

1972

## The Public and Private International Response to Aircraft Hijacking

Gary N. Horlick

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vjtl>



Part of the [Air and Space Law Commons](#), [Criminal Law Commons](#), and the [International Law Commons](#)

---

### Recommended Citation

Gary N. Horlick, *The Public and Private International Response to Aircraft Hijacking*, 6 *Vanderbilt Law Review* 144 (2021)

Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol6/iss1/9>

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in *Vanderbilt Journal of Transnational Law* by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact [mark.j.williams@vanderbilt.edu](mailto:mark.j.williams@vanderbilt.edu).

# THE PUBLIC AND PRIVATE INTERNATIONAL RESPONSE TO AIRCRAFT HIJACKING

Gary N. Horlick\*

## I. INTRODUCTION

The first recorded incident of aircraft hijacking<sup>1</sup> took place in Peru in 1930,<sup>2</sup> 27 years after the first heavier-than-air flight.<sup>3</sup> While the emergence of hijacking as a frequent occurrence began during the Cold War years following World War II,<sup>4</sup> the "modern" era of hijacking may be dated from May 1, 1961, when an armed Cuban calling himself "Elpirata Cofrisi," the name of an 18th century Spanish

---

\* B.A., 1970, Cambridge University; J.D., 1973, Yale University.

1. The term "hijacking" is used throughout this article to describe the unlawful seizure, by force or threat thereof, of aircraft. However, the term "aircraft piracy" also has been used in reference to precisely the same phenomenon. *See, e.g.*, 49 U.S.C. § 1472(i) (the United States hijacking statute). The term "unlawful seizure (or diversion) of aircraft" is apparently preferred internationally, possibly for purity of translation. *Cf.* 65 PROC. AM. SOC'Y INT'L L. 95 (1971). For an excellent bibliography on hijacking see 26 RECORD OF N.Y.C.B.A. 325 (1971).

The analogy between hijacking and piracy *jure gentium* has often been suggested; however, the definition of piracy by the Geneva Convention of 1958 is, strictly speaking, inapplicable to aircraft hijacking. *See* Horlick, *The Developing Law of Air Hijacking*, 12 HARV. INT'L L.J. 33, 64-67 (1970); Johnson & Valladao, 54 INT'L L. ASSOC. REP. 731-49 (1970); Shubber, *Is Hijacking of Aircraft Piracy in International Law?*, 43 BRIT. Y.B. INT'L L. 193, 199-202 (1968-69); Valladao, *Pirateria aerienne: nouveau delit international*, 32 REV. GENERALE DE L'AIR ET DE L'ESPACE 261, 268 (1969); Van Panhuys, *Aircraft Hijacking and International Law*, 9 COLUM. J. TRANSNAT'L L. 1, 4-12 (1970); Wurfel, *Aircraft Piracy—Crime or Fun?*, 10 WM. & MARY L. REV. 820, 840-43 (1969).

2. List of hijackings supplied by the Federal Aviation Administration [hereinafter cited as FAA List]. Coincidentally, the pilot of the plane hijacked in 1930 was also the pilot of the first jet to be hijacked, in 1961. J. AREY, *THE SKY PIRATES* 57 (1972). Mr. Arey is an employee of Pan American World Airways.

3. The need for an examination of the legal problems of piracy in international airspace was first pointed out in 1957. *See* Johnson, *Piracy in Modern International Law*, 43 TRANSACTIONS GROT. SOC'Y 63, 67 & n.6 (1957).

4. One hijacking occurred in 1947, seven in 1948, three in 1949 and three in 1950. FAA List, *supra* note 2.

pirate, ordered the pilot of a National Airlines Convair 440 carrying eight passengers to divert from his Marathon-to-Key West flight plan and land in Havana.<sup>5</sup> As of January 1, 1972, there had been a total of 328 hijacking incidents, of which 226 were successful (91 United States aircraft, 135 foreign aircraft) and 102 unsuccessful (37 United States aircraft, 65 foreign aircraft).<sup>6</sup> In 1972 alone, as of November 10, 30 airliners from 14 countries had been hijacked and 29 other hijacking attempts had been made.<sup>7</sup>

Hijacking statistics show a significant rise in number and increased geographical spread in the years since 1966; instead of a few unscheduled flights to Havana, there are now numerous hijackings occurring throughout the world. Prior to 1967 there had been 40 successful hijackings—8 to Cuba and 32 elsewhere. During 1967, there were 3 to Cuba, 3 elsewhere; during 1968, 27 to Cuba, 3 elsewhere; in 1969, 58 to Cuba, 12 elsewhere; in 1970, 32 to Cuba, 24 elsewhere; and in 1971, 14 to Cuba, 10 elsewhere.<sup>8</sup> Moreover, the 58 incidents—successful and unsuccessful—in 1971 involved 105 hijackers of at least 22 different nationalities, and 36 air carriers of 24 states.<sup>9</sup>

The number of persons directly affected by hijackings has also increased dramatically in recent years. The five hijackings in 1961 for which figures are available affected 178 passengers in addition to the crew members, while the 27 documented successful seizures in 1968 involved 1,490 passengers (including the 43 hijackers) and 168 crew members—an incidence of 5.7 hijacked passengers per million air travelers in 1968.<sup>10</sup> It is safe to double these figures for the 70 successful hijackings in 1969 and the 56 successes in 1970. These figures, of course, do not reflect the inconvenience to and emotional impact on the many passengers of aircraft subjected to unsuccessful

5. *Hearings on Air Piracy in the Caribbean Area Before the Subcomm. on Inter-American Affairs of the House Comm. on Foreign Affairs, 90th Cong., 2d Sess. 9, 19 (1968)* [hereinafter cited as *Caribbean Hearings*]. See also *The Times* (London), May 3, 1961, at 11, col. 1.

6. FAA List, *supra* note 2.

7. *Washington Post*, Nov. 10, 1972, § A, at 24, col. 1.

8. In 1967, the recipient countries other than Cuba were Algeria, Jordan and Nigeria; in 1968, Algeria, Egypt and the Philippines; in 1969, Egypt, Zaire, Sudan, Albania, Syria, Aden, Bulgaria, West Germany, Italy, Austria and North Korea; in 1970, Lebanon, North Korea, Austria, Egypt, Denmark, West Germany, Syria, Yugoslavia, Jordan, North Vietnam, Iraq and Turkey; and in 1971, Libya, Pakistan, Canada, China, Venezuela, Austria, the Bahamas, Congo (Brazzaville) and Peru. FAA List, *supra* note 2.

9. FAA List, *supra* note 2.

10. International Civil Aviation Organization (ICAO) Doc. AT-WP/1005 at 5, 7, 17 (1969).

attempts, or the additional hazards experienced by the 21 Israelis held in Algeria in 1968,<sup>11</sup> the two Israelis detained in Syria for three months in 1969,<sup>12</sup> the 310 passengers and crew members held as hostages in September, 1970, by Palestinian guerrillas for the release of Arabs held in Switzerland, West Germany and England,<sup>13</sup> and the fourteen crew members held in Aden by another guerrilla group in 1972 for a payment of five million dollars.<sup>14</sup>

## II. THE HIJACKERS

The interests of aircraft hijackers are not easily summarized, if for no other reason than that the motivation of a given incident often cannot be clearly defined. For example, the recent extortion hijackings could have been motivated as easily by a desire for notoriety or other psychological reward as by a desire for cash. Hijackers exhibit, however, several recurring motivations. One fairly consistent element is the desire of the hijacker to escape the country in which he lives. Clearly, this motive was present in the eighteen attempts (eleven successes, seven failures) to flee Eastern European countries since 1960 by hijackers having no other legal means of departure. Hijackings to Cuba by military deserters, Black Panthers and other fugitives from justice may have been similarly motivated. Of 49 hijackers traced by the Justice Department by 1969, fourteen had prior criminal records, and four were currently being sought on charges ranging from passing a bad check to the attempted murder of a policeman.<sup>15</sup>

Personal problems probably underlie most of the attempted hijackings. An example is the Army deserter who fled to Cuba with his daughter, whose custody had just been awarded to his ex-wife. Often, however, these hijackings can be viewed as political in the broadest sense—*i.e.* an expression of the hijacker's discontent with his life in the departed country. An American psychiatrist has claimed that most of the hijackers he has interviewed exhibited suicidal personalities and a strong need to attract the attention of the entire world to their

---

11. N.Y. Times, Sept. 1, 1968, at 1, col. 7.

12. N.Y. Times, Oct. 14, 1969, at 4, col. 3.

13. AVIATION WEEK AND SPACE TECHNOLOGY, Sept. 8, 1969, at 22.

14. N.Y. Times, Feb. 26, 1972, at 1, col. 8.

15. FAA List, *supra* note 2. See also Evans, *Aircraft Hijacking: Its Cause and Cure*, 63 AM. J. INT'L L. 695, 700 & n.25 (1969); HOUSE COMM. ON INTERSTATE AND FOREIGN COMMERCE, AIRCRAFT PIRACY, H.R. REP. NO. 33, 91st Cong., 1st Sess. 26 (1969) [hereinafter cited as AIRCRAFT PIRACY REPORT].

plight.<sup>16</sup> Additionally, there is a certain contagious quality about a successful hijacking covered extensively by the media. Perhaps this explains why extortion hijackings seem to occur in waves or cycles.<sup>17</sup>

In addition to hijackings for reasons of escape, personal discontent or notoriety, a number of hijackings have been undertaken as part of a political plan either to extort some advantage in bargaining power or to call attention to a political issue. The former category clearly would include those hijackings designed to take hostages.<sup>18</sup> The 1969 hijacking to Syria to protest the sale of U.S. Phantom jets to Israel falls more clearly into the category of political "demonstration," even though six Israelis were detained for various lengths of time.<sup>19</sup> In addition, the flights to China and North Korea by radical students certainly involve an element of "demonstration." Finally, many of the

---

16. Evans, *supra* note 15, at 700; D. HUBBARD, *THE SKYJACKER* (1971).

17. "[O]ur feeling is that this is a communicable disease. One fellow reading about a hijacking, the way that another fellow has apparently solved this problem by getting out of the United States by doing so in a quite splashy manner, that does plant a seed in that man's mind. . . . That is the best explanation we have for this cyclical nature of the problem." *Hearings on Aviation Safety and Aircraft Piracy Before the House Comm. on Interstate and Foreign Commerce, 91st Cong., 1st & 2d Sess. 55 (1970)* [hereinafter cited as *Aviation Safety Hearings*] (quoting Frank E. Loy, Deputy Ass't Sec'y for Transportation and Telecommunications, Dep't of State).

18. Examples include the following incidents: the 1968 diversion of an El Al flight to Algiers, FAA List, *supra* note 2, no. 81; the July 22, 1970 hijacking of an Olympic Beirut-to-Athens flight to force the release of Arab guerrillas held in Greece for their attacks on El Al planes and offices, FAA List, *supra* note 2, no. 233; the five hijackings in September, 1970 by the Popular Front for the Liberation of Palestine (PFLP), FAA List, *supra* note 2, nos. 247-51; the attempted seizure of a Rio de Janeiro-Buenos Aires flight by four Brazilians to exchange the passengers for jailed terrorists, FAA List, *supra* note 2, no. 229; N.Y. Times, July 2, 1970, at 70, col. 6; and the hijacking of the Lufthansa jet ransomed from Aden, N.Y. Times, Feb. 26, 1972, at 1, col. 8.

19. N.Y. Times, Aug. 30, 1969, at 1, col. 8, and 2, col. 3. Also within this category are the following incidents: the forced return to Paris of a Paris-Athens flight while antijunta pamphlets were distributed to the passengers, N.Y. Times, Nov. 9, 1968, at 3, col. 6; the 1930 hijacking and two in late 1961 to scatter propaganda leaflets over Peru, Portugal and Venezuela, respectively, J. AREY, *supra* note 2, at 49, 64; the two unsuccessful attempts by the PFLP on Jordanian planes while King Hussein was suppressing the guerrillas in 1971, N.Y. Times, Dec. 26, 1971, at 46, col. 5; the 1971 seizure and destruction of an Indian plane by Kashmiris in Pakistan, N.Y. Times, Feb. 6, 1971, at 3, col. 5; and the surrender of a hijacker in Los Angeles only after he was interviewed on live radio and television about the injustices suffered by poor minority groups, N.Y. Times, April 14, 1972, at 11, col. 2.

hijackings to Cuba from the United States and Latin America may have some element of "demonstration," although they are predominately for "escape" or personal reasons.

Hijackings solely for extortion became popular in late 1971. The fictitious "D.B. Cooper" became a minor folk hero when he successfully parachuted from a Northwest Orient jet on Thanksgiving Eve with 200,000 dollars ransom money.<sup>20</sup> Five of the six attempted American hijackings in January, 1972, were for extortion (all five were thwarted),<sup>21</sup> and March, 1972, was marked by the use of bomb threats for extortion, patterned after the example of the hoaxer who persuaded Quantas officials in Australia to pay over 560,000 dollars in May, 1971.

