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Un Legal Instruments on Terrorism Relating to Civil Aviation

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Abstract

This paper focused on the UN treaties on terrorism that affect civil aviation. The authors analyze all those treaties, studying their scope, structure, and purpose in practice. The treaties have also been studied in a comparative perspective to highlight their strengths and eventual weaknesses, which have been disclosed (uncovered) by the developments in the field of aviation, during their practical application since 1963 until today. The treaties have established several criminal offenses against civil aviation, including the use of commercial aircraft as lethal weapons, then have addressed the issues of jurisdiction between states in concrete cases; extradition; mutual legal assistance between States Parties, etc. As a result, the authors are deeply convinced that the development of the Tokyo-Hague-Montreal-Beijing system, which is part of the whole international legal system of combating terrorism, is fully justified. The new treaties also make this system more coherent and sufficient in relation to preventing, combating, and suppressing unlawful acts against civil aircraft and provide a suitable ground for the development of multilateral international cooperation between state parties and the creation of an effective and uniform legal mechanism. It should be emphasized that the adoption of the Beijing Treaties is part of the implementation of the UN Global Counter-Terrorism.

Keywords: Terrorism, terrorist attacks, hijacking, civil aviation, jurisdiction, convention, protocol.

Introduction

Civil aviation has been the target of attacks of various kinds and motives since the appearance of this type of transport of people and goods. The majority of early attacks were conducted for non-political reasons, resulting in non-terrorist attacks, but in the second half of the 20th century, the number of attacks on aircraft and civil aviation in general of a terrorist nature has appeared and constantly increased, conducted for political, religious, extremist purposes, etc.

The first terrorist bombing in mid-air of an airliner took place in May 1949, the first armed assault on an airliner on the ground occurred in June 1968, and the first indiscriminate armed assault on passengers at an airport happened in May 1972 (Merari, 1998). There has been a continuous increase in the number of civilian aircraft hijackings, as well as other terrorist acts against international civil aviation, so according to the Global Terrorism Database, 1,363 terrorist attacks against airplanes and international airports were registered during the period 1970-2015.

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In response to the great wave of terrorist attacks (hijackings, explosions, etc.) against civil aviation that took place in the 1960s and 1970s, in order to enhance aviation security, (The "Golden Age" was brought to an end in (1973) when the Federal Aviation Administration (FAA) in the US introduced rules which required the screening of all passengers and carry-on luggage before boarding passenger aircraft. This is a measure we take for granted today) it comes to the drafting and approval of the national and international legal infrastructure, through which human society aims to prevent and punish such terrorist acts.

New security measures, as well as numerous legal instruments, including those of the UN, have influenced the decrease in the number of terrorist acts with fatalities in civil aviation. As a result, civil aviation has become a relatively secure means of transportation. If we compare that to the number of people who fly, in 2017 there were just 0.01 deaths per million passengers, or one death per 100 million. The situation has improved markedly since the 1970s, when there were approximately five fatalities per million passengers. The fatalities of hijacking are rare: with increased safety measures post-2001, there have been almost no (Ritchie, Hasell, Mathieu, Appel & Roser, 2013). In this regard, the UN has also been very active, so during the period 1963-2014, seven (7) treaties of this nature were approved, namely four (4) conventions and three (3) protocols, which will be the topic of this paper.

The Scope of the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft (The Tokyo Convention)

The Convention was adopted on 14 September 1963 in Tokyo and has four main objectives. First, it makes it clear that the state of registration of an aircraft has the authority to apply its laws to events occurring on board its aircraft while in flight no matter where it may be. Second, the Convention provides the aircraft commander with the necessary authority to deal with persons who have committed, or are about to commit, a crime or an act jeopardizing safety on board his aircraft. Third, the Convention delineates the duties and responsibilities of the contracting State in which an aircraft lands after the commission of a crime on board, including its authority over, and responsibilities to, any offenders that may be either disembarked within territory of that State or delivered to its authorities. The fourth major subject dealt with by the Convention is the crime of 'hijacking' (Boyle, 1964).

As regards the scope of the Convention, its provisions make it clear that two types of action fall within its scope: a) offenses against criminal law and (b) acts which, whether they are offenses, may or will jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board. Although the Convention does not specify criminal offences within its scope, it has determined the necessary criteria or circumstances under which it should also apply to its geographic scope. It also contains provisions excluding certain types of aircraft and certain types of crimes from the application of the Convention.

Article 1 of the 1963 Convention provides the basis for the *vis vitae* of the Convention. The basic prerequisite is that an aircraft registered in a contracting state be in flight, or on the surface of the high seas or any area outside the territory of any state. An aircraft is considered to be in flight from the moment when power is applied for take-off, until the moment the landing run ends. The second prerequisite is that any offence or act must be committed by a person on board the aircraft. Presumably the offense must be one against penal law, and the act must be one which may or does jeopardize the safety of the aircraft, or of persons or property on board the aircraft. Also, the use of the word 'person' would appear to include not only the passengers, but also the crew, and even the aircraft commander (Klimek, 1971).

