

Review of Aviation Security under International Conventions

Dr. Hedayatollah Shenasaee¹, Dr. Maggie Qin², Faramarz Shirvani³

¹Researcher, the China University of Political Science and Law (CUPL)

²Associate professor, the China University of Political Science and Law

³ Ph.D. Candidate in National University of Malaysia (UKM)

Abstract: In recent decades, the security of civil aviation has been threatened by new wave of terrorist attacks and other unlawful acts against commercial aviation with different motivation and purpose. The offence of unlawful interference against aviation security should be considered as a world's famous form of acts of terrorism in the world. international legal and regulatory regime concerning aviation security suffer from many deficiencies in the legal terms used in multilateral conventions, applicable scope of conventions, jurisdiction, nature of offence, extradition of alleged offender, enforceability of conventions, ambiguity in definition of offences, structural and conceptual weakness of existing international conventions, the difficulty to understand nature, scope and goals of new waves of criminal activities in the world, identification of serious threats and dangers concerning safety and security of civil aviation.

Keywords: civil aviation, terrorism, multilateral conventions.

I. INTRODUCTION

Towards the end of World War II, the United States invited international community to gather in conference held in Chicago in order to design effective legal mechanism to govern international civil aviation¹. The conference has been held by delegates of fifty-four nations which resulted to adopt the Convention on International Civil Aviation (Chicago Convention) on 7 December 1944². Afterwards, the International civil Aviation Organization (ICAO) has been established "to facilitate safety and navigation and to provide uniformity of standards across borders"³. The main mission of ICAO in accordance with Article 44 (a) of the Chicago Convention is "to insure the safe and orderly growth of international civil aviation throughout the world"⁴. These legal and technical measures had been developed by the ICAO in the form of several multilateral conventions, resolutions and declarations (legal measures); and as Standards and Recommended Practices (SARPs) and Universal Security Audit Programme (technical measures). Thus, the role of ICAO is vital in global transportation system to combat and prevent the man-made intentional harm against civil aviation, improve the method and standards to cover gaps and loopholes in law and regulations in order to protect aviation security⁵. This is difficult task due to aviation security has suffered from much uncertainty in legal terms used in regional and international conventions such as unlawful interference, terrorism, hijacking and so forth; the difficulty to understand nature, scope and goals of new waves of uncivilized criminal activities in the world, as well as, the global weakness regarding multilateral and regional approaches to face with these challenges⁶. Frankly speaking, it has been accepted

¹ Thomas, Buergethal, Law-Making in the International Civil Aviation Organization, 1st ed., New York: Syracuse University, 1969, p 18.

² *Ibid.*

³ Paul Stephan Dempsey, Public International Air Law, First Edition, McGill University, p 4.

⁴ Chicago Convention, Article 44 (a), section 1.2 to 1.4.

⁵ Jiefang Huang, Aviation Safety through the Rule of Law, First Edition, Wolters Kluwer, p 6.

⁶ Steven Kropp, Transportation Law in the Post 9/11 World, 29 Transp. L. J. 247, pp 1-32.

generally that "transportation systems have historically attracted terrorist attacks"⁷. Some scholars argue this is because " commercial aviation disasters-intentional or accidental- are uniquely treated by the news media as singular events, commanding the front pages of newspapers, the cover stories of new magazines, and the lead stories of television new broadcasting and electronic media sites"⁸. From Dr. Abeyratne point of view, the nature of the offence of unlawful interference with international civil aviation, whether it is direct or indirect attack on airlines, its passengers and properties therein as criminal act with can be broadly identified as an act of terrorism⁹. The term terrorism has not been defined exactly, but it has been first used in 1798 during French Revolution. In fact, with the diversity of nature of terrorism, it is not possible to define it in precise way. However, two important factor of terrorism are: the commission of terrorist act and international element involved in this act¹⁰. The most important problem regarding the act of terrorism is to identify the parameters for such offence and finding an appropriate solution to the various categories of the offence. Terrorism is result of political discord between nations¹¹.The terrorism should be considered as 'enemy' of both life and liberty of human being. The reason for terrorism is numerous such as political instability of nations, political asylum, proliferation of arms, emergence of mercenaries, economic chaos of nations, religious extremism, constructive unilateralism and so forth¹². Aviation terrorism has been broadly comprised: "Hijacking Aircraft, aviation sabotage, missile attacks against aircraft, armed attack on airports, passengers and other aviation-related property, illegal carriage of narcotics by air and its criminal ramification, turning Aircraft into guided missiles aimed at financial institutions, a cyber attack on air navigation facilities, unlawful transport of explosive or radioactive material for terrorist purposes, using civil aircraft to discharge biological, chemical and nuclear (BCN) weapons or similar substances to cause death, injury or damage, using BCN weapons or similar substances to attack civil aircraft, unlawful transport of BCN weapons or certain related material"¹³. This research paper tries to interpret critically the concept of "unlawful interference" in multilateral conventions to find out legal gaps and loopholes in these Conventions. Indeed, this research tries to outline and explain these legal instruments under existing international legal regimes from scholastic and legislative point of view.