### III. THE PRIVATE AND SOCIAL COSTS OF HIJACKING

#### A. *Direct and Indirect Dangers*

1. *Direct Dangers.*—In addition to the attendant irritation, inconvenience and delay, hijackings are extremely dangerous. To date, hijacking deaths on U.S.-registered planes have included two passengers, one copilot,<sup>22</sup> one boarding-gate attendant and the wife of a hijacker shot to death by him prior to his own suicide. At least three passengers on United States flights have been wounded,<sup>23</sup> as well as one pilot, two crew members<sup>24</sup> and one stewardess.<sup>25</sup> International statistics are hard to find;<sup>26</sup> however, the first successful hijacking from the U.S.S.R. resulted in the death of a stewardess and injury to two pilots, and a 1948 diversion from Bulgaria to Turkey left two

---

20. Washington Post, Nov. 25, 1971, § A, at 3, col. 2. A record entitled "D.B. Cooper, Where are You?" was released, although several radio stations pulled it off the air following protests from the pilots' association, and 5,000 "D.B. Cooper" T-shirts were sold in the Portland area. NEWSWEEK, Jan. 31, 1972, at 54. An imitator failed to get away with \$300,000 a month later, when the crew escaped while the plane was on the ground, even though the would-be hijacker had kept one passenger as a hostage to insure that the parachutes given him were in working order. Washington Post, Dec. 25, 1971, § A, at 2, col. 1.

21. N.Y. Times, March 8, 1972, at 28, col. 6.

22. Washington Post, March 18, 1970, § A, at 1, col. 5.

23. SATURDAY REVIEW, Jan. 2, 1971, at 30.

24. N.Y. Times, March 8, 1972, at 28, col. 1.

25. N.Y. Times, July 25, 1971, at 24, col. 1.

26. The figure of 44 dead passengers, 5 dead crew members and 1 crashed plane was offered in 1969. Toothman, *Legal Problems of Skyjacking*, ABA SECTION OF INS., NEGLIGENCE & COMPENSATION L. PROCEEDINGS 251, 255 (1969).

pilots dead and one crew member wounded.<sup>27</sup> Five passengers were wounded, one severely, when Israeli troops killed two hijackers to free 90 passengers and ten crew members on a Sabena plane held at Tel Aviv airport by Palestinian guerrillas seeking the release of 317 Palestinians imprisoned in Israel.<sup>28</sup> All of these casualties arose from resistance—either real or perceived—to the wishes of the hijacker. As yet, American air travelers have been spared the potentially catastrophic results of airborne explosive discharge,<sup>29</sup> as well as the possibility of stray bullets rendering critical aircraft systems inoperable;<sup>30</sup> but passengers of the Boeing 747 blown up in Cairo on September 6, 1970, were barely 100 yards away from the plane when the explosions began.<sup>31</sup>

2. *Indirect Dangers.*—In addition to these immediate dangers, hijacking raises a number of indirect hazards:

[T]here is the danger that the hijacker would insist on diverting the flight to a destination beyond the range of the aircraft's fuel supply, resulting perhaps in a ditching, crashlanding, or emergency landing at an airport lacking the required runway length for the aircraft involved. The aircraft could be diverted to an airport at which bad weather or lack of navigational aids would make an approach or landing unsafe.<sup>32</sup>

Although there have been no crashes since a hijacked plane went down off the coast of Cuba on November 1, 1958,<sup>33</sup> killing 17 of the 21 passengers, the testimony of hijacked pilots clearly communicates the dangers inherent in situations where, for example, the crew was not allowed to touch any of the controls for fifteen minutes.<sup>34</sup> Further examples include the TWA jet diverted to Damascus in August, 1969, which was controlled by hijackers who neglected to recalculate their previously obtained fuel consumption figures to allow for higher consumption at lower altitudes; the pilot landed on the first pass with

---

27. N.Y. Times, Oct. 16, 1970, at 1, col. 5.

28. Washington Post, May 10, 1972, § A, at 1, col. 4.

29. One passenger was killed, however, by the explosion of a hijacker's grenade on a Cuban flight. N.Y. Times, July 13, 1971, at 30, col. 5.

30. *Aviation Safety Hearings*, *supra* note 17, at 87.

31. TIME, Sept. 21, 1970, at 20.

32. Opening Statement of U.S. Delegation to the Second Meeting of the ICAO Legal Subcommittee on the Unlawful Seizure of Aircraft, IFALPA Doc. 70A104, attach. A, at 1. The author was granted access to the files of the International Federation of Airline Pilots Associations (IFALPA) at their London offices.

33. FAA List, *supra* note 2, no. 21; N.Y. Times, Nov. 3, 1958, at 1, col. 1.

34. *Aviation Safety Hearings*, *supra* note 17, at 283.

nearly empty tanks.<sup>35</sup> Other indirect dangers to passengers are illustrated by the heart attack suffered by a passenger on a Turkish plane held by Turkish hijackers in Bulgaria.<sup>36</sup> Moreover, the indirect dangers no longer cease with the landing of the aircraft—passengers, crew and plane are now frequently held hostage.

### B. *The Monetary Cost of Hijackings*

1. *Direct Costs to Air Carriers.*—Hijackings also impose considerable cost and inconvenience on air carriers. The direct cost to an American airline of a hijacking to Havana—including landing costs, navigation charges, fuel prices, food, and passenger services—is estimated to run from 3,000 to 10,000 dollars, which is substantially more than such services would cost at American airports.<sup>37</sup> One Venezuelan plane was charged over 31,000 dollars after four days detention in Havana, apparently in retaliation to the detention of Cuban fishing boats by

---

35. AVIATION WEEK AND SPACE TECHNOLOGY, Sept. 8, 1969, at 22; N.Y. Times, Aug. 31, 1969, at 1, col. 8.

36. N.Y. Times, May 5, 1972, at 2, col. 3.

37. Wurfel, *supra* note 1, at 823.

Two itemized lists of costs are much lower:

August 24, 1970—Boeing 727:

Landing fees	\$115.00
Handling	264.00
Flight Dispatch	40.00
Aeronautical services	60.00
Customs services	52.50
Catering	341.00
TOTAL	<u>\$872.50</u>

August 20, 1970—DC-9:

Landing fees	\$ 73.50
Handling	216.00
Flight dispatch	40.00
Aeronautical services	60.00
Parking	12.25
Fuel	152.72
Customs services	52.50
Catering	353.50
Transportation	200.00
TOTAL	<u>\$1,160.47</u>

Figures obtained from *Hearings Before the House Comm. on Foreign Affairs on Aircraft Hijacking*, 91st Cong., 2d Sess. 116 (1970) [hereinafter cited as *Aircraft Hijacking Hearings*]. The bill is paid by the State Department through the Swiss Embassy and passed on to the carrier.



Venezuela.<sup>38</sup> Of considerably greater impact, however, is the average loss of 15,000 dollars revenue per aircraft per day of detention.<sup>39</sup> Further direct costs to air carriers have, of course, been imposed by the wave of hijackings solely for extortion. New costs have also been imposed on the airlines by the destruction of aircraft by the Popular Front for the Liberation of Palestine (PFLP) in some of the Middle Eastern incidents. The cockpit of a TWA 707 was blown up in Syria in August, 1969, requiring 2.7 million dollars in repairs, and the four aircraft destroyed in September, 1970, were valued at 52 million dollars.<sup>40</sup> One arm of the PFLP used the threat of destruction of a 25 million-dollar Lufthansa plane and fourteen crew members to extort five million dollars from Lufthansa after the plane had been diverted to Aden and the 172 passengers released.<sup>41</sup> In this case, the West German Government bore the costs, having agreed to bear the risks of hijacking when hijacking insurance became too expensive for the airline.<sup>42</sup>

2. *Indirect Costs to Air Carriers.*—Some passengers have attempted to pass on their “costs” to the airlines by bringing suit for damages. Litigation arising from flights originating in the United States (regardless of the place of landing) must be grounded on negligence,<sup>43</sup> or negligent breach of contract.<sup>44</sup> Apparently, no domestic case has reached a final reported adjudication. International flights are gov-

---

38. N.Y. Times, Feb. 18, 1969, at 81, col. 4.

39. *Aviation Safety Hearings*, *supra* note 17, at 9.

40. SATURDAY REVIEW, Jan. 2, 1971, at 30. The airlines have not yet collected from their insurers, as different groups carried the war-risks and ordinary liability, and a question arises of which policy is applicable in the circumstances. Interview with D.L. Morgan of Cleary, Gottlieb, Steen & Hamilton, Washington, D.C., Nov. 26, 1971.

41. N.Y. Times, Feb. 23, 1972, at 1, col. 3; N.Y. Times, Feb. 26, 1972, at 1, col. 8. Surprisingly, no demand was made for the release of five Jordanians held in West Germany for terrorist shootings, nor for the release of four guerrillas held in Egypt for the assassination of the Jordanian premier. Even more ironically, the South Yemen Government extorted \$1,000,000 of the ransom money from the hijackers before allowing them to depart. NEWSWEEK, March 20, 1972, at 17.

42. Premiums had reached DM 13-15 million to cover the Lufthansa fleet. Daily Telegraph (London), March 3, 1972, at 3, col. 2.

43. Evans, *supra* note 15, at 699-700.

44. These claims are usually supported by allegations of failure to screen out hijackers, to which a number of defenses are available, either on contract or assumption of risk. Toothman, *supra* note 26, at 255-57. See also Note, *Aircraft Hijacking: Criminal and Civil Aspects*, 22 U. FLA. L. REV. 72, 90-100 (1969); Bradford, *The Legal Ramifications of Hijacking Airplanes*, 48 A.B.A.J. 1034, 1035-37 (1962).

erned by the Warsaw Convention and the Montreal Agreement of 1966. A New York State Supreme Court judge has recently ruled that a passenger on the TWA jet hijacked to Dawson's Field on September 6, 1970, *may* recover up to 75,000 dollars in damages against the airline for "fright and distress" without proof of negligence, under the absolute liability provisions of the Warsaw and Montreal Conventions.<sup>45</sup> Should this ruling be sustained and become binding, airline costs could well rise substantially. Five suits have been filed against Swissair as a result of the hijacking to Jordan,<sup>46</sup> and five against Pan Am, in addition to an unspecified number that have been settled out of court.<sup>47</sup> Furthermore, added security measures have also cost the airlines; BOAC recently reported expenditures for security measures aimed at hijackers of one million pounds per year.<sup>48</sup> Finally, of course, no measure can be assigned to the added psychological burdens placed on travelers and air carriers by the threat of hijacking.

3. *The Relativity of the Hijacking Burden.*—The burden of hijacking on passengers and airlines must not be exaggerated. The 10,000 passengers whose flights have been disturbed by hijacking incidents since 1961 comprise a very small fraction of the 287 million annual air passengers. Moreover, the occasional destruction of aircraft must be seen as exceptions to the rule that states *do* return hijacked aircraft; the four planes blown up in September, 1970, were clearly beyond the effective power of any state (in fact, the 747 blown up at Cairo was destroyed to protest the foreign policy of the state of landing, *i.e.* Nasser's participation in peace talks).<sup>49</sup> Cuba, for example, has followed a policy of prompt returns (usually on the same day since February 10, 1969) with only minor exceptions.<sup>50</sup> The worst record

---

45. N.Y. Times, March 17, 1972, at 1, col. 1.

46. See N.Y. Times, Aug. 17, 1971, at 37, col. 8; N.Y. Times, Sept. 22, 1970, at 14, col. 5. A federal judge in the Southern District of New York recently refused to dismiss one of the suits against Swissair, an action by a passenger who claimed bodily injuries and mental anguish as a result of the hijacking. The judge ruled that a hijacking is "within the ambit of the term 'accident' and sufficient to raise the presumption of liability under the Warsaw Convention as modified [by the Montreal Agreement]." N.Y. Law Journal, Nov. 9, 1972, at 1, col. 6.

47. N.Y. Times, March 17, 1972, at 83, col. 7.

48. Manchester Guardian Weekly, Aug. 26, 1972, at 8, col. 2. In the U.S., a tax of 8% on domestic tickets and \$3.00 on international departures was imposed to pay for the sky marshal program. N.Y. Times, Sept. 22, 1970, at 1, col. 2.

49. TIME, Sept. 21, at 20.

50. A U.S. plane was held for three weeks in 1961 until exchanged for a Cuban ship held under attachment in Norfolk, a U.S. plane held four days in connection with the seizure by the United States of Cuban fishing vessels, and a

for the return of aircraft belongs to the United States prior to 1961—eleven of 25 planes (eighteen hijacked, seven seized here) were disposed of pursuant to court orders, and fourteen were returned.<sup>51</sup> All other planes have been returned, although the Israelis had to release sixteen Arabs held in Israel to recover a plane from Algeria in 1968, and the West Germans had to pay five million dollars for one of theirs in 1971.<sup>52</sup>

#### IV. VALUE AND POLICY PREFERENCES

##### A. *The Suppression of Hijacking*

1. *Universal and Absolute Values.*—In formulating a policy for the suppression of hijackings, it is necessary to weigh the value derived from permitting the hijacking against the potential danger to the innocent participants. Thus the desirability of the complete suppression of hijackings done solely for motives of personal gain or ego-reinforcement cannot be disputed so long as the hijacking presents any element of danger to passengers, crew or persons on the ground. Similarly, hijackings done solely as political demonstrations are clearly undesirable, for any danger to life should outweigh the value of allowing this particular means of media access to dissident groups.<sup>53</sup> Nor should hijacking for political advantage be permitted, since the general undesirability of waging war on uninvolved civilians outweighs the value of extending this activity to groups such as the PFLP, even though few other viable strategies may be open to them.

