

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Aircraft Hijacking and International Law

ANUSHKA SINGH¹ AND MAHIMA YADAV²

ABSTRACT

The purpose of this article was to analyse all possible aspects of the phenomenon known as “aircraft hijacking”. According to International Law, the aircraft crime is considered as one of the crimes against humanity. It is totally excoriated by the international community because the effect of this crime traumatizes the human values, endangers lives, and destroys possessions, goods and chattels. The intentions which highlights this crime may be derived from any personal motive, hostage taking, political and administrative reason etc. It is the state who should come forward and take the full responsibility, based on international law, to resolve the issues related to aircraft hijacking. The attempt to resolve this problem of aircraft hijacking can be done only through international networks, bilateral agreement and the conviction of those who commits aircraft hijacking.

This paper provides the instances in the history of aviation like that of Indian Aircraft IC 814, and 9/11 attacks, and will deal with the various international aviation safety problems emerging and the existing conventions like The Hague Convention 1970, Montreal Convention, Tokyo Convention and other norms regulating it.

More specifically this article will portray all the above to the incident of Indian Airlines Flight 814 also known as IC814 en route from Nepal to Delhi, on December 1999, when it was hijacked. A Pakistan based Islamic extremist group, was accused of this aircraft hijacking. The intention for the hijacking was to root the release of Islamist held in prison in India. The hostage crisis ended after India Government grant the permission to release their three militants, who have since then, been connected in other terrorist actions, such as 9/11, the murder of Daniel Pearl and Mumbai terror attacks.

This article will also provide suggestion to improve and reduce the air disasters which appear to happen more frequently these days.

I. INTRODUCTION

International terrorism has become a topic of debate over the years since it affects, the other States or their affairs. It can be defined as terror inspiring violence comprising an international element that is against civilians, States or internationally pro-tested persons in order to achieve

¹ Author is a Student at Babu Banarasi Das University, Uttar Pradesh, India

² Author is a Student at Babu Banarasi Das University, Uttar Pradesh, India

political goals.

Transportation systems of all kinds have served as means for encouraging terrorism. Aircraft hijacking, commonly called as “skyjacking” is an unlawful seizure of aircraft by an individual or a group.

According to Article 1 of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, 1970: “Any person who on board an aircraft in flight: 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 is an accomplice of a person who performs or attempts to perform any such act commits an offence”.³

In most of the cases hijackers intend to use the passengers as hostages, either for ransom or for some political or administrative purpose. Motives vary from demanding the release of certain convict, to crowning the injustice towards a particular community.

The Hague Convention 1970 recognized the need to provide for appropriate measures for punishment of such offences and mentioned that hijacking of an international flight of a civilian aircraft comes under both the principles of International customary law and treaty law.

International treaty law

Up to 1960s, there was an absence of any international customary law in relation to the hijacking of aircraft. This is the reason why the international community was asked for any solution to this threat, which leads towards the Tokyo Convention on Offences and Other Acts Committed on Board Aircraft, 1963, and the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, 1970. Two more conventions were adopted, namely The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971; and The International Convention against the Taking of Hostages, 1979. The first three were evolved under the auspices of the International Civil Aviation Organization (ICAO) and the fourth was adopted by the U.N. General Assembly.⁴

II. HISTORY

The Golden age of airline hijacking was between May 1961 in United States airspace and 159 were hijacked and there was more than one hijacking on the same day.⁵ During 1960s spate of hijacking a plane was held up once every six days in the United States. Raffaele Minichiello

³ Nicholas M. Poulantzas “hague convention”, published online by Cambridge University Press, Vol. 18 Issue 1, 21 May (2009)

⁴ Jayatigupta, “AerialHijacking and International Law”, Article 2384,, legal service India.

⁵ Libby Nelson, “libbynelson”, March 29, 2016

was responsible for the “longest and most spectacular”.

The first listed aircraft hijack was on February 21, 1931, in Arequipa, Peru. Byron Rickards, flying a Ford Tri-Motor, was approached on land by armed revolutionaries. Since 1947, 60 % of hijackings have been refugee escapes. In 1968-1969, hijacking rises at the peak. In 1968 there were 27 hijacking attempted to Cuba and 82 attempts worldwide. One of the famous and longest hijacking on record took on December 1999, in which an Indian Airline flights was hijacked by a terror based in Pakistan for seven days, flying it from Amritsar to Lahore to Dubai to Kandahar.

