3.1 Air Sovereignty

Before analyzing Air Law, it is pertinent to understand air sovereignty i.e. whether a State exercises complete sovereignty over air space.

3.1.1 Various Theories Regarding Air Sovereignty

There are various theories regarding air sovereignty over a certain territory which comprises lands, wafers, maritime belts, air space, etc. According to the old theory, each state exercises sovereignty over its complete air space. In the modern times however, this view is subjected to criticism and has been questioned by the jurists in several occasions. However, various views are provided in modern view:¹

(i) According to the first view, air space is available for each state and the aircrafts of each state may pass through it without any obstruction. This view has been strongly criticized because it is contrary to many international treaties.²

(ii) The second view suggests the state may exercise control over its air space. This means the aircrafts of another state can enter in its air space only after seeking its prior permission. In accordance with the second view, each state exercises control over its air space up to unlimited

¹ Available at: https://sites.google.com/site/walidabdulrahim/home/my-studies-in-english/13-air-space-and-outer-space-Law, (visited on August 20, 2014).
² Ibid.
height. In other words, each state is entitled to complete control over this unlimited space and may not permit the entry of the aircrafts of other States in this area.\(^3\) This view does not seem to be correct as well because in regards to the rapid scientific and technological developments, aircrafts can go to significant heights which are obviously impossible to have control over. Due to this problem, this theory has also lost its relevance.

(iii) The third view proposes the control over the lower strata of the air space. In other words, its sovereignty is limited only to that extent.\(^4\) This view seems to be the most acceptable view other than the previous ones mentioned earlier because sovereignty can be effective only when the State can exercise control over it. However, the greatest difficulty in the general acceptance of this theory is that no State (s) is prepared to put it into practice. According to this view, the State can make rules in regarding to the outer space so as to ensure its security.\(^5\) However, only a few of the world’s states have the actual power to enforce such rules.\(^6\)

Thus, there is a great controversy in respect of laws related to airspace sovereignty. But there are general agreements regarding certain matters. For example; one is that each State exercises control over the airspace over its territory. This sovereignty is essential for the defense and security of the State. But at the same time there is need for the freedom of aerial navigation for commercial, scientific and humanitarian purposes. In order to reconcile these conflicting

\(^3\) Available at: https://www.herts.ac.uk/_data/assets/pdf_file/0010/38629/HLJ_V1I2 _Oduntan.pdf, (visited on March 17, 2015).
\(^4\) Ibid.
\(^5\) Ibid.
\(^6\) Ibid.
needs, the concept of functional sovereignty has been suggested. There is also need to move away from less practical views (i.e. views A and B) and move towards using branches of international law.  

3.1.2 State Sovereignty in Territorial Airspace

State sovereignty over the state’s territorial airspace is the basic principle underlying the whole system of International Air Law. Irrespective of whether the airspace can be regarded as a part of a state’s territory, it is generally recognized that it is the sovereign’s right over the airspace above its land and territorial waters. After the crumple of the short lived description of freedom of the air in the first decade of 19 century, air law theory has been based on the concept of air sovereignty as airspace is regarded as an extension of state’s land and maritime territory or its complementary element.

3.1.3 Extension of Airspace

Significantly, in international air law, it is essential that the air sovereignty rule has been strictly applied and recognized with a definition of the limits of the airspace itself no different either in public law or in private law, but this definition has been subjected to on-going debates and disputes. The various definitions of the upper limit of airspace can be referred: the striking distance of a man standing upright on the ground, the height of buildings, the range of vision, the range of weapons, the flight ceiling of aircraft the altitude in which man is able to survive, or the point of equilibrium between the earth and other planets indefinably. As such, sovereign jurisdiction could only be concluded as high as the airspace of an aircraft in which

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7 Ibid.
9 Ibid.
the atmosphere is sufficiently dense to keep it sustained. Sovereignty would therefore, be limited to usable or navigable airspace.10

Air law has taken on its international character and emerged on an international plane almost from the very beginning: that is, the first flight between Paris and London. The Paris Convention was concluded in 1919 in Paris: the year in which this flight had taken place. Due to the rapid developments in aviation and with the law makers attempting to keep pace, customs has largely been bypassed as a source of law, with the outcome that Air Law is mainly consist of written law.11

All international treaties are discussed in multilateral conventions where the primary source of air law has been widely debated and argued on. As a matter of fact, all related parties and concerned participants such as: the state, the owner, the passengers, the operator, the passenger’s the mortgage holders, goods and articles, etc., and their rights have been the topic of discussion by the international air law conventions. Today’s international laws and regulations are the result of intense and lengthy debate and on-going conversation in conventions which evidently led to the world states agreements and signed treaties. Other classifications relevant for Air Law are bilateral instruments, such as national Laws which are contracts between states and airline companies or contracts between airlines companies, and general principles of International Law.12

3.2 Development of Air Law

The Wright Brothers had successfully carried out the first engine-powered flight in 1903, and it has been 110 years since the airplanes have been flying. It is important and relevant to review the

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10 Available at: http://www.ivao.ca/pilot/airspace/controlled, (visited on March 12, 2015).
11 Tang Ut Fong, Air Law, 1-15 (University, Beijing, 1979).
12 Prof. (Dr.) I.H.Ph. Diederiks-Verschoor, An Introduction to Air Law, 3-4 (Kluwer Law and Taxation Publishers, Deventer/Antwerp, 1988).
past and take into account the history of flying when we analyze the national rules and regulations in various states regarding the international air laws.¹³

The first concerted attempt at codification of international air law took place in 1910, when German balloons repeatedly and without permit made flights above French territory.¹⁴ The Government of France had the opinion that for safety reasons, it would be desirable for the two governments involved, to reach an agreement in order to resolve the problem. As the result, the Paris Conference of 1910 was convened. The conference did not result in the formation of the idea of ‘freedom of the air’, but was in favor of the sovereignty of states in the space above their territories, which was reflected on the draft convention at the plenary session of the conference.¹⁵

Following the 1ˢᵗ World War, the first scheduled air service between Paris and London started on 8ᵗʰ Feb 1919. The existing regulations were considered and discussed in a convention. However, a choice had to be made between a free airspace similar to the principle of maritime law, and an airspace governed by the sovereignty of the states. The rule of Air Law was to be made subject to the rules that have been already applied to regulate other means of transportations such as: sea, road or rail. Generally Air Law, covers an area which is determined by the special characteristics and demands of aviation, but whenever this implies a departure from a point where there is an existing law in place, the justification for this departure is to assessed and weighed and in some cases, applied. Between those two poles (the


¹⁴ The International Declaration Prohibiting the Discharge of Projectiles and Explosive from Balloons, (The Hague, 29 July, 1899).

flight point and the landing point), Air Law will have to find its range and its limits.\textsuperscript{16}

However, two aspects of Air Law which need discussion are:

(i) Aerial Navigation.

(ii) Aircraft Hijacking.

(i) **Aerial Navigation**

A number of international conventions have been concluded to regulate aerial navigation.\textsuperscript{17}

2. Pan American Convention on Commercial Aviation (Havana Convention), 1928
3. Convention for the Unification of Certain Rules relating to International Carriage by Air (Warsaw Convention), 1929
4. Chicago Convention on International Civil Aviation (Chicago Convention), 1944

1. **Paris Convention of Aerial Navigation (Paris Convention) 1919**

The first convention related to the Regulation of Aerial Navigation was signed at Paris, October 13, 1919. The convention is

\begin{footnotesize}
\textsuperscript{16} Ibid.
\textsuperscript{17} Ibid.
\end{footnotesize}
also known as Paris convention. Initialy Twenty six countries signed the convention.\textsuperscript{18}

The preamble of the convention provided that, convention framed certain rules regarding aerial navigation during peace time. Further, during peace, parties of convention will give innocent passage to aircraft of the other State parties of the convention. The convention did not frame rules for the period of war.\textsuperscript{19}

The important point in this convention is, the participating states agreed to recognize the sovereignty of the space above each territory to the state which it belongs to. In other words, the contracting parties recognize that every power has complete and exclusive sovereignty over the air space above its territory. Significantly for the purpose of the Convention,\textsuperscript{20} the territories of a State includes the national territory, both that of the mother country and of the colonies and the territorial waters of the state.\textsuperscript{21} Each contracting State however is to allow freedom of innocent passage above its territory to the aircraft of the other contracting States in the time of peace, provided that the conditions laid down in the present Convention are observed.

