

Aviation Security by Sagar Singamsetty, LL.M (Hons)

Aviation security is essentially an international issue affecting each state which operates international flights.

Slide 1 – General background

It may seem hard to imagine how the need to address acts of sabotage, unlawful seizure of aircraft and the use of civil aircraft in terrorist attacks (as was the case on 11 September 2001) could have been overlooked by the drafters of the Chicago Convention, ICAO's founding charter and corner piece for international technical legislation in the field of civil aviation. In 1944, however, no one foresaw such security threats and the need for security measures.

- Aviation security involves the protection of persons and cargo in carriage by air facilities and related auxiliary support activities.
- Annex 17 of the Chicago Convention defines aviation security as a "combination of measures and human and material resources intended to safeguard civil aviation against acts of unlawful interference".
- It contains standards and recommended practices (SARPs) for safeguarding international civil aviation operations worldwide.
- Aviation security requires incessant precautions and effective security controls and procedures to be implemented by governments, airports authorities and airlines.

Slide 2 - General background

- "Civil aviation remains an attractive target for terrorists," said Roberto Kobeh González, President of the ICAO Council.
- "It is an essential mode of transport that contributes significantly to worldwide economic and social development.
- Clearly, as terrorist threats evolve, we must continually adapt and reinforce our strategies and improve our level of collaboration so that aviation remains a secure means of moving people and goods quickly and affordably."

Slide 3 - Problems Relating to Aviation Security

- Civil aviation has been greatly affected by social unrest for the past four decades in various forms: hijacking, shooting down, sabotage - like explosions in aircraft, missile attacks against aircraft, armed attacks on airports, passengers and aviation property and bombings.
- The motives range from political ideology to extortion and murders. The targets, besides aircraft themselves, include "aviation facilities" - air terminals, cargo buildings, maintenance hangars, passenger buses, airline offices and travel agencies. These acts are committed by individuals, organizations, groups, or members of a community.

Slide 4 – Terrorist acts, in recent times

- From 1968 through 1970 some 200 aircraft hijackings occurred. That the perpetrators were mostly criminals, political militants or mentally unstable persons made the problem more alarming.

- Three types of attacks - hijacking, bombing and missile attacks - have, of late, dominated the crime against civil aviation.
- **Air travel today encounters a more serious and faceless threat.**
- Terrorism, whatever the motivation, involves certain common techniques to execute. The observation that “terrorism is a threat” to gain mass publicity holds very true in bombings and sabotage.

Slide 5 - Terrorist acts, in recent times

- Air India Boeing 747 explosion en route to Delhi from Montreal, in 1985;
- the bomb explosion on board TWA Boeing 727 en route from Rome to Athens;
- the Airlink Tristar blowing up at Colombo airport prior to departure, in 1986;
- the crash of Korean Airlines Boeing 707 into the sea, in 1987;
- Pan Am Boeing 747 explosion over Lockerbie on London-New York flight, in 1986;
- the France's UTA DC-10 jetliner, in 1989, over Niger's Enere Desert;
- and the Colombian Avianca Airline Boeing 727 detonation minutes after take-off at Botota, with bomb planted near the fuel tanks, in 1989.

In the last decade nearly 1,800 people have been killed in airliner bombings, while 800 were killed in hijacking over the past 50 years.

Slide 6 - Terrorist acts, in recent times

- These incidents have added urgency for evolving an extremely stringent system of "security control", leading to new acts, regulations and policies on security for airport managements, air carriers and airport police.
- The legislative machinery of many states and international organizations has, over the past few years, been busy establishing effective means to combat hijackings.
- More and more agreements are showing deeper interest in internationally agreed regulations to be implemented by airport and airline managements. New and improved hi-tech equipment is being continually tested and marketed.

Slide 7 – ICAO and Aviation Security

- Aviation safety is at the core of ICAO's fundamental Objectives.
- The basic aim of the ICAO, is to ensure a safe and orderly growth of international civil aviation throughout the world and promote flight safety.
- The standardization of operational practices for international services is of fundamental importance, enabling elimination of error caused by misunderstanding or inexperience.
- The establishment of standards for air traffic control, personnel licensing, aerodrome design and infrastructure development, etc., all require more than a national action.

Slide 8 - ICAO and Aviation Security

- The ICAO has formulated aviation security policies and implemented relevant programmes with the full support of its contracting states.
- The main objective of the ICAO's technical aviation security programme is to ensure the safety of passengers, crew, ground personnel, and members of the general public by denying offenders access to their primary target - the aircraft.

- The inspection and screening of passengers and their baggage is, thus, most important. Human error or lack of vigilance in the process of inspection and screening is the key lapse, which made it difficult to detect and prevent recent acts of unlawful interference.

