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# **AERIAL TERRORISM AND OTHER CRIMES: AN ANALYSIS THROUGH RELEVANT INTERNATIONAL CONVENTIONS**

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## **ABSTRACT**

Aerial Terrorism is one of the many forms of terrorism. Aerial terrorism and aerial crimes range from misdemeanours in an aircraft to much larger crimes with an almost genocidal impact on humanity. One among the many tragic incidents like the 9/11 World Trade Centre attack gives a perspective as to how dangerous aerial terrorism really is. On the other hand, while many legislations, policies and conventions are in place to regulate other crimes on aircrafts within the sovereign space and ideally uncharted civil air space, problems still arise between different countries with respect to jurisdiction and extradition of criminals.

The first attempt on framing a legislation towards the Aviation laws began with the advent of The Convention on Crimes and Certain Other Acts Committed Onboard an Aircraft, otherwise known as The Tokyo Convention in 1963. Article 3 in Chapter II of this Convention elucidates a general idea of applicable jurisdiction for crimes on aircrafts. The Tokyo Convention goes into further detail about other provisions like the Powers of an Aircraft Commander and the Powers and Duties of the State on criminal incidents onboard an aircraft. Following the Tokyo Convention, The Convention on Suppression of Unlawful Seizure of Aircraft (The Hague Hijacking Convention) in 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (The Sabotage Convention or the Montreal Convention) aimed to fill in the gaps of the Tokyo Convention by addition of more categories of crimes and extending enforcement not only on the aircrafts but also in the airports. Even with the existing level of crime there were many problems arising on the lines of jurisdiction and extradition with the involvement of National Laws. These National Laws tend to be inconsistent with each other creating an impasse between two or more countries in some cases which consequently obstructs justice.

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The exponential growth of technology in the past decades has conjured a whole new realm of crimes. However, the legal framework remains in an outdated position leaving a lot of questions unanswered. Different scenarios may arise such as what the legal implication would be when a situation like the 9/11 attack arises, but the aircraft is unmanned and controlled remotely. In such a case, the jurisdiction and extradition might become a major issue between the country which hosts the criminal and the country which sustained the damage. There are many other cases where the technological advancement is irrelevant and yet the question remains. For instance, what happens when a crime is committed by a citizen of one country against a citizen of another country in a layover airport whose country's interest is not directly hindered by that crime. Although jurisdictional provisions might exist in respective National Laws and momentary extradition treaties are drawn up between countries, an ideal International Jurisdiction would be an optimal solution. Any crime that is associated with an aircraft or that happens on the civil air space could potentially be tried in the International Criminal Court. Therefore, this research paper focuses on a brief analysis to identify the gaps in the existing legislations for the aerial regulations and suggests trying criminals in the International Criminal Court to fully resolve the jurisdictional and extradition issues. It also attempts to analyse the positive and negative aspects of such a jurisdiction.

## **INTRODUCTION**

Aerial terrorism is one of the most grievous forms of terrorism and involves instruments like airplanes and drones to cause destruction or sabotage. Aerial terrorism is particularly malicious since it causes great damage and threat to the national and international security, and it could potentially result in catastrophic damages to both aviation infrastructure and passengers on a relatively large scale. This form of terrorism occurs in various ways with bombings, hijacking and attacks on aircrafts and airports being some common examples and their motivations ranging from political, ideological, or religious extremism to plain criminal intent. Thereby, these acts of terrorism are typically conducted by organized groups or even individuals in some cases. Moreover, these attacks could either be by conventional methods with the use of explosives and such or sophisticated new age methods like cyber attacks or unmanned aircrafts which are remotely piloted, or a missile set to attack from a longer range with registered coordinates. Hence, it is safe to say that aerial terrorism is an evolving threat and is an important area which requires a lot of safety protocols and precautionary systems. As a response, various nations and international organizations have created a vast network of legislations and intelligence

