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## A Review of Issues Concerned with Aerial Hijacking and Terrorism: Implications for Australia's Security and the Sydney 2000 Olympics

Michael S. Simons

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# A REVIEW OF ISSUES CONCERNED WITH AERIAL HIJACKING AND TERRORISM: IMPLICATIONS FOR AUSTRALIA'S SECURITY AND THE SYDNEY 2000 OLYMPICS

MICHAEL S. SIMONS\*

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\* Michael S. Simons, LL.B. (Melb. 1966), M.A. (Macq. 1984), LL.M. (U.T.S. 1994), is the Head of the Hospitality Management Unit within the School of Marketing, Faculty of Commerce and Economics at the University of New South Wales, Sydney, Australia. He has been a practicing lawyer for twenty years, has published widely on tourism-law related issues, and is the Head of the Australian and South Pacific Section of The International Forum of Travel and Tourism Advocates.

*This Article analyzes Australia's legal obligations under a range of international conventions and treaties concerned with aerial hijacking and terrorism. In reviewing recent incidents of aerial hijacking in Australia, the Article notes the trend in damages awarded to victims and relatives in the United States during 1996 following the decisions of Zicherman v. Korean Airlines Co.,<sup>1</sup> Bickel v. Korean Air Lines Co.,<sup>2</sup> and Pescatore v. Pan American World Airways, Inc.<sup>3</sup> As the Sydney 2000 Olympics approach, should airlines entering Australia experience similar incidents of terrorist attacks on aircraft, either in the air or on the ground, international insurance companies may well face financial ruin, unable to meet many of the claims for damages by the families of the deceased victims, as witnessed by some insurers in the United States. The Article concludes with the view that while Australia may potentially face an increase in incidents associated with aerial terrorism and hijacking as the millennium approaches, the opportunities for such incidents ought largely be nullified by the Australian federal government's current security and operational strategies.*

## I. INTRODUCTION

**A**N INCIDENT on November 25, 1996, involving Flight ET Côte d'Ivoire 961 en route from Addis Abbaba, Ethiopia, to Abyan, when hijackers demanded the plane fly to Australia,<sup>4</sup> highlights the potential vulnerability of Australia's aerial security. Given that Australia will host the Sydney 2000 Olympics, such incursions from abroad at this time raise concerns. Only four previous incidents involving aerial terrorism have occurred in Australia's aviation history. The first occurred in 1971 when Peter Macari, posing as "Mr. Brown," threatened to activate a bomb aboard a Qantas flight from Sydney to Hong Kong.<sup>5</sup> He was subsequently convicted of the criminal offence of extortion against Qantas and jailed for fifteen years. The second incident, in 1981, was aboard a flight from Sydney to Brisbane; a deranged passenger attempted to take over the plane,<sup>6</sup> produced a loaded, sawed-off shotgun and threatened the crew of a DC 9 carrying forty-one passengers. The aircraft was forced to fly on an unauthorized flight path and at an unauthorized altitude.<sup>7</sup>

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<sup>1</sup> 516 U.S. 217 (1996).

<sup>2</sup> 96 F.3d 151 (6th Cir. 1996).

<sup>3</sup> 97 F.3d 1 (2d Cir. 1996).

<sup>4</sup> See *Hijackers Wielded Axe*, SYDNEY MORNING HERALD, Nov. 25, 1996, at 1.

<sup>5</sup> See Internet "Led to Qantas Bomb Threat," SYDNEY MORNING HERALD, July 7, 1997, at 3.

<sup>6</sup> See L.R. Edwards, *R. v. Sillery 1981—A Further Note*, 6 AIR L. 96 (1981).

<sup>7</sup> See *id.*

The aircraft eventually landed without harm to the lives of the passengers, crew, and people on the ground.<sup>8</sup> The third incident occurred on November 10, 1995, at Sydney International Airport,<sup>9</sup> and the fourth incident occurred on July 4, 1997. In this latest incident a seventeen-year-old youth, using a similar alias to the convicted offender Macari in 1971, adopted the alias "Mr. Brown" and informed Qantas Airways officials that he had planted a device on board Qantas Flight 27, en route from Sydney to Hong Kong that would be triggered to detonate a bomb on board the aircraft unless he received \$505,000 (Australian) in cash.<sup>10</sup>

Australian Security Intelligence Organization (ASIO) is assessing the likelihood of terrorist incursions into Australia as well as possible insurrection from dissident groups within the country.<sup>11</sup> These issues will be discussed later in this Article.<sup>12</sup> The World Travel and Tourism Council predicts that air passenger traffic will grow worldwide between 5.1 percent and 5.7 percent between 1997 and 2000.<sup>13</sup> At the same time, export earnings from Australian tourism in 1995 generated \$13.1 billion (an increase of 17.2 percent from 1994), accounting for 12.6 percent of Australia's total export earnings and 62.2 percent of its total services exports. By 2000, gross export earnings from tourism are estimated to rise to approximately \$21 billion. In 1995, over 3.7 million international visitors came to Australia. In the year 2000, some 6.3 million people are expected to visit this country, providing consequential economic benefits to the nation.<sup>14</sup> As the Sydney 2000 Olympics approach, there are serious concerns

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<sup>8</sup> See *id.*

<sup>9</sup> See Amanda Meade, *Greece, Canada Set to Grant Ethiopian Hijacker Asylum*, AUSTRALIAN, Dec. 18-19, 1995, at 10.

<sup>10</sup> See Internet "*Led to Qantas Bomb Threat*", *supra* note 5, at 3.

<sup>11</sup> See David Lague, *ASIO Warns of Olympic Terrorism*, SYDNEY MORNING HERALD, Nov. 2, 1995, at 15. See also Dennis Shanahan, *Ruddock Pushes After Ervin Jumps*, WEEKEND AUSTRALIAN, July 26-27, 1997, at 5 (describing the recent incident when the Australian Minister for Immigration deported Lorenzo Ervin, an aging Black Panther who had been in Australia on a lecture tour. The minister cancelled Ervin's visa on the grounds that he was not of good character for the purposes of Section 501 of the Migration Act as he had been previously convicted for aerial skyjacking and kidnapping, although he received Presidential clemency for his convictions some years ago).

<sup>12</sup> See *infra* Part V.

<sup>13</sup> See *Air Transport and Free World Trade*, in WORLD TRAVEL AND TOURISM COUNCIL 3 (1997).

<sup>14</sup> See *Australian Tourism—Facts and Figures* (visited Jan. 8, 1997) <<http://www.tourism.gov.au>>.

for the international safety and security of travellers as well as the potential for damage to Australia's tourism industry.