9/11 Attacks

Terrorists of Al-Qaeda, headed by Osama Bin Laden (co-founder of Al-Qaeda), carried out one of the most frightful and horrifying attacks in the history of United States. The attack left the entire world in blow & fear. On September 11, 2001, they targetted the twin towers of the World Trade Center in New York City and the Pentagon outside Washington DC. Nineteen terrorists of Al-Qaeda hijacked four aircraft's to complete the mission. The world closely witnessed two hijacked planes crashing into the twin towers of the World Trade Center. Two aircrafts-United Airlines Flight 175 & American Airlines Flight 11 crashed into the twin tower of the World Trade Center. In spite of the fact that Al-Qaeda, was founded in Pakistan, who claimed the responsibility for the 9/11 attacks, investigations unfolded that the hijackers were terrorist belonging primarily to Saudi Arabia. Osama Bin Laden, was named the mastermind and supervisor of the 9/11 attacks. Their intention behind the attack was America's support for Israel, or we can say that alleged support to the Persian Gulf War. After the Ten years of this horrifying incident, the US Navy seals and killed Osama Bin Laden in the Khyber Pukhtunkhwa province in Pakistan. Approximately 3,000 people were killed in the 9/11 attacks. The deceased included people from 78 countries.

Hijacking of IC 814

Flight 814 of Indian Airlines also known as IC 814, enroute from Tribhuvan International Airport in Kathmandu, Nepal to Indira Gandhi International Airport in Delhi, India on 24 December 1999, when it was hijacked by hijackers and flown to several locations before landing in Afghanistan. Harkat-ul-Mujahideen was charged of hijacking with the support and active guidance from ISI.

The aero plane was hijacked by gunmen shortly after it entered Indian at about 17:30 IST. Hijackers commanded the aircraft to be flown to different locations. After touching down in Amritsar, Lahore, and Dubai the hijackers finally ordered the aircraft to land in Afghanistan,

which was under the control of Taliban. The hijackers released only 27 out of 176 passengers in Dubai which were stabbed and wounded.

At that time, most of Afghanistan, including Kandahar where the plane landed, was under Taliban control. At the beginning it was quite understood that Taliban was on our side but later it comes as a shock that they are working in collaboration with ISI. Taliban surrounded the aircraft to prevent any Indian military intervention.

The main purpose for the hijacking appears to have been to secure the release of Islamist captured in the prison in India. The hostage crisis lasted for seven days and ended only after when India agreed to release three militants - Mushtaq Ahmed Zargar, Ahmed Omar Saeed Sheikh, and Mulana Masood Azhar. These three militants have since been charged in other terrorist activities, such as the 2002 kidnapping and murder of Daniel Pearl, 2008 Mumbai attacks. The hijacking has been noted as one of the millennium attack plots in late December 1999 and early January 2000 by al-Qaeda jihadists.

III. TOKYO CONVENTION, 1963

In the diplomatic conference on September 14 1963, The Convention on Offence and Certain Other Acts Committed on Board Aircraft was signed at Tokyo. This convention specifies under Article 1(1) covers:

- Offence against penal law
- Acts which, whether or not they are offences, may or do jeopardize good order and discipline on board.⁶
- In this convention Article 1(4) exempts the implementation to aircraft in military, customs or police service.

Tokyo Convention, widened the net to apprehend the hijackers and ensures the safety of civil aircraft's but suffers from sundry deficiencies-

- This convention neither elaborated the word hijacking and did not deal with an offence because the act of hijacking was not regarded as a crime.
- Absence of provision regarding formulated principles of inescapable punishment. Article 16 makes it clear that it does not create an obligation to grant extradition.
- No prescription of adequate punitive measure.

⁶ H.O. Aggarwal, "International Law and Human Rights", Central Law Publication, ed. 18, 2011, p.649

- Exclusive rights were distributed to flight commanders for protection of aircraft.
- Unjustifiable restraints were imposed on the offenders.

IV. THE HAGUE CONVENTION 1970

Countless crimes were increasing even after the shortcoming Tokyo Convention, the States were coerced to look into this and take effective measures and give deterrent punishments to hijackers. In September 1968 the International Civil Aviation Organization Council started to deal with this problem by adopting The Hague Convention, 1970, i.e., the Convention for the Suppression of Unlawful Seizure of Aircraft. This is a significant milestone for suppressing the crime of hijacking. As signalized by Sami Shubber: “These features of jurisdiction have brought the offender to the hand of piracy under International Customary Law⁷. The Hague Convention, 1970 considered as a huge step in the endeavour of the International Community to conquer hijacking and remove the threat.⁸

JURISDICTION: The Convention deals with the international as well as domestic flights. And it is applied in case of forced landing. The States jurisdiction over hijackers becomes difficult for them to escape the process of law.

EXTRADITION: In Hague Convention Article 8, stated in a treaty existing between contracting States that offence shall be deemed to be included as extraditable offence in any extradition. The purpose of extradition between the contracting States, as if it has not been committed only in the location in which it occurred, but also in territories of the State required to initiate their jurisdiction in accordance with the provisions contained in Article 5 of the Convention. The provision implies offence shall not be presumed as a political offence and if done so the offender will have to be extradited even the offence committed for the political gain.

