

# The ICAO Role to Improve Aviation Security against Acts of Unlawful Interference

Dr. Hedayatollah Shenasaee<sup>1</sup>, Faramarz Shirvani<sup>2</sup>

<sup>1</sup>Ph.D. in International Law, the China University of Political Science and Law

<sup>2</sup>PhD Candidate, National University of Malaysia (UKM)

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**Abstract:** Terrorism should be considered as a nightmare of modern world. Historically, transportation systems have attracted terrorist attacks<sup>1</sup>. The offence of unlawful interference against aviation security should be considered as a world's famous form of acts of terrorism in the world. 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<sup>2</sup>. 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. This Article deals with approaches to strength the protection of aviation security under the ICAO auspices. It should be noted that the development of aviation-related security depends on compromising between what could be done and what needed to be done among states. It should be determined how the international society undertakes to adopt various forms of legal and technical measures in order to prosecute and punish severely the alleged offender and what should be done to improve existing international legal and regulatory regime concerning aviation security.

**Keywords:** ICAO, civil aviation, unlawful interference, international conventions.

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## I. INTRODUCTION

The strengthening aviation security against unlawful interference through rule of law has always been the first priority of the ICAO as the best response to deal with new wave of terrorist threat against civil aviation. In practice, enhancing law and regulations in this respect made many advantages to combat and prevent such criminal threat against commercial aviation. Following the terrorist events, the international community has been obligated to establish international legal and regulatory regime to prevent, combat and suppress any potential and serious threats against security of civil aviation and facilitates cooperation between state parties so that such act do not go unpunished. The thesis focuses on the role of the ICAO in global transportation to combat and prevent acts of unlawful interference against civil aviation and to improve the method and standards to prevent gaps and loopholes in existing law and regulations in order to protect aviation security. According to Article 44 (a) of Chicago Convention, the vital mission of the ICAO is to "insure the safe and orderly growth of international civil aviation throughout the world"<sup>3</sup>. This function of the ICAO has been also emphasized in the preamble of the Chicago Convention where contracting parties have enacted various principles and

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<sup>1</sup> Abeyratne, Attempts at Ensuring Peace and Security in International Aviation, 24 Transp. L. J. 27, 1996, p 1-32.

<sup>2</sup> Jung Sang Yool, 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, p 3.

<sup>3</sup> Chicago Convention, Article 44 (a).

arrangements to develop international civil aviation " in a safe and orderly manner"<sup>4</sup>. Thus, in this research paper, the author try to show the important role of the ICAO in order to improve aviation security against unlawful interference.

## II. THE ROLE OF ICAO TO DEVELOP THE TERM "ERGA OMNES"

The ICAO plays a vital role in global transportation system to prevent and combat the man-made intentional harm against civil aviation and eventually improve safety standards and security safeguards to cover gaps and loopholes in existing national and international regulations in order to protect aviation security<sup>5</sup>. The main mission of the 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"<sup>6</sup>. This task is very difficult nowadays because aviation-related security has suffered from much more ambiguity and uncertainty in term of applicable scope of existing international conventions, legal terms used in international conventions (such as unlawful interference, terrorism, hijacking); extradition of alleged offender, enforceability of the conventions, universal jurisdiction over the international crime and the difficulty to understand nature and goals of new waves of terrorist activities<sup>7</sup>. In recent years, the obligations "*Erga Omnes*" has been discussed repeatedly among legal commentators in order to improve the quasi-legislative role of the ICAO to combat against aviation terrorism. The most important features of obligations "*Erga Omnes*" is related to their 'universality' and 'non-reciprocity'.

Indeed, the obligation "*Erga Omnes*" is, without having a doubt, "the obligation of a state towards the international community as a whole, which are the concern of all states"<sup>8</sup>. The obligation "*Erga Omnes*" reveal that there is serious common interest of states parties concerning aviation security. Moreover, this obligation is not based on exchange right and duties of state parties but based on the common interest of all mankind (normative system). For instance, the obligations mentioned in Article 33 of the Chicago Convention concerning certificates of airworthiness and certificate of competency should be considered as obligation of "*Erga Omnes*" because imposition of such obligations on state parties is not based on exchange of right and duties, but in adherence to a normative system. In fact, all member states have to meet minimum standards under the convention, otherwise they cannot remain in the convention anyway. It is impossible to preserve uniformity of the convention, if some member states would not like to meet at least minimum standards under the provision of convention. In this circumstances, other member state also can refuse to recognize the validity of standards mentioned under the convention.