This Article therefore seeks to define aerial terrorism and hijacking and to examine the international regime of laws governing such matters. In doing so, it describes the range of conventions, declarations, and protocols that regulate and, where possible, reduce incidents of aerial terrorism. The Conventions include: the Warsaw Convention (1929), the Tokyo Convention (1963), the Hague Convention (1970), the Montreal Convention (1971), the European Convention (1977), the Bonn Declaration (1978), the International Convention Against the Taking of Hostages (1979), the Montreal Protocol (1984), and the Montreal Protocol (1988). This Article will assess some recent incidents involving aerial terrorism and hijacking, noting that terrorism has declined sharply in the last decade, from a peak of 665 incidents in 1987 to 296 in 1996, a twenty-five year low.<sup>15</sup> Nevertheless, the overall threat of terrorism remains serious. Despite greater sophistication in vigilance and security techniques employed by airlines and at international airports, aerial terrorist attacks persist.<sup>16</sup>

Finally, the Article will discuss recent trends in litigation involving aerial disasters, including the 1983 Korean Airlines Flight 007 disaster with the loss of 269 lives and the Lockerbie Disaster in 1988 when 259 lives were lost. Both incidents created substantial claims for damages by the families of deceased victims in United States courts. The cases, *Zicherman v. Korean Air Lines, Co.*,<sup>17</sup> *Bickel v. Korean Air Lines, Co.*,<sup>18</sup> and *Pescatore v.*

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<sup>15</sup> Between 1949 and 1985, there were 1539 persons killed in 87 registered bombings and explosions on aircraft. In the period from 1970 to 1979, criminal acts against civil aviation resulted in 1255 deaths, 1013 wounded, and 33,097 persons taken hostage. Between 1980 and 1985, there were 123 incidents of hijacking and 80 attempted hijackings. See Henrik Gam, *Liability Damages for Injuries Sustained by Passengers in the Event of Hijacking of Aircraft and Other Violations of Aviation Security*, LLOYDS MARITIME & COM. L. Q., May 1988, at 217 n.1. See also United States Dept. of State, *1996 Patterns of Global Terrorism Report* (visited Feb. 1, 1998) <<http://www.state.gov/global/terrorism/1996report/1996index.html>>.

<sup>16</sup> See generally Perry S. Bechky, *Management and Misrepresentation: U.S. Judicial Implementation of the Warsaw Convention in Air Disaster Litigation*, 60 J. AIR L. & COM. 455, 457 n.6 (1995). Pan Am, having declared bankruptcy, will have to look to its insurers to pay the awards. See Ronald Sullivan, *Court Upholds Pan Am 103 Awards*, N.Y. TIMES, Feb. 1, 1994, at D2. The bankruptcy also further complicates the litigation. See *Murray v. Pan Am. World Airways, Inc.*, 16 F.3d 513 (2d Cir. 1994).

<sup>17</sup> 516 U.S. 217 (1996). *Zicherman* arose when KAL flight 007, en route from Anchorage, Alaska, to Seoul, South Korea, strayed into air space of the Soviet

Union and was shot down by Soviet military aircraft over the Sea of Japan, resulting in the deaths of 269 passengers and crew. The mother and sister of a deceased passenger brought suit. The jury awarded the plaintiffs \$161,000 for survivors' grief damages, \$16,000 to Zicherman (the decedent's sister) for loss of support and inheritance, and \$100,000 to Zicherman for the decedent's pain and suffering. In addition, the jury awarded \$50 million for punitive damages against KAL, as the flight crew was held to be in breach of Article 25 for wilful misconduct, thus lifting the \$75,000 damages cap.

On appeal, the D.C. Court of Appeals upheld the finding of wilful misconduct on the part of the airline, but dismissed the claim for punitive damages, on the grounds that the Warsaw Convention does not permit such a claim. *See id.* at 219-20.

Also at the damages trial, KAL argued that the Death on the High Seas Act (DOHSA) applied, which did not permit damages for loss of society. On appeal, relying on the earlier decision of *Lockerbie II*, the court held that general maritime law governed and permitted loss of society damages but only if the plaintiff was a dependent of the decedent at the time of death. *See id.* at 220-21. The court remanded to the district court for determination of whether Zicherman was a dependent of the decedent. *See id.* at 221.

The court also concluded that Articles 17 and 24, which permit compensation only for legally cognizable harm, but leave the specification of what harm is legally cognizable to the domestic law, were applicable under choice-of-law rules. Because the airplane crash occurred in international waters, DOHSA supplied the substantive law; because DOHSA permits direct financial damages only, the plaintiffs were not entitled to recover for loss of society damages. *See id.* at 231.

<sup>18</sup> 96 F.3d 151 (6th Cir. 1996). In *Bickel*, the decedent's estate claimed damages based upon the decedent's pre-death pain and suffering, namely that, for "the twelve minute descent into the Sea of Japan, [the decedent] suffer[ed] the physical effects of decompression and recompression along the way as well as the horror of knowing that death was imminent." *Id.* at 155.

The district court had awarded varying sums of \$400,000, \$1,350,000, and \$1,000,000, and was supported by sufficient evidence in actions brought under the Warsaw Convention. *See id.* at 156. KAL argued that the Supreme Court's decision in *Zicherman* intervened and changed the law on the availability of pre-death pain and suffering damages. The court disagreed, noting that *Zicherman* did not address the propriety of the predeath pain and suffering damages awarded at the trial in that case and pointed out the *Zicherman* award was left to stand. *See id.* at 153.

The court of appeals initially reversed the pre-death pain and suffering awards. On rehearing, the court let the awards stand, finding KAL had waived the issue. *See id.* at 153. The court further held that *Zicherman* does not address the priority of the pre-death pain and suffering damages awarded at trial in that case, and the award stands to this day. *See id.*

The *Zicherman* decision neither added to nor changed the law regarding the availability of nonpecuniary damages under DOHSA. *See id.* at 153. The court stated, "Thus any argument that KAL could make based on the fact that DOHSA does not allow nonpecuniary damages was available to it before the Court decided *Zicherman*, and therefore KAL could have raised this issue in its opening briefs." *Id.* Furthermore, the court noted that "[t]he argument that pre-death pain and suffering damages are not available if DOHSA applies has been raised numerous times before *Zicherman*." *Id.* at 154.

*Pan American World Airways, Inc.*,<sup>19</sup> were recently before the appellate courts, and in the case of *Zicherman*, the Supreme Court of the United States in September 1996.<sup>20</sup>

One of the most recent cases of aviation disaster, resulting in the loss of 230 lives, occurred on July 17, 1996, when TWA Flight 800 exploded and crashed into the sea over the coast of Long Island, New York, shortly after its departure from New York's JFK International Airport.<sup>21</sup>

More than twenty family members have appeared before the National Transportation Safety Board (NTSB) and the Federal Aviation Administration (FAA) in an attempt to have the law

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Judge Batchelder, in a dissenting opinion, stated that "DOHSA . . . governs exclusively; it provides the sole source of damages recoverable and permits only pecuniary damages." *Id.* at 157. He remarked that *Zicherman* constitutes an insuperable obstacle to an award of pain and suffering damages—clearly non-pecuniary damages in these cases. Moreover, he contended that "there is no basis in the law for the pre-death pain and suffering awards which today's majority upholds." *Id.* at 159.

However, where wilful misconduct can be proven against the carrier, the limitation does not apply.

<sup>19</sup> 97 F.3d 1 (2d Cir. 1996). On December 21, 1988, a bomb in a suitcase exploded aboard PAN AM flight 103, causing the aircraft to explode over Lockerbie, Scotland. All 243 passengers and 16 crew members died. The families and relatives of the deceased brought wrongful death actions under Article 17 of the Warsaw Convention against Pan Am. Recovery of damages is generally limited to \$75,000, as set out in airline passenger tickets pursuant to Article 17 of the Warsaw Convention.

*Pescatore* arose as a result of the facts surrounding the Lockerbie disaster. A deceased's wife brought suit claiming damages under the Warsaw Convention under Article 17 and Article 25, the wilful misconduct provision. Under the choice of law rules, the substantive law to be applied was that of Ohio, the state with the greatest interest in the litigation. *See id.* at 14.