2. *Conflict of Values.*—A more difficult problem of balancing desirable outcomes is presented by the need to prescribe and apply some regime to hijackings by political refugees, since sympathy for the human rights of the refugee conflicts with both sympathy for the rights of the passengers and the value of unhampered global

---

Venezuelan aircraft held four days for the same reason. 63 PROC. AM. SOC'Y INT'L L. 191 (1969); N.Y. Times, June 2, 1971, at 12, col. 1.

The Cubans customarily have returned money stoken by hijackers from passengers. Horlick, *supra* note 1, at 56. Algeria returned ransoms of \$1,000,000 and \$500,000 taken by hijackers in 1972. Anchorage Daily Times, Aug. 25, 1972, at 27, col. 4.

51. At least one plane was returned after Cuba had entered a plea of sovereign immunity through the Czech Embassy. 45 DEP'T STATE BULL. 278, 407 (1961).

52. See note 41 *supra*.

53. Even in the closest possible case, where no legitimate media access is available, equally newsworthy illegal acts can be performed with less danger to nonparticipants.

communication. The category of "political refugee" is a very elastic characterization; almost every hijacking has political coloration simply from the choice of a state of landing unlikely to return the hijacker.

Therefore, certain preliminary distinctions may be drawn. First, no sympathy, and hence no benefit, should be given to hijackers with destinations attainable by legitimate means. Neither the danger to the passengers nor the disruption of air travel are justifiable incidents of the hijacker's inability to pay for an airplane ticket. Secondly, a distinction may be drawn between escape by hijacking from prosecution for "political" offenses and similar flight from prosecution for "common" crimes.<sup>54</sup> Finally, the particular circumstances of the actual incident must be examined to ascertain that the hijacking was undertaken solely for the purpose of travel to political freedom, rather than the more common fantasy-voyage.

### B. Implementation of Suppression Strategies

1. *Direct Suppression.* (a) *Ground Detection.*—Not surprisingly, the apparent ease of hijacking has sparked widespread interest in a large number of schemes to halt the rising trend of seizures.<sup>55</sup> At the heart of the problem is the relative ease of taking over an airborne aircraft, because of the extreme vulnerability of planes in flight. Clearly, therefore, the most desirable strategy is to prevent hijackings by screening out would-be hijackers on the ground,<sup>56</sup> thus removing

---

54. However, adherents to the theory that all crime is a rebellion against a "system" would not recognize such a distinction.

55. Of 1,000 unsolicited suggestions, the 10 most popular have been:

- (1) provide free transportation to Cuba for those desiring to leave the United States;
- (2) provide armed guards on all United States passenger flights;
- (3) pay Castro to return hijackers to the United States;
- (4) build a simulation of Havana airport in Florida;
- (5) bulletproof the pilot's cabin, with one-way communication only;
- (6) search each passenger, either by x-ray or metal detector;
- (7) depressurize the plane's cabin or use sleeping gas on the aircraft;
- (8) equip all crew members with Mace;
- (9) use tranquilizer darts; and,
- (10) require special identification cards for air travelers.

AIRCRAFT PIRACY REPORT, *supra* note 15, at 28.

56. The problem of actual ground attacks on aircraft is not dealt with here. A Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (aside from hijacking) was signed by 31 states in Montreal on September 23, 1971. This document parallels the Hague Convention in all respects except the definition of the offense. 10 INT'L LEGAL MATERIALS 1151 (1971).

the danger of a crash. Pursuant to statutory authorization, a Civil Aeronautics Board (CAB) tariff regulation allows airlines to refuse transportation to anyone who refuses to submit to a search, or whose conduct appears to be threatening.<sup>57</sup> Thorough searches of all boarding passengers, however, would result in impractical delays. Therefore, the Federal Aviation Administration (FAA) Task Force on Hijacking has sought the development and use of sophisticated concealed-weapon detection devices.<sup>58</sup> Over 700 detection devices are already in use, with an additional 900 likely to be authorized.<sup>59</sup> For example, Eastern Airlines by 1971 had magnetometers at 32 of its 106 terminals (the 32 terminals service approximately 75 per cent of Eastern's passenger traffic) and 50 hand sets at smaller terminals.<sup>60</sup> Many of the earlier detection models provided insufficient discrimination, but a model recently developed under FAA contract uses a computer to distinguish between guns and other metal objects, and then alerts ground personnel if firearms are detected.<sup>61</sup>

But the deficiencies of even an ideal detector are serious. Most current detectors, for instance, would miss the nonferrous gun used in the attempted hijacking of an El Al plane on September 6, 1970. Of 107 weapons used in 94 United States hijackings, there were twenty knives, 21 real and alleged explosives, three razors, one tear gas pen, and one broken bottle—all of which would probably survive mechanical detection screening. Moreover, nothing could prevent the boarding of some of the weapons actually used in past hijackings, such as a cigarette lighter allegedly filled with acid, or an "explosive" cigar box.<sup>62</sup> Finally, there is the fallibility of the agents manning the detection devices: hijackers have boarded even after tripping a detector when security agents were satisfied that the alarm had been set off by metal items other than the weapon actually used.<sup>63</sup>

---

57. This regulation implements the statutory authority of 49 U.S.C. § 1511 (1964). See Evans, *supra* note 15, at 703.

58. Such devices must combine a high probability of detection and a low probability of false alarm, discriminate reliably between weapons and other items without harm to people, and offer instant detection without human monitoring, at reasonable cost. *Aviation Safety Hearings*, *supra* note 17, at 98.

59. Honolulu Star-Bulletin, July 17, 1972, at 2, col. 1.

60. SATURDAY REVIEW, Jan. 2, 1971, at 31.

61. U.S. NEWS & WORLD REPORT, Aug. 9, 1971, at 25.

62. N.Y. Times, May 30, 1971, at 37, col. 2.

63. N.Y. Times, July 24, 1971, at 16, col. 1; see P. SNOW & D. PHILLIPS, THE ARAB HIJACK WAR 10 (1970); J. AREY, *supra* note 2, at 244; *Aircraft Hijacking Hearings*, *supra* note 37, at 164.

Detectors are meant to be used in conjunction with a discreetly-administered personality profile, which FAA psychologists compiled on the basis of interviews with unsuccessful and returned hijackers and families of successful hijackers. According to Dr. John T. Dailey, the FAA's chief psychologist, the profile is based solely on behavior, rather than on physical appearance or ethnic criteria (although a federal judge in Brooklyn suppressed evidence in a drug case on a finding that an "ethnic element" may have led to the airport search).<sup>64</sup> The use of the profile usually eliminates the typical air traveler—the businessman in a hurry—and thus the well-dressed and well-briefed hijackers of the El Al jet in September, 1970, were able to slip through El Al's similar profile.<sup>65</sup> This dual screening system has garnered most of the credit for the recent reduction in the number of successful United States hijackings.<sup>66</sup> There were eleven successes in 26 attempts in 1971, contrasted with eighteen successes out of 27 attempts in 1970; eight of the eleven successes in 1971 fitted the profile but were not screened. The CAB has blamed the slip-ups on the failure of airline personnel to use the profile properly.<sup>67</sup> The overall cost of the antihijacking program was 55 million dollars, including 37 million dollars for the sky marshalls—a rather stiff price to pay for a slight reduction in successful hijackings. Moreover, the hijackings averted are probably those least likely to cause great danger or disruption, *i.e.* the relatively unplanned flight to Havana for personal reasons. On the other hand, it is desirable that some basic screening be retained to weed out the grossly disturbed individual—arguably the most dangerous hijacker—such as the Phoenix, Arizona hijacker who had no particular destination in mind after collecting the 100 million dollars he had demanded from the United States Supreme Court.<sup>68</sup>

---

64. *United States v. Lopez*, 328 F. Supp. 1077, 1101-02 (E.D.N.Y. 1971).

65. J. AREY, *supra* note 2, at 99, 240-41. Two would-be hijackers were refused passage by El Al, and transferred to a Pan Am 747, which they hijacked to Cairo; they used faked diplomatic passports to prevent a search. *Aircraft Hijacking Hearings*, *supra* note 37, at 93.

66. In addition, Justice Department sky marshals reported 1,926 "incidental" arrests in 1971, including 538 for narcotics violations, 205 for concealed firearms, and 133 for concealed knives. Note, *supra* note 44, at 82-83. The fourth amendment questions raised thereby remain unsettled. See *United States v. Lopez*, 328 F. Supp. 1077, 1098-99 (E.D.N.Y. 1971); 65 *PROC. AM. SOC'Y INT'L L.* 88 (1971).

67. *N.Y. Times*, Jan. 9, 1972, at 66, col. 1. United Air Lines and Pacific Southwest Airlines were recently fined by the FAA for failure to screen passengers properly. *N.Y. Times*, June 9, 1972, at 15, col. 6.

68. J. AREY, *supra* note 2, at 117-20.

(b) *Airborne Suppression.*—The airlines' initial policy of total nonresistance while the aircraft is airborne was exemplified by Eastern's instructions:

The most important consideration under the act of aircraft piracy is the safety of the lives of the passengers and crew. Any other factor is secondary.

Therefore, company policy is:

In the face of armed threat to *any* crew member, comply with the demands presented.

Do not make an attempt to disarm, shoot out, or otherwise jeopardize the safety of the flight.

To sum up: Going on past experience, it is much more prudent to submit to a gunman's demands than to attempt action which may well jeopardize the lives of all on board.<sup>69</sup>

Moreover, the pilots have also favored this policy:

It is the general opinion of airline pilots, based on the experience of those who have been hijacked, that there is almost no safe method of preventing a determined hijacker from having his way once the aircraft is airborne. To oppose violence with violence, in the particularly vulnerable circumstances of flight, is regarded as being on balance more dangerous than to carry out a hijacker's instructions to divert. . . . This is not to say that there are no circumstances in which a hijacker can be successfully resisted in flight; only that, in most cases, it is probable that the safety of the aircraft and passengers will be best served by offering neither physical nor verbal resistance and by complying with a hijacker's instructions, so long as these are practicable.<sup>70</sup>

Recently, however, attitudes have changed, partially as a result of the shootings of unarmed pilots,<sup>71</sup> and the concept of airborne resistance is becoming more accepted.<sup>72</sup> Armed sky marshalls now ride American air carriers (although a pilot may request that they not fly with him), and eighteen arrests were made aboard aircraft in 1971 (only six of which were in response to an announced or threatened hijacking).<sup>73</sup> Nonetheless, no attempt to interfere will be made once a crew member or passenger is held as a hostage by the hijacker.

69. *Caribbean Hearings, supra* note 5, at 14.

70. IFALPA Statement to the ICAO Council, Aug. 14, 1969, IFALPA Doc. 70A78, attach. A, at 3-4.

71. *Aircraft Hijacking Hearings, supra* note 37, at 9.

72. "When you are exposed to people of this character, you've got to make a choice between total destruction *for sure*, and maybe part or total destruction in an attempt to *prevent* the deliberate, total destruction of an airplane." J. ARBY, *supra* note 2, at 227.

73. N.Y. Times, Nov. 2, 1971, at 1, col. 3; FAA Release 72-15, Jan. 24, 1972, at 3.

The American penchant for gadgetry has applied itself to the problem of airborne resistance and has motivated suggestions to use sealed cockpits, "Potemkin village" fake airports, depressurized cabins, trap doors, sleep-inducing gases, Mace, and tranquilizer darts. However, airborne resistance is not so simplistic a proposition as these suggestions might indicate: anaesthetics (television mythology notwithstanding) allow the hijacker a few seconds in which to cause considerable damage, and could also endanger other passengers; and hijackers are often wary of attempts to land at the wrong airport. The objections to sealed control cabins reveal the many conflicting considerations: clearly, some communication is needed to deal with flight emergencies, and the same channels could be used to "control" the aircraft by threatening the stewardesses or others in the passenger compartment. Moreover, the cabin door is designed to be frangible, in case of crashes or emergencies—in one case, a fire melted the stainless-steel wash basin before crewmen could get to the blaze from the cockpit.<sup>74</sup> These often-suggested methods of airborne resistance, therefore, actually emphasize the extreme vulnerability of an airplane in flight and the consequent imprudence of any form of airborne resistance. It is foreseeable, and probably desirable, that guards will be removed from aircraft completely and be used to operate a wider preflight inspection network, on the theory that the prevention of hijackings must take place before the plane is in the air.<sup>75</sup>

2. *Indirect Suppression.*—A less dangerous approach to the suppression of hijacking is deterrence through assured punishment. Although this strategy assumes a certain capacity for rational analysis on the potential hijacker's part, the assumption does seem to have some validity: hijackers almost invariably aim for destinations from which they expect not to be returned to a country interested in punishing them.<sup>76</sup> This deterrent strategy has always been favored by the United States, the pilots' organizations and the airline industry.<sup>77</sup>

---

74. AIRCRAFT PIRACY REPORT, *supra* note 15, at 28; J. AREY, *supra* note 2, at 215-19.

75. N.Y. Times, April 9, 1971, at 62, col. 1; N.Y. Times, Jan. 9, 1972, at 66, col. 1. The increasingly frequent problem of hijackers on the ground holding hostages to force the continuation of the hijacking should be handled as a normal police problem.

