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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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CRISIS IN THE SKIES: ANALYZING THE GLOBAL THREAT OF AIRCRAFT HIJACKING AND COUNTERMEASURES

AUTHORED BY - VAIBHAV

Abstract

Aviation has evolved a lot since the first successful aeroplane was built by the Wright Brothers in 1903. This can be attributed to the significant developments in modern science and technology. Aviation has grown to be a significant part of our daily lives. Fast travel and convenience in trade and commercial activities are just some of the boons of aviation. However, new crimes have also emerged with technological growth and new inventions. Aircraft Hijacking is one such weed that has grown and created problems in safe transport. The safety, freedom and many other inalienable rights of the passengers are affected due to such criminal activity. While the motive of the offenders might be political or personal, the innocent passengers are wrongly put through this traumatic experience. Although the Freedoms of Air have made travel globally convenient, strict action and precautions must be taken against hijacking. This research paper aims to understand the terrorist activity of aircraft hijacking through various case studies. It also aims to understand what constitutes aircraft hijacking and the international community's efforts to govern such international terrorism. Further, the research paper will also explore the reasons and motives behind such hijacking and analyze the effectiveness of the international community in curbing such violations.

Keywords: Aircraft Hijacking, International Terrorism, Ransom, Hostage, Tokyo Convention, Hague Convention, Montreal Convention.

Introduction

Aircraft Hijacking, in layman's terms, can be understood as unlawfully taking control of an aircraft through threat or coercion due to personal or political motives. It can occur before or after the flight has taken off and is in transit. It did not take long for the crime of aircraft hijacking to emerge as the first successful plane was built in 1903, and the first aircraft hijacking was committed in 1931 in *Peru Lima*. However, this is not the most severe case of hijacking in the

same way the first aeroplane was not the best. Both the good and the bad have evolved. Aircraft hijacking is seen as a grave offence against humanity across the globe. Four elements constitute the crime of aircraft hijacking:

1. The most obvious one is that the offence is committed on the Aircraft before or after it has taken off.
2. The offenders use unlawful force or coercion to gain control of the Aircraft.
3. Intimidation is used against the pilots or other authorities controlling the flight.
4. The hijacking is committed due to personal and political reasons such as enmity between countries or terrorism.

The governments and international community have made much effort throughout the years to curb the crime of aircraft hijacking and prosecute the violators and offenders.

Nevertheless, these hijackings continue to happen despite the preventive and precautionary measures to safeguard the passengers. Aircraft hijackings, although sometimes resolved without any casualties, can sometimes take horrible turns and result in casualties of multiple passengers, like the infamous 9/11 incident, which shocked the whole international community and resulted in the death of almost 3000 people. This incident paved the way for stricter rules and regulations and is condemned as one of the most fateful events ever. Hijackers see Aircraft as an easy target since nobody can stop them once the flight is in transit and hundreds of feet in the air.

Moreover, they can take the Aircraft to a country that fits their political ideologies and will provide them with safe asylum till they achieve their aim or motive. At the same time, past events have made the international community stricter regarding framing rules and ensuring precautions in Aircraft; an analysis of how and why they were achieved at the present stage is essential. The rarity of aircraft hijackings in the modern era suggests the success of the efforts of the International Community in addressing the issue

Understanding the Motives and Objectives for Aircraft Hijacking

It is evident from the past cases that “Aircraft Hijacking” is committed for specific purposes, aims or objectives. For example, A particular terrorist organization can Hijack an Aircraft and hold the passenger's, hostage, for vast amounts of ransom. The aim of the hijackers, in this case, is personal or monetary, as they use the passengers on board as collateral for getting vast amounts of money.

