
International Law - Convention on Offenses and Certain Other Acts Committed on Board Aircraft - The Tokyo Convention

Robert F. Klimek

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

Recommended Citation

Robert F. Klimek, *International Law - Convention on Offenses and Certain Other Acts Committed on Board Aircraft - The Tokyo Convention*, 20 DePaul L. Rev. 485 (1971)

Available at: <https://via.library.depaul.edu/law-review/vol20/iss2/4>

This Comments is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact digitalservices@depaul.edu.

COMMENTS

INTERNATIONAL LAW—CONVENTION ON OFFENSES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT—THE TOKYO CONVENTION

The first known hijacking¹ of an airplane in the United States was to Cuba, in May of 1961.² The event seemed to prophesy the destination of most of the future United States hijackings, for, since the inception, in that year, the overwhelming majority of hijackings in the United States have been to Cuba.³

Overall, from May of 1961, to August 9 of 1969, there have been 83 actual or attempted hijackings to Cuba, including all types of aircraft of every nation. Of these, 73 have been successful, and 54 involved aircraft of United States' registry.⁴ The problem also seems to be worsening. During the period beginning February, 1968, to September, 1969, the number of hijackings jumped sixteenfold; there were more successful acts of this nature during this period than there had been in the previous twenty years.⁵

A point of interest is that success seems to generate renewed activity. A successful hijacking or series of hijackings instigates others to do the

1. The prevalence of airplane hijacking has given rise to terms and phrases which are uniquely associated with it. For example, the process itself has been referred to as "skyjacking," Denaro, *In-Flight Crimes, the Tokyo Convention, and Federal Judicial Jurisdiction*, 35 J. AIR L. & COM. 171, 172 n.7 (1969); and "highjacking," Stephen, "Going South"—*Air Piracy and Unlawful Interference with Air Commerce*, 4 INT'L LAWYER 433, 435 (1970). Also, pilots radio the phrase, "Going South" to indicate that a hijacking is taking place, *id.* at 433. For purposes of this paper, I shall continue to refer to the process as "hijacking."

2. Stephen, *supra* note 1, at 433.

3. Evans, *Aircraft Hijacking: Its Cause and Cure*, 63 AM. J. INT'L LAW 695, 697 (1969); Stephen, *supra* note 1, at 434.

4. Loy, *Some International Approaches to Dealing with Hijacking of Aircraft*, 4 INT'L LAWYER 444, 445 (1970).

5. Evans, *supra* note 3, at 697; Stephen, *supra* note 1, at 433. Evans gives the following breakdown of statistics, *supra* note 3, at 698 n.14: Successful aircraft hijackings, January 1, 1948—Sept. 8, 1969:

1948: 7	1958: 2	1964: 1
1949: 7	1959: 4	1966: 1
1950: 3	1960: 3	1967: 5
1952: 1	1961: 6	1968: 30
1953: 1	1962: 2	1969: 46
1956: 1	1963: 1	

States of registration of successfully hijacked aircraft:

same. Thus, there are waves of hijackings, with the numbers of actual and attempted hijackings increasing with each wave. The "waves" which have been noted have been during the years 1961-1962; 1964-1965; and 1968-1969. On an average, there have been 4 per month.⁶

But if the number of hijackings is alarming, an exposition of the type of person⁷ that is likely to commit such an act should give renewed cause for alarm. The temperament and make-up of the potential hijacker is especially serious because of the number of lives his action commands.

A large proportion of hijackers are mentally imbalanced and/or in trouble with the law.⁸ The type of mental imbalance can be best described as varying degrees of schizophrenia and/or paranoia, usually brought about by personal or professional failure, or dissatisfaction with

Argentina:	1	Mexico:	5
Bahamas:	1	Nationalist China:	4
Brazil:	1	Peru:	2
Bulgaria:	1	Phillippines:	2
Colombia:	13	Poland:	1
Cuba:	7	Portugal:	2
Czechoslovakia:	7	Romania:	2
Ecuador:	2	Spain:	1
Egypt:	2	U.S.S.R.:	1
Ethiopia:	1	United States:	51
Greece:	4	Venezuela:	5
Hungary:	2	Yugoslavia:	2
Israel:	1		

United States air carriers hijacked, February 17, 1968-Sept. 9, 1969:

Continental:	1	Northwest Orient:	1
Delta:	3	Pan American:	2
Eastern:	14	Southeast:	1
National:	10	Trans World:	2
Northeast:	2	United:	2

"From July 1 through Sept. 8, 1969, there were 12 hijackings, making a total of 46 in 8 months: United States, 6; Colombia, 2; and 1 each of aircraft registered in Egypt, Ethiopia, Greece, and Mexico. Five United States aircraft were hijacked to Cuba; one was hijacked to Syria by two members of the Popular Front for the Liberation of Palestine, acting for political reasons." See *Appendices B & C*.

6. Evans, *supra* note 3, at 705; *supra* note 4, at 445.

7. Although a hijacker usually acts alone, there have been several instances of up to four hijackers securing the control of a single aircraft; and in at least six cases, members of his family accompanied the hijacker. Evans, *supra* note 3, at 700.

8. Stephen, *supra* note 1, at 435. Evans notes that fourteen out of forty-nine identified or attempted hijackers had criminal records. Four were wanted by police on charges from passing bad checks to the attempted murder of a policeman. Three had been military deserters, while two more had been involved in difficulties with domestic relations. Evans, *supra* note 3, at 700. In the longest known hijacking, on November 1, 1969, from California to Rome, the former U.S. Marine who conducted the hijacking claimed during trial in an Italian court that he could not get a fair trial in the United States on charges of burglary from a United States military installation. Chicago Sun-Times, Nov. 12, 1970, at 3, col. 4 (final ed.).

the American way of life.⁹ If the hijacked plane is one of United States' registry, the hijacker will most probably be a United States national, but persons of Cuban nationality run a close second.¹⁰ They are not infrequently armed.¹¹

A degree of consolation can be gained from the fact that, in 1969, 5 out of 6 attempted hijackings by mentally disturbed persons failed,¹² and that, as a rule, the Castro regime has not received hijackers with much warmth.¹³ But a new problem can be foreseen: that of the political extremist. The urban guerilla, perhaps best typified by the Weatherman faction of the Students for a Democratic Society in their heyday, sees the airplane as a perfect instrument for sabotage. The airplane is "just a big, old, fat, pregnant, vulnerable dove out there."¹⁴ Presumably, also, Cuba represents a bona fide sanctuary to the extremist, who would not exclude hijacking from his viable alternatives.

Superimposed on the fact of hijacking is the principle that the United States recognizes no right of extradition except by treaty.¹⁵ The United States has ceased diplomatic relations with Cuba, and thus extradition is not, strictly speaking, possible.¹⁶ The return of hijacked United States aircraft and passengers from Cuba has thus far been successfully

9. Evans, *supra* note 3, at 700; *supra* note 4, at 445; LIFE, April 18, 1969, at 26; TIME, Jan. 31, 1969, at 19.

10. Evans, *supra* note 3, at 700; Stephen, *supra* note 1, at 434.

11. Evans, *supra* note 3, at 699 n.16. Evans notes, *id.*, that, according to a statement from the Department of Justice, 37 hijackers have used guns, 4 have used knives, and 6 have used both weapons. They are not beyond using hand grenades, dynamite sticks, nitroglycerine, and machine guns.

12. *Supra* note 4, at 445.

13. See, e.g., LIFE, April 18, 1969, at 27. It is evident that, in almost all circumstances, the Castro regime has not treated hijackers kindly. There is frequent evidence of imprisonment, and at least one instance of mistreatment. *Id.*

14. The statement is attributed to Carl F. Maisch, director of the FAA's Office of Air Transportation Security. NEWSWEEK, Oct. 26, 1970, at 76.

15. Factor v. Laubenheimer, 290 U.S. 276, 287 (1933).

16. Evans, *supra* note 3, at 706. Professor Evans has a dissenter to this stance. Professor M. Cherif Bassiouni takes the view that cessation of diplomatic relations with a country does not in itself abrogate the terms of any treaty. Thus, extradition from Cuba to the United States is still possible. See Bassiouni, *Political Offenses*, *infra* note 51, at 219. This would present certain other problems, however, for Cuba has expressed a willingness to extradite for hijacking, but only with the caveat that it be mutual. See N.Y. Times, Sept. 28, 1970, at 11, col. 7. The United States has obviously granted asylum to a great number of Cuban nationals who have fled the Castro regime, many of whom have arrived in America by a variety of means, including hijacking. Interview with M. Cherif Bassiouni, Professor, DePaul University College of Law, in Chicago, April 20, 1971. See Evans, *The Political Refugee in United States' Law and Practice*, 3 INT'L. LAWYER 205 (1969). Other writers hold that the "severing of diplomatic ties" with Cuba has suspended the applicable treaty's operation. Hirsch & Fuller, *Aircraft Piracy and Extradition*, 16 N.Y.L. FORUM 392, 402 (1970).

concluded by notification of either the Czech embassy (which maintains diplomatic contact with Cuba) in Washington, or the Swiss Government, which maintains an embassy in Havana. The return of the aircraft and passengers is arranged with appropriate reimbursement.¹⁷

Although the return of the aircraft and passengers has been arranged in this way, the hijacker remains in Cuba. The United States does have the Extradition Treaty of 1904 with Cuba,¹⁸ which provides for extradition of an offender for the offenses of larceny of movable property of a value of more than \$50.00 and kidnaping.¹⁹ By the terms of the treaty, the requisition of such offender is to be made by the diplomatic agents of the U.S. and Cuba²⁰ (presumably the Swiss Government could be classed as such); but the Department of State has taken the view, as early as 1961, "that the Federal offenses of kidnaping a person or transporting a stolen aircraft in interstate or foreign commerce could not be comprehended within the terms of the treaty offenses because the focus in each of the Federal offenses is upon the element of illegal transportation rather than upon the offenses *per se*."²¹ Thus, arguably, the Treaty does not in terms include the offense of illegal transportation.

Hence, it was successfully to combat this problem of aircraft hijacking that the representatives of 61 governments²² attended the International Conference on Air Law convened at Tokyo, Japan, in 1963. The Conference was sponsored by the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations, which has its headquarters in Montreal. The result of the Conference was the drafting

17. Evans, *supra* note 3, at 699.

18. March 2, 1905, 33 Stat. 2265 (1904), T.S. No. 440 (1904).

19. Extradition Treaty with Cuba, March 2, 1905, art. II (14), (15), 33 Stat. 2265 (1904), T.S. No. 440 (1904). Evans, *supra* note 3, at 706 nn. 62, 63.

