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Regarding the issue of jurisdiction in the field of combating acts of illegal interference in the activities of civil aviation

Abstract. The present work is based on theoretical and empirical research. It should be noted that along with the development of international civil aviation, the concepts: “Act of Unlawful Interference” and “Issues of Jurisdiction” are becoming increasingly popular. Illegal actions committed by persons that threatened the safety of civil aviation and that affected the legal well-being of passengers on boards of aircrafts were not initially recognized at the legal level by international air law, therefore, it became problematic to qualify such actions, but due to the increased use of airspace and along with the development of the transportation sector, it became necessary to form new approaches based on the existing experience. This led to the creation of five conventions which are discussed in terms of the exercise of jurisdiction.

Key words: international civil aviation, unlawful interference act, convention, international air transport.

Introduction. In the modern world, international air transport has become a popular means of fast, safe and affordable transportation, which has made it possible to establish active economic ties and various types of close relations around the world. The most important thing is that distant countries have become closer. On December 17, 1903, the Wright brothers laid the foundation for the history of aviation with the use of the first airplane, and today we can already see large and small vehicles in the air space, the management and safety of which are connected with the greatest informational, financial, logistical and planning activities, which in turn is the responsibility of governmental agencies. It is the result of coordinated action. The development of aviation, especially civil aviation, changed modern history forever, and this change in itself was followed by the formation of a brand new transportation circumstance. Civil aviation has become the most vulnerable to the threat of acts of unlawful interference and terrorism.

This extremely dangerous phenomenon, well-known to modern international law, not only penetrated, but was able to weaponize air vehicles designed for peaceful purposes, and, at the same time,

cases of illegal interference in the use of airspace itself became frequent, forcing countries to reassess the security risks they faced and the international civil aviation organization ICAO, founded in 1944, has done a great job to create the international legal basis through conventions and other international legal documents, which would give countries the opportunity to adequately respond and prevent acts of illegal interference. This was followed by the formation of the main legal documents related to civil aviation safety, namely: the 1963 Tokyo, 1970 Hague, 1971 Montreal and 2010 Beijing Conventions.

Actions committed by persons that threatened the safety of civil aviation and that affected the legal well-being of passengers on board of aircrafts were not initially recognized at the legal level by the international air law, therefore, it became problematic to qualify such actions, but with the increase in the use of airspace and the development of the field at the same time, it became necessary to develop new approaches based on existing experience, which resulted in the creation of the 1963 Tokyo Convention on Unlawful Interference in Civil Aviation[1] and other acts. The Convention defines one of the types of unlawful interference - hijacking of an aircraft, as follows: “When a person on an aircraft unlawfully, by force or threat of force, commits an act of interference, seizure during the flight, unlawfully exercises control over an aircraft in flight, or intends to commit such an act”[2]. This definition singles out the fact of wrongful exercise of control over an aircraft by a person during th flight, regardless of the purpose, but the convention does not qualify such an act as an international crime and is limited to indicating what actions states undertake in order to restore or maintain control of the “lawful commander” of the aircraft. To be precise, the convention explains the nature of actions of unlawful seizure of aircraft, not the essence of its term. A similar approach to the convention can be explained by the peculiarity of this specific illegal intervention itself, in particular, in the 20th century, there were frequent cases of aircraft seizures and hijacking, which often had political motives behind them. In this case, the political will of the states has created a problem, because the extent of the real effect and influence of any kind of convention is determined by the number of countries that have recognized the convention and joined it. Civil aviation is primarily a manifestation of the political will of states to be able to establish a continuous, safe and open aviation system through mutual cooperation, however, obviously, there were and are political actors who prevent this. In the 60s and 70s of the 20th century, the increase in the number of illegal interference in civil aviation activities[3] led to the need for states to respond, and subsequently, the rapid efforts of ICAO made the development of the 1970 Hague Convention[4] possible, which deals with the fight against illegal seizure of aircrafts. The Hague Convention preceded the Tokyo Convention. It qualifies the act of illegal seizure as a crime and requires states to take strict measures against them. In 1971, the Montreal Convention for the Suppression of Acts Against the Safety of Civil Aviation was adopted, which expanded the definition of UICA and further specified the actions that it qualified as unlawful interference. The purpose of the convention was to prevent acts of sabotage and violence against specific aircrafts. In the convention, the list of defining signs of particular actions as acts of illegal interference in civil aviation activity is significantly expanded. An important legal document was also created in the form of the Montreal Protocol of 1988, which defined acts of violence against persons at airports serving international civil aviation that cause or are likely to cause serious injury to health

