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David L. Glassman

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Keeping "The Wild" Out of "The Wild Blue Yonder": Preventing Terrorist Attacks Against International Flights in Civil Aviation

I. Introduction

Terrorist attacks1 against international civil aviation2 alarmed the world in 1985. Hijackers and saboteurs terrorized citizens from a variety of states. Passengers aboard some of the hijacked aircraft were held hostage. As air carriers and airports3 tightened security measures for the protection of aircraft, terrorists adjusted their strategy for attracting international publicity by attacking civilians inside the terminal buildings and airports. Patrons and personnel of air carriers were assaulted and time-bombs were exploded in crowded terminals. The international community was outraged.

Undoubtedly, the protection of airport patrons and facilities is an issue closely related to the issue of aircraft protection. In both cases, the primary goal is to protect people from terrorist attacks. However, there is little that states can do to secure airport terminals which has not been done already. An army of law-enforcement officers and an anti-terrorist intelligence network are the principal means by which states attempt to prevent terrorist attacks in terminals. Some countries have also installed screening systems for people to walk through at terminal entrances.4 The disadvantage of such screening procedures is that airport patrons are greatly inconvenienced by the searches and the ensuing delays.5 Also, a terrorist could choose to attack airport patrons outside of the terminal entrances rather than inside the terminals. Airport-terminal security is an issue that should be specifically addressed by the international

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1. The term "terrorist attacks" is defined as the use of force or weapons, with the intent of causing great fear among the public, as a method of expressing opposition to the government of a state. WORLD BOOK DICTIONARY 135, 2148-49 (1973).
2. "International civil aviation" hereinafter will be referred to throughout this comment as "aviation."
3. This comment discusses only those airports which handle international flights on a daily basis.
5. This is especially the case where patrons must line up outside a terminal building under uncomfortable weather conditions.
community in the wake of the dual massacres of airport patrons in Italy and Austria in December 1985. This comment, however, only addresses airport security insofar as it relates to the issue of aircraft security.

The visibility, mobility and vulnerability of aircraft have made them a favorite target for terrorists since the late 1960's. The fact that many air carriers are owned and operated publicly by state governments, rather than privately, is one reason why their aircraft have become extremely powerful symbols open to attack. In addition, an aircraft in flight, despite all of its engineering sophistication, is a uniquely fragile vessel once someone aboard is able to exhibit a weapon or explosive and threaten to use it unless his orders are obeyed. For this reason, there will always be a compelling necessity to protect the lives of passengers, particularly since the air commerce system has become such an essential part of life in the twentieth century.

This comment begins by discussing the ineffectiveness of ex post facto measures in controlling terrorism. It then describes the preventive — or “pre-attack” — measures which nations and their air carriers should take in order to secure aircraft prior to departure. In this respect, the annexes amending the Convention on International Civil Aviation will be emphasized insofar as they relate to aviation security precautions. Finally, the comment focuses upon the methods by which states can enforce the provisions of the annexes against one another.

II. The Inadequacy of “Post-Attack” Deterrents

A. Punishment

There have been four conventions that have addressed the subject of punishing those who commit attacks against aviation. These


8. United States v. Bell, 464 F.2d 662, 670 (2d Cir. 1972). This case concerned the legality of a search and seizure. The defendant, a prospective aircraft passenger, had been searched after: (1) being selected by a ticket agent as a person to be closely watched because of suspicious behavior; (2) activating a metal detector; and (3) admitting that he had recently been released on bail. *Id.* at 668-69. The airport security officer discovered two fully-packed brown paper bags in the pockets of the defendant's raincoat which revealed glassine envelopes filled with narcotics. *Id.* at 669. The court upheld the legality of the officer's search. *Id.* at 672-74.

9. United States v. Epperson, 454 F.2d 769, 772 (4th Cir. 1972) (court upheld a search of the defendant's jacket and his person based upon the activation of a metal detector).


The Geneva Convention defines the “piracy” of vessels (including both ships and aircraft) as an international offense when committed outside the jurisdiction of any state. The Convention urges signatory states to cooperate in punishing anyone guilty of such piracy. In the 1950’s, hijacking had become a problem in the context of people seeking political asylum. The Geneva Convention had responded to this problem by discouraging the seizure of aircraft as a means of escape from one state to another. However, the motive for hijacking changed in the 1960’s, making air piracy an even greater threat.

Domestic flights within the United States began to be hijacked to Cuba in 1961 by persons loyal to the Communist regime of Premier Fidel Castro. On many occasions, Cuba refused to return the hijacked aircraft. In response to such incidents, the International Civil Aviation Organization (ICAO) in 1963 sponsored the first convention to concentrate solely on the subject of attacks against aviation. This convention, known as the Tokyo Convention, permitted states to establish jurisdiction over any act, including hijacking, which jeopardized the safety of aviation. The Tokyo Convention affirmed the punishment principles of the Geneva Convention, but emphasized the necessity for countries to promptly release all hijacked aircraft.

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16. This comment will use the popular term “hijacking” to refer to the offense of “aircraft piracy,” as opposed to the piracy of ships. See id. at art. 15. See also 49 U.S.C. § 1472(i) (1982) (criminal penalties for aircraft piracy).