20. Extradition Treaty with Cuba, March 2, 1905, art. III, 33 Stat. 2265 (1904), T.S. No. 440 (1904); Evans, *supra* note 3, at 706 n. 62. The treaty states: "Requisitions for the surrender of fugitives from justice shall be made by the diplomatic agents of the contracting parties. . . ."

21. Evans, *supra* note 3, at 706-07, *citing* Deputy Legal Adviser (Meeker) to Assistant Attorney General (Miller), July 18, 1961; 6 WHITEMAN, DIGEST OF INTERNATIONAL LAW 790.

22. Afghanistan, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Byelorussian S.S.R., Cambodia, Canada, Ceylon, Chile, Colombia, Congo (Brazzaville), Costa Rica, Cuba, Ecuador, Federal Republic of Germany, Finland, France, Greece, Guatemala, Holy See, Hungarian People's Republic, India, Indonesia, Iraq, Italy, Ivory Coast, Japan, Kuwait, Laos, Liberia, Mexico, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Polish People's Republic, Portugal, Republic of China, Republic of Haiti, Republic of Korea, Republic of Mali, Republic of the Upper Volta, Rumanian People's Republic, Senegal, Spain, Sweden, Switzerland, Ukrainian S.S.R., Union of Soviet Socialist Republics, United

and enactment of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, or, more simply the Tokyo Convention.²³ The Tokyo Convention became effective on December 4, 1969, after ratification by the United States.²⁴

The purpose of this comment is to provide a general explanation of the Tokyo Convention, and to describe the mechanics by which the contracting nation-states are attempting to solve the problem of "Offenses and Certain Other Acts Committed on Board Aircraft."

PRINCIPLES OF JURISDICTION RECOGNIZED IN INTERNATIONAL LAW

Fundamental to any understanding of the Tokyo Convention, which, because of the speed of aircraft, necessarily includes crimes which, more often than not, are international in nature, are the bases by which nation-states assert jurisdiction under international law. In order successfully to prosecute a crime, the nation-state's first step must be to acquire jurisdiction.

THE PRINCIPLE OF NATIONALITY

Simply stated, the mere fact of one's nationality enables the nation to which that nationality applies to assert jurisdiction.²⁵ Further, because aircraft registered in a particular state may be said to have the

Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, and Yugoslavia.

23. See *Appendix A*. October 1, 1969, [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768. For purposes of simplicity, the "Convention on Offenses and Certain Other Acts Committed on Board Aircraft" shall be hereinafter cited as the "Tokyo Convention," "Tokyo," or "Convention."

24. By the terms of the *Convention* itself, it was to come into force 90 days after ratification by twelve of the signatory states. Art. 21, October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; see *Appendix A*. The United States was the twelfth, the other eleven being Denmark, Italy, Mexico, Niger, Norway, Philippines, Portugal, Republic of China, Sweden, United Kingdom, and Upper Volta. Although the ratification by the United States was deposited with International Civil Aviation Organization on September 5, 1969, the agreement entered into force on December 4, 1969. Only those nation-states actually ratifying the *Convention* agree to be bound by it.

It might be noted at this point that a distinction is sometimes drawn between a convention and a treaty, the former being said to look forward to universal acceptance, whereas the latter rely on the principle of reciprocity. Other writers make no distinction between the two. Compare Gutierrez, *Should the Tokyo Convention of 1963 Be Ratified?* 31 J. AIR L. & COM. 1, 13 (1965), with Boyle & Pulsifer, *The Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft*, 30 J. AIR L. & COM. 305, 306 (—).

25. Mendelsohn, *In-Flight Crime: The International and Domestic Picture Under the Tokyo Convention*, 53 VA. L. REV. 509, 511 (1967). As I mentioned, *supra*, jurisdiction is the necessary element. See BASSIOUNI, CRIMINAL LAW AND ITS

"nationality" of that state, this principle also supports the view that events committed on board an aircraft should be submitted to the state of registry of that aircraft.²⁶

A concomitant of this theory is the active-passive personality doctrine. This principle would give a nation-state jurisdiction for a crime committed, anywhere in the world, by or against one of its nationals. This theory is rejected by certain jurisdictions, including the Anglo-American.²⁷

THE PRINCIPLE OF TERRITORIALITY

The basis of this principle is the right of the sovereign to control everything that occurs within (or above) its domain. If something occurs which has an effect on the state itself, this principle likewise gives the nation-state jurisdiction. With this principle it is possible to reason under maritime law that any vessel flying the flag of a particular nation is the juridical extension of that nation. Thus, any act committed against the vessel has an effect on the territory of that state, again giving it jurisdiction.²⁸

A theory which is similar to this is the principle of protection. This, however, is not universally accepted, for this principle would enable a state to assert jurisdiction for a mere *threat* to its sovereignty.²⁹

THE PRINCIPLE OF UNIVERSALITY

Some crimes are so heinous as to be universally accepted as threatening to our present civilization. An example is piracy. Thus, the nature of the crime itself gives all nations the power to assert jurisdiction.³⁰

THE PRINCIPLE OF FIRST LANDING

This is asserted as a practical alternative to crimes committed aboard aircraft. Under this view, the first nation in which the aircraft lands is able to assert jurisdiction.³¹ The practicality of such a view, however, disappears in the case of a forced landing upon the high seas, which would necessitate the application of one of the other theories.

PROCESSES: THE LAW OF PUBLIC ORDER 330 (1969); George, *Extraterritorial Application of Penal Legislation*, 64 MICH. L. REV. 609 (1966).

26. Gutierrez, *supra* note 24, at 3, 7.

27. *Supra* note 25, at 512.

28. *See supra* note 25, at 511. *See also* text accompanying *infra* notes 33, 37, 38.

29. Gutierrez, *supra* note 24 at 4; *supra* note 25, at 512.

30. Gutierrez, *supra* note 24, at 4; *supra* note 25, at 511-12.

31. Gutierrez, *supra* note 24, at 4; *supra* note 25, at 514.

THE LAW OF THE FLAG

The law of the flag has been described as being the same as the principle of nationality. Thus, the nation-state in which an aircraft is registered is able to assert jurisdiction over acts occurring on board.³²

It may be debated whether or not the consideration of a vessel flying the flag of a particular nation as a "juridical extension"³³ of that nation gives rise to a true territoriality-nationality dichotomy, when an aircraft is flying over the high seas, if an aircraft is considered as a "vessel" within applicable maritime law.³⁴ The conflict can arise only when the aircraft flying the flag (*i.e.* is a national) of one state has a crime committed on board the aircraft while it is flying over the territory of another nation; assuming, of course, that the former nation subscribes to the law of the flag theory, and the latter to the principle of territoriality.

THE PRINCIPLE OF MULTIPLE COMPETENCES

This theory admits the coexistence of several types of the above principles. This is the theory of the Tokyo Convention.³⁵

AN OVERVIEW OF TOKYO

A distinction has been drawn between the common law countries, which favor a theory of territoriality, and the civil law countries, which favor the nationality principle.³⁶ It might be noted, however, that the "juridical extension" theory, while applicable to the maritime law of the United States, was refused application to United States' aircraft in the case of

32. See, *e.g.*, *supra* note 25, at 513, citing Fauchille, *Le Domain Aerien et le Regime Juridique des Aerostats*, 8 REVUE GENERALE DE DROIT INTERNATIONAL PUBLIC (1902), as the first proponent of this theory.

33. See text accompanying *supra* note 28.

34. See text accompanying *infra* notes 37, 38.

35. Gutierrez, *supra* note 24, at 4; *supra* note 25, at 514-15. Assume that the act of hijacking is piracy. On a flight of a BOAC jet from Paris to Chicago, an Italian national attempts a hijacking. To get the pilot to accede to his wishes, he murders a German stewardess as the plane is over Indiana. The plot is foiled, however, and the plane requests a forced landing in Canada, which is effectuated.

Because it happened on a BOAC aircraft, England can assert jurisdiction under the law of the flag. Both Italy and Germany could assert jurisdiction under the active-passive personality principle. Because murder occurred in United States' airspace, the United States can assert jurisdiction under the territoriality principle. Canada can assert jurisdiction as the place of first landing. The crime of piracy allows any and all states to assert jurisdiction under the principle of universality. The *Tokyo Convention* recognizes the potentiality of assertion of all the jurisdictions delineated above.

36. Gutierrez, *supra* note 24, at 4-5.

United States v. Cordova,³⁷ on the ground that the aircraft was not a "vessel," and that thus a crime committed *over* the high seas was not committed *upon* the high seas. This case gave rise to the enactment of paragraph 5 of section 7 of Title 18 of the United States Code (1964) which defines the "special maritime and territorial jurisdiction of the United States" to include flag aircraft of the United States flying over the high seas.

Although one work has suggested that the above legislation resulted in the extension of the law of the flag to American aircraft,³⁸ this is not truly correct, for such legislation is merely a "juridical extension" of the territory of the United States, coextensive with maritime law designations. As such, the "law of the flag," if such, is extended only to United States aircraft flying over the high seas.³⁹ Therefore, the United States, until its ratification of the Tokyo Convention, remained a nation which asserted the principle of territoriality as a basis for its criminal jurisdiction.

There are two other concepts necessary to explore before an examination of the text of the Convention proper. It has been noted that the Tokyo Convention allows for the coexistence of several recognized bases for the assertion of jurisdiction. Although this is recognized, the Convention delimits no system of priorities of jurisdiction among the several nations which may have a basis for asserting it.⁴⁰ The contracting states are free to decide which among them shall assert jurisdiction, and the manner in which it will be asserted; a provision proposed by the United States.⁴¹ Although there are provisions in the Convention for arbitration of any dispute and final determination by the International Court of Justice,⁴² such provisions probably will, in practice, result in needless

37. 89 F. Supp. 298 (E.D.N.Y. 1950).

38. Note, *Aircraft Hijacking: Criminal and Civil Aspects*, 22 U. FLA. L. REV. 72, 86 (1969).

39. 18 U.S.C. § 7(5) (1964) states that the "special maritime and territorial jurisdiction of the United States" includes "Any aircraft belonging in whole or in part . . . to any [United States] corporation . . . while such aircraft is in flight over the high seas, or over any other waters . . . out of the jurisdiction of any particular State." This does not, of course, extend maritime jurisdiction to airspace immediately subjacent to "any particular" nation-state.

40. Boyle & Pulsifer, *supra* note 24, at 329.

41. Boyle & Pulsifer, *supra* note 24, at 353. One writer, however, has found an implicit system of priorities, based upon the principle of negative inclusion (*i.e.* that certain provisions of the *Convention* refer only to those matters not specifically excluded). This is, as the writer states, an especially "unique" theory. Denaro, *supra* note 1, at 188-92.