This convention significantly focuses on the issue of peace, territory, and prohibition of military use.\textsuperscript{22} The convention’s main focus was that, each contracting State is entitled to military reasons or in the interest of public safety to prohibit the aircraft of the other contracting States, to enter their air space. This is subject to the condition that no distinction is being made between private aircrafts

\textsuperscript{18} Available at: http://library.arcticportal.org/1580/, (visited on May 14, 2015).
\textsuperscript{19} Known as Paris Convention.
\textsuperscript{20} Article 1, of the Paris convention 1919.
\textsuperscript{21} \textit{Ibid}, Article 2.
\textsuperscript{22} \textit{Ibid}, Article 3.
and the aircrafts of those of the other contracting States which fly over certain areas of its territory.\(^{23}\)

According to this convention, important issue is “the progress on the topic of aerial navigation, and that the establishment of regulations of universal application was considered to be the interest of all,\(^{24}\) appreciating the necessity of an early agreement upon certain principles and rules were calculated to prevent controversy”.\(^{25}\) The convention also provided the rules and guidelines surrounding various important topics including: ownerships nationality and registration of aircrafts. This convention makes it clear that no aircraft must be entered on the register of one of the Contracting States unless it belongs wholly to the nationals of such State.\(^{26}\) No incorporated company can be registered as the owner of an aircraft unless the following conditions are fulfilled:

(i) It possess the nationality of the State in which the aircraft is registered,

(ii) The president or chairman of the company and at least two-thirds of the directors possess such nationality, and

(iii) The company fulfills all other conditions which may be prescribed by the laws of the said state.

(iv) Lastly, an aircraft cannot be validly registered in more than one state. The focus at this point, is on single nationality. In this convention dual nationality has been rejected. If the aircraft has been sold or given to another country,\(^{27}\) it immediately should change the name to the

\(^{23}\) Ibid, Article 4.

\(^{24}\) Ibid, Article 5.

\(^{25}\) Ibid, Article 6.

\(^{26}\) Ibid, Article 7.

\(^{27}\) Ibid, Article 8.
name of new country or company and flag. Ships also follow the same rule mentioned here. All aircrafts engaged in international navigation must bear their nationality and registration marks as well as the name and residence of the owner.\textsuperscript{28}

An important part of convention in foreign relation policy is the issue of entering and exiting of another state’s territory.\textsuperscript{29} Every aircraft of a Contracting State has the right to cross the air space of another state without landing. In this case, it must follow the route fixed by the state over which the flight takes place.\textsuperscript{30} However, for reasons of general security, it will be obliged to land if ordered to do so by means of the signals provided.\textsuperscript{31} Every aircraft, which, passes from one State into another must land in one of the aerodromes fixed by the latter if the regulations of the latter State, require it. Notification of these aerodromes must be given by the contracting states to the International Commission for Air Navigation and by it transmitted to all the Contracting States. The establishment of international airways is subject to the consent of the States flown over. Significantly, according to the convention “Every aircraft passing through the territory of a contracting state including landing and stopping for necessary reasons, should be exempt from any seizure on the ground of infringement of patent”,\textsuperscript{32} design or model, subject to the deposit of security the amount of which is default of amicable agreement must be fixed with the least possible delay by the competent authority of the place of seizure. This chapter is important.

\begin{flushleft}
\textsuperscript{28} Ibid, Article 10, see also Chapter IV.  
\textsuperscript{29} Ibid, Article 15.  
\textsuperscript{30} Ibid, Article 16, see also “Open Sky Agreement” Chapter 4.  
\textsuperscript{31} Ibid, Article 17.  
\textsuperscript{32} Ibid, Article 18.
\end{flushleft}
in aircraft hijacking, hijacking prevention and the explosions which the aircraft may face”.33

Significantly, under the convention, distinctions were made between private and state aircrafts.34 The following are considered to be State aircraft: (a) Military aircraft. (b) Aircraft exclusively employed in State service, such as Police, Posts and Customs. Every other aircraft is considered to be a private aircraft. All private aircrafts are subjected to all the provisions of the present Convention. Regarding to this convention “Every aircraft commanded by a person in military service detailed for the military purpose must be deemed to be a military aircraft”.35 It is important to note that36 “No military aircraft of a Contracting State should neither fly over the territory of another state, nor land thereon without special authorization or permission.37 Special arrangements between the states concerned will determine in what cases police and customs aircrafts may be authorized to cross the frontier. Finally, the convention provides that, “In case of war, the provisions of the present38 Convention should not affect the freedom of action of the Contracting States either as belligerents or as neutrals”.39 After discussing Paris convention the next important convention to be discussed is Havana convention 1928.

2. Pan American Convention on Commercial Aviation (Havana Convention), 1928

The 5th International Conference of American States was held at Santiago, Chile, from March 25th to May 3rd, 1923 which adopted a important resolution for the creation of an Inter-American Commercial

33 Ibid, Chapter VI.
34 Ibid, Article 30, see also Chapter VII.
36 Ibid, Article 32.
37 Ibid, Article 33.
38 Ibid, Article 38, see also Chapter IX.
39 Ibid.
Aviation Commission to be determined by the Governing Board of the Pan-American Union to consider the problems regarding to aviation. The commission adopted a convention (or conventions) and submitted for the consideration of state members of the Pan-American Union.\textsuperscript{40}

Further, the Pan American Convention on Commercial Aviation (Havana convention) had been finalized in Havana in 1928 under the auspices of the Sixth Pan-American Conference.\textsuperscript{41} The United States and twenty other countries located in the Western Hemisphere signed the Convention on February, 20\textsuperscript{th} 1928. This new Convention weakened the International Commission for Air Navigation’s (ICAN) international stature.\textsuperscript{42}

The Havana Convention was modeled after the Paris Convention; it applied exclusively to private aircrafts\textsuperscript{43} and had laid down basic and important principles and rules for aerial traffic, significantly recognizing that every State had complete and exclusive sovereignty over the airspace above its territory and adjacent territorial waters. Clauses largely enabled USA owned airlines to freely operate services within North and South America.\textsuperscript{44}

The fact that the ICAN was considered formally linked with the Havana convention was one of reasons why the USA did not join it. The need for a separate form of international cooperation on a regional American basis was reason of this situation. Although the principles of the Havana Convention were the mutual freedom of air passage, no attempt was made to develop uniform technical standards, nor was there any provision for periodic discussions on common problems.

\textsuperscript{40} Available at: http://www.icao.int/secretariat/PostalHistory/1928_the_havana_convention.htm, (visited on February 13, 2014).
\textsuperscript{41} Held in Havana, Cuba, from 16 January to 20 February 1928. Available at: http://www.refworld.org/pdfid/3ae6b37923.pdf, (visited on March 15, 2015).
\textsuperscript{42} Government aircraft were not included. Available at: http://www.icao.int/Meetings/atconf6/Documents/Doc%209626_en.pdf, (visited on February, 11, 2013).
through the agency of a permanent organisation (i.e. a Secretariat). The Convention did not contain provisions for continuing administrative machinery and entrusted certain duties of coordination to the Pan-American Union, mainly through a conference that were to be held every five years. The Havana Convention had no Annexes; all rules were contained in the treaty itself. Aircraft regulation was done according to the laws of each country; and hence, no uniformity was provided.\footnote{Available at: http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1429516794785~220, (visited on April 3, 2014).}

The Pan-American convention was a successful, since, signed by 21 States, then it was finally ratified by 16 of them by 1944.\footnote{i.e. Bolivia, Brazil, Chile, Costa Rica, Cuba, the Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Uruguay, the USA, and Venezuela.} The Secretary General of ICAN entered into direct relations with the Director General of the Pan-American Union and it was agreed between them that the secretariat of ICAN should regularly communicate all information they receive to the Union, in exchange of documentation of the same order that the Union can gather.

According to this convention, it is not permissible for the states to grant asylum in military camps, legations, warships or military aircraft, to persons accused or condemned for common crimes, or to deserters from the army or navy.\footnote{Article 1 of the Havana Convention, 1928.} Persons accused of or condemned for common crimes taking refuge in any of the places mentioned in the preceding paragraph, must be surrendered upon request of the local government. Where said persons take refuge in foreign territory, the accused should be brought back through extradition, but only in such cases and in the form established by the respective treaties and
conventions or by the constitution and laws of the country of refuge as mentioned.  

The convention explains that, asylum granted to political offenders in legations, military camps, warships or military aircraft, must be respected to the extent in which is allowed, as a right or through humanitarian toleration, by the usages, the conventions or the laws of the country in which granted and in accordance with the following provisions: First, asylum may not be granted except in urgent cases and for the period of time strictly indispensable for the person who has sought asylum to ensure in some other way his safety. Second, immediately upon granting asylum, the commander of a warship diplomatic agent, or military camp or aircraft, must report the fact to the Minister of Foreign Relations of the State of the person who has secured asylum, or to the local administrative authority, if the act occurred outside the capital. Third, the government of the state may ask the refugees to be sent out of the national territory within the shortest time possible; and the diplomatic agent of the country who has granted asylum may in turn require the guaranties necessary for the departure of the refugees with regards to their inviolability, from the country. Fourth, refugees should not be landed in any point of the national territory, or in any place near the borders. Fifth, during the asylum, refugees could not be allowed to perform acts contrary to the public peace. Sixth, states are under no obligation to defray expenses incurred by one granting asylum.