Slide 9 - ICAO planning mechanism

A mechanism was launched in January 1990 for financial and technical assistance to the states on aviation security. The mechanism provides:

- Advice to states, on request, on aviation security organization and techniques;
- International security surveys and assessments on a confidential basis, also on request;
- The co-ordination of an aviation security programme; and
- Regional and sub-regional seminars and workshops.

On airport security, the ICAO provides optimal security in developed and developing countries. It launched training programmes and helped develop expertise in the maintenance of aviation security equipment and security exercises.

Slide 10 - Annex 17 - Security - Safeguarding International

- When aviation security did arise as a serious issue in the late 1960s, there was a need to adopt an international framework for addressing acts of unlawful interference.
- Provisions for international aviation security were first disseminated as Annex 17 to the Chicago Convention in 1974, and since then have been improved and updated.
- With the advent of Annex 17, ICAO began providing States with guidance material to assist with the implementation of international security measures, the primary document being the Security Manual for Safeguarding Civil Aviation Against Acts of Unlawful Interference (Doc 8973 – Restricted)
- Initially, ICAO's security-related work focused on developing Standards and Recommended Practices (SARPs) for inclusion in Annex 17.
- Over the years, its work in the field of aviation security broadened and today is essentially carried out in three inter-related areas: policy initiatives, audits focused on the capability of Member States to oversee their aviation security activities, and assistance to States that are unable to address serious security deficiencies highlighted by ICAO audits.

Slide 11 - Annex 17 - Security - Safeguarding International

- In addressing the evolving threat to civil aviation, ICAO relies on the advice of experts who sit on the Aviation Security (AVSEC) Panel.
- Established in the late 1980s, the Panel is currently comprised of 27 members nominated by States, as well as five observers from industry.
- Together with the ICAO Secretariat, the Panel actively develops ICAO security policy and responses to emerging threats as well as strategies aimed at preventing future acts of unlawful interference.
- All of ICAO's initiatives in the field of aviation security rely, both globally and regionally, on cooperation amongst States and all other stakeholders. The overarching goal is to enhance global security by implementing uniform security measures around the world, a goal that cannot be achieved without an unswerving commitment by all concerned.

Slide 12 - Annex 17 - Security - Safeguarding International

- Annexe 17 is divided into five chapters.
- **Chapter one** defines terms like air side, security, security control and security programme.
- The aims and objectives of Annex 17 are stated in **chapter two**: to safeguard international civil aviation against acts of unlawful interference; safety of passengers, crew and ground personnel, and development plans and their implementation procedures for the operation of international flights.
- **Chapter three** of Annex 17 embodies detailed provisions for the organization of security. Each contracting state has a right to establish its own civil aviation security programme to ensure the safety, regularity and efficiency of international civil aviation against acts of unlawful interference. It emphasizes the designation of an appropriate authority responsible for the development, implementation, maintenance and constant review of national aviation security programmes.

Slide 13 - Annex 17 - Security - Safeguarding International

- **Chapter four** mentions various preventive security measures for the contracting states: the prevention of weapons, explosives or dangerous devices, which may be used to commit acts of unlawful interference against civil aviation; special authorization from states concerned for the carriage of weapons; the carriage of weapons by authorized and duly qualified persons; pre-flight checks; established procedures for concealed weapons, explosives or other dangerous devices; arrangements for surveys; and inspection of security measures. The measures relating to passengers include the adequate control, transfer and transit of passengers and their cabin baggage to prevent unauthorized articles being taken on-board aircraft; and the security inspection/screening of checked baggage, crew and other goods.

Slide 14 - Annex 17 - Security - Safeguarding International

Chapter five describes the management of response to acts of unlawful interference. The contracting states shall take adequate measures for the safety of passengers and aircraft crew, provide air traffic services to aircraft, and ensure assistance to an aircraft under unlawful seizure, exchange information with other states when an aircraft is in distress and also notify to the state of aircraft registry and help free hostages.

Slide 15 - Other Amendments to Annex 17

- On airport design, Annex 17 requires airport operators to follow security measures when designing new or expanding facilities.
- New problems and perspectives have resulted in the enactment of amendments to Annex 17.
- For instance, a comprehensive security screening of checked in baggage, security control over cargo, courier and express parcels and mail, pre-flight checks of international aircraft and the incorporation of security considerations into airport design.
- Also, the introduction of new provisions in relation to: pre-employment checks and capabilities of persons engaged in implementing security controls; baggage accountability and authorization; measures to be applied to catering supplies; tests for

programme effectiveness; and the notification to the state of known or presumed destination of an aircraft under seizure.