Such a definition of 'offenses and acts' can result in two obvious effects. The first is that language excludes saboteurs who just put a bomb on the plane, without flying. The Convention makes it apparent that while it deals with offenses committed on board aircraft, the person who commits the offense must also be present on board. The second, is that the Convention is alleged to be applicable to domestic flights as well. The Convention applies also in the situation of a forced landing of the aircraft (Klimek, 1971).

Article 11 of the Convention specifically addresses the criminal offense of Unlawful Seizure of Aircraft. The approach taken by this Article (11) to the crime of unlawful seizure of aircraft avoids attempting either the description of an international crime or the attempt to make such action a crime under international law. The question of whether a particular act is lawful or unlawful is to be judged by the law of the State of registration of the aircraft or the law of the State in whose airspace the aircraft may be in flight. According to paragraph 1 of Article 11, in the event of commission of the act of hijacking, imposes on all contracting States the obligation to take appropriate measures to restore or preserve the aircraft commander's control of the aircraft (Klimek, 1971). A Contracting State should not prosecute with its military aircraft an aircraft hijacked in the territorial airspace of another State without the authorization of that State, because to do so would be unlawful. Of course, once an aircraft lands within a territory of a contracting State after being hijacked, the measures which a State may take to restore control to the lawful aircraft commander are much more inclusive. Additionally, when this occurs, paragraph 2 of Article 11 imposes upon the contracting State the obligation to permit the passengers and crew to continue as soon as practicable and to see to it that the aircraft and its cargo are returned to the persons lawfully entitled to possession (Klimek, 1971).

The Convention is characterized and distinguished from other Conventions by its provisions defining the powers of the aircraft commander. Chapter III, specifically Articles 5-10 of the Convention, governs this issue. These Articles describe the acts and offenses that his authority applies to, the duration of its existence, its extent, and its limitations. Their terms also impose certain specific obligations on the aircraft commander, with which he must comply in order to bring himself within the protection accorded him by the Convention (Boyle, 1964).

The 2014 Protocol to Amend the Convention on Offences and Certain Acts Committed on Board Aircraft, 1963 (the Montreal Protocol)

This Protocol was adopted at Montreal on 4 April 2014 and entered into force on 1 January 2020. Despite the fact that the 1963 Convention applied with its useful principles, in practice the illegal behavior and undisciplined actions of passengers on board aircraft have not ceased, in fact become a growing threat. Such cases indicated that the Convention did not address many critical issues, nor specified which actions were considered "criminal acts" or for which actions of the undisciplined passenger was mandatory extradition (Urban, 2016).

These and other reasons that have appeared during the 51-year period (1963-2014) have led to the approval of the Montreal Protocol, which aim is to supplement and enhance the 1963 Convention, in accordance with contemporary circumstances. Generally, the protocol is intended to review the jurisdictional clauses under the Tokyo Convention to align them with modern practice and establish common standards, and practices regarding offenses; strengthening international cooperation in harmonizing enforcement procedures; regulate the power of the aircraft Commander and related immunity and the status of In-Flight Security Officers (Urban, 2016). Given the intentions of the Protocol, it can be said that the following issues were among the focus of its amendments:

List of offences; during the Conference at which the Protocol was approved, predominated the proposal "for not establishing an actual list due to the need for safeguarding provisions in exceptional situations, such as military activities"(Urban, 2016). The Protocol did not contain a list of offences, but rather it includes two types of unacceptable behavior, and requested that ICAO update its Circular 288 with a more detailed and modernized list of offences (Urban, 2016). “Enumerated offences and acts can secure the uniform interpretation of the Protocol’s scope. Wherever such offence would occur, the Contracting State would commence legal actions against the alleged offender” (Lásková & Sedláčková, 2021).

Jurisdictions issue; although the Protocol has made significant improvements in jurisdictions, there are still unresolved issues. The issue of jurisdiction is regulated by Articles 3 and *3 bis* of the Protocol, which expressly point out in paragraph 1 of the article: “the State of registration of the aircraft is competent to exercise jurisdiction over offences and acts committed on board.” However, the other paragraphs of these articles provide that other states also have competence over jurisdiction, such as ‘the State of Landing’(*Article 3.1 bis*); ‘the State of the operator’ etc. Where it is added that section 3.3 of the Article contains the following wording: "this Convention does not exclude any criminal jurisdiction exercised in accordance with national law," then it may be said that in regard to jurisdiction, the Protocol offers many alternatives. For this reason the lawmaker added *Article 3 bis*,

as a mandatory obligation to minimize overlap between the involved jurisdictions, requesting from them to also deepen cooperation through coordination of their actions.