17. See McGinley and Downs, *Airport Searches and Seizures — A Reasonable Approach*, 41 FORDHAM L. REV. 293, 294 (1972) [hereinafter cited as McGinley & Downs].


20. The International Civil Aviation Organization is a 156-member specialized agency of the United Nations formed in 1944 whose activities are aimed at ensuring the safe and orderly growth of aviation. Dept. of Transportation Press Release No. 118-85, Nov. 6, 1985 (available from the Office of the Assistant Secretary for Public Affairs, Washington, D.C.); see generally ICAO Convention, supra note 10 (providing for the creation of ICAO).


22. Id. at art. 1(b).

23. See Geneva Convention, supra note 11. See also text accompanying notes 15-17.
jacked aircraft so that air carriers could fulfill their obligation to carry their passengers to their intended destinations.\textsuperscript{24} Throughout the mid-1960's, however, most of the world considered the act of hijacking to be a problem confined to the Western Hemisphere.\textsuperscript{25}

The international community began to feel the impact of a new brand of hijacking in the late 1960's. Terrorist hijackings and violent attacks against aircraft and aircraft passengers started to become prevalent by late 1968.\textsuperscript{26} There had been only forty-three reported hijackings worldwide from 1960 through 1967, but there were thirty-five hijackings in 1968 alone.\textsuperscript{27} As terrorists began to discover that their political causes could be publicized worldwide by a sequence of hijackings, diversions to friendly states and, occasionally, the seizure of persons aboard the flights as hostages, the frequency of these acts escalated dramatically.\textsuperscript{28} The number of successful hijackings over the next two years peaked at a staggering rate of almost ninety per year.\textsuperscript{29}

The climax to this reign of terrorist hijackings occurred during a tension-packed three-week crisis in 1970 which became known as "Black September."\textsuperscript{30} A group of terrorists smuggled weapons aboard five flights out of several European cities and successfully diverted four of those flights to states in the Middle East.\textsuperscript{31} The terrorists then held some of the aircraft occupants hostage, blackmailed several nations into releasing convicted terrorists in exchange for the hostages and, ultimately, blew up the four aircraft.\textsuperscript{32} The international community reacted to this incident by showing immediate support for two ICAO conventions sponsored within the following twelve months. Both were designed to punish such attacks.

The first of these conventions was the Hague Convention, which was opened for signature in December 1970.\textsuperscript{33} The Hague Convention called upon the contracting states to severely punish hijackers in accordance with the penal codes of their respective governments.\textsuperscript{34} A "universal jurisdiction" provision in the Convention required all signatory states to either prosecute or extradite all apprehended
hijackers.\textsuperscript{35}

In addition, the second ICAO-sponsored convention, the Mon-
treal Convention of 1971,\textsuperscript{36} expanded the scope of offenses subject to
the penal provisions of the Hague Convention to include: the com-
misson of violent acts against persons on board an aircraft, sabo-
tage, and the communication of false information which threatens
the safety of an aircraft.\textsuperscript{37}

Although the ICAO-sponsored aviation security conventions are
among the most widely-accepted instruments in international law,\textsuperscript{38}
the unfortunate reality is that many terrorists do not fear punish-
ment or death.\textsuperscript{39} Furthermore, the imprisonment and killing of ter-
rorsists has the tendency to perpetuate a cycle of further attacks
against aviation for the purpose of either blackmailing a state into
releasing imprisoned colleagues\textsuperscript{40} or avenging the slaying of a col-
league during an earlier attack. International agreements to punish
or extradite attackers against aviation have effectively deterred those
persons who used to hijack aircraft for non-terrorist motives.\textsuperscript{41} However,
the wave of attacks against aviation in 1985 shows that ter-
rorsists are willing to risk penal consequences in order to publicize
their causes to the world.

\section*{B. Sanctions Against States That Do Not Punish}

It has been said that states have a duty to exercise “due dili-
gence” in preventing the use of their territories as bases for ter-
rorsists.\textsuperscript{42} The Consultative Assembly to the Council of Europe, in the
midst of the “Black September” crisis,\textsuperscript{43} resolved that its members
would take sanctions\textsuperscript{44} against any countries that become “accomp-

\textsuperscript{35} Id. at art. 7.
\textsuperscript{36} Montreal Convention, supra note 14.
\textsuperscript{37} See id. at art. 1.
\textsuperscript{38} The Tokyo, Hague and Montreal Conventions each have more than 125 signatory
states. \textit{U.S. Will End Curbside Check-ins As Part of Drive on Airline Terror}, N.Y. Times,
June 28, 1985, at A1, col. 4 (statement by Assad Kotaite, President of ICAO Security Coun-
cil). \textit{See also} ICAO Assembly, 24th Sess. (A24-Min., P/1-15) 94, 95 Doc. 9415 (Sept. 20-
\textsuperscript{39} See, \textit{e.g.}, \textit{Terrorist Goal Was Hostages}, Philadelphia Inquirer, Dec. 31, 1985, at 1-
A, col. 6 (terrorists “sworn to die”).
\textsuperscript{40} See E. McWhinney, \textit{The Illegal Diversion of Aircraft and International
Law} 114 (1975) [hereinafter cited as McWhinney].
\textsuperscript{41} Id. at 1. See, \textit{e.g.}, supra text accompanying note 17 (regarding persons seeking
political asylum). \textit{See also} Lowenfeld, supra note 25, § 2.32, at 8-46 n.(g) (regarding a
series of hijackings occurring aboard domestic United States flights between November 1971
and February 1972 for the purpose of robbing the passengers).
\textsuperscript{42} Lillich and Paxman, \textit{State Responsibility for Injuries to Aliens Occasioned by Ter-
\textsuperscript{43} See supra text accompanying note 26.
\textsuperscript{44} A “sanction” is a punitive act taken by one nation against another nation which has
violated a treaty or international law. \textit{Black’s Law Dictionary} 1203 (5th ed. 1979).
plices to these criminal acts." The use of an aviation boycott as a sanction was also one of the issues debated at the meetings of the member nations of the ICAO during the early 1970’s.