Slide 16 - Conventions Relating to Aviation Security

- Criminal acts endangering air safety and security have, over the past four decades, gained prominence as the highest priority area for regulatory process of civil aviation.
- The UN and its specialized agencies, such as the ICAO, have worked to eradicate terrorist threat to international civil aviation.
- Conventions and protocols have been adopted to check aircraft hijacking and curb terrorist attacks on international airports.
- The efforts of the international community helped to focus attention on the problem.
- Nevertheless, there has been no consensus, or effective concerted action to crack down on terrorist attacks.

Slide 17 - Conventions Relating to Aviation Security

- The Tokyo Convention, 1963.
- The Hague Convention, 1970.
- The Montreal Convention, 1971.
- The Montreal Protocol (Supplementary to the Montreal Convention 1971) 1988.
- The Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991.

Slide 18 - The Tokyo Convention, 1963.

Convention on Offences and Certain Other Acts Committed on Board Aircraft Signed at Tokyo on 14 December 1963

- The earliest multilateral action ever initiated to target hijacking was the Tokyo Convention, 1963, drawn up under the auspices of the ICAO, with four principal objectives.
- i) The Convention makes clear, the state of aircraft registration has the authority to apply its laws to events occurring on board its aircraft while in flight.
- ii) The Convention provides the aircraft commander with the necessary authority to tackle persons who have committed, or are about to commit a crime, or an act jeopardizing safety on board the aircraft by the use of reasonable force when required, and without fear of subsequent retaliation through civil suit, or otherwise.
- iii) The Convention outlines the duties and responsibilities of the contracting state in which an aircraft lands after the commission of a crime on board, including its authority over and responsibilities to any offenders, who may be either disembarked within the territory of that state, or delivered to its authorities.
- iv) major subject stated by the Convention is the crime of hijacking.

Slide 19 - The Tokyo Convention, 1963.

- The Tokyo Convention applies to criminal offences and acts committed to jeopardize the safety of an aircraft, the life and property of persons on board while the aircraft is in flight.
- It means that the Convention recognizes the jurisdiction of the state of aircraft registration over offences and acts committed on board the jet.

- Under Article 4, the Convention recognizes the criminal jurisdiction of the aircraft in respect of offences committed on board the aircraft which have effect on the territory of that state, or offences committed by or against a national or permanent resident of that state, or an offence made against the security of that state.
- Articles 5 to 10 of the Convention give the aircraft commander substantial powers of control, including restraint, where he has reasonable grounds to believe that a person has committed or is about to commit a crime on board the aircraft¹ - the offences or acts specified in the opening clause of the Convention, namely "acts which, whether or not they are offences, may or do jeopardize the safety of aircraft or of persons or property therein or which jeopardize good order and discipline on board".

Slide 20 - The Tokyo Convention, 1963.

- The provisions of the Tokyo Convention deliberately and specifically oriented to the problem of aerial hijacking are contained in Article 11 (unlawful seizure of aircraft).
- Article 11(1) states that when a person on board an aircraft has unlawfully committed by force of threat thereof, an act of interference, seizure or other wrongful exercise of control of an aircraft in flight, or when such an act is about to be committed, the contracting states shall take all appropriate measures to restore control of the aircraft to its lawful commander, or to preserve his control of the aircraft.
- In the cases contemplated in the preceding paragraph, the contracting state in which the aircraft lands shall permit its passengers and crew to continue their journey as soon as practicable and shall return the aircraft and its cargo to the person lawfully entitled to possession.

Slide 21 - The Tokyo Convention, 1963.

- The powers and duties of the states are covered under Articles 12-15 of the Convention. The contracting state is obliged to allow the aircraft commander to disembark passengers for safety reasons and upon the delivery of an offender, to institute an inquiry into the offence immediately, paying due regard to the general interests of air navigation so as to avoid the unnecessary delay to the aircraft, passengers, crew, or cargo.
- Although the contracting state is bound to take hijackers into custody, which is to continue until any prosecution or extradition proceedings take place, the Convention contains no obligation actually to prosecute, or extradite.

Slide 22 – Criticism - The Tokyo Convention, 1963.

- The Convention fails to list any offences which the state is required to suppress and to impose any obligations involving the prosecution or extradition of offenders;
- The convention lacks in any attempt to develop a system of priorities governing the order in which several possible criminal jurisdictions, including the one given to the state of aircraft registry, can be exercised;
- the text adopted in Tokyo contains no provision dealing with double jeopardy, or ne bis in idem; and
- the convention is silent on the question of aircraft under hull character to a national of a state other than the state of registry.