Issue of the In-Flight Security Officers (ISFOs); the United States defined IFSOs as, "government personnel who are specifically trained and selected and deployed on aircraft with the purpose of protecting that aircraft and its occupants" (Authority and Protections for In-Flight Security Officers, (2014). (Int'l Conference On Air Law). IFSOs are a necessity to help address the issue of terrorism, especially flights that are in anyway connected to the United States (Authority and Protections for In-Flight Security Officers, (2014). (Int'l Conference On Air Law). Article 6.2 of the Protocol defines that "the aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of in-flight security officers or passengers to restrain any person whom he is entitled to restrain." The final wording of this provision is likely a direct consequence of the significant support for the incorporation of the IFSO, and at the same time, the significant opposition to the inclusion of protection for this role (Nase, 2014). While Article 10 does not give IFSOs full immunity, but instead is offered reasonable legal protection for their actions to protect and ensure the safety of the aircraft, along with the persons on board (Article 10 of the 2014 Protocol).

Ability to Obtain Damages From the Unruly Passenger; the provision of *Article 18 bis* states "nothing in this Convention shall preclude any right to seek the recovery, under national law, of damages incurred, from a person disembarked or delivered pursuant to Article 8 or 9 respectively." It does not explain who may or may not request recovery. As the provision currently reads, it seems to mean that anyone can seek recovery from a disembarked unruly passenger. The Montreal Convention does not define damage, so it is left to national law to define the term and establish which kind of damage must be compensated (Nase, 2014).

- In addition to the issues mentioned earlier, the Protocol's provisions modify the definition of 'aircraft in flight', stating that "an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation" (Article 1.3 (a) of the 2014 Protocol). The changed definition would bring the Convention in unison with the Beijing Convention 2010. (Article 1.3 (a) of the 2014 Protocol).

-The Protocol aims to expand anti-discrimination policies by prohibiting discrimination on any grounds, in addition to the existing ones (political nature, racial or religious), there are new antidiscrimination grounds, such as nationality, ethnic origin, political opinion, or gender.

-The newness to this Protocol presents *Article 15 bis*, with the provisions of which each Contracting State is encouraged to take such measures as may be necessary to initiate appropriate criminal, administrative or any other forms of legal action can

be taken against anyone who commits an offence or act mentioned in Article 1 while on board an aircraft.

-It is worth noting that the provisions of the Protocol provide that as between the contracting parties to the Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument and shall be known as the Tokyo Convention as amended by the 2014 Montreal Protocol.

-Finally, it should be emphasized that although IATA's STEADS report identified alcohol as the lead contributing factor in unruly passenger events, the Convention did not address whether alcohol should be banned on all international flights or whether an already intoxicated person should not be allowed to board the aircraft (Urban, 2016).

The scope of the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (the Hague Convention)

Aircraft hijacking was at its peak in the late 1960s and early 1970s. Between January 1961 and August 1973, approximately 343 successful and unsuccessful hijackings have occurred throughout the world (Abramovsky, 1974). Due to these developments, the UN approved the Convention for the Suppression of Unlawful Seizure of Aircraft on 16.01.1970 in the Hague. Although the Tokyo Convention deals partially with the unlawful seizure of aircraft, the Hague Convention became the first international instrument to deal with the unlawful seizure of aircraft. The scope of the Hague Convention is the offence of 'unlawful seizing or exercising control of an aircraft'. The description of this offence in article 1 of the Hague Convention and article 11 of the Tokyo Convention is identical with slight changes in drafting. Although the expression "unlawful seizure of aircraft" is not defined in the Convention, in Article 1 the elements that must be fulfilled in order to exist an offense to which the Convention will be applied are highlighted:

a. The first element is that the offense can be committed by: "any person who is on board aircraft", it means that under provisions of the Article 1, the Convention does not apply to an attempt to seize or exercise control of an aircraft by a person on the ground or in another aircraft.

b. The second element is the act of committing, which can be done by ‘force or threat, or by any other form of intimidation.’ In accordance with this definition, only a seizure effected by force, threat of force, or intimidation is an 'unlawful seizure' within the meaning of the Convention. The words 'any other form of intimidation' are to be construed in the light of the authentic French text of the Convention, from which these words are absent. They refer only to moral compulsion which is also comprised in the French word "violence”. (Mankiewicz, 1971).

c. The third element is the ‘unlawful seizure or exercise of the aircraft’, which is the subjective aspect of the offense. In order to have this element, the offender must use unlawful force or threat, resulting in a 'seizure', respectively interference in the control or unlawful exercise of control of an aircraft in flight, respectively the establishment of an unlawful command on the direction of the

subsequent flight of the aircraft. So, it's simply unlawful command, control, or deviation of the aircraft.

d. The fourth element of this offence is the fact that the offence must be committed while 'the aircraft is in flight.' According to Article 3.1. of the Convention, an aircraft is 'in flight' from the moment when all external doors are closed following embarkation, not only from the moment when power is applied for take-off; it ceases to be 'in flight' when any such door is opened for disembarkation, not at the prior moment when the aircraft has come to a final stop. The Convention excludes hijacking that is initiated or attempted before or after the aircraft's doors are closed or opened. Therefore, such acts are punishable only under the law of the state where they were committed, the jurisdictional articles of the Convention do not apply to them (Mankiewicz, 1971). To apply the Convention, an 'aircraft in flight' must first be a civil aviation flight and secondly have 'international character'. This 'international character' is defined rather curiously: according to article 3.3. the Convention applies "only if the place of take-off or the place of actual landing of the aircraft....is situated outside the territory of the State of registration of the aircraft." Generally, the Convention applies to all flights ending actually in a state other than the one from which the aircraft took-off. In other words, the Convention applies to 'domestic flights' outside the state of registration. Hence, it is rather difficult to understand why it is inapplicable to domestic flights within that state (Mankiewicz, 1971).

