that Rwanda could be responsible for that act. Far from being a specific claim founded in the arguable responsibility of the Respondent, this is a vague and general assertion irresponsibly made by the Applicant. If the Applicant had any basis for asserting Rwanda's responsibility, it has completely failed to plead it. Indeed it could hypothetically be true that rebels who shot down a plane *were* supported by States A and B and C, yet that allegation would not begin to establish the responsibility of any one of those States, or all of them, in accordance with the criteria laid down by the Court in the *Nicaragua* case.

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<sup>40</sup> *Nuclear Tests cases* ICJ Reports 1974 at p.364 (Joint Dissenting Opinion).

<sup>41</sup> See e.g. *Case concerning Certain Phosphate Lands (Nauru v. Australia)* ICJ Reports 1992 p. 240.

- 2.46 These requirements are important not only for the protection of the parties but also for the protection of the interests of the Court. It is contrary to the sound administration of justice for a State to be permitted to take the time of the Court by filing a wholly inadequate application which then remains on the List for two or three years.
- 2.47 For all these reasons the Court should dismiss this claim on the basis that it is inadmissible (a) for failure to comply with Article 38 (2) of the Rules; (b) for failure to state any rational or arguable basis of a claim under the Montreal Convention.

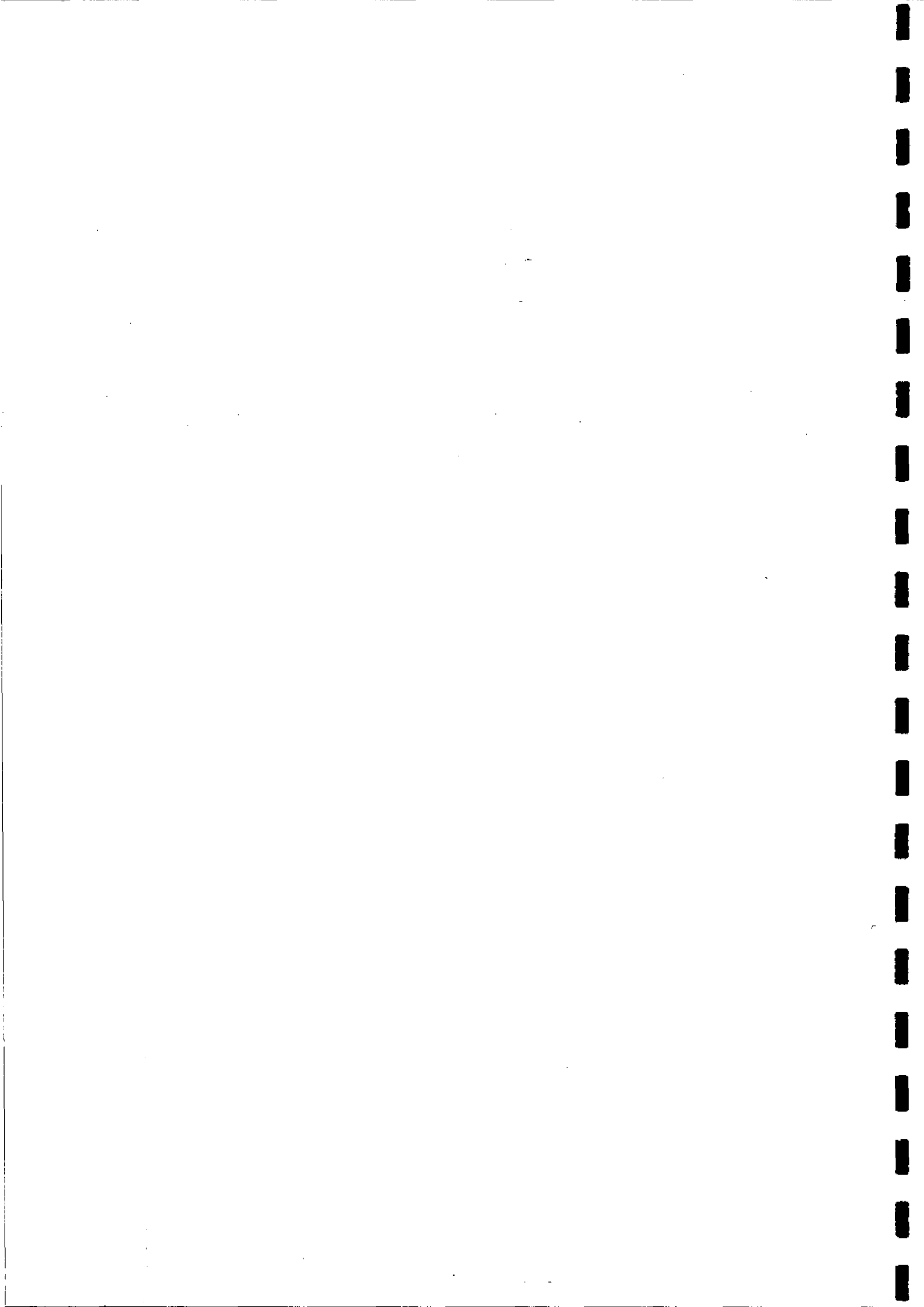
## PART III

### CONCLUDING SUBMISSIONS

3.1 For the reasons advanced above, Rwanda requests the Court to adjudge and declare that it lacks jurisdiction over the claims brought by the Democratic Republic of the Congo and/or that the claims brought by the Democratic republic of the Congo are inadmissible.

21 April 2000

Gerald Gahima,  
Procureur Général  
Agent of Rwanda



## List of Annexes

The following documents are annexed in an accompanying volume to this Memorial:

1. *Montreal Convention for the Suppression of Unlawful Acts against Civil Aviation, 1971.*
2. *United Nations Convention against Torture, 1984.*
3. *ICAO Document PRES AK/639:-*

*Attachment A: Letter from Minister of Transport and Communications of Congo to the President of the Council of ICAO (9 October 1998)*

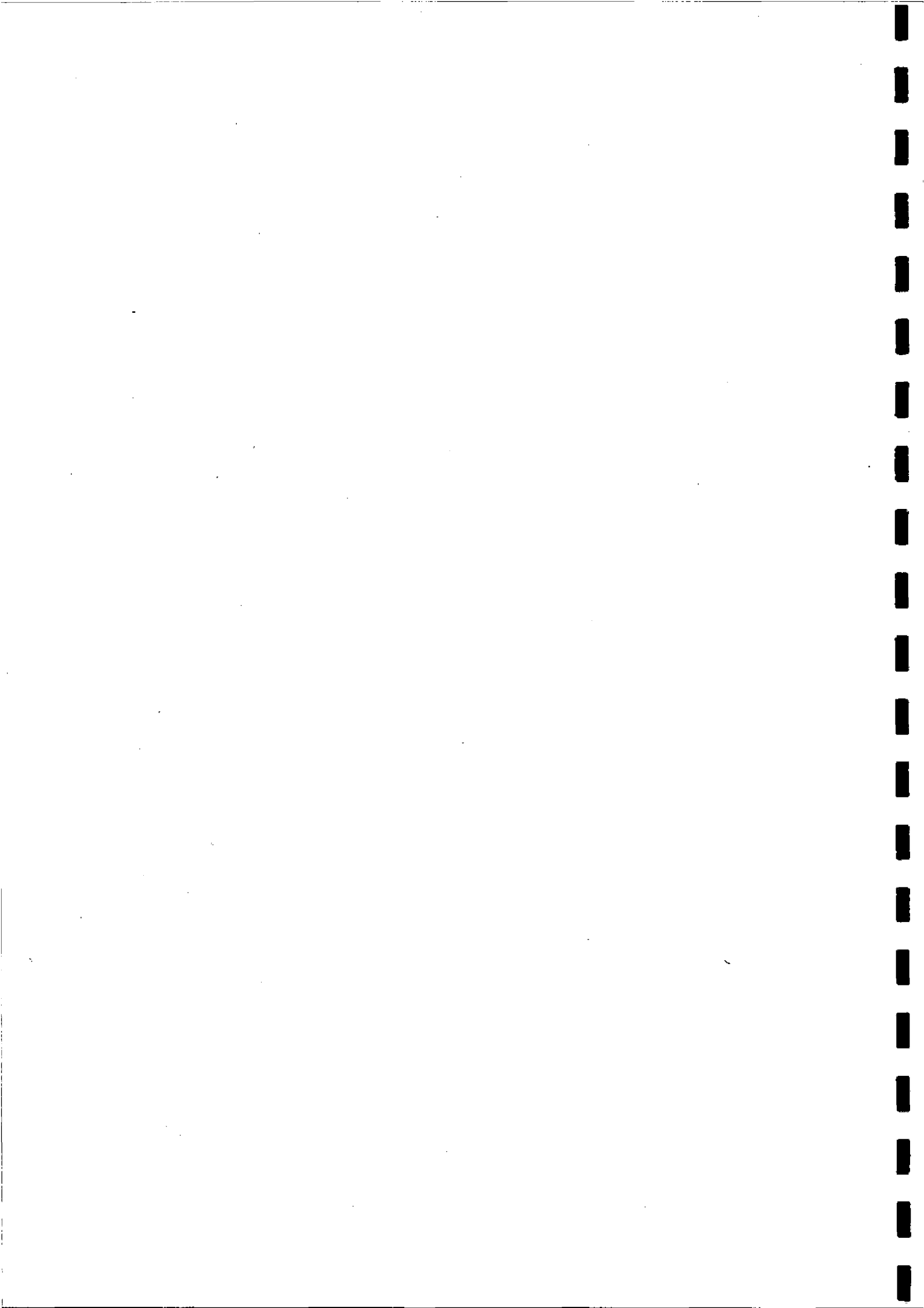
*Attachment B: Letter from the President of the Council of ICAO to the Minister of Transport and Communications of Congo (3 November 1998)*

*Attachment C: Letter from Minister of Transport and Communications of Congo to the President of the Council of ICAO (20 October 1998)*

*Attachment D: Letter from the Embassy of Congo to the President of the Council of ICAO (2 February 1999)*

*Attachment E: Letter from Minister of Transport and Communications of Congo to the President of the Council of ICAO (2 February 1999).*

4. *ICAO Council Minute C-MIN 156/9.*
5. *ICAO Council record of Ninth Meeting, 10 March 1999, C-DEC 156/9.*
6. *ICAO Council record of Tenth Meeting, 10 March 1999, C-DEC 156/10.*
7. *ICAO Council Declaration, adopted 10 March 1999.*





**Attachment C****DEMOCRATIC REPUBLIC OF THE CONGO**

Kinshasa, 20 October 1998

**MINISTRY OF TRANSPORT AND COMMUNICATIONS**  
The Minister

No. 409/CAB/MIN/TC/2116/H3/98

**Subject: Complaint against Rwanda and Uganda concerning an attack against a civil aircraft**

Copy sent for information to:

Minister of Foreign Affairs  
at Kinshasa-GombeDr. Assad Kotaite  
President of the Council of ICAO  
Montreal

Sir,

Further to my letter No. 409/CAB/MIN/TC/2075/H3/98 of 9 October 1998 concerning the hijackings and violations of the airspace of the Democratic Republic of the Congo by Rwanda and Uganda. I have the honour to inform you that on Saturday, 10 October 1998, a Boeing 727 belonging to the private airline Congo Airlines, flight EO-165 Kindu-Kinshasa, was savagely shot down by the aggressors against our country, three minutes after take-off. It was carrying 37 passengers, mainly women and children, and 4 crew members. There were no survivors.

Through this act, our Rwandan and Ugandan aggressors violated in the eyes of the international community the provisions of Article 3 *bis* of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944, in accordance with which States must refrain from resorting to the use of weapons against civil aircraft in flight.

It should be noted that on the day after this attack one of the aggressors' spokespersons expressly acknowledged responsibility for this act; there is not the shadow of a doubt that they quite deliberately made an attempt on the lives of innocent passengers in violation of the elementary principles of humanity and the international rules of conduct recognized by civilized nations.

Several other violations of the international conventions by these aggressors were brought to your attention by my above-mentioned letter, namely:

- The hijacking of 2 Boeing 707s belonging to Congo Airlines and Lignes Aériennes Congolaises respectively and of a Blue Airlines Boeing 727 to use them for military purposes, a use which is prohibited by the provisions of Articles 4 and 35 of the above-

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mentioned Convention as well as those of the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation;

- Almost daily violations, from 4 August 1998 to the present, of the sovereignty of the airspace of the Democratic Republic of the Congo by Rwandan and Ugandan military aircraft carrying munitions of war and implements of war in violation of the provisions of Article 1 of the Chicago Convention;
- Frequent flights without radio contact with the air traffic units on airways used by scheduled air traffic in violation of the Standards and Recommended Practices of Annex 11 to the ICAO Convention, thus exposing both the domestic and international traffic operating in Congolese airspace to ongoing danger.

In view of the foregoing, and although they are parties to the above-mentioned conventions, our Rwandan and Ugandan aggressors violated both our State's territorial sovereignty and our airspace, which constitutes an infraction of the rules of private international air law, from the viewpoint of the provisions of the Paris Convention of 13 October 1919 for the Regulation of Aerial Navigation, reaffirmed by the Chicago Convention, and the provisions of public international law.

Consequently, since these violations and particularly the recourse to weapons against the above-mentioned civil aircraft are such as to jeopardize the aims and objectives of ICAO as well as the very foundation of international law, I would be grateful if you would be good enough to condemn them unambiguously, take the appropriate measures stipulated by the Chicago Convention against their authors and require the necessary reparations from them.

Accept, Sir, the assurances of my highest consideration.

(Sgd)

Henri MOVA Sakanyi

**Attachment D****EMBASSY OF THE DEMOCRATIC REPUBLIC OF THE CONGO**

Ottawa, 2 February 1999

No. 132.63/A1/025/99

**Subject: Request that the complaint against Rwanda and Uganda concerning an attack against a civil aircraft be placed on the agenda of the 156<sup>th</sup> Session of the Council of ICAO**

Copy sent for information to:

Minister of Transport and Communications of the Democratic Republic of the Congo  
Kinshasa/Gombe

Minister of Foreign Affairs of the Democratic Republic of the Congo  
Kinshasa/Gombe

Dr. Assad Kotaite  
President of the Council of ICAO  
Montreal

Sir,

Further to the telephone conversation I had with Dr. Ludwig Weber on 22 January 1999 concerning the above-mentioned subject, I have the honour to transmit to you herewith a letter which the Minister of Transport and Communications of the Democratic Republic of the Congo is addressing to you, officially requesting that you place the said complaint on the agenda of the 156<sup>th</sup> Session of the Council of ICAO.

Accept, Sir, the assurances of my highest consideration.