It is important to note that the present convention does not affect obligations previously undertaken by the contracting parties

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48 Available at: http://www.refworld.org/pdfid/3ae6b37923.pdf, (visited on April 13, 2013). See also Article 2 of Havana Convention, 1928.


51 Ibid.
through international agreements.\textsuperscript{52} The instrument of ratification must be deposited in the archives of the Pan American Union in Washington, and the Union would notify the signatory governments of the said deposit.\textsuperscript{53} Such notification shall be considered as an exchange of ratifications.\textsuperscript{54}

After explaining Havana convention the next important convention relating to international carriage by air is Warsaw convention:

3. \textbf{Convention for the Unification of Certain Rules relating to International Carriage by Air, (Warsaw Convention) 1929}

This convention was signed in Warsaw on October 12th, 1929 and is also known as Warsaw Convention. Significantly, the terms of the convention\textsuperscript{55} applies to all international carriage of persons, luggage or goods performed by aircraft for reward. It applies equally to gratuitous carriage by aircrafts performed by an air transport undertaking.\textsuperscript{56}

This Convention focused on scope,\textsuperscript{57} definition and discussion of all details regarding persons, luggage, and goods, which are carried by aircraft. Significantly, this Convention applies to all international carriage of persons, luggage or goods performed by aircraft for reward. The convention applies equally to gratuitous carriage by aircraft performed by an air transport undertaking. Under this

\begin{itemize}
\item \textsuperscript{52} Article 4. After being signed, the present Convention shall be submitted to the ratification of the signatory States. The Government of Cuba is charged with transmitting authentic certified copies to the Governments for the aforementioned purpose of ratification.
\item \textsuperscript{53} Article 3 of the Paris Convention, 1919.
\item \textsuperscript{54} This Convention shall remain open to the adherence of non-signatory States. In witness thereof, the a forenamed Plenipotentiaries Sign the present convention in Spanish, English, French and Portuguese, in the city of Havana, the 20th day of February, and 1928.
\item \textsuperscript{55} Article 1 of the Warsaw Convention, 1929.
\item \textsuperscript{56} Ian Brownile, \textit{Principles of Public International Law}, 76 (2\textsuperscript{nd} Edition, 1968).
\item \textsuperscript{57} Chapter I of the Warsaw Convention, 1929.
\end{itemize}
Convention, the expression “international carriage” meant any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there would be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties, or within the territory of single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another power, even though that power is not a party of this Convention.\(^{58}\) According to Warsaw Convention a carriage without such stopping place between territories is subject to the mandate, sovereignty, suzerainty, or authority of the same High Contracting Party is not deemed to be international for the purposes of this Convention.\(^{59}\)

The Warsaw Convention made it clear, carriage has to be performed by several successive air carriers will be treated as one undivided carriage, if it has been regarded by the parties as a single operation (whether it had been agreed upon under the form of a single contract or of a series of contracts). Hence, it will not lose its international character merely because one contract or a series of contracts are to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.\(^{60}\)

According to convention, if the carrier accepts goods without an air consignment note having been made out, or if the air consignment note does not contain all the particulars set out in this convention \(^{61}\) the carrier should not be entitled to avail himself of the provisions of this Convention which exclude or limit his responsibility as its provides

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\(^{59}\) Article 1.3 of the Warsaw Convention, 1929.

\(^{60}\) Ibid, Article 2.1.

\(^{61}\) Ibid, Article 8(a) to (i) inclusive and (q).
that “The consignor is responsible for the correctness of the particulars and statements relating to the goods which he inserts in the air consignment”. The consignor is also responsible for all damages suffered by the carrier or any other person by reason of the irregularity incorrectness or in-completeness of the said particulars and statements.

A welcoming feature of the convention is that the consignor and the consignee can respectively enforce all the rights given to them by this convention, each in his own name, whether he is acting in his own interest or in the interest of another. However, he must carry out the obligations imposed by the contract. Regarding liability of carrier it is provided in the convention, that he is not responsible if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures. Further, In the carriage of luggage and goods the carrier is not responsible if he proves that the damage was occasioned by negligent pilot or negligence in the handling of the aircraft or in navigation and that in all other respects, he and his agents have taken all necessary measures to avoid the damage.

Significantly, Warsaw Convention has mentioned clearly about damage and liability that the right to damages must be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped. The

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62 Article 10.1, Warsaw Convention, 1929.
63 Ibid, Articles 12 & 13
64 Ibid, Article 14.
65 Ibid, Article 20.1
66 Ibid.
67 Ibid, Article 29.
method of calculating the period of limitation should be determined by the law of the court which has seized the case.\textsuperscript{68}

After discussing Warsaw convention the next important and more effective convention is Chicago Convention;

4. \textbf{Chicago Convention on International Civil Aviation (Chicago Convention) 1944}

Chicago Convention on International Civil Aviation 1944 was an important convention related to aerial navigation. It was signed by 53 States. This convention was concluded on 7\textsuperscript{th} December, 1944 and entered into force on 14\textsuperscript{th} April 1947. The International Civil Aviation Organization (ICAO) created a framework for International Civil aviation including the principle and main result of this convention was that every State has complete and exclusive sovereignty over the airspace above its territory and that no scheduled flight may operate over the territory of a contracting State without its consent. It is also important to note here that the convention confers on the ICAO Council the power to settle disputes between contracting parties and its decision is binding on the parties.\textsuperscript{69} Civil aviation leaders from around the world have adopted a global strategy which would usher in a new era of openness and transparency concerning safety information. Five Freedoms of air were for the first time, declared under this convention. Some of the important provisions of the Chicago Convention on International Civil Aviation, 1944 are as follows:\textsuperscript{70}

\textsuperscript{68} Available at: http://www.dgca.nic.in/int_conv/Chap_VI.pdf, (visited on April 3, 2014).

\textsuperscript{69} 20 to 22 March, 2006.

\textsuperscript{70} International Civil Aviation Organization (ICAO) was adopted in this conference which is Second largest world organization and its largest manager of aviation law.
(i) The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.\(^71\)

(ii) For the purposes of this Convention the territory of a State means the land areas and territorial waters adjacent there to under the sovereignty, suzerainty, protection or mandate of such State.\(^72\)

(iii) The Convention is applicable only to civil aircraft, and is not being applicable to State aircraft used in police, customs and military services. No State aircraft of a contracting State can fly over the territory of another State or land thereon without authorization by special agreement otherwise and in accordance with the terms thereof.\(^73\)

(iv) Each contracting State agrees that all aircrafts, of the other contracting States (not engaged in scheduled international air services) has the right, subject to the observances of the terms of this Convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission and subject to the right of State flown over to require landing. However according to this convention, each contracting State reserves the right, for reasons of safety of flight, if the aircraft is required to proceed over regions which are inaccessible or without adequate air navigation facilities

\(^{71}\) Article 1 of the Chicago Convention on International Civil Aviation, 1944.

\(^{72}\) Ibid, Article 2.

\(^{73}\) Ibid, Article 3.
to follow prescribed routes, or to obtain special permission for such flights. In these situations it has been cleared, if the aircraft is engaged in the carriage of passengers, cargo, or mail for remuneration or hire of other scheduled international air services, it will be covered under the provisions of convention,\(^74\) and have the privilege of taking on or discharging passengers, cargo or mail, subject to the right of any State where such embarkation or discharge takes place to impose such regulations or limitation as it may be considered desirable.\(^75\)

(v) Scheduled International Air Service may be operated over or land on the territory of a contracting State. However it must be with the special authorization or other permission of that State, and in accordance with the terms of such authorization or permission.\(^76\)

(vi) A significant proposition is that Aircrafts have the nationality of the State in which they are registered.\(^77\)

(vii) Last but not the least, an aircraft may be validly registered in more than one State, but its registration may be changed from one State to another.\(^78\)

A welcoming feature of Chicago Convention is that it has mentioned the Nationality of Aircraft clearly.\(^79\)

\(^{74}\) Ibid, Article 7.
\(^{75}\) Ibid, Article 5.
\(^{76}\) Ibid, Article 6.
\(^{77}\) Ibid, Article 17.
\(^{78}\) Ibid, Article 18.
\(^{79}\) Ibid, Chapter II.
Five Freedoms of Air

Apart from Chicago Convention of 1944, the five important and effective freedoms of air were adopted in this conference. The five freedoms are:

(i) Freedom to fly across foreign territory without landing;
(ii) Freedom to land for non-traffic purposes;
(iii) Freedom to disembark in foreign territory traffic originating in the State of the origin of the craft;
(iv) Freedom to pick up in any foreign country traffic destined for the State of origin of aircraft; and
(v) Freedom to carry traffic between two foreign countries.

In order to give concrete shape to the above five freedoms, two agreements were concluded. They are as follows:

(a) Chicago International Air Services Transit Agreement of 1944. This agreement was incorporated the first two freedoms.

(b) Chicago International Air Transport Agreement of 1944. This agreement was incorporated the last three freedoms. However, this agreement was signed by only a few countries.

