

ANTI-HIJACKING LAW AND TREATIES

INTRODUCTION

When we see aircraft in the sky, we often feel contented to take a flight to our dream destination. Imagine a scenario whilst a Boeing flight with quite a good amount of mob waiting to travel to their desired destination. Targeted by some greedy wants of some individuals or a group of folks. This act of the seizure of an aeroplane and its forcible diversion to destinations chosen is termed aircraft hijacking.

TIMELINE OF SKYJACKING

- **HIJACKING IN PERU (1931):** The first recorded hijacking was on a ford tri-motor which was approached on the ground by armed revolutionaries.
- **US Boeing 727(1971¹):** A commercial plane from Portland to Seattle was hijacked by D.B Cooper where he negotiated an amount of \$2,00,000 and a parachute. The government realized the demand. Cooper flew off from the aircraft with a parachute.
- **Air France flight (1976²):** The air France airbus A300 jet airliner with 248 passengers were under hostage by four hijackers. The hijacker demanded to release 40 Palestinian prisoners in Israel. The hijackers were members of the popular front for the liberation of Palestine and German revolutionary cells. The hijackers routed the flight from Athens to Benghazi and then Entebbe in Uganda. All hostages got released except the Israelites. The Israeli commandos undertook operation Entebbe to free the hostages. 102 hostages got rescued in the mission. Three of the hostages died during the attack and one of the travellers were wounded and died in hospital.
- **EgyptAir Flight 648 (1985³)**– The hijacking took place on a plane directed from Athens to Cairo where the hijacker targeted American and Israelites passengers. The hijackers negotiated with the government for the refuelling process and intimidated that they would kill hostages every 15 minutes. The causality of people stabbed to death was 60.

¹ Hijacking of D.B. Cooper available at: https://en.wikipedia.org/wiki/D._B._Cooper

² Famous hijacking available at: <https://historyofyesterday.com/3-famous-incidents-of-hijacking-in-history-e8fe0e3305c0>

³ Notorious hijacking accessible in: <https://www.airport-technology.com/features/world-most-infamous-aeroplane-hijackings/>

- 9/11 ATTACK (2001⁴) – One of the well-known attack in the past. It has sought the eye of many throughout the arena. On September 11, 2001, 19 militants associated with the Islamic revolutionist group al Qaeda commandeered four aeroplanes and carried out self-murder attacks against targets in the United States. American Airlines flight 11, united Airlines flight 175, American Airlines flight 77 and united airlines flight 93 were the flights hijacked. Two of the aeroplanes were flown into the twin halls of the world trade Centre in New York City, a third aeroplane hit the pentagon in Arlington, Virginia, just outside Washington. Dc and the fourth aeroplane crashed in a field in Shanksville, Pennsylvania. Nearly 3000 people were killed during the 9/11 terrorist attacks, which triggered a major part of America. US initiatives to combat terrorism and defined the administration of George W Bush.
- LUFTHANASA FLIGHT (2014⁵): The flight was scheduled from Munich to Budapest, which was disrupted by a 28-year-old male passenger who threatened one of the cabin crew with a razor blade. He shouted (in the Albanian language) which couldn't be understood by the crew and the flight returned to Munich where police persuaded the man to surrender.

CAUSE AND EFFECT OF HIJACKING

- Political reason: Hijacking is done for two purposes. People think that their freedom is restricted by the country (the freedom like thought, expression, migration to another country). People think that aircraft hijacking drew great attention and drag the mind to the political situation.
- Attention seeking: Aircraft hijacking is much harmful than other types of hijacking. So, to seek the attention of the political leaders of the nation and to get ransom benefits from the authority
- With ransom goals: Through aircraft hijacking, the lives of passengers and the crew can be threatened, therefore the pirates demand the release of certain high-profile mobs and to fulfil other obligations.

⁴ 9/11 attack in USA: https://en.wikipedia.org/wiki/September_11_attacks

⁵ Recent hijacking available at: <https://www.usatoday.com/story/news/2016/03/29/hijackings-rare-after-911-security-improvements/82375474/>

- Extortion: Sometimes aircraft hijacking is for extortion of expensive commodities that could include the defence weapon of a country or to loot lumpsum money by threatening hostages.
- Aircraft hijacking could poorly affect flight safety. The air traffic controller does not indeed have much opportunity to impede other aircraft from malfunction. This may generate calamity in the air, the runway of the flight is different according to the body of the aircraft. So, when there is a difference in the airfield that may cause catastrophe.

This act of hijackers may affect the lives of passengers, and crew members. Every flight has an adequate amount of fuel to reach the destination. The depletion of fuel can cause chaos in the functioning of aircraft. Hence, when the pattern of flying changes depletion takes place at a faster pace.