In the ICAO Assembly, the sanctions issue was a delicate one, since such drastic measures could do serious harm to existing relations between countries. Nevertheless, several states in the ICAO Assembly adamantly pressed for the adoption of a convention that would enforce the Tokyo, Hague and Montreal Conventions by requiring a boycott of any nation that failed to adhere to those conventions. Several other countries, however, believed that an ICAO-sponsored sanctions convention would be tantamount to a usurpation of the sanctioning power ordinarily reserved to the United Nations Security Council. On two occasions in 1973, proposals to draft a sanctions convention failed to achieve the requisite two-thirds majority in the ICAO Assembly, and so the proposal was unable to pass as a resolution.

One problem with the use of sanctions is that it is sometimes difficult to prove that a state has breached its international legal duty to prevent the use of its territories as a base for terrorists. For example, terrorists may operate within a country due to their popularity and military strength on the local level, although the government of that country may wish that it had the capability to drive them out. Another problem is that even the most extreme terrorists have their sympathizers. In addition, some nations simply do not

45. Resolution 450 on Air Piracy, Eur. Consult. Ass., 10th Sess. Doc. ______ (1970) (reprinted in E. McWHINNEY, AERIAL PIRACY AND INTERNATIONAL LAW 194 (1971)). The Council of Europe is an organization which includes most of the non-Soviet bloc European nations. Based in Strasbourg, France, the Council was formed in 1949 to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress. This aim will be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action in... legal... matters... O. CRAWFORD, DONE THIS DAY 24 (1969) (excerpt from the chartering convention of the Council). The Council is composed of a Committee of Ministers and a Consultative Assembly. The Committee of Ministers aims to develop cooperation between the governments of the member states. The Consultative Assembly provides “a means through which the aspirations of the European peoples may be formulated and expressed, the governments thus being kept continually in touch with European public opinion.” Id. at 25 (excerpt from the chartering convention).

46. See FitzGerald, Unlawful Interference With Civil Aviation, reprinted in ESSAYS IN AIR LAW 64 (A. Kean ed. 1982); see also McWHINNEY, supra note 40, at 115 (France, Great Britain and Switzerland were some of the states that sponsored such proposals).

47. See FitzGerald, supra note 46, at 64.

48. Id. at 64-65. See also McWHINNEY, supra note 40, at 115.

49. Lillich and Paxman, supra note 42, at 276.

50. Jordan was unable to expel the terrorists who had hijacked three aircraft to that state during “Black September.” See, e.g., Polk, supra note 30, at 246. Also, Lebanon was unable to expel the terrorist group believed to be responsible for the destruction of American and French military compounds in October 1983. See generally Marines Release Diagram On Blast, N.Y. Times, Oct. 28, 1983, at 1, col. 2.

51. Träskman, The Finnish-Soviet Hijacking Treaty, 26 SCANDINAVIAN STUDIES IN
want commercial air relations with certain other nations. Sanctions do not affect hostile countries which fervently support causes espoused by terrorists. Under these circumstances, sanctions cannot be expected to reduce the frequency of attacks against aviation.

C. Air Police

The presence of law-enforcement officers aboard flights could be regarded as a preventive, rather than an ex post facto, deterrent in the case of non-terrorist hijackers. Non-terrorists would be more apt to think twice about carrying out their plans to either flee a state or rob passengers when an officer in uniform is aboard their flight. It is now common for air police to travel incognito as passengers or airline employees. The placement of these disguised officers aboard select flights can also deter potential hijackers who are less willing than terrorists to take the chance that their flight may or may not have police on board. For terrorists, however, since their philosophy often requires them to accept the possibility of death as a necessary risk in furthering their cause, they are more likely to accept any challenge which an air police officer may present. It is therefore more appropriate to categorize the use of air police as merely another type of "after-the-fact" deterrent with regard to terrorist hijackers.

The idea of air police first became popular during the "Black September" crisis. An armed officer aboard one of the five hijacked aircraft thwarted the hijack by fatally shooting the lone terrorist gunman. The heroics of that officer led the international community to believe that the presence of air police could remedy the hijacking problem. The Council of Europe urged its members to consider placing officers aboard international flights and the United States ordered that "sky marshals" be placed aboard a significant number of American air carriers operating flights to Europe and the Middle East.