76. Horlick, *supra* note 1, at 44-45. *But see* Stephen, "Going South"—Air Piracy and Unlawful Interference with Air Commerce, 4 INT'L LAWYER 433, 437-38 (1970) (on the limited deterrent value).

77. *See* Loy, *Some International Approaches to Dealing with Hijacking of Aircraft*, 4 INT'L LAWYER 444, 452 (1970) (Mr. Loy is the Deputy Assistant Secretary of State for Economic Affairs); INTERNATIONAL FEDERATION OF



Its effectiveness depends on the cooperation of a large number of nations with varying outlooks and political interests.

Argentina, Australia, Brazil, Canada, Cuba, France, Japan, Mexico, the Netherlands, New Zealand, Spain and the United States currently have statutes aimed specifically at the crime of airplane hijacking, and in Denmark and the United Kingdom such legislation is imminent.<sup>78</sup> In addition, many states choose to prosecute hijackers for related crimes, such as kidnapping, assault, or violation of flight safety regulations.<sup>79</sup> Conviction statistics, however, are considerably less impressive when one considers that the crime is such that identification of the suspect is rarely a problem. Of 128 incidents involving United States aircraft since 1961, 35 persons have been convicted of air piracy or related crimes (ten in 1971), and ten persons have been committed to mental institutions. An additional thirteen cases await trial or the outcome of mental examinations, and there have been two acquittals. Another hijacker was shot and killed in a bank robbery after returning secretly to the United States.<sup>80</sup>

Of greater significance is the treatment meted out to hijackers who land in Cuba. A considerable body of evidence suggests that since 1969, Cuban treatment of American hijackers has been quite harsh in most cases.<sup>81</sup> One hijacker who stole 1,700 dollars from the passengers of the diverted aircraft was arrested by the Cubans upon landing, and the Cubans returned the money, just as they had done following the only other hijacking-theft. The voluntary return of fourteen hijackers to the United States (via Canada) is evidence in itself of the quality of Cuban treatment of hijackers; more publicity

---

AIRLINE PILOTS ASSOCIATIONS, FACTS ABOUT IFALPA 11, 12 (6th ed. 1970); K. Hammarskjöld (Director-General, IATA), Statement of Sept. 2, 1969.

78. See, e.g., Federal Aviation Program Act, 49 U.S.C. § 1472(i) (1970); 8 INT'L LEGAL MATERIALS 1175 (1969) (Cuba); 9 INT'L LEGAL MATERIALS 180 (1970) (Brazil); 9 INT'L LEGAL MATERIALS 185 (1970) (Mexico); 10 INT'L LEGAL MATERIALS 436 (1971) (France). Cf. D. COOPER, THE AIR CODE OF THE U.S.S.R. 58 (1966).

79. See Fitzgerald, *Development of International Legal Rules for the Repression of the Unlawful Seizure of Aircraft*, 7 CAN. Y.B. INT'L L. 269, 272-77 (1969); *Aircraft Hijacking Hearings*, supra note 37, at 110.

80. FAA Release 72-15, Jan. 24, 1972, at 2-3. See generally *Aviation Safety Hearings*, supra note 17, at 68-80.

81. See *Aviation Safety Hearings*, supra note 17, at 52, 88; J. AREY, supra note 2, at 148-51, 261-65. On arrival, the hijacker reportedly is placed in jail for intense questioning (Alben Barkley Truitt was held for three months) while the Cubans ascertain that he or she is not a CIA agent, and is then removed to a guarded area.

about the conditions of life for hijackers in Cuba hopefully will deter potential hijackers.

Punishment of hijackers has varied elsewhere, from two unsuccessful hijackers whose throats were slit by Ethiopian Airlines guards, to Christian Belon, who stepped off the plane that he had diverted to Beirut, announced, "I did it for Lebanon," and was released on bail of \$7.50 before the resulting international uproar resulted in new charges being brought against him. Noteworthy is the trend of prosecution of refugee hijackers from Eastern Europe by Western European countries, despite obvious political sympathy. For example, two East Germans were each sentenced to two years in prison by a French military court in West Berlin and two Poles were jailed for 27 months and 24 months respectively by an Austrian court. In addition, charges were brought in Sweden against two hijackers of Greek aircraft, and Raffaele Minichiello was sentenced to seven and one-half years in prison in Italy after his flight from the United States (he was released, however, after eighteen months as a result of various amnesties).<sup>82</sup>

Obviously, the problem of hijacking has been exacerbated by the inability of the aggrieved country—usually the country of the aircraft's registration—to bring the hijacker within its effective control for prosecution. Cuba extradited one hijacker (a French national named Albert Cadon) to Mexico in 1961, where he was sentenced to eight years and nine months in jail, but subsequently refused to extradite to Mexico two Mexicans and two Dominicans involved in the hijacking of Mexican aircraft.<sup>83</sup> Cuba returned Robert Labadie, an American, to the United States in 1970 after the FAA dossier showing that he was a mental patient arrived in Havana (a standard FAA practice). Otherwise, extraditions have resulted mainly from hijackings aborted before the intended destination was reached, or in the extremely rare incident in which a state of landing was chosen that would return the hijacker.<sup>84</sup>

Even if the United States maintained diplomatic relations with Havana, extradition of hijackers still could not be achieved because hijacking is not among the offenses listed in the 1904 Extradition Treaty. Additionally, in 1961 the Deputy Legal Adviser ruled that transportation of neither kidnapped persons nor stolen property came

---

82. Washington Post, Jan. 23, 1970, § A, at 18, col. 1; *Aircraft Hijacking Hearings*, *supra* note 37, at 110; see Horlick, *supra* note 1, at 58.

83. N.Y. Times, Aug. 10, 1961, at 1, col. 4; Washington Star, April 30, 1971, § C, at 24, col. 5.

84. Washington Post, Sept. 25, 1970, § A, at 1, col. 3; J. ARÉY, *supra* note 2, at 236.

within terms of the agreement.<sup>85</sup> Cuban Law 1226 invites a bilateral exchange of hijackers (aerial and marine), but the sweeping nature of the law renders the terms of exchange unacceptable to the United States.<sup>86</sup> New treaties that specifically include hijacking have been negotiated with New Zealand, Spain, France, Italy and the United Kingdom, and the treaties with Spain and Italy include a presumption that the offense is not political. Similar negotiations are underway between the United States and thirteen other countries, and among other states as well.<sup>87</sup>

Extradition treaties, however, are not a practicable solution to the problem of punishing hijackers. Such treaties are negotiated with friendly countries, to which a hijacker is least likely to go, and they are the type of agreement that is most likely to fall into desuetude should relations between the two states become strained.<sup>88</sup> Also, irrespective of treaty obligations, it is unlikely that a United States Government, for example, would wish to bear the political cost of returning a refugee to the U.S.S.R.,<sup>89</sup> just as the delicately balanced Italian Government could hardly afford the political repercussions of extraditing Minichiello to the United States. These same internal political considerations prevent international reliance on a simple prosecution procedure by the state of landing. Only an international furor forced the re-arrest of Belon by Lebanon, and Minichiello was not tried until his popularity had waned. None of the Arab guerrilla hijackers have been tried in Arab countries. It seems clear, therefore, that only some form of external, or international, obligation can insure prosecution for all hijackers, especially where the government is either delicately balanced or less than normally responsive to the usual diplomatic pressures.

The means of insuring punishment must embrace the political realities of both probable effectiveness and the desirability of preventing each type of hijacking, outlined earlier. No major difficulty, therefore, should be presented by treaty agreements requiring

---

85. 6 M. WHITEMAN, *DIGEST OF INTERNATIONAL LAW* 790 (1968).

86. 45 DEP'T STATE BULL. 407 (1961).

87. *Aircraft Hijacking Hearings*, *supra* note 37, at 84, 110.

88. Cf. Lissitzyn, *International Control of Aerial Hijacking: The Role of Values and Interests*, 65 PROC. AM. SOC'Y INT'L L. 80, 85 (1971).

89. The aborted attempt to defect by S. Kudirka and the criticism of the Coast Guard for its allowing the Russians to remove him from a Coast Guard vessel during fishing negotiations indicate the political risk involved for the U.S. Government to return a hijacker from the Soviet Union who has already landed in the United States. *See* N.Y. Times, Nov. 29, 1970, at 1, col. 2; N.Y. Times, Dec. 4, 1970, at 12, col. 1.

that hijackers motivated solely by personal reasons be punished by the state of landing; even the Italians managed to sentence Minichiello to seven and one-half years in prison, despite a sympathetic public. Mandatory extradition is not a realistic solution, given the contours of political dissonance throughout the world; but the alternative of returning the hijacker should definitely remain open, since the state of landing presumably has no interest in serving as a haven for another state's misfits—as was demonstrated by Cuba's return of Robert Labadie, a mentally disturbed veteran, to the United States.

Although it is equally desirable to have the state of landing punish hijackers acting for purposes of political demonstration or to gain political advantage, it is unrealistic to expect that this will happen very often, assuming that hijackers will continue to exercise the modicum of common sense necessary to divert the plane to a state sympathetic to their views. No Arab government would dare defy popular passions—which, ironically, the governments themselves have molded—by pressing charges against the perpetrators of the September, 1970 hijackings, even though the international impact of the incidents prompted both criticism of the PFLP by Iraq, Syria, and *Al Ahram* (the semi-official Egyptian organ), and expulsion of the PFLP by the Palestine Liberation Organization (the guerrilla umbrella organization).<sup>90</sup> On the other hand, Lebanon did convict Belon, albeit on minor charges, and France jailed (for eight and six months respectively) the two Italians who hijacked an Olympic Airlines plane to pass out pamphlets denouncing the Greek junta.<sup>91</sup> Arguably, while extradition is improbable in such cases, the existence of an international obligation would strengthen the hand of a government seeking prosecution.

The case of "political refugees" using hijacking as a means to escape to "freedom," either in the free societies of the West or in the Socialist paradises of Cuba or China, is obviously more difficult. The question of "political" asylum is usually explored in the context of extradition,<sup>92</sup> an approach unlikely to be employed in the case of people fleeing from the Soviet bloc to Western Europe, or from the United States and Latin America to Cuba.<sup>93</sup> The considerations of

---

90. TIME, Sept. 21, 1970, at 20, 27.

91. 65 PROC. AM. SOC'Y INT'L L. 87, 90 (1971).

92. See, e.g., McMahon, *Air Hijacking: Extradition as a Deterrent*, 58 GEO. L.J. 1135, 1138-40 (1970).

93. The United States refused to extradite the hijackers of three Czech planes in 1950. 22 DEPT STATE BULL. 595 (1950); 6 M. WHITEMAN, *supra* note 85, at 808-09. France refused to return the hijackers of a Polish plane diverted to the

internal politics and human rights that underlie a refusal to extradite, however, are not present with the same force where the decision is more simply one of punishment: incarcerating "victims of oppression" would not be a popular move for a government, but it certainly would be a less explosive move than returning the refugee to the tender mercies of the "oppressor." For example, Austria, Denmark, France and West Germany all have punished hijackers from Eastern Europe, even while granting asylum, on charges of theft of the aircraft, illegal possession of weapons, jeopardizing passengers, and similar offenses.<sup>94</sup> The same reasoning applies to the human rights considerations: the rights of the hijacker should not be completely and unconditionally eliminated by the imposition of mandatory extradition, but an appropriate punishment should be formulated and enforced for the infringement of the rights of the passengers and crew of the hijacked plane, as well as for the disruption of world air travel.

Even bona-fide "political refugees" should not be exempted from such sanctions, in order to prevent the opening of an unmanageable and inconsistently defined "political offense" loophole. The severity of the sanction, however, should be determined by the balancing test used by the Swiss Federal Tribunal in considering the diversion of a Yugoslav aircraft to Switzerland by three crew members in 1952:

Such a [political] character must also be attributed to offenses which were committed in order to escape the constraint of a State which makes all opposition and, therefore, the fight for power impossible.

In this connection there can also be applied the principle that the relation between the purpose and the means adopted for its achievement must be such that the ideals connected with the purpose are sufficiently strong to excuse, if not justify, the injury to private property, and to make the offender appear worthy of asylum. . . . In the present case the required relationship undoubtedly exists; for, on the one hand, the offenses against the other members of the crew were not very serious, and, on the other, the political freedom and even existence of the accused was at stake, and could only be achieved through the commission of these offences.<sup>95</sup>

In the above case, the balance weighed against extradition, but it need not weigh as strongly against punishment *without* extradition. This same standard could be used to determine the severity of punishment,

---

French sector of West Berlin in 1969. N.Y. Times, Oct. 20, 1969, at 1, col. 5. Cuba refused a Mexican request for the return of two Mexicans who hijacked a Mexican plane to Cuba in 1971. Washington Star, April 30, 1971, § C, at 24, col. 5.

