Global Research Review

ISSN: 2737-8551

Review homepage: http://www.grrjournal.org

THREATENING AVIATION SAFETY: CASE OF STUDY FROM THE RYANAIR FLIGHT 4978 INCIDENT

Tejas Sateesha Hinder , Pooja V

National Law Institute University, Bhopal, India

Corresponding Author Email: tejashinder.ug@nliu.ac.in

Abstract

A recent diversion of the Irish Carrier Ryanair (flying from Athens to Vilnius) to Minsk on the false pretext of a bomb threat and the arrest of a dissident journalist Roman Protasevich and his Russian girlfriend, Sofia Sapega who were onboard has created a spur among the international community for multitude of reasons. Firstly, even though incidents of interception have occurred in the past, the current one is unprecedented, and secondly, apart from endangering aviation safety, the incident sheds light on the lack of basic human rights in Belarus and the extent to which the current regime in Belarus condemns independent media.

Additionally, the incident escalates as one of the biggest spurts in East-West tensions in the recent years with sanctions by the US and EU over Belarus on one hand and Russia's relentless support to the regime on the other. Despite avoidance of a country's airspace due to conflicts or political considerations is not novel, the recent incident has brought to light the weaknesses of international aviation law in general as well as the insufficiency of the regulatory mechanism pertaining to aviation safety.

Undertaking a doctrinal approach to bring to light the legal issues surrounding the diversion of the aircraft, this paper *vide* a legal analysis of statutory framework regulating airspace, identify violations that may have occurred and attempt to substantially affix responsibilities for such

violations. In such attempt at affixation, the paper brings to light gaps in the statutory framework regulating aerial activities & air space, and highlight what would entail thereafter through an impact based analysis. In light of the analysis, the paper finally presents a specific road ahead, *vide* suggestions to bring about changes in the Montreal and Chicago Conventions, and better executive action of the International Civil Aviation Organization (hereinafter "ICAO") so as to bring about effective enforcement of the aforementioned primary laws and strengthening the process of such execution.

Keywords: RYANAIR Flight 4978 incident, Aviation Safety,

1. Imputing Liability: The factual and legal interplay

1.1. Chicago Convention

Before delving into specific legal issues pertaining to the incident, it is imperative to look briefly into the principle of state's sovereignty over airspace. Even though international aviation is supported by global standards and recommended practices to ensure the safety of airspace, regulations are stricter at the national level owing to the principle of sovereignty over air space. Thus, every state is entitled to regulate the entry of foreign aircraft into its territory. Even Article 1 of the Chicago Convention of 1944 and customary international law recognise the sovereignty of states over their airspace. Under this Convention, airspace of all contracting States is closed until States decide to open it by granting special permission or authorization. Thus, airlines such as Ryanair which run scheduled passenger services ought to obtain permission before flying over another territory, under Article 6. The uptight concept of sovereignty over airspace was eased by the 1944 International Air Services Transit Agreement, which gave airlines registered in member countries some rights of passage. In fact, this very Convention by demanding states to adopt uniform standards and practices internationally, under Article 37 has prevented states from adopting practices as per their whims.

However broadly, states have exclusive sovereignty over their airspace and there is no right of innocent passage (similar to one in territorial sea). This exclusive right over airspace led to the unreasonable shooting down of even civilian aircrafts of another state on intrusion into the state's airspace.[i]

Article 3*bis* of the Chicago Convention was adopted to curb this menace whereby States 'recognize' their obligation to refrain from resorting to the use of weapons against civil aircraft in flight. The provision furthered the rights and obligations of States set forth in the United Nations Charter. Thus, the provision can be interpreted to include even a threat of force against civil aircraft in flight that endangers the lives of persons on board and the safety of aircraft. At the backdrop of this provision, the scrambling of fighter jet MiG-29 to intercept and escort the flight to the airport should constitute a threat of force and hence a violation of the obligation under the Chicago Convention. Additionally, under Article 3 *bis* (b), a state is entitled to require the landing at some designated airport of a civil aircraft flying above its territory without authority (this has no relevance to the incident) or 'if there are reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of this Convention.' Even otherwise, under Article 4, states have an inherent obligation to refrain from using civil aviation for purposes inconsistent with the convention.