- Maltreating life and liberty of people: when a flight is captured by the hijackers the life and liberty of each passenger are questioned. "The longer the period of hostage, the greater the struggle is", this could get the authorities in question of safety and security of the crew members, passengers and the airline may serve a huge loss.
- The pilot may not be familiar with the navigation plan and so when the cockpit is hijacked. it is a tough task to comprehend the route.
- If an airline's flight is continuously hijacked by the pirates, it affects the creditability of the airlines and would result in the reduction of the number of passengers

INTERNATIONAL CONVENTION:

Since the airline industry has been commenced, it is prone to many incidents which pointed out the drawback of the system. The following are the directives laid down to further prevent complications in the industry:

- Tokyo Convention 1963: The convention on offences and certain other acts committed on board aircraft was concluded at Tokyo on 14 September 1963 and ratified by 186 parties. Tokyo convention was made with the insight to provide safety of the passengers, to safeguard the aircraft, and maintain discipline on board. The passengers and crew members are empowered to prevent the commission of such an act and debark the person concerned. The safety of the plane is ensured by the fighter pilots when hijackers take control of the cockpit.

- Montreal Protocol 2014: Amended the vintage Tokyo convention of 1963. This protocol had made several improvements to the Tokyo convention by expanding the jurisdiction over the offence to the state of landing. further, if the aircraft divert its direction to the third state, that state has the competence to exercise jurisdiction of its discretion and this protocol gives a greater clarity to the definition of unruly behaviour. this protocol has also recognized the right of the airlines to claim compensation for the event of a hijacking.
- The state of registration of the aircraft has its jurisdiction over the offence that arise in the aircraft. If wrongdoing has been brought out in the territory of the state, the offence should be committed against the permanent resident of the state and against the security of the state, in these cases, the contracting state has the competency of jurisdiction.
- The Hijacking Convention: Hague Convention 1970⁶ : This convention is laid down for the suppression of aircraft hijacking, this does not apply to military aircraft, customs, and law enforcement aircraft. This convention is only applicable when the flight takes off or lands in a place that differs from its country of registration. The convention also lays down the principle of ‘aut dedere aut judicare’ which says that, states have a legal obligation under the public international law to prosecute the people who are accused of committing serious international crimes, in this case, aircraft hijacking when no other state has requested the extradition of the accused person. This convention was adopted by the international conference on air law at the Hague on 16th December 1971 after it have been ratified by 10 states. As of 2013, the convention has 185 state parties.
- Beijing Protocol 2010 is ancillary to the Hague convention of the suppression of aircraft hijacking. This protocol makes amendments and addition to the convention. It is a protocol by which state parties agree to criminalize certain terrorist actions against aviation.
- The Sabotage Convention (Montreal Convention 1971): Is a convention for the suppression of unlawful acts against the safety of civil aviation. The convention was adopted in Montreal on 23rd September 1971. It came into force on 26 January 1993 after it has been ratified by 10 states. As of 2017, the convention has 188 states parties. This convention does not apply to customs, military or law enforcement aircraft, it is

⁶ A note on hijacking: <https://blog.ipleaders.in/overview-anti-hijacking-act-2016/>

exclusively applicable to civil aviation. This convention criminalizes some behaviour, for instance, an act of violence against a person on board. It is likely to endanger the safety of aircraft, destroying and damaging aircraft facilities and communicating false information which endangers the safety of the aircraft.

The main objective of the convention was to prohibit and punish acts that might affect the safety and security of civil aviation.

- The Unlawful Acts Convention Beijing Convention 2010: it is a convention on the suppression of unlawful acts relating to international civil aviation. This agreement was concluded on 10th September 2010 at the diplomatic conference on aviation security in Beijing. This convention criminalizes certain acts against civil aviation like illegal transport of chemical, biological and nuclear weapons and attacks to another target by using civil aircraft. On this convention, the protocol supplementary to the convention for the suppression of unlawful seizure of aircraft was adopted.

These conventions were laid out for the protection of the civil aviation industry and were brought to existence to create peace and friendship among nations about the matter in concern. The government take up initiative to act upon this agreement for the development of welfare and orderly manner of international civil aviation.

AIRCRAFT HIJACKING AND INDIAN LAW

- Anti-hijacking law 1982: The hijacking law of 1982 was enacted due to the lingering threat on the airline industry by the militant groups which had a huge impact on the legislators of our country and to ensure the safety and security of the airlines of the country. The law that was passed was not comprehensive enough to deal with modern-day hijack techniques, did not penalize individuals who made false hijack threats and had weak penalties that did not serve as sufficient deterrent to potential hijackers. 1982 had a narrow focus in dealing with the dilemma.
- Amendment anti-hijacking law 2016⁷: The vintage law was replaced by the amendment act. The new act broadens the definition of hijacking to include any attempt to seize or gain control of an aircraft using "any technological means", which accounts for the possibility that the hijackers may not be physically present on board the aircraft.