¹Ibid., Article 6.

Slide 23 – The Hague Convention 1970.

The Convention for the Suppression of Unlawful Seizure of Aircraft Signed at The Hague on 16 December 1970.

- The Hague Convention of 1970 was adopted for 2 main reasons:
- i) the menacing dimensions of aerial hijacking throughout the 1960s; and
- ii) the demonstrated inadequacy of anti-hijacking provisions enacted in the Tokyo Convention, 1963.

The Hague Convention opens by a definition of the offence of "unlawful seizure of aircraft". According to Article 1, any person who - on board an aircraft in flight -

- (a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of that aircraft, or attempts to perform any such act, or
 - (b) is an accomplice of a person, who performs or attempts to perform any such act, commits an offence.
- Under Article 2 of the Convention, each contracting state is to make the offence "punishable by severe penalties". An offence under this convention is deemed to have been committed from the time the doors of the aircraft are shut until they are opened again for disembarkation.
 - Each contracting state is also obligated, under Article 4, to take steps to establish its legal jurisdiction over the unlawful seizure of aircraft and any other act of violence against passengers or crew committed in connection with hijacking - particularly when the offence is committed on board an aircraft registered in that state, or when the hijacked aircraft lands in that state with the hijacker still on board. This is a step forward in establishing the universality of jurisdiction.
 - Under Article 6 of the Convention, each contracting state is required to take the hijacker into custody for the purpose of criminal or extradition proceedings and to notify interested states to that effect.
 - Under Article 7, the state in whose territory the hijacker is found, if it does not extradite him, is obliged "without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offences of a serious nature under the law of that state."

Slide 24 – The Hague Convention 1970.

- Article 8 of the Convention attempts to deal with the difficult issue of extradition, raised by the establishment of the alternative obligation to extradite, if the state in which the hijacker is found should decide not to refer the hijacker to its criminal authorities for prosecution within that state.
- It declares that hijacking is "deemed to be included as an extraditable offence" in any extradition treaty existing between the contracting states, and that it is to be expressly included as an extraditable offence in any new extradition treaty between the contracting states.
- Where no extradition treaty is in force between two contracting states, then - under Article 8(2) - any one of the contracting states may, at its option, consider the Hague Convention as the legal basis for extradition in response to a request from the other state.

The other important provisions of the Convention include: assistance between the contracting states in connection with criminal proceedings; information to the ICAO by the contracting states

in tracking the circumstances of the offence, measures taken in relation to the offender, etc; provisions for negotiations and, then failing that, arbitration in the event of a dispute between two or more contracting states; and the instrument of ratification and provisions relating to the denunciation.

Slide 25 – The Montreal Convention 1971.

Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation Signed at Montreal on 23 September 1971

- The Tokyo Convention does not define specific offences, but the Hague Convention, concerned only with the specific offence of unlawful seizure of aircraft.
- The Montreal Convention, dealing with various acts against the safety of civil aviation, adopts the enumerative approach in the definition of the offence.
- The Montreal Convention follows the general plan of the Hague Convention, creating a wider jurisdiction over offences specified in the convention and imposing the requirement of either extradition or prosecution of criminal offenders on the part of the contracting states.

The offence of unlawful acts against civil aviation is defined in the opening provision of the Montreal Convention. Under Article 1.1 of the Convention, any person is deemed to have committed an offence if he unlawfully and intentionally:

- (a) perform an act of violence against a person on board an aircraft in flight and if the act is likely to endanger the safety of that aircraft;
 - (b) destroys an aircraft in service or causes damage to such aircraft, which renders it incapable of flight, or such aircraft, which renders it incapable of flight, or which is likely to endanger its safety in flight;
 - (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or cause damage to it which renders it incapable of flight, or cause damage to it which is likely to endanger its safety in flight; or
 - (d) destroys or damages air navigation facilities, or interferes with their operation, and if any such act is likely to endanger the safety of aircraft in flight; and
 - (e) Communicates information which he knows to be false, thereby endangers the safety of an aircraft in flight.
- Article 1(2) of the Convention goes on to penalize the attempt to commit any of these offences and also punishes accomplices of persons committing or attempting to commit the offences. Under Article 3 of the Convention, each contracting state is to make the offence punishable by severe penalties.
 - Article 5(1) of the Convention ordains every contracting state to establish its jurisdiction when the offence is committed in its territory against or on board an aircraft registered in that state; and when the aircraft, on board which the offence is committed, lands in its territory with the alleged offender still on board. Each contracting state is required beyond this to establish its jurisdiction in cases defined in Article 1, wherein the offender is present in its territory and it does not extradite him pursuant to the Convention (Article 5(2)).
 - Under Article 7, a contracting state in which the offender is found, if it does not extradite him, is obliged - “without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose

or prosecution”. Article B of the Montreal Convention has the same basic provisions as included in the Hague Convention of 1970, to treat offences under the Convention as extraditable offences.