Before a jury trial in New York, the jury awarded roughly \$19,000,000. The award consisted of:

- (1) \$9,000,000 for loss of past and future financial support;
- (2) \$5,000,000 for loss of society, companionship, love, and affection, past and future; and
- (3) \$5,045,000 in net prejudgment interest. *See id.* at 18-20.

The Second Circuit held that

*Zicherman* embodies an intervening change of controlling law by holding that the Warsaw convention does not require imposition of a uniform federal rule of damages . . . [thus] we are compelled to alter the law of this case . . . [T]he law governing damages is determined by reference to the relevant sovereign's law, not federal common law.

*Id.* at 12.

<sup>20</sup> *See Pescatore*, 97 F.3d at 4.

<sup>21</sup> *See* Alan Attwood, *Test Plane Retraces Flight to Disaster*, SYDNEY MORNING HERALD, July 16, 1997, at 11.

changed that presently limits their ability to sue over the crash.<sup>22</sup> The parties sought an amendment to DOHSA, which does not allow families to claim punitive damages in aviation disasters more than three miles offshore. Flight 800 was 10 miles off East Moriches, New York, when it crashed.<sup>23</sup> The statute only allows families to seek compensation in lawsuits against the manufacturer and airline for loss of support if the deceased was a breadwinner. The inquiry is continuing at the time of writing.<sup>24</sup>

If similar claims are successful, they are likely to drive the associated airlines and their insurers into bankruptcy. These events signal concern for Australian carriers and insurers. Australia may be faced with similar litigation in the future given its propensity to follow litigation trends in the United States.

This Article concludes with the view that despite Australia's relative geographical isolation from the rest of the world, increased security measures will be necessary to protect passengers and airlines, especially during the weeks leading up to the Sydney 2000 Olympics.

## II. AERIAL TERRORISM

The term "terrorism" can be defined as "an act of political violence directed at targets which have symbolic value aimed at influencing potential decision-making through fear and intimidation."<sup>25</sup> In attempting to find an effective definition of terrorism, "one person's terrorist is another's patriot or freedom fighter."<sup>26</sup>

Gerald Fitzgerald states that there are many definitions of terrorism, citing the statement of former President George Bush in 1986 that terrorism is "the unlawful use or threat of violence against persons or property to further political or social objectives. It is usually intended to intimidate or coerce a govern-

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<sup>22</sup> See Lauren Terrazzano, *Families Plea for Compo Change*, SYDNEY MORNING HERALD, July 12, 1997, at 31.

<sup>23</sup> See *id.* at 31.

<sup>24</sup> See *id.*

<sup>25</sup> George Borkowski, *Use of Force: Interception of Aircraft*, 27 HARV. INT'L L.J. 761, 762 n.12 (1986).

<sup>26</sup> *Id.* But see Louis R. Beres, *The Meaning of Terrorism—Jurisprudential and Definitional Clarifications*, 28 VAND. J. TRANSNAT'L L. 239, 241 (1995) (criticizing this definition).



ment, individuals, or groups or to modify their behavior or policies.”<sup>27</sup>

Crenshaw, on the other hand, observes that “[t]errorism by definition requires an audience. It is violence performed for effect, to communicate a threat and to demonstrate a point not just to the government but to the public. Its power is psychological.”<sup>28</sup>

The term “aerial terrorism” limits the discussion of terrorism to incidents associated with aircraft in the air or on the ground. It also includes attacks on air terminal facilities. Aerial terrorism, therefore, is distinct from other types of terrorism, such as terrorist attacks on foreign embassies, legations, government, or airline offices.

The expression “hijack,” according to Borkowski, is somewhat problematic.<sup>29</sup> Its original meaning, at least in the United States, is derived from the Prohibition of Alcohol era in the 1920-1930s, when the term referred to the seizure of a private commercial vehicle or vessel with the intent of theft of its load or cargo.<sup>30</sup> Borkowski adopts the United States Federal Aviation Act’s definition referring to “any seizure or exercise of control by force or violence or threat of force or violence and with wrongful intent of an aircraft in flight in air commerce.”<sup>31</sup>

Aerial hijacking and terrorist incidents between 1949 and 1985 serve to illustrate the severity of this problem. In that time period, 1539 persons were killed in 87 registered bomb explosions on aircraft. Furthermore, airline passengers endured 498 hijackings and 281 attempted hijackings.<sup>32</sup>

More specific incidents include a July 4, 1997, Qantas Flight traveling from Sydney to Hong Kong with 95 passengers and

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<sup>27</sup> L.L. Green, *International Law and the Control of Terrorism*, 7 DALHOUSIE L.J. 236, 239 (1983). The term “terror” seems to have French origins. It gave connotations of criminality to one’s conduct and was explicitly identified with the reign of terror during the French Revolution. See *id.* In Abeyratne’s view, it is considered a system of coercive intimidation brought about by the infliction of terror or fear. See R.I.R. Abeyratne, *The Effects on Unlawful Interference of Civil Aviation on World Peace and the Social Order*, 22 TRANSP. L.J. 449 (1995) (quoting A.H. MILLER, TERRORISM AND HOSTAGE NEGOTIATIONS 10-11 (1980)).

<sup>28</sup> Martha Crenshaw, *The Counter-Terrorism/Terrorism Dynamic*, in TERRORISM AND THE 2000 OLYMPICS 121, 124 (Alan Thompson ed., 1996).

<sup>29</sup> See Alona E. Evans, *Aircraft Hijacking: Its Cause and Cure*, 63 AM. J. INT’L L. 695, 696 (1969).

<sup>30</sup> See *id.*

<sup>31</sup> *Id.*

<sup>32</sup> See Gam, *supra* note 15, at 217.

crew, during which terrorists threatened to detonate a device on board if they did not receive a ransom of \$505,000. In June, 1997, an Air Malta Flight bound for Turkey was diverted to Germany.<sup>33</sup> On March 11, 1997, on Taiwanese Flight FEAT 128, with 150 passengers and six crew members, a Taiwanese journalist doused himself with gasoline and demanded the plane be diverted to Kaohsiung on the Chinese mainland, where he was subsequently arrested by local police.<sup>34</sup> Moreover, in November 1996, on Flight ET 961, en route from Addis Abbaba, Ethiopia, to the Ivory Coast, three hijackers, one wielding an ax, demanded that the pilot fly the plane to Australia because the hijackers wanted to make history.<sup>35</sup> The plane ran out of fuel approaching the Comoros Islands near Madagascar and crashed into the sea, resulting in 123 deaths.

In October, 1996, a German court sentenced a Turkish male to a seven-year jail term for hijacking an aircraft with a toy pistol in order to draw attention to the plight of Muslims in Chechnya. The flight's path was originally from Cyprus to Munich. The hijacker released 108 hostages after police promised him access to a radio reporter and a lawyer.<sup>36</sup>

In November, 1995, on Olympic Flight 472 from Sydney International Airport, which was carrying 110 passengers and bound for Athens, an Ethiopian journalist, who had travelled to Australia from Greece six months earlier on a false passport, threatened a steward with a knife minutes before the flight left the tarmac, demanding the Greek government grant him sanctuary.<sup>37</sup>

### III. THE WARSAW CONVENTION (1929)<sup>38</sup>

Australia is a signatory to the international convention governing the safety of passengers, known as the Warsaw Convention. Article 17 of the Convention provides that the liability of

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<sup>33</sup> See *Hijackers to Make Statement of Solidarity for Man Who Shot Pope*, L.A. TIMES, June 10, 1997, at A4.

<sup>34</sup> See *Taiwan Journalist Hijacks Plane*, SYDNEY MORNING HERALD, Mar. 11, 1997, at 8.