42. Tokyo Convention art. 24, October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768. See *Appendix A*.

hindrance and frustration of the purposes of the Convention, especially in disputes concerning the major powers.

Another problem is that nowhere in the Convention is there a provision for the principle *ne bis in idem, del'* or double jeopardy. Should one accept the notion of no priorities for jurisdiction, an argument that *ne bis in idem* should be adopted readily follows, to prevent a subsequent exercise of jurisdiction for the same crime after a trial with resulting punishment or finding of innocence.⁴³ Although the adoption of a provision of this type was also discussed, it too, was finally dropped.⁴⁴

THE SCOPE OF THE CONVENTION

Article 1⁴⁵ gives the basic formula for the *vis vitae* of the Convention. The basic prerequisite is that an aircraft registered in a contracting state be in flight, or on the surface of the high seas or any area outside the territory of any state. An aircraft is considered to be in flight from the moment when power is applied for take-off, until the moment the landing run ends.

The second prerequisite is that an offense or act must be done by a person *on board* the aircraft. Presumably the offense must be one against penal law, and the act must be one which may or does jeopardize the safety of the aircraft, or of persons or property on board the aircraft. Also, the use of the word "person" would appear to include not only the passengers, but also the crew, and even the aircraft commander.

Two effects can immediately be seen. One is that the language excludes saboteurs who merely plant a bomb on the plane, without taking the flight.⁴⁶ Another is that the Convention purportedly applies even to purely domestic flights.⁴⁷ In those nations that recognize the territoriality

43. Boyle & Pulsifer, *supra* note 24, at 313, citing Danilovics and Szondy, *Les Infractions à la loi penale commises à bord des aeronefs*, 14 *DROIT AËRIEN* 402 (1914).

44. Gutierrez, *supra* note 24, at 17. The principle *ne bis in idem* is notoriously lacking, however, in almost all documents which look to international agreement. It seems that the nation-states focus more upon the potential potency of the assertion of prosecutorial powers than upon actual punishment of the offender.

45. Tokyo Convention, October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; see *Appendix A*.

46. Boyle & Pulsifer, *supra* note 24, at 331. Throughout the *Convention*, it is made clear that, while the *Convention* ostensibly deals with offenses committed on board aircraft, the person who commits the offense must also be on board.

47. Boyle & Pulsifer, *supra* note 24, at 332; Denaro, *supra* note 1, at 175. For example, on a flight of a United plane from Kennedy airport in New York to O'Hare Field in Chicago, the flight, from start to finish, is accomplished wholly within United States airspace. However, the *Convention* applies, for the aircraft is "in flight" as defined within the *Tokyo Convention*.

principle, however, an aircraft flying over the territory of the state in which it is registered would be subject to the laws of that nation in any event.⁴⁸

The Convention applies not only when the airplane is in flight, but also applies in the situation of a forced landing on the high seas. Military, customs, and police aircraft, even if registered in a contracting state, are not within the scope of the Convention.

Article 2⁴⁹ exempts certain offenses against penal law from the application of the Convention. Thus, if the offense committed on board is of a political nature or based upon racial or religious discrimination, the Convention is ordinarily inapplicable. By ratification, however, a state does not give up its right to prosecute a crime of this nature, for it has not given up any jurisdiction it has a right to assert.⁵⁰ Likewise, if the offense is of a political nature, or based upon religious or racial discrimination, and some form of action is necessary for the safety of the aircraft or of persons or property on board, this Article authorizes such action. The section presents obvious problems of interpretation; many persons would have difficulty interpreting the meaning of the phrase "of a political nature."⁵¹

JURISDICTION UNDER THE TOKYO CONVENTION

Paragraph 1 of Article 3⁵² is considered the most important Article

48. Tokyo Convention art. 3(3), October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; see *Appendix A*. This is especially true of the United States, which, even before the *Convention* recognized the principle of territoriality, and thus would assert jurisdiction for acts occurring on board a plane flying within its airspace.

49. Tokyo Convention, October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6758; see *Appendix A*.

50. See text accompanying *infra* note 73.

51. Boyle & Pulsifer, *supra* note 24, at 333. Particular issue may be taken with the phrase, "offenses against penal laws of a political nature," (emphasis added). As a rule, the only offense which can truly be classified as a "political" crime is the crime of treason, for this crime looks to the overthrowing of a particular nation-state. Other crimes are, by their very nature, apolitical. For instance, the crime of murder, whether it be committed against serf, prince, or president, has no politics, unless politics can be gained from the person against whom the crime is committed. The taking of a life, the destruction of a vessel, the assault upon an ambassador are crimes, purely and simply, per the proscription of statute. Any attempt to politicize them must fail. If I may paraphrase dear Gertrude, "A murder is a murder is a murder." See Bassiouni, *Ideologically Motivated Offenses and the Political Offenses Exception in Extradition—A Proposed Juridical Standard for an Unruly Problem*, 19 DEPAUL L. REV. 217 (1969); and Bassiouni, *International Extradition in American Practice and World Public Power*, 36 TENN. L. REV. 1, 16-19 (1968).

52. Tokyo Convention, October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; see *Appendix A*.

in the entire Convention,⁵³ for it is an extension of the law of the flag to each registering state.⁵⁴ The state of registration of the aircraft clearly has jurisdiction over acts occurring aboard its aircraft over the high seas by means of this section. But the section *exacts* from each contracting state even more: it represents an independent grant of jurisdiction to each sovereign which flies a registered aircraft through the airspace of another sovereign, by that other sovereign. Thus, it is clear that at least the state of registration of the aircraft can assert its jurisdiction over offenses and acts committed on board the airplane anywhere in the world, once the Tokyo Convention applies.

This, then, is the greatest strength of the Convention, for it can assure eventual prosecution by at least one sovereign. This jurisdiction may therefore be asserted by a nation recognizing the nationality principle even when an offense or act is committed aboard its registered aircraft in flight in the airspace of a nation that, until the Convention, recognized solely the territoriality principle.

The United States and others strongly opposed the view that an obligation should be placed upon a contracting state to exercise the jurisdiction granted by paragraph 1 of this Article.⁵⁵ The instruction to the drafting committee reflected this fact. Thus, paragraph 2 has been interpreted as placing an obligation on contracting states merely to define the precise offenses over which jurisdiction is able to be asserted: the decision *whether or not* to assert the jurisdiction was left to the state of registry.⁵⁶

Pursuant to this obligation, Congress has made criminal certain acts committed aboard aircraft in flight in air commerce. These include assault,⁵⁷ maiming,⁵⁸ larceny,⁵⁹ receiving stolen goods,⁶⁰ murder,⁶¹

53. Boyle & Pulsifer, *supra* note 24, at 333.

54. Gutierrez, *supra* note 24, at 2.

55. Boyle & Pulsifer, *supra* note 24, at 335.

56. Boyle & Pulsifer, *supra* note 24, at 335-36, *citing* Documentation for Diplomatic Conference, Tokyo, Japan, ICAO Doc. SR/9. *See supra* note 25, at 515. It might be noted that not many states have an offense defined for aircraft hijacking. For instance, a 1969 hijacking from California to Rome was tried by an Italian court on the basis of kidnaping, assault, and illegal weapons charges. The United States made no formal extradition request. CHICAGO SUN-TIMES, *supra* note 8.

57. 18 U.S.C. § 113 (1964). This crime, as well as the ones described in the text accompanying *infra* notes 58-70, were made crimes when committed within the "special maritime and territorial jurisdiction of the United States."

58. 18 U.S.C. § 114 (1964).

59. 18 U.S.C. § 661 (1964).

60. 18 U.S.C. § 662 (1964).

61. 18 U.S.C. § 1111(b) (1964).

manslaughter,⁶² attempt to commit murder or manslaughter,⁶³ rape,⁶⁴ carnal knowledge of a female under the age of sixteen,⁶⁵ robbery,⁶⁶ interference with members of the flight crew or flight attendants,⁶⁷ carrying concealed weapons aboard aircraft,⁶⁸ conveying false information concerning attempts or alleged attempts to commit any of the offenses enumerated in the statute,⁶⁹ and aircraft piracy.⁷⁰ It might be noted that there is no statute of limitations for the offense of aircraft piracy,⁷¹ and, by fleeing, the offender tolls any applicable statute of limitations.⁷²

Thus, by ratifying the Tokyo Convention and enacting appropriate legislation, the United States can assert jurisdiction over the above offenses committed on its registered aircraft occurring within the sovereign airspace of other ratifying states. A refusal so to do, however, may serve as precedent for other nations since the ultimate purpose of the Article, that is, that at least one nation punish the offender would be frustrated.

Paragraph 3 of Article 3 establishes the principle of multiple competences. Under this paragraph, the principles of jurisdiction enunciated previously⁷³ may be asserted over in-flight crimes, if the crimes as defined are concomitant with the national law of the state which is striving to assert it.

Article 4⁷⁴ gives a limited right to a contracting state to "interfere" with an aircraft in flight to a contracting state though not the state of registry of the aircraft, in certain limited situations.⁷⁵

62. 18 U.S.C. § 1112(b) (1964).

63. 18 U.S.C. § 1113 (1964).

64. 18 U.S.C. § 2031 (1964).

65. 18 U.S.C. § 2032 (1964).

66. 18 U.S.C. § 2111 (1964).

67. 49 U.S.C. § 1472(j) (1964).

68. 49 U.S.C. § 1472(l) (1964).

69. 49 U.S.C. § 1472(m) (1964).

70. 49 U.S.C. § 1472(i) (1964).

71. 18 U.S.C. § 3281 (1964): "An indictment for any offense punishable by death may be found at any time without limitation except for offenses barred by the provisions of law existing on August 4, 1939."

72. 18 U.S.C. §§ 3282 (5-year statute of limitations for any non-capital offense), 3290 ("No statute of limitations shall extend to any person fleeing from justice.") (1964).

73. See text accompanying *supra* notes 25-35.

74. Tokyo Convention, October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; see *Appendix A*.

75. Presumably interference means forcing it to land. *Supra* note 25, at 518.

For purposes of argument, it will be assumed that this right is given only to a subjacent (*i.e.* that state in whose airspace the airplane is, under the principle of territoriality) contracting state.⁷⁶

Presumably, a violation of the subjacent state's laws can have an effect on its territory.⁷⁷ Article 4(b) is a reiteration of the active-passive personality principle, and gives a right of interference with an aircraft in flight. A breach of the security of a nation is but an extension of the principle of territoriality, and the same right is given to the contracting state in this instance.