II. AVIATION SECURITTY BEFORE 1963

International community starts to combat against terrorism and other unlawful act with civil aviation after incidents had been made by several Peruvian revolutionaries which took control of civil aircraft belong to Pan American and diverted it from its scheduled destination in May 1930¹⁴. At that time, there was no legislation to regulate these kinds of unlawful acts against civil aviation¹⁵. This situation has been continued until assassination of King Alexander I of Yugoslavia during his visit to France and the French Foreign Minister, Mr. Louis Barthou on October 9, 1934¹⁶. Aftermath, the League of Nations adopted a resolution to establish a committee to study the efficient means for the repression of offences committed with political purposes¹⁷. The result of this event was preparation of a draft convention for the Prevention and Punishment of Terrorism. This convention had been adopted in Geneva on November 1, 1937. However, this convention never entered into force because starting the Second World War on September 1939. The Convention on International Civil Aviation (" Chicago Convention") has been adopted on 7 December 1944 by 52 States without explicit sentence about unlawful interference. However, in the preamble of Chicago Convention the importance of aviation security has been regarded as primary obligation of member state " to develop international civil aviation in a safe and good manner, to establish international air transport services on the basis of equality of opportunity, and to operate the services soundly and economically"¹⁸. The Geneva Convention of the High Seas of 1958 should be regarded as the first international effort to harmonize the application of rules which directly contained aviation security¹⁹. This convention can be applied with

⁷ R.I.R. Abeyratne, Attempts at Ensuring Peace and Security in International Aviation, 24 transp. L. J. 27, 1996, p 3.

⁸ Paul Stephan Dempsey, *op. cit.*, p 226.

⁹ See R.I.R. Abeyratne, *op. cit.*, p 21.

¹⁰ *Ibid.* p 57.

¹¹ *Ibid.* p 33.

¹² *Ibid.*

¹³ R.I.R. Abeyratne, *op. cit.*, pp 1-32.

¹⁴ *Ibid.*, p 51.

¹⁵ *Ibid.*

¹⁶ Edward McWhinney, Aerial Piracy and International Terrorism, The illegal Diversion of Aircraft and International Law, 2nd ed., Dordrecht, the Netherlands ; Boston: Martinu Nijhoff, 1987, p 128.

¹⁷ See R.I.R. Abeyratne, *op. cit.*, p 103.

¹⁸ Convention on International Civil Aviation (Chicago, 1944), 15 U.N.T.S. 295, ICAO Doc.7300/8.

¹⁹ See R.I.R. Abeyratne, *op. cit.*, pp 1-32.

acts of piracy whether committed at sea or in air²⁰. Article 5 of the Convention expressly defines the acts of piracy as follows²¹:

Piracy consists of any of the following acts:

- 1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passenger of a private ship or a private aircraft, and directed:
 - a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - b) Against a ship, aircraft, persons, or property in a place outside the jurisdiction of any state;
- 2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- 3) Any act of inciting or of internationally facilitating an act described in sub-paragraph 1 or sub-paragraph 2 of this article.

According to Article 14 of the Convention member states has been obligated to "cooperate to the fullest possible extent in the repression of piracy on the high seas"²². According to Article 14 of the Convention, Universal jurisdiction has been conferred to "every state may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board"²³. This jurisdiction also can be apply "to solve the somewhat complex problem of jurisdiction, which often arose under municipal law where the crime was committed, outside the territorial jurisdiction of the particular State seeking to prosecute an offender"²⁴. However, there are some legal loopholes in the convention. First of all, with regard to definition of piracy in Article 15, it seems that this convention restricts limits its applicable Scope only to "private ends"²⁵. Thus, many other unlawful acts with different motivations which are danger for aviation security cannot be covered by this convention²⁶. Second, this convention cannot be applied to the acts committed on board a ship or aircraft by the crew or passenger and directed against the aircraft itself or against persons or property on board because Article 15 (1) stipulate this convention can be applied upon those acts committed by crews or passengers of the pirate ship or aircraft against another ship or aircraft²⁷. Third, in accordance with Article 15 (1) (a) and (b) the acts of piracy should be committed on the high seas or in any place outside the jurisdiction of any state, while the unlawful interference can be committed anywhere²⁸. Forth, the piracy as referred in Article 15 should be involve acts of violence, detention or depredation, while most unlawful acts have been carried out by the use of threats or even other means which are different than using violence²⁹.