94. 65 PROC. AM. SOC'Y INT'L L. 91 (1971).

95. *In re Kavic, Bjelanovic & Arsenijevic*, 1 *Arrêts du Tribunal Fédéral Suisse, Recueil Officiel* 39, 78, 19 ANN. DIG. 371, 374 (1952).

after a judicial examination of the alternate means of escape (if any) and of the danger to which others would have been exposed had the alternatives been chosen.

Real world considerations, however, pose problems for the deterrence plan of assuring punishment through international obligation. For example, a state such as Cuba, even though it recognizes the dangers posed to international aviation (in which it participates), may refrain from punishing even hijackers motivated solely by personal reasons, simply to avoid doing anything considered desirable by a state with which it is on unfriendly terms. Moreover, collusive trials may subject favored hijackers to only a minimal deprivation for their mandatory punishment; in fact, internal politics may prevent altogether the punishment of any hijacker who claims a popular political affiliation. For these reasons, hijacking also must be made an international crime, so that any state within which an accused hijacker is found could apply the appropriate penalty without regard to the place of the alleged offense. Most hijackers motivated by personal reasons are not interested in spending the remainder of their lives within the social and geographic confines of the state of landing.<sup>96</sup> Universal jurisdiction should also help deter the use of hijacking for political demonstration or for the taking of hostages, because the hijackers, after the initial offense, would be confined to those countries that were strongly sympathetic to their aims.

## V. THE DEVELOPMENT OF INTERNATIONAL REGULATION

### A. Regulation by Private International Organizations

The interests of air carriers and crews are directly represented in the international area by their respective organizations, the International Air Transport Association (IATA) and the International Federation of Air Line Pilots Associations (IFALPA). The IATA, spun off from the 1944 Chicago Conference on International Civil Aviation, is a voluntary association of 103 scheduled international airlines from 84 countries. Its membership includes, *inter alia*, the national airlines of Cuba, Lebanon, the U.A.R. and Czechoslovakia.<sup>97</sup> While IATA's main

---

96. Fifteen have returned voluntarily to the United States from Cuba despite near certain prosecution.

97. 13 Y.B. INT'L ORGANIZATIONS 237, 384 (1971). Although the Soviet Aviation Workers Union does not belong to IFALPA, representatives of Aeroflot have indicated privately that they agree with proposals for a boycott of receiving states that fail to punish hijackers. See Stephen, *supra* note 76, at 442.

concerns are economic and technical, the organization became seriously concerned about hijacking in 1968, when it became a persistent and serious threat to safe and efficient air carrier operations. IFALPA is a federation of 57 national pilots associations, including those of Cuba, Lebanon and the U.A.R.<sup>98</sup> Because the interests of other crew members are essentially identical to those of the pilots in relation to the problem of hijacking, the International Transport Workers Federation (ITWF) has generally followed the lead of IFALPA. The focus of IFALPA is air safety and working conditions; therefore, hijacking has been of very great concern, especially since 1968. Neither IATA nor IFALPA has been able to take unilateral measures to insure that all receiving states punish hijackers. IATA cannot force those among its member carriers that are owned or otherwise controlled by their state to controvert the wishes of those states (*e.g.*, by an IATA-run suspension of air service), nor can it affect states serviced by nonmembers.

The pilots' associations, acting both independently and through the international organization, have exerted pressure on states in which member associations provide significant air service. For example, following the detention of an Israeli plane, crew and passengers by Algeria in 1968, the President and Deputy President of IFALPA went to Algiers, reportedly to threaten an air boycott.<sup>99</sup> The hostages were released, however, and the boycott was abandoned.<sup>100</sup> The limits of IFALPA power were indicated by the dissent of the Lebanese pilots, and by the threat of an Arab union to blacklist any boycotting airline.<sup>101</sup> IFALPA's 24th Conference, held in March, 1969, authorized boycotts of any states that refused to punish hijackers.<sup>102</sup> On September 1, 1969, the Federation threatened a 24-hour worldwide stoppage unless Syria were forced to release two Israelis detained following a PFLP hijacking to Damascus, although the pilots evidently were persuaded by U Thant not to follow through on their threat.<sup>103</sup>

---

98. INTERNATIONAL FEDERATION OF AIRLINE PILOTS ASSOCIATIONS, SOME FACTS ABOUT IFALPA (6th ed. 1970); IFALPA File 2/5/2. *See* note 32, *supra*.

99. Most air service to Algeria was flown by members of the French member association, which announced on August 14, 1968, that a boycott would begin on August 19. *N.Y. Times*, Aug. 15, 1968, at 15, col. 1.

100. *N.Y. Times*, Aug. 18, 1968, § 4, at 5, col. 1.

101. *Aviation Safety Hearings*, *supra* note 17, at 275; *N.Y. Times*, Aug. 15, 1968, at 15, col. 2.

102. *N.Y. Times*, March 27, 1969, at 1, col. 3.

103. *N.Y. Times*, Sept. 2, 1969, at 1, col. 2. *See also* *N.Y. Times*, Sept. 4, 1969, at 15, col. 1; AVIATION WEEK AND SPACE TECHNOLOGY, April 13,

A worldwide 24-hour boycott, called by IFALPA after a series of hijackings culminated in the murder of a Czech pilot, was unable to overcome court orders in the U.S. and some pilot antipathy to striking the airlines over hijacking, but probably should be given some of the credit for reviving the interest of the International Civil Aviation Organization (ICAO) in a convention providing for sanctions against nations harboring hijackers.<sup>104</sup>

### B. Regulation by Public International Organizations

1. *The Organizations.*—The most obvious source of an authoritative prescription of an international obligation on states to punish hijackers is the United Nations. It is possible that some U.N. action on hijacking would have been obtained, but for that body's preference for viewing hijacking as a technical subject more within the competence of ICAO (reflecting a fear of political roadblocks in the Security Council and General Assembly)<sup>105</sup> and considerations of timing. By the time that the hijacking problem had assumed proportions sufficiently significant to engage the attention of the entire world community, the leading aviation states had already initiated action in ICAO. Hijacking did not become a real threat to world peace until September, 1970, by which time a consensus had been formulated through ICAO.

At a meeting on November 19, 1969, of the Sixth (Legal) Committee of the General Assembly, a Dutch delegate, speaking for 28 states, put forward a draft resolution on hijacking.<sup>106</sup> The resolution, which was adopted without change by the General Assembly on December 12, 1969, by a vote of 77 to 2 with 17 abstentions, did no more than "call upon" states to insure that their national legislation permitted the prosecution of the hijacker, "urge"

---

1970, at 45-47. The Austrian Airline Pilots Association wrote to the Austrian Minister of Justice to request that two Poles who hijacked a plane to Vienna be prosecuted without political consideration. Letter of Dec. 9, 1969, IFALPA File 2/5/2; see note 32 *supra*. An independent group of pilots chartered a 747 to give 80 U.N. delegates an airborne seminar on hijacking, featuring 18 crew members who had experienced hijacking, to dramatize the need for prompt ratification of the Tokyo, Hague and Montreal agreements. N.Y. Times, Nov. 7, 1971, at 82, col. 1.

104. N.Y. Times, June 9, 1972, at 1, col. 5; N.Y. Times, June 18, 1972, at 1, col. 8; N.Y. Times, June 20, 1972, at 1, col. 6; N.Y. Times, June 21, 1972, at 20, col. 5.

105. Statement by C.A. Stavroupolous (U.N. Legal Counsel), March 4, 1970, in ICAO Doc. 8877-LC/161, at 171-74 (1971).

106. 24 U.N. GAOR, 265, U.N. Doc. A/C.6/SR 1154 (1969).



that hijackers be prosecuted, "invite" states to accede to the Tokyo Convention of 1963, and "urge" support for the efforts of ICAO to put together a convention on the unlawful seizure of civil aircraft.<sup>107</sup> The entire Soviet bloc abstained from voting in the Legal Committee except Poland, which, despite dissatisfaction with the draft resolution, voted for its adoption because "the text was the minimum that the Sixth Committee could submit to the international community in the circumstances."<sup>108</sup> The weakness of the resolution was obliquely admitted by the sponsor, who noted the consensual nature of the process by which it had been drafted.<sup>109</sup>

The ICAO probably is the logical forum for the development of international prescriptions regarding hijacking. ICAO, a specialized agency of the United Nations since 1947, is comprised of 122 states,<sup>110</sup> including every state to which aircraft have been diverted except North Korea, North Vietnam, and East Germany (all of whom presumably remain aloof because of membership held by their "counterpart" states), and has working relationships with all the major aviation groups (especially IATA) and all the major international law groups. Especially significant was the accession of the U.S.S.R. on November 14, 1970.<sup>111</sup>

2. *The Tokyo Convention.*—The involvement of ICAO with the unlawful seizure of aircraft began with the Convention on Offenses and Certain Other Acts Committed On Board Aircraft (Tokyo Convention).<sup>112</sup> The claims of prescriptive jurisdiction over airborne crimes that had been made prior to the Tokyo Convention were inconsistent and frequently conflicting.<sup>113</sup> The Tokyo Convention is

107. G.A. Res. 2551, 24 U.N. GAOR Supp. 30, at 108, U.N. Doc. A/7630 (1969). Cuba and the Sudan cast the negative votes (although the Sudanese delegate later claimed that he should have been recorded as abstaining). Van Panhuys, *supra* note 1, at 1, n.2.

108. 24 U.N. GAOR, 377, 378, U.N. Doc. A/C.6/SR 1172 (1969).

109. 24 U.N. GAOR, 371, U.N. Doc. A/C.6/SR 1171 (1969).

110. List of member states supplied by ICAO.

111. 13 Y.B. INT'L ORGANIZATIONS 1010-27 (1971); 1 EUROPA Y.B. 48 (1971).

112. Sept. 14, 1963, [1969] 3 U.S.T. 2941, T.I.A.S. No. 6768 (effective Dec. 4, 1969). As of April 26, 1972, the Convention had been ratified or acceded to by 51 states. Treaty Information Office, U.S. State Dep't.

113. The preexisting lacunae in national jurisdictions are typified by *United States v. Cordova*, 89 F. Supp. 298 (E.D.N.Y. 1950), which demonstrated that it was possible in 1950 for an American to commit mayhem on another American aboard a United States aircraft over the high seas without falling within any state's jurisdiction. Similar cases in other states are found in DE F. BILLYOU, AIR LAW 224-40 (1963).

characterized as "lawyers' law," and was intended to rationalize the many claims of prescriptive jurisdiction over airborne crimes.<sup>114</sup> The general provisions of the Tokyo Convention are discussed extensively elsewhere and will not be treated in detail here.<sup>115</sup> They are, however, important here because they exclude no criminal jurisdiction that is exercised under national law.<sup>116</sup> Moreover, they do not mandate extradition or prosecution of hijackers; therefore, the usefulness of the Convention for the suppression of hijacking is limited to the rare situation in which the hijacker is within the effective power of a state interested in prosecuting him or her.<sup>117</sup>

The proposal that specific provisions concerning hijacking be included in the Tokyo Convention was first made by the United States and Venezuela at a meeting of the Legal Subcommittee in Montreal in 1962.<sup>118</sup> The joint proposal was adopted with some changes as article 11 of the Tokyo Convention, which requires contracting states to "take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft. . . ." and to "permit its passengers and crew to continue their journey as soon as practicable, and . . . return the aircraft and its cargo to the persons lawfully entitled to possession."<sup>119</sup>

---

114. For a summary of the various jurisdictional claims by ICAO members in 1959 see ICAO Doc. 8111-LC/146-2, at 160-65 (1959).

115. The best brief account is in 1 C. SHAWCROSS & K. BEAUMONT, *AIR LAW* 701-06 (P. Keenan, A. Lester & P. Martin 3d ed. 1966). For a detailed exposition see S. Shubber, *Jurisdiction over Crimes on Board Aircraft*, 1968, (unpublished thesis at Cambridge University). See generally 1-2 ICAO, *INTERNATIONAL CONFERENCE ON AIR LAW, TOKYO* (1963) (containing the Minutes and Documents of the Tokyo Conference).

116. Tokyo Convention, arts. 3(3), 4.

117. See generally Mendelsohn, *In-flight Crime: The International and Domestic Picture Under the Tokyo Convention*, 53 VA. L. REV. 509, 513-14 (1967).

118. Fitzgerald, *supra* note 79, at 280. The Tokyo Convention was not aimed at preventing hijacking, as is sometimes thought. See Horlick, *supra* note 1, at 35 & n.16. The first draft of the Convention goes back to Geneva in 1956, six years before the first mention of hijacking as a separate matter. Article 11, which addresses unlawful interference with aircraft, was added only in the hope of obviating the need for a separate protocol. See Shubber, *supra* note 115, at 41; Wiberforce, *Crime in Aircraft*, 67 J. ROYAL AERO. SOC'Y 175, 180 (1965).

