



Institute of Air & Space Law

Government Security Responsibility

Professor Dr. Paul Stephen Dempsey

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Aviation Security Conventions

- Chicago Convention of 1944 – 190 States
- Tokyo Convention of 1963 – 182 States
- The Hague Convention 1970 for the unlawful seizure of aircraft – 182 States
- The Montreal Convention 1971 for the suppression of unlawful acts against the safety of aviation – 185 States
- The Montreal Protocol for the suppression of acts of violence at airports – 161 States
- The MEX Convention 1991 on the marking of explosives – 132 States

OTHER INTERNATIONAL AGREEMENTS

- **US-Cuba Memorandum of Understanding (1973)**
- **The European Convention of 1977** provides that hijacking is not deemed to be a political offense exception that avoids extradition.
- **The Bonn Declaration of 1978**, an agreement of G-7 leaders, provides that all flights would be ceased immediately to or from any nation that refused either to return the hijacked aircraft or to prosecute or extradite a hijacker.

The Tokyo Convention of 1963

The delegates who met in Tokyo in 1963 were concerned with drafting legal rules governing offenses occurring on board the aircraft. The issue of unlawful seizure of aircraft was added as an afterthought in Article 11.

Under the Convention, the contracting State in which a hijacked aircraft lands is obligated to "take all appropriate measures to restore control of the aircraft to its lawful commander" and to "permit its passengers and crew to continue their journey as soon as practicable. . . ."

The Convention has been criticized for its failure to create a definitive obligation on behalf of its signatories to prosecute or extradite the individual committing acts of unlawful interference.

The Hague Convention of 1970



- Provides that one who, during flight, “unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform such act” or is an accomplice of such person, commits an “offense,” for which extradition or prosecution and the imposition of “severe penalties” is required.
- Contracting States must render their decision in the same manner as it would in an offense of a serious nature under their domestic law.

The Montreal Convention of 1971



The Montreal Convention addresses the issues of damage to air navigation facilities and aircraft sabotage, and extends its scope to certain activities preceding embarkation and departure, and subsequent to landing and disembarkation. It declares the following to be “offense[s]:”

- (a) acts of violence likely to endanger the safety of an aircraft,
- (b) destruction of or serious damage to an aircraft or air navigation facilities, and
- (c) communication of false information that endangers the safety of an aircraft.

The Montreal Protocol of 1988



Extended the principal provisions of the Montreal Convention to airports, prohibiting acts of violence at airports and the destruction or damage of airport facilities.



PROHIBITED ACTS

The four international conventional Air Law instruments collectively prohibit the following:

- offences against penal law;
- performing an act which jeopardizes the safety of the aircraft or of persons or property therein, or good order and discipline on board (**Tokyo Art. 1(1)**);
- unlawfully, by force or threat or intimidation, seizing or controlling an aircraft, or attempting to; or
- being an accomplice of a person who performs or attempts to perform any such act; (**Hague Art. 1**);
- performing an act of violence against a person on board an aircraft in flight likely to endanger the safety of that aircraft; or
- destroying or damaging an aircraft so as to render it incapable of flight or endangering its safety in flight; or
- placing or causing to be placed a device or substance likely to destroy an aircraft in service, or to cause damage to it which renders it incapable of flight, or is likely to endanger its safety in flight; or
- destroying, damaging or interfering with air navigation in a way likely to endanger the safety of aircraft in flight; or
- communicating knowingly false information endangering the safety of an aircraft in flight;
- attempting to commit the above offences or acting as an accomplice to one who commits or attempts to commit any such offence (**Montreal 1971 Art. 1**);
- performing an act of violence against a person at an international airport likely to cause serious injury or death; or
- destroying, seriously damaging or disrupting international airport facilities or out-of-service aircraft located thereon, if such an act is likely to endanger safety at that airport (**Montreal Protocol Art. 2**).



New Offenses?

Among the additional offenses ICAO is considering adding in a new international instrument are:

- using civil aircraft as a weapon;
- using civil aircraft to spread biological or nuclear weapons or substances;
- using biological or chemical weapons or substances to cause damage; and
- threats to cause such offenses.



RIGHTS OF STATES



The State of Registration may exercise jurisdiction over offenses committed on board an aircraft (Tokyo, Art. 3(1)).

A State that is not the State of Registration may exercise its jurisdiction over an offense committed on board if the offense:

- affects its territory,
- was committed against its national or permanent resident,
- infringes its security, or
- breaches flight or maneuver rules and regulations there in force. (Tokyo, Art. 4).