The Convention requires that parties assist each other with the criminal procedures established in criminal cases that are defined according to it (Article 10 para. 1.).

The Convention does not deal with the contracting states that do not fulfill its provisions, respectively with States that take measures against the Convention, such as support for hijackers. The convention also does not contain provisions that regulate the issue of *bona fide* brave hearts as well as the provision regarding medical assistance to victims of the hijacking.

The 2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft 1970 (The Beijing Protocol)

The Protocol was approved in Beijing on September 10, 2010, to complement the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft. The Protocol is a complement to the 1970 Hague Convention in many ways, starting with the expansion of the criminalization scope to deal with new types of hijacking of aircrafts, which have been appeared during the 40-year period (1970-2010), some of them are the result of various technological and social developments, including kidnappings that are carried out using modern technological means. Thus, in Article II of the Protocol, it is expressly stated that "any person commits an offense if that person unlawfully and intentionally seizes or exercises control of an aircraft in service by force or threat thereof, or by coercion, or by any other form of intimidation, or by any technological means."

The Beijing Protocol adopted the concept of 'aircraft in service', leaving aside the notion of 'aircraft in flight' adopted by The Hague Convention. This expanded temporal scope will apply to behavior such as the unlawful seizure of an aircraft (Piera & Gill, 2021). It means that the time of committing the criminal offense has been expanded, concretely the offence can be committed before the start of the flight, while the ground personnel perform preparations and after landing of the aircraft up to twenty-four hours (Article V of the 2010 Protocol).

The 2010 Protocol creates a new principal offense, if the unlawful and intentional seizure or exercise of control of an aircraft in service is carried out by 'coercion or by any technological means'. This new concept tries to capture the possibility that, for instance, "control [of the aircraft] could be obtained by a person on the ground jamming the [air navigational] signals without seizing [it] physically." Obviously, a prosecutor would still need to establish the perpetrator's intent to commit such an offense (Piera & Gill, 2021).

With regard to the 1970 Hague Convention, only 'attempts' and 'complicities' were regulated, whereas with Article II (paragraphs 2 and 3) of the Protocol in addition to these, 'the threat to commit a criminal offense' was regulated; then 'the organization and direction of others (group)'; 'unlawfully and intentionally assists'; 'agreeing with one or more other persons to commit an offense', as well as 'contributing in any other way to the commission of an offence'. The Protocol is also characterized by the fact that, in addition to the responsibility of natural (physical) persons, it also regulates the responsibility of a legal entity for the first time.

With the provisions of the Protocol, the issue of the jurisdiction of States Parties is also raised, offering new formulations and solutions related to jurisdiction, respectively adding and being more specific for jurisdiction in cases 'when the offense is committed by a national of that State' or 'when the offense is committed against a national of that State' and 'when the offense is committed by a stateless person whose habitual residence is in the territory of that State.' (Article VII of the Protocol). There is no mandatory obligation to establish jurisdiction since the Beijing instruments require only that a State Party 'take[s] such measures as may be necessary to establish its jurisdiction (Aggarwala, N., Fenello, M. J & Fitzgerald, G. F,. 1971). Whereas with Article X of the Protocol, the issue of human rights of the person who is taken into custody is regulated.

It is determined by *Article 8bis* that any offence committed under Article 1 of the Convention for the purpose of extradition or mutual legal assistance cannot be considered as a political offense or as an offense connected with a political offense or as an offense inspired by political motives.

Another novelty in this Protocol is determined by Article XVI- *Article 10bis,* according to which if a State Party has reason to believe that one of the offences set forth in Article 1 will be committed, in accordance with its national law, it shall provide any relevant information it possess to those States Parties that it believes would be the States affected by such an offence.

The 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (the Montreal Convention)

The Convention was approved on September 23, 1971, at Montréal, Canada. The Montreal Convention is a successor to the Tokyo and Hague Conventions, and its primary objective is to regulate a new type of attacks on civil aviation, also, to modify previous conventions. The primary focus of these changes is on the types of offenses that can be committed against civil aviation, furthermore, they relate to the perpetrator's location during the crime.