The two relevant questions at this point are whether Ryanair was used for a purpose inconsistent with the aims of this Convention and whether Belarus had any 'reasonable ground' to conclude the same. Firstly, if Ryanair had a bomb planted in it and faced the alleged threat of explosion by Hamas (which Hamas clearly denied), the safety and the lives of persons on board civil aircraft were at stake and hence, would clearly not be in keeping with the aims of the Convention. In that case, Belarus would have a reasonable ground to conclude a threat and the diversion and landing at Minsk would be justified. However, if safety was the primary concern, Belarus failed to 'reasonably' explain why the aircraft was diverted to Minsk which was 183 km away and not to Vilnius airport, which was just 72 km away at the time of diversion.[ii] Also, Swiss email provider ProtonMail stated that the email cited by Belarusian authorities containing the in-flight bomb threat was sent after Ryanair was diverted to Minsk. The upshot of this argument would only mean rejecting the ground of reasonableness claimed by the authorities in Belarus.

On the other hand, ascribing a mere presence of a criminal or terrorist onboard to the aircraft being used for purposes inconsistent with the aims of this Convention would be to go beyond the proper interpretation and purpose of Article 3 *bis* (b). Even though Article 3 *bis* of the Chicago Convention makes reference to Article 51 of the UN Charter (which provides a right to self-defence) and the Security Council's Resolutions 1368 and 1373 recognize the right to resort to

self-defence in response to terrorist acts, the actions of Belarus would still be unjustified due to the aforesaid justifications and lack of evidence of the claims made by Belarus.

As per the ICAO Council's special recommendations, 'interception of a civil aircraft, carried out as a last resort, should be limited to establishing the aircraft's identity and to providing the navigational guidance necessary to ensure the flight's safety.' [iii] Belarus' diversion does not seem to fulfil any of these requirements (only a further investigation can clarify this point).

1.2. Montreal Convention

Another legal framework which comes into play while seeking to establish responsibility on Belarus is the Montreal Convention of 1971 which was adopted for suppressing unlawful acts against the safety of civil aviation. Article 1 of the Convention defines the offences which includes under paragraph (1)(e) the communication of information by any person unlawfully and intentionally which he knows to be false, thereby endangering the safety of an aircraft in flight. Under paragraph (2)(a) if any person attempts to commit any of the offences mentioned in paragraph 1, he is said to have committed an offence. Even though the facts are under investigation, an offence seems to be committed at the outset. Moreover, the timeline provided by the Swiss email provider ProtonMail establishes that the information communicated was false and it was targeted against the dissident journalist under the pretence of a bomb threat.

Moving on to affixing responsibility, we come across both individual (responsibility of KGB agents in case they disseminated false information) and state responsibility under the Convention. With regard to individual responsibility, Article 1 determines the scope of the Convention *ratione personae.* While uncertainity prevails regarding the implied waiver of immunity *ratione materiae* of the KGB agents, a broad application of the reasoning in *Pinochet*; by according the ordinary meaning to be given to the term vide the Vienna Convention[iv] as well as on the basis of 'Replies by Libya to the questions put by Judge S Chwebel'[v], the Convention seems to apply both to acts committed by individuals and acts committed by persons acting on behalf of a State.

As regards State Responsibility, Article 10(1) of the Convention states, "Contracting States shall, in accordance with international and national law, endeavour to take all practicable measure for the purpose of preventing the offences mentioned in Article 1." It is very evident

that Belarus has breached this obligation under Article 10(1). However, a broader question is whether the positive obligation of prevention would also extend to negative obligations of restraint by the state from committing the offences set out in Article 1, i.e., whether the obligation to prevent the offences also includes an obligation not to commit the said offences. A broader understanding of the ICJ's decision in the Bosnian Genocide case[vi] seems to answer this in the affirmative.

Thus, the obligation to prevent the offences in Article 1 necessarily implies the prohibition of the commission of those offences as well. Additionally the observation of Judge Bedjaoui in the Lockerbie case[vii] imposes an obligation on states to refrain from the commission of offenses in Article 1. However, as per the ICJ's observation in the Bosnian Genocide case[viii], in case of jurisdictional positions such as Article 10(1), whether the substantive obligation on States not to commit the offences 'flow from the other provisions of the Convention' has to be looked into. While the convention is no doubt aimed at suppressing unlawful acts against the safety of civil aviation, extension of every individual obligation to state still remains a grey area.