arrangements to enhance and ensure aviation security. Some of these legislations include the Convention on Offences and Certain Other Acts Committed on Board Aircraft otherwise known as the Tokyo Convention and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation or the Montreal Convention, in addition to various national laws and regulations covering its own jurisdiction of civil air space. Even with these conventions in place, the aftermath of some traumatizing incidents like the 9/11 attacks, forced the national and international organizations to take a good hard look at these legislations and reinforce better safety mechanisms like scrutinizing passenger screening, strict customs regulations governing the transport of hazardous and dangerous materials etc. However, aerial terrorism remains a simmering threat to international peace and sometimes these terrorists find a way to circumvent existing security measures. Therefore, these conventions need to be airtight with absolutely no gaps or ambiguity with clear instructions and protocols to ensure that the Governments and enforcement agencies have a concise process and know how to respond to any given situation to ensure safety to their aviation instruments and personnel. All the stakeholders must work together to develop a precise legislation for this purpose.

Aerial crimes on the other hand, are a different category which are characterized as illegal activities that generally occur within the aviation sector. These crimes range from smuggling contraband to unauthorized intrusions, and they are usually not done to necessarily cause targeted harm to anyone but are still activities that breach the law. Aerial crimes pose a threat to aviation security and the authorities tend to have a profound system in place to address and prevent these kinds of criminal activities through surveillance, regulation, and enforcement efforts.

## **HISTORICAL BACKGROUND**

The international bodies and instruments had to evolve over time in response to the correspondingly evolving threats to the aviation security. There had to be conventions and legislations in place to keep the threats in check, to regulate the aerial activities and to keep the peace in the aviation sector. The historical progression of some of the key conventions and agreements in this regard are as follows:

### ➤ **1933 - ROME CONVENTION**

Also known as the Convention for the Suppression of Unlawful Acts against the Safety of Civil

Aviation was one of the first steps taken towards addressing aerial terrorism.<sup>2</sup> The objectives of this convention were to curb any acts of piracy or interference in the civil aviation space. This Convention is deemed to be of high significance since it set the stage for future developments on this accord.

➤ **1944 – INTERNATIONAL CIVIL AVIATION ORGANIZATION**

The International Civil Aviation Organization was established in the year 1944 with its headquarters in Montreal, Canada. It has been an important body in the line of Aviation security and defence. It has time and again been updated with the emergence of conventions and treaties and the increasing risk of crimes in the sector. ICAO's Annex 17<sup>3</sup>, titled "Security", has set global standards and practices enhancing the safety measures during instances of interference.

➤ **1963 - TOKYO CONVENTION**

The Convention on Offences and Certain Other Acts Committed on Board Aircraft, otherwise known as the Tokyo Convention, marked a major milestone in aviation safety. It was the first international agreement in the domain and specifically targeted acts committed on aircrafts such as hijacking and sabotage, to name a few and criminalized them. It also established clear statutes for jurisdiction and extradition procedures with them being the major concerns when it comes to international flights across international borders.

➤ **1971 – MONTREAL CONVENTION**

Montreal convention or the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation was said to be based on the standards set by the Tokyo Convention. It attempted to fill up the gaps of the Tokyo Convention by expanding its scope. It included bombings and other such acts to be considered as criminal offences.<sup>4</sup> It also emphasized that international cooperation was vital for aviation security.

➤ **1988 – LOCKERBIE BOMBING**

Preceding the infamous 9/11 attacks, the bombing of a flight over Lockerbie, Scotland in the year

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<sup>2</sup> The Rome Convention and its modernization, The Journal of the UN Philatelists, Vol 34 #2, April 2010. Available at: [https://applications.icao.int/postalhistory/the\\_rome\\_convention\\_and\\_its\\_modernization.htm](https://applications.icao.int/postalhistory/the_rome_convention_and_its_modernization.htm)

<sup>3</sup> <https://www.icao.int/security/sfp/pages/annex17.aspx>

<sup>4</sup> Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971, Art. 1. 1(c)

1988 was a tragic event that pressed the need for a stronger and more efficient defence line.<sup>5</sup> It also highlighted the need for a coordinated action against terrorism in civil aviation on an international scale. Consequently, the United Nations Security Council endorsed Resolution 748 which prompted the states to accentuate their security measures against aerial terrorism and crimes.