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52. See supra note 41.
53. For example, Israel's air carrier carries up to ten disguised officers per flight. See LOWENFELD, supra note 25, § 2.31, at 8-44; Making the Sky Secure, TIME, July 1, 1985, at 21 [hereinafter cited as Making the Sky Secure]. Egypt's air carrier carries up to four disguised officers per flight. See Attack Was 'Our Only Hope,' Pilot of Flight 648 Declares, N.Y. Times, Nov. 25, 1985, at A1, col. 6 [hereinafter cited as Attack Was 'Our Only Hope'].
54. See 4 Jets Hijacked, supra note 31 and accompanying text, at 1, col. 4. See also supra text accompanying note 30.
55. A female terrorist, holding grenades, was quickly overpowered by other persons on board the flight soon after the male terrorist was killed. 4 Jets Hijacked, supra note 31, at 1, col. 4.
The United States quietly discontinued the "sky marshal" program shortly after its implementation because the use of air police in large numbers came to be considered unnecessary. Government officials had stated that there was no direct evidence that air police actually prevented hijackings. The hijacking of an American aircraft in June 1985, however, prompted the United States to reestablish an air police program very similar to the one which had been deployed fifteen years earlier. In the International Security and Development Cooperation Act of 1985, Congress specifically authorized the executive branch of the Government to carry out the air police program.

Several problems make the placement of air police aboard aircraft a very risky measure. One of these is the general fearlessness of most terrorists. Three other problems became evident during the terrorist hijacking of an Egyptian aircraft in November 1985. First, the terrorists were probably aware of the fact that several officers usually were carried aboard each of the flights of that particular air carrier. It was probably for this reason that, soon after the three terrorists commandeered the flight, one of them began to frisk the passengers for weapons. When one of the disguised officers was ordered to submit to a frisk, the officer felt compelled to confront the terrorists rather than risk their reaction if they were to discover his weapon and his identity.

The ensuing gunfight could have killed passengers caught in the crossfire, a second problem to having armed officers on board flights. The officer did kill the terrorist who was nearest to him, but the other two terrorists wounded the officer with shots from the front and rear of the aircraft cabin. The third problem occurred when

58. Id.
62. Id. at § 553(a), 99 Stat. 190, 226 (to be codified at 49 U.S.C. [1356b]).
63. According to passengers, the terrorists began to collect passports and check passengers for firearms about one hour after the hijacking had begun. Attack was 'Our Only Hope', supra note 53.

There were four "security policemen" aboard the hijacked Egyptian aircraft. List of Passengers and Crew Members on Egyptian Plane, N.Y. Times, Nov. 25, 1985, at A13, col. 1.
64. Attack Was 'Our Only Hope', supra note 53.
65. Id.
66. Id. See also McWhinney, supra note 40, at 87 (one passenger killed when F.B.I. officers thwarted an attempted hijack of a domestic American flight to the Soviet Union in the early 1970's); Lowenfeld, supra note 25, § 2.31, at 8-44 (six passengers wounded when Israeli officers thwarted an attempted hijack of an Israeli flight in February 1969).
67. Shot in Head or Caught in Inferno, Passengers Live to Tell of Ordeal, N.Y. Times, Nov. 26, 1985, at A1, col. 4.

According to the International Air Transport Association (IATA) of international air carriers, most airlines now believe that the posting of disguised air police aboard flights may
one of the stray bullets punctured the fuselage of the aircraft. The consequent depressurization of the cabin created turbulence throughout the duration of the flight. This combination of risk to passengers involving stray bullets and transport in a damaged aircraft has led security experts to agree that the "best place to head off hijackings is on the ground."  

III. Prevention: "Pre-Attack" Deterrence

A. The Duty of Air Carriers to Secure Their Flights

The Warsaw Convention of 1929 established the liability of air carriers to their passengers for "accidents" occurring during a flight and "in the course of any of the operations of embarking or disembarking" from a flight. However, the Warsaw Convention excused an air carrier from liability if it was proven that "all necessary measures" had been taken to avoid the accident or that it had been impossible to take such measures. Most air carriers agreed to a waiver of this defense for various policy reasons in the Montreal Agreement of 1966. For example, they agreed that they were best qualified to develop preventive security measures for controlling access to aircraft, most capable of assessing and insuring against aviation risks, and most capable of distributing the costs of prevention.

One of the first cases in which passengers upon a hijacked aircraft recovered damages under the Warsaw Convention was Husserl v. Swiss Air Transport. The plaintiff, in an action which arose out of the "Black September" incident of 1970, alleged bodily and

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In reference to the November 1985 hijacking and subsequent mid-air shoot out, an IATA spokesman noted that, "[t]he unfortunate way this incident turned out simply reinforced the general view that sky marshals are not a significant deterrent, and may even contribute to a situation deteriorating. . . . Most airlines feel that firearms on board contribute to the problem." Airlines Doubtful on Guards, N.Y. Times, Nov. 26, 1985, at A12, col. 1.