For the sake of brevity and to prevent a detour, we would like to merely state that even though some states refer to the diversion as "state sponsored high-jacking" or "state privacy" in which case the Hague Convention[ix] should be invoked, the facts of the present case do not seem to constitute an 'offence' defined in Article 1 of the Convention. Similarly, the possibility of the application of the Tokyo Convention[x] is also not explored in this piece (the facts do not seem to merit such discussion).

2. Attributions of State Responsibility

2.1. The Issue of Responsibility

The next aspect to consider is how to hold Belarus responsible for the breaches committed against its obligations. The Draft Articles on State Responsibility (hereinafter "ASR") assumes its role here. Assuming that Belarus breached its primary obligations under the Chicago and the Montreal Conventions as illustrated in the aforesaid sections, the next consideration would be to entail international responsibility of Belarus. A combined reading of Articles 2 and 12 of ASR would affix responsibility on Belarus for non- conformity of the two Conventions, as notably brought out by the ICJ in Gabčíkovo-Nagymaros Project[xi].

Article 2(4) of the UN Charter requires that states refrain in their international relations, from the threat or use of force, "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any manner inconsistent with the Purposes of the United Nations." It endows the prohibition of force as a general and authoritative principle.[xii] The substantial majority of legal scholars attribute the norm contained in Article 2(4) a jus cogens character.[xiii] The same has also been regarded as jus cogens by the International Court of Justice and the International Law Commission.[xiv] Further, the Article is a strict prohibition; an incursion into the territory of another State constitutes an infringement of Article 2(4), even if it is not intended to deprive that State of part of its territory and if the invading troops are meant to withdraw immediately after completing a temporary and limited operation. In order for the force used against a State to be illegitimate, force has to be aimed towards the territorial integrity or political independence of said State. The standard of using forcible measures encompass sending undercover agents to kill an individual, therefore a covert military mission into another State satisfies the conditions of a forcible measure.[xv]

Further, countermeasures that violate fundamental human rights obligations[xvi] and involve the use or threat of force[xvii] are unlawful.[xviii] Countermeasures must be necessary "to safeguard an essential interest against a grave and imminent peril"[xix] and proportionate, including quantitatively equivalent,[xx] in response to an internationally wrongful act.

At this juncture, three questions are to be answered, i.e., who can invoke this responsibility; who is this obligation owed to and what comes thereafter. We will attempt to answer all these, albeit briefly. For the first question, the answer lies in Article 42 and 48 of ASR. Poland (state of registration of the aircraft) is 'entitled' to invoke responsibility on its own as an injured state (that the case primarily falls under Polish jurisdiction). Similarly, any state whose passengers were onboard the diverted aircraft would also be entitled to invoke responsibility under Article 42 of ASR. Apart from this, any member country to these Conventions can invoke the responsibility of Belarus under Article 48 of ASR.

In light of the same, answering the next question of who is this obligation owed to becomes quintessential. Essentially, both the Chicago Convention and the Montreal Convention are not based on *quid pro quo* and are obligations *erga omnes*. This is in keeping with Article 33 of ASR which necessitates looking into the character and content of the international obligation and on

the circumstances of the breach. The Chicago Convention (with 190 state parties) meets the criteria of the "international instruments of a universal or quasi-universal character" mentioned in the Barcelona Traction case[xxi]. Article 33 of the Chicago Convention (recognition of certificates and licenses by all contracting states) reflects that the Convention was not designed for reciprocal purpose but for the orderly development of international civil aviation.

Similarly, with regard to the Montreal Convention, the ICJ's Advisory Opinion in the Wall case[xxii] though spoken in the context of armed conflict seems relevant. The ICJ observed, "rules fundamental to the elementary considerations of humanity incorporate obligations which are essentially of an *erga omnes* character." Thus, the Montreal Convention which is aimed to prevent unlawful acts against the safety of civil aviation jeopardizing the safety of persons and to prosecute acts of international terrorism against civil aviation, thereby owes an obligation *erga omnes*. Specifically, "Article 7 of the Montreal Convention with a strict extradite or prosecute rule reflects such a general obligation owed to every Member State."