⁷Anti-hijacking law 2016: <https://www.civilaviation.gov.in/sites/default/files/Anti-hijacking%20Act%2C%202016.pdf>

- Section 3(1) of the Anti-Hijacking Act, 2016 defines the offence of hijacking as: “Whoever unlawfully and intentionally seizes or exercises control of an aircraft in service by force or threat thereof, or by coercion, or by any other form of intimidation, or by any technological means, commits the offence of hijacking”.
- For example, in 2017 a businessman was sentenced to life imprisonment and a penalty of 5 crores for hijack hoax on a jet flight by leaving a note on the lavatory in flight conveying that there are explosives on board⁸.
- It takes into account that armed possession of an aircraft may not be necessary for hijacking and that it may be hijacked remotely through a technological threat.
- Hijacking attempts, directing others to commit hijacking, being an accomplice and assisting another person to evade investigation are punishable as hijacking and so is the preparation for hijacking.
- Punishment: If hijacking results in the death of a passenger or a crew member, it is punishable by death. If not, the hijacking is punishable with life imprisonment.

CASE LAWS

- **Indian Airlines Flight 814⁹(1999)**: This flight was known as IC 814 was an Indian airline airbus A300 En-route from Tribhuvan international airport in Kathmandu to Indira Gandhi International airport in Delhi, India. The flight was hijacked by the terrorists of the Islamic State. They have demanded to fly flights to a series of locations Amritsar, Lahore and across the Persian Gulf to Dubai. The hijackers finally were ready to release 27 passengers out of 176 in Afghanistan. Many were injured and one of the hostages was stabbed to death. The Taliban militiamen fighter encircled the plane and assisted in the release of passengers. The main negotiation made by the hijackers was to release seven Islamist state terrorists from the Indian jail. Their demand was accepted, but only three terrorists were released.

⁸ <https://indianexpress.com/article/india/birju-salla-gets-life-imprisonment-rs-5-crore-fine-for-hijack-hoax-on-jet-flight-in-2017-5775074/>.

⁹ Most famous hijacking in India: https://en.wikipedia.org/wiki/Indian_Airlines_Flight_814

- **Indian Airlines Flight 421¹⁰ (1984):** A Boeing 737-2A8 on a domestic flight from Delhi Palam airport to Srinagar airport with 74 people on board and demanded to be flown to the US. The flight was hijacked by banned all Indian Sikh student's federations. The flight had landed in Dubai and the defence minister of UAE had negotiated with the hijackers to release all the hostages and surrenderers of the hijackers to the UAE government. The motive of hijacking was related to the secessionist insurgency in Punjab. And the Khalistan movement was a different approach of demanding a different country for Sikhs. The hijackers were extradited by the UAE government and handed over to the Indian government.

COUNTER MEASURES

This series of events created awareness to the government and airways to protect the passengers and planes from air pirates and it's important to apply certain tactics.

- **Law enforcement agencies:** As a part of an active measure taken up by the airport authority, special airport security officers were made in charge of detecting personals with unnatural or suspicious behaviours.
- **Metal detectors:** Installation of metal detectors before boarding. The plane was first proposed by Senator George Smathers in 1968. It was inspired by the security outside the military quarters and security prisons. New Orleans airport becomes the first airport to install metal detectors.
- **Backscatter passenger scanner:** This detects threats such as weapons or explosives that a person could be carrying under their clothing.
- **Security on-board:** on-board security has been taught by the airline to the cabin crew. To recognize the subspinous behaviours of the passengers and trace the necessary deviations. Even today, the aeronautical institution prepares the cabin crew for such attacks.
- **Air marshal:** The air marshal system is operated when there is a hijacking takes place in flight. The fighter flight of the country provides security for the passengers and crew members.
- **Cockpit security:** the most secure part of the plane is the cockpit. If the cockpit is hijacked, it is difficult to regain control back. The attacks in the past few years had

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https://en.wikipedia.org/wiki/Indian_Airlines_Flight_421#:~:text=On%2024%20August%201984%2C%20seven,be%20flown%20to%20the%20United

made a due consciousness in communicating with cabin crew and if an attack takes place, they are aware of how to handle the event. Even pilots also carry a weapon for safety for the plane and passengers.

- Air traffic control: They are expected to exercise their best judgement and expertise when dealing with the apparent consequences of unlawful interference or hijack. Negotiations and demands are recorded and retrieved by the air traffic control.
- Implementation of passive measure to control taken in response to the spate of aircraft hijacking.

CONCLUSION:

Every passenger on a flight has an assurance that they would reach their destination soon. And that determination is questioned by when the flight is hijacked. For the monetary or personal pleasure capturing a flight and putting many lives into question is another form of terrorism. Hijacking is one of the most dangerous aspects of the world of aviation. The history of aviation is replete with examples of hijacking resulting in the loss of human lives as well as damages to the airlines. The recent incident of hijacking and attacks on the World Trade Center has changed the whole world. Indeed, we can say that it has added a new chapter to human history. Air transport has made the lives of people easier. Back in the days, a journey by road or sea would take days, months, and years to reach the destination but now flights are considered to be the most reliable and dynamic industry. When it comes to safety and security the countermeasures taken are not sufficient for the advancing technology which is leading to cyberattacks. The radio transmitting information is tapped and recorded by the desired groups. All the incidents of hijacking enabled the airlines and the aviation industry to take extraordinary measures to avoid any hijacking attempts in the future. Moreover, the security of the people was ensured and they made sure to keep them safe during air travel.