(Sgd)

Sampassa Kaweta Milombe  
Ambassador

**Attachment E****DEMOCRATIC REPUBLIC OF THE CONGO**

Kinshasa, 2 February 1999

**MINISTRY OF TRANSPORT AND COMMUNICATIONS**  
The Minister

No. 409/CAB/MIN/TC/0182/H3/98

**Subject: Request that the complaint against Rwanda and Uganda concerning an attack against a civil aircraft be placed on the agenda of the 156<sup>th</sup> Session of the Council of ICAO**

Copy sent for information to:

His Excellency the President of the Republic  
with the assurances of my highest consideration  
at Kinshasa/GombeMinister of Foreign Affairs  
at Kinshasa/GombeDr. Assad Kotaitc  
President of the Council of ICAO  
Montreal

Sir,

I have the honour to remind you that, since 2 August 1998, the Democratic Republic of the Congo has been the victim of armed aggression by Rwanda and Uganda acting jointly.

Pursuant to this aggression, several violations of the international conventions in the field of civil aviation by the two States have been noted and reported to you by my letters No. 409/CAB/MIN/TC/2075/H3/98 of 9 October 1998 and No. 409/CAB/MIN/TC/[2116]/H3/98 of 20 October 1998, copies of which are attached hereto.

In addition, a delegation from my Ministry has discussed this matter at length in Montreal with the Director of the Legal Bureau of ICAO.

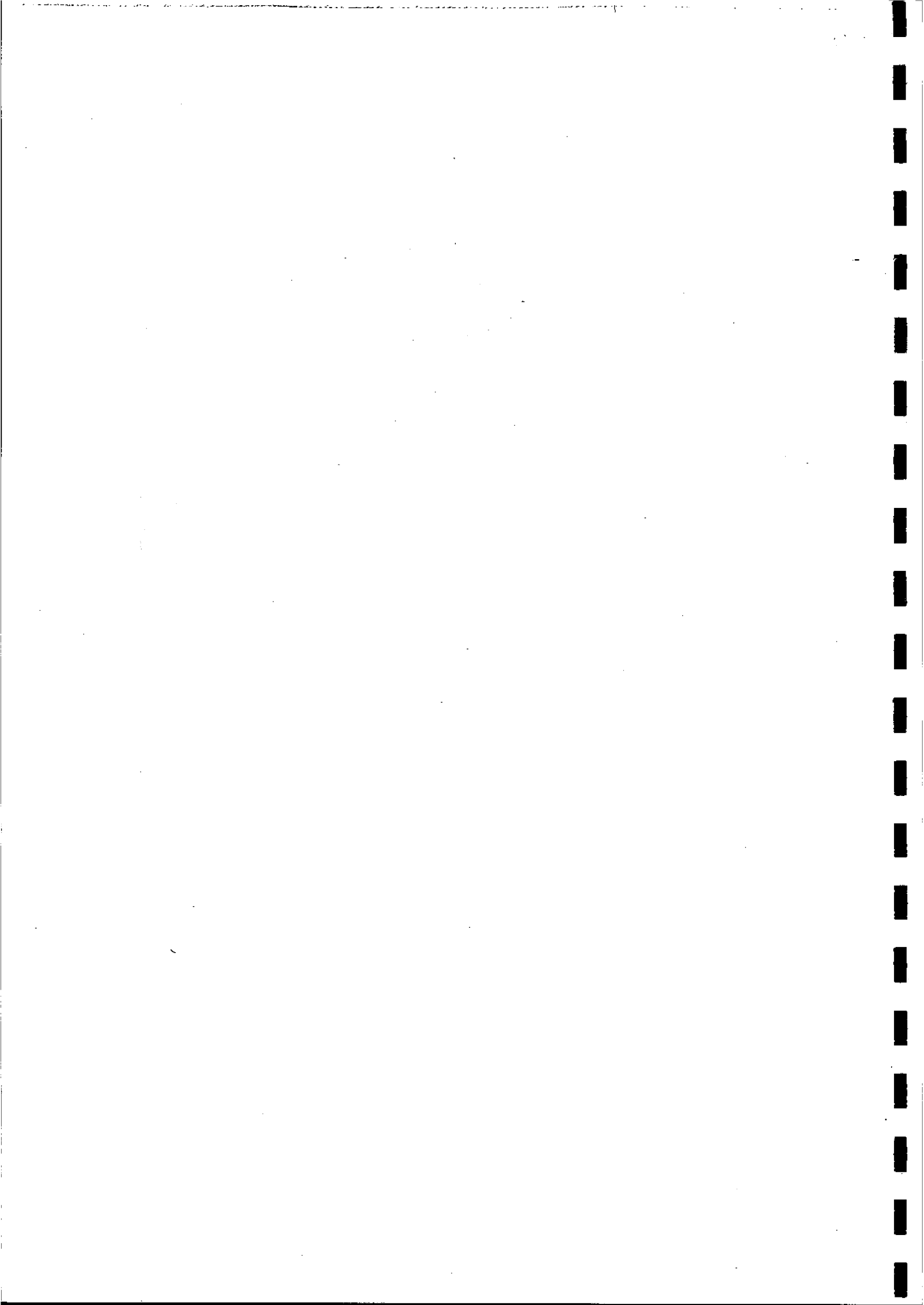
Consequently, since the violations of international air law reported in the above-mentioned letters, in this case the recourse to weapons against a civil aircraft, are such as to jeopardize the aims and objectives of ICAO as well as the very foundations of international law, I would be grateful to you if you would be good enough to place this complaint on the agenda of the 156<sup>th</sup> Session of the Council.

Accept, Sir, the assurances of my highest consideration.

(Sgd)  
Henri MOVA Sakanyi

**Annex 4**

**ICAO Council Minute C-MIN 156/9**



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C-MIN 156/9

## COUNCIL — 156TH SESSION

## SUMMARY MINUTES OF THE NINTH MEETING

(THE COUNCIL CHAMBER, WEDNESDAY, 10 MARCH 1999, AT 1000 HOURS)

## OPEN MEETING

President of the Council: Dr. Assad Kotaite

Secretary: Mr. R.C. Costa Pereira, Secretary General

## PRESENT:

Algeria	— Mr. T. Chérif	Kenya	— Mr. S.W. Gilraiga
Argentina	— Mr. A.F. Fazio Carreras	Mexico	— Mr. R. Kobeh González
Australia	— Dr. J. Aleck	Netherlands	— Mr. L.T. Wilhelmy van Hasselt
Botswana	— Mr. K. J. Mosupukwa	Nigeria	— Mr. D.O. Eniojukan
Brazil	— Mr. A.R. Braga Malmeström	Norway	— Mr. O.M. Rambech
Cameroon	— Mr. T. Tekou	Pakistan	— Mr. S.N. Ahmad
Canada	— Mrs. G. Richard	Panama	— Mr. R.E. García de Paredes
China	— Mr. J. Yuan (Alt.)	Russian	— Mr. V.A. Rouchkine
Colombia	— Mr. J. Hernández López	Federation	
Cuba	— Dr. M. Molina Martínez	Saudi Arabia	— Mr. S. Al-Ghamdi
Egypt	— Mr. A.Y. El Karimy	Senegal	— Mr. C.M. Diop
France	— *Mr. M.-Y. Peissik	Slovakia	— Mr. O. Fabrici
Germany	— Mr. T.E.W. Schmidt	Spain	— Mr. L. Adrover
India	— Mr. V.S. Madan	United Kingdom	— Mr. D.S. Evans
Indonesia	— Mr. E.A. Silooy	United States	— Mr. J.P. Orlando (Alt.)
Italy	— Dr. C. Palma (Alt.)	Uruguay	— Mr. C.A. Borucki
Japan	— Mr. K. Okada		

## ALSO PRESENT:

Mr. V.M. Aguado (President, ANC)	
Mr. G.B. Graziani (Alt.)	— Argentina
Mr. J. Majakwara (Alt.)	— Botswana
Mr. J.S. Escobar (Alt.)	— Brazil
Mr. A. Veillard (Alt.)	— France
Mr. J.F. Murphy (Alt.)	— Canada
Mrs. Z. González y Reynero (Alt.)	— Mexico
Mr. J. Whyte (Alt.)	— Netherlands
Mr. K. Keldusild (Alt.)	— Norway
Mrs. A. Valdés (Alt.)	— Uruguay
Mr. K.M. Sampassa (Obs.)	— Democratic Republic of Congo
Mr. A. Mukama (Obs.)	— Rwanda
Mr. J.W. Kabbs Twijuke (Obs.)	— Uganda

\*Part-time

## SECRETARIAT:

*Mr. V. Pattanayak	— D/ADB
*Dr. L.J. Weber	— D/LEB
*Mr. J.D. Howell	— D/ANE
*Mr. Y.N. Beliaev	— C/LPB
*Mr. C.-R. Boquist	— C/ATM
*Ms. L. Boisvert	— ERO
*Mr. S. Espinola	— PLO
*Dr. K.M. Rooney	— TO/OPS/AIR (Dangerous Goods)
*Mr. J. Huang	— Legal Officer
*Mrs. H.M. Bicrnacki	— Aviation Security Officer
Mrs. C. Rideout	— CSO

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**Subject No. 14: Subjects Relating to Air Navigation****Request by the Democratic Republic of the Congo**

1. The above subject was documented for the Council's consideration in a Memorandum of the President of the Council AK/639 dated 15 February 1999. Documents listed for information purposes included Memorandum PRES AK/642 dated 2 March 1999, by which the President of the Council circulated copies of two statements by the President of the United Nations Security Council, dated 31 August and 11 December 1998, and a press release by the United Nations Secretary-General dated 6 January 1999, on the situation in the Democratic Republic of the Congo. These documents made no reference to the subjects which formed the basis of the complaint before the Council.

2. The President of the Council recalled that at the request of the Minister of Transportation and Communications of the Democratic Republic of the Congo, the Council, at its Second Meeting of the current Session (156/2) on 22 February 1999, had decided to include the item "Request by the Democratic Republic of the Congo" in its work programme for the 156th Session and had agreed to examine it Wednesday, 10 March 1999.

3. In accordance with Article 53 of the *Convention on International Civil Aviation* and Rule 32 of the *Rules of Procedure for the Council*, the President had invited Rwanda and Uganda to participate, without the right to vote, in the consideration by Council of this item. The President had also informed the Democratic Republic of the Congo of the Council's decision, and had extended an invitation to the Democratic Republic of the Congo to also participate in this discussion without right to vote. The President extended a welcome to Mr. Kaweta M. Sampassa, Ambassador of the Democratic Republic of the Congo to Canada; to Mr. Augustin Mukama, *Chargé d'Affaires* at the Embassy of Rwanda in Canada; and to Mr. J.W. Kabbs Twijuke, Director of Air Transport at the National Civil Aviation Administration of Uganda.

4. The President then referred to his above-mentioned Memorandum PRES AK/639 of 15 February 1999, by which he had informed the Council that his office had, on 13 October 1998, received a letter dated 9 October 1998 from the Minister of Transport and Communications of the Democratic Republic of the Congo, raising the matter of the hijacking of three Congolese civil aircraft by the military forces of Rwanda and Uganda for military purposes, as well as the violation of the Congolese airspace by the said military forces. The President had informed the Council orally of this letter on 21 October 1998 (155/1). Subsequently, by a letter dated 20 October 1998, the Minister of Transport and Communications of the Democratic Republic of the Congo had informed the President of the Council that a civil aircraft belonging to the private airline Congo Airlines had been shot down by Ugandan and Rwandan forces; the 37 passengers and four crew members had all perished. The Minister had requested that the Council include this complaint in the work programme of its 156th Session, a request with which the Council had complied, as indicated above.

5. The Council heard the following statements presented by the Delegates of the Democratic Republic of the Congo, Uganda and Rwanda:

6. The Delegate of the Democratic Republic of the Congo:

"It is both an honour and an awesome responsibility to take the floor before this august Council to speak of such a sensitive issue that concerns neighbouring States with which we have traditionally had friendly and fraternal relations. The Democratic Republic of the Congo is moved by a desire to see a return to peace and stability in the rich, beautiful region of the Great Lakes, in the interests of all our peoples.



We are addressing ICAO in connection with a series of acts of which our country has been the victim and which are violations of the various conventions governing international air law. In his statements on 31 August 1998 and 11 December 1998, the President of the Security Council reaffirmed "the obligation to respect the territorial integrity and national sovereignty of the Democratic Republic of the Congo and other States in the region and the need for all States to refrain from any interference in each other's internal affairs" (31 August 1998); "the obligation to respect the territorial integrity, political independence and national sovereignty of the Democratic Republic of the Congo and other States in the region, including the obligation to refrain from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the Purposes of the United Nations." (11 December 1998).

Transposed into the field of international civil aviation, these principles lie at the base of the Chicago Convention and all the other international air law instruments that flow from it. The Democratic Republic of the Congo asks that ICAO direct its attention to the violation of these principles in the field of civil aviation by our two neighbours, Rwanda and Uganda, and requests that these violations be condemned and that the sanctions and other measures provided for under the Convention be applied.

- (1) The unlawful seizure on 4 August 1998 of three Boeing aircraft operated by the Congolese carriers Congo Airlines and Blue Airlines and a cargo aeroplane operated by *Lignes aériennes congolaises* departing from Goma Airport. A stop at Kigali for refuelling, transportation of armed soldiers and ammunition to Kitona to support the offensive in the west. Return to Kigali with the wounded and other victims. (Testimony of the Nigerian Captain Inyang).  
Boeing 707, registration 9Q-CKG - Congo Airlines  
Boeing 727, registration 9QCDI - Blue Airlines  
Boeing 707, registration 5N EEO - Air Atlantic
- (2) Beginning on 4 August 1998, almost daily violations of the sovereignty of the airspace of the Democratic Republic of the Congo by Ugandan and Rwandan military aircraft carrying munitions of war and implements of war in violation of Article 35 of the Chicago Convention. More seriously, these flights frequently failed to establish radio contact with air traffic control units along the routes used by scheduled air traffic, in violation of the Standards and Recommended Practices of Annex 11 to the ICAO Convention, thus exposing both domestic and international traffic in Congolese airspace to constant danger.
- (3) On Saturday, 10 October 1998 at 8:54 UTC, that is 10:54 EST in our country, a civil Boeing 727 aircraft, registration 9Q-CSQ, belonging to the private carrier Congo Airlines, was savagely shot down by those attacking our country, three minutes after take-off from Kindu airport on a flight to Kinshasa. The aircraft was carrying some forty crew members and passengers on board, most of them women and children. Unable to control the aircraft after it was struck, the pilot broadcast a distress call to indicate that he was attempting a forced landing. The message was heard by the Airways Board control centres, including those at Kinshasa. The crash occurred moments later, 50 kilometres from the city of Kindu, resulting in the loss of innocent human lives and considerable material damage. One of the sponsors of the attack claimed responsibility for it on *Radio France Internationale* and on the Voice of America, broadcasting from the aggressors' base.
- (4) In order to travel to or from Goma by air, all passengers go through Kigali or Kampala. There are almost daily flights to Goma, Bukavu, and Kindu. These are massive and systematic violations of the sovereignty of Congolese airspace.

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The Government of the Democratic Republic of the Congo calls upon the international community, through the ICAO Council, to examine the violations we have denounced and to adopt the sanctions and other measures provided for under the Convention."

7. The Delegate of Uganda:

"I bring you warm greetings and good wishes from the Government and people of the Republic of Uganda.