The continued rise of terrorist attacks against aircraft has necessitated changes that were required at the time. It is worth emphasizing the fact that between 1949 and 1970, 22 aircraft were destroyed and over 400 persons were killed as a result of the detonation of explosives on board (Criminal Law Section Legal and Constitutional Affairs Division Commonwealth Secretariat Marlborough, 1999). In order to deter and punish such acts, a new treaty was necessary. Up until the Tokyo Convention, offenses were defined as 'offenses against the criminal law', in addition the Hague Convention emphasized ‘seizing, or exercising control of, that aircraft’, while with the Montreal Convention in article 1.1. in sub-paragraphs a, b, c, d and e, new types of offenses are defined.

Specifically, in sub-paragraph (a) ‘the use of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft’ is defined as a new offense. The act of violence must be of a nature that jeopardizes the safety of the aircraft. It must be directed against a person on board an aircraft in flight but, in contrast to the Hague Convention, the attacker does not have to be on board the aircraft. The attack does not have to be directed against a particular person. Thus the provision would extend to the application of violence against persons on board an aircraft in flight from outside the aircraft, such as firing a missile at it or planting a bomb on board before the flight (Criminal Law Section Legal and Constitutional Affairs Division Commonwealth Secretariat Marlborough, 1999).

In the context of sub-paragraph (b), the expression 'destroying an aircraft in service or causing damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight’ is defined as a new offense. The destruction or damage must occur at a time when the aircraft is in service; the offence does not extend to acts of sabotage against an aircraft performed before then. Yet it is of course possible that a person might before an aircraft is in service set in train a course of events which results in destruction or damage when the aircraft is in service. The offence is not limited to the conduct of persons on board the aircraft. This encompasses acts of sabotage to the aircraft before it begins the flight and an attack on an aircraft in flight from another aircraft. In the case of the infliction of damage which falls short of destruction, the damage must either render the aircraft incapable of flight or be likely to endanger its safety in flight. In the latter case it is not necessary that its safety in flight should in fact be endangered (Criminal Law Section Legal and Constitutional Affairs Division Commonwealth Secretariat Marlborough, 1999).

Furthermore, sub-paragraph (c) defines a new criminal offense as 'placing or causing to be placed on an aircraft in service, by any means whatever, a device or substance which is likely to destroy that.' The primary purpose of this is to cover cases where a bomb has been placed on board. Words such as 'device or substance' are probably broad enough to include most bombs. The offence can occur either by introducing the bomb into the aircraft or by attaching it to the outside. However, the provision requires that the bomb be placed or caused to be placed on an aircraft 'in service'. This does not mean that it has to be in service when the act is committed; it is enough that the act is done before the period of service commences and the bomb remains there during any period of service (Criminal Law Section Legal and Constitutional Affairs Division Commonwealth Secretariat Marlborough, 1999).

The Montreal Convention's innovation also includes offenses that can indirectly affect the aircraft, such as those mentioned in sub-paragraph (d) of Article 1.1, as 'destroying or damaging air navigation facilities or interfering with their operation, if any such act is likely to endanger the safety of aircraft in flight'. They may be on the ground, at an airport or elsewhere, and, possibly, on board an aircraft. It is not necessary that the safety of a particular aircraft in flight should in fact be endangered; it is sufficient that the act creates a general danger to the safety of aircraft in flight. The provision is sufficiently wide to include the jamming of radio signals emitted from air navigation facilities (Criminal Law Section Legal and Constitutional Affairs Division Commonwealth Secretariat Marlborough, 1999).

A similar crime is outlined in sub-paragraph (e), as 'communication of information that he knows to be false, thereby endangering the safety of an aircraft in flight'. The purpose of this offence is to cover cases like false signals being sent to an aircraft to divert it from its intended course. However, such conduct will constitute an offence only if the safety of the aircraft is actually endangered.
Based on the criminal nature of these offenses, including the means of commission, the *modus operandi*, and other constituent elements, it is apparent that such crimes can be committed by person who is not on board the aircraft.

In each case the conduct must be unlawful and carried out intentionally. The former requirement excludes from the scope of the offence conduct which is legally justifiable or done with legal authority, such as preventive action by police. The requirement that the act should be intentional applies only to the acts performed, not to their consequences; it is immaterial whether the consequences were those intended (Criminal Law Section Legal and Constitutional Affairs Division Commonwealth Secretariat Marlborough, 1999).

Under Article 3 each Party undertakes to make the offences punishable by severe penalties (Criminal Law Section Legal and Constitutional Affairs Division Commonwealth Secretariat Marlborough, 1999). What constitutes severe penalties was not provided, it was left to the discretion of the Parties. States Parties were expected to use all reasonable means to prevent offences in accordance with domestic and international law (Muoneke, L. C., 2013). It should be pointed out that the Montreal Convention's approach is highly similar to that of the Hague Convention and many of its provisions are identical.

The 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, 1971 (the 1988 Montreal Protocol)

The Protocol was approved on February 24, 1988, in Montreal, which supplements the 1971 Montreal Convention by extending the regime of the Convention to include offences involving acts of violence at international airports. As between the Parties to the Protocol, the Convention and the Protocol are to be read and interpreted as one single instrument (Article 1).