The question arise here is, why international society need to develop the role of the ICAO based on the obligations "*Erga Omnes*"? There are two main reasons for choosing such an approach: (1) different definition of terrorism and other illegal acts by state parties. It is not unreachable goal to determine unanimous mechanism about universal offences which are "danger for all mankind". The main reason for lack of consensus in international community regarding acts of terrorism and other illegal acts against civil aviation is related the definition of such terms based on national and political interests of states. Unfortunately, each country has a different political interest and security priority regarding international civil aviation. Thus, it is not strange that each country has different viewpoint regarding the terrorism and other illegal acts against commercial aircraft. For instance, during the conclusion of Hague Convention, the Russian delegations declared the act of hijacking must be introduced as "crime against humanity", while the some western countries have not accepted this standpoint because they argued many hijackings are for political asylum that time<sup>9</sup>. Therefore, it is important to create practical criteria for terrorism can contain the interests of various nations in this respect; (2) different approach of state parties to face with terrorism in practice. For example, unconditional recognition of political right of refugees has led to serious restriction in effectiveness of international conventions to prevent the unlawful acts against civil aviation.

For instance, with the beginning of the Cold War, the total number of hijackings has increased dramatically because the rebels seized unlawfully an aircraft and escaped from his country to gain political asylum in Western countries<sup>10</sup>. Indeed,

<sup>4</sup> *Ibid.*

<sup>5</sup> Jiefang Huang, *Aviation Safety through the Rule of Law*, First Edition, Wolters Kluwer, 2009, p 6.

<sup>6</sup> Convention on International Civil Aviation (Chicago, 1944), 15 U.N.T.S. 295, ICAO, Doc.7300/8 (Chicago Convention), Article 44 (a).

<sup>7</sup> Steven Kropp, *Transportation Law in the Post 9/11 World*, 29 *Transp. L. J.* 247, 2010, pp 1-32.

<sup>8</sup> Jiefang Huang, *Aviation Safety through the Rule of Law*, First Edition, Wolters Kluwer, 2009, p 156.

<sup>9</sup> *Ibid.*, pp 147-150.

<sup>10</sup> Jung Sang Yool, *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, p 20.

there were no rules and regulations to prevent aerial hijackings for gaining political asylum. Actually, the act of hijacking with political motivation was not considered as an international offence, in return, in some cases the host countries accept hijacker as a political refugee. In the 1980s, during the Cold War, the west-oriented terrorists who believe in liberal ideals had been committing acts of terror in the East Block. Afterwards, they were refugees in western countries, where they were admitted as freedom fighters. In fact, the criminals were receiving political asylum without being punished for commission of terrorist offences. To prevent such problem concerning how to deal with aviation terrorism, the obligation "*Erga Omnes*" ensure the common interest of international civil aviation community and eventually enhance the global normative system for the safety of civil aviation<sup>11</sup>. In this regard, Professor Jiefang Huang observed<sup>12</sup>:

A state is obliged to comply with requirement irrespective of how other states may have behaved. In other words, States are not pursuing their national, individual interests. Instead, they had a 'common interest', namely, the accomplishment of those high purposes which are the *raison d'être* of the convention. The obligations are therefore incurred toward the international community as a whole or at least towards all the Member States of ICAO.

It should be noted that the obligation "*Erga Omnes*" originally derived from the principle and rules concerning international human rights. As a matter of fact, any type of threat to the aviation safety and security is, in practice, a threat to right of life.