119. The drafting history of article 11 is well covered in Fitzgerald, *supra* note 79, at 280-83. See also Shubber, *Is Hijacking of Aircraft Piracy in International Law?*, 43 BRIT. Y.B. INT'L L. 193, 194-98 (1968-69).

The inadequacy of the Tokyo Convention as an effective measure for the repression of hijacking has been widely recognized.<sup>120</sup> The missing element of the Tokyo Convention became quite apparent as hijackings increased in 1968 and 1969:

The weakness in the Tokyo Convention is the lack of any provision for the return of the hijacker. It deals with a number of subjects, and the article pertaining to unlawful seizure calls only for the restoration of proper control of the aircraft and forward movement of passengers, crew and cargo.<sup>121</sup>

Even the minimally rational hijacker will have the foresight to divert the hijacked plane to a country whose international relations militate against the possibility of his being extradited for prosecution, pursuant to the permissive provisions of the Tokyo Convention. This weakness of the Convention, however, is not so surprising when one recalls that it was adopted in 1963, when hijacking was perceived as a somewhat amusing problem for the United States and certain other American countries. At that time, only a fairly weak provision was sufficiently acceptable to insure its inclusion in the Convention.<sup>122</sup>

3. *Aftermath of the Tokyo Convention.*—Dissatisfaction with the Tokyo Convention was expressed by several delegates at the Sixteenth ICAO Assembly in September, 1968, in Buenos Aires, both at the plenary meetings and at sessions of the Legal Committee. In resolution A16-37, the ICAO Assembly urged all states to give immediate effect to the principles of article 11 of the Tokyo Convention, and directed the ICAO Council to arrange a study of other measures. The ICAO Council dropped a reference to prosecution from its eventual resolution, but directed the ICAO Legal Committee to establish a subcommittee to examine both the development of model national legislation and the possibility of an international convention dealing with the prosecution of hijackers.<sup>123</sup> The subcommittee's pre-

---

120. *E.g.*, INSTITUT DE DROIT INTERNATIONAL, HIJACKING OF AIRCRAFT 76, 81, 91, 96, 105 (E. McWhinney ed. 1970) (Provisional Report and Draft Resolution). *See generally* AERIAL PIRACY AND INTERNATIONAL LAW (E. McWhinney ed. 1971); Boyle & Pulsifer, *The Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft*, 30 J. AIR L. & COM. 305 (1964).

121. AVIATION WEEK AND SPACE TECHNOLOGY, Sept. 8, 1969, at 14.

122. *See Note, Air Piracy: The Role of the International Federation of Airline Pilots Associations*, 3 CORNELL INT'L L.J. 79, 85-86 (1970).

123. ICAO Doc. 8779, Res. A/16, at 92 (1968). *See generally* Volpe & Stewart, *Air Hijacking: Some Domestic and International Responses*, 59 KY. L.J. 273, 291 (1970).

liminary work indicated that universal jurisdiction over hijackers, coupled with state obligation either to prosecute or to extradite, would reach the desired results. The need for careful attention to the right of asylum was also noted.<sup>124</sup> These goals were amplified in an introductory note by the ICAO Secretariat a month before the meeting of the subcommittee in Montreal on February 10, 1969:

[I]t is suggested that the objectives might well be to obtain the consent of as many States as possible that—

- (a) "unlawful seizure" of aircraft in flight and attempts thereat shall be recognized as a penal offence subject to the jurisdiction of every such State, irrespective of whether the act took place in or outside of the territory of any State,
- (b) each State would take necessary measures to establish such jurisdiction, and,
- (c) a State would extradite such offender if found within its territory, unless it has decided to try him, but careful study will be necessary as to whether a State could refuse a request for extradition in specified cases, for example, in the case of its own national, or to preserve the right of an individual to seek asylum in certain circumstances.

The above objectives could be attained either by the enactment of uniform national legislations by the consenting States or by means of an international instrument. Such instrument might well be one which would leave untouched the Tokyo Convention, some provisions of which would remain applicable to certain aspects of the problem of "unlawful seizure," but would contain complementary provisions which, without amending the Tokyo Convention, would fill gaps . . . and would also include other provisions which a proper study of the subject might indicate.<sup>125</sup>

The subcommittee met twice (February 10-22 and September 23-October 3, 1969), and decided that an international convention would most effectively achieve the desired objectives. A draft convention was produced that defined a new international offense of "unlawful seizure," although the subcommittee reduced the likelihood of effective prosecution by dropping provisions for universal jurisdiction.<sup>126</sup> The Legal Committee, meeting in Montreal from February 9 to March 11, 1970, made minor changes<sup>127</sup> before passing

---

124. 65th Session of the ICAO Council, ICAO Doc. C-P/4885, at 3-4 (1968).

125. ICAO Doc. 8838-LC/157, at 35, 36 (1969).

126. For an analysis of the work of the subcommittee see Fitzgerald, *supra* note 79, at 286-94. See generally ICAO Doc. 8838-LC/157 (1969) (containing the Reports and Documents of both meetings of the subcommittee).

127. See 9 INT'L LEGAL MATERIALS 669 (1970). See generally ICAO Doc. 8877-LC/161 (1970) (containing the Minutes and Documents of the

the draft on to the Diplomatic Conference at the Hague on December 1, 1970.

4. *The Hague Convention.*—The Convention for the Suppression of Unlawful Seizure of Aircraft (the Hague Convention)<sup>128</sup> was approved by a unanimous vote (74 for, none opposed, Algeria and Chile abstaining)<sup>129</sup> at the Hague on December 16, 1970. Fifty states signed immediately (a fairly high number), and thereby assumed the obligation to do nothing to frustrate the purpose of the agreement. The treaty took effect on October 14, 1971, and by April 26, 1972, ratifications or accessions had been deposited by 30 states.<sup>130</sup>

The Preamble of the Convention states concisely the concerns of the principal aviation states of the world: the danger accompanying hijackings, and the consequent disruption and discrediting of the most important single means of global interchange.

Article 1, which defines the offense, was carried over unchanged from the Legal Committee draft. It includes seizures by force or blackmail, but not by fraud or bribery. Article 2 obliges contracting states to make the offense punishable by "severe penalties," which are left undefined.

Paragraph 1 of article 3 is identical to the definition of "in flight" used in article 5(2) of the Tokyo Convention,<sup>131</sup> and extends beyond the Legal Committee draft to include the period of taxiing, and also

Seventeenth Session of the Legal Committee Relating to the Subject of the Unlawful Seizure of Aircraft). Among the changes made by the Legal Committee from the subcommittee draft was the extension of jurisdiction to include states in which the plane lands with the hijacker aboard, as well as the state in which the hijacker actually leaves the plane. *Compare* 9 INT'L LEGAL MATERIALS 77 (1969) (final subcommittee draft) *with* 9 INT'L LEGAL MATERIALS 669 (1969) (Committee draft). There was no discussion of universal jurisdiction by the Committee, although it had been urgently recommended by the International Law Association as necessary for effectiveness. *See* 54 INT'L L. ASSOC. REP. 342, 358 (1970).

128. Dec. 16, 1970, T.I.A.S. No. 7192 (effective Oct. 14, 1971).

129. The Chilean delegation was awaiting instructions from the newly elected Allende government, while Cuba, adhering to its preference for bilateral arrangements, was not present.

130. As of April 26, 1972, the following states had ratified or acceded to the Hague Convention: Beylorussian S.S.R., Brazil, Bulgaria, Chile, Costa Rica, Czechoslovakia, Dahomey, Ecuador, Finland, Gabon, German Democratic Republic, Hungary, Iran, Iraq, Israel, Japan, Jordan, Mali, Mongolia, Niger, Norway, Paraguay, Poland, Sweden, Switzerland, Trinidad-Tobago, Ukrainian S.S.R., Soviet Union, United Kingdom and the United States.

131. *Compare* Tokyo Convention, *supra* note 112, art. 5(2) *with* Hague Convention, *supra* note 128, art. 3(1).

the time on the ground during forced landings.<sup>132</sup> Paragraph 2 parallels the Tokyo Convention in excluding military, customs and police aircraft. Paragraph 3 excludes application of the Convention to hijackings solely within one state (domestic flights are included if diverted to another state), unless taking place in a state other than that of registration. Paragraph 4 provides that hijackings within one state of a joint-operating air transport agency will not be covered, but that an interstate diversion of a plane operated by such a body will be included. Paragraph 5 (added at the Hague) applies the operative features of the Convention (*i.e.* custody, prosecution, extradition) to *all* hijackings, including purely domestic incidents, as long as the alleged offender is found within the territory of a contracting state other than the state of registration (which presumably has national legislation concerning the hijacking of its own airplanes within its territory). This section was added as part of the provision for universal jurisdiction.

Article 4 provides much of the backbone of the Convention, by the addition of a form of universal jurisdiction<sup>133</sup> to the bases of jurisdiction provided by the Legal Committee (state of the flag and each state of landing). Article 4(1)(c), dealing with aircraft leased without crew, was added to deal with the burgeoning nonscheduled air transport business. Article 5 assimilates international operating agencies (or joint air transport operating agencies) into the Hague regime by providing that one of the participating states be designated as the state of registration for purposes of the Convention. Article 6, detailing the obligation to take custody of alleged offenders within the territory of contracting states, is given greater significance by the obligation imposed by articles 3(5), 4(2) and 7 to either prosecute or extradite alleged offenders without regard to the site of the alleged offense.<sup>134</sup>

---

132. 9 INT'L LEGAL MATERIALS 669, 670 (1970) (Legal Committee Draft).

133. Article 4 requires each contracting state to "take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him . . ." This form of universal jurisdiction was added at the initiative of Spain, Switzerland and the U.A.R. True universal jurisdiction (hanging a pirate wherever he or she may be found) is probably undesirable; one wishes neither encroachments on the territorial sovereignty of other states to obtain custody, nor attempted arrests in flight over the high seas, where resistance could be dangerous to all.

134. Normally, identifying the hijacker poses no problem, but some flexibility for doubtful cases clearly is intended by the first clause of article 6: "*Upon being satisfied that the circumstances so warrant, any Contracting State in the*

Article 7, which sets out the obligations to extradite or prosecute an alleged offender found within the territory of the contracting state, is the heart of the Convention. In view of the rejection of the wording of the Draft Convention,<sup>135</sup> article 7 must be interpreted as creating an obligation to press prosecution as far as possible (an absolute obligation cannot be imposed on states with an independent prosecuting arm). Other changes in the language of the Legal Committee Draft are understood by the United States to exclude any consideration of political motives in the decision to prosecute.<sup>136</sup> An attempt to include the phrase "regardless of motive" was rejected by the Conference.<sup>137</sup> The language of the General Assembly Resolution of November 25, 1970,<sup>138</sup> however, indicates an international consensus that hijackers be prosecuted regardless of motive, as does the resolution of the Eighteenth Commission of the Institut de Droit International.<sup>139</sup>

Article 8 is intended to facilitate extradition of hijackers among contracting states. It provides that hijacking, as defined in the Convention, shall be included as an extraditable offense under all existing extradition treaties of contracting states, thus circumventing the problem of amending existing treaties. Additionally, it provides that hijacking shall be considered an extraditable offense between states that do not make the existence of a treaty a condition to extradition. The frequent limitation of extradition treaties and laws to

---

territory of which the offender or the alleged offender is present, shall take him into custody. . . ." (emphasis added). Once identification is made, article 6 allows no exception to the obligation of the contracting state to insure the hijacker's presence and to either extradite or submit him for prosecution.

135. Article 7 of the Legal Committee Draft Convention stated: "The Contracting State which has taken measures pursuant to Article 6, paragraph 1, shall, if it does not extradite the alleged offender, be obliged to submit the case to its competent authorities *for their decision whether to prosecute him*. These authorities shall take their decision in the same manner as in the case of other offences." 9 INT'L LEGAL MATERIALS 669, 671 (1970) (emphasis added). In final form, the italicized portion of the Draft Convention was replaced with the words "for the purpose of prosecution."

136. See note 135 *supra*. The final article 7 also carries the words "without exception whatsoever" following "obliged" and replaced the phrase "other offences" at the end of the article with the phrase "any ordinary offence of a serious nature under the law of that State."