The success achieved from Tokyo and Hague Convention are- Rights of Aircraft Commander and Crew Members to take measures, Protection of such persons, Arrest and Delivery of hijackers. The Indian Parliament enacted the Anti- Hijacking Act, 1982 to give light to the provision of the Hague Convention, 1970.

V. MONTREAL CONVENTION, 1971

Montreal Convention criticizes Hague Convention on the Provisions relating to jurisdiction

⁷ S.K.kapoor, *International Law and Human Rights*, Central Law Agency, ed.22, p. 324

⁸ Sami shunner, “Aircraft Hijacking under Hague Convention, 1970- A new Regime”, *I.C.L.Q.*, Vol. 22 (1973) p.687 at p. 725

and extradition of hijackers. The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation was adopted on 23 September, 1971 under Article of the Convention at diplomatic conference in Montreal and came into force on 14 December, 1973.

This convention is simply an improvement of the Hague Convention because except the provision of providing deterrent punishment to the hijackers rest of the provisions regarding prosecution and extradition are identical to that Hague Convention. Montreal Convention is directed against not only unlawful acts but also acts done with the intention against a person on aircraft in flight if act is likely to endanger the safety of the aircraft in flight.

VI. WHY THE NEW ACT

Anti-Hijacking Act, 2016 was brought to replace the Anti Hijacking Act of 1982, which the government considered obsolete. The new Act of Anti-Hijacking targets to enforce the Hague Hijacking Convention and the 2010 Beijing Protocol Supplementary to the Convention and introduced the death penalty and a sentence to life for hijacking attempts while the old Act was embedded with weak penalties and punishments for the offence.

In furtherance with the new Anti-Hijacking Act, 2016 if the offence of hijacking takes places outside the country in an aircraft that is registered in India or is leased to the Indians, or when the offender is in India or if the offender is stateless but currently is a resident of India, or when the offence is committed against the Indians.

VII. HIGHLIGHTS OF THE ANTI-HIJACKING ACT, 2016

The Anti-Hijacking Act, 2016 repealed the 1982 Act.

Its main objective is related to the Convention for the Suppression of Unlawful Seizure of Aircraft includes the September 2010 Beijing Protocol Supplementary to the Convention which particularly deals with “unlawful acts against civil aviation by new types of threats”

The Act highlighted the government’s concern for expedient measures to be taken during hostile acts of seizure or exercise of control of aircraft which jeopardise the safety of persons and property.

This new law remodel the Section 3 of the 1982 legislation to enlarge the definition of hijacking to seizure or takeover of any aircraft using “any technological means” and Section 4 of the Act allows capital punishment I.e. if the hijacking leads to the death of a hostage, security personnel, or any person present in the aircraft.

The law also considers the possibility and probability that a hijacker may or may not be

physically present in the aircraft.

Now the definition of ‘hijacking’ also includes an attempt to commit the crime, abetting, organising, participating in it as an accomplice, and unlawfully or intentionally if a person involved in hijacking to evade investigation or prosecution or punishment.

According to the Anti-Hijacking Act, 2016 an aircraft is considered to be “in-service” from the very beginning of its pre-flight preparation by crew for a specific flight until 24 hours after “any landing”.

VIII. THE NEED FOR NEW STRICTER LAW

The hijacking of Indian Aircraft’s such as IC-814 in 1999 and the 9/11 attacks in the U.S., in which aero planes were used as a weapon, which made India think and realize that they really need to amend the 1982 anti-hijacking law.

The need was also realized to make hijacking punishable with death penalty.

After all the incidents of aircraft hijacking the government felt that the Anti-Hijacking Act of 1982 had insufficient penalties and was not inclusive and strict enough to deal with new challenges.

IX. CONCLUSION

Incidents of hijacking have no reduction while much have been achieved much more remains to be done to effectively deal with hijacking. The Process is continuing but still the fact comes out clear: nation State are not prepared to fetter their sovereignty, the aircraft users seems to be condemned to rely on co-operation between States which seems to be more an outcome of convenience and more diplomacy than the result of any sense of obligation.⁹

There is exigency to deal with this issue of suppressing the crime of hijacking. Since many states still do not prepared to take stringent measures and to present state of international relations and affairs, preventive measures. A special Session of the U.N General Assembly should be convened and efforts made to point out the loopholes in the existing law.

The 2016 Acts is wider than 1982 Act, and mention stringent punishments, penalties, seizure of property will refrain from pranks. It’s good say that world has not struggled any major hijack in long time and hopefully, it shall remain so. The present provisions should made amendments or judicial interpretation.

⁹ Damodar Wadegaonkar, “hijacking and International law”, *I.J.I.L.*, Vol.22 (1982) p. 360 at p. 374.