On 25 February 1999, our Minister of Works, Housing and Communications received a letter from the President of the ICAO Council, dated 23 February 1999, inviting Uganda to participate in these deliberations. In the letter, the President of the Council informed our Minister that the Minister of Transport and Communications of the Democratic Republic of Congo had written to him and levied accusations against the Republic of Uganda. Uganda has studied the letters written by the Minister of the Democratic Republic of Congo, copies of which were sent to Uganda under cover of the letter of the President of the Council.

It is the considered opinion of Uganda that the allegations raised by the Democratic Republic of Congo are completely unfounded. Uganda categorically denies the hijacking of the three Congolese civil aircraft, shooting down of the Congo Airlines aircraft on 10 October 1999 and non-observance of the international standards and recommended practices of the Convention on International Civil Aviation. In any case, it is Uganda's view that such conflicts should have been brought to the attention of Uganda earlier with a view to seeking bilateral or even regional solutions as envisaged in Article 84 of the Chicago Convention. It is also surprising to note that the matter was brought to the attention of the President of the ICAO Council as early as 9 October 1998 but was never brought to the attention of Uganda. Uganda only learnt of it through the President of the Council in his letter of 23 February 1999. It would have been expected that the Democratic Republic of the Congo would have raised these issues with Uganda in the first instance. However, now that the matter is on the agenda of this august Council, Uganda is obliged to present its formal response to the Democratic Republic of Congo's allegations.

It is unrealistic to term the crisis in Congo as an act of aggression on the part of Uganda whereas at the local, national and even international levels it is acknowledged that the eastern part of the Democratic Republic of Congo is under the control of Congolese rebels. This rebellion was triggered off by a mutiny of sections of the Congolese Army based in the eastern part of the Democratic Republic of the Congo.

In principle and practice Uganda respects international law and good neighbourliness. It is enjoined by the United Nations and Organization of African Unity (OAU) Charters to respect international borders. It is however also mandated by international law and its own Constitution to defend its territorial integrity, people and their property from criminals and killers who have been recruited, trained, armed, supplied and coordinated from the Democratic Republic of the Congo for a very long time.

The Democratic Republic of the Congo has for a long time been a sanctuary of several rebel groups which include the National Army for the Liberation of Uganda (NALU), Allied Democratic Forces (ADF), West Nile Bank Front (WNBF), Uganda National Rescue Front (UNRF) and Rwandese Interahamwe. These rebel groups have for a long time, been using the Democratic Republic of Congo as a launching pad for their attacks on innocent civilians in Uganda. The most grisly incursion was the ADF burning of over 100 students at a technical institute in Uganda, in the district known as Kabarole in early 1998 and the recent atrocious murder of foreign tourists and Ugandans in the Bwindi National Park by these Rwandese

Intcrahawwes as recently as last week. Other attacks mounted by these groups from their bases in Congo include the October-November 1996 attack on Mpondwe, Kasese and Bwera by the ADF and its abduction of students from a seminary in Kasese in 1997.

On 15 June 1997, the ADF moved from the Democratic Republic of the Congo and attacked Bundibugyo district, located in south-west Uganda, looted the town and killed 121 people, displacing another 200,000. The WBNF and UNRF which also have their bases in the Garamba National Park in the Democratic Republic of the Congo have also been launching their terrorist activities against the people in Uganda. The whole of western Uganda which includes the districts of Kisoro, Kabale, Rukungiri, Kasese, Bundibugyo, Hoima, Masindi, Nebbi, Arua and Koboko have been subjected to untold suffering at the hands of rebels based in the Democratic Republic of the Congo.

It is against this background that the Ugandan Government and the current Government of the Democratic Republic of the Congo, under a protocol between the two countries signed in Kinshasa on 27 April 1998, agreed to deploy Uganda's Armed Forces (UPDF) into the Democratic Republic of the Congo to conduct joint operations against the aforementioned criminal groups. Uganda cannot stand by and watch its people being killed and property destroyed by organized criminals based in the Democratic Republic of the Congo. Uganda is in the Democratic Republic of the Congo to deny these murderous groupings territory that can be used to launch attacks against its people and will immediately leave when a mechanism capable of effectively checking these rebel activities is in place.

The accusations of external aggression have been raised by the Democratic Republic of the Congo and exhaustively explained by the Government of Uganda before the UN General Assembly, the Organization of African Unity, the Southern African Development Community (SADC), and the East African Cooperation. Uganda has attended all regional and international peace initiatives in Addis Ababa, Mauritius, Victoria Falls, Lusaka, Windhoek and Pretoria. In all these cases it has been appreciated that the conflict in the Democratic Republic of the Congo has both internal and external dimensions and that the security concerns of neighbouring countries, including Uganda, have to be addressed.

I wish now to address the specific complaints raised by the Democratic Republic of the Congo to the effect that Uganda has violated the Democratic Republic of the Congo's airspace, hijacked the Democratic Republic of the Congo's aircraft and shot down a Congo Airlines aircraft.

- (1) Hijacking of three aircraft: The Democratic Republic of the Congo alleged that on the date of 4 August 1998 three aircraft, a Boeing 707 registration 9Q-CKG, a Boeing 727 registration 9Q-CDI belonging to Congo Airlines and Blue Airlines respectively, and an Air Atlantic Boeing 707 on lease to *Lignes aériennes congolaises* were hijacked by Ugandan armed forces. Uganda submits that it has never taken any possession, lawful or unlawful, of the said three aircraft. The Democratic Republic of the Congo categorically states that a Mr. James Kabarehe who is said to have commandeered the three aircraft is their former chief of staff. For this reason Uganda cannot answer for his actions. Moreover the said Mr. James Kabarehe is not a Ugandan national.
- (2) Violation of territorial integrity and Congolese airspace: Uganda has not engaged in any aerial activities or missions in the Democratic Republic of the Congo, neither does it have any aircraft in the Democratic Republic of the Congo. Therefore, Uganda has not violated Democratic Republic of the Congo airspace or any provisions of the Chicago Convention, let alone Articles 3 or 35 as alleged by the Government of the Democratic Republic of the Congo.

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- (3) Shooting down of an aircraft: The Democratic Republic of the Congo alleges that Uganda shot down an aircraft belonging to Congo Airlines on 10 October 1998. Uganda has no knowledge of the shooting down of the aircraft. Therefore the Democratic Republic of the Congo's accusation of Uganda for non-observance of the Standards and Recommended Practices as contained in Annex 11 to the *Convention on International Civil Aviation* is indeed surprising.

In conclusion, Uganda has not hijacked or shot any Democratic Republic of the Congo aircraft and has not violated Democratic Republic of the Congo airspace or contravened any provision of the *Convention on International Civil Aviation*. The claims raised by the Democratic Republic of the Congo against Uganda are unfounded and Uganda appeals to this Council not to accept them."

8. The Delegate of Rwanda:

"I would like to refer to you a letter dated 23 February 1999 from the ICAO Council President, Assad Kotaite, to the Minister of Transport and Communications of the Republic of Rwanda, informing the Government of the Republic of Rwanda of accusations by the Democratic Republic of the Congo, of attacking and hijacking Congolese aircraft and violating its airspace. The Government of Rwanda has the pleasure to respond to these allegations as follows.

First of all, I would like to give you a brief background of the conflict so that you will understand better what is going on in that region. In 1994, the worst genocide in our modern times took place in Rwanda. It was both tragic and gruesome. Over one million innocent people lost their lives in one hundred days. The sheer scale and organization of the Rwanda genocide was tragically spectacular, unprecedented in human history. The genocide was planned by the Government of the late President Habyarimana and executed by the deadly Interahamwe, a militia which preached ethnic hatred, division and death to Tutsis and Hutus who did not share their evil politics. The one hundred days of murder was only brought to a halt when the current government defeated the force of Habyarimana and the Interahamwe in battle, sending many of them across the border to the Democratic Republic of the Congo (then Zaire) where they immediately began plotting their return to Rwanda. On return, they hoped to complete the "unfinished" task of annihilation of Tutsis and moderate Hutus.

The Interahamwe found an ally in their evil plot. It was former President Mobutu who, seeing the regional upheavals as a threat to his dictatorship, chose to give moral and material support to the Interahamwe. With this support, the Interahamwe were able to continue their war against the new government of Rwanda. They made frequent cross border raids, creating serious insecurity in the prefectures bordering the Democratic Republic of the Congo. Thousands of innocent villagers were killed as the Interahamwe made night raids on their villages, while others were abducted and forced to join their ranks as fighters or concubines. After repeated requests to the Mobutu government to cut off links with the militia, and the security situation having deteriorated to the extent that because of the cross-border attacks by the Interahamwe, there were hundreds of thousands of internally displaced persons in Rwanda, the government of national unity in Kigali was compelled to back an internal rebellion in Congo which eventually led to the overthrow of Mobutu.

The new government in Kinshasa led by President Laurent Kabila, however, failed to provide adequate guarantees against the Interahamwe, and in the course of 1998 actually entered into an alliance with them to create instability and commit acts of violence and terror in Rwanda. In September 1998, President Kabila of the Democratic Republic of the Congo said in a speech that he would take the war he is fighting in eastern Congo to Kigali, a statement seen by both Rwandese and the international community as a declaration of war against Rwanda, in violation of Article 1 of the UN Charter. Kabila's Minister for Health in the same

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month referred to Tutsis, including Rwandese Tutsis, as "microbes which should be exterminated". This statement was the main catalyst for the mass killings of Rwandese and Congolese Tutsis right across Congo in 1998. These events were widely documented in the international media and in reports of international human rights groups.

Equally worrying for Rwanda was that Kabila's alliance with the Interahamwe resulted in a resurgence of insecurity, and therefore loss of life and property and internal displacement in the border regions of Rwanda. Kabila's decision to back these militias, whose stated aim is to overthrow the government in Kigali and continue the genocide they began in 1994 in Rwanda, violates Article 2.4 of the UN Charter.

At this point I should like to mention that this is not just the view of Rwanda, but also that of the United Nations. In fact, the final report of the International Commission of Inquiry for the Investigation of Arms Flows to Former Rwandan Government Forces in the Great Lakes Region, established by Security Council Resolution 1013 (1995) and reactivated by Security Council Resolution 1161 (1998) with a mandate to collect information and investigate reports relating to the sale, supply and shipment of arms and related matériel to former Rwandan government forces and militias in the Great Lakes region of central Africa; to identify parties aiding and abetting the illegal sale to or acquisition of arms by former Rwandan government forces and militias; and to make recommendations relating to the illegal flow of arms in the Great Lakes region, stated, in its paragraph 87, that it was convinced that "the ex-FAR and Interahamwe have continued to receive arms and ammunition, both through their close links with other armed groups in Angola, Burundi, Uganda and elsewhere, and most recently, from the Government of the Democratic Republic of the Congo. Despite the imposition upon them of a Security Council arms embargo, which has remained in force since the genocide of 1994, the ex-FAR and Interahamwe have now become in effect the allies of the Government of the Democratic Republic of the Congo and its allies, the Governments of Angola, Chad, Namibia and Zimbabwe. The new relationship has conferred a form of legitimacy on the Interahamwe and the ex-FAR. This is a profoundly shocking state of affairs."

In accordance therefore with provisions in the Constitution of the Republic of Rwanda referring to the obligation of the State in protecting the population from internal or external attack, the Government was compelled to take action to protect the sovereignty and territorial integrity of Rwanda and to defend its population. To this end, the Government of Rwanda sent troops to Congo, once more to hunt for and apprehend the criminal Interahamwe who are fighting within the ranks of President Kabila's army. It must, however, be made clear that the presence of Rwanda's troops in Congo are a result of an initial act of aggression by the Democratic Republic of the Congo in blatant violation of Article 2.4 of the UN Charter. It should also be made clear that the war in Congo is essentially an internal conflict with external repercussions as I have highlighted above. The accusations made against Rwanda therefore need to be directed at the warring factions in the Congolese conflict, namely the government of the Democratic Republic of the Congo and the rebel alliance. It has not been in Rwanda's capacity or interest to attack Democratic Republic of the Congo aircraft rather than pursuing Interahamwe who are Rwanda's interest in Congo.

The Government of Rwanda requests the Council to reject the accusations by the Democratic Republic of the Congo because of the above-stated reasons. It has become a tactic of the Democratic Republic of the Congo government to accuse Rwanda and Uganda of causing the problems it is facing as a result of a rebellion in eastern Congo, instead of facing the problems and coming to terms with the internal problems in the Democratic Republic of the Congo. It is unfortunate that the Democratic Republic of the Congo is taking up the time of this honourable Council to engage in making scapegoats of Uganda and Rwanda. Had the Democratic Republic of the Congo even remotely thought that Rwanda had violated its obligation to the Convention, Article 84 (*Settlement of Disputes*) of the *Convention on International Civil Aviation* would have

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applied. This Article is well known to the Democratic Republic of the Congo and has been applied between us twice before. In both instances, a perfectly amicable solution was found.

The two instances were:

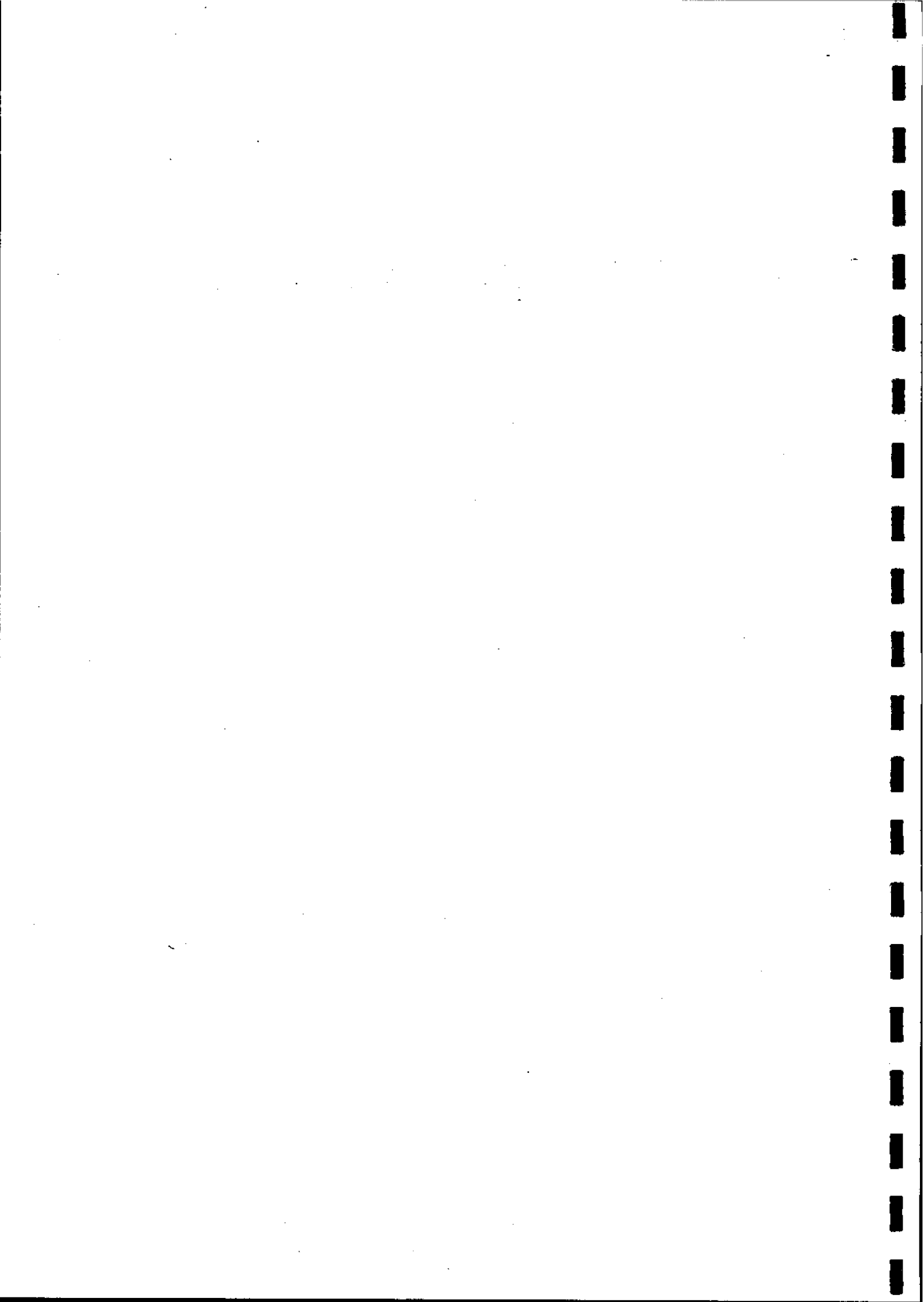
- (1) When aircraft registration number 9Q-CBE of *Société Scribe Airlift* was allegedly shot down on 10 September 1991. In accordance with the provisions of Article 84 of the Convention, both countries held consultations before resorting to the Council. ICAO and the African Civil Aviation Commission (AFCAC) were invited as observers in the deliberations.
- (2) A Zairian registered aircraft (B-737) which violated Rwandan airspace and landed without authorization at Kamembe Airport, a non-international airport in April 1996. In accordance with the same article mentioned above, consultations were held and ICAO and its Eastern and Southern African Regional Office officials attended as observers.