➤ **1999 - MONTREAL CONVENTION PROTOCOL**

In 1999, a protocol was added to the Montreal Convention of 1971 once again to expand the scope of offences. This protocol included a wide range of criminal offences to keep in line with the usage of new age technology in acts of terrorism. It administered the use of weapons monitored and controlled remotely or otherwise and cyberattacks.<sup>6</sup>

➤ **2001 - THE SEPTEMBER 11 ATTACKS**

Commonly known as the 9/11 attacks, this incident was the saturation point for the whole world to acknowledge that aerial terrorism is a much more serious issue that could cause damages unmeasured and a befitting if not much stronger aviation security was necessary. The aftermath of these attacks brought in many changes on the legislative fronts and more defence mechanisms were employed globally in many countries. But especially in the United States it gave rise to the establishment of the United States Transportation Security Administration.<sup>7</sup>

The 9/11 attacks shook up the whole world and it didn't take much longer for the rest of the countries to realise that if they didn't develop their security measures, they would have to face a similar situation. This incident therefore brought about changes in many countries and paved the way for a more coordinated international effort towards aviation security.

These events and conventions mark the milestones in the progression of aviation security through legislation, regulatory measures, and security protocols.

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<sup>5</sup> Paulina Villegas, The Lockerbie bombing created a global probe, The Washington Post, Dec 11, 2022.

Available at : <https://www.washingtonpost.com/national-security/2022/12/11/lockerbie-bombing-explainer-faq/>

<sup>6</sup> 2. Chapter Five, Protocol for the suppression of unlawful acts of violence at airports serving international civil aviation 1988 ('Montreal Protocol')

<sup>7</sup> Dave Roos, "5 Ways September 11 changed America", History, September 1, 2020.

Available at: <https://www.history.com/news/september-11-changes-america>

## **THE TOKYO CONVENTION - 1963**

The Tokyo Convention, or the International Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation was established in Tokyo, Japan on the 14<sup>th</sup> of September 1963 and came into force on December 4<sup>th</sup>, 1969. This treaty was created with the objective to prevent illegal acts on the aviation sector. The convention covers and regulates acts that jeopardize the safety of passengers, crew members and aircrafts in general<sup>8</sup>. It was created during the time when international aviation was more susceptible to threats like hijacks and sabotage to combat such acts or events.

### **Objectives**

The prime objectives of the Convention include:

- To criminalize the seizing or exercising or attempting to seize or exercise the control of an aircraft during its flight i.e., hijacking.
- To require all the parties to the treaty to make a coordinated effort to prevent and suppress any unlawful acts against the peaceful functioning of aircrafts within the civil aviation space.
- To ensure that any offenders duly face the legal sanctions be it by way of prosecution or extradition and to meet the ends of justice.
- To provide an extensive legislative structure covering the process of investigation and prosecution of offences and offenders.

### **Jurisdiction**

Jurisdiction becomes a crucial aspect to be considered when it comes to the international civil aviation space. An ideal procedure must be implemented to determine the jurisdictional aspects of a crime, investigation, prosecution etc. The Tokyo Convention attempted to establish jurisdictional boundaries for this purpose.

#### ➤ **Territorial Jurisdiction**

When an unlawful act takes place on an aircraft, in the airport, or within the territorial borders of the state where the airport is situated, then that state is to have primary jurisdiction to investigate,

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<sup>8</sup> International Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, 1963, Article 1. 1(b)

try and prosecute the offender.

