

Unlawful Seizure of Aircraft - Hijacking

ON May 1, 1961, an aircraft of United States registry, while on a routine scheduled domestic flight, was diverted to Cuba by a person brandishing a firearm. This was the first episode of a new and highly dangerous chapter in the history of civil aviation. Since that time, there have been more than 135 incidents of aircraft hijacking, attempted hijacking or armed interference with scheduled civil air transport — over 70 in 1969 alone. These activities have involved some 50 states or territories in North and South America, Eastern and Western Europe, the Middle East, Africa and Asia, as country of registry, destination, intended destination or location of the incident; they have affected more than 6,000 air-passengers and 700 members of civilian air-crews.

In 1963, representatives of most of the world's nations with civil aviation interests met in Tokyo under the auspices of the International Civil Aviation Organization (ICAO) to consider the adoption of an international legal instrument aimed at deterring and preventing unlawful acts in the air. On September 14 of that year, the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft was opened for signature and ratification. Over 40 nations have signed the Convention; 15 have ratified it — including Canada, which deposited its instrument of ratification on November 7, 1969. The treaty came into force on December 4, 1969, 90 days after the twelfth ratification.

Convention Provisions

The provisions dealing with hijacking require that, when such an act is committed or is about to be committed, states parties "shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft". The state of landing must also permit the passengers and crew to continue their journey and return the aircraft and cargo to the airline. If the circumstances so warrant, the landing-state authorities must also take custody of the alleged hijacker and hold him for such time as is reasonably necessary for extradition or criminal proceedings to be initiated against him.

As acts of unlawful seizure increased and the threat to the safety of international civil aviation grew, the ICAO Assembly, at its September 1968 meeting in Buenos Aires, urged all states to become parties to the Tokyo Convention as soon as possible and, even before acceding, to give effect to the provisions described above. In addition, however, the Assembly considered that further action was required to combat the problem of hijacking, and the Council of ICAO — the Organization's permanent executive organ (on which Canada has a seat) — was requested to institute a study of other measures to cope with unlawful seizure "at the earliest possible date". In December of the same year, the Council adopted a resolution calling on all ICAO states to take all possible measures to prevent hijacking and to co-operate with any state whose aircraft had been seized.