Thus, most of the States of the world agreed to provide the first two freedoms to each other. Which was “The International Air Services Transit Agreement” or “the two freedoms Agreement” has been widely accepted. The International Transport Agreement or the

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80 Its known as Open Sky Agreement.
81 Ibid.
82 “Open Sky Agreement”, available in Chapter 3 of this study.
“five freedoms” Agreement on the other hand has had a few supporters. Even if its effect and influence was minimal, it has influenced the decision of many states that in the absence of multilateral treaties, most of the States regulate their relations through bilateral treaties.\footnote{\textit{Ibid.}}

The International Civil Aviation Organization was established in 1944 during Chicago Convention. This Organization has been influential shaping the laws surrounding the International Air Transport and International Air Traffic. The important treaties which have been adopted under this Organization are:

2. Rome Convention of 1952 on damage caused by a foreign aircraft.

The International Civil Aviation Organization (ICAO) has played an outstanding role in the world aviation events. Its set-up is starting point by the agreement concluded during the Chicago conference of 1944.\footnote{\textit{Ibid.}, Article 64.} The impulse of its set-up is generated as to the field of aviation in structural innovations of international co-operation and law making after the 2nd World War.\footnote{\textit{Ibid.}}

Its daily business is run by a council, a permanent body which performs a variety of duties in the legal, technical and recently added economic field. It has a state membership of over 150 presently and

\footnote{\textit{Ibid.}}
operates under the supervision of an assembly with considerable budgetary powers. It also contains a legal committee, which has taken charge of preparing and drafting international treaties and conventions on Air Laws prior to their submission of Diplomatic Conference for final approval.\textsuperscript{86} One of the important roles of the council lies on the settlement of disputes as it is authorized to request legal opinions from the ICJ. The International Court of Justice at The Hague is offering interpretation of treaties and conventions\textsuperscript{87} and performing mediating role in disputes.\textsuperscript{88}

5. \textbf{Convention for the Unification of Certain Rules for International Carriages by Air (Montreal Convention), 1999}

After the convention held at Montreal in 1991 this convention has addressed the involving parties regarding transport, transit, cargo and delivering passengers, materials (exports and imports). The Montreal Convention 1999\textsuperscript{89} is a multilateral treaty adopted by a diplomatic meeting of ICAO member states in 1999. It amended important provisions of the Warsaw Convention’s\textsuperscript{90} regime concerning compensation for the victims of air disasters (in any kind of loss or damage or . . . ). The Convention attempts to re-establish uniformity and predictability of rules related to the international carriage of passengers, baggage and cargo. While maintaining the core provisions which have served the international air transport community for several decades (i.e., the Warsaw regime), the new treaty achieves modernization in a number of key areas. This convention has VII


\textsuperscript{87} Article 96(2) of the UN Charter stating ‘other organs of the UN and specialized agencies, which may at opinions of the Court on Legal questions arising within the scope of their activities’.

\textsuperscript{88} Article 84 of Chicago Convention stating whenever a state is involved in a dispute which cannot to be settled by negotiation, the council is called upon for a decision.

\textsuperscript{89} Formally, the Convention for the Unification of Certain Rules for International Carriage by Air. It has not ratified yet. It should have more than 30 states member

\textsuperscript{90} Warsaw Convention is available in this chapter of this Study.
Chapters and 57 Articles, and however most important articles will be analyze here.\footnote{Available at: \url{http://unctad.org/en/Docs/sdtetlb20061_en.pdf}, (visited on April 12, 2015).}

This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking”.\footnote{Chapter I, “General Provisions”, Article 1 of Montreal Convention, 1999.} Passengers can carry international carriage according to aircraft and even in case of transit trips. However, the expression international carriage means, any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two States Parties, or within the territory of a single state party if there is an agreed stopping place within the territory of another state, even if that state is not a state party.\footnote{Ibid.}

Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention. Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts are to be performed entirely within the territory of the same State.\footnote{Convention for the Unification of Certain Rules for International Carriage by Air, opened for Signature at Montreal on 28 May 1999 (ICAO Doc No 4698). [PN]}

In this convention, duties and documentation of the parties related to the carriage of passengers, baggage and cargo is discussed
in length.\textsuperscript{95} In respect to the carriage of passengers, an individual or collective document on the subject carriage must be delivered containing:\textsuperscript{96} a) an indication of the places of departure and destination; b) if the places of departure and destination are within the territory of a single member state, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.\textsuperscript{97} The carrier must deliver to the passenger a baggage identification tag for each piece of checked baggage.\textsuperscript{98}

This convention also explains the Cargo system. The right of disposition of cargo in respect of the carriage of cargo has also been mentioned.\textsuperscript{99} Significantly, this convention mentioned that, the passengers easily can transfer their luggage by using cargo service and it’s their duty to do all services required. Subject to the responsibility to carry out all its obligations under the agreement of carriage, the consignor has the right to dispose of the cargo, by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination, or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure.\textsuperscript{100} If it is impossible to carry out the instructions of the consignor, the carrier must inform the consignor forthwith.\textsuperscript{101}

Formalities of Customs, Police or other Public Authorities have been explained in this convention as;\textsuperscript{102} “The consignor must furnish

\begin{itemize}
\item \textsuperscript{95} Chapter II, “Documentation and duties of this protocol”.
\item \textsuperscript{96} Article 3, of the Montreal Convention 1999.
\item \textsuperscript{97} Available at: https://www.iata.org/policy/Pages/mc99.aspx, (visited on September 3, 2013).
\item \textsuperscript{98} Article 4, Montreal Convention, 1999.
\item \textsuperscript{99} Ibid, Article 12.
\item \textsuperscript{100} Ibid, Article 12.1.
\item \textsuperscript{101} Ibid, Article 12.2.
\item \textsuperscript{102} Ibid.
\end{itemize}
such information and such documents as are necessary to meet the formalities of police and customs, any other public authorities before the cargo can be delivered to the consignee. The consignor is responsible to the carrier for any damage caused by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, its servants or agents.\textsuperscript{103} The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.\textsuperscript{104}

Liability of the Carrier and Extent of compensation for damage also has its place in this convention. Under this convention liability arises in case of death, injury and damage, which holds the carrier responsible. This means they should try all their best to save Life and luggage of passenger.\textsuperscript{105} The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident caused the injury or death took place on board the aircraft or in the course of any of the operations of embarking or disembarking.\textsuperscript{106} The carrier is liable for damage sustained in case of destruction or loss of, or of damage to checked baggage upon condition only that the event, which caused the damage loss or destruction, or took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier.\textsuperscript{107} However, the carrier is not responsible if the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents. This convention made it clear also in case if carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the

\begin{itemize}
\item \textsuperscript{103} Ibid, Article 16.1.
\item \textsuperscript{104} Ibid, Article 16.2.
\item \textsuperscript{105} Available at: http://www.jus.uio.no/lm/air.carriage.unification.convention.montreal.1999/17.html, (visited on March 3, 2015).
\item \textsuperscript{106} Article 17, Montreal Convention, 1999.
\item \textsuperscript{107} Ibid.
\end{itemize}
expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.\textsuperscript{108} However, under this Convention the term “baggage” means both checked baggage and unchecked baggage.\textsuperscript{109}

Significantly, under this convention, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to the cargo has resulted from one or more of the following:\textsuperscript{110} a) inherent defect, quality or vice of that cargo; b) defective packing of that cargo performed by a person other than the carrier or its servants or agents; c) an act of war or an armed conflict; d) an act of public authority carried out in connection with the entry, exit or transit of the cargo. The carriage by air within the meaning of this Agreement comprises the period during which the cargo is in the charge of the carrier.\textsuperscript{111}

This convention also provides enforcement mechanism. It provides that any dispute between the parties should be referred to Arbitration.\textsuperscript{112} Such agreement should be in writing. The arbitration proceedings, at the option of the claimant, are to take place within one of the jurisdictions referred to in this convention.\textsuperscript{113} The arbitrator or arbitration tribunal should apply the provisions of this Convention.\textsuperscript{114} Further, the States Parties providing insurance should require their carriers to maintain adequate insurance covering their responsibility under this Convention.\textsuperscript{115} The state party into which it operates to

\textsuperscript{108} Article 18.3 & 18.4, Montreal Convention, 1999.
\textsuperscript{109} Article 18.1, Montreal Convention, 1999.
\textsuperscript{110} Ibid.
\textsuperscript{111} Ibid.
\textsuperscript{112} Ibid, Article 34.
\textsuperscript{113} Ibid, Article 33.
\textsuperscript{114} “All articles”, available at: http://www.jus.uio.no/lm/air.carriage.unification.convention.montreal.1999/, (visited on June 5, 2015).
\textsuperscript{115} Ibid, Article 50.
furnish evidence that it maintains adequate insurance covering its liability under this Convention may require a carrier. The good example for this convention is the case concerning the appeal relating to the jurisdiction of the ICAO council, where the International Court of Justice (ICJ) by 13 votes to 3, rejected the Government of Pakistan’s objection on the question of its competence and found that it had jurisdiction to entertain the Indian appeal. By 14 votes to 2 it held that the council of the ICAO is competent to entertain the application and compliant laid before it by the Government of Pakistan, and in consequence rejected the appeal made to the court by the Government of India.