### III. QUASI-LEGISLATIVE ROLE OF THE ICAO

Historically, international conventions alone could not prevent and suppress illegal intervention against civil aircraft because they could only offer general prevention measures, while, the fight against terrorism needs to more detailed and practical deterrent measures so that criminals could not easily escape from the justice. It is apt to recall in this context that legal measures suffered from variety of deficiencies in its applicable scope and enforceability of conventions in order to combat and prevent acts of unlawful interference against civil aviation. As a matter of fact, international conventions were unable to prevent crime in many cases, so that they are ineffective in dealing with air terrorism, hostage-taking, hijacking and other illegal intervention against civil aircraft. After too many incidents of terrorism against commercial aircraft and airport facilities, the ICAO was forced to use its quasi- legislative power to pass legislation like Standards and Recommended Practices (SARPs) which was known as Annexes to the Chicago Convention on 22 March 1974<sup>13</sup>. Indeed, the question that was raised during the Chicago conference how it is possible to provide global standards and uniformity as technical and operational requirements for international navigation without violating the constitutional procedures of member states for formal approval of treaty amendments<sup>14</sup>.

This question was the result of three undeniable facts: First, the international community recognized that aviation system cannot be succeed, unless different national standards, procedures and practical approaches to be coordinated. To achieve such purpose, each member state should have a uniform practical and technical standards and practices in the field of national aviation safety. Second, the technical and operational requirements of international civil aviation system should be coordinated and uniform so that the entire international community follow a standard and practical approaches. Third, reform of the additional annex by the member states should be in the form of global uniformity without the need for official approval of member states so that the reform process is easy, quick and flexible than international conventions. Broadly speaking, Annex 17 to the Chicago Convention covers preventive security measures for passengers, commercial aircraft, airport facilities, baggage, air equipment, theoretical and practical recommendations, operational procedures and standards for the safety of personnel and aircraft crews and responsive measures for preventing criminal acts against civil aviation.

It should be noted that the power of the ICAO Council for approval and modification of standards and operational procedures (Annex) from time to time is derived from provision of the Articles of 37, 38, 54 (1) and 90 of the Chicago Convention<sup>15</sup>. The process of approval and amendment of Annexes is very simple so that each of the member states have

<sup>11</sup> Jiefang Huang, *Aviation Safety through the Rule of Law*, First Edition, Wolters Kluwer, 2009, p160.

<sup>12</sup> *Ibid*, p160.

<sup>13</sup> Jung Sang Yool, *A legal Analysis of Aviation Security under the International Legal Regime*, Mc Gill University, Montreal, Canada, 2005, p 55.

<sup>14</sup> John Cobb Cooper, *Backgrounds of International Public Air Law*, Air & Sp.L.3, 1965, pp 24-27.

<sup>15</sup> Articles 37, 38, 54 (1) and 90, Chicago Convention.

the right to participate in divisional meetings during the drafting process to promulgate their opinion in relation to the provisions and legal content, technical and operational requirements and how to implement the provisions of the Annexes. It should be noted that the main committees of the ICAO analyze carefully all received suggestions and then provide a final draft to the ICAO Council. Finally, a final draft (SARPs) will be approved if it has a two-thirds majority of the members of the Council. After that, any Annex or its amendment will be applicable unless the majority of state parties object to it within three months after its submission to all member states or at the expiration of that period as ICAO Council may prescribe<sup>16</sup>.

#### IV. LEGAL STATUS OF ICAO STANDARDS AND RECOMMENDED PRACTICES

Without a doubt, there is a huge difference between the SARPs (Standards and Recommended Practices) and international convention: First of all, the SARPs cannot be considered as an integral part of an international convention. Second, the SARPs cannot have the same status and legal effects of an international convention. Third, adoption and implementation of the SARPs does not follow the principles of the 1969 Vienna Convention. Such differences between the SARPs and an international convention raises a series of important questions, such as whether genuinely the ICAO have the right to recommend to member countries the use of the SARPs in the domestic laws of their countries. In other words, whether the ICAO has a jurisdiction to recommend the application of Annexes into domestic operations of countries. Another question that arises is, whether the Annexes can have a legal obligation for the member states. In other words, whether the Annexes contain legal effects and binding obligations for member states so that all states should have implemented the provisions of the Annexes in practice? Answering these questions without understanding the legal effects and legal status of Annexes is impossible. Article 54 (1) of the Chicago Convention declares that the most important reason for adoption of Annexes is "for convenience" in the implementation of the provisions of the Chicago Convention. Indeed, the Annexes should facilitate the implementation of the legal provisions of the Chicago Convention so that international air navigation develops in a safe and orderly manner, and any terrorist activity against commercial aircraft in every corner of the world to be suppressed. In order to achieve such goal, Article 37 of the Chicago Convention requires all member states "to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation"<sup>17</sup>. According to the terms mentioned in Article 37, it can be said, state parties "undertake" to collaborate in securing the highest practicable degree of uniformity. Without a doubt, such an obligation is not a moral obligation, but it is a binding and legal obligation. As a result, it must be said that the obligation of member states to achieve the maximum practicable degree of uniformity in all the laws obliged them to cooperate in good faith in all aviation matters.