Article 4(d) gives some credence to the argument that this Article applies only to *subjacent* contracting states. Rules and regulations pertaining to flight or maneuver of aircraft normally apply to flight *in a state's airspace*. Since no qualification is given in this or any other section of this Article, it can be argued that this section is applicable as are the other sections: to a limited right of interference in the subjacent state's airspace.

The wording of Article 4 is ambiguous. Especially Article 4(b) which appears to allow the contracting state to "interfere" with the aircraft *anywhere* in the world. The tenor, however, would more practically be to grant a right to a state only while the aircraft is within its territory. The Article likewise imposes no obligation upon the contracting state to exercise its right to interfere. All in all, the state can "interfere" with the aircraft anytime it wants to, so long as it doesn't do it with the purpose of "exercis[ing] its criminal jurisdiction."⁷⁸

POWERS OF THE AIRCRAFT COMMANDER

This section of the treaty⁷⁹ is unique in the history of air law. By its application, certain duties of the contracting state are brought into effect.

Initially, it applies only in the case of convention-defined international flight. This type of flight occurs in two instances: (1) Where the last point of take-off or the next point of intended⁸⁰ landing is in a state other

76. Compare Boyle & Pulsifer, *supra* note 24, at 336-37, who take it for granted that it is a subjacent state, with Gutierrez, *supra* note 24, at 9 n.63, who has difficulty with this interpretation.

77. Gutierrez, *supra* note 24, at 10.

78. Tokyo Convention, October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; see *Appendix A*.

79. Tokyo Convention, ch. 3, art. 5, October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; See *Appendix A*.

80. The term is nowhere defined in the *Convention*. A flight from Paris to Miami has as its "intended" point of landing Miami International Airport. In the

than that of registration; or (2) when the aircraft flies in the airspace of a state other than that of registration subsequent to the offense or act committed or about to be committed with the person still on board. Therefore, the flight of a United States registered aircraft from Los Angeles to Oahu, although an international flight (for it traverses international waters), is not convention-defined international flight, for neither of the two instances have occurred. In purely domestic flight, then, the recent introduction of military sky marshals⁸¹ to ensure safety of air carriers can cause no conflicts with the aircraft commander's authority under the Convention, for he has none in this case.

Assuming that convention-defined international flight is present, such flight is deemed to be in progress from the moment when all the aircraft's external doors are closed following embarkation until the moment when any such door is opened for disembarkation. Thus, when the commission or threatened commission of an offense or act occurs while the plane is on the runway awaiting take-off, the aircraft is in flight, and certain powers devolve upon the aircraft commander, even though the aircraft is *not* "in flight" for purposes of Article 1.⁸² There is continued application even in the case of a forced landing and until the competent authorities of any (?)⁸³ state take over responsibility for the aircraft and persons or property on board.

The language of Article 6⁸⁴ gives only a power to the aircraft commander; it does not require him to exercise it. The power can arise only when convention-defined international flight is in progress, as per Article 5 above. Assuming that such flight is in progress, if the commander has "reasonable grounds" to believe that a person on board the aircraft has committed or is about to commit an offense against penal law, or an act which may or does jeopardize the safety of the aircraft, of persons or property therein, or good order and discipline on board, he may take "reasonable measures," including restraint, necessary to preserve the safety, good order and discipline of the aircraft.

These "reasonable measures" may bring into effect corresponding pow-

case of a hijacking in flight to Cuba, however, can it be said that now the "intended" point of landing is José Martí Airport in Havana?

81. NEWSWEEK, Oct. 26, 1970, at 77.

82. For purposes of simplicity, I shall refer to the flight of Chapter I as "Article I flight," and the flight which actuates the provisions of Chapter III as "convention-defined international flight."

83. See text accompanying article 9, *infra*.

84. Tokyo Convention, October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; see *Appendix A*.

ers and duties of the various states: he may "deliver" such person to "competent" authorities, or the commander may "disembark" him. The two terms must always be distinguished, for each carries with it corresponding duties, some of which are co-extensive in each case. Presumably, "competent" authorities are those authorities of contracting states only.⁸⁵

Once the aircraft commander desires to exercise his power of restraint, he may *require* crew members, *request* passengers, or authorize any of them to do the actual restraining. By the use of this language, the aircraft commander, if he wishes to take any other type of "reasonable measures," must do so himself, for he does not have the foregoing authority over crew and passengers beyond that indicated.

Passengers and crew members are similarly given a qualified power in this Article. They may take "preventive" measures alone, without authorization from the aircraft commander, to preserve the safety of the aircraft, or of persons or property therein if one condition is met: they must have reasonable grounds to believe that such measures are immediately necessary to carry into effect the above objects. It might be noted that this section comes into play when any "person on board" commits a prohibited act. Thus, this power may be exercised when the commander himself does or threatens to do a prohibited act. The powers of passengers are certainly less than those of the aircraft commander, and, true to form, *no duty* devolves upon them by this Article.

Article 7⁸⁶ gives the time limitation for any restraint imposed upon a person pursuant to the power given the commander under the preceding Article. Restraint ordinarily is not to extend beyond the point of first landing. It can, however, continue beyond that point in four instances: (1) Where the aircraft commander desires to disembark the passenger, but the land state is not a contracting state and refuses disembarkation;⁸⁷ or (2) the aircraft makes a forced landing and the aircraft commander is unable to *deliver* that person to *competent* authorities;⁸⁸ or (3) the person agrees to onward carriage under restraint (apparently because he doesn't want to disembark in the state in which the aircraft has landed);

85. See text accompanying discussion of *infra* Article 9.

86. Tokyo Convention, October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; see *Appendix A*.

87. It might be noted that a contracting state has no power to refuse disembarkation. See text accompanying *infra* Article 12.

88. Again, the word "competent" is used in conjunction with the aircraft commander's power to "deliver." Presumably, this then means he cannot deliver him to the authorities of other than a contracting state. See text accompanying *infra* Article 9.

or (4) the aircraft commander has imposed restraint in order to effectuate his other power of delivery, and the aircraft has landed in a non-contracting state.

Paragraph 2 of Article 7 imposes another duty upon the aircraft commander if he decides to exercise his power of restraint. As soon as possible, he has the duty to notify the authorities of the state in which he intends to land that he has a person on board under restraint, and of the reasons for the restraint.

A built-in conflict is present in the terms of Article 7. Nothing is said of what happens if the aircraft lands in a non-contracting state which is able to assert jurisdiction over the offense and *wants* disembarkation, but the aircraft commander has imposed restraint in order to effectuate his power of delivery. Probably the *power* to assert jurisdiction would govern the *power* of the aircraft commander to deliver.

This section⁸⁹ gives the mechanics for the effectuation of the aircraft commander's power to disembark a passenger. It is to be noted that he has the *power* to disembark a person in *any* state in which the aircraft lands, once the power is exercisable. If it is necessary to protect the safety of the aircraft or of persons or property therein, or to maintain good order and discipline on board, and he has reasonable grounds to believe that the person has committed or is about to commit an act which may or does jeopardize the safety or good order and discipline, the power arises, although the commander has no *duty* to exercise it. Once he disembarks such person, though, he has a duty to report the fact of and the reasons for the disembarkation.

It is well to note that he may disembark a passenger without prior restraint.⁹⁰ If no restraint is used, he may disembark without notifying the landing state, and thus it would have no opportunity to refuse disembarkation.⁹¹ Likewise, if the person has committed a penal offense which does not jeopardize safety or good order, the Convention applies, but the commander has no power of disembarkation.⁹² The power to disembark applies when a landing is made in *any* state.

Article 9⁹³ describes the procedure of the aircraft commander's power

89. Tokyo Convention, October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; see *Appendix A*.

90. That is, with only the "reasonable measures" taken, which are contemplated in Article 6, *supra*.

91. The duty to notify in Article 7 is conditioned upon prior restraint, while the duty in article 8 to report can be reasonably interpreted as a *post hoc* report.

92. Article 1(a) is not included by reference in Article 8.

93. Tokyo Convention, October 1, 1969, [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; see *Appendix A*.

to deliver. The word "deliver," as used in the Convention, is a word *d'art*, and it is only in this Article that one can derive the true meaning of the word as it is used in the other Articles. The commander may *deliver* to the *competent* authorities of any *contracting state*. By using this language, the Convention apparently means that the only "competent" authorities are those of a contracting state, when the commander seeks to exercise his power of delivery.

The power to deliver arises only when the commander has *reasonable grounds* to believe that a person *has already committed on board* the aircraft an offense which is, *in his opinion*, a *serious offense* of the penal law of the state of registration of the aircraft. The commander need not know the law of the state of registration—the offense need be serious only in his opinion; restraint and delivery can follow. He need have only reasonable grounds to believe that the offense has been committed.

Before going any farther, the power to disembark pursuant to Article 8 can be exercised only upon landing *within* a state; likewise the power to deliver pursuant to Article 9 can be exercised only when the aircraft lands *within* a contracting state. In the case of a forced landing pursuant to Article 4, no problem is presented, for the landing will be within a contracting state, enabling the commander to deliver or disembark. In the case of a forced landing by a non-contracting state, the same built-in conflict arises as discussed in Article 7.⁹⁴ But where the aircraft makes a forced landing at sea, the commander's powers to disembark or deliver cease: the airplane has not landed within a state. Also, his power to take reasonable measures, including restraint, ceases unless an offense or act was committed *on board*.⁹⁵ His power does not extend to acts committed aboard life rafts. The Convention, however, still applies, for the aircraft is in "any other area outside the territory of any state,"⁹⁶ even though sunk.

Once the commander intends to deliver a person, this section also places two duties on him. He must, as soon as practicable, notify the authorities of the contracting state of his intention, and of the reasons therefor.

The second duty is found in paragraph 3, and this paragraph gives a

94. See *supra* p. 32.

95. Tokyo Convention Art. 5(2), October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; see *Appendix A*. Also note the use of the words, "competent authorities of a state . . ." (emphasis added).

96. Tokyo Convention art. 1(2), October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; see *Appendix A*. This is typical of the anomalies that can arise under the *Convention*.

modicum of protection to the suspected offender. Although the aircraft commander must furnish the authorities to whom the person is delivered evidence and information concerning the alleged offense, only what evidence and information lawfully in his possession under the law of the state of registration is to be tendered. Thus, for United States registered aircraft, constitutional guarantees apply.

Article 10⁹⁷ gives immunity, for actions taken pursuant to the Convention, from any proceeding by a person against whom actions were taken in accordance with the terms of the Convention. The immunity is granted to the aircraft commander, the crew, any passenger, the owner or operator of the aircraft, and the person on whose behalf the flight was performed.