III. THE 1963 TOKYO CONVENTION

Tokyo Convention can be considered as the first global intention to suppress offences committed on board civil aircraft³⁰. The most important purpose of the Tokyo Convention was "to secure the collaboration of States in restraining terrorist activity directed at air transport"³¹. The main objective of the Tokyo convention can be summarized into four principal: 1. According to provision of the convention it has been accepted that the State of registration of the aircraft has the authority to apply its laws; 2. The aircraft commander has a certain authority to deal with "persons who have committed, or are about to commit, a crime or an act jeopardizing safety on board his aircraft through use of reasonable force when required, and without fear of subsequent retaliation through civil suit or otherwise"³²; 3. The duties and responsibilities of

²⁰ *Ibid.*

²¹ Article 5 of the Convention on the High Seas.

²² Michael Milde, the International Fight against Terrorism in the Air in C-J. Cheng, *The Use of Airspace and Outer Space for all Mankind in the 21st Century*, The Netherlands: Kluwer Law International, 1995, p 143.

²³ Article 5 of the Convention on the High Seas

²⁴ See also R.I.R. Abeyratne, *op. cit.*, pp 8-11.

²⁵ Jung Sang Yool, *op. cit.*, p 17.

²⁶ *Ibid.*

²⁷ Article 25 (1) of the Convention on the High Seas

²⁸ See R.I.R. Abeyratne, *op. cit.*, pp 1-32.

²⁹ *Ibid.*

³⁰ See Paul Stephan Dempsey, *op. cit.*, p 237.

³¹ R.I.R. Abeyratne, *op. cit.*, p 11.

³² *Ibid.*

member state have been delineated which an aircraft lands after the commission of a crime on board. 4. The act of hijacking' has been addressed in the convention³³. In overall view, the Tokyo Convention was failed to close gaps and loopholes to prevent international offences, including hijacking, sabotage, terrorist activities and other wrongful acts³⁴. The scope of multilateral Convention is limited to "the offences committed and acts done by a person on board"³⁵. The offences and illegal acts must be committed on 'board' civil aircraft. In the case of accomplice on board the Convention is silent. It should be noted that the "offence" at an international level has not been defined in convention clearly, though Article 11 (1) provides the circumstances that shall constitute the offence as "when a person on board has unlawfully committed by force or threat thereof an act of interference, seizure or other wrongful exercise of control of an aircraft in flight or such an act is bound to be committed"³⁶. In fact, the convention can be applied to any act which is regarded as an offence under penal law of member state except "offences against penal laws of a political nature or those based on racial or religious discrimination"³⁷ as referred in Article 2 of the convention.

The convention cannot also be applied to aircraft used in military, customs or police services. It should be noted that the penal law usually forbids various forms of racial and religious discrimination, those will be covered by convention which jeopardized safety or good order and discipline on board. The Article 1 of the Convention does not specifically criminalize any wrongful acts endangering the safety of aircraft, person and property therein. In particular, it is not clear that the main goal of Convention is to prevent and suppress hijacking as an internally offence³⁸. Article 3 tries to be considered as guide line for international community to solve the jurisdictional conflicts over an act of hijacking among States in order to remove the possibility of situation that offender cannot be punished.³⁹ Article 3(2) of the Convention obligates "each Contracting State shall take measures as may be necessary to establish its jurisdiction as State of registration over offenses committed on board aircraft registered in such State"⁴⁰. Article 3(3) of the convention also provides more legal grounds of jurisdiction over such illegal acts to eliminate the possibility of obstacles in the prosecution of offender⁴¹. One of contribution of Tokyo Convention is related to restriction of subjacent State to exercise its criminal jurisdiction over an offence committed on board civil aircraft. Article 4 of the Convention promulgated expressly contracting State that is not the state of registration should not intervene with an aircraft in the flight for exercising its jurisdiction over offence committed on board⁴².

IV. THE 1970 HAGUE CONVENTION

The international community realized many gaps, loopholes and weakness in the Tokyo Convention regarding combat against global terrorism. It is important to be noted adoption of the Hague Convention was in middle of aviation safety's crisis regarding expansion of hijacking in the world⁴³. Article 1 of the convention declares:

Any person who on board on aircraft in flight:

- (1) Unlawfully, by force or threat therein, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or
- (2) Is an accomplice of a person who performs or attempts to perform any such act commits an offence

First of all, the context of Article 1 of Hague Convention shows offence committed in Article 1 is just related to hijacking, even if it is not mentioned in the Article⁴⁴. Second, it does not cover other international terrorist attacks such as sabotage of aircraft⁴⁵. Third, the offence must be committed on "board" on aircraft in flight. Thus, it is not included the offence committed on ground on aircraft. Forth, the term "accomplice" here refers to the offence committed on the "board" with

³³ Ibid.

³⁴ Jiefang Huang, *Aviation Safety through the Rule of Law*, First Edition, Wolters Kluwer, pp 112-119.

³⁵ Tokyo Convention, Article 1.

³⁶ Ibid, Article 11 (1).

³⁷ Ibid, Article 2.

