Assessing progress in developing systems to curb aerial hijackings

by G. I. Warren

The frequency of aerial hijackings and related acts of unlawful interference with civil aviation appears to be decreasing, most dramatically in North America. It is obviously risky, perhaps foolhardy, to make such a bold assertion, and I have the slightly uncomfortable feeling that there will be a fresh flurry of incidents before this article is published.

If my assertion is correct, however, what has brought about this encouraging development? As an international lawyer, I should like to be able to claim that it stems from the development of an effective international legal regime. This is certainly an important factor, but perhaps the main contributing factor has been the implementation by many governments of more effective security measures at airports. For instance, both the United States and Canada have been co-operating with other member states of the International Civil Aviation Organization (ICAO) to develop more rigorous international standards and recommended practices in an effort to forestall incidents before they can take place. This effort must continue if my assertion is to remain true.

The development of an international legal regime has, however, had a crucial deterrent effect in bringing the problem under control. The legal network may not be completely leak-proof, but the message seems to be filtering through to potential offenders that there are practically no countries left where it is possible to evade punishment. Canada made significant contributions to the negotiation, under the auspices of ICAO, of three important international conventions to which it is a party: the 1963 Tokyo Convention, which obliges contracting states to permit hijacked passengers and crews to continue their journey as soon as practicable, and return hijacked aircraft and cargo; the 1970 Hague Convention, which obliges contracting states in whose territory an alleged hijacker is found either to extradite or prosecute him; and the 1971 Montreal Convention, which requires contracting states in whose territory an offender alleged to have committed an armed attack or act of sabotage against international civil aviation is found either to extradite or prosecute him.

Hole in the dike

There was a gaping hole, however, in this legal dike, or so it seemed until fairly recently. It appeared that a number of states were not going to accept these binding obligations by becoming parties to the three international conventions. Although it was clear that no government would wish to encourage purely "criminal" hijackers, it was equally clear that certain countries were unwilling to become obliged to take such decisive action against "political" or "revolutionary" hijackers. This ambivalent attitude still characterizes the posture of many governments to the general problem of "international" terrorism and explains the failure of the United Nations General Assembly and its special Ad Hoc Committee on International Terrorism, which met last summer in New York, to recommend any effective measures against such terrorism.

It was to fill this gap that, in 1970 and 1971, at the height of the hijacking problem, Canada and the United States took the initiative in calling for the approval of a fourth international convention, which would authorize contracting states to take "joint action" – such as the suspension of air services – against states that failed to fulfill the fundamental international obligations reflected in the Tokyo, Hague and Montreal conventions.

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