Previous Conventions (1963, 1970 and 1971) dealt with the safety of civil aviation, particularly the safety of aircraft in flight. The Conventions did not adequately address all the issues related to the suppression of unlawful acts against the safety of civil aviation. In the practice of international terrorism during the 70s and 80s, had risen the appearance of unlawful acts of violence which endanger or are likely to endanger the safety of persons at airports serving international civil aviation or which jeopardize the safe operation of such airports and disturb the safe and orderly conduct of civil aviation for all States. The terrorist attacks at the Rome and Vienna Airport on December 27, 1985 were a notorious example (The Rome and Vienna airport attacks were two major terrorist attacks carried out on 27 December (1985). Seven Arab terrorists attacked two airports in Rome, Italy, and Vienna, Austria, with assault rifles and hand grenades. Nineteen civilians were killed and over a hundred were injured before four of the terrorists were killed by El Al Security personnel and local police, who captured the remaining three). These developments and terrorist threats at airports resulted in the approval of the Montreal Protocol.

In general terms, it was agreed that the new instrument should not depart from the basic principles of the Hague and Montreal Conventions, and should seek only to supplement the Montreal Convention. As a result, it was decided that the new instrument should not be a new Convention but rather a Protocol to the Montreal Convention of 1971 (Williams, S. A., 1988).

As noted herein above, one weakness of the Montreal Convention of 1971 is that it is limited to offences which affect the safety of aircraft 'in service' or 'in-flight'. However, this limitation was addressed to some extent by the Protocol of 1988, which expanded the reach of the Montreal Convention to extend beyond aircraft in flight and include airports serving international civil aviation, where air passengers are assembled before and after travel. In particular, Article 2 (with Article *1bis*) expands the scope of the offences set out in Article 1 of the 1971 Convention by adding new offences ('the Protocol offences'), and Article 3 establishes jurisdiction over Protocol offences. In particular, this article states that: "any person commits an offense if he unlawfully and intentionally, using any device, substance or weapon: (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or (b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport" (Article 2 of the (1988) Montreal Protocol).

Based on this definition of the offence, its main features can be distinguished, namely:

- The act of violence must be against a person and must cause, or be such as is likely to cause, serious injury or death. The intent to cause death or serious injury is not necessary for the offence to exist, it is sufficient for the perpetrator to intentionally exercise violence that will or may cause serious consequences.
- According to the provisions of the Protocol, the perpetrator of the violence must act "unlawfully and intentionally, using any device, substance, or weapon." This expression is vague and does not specify the device, means, weapon, or substance, that the perpetrator may use, but it was revealed that if he is unarmed, he cannot commit an offence.
- The Protocol will be broadly applicable to all acts of violence or destruction connected to an airport that serves international civil aviation. It is not limited in scope but refers to the facilities of an airport or aircraft that is not in service. Facilities are not defined, but it could be argued that they mean facilities located inside and outside the airport structure, such as airport buildings and elsewhere within the airport, including runways.
- The Protocol's applicability is dependent on the international dimension. The international dimension was included in the concept of 'airport serving international civil aviation'.
- Concerning the new offence contained in new paragraph *1 bis* to the Montreal Convention, the crucial element is that the act "endangers or is likely to endanger safety at that airport" (Williams, S. A., 1988). The act is distinguished from 'ordinary' acts of violence by the requirement that it must endanger life or be likely to endanger safety at the airport (Criminal Law Section Legal and Constitutional Affairs Division Commonwealth Secretariat Marlborough).

The 1988 Protocol has a novel feature that is also restrictive as it stipulates that the state where an alleged offender is present shall take measures necessary to establish its jurisdiction over the offences where it does not extradite to the state where the offence was committed. It is not unusual to prioritize extradition when prosecution via jurisdiction on the universal basis is the sole alternative (Williams, S. A., 1988). All of the pre-existing anti-terrorist conventions are couched in such terms. However, the Protocol adds a twist; extradition is restricted to the state with the territorial basis of jurisdiction and does not provide for any other potential bases such as the active and passive nationality principles (Williams, S. A., 1988).

A final question is who may sign, ratify, or accede to the Protocol. Article 5 of the Protocol provides in paragraph 2 that "Any State which is not a Contracting State to the Convention may ratify this Protocol if at the same time it ratifies or accedes to the Convention in accordance with Article 15 thereof" (Williams, S. A., 1988).

The 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (The Beijing Convention)

The terrorist attacks of September 11, 2001, with tragic consequences, revealed numerous weaknesses in the international legal infrastructure related to civil aviation security. The international community has consistently committed to addressing the issue of aviation security, eliminating weaknesses, covering gaps of various natures, and modernizing existing international conventions. After a nine-year process, in the diplomatic conference held in Beijing, from August 30 to September 10, 2010, two international treaties were approved, one of them is the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation or the Beijing Convention.