(ii) Aircraft-Hijacking

Before further proceeding, we should know the meaning and definition of ‘Hijacking’: Aircraft hijacking is a contemporary addition to the roster of international and national crimes and the necessity for its control at international and national level is only beginning to be recognized by States. In its wide sense hijacking is an act against the safety of civil aviation and resembles piracy. According to Tokyo Convention 1963. When a person on board has unlawfully commit an act of interference, seizure or wrongful exercise of control of an aircraft in flight by force or threat, or when such an act is about to be committed, contracting States must take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve its control of the aircraft. In addition, when an aircraft lands, permission must be given to its passengers and crew to continue their journey as soon as practicable and the aircraft must

116 Ibid.
119 Article 11 of Tokyo convention its available in chapter 3 of this study.
give its cargo to the persons whom are lawfully entitled to their possessions. Any contracting State must take the delivery of any person whom the aircraft commander belongs to and that it must immediately make a preliminary enquiry. Significantly, it is clear from the above provisions that an attempt has been made to define the term ‘hijacking’, but in reality, the term itself has not been clearly explained. Basically this definition is simply imposes certain obligations upon a contracting State and lays more emphasis on the return of the hijacked aircraft and its passengers to those persons who are entitled to its possession, instead of actually explaining under what conditions an act of hijacking takes place.\footnote{This is the opinion of some jurists, not mentioned in Article 13 of the Tokyo convention}

The Hague Convention of 1970,\footnote{Article 1 of the Hague Convention.} provides that “If any person who is on board of an aircraft (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”. This provision also does not define the term ‘hijacking’, but simply mentions its essential elements which are following:

(i) Unlawful use of force or threat thereof or any other form of intimidation;

(ii) To do above-mentioned acts with a view to seize that aircraft or to exercise control over it;

(iii) The said acts should have been committed on board and inside an aircraft in flight;
Accomplice of a person who performs or attempts to perform the above-mentioned act is also guilty of the offence of hijacking.122

The above-mentioned essential elements are similar to those mentioned in the Tokyo Convention, 1963.123 The only innovation in ‘Hague Convention, 1970’ is that it includes an accomplice of a person who performs or attempts to perform any such act.124 The wider concept of the offence of hijacking has been incorporated in the Montreal Convention, 1971. Article I of the Montreal Convention, 1971 states that any person who commits an offence unlawfully and intentionally, according to this conventions any kind of (a) performs an act of violence against a person on board an aircraft in flight and if the life of others are endangered by that act; (b) if the person destroys an aircraft in service or causes damage to such an aircraft: which cause the aircraft to be incapable of flight or it is likely to endanger its safety in flight; or (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it, which is likely to endanger its safety in flight; or (d) destroys or damages air navigation facilities or interferes with that operation if any such information which he knows to be false, thereby endangering the safety of an aircraft in flight that act will then be considered Hijacking. Besides this, it is further provided that any person also commits an offence if he attempts to commit any of the offence mentioned earlier or if he is an accomplice of a person who commits or attempts to commit any such offence he also would be considered guilty of the same offense.125

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3.3 Development of Law Related to Hijacking

The increase in number of incidents of hijacking and increase in the dangers against the safety of the flights of aircraft presented grave problems before the international community and particularly before the International civil aviation organization. In order to solve this problem and to punish the hijackers a convention was adopted in 1963, known as the Tokyo Convention, 1963. Despite the adoption of this convention the number of incidents continued to increase and this convention failed to solve the problems.\textsuperscript{126} India also acceded to the Tokyo convention and with a view to give effect to the provisions of the convention parliament of India, enacted the Tokyo Convention Act, 1975.\textsuperscript{127} Increases in the number of incidents relating to hijacking and the shortcomings of the Tokyo Convention compelled the states to think and take some effective measures to solve the problem and to give deterrent punishment to the hijackers. This process started, when the International Civil Aviation organization council was asked to study the problem of hijacking. In December, 1968, the council entrusted this matter to a legal sub-committee. This legal subcommittee prepared a draft for convention. In order to consider this draft and to adopt a convention a conference was called in December, 1970. The convention was finally adopted and was known as the Hague convention, 1970. After having been ratified by the prescribed number of states, Hague Convention came into force on October 1971.\textsuperscript{128}


\textsuperscript{127} “Test for the Act”, \textit{IJIL}, Vol. 15 274-279 (1975).

\textsuperscript{128} Sami Shubber, Aircraft Hijacking under the Hague Convention, 22 (1970).
As noted, there are several international conventions against unlawful interference with civil aviation. Among such conventions the following are the most important:\(^{129}\)

(i) Convention on Offences and Certain other Acts Committed on Board Aircraft (Tokyo Convention), 1963

(ii) Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention), 1970


(iv) Protocol for the Suppression of Unlawful Act of Violence at Airports Serving International Civil Aviation, 1971\(^\text{130}\)


(vi) Aviation Counter-Terrorism Convention (the Beijing Convention) and Protocol (the Beijing Protocol), 2011

Let us now briefly analyze some of the more important conventions regarding hijacking:

1. **Convention on Offences and Certain other Acts Committed on Board Aircraft (Tokyo Convention), 1963**

   Convention on Offences and Certain other Acts Committed on Board Aircraft Signed at Tokyo on 14 September, 1963\(^\text{131}\) is also known as Tokyo Convention. It is the first important convention relating to hijacking. This Convention applies in respect of (a)

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\(^{129}\) Ibid.

\(^{130}\) ICJ Rep, 33 (1972).

\(^{131}\) Ibid.
offences against penal law; (b) acts (offences or otherwise) which jeopardize the safety of the aircraft or of persons or property therein or which jeopardize the order and discipline on board. This convention cover offences 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 of any other area outside the territory of any State. Under this Convention, “an aircraft is considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends”. However, this Convention is not applicable to aircraft used in military, customs or police services. Thus, the convention also mentions the authority and enforcement of this convention. The Convention is not to be interpreted as authorizing or requiring any action in respect of offences against penal laws of a political nature or those based on racial or religious discrimination.

Regarding jurisdiction this convention provides that:

(i) The State of registration of the aircraft is competent to exercise jurisdiction over offences and acts committed on board.

(ii) Each Contracting State is required to take such measures as may be necessary to establish its jurisdiction as the State of registration over offences committed on board aircraft registered in such State.

(iii) This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

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133 Ibid, Chapter III.
134 Ibid, Article 3.
136 Ibid, Article 2.
137 Ibid, Article 3.
The convention clearly provides that “a Contracting State which is not the State of registration cannot interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board except in the following cases”:139

(i) The offence has effect on the territory of such State;140

(ii) The offence has been committed by or against a national or permanent resident of such State;

(iii) The offence is against the security of such State;

(iv) The offence consists of a breach of any rules or regulations relating to the flight or maneuver of aircraft in force in such State;

(v) The exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under a multilateral international agreement.141

After explaining the Tokyo convention the next important convention is Hague convention;

2. **Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention), 1970**

The Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention), 1970 is a significant milestone for suppressing the crime of hijacking.142 As pointed out earlier, the Hague Convention further developed the concept of hijacking. As

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139 Article 4 of Tokyo convention, 1963.
140 Ibid, Article 4.
141 Ibid.
compared to the Tokyo Convention,\textsuperscript{143} it further widened the net to apprehend the hijackers and “to ensure the safety of flights of civil aircraft’s.”\textsuperscript{144} According to the convention, the State parties may have jurisdiction over the hijackers in some or other way and it will become difficult for hijackers to escape the process of law. It is also pointed out that “these features of jurisdiction have brought the offence of hijacking very near to piracy under International Customary Law. Thus, it is not without justification that the ‘Aerial Piracy’ has been applied to this new regime in the field of International Civil Aviation”.\textsuperscript{145}

Yet, another special feature of the Hague Convention is that the offences must be included as extraditable offences in any extradition treaty existing between contracting States. The contracting States undertake to include the offences as extraditable offences in every Extradition Treaty to be concluded between them.\textsuperscript{146} It is further provided that each of the offences must be treated, for the purpose of expulsion between the Contracting States, as if it had been committed not only in the place in which it occurred, but also in the territories of the States required to establish their Jurisdiction in accordance with the provisions contained in the Convention.\textsuperscript{147} Thus, “the Hague Convention, 1970, may be considered as a big step forward in the endeavor of the international community to suppress hijacking of aircraft and remove the threat caused by it to international civil aviation”.\textsuperscript{148} Further, “The Hague Convention borrows heavily from the Tokyo Convention, which may lead one to wonder whether or not its adoption, as a protocol to the Tokyo Convention would have been more desirable, as’ there would have been some advantage to be
gained from the link between the two instruments, for example, rights of aircraft commander and crew members to take measures, protection of such persons, arrest and delivery of hijackers, simplicity of arrangements and so forth”.