Now comes the answer to the third and the most important question, what follows this, i.e, how will this turn out. If after the invocation of responsibility by anyone competent to invoke it (refer previous section), Belarus has two options. It may either contest the application of the Conventions or accept such a commission of internationally wrongful act (there is a very remote possibility). The most likely recourse that Belarus would adopt is the former, in which case a 'dispute' would arise regarding the interpretation and application of these Conventions.

Article 84 of the Chicago Convention and Article 14(1) of the Montreal Convention provide a mechanism of settling such disputes which first makes a reference to negotiation, failing which the matter shall be decided by the ICAO Council on the application of any state concerned in the disagreement under the Chicago Convention, or an arbitral tribunal, on the request of one of the parties under the Montreal Convention. There is a mechanism of appeal or reference to the ICJ under both the Conventions if the aforesaid attempts fail to yield a solution. However, Belarus has closed its gates to the ICJ under the Montreal Convention by explicitly excluding itself from the purview of ICJ under Article 14(2).

If Belarus resorts to the second alternative, i.e., if it accepts the commission of internationally wrongful act, it should cease such act, if it is continuing.[xxiii] In foresight, it still seems to be

continuing as the return to *status quo ante* is not yet achieved, and the same will be possible only when Roman and Sofia are released and the offenders are prosecuted. It should further give assurances of non- repetition, which Belarus may not, citing special circumstances of bomb threat or by taking recourse to the LaGrand case[xxiv] and make full reparation to the injured state. Such exceptions are only possible only on the release of the detained journalist and his girlfriend as per the observations in Chorzów Factory case[xxv] and the *Arctic Sunrise* case). It becomes imperative that Belarus fulfils these secondary obligations, failing which the states to which such obligations are owed can resort to counter measures. This is where the situation seems to take a U-turn.

2.2. Underlying issues in enforcing State Responsibility

Still retaining the assumption that Belarus violated its obligations, the injured state as well as the other states invoking responsibility may resort to countermeasures, provided they fulfil the prerequisites of a valid countermeasure, as under Article 54 of the Chicago Convention. Such countermeasures may include a breach of trade obligations and imposition of sanctions. It may additionally take the form of breach of treaty obligations, in particular, the Chicago Convention. Several states have already been avoiding the Belarussian airspace[xxvi] and have banned Belarus planes from their airspace. Even though this broadly comes under the ambit of countermeasures, the validity of such countermeasures seem questionable. This is where the scenario is reversed.

The Investigative Committee of Belarus has pointed out that Belarus has received numerous fake bomb threats from the Swiss mail service ProtonMail and an investigation is underway. The pending investigation by the authorities of Belarus as well as the ICAO (which will release its report by the end of June) firstly, mandate an assessment of the validity of countermeasures and secondly, may lead to a turning of the table with Belarus resorting to the ICAO. These claims are not without basis.

With regard to the first claim, it was established in the East Timor case[xxvii] that the allegation of breach of an obligation *erga omnes* remains an allegation, and is not a key to universal judicial action. Thus, even in the case of breach of an obligation *erga omnes,* the existence of the breach has to be clearly established and a mere belief of the 'injured' State in the wrongfulness is not a sufficient basis. In this case, the Federation of Trade Unions of Belarus has planned to approach

the ICJ for a legal assessment of the EU sanctions as the probe is still pending and claimed it to be a political action taken to reduce competition[xxviii] and such an approach seems to be valid considering the circumstances. Despite all this, the fact that countermeasures are in general self-assessed and subjective claims remain unchanged.