Anyway, Article 38 of the Chicago Convention declares that all member countries entitle to decide in relation to the practicability of compliance or non-compliance of Annexes with their laws and regulations. As a matter of fact, state parties have the right to decide whether or not the implementation of any international standard and practice is impractical for them, or that they cannot make their laws comply with international standards after amending this regulations, or that they deem necessary to adopt rules that are different in every respect with international standards and regulations. In other words, state parties have the right to determine what could be for them "practicable" in accordance with the provisions of Article 37 of the Chicago Convention<sup>18</sup>. However, it should be noted that some of the Annexes do not need to decision of member states, such as Annexes relating to rules of air, Journey log books and recognition of certificates and licenses. In other words, this type of Annexes are binding and compulsory so that member states cannot avoid from its implementation. Article 38 of the Chicago Convention forecasts cases where enforcement of Annexes is impractical for a country. In this case, this country should notify the ICAO of the differences between their laws and regulations with international standards and practice. As a conclusion it should be said that the ICAO Council cannot adopt any laws and regulations in form of Annexes for domestic civil aviation operation because this organization suffer from judicial jurisdiction to pass such laws.

<sup>16</sup> Article 90 (a), the Chicago Convention; see also Thomas Buergenthal, *Law-Making in the International Civil Aviation Organization*, New York: Syracuse University, 1969, pp 62-65.

<sup>17</sup> Article 37, the Chicago Convention.

<sup>18</sup> Jung Sang Yool, *A legal Analysis of Aviation Security under the International Legal Regime*, Mc Gill University, Montreal, Canada, 2005, p 58.

## V. LEGAL STRUCTURE OF ANNEX 17 TO THE CHICAGO CONVENTION

As mentioned previously, Annex 17 to the Chicago Convention seeks to provide a preventive legal regime to prevent acts of terrorism against civil aircraft. In fact, the purpose of Annex 17 to the Chicago Convention is establishment of preventive legal regime to prevent, fight and suppress unlawful interference against civil aviation, such as the establishment of national aviation security programs, airport security programs, and protection of safety of passengers, crew, ground personnel, and general public in all matter concerning international air navigation<sup>19</sup>.

### 1. Objectives of Annex 17:

The most important matters covered under Annex 17 to the Chicago Convention is, namely, international cooperation (Chapter 2, 2.3), national organization and appropriate authority, preventive security measures in connection with civil aviation, airport facilities, passengers and crew, baggage, cargo (Chapter 4), management of response to acts of unlawful interference (Chapter 5).

### 2. International Cooperation:

Chapter II of Annex 17 to the Chicago Convention is related to international cooperation between state parties to establish sustainable aviation security in international air navigation in the field of fight against offence of unlawful interference. In terms of Annex 17 to the Chicago Convention, international cooperation should prevent from potential opportunities for committing terrorist crimes against civil aviation. As a matter of fact, the international community should prevent the offence of unlawful interference against passenger airlines through covering legal gaps that criminals can use them to commit any aviation terrorism. Accordingly, Standard 2.4.1 of Annex 17 to the Chicago Convention requires all member states to meet security requests from other countries in the respect of special flights. Furthermore, Standard 2.4.2 also requires member states to cooperate with each other in connection with the exchange of information on national aviation security programs, aerial training programs and quality control programs. Also, member states should also share with other countries "the threat information" in relation to aviation security threats and threat to commit terrorist acts (Standard 2.4.3). The member states should also require to protect from security information shared by other countries so that to prevent from inappropriate use or disclose of such information in accordance with Standard 2.4.4. In this regard, the Recommendation 2.4.6 also require all member states to include a legal clause in relation to aviation security in all of its air bilateral agreements on air transport. Moreover, the Recommendation 2.4.7 require all member states to provide an appropriate parts of its national civil aviation security programme for other countries.