If it refuses to accept a disembarked passenger that it not its national or permanent resident, a State may return such passenger to his State of nationality or permanent residence, or the territory in which he began his journey (Tokyo, Art. 14(1)).

DUTIES OF STATES



Contracting States must:

- restore control of an aircraft unlawfully seized or interfered with to the aircraft commander, or preserve his control thereof (Tokyo, Art. 11(1) ; Hague Art. 9(1));
- permit the passengers and crew to continue on to their destination as soon as practicable, and return the aircraft and its cargo to those entitled to lawful possession thereof (Tokyo, Art. 11(2), (Hague Art. 9(2)), (Montreal Art. 10(2)).
- avoid unnecessary delay of the aircraft, crew or passengers (Tokyo, Art. 17).

DUTIES OF STATES

States must allow a passenger to disembark if delivered to it by the commander of the aircraft on grounds he has committed, or is about to commit, an offense against penal law, or “may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board.” (Tokyo, Art. 12).

Once it takes delivery, if the State must:

- take him into custody for such time as necessary to launch criminal or extradition proceedings (Tokyo, Art. 13(2));
- allow him to communicate with the State of which he is a national (Tokyo, Art. 13(3));
- immediately make a preliminary enquiry into the facts (Tokyo, Art. 13(4));
- notify the State of registration, the State of which the person is a national, and any other interested State that the person has been taken into custody and the circumstances that warrant his detention, and whether it intends to exercise jurisdiction (Tokyo, Art. 13(5), Montreal 1971 Art. 5(2));and
- accord to a person in its custody treatment no less favorable than that accorded its own nationals (Tokyo, Art. 15(2)).



DUTIES OF STATES

Contracting States must make the unlawful seizure or attempted seizure of an aircraft punishable by severe penalties (Hague Art. 2). Further, it must make the following offenses punishable by severe penalties (Montreal 1971 Art. 3):

- (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. (Montreal 1971 Art. 1).



DUTIES OF STATES

If the offense took place aboard its registered aircraft, or in its territory, or aboard an aircraft dry leased to a person who has its principal place of business or its permanent resident within the State, that State must exercise its jurisdiction over the offense of unlawfully seizing an aircraft or any other act of violence against the crew or passengers (Hague Art. 4) (Montreal 1971 Art. 5(1)).

If the alleged wrongdoer is in its territory, that State may take him into custody for purposes of promptly making an enquiry into the facts to determine whether criminal proceedings or extradition should be instituted (Hague Art. 6) , (Montreal Art. 6(1)).

If the alleged wrongdoer is found in the State, it must either extradite him, or submit the case to competent authorities for prosecution in the same manner as any ordinary offense of a serious nature would be handled (Hague Art. 7) (Montreal 1971 Art. 7).

Other States must assist the prosecuting State in its criminal proceedings (Hague Art. 10(1), Montreal 1971 Art. 11).



Annex 17 to the Chicago Convention (1974)



- Reaffirms many of the requirements of the Tokyo, Hague and Montreal Conventions.
- Requires that each member State “have as its primary objective the safety of passengers, crew, ground personnel and the general public in all matters related to safeguarding against acts of unlawful interference with civil aviation.”
- Requires States to establish a national civil aviation security program and to create a governmental institution, dedicated to aviation security, that would develop and implement regulations to safeguard aviation.
- Requires States to develop a security training program, share aviation threat information, and otherwise cooperate with other States on their national security programs.

Recent Amendments to Annex 17

- Amendment 10 to Annex 17, adopted less than three months after the tragic events of September 11th, extends its reach to *domestic* air transportation. Specifically, the relevant provision provides: “Each Contracting State shall ensure that principles governing measures designed to safeguard against acts of unlawful interference with international civil aviation are applied to domestic operations to the extent practicable.”
- Coupled with ICAO’s new security audit procedures, states that fail to comply with their international legal obligations in this arena are likely to have industrialized nations prohibit commercial aviation services to or from their territories.



THE ICAO SECURITY AUDITS

Following September 11, 2001, the 33rd ICAO General Assembly passed several resolutions strongly condemning the use of aircraft as weapons of mass destruction. One such resolution called upon ICAO to establish a security audit program modeled on USOAP, launched in 1999. As a result, ICAO inaugurated the Universal Security Audit Programme [USAP] to assess state compliance with Annex 17 (security).

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