It should also be noted that while a pilot of an aircraft is duty bound to immediately report any unfortunate incident in accordance with para 13.4, Chapter 13 of Annex 6 of the Convention, the authorities in the Democratic Republic of the Congo have never informed us of the allegations that they have now brought before the Council.

In conclusion, I would like to implore the Council to reject these baseless allegations which, given the Democratic Republic of the Congo's current political difficulties and the history of consultations when disputes arise, appears to be aimed at discrediting Rwanda and gaining political capital internationally for the Democratic Republic of the Congo government."

**Annex 5**

**ICAO Council record of Ninth Meeting, 10 March 1999, C-DEC 156/9**





C-DEC 156/9  
11/3/99

## COUNCIL - 156TH SESSION

## NINTH MEETING

(THE COUNCIL CHAMBER, WEDNESDAY, 10 MARCH 1999 AT 1000 HOURS)

## SUMMARY OF DECISIONS

## OPEN MEETING

**Request by the Democratic Republic of the Congo (Subject No. 14)**

1. The above subject was documented for the Council's consideration in a Memorandum of the President of the Council AK/639 dated 15 February 1999. Documents listed for information purposes included Memorandum PRES AK/642 dated 2 March 1999, by which the President of the Council circulated copies of two statements by the President of the United Nations Security Council, dated 31 August and 11 December 1998, and a press release by the United Nations Secretary-General dated 6 January 1999, on the situation in the Democratic Republic of the Congo. These documents made no reference to the subjects which formed the basis of the complaint before the Council.

2. The President of the Council recalled that at the request of the Minister of Transportation and Communications of the Democratic Republic of the Congo, the Council, at its Second Meeting of the current Session (156/2) on 22 February 1999, had decided to include the item "Request by the Democratic Republic of the Congo" in its work programme for the 156th Session and had agreed to examine it Wednesday, 10 March 1999.

3. In accordance with Article 53 of the *Convention on International Civil Aviation* and Rule 32 of the *Rules of Procedure for the Council*, the President had invited Rwanda and Uganda to participate, without the right to vote, in the consideration by Council of this item. The President had also informed the Democratic Republic of the Congo of the Council's decision, and had extended an invitation to the Democratic Republic of the Congo to also participate in this discussion without right to vote. The President extended a welcome to Mr. Kaweta M. Sampa, Ambassador of the Democratic Republic of the Congo to Canada; to Mr. Augustin Mukama, *Chargé d'Affaires* at the Embassy of Rwanda in Canada; and to Mr. J.W. Kabbs Twijuke, Director of Air Transport at the National Civil Aviation Administration of Uganda.

4. The President then referred to his above-mentioned Memorandum PRES AK/639 of 15 February 1999, by which he had informed the Council that his office had, on 13 October 1998, received a letter dated 9 October 1998 from the Minister of Transport and Communications of the Democratic Republic of the Congo, raising the matter of the hijacking of three Congolese civil aircraft by the military forces of Rwanda and Uganda for military purposes, as well as the violation of the Congolese airspace by the said military forces. The President had informed the Council orally of this letter on 21 October 1998 (155/1). Subsequently, by a letter dated 20 October 1998, the Minister of Transport and Communications of the Democratic Republic of the Congo had informed the President of the Council that a civil aircraft belonging to the private airline Congo Airlines had been shot down by

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C-DEC 156/9

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Ugandan and Rwandan forces; the 37 passengers and four crew members had all perished. The Minister had requested that the Council include this complaint in the work programme of its 156th Session, a request with which the Council had complied, as indicated above.

5. The Council heard statements presented by the Delegates of the Democratic Republic of the Congo, Uganda and Rwanda, after which interventions were made by a number of Representatives on the Council. The President of the Council observed from these interventions that there was widespread support for an approach outlined by the Representative of Cameroon, who had put forward two alternatives. The first alternative would have the Council issue a declaration which would be within the framework of the Chicago Convention, the Council's competence and domain, as well as within the framework of certain aviation security conventions, including the *Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Tokyo, 1963), the *Convention for the Suppression of Unlawful Seizure of Aircraft* (The Hague, 1970), the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (Montreal, 1971), and the *1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, supplementary to the Montreal Convention.

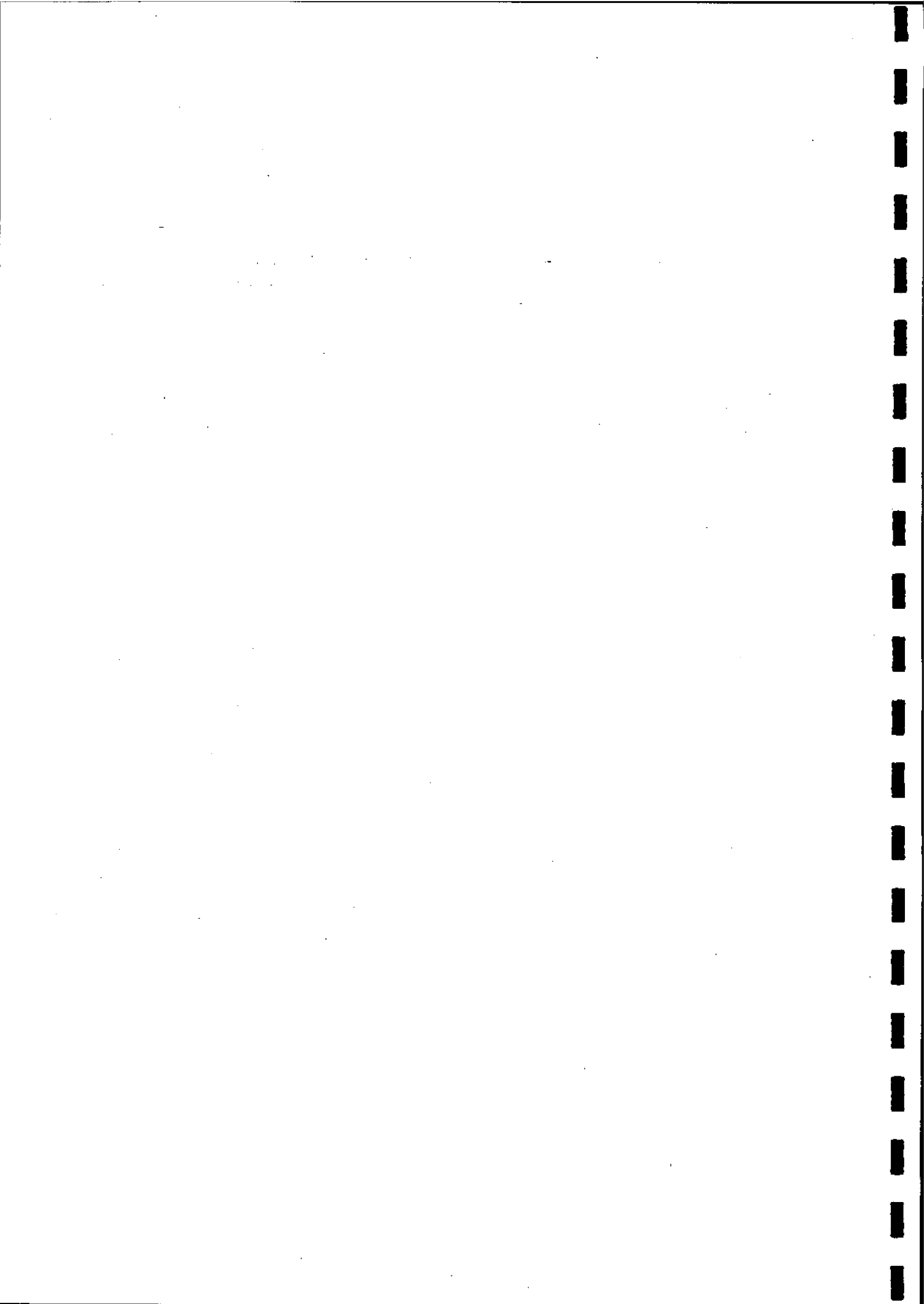
6. The President noted the reference which the Representative of Senegal had made to the preamble of the *Convention on International Civil Aviation*, which stipulated that "(...) the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security (...)". In this connection, he observed that any conflict could seriously affect the development and progress of civil aviation, i.e. air transport, which was an essential factor for socio-economic development at the national, regional and international levels. The President indicated that if the Council so wished, he could prepare a draft declaration within the framework and domain of the Organization and the above-mentioned documents which protected civil aviation. The draft declaration would be available for the Council's consideration at the next (156/10) meeting, which would take place later in the day.

7. As regards the second alternative which had been mentioned by the Representative of Cameroon, whereby the President of the Council would use his good offices and keep the Council informed at appropriate times, the President suggested that the Council first review the above-mentioned draft declaration to determine whether it would fulfil the objectives of the Council in protecting civil aviation and in taking all the necessary measures to ensure the safety, efficiency and regularity of civil aviation.

8. The Council accepted the course of action suggested by its President, with the understanding that it would return to the request by the Democratic Republic of the Congo at its next meeting, at which time a draft declaration would be presented for its review.

**Annex 6**

**ICAO Council record of Tenth Meeting, 10 March 1999, C-DEC 156/10**





C-DEC 156/10  
12/3/99

**COUNCIL - 156TH SESSION**

**TENTH MEETING**

**(THE COUNCIL CHAMBER, WEDNESDAY, 10 MARCH 1999 AT 1600 HOURS)**

**SUMMARY OF DECISIONS**

**OPEN MEETING**

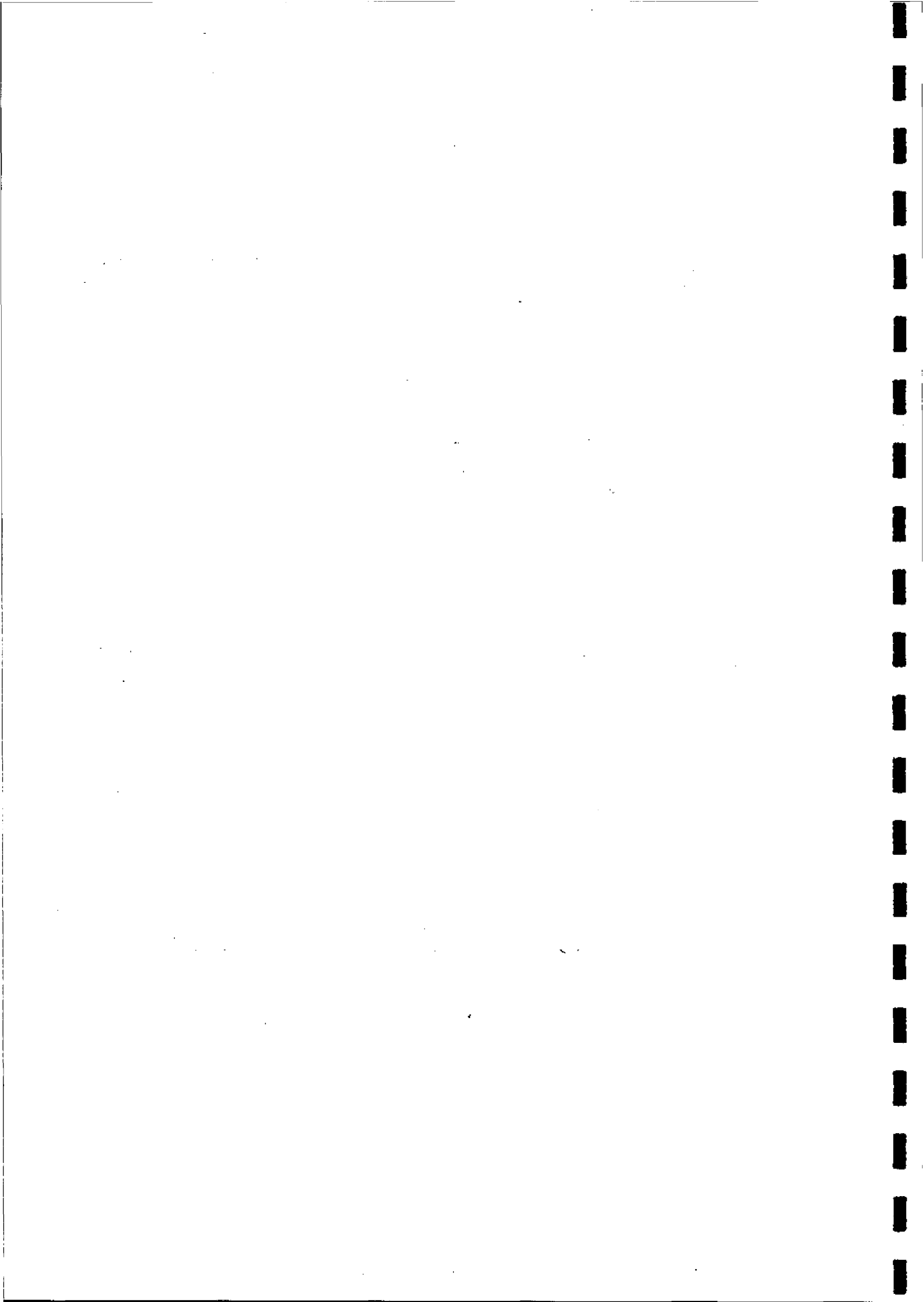
**Request by the Democratic Republic of the Congo (Subject No. 14)**

1. The Council resumed (156/9) its consideration of the above subject, documented in a Memorandum of the President of the Council AK/639 dated 15 February 1999. Further to the understanding reached at the previous meeting, the President had circulated a draft declaration, within the framework and domain of the Organization and certain aviation security conventions, for the Council's review.
2. Some comments of an editorial nature, offered in connection with the different language versions of the draft declaration, were noted by the Secretariat for verification. In all language versions, the verb "Concludes" which introduced the operative part of the declaration was changed to "Declares".
3. Subject to these amendments, the Council adopted the declaration<sup>1</sup> presented by the President and thus concluded its consideration of the item "Request by the Democratic Republic of the Congo". The President of the Council thanked the Delegations of the Democratic Republic of the Congo, Rwanda and Uganda for having taken part in the Council's consideration of this subject, and expressed the wish and the desire that this conflict would be resolved in a peaceful manner, promoting close cooperation and relations among neighbouring States. As part of the United Nations, ICAO attached great importance to resolving all conflicts in a peaceful way.
4. It was understood that the declaration adopted by the Council would be sent to Contracting States and to the United Nations, and that a press release would be issued.