### 3. National Organization and Appropriate Authority:

Chapter III of Annex 17 to the Chicago Convention is in connection with the "national organization and appropriate authority" to protect and safeguard the security of commercial aircraft, passengers, crew, airport facilities, ground personnel and all navigation matters that will be useful for the fight against unlawful interference. Standard 3.1.1 of Annex 17 require all member states to establish a "national organization" to develop, implement "national civil aviation security program" to combat against acts of unlawful interference<sup>20</sup>. The most important purpose of the national civil aviation security program should be the adoption of regulations, standards, recommended practices and procedures in order to enhance the safety and security of civil aviation considerably. In this regard, all member states must also specify to the ICAO appropriate authorities who are responsible for the development and implementation of national civil aviation security program in accordance with standard 3.1.2 of Annex 17<sup>21</sup>. Standard 3.1.3 is very innovative as it gives an opportunity to the authorities for security risk assessment. Accordingly, the standards 3.1.3 require all member states should examine the level of threat to civil aviation within their territories<sup>22</sup>.

According to the standard 3.1.5, member states should create a national aviation security committee. Pursuant to Standard 3.1.6, the governmental authorities should develop and implement a national training program for staff of all institutions.

<sup>19</sup> International Standards and Recommended Practices, Annex 17 to the Convention on International Civil Aviation, Security, Safeguarding International Civil Aviation Against Acts of Unlawful Interference, 8 edition, 2006.

<sup>20</sup> Jung Sang Yool, A legal Analysis of Aviation Security under the International Legal Regime, Mc Gill University, Montreal, Canada, 2005, p 61.

<sup>21</sup> Annex 17 to the Convention on International Civil Aviation, Safeguarding International Civil Aviation Against Acts of Unlawful Interference, Edition: 9, 2011.

<sup>22</sup> *Ibid.*

All member states should ensure that the training program is also based on defined standards, in recommendations 3.1.7 Annex 17 to the Chicago Convention. According to Standard 3.1.9 of Annex 17, all member states to the Chicago Convention should provide a written version of the appropriate parts of their national civil aviation security program for their airports and aircraft operators who work within their territories. Such an approach can enable the airports and aircraft operators and other entities to meet the requirements of national civil aviation security program<sup>23</sup>. Standard 3.2.1 require all member states to establish a written airport security program so that this program should meet the requirements of the national civil aviation security program. In connection with the airport security program, member states should ensure that the "Airport Security Committee" has been created to assist the authorities to coordinate the implementation of security control (Standard 3.2.3 of Annex 17 to the Chicago Convention). In this regard, Standard 3.2.4 also require all member states to coordinate the requirements of design and construction of new buildings based on the national civil aviation security program.

With regard to air transport operators, Standard 3.3.1 of Annexes 17 requires member states to establish a written operator security programme so that all aircraft operator providing service from that country should meet all requirements mentioned in the national civil aviation programme. With regard to the concept of quality control, Standard 3.4.1 declare that persons have duty for security control, should include background check and selection procedures. Such person should possess all relevant competencies for performing its duties so that he/she appropriately trained (Standard 3.4.2). Accordingly, persons who are responsible for screening operations must have the relevant certificates and all member states are required to ensure that such a certificate is based on the requirements mentioned in the national civil aviation security quality control programme (Standard 3.4.3). It should be noted that quality control provisions listed in Annex 17 to the Chicago Convention tries to encourage all countries to develop "national civil aviation security quality control programme" in order to enhance the efficiency and effectiveness of the "national civil aviation security program"<sup>24</sup>. Standard 3.4.5 and 3.4.6 of Annex 17 to the Chicago Convention also pledged that all countries should implement security measures (namely, inspection-surveys-test-security audit) on the basis of compliance with national civil aviation security programme.