³⁸ Ibid, Article 1.

³⁹ Ibid, Article 3 (1).

⁴⁰ Ibid, Article 3 (2).

⁴¹ Ibid, Article 3 (3).

⁴² Ibid, Article 4.

⁴³ See Paul Stephan Dempsey, *op. cit.*, p 241.

⁴⁴ Hague Convention, Article 1.

⁴⁵ Jung Sang Yool, *op. cit.*, pp 20-30.

collaboration of offender and its accomplice⁴⁶. Therefore, the Hague Convention is not applicable to accomplice on ground alike with Tokyo Convention. Fifth, this Convention cannot be applied to any hijacking started or attempted before the closing or after the opening of the aircraft doors. Sixth, according to Article 3 (3) of the Convention the offence should be committed on board during flight with International character⁴⁷. According to Article 3 (2) this Convention cannot be applied for aircraft used in military, customs or police services⁴⁸. According to Article 7 of Hague Convention, contracting parties can choose one of ways regarding alleged offender is found in its territory: first) they should extradite the alleged offender to the latter state for punishment⁴⁹; or second) they are obligated to submit the case to its competent authorities for prosecution⁵⁰. For the submission the case to the competence authorities, it is not important the offence was committed in its territory.

V. THE 1971 MONTREAL CONVENTION

Since both the Tokyo and the Hague Conventions cannot be applied for sabotage committed on the ground and also unlawful interference with air navigation facilities and services, the Montreal Convention should be considered as global attempts against unlawful acts for aviation safety. This Convention was adopted at a diplomatic conference held in Montreal on September 8-23, 1971. One of the important contributions of the Montreal Convention was related to the criminalization of numbers of acts against the safety of civil aviation⁵¹. In this respect, Article 1 of the Montreal Convention provides wide range of unlawful acts can be committed on board civil aircraft⁵². Article 1 of the Montreal Convention enumerates the offences of unlawful interference with civil aircraft as follows⁵³:

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.

According to 1 of the Montreal Convention each act requires at least two elements⁵⁴: first, the offence should be committed unlawfully and intentionally. Second, act should be in nature endanger for the safety of an aircraft in flight. There is an important difference between Tokyo Convention, Hague Convention with Montreal Convention. The offences of unlawful interference with civil aircraft have been defined and enumerates in the new Convention, while the specific offences has not been defined in the Tokyo Convention and the Hague Convention defined only the offence of unlawful

⁴⁶ Ibid.

⁴⁷ Hague Convention, Article 3 (3).

⁴⁸ Ibid, Article 3 (2).

⁴⁹ Ibid, Article 7.

⁵⁰ Ibid.

⁵¹ See R.I.R. Abeyratne, *op. cit.*, pp 1-32, see also Jung Sang Yool, *op. cit.*, p 32.

⁵² Ibid.

⁵³ Montreal Convention, Article 1.

⁵⁴ Abraham Abramovsky, Multilateral Conventions for the Suppression of Unlawful Seizure and Interference with Aircraft, Part II: The Montreal Convention 14 Colum. J. Transnat'l L.268, 1975, p 283.

seizure of aircraft⁵⁵. With regard to scope of application, it should be noted that the Convention adopts a new term "aircraft in service" to enlarge the scope of application. Article 2 (b) promulgates as follows⁵⁶:

An aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing. The period of the service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this Article.

However, Article 4 (2) of the Convention restricts the scope of application only to international flights unless the domestic flights have international features as follows⁵⁷:

(a) The place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registration of that aircraft; or

(b) The offence is committed in the territory of a State other than the State of registration of the aircraft.

The application of the Convention has been excluded about aircraft used in military, customs or police services. In general overview about Montreal Convention, it should be noted that the Convention follows *aut dedere aut judicare* in the Hague Convention⁵⁸. After to the *Lockerbie* case, it has been determined this system "is neither extradition nor prosecution"⁵⁹. The main contribution of The Montreal Convention and Montreal Supplementary Protocol was to design legal measures not only protect aviation safety on board an aircraft in flight, but also airport facilities⁶⁰. This Supplementary Protocol expanded the scope of The Montreal Convention into two additional offences; *inter alia*, an act of violence against a person at an aircraft, destroying or make serious damage the facilities of an aircraft or aircraft not in service or disrupting the services of the aircraft⁶¹.