However, there are also other motives or objectives for Skyjacking, which are discussed below:

Terrorism: Hijacking for terrorism is considered to be one of the most gruesome and inhumane forms of Hijacking. Under this type of Hijacking, the group of Hijackers take control of the Aircraft through force to create fear in the general public or become infamous across the globe by communicating their ultimate aim. This is the most severe type of Hijacking because both the Aircraft and the passengers' lives are threatened, and the past has shown us that these terrorists show no mercy to anyone. The relevant authorities, even if they try their best, only have limited control hundreds of feet in the air and thus sometimes have to fall to the demands of the terrorists.

Political: This type of Hijacking is committed to creating an imbalance in the country's politics. After passing a particular order or decision, high-profile political leaders or organization leaders are targeted and criticized for the country's condition. Every decision will have supporters and critics, and thus, this type of Hijacking is done by a group of people who are extremely unhappy with the leader's decision and want to punish them. This is the reason the political leaders travel with so much security since their deaths can affect the governance of the entire nation and create havoc.

Personal: There are certain instances where hijacking is committed by people who are mentally unstable or have psychological disorders and commit hijacking for no other reason apart from criminal intentions. These categories of people are hazardous as we have seen in the past that serial killers and other unstable criminals have killed a vast number of people for no other reasons apart from personal satisfaction from the killings.

Political Refugee Motive and Release of Members Imprisoned:

Hijackings are also committed when a particular group of people who are not satisfied with the politics in their state wish to immigrate to another country illegally to seek political refugee. Apart from this, certain hijackings are also committed by holding passengers as hostages and threatening to kill them unless the hijackers's colleagues who are imprisoned are released. In these cases, the hijackers are in contact with the government of the state whose airline is ambushed and the members are imprisoned. The Hijack is stopped after the requested members are released from the prisons of that particular state.

Monetary or Ransom Motive: Under these types of Hijackings, the group of Hijackers take control of the plane through unlawful use of force and hold the passengers hostage, in return for

a massive sum of money. The passengers are released, and the Hijacking is concluded when the requested amount is deposited into the Hijackers' accounts. The Hijackers can also have other demands apart from just money to publicize the aim and objective of their terrorist activities.

These are the most common motives and objectives that the terrorists who commit "Aircraft Hijacking" have. Political and personal reasons are the most common, and thus, these are the ones that need more investigation by the intelligence agencies and other relevant authorities to know when the terrorists can strike, and thus they can take precautionary measures

Analysis of the International Conventions on Aircraft Hijacking

Tokyo Convention (1963)¹

Finally, considering the severity and casualties caused by aircraft hijacking, *"The Convention on Offences and Certain Other Acts Committed on Board Aircraft"* was introduced in Tokyo and enacted on 4th December 1969. The Tokyo Convention was one of the first efforts taken by the international community against the offence of "Aircraft hijacking" or "Skyjacking," which was becoming more prevalent due to the lack of regulating legislation or rules around the issue. Article 1(1) of the Convention declared that actions that threaten the passengers on the Aircraft, create indiscipline, or affect the general good conduct and order on the Aircraft shall be a penal offence. Further, Article 1(2) of the Convention discusses the applicability and jurisdiction in cases of such offences committed on board while the flight is in transit outside its territorial jurisdiction.

However, the Tokyo Convention has been criticized since it failed to curb the offence of aircraft hijacking effectively and had several deficiencies. At the outset, the Convention only defined what activities could be offences while the Aircraft was on board. At the same time, it failed to define the offence of "Aircraft Hijacking exclusively" and the elements that constitute it. It failed to address the severe offence of Skyjacking and the repercussions of the activities that would constitute such an offence. The Convention did not declare it a crime but merely listed activities that could constitute Aircraft Hijacking. However, this is unfair as aircraft hijacking is a much more grave and serious offence than creating indiscipline. Secondly, the convention failed to consider the fact that the offence of 'Aircraft Hijacking' can also take place within the borders of

¹ Convention on Offences and Certain Acts Committed on Board Aircraft, September 14, 1963

the Home State Airline. The applicability of the convention as per Article 1(2) will be “in the high seas” or “other areas outside the territory of the State”. However, this is a significant drawback of the convention as time has proved that aircraft hijacking also takes place in the territory of the home state as much as it takes place outside. The Convention also failed to impose sanctions or mandate the prosecution of offenders effectively. The Home State airline can either exercise its territorial criminal jurisdiction and prosecute the offender or send the offender back to his/her country to be prosecuted per their laws regarding such offence. However, providing the power to the authorities on the flight to prevent such offences and protect the Aircraft was a great initiative and justified concerning “Aircraft Hijacking”.