This Article grants immunity with respect to every type of action brought by the suspected offender. It does not, however, prevent an action by another passenger who was unjustly and incidentally harmed by action taken against such suspected offender.

UNLAWFUL SEIZURE OF AIRCRAFT

Article 11⁹⁸ imposes a duty upon contracting states to take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control over the aircraft, when a person on board has unlawfully committed or threatened to commit an act of interference, seizure, or other wrongful exercise of control over the aircraft in Article 1 flight, or when such act is about to be committed. Presumably, whether or not the act is unlawful is to be determined by the law of the state of registration, passed pursuant to Article 3, paragraph 2.⁹⁹ "Appropriate measures" mean all that is feasible and lawful to do. Thus a contracting state 1000 miles from the scene of the hijacking is obliged to do nothing, for this would not be feasible; to pursue an aircraft through the airspace of another state would not be lawful.¹⁰⁰ It remains, therefore, that a contracting state has the *duty* to force down an unlawfully seized aircraft within its own airspace, if the next paragraph in the Article is to be given meaning.

Paragraph 2 of Article 11 states that the contracting state in which the

97. Tokyo Convention, October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; *see Appendix A*.

98. Tokyo Convention, T.I.A.S. No. 6768; *see Appendix A*.

99. Boyle & Pulsifer, *supra* note 24, at 345. *See* text accompanying *supra* notes 55-72.

100. Boyle & Pulsifer, *supra* note 24, at 345.

airplane lands has the duty to permit the passengers and crew to continue their journey as soon as is practicable, returning the aircraft and its cargo to those lawfully entitled to possession. The duties imposed by Article 11 are some of the few actually imposed by the Tokyo Convention.

POWERS AND DUTIES OF STATES

There is an unqualified duty placed upon contracting states by Article 12.¹⁰¹ They must permit the aircraft commander of a plane registered in another contracting state to disembark the person sought to be disembarked pursuant to the exercise of the commander's power of Article 8.

Article 13¹⁰² likewise places a duty upon contracting states to accept delivery of a person pursuant to the exercise of the power granted to the aircraft commander by Article 9. Once the contracting state has taken delivery, it must take custody (if it is satisfied that the circumstances so warrant) or other measures to ensure the presence of that person. The same duty of custody or other measures to ensure his presence applies to those suspected of violations of Article 11, and whatever measures are taken are to be instigated by the law of the state in which the aircraft lands. Such measures may be continued for such time as is reasonably necessary to institute criminal or extradition proceedings. Once custody is taken, the contracting state has an obligation to assist the person in immediate communication with the nearest appropriate representative of the state of which he is a national.

When a person is delivered, or when an aircraft lands in a contracting state following the commission of an unlawful seizure of aircraft, such contracting state has the duty to make an immediate preliminary inquiry into the facts. Once the state has taken a person into custody, it must immediately notify the state of registration of the airplane and the state of which the detained person is a national. If it deems it advisable, it may notify any other interested state; but it *must* promptly report its findings to *all* the notified states, and also indicate whether or not it intends to exercise jurisdiction.

Article 14¹⁰³ states that: (1) When a person has been disembarked or delivered by the aircraft commander, or when he has disembarked after committing an unlawful seizure of aircraft; *and* (2) when such person cannot or does not desire to continue his journey; *and* (3) the state of

101. Tokyo Convention, October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; *see Appendix A.*

102. Tokyo Convention, T.I.A.S. No. 6768; *see Appendix A.*

103. Tokyo Convention, T.I.A.S. No. 6768; *see Appendix A.*

landing refuses to admit him; and (4) he is not a permanent resident or national of that state; then that state *may* return him to: (1) The territory of the state of which he is a permanent resident or national; or (2) the territory of the state in which he began his journey by air. Because the Convention requires the presence of certain persons in contracting states, certain safeguards were placed in paragraph 2. Thus, that paragraph provides that no act of the contracting state pursuant to Articles 13 and 14 shall in any way affect the state's laws with respect to immigration, deportation, or extradition.

In Article 15¹⁰⁴ it is provided that any person who has been disembarked or been delivered by the aircraft commander, or who has disembarked after committing an unlawful seizure of aircraft, shall be at liberty to proceed to any destination of his choice as soon as is practicable, provided his presence is not required by the law of the state of landing for purposes of extradition or criminal proceedings. Paragraph 2 places a duty upon contracting states to accord any person in their territory pursuant to Articles 8, 9, or 11 the same treatment accorded to their own nationals in like circumstances.

OTHER PROVISIONS OF THE TREATY

Because most extradition treaties refer to crimes committed within the territory of a state, Article 16¹⁰⁵ states that an offense committed aboard a registered aircraft of a contracting state shall be considered, for purposes of extradition, as if committed not only in the place it occurred, but also in the territory of the registering state.¹⁰⁶ The Article goes on to say the Convention creates no duty to grant extradition.

Article 17¹⁰⁷ is self-explanatory. Article 18 states that where an aircraft is registered in more than one state, those states of registration shall designate which one among them shall be considered as the state of registration for purposes of the Convention, and shall communicate this decision to the International Civil Aviation Organization.¹⁰⁸

Articles 19¹⁰⁹ and 22¹¹⁰ limit the possible parties to the Convention

104. Tokyo Convention, T.I.A.S. No. 6768; *see Appendix A.*

105. Tokyo Convention, T.I.A.S. No. 6768; *see Appendix A.*

106. Boyle & Pulsifer, *supra* note 24, at 351.

107. Tokyo Convention, October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; *see Appendix A.*

108. Tokyo Convention, October 1, 1969 T.I.A.S. No. 6768; *see Appendix A.*

109. Tokyo Convention, T.I.A.S. No. 6768; *see Appendix A.*

110. Tokyo Convention, T.I.A.S. No. 6768; *see Appendix A.*

only to members of the United Nations or the Specialized Agencies, thereby effectively blackballing Red China. Article 21¹¹¹ states that the Convention shall come into force for each ratifying state 90 days after deposit of the instrument of ratification with the International Civil Aviation Organization.¹¹²

CONCLUSION

Looking toward United States' interests, and to the realities of hijacking, it must be remembered that the Tokyo Convention binds only those states which ratify it. To date, Cuba has not. However, as in the case of the usual hijacking, both the United States and Cuba would be able to assert jurisdiction over the hijacker even under the Convention.¹¹³ Perhaps the present system of returning merely the passengers and aircraft¹¹⁴ has a lesser potentiality than the Convention for a face-to-face confrontation between the great powers, although it lessens the deterrent effect of summary prosecution of the hijackers, than the Convention.

It has been previously noted that the Tokyo Convention delimits no system of priorities to the exercise of jurisdiction, while it admits of many potential exercises.¹¹⁵ There are three ways of viewing this from a practical standpoint. First, the setting up of priorities would be the most practical. Second, the more strict the rule is, the more likely it will be broken. Third, knowing the adamancy of states with respect to their own sovereignty, it is unlikely that they would submit to a possible exercise of their jurisdiction only at the largess of a state having a higher priority: thus, the Convention would never be ratified. But in truth the realities of a system of no priorities are just as, if not more, dismal.

Practically speaking, is not the punishment of the hijacker the prime movant of any agreement similar to the Tokyo Convention? If the focus is on prosecution, it makes little difference *who* does it; if *nations* are to protect hijacked planes and passengers, it makes little difference which *nation* does it. However, real pragmatism would encompass an international airline boycott of any nation that harbors hijackers, or detains hijacked planes and passengers. This surely would be more effective than

111. Tokyo Convention, T.I.A.S. No. 6768; see *Appendix A*.

112. Tokyo Convention, T.I.A.S. No. 6768; see *Appendix A*.

113. The U.S. because it is the state of registry, Tokyo Convention art. 3(1), October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; and Cuba under any principle of national law, Tokyo Convention art. 3(3), October 1, 1969 [1969] 20 U.S.T. 2941, T.I.A.S. No. 6768; see *Appendix A*.

114. See text accompanying *supra* notes 1-21.

115. See text accompanying *supra* notes 40-42.

leaving the nations involved to fight out the assertion of jurisdiction among themselves. The International Civil Aviation Organization is currently working on such a project.¹¹⁶

The main thrust of *Tokyo* can properly be said to be: Get the airplane and passengers back on their route as soon as possible. Too little emphasis is placed upon punishment of the offender, with an aim toward the eventful stopping of all aircraft hijacking. This weakness was apparently noticed by the International Civil Aviation Organization, for it has recently proposed a document whose title tells it all: Convention for the Suppression of Unlawful Seizure of Aircraft.¹¹⁷ This contains some appropriate language:

The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offense was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. . . .¹¹⁸

Strong language, but it will become effective upon ratification by ten nations.¹¹⁹ It took *six years* to make *Tokyo* effective.

Another problem in this whole area is emotion. For example, what if the phrase, "Hijacking to Cuba," is substituted for "Asylum from Communism?" The seizure of the Soviet Aeroflot on October 12, 1970,¹²⁰ by two passengers who diverted it to Turkey is surely an example of the latter. In the absence of an extradition treaty, is prosecution by the landing state "good," even under the Convention?¹²¹ What about *ne bis in idem*?

In short, the Convention delimits many powers, but specifies too few

116. See *supra* note 81, at 78. At least one other writer has also advocated this view. Buckley, *The Hijackers*, N.Y. Post, Sept. 15, 1970, at 36 col. 1; Buckley, *Terror in the Air*, N.Y. Post, Mar. 12, 1970, at 32 col. 1.

117. I.C.A.O. Doc. No. 8920, December 16, 1970.

118. *Id.* at art. 7.

119. *Id.* at art. 13. And when, of course, only between those ten.

120. See *supra* note 81, at 42.

121. The question of asylum is equally important. Professor Bassiouni notes that, as two nations become closer ideologically, asylum ceases to be a focal point of their "non-relationship," and extradition for various offenses approaches the heart of their "relationship." Interview with M. Cherif Bassiouni, Professor, DePaul University College of Law, in Chicago, April 20, 1971. This ideological affinity is manifested in some part by the treaties existing between the two countries. It is of note, for example, that, in a list of all the treaties the United States has with each country with which it has an extradition treaty, the United States has 9 treaties out of a possible 59 with Cuba, and 26 out of a possible 59 with Canada. Bassiouni, *Ideologically Motivated Offenses and the Political Offense Exception in Extradition—A Proposed Juridical Standard for an Unruly Problem*, 19 DEPAUL L. REV. 217, Appendix C (1969). Pragmatism appears to bear him out. We will extradite to Canada, but not to Cuba.

duties. The aircraft commander is *required* to take *no* action, even when the ship is in danger; the duties of contracting (*i.e.* ratifying) states hinges upon the prior exercise of the power of the aircraft commander; there is no creation of a *right* of extradition; *et cetera ad nauseam*.