1 see. https://treaties.un.org/doc/db/terrorism/conv1-english.pdf

2 ibid

3 see. https://applications.icao.int/postalhistory/legal_instruments_related_to_aviation_security.htm

4 see.https://treaties.un.org/doc/db/terrorism/conv2-english.pdf

or death, damage to international airport equipment, structures, decommissioned aircraft located at airports or serious damage, disruption of airport services if it threatens or may threaten security at that airport. [5]

The Act of Unlawful Interference is not a single specific act, but encompasses all acts that threaten the rights of persons on board of civil aircrafts and thus threaten their safety. The safety of the flight of the aircraft depends on the proper operation of all the elements that make up the airspace, starting with the air-navigation systems and ending with the checks carried out during the period of operation of the aircraft. UICA has fundamentally undermined the stability element of civil aviation, which caused the adoption of conventions, although the sole adoption of legal documents could not solve the existing problem, because after any illegal intervention, the legal response of the states, the preconditions for the exercise of jurisdiction and the rights arising from it were of decisive importance. Jurisdiction of a state can be exercised either only in relation to criminal violations (which are considered as such under the law of the state exercising its jurisdiction) or actions that threaten the safety of a flight (in this case, regardless of their classification as a criminal offense). When an aircraft is in the territory of the state of its registration, including the airspace, then the state fully exercises its jurisdiction over the crimes provided for in the conventions. This is the principle of the state's exclusive and complete sovereignty over its airspace/land/water recognized in international air law.[6] This principle is recognized both by international agreements, for example, by Article 1 of the Chicago Convention, and by various state laws, in particular, by the Air Code of Georgia. [7] Jurisdiction is the ability of a state to act and take measures to protect the safety of aircraft flight and to respond to unlawful interferences. Jurisdiction includes the elements of rights and obligations. For example, when a state has jurisdiction over a particular unlawful interference, then the state must assert its own jurisdiction so that the perpetrator cannot escape punishment and legal action. On the other hand, another factor is also of an interest here, namely, what happens when a specific state has jurisdiction over a specific illegal intervention, but its realization is not possible? That is, the most important element of the jurisdiction, the legal control of a specific airspace in the hands of the state no longer exists. [8] In this case it is logical for a state to announce the existing circumstance in advance, to close a part of the airspace over which it can no longer exercise its jurisdiction, hovewer, in a rapidly changing situation, there is a risk that the aircraft will be in danger, and the state, which has the obligation to extend the jurisdiction, will not be able to exercise it. Conventions do not refer to this particular issue. In general, the Tokyo, Hague and Montreal Conventions apply when an aircraft flies into the airspace of another state, which is not its state of registration. The starting point of the Tokyo Convention is the existence of the state of registry of an aircraft, which can exercise jurisdiction over acts of unlawful interference, but at the same time, the convention allows the jurisdiction of any other state to take relevant measures if the actions carried out on the aircraft are directed against a national(s) of that state and the crime has consequences in its territory, threatens its security during the flight and the intervention of the state is needed to fulfill its obligations under the multilateral international agreement.

5 For details, see D. Geferidze, Modern trends of international legal regulation of combating acts of illegal interference in civil aviation activities determined at the 2010 Beijing International Conference on Air Law, "Diplomacy and Law" magazine, 2016, No. 1;