VI. THE 1976 EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM

The European Convention on the Suppression of Terrorism was adopted on November 1976 by the Committee of Ministers of the Council of Europe in order to ensure "the perpetrators of terrorism could not escape prosecution and punishment by encouraging extradition between member States and by limiting the political offense justification for refusing extradition"⁶². In this respect, Article 1 of the Convention lists several offences cannot be considered as political offences for the purposes of extradition⁶³. Article 1 of the Conventions attempts to depoliticize certain acts of terrorism which includes offences fall within the scope of the Hague and Montreal Conventions for the purpose of extradition. Also, Article 2 of the Convention obligates State Parties for the purposes of extradition between Contracting States, "a Contracting State may decide not to regard as a political offence or as an offence connected with a political offence or as an offence inspired by political motives a serious offence involving an act of violence, other than one covered by article 1, against the life, physical integrity or liberty of a person"⁶⁴. Article 3 and 4 of the Convention requires the States Parties to modify all extradition treaties and arrangements to provide effective extradition procedures⁶⁵. In this respect, Article 4 of the Convention provide if "any offence mentioned in article 1 or 2 is not listed as an extraditable offence in any extradition convention or treaty existing between Contracting States, it shall be deemed to be included as such therein"⁶⁶.

VII. THE 1978 BONN DECLARATION ON HIJACKING

The increased recognition of political right of refugees has led to serious restriction in effectiveness of international Conventions to prevent the unlawful acts against civil aviation. In fact, this challenge has been apparent when the offenders receive political asylum instead of punishment for its criminal acts. Thus, the leaders of the G-7 (Canada, France, the Federal Republic of Germany, Italy, Japan, the United Kingdom and U.S.A.) participated in Bonn Economic

⁵⁵ Ibid.

⁵⁶ Montreal Convention, Article 2 (b).

⁵⁷ Ibid. Article 4(3).

⁵⁸ See Jiefang Huang, *op. cit.*, p 130.

⁵⁹ Ibid.

⁶⁰ See Paul Stephan Dempsey, *op. cit.*, pp 243-247.

⁶¹ See Montreal Supplementary Protocol, Article 2.

⁶² See Jung Sang Yool, *op. cit.*, p 44.

⁶³ The European Convention on the Suppression of Terrorism, Article 1.

⁶⁴ Ibid, Article 2.

⁶⁵ Ibid. Article 3 and 4.

⁶⁶ Ibid. Article 4.

Summit to deal with it on July 17, 1978⁶⁷. The Declaration was known as the Bonn Declaration on Hijackings. The text of the Declaration is as follows⁶⁸:

The heads of States and governments concerned about terrorism and the taking of hostages, declare that their governments will intensify their joint efforts to combat international terrorism.

To this end, in cases where a country refuses extradition or prosecution of those who have hijacked an aircraft and/or do not return such aircraft, the heads of States and governments should take immediate action to cease all flights to that country.

At the same time, their government will initiate action to halt all incoming flights from that country or from any country by the airlines of the country concerned. The heads of States and governments urge other governments to join in this commitment.

Although the first paragraph of the Declaration is related international concern regarding terrorism and the taking of hostages, the subsequent section is only about hijacking. It should be noted that definition of hijacking is unclear in the Declaration. It is possible to assume that the leaders of the G-7 States refer to the definition of hijacking in Article 1 of the Hague Convention. With regard to this interpretation the sabotage of aircraft and aviation facilities cannot be considered as subject to this Declaration. However, the scope of Declaration cannot be restricted to "terrorist hijackers"; rather it contains all hijackers, without considering to the reasons of hijackings⁶⁹.

VIII. THE 1988 MONTREAL SUPPLEMENTARY PROTOCOL

On February 24, 1988 Montreal Supplementary Protocol has been adopted as a new legal instrument to deal with unlawful acts of violence at airports serving international civil aviation. In this regard, the definition of "offence" in Article 1 of the Montreal Convention has been extended by Article II (1) of the Protocol as follows⁷⁰:

- (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or
- (b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport.

However, it should be noted that the term "safety at that airport" in Article 11(1) (b) has not been defined by the Protocol and there is no guideline to conclude whether the safety of airport is endangered or not⁷¹.

IX. THE 1991 MEX CONVENTION

To identify firearms and other dangerous devices and prevent their introduction onto aircraft, the "Convention on the Marking of Plastic Explosive for the purpose of Detection" ("The Mex Convention") has been adopted by ICAO as technical security measures on 1 March 1991. This Convention tries to provide preventive measures to curb unlawful interference with criminalization of certain acts and offences. It should be noted that most explosive substances cannot be identified due to some substantial reasons such as it contains low density mass which cannot be identified by x-ray, it can be concealed in innocuous containers (e.g., portable radios, laptop computers, toys, etc.), it can be shaped in any form and so forth⁷². The main objective of the Mex Convention is to establish "uniform international system for marking certain explosive by one of the detection agents specified in Convention"⁷³. Article II and III of the Mex Convention promulgates State Parties must take necessary measure to prevent manufacturing unmarked explosive in its territory and

⁶⁷ Mark E. Fingerman, *Skyjacking and the Bonn Declaration of 1978: Sanctions applicable to Recalcitrant Nations*, 10 Cal. W. Int'l L. J.123, 1980, pp 142-143.

⁶⁸ Joint Statement on International Terrorism (Bonn, 1978), 17 I.L.M.1285.