Perhaps the greatest drawback to the Tokyo Convention is the one fault it couldn't avoid: It is, by nature, an *international* agreement. As such, it relies on the continued goodwill of the nations bound by it for any lasting effectiveness. At a time when it is difficult for the major powers even to keep *peace*, reality would appear to reject any possibility of continued international agreement concerning incidents which are charged with such a high potentiality for international conflicts. This may be one reason why the member-states of ICAO saw fit to draft and sign the 1970 Hague Convention on the Unlawful Seizure of Aircraft, discussed in Professor Sundberg's article in this issue.

Robert F. Klimek

APPENDIX A

TOKYO CONVENTION

CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS
COMMITTED ON BOARD AIRCRAFT

THE STATES Parties to this Convention HAVE AGREED as follows:

CHAPTER I—SCOPE OF THE CONVENTION

ARTICLE 1

1. This Convention shall apply in respect of:
 - (a) offences against penal law;
 - (b) 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.
2. Except as provided in Chapter II, this Convention shall apply in respect of offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State.
3. For the purpose of this Convention, 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.
4. This Convention shall not apply to aircraft used in military, customs or police services.

ARTICLE 2

Without prejudice to the provisions of Article 4 and except when the safety of the aircraft or persons or property on board so requires, no provision of this Convention shall be interpreted as authorizing or requiring any action in respect of offences against penal laws of a political nature or those based on racial or religious discrimination.

CHAPTER II—JURISDICTION

Article 3

1. The State of registration of the aircraft is competent to exercise jurisdiction over offences and acts committed on board.
2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 4

A Contracting State which is not the State of registration may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board except in the following cases:

- (a) the offence has effect on the territory of such State;
- (b) the offence has been committed by or against a national or permanent resident of such State;
- (c) the offence is against the security of such State;

(d) the offence consists of a breach of any rules or regulations relating to the flight or manoeuvre of aircraft in force in such State;

(e) the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under a multilateral international agreement.

CHAPTER III—POWERS OF THE AIRCRAFT COMMANDER

ARTICLE 5

1. The provisions of this Chapter shall not apply to offences and acts committed or about to be committed by a person on board an aircraft in flight in the airspace of the State of registration or over the high seas or any other area outside the territory of any State unless the last point of take-off or the next point of intended landing is situated in a State other than that of registration, or the aircraft subsequently flies in the airspace of a State other than that of registration with such person still on board.

2. Notwithstanding the provisions of Article 1, paragraph 3, an aircraft shall for the purposes of this Chapter, be 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. In the case of a forced landing, the provisions of this Chapter shall continue to apply with respect to offences and acts committed on board until competent authorities of a State take over the responsibility for the aircraft and for the persons and property on board.

ARTICLE 6

1. The aircraft commander may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence or act contemplated in Article 1, paragraph 1, impose upon such person reasonable measures including restraint which are necessary:

(a) to protect the safety of the aircraft, or of persons or property therein; or

(b) to maintain good order and discipline on board; or

(c) to enable him to deliver such person to competent authorities or to disembark him in accordance with the provisions of this Chapter.

2. The aircraft commander may require or authorize the assistance of other crew members and may request or authorize, but not require, the assistance of passengers to restrain any person whom he is entitled to restrain. Any crew member or passenger may also take reasonable preventive measures without such authorization when he has reasonable grounds to believe that such action is immediately necessary to protect the safety of the aircraft, or of persons or property therein.

ARTICLE 7

1. Measures of restraint imposed upon a person in accordance with Article 6 shall not be continued beyond any point at which the aircraft lands unless:

(a) such point is in the territory of a non-Contracting State and its authorities refuse to permit disembarkation of that person or those measures have been imposed in accordance with Article 6, paragraph 1(c) in order to enable his delivery to competent authorities;

(b) the aircraft makes a forced landing and the aircraft commander is unable to deliver that person to competent authorities; or

(c) that person agrees to onward carriage under restraint.

2. The aircraft commander shall as soon as practicable, and if possible before landing in the territory of a State with a person on board who has been placed under restraint in accordance with the provisions of Article 6, notify the authorities of such State of the fact that a person on board is under restraint and of the reasons for such restraint.

ARTICLE 8

1. The aircraft commander may, in so far as it is necessary for the purpose of subparagraph (a) or (b) of paragraph 1 of Article 6, disembark in the territory of any State in which the aircraft lands any person who he has reasonable grounds to believe has committed, or is about to commit, on board the aircraft an act contemplated in Article 1, paragraph 1(b).
2. The aircraft commander shall report to the authorities of the State in which he disembarks any person pursuant to this Article, the fact of, and the reasons for, such disembarkation.

ARTICLE 9

1. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed on board the aircraft an act which, in his opinion, is a serious offence according to the penal law of the State of registration of the aircraft.
2. The aircraft commander shall as soon as practicable and if possible before landing in the territory of a Contracting State with a person on board whom the aircraft commander intends to deliver in accordance with the preceding paragraph, notify the authorities of such State of his intention to deliver such person and the reasons therefor.
3. The aircraft commander shall furnish the authorities to whom any suspected offender is delivered in accordance with the provisions of this Article with evidence and information which, under the law of the State of registration of the aircraft, are lawfully in his possession.

ARTICLE 10

For actions taken in accordance with this Convention, neither the aircraft commander, any other member of the crew, any passenger, the owner or operator of the aircraft, nor the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken.

CHAPTER IV—UNLAWFUL SEIZURE OF AIRCRAFT

ARTICLE 11

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.

CHAPTER V—POWERS AND DUTIES OF STATES

ARTICLE 12

Any Contracting State shall allow the commander of an aircraft registered in another Contracting State to disembark any person pursuant to Article 8, paragraph 1.

ARTICLE 13

1. Any Contracting State shall take delivery of any person whom the aircraft commander delivers pursuant to Article 9, paragraph 1.
2. Upon being satisfied that the circumstances so warrant, any Contracting State shall take custody or other measures to ensure the presence of any person suspected of an act contemplated in Article 11, paragraph 1 and of any person of whom it has taken delivery. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is reasonably necessary to enable any criminal or extradition proceedings to be instituted.
3. Any person in custody pursuant to the previous paragraph shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.
4. Any Contracting State, to which a person is delivered pursuant to Article 9, paragraph 1, or in whose territory an aircraft lands following the commission of an Act contemplated in Article 11, paragraph 1, shall immediately make a preliminary enquiry into the facts.
5. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the State of registration of the aircraft and the State of nationality of the detained person and, if it considers it advisable, any other interested State of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 4 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

ARTICLE 14

1. When any person has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1, or has disembarked after committing an act contemplated in Article 11, paragraph 1, and when such person cannot or does not desire to continue his journey and the State of landing refuses to admit him, that State may, if the person in question is not a national or permanent resident of that State, return him to the territory of the State of which he is a national or permanent resident or to the territory of the State in which he began his journey by air.
2. Neither disembarkation, nor delivery, nor the taking of custody or other measures contemplated in Article 13, paragraph 2, nor return of the person concerned, shall be considered as admission to the territory of the Contracting State concerned for the purpose of its law relating to entry or admission of persons and nothing in this Convention shall affect the law of a Contracting State relating to the expulsion of persons from its territory.

ARTICLE 15

1. Without prejudice to Article 14, any person who has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1, or has disembarked after committing an act contemplated in Article 11, paragraph 1, and who desires to continue his journey shall be at liberty as soon as practicable to proceed to any destination of his choice unless his presence is required by the law of the State of landing for the purpose of extradition or criminal proceedings.
2. Without prejudice to its law as to entry and admission to, and extradition and expulsion from its territory, a Contracting State in whose territory a person has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1 or has disembarked and is suspected of having committed an act contemplated in Article 11, paragraph 1, shall accord to

such person treatment which is no less favorable for his protection and security than that accorded to nationals of such Contracting State in like circumstances.

CHAPTER VI—OTHER PROVISIONS

ARTICLE 16

1. Offenses committed on aircraft registered in a Contracting State shall be treated, for the purpose of extradition, as if they had been committed not only in the place in which they have occurred but also in the territory of the State of registration of the aircraft.
2. Without prejudice to the provisions of the preceeding paragraph, nothing in this Convention shall be deemed to create an obligation to grant extradition.

ARTICLE 17

In taking any measures for investigation or arrest or otherwise exercising jurisdiction in connection with any offense committed on board an aircraft the Contracting States shall pay due regard to the safety and other interest of air navigation and shall so act as to avoid unnecessary delay of the aircraft, passengers, crew or cargo.

ARTICLE 18

If Contracting States establish joint air transport operating organizations or international operating agencies, which operate aircraft not registered in any one State those States shall, according to the circumstances of the case, designate the State among them which, for the purpose of this Convention, shall be considered as the State of registration and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

CHAPTER VII—FINAL CLAUSES

ARTICLE 19

Until the date on which this Convention comes into force in accordance with the provisions of Article 21, it shall remain open for signature on behalf of any State which at that date is a Member of the United Nations or of any of the Specialized Agencies.

ARTICLE 20

1. This Convention shall be subject to ratification by the signatory States in accordance with their constitutional procedures.
2. The instruments of ratification shall be deposited with the International Civil Aviation Organization.

ARTICLE 21

1. As soon as twelve of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninth day after the date of the deposit of the twelfth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninth day after the deposit of its instrument of ratification.
2. As soon as this Convention comes into force, it shall be registered with the Secretary-General of the United Nations by the International Civil Aviation Organization.

ARTICLE 22

1. This Convention shall, after it has come into force, be open for accession by any State Member of the United Nations or of any of the Specialized Agencies.
2. The accession of a State shall be effected by the deposit of an instrument of accession with the International Civil Aviation Organization and shall take effect on the ninetieth day after the date of such deposit.

ARTICLE 23

1. Any Contracting State may denounce this Convention by notification addressed to the International Civil Organization.
2. Denunciation shall take effect six months after the date of receipt by the International Civil Aviation Organization of the notification of denunciation.

ARTICLE 24

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may, at the time of signature or ratification, of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.
3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the International Civil Aviation Organization.

ARTICLE 25

Except as provided in Article 24 no reservation may be made to this convention.