#### 4. Preventive Security Measures:

Chapter IV of Annex 17 to the Chicago Convention should be considered as a significant step in the fight against offence of unlawful interference and other form of terrorism through the adoption of preventive security measures. As previously mentioned, one of the major problems of international conventions is the lack of preventive security measures to deal with aviation terrorism so that international law merely trying through severe punishments to deal with terrorist crimes. Chapter IV of Annex 17 tries to introduce preventive security measures to all member states to prevent the offender from committing a crime before he/she can perform his/her terrorist acts. Accordingly, the Standard 4.1 of Annex 17 to the Chicago Convention require all member states to create an effective legal, preventive and practical regime to prevent the carriage or bearing of weapons, explosives or other dangerous devices on board civil aviation to commit terrorist acts. In this respect, Annex 17 to the Chicago Convention divides the preventive security measures to combat the crime of unlawful interference in passenger aircraft into 6 parts: First Part) Annex 17 of the Chicago Convention introduces a series of legal requirements for member states in relation to preventive security measures to control the airside area at airport. In this regard, Standard 4.2.1 of Annex 17 to the Chicago Convention declares that all member states should control the access to airside area at airport.

Moreover, countries should also create a "security restricted areas" at all airports serving civil aviation. (Standard 4.2.2). Standard 4.2.3 also require all state parties to create identification system to prevent unauthorized persons from entering (persons or vehicles) to the airside area and security restricted areas. According to Standard 4.2.4, background checks on people other than passengers should be controlled for access to the security restricted areas. In addition, according to Standard 4.2.5, the movement of individuals and means of transport (vehicles, automobile) to the civil aircraft or from the aircraft should be closely monitored within the security restricted areas. All persons (persons other than passengers) should be scanned to access the security restricted areas (4.2.6). The Recommendation 4.2.7 also declares the identity documents issued for aircraft personnel should be based on international standards so that such document can easily be

<sup>23</sup> *Ibid.*

<sup>24</sup> Jung Sang Yool, A legal Analysis of Aviation Security under the International Legal Regime, Mc Gill University, Montreal, Canada, 2005, p 62.

identified. Thus, in connection with access control, all member states should: (1) control airside area at airports; (2) establish the security restricted areas, access procedure and identification system; (3) control a background check; (4) the monitoring of the movement of persons and vehicles to or from aircraft; (5) Scanning people (other than passengers) to enter the security restricted areas.

Second Part) in this section, Annex 17 to the Chicago Convention introduces a series of preventive security measures in connection with the "aircraft" to prevent unlawful interference and other forms of aviation terrorism against civil aircraft. In this respect, standard 4.3.1 declare all member states should perform all security programme concerning aircraft security check of originating aircraft. Standard 4.3.2 also require state parties to use all preventive security measures to ensure that aircraft passengers do not place anything on the plane after leaving the plane. According to Standard 4.3.3 of Annex 17 to the Chicago Convention, during the flight of the aircraft, unauthorized people are not allowed to get into the flight crew compartment. Recommendation 4.3.5 of Annex 17 to the Chicago Convention also declares that security controls must be established to prevent terrorist acts, particularly when the aircraft is not within the security restricted areas. Third Part) in this section, Annex 17 to the Chicago Convention introduces preventive security measures in connection with "the passengers and their cabin baggage" to fight against offence of unlawful interference in passenger airlines. Standard 4.4.1 of Annex 17 declares that all passengers and their cabin baggage must be scanned before flight. In fact, the most important purpose of Annex 17 of the Chicago Convention for the adoption of such an approach is to prevent from entry of dangerous and illegal materials into civil aircraft. The Standard 4.4.3 also require all member states to prevent from the mixing or connecting scanned and non-scanned passengers<sup>25</sup>. In the case where mixing or contact of passengers with each other take place, all passengers and their baggage should be rescreened before the flight. According to Standard 4.4.4, all state parties to the Chicago Convention should establish preventive security measures at all international airports for transit operations in such a way that these measures maintain and protect passengers' cabin baggage from unlawful interference.