➤ **Nationality Jurisdiction**

If an offender commits a crime in any place away from his home state and if his state has jurisdiction regulations regarding crimes committed abroad, then his state can claim the said jurisdiction irrelevant of the place the crime was committed in. This principle is brought about by countries to ensure that they can try and prosecute their own citizens in their own nationality. Section 4 of the Indian Penal Code is titled Extension of Code to extra territorial offences. By this provision, any citizen of India who commits a crime beyond its territorial borders and any person who commits a crime in an aircraft or ship registered in India are covered by the Indian Penal Code only.

➤ **Dual Criminality**

Whenever the extradition of an offender comes into question, the Tokyo Convention requires that any given offence must be recognized as a crime in the state that ideally exercises jurisdiction and the state that requests that the offender be extradited. This is the concept of Dual criminality.

➤ **Hijacking of Ethiopian Airlines Flight 961 in 1996**

A flight in the Ethiopian Airlines was hijacked by three individuals. They forced the pilots to crash the plane into the Indian Ocean off the Comoros Islands. However, the hijackers were captured and taken into custody in the Comoros islands. Dual criminality was determined in this case since the act was considered criminal in both Ethiopia and the Comoros.<sup>9</sup>

➤ **Extraterritorial Jurisdiction**

States may extend their jurisdiction in some cases even if the offender is not a citizen of the state nor if the offence takes place within the territorial borders of that state. Extraterritorial jurisdiction is when such a state extends its jurisdiction simply because the act or offence poses a threat to the national security of that state, or the interests of that state are affected.

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<sup>9</sup> <https://acearchive.org/ethiopian-airlines-flight-961>

➤ **Hijacking of Air France Flight 139 in 1976**

An Air France Flight set out to Israel was hijacked by Palestinian and German terrorists. Majority of the passengers and crew members were citizens of Israel.<sup>10</sup> Therefore, in this case, Israel claimed extraterritorial jurisdiction and the hijackers were captured in Uganda by Israeli special forces.

**Extradition**

Extradition is a legal and formal procedure where one country agrees to surrender an individual who has committed or alleged to have committed an offence to another country that requests that the individual be tried and prosecuted under their jurisdiction. The Tokyo convention having dealt with crimes in the international scope and their corresponding jurisdiction did not specifically focus on elaborating on the Extradition procedure. During the time of establishment, the jurisdiction instructions put forth by the Convention were ideal enough but with each state forming their own domestic laws, extradition became a complicated process. While there is no standard international law on a definitive procedure for extradition, extradition treaties are drawn up between countries as and when an incident occurs that requires it. This might not always workout as a peaceful negotiation between two countries and might even lead to conflicts and disruption. Thereby the Tokyo Convention does not cover the procedure of extradition in its scope leaving a large area untouched.

**THE MONTREAL CONVENTION - 1971**

The Convention on the Suppression of Unlawful Acts Against the Safety of Civil Aviation, often referred to as the Montreal Convention was drawn up in the year 1971 and had been since amended several times to combat emerging concerns against the aviation security.

The Montreal Convention was built upon the foundation laid down by the Tokyo Convention to widen its scope and cover a broader range of offences and criminalise them. It included acts like placing explosives and dangerous devices on an aircraft and penalised these offences. It also included any act of violence that was committed on board an aircraft that would endanger its

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<sup>10</sup> Alex Auclair, "What happened during the real life rescuer mission of the hijacked airplane in Operation Entebbe", Medium, Aug 20, 2021.

Available at: <https://alexauclair.medium.com/what-happened-during-the-real-life-rescue-mission-of-the-hijacked-airplane-in-operation-entebbe-dfc2028e7bfc>

safety.<sup>11</sup>

This convention recognizes that the countries are independent bodies with their own legislative framework. Therefore, it makes it obligatory for the states to establish their own terms of jurisdiction and extradition over the crimes that happen in the civil aviation space in addition to the principles of jurisdiction established by the Tokyo Convention.<sup>12</sup> It further highlights that prosecution of an offender shall be carried out under the law of the state where the offender is found or the state under which the aircraft is registered.

