Security of International Civil Aviation and International Law

- A review of the Legal Regime under the Tokyo, Hangue and Montreal Conventions -

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Before getting into our discussion, please allow me to say that I feel very privileged to be able to attend this important conference and I would like to extend my most thanks to the Civil Aviation Authority of Macau and the Law Faculty of the University of Macau for their nice invitation and their wonderful hospitality which we all enjoy during these couple of days. As a beginner in the career of international air law, however, I must say that I feel it a challenge to join this group of prominent experts of air law. With my high respect for their outstanding expertise and experience, I would like to take this opportunity to share with you some of my experience in the study of this increasingly important subject.

The topic of my paper, as indicated in its title, discusses rules of international air law as applied to the maintenance of the safety of international civil aviation. In fact, this topic alone involves many complicated problems and the legal techniques of their solution, ranging from the standard of air worthiness to air traffic control, to passenger handling, etc. What I would like to focus on in my paper for our present discussion, however, is a public international law aspect concerning a peculiar, yet flagrant aviation-related crime, namely, hijacking of aircraft.

As all of us have experienced, when we travel at home or to a foreign country by air and before we get aboard an aircraft of a commercial airline, we have to go through a very stringent pre-flight screening process, including, as the case may be, searches of our physical bodies and hand bags. These pre-flight preventive security measures inherent in contemporary air passenger travel always serve as a reminder that the aircraft we board runs the risk of being hijacked while in flight.

The term "hijacking" was originally used to indicate the illegal and forcible taking of property from a traveller on a public road or highway. A notable historical example of this kind of offence was the frequent take-over of illicit liquor by rival

gangs during the era of Prohibition in the United States during the 1920s. In the air, hijacking is a term which connotes the forcible commandeering of an aircraft while in flight. Often, we find that term used indiscriminately, and taken to be interchangeable with the expression "aerial piracy". This, however, is rather a misunderstanding commonly made these days. Hijacking of aircraft actually differs from air piracy, the definition of which in Article 101 of the 1989 UN Law of the Sea Convention is declaratory of general international law.

Under international law, the term "hijacking" of aircraft refers commonly to the illegal seizure by force or other means, of an aircraft in flight, followed by the diversion of the said aircraft to a destination other than that envisaged in its original flight. Air hijacking as such is a peculiarly contemporary legal problem. We say this not only because air hijacking is an obvious offence or crime arising in the air age, but also because, to a large extent, it is made possible, or at least, enormously facilitated by the extraordinary complexity of the technological revolution in air industry. Today's modern jet aircraft, in its own special way, is too highly vulnerable to attacks by wilful or misguided men, because of its engineering refinements and its general technological sophistication, to an extent and degree that the earlier, less complicated propeller-driven aircraft never were.

Moreover, all acts of hijacking of aircraft have one element in common, namely, they involve, as afore-mentioned, the forcible seizure and diversion of an aircraft while in flight, against the will of its air crew and passengers. Yet, a closer examination indicates that air hijacking is not just one single problem that is uniform in its constituent elements, but really a series of different and sometimes not always related problems. Here, we may classify air hijacking into four different categories.

The first category may be said to be the "political escape" hijackings which are used as means of vindicating their political claims, *bona fide* or otherwise, put forward by those attempting them. Originally, these hijackings were part of Cold War stratagems, whereby people, sometimes military personnel and sometimes civilians, of countries belonging to the then rival East-West blocks seized military or commercial aircraft to flee from one bloc to seek political asylum in the other. "Political escape" hijackings of this type also include cases where people claimed to have been subjected to witch-hunting and, thus, to have been barred from getting exit visas except under arduous financial conditions or penalties. These people, as they alleged, managed to seize aircraft as a sort of desperate "last resort" means of leaving the country.

The second category may be labelled as the "lunatic fringe" hijackings, perpetrated by those emotionally disturbed or mentally unbalanced people without *bona fide* political motivations. They hijacked aircraft, as extended psychological studies later shows, mainly as a result of the contagion of past example and the lure of the massive publicity given by the public media to past successful hijackings. Air hijackings of this type went particularly conspicuous during the whole 1960s and the early 1970s between Cuba and the United States. To be sure, however, there is no reason to preclude

the "lunatic fringe" personality from those among the other categories of hijackers with political, ideological or economic motivations.