69. Id.; see also A 'Gentle' Man Began the Terror, Philadelphia Inquirer, Nov. 26, 1985, at 13A, col. 1.
72. Id. at art. 17.
73. Id. at art. 20.
74. The Agreement consisted of several documents which were agreed upon by the United States and the IATA. Husserl v. Swiss Air Transport Co., 351 F. Supp. 702, 703 n.1. (S.D.N.Y. 1972), aff'd 485 F.2d 1240 (2nd Cir. 1973). (The Montreal Agreement of 1966 is different from the Montreal Convention of 1971 previously mentioned at note 14 and accompanying text).
75. Id. at 707.
76. Id. at 702.
mental harm due to the hijacking of the aircraft on which she was a passenger. In 1972, the district court denied the defendant air carrier’s motions for dismissal of the complaint and for summary judgment. The Court held that the term “accident,” as used in both the Warsaw Convention and the supplementary Montreal Agreement, encompassed hijackings. Therefore, proof of the fact that the aircraft was hijacked was sufficient to raise a presumption of the air carrier’s liability under those documents.

In 1977, the Third Circuit Court of Appeals ruled upon the issue of what constitutes an “embarking” under the Warsaw Convention. The plaintiffs in Evangelinos v. Trans World Airlines had been instructed by airline officials to line up in the departure lounge for a routine security screening prior to boarding their scheduled flight. As passengers began to filter through the screening checkpoint, terrorists assaulted the plaintiffs and other passengers who were awaiting security clearance in the lounge. The court considered three factors: the location of the accident, the activity of the plaintiffs at the time of the accident and the air carrier’s assumption of control over the plaintiffs at that location and time. The court held that the air carrier’s order for the passengers to line up in preparation for boarding occurred during one of the “operations of embarking” and, therefore, fell within the sphere of liability under the Warsaw Convention. The Husserl and Evangelinos cases illustrate the legal duties which air carriers owe to their passengers to ensure that hijackers and saboteurs do not succeed in putting either weapons or explosives aboard aircraft flights.

B. Safeguarding the Aircraft Cabin

1. The Screening of Passengers.—A procedure for the screening of passengers prior to air flight departures was not developed until the frequency of hijackings began to climb in 1968. In October 1968,
the United States Government appointed a task force to devise a system that could detect potential hijackers without requiring a complete search of every prospective passenger. The task force recommended the use of two procedures: personality analysis and metal detection.

The personality analysis, or "hijacker profile," was compiled by a team of psychologists, sociologists, scientists and federal investigators. It consists of about twenty-five behavioral traits that prior hijackers tended to exhibit. The procedure calls for the airline employee at the ticket counter to observe prospective passengers for any unusual behavior listed on the "profile." The employee will then either place a secret mark on that person's boarding pass or notify a security officer at the departure gate that the person should be observed closely. In either situation, the selected person may be asked to produce positive identification upon arriving at the security checkpoint of the departure gate. The "profile" remains an element of preliminary screening of prospective passengers at many airports. However, the metal detector has been the primary method for screening persons for weapons since 1973, when it became mandatory at departure gates in all United States airports.

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note 27.
87. LOWENFELD, supra note 25, § 2.32, at 8-45.
88. Id.
89. Id.
90. United States v. Slocum, 464 F.2d 1180, 1182 (3d Cir. 1972) (a match of defendant to the "hijacker profile," his failure to clear the metal detection checkpoint at the boarding gate, and his failure to produce positive identification upon request by a federal marshal were held to constitute a sufficient security threat to enable the marshal to lead defendant to a private security area, pat him down, and search his baggage for weapons); see also Dailey, Development of a Behavioral Profile for Air Pirates, 18 VILL. L. REV. 1004 (1973) (Dr. Dailey, a psychologist, was a member of the task force referred to in the text accompanying notes 81-83) [hereinafter cited as Dailey].
91. See LOWENFELD, supra note 25, § 2.32, at 8-45. The contents of the "profile" is kept confidential for security reasons by the Federal Government since potential hijackers could seriously undermine the system by adopting a demeanor acceptable under the "profile." See also United States v. Lopez, 328 F. Supp. 1077 (E.D.N.Y. 1971). In Lopez, the management of an American air carrier issued a memorandum, without any authorization, to its boarding area personnel. The memorandum purported to "update" the "profile" by eliminating one of the fundamental characteristics of hijackers, as described by Dr. Dailey during in camera testimony, and adding two elements: passenger ethnicity and discretion by the airline employee. 328 F. Supp. at 1101; see generally Dailey, supra note 90 (concerning the expertise of Dr. Dailey on the "profile"). The effect of the changes was to destroy the essential neutrality and objectivity of the "profile." 328 F. Supp. at 1101. The district court granted the defendant's motion to suppress the narcotics evidence that was seized during the airport search of the defendant by federal marshals pursuant to the tainted security procedures. 328 F. Supp. at 1102.
92. See LOWENFELD, supra note 25, § 2.32 at 8-45, 8-46; United States v. Slocum, 464 F.2d at 1182.
93. See LOWENFELD, supra note 25, § 2.32, at 8-46; 464 F.2d at 1182.
94. TERRORIST HIJACK SPURS U.S. REVIEW supra note 59, at 32.
The metal detector is a device which is typically attached to two upright poles through which prospective passengers walk. The device registers a positive reading whenever a person is carrying an amount of ferrous metal equivalent to that contained in a small handgun. If a person was selected as a potential hijacker by the ticket-counter employee, then he might be asked to submit to a frisk if the device registers a positive reading. On the other hand, persons who do not meet the profile criteria but register a positive reading on the metal detector are asked to voluntarily place their metallic items on the security counter and walk through a second time.