The Hague Convention (1970)²

The years 1968 and 1969 laid the road for setting new rules and regulations concerning ‘Aircraft Hijacking’ as more than 100 successful reported hijackings were committed in this period alone. This affected the international community as passengers no longer felt safe while commuting through aviation and were hesitant to travel through airlines. Moreover, the trade and commercial purposes that were fulfilled through aviation were also threatened due to such a high number of successful hijackings. It was evident that the Tokyo convention had failed and was inefficient in curbing the offence of Aircraft Hijacking, and thus, a new Convention was adopted in Hague on December 16, 1970, which was the “Convention for the Suppression of Unlawful Seizure of Aircraft.”. The Convention very briefly defined the offence of Aircraft Hijacking as Article 1 said

“ Any person who on board an aircraft in flight:

- (a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizers, 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”³*

Recognizing the accomplices as offenders was necessary since such offences on the aircraft are generally committed by a group of people and are rarely a one-person operation. Article 2 of the Convention has also made mandatory for the “Contracting State” to make these offences punishable with severe punishments. Unlike the Tokyo convention, where the Contracting state

² Convention for the suppression of unlawful seizure of aircraft, December 17, 1970, 860 U.N.T.S 105.

³ Convention for the suppression of unlawful seizure of aircraft, December 17, 1970, 860 U.N.T.S 105, Article 1

was at liberty to either prosecute the offenders or extradite them, the Hague Convention mandates the Extradition of such individuals who violate the rules of the convention through Article 8. The Extradition will take place by the laws of the requesting state, and the facts and circumstances plus motives of hijacking are not considered, which is a drawback because if the act were committed for political reasons, the Extradition would fail the purpose of the convention which aims to punish such individuals. Thus, although all the rules and regulations of the Hague Convention aimed at actions that constituted aircraft hijacking, it still failed in the same way as the Tokyo Convention in recognizing exclusively the offence and crime of “Aircraft Hijacking”. Another drawback is that the convention only protects an aeroplane ‘in-flight’ and “in situations where it is under a threat of seizure.” this narrows down the authority of the convention as the Aircraft can also be hijacked on the ground, as in the case of “Pan Am Flight 73 Boeing 747-121” going to New York and was hijacked before the flight in Karachi by a terrorist organization. In order to increase the effectiveness of the Hague Convention and address its deficiencies, a supplementary protocol was adopted in “Beijing in September 2010” the significant change brought by this supplementation was to replace Articles 1 and 3 of the Convention. The Article 1 was replaced to:

“(1) Any person commits an offence if that person unlawfully and intentionally seizes or exercise control of an aircraft in service by force or threat thereof, or by coercion, or by any other form of intimidation, or by any technological means;

(2) Any person also commits an offence if that person:

(a) makes a threat to commit the offence set forth in paragraph 1 of this Article or

(b) Unlawfully and intentionally causes any person to receive such a threat, under circumstances which indicate that the threat is credible.”

Thus, by replacing the Article, the Convention will now apply to a broader range of offences. Another practical addition is the introduction of the term “Aircraft in Service”, which, as per Article 3, means that the Aircraft will be in service or operation before the flight has taken off, thus including the time when the Aircraft is on land getting ready to take off and shall be in service 24 hours after landing. This solves the deficiency of the Hague Convention, which only considers the offence committed while the flight has taken off and is in transit. Although the Hague Convention is not perfect, it considered and included many provisions to limit success in curbing aircraft hijacking. The Convention was much broader and effective than the Tokyo Convention.