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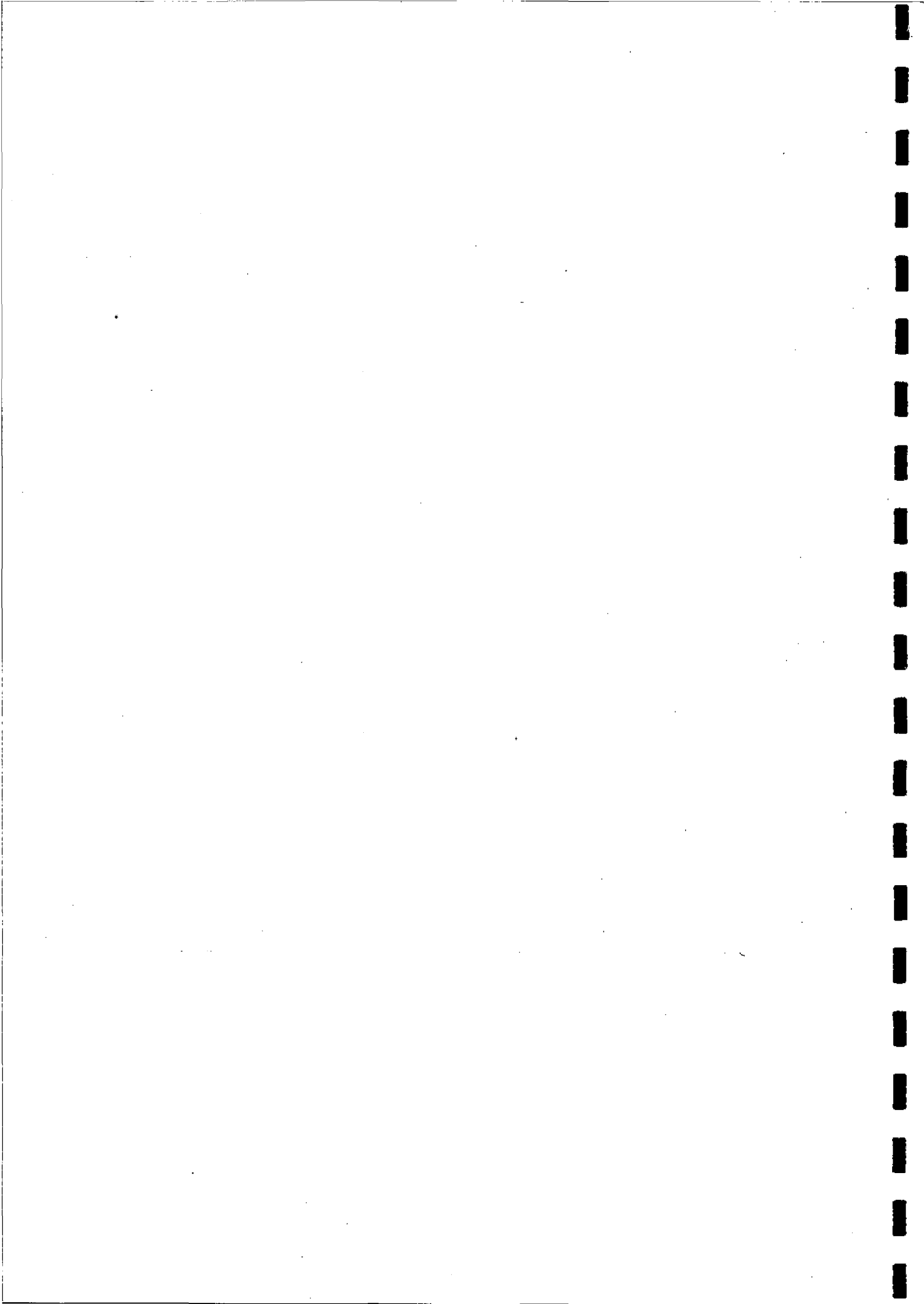
<sup>1</sup>The text of the declaration adopted by the Council is attached.

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**Annex 7**

**ICAO Council Declaration, adopted 10 March 1999**





**DECLARATION ADOPTED BY THE COUNCIL  
OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION  
AT THE NINTH MEETING OF ITS 156TH SESSION ON 10 MARCH 1999**

*THE COUNCIL*

*HAVING CONSIDERED* the request of the Government of the Democratic Republic of the Congo for consideration of the matters referred to in its letters dated 9 and 20 October 1998 to the President of the Council and in its verbal statement to the Council on 10 March 1999;

*HAVING CONSIDERED* the Statements of the Government of Rwanda and the Government of Uganda respectively to the Council on 10 March 1999 in relation to the above-mentioned request;

*HAVING NOTED ALSO* the Statements by the President of the Security Council of the United Nations dated 31 August and 11 December 1998 and the Press Release of the U.N. Secretary General dated 6 January 1999;

*MINDFUL* that any conflict could negatively affect the progress and development of international civil aviation, not only as a means of transport but also as an essential factor of socio-economic development;

*DECLARES* as follows:

1. The preamble of the *Convention on International Civil Aviation* stipulates that the development of 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 the general security;
2. The Assembly and the Council affirmed in their resolutions that the unlawful seizure of aircraft and other acts of unlawful interference against civil aviation, including acts aimed at the destruction of aircraft, have serious adverse effects on the safety, efficiency, and regularity of international civil aviation, endanger the lives of aircraft passengers and crew, and undermine the confidence of the peoples of the world in the safety of international civil aviation;
3. In accordance with Articles 1 and 2 of the *Convention on International Civil Aviation*, the Council recognizes the principle that every State has complete and exclusive sovereignty over the airspace above its territory, and that the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto;
4. In accordance with Article 3 bis of the Convention, States must refrain from the use of weapons against civil aircraft in flight as being incompatible with elementary considerations of humanity;

-2-

5. The protection of civil aviation from acts of unlawful interference has been enhanced by the Tokyo Convention (1963), The Hague Convention (1970), the Montreal Convention (1971) and the 1988 Protocol Supplementary to the Montreal Convention of 1971 as well as by Annex 17 to the *Convention on International Civil Aviation*;

6. The Council urges all States in exercising their authority under the *Convention on International Civil Aviation* and the aviation security conventions to be guided by the principles, rules, Standards and Recommended Practices laid down in these Conventions and in the Annexes to the *Convention on International Civil Aviation*;

7. The Council urges all States which have not yet done so to ratify as soon as possible Article 3 *bis* of the *Convention on International Civil Aviation* and to comply with all the provisions of this Article.

-- END --

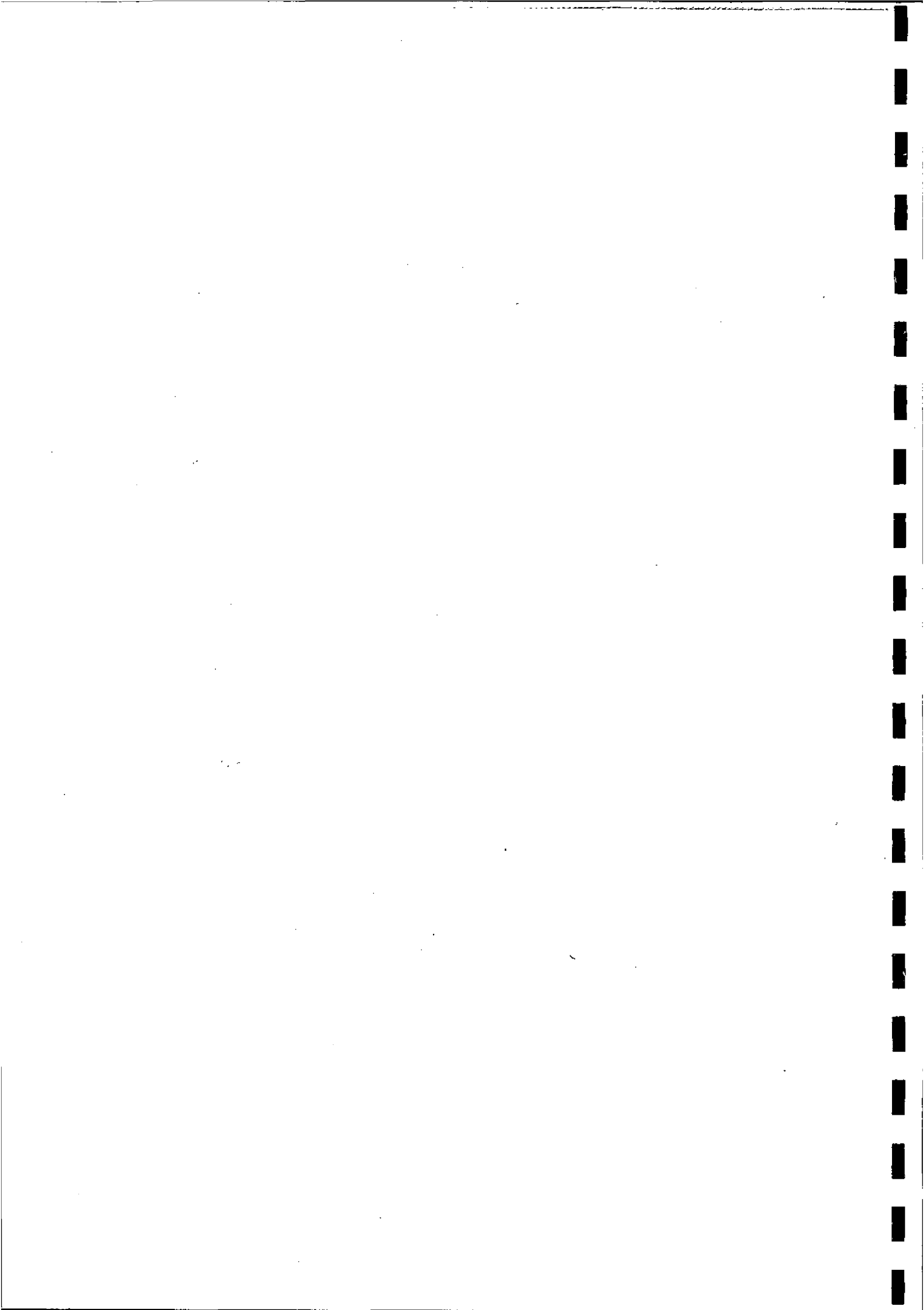
**International Court of Justice**

**CASE CONCERNING ARMED ACTIVITIES  
ON THE TERRITORY OF THE CONGO**

**(DEMOCRATIC REPUBLIC OF THE CONGO  
v. THE REPUBLIC OF RWANDA)**

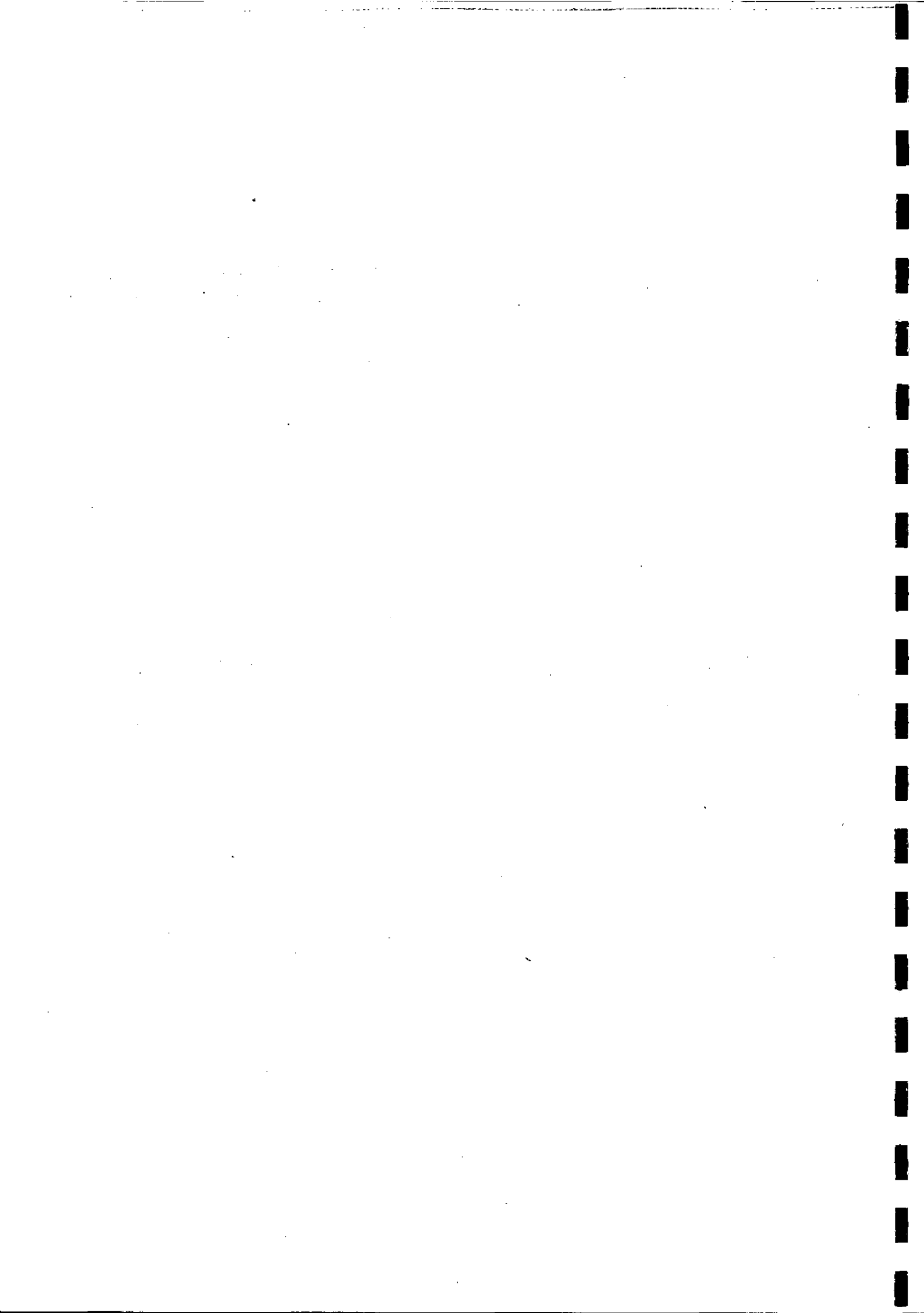
**ANNEXES TO THE  
*MEMORIAL OF THE REPUBLIC OF RWANDA***