Security provisions within the annexes to the ICAO Convention have endorsed the screening of prospective passengers. Annex 17 requires contracting states to take "the necessary measures" to prevent the unauthorized introduction of weapons and devised aboard aircraft. Furthermore, Annex 9 specifically recommends that such states, "to the extent feasible, utilize security equipment" so as to materially reduce the number of persons to be searched by other means. The worldwide adoption of metal detectors for use in national aviation security programs has facilitated the prompt departure of flights by keeping security delays to a minimum.

2. The Screening of Baggage.—The pre-flight screening of carry-on baggage became mandatory in the United States by 1973 as a necessary complement to the simultaneous mandate of metal detectors at departure gates in American airports. The importance of screening baggage prior to departures became especially evident following the massacre of airport patrons by terrorists in an Israeli airport in May 1972. The terrorists had hidden machine-guns in...
their baggage prior to boarding a flight for Israel.\footnote{105} Although the attack occurred after their arrival, it was plainly recognized that the weapons could have been used to hijack the aircraft instead.

The ICAO Convention's annexes provide for the screening of baggage in the same manner in which they provide for the screening of passengers.\footnote{106} Baggage searches are usually\footnote{107} conducted either physically or through the use of X-rays. Annex 9 to the ICAO Convention recommends the use of "security equipment," such as X-ray devices, in order to reduce the delay inherent in physical searches.\footnote{108} However, certain tactics, such as the encasement of weapons with foil, have been used successfully to distort or hide the shape of an image on an X-ray screen.\footnote{109} Consequently, aviation officials in several states have recommended that at least ten percent of all baggage be physically searched.\footnote{110}

C. Safeguarding the Aircraft Cargo-Bay

On June 23, 1985, a bomb exploded in the cargo-bay of a Canadian aircraft as luggage\footnote{111} was being unloaded by airport personnel upon arrival at an airport in Japan.\footnote{112} Although two airport workers were killed and four others injured by the blast, the bomb easily could have exploded while the aircraft was in flight over the Pacific Ocean had it not been for the arrival of the aircraft fifteen minutes ahead of schedule.\footnote{113} Less than an hour later, a bomb exploded aboard an Indian aircraft in flight over the North Atlantic Ocean near Ireland,\footnote{114} killing all 329 persons on board.\footnote{115} The June 23 ex-

\footnote{105}{Id.}
\footnote{106}{ICAO Convention, Annex 17, para. 4.1.5., supra note 100.}
\footnote{107}{For a discussion of the limits on the use of searches concerning diplomats' baggage, see E. Denza, Diplomatic Law 127 (1976).}
\footnote{108}{ICAO Convention, Annex 9 (Facilitation) para. 6.16, supra note 101.}
\footnote{109}{Making the Sky Secure, supra note 53, at 21.}
\footnote{110}{See, e.g., Greeks Claim Athens Needs No Security Upgrade, Aviation Week & Space Tech, June 24, 1985, at 30 (position of European Civil Aviation Conference); DOT Press Release No. 67-85, supra note 7. For a discussion of the constitutional issues surrounding airport security searches, see generally United States v. Lopez, 328 F. Supp. 1077 (upholding their constitutionality). But see McGinley, supra note 17 (disputing the constitutionality of such searches).}
\footnote{111}{For purposes of this comment, "luggage" will refer to any personal belongings which a passenger elects to "check" into the cargo-bay of an aircraft. Compare supra note 102.}
\footnote{112}{Iyer, Two More Strikes for Terrorists?, TIME, July 1, 1985, at 36 [hereinafter cited as Iyer].}
\footnote{113}{Id.}
\footnote{114}{Id. The circumstantial evidence eventually led most aviation experts to conclude that an explosion, rather than a structural defect in the aircraft, was the cause of the Air India accident. This evidence included the facts that the Indian and Canadian aircraft had both departed from Vancouver, Canada earlier that day, the Indian aircraft had disappeared suddenly from the radar-screen which had been tracking it and the wreckage had been scattered. Id. See also Mounties Hold 2 in Jet Blast, N.Y. Times, Nov. 8, 1985, at A3, col. 1.}
\footnote{115}{Iyer, supra note 112.}
Explosions were believed to be related since both aircraft had departed from the Canadian city of Vancouver earlier that day. This double sabotage led to the implementation of a number of new security regulations at airports for the purpose of safeguarding aircraft cargo-bays from the work of saboteurs. These newly adopted methods included the matching of passengers with their luggage and the screening of luggage and cargo.

1. Matching Passengers With Their Luggage.—Annex 17 to the ICAO Convention recommends that airports set aside secure storage areas where "unidentified" luggage may be held until it is claimed. This provision implicitly recognizes that unidentified suitcases, in any part of an airport, may be laden with time-bombs and so must be confiscated promptly. In September 1985, the ICAO Council proposed a new standard which was adopted by the ICAO Assembly on December 19, 1985. This new standard requires contracting states to establish measures for matching passengers with their luggage prior to departure. The underlying assumption is that a saboteur would not want to be one of his own victims by willingly boarding a flight upon which he has placed explosives.