ARTICLE 26

The International Civil Aviation Organization shall give notice to all States Members of the United Nations or of any of the Specialized Agencies:

- (a) of any signature of this Convention and the date thereof;
- (b) of the deposit of any instrument of ratification or accession and the date thereof;
- (c) of the date on which this Convention comes into force in accordance with Article 21, paragraph 1;
- (d) of the receipt of any notification of denunciation and the date thereof; and
- (e) of the receipt of any declaration or notification made under Article 24 and the date thereof.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Tokyo on the fourteenth day of September One Thousand Nine Hundred and Sixty-three in three authentic texts drawn up in the English, French, and Spanish languages.

This Convention shall be deposited with the International Civil Aviation Organization with which, in accordance with Article 19, it shall remain open for signature

and the said Organization shall send certified copies thereof to all States Members of the United Nations or of any Specialized Agency.

Certified to be a true and complete copy

SIGNATURE

Legal Bureau
ICAO

Afghanistan	Liberia
Argentina	Mexico
Australia	Netherlands
Austria	Nicaragua
Belgium	Nigeria
Bolivia	Norway
Brazil	Pakistan
Byelorussian Soviet Socialist Republic	Panama
Cambodia	Peru
Canada	Philippines
Ceylon	Polish People's Republic
Chile	Portugal
Colombia	Republic of China
Congo (Brazzaville)	Republic of Haiti
Costa Rica	Republic of Korea
Cuba	Republic of Mali
Ecuador	Republic of the Upper Volta
Federal Republic of Germany	Rumanian People's Republic
Finland	Senegal
France	Spain
Greece	Sweden
Guatemala	Switzerland
Holy See	Ukranian Soviet Socialist Republic
Hungarian People's Republic	Union of Soviet Socialist Republics
India	United Arab Republic
Indonesia	United Kingdom of Great Britain and Northern Ireland
Iraq	United States of America
Italy	Venezuela
Ivory Coast	Yugoslavia
Japan	
Kuwait	
Laos	

WHEREAS the Senate of the United States of America by its resolution of May 13, 1969, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the Convention;

WHEREAS the Convention was duly ratified by the President of the United States of America on June 30, 1969, in pursuance of the advice and consent of the Senate;

WHEREAS it is provided in Article 21, paragraph 1, of the Convention that it shall come into force on the ninetieth day after the deposit of the twelfth instrument of ratification;

WHEREAS instruments of ratification were deposited with the International Civil Aviation Organization as follows: Portugal on November 25, 1964; the Philippines on November 26, 1965; the Republic of China on February 28, 1966; Denmark, Norway, and Sweden on January 17, 1967; Italy on October 18, 1968; the United

Kingdom of Great Britain and Northern Ireland on November 29, 1968; Mexico on March 18, 1969; Upper Volta on June 6, 1969; Niger on June 27, 1969; and the United States of America on September 5, 1969;

AND WHEREAS, pursuant to the provisions of Article 21, paragraph 1, the Convention will come into force between the aforementioned States on December 4, 1969;

NOW, THEREFORE, be it known that I, Richard Nixon, President of the United States of America, do hereby proclaim and make public the *Convention on Offences and Certain Other Acts Committed on Board Aircraft* to the end that the same and every article and clause thereof shall be observed and fulfilled with good faith, on and after December 4, 1969, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this first day of October in the year of our Lord one thousand nine hundred sixty-nine and of the Independence of the United States of America the one hundred ninety-fourth.

[SEAL]

/S/ RICHARD NIXON

By the President:

/S/ Elliot L. Richardson
Acting Secretary of State

APPENDIX B

DISPOSITION OF ALL UNITED STATES HIJACKING CASES (1961-69)

SOURCE: *Air Piracy (Report of the Subcomm. on Inter-American Affairs of the House Comm. on Foreign Affairs, 90th Cong., 2d Sess. (1968).)*

Hearings (Preliminary Report of the Comm. on Interstate Commerce of the House of Representatives—Aircraft Piracy, H.R. Rep. No. 91-33, 91st Cong., 1st Sess. (1969).)

Hijackings (Interdepartmental Memorandum, Aircraft Hijackings, Dep't of State (1969).)

DATE	NAME	OFFENSE	DISPOSITION	SOURCE
5/1/61	Antulie Ortiz	18 U.S.C. § 1951 (1964)	Returned to U.S. by Cuba after neg. for return of Cuban vessels	<i>Air Piracy</i> at 9
7/24/61	Wilfredo Oquendo	Aircraft Piracy 75 Stat. 466 (1961)	Allowed to remain in Cuba	N.Y. Times, July 26, 1961, at 1, col. 5. See also Hijackings.
7/31/61	Bruce Britt	Aircraft Piracy	Unsuccessful attempt, serving prison term	(case not reported) Hijackings
8/3/61	Leon Bearden Coby Bearden (son)	Interruption of Commerce by threats. 18 U.S.C. § 1951 (1964)	Convicted—20 yrs. Reform School (son)	Bearden v. United States 372 U.S. 252 (1964)
8/9/61	Albert Candon	Robbery and illegal carrying of firearms	Convicted in Mexico, sentenced to 8 yrs., 9 months	<i>Hearings</i>
4/13/62	David Healy Oeth Leonard	Aircraft Piracy & Kidnapping, 18 U.S.C. § 3731 (1964)	Convicted and sentenced to 20 yrs. for air piracy and 1 yr. for kidnapping	United States v. Healy, 376 U.S. 75 (1964). See also <i>Hearings</i>
8/5/63	Roy Siller	Interruption of Commerce	Unsuccessful attempt, fined \$150.00	Hijackings (case not reported)
2/18/64	Enrique Hernandez Renaldo Rodriguez	Aircraft Piracy	Allowed to remain in Cuba	<i>Air Piracy</i> at 9

DATE	NAME	OFFENSE	DISPOSITION	SOURCE
8/13/65	Harry Fergertstrom	Juvenile	Committed to Hawaii Youth Correctional Facility	<i>Hearings</i> (case not reported)
10/25/65	Luis Perez	Aircraft Piracy & Assault	Acquitted	<i>Air Piracy</i> at 9 (case not reported)
11/17/65	Thomas Robinson	Juvenile	Sentenced under Youth Cor- rections Act, 18 U.S.C. § 5005 (1964)	<i>Hearings</i>
11/20/67	Luis Gabor	Aircraft Piracy	Granted asylum in Cuba	<i>Air Piracy</i> at 10
2/17/68	Thomas Boynton	Aircraft Piracy	Allowed to remain in Cuba but later returned to U.S. and was arrested coming from Canada	N.Y. Times, Nov. 3, 1969, at 24, col. 4.
2/21/68	Lawrence Rhodes	Aircraft Piracy	Granted asylum in Cuba	<i>Air Piracy</i> at 10
3/12/68	Jesus Armenteros Gilberto Gonzales Ramon Martin	Aircraft Piracy	Allowed to remain in Cuba	<i>Air Piracy</i> at 10
6/29/68	E. H. Carter	Aircraft Piracy	Granted asylum in Cuba	N.Y. Times, Nov. 3, 1968, at 16, col. 6
7/1/68	Mario Fonseca	Aircraft Piracy	Allowed to remain in Cuba	<i>Air Piracy</i> at 10
7/4/68	John H. Morris	Aircraft Piracy	Unsuccessful attempt, case pending	<i>Hearings</i> (case not reported)
7/12/68	Leonard Bendicks	Aircraft Piracy & Kidnapping	Allowed to remain in Cuba but was arrested Sept. 24, 1968 in New York State. Undergoing psychiatric treatment	<i>Air Piracy</i> at 11; N.Y. Times, Nov. 4, 1969, at 77, col. 3
7/12/68	Oran Richards	Aircraft Piracy	Frustrated attempt, landed in Miami, further proceedings pending	<i>Air Piracy</i> at 11; <i>Hearings</i> (case not reported)

DATE	NAME	OFFENSE	DISPOSITION	SOURCE
7/17/68	Rogelio Leyva	Aircraft Piracy	Allowed to remain in Cuba	Hijackings
7/23/68	Klink	Illegal possession of fire-arms aboard aircraft	Arrested July 23, 1968	<i>Hearings</i> (case not reported)
8/4/68	Willis Jessie	Aircraft Piracy	Returned voluntarily from Cuba via Mexico. Pleaded guilty in Miami. Sentenced to 20 years, Jan. 31, 1969	N.Y. Times, Feb. 7, 1969, at 13, col. 6; <i>id.</i> , Jan. 31, 1969, at 76, col. 1. <i>See also Hearings</i> (case not reported)
8/22/68	1 unidentified man	Aircraft Piracy	Allowed to remain in Cuba	<i>Air Piracy</i> at 11
9/11/68	Charles Beadsley	Aircraft Piracy	Forced to land in Canada, was granted asylum in exchange for giving up the hijacking	<i>Air Piracy</i> at 11
9/20/68	José Garcia	Illegally entering the United States	After psychiatric examination by H.E.W. was returned to Cuba	<i>Air Piracy</i> at 11; N.Y. Times, Sept. 21, 1968, at 66, col. 8
10/23/68	William Truitt	Aircraft Piracy	Returned to United States. Arrested in New York State. Convicted in Florida and sentenced to 20 years	<i>See also N.Y. Times</i> , Jan. 31, 1969, at 76, col. 1 (case not reported)
11/2/68	Roger Pastorich	Juvenile	Pending	<i>Hearings</i>
11/4/68	Raymond Johnson	Aircraft Piracy	Indicted in New Orleans, May, 1969	N.Y. Times, June 26, 1969, at 4, col. 2; <i>id.</i> , Nov. 5, 1969, at 4, col. 3. <i>See also</i>
11/24/68	Alejandro Figueroa	Conspiracy to kidnap & hijack	Acquitted	Hijackings United States v. Figueroa, 299 F. Supp. 1394 (S.D. N.Y. 1969). <i>See also</i>
11/30/68	J. Sanchez or Lopez	Aircraft Piracy	Cuban National, allowed to remain in Cuba	<i>Hearings</i> <i>Air Piracy</i> at 12