Fourth Part) in this section, Annex 17 to the Chicago Convention introduces preventive approaches in connection with "hold baggage" to prevent and suppress any terrorist acts against passenger airlines. In this regard, Standard 4.5.1 promulgates efficient security measures and security controls should be created for scanning originating hold baggage before entering the plane. Standard 4.5.2 also said that countries should avoid mixing of hold baggage and other passenger equipment from unauthorized interference particularly during scanning it and before entering the plane. Thus, if they are mixed together, they must be scanned again before entering the plane. In Standard 4.5.3 has also been said that baggage of passenger who is not on board an aircraft, should not be transferred unless such baggage is identified as non-hazardous and unaccompanied. The Recommendation 4.5.6 also declares state parties to the Chicago Convention should establish legal mechanisms and procedures to deal with unidentified baggage and equipment. Fifth Part) in this section, Annex 17 of the Chicago Convention introduces preventive approaches in relation to the "cargo, mail, and other goods" to prevent unlawful interference in civil aviation. Accordingly, the standard 4.6.1 declares the security controls should be implemented for all goods and other passenger equipments before they are entered onto an aircraft. Standard 4.6.2 requires state parties to implement appropriate security controls for protection and support of all cargoes, goods, mail and other passenger equipment from any acts of unlawful interference that can bring serious harm to the safety and security of commercial aircraft. The Standard 4.6.3 explicitly declares the implementation of security controls should be established legal and regulatory processes for approval of regulated agents. According to Standard 4.6.4, the aircraft operator cannot accept any good or mail for carriage by air transport unless the application of security control is confirmed. The Standard 4.6.5 declares some passenger equipment such as supplies, stores, catering should be subject to security checks and they should be under serious protection until loaded onto commercial aircraft. As a result, all member states to the Chicago Convention should adopt appropriate security measures for checking and scanning all commercial cargo, mail, commodities, goods, postal parcels and express mail for carriage by air transport.

Sixth Part) in this section, Annex 17 to the Chicago Convention introduces preventive security measures in connection with the "special categories of passengers" for any combat with offence of unlawful interference and other terrorist acts against passenger airlines. In this section, Annex 17 to the Chicago Convention require member states to adopt appropriate steps for carriage of weapon, explosives, firearms, melee weapon and destructive persons under a special

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<sup>25</sup> Jung Sang Yool, A legal Analysis of Aviation Security under the International Legal Regime, Mc Gill University, Montreal, Canada, 2005, p 62.

authorization. Standard 4.7.1 declares air transportation of dangerous people (who have criminal record) should be based on a series of legal requirements associated with air carriers. In this regard, aircraft operator should also have a security measures and practical procedures to ensure safety of aircraft when they are forced to carry dangerous passengers in accordance with Standard 4.7.2. In this context, standard 4.7.3 declares the aircraft operator and the pilot in command should be aware of when they are forced to carry dangerous travellers. In fact, to protect of such persons, operator and pilot should apply appropriate security controls. Standard 4.7.4 is said to carriage of military means (weapon, gun, hazardous materials, etc.) into commercial aircraft should be taken under special license based on the domestic laws of countries involved. The standard 4.7.5 declares the travel of military personnel must be approved by other countries. The Standard 4.7.7 declares the security officers who are responsible for the safety and security of the aircraft, had to be specially trained and selected. According to the Standard 4.7.8, the aircraft pilot should be fully aware of the number of military officials and the number of seats on the plane.