<sup>35</sup> See *Hijackers Wielded Axe*, SYDNEY MORNING HERALD, Nov. 25, 1996, at 1.

<sup>36</sup> See *Hijack Bid Fails on Plane Out of Sydney*, SYDNEY MORNING HERALD, Nov. 10, 1995, at 3.

<sup>37</sup> See *Hijacker Feared A Firing Squad*, SYDNEY MORNING HERALD, Sept. 11, 1995, at 1.

<sup>38</sup> Convention for Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, 137 L.N.T.S. 11 (codified at 49 U.S.C. § 40105 (1996)) [hereinafter Warsaw Convention]. The Convention

air carriers is for the safety of passengers "on board the aircraft or in the course of any of the operations of embarking and disembarking."<sup>39</sup> The Warsaw Convention is limited in its scope, providing rights to passengers seeking damages for personal injuries against air carriers. It offers absolute liability for a fixed and limited award of damages. It is civil in nature, not criminal. Thus, it does not seek to punish offenders with criminal sanctions. This is a matter for the Tokyo Convention (1963) and other related conventions.

#### IV. THE CONVENTIONS AGAINST TERRORISM AND HIJACKING

The group of Conventions and Protocols associated with aerial hijacking and terrorism have been fully described elsewhere<sup>40</sup> by a number of learned authors including Gerald F. Fitzgerald and Paul S. Dempsey.<sup>41</sup> The following is a summary of the main principles.

##### A. THE TOKYO CONVENTION (1963)<sup>42</sup>

The first international legal instruments governing terrorism and hijacking were developed by the International Civil Aviation Organization in 1963.<sup>43</sup> This was a response to the large

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has been adopted as Australian Law under the Civil Aviation Carriers' Liability Act (1959).

<sup>39</sup> Warsaw Convention, *supra* note 38, art. 17. It further provides that: [t]he carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 25 similarly provides that:

[t]he carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part . . . is considered to be equivalent to wilful misconduct.

*Id.* art. 25.

<sup>40</sup> See Gerald F. Fitzgerald, *Towards Legal Suppression of Acts Against Civil Aviation*, Nov. 1971, No. 585, 42-82; Gerald F. Fitzgerald, *Unlawful Interference with Civil Aviation*, in *ESSAYS IN AIR LAW* 59, 60-63. (Arnold Kean ed., 1982).

<sup>41</sup> See Paul S. Dempsey, *Aerial Piracy and Terrorism: Unilateral and Multilateral Responses to Aircraft Hijacking*, 2 *CONN. J. INT'L L.* 427 (1987).

<sup>42</sup> Convention on Offenses & Other Acts Committed on Board Aircraft, Sept. 14, 1963, 204 U.S.T. 1641, 704 U.N.T.S. 219 [hereinafter Tokyo Convention].

<sup>43</sup> The Convention was ratified by 49 states within one year. By 1969, 86 states had ratified it. The Convention deals with crimes on board civil aircraft and also gives extra territorial jurisdiction—the right to seek out offenders and return

number of aerial hijacking and acts of terrorism aboard aircraft during the 1950s and 1960s, particularly in Northern Europe and the Middle East.<sup>44</sup> Dempsey reports that while there were hijackings as early as the 1930s and 1940s, modern commercial air travel terrorism really began in the period 1948-1960 when there were twenty-nine successful hijackings worldwide. In the following six years (1961-1967), there were a total of sixteen hijackings. In 1960, there were thirty successful hijackings of aircraft, seventeen with United States registration.<sup>45</sup>

The motives for aerial hijacking during this early period were mixed. In some incidents, political refugees sought a safe haven. This was so in a number of hijackings involving Cuban émigrés attempting to enter the United States or by dissidents in the United States wishing to return to Cuba. Dempsey describes them as "the actions of unbalanced individuals seeking an outlet for frustration and repression."<sup>46</sup> The aerial hijackings in the post-Cold War period through to the 1980s were made in an attempt to promote political objectives relating to existing international conflict between nations.<sup>47</sup> The conflict between Israel and the Arab states that began in 1946 in the Middle East following the end of the Second World War continues to the present time.

The Tokyo Convention was signed in Tokyo on September 14, 1963. Its purpose was to outlaw acts committed on board aircraft that may jeopardize the safety of persons on board or their property,<sup>48</sup> and it was the first convention to assert formal international control over the criminal acts of hijackers.

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them to the country for prosecution. It gives the aircraft commander the authority to deal with persons who had committed, who possibly conspired to commit, or were about to commit a crime that would jeopardize the safety of passengers and the aircraft. The commander may use reasonable force to apprehend the terrorist, without fear of a civil suit. The Convention sets out the duties and responsibilities of contracting states where an aircraft lands. It gives authority to the state's authorities over offenders who disembark in that state, and it requires contracting states to cooperate and hand over offenders. The commander can authorize the assistance of the crew and passengers to take reasonable preventive measures where they have reasonable grounds in an emergency situation; anyone so acting is given immunity from prosecution if they acted under Article 10. The failure to provide mandatory extradition, if prosecution was not conducted, was one of its major weaknesses.

<sup>44</sup> See Dempsey, *supra* note 41, at 428.

<sup>45</sup> See *id.* at 429.

<sup>46</sup> *Id.*

<sup>47</sup> See *id.* at 430.

<sup>48</sup> See *id.* at 432 (citing Tokyo Convention, *supra* note 42, art. 1(b)).

The Tokyo Convention applies to offenses "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 any other area outside the territory of any State."<sup>49</sup> Jurisdiction is contracted under Article 3, which provides that the State of registration of the aircraft is competent to exercise jurisdiction over offenses and acts committed on board. The Tokyo Convention also seeks to preserve criminal jurisdiction under national law.<sup>50</sup> The Convention gives to the aircraft commander specified powers that, in certain circumstances,

when he has reasonable grounds to believe that a person has committed, or is about to commit, on board the aircraft, an offence [he may] 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. . . .<sup>51</sup>

The Tokyo Convention authorizes each contracting state to take measures establishing its jurisdiction over offenses committed in the territory of that state, over offenses committed against or on board an aircraft registered in that state, and in situations in which the aircraft lands in its territory with the alleged offender still on board. Under Article 7, when the state does not seek to extradite the offender, though hijacking is an extraditable offense, it is required to submit the case to its competent authorities for the purpose of prosecution.<sup>52</sup> Disputes arising under the provisions of the Tokyo Convention shall be resolved by negotiation, arbitration, or through the International Court of Justice.

States are not obliged, however, to exercise jurisdiction over or to extradite those offenders. The states' only affirmative duty is to help the aircraft commander; there is no duty to punish the offenders.<sup>53</sup>

Dempsey points out that one of the weaknesses of the Convention is its failure to create a definitive obligation on behalf of all of its signatories, either to prosecute or to extradite the accused. He suggests the involved nation need only institute a criminal or extradition proceeding, but not consummate it.<sup>54</sup> In

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<sup>49</sup> Tokyo Convention, *supra* note 42, art. 1(2).

<sup>50</sup> *See id.* art. 3(3).

<sup>51</sup> *Id.* art. 6.

<sup>52</sup> *See id.* art. 7.

<sup>53</sup> *See Dempsey, supra* note 41, at 437.

