

Session of Zagreb – 1971

Unlawful Diversion of Aircraft

(Eighteenth Commission, Rapporteur : Mr. Edward Mc Whinney)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Considering that acts of seizure or unauthorized exercise of control of aircraft in flight, jeopardizing the life and health of passengers and crew, as well as those of persons on the ground or in other aircraft, in disregard of elementary considerations of humanity, are unlawful under international law,

Considering that such unlawful acts may endanger international peace and friendly relations among States,

Considering that such unlawful acts jeopardize the freedom of international communications and seriously affect the operations of air services and undermine the confidence of the peoples of the world in the safety of civil aviation.

Having regard to the general condemnation of such unlawful acts expressed in the Resolutions of the General Assembly of the United Nations and of the International Civil Aviation Organisation and of regional intergovernmental organisations,

I

Is of the opinion that no purpose or objective, whether political or other, can constitute justification for such unlawful acts, and that every State in whose territory the authors of such acts may be found has the right and the obligation, if it does not extradite such persons, to undertake criminal prosecution against them.

II

Notes that, among others, the following rules of international law apply :

1. Under the general rules of international air law, as expressed especially in the Chicago Convention of 7 December 1944, States are required to ensure the safety, regularity and efficiency of international air navigation and to collaborate with each other to this end.

2. Under the general rules of international law which find particular expression in Articles 25 and 37 of the Chicago Convention of 1944, States are required to render assistance to aircraft in distress in their territory and to permit, subject to control by their own authorities, the owners of the aircraft or authorities of the States in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances.

3. Under general international law, States are required not to allow knowingly their territory to be used for acts contrary to the rights of other States.

Expresses the opinion that, in consequence, States must take all appropriate measures to give effect to these principles, notably by taking action :

a) to prevent the accomplishment of acts of unlawful diversion of aircraft in flight, and

b) in cases where an unlawfully diverted aircraft lands in their territory,

to restore control of the unlawfully diverted aircraft to its lawful commander or to preserve his control of the aircraft,

to permit the passengers and crew of the aircraft to continue their journey as soon as practicable,

to return the aircraft and its cargo to the persons lawfully entitled to possession,

to ensure the personal safety and human dignity of the passengers and crew until their journey can be continued.

III

Notes that the concern of States to resolve the problem of unlawful diversion of aircraft in flight received a first recognition by the adoption of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, and in the Convention for the Suppression of Unlawful seizure of Aircraft, signed at The Hague on 16 December 1970.

Considers that, in ratifying these Conventions and in making all necessary dispositions to give effect to them, States will contribute to implementing and to rendering precise the obligations set out in this Resolution as well as to the progressive development of international law in these matters.

Emphasizes, in particular, the urgency for States to make such adaptations in their internal law as may be necessary to give effect to the principles contained in the above-mentioned Conventions.

IV

This Resolution does not prejudge in any way the question of the prevention and repression of all other acts of violence which may endanger the safety of air transport, nor the question of a more specific regulation of sanctions against States which fail to fulfill their international obligations in the matter of the unlawful diversion of aircraft in flight.

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(3 September 1971)