### 5. Management of Response to Acts of Unlawful Interference:

Chapter V of Annex 17 to the Chicago Convention is related to the responsive measures for preventing offence of unlawful interference on passenger airlines. In this chapter, countries require to adopt a particular approach to dealing with terrorist acts and other illegal intervention against passenger airlines. In fact, this chapter confirms and emphasizes all legal requirements of the Tokyo, Hague and Montreal Conventions<sup>26</sup>. The Standard 5.1.1 of Annex 17 to the Chicago Convention declares that the member states should make any preventive measures, if the reliable information exist that commercial aircraft is subject to terrorist acts and other unlawful interference<sup>27</sup>. To adopt such an approach, state parties should take all appropriate security measures if the plane did not fly yet and it is still on the ground, or if the plane is now flying, member states should provide all reliable information before the landing of such aircraft in the respective country. Standard 5.1.2 also announced that the plane should be inspected to detect any dangerous weapons and explosives if there is reliable information that an aircraft may be subject to terrorist attacks. Also, if there is reliable information about dangerous explosives or weapons at airports, member states should carry out any arrangements that is required such extensive research at the airport, drain the airport. For practical deterrence of the crime of unlawful interference against civil aviation, Standard 5.1.4 of Annex 17 to the Chicago Convention declares that the contingency plans should be ready to protect passenger airlines against terrorist crimes<sup>28</sup>. In addition, to implement a number of contingency plans, the adequate financial resources should be provided. To help deal with unlawful interference against civil aviation, Standard 5.1.5 declares that trained personnel should be available in the airport of state parties<sup>29</sup>. Thus, member states should carry out any arrangements that is required such as extensive research at the airport, drain the airport.

In response to the terrorist attacks on passenger airlines, standard 5.2.1 declares the member states should be prepared for the safety and security of passengers and aircraft personnel, when the plane was under terrorist attack<sup>30</sup>. According to Standard 5.2.2, all member states should collect information concerning civil aircraft that may be subject to terrorist attacks and provide this information to other countries<sup>31</sup>. Pursuant to 5.2.3, all member states should provide any assistance to passenger airlines that have been subject to terrorist attacks<sup>32</sup>. This assistance can include navigation aids, air traffic services, and allowing the aircraft landed at the airport of state parties. In accordance with Standard 5.2.4, all member states should arrest of airline passengers landed in their territory unless departure is necessary to protect the lives and property of passengers<sup>33</sup>. According to Standard 5.2.5, the country in which the plane subjected to terrorist threats has landed, should as soon as possible, announce state of registry of aircraft and state of operator of landing<sup>34</sup>. In addition, the following countries should also be informed of: 1. a country where its citizens have died or been injured as a result of the terrorist attacks on passenger airlines; 2. A country where citizens are arrested; 3. country where citizens are on the plane.

<sup>26</sup> Jung Sang Yool, A legal Analysis of Aviation Security under the International Legal Regime, 2005, p 63.

<sup>27</sup> Annex 17, the Standard 5.1.1.

<sup>28</sup> *Ibid*, the Standard 5.1.4.

<sup>29</sup> *Ibid*, the Standard 5.1.5.

<sup>30</sup> *Ibid*, the Standard 5.2.1.

<sup>31</sup> *Ibid*, the Standard 5.2.2.

<sup>32</sup> *Ibid*, the Standard 5.2.3.

<sup>33</sup> *Ibid*, the Standard 5.2.4.

<sup>34</sup> *Ibid*, the Standard 5.2.5.



## VI. CONCLUSION

The awareness of public about terrorist threats at airports, international bus and train terminals and other vulnerable areas must be considered as other task of the ICAO before commission of act. For such reason, many practical measures has been designed in recent decades to restrict geographical scope of terrorism in whole world, namely, checking documents in international terminals, passengers double-checked documents, electronic surveillance of passports, using eligible persons without revealing their identity to the public, alarming people in good manner before and during the incidents, training armed and security personals to work to gather when they encounter with terrorist attack, educating the public how to react in an emergency situation, using media to support the people during the incidents, prevention from the use of media (television, radio, internet) as a symbolic weapon by terrorists to spread fear in the public. In addition, the ICAO has played key role in dealing effectively with aviation terrorism after commission of act. Indeed, the second stage to face with unlawful act is related after commission of acts that include different type of measures such as introduction of terrorism as crime against humanity and economic sanctions. It should be noted that the terrorism cannot be eliminated without knowing the causes of terrorism at national and international levels. Some authors believe " terrorism is usually a by-product of political discord between nations"<sup>35</sup>.

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<sup>35</sup> Abeyratne, *Legal and Regulatory Aspects*, First Edition, Ashgate Publishing Co. Ltd., 1999, p 66.