⁶⁹ Walter Schwenk, *the Bonn Declaration on Hijacking*, 4 Ann. Air & Sp. 1.307, 1979, pp 308-309.

⁷⁰ Montreal Supplementary Protocol, Article II (1).

⁷¹ Michael Milde, *op.cit.*, pp 150-151

⁷² See Jung Sang Yool, *op.cit.*, p 40.

⁷³ *Ibid.*

"the movement into or out of its territory of unmarked explosives"⁷⁴. However, it is not determined in the Convention what "the necessary and effective measures" are to be. In fact, the Convention left it to the individual States to formulate regulations and appropriate sanctions in this respect. The Article use term 'unmarked' explosive that means State are not prohibited to manufacture marked explosive⁷⁵. According to Article IV of Mex Convention Contracting parties must destroy the unmarked explosive within certain period of time in reliable way in order to prevent possibilities gathering explosives by terrorists⁷⁶. The Convention tries to make balance between State sovereignty and sake of common safety.

X. THE 2010 BEIJING CONVENTIONS

From 31 August to 10 September 2010, a diplomatic conference was held in Beijing to develop international legal and regulatory regime to prevent and suppress acts of unlawful interference against civil aviation and facilitates cooperation between States so that such acts do not go unpunished. In fact, the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation ("Beijing Convention"); and the Supplementary Protocol to the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft ("Beijing Supplementary Protocol") together criminalize a comprehensive range of unlawful acts. The Beijing Convention 2010 has been replaced with the Montreal Convention 1971 on the Suppression of Unlawful Acts Relating to International Civil Aviation. The Beijing Convention 2010 broadly creates new principles and specific criminal acts, as follows⁷⁷:

1. Using civil aircraft as a weapon to cause death, injury or damage,
2. Using civil aircraft to discharge biological, chemical and nuclear (BCN) weapons or similar substances to cause death, injury or damage;
3. Using BCN weapons or similar substances to attack civil aircraft.
4. Unlawful transport of BCN weapons or certain related material;
5. Unlawful transport of explosive or radioactive material for terrorist purposes;
6. A cyber-attack on air navigation facilities.

Article 1 of Beijing Convention enumerates variety numbers of acts against the safety of civil aviation⁷⁸. However, it should be noted that each acts requires at least two elements to be considered as an unlawful interference: firstly, the criminal acts should be committed unlawfully and intentionally; secondly, the criminal acts must jeopardize the safety of an aircraft in flight. Article 1(1) (a) of the Convention criminalizes an act of violence against a person on board an aircraft in flight⁷⁹. However, any acts of violence against a person on board an aircraft in flight cannot be punishable because the Article declare just those acts are danger for the safety of the aircraft. It should be noted that an act of violence should be performed on board an aircraft in flight. Article 2 (a) of the Convention declares an aircraft should be considered in flight " any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation"⁸⁰. In case of a forced landing, this issue will be happen while the competent authorities take over the responsibility for the aircraft⁸¹. The main purpose of Article 1 (b) is to penalize acts of sabotage perpetrated against security of aircraft itself. The destruction should be occurred when an aircraft is in service⁸². Article 2 (b) of the Convention explains the meaning of 'in service', as follows⁸³:

an aircraft is considered to be in service from the beginning of the pre-flight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this Article

⁷⁴ Mex Convention, Article II and III; See also Jung Sang Yool, *op.cit*, p 41.

⁷⁵ See Jiefang Huang, *op.cit*, pp 140-141.

⁷⁶ Mex Convention, Article IV.

⁷⁷ ICAO, Beijing Achievements 2010 diplomatic Conference, pp 1-32.

⁷⁸ Beijing Convention, Article 1.

⁷⁹ *Ibid*, Article 1 (1) (a).

⁸⁰ *Ibid*, Article 2 (a).

⁸¹ *Ibid*.

⁸² *Ibid*, Article 1 (b).

⁸³ *Ibid*. Article 2 (b). See also R.I.R. Abeyratne, *op.cit*, pp 1-32.