The second claim seems to have already materialized as Belarus has approached the ICAO for judgment on countries that closed their airspace citing violations of the Chicago Convention and lack of uniform measures in relation to identical incidents. This scenario is not new as Qatar reacted similarly in response to measures taken against it by Saudi Arabia and other states, leading to an appeal to the ICJ.[xxix]

3. Arbitrary Arrest and Human Rights

The ban against arbitrary arrest, like freedom of speech, has become customary international law, as proven by a powerful corpus of domestic and transnational human rights instruments.[xxx] Alternatively, even if the restriction is not part of international custom, it is sufficiently basic to the ICCPR that its violation would automatically result in a violation of Article 18 of the VCLT. Freedom of expression, the rule of law, and other democratic features are all jeopardised without such a prohibition.[xxxi]

On four independent reasons, the arrest was arbitrary and hence illegal under international law.

First, any legal deprivation that is unjust, unpredictable, manifestly disproportionate, discriminatory, or inappropriate to the circumstances of the case falls under the arbitrariness criterion.[xxxii] It's difficult to imagine a more unpredictable arrest than one that occurs after a formal government assurance of immunity.

Second, in recent case law, forcible abduction has been deemed manifestly arbitrary. Nothing in principle distinguishes luring from physical coercion, as fraudulent inducement robs the victim of the power of autonomous decision and action.[xxxiii] Both luring and abduction, when viewed in the positive terms of the right to liberty, deprive an arrested fugitive of the ability to exercise that right in an autonomous manner.[xxxiv]

Further, it has been recognised that the prohibition on arbitrary arrest is informed by a continuum of coercion. The goodness and sense of responsibility for events of this nature, unlike

circumstances when police have been allowed liberty to exploit a criminal's own avarice. If the employment of such "moral" pressure is found to be in accordance with international human rights principles, hackers will be discouraged from offering potentially useful help to governments in the future.[xxxv] The deterrent of international cooperation is especially unfortunate in the case of developing countries like Belarus, who may benefit from aid supplied by those guilty for any such harm.

Lastly, arrests made without following established procedures for obtaining custody, such as extradition treaties, have been ruled manifestly arbitrary. Extradition procedures include crucial due process protections for the accused, and hence have a strong human rights component.[xxxvi] Unconstrained unilateral tactics like kidnapping or enticing, on the other hand, are the definition of arbitrary. The lack of an extradition treaty does not justify the deployment of arbitrary, unilateral actions.

4. Estoppel against initiation of legal proceedings

The International Court of Justice (ICJ) has acknowledged that governments might commit themselves to a course of action by unilateral commitments. The undertaking must be offered openly with the purpose to be bound in order to be legally effective. The motivation behind a purported commitment must be evaluated in light of the concept of good faith, with the trust and confidence inherent in international cooperation meaning that interested governments may trust unilateral pronouncements. The legal impact of such utterances is ultimately determined by their content and context.

There was no reason for Roman to have any doubts about the genuineness of the request for help. Belarus must be held to its public commitments in line with the norm of good faith. Any condition of a genuine offer and acceptance would be met on the facts,[xxxvii] even if it was found superfluous in the Nuclear Tests case[xxxviii].

Following a breach, international law requires that the wounded state be restored to the status quo ante in order to re-establish the condition that would have prevailed if the breach had not occurred. Roman, who was detained in violation of his human rights, must be liberated under the desire stated in Chorzow Factory for ‘restitution in kind’. Roman's release would also be in line

with state policy in situations of unlawful rendition. Any possibility of renunciation of a right to reparation is also refuted by immediate protest.

5. The dilemma surrounding attribution of liability to the Captain of the flight

The parties to the Tokyo Convention are bound by its requirements. The phrase ‘Contracting State’ is defined in Article 2 paragraph 1 (f) of the VCLT as, “a State that has accepted to be bound by a treaty, whether or not such treaty has gone into effect.” Paragraph 2 of Article 2 When a treaty has already gone into effect, a State is also considered a "party" to it under Article 1 (g).

Belarus has expressed no objections to either the Convention or the Protocol to the Tokyo Convention. This problem comes within the material scope of the Tokyo Convention, which states that it "must apply in respect of crimes committed or actions done by a person on board any aircraft registered in a contracting state while such aircraft is in flight" (Article 1 of the Tokyo Convention). This concept seeks to include all of the time that an aircraft is involved in international aviation. “Aircraft have the nationality of the State in which they are registered,” according to Article 17 of the 1944 Chicago Convention on Civil Aviation. In other words, registration serves as proof of the aircraft's nationality.