<sup>54</sup> *See id.* at 432.

other words, the Convention has succeeded in identifying the problems that threaten the security of international aircraft, but it has been criticized for not providing a satisfactory framework for resolving the problems.<sup>55</sup>

#### B. THE HAGUE CONVENTION (1970)<sup>56</sup>

In 1970, the International Civil Aviation Organization (ICAO), concerned with the increase in aerial terrorism incidents during the late 1960s, sought to introduce a new Convention that would clearly define unlawful acts against aircraft as well as impose more appropriate penalties. Article 1 of the Hague Convention<sup>57</sup> states that

[a]ny person who on board an aircraft in flight: (a) unlawfully, by force or threat thereof, or by any other form of intimidation seizes, or exercises control of, that aircraft, or attempts to perform any such act, or (b) is an accomplice of a person who performs or attempts to perform any such act—commits an offence

and under Article 2 is subject to severe penalties.<sup>58</sup> The effect of this provision was to declare clearly for the first time that the hijacking of an aircraft is an international crime.

Dempsey notes that the Hague Convention creates a clear legal policy and enforcement procedure to deal with it.<sup>59</sup> By providing mandatory jurisdiction or extradition, the Hague

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<sup>55</sup> See *id.* at 434; see also NICOLAS MATTE, *TREATISE ON AIR-AERONAUTICAL LAW* 353 (1981); Ruben Kraiem, Recent Developments, *International Terrorism: Hijacking* 19 HARV. INT'L L.J. 1037, 1040 (1978).

<sup>56</sup> Convention for the Suppression of Unlawful Seizure of Aircraft, International Conference on Air Law, Dec. 16, 1970, 22 U.S.T. 1641, 10 I.L.M. 133 [hereinafter Hague Convention].

<sup>57</sup> Seventy-seven states originally adopted the Hague Convention on December 1, 1970. This convention made hijacking aircraft in flight a distinct offense calling for severe punishment of any person who hijacked an aircraft. Each state makes the offense punishable by severe penalties, but not necessarily the extradition of the offender. The Hague Convention did not deal with offenses committed on the ground, by sabotage, or by someone not on board the aircraft but who had placed a bomb on the plane to be operated by a remote control device. The Convention's drafters limited its scope to only acts committed when the plane's external doors are closed. Hijackings initiated before the closing of doors on embarkation, or after the opening of the doors during disembarkation, were not covered by the Convention. The Hague Convention also required the state to take jurisdiction over the aircraft, but did not provide for the state to prosecute the offender.

<sup>58</sup> Hague Convention, *supra* note 56, arts. 1, 2.

<sup>59</sup> See Dempsey, *supra* note 41, at 435.

Convention seeks to encourage states to initiate criminal proceedings against hijackers. Article 6 states that the

Contracting State in the territory of which the offender or alleged offender is present, shall take him into custody or take other measures to ensure his presence. 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 necessary to enable any criminal or extradition proceedings to be instituted.<sup>60</sup>

Furthermore, Article 6(2) requires a state to "immediately make a preliminary inquiry into the facts."<sup>61</sup> These provisions encourage states to initiate criminal proceedings under their own domestic laws against hijackers. The apparent weakness of the Hague Convention is its failure to provide a uniform system of prosecution, leaving it to the vagaries of a country's local laws to provide sanctions. Nevertheless, as Dempsey points out, the effect of the Hague Convention is to act as a deterrent. Since prosecution or extradition became mandatory, fewer states are available as safe havens. Algeria, Lebanon, Syria, and Libya are the exceptions. Moreover, the Convention enhanced international law regarding enforcement of penalties against hijackers.<sup>62</sup>

### C. THE MONTREAL CONVENTION (1971)<sup>63</sup>

A third convention criminalizing hijacking occurred only a year later with the Montreal Convention of 1971, which was ratified by over 128 states.<sup>64</sup> The Convention "makes punishable 'by severe penalties' an 'act of violence against a person on board an aircraft in flight if that act is likely to endanger the

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<sup>60</sup> Hague Convention, *supra* note 56, art. 6.

<sup>61</sup> *Id.*

<sup>62</sup> *See id.*, art. 2; *see also* Dempsey, *supra* note 41, at 443 n.83.

<sup>63</sup> Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Sept. 23, 1971, 24 U.S.T. 564, 10 I.L.M. 115 [hereinafter Montreal Convention].

<sup>64</sup> The Montreal Convention defined aircraft in service (as opposed to aircraft in flight) with a broad definition to take account of pre-flight preparation by ground personnel or crew as well as a 24-hour period after the landing. It covered bombings or the discharge of weapons against aircraft on the ground (e.g., in the hangar or parking area) whether by a person on board or outside the aircraft as well as acts against the aircraft in flight, which might also include a stopover or night stop in another country. The Montreal Convention includes "performing an act of violence in destroying an aircraft in service," or placing a device or substance that is likely to destroy the aircraft, or using accomplices to commit acts of violence or destruction. *See id.* at 1-2.

safety of that aircraft.”<sup>65</sup> A state that is a party to the Montreal Convention is required at a minimum to assist an air pilot to regain control, return an aircraft to its rightful owner, and hold an offender while considering prosecution or extradition.<sup>66</sup>

Dickinson observes that the treaties have also created customary law that regulates non-state parties and non-state entities. Over 125 states, including Lebanon, have ratified these treaties. The controversy concerning types of punishment and exceptions to extradition is not an issue unless an international crime is involved.<sup>67</sup> Hijacking is also a criminal act under international customary law.

Levitt suggests that the Montreal Convention, like the Hague Convention, was framed in response to an escalation of terrorist violence, in particular the bombings of Austrian and Swiss airliners in the previous year.<sup>68</sup> Consequently, the United Nations General Assembly has passed two resolutions condemning hijacking. The UN Resolution on the Forcible Diversion of Civil Aircraft in Flight passed on December 12, 1969, by a 77-2 vote, with 17 abstentions. The UN Resolution on Aerial Hijacking or Interference with Civil Air Travel, adopted on November 25, 1970, by 105-0 vote, with 8 abstentions, condemns all acts of aerial hijacking and the taking of hostages from aircraft.<sup>69</sup>

#### D. THE EUROPEAN CONVENTION (1977)<sup>70</sup>

The European Convention<sup>71</sup> was passed following a series of unsuccessful resolutions between 1970-1976 in which ICAO attempted to strengthen the provisions of the existing conventions, particularly in relation to the apprehension of suspected

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<sup>65</sup> Karen Dickinson, *United States v. ?—International Responsibility for the Hijacking of TWA Flight 847*, 19 ARIZ. ST. L.J. 325, 339 (1987) (quoting Montreal Convention, *supra* note 63).

<sup>66</sup> See *id.* at 340.

<sup>67</sup> See Geoffrey M. Levitt, *The International Legal Response to Terrorism: A Reevaluation*, 60 U. COLO. L. REV. 533 (1989).

<sup>68</sup> See *id.* at 542.

<sup>69</sup> See Dickinson, *supra* note 65, at 327.

<sup>70</sup> European Convention on the Suppression of Terrorism, Jan. 27, 1972, 15 I.L.M. 1272 [hereinafter European Convention].