The third category may be identified as the "profit-seeking" hijackings, in which the dominant motive is clearly to have large scale of financial gains. Perpetrators of this type of offence, or sometimes "sky bandits", as they are called, hijack aircraft to hold the air crew and passengers to ransom for large sums of money.

The last category of hijackings are confined, in geographical terms, essentially to the Middle-Eastern countries or at least to nationals or former nationals of those countries. Among many other different motives, the prime one behind hijackings of this kind is clearly linked to the solution or at least continuance of hitherto unresolved international conflicts in that region. Cases of these "political" hijackings usually involved the spectacular, well-organised and coordinated combatant groups, or even governments. They carried out air hijackings most often to trade off the release of their fellow comrades from prison or to gain publicity for their causes with the seized aircraft, its crew, and passengers with whom they have no legal point of contact. Hijackings of this type are perhaps the most difficult of all to control, for, as proved empirically, an effective control would seem to require, in the end, some sort of generally acceptable, or at least generally imposed, final solution to the key political conflicts from which they ultimately stem.

In the mid-1980s, the world witnessed the escalation of the problem. In 1985, 1989, and 1991, world-wide incidents of hijackings amounted to 35, 24, 46, and 36, respectively. The re-emergence of hijacking is now a strictly international terrorism phenomenon. At the same time, in East Asia and between Mainland China and Taiwan in particular, hijacking of aircraft as a means of common criminals to escape impending criminal proceedings or a prison sentence increased - a phenomenon attributable, in a considerable measure, to gross negligence and oversight in the actual application of pre-flight screening on one side and the high inducement of havens for the so-called "freedom and anti-communist fighters" provided by the other side.

The danger involved in aircraft hijacking are out of all proportion to the number of incidents. Apart from the navigational difficulties attendant on changes of course, together with risks involved in landing and take-off, there are many other hazards. To name a few, a fight between the crew and the hijackers may cause a complete loss of control of the aircraft, essential damage may be caused if weapons are used in the cockpit, collisions may result from an aircraft being unable to observe traffic regulations, fuel shortage may occur, the crew may be unfamiliar with a particular airport and its approach procedures. While hijackings are usually unsuccessful and frequently end in the death or imprisonment of their perpetrators, innocent crew and passengers may also be harmed. A famous example was the June 1976 hijacking of an Air France plane to Entebbe airport in Uganda. A daring raid by Israeli commandos resulted in the deaths of the hijackers and the rescue of more than 100 hostages; three hostages, however, died in the fighting. In November 1985, an Egyptian commercial aircraft had been

diverted to Malta on a flight from Athens to Cairo. The tragedy ended in the murder of a female US passenger and the deaths of 57 passengers and in addition to 2 hijackers in the resulting storming of the aircraft on the tarmac by an Egyptian special commando squad.

Apparently, the increasing tide of hijacking in international civil aviation has become a factor of dominant concern to those who operate airlines, who fly or service aircraft, and who travel on aircraft, as well as to the government agencies which supervise aviation.

Moreover, in today's increasing interdependence among nations and peoples, the impact of aircraft hijacking on the interests of the world community becomes more sinister, given the rapid increase in the volume, range, and frequency of the international air traffic, coupled with the high dependence of the daily conduct of international relations on the principle of the freedom of air communications. It is by no means an exaggeration to say that the jeopardy caused by air hijacking may result in sudden and far-reaching community paralysis. In 1971, l'Institut de Droit International declared in its Resolution on Unlawful Diversion of Aircraft that aircraft hijackings are unlawful acts under international law. This is because they jeopardize the life and health of passengers and crew, as well as those of persons on ground or in other aircraft, in disregard of elementary considerations of humanity, they may endanger international peace and friendly relations among states; they also jeopardize the freedom of international air communications and seriously affect the operations of air services and undermine the confidence of the world in the safety of civil aviation.