Actions taken on board an aeroplane while it is in flight are covered under the Tokyo Convention. “An aircraft is deemed to be in flight at any time from the moment when all of its exterior doors are closed after embarkation until the moment when any such door is opened for disembarkation,” according to Article 1 paragraph 3 of the 1963 Tokyo Convention, which was amended in 2014. This clause conveys the belief that the aircraft commander must be able to adopt globally recognised actions to safeguard individuals, property, and the aircraft, which is regarded as a closed universe or sealed unit.

“Any Contracting State must enable the commander of an aircraft registered in another Contracting State to disembark any individual subject to article 8 paragraph 1,” according to Article 12 of the Tokyo Convention. The responsibility of a Contracting State to permit such disembarkation is regarded unqualified or unconditional in order to ensure good order, discipline, and the safety of an aircraft or of people or property on board. As a result, this responsibility is not constrained by a condition and does not rely on an unforeseen occurrence or situation to be

created. As a result, the legality of a choice to disembark a person has no bearing on the state of landing's obligation to accept the disembarkation.

As a result, Belarus violated the Tokyo Convention by failing to perform the responsibility required by Article 12. In any scenario, disembarkation would be legal under the Tokyo Convention: Article 8 paragraph 1 gives the aircraft commander the authority to disembark a person if it is essential to safeguard the aircraft, its passengers or property, or to preserve good order and discipline on board. However, under Article 1 paragraph 1 (b), this power is confined to situations in which the commander has reasonable grounds to think that a person has performed an act on board the aircraft that may or does risk the safety of those on board or jeopardises good order and discipline on board. The commander's judgement must be founded on reasonable factual reasons, exercised in good faith, and the test of such reasons' reasonableness seems to be subjective. Captain's decision was based on reasonable grounds in this case, as Roman's assault over Teasdale jeopardised the safety of a person on board, namely the flight attendant's safety. On board, the events reported had also produced chaos.

"Any Contracting State must take possession of any person whom the aircraft delivers under to article 9, paragraph 1," says Article 13 of the Tokyo Convention . The obligation to take delivery is also regarded as absolute, requiring strict compliance with the terms of the engagement [in question] without the obligor having any other options. The above-mentioned responsibility does not imply that the delivered person must be taken into prison. The Captain was not allowed to deliver Roman in this case, and as a result, the authorities failed to fulfil the absolute duty imposed by Article 13.

Captain's decision to hand over Roman to the authorities was, in any case, legal. Article 13 is the legal corollary of the Tokyo Convention's Article 9 paragraph 1, which states that "the aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed on board the aircraft an act which, in his opinion, is a serious offence." The Tokyo Convention gives the aircraft commander discretion in deciding when a person must be delivered, but the decision must be based on reasonable factual grounds, making the decision subjective and ultimately limited by an objective criterion, namely the commander's belief that a serious offence has been committed. The standards for determining the severity of an infraction are not defined

in the Tokyo Convention. As may be observed from the preparatory works of the 1963 Tokyo Convention, which are taken into account according to Article 32 of the 1969 Vienna Convention on the Law of Treaties, the Drafters were unable to agree on the 'seriousness' of an offence. The commonly recognised measure of punishment that is connected to an infraction in domestic criminal laws provides solid advice as to the definition of the phrase "severe crime', but severe crimes may also encompass violations against the person.

The Tokyo Convention applies to criminal offences and conduct that may or do compromise the safety of the aircraft, its passengers or property, or good order and discipline on board, whether or not they constitute criminal offences. The commander of the aircraft has the authority under Article 8 of the Tokyo Convention to depart a person if he has reasonable grounds to think that the person has committed an infraction or conduct that jeopardises the safety of the aircraft, its passengers, or its property. The Magistrates Court of Haifa concluded in Zikry v. Air Canada[xxxix] that reasonableness had to be decided as a matter of fact, not law.

Additionally, The ICAO Security Manual on the Implementation of ICAO Annex 6 Security Provisions presents a four-tiered threat level system, which is a valuable tool for gauging the severity of an unruly and disruptive passenger event. The ICAO has included physical abuse of a crew member as one of the dangers.

