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## **A SYMPOSIUM ON THE UNLAWFUL SEIZURE OF AIRCRAFT: APPROACHES TO THE LEGAL PROBLEMS**

### **FOREWORD**

How to control the increasing frequency in the number of hijackings probably has become the most serious and perplexing question facing the world aviation community. During the past one and three quarter years, for example, 170 individual attempts to forcibly seize an aircraft have jeopardized the lives of over 9,000 passengers representing 209 countries, the planes of sixty-eight countries and have rendered no state immune from unlawful seizures of its aircraft. Nevertheless, even though this epidemic is demonstrative evidence that more is involved than an erstwhile romantic adventure, the problem is not new. Hijacking has been a peculiar international problem at least since the early sixties, beginning with the concerted hijackings to Cuba in 1961, and climaxing in September 1970 with the multiple hijackings to the Jordanian desert and subsequent destruction of the aircraft involved. However, attempts by the international community to provide comprehensive control measures by means of a multilateral convention have been ineffective—limited by restrictiveness of scope and the number of states involved, and by the seemingly low priority traditionally given to international transportation in the everyday functioning of the contemporary world community. The most obvious example of this type of problem is the 1963 Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft, a proposal drafted in response to wave of hijacking in the Caribbean. Article 11 contains provisions concerning the unlawful seizure of aircraft, but is only concerned with alleviating the consequences of an unlawful seizure for the passengers, crew and the aircraft and not with affirmative obligations to punish the offender by the state in which the hijacker was destined. Moreover, even though only twelve ratifications were necessary to bring the Convention into legal effect, it took six years to come into force after its adoption at the Tokyo diplomatic conference. Thus, even an inadequate proposal has met the dilemma of a multilateral agreement containing sanctions but no ratifications or a draft convention containing more ratifications but no sanctions.

In either case the result is a legal pleonasm and has been criticized as outdated and inaccurate.

Since there has been a steady growth in the frequency and seriousness of hijackings from the time of the Tokyo Convention, increasingly, the international community has been concerned with the need to develop an effective international framework to prevent and deter such acts. The result was the Draft Convention on Unlawful Seizure of Aircraft, slated for a Diplomatic Conference at The Hague in December 1970. The thrust of the Convention defines the offense of “unlawful seizure” and provides a generally acceptable means of punishing offenders—either by extradition of the hijackers upon request or by prosecution under the state’s national laws—generally applauded as providing “teeth” to the provisions. A number of commentators, however, argue either (1) The Hague Convention did not go far enough in that there should be no safe haven for hijackers, and a recognition, both political and legal, by all nations that to punish such offenders is in their best interests; or (2) the method of international conventions is no longer adequate to cope with the situation because treaties are merely promises which are not always dependable; they lack universality, and they require a vast amount of time to negotiate. Moreover, once an agreement is reached, the terms are then frozen, requiring as much time and work to revise as the original treaty. These critics maintain that what is needed today is legal machinery to make and enforce global laws. Nevertheless, it remains to be seen if The Hague Convention will be widely adopted and ratified.

The articles that follow survey and review the work done in several of the above categories. The authors were asked to describe their research in a particular field and critically examine the basic assumptions, results and potential of such analysis. Although each author advocates a different position and approach from the others, all agree that unless a proposal gains universality, control measures can never expect to be effective in halting hijacking.