**21 April 2000**



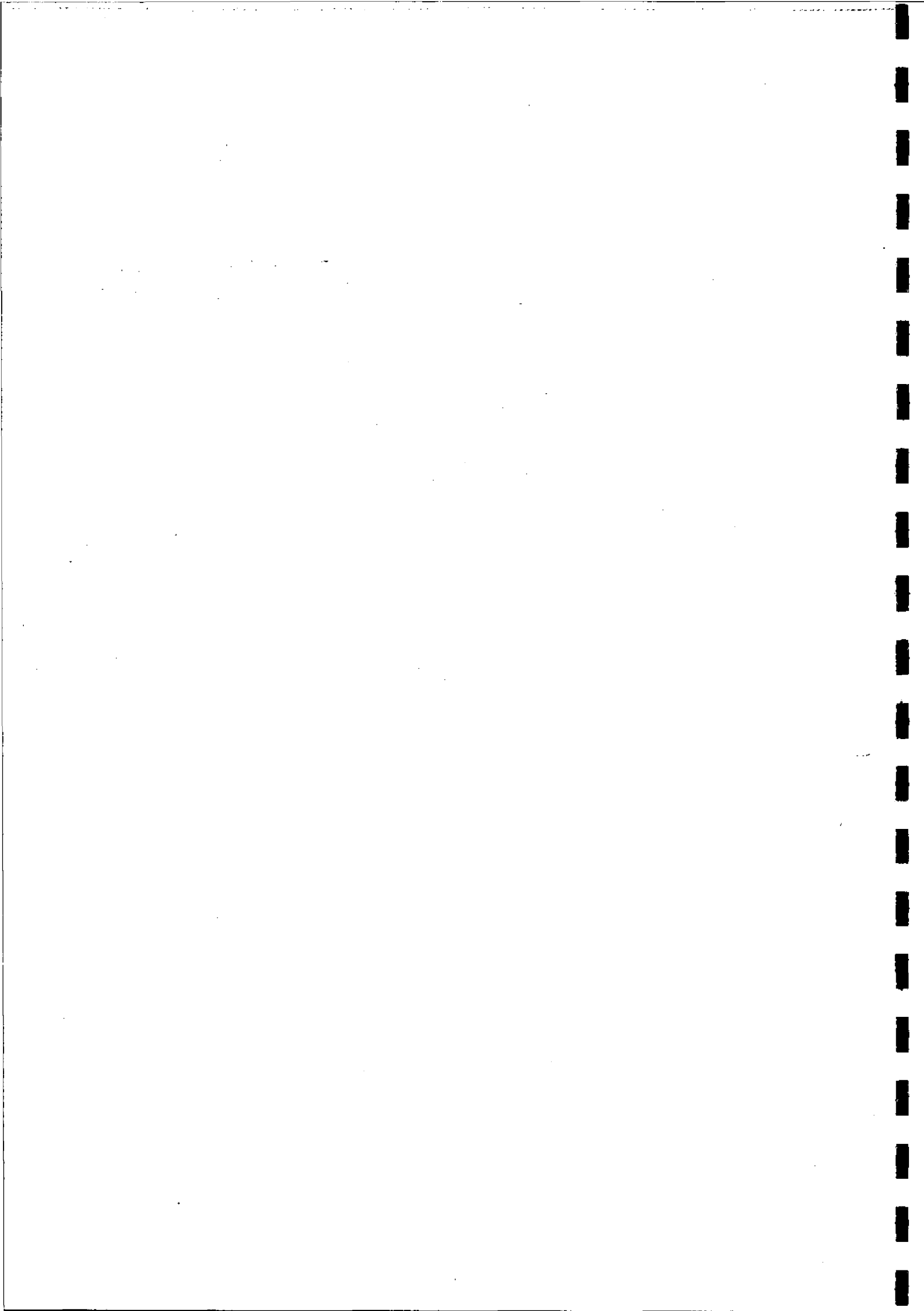
### List of Annexes

1. Montreal Convention for the Suppression of Unlawful Acts against Civil Aviation, 1971.
2. United Nations Convention against Torture, 1984.
3. ICAO Document PRES AK/639:-
  - Attachment A:* Letter from Minister of Transport and Communications of Congo to the President of the Council of ICAO (9 October 1998)
  - Attachment B:* Letter from the President of the Council of ICAO to the Minister of Transport and Communications of Congo (3 November 1998)
  - Attachment C:* Letter from Minister of Transport and Communications of Congo to the President of the Council of ICAO (20 October 1998)
  - Attachment D:* Letter from the Embassy of Congo to the President of the Council of ICAO (2 February 1999)
  - Attachment E:* Letter from Minister of Transport and Communications of Congo to the President of the Council of ICAO (2 February 1999).
4. ICAO Council Minute C-MIN 156/9.
5. ICAO Council record of Ninth Meeting, 10 March 1999, C-DEC 156/9.
6. ICAO Council record of Tenth Meeting, 10 March 1999, C-DEC 156/10.
7. ICAO Council Declaration, adopted 10 March 1999.



**Annex 1**

**Montreal Convention for the Suppression of Unlawful Acts against Civil  
Aviation, 1971**





No. 14118

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**MULTILATERAL**

**Convention for the suppression of unlawful acts against the safety of civil aviation (with Final Act of the International Conference on Air Law held under the auspices of the International Civil Aviation Organization at Montreal in September 1971). Concluded at Montreal on 23 September 1971**

*Authentic texts: English, French, Russian and Spanish.*

*Registered by the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics on 18 July 1975.*

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**MULTILATÉRAL**

**Convention pour la répression d'actes illicites dirigés contre la sécurité de l'aviation civile (avec Acte final de la Conférence internationale de droit aérien tenue sous les auspices de l'Organisation de l'aviation civile internationale à Montréal en septembre 1971). Conclue à Montréal le 23 septembre 1971**

*Textes authentiques : anglais, français, russe et espagnol.*

*Inregistrée par les États-Unis d'Amérique, le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et l'Union des Républiques socialistes soviétiques le 18 juillet 1975.*

## CONVENTION<sup>1</sup> FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION

### The States Parties to the Convention

Considering that unlawful acts against the safety of civil aviation jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation;

Considering that the occurrence of such acts is a matter of grave concern;

Considering that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

Have agreed as follows:

*Article 1.* 1. Any person commits an offence if he 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

<sup>1</sup> Came into force on 26 January 1973 in respect of the following States, on behalf of which an instrument of ratification or accession had been deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland or the United States of America, i.e. 30 days following the date (27 December 1972) of deposit of the instruments of ratification of ten signatory States having participated in the Montreal Conference, in accordance with article 15(3):

<i>State</i>	<i>Date of deposit of instrument of ratification or accession (a) at London (L), Moscow (M) or Washington (W)</i>	
Brazil*	24 July	1972 (L,M,W)
Canada	19 June	1972 (L)
	20 June	1972 (W)
	23 July	1972 (M)
Chad	12 July	1972 (L,W)
	17 August	1972 (M)
German Democratic Republic*	9 July	1972 (M)
Guyana	21 December	1972 a (W)
Hungary*	27 December	1972 (L,M,W)
Israel	30 June	1972 (L)
	6 July	1972 (W)
	10 July	1972 (M)
Malawi*	21 December	1972 a (W)
Mali	24 August	1972 a (W)
Mongolia*	5 September	1972 (W)
	14 September	1972 (L)
	20 October	1972 (M)
Niger	1 September	1972 (W)
Panama	24 April	1972 (W)
Republic of China	27 December	1972 (W)
South Africa*	30 May	1972 (W)
Spain	30 October	1972 (W)
Trinidad and Tobago	9 February	1972 (W)
United States of America	1 November	1972 (W)
	15 November	1972 (L)
	22 November	1972 (M)
Yugoslavia	2 October	1972 (L,M,W)

*(Continued on p. 179)*

- (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 he knows to be false, thereby endangering the safety of an aircraft in flight.
2. Any person also commits an offence if he:
- (a) attempts to commit any of the offences mentioned in paragraph 1 of this Article; or
- (b) is an accomplice of a person who commits or attempts to commit any such offence.

(Footnote 1 continued from p. 178)

Subsequently, the Convention came into force for the States listed below 30 days after the date of deposit of their instrument of ratification or accession with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland or the United States of America, in accordance with article 15 (4):

State	Date of deposit of instrument of ratification or accession (a) at London (L), Moscow (M) or Washington (W)	
Argentina..... (With effect from 25 December 1973)	26 November	1973 (L,M,W)
Australia..... (With effect from 11 August 1973)	12 July	1973 (L,M,W)
Austria..... (With effect from 13 March 1974)	11 February	1973 (L,M,W)
Bulgaria*..... (With effect from 24 March 1973)	22 February 28 March 20 March	1973 (L) 1973 (W) 1974 (M)
Byelorussian Soviet Socialist Republic*..... (With effect from 2 March 1973)	31 January	1973 (M)
Chile..... (With effect from 30 March 1974)	28 February	1974 a (W)
Costa Rica..... (With effect from 21 October 1973)	21 September	1973 (W)
Cyprus..... (With effect from 14 September 1973)	27 July 30 July 15 August	1973 (L) 1973 (M) 1973 (W)
Czechoslovakia*..... (With effect from 9 September 1973)	10 August	1973 (L,M,W)
Denmark..... (With effect from 16 February 1973. Decision reserved as regards the application of the Convention to the Faroe Islands and Greenland)	17 January	1973 (L,M,W)
Dominican Republic..... (With effect from 28 December 1973)	28 November	1973 (W)
Fiji..... (With effect from 4 April 1973)	5 March 18 April 28 April	1973 (W) 1973 (L) 1973 (M)
Finland..... (With effect from 12 August 1973)	13 July	1973 a (L,M,W)
Ghana..... (With effect from 11 January 1974)	12 December	1973 a (W)
Greece..... (With effect from 14 February 1974)	15 January	1974 (W)
Iceland..... (With effect from 29 July 1973)	29 June	1973 (M)
Iran..... (With effect from 9 August 1973)	29 June 10 July	1973 a (L,W) 1973 a (L,M,W)
Iraq*..... (With effect from 10 October 1974)	10 September	1974 a (M)

(Continued on p. 180)

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*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;

(Footnote 1 continued from p. 179)

State	Date of deposit of instrument of ratification or accession (a)	at London (L), Moscow (M) or Washington (W)
Italy	19 February	1974 (L,M,W)
(With effect from 21 March 1974)		
Ivory Coast	9 January	1973 a (W)
(With effect from 8 February 1973)		
Japan	12 June	1974 a (L,W)
(With effect from 12 July 1974)		
Jordan	13 February	1973 (L)
(With effect from 15 March 1973)	19 February	1973 (M)
	25 April	1973 (W)
	19 February	1974 a (W)
Libyan Arab Republic		
(With effect from 21 March 1974)		
Mexico	12 September	1974 (L,M,W)
(With effect from 12 October 1974)		
Netherlands	27 August	1973 (L,M,W)
(With effect from 26 September 1973 for the Kingdom in Europe and Surinam, and with a declaration to the effect that the Convention shall apply to the Netherlands Antilles from 11 June 1974)		
New Zealand	12 February	1974 (L,M,W)
(With effect from 14 March 1974)		
Nicaragua	6 November	1973 (W)
(With effect from 6 December 1973)		
Nigeria	3 July	1973 a (W)
(With effect from 2 August 1973)	9 July	1973 a (L)
	20 July	1973 a (M)
	1 August	1973 a (L,M,W)
Norway		
(With effect from 31 August 1973)		
Pakistan	16 January	1974 a (M)
(With effect from 15 February 1974)	24 January	1974 a (L,W)
Paraguay	5 March	1974 (W)
(With effect from 4 April 1974)		
Philippines	26 March	1973 (W)
(With effect from 25 April 1973)		
Poland*	26 January	1975 (L,M)
(With effect from 27 February 1975)		
Portugal	15 January	1973 (L)
(With effect from 14 February 1973)		
Republic of Korea*	2 August	1973 a (W)
(With effect from 1 September 1973)		
Saudi Arabia*	14 June	1974 a (W)
(With effect from 14 July 1974)		
Sweden	10 July	1973 a (L,M,W)
(With effect from 9 August 1973)		
Ukrainian Soviet Socialist Republic*	26 February	1973 (M)
(With effect from 28 March 1973)		
Union of Soviet Socialist Republics*	19 February	1973 (L,M,W)
(With effect from 21 March 1973)		
United Kingdom of Great Britain and Northern Ireland*	25 October	1973 (L,M,W)
(With effect from 24 November 1973. In respect of the United Kingdom of Great Britain and Northern Ireland and Territories under the territorial sovereignty of the United Kingdom as well as the British Solomon Islands Protectorate)		
United Republic of Cameroon*	11 July	1973 a (W)
(With effect from 10 August 1973)		

\* See p. 223 of this volume for the text of the reservations and declarations made upon ratification or accession.

(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.

*Article 3.* Each Contracting State undertakes to make the offences mentioned in Article 1 punishable by severe penalties.

*Article 4.* 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) and (e) 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 registration of that aircraft; or
- (b) the offence is committed in the territory of a State other than the State of registration of the aircraft.

3. Notwithstanding paragraph 2 of this Article, in the cases contemplated in subparagraphs (a), (b), (c) and (e) 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 registration of the aircraft.

4. With respect to the States mentioned in Article 9 and in the cases mentioned in subparagraphs (a), (b), (c) and (e) 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 9, 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 2 of Article 1.

*Article 5.* 1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offences 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 who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State.

2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraph 1 (a), (b) and (c), and in Article 1, paragraph 2, in so far as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article.

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

*Article 6.* 1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his 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 he is a national.

4. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the States mentioned in Article 5, paragraph 1, the State of nationality of the detained person and, if it considers it advisable, any other interested State of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

*Article 7.* The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, 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 8.* 1. The offences shall be deemed to be included as extraditable offences in any extradition treaty existing between Contracting States. Contracting States undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State 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. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offences 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 Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 5, paragraph 1 (b), (c) and (d).

*Article 9.* The Contracting States 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 registration for the purpose of this Convention and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

*Article 10.* 1. Contracting States shall, in accordance with international and national law, endeavour to take all practicable measure for the purpose of preventing the offences mentioned in Article 1.

2. When, due to the commission of one of the offences mentioned in Article 1, a flight has been delayed or interrupted, any Contracting State 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 11.* 1. Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences. 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 12.* Any Contracting State having reason to believe that one of the offences mentioned in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States which it believes would be the States mentioned in Article 5, paragraph 1.