A less time-consuming measure for achieving the same anti-sabotage goal would be to ensure that luggage is checked in for a flight only by ticketed passengers at the air carrier's ticket counter. Prior to the June 1985 double sabotage, a saboteur could check bomb-laden luggage into the cargo-bay of an aircraft at many airports worldwide with little difficulty. One could drive up to the entrance to a terminal, request and tip an airport worker to have luggage checked aboard a flight, and drive away. In response to this scenario, the United States eliminated curbside check-ins for flights and declared that luggage would only be accepted at ticket counters from ticketed passengers with positive identification. An air carrier can empty an aircraft prior to departure and match passengers to their luggage if there is a discrepancy between the number of persons who checked in for a flight and the number who actu-

116. See supra note 114.
117. ICAO Convention, Annex 17, para. 4.1.15, supra note 100.
120. See Reagan to Get Transportation Dept.'s Proposals Today On Aviation Security, N.Y. Times, June 25, 1985, at A9, col. 1 (city ed.).
122. Id.
ally board. Different preventive measures are needed, however, if an air carrier is to prevent a terrorist saboteur who is willing to blow himself up along with the aircraft.

2. The Screening of Luggage and Cargo.—Ideally, the most effective way to thwart a suicidal saboteur is to screen every piece of luggage and cargo that is to be shipped while it is en route to the cargo-bay of the aircraft. Some states screen all luggage and cargo by using X-ray devices, physical searches or dogs trained to detect explosives. However, aviation experts admit that most air carriers do not want to inspect all luggage and cargo because it would mean that at some of the busier airports in the world passengers would have to arrive up to six hours prior to departure to allow for inspection of the large volume of items to be carried by the aircraft. Consequently, states that have a comparatively heavy volume of flights often maintain a selective screening system for luggage and require that cargo either be held for at least twenty-four hours or be screened if it is to be shipped aboard a passenger flight. In addition, several technological innovations in the field of explosives-detection have either been implemented already or remain a few years away from success.

D. Safeguarding the Entire Aircraft

As screening techniques have become more sophisticated, terrorists have become less willing to risk detection by personally at-

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123. See Making the Sky Secure, supra note 53.
126. See Skrzycki, supra note 125, at 32.
127. See DOT Press Release No. 67-85, supra note 7. Both the United States and Canada provide screening exemptions for perishable cargo items accepted for transport from known shippers. Id.
128. These innovations include: (1) the use of a mass spectrograph machine to analyze the air inside shipping containers; (2) the use of gamma-ray or high-intensity X-ray machines in order to enhance the imaging of containers' contents and to allow personnel to compare images to those stored in the computer; (3) the subjecting of items to air-pressure changes in order to defuse air-pressure fuses; (4) the use of nuclear magnetic resonance; (5) the use of "thermal neutron activation" radiation bombardment; and (6) a sniffer built into an aircraft's pressurization system that would warn a pilot of on-board explosives while the aircraft is taxi-
tempting to smuggle weapons aboard aircraft. For example, five screening checks were used at the airport in Greece prior to the June 1985 hijack of an American aircraft and the November 1985 hijack of an Egyptian aircraft, both of which departed from that airport. Indeed, only weeks before the November hijacking, aviation experts had described that airport as probably one of the world's best-guarded terminals. Thus, it became increasingly likely that the terrorist hijackers had accomplices who worked for either the airport in Greece or the airport in Egypt.

1. The Screening of Airport Personnel.—Annex 17 to the ICAO Convention, in a broadly-worded recommendation, urges contracting states to take necessary measures to prevent weapons and devices from being introduced aboard any “aircraft not engaged in the carriage of passengers.” Such aircraft would include those standing on the tarmac at an airport during a stopover between flights. Since the labor turnover at many airports can be as high as two hundred percent annually and background checks on new personnel may not be conducted thoroughly, it is essential that airport personnel be subject to some sort of screening prior to gaining access to the airport tarmac to perform their duties.

Following the November 1985 hijack of the Egyptian aircraft, the International Air Transport Association (IATA) of air carriers suggested that boarding ramps be classified as “sterile” areas. This preventive measure would require that all catering, cleaning and other personnel at airports be searched by some method in order to guard against the possibility that they might secretly hide weapons aboard aircraft for the later recovery and usage by the actual...
hijackers.\textsuperscript{136} Furthermore, IATA recommends that screened personnel be required to wear positive identification while on duty which can be readily verified by airline and airport security personnel.\textsuperscript{137}

As a secondary precaution, the annexes to the ICAO Convention provide for a security inspection of aircraft by an airline employee if any threat against that aircraft has been made. Annex 6 requires that all aircraft contain a checklist of the procedures to be followed in searching for a bomb.\textsuperscript{138} Also, Annex 17 recommends that the entire aircraft be inspected if it is believed to be the likely "object of an act of unlawful interference."\textsuperscript{139} Annex 17 further recommends that air carriers take precautions to prevent unauthorized access to unattended aircraft, such as locking aircraft doors and removing loading stairs.\textsuperscript{140} While it is important that air carriers take precautions to ensure that airport personnel are screened, the annexes also express the necessity for airport security to cooperate by patrolling the tarmac and the surrounding perimeter of the airport in order to fully secure all aircraft.\textsuperscript{141}