<sup>71</sup> This agreement was made outside ICAO (the International Commercial Airline Organization, based in Montreal, Canada) with 14 western nations and Japan. The intent was to impose sanctions on states that failed to return hijacked aircraft or failed to extradite or prosecute hijackers. A major weakness was that only a small number of states signed it. The agreement did not authorize collective action and most states placed reservations on the agreement. Finally, there were no enforcement procedures except arbitration.



aerial terrorists and their activities. Political factors played a part in the failure of ICAO to successfully create a new convention. This was due to certain states providing safe havens for offenders.<sup>72</sup>

For the same reason, political differences were the primary cause of the ICAO's inability to draft and adopt a rigorous air security enforcement agreement. Consequently, two new security agreements were initiated and drafted outside the ICAO during 1976: the European Convention on the Suppression of Terrorism of 1977 and the Bonn Declaration of Hijacking of 1978. Six western nations and Japan wished to impose sanctions on any state that failed to return hijacked aircraft or failed to extradite or prosecute offenders.<sup>73</sup>

Dempsey notes that as early as September 1970, the Consultative Assembly of the Council of Europe adopted resolutions and recommendations calling for a common agreement on sanctions to be taken against states providing sanctuary to air pirates.<sup>74</sup> But it was not until late 1976 that the Committee of Ministers of the Council of Europe, then consisting of fourteen countries, finally adopted the European Convention. The weakness of the Convention, in Dempsey's view, is that a country could refuse extradition if it had "substantial grounds for believing" that the alleged offender was being prosecuted for his political opinions.<sup>75</sup> The European Convention had limited impact because few states were signatories. It failed to authorize collective action by member states, contained rights of reservation by any state which chose to do so, and had no coercive power other than arbitration.<sup>76</sup>

#### E. THE BONN DECLARATION (1978)<sup>77</sup>

During the Bonn Economic Summit in July, 1978, heads of state and government representatives, known as the G7, issued a joint declaration—the Bonn Declaration on Hijacking.<sup>78</sup> From

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<sup>72</sup> See Dempsey, *supra* note 41, at 443.

<sup>73</sup> See *id.* The countries included Belgium, Cyprus, Denmark, France, the Federal Republic of Germany, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Switzerland, Turkey, and the United Kingdom. The United States was not a party. See *id.* at 445 n.88.

<sup>74</sup> See *id.*

<sup>75</sup> *Id.* at 445.

<sup>76</sup> See *id.* at 446.

<sup>77</sup> The Bonn Agreement on Hijacking of 1978, 17 I.L.M. 1285 (1985).

<sup>78</sup> See Dempsey, *supra* note 41, at 446. The Declaration aimed to combat international terrorism by requiring states to hand over terrorists. Where a state re-

its title, it is apparent that the agreement is not a treaty, nor did it create legal rights or obligations between the parties.<sup>79</sup> But the Declaration's objective was to resolve to take legal action against any state that fails to respond to a hijacking. The sanctions have been employed on only two occasions.<sup>80</sup> Busuttil comments that the Declaration does not deal directly with hijackers, but is directed toward a state that finds a hijacker or hijacked aircraft within its territory.<sup>81</sup>

The Bonn Declaration incorporates the provisions of the Hague Convention and requires the extradition of the offender or submission to the domestic authorities for prosecution of a hijacker found within a state's territory. Similarly, the Bonn Declaration requires the return of any hijacked aircraft to the persons lawfully entitled to possession. The Declaration is directed at states that refuse extradition or prosecution of those who have hijacked an aircraft or do not return such aircraft.<sup>82</sup> Abeyratne has observed that the aerial boycott adopted by the Bonn Declaration is not permissible according to international law as incorporated into the Charter of the United Nations. Abeyratne further suggests that "States will be held responsible for a boycott instituted directly by their governments if such measure is found by the international community to be *ultra vires* the established norms of international law."<sup>83</sup>

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fused to hand over a terrorist, other states could take immediate action. For example, they could cease all flights to that country or suspend all incoming flights from that country. This strategy amounts to an economic boycott or a reprisal action. The Bonn Declaration recognized that some states may act as accomplices and give refuge or safe havens to hijackers, e.g., Algeria, Libya, Syria, and Lebanon. *See id.* at 443 n.83.

<sup>79</sup> *See id.*

<sup>80</sup> *See id.* Dempsey points out that the legal issues raised by the possible use of the sanctions under the Bonn Declaration seem to assume the obligations set out in the Tokyo Convention and Hague Convention to return hijacked aircraft and extradite or prosecute hijackers form part of customary international law binding on all states. But Dempsey also notes that, at least as of 1987, one-third of the world community has yet to ratify those conventions. *See id.*

*See also* Kevin Chamberlain, *Collective Suspension of Air Services with States Which Harbour Hijackers*, 32 INT'L & COMP. L.Q. 616 (1983); Comment, *Skyjacking and the Bonn Declaration of 1978: Sanctions Applicable to Recalcitrant Nations*, 10 CAL. W. INT'L L.J. 123 (1980); Dempsey, *supra* note 41, at 447-48; Fitzgerald, *supra* note 40, at 223; James J. Busuttil, *The Bonn Declaration on International Terrorism: A Non-Binding Agreement on Aircraft Hijacking*, 31 INT'L & COMP. L.Q. 474 (1982).

<sup>81</sup> *See* Busuttil, *supra* note 80, at 477.

<sup>82</sup> *See id.*

<sup>83</sup> R.I.R. Abeyratne, *Attempts at Ensuring Peace and Security in International Aviation*, 24 TRANSP. L.J., 27, 67 (1996).

While acknowledged as a non-binding international agreement imposing no legal obligations on its signatories, Busuttil concludes that the Bonn Declaration is a sign to the rest of the world that the West is serious about curbing and reacting to hijacking.<sup>84</sup>

F. THE INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES (1979)<sup>85</sup>

In 1976, the Federal Republic of Germany proposed to the General Assembly of the United Nations that an international convention against the taking of hostages be drafted. Consequently, the UN adopted the International Convention Against the Taking of Hostages in December, 1979. The Convention defines hostage taking as

seizing or detaining and threatening to kill, injure, or continue to detain another person (the hostage) in order to compel a third party to do or abstain from doing any act as a condition for the release of the hostage. Parties to the Convention must make the offense punishable by 'appropriate penalties,' which take into account the 'grave nature' of the offense.<sup>86</sup>

Furthermore, a state party in whose territory a hostage is held "shall take all measures it considers appropriate to ease the situation of the hostage and, in particular, to secure his release."<sup>87</sup> There is a further requirement that the state parties must cooperate in the prevention of the taking of hostages.<sup>88</sup>

In short, the Bonn Convention obliges the state to establish jurisdiction over the offenses and to either extradite or prosecute the alleged offender.<sup>89</sup> The exception to the general rule occurs when the act of taking hostages is in the course of armed conflict as defined by the Geneva Convention of 1949. Levitt observes that despite its national liberation rhetoric, this provision creates no gap in the legal coverage of the hostages convention and has over forty signatories representing a fairly broad segment of the international community.<sup>90</sup>

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<sup>84</sup> See Busuttil, *supra* note 80, at 477.

<sup>85</sup> *International Convention Against the Taking of Hostages*, U.N. GAOR, 34th Sess., U.N. Doc. A1341819 (1979) [hereinafter Bonn Convention].

<sup>86</sup> Levitt, *supra* note 67, at 545-46 (citing McDONALD, THE UNITED NATIONS CONVENTION AGAINST THE TAKING OF HOSTAGES: THE INSIDE STORY 6 (1983)).

<sup>87</sup> *Id.* at 546.