The Montreal Convention established certain rules of extradition between the contracting states and attempted to fill the gap left out in the Tokyo Convention. The rules are framed in a way that the convention comes into effect only if there is no extradition treaty already existent between two or more states and if it does exist, the process of extradition takes place according to the law of the requesting state.<sup>13</sup>

It also has provisions for when a dispute arises between two or more states regarding extradition or interpretation and application of the terms of the Convention which was also not covered by the Tokyo Convention. A dispute between two signatories shall be handled by negotiation or at the request of one of the parties by way of arbitration. If the dispute still hasn't been resolved, then it can be taken up to the International Court of Justice.<sup>14</sup>

This Convention further affirms that aviation security must be a coordinated effort by all the states working together. It points out that every signatory must undertake to offer maximum assistance to a state in distress.<sup>15</sup> The states must cooperate with each other during the process of investigation and prosecution of offenders. This must also extend to facilities like sharing intelligence information when need be, offering aid in legal proceedings and offering the victims adequate support.

The Convention also reiterates that every state should implement a wide range of security

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<sup>11</sup> Convention on the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 1971, Art. 1. 1 (a)

<sup>12</sup> Ibid. Art. 5

Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%20974/volume-974-I-14118-english.pdf>

<sup>13</sup> Ibid. Art 8

<sup>14</sup> Ibid. Art. 14

<sup>15</sup> Ibid. Art. 11

measures at airports and aircrafts like screening of passengers and use of air marshals who can travel incognito to take action if a necessary situation arises, to ensure utmost aviation security.

## **THE MONTREAL PROTOCOL**

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation commonly known as the Montreal Protocol was an addition to the Montreal Convention of 1971. This protocol was adopted in response to the manifestation of “Modern terrorism” as a form of violence in international airports. A terrorist attack in Rome airport in January 1986 insinuated the need for a contemporary legislation to keep up with the emerging new forms of violence.<sup>16</sup> This protocol is not a separate entity apart from the Montreal convention but merely supplementary to it. A country cannot ratify the protocol without having ratified the original convention. The protocol adds on more offences to be penalized by the convention known as “Protocol offences” and these include committing intentional violent acts by using a device or weapon which causes or is likely to cause serious injury or death; or destroys or damages the facilities of an airport thereby disrupting the services.<sup>17</sup> The Protocol further adds on to Article 5 of the Convention which talks about Jurisdiction and the amendment includes respective jurisdiction for the Protocol offences mentioned in Article 2 of the Protocol. Since those offences relate to violent acts committed in airports and related buildings and the runways, the state where the airport stands will have prima facie jurisdiction.<sup>18</sup>

## **THE BEIJING CONVENTION**

The Beijing Convention on the Suppression of Unlawful Acts relating to International Civil Aviation was adopted in 2010 and it became the most enhanced civil aviation law on the international scope. Being built upon the Tokyo Convention and the Montreal Convention, the Beijing Convention now covers a plethora of statutes overlooked by the former conventions on the same subject making it the most comprehensive convention on international civil aviation security.

As the older conventions included traditional acts of terrorism such as hijacking, sabotage, and

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<sup>16</sup> Supra note. 5

<sup>17</sup> Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, 1988, Art 2.

<sup>18</sup> Ibid. Art 3.

unlawful interference, the Beijing convention extensively included cyberattacks and similar acts of terrorism against aviation systems. It is one of the most notable additions in the Beijing Convention. It acknowledged and recognized the growing necessity of cyber security in addition to regular security and defence measures and the use of communication and information technologies in aviation security. Furthermore, it includes the usage of “BCN (Biological Chemical and Nuclear) weapons” to cause any kind of damage in an aircraft or an airport or even just the possession of such weapons within the aviation premises to be a punishable offence.<sup>19</sup> The Convention also penalizes the secondary offenders who are not physically present in the crime scene such as organizers, directors or abettors of the offence.