6 For details, see D. Geferidze, International Air Law, Tbilisi, 2021, p. 96

7 see. https://matsne.gov.ge/ka/document/view/33298?publication=29

8 see. https://www.britannica.com/topic/international-law/Jurisdiction

Such a violation of the rights of other states, for example, happened on July 4, 1976 during the special operation carried out by Israel on Ugandan airport. [9] Since the Convention does not exclude the exercise of its criminal jurisdiction by any State, the State of landing of the aircraft is in fact in a more favorable position than the other State in terms of establishing its criminal jurisdiction - manifestation of the so called Preferential Jurisdiction. The Tokyo Convention does not provide for the punishment of the illegal seizure of an aircraft, nor the obligation to hand over the persons who committed it. It cannot be used as a legal basis for requests for the transfer of persons. The Hague Convention of 1970 defined the act of unlawful seizure of an aircraft as a crime involving violence or the threat of force, provided that the aircraft must be in the air and the offense must be committed on board, during the flight. According to the convention, the contracting states are obliged to determine their jurisdiction: it can be the state of registration of the aircraft, the state in whose territory the aircraft flew when the offender was on board, the state in the territory of which the principal place of activity of the lessee is concerned, if it is a leased aircraft. The state in whose territory the criminal is found must establish its own jurisdiction if it does not have an extradition treaty with any of the above-mentioned states. The case of a concrete criminal should be transferred to the relevant state authorities for criminal prosecution. According to the central Article 7 of the Hague and Montreal Conventions, “a state party to the treaty, in whose territory an alleged criminal was found and does not extradite him, is obliged, without any exception and regardless of whether the crime was committed in its territory, to transfer the case to its competent authorities for criminal prosecution.” [10] These authorities decide in the same way as in cse of any other serious crime, in accordance with the legislation of that particular state. In the conventions, there is no imperative obligation to hand over the offender, but there is a direct reference to the punishment of the offender in case of non-handover. Such a reference is a direct echo of the desire to protect the safety of civil aviation and the possibility of determining the legal responsibility of the perpetrator, although the very fact that there is no mandatory provision for the transfer of the perpetrator indicates the window that the state can always use according to its political will.

The most important innovation, which is consolidated in the Beijing Convention of 2010, is the expansion of the list of types of crimes against the safety of civil aviation. In addition to the acts already recognized under the Montreal Convention and the Montreal Protocol as crimes punishable by severe penalties, the given list provided by the Beijing Convention includes new acts committed “unlawfully and deliberately”.

The main element of the existence of international civil aviation is the existence of its international public and international private spheres, which in turn are based on the governance and political will of the states. When a specific state has a criminal who has committed an act of illegal interference, but despite this, the actions prescribed by the convention are not implemented and the criminal remains unpunished, we have a direct echo of the public legal element of international civil aviation, the cornerstone of which is the state and its administrative actions. A clear example of this is the case of the Malaysian Airlines plane M17[11] shot down in the Ukrainian airspace in July 2014, when the perpetrators of this terrorist act were/are present in the territory of the Russian Federation, however, as a result, no significant investigative measures were taken, nor was the issue of criminal liability of the perpetrators

9 see. https://www.britannica.com/event/Entebbe-raid

10 For details, see D. Geferidze, International Air Law, Tbilisi, 2021, p. 113

11 see. https://assembly.coe.int/LifeRay/JUR/Pdf/TextesProvisoires/2022/20220524-AccountabilityMH17-EN.pdf

considered. Such a case is a kind of reminder of the fact that the stability and ability to implement the convention is directly related to the will of a state to fulfill its obligations. States parties to the Conventions must act in accordance with their own laws and punish offenders with the same seriousness as in cases with similar criminal offences. And for this, obviously, there must be an established legal framework, which will be a prerequisite for the fact that the person who commits actions against the safety of civil aviation will be punished with the full severity of the law. It is also worth noting the role of ICAO[12] and modern international law in general. They must ensure the creation of such a legal or material environment, where the state will be forced to punish a particular criminal, regardless of the absence of obligation.

Also, implementation of the 2010 Beijing Convention raises the question for Georgia: should it wait or ratify it immediately. It is time to raise the issue of its ratification, in order for us not be late, because immediately after its implementation, the list of types of crimes against the safety of international civil aviation will expand significantly. However, the question is whether the creation of a unified system to fight terrorism in international civil aviation will be effective or not, based on the fact that some countries are not ready to set priorities, determine jurisdictional issues and, in general, policies to fight terrorism, terrorist acts carried out in civil aviation, which have affected the nations of the world from economical, political or social point of view.

In this case, great importance is attached to the interests and positions of the main geopolitical entities, international sanctions, the impact of which prompts any international legal entity to think about the economic, political and legal consequences of its obligations under international legal norms, which in turn will form a relevant, stable system necessary for the protection of international civil aviation safety and effective international legal environment.

12 see. https://www.icao.int/Pages/default.aspx