137. IFALPA Report, March 18, 1971, IFALPA Doc. 71A322. See note 32 *supra*.

138. G.A. Res. 2645, 25 U.N. GAOR Supp. 28, at 126-27, U.N. Doc. A/8028 (1970).

139. See APPENDIX A.

offenses committed within the territory of the state requesting extradition is avoided by treating the offense as if it were committed within the territories of the state of registration, of landing with the alleged offender on board, and of the airline's principal place of business or, absent one of the above, the permanent residence of a "bare-hull" lessee. Those provisions were all carried over from the Legal Committee Draft, which had borrowed them from the 1929 Convention of the Suppression of Counterfeiting,<sup>140</sup> and are amplified by article 8(2), which gives a "treaty-extradition" state the option of considering the Convention a treaty for purposes of extradition to a "non-treaty-extradition" state. A number of states, led by the U.S.S.R. and the United States, sought to make extradition mandatory,<sup>141</sup> but this proposal was unacceptable to many smaller countries that argued that extradition in every instance might not be appropriate.<sup>142</sup>

Article 9 supplements article 11 of the Tokyo Convention, extending coverage of the Convention to situations in which the hijacked plane, passengers, crew and cargo are not all in the same state, and by requiring the contracting states to "facilitate" (rather than merely "permit") continuation of the journey, and to return the aircraft and cargo "without delay."<sup>143</sup>

Articles 10 and 11 set out obligations to aid other contracting states in prosecutions and to report actions taken in connection with hijacking incidents. It is anticipated that airlines will also be helpful in supplying witnesses and other assistance. Article 12 refers disputes over interpretation or application of the Convention to arbitration, and, if that fails, to the International Court of Justice. Paragraph 2, however, explicitly recognizes the possibility of reservations to this article (raising the implication that reservations to other articles are not permitted). Article 13 provides that the Convention shall become effective 30 days after ten ratifications have been deposited by states that participated in the Hague Conference.<sup>144</sup> Especially noteworthy is the provision of article 13(1) opening the Convention to *all* states,

---

140. See ICAO Doc. 8838-LC/157, at 51; INSTITUT DE DROIT INTERNATIONAL, *HIJACKING OF AIRCRAFT* 58 (E. McWhinney ed. 1971).

141. ICAO Doc. 8838-LC/157, at 71.

142. Interview with K.J. Chamberlain, Foreign and Commonwealth Office, London, March 23, 1971. See also D. Marrinan, *Hijacking Act 1971*, 23 N. IRE. LEGAL Q. 238, 242 (1972).

143. The only problem involving the cargo on hijacked planes, as yet, was the presence of secret NATO documents on the Pan Am 747 destroyed in Cairo on Sept. 6, 1970. N.Y. Times, Sept. 9, 1970, at 18, col. 6.

144. This reflects a desire for greater speed than the six years it took to get the required twelve ratifications to the Tokyo Convention.



rather than limiting participation to United Nations members or some other formula. Article 14 permits denunciations, effective six months following receipt of notice.

5. *Background of the Hague Conference.*—It is generally conceded that the substantial strengthening of the Legal Committee Draft of March, 1970, by the Hague Conference in December, 1970—i.e. the provision of universal jurisdiction and the tightening of the obligation to extradite or prosecute—was precipitated by the events of the intervening months, notably the September, 1970, hijackings in the Middle East and the successful hijackings from the U.S.S.R. to Turkey in October, 1970.<sup>145</sup> The Middle Eastern incidents clearly had a great impact on many governments, including Arab states. Several Arab states criticized the actions of the PFLP, and the U.A.R. strongly supported the establishment of effective universal jurisdiction. Perhaps, however, the U.A.R.'s position was actually prompted by Arab opposition to mandatory extradition—an obligation that Arab governments could hardly hope to fulfill and still remain in power. Nonetheless, it is probable that the revision of article 9, which now requires that states “facilitate,” rather than merely “permit,” the continuation of the journey, was partially motivated by the plight of the hostages held in Jordan in September, 1970, even though there was little that Jordan or any state could have done in that situation without risking a rather abrupt end to the hostages' travels.

6. *Soviet and Bloc Response.*—The Russian hijackings merely emphasized Soviet sensitivity concerning attempts to leave the U.S.S.R. without permission. Four other Eastern bloc countries (Poland, Bulgaria, Czechoslovakia and Hungary) had proposed mandatory extradition in the Legal Committee in March but had been voted down, 18-5.<sup>146</sup> Although it had participated in the Tokyo Conference of 1963, the U.S.S.R. had joined ICAO only the month before the Hague Convention, and perhaps it also wished to appear cooperative as a new member.<sup>147</sup> Soviet interest in the suppression of

---

145. See 65 PROC. AM. SOC'Y INT'L L. 76-77 (1971); G.A. Res. 2645, 25 U.N. GAOR Supp. 28, at 126, U.N. Doc. A/8028 (1970); 64 DEP'T STATE BULL. 50, 53-55 (1971).

146. ICAO Doc. 8877-LC/161, at 59, 170 (1970).

147. A Soviet commentator explained Soviet participation as follows: “The [Draft Convention] was necessitated by the recent increase in cases of aircraft crews' being forced to change course in mid-flight and land in other countries. Modern flying is such that any deviation of a heavy, fast-flying plane from its route may result in a crash, endangering many lives. States concerned about air safety and the prevention of hijackings have taken steps to work out and introduce international legal rules that would make punishment inevitable and

hijacking is further demonstrated by the ratifications deposited within one year of the Hague Conference by the U.S.S.R., Bulgaria, Hungary, Mongolia and the German Democratic Republic.<sup>148</sup>

7. *Weaknesses of the Hague Convention.*—The major weaknesses of the Hague text are fairly obvious, and, in fact, are mostly deliberate. Article 1, for example, includes an explicit rejection by the Conference of a proposal that persons participating in the hijacking, but who remain outside the aircraft, be included as offenders.<sup>149</sup>

The failure to define "severe penalties" prompts the suspicion that favored hijackers will get off easily, as did the two hijackers who used an Olympic aircraft to distribute political propaganda (eight months and six months imprisonment, respectively). Given the present variance in national values, however, it is unlikely that any fixed range of penalties could be agreed upon; nonetheless, a full year or more in jail is hardly a trivial penalty, and nearly all sentences have exceeded that. A harsh mandatory penalty could well prevent conviction altogether in some cases. It is more likely that disparity in sentencing will be a welcome means of distinguishing between "deserving" political refugees (of all types) and other hijackers.

Article 7 may also be seen as a possible loophole, because contracting states may hide behind the decision of an independent judiciary to prosecute a given hijacker.<sup>150</sup> It is difficult, however, to see how the wording of this article could be much stronger and still be acceptable to most civil law countries. The obligation of a state to

---

serve as a grave warning to persons hijacking planes for personal reasons. . . . In November 1970, the 25th General Assembly returned to a consideration of this problem and adopted a resolution condemning all hijackings, emphasizing the need to bring to justice or extradite hijackers, and urged to exert every effort for the success of the Hague Conference. This Conference is to adopt a convention providing for the severest penalties for offenders against air traffic, including extradition to the state of the plane's registry for the purpose of administering justice. The Convention should apply to internal, as well as international flights. The Soviet Union's entry into ICAO and its participation in the Conference will make the struggle against infringements of air safety and for the achievement of ICAO's main objectives much more effective." INT'L AFFAIRS (MOSCOW), Jan., 1971, at 71, 72.

148. Moreover, the rapidity with which ratifications and accessions have been deposited by a variety of states shows the urgency with which the problem of hijacking is viewed by the world community.

149. This gap was filled by a 1971 convention signed in Montreal; see note 56 *supra*.

150. See INSTITUT DE DROIT INTERNATIONAL, HIJACKING OF AIRCRAFT 56 (E. McWhinney ed. 1971).

prosecute an alleged hijacker is substantial, but cannot be absolute, in order to allow for cases involving insufficient evidence and mental incompetence. A certain discretion also should be reserved for the true political refugee, but this should be a discretion only to temper the punishment, not to excuse the offense entirely.

Given the provision of mandatory submission for prosecution, the deliberate omission of mandatory extradition is not too serious a defect. Mandatory extradition clearly would be the greatest deterrent to hijackers. Equally clear, however, is that mandatory extradition would be completely unacceptable to a large number of states, either for reasons of political expediency or because of traditions of asylum. Therefore, it was not surprising that a last minute deal between the Arab and Latin American states made extradition under article 8(2) optional rather than mandatory.

There are also several minor omissions: there is no provision making custody on request of a contracting state an obligation in article 6(1); nor is there a provision requiring that those in custody receive the same treatment accorded nationals, as in article 15(2) of the Tokyo Convention. Moreover, there is no explicit provision forbidding the unreasonable detention of witnesses;<sup>151</sup> nor is there an express prohibition of reservations to articles other than 12. Finally, there is no provision of extraterritoriality of hijacked passengers and crew. All in all, however, the text of the Hague Convention adequately seems both to set up prescriptions against the crime of hijacking and to provide for the application by states of some penalty to all hijackers, while leaving sufficient leeway to the state in order not to unduly restrict the human rights of political refugees.

The usual criticism of the Hague Convention is that the desired penalties will not be applied by some states, either through nonparticipation in the Hague regime, or by the flouting of Hague Convention provisions by parties to the Convention. Attention has been drawn to the fact that Cuba, apparently the favorite destination of hijackers, is not a party to the Hague Convention and did not participate in the Conference. The Cubans have chosen to stand on their offer to negotiate bilateral agreements for the return of hijackers, on the basis of Cuban Law 1226 of September 16, 1969. While the United States is ready to jettison the human rights of refugee hijackers by swapping unconditionally all hijackers with Castro in order to end the threat to

---

151. In 1969, three stewardesses and two passengers were detained in Aden for five days, ostensibly as witnesses. Given the relative ease of identifying hijackers, some reasonable time limit should be set. Letter of Sept. 22, 1969, IFALPA File 2/5/2; see note 32 *supra*.

its air industry,<sup>152</sup> it is not willing to return violators of all the provisions of Law 1226, which include the crime of leaving Cuba without permission, as well as violations of some customs and health laws. Although there is a reciprocal reservation of the right of asylum in Law 1226, it is limited to those fleeing a threat of "death or severe repression," a reservation that American officials do not believe could be observed in good faith without agreeing to extradite to Cuba for crimes that the United States does not include in any other extradition treaty.

Fortunately, since 1961 the hijackings to Cuba have been relatively free from danger, so the need for application of the Hague Convention penalties is less acute there than elsewhere. The only real solution to the problem probably must await the reintegration of Cuba into world and regional patterns of trade and transportation, to a point where the Cubans' dislike of the disruption caused by hijackings will outweigh their desire to do nothing that would please the United States Government. Should hijacking become a greater threat before such a change in relationships, it is possible that the states whose airlines serve Cuba—Mexico, Spain and the U.S.S.R.—would exert pressure sufficient to insure Cuban punishment of hijackers when those states perceive such measures as necessary to end hijacking.

8. *A Proposed Convention on Sanctions.*—The need for the imposition of sanctions against states refusing to apply the Hague Convention was pointed out by the United States in the wake of the September, 1970 Middle Eastern hijackings. Those hijackings, as well as the seizure of a Greek plane in June, 1970, and a German plane in October, 1972, were explicitly designed to extort the return of members of the hijacking organization who had been jailed for earlier hijackings or other terrorist activities. Effective sanctions are necessary to "persuade" ideologically motivated states, such as Libya, from vitiating antihijacking efforts by facilitating these "blackmail" hijackings. The U.S. requested a Special Meeting of the ICAO Council (Israel had unsuccessfully sought sanctions at the June, 1970 Extraordinary Assembly of ICAO), which was convened in Montreal on September 18, 1970.<sup>153</sup> The Council

"Call[ed] upon Contracting States, in order to ensure the safety and security of international civil air transport, upon request of a Contracting State to consult together immediately with a view to deciding what joint action should be undertaken, in accordance with international law, without

---

152. The United States has offered, without success, to agree to the simple exchange of all hijackers.

153. Volpe & Stewart, *supra* note 123, at 300.

excluding measures such as the suspension of international civil air transport services to and from any State which after the unlawful seizure of an aircraft, detains passengers, crew or aircraft contrary to the principles of Article 11 of the Tokyo Convention, for international blackmail purposes, or any State which, contrary to the principles of Articles 7 and 8 of the Draft Convention on Unlawful Seizure of Aircraft, fails to extradite or prosecute persons committing acts of unlawful seizure for international blackmail purposes;

Direct[ed] the Legal Committee to consider during its Eighteenth Session, if necessary by extension of the session, an international convention or other international instruments:

- (i) to give effect to the purposes set out in the preceding paragraph;
- (ii) to provide for joint action by States to take such measures as may be appropriate in other cases of unlawful seizure; and
- (iii) to provide for amendment of bilateral air transport agreements of contracting parties to remove all doubt concerning the authority to join in taking such action against any State.<sup>154</sup>

The Legal Committee, which was in session considering the draft convention against sabotage and ground attacks, set up a Special Legal Subcommittee<sup>155</sup> to consider drafts of a bilateral clause submitted by Canada<sup>156</sup> and a multilateral sanctions convention submitted by the United States.<sup>157</sup> The Special Legal Subcommittee met during April, 1971, in Montreal, and considered the text of a multilateral convention submitted jointly by the United States and Canada, which provided a two step procedure—first, determining whether a state has defaulted on its obligations under the Tokyo and Hague Conventions, and secondly, determining the appropriate action to be taken, possibly including suspension of air services to the defaulting state.<sup>158</sup> The subcommittee also prepared a questionnaire for states, the answers to which were to be considered at the next meeting.<sup>159</sup> At this point, the entire movement for sanctions came to a halt; the ICAO Assembly decided to relegate the subject of sanctions to the inactive part of the Legal Committee.<sup>160</sup> A wave of hijackings in 1972, and the pilots'

---

154. 9 INT'L LEGAL MATERIALS 1286-87 (1970).