<sup>88</sup> See *id.*

<sup>89</sup> See *id.*

<sup>90</sup> See *id.*

G. THE MONTREAL PROTOCOL (1984)<sup>91</sup>

The purpose of the Montreal Protocol of 1984<sup>92</sup> was to amend the provisions of Article 9 of the Chicago Convention, including Article 3 *bis*, which requires that every state refrain from the use of weapons against civil aircraft in flight and that, in the case of interception, the lives of persons on board must not be endangered.<sup>93</sup> Furthermore, the Chicago Convention requires that each contracting state take appropriate measures to prohibit the deliberate use of any civil aircraft registered in that state for any purpose inconsistent with the aims of the Convention.<sup>94</sup>

H. THE MONTREAL PROTOCOL (1988)<sup>95</sup>

On February 24, 1988, ICAO introduced a new protocol aimed at the suppression of unlawful acts of violence at airports serving international flights. The purpose of the Montreal Protocol<sup>96</sup> is to supplement the Montreal Convention of 1971 with the addition of Article 1 *bis*:

Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon: (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death, or (b) destroys or seriously damages the facilities of an airport . . . or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport.<sup>97</sup>

The Montreal Protocol also requires, under Article 2 *bis*, that each contracting state shall take such measures as may be necessary to establish its jurisdiction over the offenses in the case

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<sup>91</sup> *Protocol Relating to an Amendment to the Convention on International Aviation*, ICAO Doc. 9436 (May 10, 1984). This Convention deals with the lives on board an aircraft imported by the threat or use of weapons against the aircraft in flight, say by missile or other device, or the threat of interception, say by another plane.

<sup>92</sup> *See id.*

<sup>93</sup> *See id.*

<sup>94</sup> *See id.*

<sup>95</sup> *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, ICAO Doc. 9518 (Feb. 24, 1988) [hereinafter *Montreal Protocol*].

<sup>96</sup> This protocol deals with the suppression of unlawful violence to persons at airports. It is concerned with persons committing an offense using a device, substance, or weapon, or an act of violence against a person, the damaging of facilities at the airport, as well as the endangering of the safety of all persons at the airport.

<sup>97</sup> *Montreal Protocol*, *supra* note 95, art. 1 *bis*.

where the alleged offender is present in its territory and the state does not extradite him.<sup>98</sup>

## V. TERRORISM AND AUSTRALIA'S CONCERN WITH THE SYDNEY 2000 OLYMPICS

This section examines the role of the Australian federal government's security agencies and support services in assessing the potential for terrorist activities at the time of the 2000 Sydney Olympics. This section also considers some strategies being implemented to minimize danger to tourists and other visitors both before and after the Games.

Terrorism may be orchestrated by one of two forms: classic terrorism and amateur terrorism. Thompson describes classic terrorism as being carried out by defined organizations that are full-time, underground, and covert, using traditional methods and with largely definable motives and purposes.<sup>99</sup> Amateur terrorism, on the other hand, is carried out by persons who are not members of defined groups, have no background in terrorism, and whose *modus operandi* cannot be predicted. Thompson points to recent examples of amateur terrorists' work, including the bombing of the World Trade Center in New York, the use of nerve gas in the Tokyo subway, the bombing of the Paris Metro, and the destruction of the Alfred P. Murrah Federal Building in Oklahoma City.<sup>100</sup>

In contrast, Hoffman highlights the increase in religiously motivated terrorism groups, stating:

[t]he fact that for the religious terrorist violence inevitably assumes a transcendent purpose and therefore becomes a sacramental or divine duty arguably results in a significant loosening of the constraints on the commission of mass murder. Religion, moreover, functions as a legitimizing force sanctioning if not encouraging wide scale violence against an almost open-ended category of opponents.<sup>101</sup>

Thus, amateur religious terrorism may well increase as the millennium approaches. "Not only will this group include obscure millenarian sects and cults," but in Thompson's view, may

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<sup>98</sup> See *id.*, art. 2 *bis*.

<sup>99</sup> See Alan Thompson, *Introduction*, in *TERRORISM AND THE 2000 OLYMPICS* 3 (Alan Thompson ed., 1996).

<sup>100</sup> See *id.*

<sup>101</sup> Bruce Hoffman, *Targeting Tactics and the Likely Future Trends*, in *TERRORISM AND THE 2000 OLYMPICS* 19, 21-22 (Alan Thompson ed., 1996).

include "a proliferation of Christian fundamentalist, far-right organisations with a para-military bent."<sup>102</sup>

Dissident groups and extremists are again active in Australia. In recent years, the activities of the extreme political right, including Ms. Pauline Hanson, the federal member for Oxley in the Commonwealth Parliament of Australia, who favors restricting Asian immigration to Australia, has caused dissent, protests, and violence not seen in Australia since the anti-Vietnam war protests of the 1960s-70s.<sup>103</sup> The Director General of ASIO, David Sadleir, notes that the neo-Nazi extremists and the racist right in Australia are also among possible sources of concern, though they are small in number, politically isolated, and subject to vigorous police action.<sup>104</sup>

The 2000 Olympics is an international event that will be held in Sydney, Australia, the country's largest city. While the responsibility for the organization and funding of the Games is largely a State responsibility, it requires an international response and coordination. Thompson believes that "[t]he Olympics will be the largest event to be staged in Australia's history and by far the greatest law enforcement/security operation outside wartime."<sup>105</sup> Consequently, only the Commonwealth, through the Australian Defence Force and the Special Air Service Regiment, has the national capacity to deal with a terrorist incident.<sup>106</sup>

There is also concern for the role the media will play during the Olympics because 15,000 journalists and other media representatives will be in Australia to cover the events. Indiscriminate reporting may actually encourage acts of violence. Grabosky considers that in 2000, Sydney will be the center of the world stage with an audience in excess of one billion people, where the opportunity will not be lost on those wishing to make a political statement.<sup>107</sup>

Hoffman describes terrorist groups as mercurial, unpredictable, and above all, transnational, highlighting the Aum sect's

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<sup>102</sup> Thompson, *supra* note 99, at 4.

<sup>103</sup> See L. Lamont, *What Asia's Top Business Leaders Think of Hanson*, SYDNEY MORNING HERALD, July 21, 1996, at 1-2.

<sup>104</sup> See David Sadleir, *Australia and Terrorism*, in *TERRORISM AND THE 2000 OLYMPICS* 43, 47 (Alan Thompson ed., 1996).

<sup>105</sup> Thompson, *supra* note 99, at 5.

<sup>106</sup> See *id.* at 5-6.

<sup>107</sup> See Peter Grabosky, *Violence in Australian Society*, in *TERRORISM AND THE 2000 OLYMPICS* 49, 59 (Alan Thompson ed., 1996).

millennialist beliefs, and suggests the world may be "on the cusp of a new, and potentially more dangerous, era of terrorism as the year 2000—the literal millennium—approaches."<sup>108</sup> The Aum sect has been active in Japan, Russia, and Australia, where it was able to conduct experiments and manufacture chemical nerve gas that was later used in the Tokyo underground railway against innocent victims.<sup>109</sup>

Over the last twenty-three years and eleven Olympic Games, a repeat of the Munich incident has been avoided.<sup>110</sup> Within this same time period, both the profile of the Games and the frequency and lethality of terrorism have risen to unprecedented levels.<sup>111</sup> At the Moscow Games, security was not an issue, as the Soviets declared martial law and banished over 120,000 people from the city. Troops lined the streets and filled significant portions of the stadiums. The KGB also prevented press and foreigners from having contact with the Russian people.<sup>112</sup> As Crenshaw observes, the dissolution of the Soviet Union and the dispersion of nuclear materials formerly in the hands of the Soviet State have provided new resources for potential mass-casualty terrorism.<sup>113</sup> Moreover, it should be remembered that seven of the twelve Games held since the Second World War have been subject to major protests, terrorist threats, actual violence, or other kinds of political tension or threats, beginning with the 1956 Olympic Games.<sup>114</sup>

Olympic security represents a unique and extraordinary security challenge to the host country in terms of the scale and cost, the media attention focused on the event, and the diversity of the participants and the host environment. More importantly, as Sanan states, "Olympic security requires measures that are both comprehensive and unobtrusive so that the atmosphere of the Games is not spoilt."<sup>115</sup>

Grabosky observes that the likelihood of the 2000 Olympics being blighted by political violence "depends less on Australian history and society than on situational factors in distant

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<sup>108</sup> Hoffman, *supra* note 101, at 27.