Therefore, from the early 1960s, the grave menace to the safety and reliability of international civil aviation caused by the multiplication of hijacking incidents prompted the world community to take serious measures to address the situation. It should be noted that the International Civil Aviation Organisation (ICAO), a Montreal-based inter-governmental institution and a United Nations Specialized Agency, played a tremendous role in initiating the conclusion of a number of international treaties dealing with the problem.

The first attempt to deal with air hijacking was made by the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft signed on September 14, 1963. To be sure, the original purposes of the diplomatic negotiations which led up to the 1963 Tokyo Convention was to try to define the legal status of aircraft and to ensure that persons committing criminal offences aboard aircraft in flight or on the surface of the high seas, or any area outside the territory of any country, or committing acts aboard such aircraft to the danger of air safety, would not go unpunished simply because no country would assume jurisdiction to apprehend or try them, and even to establish for protective and disciplinary purposes, the legal authority and powers of the aircraft commander over the aircraft and its aircrew and passengers while in flight. Although the Convention made no special reference to aircraft hijacking, all these provisions have important application to actual cases of air hijacking.

Indeed, the international character of aviation and air law makes it all necessary to determine which country is competent to exercise jurisdiction in cases of criminal offences committed on board of an aircraft. Normally, it is the subjacent state which exercise jurisdiction over offences committed in its airspace, but in reality, it is not always possible to determine the exact position of the aircraft at the time the offence was committed, for the offence may not have been noticed until the aircraft reaches a destination outside the territory of the country in whose airspace the offence was committed.

In order to deal with this question, the Tokyo Convention recognises in Article 3 that the country of registration of the aircraft is competent to exercise jurisdiction over the offences committed aboard the aircraft and that state parties to the Convention are obliged to take the necessary measures to establish their jurisdiction as the country of registration. The Convention goes further to recognise in Article 4 a criminal jurisdiction on the part of a state other than the state of registration of the aircraft, among other things, in respect to offences committed on board an aircraft that have effect on the territory of that state, in respect of offences by or against a national or permanent resident of that state, in respect to an offence against the security of that state, and in respect to the exercise of jurisdiction which is necessary to ensure the observance of any obligation of such state under a multilateral international treaty. Coupled with these provisions was the provision of Article 16 that offences committed aboard an aircraft are to be treated, for purposes of extradition, as if they had occurred in the territory of the country of registration, hence if the offender takes refuge in a country which is party to the Convention and also party to an extradition treaty with the country of registration, making the alleged offence an extraditable crime, the offender can be duly extradited. Also, the Convention, as provided in Article 3 (3), "does not exclude any criminal jurisdiction exercised in accordance with national law". This means that the jurisdictional rules contained in the Convention do not prevail over those contained in the domestic law of states parties to this Convention, which are based either on the active nationality principle or the passive nationality principle, or both.

As to the authority and powers of the aircraft commander, this Convention contains detailed provisions giving the aircraft commander substantial powers of control, including to disembark an offender and deliver him, if necessary, to the competent authorities of a state party to the Convention, where he has reasonable grounds to believe that this person has committed, or is about to commit, on board the aircraft the offences or acts specified in the opening of the Convention, namely, "acts which whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board".

The Tokyo Convention also renders the definition "in flight". According to Article 1 (3), an aircraft is considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends. Yet, in connection with the authority and power of the aircraft commander, an aircraft is considered to be in flight at 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 [Article 5 (2)]. Under the first definition the time when an aircraft moves across the airfield into position for actual take-off is left out of account: during that period the aircraft is not considered to be in flight, and the national law of the state concerned is applicable. According to the second definition, from the moment the aircraft has become a "sealed unit", separating itself from the outside world, that aircraft is considered to be in flight in connection of the exercise of the authority and power of the aircraft commander. The two definitions were designed to guarantee and ensure that at no time after the aircraft has become a closed university, will it goes outside the scope of the Convention.

The provisions of this Convention that are deliberately and specifically oriented to the problem of air hijacking are contained in Article 11, which reads:

"(1) 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 when such an act is about to be committed, Contracting States shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft.