Montreal Convention (1971)⁴

After the Hague Convention in 1970, “*The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*”, i.e., the Montreal Convention, was adopted in 1971, which, in addition to certain offences committed on Aircraft, laid more emphasis on the actions that were likely to endanger the wellbeing and safety of the Aircraft, i.e. placed more importance on the Aircraft as a property. This can be understood by looking at Article 1 of the Montreal Commission, which states:

“*Article 1.*

1. *Any person commits an offence if he unlawfully and intentionally:*

(a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or

(b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or

(c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or

(d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or

(e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.

2. *Any person also commits an offence if he:*

(a) attempts to commit any of the offences mentioned in paragraph 1 of this Article; or

(b) is an accomplice of a person who commits or attempts to commit any such offence.”⁵

It must be noted that apart from this, most of the provisions were similar to those of the Hague Convention. However, there were many measures adopted which increased screening and security at the airports. This would prevent hijackings at the earlier stage by identifying suspicious people and dangerous weapons/devices. Another significant change brought about by the Montreal Convention was its supplementary protocol in 1989, which laid several penalties for persons who commit such offences in airports. Further, the convention stipulated that the Home

⁴ Convention for the suppression of unlawful acts against the safety of civil aviation, September 1971, 974 U.N.T.S 178

⁵ Convention for the suppression of unlawful acts against the safety of civil aviation, September 1971, 974 U.N.T.S 178, Article 1

State Airline can exercise its territorial jurisdiction on such offences even if they are far beyond its territories

Case Study

Hijacking of 4 planes which crashed into the World Trade Center and Pentagon

Considered to be one of the most inhumane and destructive terrorist acts post World War 2, the hijacking incident took place in September 2001. All the four planes which were scheduled to fly were hijacked by a group of terrorists. The Hijackers used two planes to destroy the famous “World Trade Centre(WTC)” whereas the other two planes crashed in “Pennsylvania” and the “Pentagon in Washington”. This is one of the most severe cases of Aircraft Hijacking, as it led to the death of hundreds of people and injured thousands of others. It destroyed four aircraft and damaged much public property, costing millions of dollars in damages. It shocked the entire World, and the international community could not do anything since the offenders could not be identified. “Osama Bin Laden”, who is an infamous terrorist, was apprehended to be responsible for this fateful incident by the United States concurring with the Intelligence agencies. However, the Taliban regime in Afghanistan was protecting and sheltering Osama Bin Laden, and thus, he could not be extradited by the United States for prosecution. However, the United States was not going to stay silent and mourn. Thus they launched ‘Operation Infinite Justice ’and waged a war against such gruesome terrorism by launching “cruise missiles” at the suspected areas in Afghanistan that were considered to be Terrorist Camps of Taliban and where Osama Bin Laden was suspected to be hiding. The international community along with NATO supported this initiative. It is shocking and must be noted that the country of Pakistan, which is considered to be associated with the Taliban, also supported the United States Operation. However, it is difficult to understand what kind of significant advantage Pakistan would be able to provide by agreeing to support the US, as the operation will very likely kill most of its citizens who are involved in terrorist organizations in Afghanistan. “The Secretary General of the United Nations: *Kofi Annan*” posted this incident and addressed that:

“Today, the shock of this crime has united the World. If we are to prevent such crimes from being committed again, we must stay united as we seek to eliminate terrorism. In this struggle, there is simply no alternative to international cooperation. Terrorism will be defeated if the international

community unities in a broad coalition, or it will not be defeated at all.”⁶

Aircraft Hijackings in India

India was a signatory and ratified “the Tokyo Convention, Hague Convention and Montreal Convention.” Even India has been affected by the terrorist activity of Aircraft Hijacking, as there have been six successful cases of aircraft hijackings in India. The first reported one was in 1970, when a group of people hijacked an Indian Aeroplane, and the Aircraft was then taken to Lahore (Pakistan) to flee from India’s jurisdiction and get safe shelter. It is indeed notable that none of the passengers were harmed, and they were released; however, the Indian Aircraft was blown to bits by the terrorists. Despite the requests from the Indian governments, no prosecution or punishment was given to the offenders by the Pakistan Government, and they were neither allowed to be extradited to India for trial and punishment. India, who were angered by this display of non-cooperation by the Pakistan Government, restricted airspace access of all Pakistan aircraft in Indian airspace. There was another incident in 1976 where a similar thing occurred, and the aircraft was again taken to Lahore in Pakistan. However, learning from their mistakes, the Pakistan Government ordered the relevant authorities to address the offenders, and the Aircraft was returned to India along with the passengers, and luckily, no one was harmed or injured. A Hijacking attempt by the Taliban was also reported in December 1999 when an Indian aircraft travelled from “Kathmandu in Nepal” to “New Delhi in India.” The Hijackers aimed to take the Aircraft to “Kandhar in Taliban” in order to facilitate their terrorist aims. A passenger was killed, and other passengers faced a lot of violence and harassment by the terrorists. The passengers were released after their demands of the hijackers were fulfilled. The Indian Government had apprehension that the Hijackers were taking shelter in Pakistan in order to avoid prosecution by India, and thus, the Indian Government requested Pakistan to extradite them. However, Pakistan did not do anything and did not even arrest the Hijackers nor make any attempts to cooperate with India.

Conclusion

Aircraft hijacking is a very serious terrorist activity that can endanger the safety and lives of hundreds of people and can also result in large damage to public property. Moreover, the relevant authorities must take precautions and serious measures in airports for proper screening

⁶ See his address to the General Assembly Session on Terrorism of October 1, 2001. (UNIC/PRESS Release/106-2001)

of all passengers in order to prevent the carrying of any devices that might facilitate hijacking. This is important because if the screening process is strict, there would be less chance of terrorists entering the Aircraft that is about to take off. After the Aircraft takes off and is in the air, the authorities have very few options to take back control of the airline since the aeroplane is isolated in the air, away from land. To solve this deficiency, the crew members of the airline need to be adequately trained regarding what to do and what not to do in such circumstances. The measures taken by the international community through various conventions, such as the *Montreal and Hague Conventions*, are significant initiatives and have successfully reduced the number of aircraft hijackings in modern times. The criminalization of aircraft hijacking and other related offences on airlines has raised awareness across the globe regarding this type of crime.

Further, the extradition rules and compulsory prosecution of such offenders is another great step, which was essential because certain countries that support such terrorist organizations will no longer be able to safeguard these individuals. Providing the right and power to flight commanders to use necessary force to protect the Aircraft from this terrorist is another excellent initiative. It will help ensure safety even in the air. All these measures and increasing security will help the citizens of the country and the passengers to travel and fly on the airlines without any worry about safety. The Specialized Intelligence agencies also play an integral role in detecting these hijackings beforehand and thus preventing them altogether. The aircraft must be equipped with tools and equipment that can be used while hijacking to protect the passengers and the aircraft. Continuous communication with the airline authorities is also essential to get backup in cases where things go out of hand. The past incidents have taught us that unless severe and immediate action is taken against this terrorism by the international community altogether, we will never be able to eradicate these terrorist activities. Thus, with the help of new technological advancements such as Artificial Intelligence, the screening measures at airports can be made more strict and special measures need to be taken during times of political discord in the country since political discord is one of the most frequent aims seen in Aircraft Hijackings throughout the years. Additionally, stricter approaches need to be taken against terrorist organizations in the Taliban and Afghanistan who have been constantly involved in such activities and think they are invincible. The International Community together shall launch initiatives to find and punish these terrorists.