The Convention also expands the jurisdiction of the states to include the interests of the state where the victim is a citizen. It encourages states to provide as much assistance as possible to support the victims of an offence to help through processes of repatriation, medical and psychological rehabilitation.<sup>20</sup> A victim centric approach was a step up from the existing conventions. Therefore, the Beijing Convention incorporated new factors to address the threats and risks in the aviation sector and provides a comprehensive and extensive legal framework for the same.

## **LIMITATIONS**

### **TOKYO CONVENTION**

- The Tokyo Convention has a limited scope since it focuses solely on offences committed on board an aircraft and failed to be inclusive of security issues in the broader aviation premises.
- It also covers offences that are committed when the aircraft is on flight, neglecting the jurisdiction on ground.
- Critics argue that the penalties enumerated in the Convention are not befitting the crimes.
- The convention establishes the procedure for jurisdiction but fails to provide guidelines when there is a grievance or dispute between two or more parties.
- Lacks clarity on extradition provisions.

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<sup>19</sup> Administrative package for ratification of or accession to the Convention on the Suppression of Unlawful Acts relating to International civil aviation (Beijing convention, 2010), 3.

<sup>20</sup> Ibid.

## **MONTREAL CONVENTION**

- Since the Montreal Convention emphasizes dependence on the signatory countries' domestic legal framework, there might be discrepancies in enforcement, given the State sovereignty and some states may struggle to implement its provisions effectively.
- Considering the State sovereignty once again, there might be conflicts in the extradition procedures.
- This convention does not actively address modern threats like cyber or drone attacks.
- The convention requires signatory countries to ratify the same and hence might not deter the non-signatory countries leading to imbalance and inequality and a gap in the enforcement of legal procedures.

## **BEIJING CONVENTION**

- As all the international conventions and treaties, this convention is no exception with its ratification process and when a treaty requires to be ratified by the world countries, not all countries would be willing to be part of it creating an unequal landscape.
- Many countries face difficulties with limited resources to enforce security measures to combat threats to their aviation sector. This makes the implementation of the convention difficult for those countries.
- As there are technological advancements in the aviation defence line, the potential offenders could get their hands on similar advanced technology and weapons which makes it difficult for them to be covered by the Convention.
- This convention aims to address offences across a single country's borders and the more parties involved, the more complicated the extradition process becomes. Although there are redressal mechanisms in place when a dispute occurs, it cannot be perceived as meeting the ends of justice.

## **SUGGESTIONS AND CONCLUSION**

- The international conventions and treaties should be regularly reviewed and updated to stay ahead of emerging threats and risk factors.
- International cooperation is vital to ensure aviation security. The international bodies should foster good cooperation between the countries to build a unified front against these threats.

- There must be a standard security procedure that is practiced in all countries to prevent inconsistencies and negligence.
- Use technology to its fullest capacity to identify and mitigate potential security risks.
- Train security personnel in the airports and aircrafts to recognize suspicious behaviour by implementing behavioural analysis and act accordingly.
- Establish robust crisis management techniques so when a situation arises, no time is wasted on strategizing.
- Consider a potential trial of all offences that happen outside of the express territorial borders of a country or registered aircraft, in the International Criminal Court in order to prevent complications of jurisdiction and extradition processes which could pave way to a dispute between two or more countries.

Aviation safety is a global responsibility that requires all the countries in the world to take a unified action and combat against all possible hindrances that might occur. The aim is to provide the staff and the passengers the highest level of security in airports and aircrafts and to protect the country from a really intense and unforeseen damage through aerial terrorism. Therefore, enhancing aviation security measures by way of international conventions and domestic laws is critical to ensure safe air travel and safety within the civil aviation space.

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