Some legal commentators observe the term of destruction in this paragraph referred to "substantial destruction of an aircraft beyond the possibility of rendering it airworthy through repairs"⁸⁴. The term of "causing damage" in the Article 1(1) (b) referred to any damage may lead to an aircraft incapable of flight or endanger its safety in flight⁸⁵. The main purpose of Article 1(1) (c) is to prevent situations which offender of acts placed explosive substance or other devices on board an aircraft⁸⁶. Article 1(1) (d) of the Convention penalize sabotage of air navigation facilities such as airports, towers, radio services and meteorological services⁸⁷. The acts of sabotage also can be occurred with intervention in operation of air navigation facilities so that jeopardize the safety of aircraft. According to Article 1 (1) (e) of the Convention, communication false information with different motivations such as pecuniary gain, political blackmail, social upheaval or practical jokes should be punished if such act jeopardize the safety of an aircraft in flight⁸⁸. Article 1 (1) (f) of the Convention penalize using an aircraft in service for illegal purposes such as causing death and serious injury to innocent person or causing damage to property and environment⁸⁹. Article 1(1) (g) of the Convention also criminalizes discharges of explosive and radioactive materials or similar substances from an aircraft in service so that this could cause death and injury to person or damage to property and environment⁹⁰. Articles 1 (1) (h) of the Convention criminalize the use of any explosive and radioactive materials or similar substances against or on board an aircraft in service⁹¹. Articles 1(1) (i) of the Convention broadly penalize " transports, causes to be transported, or facilitates the transport of, on board an aircraft" any explosive or radioactive material, BCN weapon, special fissionable material and so forth⁹². However, the sub-paragraph (1), (2), (3) and (4) restricts this wide result and declares *mens rea* should be existed in criminal acts⁹³. For instance, Articles 1 (i) (1) of the Convention declares a person who should know explosive or radioactive materials are intended to be used to cause, or in a threat to cause death, injury and damage⁹⁴.

Articles 1 (2) (a) of the Convention penalize an act of violence against person- unlawfully and intentionally-at an airport serving international civil aviation which led to serious injury or death of innocent person⁹⁵. Also, Articles 1 (2) (b) of the Convention penalizes an act of sabotage, damage and destruction of air navigation facilities, airports and aircraft which is not in service⁹⁶. The Article also introduces the disruption in the service of airports as unlawful act if such an act endangers safety and security of that airport. According to provision of Articles 1 (3) (a) (b) making threat to commit any of the offences mentioned above or causing any person to receive such threat should be considered as unlawful interference if under special circumstances shows that threat is credible⁹⁷. Articles 1 (4) (a) criminalize 'attempts to commit' any of the offence mentioned in this Article which includes an act of violence against a person on board an aircraft in flight, sabotage of an aircraft and air navigation facilities in service, communicates false information, using aircraft in service to cause death or make damages to others and environment, releases from an aircraft any explosive and radioactive material, transports or causing transports or facilitating transporting explosive and radioactive material for the purpose of terrorism⁹⁸. Also, Articles 1 (4) (b) (c) penalizes organizing of acts, directors of acts and participates in an offence as accomplice⁹⁹. Furthermore, Articles 1 (4) (d) criminalize assistance of another person to evade investigation, prosecution or punishment - unlawfully and intentionally- if he/she knows that person commits an offence mentioned above¹⁰⁰. The main achievements of 2010 The Beijing Convention and Beijing Supplementary Protocol can be summarized: firstly, in both treaties a threat to commit criminal acts is considered as offence itself, if the threat is credible; secondly, in both treaties the conspiracy to commit unlawful acts or its equivalent can be punished; thirdly, assistance of actor/offender of acts to evade investigation, prosecution or punishment is punishable; fourthly, both treaties

⁸⁴ Ibid, Article 1(1) (b).

⁸⁵ Ibid.

⁸⁶ Ibid, Article 1(1) (c).

⁸⁷ Ibid, Article 1(1) (d).

⁸⁸ Ibid, Article 1 (1) (e).

⁸⁹ Ibid, Article 1(1) (f).

⁹⁰ Ibid, Article 1(1) (g).

⁹¹ Ibid, Article 1(1) (h).

⁹² Ibid, Article 1(1) (i).

⁹³ Ibid, sub-paragraph (1), (2), (3) and (4).

⁹⁴ Ibid, Article 1(i) (1).

⁹⁵ Ibid, Article 1(2) (a).

⁹⁶ Ibid, Article 1(2) (b).

⁹⁷ Ibid, Article 1(3) (a) (b).

⁹⁸ Ibid, Article 1 (4) (a).

⁹⁹ Ibid, Article 1(4) (b) (c).

¹⁰⁰ Ibid, Article 1(4) (d).

introduce a criminal liability of legal entity, if the applicable municipal law so provides; fifthly, with regard to jurisdiction a Member state should establish jurisdiction if the offender or victim is in its national; sixthly, in both treaties it has been guaranteed a fair treatment in the legal process for the alleged offender; seventhly, in legal process both treaties ban expressly discrimination regarding alleged offender on the ground of race, religion, nationality, ethnic origin, political opinion or gender.