As a result, the Captain had reasonable reasons to assume that Roman's activities risk the ship's good order and discipline, as well as its safety.

Conclusion

Air travel is seen as quick and dependable; nonetheless, it is rapidly expanding and bringing with it a slew of issues. Unfortunately, certain important aviation laws and judgments are made as a consequence of certain tragic events. Recent mishaps in Malaysia, Germany, and Egypt are instances of this. All three accidents highlight the need to revise aviation regulations and implement additional safeguards. Many nations are affected by issues with the universalism concept in aviation. Many individuals, regions, and nations are affected by the fact that governments' security systems are lacking and that consequences for aeroplane hijacking are ineffective. Terrorist attacks have been more common in recent years, and incidents such as terrorist hijacking of planes have necessitated a revision of uniform regulations, penalties, and

security protocols. It demonstrates that, because to international accords, plane hijackings are no longer linked to political events. States who refuse to sign these accords will face a united front in order for them to be implemented throughout the globe. Despite the fact that the first aeroplane hijacking statute was passed in 1931, hijacking occurrences continue to occur today. As a remedy, in addition to avoiding linking aircraft hijacking activities with political events, it should be mandatory to have a plane police within the flights, and all airline companies should be required to do so in order to avoid accidents and losses; this should be implemented by all nations. Other precautions must also be followed. It's crucial, for example, to keep track of the pilots' activities. The International Civil Aviation Organization (ICAO), of which nations are members, should take the lead on penalties by informing nations that aeroplane hijacking is not linked to political crimes.

The current case has underlined several important questions of international law ranging from who can supervise and penalise Belarus for its actions, to whether countries are justified in resorting to such extreme means. Belarus seems to clearly be at fault considering the timing of the mail; unsubstantiated diversion to Minsk as opposed to Vilnius; unjustified arrest of Roman and Sofia. Concern lies regarding the countermeasures taken in general interest, where countries resorted to shutting down their airspace, while a more valid and effective measure could have been suspension/ termination of the bilateral agreements signed with Belarus. However, even if Belarus comes out clean with regard to the bomb threat, Poland still has every right to secure the release of the journalist and in fact, complete reparation would be possible only after their release. International aviation law seems to be less equipped to deal with the situations of this kind. It shows the absence of a universal police to take action in case a country violates its obligations. Even though ICAO remains a central body to deal with the situation, its core function remains restricted to helping countries cooperate together diplomatically on international aviation priorities. The maximum it can do is to suspend the voting rights of Belarus if it finds ‘non-conformity’ with the organization’s requirements, in line with Article 88 of the Chicago Convention. Given that this is the first time that the government of an ICAO member has been accused of a direct violation of aviation law to this extent, the outcome might lead to rethinking of strengthening the existing regulatory and supervisory mechanisms in international aviation law and plugging the loopholes in the current system.

References

[i] Aviation Safety Network, available at: http://aviation-safety.net/database/record.php?id=19830901-0, last visited (19-09-2021).

[ii] Ryanair flight 4978 to Vilnius forcibly diverted to Minsk, Flightradar24 (May, 2021), available at: https://www.flightradar24.com/blog/ryanair-flight-4978-to-vilnius-forcibly-diverted-to-minsk/

[iii] International Civil Aviation Organization, *Annex 2 to the Convention on International Civil Aviation – Rules of the Air* (July, 2005), available at: https://www.icao.int/Meetings/anconf12/Document%20Archive/an02_cons%5B1%5D.pdf.

[iv] Vienna Convention on the Law of Treaties, art. 31(1) (1969).

[v] Replies by Libya to the questions put by Judge Schwebel, Annex to LUS 92/17, available at: https://www.icj-cij.org/public/files/case-related/89/18056.pdf.

[vi] Bosnia and Herzegovina v. Serbia and Montenegro, L.J.I.L. 21(1) at 63-64 (2008), ¶166.

[vii] Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie, Libyan Arab Jamahiriya v United Kingdom, Order, provisional measures, ICJ GL No 88, [1992] ICJ Rep 3.

[viii] *Supra Note* 6.

[ix] Convention for the Suppression of Unlawful Seizure of Aircraft (1970), available at: https://treaties.un.org/doc/db/Terrorism/Conv2-english.pdf.