(2) In the cases contemplated in the preceding paragraph, the Contracting State in which the aircraft lands shall permit its passengers and crew to continue their journey as soon as practicable and shall return the aircraft and its cargo to the persons lawfully entitled to possession."

These provisions should be taken as a reflection of the deep concern of the framers of this Convention and their desire to accentuate the importance they attached thereto. However, it is argued that such emphasis was not quite commensurate with the effect they expected. Not only does this article fail to cover all forms of unlawful seizure of aircraft, it also fails to prescribe any effective sanction to such offence, except for imposing the obligation to take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft. Moreover, what this article contains is no more than a restatement of customary international law as to the situation of distress, establishing the obligation on the part of all states to render all possible assistance and comfort to vessels undergoing shipwreck or otherwise distress, and to do everything possible to speed them on their way to their original destination with their passengers and their crew and cargo.

The Tokyo Convention entered into force on December 4, 1969, 90 days after the twelfth ratification was obtained. In regard to hijacking, however, it is fair to say that the Convention has no real teeth in it, given its failure to make frontal attack upon this offence in terms of effective punishment of hijackers. Thus, what it achieved is rather a moderate degree of legal order in this respect. Yet, in spite of its imperfection and weak points, the Tokyo Convention as a whole should be regarded as a significant step taken by the world community in combating hijacking of aircraft, given the then political cloud over the treaty-making process.

The expansion of the dimensions of the air hijacking problem throughout the 1960s from an essentially limited, US-Cuban, regional, inter-American or Caribbean "nuisance" to a more genuinely world-wide phenomenon affecting equally a number of countries with different political-ideological bases, coupled with the evident inadequacy of the essentially hortatory, admonitory, anti-hijacking provisions contained in the Tokyo Convention of 1963 led to the conviction that a more ambitious, more elaborate effort to deal with hijacking was badly needed. This prompted the conclusion, in December 1970, of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft. The Hague Convention was specifically and deliberately confined to hijacking, leaving the matter of armed attacks, sabotage, and other forms of violent action directed against civil aviation and aviation facilities to be dealt with by a later diplomatic conference.

The Hague Convention opens by a definition of the offence of unlawful seizure of aircraft:

"Article 1. Any person who on board an aircraft in flight

a) unlawfully, or by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of that aircraft, or attempts to perform such act, or

b) is an accomplice of a person who performs or attempts to perform any of such acts commits an offence."

Unlike the Tokyo Convention, under the Hague Convention, an aircraft is consider to be in flight only from the moment when all its external doors are closed following embarkation until the moment when any such door is open for disembarkation [Article 3(1)].

Under Article 2 of the Convention, each contracting party is obligated to make the offence "punishable by severe penalties", though it does not specify minimum penalties on the part of contracting parties. Under Article 4, each contracting part is also required to take steps to establish its legal jurisdiction over unlawful seizures of aircraft and any other act of violence against passengers or crew when the offence is committed on board of an aircraft registered in that state, or when the hijacked aircraft lands in a contracting state's territory with the alleged hijackers still on board, or when the offence is committed on board of an aircraft leased with out crew to a lessee who has his principal place of business in the contracting state, or if no business, his permanent residence. As compared with the Tokyo Convention, this is a step forward, of course, though it is certainly not the same thing as universality of jurisdiction.

The Convention applies only to civil aircraft, and not to aircraft used in military, customs, or police services, but it is immaterial whether the aircraft in question is engaged in an international or domestic flight. However, for general purposes, the Convention is only operative if the place of take-off, or the place of actual landing of the hijacked aircraft is situated outside the territory of the state in which the aircraft is registered. This restriction does not affect the far-reaching provisions in Article 6, under which each contracting party is obliged to take the

hijacker into custody for purposes of criminal or extradition proceedings, and to notify interested states to that effect and those in Article 7, whereby the state in whose territory the hijacker is found, if it does not extradite him is obliged "without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution".

Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that state.