XI. CONCLUSION

Although human history has been accompanied with a large number of acts of terror and violence against international air navigation with various goals and motivations, but the current age is called as the age of terrorism because such intimidating phenomenon has a fundamental differences with its predecessor in terms of goals, motivation and geographical scope. In recent decades, the security of civil aviation has been threatened by new wave of terrorist attacks and other unlawful acts against commercial aviation with different motivation and purpose. For such reason, the strengthening of aviation security under auspices of the International Civil Aviation Organization (ICAO) against various forms of threats and offences have been one of the most challenging debates among politicians and legal commentators. There are three main reasons for such notable considerations concerning aviation security, included: First of all, the spread of terrorist threats against the security of commercial aircraft around the world. Second, it need to identify the weaknesses and loopholes of existing international conventions regarding aviation security. Third, the world community should find out desirable solutions for these legal loopholes and deficiencies in order to improve uniformity of commercial aviation, as well as, to prevent, combat and suppress the man-made intentional harm against international air navigation. This is difficult task due to international legal and regulatory regime concerning aviation security suffer from many deficiencies in the legal terms used in multilateral conventions, applicable scope of conventions, jurisdiction, nature of offence, extradition of alleged offender, enforceability of conventions, ambiguity in definition of offences, structural and conceptual weakness of existing international conventions, the difficulty to understand nature, scope and goals of new waves of criminal activities in the world, identification of serious threats and dangers concerning safety and security of civil aviation.

REFERENCES

- [1] Abeyratne R.I.R., *Aviation Security: Legal and Regulatory Aspects*, First Edition, Ashgate Publishing Co. Ltd., 1999.
- [2] Abramovsky, *Multilateral Conventions for the Suppression of Unlawful Seizure and Interference with Aircraft*, Part 1: The Hague Convention, 13 Colum. J. Transnat'l L.381, 1974.
- [3] Abramovsky, *Multilateral Conventions for the Suppression of Unlawful Seizure and Interference with Aircraft*, Part II: The Montreal Convention", 14 Colum. 1. Transnat'l L.268, 1975.
- [4] Busttil, James J., *The Bonn Declaration on International Terrorism: A non-binding International Agreement on Aircraft Hijacking*"31 LC.L.Q. 474, 1982.
- [5] Boyle Robert P. & Roy Pulsifer, *The Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft*, 30 J. Air L. & Comm, 1964.
- [6] Chung, D.Y., *Some Legal Aspects of Aircraft Hijacking in International Law*, LL.M. Thesis, University of Tennessee, 1976.
- [7] Dempsey, Paul Stephan, *Public International Air Law*, First Edition, McGill University, 2008.
- [8] Fitzgerald, Gerald F., *Toward Legal Suppression of Acts against Civil Aviation in Air Hijacking: An International Perspective*, New York: Carnegie Endowment for International Peace (No.585), 1971.
- [9] Guillaume, Gilbert, *Terrorism and International Law*, *International and Comparative Law Quarterly (ICLQ)*, vol 53, 2004.
- [10] Huang, Jiefang, *Aviation Safety through the Rule of Law*, First Edition, Wolters Kluwer

- [11] Milde, Michael, Status of Military Aircraft in International Law, in Milde, M. and Khadjavi, H., ed., Public International Air Law, IASL, Fall Term Course material, Vol. one, Montreal: McGill University, 2001.
- [12] Milde, Michael, the International Fight against Terrorism in the Air in C-J. Cheng(ed), The Use of Airspace and Outer Space for all Mankind in the 21st Century, Kluwer Law International, 1995.
- [13] Milde, Michael, Draft Convention on the Marking of Explosives, 15 Ann. Air & Sp. L. 155 , 1990.
- [14] Mendelson, A.I., In-Flight Crime, The international and Domestic Picture under the Tokyo Convention 53:3 Va. L. Rev., 1967.
- [15] Moore, Kenneth C., Airport, Aircraft and Airline Security, LA: Security World Pub., 1976.
- [16] Matte, Nicolas Mateeso, Treatise on Air Aeronautical Law, Montreal: ICASL-McGill University; Toronto: Carswell, 1981.
- [17] McWhinney, Edward, Aerial Piracy and International Terrorism, The illegal Diversion of Aircraft and International Law, 2nd ed., Dordrecht, the Netherlands ; Boston: Martinu Nijhoff, 1987.
- [18] Schacher, O., the Twilight Existence of International Non-Binding Agreements, 71 A.J.I.L., 1977.
- [19] Shubber, Sami, Aircraft Hijacking under the Hague Convention 1970-A new Regime? 1973.
- [20] Schwenk, Walter, the Bonn Declaration on Hijacking, 4 Ann. Air & Sp. 1.307, 1979.
- [21] Thomas, C.S., and Kirby, M.J., "The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation" 22 LC.L.Q. 163, 1973.
- [22] Welch, Andrew, Full-Body Scanners: Full Protection from Terrorist Attacks or Full-On Violation of the Constitution? 37 Transp. L. J. 167.
- [23] Wallis, Rodney, How safe are our Skies? assessing the airlines' response to terrorism, Wesport, Conn.; London: Praeger, 2003.
- [24] Yool, Jung Sang, A legal Analysis of Aviation Security under the International Legal Regime, Faculty of Law, Institute of Air and Space Law, Mc Gill University, Montreal, Canada, 2005.