155. *Id.*, at 1196.

156. *Id.*, at 1206.

157. *Id.*, at 1201.

158. ICAO Doc. LC/SC CR, app. D, April 27, 1971.

159. ICAO Letter to States, June 4, 1971, ICAO Doc. LM 3/6.3-71/155.

160. At that time, it was thought that "the result of this decision is that in the foreseeable future no work will be undertaken on this subject." Letter from ICAO to author, Nov. 16, 1971. The following objections were among those raised at the April, 1971 meeting of the subcommittee in Montreal: the beliefs

24-hour worldwide strike, however, prompted the revival of the sanctions convention by ICAO. A seventeen-nation subcommittee began consideration on September 4, 1972, of a United States-Canadian proposal for an airline boycott of nations that either do not return hijacked passengers and crews or refuse to prosecute or extradite the hijackers.<sup>161</sup> Notwithstanding the pressure generated by the massacre of Israeli Olympic athletes, adamant opposition to such sanctions by France<sup>162</sup> and the Soviet Union (supported by Spain, Tanzania, Egypt and Chile) led to the adoption of a weak British compromise measure that was forwarded to the Legal Committee with a recommendation that it be "studied," rather than with a recommendation of adoption.<sup>163</sup> It seems likely that the fate of a sanctions convention remains dependent on the occurrence of hijacking episodes spectacular enough to convince states of the need for such a weapon.

A sanctions convention would be a means of formalizing arrangements by major aviation states to protect their air traffic by seeking to insure that all states punish those who endanger and disrupt international air travel. Thus, sanctions could as easily be applied to a state that

---

that only the Security Council could impose such sanctions and that some detentions could be legal (under either court order or in a state of war); the disputed applicability to states not parties to the Hague Convention or to the sanctions convention; the possible conflict with obligations under bilateral air agreements; and the lack of specific positive obligations on states of landing. ICAO Letter to States, June 4, 1971, ICAO Doc. LM3/6.3-71/155, at 2-18.

"I don't believe any single specific reason can be given for why States, at this stage, are unwilling to consider formal arrangements adopted in an international convention to deal with the question of sanctions. For some, there is concern that a convention might restrict their flexibility to deal with a particular situation when they might be peculiarly affected. Others question whether such a convention might conflict with provisions of the U.N. Charter. Still others are concerned with obligations under bilateral air transport agreements which, they argue, could preclude their cutting-off air services to a State pursuant to action under a multilateral convention to which the bilateral partner was not a party. Some States traditionally oppose concerted action other than through the United Nations. Perhaps the most strongly argued position at the ICAO Legal Subcommittee which met in April to consider a sanctions convention was that such a convention would require universal acceptance to be effective, and there was no realistic prospect of this." Letter from F.K. Willis, U.S. Dep't of State, to author, Jan. 18, 1972.

161. N.Y. Times, Sept. 5, 1972, at 1, col. 4.

162. The United States promptly broke off negotiations with France for a new bilateral air agreement to express its displeasure with the French opposition. N.Y. Times, Sept. 12, 1972, at 22, col. 3.

163. The Times (London), Sept. 17, 1972, at 5, col. 5.

had withdrawn from the Conventions, or one that was never a member. The International Coffee Agreement, under which nonsignatories sell at a disadvantage, is usually cited as analogous.<sup>164</sup> All that is really necessary is formal legal authority to enable states to unilaterally breach bilateral air transport agreements with states failing to comply with Tokyo and Hague Convention provisions. Both houses of the United States Congress recently passed by overwhelming margins bills giving the President unilateral authority to sever air service by United States air carriers to any state harboring hijackers, or any state failing to sever service by *its* carriers to a state harboring hijackers.<sup>165</sup> Appropriate sanctioning activity should not, however, be limited to the suspension of air services since the effectiveness of such a suspension would otherwise depend solely on the degree of participation in the boycott by states supplying air service to the sanctioned state.

Even effective sanctions, however, are not a complete solution to the problem of hijacking. For example, sanctions would have been of very little use in the situation that inspired the United States initiative on sanctions—the September, 1970, hijackings—where the state, Jordan, had amply fulfilled any international standard of due diligence by fighting a civil war<sup>166</sup> in seeking to free the hostages and punish the hijackers.

Other proposals for insuring application of the Hague prescriptions to hijackers have been made—*e.g.*, a proposal by U Thant for an International Criminal Tribunal,<sup>167</sup> which is unlikely in the near future. The provision of universal jurisdiction should be viewed as similar functionally to sanctions, as a means of seeking to insure that the hijacker is punished by some state. Probably the best course for the moment is to evaluate the effectiveness of the Hague Convention in practice.

## VI. CONCLUSION

There probably is no means of completely suppressing the “international blackmail” hijacker when the power of any state is

---

164. 65 PROC. AM. SOC'Y INT'L L. 89 & n.8 (1971).

165. The measure foundered, however, on a disagreement over other security measures. N.Y. Times, Sept. 23, 1972, at 61, col. 6; N.Y. Times, Oct. 12, 1972, at 32, col. 3.

166. Stronger measures, such as intervention, were considered by the United States to endanger the hostages.

167. N.Y. Times, Sept. 15, 1970, at 7, col. 1.

ineffective, as in the September, 1970 hijackings, or when the stakes are sufficiently high to the particular hijacking group to justify sacrificing its members—an attitude that alarmingly is on the rise, as evidenced in the 1972 Olympic Village kidnapping incident. The completely irrational hijacker, who is, along with the member of a guerrilla group, the most dangerous type, also will not be deterred by threats of punishment. This type of hijacker, however, will turn to other exploits as other hijackers are deterred and as hijacking ceases to be a frequently televised drama.<sup>168</sup> The certainty of punishment will effectively discourage the bulk of hijackings for personal reasons, economic gain, or political demonstrations—as long as the punishment is sufficient to turn the hijacker to other forms of personal fantasy, economic endeavor or political propaganda. Many states now seem willing to sacrifice whatever gains might accrue to them from hijackings in order to guarantee the safety and smooth flow of the international transportation network, by fulfilling their Hague Convention obligations to prosecute or extradite, even in the case of political refugees. The prospect of a few years in jail, unfortunately, will deter some genuine political refugees, but the promise of asylum and limited punishment should strike the proper balance between the human rights of the refugee and the need of the world community for a safe and dependable system of global transportation.<sup>169</sup>

---

168. Some thought might be given to the preferability of hijacking to certain other emotional outlets, such as shooting people from towers; similarly, guerrilla hijackings are safer than attacks at airports and ticket offices. For a list of such attacks see 54 INT'L L. ASSOC. REP. 379-80 (1970).

169. Following the terrorism that marred the Olympic Games at Munich in September, 1972, the United States took a number of steps toward deterring and seeking punishment of hijackers. At Washington's invitation, fifteen nations participated in a Special Subcommittee of ICAO in Washington to consider a convention providing for the termination of air service to countries refusing to prosecute hijackers. Addressing the meeting, Transportation Secretary John Volpe stated: "President Nixon has directed that Secretary Rogers and I petition ICAO to press for enforcement of the obligation of all countries to deny hijackers sanctuary from prosecution or refuge from extradition." 67 DEP'T STATE BULL. 357, 358 (Oct. 2, 1972). For a copy of the Draft Articles Prepared at Subcommittee see 67 DEP'T STATE BULL. 361-64 (Oct. 2, 1972). On September 25, 1972, Secretary of State William Rogers addressed the United Nations on the need for multilateral cooperation to quash air piracy. See 67 DEP'T STATE BULL. 425 (Oct. 16, 1972). Accordingly, President Nixon established a cabinet committee to combat terrorism. One of the committee's first orders of business was to suspend the regulation that permitted entry into the United States without a visa. See 67 DEP'T STATE BULL. 475 (Oct. 23, 1972). On November 1, 1972, President Nixon signed the instrument of Ratification of the



## APPENDIX A

INSTITUT DE DROIT INTERNATIONAL	September 2, 1971 (afternoon)
Session de Zagreb	Eighteenth Commission
Août-Septembre 1971	Hijacking of Aircraft
	Rapporteur: M. McWhinney

Final Draft of Resolution  
presented by the Rapporteur.

## THE INSTITUTE OF INTERNATIONAL LAW:

CONSIDERING that acts of seizure or unauthorized exercise of control of aircraft in flight jeopardizing the life and health of passengers and crew, as well as of persons on the ground or in other aircraft, in disregard of elementary considerations of humanity, are unlawful under international law,

---

Montreal Sabotage Convention, which he had transmitted for Senate approval on September 15. In transmitting a copy of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (signed at Montreal on September 23, 1971), President Nixon explained that "[i]t requires States to extradite offenders or prosecute them where they are found. It is designed to ensure the prosecution of saboteurs and other terrorists who attack aircraft, and it can help serve to quell this increasingly serious problem for civil aviation worldwide." 67 DEP'T STATE BULL. 418 (Oct. 9, 1972). On signing the instrument of ratification by the United States, President Nixon pointed out that ICAO has before it several additional proposals, including a draft convention providing for the prosecution or extradition of persons who attack or kidnap foreign officials, and a convention calling for the suspension of air service to countries refusing to prosecute or extradite hijackers. See 67 DEP'T STATE BULL. 607 (Nov. 20, 1972). Early in December, the United States, through the Swiss Embassy in Cuba, began negotiating an agreement with Cuba covering hijackings of both aircraft and ships. To date the negotiations have not produced agreement on whether hijackers will be extradited, prosecuted, or both. Official spokesmen indicated that a final agreement was expected before the end of 1972 or shortly thereafter. See N.Y. Times, Dec. 6, 1972, at 1, col. 6. Finally, the United States has unilaterally taken the strongest measures to date to prevent hijackings in this country. On December 5, 1972, Secretary Volpe ordered all airports handling regularly scheduled flights to hire armed guards and to station them at every boarding gate. All passengers are to be electronically inspected and all carry-on luggage, including wrapped Christmas presents, is to be personally inspected by airport personnel. This ruling is expected to affect some 531 airports handling 15,000 flights daily, and will cost approximately 75 million dollars per year. Secretary Volpe indicated that rate hikes would be justified to cover this increased expense.

The stringency of this measure indicates the immediacy of the need for stronger international cooperation to close the loopholes in the Hague Convention.

CONSIDERING that such unlawful acts may endanger international peace and friendly relations among States,

CONSIDERING that such unlawful acts jeopardize the freedom of international communications and seriously affect the operations of air services and undermine the confidence of the peoples of the world in the safety of civil aviation,

HAVING REGARD to the general condemnation of such unlawful acts expressed in the Resolutions of the General Assembly of the United Nations and of the International Civil Aviation Organisation and of regional intergovernmental organisations,

## I

IS OF THE OPINION that no purpose or objective, whether political or other, can constitute justification for such illegal acts; and that every State in whose territory the authors of such acts may be found has the right and the obligation, if it does not extradite such persons, to undertake criminal prosecution against them.

## II

NOTES that, amongst others, the following rules of international law apply

(1.) Under the general rules of international air law, as expressed especially in the Chicago Convention of 7 December 1944, States are required to ensure the safety, regularity, and efficiency of international air navigation and to collaborate with each other to this end.

(2.) Under the general rules of international law which find particular expression in articles 25 and 37 of the Chicago Convention of 1944, States are required to render assistance to aircraft in distress in their territory and to permit, subject to control by their own authorities, the owners of the aircraft or authorities of the States in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances.

(3.) Under general international law, States are required not to allow knowingly their territory to be used for acts contrary to the rights of other States.

EXPRESSES THE OPINION THAT, in consequence, States must take all appropriate measures to give effect to these principles, notably by taking action:

- a) to prevent the accomplishment of acts of unlawful diversion of aircraft in flight,
- b) and, in cases where an unlawfully diverted aircraft lands in their territory,
  - to restore control of the unlawfully diverted aircraft to its lawful commander or to preserve his control of the aircraft,
  - to permit the passengers and crew of the aircraft to continue their journey as soon as practicable,
  - to return the aircraft and its cargo to the persons lawfully entitled to possession,
  - to ensure the personal safety and human dignity of the passengers and crew until their journey can be continued.

## III

NOTES that the concern of States to resolve the problem of unlawful diversion of aircraft in flight has received a first recognition in the adoption of The Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963 and in The Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970,

CONSIDERS that, in ratifying these Conventions and in making all necessary dispositions to give effect to them, States will contribute to implementing and to rendering precise the obligations set out in this Resolution as well as contributing to the progressive development of international law in these matters,

UNDERLINES, in particular, the urgency for States to make such adaptations in their internal law as may be necessary to give effect to the principles contained in the abovementioned Conventions.

## IV

The preceding Resolutions do not prejudge in any way the question of the prevention and repression of all other acts of violence capable of endangering the safety of airtransport; nor the question of a more specific regulation of sanctions against States which fail to fulfill their international obligations in the matter of the unlawful diversion of aircraft in flight.