*Article 13.* Each Contracting State 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 Article 10, paragraph 2;
- (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 14.* 1. Any dispute between two or more Contracting States 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 or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.

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

*Article 15.* 1. This Convention shall be open for signature at Montreal on 23 September 1971, by States participating in the International Conference on Air Law held at Montreal from 8 to 23 September 1971 (hereinafter referred to as the Montreal Conference). After 10 October 1971, the Convention shall be open to all States for signature in Moscow, London and Washington. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This Convention shall be subject to ratification by the signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, which are hereby designated the Depositary Governments.

3. This Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to this Convention which participated in the Montreal Conference.

4. For other States, this Convention shall enter into force on the date of entry into force of this Convention in accordance with paragraph 3 of this Article, or thirty days following the date of deposit of their instruments of ratification or accession, whichever is later.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force of this Convention, and other notices.

6. As soon as this Convention comes into force, it shall be registered by the Depositary Governments pursuant to Article 102 of the Convention on International Civil Aviation (Chicago, 1944).<sup>1</sup>

*Article 16.* 1. Any Contracting State may denounce this Convention by written notification to the Depositary Governments.

2. Denunciation shall take effect six months following the date on which notification is received by the Depositary Governments.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

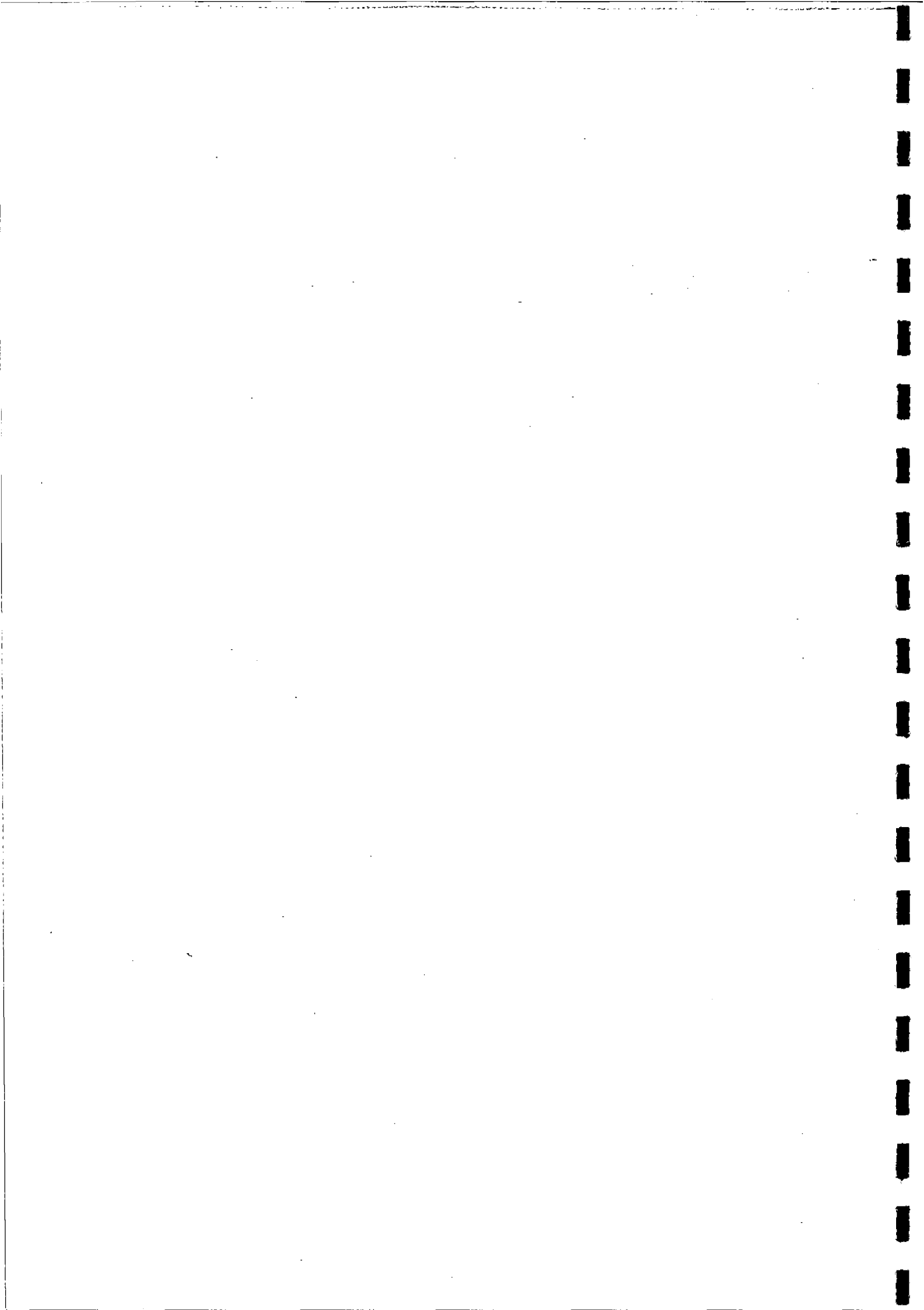
DONE at Montreal, this twenty-third day of September, one thousand nine hundred and seventy-one, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

<sup>1</sup> United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21, and vol. 893, p. 117.



**Annex 2**

**United Nations Convention against Torture, 1984**



No. 24841

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**MULTILATERAL**

**Convention against torture and other cruel, inhuman or degrading treatment or punishment. Adopted by the General Assembly of the United Nations on 10 December 1984**

*Authentic texts: Arabic, Chinese, English, French, Russian and Spanish.  
Registered ex officio on 26 June 1987.*

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**MULTILATÉRAL**

**Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants. Adoptée par l'Assemblée générale des Nations Unies le 10 décembre 1984**

*Textes authentiques : arabe, chinois, anglais, français, russe et espagnol.  
Enregistrée d'office le 26 juin 1987.*

## CONVENTION<sup>1</sup> AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights<sup>2</sup> and article 7 of the International Covenant on Civil and Political Rights,<sup>3</sup> both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,<sup>4</sup>

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

### PART I

*Article 1.* 1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person informa-

<sup>1</sup> Came into force on 26 June 1987, i.e., the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, in accordance with article 27 (1), including the provisions of articles 21 and 22 concerning the competence of the Committee against Torture, more than five States\* having declared that they recognize the competence of the Committee, in accordance with articles 21 and 22:

State	Date of deposit of the instrument of ratification or accession (a)	State	Date of deposit of the instrument of ratification or accession (a)
Afghanistan**	1 April 1987	Norway*	9 July 1986
Argentina*	24 September 1986	Philippines	18 June 1986 a
Belize	17 March 1986 a	Senegal	21 August 1986
Bulgaria**	16 December 1986	Sweden*	8 January 1986
Byelorussian Soviet Socialist Republic**	13 March 1987	Switzerland*	2 December 1986
Cameroon	19 December 1986 a	Uganda	3 November 1986 a
Denmark*	27 May 1987	Ukrainian Soviet Socialist Republic**	24 February 1987
Egypt	25 June 1986 a	Union of Soviet Socialist Republics**	3 March 1987
France**	18 February 1986	Uruguay	24 October 1986
Hungary**	15 April 1987		
Mexico	23 January 1986		

\* See p. 204 of this volume for the texts of the declarations recognizing the competence of the Committee against Torture, in accordance with articles 21 and 22.

\*\* See p. 207 of this volume for the texts of the reservations made upon ratification.

<sup>2</sup> United Nations, *Official Records of the General Assembly, Third Session, Part I*, p. 71.

<sup>3</sup> United Nations, *Treaty Series*, vol. 999, p. 171; vol. 1057, p. 407 (rectification of Spanish authentic text); vol. 1059, p. 451 (corrigendum to vol. 999).

<sup>4</sup> United Nations, *Official Records of the General Assembly, Thirtieth Session, Supplement No. 34 (A/10034)*, p. 91.

tion or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

*Article 2.* 1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

*Article 3.* 1. No State Party shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

*Article 4.* 1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

*Article 5.* 1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

- (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
- (b) When the alleged offender is a national of that State;
- (c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

*Article 6.* 1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry 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 he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

*Article 7.* 1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These 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. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

*Article 8.* 1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such 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 consider this Convention as the legal basis for extradition in respect of such offences. 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 such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

*Article 9.* 1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

*Article 10.* 1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who

may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

*Article 11.* Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

*Article 12.* Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

*Article 13.* Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

*Article 14.* 1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

*Article 15.* Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

*Article 16.* 1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

## PART II

*Article 17.* 1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from

among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

*Article 18.* 1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

*Article 19.* 1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to



give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

*Article 20.* 1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Committee shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

*Article 21.* 1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an *ad hoc* conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

- (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has

been received by the Secretary-General, unless the State Party concerned has made a new declaration.

*Article 22.* 1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

- (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
- (b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

*Article 23.* The members of the Committee and of the *ad hoc* conciliation commissions which may be appointed under article 21, paragraph 1 (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.<sup>1</sup>

<sup>1</sup> United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1, p. 18).

*Article 24.* The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

### PART III

*Article 25.* 1. This Convention is open for signature by all States.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

*Article 26.* This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

*Article 27.* 1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

*Article 28.* 1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

*Article 29.* 1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

*Article 30.* 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 or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

*Article 31.* 1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

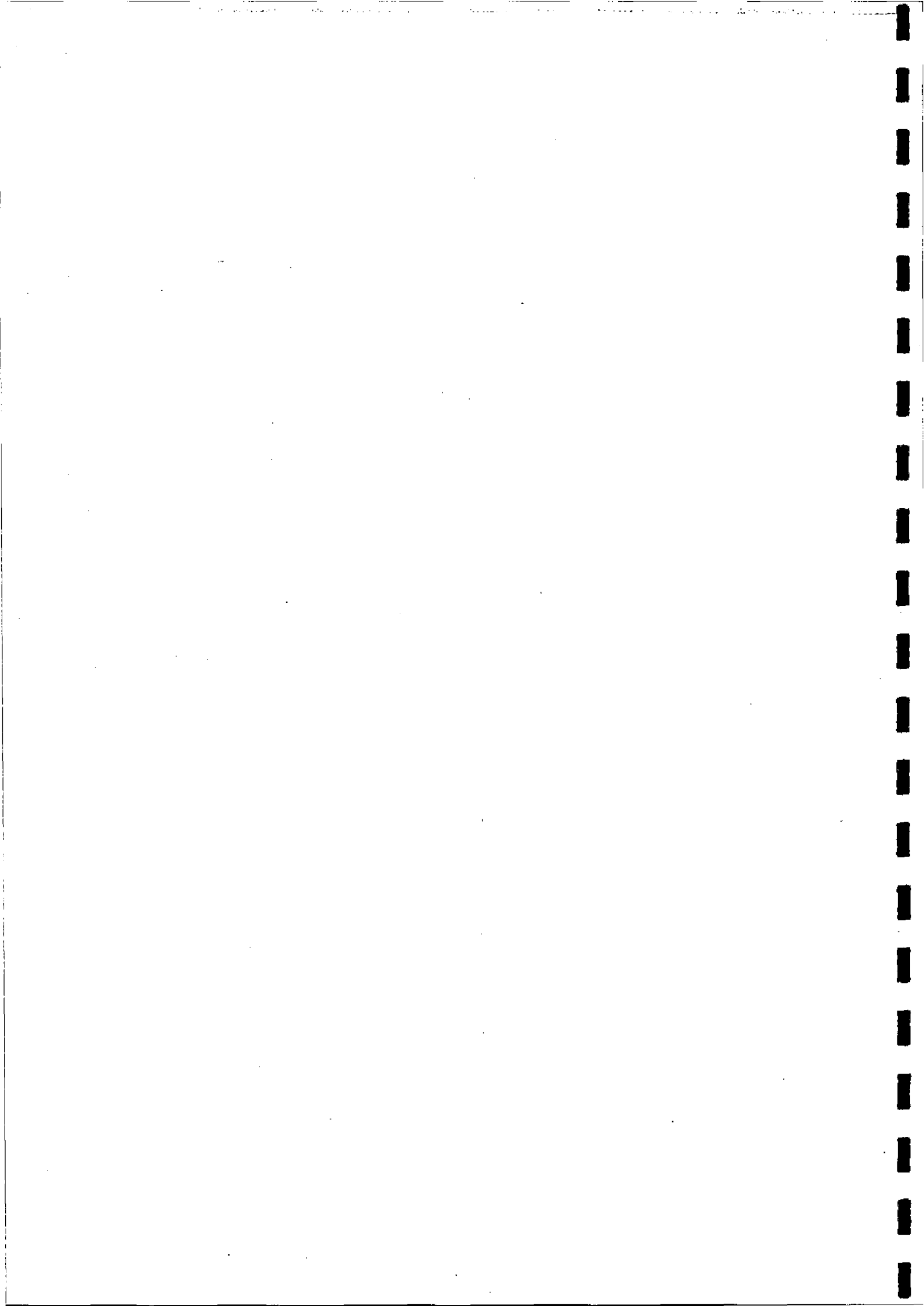
*Article 32.* The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;
- (c) Denunciations under article 31.