- Under Article 10, the contracting states shall, in accordance with international and national laws, endeavor to take all practicable measures for the purpose of preventing the offences mentioned in Article I.

Slide 26 – Critical Review of the Tokyo-Hague and Montreal Conventions

- no provision exists for any follow-up under the two conventions with any degree of diligence or good faith exercised by the host state in actually ensuring that there will be prosecution and subsequent punishment of the offender.
- there is no provision under the Hague and Montreal Conventions for possible sanctions against a contracting state, which willfully or negligently fails to honor its obligation under the conventions to either extradite or prosecute.

It is only an accident of history that the two conventions have been drafted on subjects so closely related that they should instead have been handled in one single instrument. The two conventions also have very similar provisions on the jurisdiction, custody, prosecution and extradition of alleged offenders, submission of relevant information to the ICAO, settlement of disputes and arbitration, ratification, and denunciation of the conventions. But, it was due to a sense of urgency and strong political will on the part of the states to find an early solution that the unlawful seizure of aircraft and the sabotage of aircraft or air navigation facilities were separated.

According to V.S. Mani, the major points of distinction between the Tokyo, the Hague and Montreal Conventions are:

- The Tokyo Convention targets offences committed on board an aircraft in flight under national laws, whereas the latter conventions focus on acts against the safety of civil aviation;
- The Tokyo Convention is still haunted by the ghost of traditional extradition law, i.e. the political offences exception, which most certainly renders its practical utility almost marginal.
- The Hague-Montreal regime attempts for the first time in the history of international law to create an obligation on the part of a state to prosecute or extradite an offender or a person accused of an offence. There is a clear obligation for the state to take effective steps to prosecute him if it decides not to extradite him. There is no such provision in the Tokyo Convention.

Slide 27 – Supplement to the Montreal Convention 1971.

The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation,(Supplementary to the Montreal Convention 1971) signed at Montreal on 24 February, 1988

- This Protocol was adopted by a diplomatic conference in Montreal on 24 February 1988. It extended the definition of the term "offence" given in the 1971 Montreal Convention to include certain specified acts of violence at airports serving international civil aviation, if such acts endanger or are likely to endanger the safety of such airports. The contracting

states have undertaken to make these offences punishable by severe penalties. The Protocol also contains provisions on jurisdiction.

- The main criticism against the Protocol is that the unlawful acts of violence committed at international airports are clearly located in the territory of a particular state, and that there is no vacuum in the substantive criminal law, or the rules of jurisdiction, which could not be solved otherwise by an international instrument. Thus, the real purpose of the protocol would be limited to rare, marginal cases, when a perpetrator of violence at an international airport escapes and is eventually apprehended in another state, and that state would be obliged under the protocol to prosecute or extradite such offender.

Slide 28 – Plastic Explosives for Detection 1991.

Convention on the Marking of Plastic Explosives for the Purpose of Detection Signed at Montreal on 1 March 1991

- The latest effort to unify and develop international air law against crime is the convention on the marking of plastic explosives for the purpose of detection.
- Plastic explosives present a greater danger, partly because of their vast destructive power even in minute quantities and partly because they are difficult to detect.
- This was proved when Pan Am Flight 103 exploded over Lockerbie on 21 December 1988.
- The main obligations of the parties to the Convention are set out in Articles II to IV and contain mainly two sets of obligations concerning unmarked plastic explosives. One obligation prohibits the manufacture of unmarked explosives and requires the states to control their possession and transfer. The second obligation is related to eventual phasing out/destruction of such explosives to be replaced by explosives mixed with specified detection agents.

Under Article II, each state shall take necessary and effective measures to prohibit and prevent the manufacture, in its territory, of unmarked explosives. This will encompass legislative action as well as practical measures going beyond the mere enactment of legislation to prevent such manufacture. Likewise, Article III obligates each state to take necessary and effective measures to prohibit and prevent the movement, into or out of its territory, of unmarked explosives. However, there is an exemption in respect of movement for purposes not inconsistent with the objectives of the Convention by authorities of a state performing military or police functions [Article 1(2)]. The obligation of the state over the existing stocks is "to exercise strict and effective control over the possession and transfer of possession of unmarked explosives which have been manufactured in or brought into its territory prior to the entry into the force of this convention in respect of that state, so as to prevent their diversion or use for purposes inconsistent with the objectives of this convention".