<sup>109</sup> *See id.*

<sup>110</sup> *See* Guy Sanan, *Olympic Security Operations*, in *TERRORISM AND THE 2000 OLYMPICS* 33, 37 (Alan Thompson ed., 1996).

<sup>111</sup> *See* Grabosky, *supra* note 107, at 59.

<sup>112</sup> *See id.*

<sup>113</sup> *See* Crenshaw, *supra* note 28, at 126.

<sup>114</sup> *See* David Sadleir, *The Role of Intelligence*, in *TERRORISM AND THE 2000 OLYMPICS* 113, 119 (Alan Thompson ed., 1996).

<sup>115</sup> Sanan, *supra* note 110, at 41.

lands.”<sup>116</sup> The risk of violence at the 2000 Olympics will “be affected as much by global conditions [in the next two years] as it will by local circumstances.”<sup>117</sup>

## VI. AUSTRALIA’S NATIONAL ANTI-TERRORIST PLAN

One of the first incidents to usher terrorism into Australia was the Hilton hotel bombing on February 13, 1978. Prior to this incident, counter-terrorism was a low priority in Australia. Following the *Protective Security Review* conducted by Mr. Justice Hope in 1979, a Standing Advisory Committee on the Commonwealth-State Cooperation for Protection Against Violence (SAC-PAV) was established “to provide advice and to coordinate the development of national capabilities to counter terrorism.”<sup>118</sup> An early priority for SAC-PAV was the development of the National Anti-Terrorist Plan (NATP) as “the major guiding and planning document for national counter terrorism arrangements.”<sup>119</sup>

Early versions of NATP included a more succinct definition of terrorism. The ASIO Amendment Act (1986) amended the definition of terrorism and substituted one of “politically motivated violence.”<sup>120</sup> The definition that Australian security forces generally use is the following: “acts or threats of violence of national concern, calculated to evoke extreme fear for the purpose of achieving a political objective in Australia or in a foreign country.”<sup>121</sup>

The NATP recognizes the primacy of the police in dealing with any criminal acts, including terrorist acts.<sup>122</sup> Each state has a police service with a separate anti-terrorist plan for managing terrorist incidents, and the Australian Defence Force has several contingency plans devoted to counter-terrorism.<sup>123</sup> “The preventive arrangements set out in the NATP are designed to provide a secure environment for the Australian community by enhancing the ability of the agencies to carry out their individ-

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<sup>116</sup> Grabosky, *supra* note 107, at 63.

<sup>117</sup> *Id.*

<sup>118</sup> Lindsay Hansch, *Australia’s National Anti-Terrorist Plan: Crisis and the Response Arrangements*, in *TERRORISM AND THE 2000 OLYMPICS* 91, 91 (Alan Thompson ed., 1996).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 92.

<sup>121</sup> *Id.*

<sup>122</sup> *See id.* at 93.

<sup>123</sup> *See id.* at 94.



ual roles through inter-jurisdictional and inter-agency cooperation."<sup>124</sup>

The Australian federal government's agencies, security groups, and Australian airlines acknowledge that while the Sydney 2000 Olympics will be a major generator for tourism in Australia, as the time approaches, the country may face increasing risk of international terrorist activity as both terrorism and counter-terrorism are becoming increasingly globalized both in the air and on the ground.<sup>125</sup> Restrictions on freedom of association and freedom of movement may be necessary. The use of sophisticated electronic surveillance devices in streets neighboring certain venues, and physical checks on entry to large auditoriums, will no doubt be utilized.<sup>126</sup>

## VII. IMPLICATIONS FOR TOURISM, SECURITY, AND THE 2000 OLYMPICS

Terrorism can affect tourism in two ways. First, terrorist acts can damage a destination or a country's tourist industry by creating an image of a lack of safety, as has happened in Egypt in the last few years. Second, tourists or tourism facilities, such as airport terminals or aircraft, can themselves be the subject of attack, as in the case of the 1985 Rome and Vienna airport incidents.

Australia's security organizations are aware of the continued trend in incidents around the world involving hijacking and terrorism. The Deputy Director of the General ASIO recently stated that "[i]n a rapidly changing security environment, events which occur overseas do not necessarily indicate Australian parallels but they offer guidance on what may happen here."<sup>127</sup> The federal government has urged the Sydney Organizing Committee for the Olympic Games (SOCOG) "to lay the groundwork for a security plan well in advance of the Games."<sup>128</sup> The Head of Security for the Sydney 2000 Olympics, Commander Paul McKinnon, has confirmed that "threats had been made by groups within Australia and outside."<sup>129</sup> Notably, the Secretary

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<sup>124</sup> *Id.*

<sup>125</sup> See THOMPSON, *supra* note 99, at 9.

<sup>126</sup> See George Chin, *Private Sector Involvement in Security for Sydney 2000 Olympics*, in *TERRORISM AND THE 2000 OLYMPICS* 189, 192-93 (Alan Thompson ed., 1996).

<sup>127</sup> Lague, *supra* note 11, at 15.

<sup>128</sup> *Id.*

<sup>129</sup> Nick Papadoupoulos, *Olympics Terrorist Threat Revealed*, SYDNEY MORNING HERALD, Feb. 5, 1997, at 4.

General of Interpol, Mr. Raymond Kendall, on a visit to Australia in December, 1996, to attend a three day symposium on aviation security, stated that his organization had issued to airlines and police authorities eighty-seven wanted notices for suspected terrorists.<sup>130</sup>

The response by the Australian Minister for Immigration highlights the federal government's concern that potential political or security issues do not arise, even if the response is criticized by moderates and other more libertarian voices. The aging Black Panther activist Lorenzo Ervin, who was on a lecture tour in Australia, was recently forced out of the country when the Australian government cancelled his visa. The Minister for Immigration, on learning Ervin was in Australia, took the action on the grounds that Ervin, who had been convicted years ago for aerial hijacking and kidnapping, and who had later been given presidential clemency, was regarded by the Australian government as being unfit to hold a visa; he was therefore swiftly deported in July, 1997.<sup>131</sup>

## VIII. CONCLUSION

The images of Olympic athletes held hostage by masked terrorists that flashed across the world by television during the 1972 Munich Games is one that must continue to haunt Olympic officials. The conjunction of dissident forces wishing to promote their cause at the Games, the athletes participating in a range of athletic events, and global television with over three billion people watching the events, creates the potential for chaos, destruction, and loss of life. It appears, however, that the Australian government and its security services are adequately prepared for most contingencies under its National Anti-Terrorist Plan. The Sydney 2000 Olympics and the new millennium represent an ideal opportunity for the international community to finally seek more peaceful solutions to conflict in the future. On this occasion, such an opportunity should not be lost by nations of the world.

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<sup>130</sup> See Shanahan, *supra* note 11, at 5.

<sup>131</sup> See *id.*



## **Comments**