Through this Convention, the parties are required to criminalize a number of new and emerging threats to the safety of civil aviation, including using aircraft as a weapon, then the transport of biological, chemical, and nuclear weapons and related materials etc. The Convention enhances the current international counterterrorism legal framework and makes it easier to prosecute and extradite terrorists. The Convention encourages cooperation between States in the fight against terrorism directed against civil aviation while insisting on human rights and the fair treatment of suspects of terrorism. The Convention's provisions address other issues and integrate various innovations related to civil aviation. Simply, the Beijing Convention creates a new international legal framework related to aviation security. In the same way as its predecessor, the Beijing Convention applies to offenses that involve aircraft, air navigation facilities, and airports that serve international civil aviation.

Contrary to them, the Beijing Convention, in Article 1, includes 'The New Principal Offenses' in the form of: 'the use of an aircraft as a weapon of mass destruction' (Article 1.1. f.); 'the release of BCN weapons' (Article 1.1.g.) and 'the transportation offense' (Article 1.1.i). In the Beijing Convention, a number of ancillary offenses, including concealment, were criminalized (Piera & Gill, 2021). The most novel aspect of the Beijing Convention is the creation of a new criminal offense of using an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment. This new offense is an obvious response to the factual scenario that arose on 9/11, but it also addresses the fact that a terrorist's use of an aircraft as a weapon of mass destruction contravenes the spirit of the Chicago Convention (Piera & Gill, 2021).

The second new offense criminalizes the releasing or discharging from a civil aircraft any biological, chemical, or nuclear ("BCN") weapon or explosive, radioactive or similar substances in a manner that is likely to cause death, serious bodily injury, or serious damage to property or the environment (Article 1.1. (g) of the Beijing Convention).

The third new offence is similar to the second one, but specifically criminalizes the use of the same dangerous items against or on board a civil aircraft. In this scenario, the target is the actual aircraft and the people on board, rather than

anything outside the aircraft. This has been a situation that has occurred with some frequency in recent years (Toorn van der, D., 2010).

A major development is the inclusion of a provision criminalizing the transport of dangerous materials such as explosive or radioactive materials, a BCN weapon, or source or special fissionable material if proof is shown of specific mental elements in relation to the transport of each type of dangerous material. For instance, the provision makes an individual liable under this offense if the person transported explosive or radioactive materials knowing they would be used for a terrorist purpose, or if the person transported a source or special fissionable material knowing it would be used in a nuclear explosive activity (Toorn van der, D., 2010). The Beijing Convention 2010 makes it an offence when a person unlawfully and intentionally destroys or damages air navigation facilities, or interfere with their operation if their actions are likely to endanger the aircraft 'in flight'. While the Montreal Convention 1971 contained the same provision, the Beijing Convention 2010 goes to define air navigation facility to include "signals, data, information or systems necessary for the navigation." This confirms that the offence applies to cyberterrorism acts (A WordNet lexical database uses a definition of "cyber-terrorism" that reads as follows: "an assault on electronic communication networks.") aimed at air navigation facilities (Maleta, R. A., 2014).

The Beijing Convention include several new ancillary and inchoate offenses. It provide that it is an offense to directly or indirectly threaten to commit (Article 3.3 of the Beijing Convention) one or more of the principal offenses, or to organize or direct the commission of an offense (Article 1.4 (b) of the Beijing Convention). From the point of view of the convention, threatening to commit any of the offenses listed in the convention is considered as a terrorist crime, as well as, Providing a situation for any person to receive such a threat so that under special circumstances, such a threat is credible (Shenasaei, H. & Shirvani, F., 2017). A new offense that criminalizes the conduct of a person who 'organizes or directs others to commit an offence' has its source in the United Nations Convention on Transnational Organized Crime, and does not require the primary offence to have been commenced or completed" (Piera & Gill, 2021). In addition, the Convention criminalizes any assistance to persons evading investigation, prosecution, or punishment, knowing that he or she has committed one of the offenses or is wanted for prosecution or to serve a sentence, then attempt is criminalized, as well as a conspiracy association for the planning of an offense in conjunction with others.

Contrary to earlier Conventions, the Beijing Convention by Article 4.1 creates the liability of a legal entity "when a person responsible for management or control" commits, in that capacity, an act that constitutes an offense under the new regime. Continuing the pattern established by a number of other international conventions, the Beijing Convention wisely introduce the principle that "any person who is taken into custody. .. shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present."(Article 11) The aim of this provision is to impose

an additional obligation on states to ensure (greater) respect for human rights (Piera & Gill, 2021).

There is no mandatory obligation to establish jurisdiction because the Beijing Convention only requires a State Party to "take such measures as may be necessary to establish its jurisdiction (Article 8.1 of the Beijing Convention). As in the Hague and Montreal Conventions, the drafters of the Beijing Convention chose not to include mandatory language like 'States shall establish jurisdiction'. Regarding the state's duty to establish jurisdiction on a given offense, it can be said that the words "take such measures . . . to establish jurisdiction" could be assimilated to a "best efforts" obligation by virtue of which a state is only obliged to carry out certain duties, such as an inquiry into the facts, taking custody of the offender, and turning him or her over to the authorities (Aggarwala, N., Fenello, M. J & Fitzgerald, G. F., 1971).