As mentioned earlier, this convention also defines hijacking in the following words:

Any 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. Under this convention each Contracting State undertakes to make the offence punishable by severe penalties.

This convention suggests that “each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed by the alleged offender in connection with the offence in the following cases”: (a) when the offence is committed on board an aircraft registered in that State; (b) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board; (c) when the offence is committed on board an aircraft leased without crew to a lessee who has his principal place of business, if the lessee has no such place of business or his permanent residence, in that State. Each Contracting State must take such measures as may be necessary to establish its jurisdiction over the

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149 The Indian Parliament enacted the Anti-Hijacking Act, 1982.
150 Entered into force. On 14 October, 1971. As on 30 June, 2003 there are only 177 contracting States party to it.
151 Hereinafter referred to as “the offence”.
152 India has ratified it.
When any of the acts mentioned,\textsuperscript{156} has occurred or is about to occur, contracting States must take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft. In such cases, any Contracting State in which the aircraft or its passengers or crew are present should facilitate the continuation of the journey of the passengers and crew as soon as practicable, and should be without delay, return the aircraft and its cargo to the persons lawfully entitled to possession.

According to this convention, states explain and compare the enforcement of national and international law which is enforceable.\textsuperscript{157} Each Contracting State must in accordance with its national law, report to the Council of the ICAO as promptly as possible any relevant information in its possession concerning: (a) the circumstances of the offence; (b) the action taken pursuant to Article 9; (c) the measures taken against the offender or the alleged offender, and in particular, the results of any extradition proceedings or other legal proceedings.\textsuperscript{158} Any dispute between two or more Contracting countries concerning the interpretation or application of this Convention which cannot be settled through negotiation, but at the request of one of them, must be submitted to arbitration.\textsuperscript{159} If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those parties may refer the

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{155} Ibid.
  \item \textsuperscript{156} Ibid, Article 9.1.
  \item \textsuperscript{157} Ibid, Article 11.
  \item \textsuperscript{158} In three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish Languages.
  \item \textsuperscript{159} Article 12.1.
\end{itemize}
\end{footnotesize}
dispute to the International Court of Justice by request in conformity with the Statute of the Court.\textsuperscript{160}

Also the convention has mentioned the important function of The International Air Transportation Association (IATA) i.e. first, performing as a clearing-house, handling the ticketing clearing for airlines’ account under the responsibility of its financial committee; second, to fix tariff rates for international air transport.\textsuperscript{161}


The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971 (Montreal Convention) was adopted during the International Conference on Air Law held at Montreal on 23 September 1971. It came into force on 26 January 1973 after it had been ratified by 10 states. The Convention has 188 state parties as of 2013. Undoubtedly, Hague Convention was a great milestone in the field of suppressing the offence of hijacking yet it is subject to some criticism so far as certain provisions relating to jurisdiction of States and extradition of offenders or hijackers are concerned. Moreover, it may also be noted that despite the provisions of Hague Convention, the incidence to hijacking continued to increase. Consequently, a Conference was called at Montreal from 8\textsuperscript{th} to 23\textsuperscript{rd} September, 1971. As a result of this conference, a Convention was known as Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971.\textsuperscript{162} Under this Convention,\textsuperscript{163} the concept of the offence of hijacking was further widened and the

\textsuperscript{160} Done at The Hague, this sixteenth day of December, one thousand nine hundred and seventy, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish Languages.

\textsuperscript{161} P.P.C. Haanappel, Ratemarking in International Air Transport, 57 (1978).

\textsuperscript{162} Known as Montreal Convention, 1971.

\textsuperscript{163} Article 1 of Montreal Convention, 1971.
State parties have undertaken that they will provide deterrent punishment to the hijackers.

According to this convention, any person commits an offence if he unlawfully and intentionally: (a) performs an act of violence against a person on board an aircraft in flight if the act is likely to endanger the safety of that aircraft; or (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or (d) damages or destroys air navigation facilities or interferes with their operation if any such act is likely to endanger the safety of aircraft in flight; or (e) communicates information which he knows to be false, thereby endangering safety of an aircraft in flight. Any person also commits an offence if he: (a) attempts to commit any of the offences mentioned in paragraph 1 of this Article; or (b) is an accomplice of a person who commits or attempts to commit any such offence.  

Looking at Montreal Convention clear that, the provisions are similar to that of the Hague Convention. It would not be wrong to say it is simply an improvement of the Hague Convention. As a matter of fact, it would have been better if the provisions of Montreal Convention had been adopted as protocol to the Hague Convention. With a view to give effect to the Montreal Convention, 1991, the Parliament of India passed, The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982.  

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164 Ibid.  
After Montreal convention, let us briefly analyze Protocol for the Suppression of Unlawful Act of Violence at Airports and its importance;


The protocol for the Suppression of Unlawful Acts against the Safety of Civil Aviation is a multilateral treaty by which states agree to prohibit and punish behavior, which may threaten the safety of civil aviation. The protocol does not apply to customs, law enforcement or military aircraft, thus it applies exclusively to civilian aircraft. The Convention criminalizes the following:

1. Committing an act of violence against a person on board an aircraft in flight if it is likely to endanger the safety of the aircraft;

2. destroying an aircraft being serviced or damaging such an aircraft in such a way that renders it incapable of flight or which is likely to endanger its safety in flight;

3. placing or causing to be placed on an aircraft a device or substance which is likely to cause damage or destroy to an aircraft;

4. damaging or destroying air navigation facilities or interfering with their operation if it is likely to endanger the safety of aircraft;

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166 ICJ Rep, 33 (1972).
168 Available at: https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml&menu=MTDSG, (visited on April 12, 2015).
5. communicating information which is known to be false, thereby endangering the safety of an aircraft in flight;

6. attempting any of 1–5; and

7. being an accomplice to any of 1–6.\textsuperscript{171}

5. **Protocol to Supplement the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988**

As between the Parties to this Protocol, the Convention and the Protocol must be read and interpreted together as one single instrument. Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon:\textsuperscript{172} (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 serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport”. This article applies to civil air craft and must not apply to military aircraft.\textsuperscript{173}

The States Parties to this Protocol stated that considering the unlawful acts of violence which endanger or are likely to endanger the safety of persons at airports serving international civil aviation or which jeopardize the safe operation of such airports, undermine the confidence of the peoples of the world in safety at such airports and disturb the safe and orderly conduct of civil aviation for all States, it was necessary to adopt provisions supplementary to those of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23\textsuperscript{rd} September 1971. Accordingly, State parties have agreed that this protocol supplements

\textsuperscript{171} Available at: http://dgca.nic.in/int_conv/Chap_XIX.pdf, (visited on March 12, 2014).

\textsuperscript{172} Article 1 of the Montreal convention 1971.

\textsuperscript{173} Ibid, Article 3.
the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23\textsuperscript{rd} September 1971. The Convention and the Protocol shall be read and interpreted together as one single instrument.\textsuperscript{174}

Significantly, this protocol made it clear that a person commits an offence if he unlawfully and intentionally, using any weapon, substance or device: (a) performs an act of violence against a passenger at an airport serving international civil aviation which causes or is likely to cause death or serious injury; or (b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport. According to this protocol each Contracting State must likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in this protocol.\textsuperscript{175}


In December 1988, Pan American flight 103 exploded over Lockerbie, Scotland where plastic bombs were used resulting in death of 270 passengers. Apart from this, there were other incidents where plastic bombs and explosives were used against the safety of international civil aviation. That showed that the existing International instruments were not sufficient to completely prevent such offences where plastic bombs are used against safety of international civil aviation. Therefore, to prevent future explosions onboard aircraft, the International Civil Aviation Organisation (ICAO) Council passed a resolution urging its Members States to expedite current research and

\begin{footnotes}
\item[174] \textit{Ibid}, Article 1.
\item[175] \texttt{Available at: https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml&menu=MTDSG}, (visited on May 14, 2015).
\end{footnotes}
development on detection of explosives and on security equipment during its regular session meeting in February 1989.\textsuperscript{176}

In January 1990, the ICAO Sub-Committee for the Preparation of a New Legal Instrument Regarding the Marking of Plastic Explosives to detect met in Montreal, Canada and drafted a new international agreement. In 1991, the International Conference on Air Law took place in Montreal to consider the draft of international agreement prepared by the ICAO Legal Committee in 1990. The Conference adopted the Convention by consensus and without a vote. By the end of the year, 45 States had signed the Montreal Convention, 1991. Under the Convention, States Parties undertook to take the necessary and effective measure to prohibit and prevent the movement of such explosives into or out of their territory. The States are also required to exercise strict control over the possession and transfer of unmarked explosives made or imported prior to the entry into force of the Convention and to ensure that all stocks not held by the military or police are destroyed or consumed, marked, or rendered permanently ineffective within three years of the Convention’s entry into force, with respect to a State. Finally, the States are also to ensure the timely destruction of any unmarked explosives manufactured after the entry into force of the Convention for that State and for this time period of 15 years is mentioned in the Convention.\textsuperscript{177}