It is Article 7 which seeks to render into treaty form the obligation *aut dedere, aut punire* in the case of a hijacker. It is not of course fool-proof in terms of ensuring that the hijacker will actually be punished. The obligation of the contracting state, under the treaty, ceases with the submitting of the case to its own criminal prosecution department, and the follow-up there necessarily rests upon the competence and the diligence, and the good faith, of national civil servants, and their freedom or otherwise from their own government's direction and control in the manner. This reminds of us a notorious case of 1982 where a Chinese civil aircraft in a scheduled flight from Shenyang to Shanghai was hijacked to the Republic of Korea by a group of five common criminals headed by Zuo Changren. Although they were tried by the competent Korean judicial authorities, that trial turned out to be no more than a show, for not only were the hijackers given a very light punishment (the most severe one was just 5-year imprisonment) they were also soon "extradited" to Taiwan, where they were released.

Article 8 of the Hague Convention attempts to deal with the difficult issue of extradition, raised by the establishment of the alternative obligation to extradite, if the state in which the hijacker is found should decide not to refer the hijacker to its criminal authorities for prosecution within that state. However, the Hague Convention could by no means form, in itself, a comprehensive code on extradition in regard to hijackers, in replacement for a large number of bilateral extradition treaties. What Article 8 does is to declare that hijacking is "deemed to be included as an extraditable offence" in any extradition treaty existing between contracting states, and that it is to be expressly included as an extraditable offence in any new extradition treaty between contracting states [Article 8 (1)]. Where no extradition treaty is in effect between two contracting states, then according to Article 8 (2), any one of the contracting state may, at its option, consider the Hague Convention as the legal basis for extradition in response to a request from the other state. This, I speculate, is the case where the Chinese and Japanese governments agreed to extradite back to China for prosecution and punishment a Chinese hijacker Zhang Zhenhai, who in 1989 seized a Chinese airliner in a scheduled flight from China to Japan with alleged claims for political asylum in Japan.

It is noted that the Hague Convention has adopted the provision in Article 11 of the Tokyo Convention in regard to safeguarding the right of passengers and crew to continue their journey and the return of the aircraft and its cargo to the persons legally entitled to it, the Hague Convention has put emphasis on this principle by adding the

words "without delay" (Article 9). The Convention also provides that mutual assistance in criminal matters under the Convention will not prejudice obligations of that nature under any other treaty. Moreover, according to Article 11, the contracting states are obliged to promptly notify the ICAO Council of any hijacking, the circumstances and the action taken in response to it. Finally, Article 12 prescribes that all disputes concerning the interpretation or application of the Convention shall be submitted to arbitration. When a settlement cannot be reached the dispute shall be submitted to the Intentional Court of Justice. This is the only provision in the Convention to which reservation is allowed to be made.

As compared with the 1963 Tokyo Convention, the 1970 Hague Convention on a whole has made remarkable improvement in dealing with the growing wave of hijacking incidents of the time. It was signed at the Hague on December 16, 1970, and entered into force, in accordance with Article 13 (3) of the Convention on October 14, 1971. The key provisions in the Convention are Article 1, defining the offence of hijacking, although not calling it such, Article 2, obliging each state party to make the offence punishable by severe penalties, and Article 4, providing that states parties are to tale measures to establish jurisdiction over the offence and related acts of violence against passengers or air crew. It also establishes, though in a limited manner, the *aut dedere, aut punire* principle (the country where the offender might happen to be should prosecute him, or extradite him to a country having jurisdiction to try him for the offence). This, however, is not to say that the Convention is stringent as it should be. What is contained in the Convention mainly reflects a compromise between different approaches to criminal law and to the rendition of offenders. But its prompt conclusion, in the surrounding circumstances, did meet an urgent need.