[x] Convention on Offences and Certain Other acts Committed on Board Aircraft (1963), available at: https://www.mcgill.ca/iasl/files/iasl/tokyo1963.pdf.

[xi] Gabčikovo-Nagymaros Project (Hungary v. Slovakia), 1997 I.C.J. 7.

[xii] Louis Henkin, "Use of Force: Law and US Policy" in Right v. Might, International Law and the Use of Force (Council on Foreign Relations Press 1991) 38.

[xiii] Malcolm N Shaw, International Law (Grotius, 1991) 686; Antonio Cassese, International Law in a Divided World (OUP 1994)141; Edip Celik, Milletlerarasti Hukuk (International Law) (Filiz Kitabevi 1982) 410.

[xiv] Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. U.S.) (1986) I.C.J.14 202, ¶183; Case Concerning Armed Activities on the Territory of Congo (Democratic

Republic of Congo v. Uganda), 2005 I.C.J. 168., 148; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (Sep. op. Elaraby), p. 254; Yearbook of ILC (1996-II), p. 247.

[xv] Lubell, N., EXTRATERRITORIAL USE OF FORCE AGAINST NON-STATE ACTORS. Oxford, Oxford University Press (2010).

[xvi] The International Covenant on Civil and Political Rights, art. 17 (1966).

[xvii] The Charter of The United Nations, art. 2(4) (1945).

[xviii] The Articles on the Responsibility of States for Internationally Wrongful Acts, art. 50(1)(a-b)

[xix] *Id.*, art. 25(1)(a); Thomas Franck, On Proportionality of Countermeasures in International Law, 102 AJIL 715, 741 (2008).

[xx] Enzo Cannizzaro, *The Role of Proportionality in the Law of International Countermeasures*, 2001 EJIL 889, 906-07.

[xxi] Case Concerning Barcelona Traction, Light, and Power Co., Ltd (Belgium v. Spain), 1970 I.C.J. 3, 32.

[xxii] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 2004 I.C.J. 136, 171-2 (July 9).

[xxiii] International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts, art. 30 (2001).

[xxiv] Germany v. United States of America (LaGrand Case), CJ GL No 104, [2001] ICJ Rep 466.

[xxv] Germany v. Poland (Factory at Chorzów), 1928 P.C.I.J. (ser. A) No. 17 (Sept. 13).

[xxvi] Daniel Boffey, *EU bans Belarus planes from its airspace over activist arrest*, The Guardian (Jun., 2021), available at:https://www.theguardian.com/world/2021/jun/04/eu-bans-belarus-planes-from-its-airspace-over-blogger-raman-pratasevich-arrest.

[xxvii] Portugal v Australia (East Timor Case), ICJ Reports (1996) at 29.

[xxviii] *Minsk initiates lawsuit with World Court to assess lawfulness of EU sanctions*, Tass (Russian News Agency), (Jun., 2021), available at: https://tass.com/world/1298677.

[xxix] Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar), 2020 14 July General List No. 173.

[xxx] Jean-Marie Henckaerts, BECK DOSWALD LOUISE, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW: RULES, 1, Cambridge University Press, Cambridge (2006).

[xxxi] Prosecutor v. Stanislav Galic, Opinion and Judgment Trial chamber, Case No. IT-98-29-A (2003).

[xxxii] Prosecutor, No. 1T-95-13A-PT, T Ch. II at 484; M. Nowak, *UN Covenant on Civil and Political Rights*: CCPR Commentary, at 173 (1993).

[xxxiii] Prosecutor, No. IT-95-13A-PT, T Ch. II at 487.

[xxxiv] In re Schmidt [1995] 1 AC 358.

[xxxv] Liangsiriprasert v. United States, I AC 225, at 243 (PC) (1991).

[xxxvi] Prosecutor, No. IT-95-13A-PT, T Ch. II at 487.

[xxxvii] Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v U.S.), 1986 ICJ 14 (June 1986).

[xxxviii] Nuclear Tests (Australia. v. France), 1974 I.C.J. 253, 332-33 (Dec. 1974).

[xxxix] C. F. 1716/05 (Haifa Magistrates Court), Zikry v. Air Canada.