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TURKISH AVIATION ACADEMY



AVIATION SECURITY

Module 9

Prof. Ludwig Weber, McGill University

Istanbul Technical University
Air Transportation Management, M.Sc. Programme
Air Law, Regulation and Compliance Management
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AIR LAW, REGULATION AND COMPLIANCE MANAGEMENT

- **LEGAL FRAMEWORK FOR AVIATION SECURITY:**
 - INTERNATIONAL AVSEC INSTRUMENTS
 - ANNEX 17
 - NATIONAL LEGISLATION FOR IMPLEMENTATION OF THE INTERNATIONAL AVSEC INSTRUMENTS
 - NATIONAL AVSEC LEGISLATION
 - NATIONAL AVSEC REGULATIONS
 - NATIONAL AVSEC DECREES, ORDINANCES AND DECISIONS

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THE 8 CRITICAL ELEMENTS OF AVSEC

1. AVIATION SECURITY LEGISLATION
2. AVSEC PROGRAMMES AND REGULATIONS
3. AUTHORITY WITH SUFFICIENT POWERS
4. QUALIFICATION AND TRAINING OF PERSONNEL
5. TECHNICAL GUIDANCE TOOLS AND INFORMATION
6. CERTIFICATION AND APPROVAL OBLIGATIONS
7. QUALITY CONTROL REQUIREMENTS
8. RESOLUTION OF AVSEC CONCERNS

AVIATION SECURITY

Annex 17 to the Chicago Convention:

- Status of SARPS
- Screening of Passengers, baggage and cargo
- Restricted areas at airports
- AVSEC programmes (governments, airports, airlines)
- Quality control
- Training
- Annexes 6, 8 & 17: Closed, reinforced cockpit doors

AVIATION SECURITY

- **International AVSEC Conventions**
Tokyo, Hague, Montreal, VIA, MEX, BEJ
- **Suppression of Unlawful Acts_:**
- **prevention and deterrence - appropriate measures for punishment of offenders.**
- **International crimes, universal jurisdiction, prosecute or extradite**

LEGAL ASPECTS OF AVIATION SECURITY

- Tokyo Convention of 1963 (in force since 4/12/69, 185 States Parties)
- Historical background: increase in number of hijackings from 1 per year (until 1958) to 5 per year (1959 onwards), incl. Cuban hijackings from 1960 onwards.
- Focussed on crimes committed on board (hijacking, attempts to hijack, assault on crew, threats etc.)
powers of aircraft commander – delivery of offender to authorities – disembarkation

LEGAL ASPECTS OF AVIATION SECURITY

- Tokyo Convention of 1963 (in force since 4/12/69, 185 States Parties)
- Powers of aircraft commander: Arts. 5 – 10 : charter of powers
- Art.6 (1): Imposition of reasonable measures on offenders
- Art.6 (2): Require crew members to assist; authorise, but not require, passengers to assist in restraining offenders

LEGAL ASPECTS OF AVIATION SECURITY

- Tokyo Convention of 1963 (in force since 4/12/69, 185 States Parties)
- Art.8 (1) and (2), Art.9: Disembarkation and delivery, information and evidence, Art.9 (3).
Art. 12 – 15: Duty of accepting disembarkation and delivery, but no duty to prosecute.
- Art.1 (1) (a): based on national penal law: no international crimes created – no universal jurisdiction.
- No specific provision for prosecution – investigation – no duty to either extradite or prosecute

LEGAL ASPECTS OF AVIATION SECURITY

- Case (1): O has physically assaulted crewmember C, following a disputed exchange regarding alcohol consumption, and threatens to hijack the aircraft. The Aircraft Commander requests the First Officer to ask two passengers to help him restrain C and handcuff him.
- (1) Is he entitled to do so?
- (2) Can he disembark/deliver C at first landing?
- (3) What are the obligations of the State of landing ?
What if an extradition request is made by the State of registration?
- (4) Overall result ?

LEGAL ASPECTS OF AVIATION SECURITY

- Hague Convention of 1970 (in force since 14/10/71, 185 States Parties)
- Historical background: In 1969, number of hijackings had climbed to 82 in one year, highest number ever. Tokyo Convention did not stop hijackings, with political asylum granted subsequently to hijackers.