Both the Tokyo Convention and the Hague Convention were concerned exclusively with offences committed on board in flight. In order to effectively arrest the increasing tide of air hijacking, actions also need to be taken to prevent and discourage sabotage and acts of violence which are generally directed against aircraft and against civil aviation as well. This led to the conclusion on September 23, 1971 of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

Indeed as a result in part of an increasing success in advance detection and prevention of hijacking or aircraft, through legal but also direct administrative and police measures, the criminal elements who had originally chooser hijacking of aircraft as a spectacular and easily engineered method of vindicating their claims, now turned to other methods which, if less effective perhaps, were more difficult to apprehend or counter in advance on the part of law-enforcement authorities. These acts of sabotage and violence other than hijacking were normally, though not exclusively, mounted by the same political forces that turned to hijacking as a form of "irregular" combatancy in order to achieve their political objectives. While this kind of acts do not fall within the strict definition of hijacking of aircraft in flight, the same basic legal policies are involved in suppressing them. This is what the Montreal Convention attempted to achieve, and therefore worth being mentioned here briefly.

The objective of the Montreal Convention is to deal with unlawful acts other than hijacking *sensu stricto.* This is reflected in Article 1, the key article of the Montreal Convention, which was designed to cover those multiple forms of violence and intimidation which had occurred in the past as well as those which might emerge in the future. Because these aviation crimes might not necessarily be restricted to aircraft "in service", in addition to that of an aircraft in flight, as in the Tokyo and Hague Conventions. Instead of a single, comprehensive formula, article 1 enumerated as offences for the purpose of the Convention, five categories of unlawful acts:

a. Acts of violence against a person on board an aircraft "in flight", if that act is likely to endanger the safety of that aircraft;

b. Destroying or causing damage to an aircraft "in service" so as to render it incapable of flight, or which is likely to endanger its safety "in flight".

c. Placing or causing to be placed on an aircraft "in service" any device or substance which is likely to have this effect;

d. The destruction or damage of air navigation facilities, or interference with their operation, if any such act is likely to endanger the safety of aircraft "in flight";

e. The communication of information which is known to be false, thereby endangering the safety of an aircraft in flight, a category intended to cover bomb-hoax extortions.

As in the case of the Hague Convention, an aircraft is deemed to be "in flight" at any time from the moment when all external doors are closed following embarkation until the moment when any such door is opened for disembarkation, or during the period of a forced landing pending the exercise of control by the authorities. "In service" means the period from the beginning of the pre-flight preparation of the aircraft by ground personnel or by the crew for a specific flight until 24 hours after any landing.

So far as aircraft are concerned, the Montreal Convention applies only in the case of an "international element", consisting of a place of take-off or landing, actual or intended, outside the territory of the state of registration, or if the offence committed against the aircraft is committed in a state other than the state of registration. The Convention may apply if the alleged offender is found in the territory of a non-registration state.

Under other provisions of the Convention, states parties undertake to establish jurisdiction over certain categories of offences under the circumstances set out in Article 5 (inter alia, if the offence is committed in the territory of that country, or against or on board an aircraft registered there), and they also bind themselves in accordance with international law and national law, to take all practicable measures for the purpose of preventing the offences set out in Article 1, and to cooperate with each other by communicating relevant information, and otherwise. Broadly speaking, the provisions of the Hague Convention regarding the taking into custody of alleged offenders as to extradition and prosecution, and as to the reporting to the International Civil Aviation Organization of offences and of action taken, are reproduced in the Montreal Convention, it was not found possible to adopt a more stringent, more far-reaching text.

In the long run, air hijacking and related offences are crimes of the aerospace age, controllable but not terminable until the function served by such attacks disappears. The international highway to legal control of air hijacking is represented by the regime established by the three multilateral conventions which we have briefly reviewed. Our discussion indicates that, if the Tokyo Convention of 1963 can fairly be described as purely hortatory and admonitory in its practical significance and importance, the two other later Conventions of the Hague and Montreal do attempt to face up to the problem of applying sanctions to the individual hijacker or aircraft saboteur, by requiring states parties to these Conventions either to extradite the offender when they find him within their territories or themselves to move to punish the offender. Given the political circumstances surrounding the process of the formulation of the principles and rules in these Conventions, we may fairly say that this regime, taken together, has lived up to what could be best expected therefrom. It reinforce and extend the great principles of international air law as enshrined in the 1944 Chicago Convention, in its postulation of the "freedom of air" as an imperative principle of contemporary international law, with the safeguarding of the security of international civil aviation advancing to the status of *jus cogens* and ranking ahead of other, possibly countervailing legal principles in particular cases. The public educational, law-making character of these Conventions, in the sum total, goes far beyond the normal restatement role of multilateral, codifying conventions. They have created in its own political mileage in safeguarding the life, health, and interests of passengers and crew in international civil aviation and in outlawing the use of hijacking of commercial aircraft as a way to vindicate political claims, bona fide or otherwise. Experiences have evidenced the political weight, and potential problem-solving influence, of these three Conventions and their detailed norms against air hijacking in cumulation of effective international control measures.