Paragraphs 1,2 and 3 of the Article 8 of the Beijing Convention recognize the following grounds for jurisdiction: state where the offense is committed; state of registration of the aircraft; state of landing where the offense is committed on board an aircraft and the alleged offender is still on board; state of lessee; state of nationality of the offender. The Beijing Convention include nationality of the offender as a ground for jurisdiction for states parties. This will help to expand the extra-territorial scope of the Convention and ensure that a greater number of states parties will have jurisdiction to prosecute or extradite known offenders (Toorn van der, D., 2010).

New provisions have been added to the Convention to support extradition and mutual legal assistance obligations. In particular, none of the offenses can be considered a political offense in order to avoid these obligations. However, no state may be compelled to extradite a person or provide mutual legal assistance if there are substantial grounds to believe that it would lead to prosecution on discriminatory grounds.

One of the most controversial issues in the Beijing Convention concerned the "Military Exclusion Clause" where the majority of States agreed to a provision in the treaty that activities of armed forces during an armed conflict should be excluded from the scope of the new regime (Article 6, paragraph 2 of the Beijing Convention). It means that, there can be no prosecution under the Beijing Convention for what would otherwise constitute an offence against civil aviation, if done by armed forces during an armed conflict. It is considered that the “Military exclusion clauses” may create practical problems, especially in cases where a civil aircraft is used for military related purposes (Maleta, R. A., 2014). The Beijing Convention entered into force on July 1, 2018, after its signature by Turkey.

Conclusions

Increasing the number of unlawful acts in international civil aviation in the second half of the XX century, showed a factor that greatly disrupts the security and safety of aviation. The international community, in particular UN and The International Civil Organisation (ICAO) was concerned about such unlawful acts,

has not stood idly by, but has approved several (seven) legal instruments to protect international civil aviation from various terrorist attacks.

- This protection has been modified in accordance with the present situation, which means that after the emergence of new forms of attacks against civil aviation, the international community reacted without significant delays by supplementing the existing Conventions with supplementary Protocols (3 in total), either by approving new conventions, with which weakness have been eliminated, respectively the previous conventions have been modernized.

- These treaties have foreseen various criminal offenses against international civil aviation, like as (a) 'offenses against the criminal law' and (b) 'the criminal offense of Unlawful Seizure of Aircraft' the person who commits these offenses must be present on board (the 1963 Tokyo Convention), then (a) 'the use of violence against a person on board an aircraft'; (b) 'destroying an aircraft in service or causing damage to such an aircraft'; (c) 'placing or causing to be placed on an aircraft ....a device or substance which is likely to destroy that'; (d) 'destroying or damaging air navigation facilities or interfering with their operation' and (e) 'communication of information that he knows to be false, thereby endangering the safety of an aircraft in flight' it is not required that the person who commits these offenses must be on board the aircraft at the time of commission (the 1971 Montreal Convention), then 'The New Principal Offenses' in the form of (a) 'the use of an aircraft as a weapon of mass destruction'; (b) 'the release of BCN weapons' and (c) 'the transportation offence' (the 2010 Beijing Convention).

-These treaties have foreseen various criminal offenses against international civil aviation, like as 'offenses against the criminal law' and 'the criminal offense of Unlawful Seizure of Aircraft' the person who commits the offense must also be present on board (the 1963 Tokyo Convention); then 'the use of violence against a person on board an aircraft'; 'destroying an aircraft in service or causing damage to such an aircraft'; 'placing or causing to be placed on an aircraft ….a device or substance which is likely to destroy that'; 'destroying or damaging air navigation facilities or interfering with their operation' and 'communication of information that he knows to be false, thereby endangering the safety of an aircraft in flight' the Convention stipulates that for the existence of such crimes, it is not required that the perpetrator and accomplice must be on the board of the aircraft at the time of commission (the 1971 Montreal Convention), then 'act of violence against a person at an airport serving international civil aviation'; and 'destroying or seriously damaging the facilities of an airport serving international civil aviation' (the 1988 Montreal Protocol) ; then 'The New Principal Offenses' in the form of: 'the use of an aircraft as a weapon of mass destruction'; 'the release of BCN weapons' and 'the transportation offense' (the 2010 Beijing Convention).

- With these treaties, have been addressed also other issues related to the criminal prosecution and trial of perpetrators of crimes, such as jurisdiction, extradition, the rights of persons in custody, mutual legal assistance, liability of a legal entity; threaten, attempt, accomplice, assistance to perpetrators after the commission of the criminal offense etc.

-Finally, it can be concluded that the construction of the Tokyo-Hague-Montreal-Beijing system is fully justified. The system of treaties represents a very coherent and sufficient system in relation to preventing, combating, and suppressing unlawful acts against civil aircraft and provide a suitable ground for the development of multilateral international cooperation between State Parties and the creation of an effective and uniform legal mechanism.

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