Significantly, for the Compliance and Enforcement, the Convention establishes an International Explosives Technical Commission composed of members appointed by the Council of the International Civil Aviation Organisation (based on nominations of States Parties to the Convention). The Commission consists of 15 and 19 experts with direct experience in matter relating to the


\textsuperscript{177} \textit{Supra} note 144.
manufacture, detection of, or research in explosives. An important function of the Commission is to evaluate technical developments relating to the manufacture, marking, and detection of explosives and to report to the States Parties and international organizations involved, and making recommendations for amendments to the Technical Annex to the Convention. States are requested to declare whether they are producer States when depositing their instruments of ratification, acceptance, approval or accession.\textsuperscript{178}

Further the Council, on the recommendation of the Commission, may propose to States Parties amendments to the Technical Annex to the Convention. Moreover, the dispute between two or more States concerning the interpretation or application of the Convention will be submitted to arbitration at the request of one of the States if the matter cannot be settled through negotiation.\textsuperscript{179}

Despite the above conventions, the incidents of unlawful acts against the safety of international Civil Aviation could not be reduced. In such incidents, the plastic bombs or explosives have been prominently used. For example, on 21, December, 1988, Pan Am Flight 103 while flying over Lockerbie (Scotland) was blown by a plastic bomb. This resulted in the death of 270 passengers. From 12, February to March 1, 1991 a conference was held at Montreal. In this conference the representatives of 79 countries adopted a convention known as Montreal Convention, 1971 or the convention on the Marking of Plastic Explosives for the Purpose of Detection.\textsuperscript{180}

Significantly, the parties involved in this convention were determined to prevent the manufacture and distribution of plastic explosives without commercial markings. Significantly, it was also agreed that plastic explosives or bombs which are not necessary for

\textsuperscript{178} Ibid, Article 13.
\textsuperscript{179} Ibid, Article 11 paragraph 1.
\textsuperscript{180} Ibid, Article 3.
police or army should be destroyed within a period of three years. As the result of the convention, plastic bombs and explosives are to be destroyed within a period of 15 years. The Convention provides for the establishment of International Explosives Technical Commission.\textsuperscript{181} Both the Security Council and the General Assembly have supported and approved this Convention. As remarked by the Secretary General of the U.N., Perez de Cuellar: “nothing perhaps activates corporation like a universally shared sense of danger of the threat of terrorism that spares few countries or individuals is indeed practically a universal one. By March, 1991, 41 countries had signed the Convention. The Convention will come into force after 35 States have ratified it.\textsuperscript{182}

3.4 Important Principles followed in crime of Hijacking

It is important to mention that in the crime of hijacking certain important principles are followed. Two important principles are:

(i) Principle of Universal Jurisdiction

(ii) Principle of Extradition

(i) Principle of Universal Jurisdiction

The principle of universal jurisdiction is recognized in respect of war crimes and piracy. Since hijacking is generally described as aerial piracy, the principle of universal jurisdiction is also applied in such cases. By universal jurisdiction in respect of a crime, it is describe that the crime is against the interests of international community and in order to suppress such a crime, all States can exercise jurisdiction. The Hague Convention, 1970, and the Montreal Convention, 1971 on hijacking have gone a long way to confer universal jurisdiction, to a great extent, on all States. According to


\textsuperscript{182} Ibid, Article 4.
these conventions “if an offender or alleged offender is within the territory of a State, both conventions contain provisions for him to be taken into custody and if he is not extradited, for his case to be placed before the prosecution authorities”. Although neither Convention creates a duty to extradite or an inescapable duty to prosecute authorities are nevertheless under a duty “to take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. If the decision is in the affirmative, the above mentioned universal jurisdictional clause ensures that the courts will be competent to hear the case”. 183

(ii) Principle of Extradition

The greatest difficulty in the field of suppression of the offence of hijacking is the extradition of hijackers. Under International Law extradition is based on bilateral treaties. Thus, it cleared “By its very nature extradition is not a matter regulated by International Law . . . The duty to surrender cannot arise except under a treaty”. 184

An attempt was made under Hague Convention to solve this problem. Hague Convention provided that offence is be deemed to be included an extraditable offence in the common extradition treaty existing between contracting States. The contracting States further undertook to include the offence as extraditable in every extradition treaty to be concluded between them. The obvious effect of this provision is that the offence of hijacking may not be treated as a political crime. 185 It is undoubtedly a great achievement of the Hague Convention.

Therefore, only the imposition of an international obligation on all States and to extradite or to punish, and consequent national legislation and action by all giving effect to such an obligation, could prove fruitful”. Further, “It is not as easy to put into effect a full-proof legal framework and create an international regime for preventing and deterring acts of unlawful interference with civil aviation. Many factors, political and economical, play their part, and the efforts of nations with divergent interests have to be co-ordinate. If the concern with the problem continues with an unceasing interest and enthusiasm of the aviation community, and efforts are not given in despair, better results might come forth in not too distant future”. 186

Despite the steps that have been taken so far to suppress the crime of hijacking, there has been no reduction in the number of incidents of hijacking. Rather the incidents of hijacking have increased recently. The process is continuing but still the fact comes out clear: nation states are not prepared to fetter their sovereignty. Therefore, the aircraft users seem to be condemned to rely on cooperation between states which seems to be more an outcomes of convenience and more diplomacy than the result of any sense of obligation”. 187

Efforts to induce states to prosecute or extradite hijackers presuppose that criminal sanctions against hijackers are an effective means of preventing hijacking. This assumption is not necessarily true. Indeed, there is a danger of imprisoning hijackers who are the member of an organized crime. This may result in the increase of number of future hijacking rather than its decline. For instance, other members of the gang may seize another plane and threaten to destroy them and kill the passengers and crew unless their comrades are

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released from prison.\footnote{188} There is a need to tackle the problem of suppressing the crime of hijacking from its roots. Considering this problem, a special section of the United Nations General Assembly (UNGA) must be convened and united efforts should be made to plug the loopholes in the existing law. In the meantime, preventive measures such as search of all passengers and their luggage’s, etc. before they board aircrafts should be tightened.\footnote{189}

3.5 Cases Relating to Hijacking

1. **Hijacking of Indian Aircraft and I.C.A.O. Jurisdiction case (India v. Pakistan, 1971)**\footnote{190}  

   On 30\textsuperscript{th} January 1971, an Indian Aircraft was hijacked and taken to Lahore (Pakistan). Instead of apprehending the hijackers, and to ensure that they get proper punishment, the Government of Pakistan indirectly encouraged them. Because of which the hijackers burnt the aircraft. This act on the part of Pakistan was a clear violation of Tokyo Convention.\footnote{191} According to security council the States were asked to take all possible steps to prevent the interference of hijackers in the international civil aviation, in this case also it was also against the resolution of Security Council.\footnote{192} As a reprisal the very next day India suspended with immediate effect, the over flight of all Pakistan aircrafts— civil and military over Indian Territory. India demanded

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\begin{itemize}
\item \textsuperscript{188} Michael Akehurst, “Hijacking”, \textit{IJIL} Vol. 14, 81 at 87-88 (1974).
\item \textsuperscript{189} Michael Akehurst, The best solution would be to search all passengers and their hand luggage before they board an aircraft in order to make sure that they are carrying no weapons. Such searches are carried out at many airports and are usually very effective, but they need to be applied rigorously to all passengers at all airports. It would be undesirable to lay down detailed rules of International law on the subject; much depends on local conditions and the form and intensity of the search are best left to the discretion of national authorities. But here is much to be said in favor of the adoption by ICAO of the principle of such searches as an International standard under Article 37 of the Chicago convention because such searches provide the most effective measures of preventing hijacking, 88-89.
\item \textsuperscript{190} ICJ Rep, 46 (1972).
\item \textsuperscript{191} “Hijacking—An International Crime”, 1971 (1) SCC 36.
\item \textsuperscript{192} United Nation Security Council Resolution, 286 (1970).
\end{itemize}
}
extradition of hijackers. But Pakistan didn’t accept this demand. Pakistan on the other hand, complained to the ICAO, that the suspension of over flights by India was a violation of international and bilateral commitments and requested the ICAO, Council on March 3, 1973, to declare that India’s decision to suspend the over flights was illegal. India raised certain preliminary objections and contended that the Council has no jurisdiction to hear and decide Pakistan’s complaint.\footnote{193}

The contention of India was, however, overruled by the President of the Council. India’s preliminary objections were rejected by the Council on July 29, 1971. India appealed to the International Court of Justice on August 30, 1971, against the said decision. Pakistan objected to the Jurisdiction of the International Court of Justice to hear and decide India’s appeal. Thus, the case again went to the International Civil Aviation Organization, who could decide it on merits.\footnote{194}