Being the case as it may, we can not ignore serious gaps in the coverage provided by these three Conventions. First, the host country that receives the hijacker or saboteur is, in the event it does not extradite him, bound under the Hague and Montreal Conventions only to submit his case to its competent authorities for the purpose of persecution. But there is no guarantee that prosecution will in fact follow, and also no provision for any follow-up, under the two Conventions, as to the degree of diligence or good faith exercised by the host state in actually ensuring that there will be prosecution and subsequent severe punishment of the offender. This deals with another issue, which is perennial in the contemporary international legal system, namely, the perception of states as to the desirability of seeking protection from the rules of international law. In view of the principle of state sovereignty that serves as the corner stone of today's international legal system, and given diversified understanding of this principle, it seems that the solution to this problem, if not impossible, is not an easy one. Yet, experience shows that it does not give credit to states to be so casual in their reaction to the growing and world-wide incidence of hijacking of aircraft and the increasing evidence of attendant violence, writing off because the casualty rates are low in comparison with the number of air miles flown world-wide per year or chalking them down to the regrettable pressures of international politics. This is so particularly in the increasing tendency of global interdependence of our time.

The second gap is the silence of these Conventions in regard to possible sanctions against a contracting party that wilfully or negligently fails to honour its obligation, under the Conventions, either to extradite or to prosecute. In the interests of safety of international civil aviation, it is vitally important to have the obligations imposed on contracting parties implemented in good faith and to have a mechanism to impose sanctions on delinquent states that fail to honour their obligations under these Conventions. However, few results have ever been achieved in this regard, due to political and economic implications. In a meeting of the ICA0 Legal Committee in 1973, proposals were submitted in an attempt to amend the l944 Chicago Convention to the extent that states parties which are found not complying with the Hague and Montreal Conventions would either be excluded from ICAO or refused the right of passage by the states parties to the Chicago Convention. It was also proposed that a diplomatic conference should be convened to set up a commission to monitor the facts and to advise on measures to be taken against states failing to honour the two Conventions. Another proposal was made for adding a protocol to the Hague and Montreal Conventions, requiring the extradition of the offender to the state of registration, if so requested, except when the offender is a citizen of the state receiving such a request. All these efforts failed to secure support by majority members. To this date, no real progress has been accomplished in this regard.

To a large extent, these gaps are closely related to the fact that international terrorism, which is rampant today, had not figured in the majority of these earlier hijacking incidents, and so it had never become a predominant concern in the minds of the framers of these three Conventions. Until the rash of general international terrorism incidents, from the mid-1980s onwards, the "special legal community" of international civil aviation had been content to rest with the, by now, well-established system under the three Conventions, together with national controls. The re-emergence of hijacking since the mid-1980s, as a strictly international terrorism phenomenon, as demonstrated in the tragic episodes of hijacking of TWA on an Athens to Rome flight, and destruction of an Air India over the Atlantic on a flight from Canada to India, and tragic denouement in the abortive Egyptian government rescue mission, together with other events, engendered the call for fresh, more comprehensive and holistic international control of international civil aviation. To that end, much has yet to be accomplished. Gladly to observe, more recent attempts have been made by ICAO to create an "Instrument for the Suppression of Unlawful Acts of violence at Airports Serving International Civil Aviation". Also, we have learned that efforts are being made by ICAO to prepare of a Convention on the marking of (plastic and sheet) explosives for the purpose of detection.