DATE	NAME	OFFENSE	DISPOSITION	SOURCE
12/3/68	Eddie Cantara	Aircraft Piracy	Cuban refugee, allowed to remain in Cuba	N.Y. Times, Dec. 5, 1968, at 52, col. 6; <i>id.</i> , Dec. 4, 1968, at 1, col. 5
12/11/68	J. Lumianski	Aircraft Piracy	Allowed to remain in Cuba	N.Y. Times, Dec. 12, 1968, at 49, col. 8
12/19/68	Thomas Washington	Aircraft Piracy	Returned voluntarily to U.S. via Canada. Arrested at Rouse's Point, New York. Pending	N.Y. Times, Dec. 20, 1968, at 30, col. 1; <i>id.</i> , Nov. 3, 1969, at 24, col. 4
1/3/69	Tyrone & Linda Austin	Aircraft Piracy	Warrant for arrest issued E.D.N.Y., Jan. 21, 1969	N.Y. Times, Jan. 22, 1969, at 93, col. 1; Boston Traveler, Jan. 4, 1969, at 2, col. 1. <i>See also</i> Hijackings (case not reported)
1/9/69	Ronald Bohle	Aircraft Piracy	Returned voluntarily to U.S. via Canada. Arrested at Rouse's Point, New York, Nov. 2, 1969	N.Y. Times, Nov. 3, 1969, at 24, col. 4; <i>id.</i> , Jan. 10, 1969, at 5, col. 1
1/11/69	Robert M. Helmey	Aircraft Piracy	Left Cuba for Canada. Deported from Canada, May 6, 1969. Tried and acquitted on ground of temporary insanity, Nov. 12, 1969 in Savannah, Georgia	N.Y. Times, May 7, 1969, at 73, col. 3 (case not reported)
1/13/69	Kenneth McPeck	Aircraft Piracy	Unsuccessful attempt to Cuba. Tried and convicted. Sentenced to 15 years	Hijackings
1/19/69	Payano Navarro	Aircraft Piracy	Allowed to remain in Cuba	N.Y. Times, Jan. 20, 1969, at 1, col. 4; Hijackings (case not reported)
1/24/69	John Coulter	Aircraft Piracy	Allowed to remain in Cuba	N.Y. Times, Jan. 26, 1969, at 8, col. 1; Hijackings

DATE	NAME	OFFENSE	DISPOSITION	SOURCE
1/28/69	Byron Booth	Aircraft Piracy	Remained in Cuba	Hijackings
1/28/69	3 unidentified men	Aircraft Piracy	Remained in Cuba	Hijackings
1/31/69	1 unidentified man	Aircraft Piracy	Remained in Cuba	N.Y. Times, Feb. 1, 1969, at 58, col. 1
2/3/69	W. Hernandez, wife & child, J. Babin	Aircraft Piracy	Remained in Cuba	Hijackings
2/3/69	Michael Pepar T. Fitzgerald	Aircraft Piracy	Unsuccessful attempt. Both sentenced to correctional school	Hijackings (case not reported)
2/10/69	Pedro Alvarez	Aircraft Piracy	Remained in Cuba	Hijackings
2/25/69	Edward Ervin	Aircraft Piracy	Surrendered self in Berlin; arrested in New York City, Sept. 24, 1969. Arraigned E.D.N.Y.	Boston Herald Traveler, Feb. 26, 1969, at 3, col. 2; Boston Globe, Sept. 26, 1969, at 37, col. 2 (case not reported)
3/5/69	Anthony Bryant a/k/a Jimmy Carver	Aircraft Piracy	Remained in Cuba	N.Y. Times, Apr. 6, 1969, at 84, col. 4; <i>id.</i> , Mar. 7, 1969, at 75, col. 3; <i>See also</i> Hijackings
3/17/69	Robert L. Sandlin	Aircraft Piracy	Returned voluntarily to U.S.; arrested at Rouse's Point, New York, Nov. 2, 1969	N.Y. Times, Nov. 3, 1969, at 24, col. 4; <i>id.</i> , Mar. 17, 1969, at 14, col. 3. (case not reported)
3/19/69	Douglas Dickey	Aircraft Piracy	Unsuccessful. Committed to mental institution	Hijackings (case not reported)
3/25/69	Luis Frese	Aircraft Piracy	Allowed to remain in Cuba	Hijackings
4/13/69	4 unidentified men	Aircraft Piracy	Allowed to remain in Cuba	N.Y. Times, Apr. 14, 1969, at 47, col. 1
5/3/69	John Kivlen	Aircraft Piracy	Unsuccessful attempt, case pending	Hijackings (case not reported)

DATE	NAME	OFFENSE	DISPOSITION	SOURCE
5/5/69	N. Marion J. Gagnon	Aircraft Piracy	Allowed to remain in Cuba	N.Y. Times, May 6, 1969, at 12, col. 7
5/26/69	C. Samora R. Garcia S. Bolivar	Aircraft Piracy	Allowed to remain in Cuba	Hijackings; Boston Herald Traveler, May 27, 1969, at 1, col. 7
6/17/69	William Brent	Aircraft Piracy	Allowed to remain in Cuba	Hijackings
6/22/69	1 unidentified man	Aircraft Piracy	Allowed to remain in Cuba	Hijackings
6/25/69	John Marques	Aircraft Piracy	Allowed to remain in Cuba	Boston Herald Traveler, June 29, 1969, at 13, col. 4
6/28/69	Raymond Anthony	Aircraft Piracy	Returned voluntarily to United States via Canada. Arrested at Rouse's Point, New York, Nov. 2, 1969; indicted by grand jury in Baltimore, Aug. 5, 1969	N.Y. Times, Nov. 3, 1969, at 24, col. 4; <i>id.</i> , June 30, 1969, at 4, col. 7 (case not reported)
7/26/69	Joseph Crawford	Aircraft Piracy	Returned voluntarily to United States via Canada. Arrested at Rouse's Point, New York, Nov. 2, 1969	N.Y. Times, Nov. 3, 1969, at 24, col. 4; <i>id.</i> , July 23, 1969, at 5, col. 6 (case not reported)
7/31/69	Lester Perry	Aircraft Piracy	Allowed to remain in Cuba	Boston Herald Traveler, Aug. 1, 1969, at 2, col. 1
8/5/69	John McCreery	Aircraft Piracy	Unsuccessful attempt, case pending	Hijackings (case not re- ported)
8/14/69	2 unidentified men	Aircraft Piracy	Allowed to remain in Cuba	N.Y. Times, Aug. 15, 1969, at 58, col. 6
8/29/69	J. Klein a/k/a J. Carballo	Aircraft Piracy	Allowed to remain in Cuba	N.Y. Times, Aug. 30, 1969, at 2, col. 5; Hijackings

DATE	NAME	OFFENSE	DISPOSITION	SOURCE
8/29/69	Leila Khaled Salim Isawi	Aircraft Piracy	Landed in Damascus, Syria; were released by the Syrians to return to their unit of the Popular Front for Liberation of Palestine	N.Y. Times, Aug. 31, 1969, at 1, col. 8; <i>id.</i> , Aug. 30, 1969, at col. 8. <i>See also</i> Hijackings
9/7/69	1 unidentified man	Aircraft Piracy	Allowed to remain in Cuba	N.Y. Times, Sept. 8, 1969, at 41, col. 2
9/10/69	Jose Medina	Aircraft Piracy	Unsuccessful attempt. Case pending	Hijackings (case not reported)
9/24/69	Alfred Hernandez	Aircraft Piracy	Allowed to remain in Cuba	Hijackings; Boston Herald Traveler, Sept. 25, 1969, at 3, col. 1
10/9/69	1 unidentified man	Aircraft Piracy	Allowed to remain in Cuba	Boston Globe, Oct. 10, 1969, at 41, col. 8
10/31/69	Raffaele Minichiello	Aircraft Piracy	Convicted and sentenced to 7½ years on charges in Italy (where plane landed) of importation of weapons, abduction, assault etc.; indicted E.D.N.Y. for air piracy. Grand Jury recommends extradition	N.Y. Times, Nov. 12, 1970, at 1, col. 7; <i>Id.</i> , May 27, 1970, at 15, col. 1; <i>id.</i> , Apr. 9, 1970, at 82, col. 1; <i>id.</i> , Nov. 3, 1969, at 25, col. 1; <i>id.</i> , Nov. 1, 1969, at 1, col. 1
11/10/69	David Booth	Aircraft Piracy	Unsuccessful attempt. Booth declared to be mentally incompetent	Hijackings (case not reported)
12/2/69	B. Hamilton	Aircraft Piracy	Allowed to remain in Cuba	Hijackings
12/26/69	M. Martinez	Aircraft Piracy	Allowed to remain in Cuba	Hijackings

RECEIVING NATION: The receiving nation for each hijack incident is Cuba unless otherwise indicated.

ANALYSIS

Hijack Incidents	
Successful	60
Unsuccessful	13
<i>Total</i>	73
Disposition	
Convicted	
By Aggrieved Nation	11
By Receiving Nation	2
Acquitted	
By Aggrieved Nation	3
By Receiving Nation	unknown
Granted Asylum, etc.	46
Pending	15

Hijackings 1/1/70-9/10/70

To Cuba	24
U.S. Carriers	9
Foreign Carriers	15
To Other Destinations	16
U.S. Carriers	12
Foreign Carriers	4
Total U.S. Carriers	21
Total Foreign Carriers	19
Total	40
Total Hijacking of U.S. Carriers From 1961-9/10/70	94

N.Y. Times, Sept. 10, 1970, at 1, col. 5; *id.* Sept. 7, 1970, at 3, col. 4.

Total Hijackings Through 9/10/70

Total	251
Successful	189
Unsuccessful	62
Successful to Cuba	122
Success to Other Nations	62

N.Y. Times, Sept. 10, 1970, at 1, col. 5; *id.* Sept. 7, 1970, at 3, col. 4.

APPENDIX C

DISPOSITION OF SELECTED FOREIGN HIJACKING CASES

DATE	NAME	AGGRIEVED NATION	DISPOSITION	SOURCE
12/8/60	5 Men	Cuba	All were arrested and returned to Cuba	Hijackings
11/27/61	5 men	Venezuela	Landed in Curacao; all were extradited	N.Y. Times, Nov. 28, 1961, at 21, col. 2
11/28/63	6 men	Venezuela	All were extradited	N.Y. Times, Nov. 29, 1963, at 1, col. 3
9/28/66	Maria Varrier	Argentina	Landed in Falkland; extradited	N.Y. Times, Sept. 29, 1966, at 1, col. 2
2/8/69	Victor Romo	Mexico	Subdued	N.Y. Times, Feb. 9, 1969, at 79, col. 1
9/16/69	Sadi Toker	Turkey	Committed to mental institution	N.Y. Times, Sept. 17, 1969, at 10, col. 1
12/13/69	2 men	Ethiopia	Hijackers killed by security guards	N.Y. Times, Dec. 14, 1966, at 2, col. 1
3/30/70	15 Japanese Students	Japan	Given asylum in North Korea	N.Y. Times, March 31, 1969, at 1, col. 3
5/5/70	Paul Verner	Czechoslovakia	To be tried in Austria	N.Y. Times, May 6, 1970, at 2, col. 1