However, it should be made clear here, that India and Pakistan entered into Simla Agreement and agreed to settle all their disputes through peaceful means and through bilateral negotiations. Subsequently, Delhi, Agreement, 1973 and Delhi Tripartite Agreement, 1974 were made to resolve matters relating to the repatriation of Pakistani Prisoners of War.\footnote{195} The representatives of India and Pakistan also held several round of talks related to the resumption of flights of aircraft by both countries over the territory of each other but with no success, so far. The main stumbling block in the solution of this problem was Pakistan’s persistent refusal to withdraw her case pending in the Council of the ICAO India, on her part made it clear that she would not entertain any proposal for

\footnotetext[193]{“Hijacking – An International Crime”, 1971 (1) SCC 38.}
\footnotetext[194]{Nagendra Singh, Recent Trends in the Development of International Law and Organization Promoti Inter State Cooperation and World Peace, 15 (1969).}
\footnotetext[195]{Id., at 64.}
resumption of Pakistani over flight through her territory unless and until Pakistan first withdrew her case from the Council of the ICAO. This stand was in conformity with the letter and spirit of the Simla Agreement between the two countries, in view of India’s insistence, Pakistan withdrew its case from the Council of the ICAO and subsequently Pakistani over flights over Indian territory were resumed.\(^{196}\)

2. Hijacking of Indian Aircraft, 1976

In 1976, one more Indian aircraft was hijacked and taken to Lahore. This time Pakistan arrested the hijackers and returned the aircraft and passengers to go back to India. Pakistan assured India that deterrent action would be taken against the hijackers but subsequently released them on the ground that there was no sufficient evidence to prosecute them. Thus, Pakistan once more, although not guilty of aiding and abetting the crime of hijacking, was guilty of appeasing the crime of hijacking.\(^{197}\)

3. Other incidents of Hijacking

In addition to the above incident, two cases of hijacking took place in September 1981 and July 1984.\(^{198}\) On 5\(^{th}\) September, 1986 four armed terrorists seized a Pan American Jumbo jet with 399 passengers and cabin crew on board at Karachi airport. Later on Pakistan commandos engaged the four hijackers. In the terrible shoot out that ensued, 18 persons were killed and over a 100 injured. Indian Prime Minister blamed Pakistani authorities for Karachi killings- The UK press backed India’s accusation. It was due to wrong handling of the situation and blunder committed by Pakistani authorities that the Karachi tragedy occurred. The International Court of Justice by a


\(^{197}\) Ibid.

\(^{198}\) Ibid.
majority of 13 votes to 3, rejected the Government of Pakistan’s objection on the question of its competence and held that it had jurisdiction to entertain India’s appeal. The Court, however, held by a majority of 14 to 2, that the Council of International Civil Aviation Organization was competent to entertain the application and complaint laid before it by the Government of Pakistan on March 3, 1971, and in consequence rejected the appeal made to the Court by the Government of India against the decision of the Council assuming jurisdiction in those respects.\(^\text{199}\)

4. **Hijacking of an Indian Airlines Plane (1C 814) [December, 1999]**

Another incident of hijacking of an Indian Airlines, air bus 1C 814 took place in mid-air over Lucknow on 24th December, 1999. The ill-fated plane was on flight from Kathmandu to New Delhi with 187 passengers. Before landing at Kandahar at 8.33 P.M. the next day, the air craft flew from Kathmandu to Amritsar, Lahore and Dubai. At Dubai the hijackers earlier released 27 hostages and off loaded the body of a victim, Ripon Katyai, who was killed on board the hijacked Indian Airlines’ Airbus. The greatest problem faced by Indian Government in respect of the hijacking of Indian Airlines’ airbus 1C 814 was that the hijacked plane landed at Kandahar (Afghanistan) because India still has not recognized the Taliban Government of Afghanistan and as such India has no diplomatic relations with Taliban Government. India had to seek the help of Taliban Government to rescue the passengers and secure the release of the aircraft. It has given refuge to and is protecting the dreaded and most wanted terrorist Chief Osama Bin Laden. But India had no option left except to request Taliban Government for help. Though the latter secured to have more sympathy with the hijackers, in the beginning the Taliban officials

\(^{199}\) Available at: http://www.theguardian.com/business/1986/sep/05/theairlineindustry. pakistan, (visited on March 12, 2014).
expressed resentment with Indian Government for not initiating negotiations with the hijackers rather they compelled Indian Government to start negotiations otherwise they would force the hijackers to leave Kandahar.  

Finally, regarding this case India’s longest hijack crisis ended on the night of 31st December, 1999 as the 155 passengers and crew reached India after being freed by the hijackers in exchange of three dreaded militants, namely, Maulana Masood Azhar, Mushtaq Ahmad Zarkar, and Ahmed Ummer Sayed Sheikh. The circumstances were such that the Indian Government had no option left but to release the said three militants to save the lives of 155 passengers. According to the information and evidence gathered by the Indian Government, the hijacking was planned and executed by Pakistan. The conduct of Taliban Government of Afghanistan was also not above the board. The Taliban Government not only expressed resentment against India for not starting the negotiations with the hijackers but also directly or indirectly compelled the Indian Government to an agreement of settlement with the hijackers - The subsequent events confirmed that they had more sympathy with the hijackers than with the trapped passengers and the Indian Government.  

Under International Law, it was the obligation of the Taliban Government, to rescue the passengers, and crews and return the aircraft to India. Even if they have admitted that they could not take any action against the hijackers keeping in view the safety of the passenger their conduct was certainly questionable after the passengers had been freed and the hijackers had come down the aircraft. At that stage, the hijackers could have been apprehended and

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could be either tried in Afghanistan for the crime of hijacking or could have been returned to the country against which they committed the crime. But contrary to the norms of International law they allowed the hijackers to go free and declared that they gave the hijackers a few hours time to leave Afghanistan. But subsequently it was found that even this statement of Taliban officials was wrong. The five hijackers and the three freed militants were in fact were driven away by the Taliban Government under heavy security to some undisclosed destination. Later on, it was found that they were allowed to stay and avail the hospitality of Taliban Government in the place where the Indian negotiators had stayed. Hijacking has been described as aerial piracy and any state, whether bound by any international convention or not, can apprehend, assume jurisdiction over then, and can trial and punish them. The Taliban Government did not, therefore, act according to the rules of International Law. Moreover, Taliban Government of Afghanistan is guilty of following double standards: They forced the Indian Government to negotiable with the hijackers, in case of hijacking of Arianna Airline Boeing 727 of Afghanistan with 160 passengers which landed at Stansted. Airport of U.K. on Monday, 7th February 2000 on one hand while took the stand that they would neither negotiate nor cede to the demands of the hijackers as terrorism is strongly condemned by them. In case of Indian hijacked plane and its passengers they had conducted themselves most irresponsibly. But contrary to their conduct, the British officials not only negotiated with the hijackers but ultimately got all the passengers freed without the loss of a single life and also apprehended the hijackers.

The stand taken by Indian Government throughout the hijacking incident has been appreciated by U.K. and U.S.A., The Indian Prime

Minister; Atal Behari Vajpayee\textsuperscript{204} urged the major nations of the world especially America to declare Pakistan a terrorist state. Even Russia has accused Pakistan for its hand in Chechnya and Dagestan war- U. N. sanctions are already continuing against Afghanistan for its refusal to hand over Osama Bin Laden.

It is heartening to note that America has taken a serious note of Pakistan’s involvement in terrorist Montreal Convention, 1991 or the Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1999 act. The U.S. has given a stern warning to Pakistan on terrorism after a threatening speech by Masood Azhar, who was got freed by hijackers of ill-fated Indian aircraft. After reaching Karachi, Masood Azhar had declared that Muslims “should not rest in peace until we have destroyed America and India”. America has warned Pakistan and has asked it to take stern action against such extremist groups who carry out acts of violence and terrorism. It is significant to note that Masood Azhar during his said speech had also called on all Muslims to “join the jihad for the people of Kashmir, Bosnia and Chechnya”. Both the U.S. and U.K. are reported to have asked Pakistan’s’ army ruler General Pervez Musharraf to curb militant groups operating from Pakistan and as a first step ban the Harkat-UI-Mujahedeen and disband its organizational presence in Pakistan. Last but not the least on 8th February, 2000 at the inaugural meeting of the recently set up joint working group on counter terrorism by India and America, the two sides have agreed to intensify their Joint cooperation to ensure that the perpetrators of the hijacking of Indian Airlines flight 1C-814 are brought to Justice. India has also agreed to take U.S. assistance in tackling the menace of terrorism in general and hijacking in particular.\textsuperscript{205}

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\textsuperscript{204} On 3rd January, 2000.  
\textsuperscript{205} Articles 8-10, Hague Convention, 1970. 
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