*Article 33.* 1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

*[For the signature pages, see p. 155 of this volume.]*



**Annex 3**

**ICAO Document PRES AK/639**

*Attachment A*

Letter from Minister of Transport and Communications of Congo to the President of  
the Council of ICAO (9 October 1998)

*Attachment B*

Letter from the President of the Council of ICAO  
to the Minister of Transport and Communications of Congo  
(3 November 1998)

*Attachment C*

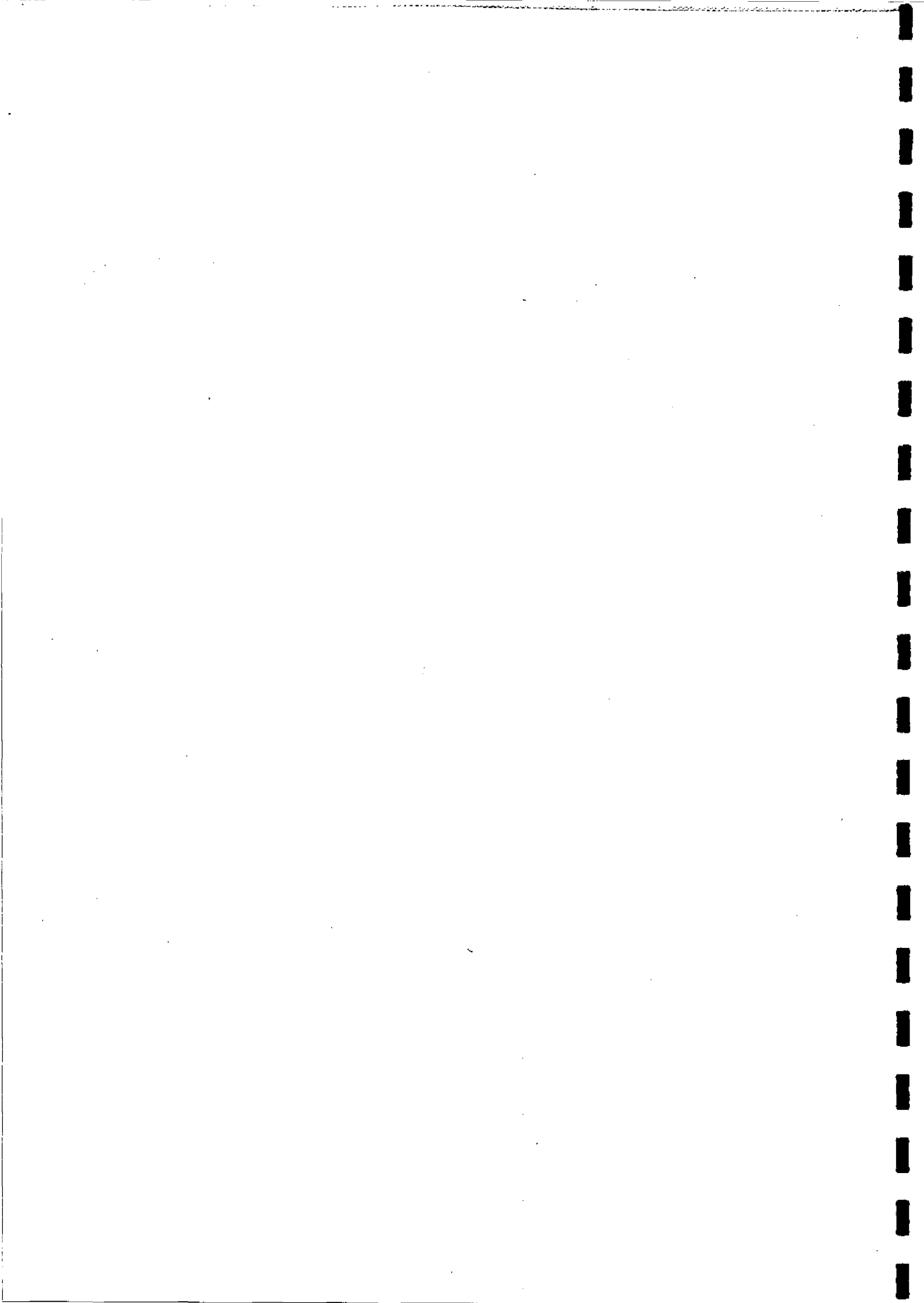
Letter from Minister of Transport and Communications of Congo to the President of  
the Council of ICAO (20 October 1998)

*Attachment D*

Letter from the Embassy of Congo to the President of the Council of  
ICAO (2 February 1999)

*Attachment E*

Letter from Minister of Transport and Communications of Congo to the President of  
the Council of ICAO (2 February 1999)







INTERNATIONAL CIVIL AVIATION ORGANIZATION  
 ORGANISATION DE L'AVIATION CIVILE INTERNATIONALE  
 ORGANIZACIÓN DE AVIACIÓN CIVIL INTERNACIONAL  
 МЕЖДУНАРОДНАЯ ОРГАНИЗАЦИЯ ГРАЖДАНСКОЙ АВИАЦИИ  
 منظمة الطيران المدني الدولي  
 國際民用航空組織

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PRES AK/639  
 AS 8/5.1 Conf.

15 February 1999

To: Representatives on the Council  
 From: President of the Council  
 Subject: Request by the Democratic Republic of the Congo

On 21 October 1998, during the first meeting of the 155th Session of the Council (C-DEC 155/1), I informed the Council that a letter dated 9 October 1998 from the Minister of Transport and Communications of the Democratic Republic of the Congo was received by my Office on 13 October 1998. This letter raised the matter of the hijacking of three Congolese civil aircraft on 4 August 1998 by the military forces of Rwanda and Uganda for military purposes, as well as the violation of the Congolese airspace by the said military forces. A copy of this letter is attached (**Attachment A**). On 3 November 1998, I sent a letter of reply to the Minister, a copy of which is also attached (**Attachment B**).

Subsequently, I received the following letters from the Democratic Republic of the Congo, copies of which are attached:

- A letter dated 20 October 1998 from the Minister of Transport and Communications (**Attachment C**);
- A letter dated 2 February 1999 from the Embassy of the Democratic Republic of the Congo (**Attachment D**), to which was attached another letter dated 2 February 1999 from the Minister of Transport and Communications (**Attachment E**).

In accordance with Rules 25 h) and 27 d) of the *Rules of Procedure for the Council* (Doc 7559/5), I intend to bring the subject to the meeting of the Council on Monday, 22 February 1999, for a decision on the inclusion of the subject in the Work Programme of the 156th Session.

  
 Assad Kotaite

Attachments

**Attachment A****DEMOCRATIC REPUBLIC OF THE CONGO**

Kinshasa, 9 October 1998

**MINISTRY OF TRANSPORT AND COMMUNICATIONS**

The Minister

409/CAB/MIN/TC/2075/H3/98

**Subject: Complaint against Rwanda and Uganda concerning aircraft hijackings and violation of Congolese airspace**

Dr. Assad Kotaite  
President of the Council of ICAO  
Montreal

Sir,

I have the honour to inform you that since 2 August 1998 the Democratic Republic of the Congo has been the victim of armed aggression on the part of Rwanda and Uganda acting jointly.

Before referring to the flagrant violations of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944, and certain international air law instruments, permit me to relate briefly the facts which establish and prove the reprehensible behaviour of the two countries.

**1. Definitional elements of the armed aggression.**

Pursuant to the discovery of several events and actions characteristic of the plot hatched and organized by the Governments of Rwanda and Uganda against the Head of State and Government of the Democratic Republic of the Congo in complicity with the Rwandan soldiers who served in our armed forces, the Head of State decided on 28 July 1998 to end the assignment of the Rwandan soldiers in the Democratic Republic of the Congo and ordered that they be repatriated to their country of origin, pending consideration of another form of military cooperation.

These soldiers were repatriated in fully official fashion on 29 and 31 July and 1 August 1998 by agreement with the Rwandan Government. However, information services reports testified to columns made up of several trucks of the Rwandan Patriotic Army loaded with heavily armed soldiers that had violated the Congolese borders to besiege the cities and airports of GOMA and BUKAVU on the border with Rwanda on Sunday, 2 and Monday, 3 August 1998 respectively. While these events were occurring in the east of the country, a group of Rwandan soldiers who had escaped from the repatriation operation took Tshatshi and Kokolo Military Camps at KINSHASA by storm.

They were neutralized by the Congolese Armed Forces after two days of combat and mopping-up. Also during the same night of Sunday, 2 to Monday, 3 August 1998, another group of Rwandan soldiers who were awaiting repatriation opened fire on the KISANGANI garrison, in the Eastern Province.

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And to pursue the execution of this plot, three Boeing-type aircraft from the Congolese airlines CONGO AIRLINES and BLUE AIRLINES and a cargo aeroplane belonging to Lignes Aériennes Congolaises were hijacked on 4 August 1998 upon departure from Goma Airport by Rwandan and Ugandan troops commanded by Mr. James KABAREHE, a Rwandan subject who had performed the functions of Acting Chief of Staff of the Congolese Armed Forces until July 1998. These aeroplanes were forced to land at KITONA Military Base in the western fringe of the country and after several trips unloaded thousands of Rwandan and Ugandan soldiers there. In this regard, the damning testimony of the Nigerian Captain INYANG, Pilot-in-Command of the AIR ATLANTIC Boeing 707 on lease to Lignes Aériennes Congolaises, which was also hijacked by Rwandan soldiers from GOMA to KITONA, and that of the Rwandan and Ugandan soldiers who were captured and made prisoners of war confirm the aggression. The purpose of these hijackings was to:

- attempt to win over the Congolese soldiers being trained at KITONA Military Base;
- blockade the seaports of BANANA, BOMA and MATADI and sabotage their facilities in order to cut Kinshasa off from supplies of foodstuffs and other indispensable goods, such as hydrocarbons and medicines;
- besiege and sabotage the Inga hydroelectric dam, which supplies electrical energy to the cities of Kinshasa and Brazzaville, Lower-Congo Province and the Katanga mining operations as well as several other countries in central and southern Africa.

It should be noted that Uganda expressly acknowledged the presence of its troops on Congolese territory at the Summit of the Non-Aligned Countries held at Durban, South Africa, in September 1998 and the SADC meeting held at Victoria Falls, Zimbabwe, in September 1998, as well as a meeting of the Ugandan Parliament, claiming that they were fighting Ugandan rebels there who were operating from Congolese territory.

2. **The aircraft hijackings and violation of Congolese airspace constitute a serious violation of international air law.**

One of the purposes of the United Nations is to maintain international peace and security and achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character.

As a specialized agency of the United Nations, the International Civil Aviation Organization has set as one of its objectives contributing to avoiding friction and promoting that cooperation between nations and peoples upon which peace in the world depends.

As such, it has set itself the aims, in particular, of developing the principles and techniques of international air navigation and fostering the planning and development of international air transport, *inter alia*, so as to ensure the safe and orderly growth of international civil aviation throughout the world and encourage the arts of aircraft design and operation for peaceful purposes.

Flight safety is an absolute priority for ICAO, which has, for several years, been concerned with the use of force against civil aircraft. Thus, Article 4 of the Chicago Convention obliges contracting States to take appropriate measures to prohibit the deliberate use of any aircraft for any purpose inconsistent with the aims of the Convention.

Furthermore, the Charter of the United Nations and the Chicago Convention on International Civil Aviation enshrine the cardinal principle of the sovereign equality of States, which obliges all States to

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respect the rights of other States. This obligation is asserted in particular in respect for the territorial integrity of other States as well as respect for the completeness and exclusiveness of the powers exercised by each of them within their territories. In this regard, the International Court of Justice states: "Between independent States, respect for territorial sovereignty is an essential foundation of international relations" (ICJ, Corfu Channel, Judgments, Advisory Opinions and Orders, 1949, p. 35).

This is what emerges from the provisions of Article 1 of the Chicago Convention, in accordance with which "the contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory". This provision entails such consequences as:

- no aircraft of a contracting State shall fly over the territory of another State or land thereon without authorization by special agreement or otherwise, and in accordance with the terms thereof (Article 3 of the Convention);
- no munitions of war or implements of war may be carried in or above the territory of a State in aircraft engaged in international navigation, except by permission of such State (Article 35 of the Convention).

It is on the basis of these principles that the Council of ICAO has condemned acts of unlawful seizure of aeroplanes, violation of the airspace of States and other acts inconsistent with the aims of the Chicago Convention.

In this particular case, in view of the evidence of the Rwandan-Ugandan armed aggression against the Democratic Republic of the Congo, it has now been established that the Chicago Convention on International Civil Aviation has been seriously violated. Among other things, this violation is characterized by:

- the invasion of the City and International Airport of GOMA in the Democratic Republic of the Congo by troops of the Rwandan Patriotic Army and Uganda and the unlawful seizure of the following aircraft: the Boeing 707 registered as 9 Q - CKG and the Boeing 727 registered as 9 Q - CDI belonging respectively to CONGO AIRLINES and BLUE AIRLINES and an AIR ATLANTIC Boeing 707 on lease to Lignes Aériennes Congolaises.
- these aeroplanes, which were hijacked on 4 August 1998 on departure from GOMA International Airport while they were in service (at the moment when their respective crews were in the process of preparing them for the flight destined for Kinshasa), were forced to land at KITONA Military Base (Lower-Congo Province), where, after several trips, they unloaded thousands of Rwandan and Ugandan soldiers and munitions and implements of war. The CONGO AIRLINES Boeing 707 registered as 9 Q - CKG suffered serious damage on take-off following an exchange of fire between the elements of the Congolese Armed Forces being trained at KITONA Military Base and the Rwandan-Ugandan aggressors, and was completely cannibalized.
- following this surprise aggression and the occupation of KITONA Military Base and Airport, civil aeroplanes from Rwanda and Uganda repeatedly flew over and violated Congolese airspace to unload soldiers there from the Rwandan Patriotic Army and Uganda as well as munitions and weapons in order to pursue their aggression against the Democratic Republic of the Congo, particularly by blockading the seaports of BANANA,

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**BOMA and MATADI and sabotaging their facilities as well as those of the Inga hydroelectric dam.**

It is important to recall that these acts of aggression, the hijackings and the violation of Congolese territorial integrity and airspace by the Rwandan army were confirmed at the press conference held in August 1998 by the Nigerian Captain INYANG, pilot-in-command of the AIR ATLANTIC Boeing 707 on lease to Lignes Aériennes Congolaises, which was also hijacked by the Rwandan and Ugandan soldiers commanded by Mr. James KABAREHE, on departure from GOMA International Airport destined for KITONA Military Base.

Furthermore, the aggression and violation of the integrity of Congolese territory by the Ugandan army were officially acknowledged by the President of Uganda at the Summit of the Non-Aligned Countries, the SADC meeting and that of the Ministers of Defence of the countries involved in the war and during a meeting of the Ugandan Parliament held in September 1998.

**3. What the Democratic Republic of the Congo expects from the Council of the International Civil Aviation Organization.**

In accordance with the provisions of the Chicago Convention on International Civil Aviation, it is for the Council of ICAO to consider any matter or any infraction of the Convention as well as any failure to carry out recommendations or determinations of the Council.

As the victim of the Rwandan-Ugandan aggression, hijackings and airspace violations, the Democratic Republic of the Congo requests that the Council consider the infractions reported above, condemn the flagrant violation of the Convention and apply penalties and other measures provided for by the Convention.

Accept, Sir, the assurances of my highest consideration.

(Sgd)

Henri MOVA Sakanyi

cc: Minister of Foreign Affairs  
Acting UNDP Representative  
(ALL) at KINSHASA/GOMBE

**Attachment B**

AS 8/5.1 Conf.

3 November 1998

Dear Mr. Minister,

I wish to refer to your letter dated 9 October 1998 in which you submitted a complaint against Rwanda and Uganda arising from the unlawful seizure (hijacking) of three civil aircraft on 4 August 1998 by the military forces of Rwanda and Uganda for military purposes, as well as to the violation of the Congolese airspace by the said military forces.

In your letter, reference is made to Articles 1, 3, 4 and 35 of the *Convention on International Civil Aviation*, as well as to other provisions. On this basis, you have requested the Council to examine the acts to which the letter makes reference and to condemn the acts and take other related action.

I wish to advise you that I have informed the Council verbally at its meeting on 21 October 1998 of the receipt of your complaint and its contents.

Furthermore, I have sought clarification on certain aspects of your request in direct contact with the Ambassador of the Democratic Republic of the Congo in Ottawa, His Excellency Kaweta Milombe Sampassa. I am in further contact with Ambassador Sampassa as regards the clarification of the aspects referred to, before this matter can be officially submitted to the Council for its consideration.

Please accept, Mr. Minister, the assurances of my highest consideration.

Assad Kotaite

Mr. Henri Mova Sakanyi  
Minister of Transport and Communications  
Ministry of Transport and Communications  
B.P. 6514  
Kinshasa/N'Dolo  
Democratic Republic of the Congo

Fax No.: 243 24 23604