LEGAL ASPECTS OF AVIATION SECURITY

- Hague Convention of 1970 (in force since 14/10/71, 185 States Parties)
- Art. 1 (a), 2: Hijacking is made an international crime
- Art. 4: Establishment of international jurisdiction (but not universal)
- Art. 6: Obligation to keep him in custody, make enquiry into facts (i.e. duty to accept delivery)
- Art. 7: Prosecute or Extradite ; Art. 8: Extradition
- Art. 10 – 11: international cooperation and notification

LEGAL ASPECTS OF AVIATION SECURITY

- Case (2):
- (1) Hague Convention applicable to facts of case 2 ?
- (2) What if O rushes to the cockpit after assaulting C ?
- (3) What if he threatens the Commander with a plastic toy gun and is then overpowered and restrained ?
- (4) Obligations of the State of landing?
- (5) What if an extradition request is made by the State of registration?

LEGAL ASPECTS OF AVIATION SECURITY

- Montreal Convention of 1971 (in force since 26/01/73, 188 States Parties)
- Historical background: Abu Nidal terrorist acts.
- Hague Convention did not cover nor stop other acts of violence on board, e.g. hostage taking, or sabotage of aircraft or installations, or communication of false information.
Palestinian violence.

LEGAL ASPECTS OF AVIATION SECURITY

- Arts.1 (1), 3: Acts of violence on board, destruction/damage to aircraft, acts of sabotage regarding aircraft or ANS installations, communication of false information, are made an international crime
- Art.5: Establishment of international jurisdiction (in connection with Art. 4 (2) and (3), quasi-universal).

LEGAL ASPECTS OF AVIATION SECURITY

- Art.6: Obligation to keep offender in custody, and make inquiry into facts (i.e. duty to accept delivery)
- Art. 7: Prosecute or Extradite; Art. 8: Extradition
- Art. 10 – 13: international cooperation and notification
- (new: Arts.10 and 12 – measures of prevention).

LEGAL ASPECTS OF AVIATION SECURITY

- Case (3): O phones Airline A and says that its flight A123 has a bomb on board, set to explode in 15 minutes. It is merely a hoax, motivated by O's hatred of A-land, A's State of registration.
- (1) Can O be prosecuted and punished if he phoned from State B, both A and B being party to the Convention?
- (2) Under which provisions?
- (3) What if O phoned from A-airport in A-land and the flight was domestic?

LEGAL ASPECTS OF AVIATION SECURITY

- Protocol on Violence at Airports (VIA Protocol) of 1988
- in force since 6/08/89, 171 States Parties
- Art. I: Protocol amending Montreal Convention 1971
- Historical background: Terrorist attacks at Rome and Vienna airports (Dec.1985)

LEGAL ASPECTS OF AVIATION SECURITY

- Art. II: Acts of violence against a person at an int. Airport, or destroying or damaging airport installations or aircraft thereon, or disrupting airport services, are made an international crime.
- Art. III: international jurisdiction to be extended over these acts.

LEGAL ASPECTS OF AVIATION SECURITY

- 5. Convention on the Marking of Explosives (MEX) of 1991
- (in force since 21/06/98, 150 States Parties)
- Historical background: Air India (1985) and Lockerbie (1988) bomb cases, involving bombs exploding on board while aircraft in flight
- MEX Convention, Art. II – IV: establish a strict regime of control over unmarked explosives, including the manufacture, movement, control of possession and transfer, and destruction.
- Explosives marked with a chemical marker in line with the Technical Annex are not affected. Marked explosives are detectable by appropriate equipment at airports

LEGAL ASPECTS OF AVIATION SECURITY

- 6. Beijing Convention and Protocol of 2010
- done on 10/09/10, not yet in force: 22 ratifications required, so far 9 ratifications
- Historical background: Following September 11, 2001, need to deal with new and emerging threats.
- Convention: based on M71
- Art. 1 (1) : Use of aircraft as weapon, release of BCN weapon from an aircraft, use of BCN weapon on board or against an aircraft, transport of explosives, radioactive, or BCN or related material on board, are made an international crime.

LEGAL ASPECTS OF AVIATION SECURITY

- Art. 4 (3) and (4) : threat of committing any of the offences, attempting, organizing or directing, participating, abetting an offence is also an international crime.
- Art.4 (5): participating in a criminal association aimed at committing any of the offences.
- Art. 3: Obligation to make offences part of national criminal code.
- Art.8: quasi-universal jurisdiction

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THANK YOU