2. Guarding the Tarmac.—In February 1974, a man fatally shot a policeman stationed beside the metal detector at a departure gate in an American airport, ran up a ramp and into an aircraft, and attempted a hijacking.\textsuperscript{142} To avoid such incidents, many air carriers now provide buses for the transport of their passengers from the departure gate to the area of the tarmac where their aircraft await boarding.\textsuperscript{143} Israel's national air carrier routinely parks its aircraft far from terminal buildings so that nobody can approach unnoticed.\textsuperscript{144} Annex 17 of the ICAO Convention directs airports to provide for "maximum segregation and special guarding of aircraft which are liable to be attacked" during stopovers.\textsuperscript{145} Parking at a distance can be of great assistance to airport security personnel by giving them more time to respond to encroachments toward an aircraft by unauthorized persons.

In the spring of 1985, attacks against three aircraft illustrated
the necessity of a well-patrolled tarmac. At the airport in Athens, Greece, a man found an opening in the fencing, crept toward the tarmac, fired a small rocket at a taxying aircraft and fled. One month later, a man at an American airport disabled two parked aircraft, including one with passengers aboard, with gunshots. One month after that, six men drove onto the tarmac at the airport in Lebanon, fired shots at security officers, stormed aboard an aircraft and hijacked it. There are several precautions which the international community has recommended for the prevention of such incidents.

The installation of fencing and security lighting at airports are among the recommended practices enumerated in Annex 14 to the ICAO Convention as deterrents against trespassers. Annex 17 urges every airport to maintain its own security service for safeguarding aircraft from unlawful access. The IATA has also suggested measures similar to those contained in the annexes concerning the guarding of tarmacs.

E. The Effectiveness of Preventive Deterrence

Prevention is a necessary complement to punishment in the battle to eliminate attacks against flights in aviation. The number of successful hijackings in the years after 1970 supports this conclusion. The cooperation of states at the ICAO-sponsored conventions of the early 1970's was a likely cause for a decline in the number of successful hijackings. While there were almost ninety hijackings in 1969 and 1970, the figure dropped into the sixties in both 1971 and 1972. The figure then dropped into the twenties from 1973 through 1977. In 1973, the United States had begun its full passenger-screening program and, in 1974, Annex 17 was adopted as the authoritative aviation-security addition to the ICAO Convention. Since 1978, the number of hijackings has remained at a relatively stable rate of less than thirty-five per year.
Although the frequency of attacks declined substantially after the early 1970’s, the problem re-emerged with an equivalent shock value in 1985 due to a decrease in states’ vigilance in adhering to their national aviation security programs. The rules and regulations for security programs are adequately defined in the security-related annexes to the ICAO Convention, but their success depends upon their implementation. States and air carriers must vigilantly ensure that security personnel are effectively performing their duties. One airline executive has said that “terrorists have demonstrated that they will do what they want, when they want, no matter what is done.” The aviation industry must never succumb to this defeatist attitude or else the terrorists will win by default.

IV. Enforcing the ICAO Convention

A. Development of the Security Program

The preamble to the 1944 ICAO Convention stated the contracting states’ intent to ensure that aviation “be developed in a safe and orderly manner.” The ICAO began to develop a technical security program to deal with specific prevention — to be used on a day-to-day basis — at an emergency session of the ICAO Assembly in June 1970. At that session, the member nations adopted resolutions regarding the need for security specifications and practices as well as the need to assist each other in the implementation of security measures. The ICAO Council and a team of aviation experts responded to the resolutions by developing a Security Manual.

The Security Manual, which is distributed to countries as a classified document, provides guidance material and procedures on all aspects of aviation security. It was designed to assist states in the implementation of their own national aviation security programs. The Manual suggests that security in each nation should

156. For a related view, see Kotaite, supra note 101, at 96.
157. See Terrorist Hijack Spurs U.S., supra note 59, at 32.
159. Skrzycki, supra note 125, at 32.
160. ICAO Convention, supra note 10, preamble.
163. ICAO, Security Manual for the Prevention of Unlawful Acts Against Civil Aviation, ICAO Doc. 8973 (Restricted) (1971). The Manual has since been revised and is now titled “Security Manual for Safeguarding Civil Aviation Against Acts of Unlawful Interference.” It is incorporated by reference into Annex 17. See ICAO Convention, Annex 17, Introductory Note to Ch.1, at 9, supra note 100; see also Evans & Murphy, supra note 26, at 27 (listing the states and organizations that assisted in developing the Manual).
164. Kotaite, supra note 101, at 97.
165. Id.
be the responsibility of a national committee composed of representatives from government agencies, airlines, airports, and aviation employees' organizations.¹⁶°

Security standards¹⁶⁷ and recommended practices¹⁶⁸ were incorporated into several annexes to the ICAO Convention throughout the early 1970's. Annex 17 specifically deals with administrative and organizational aspects of aviation security.¹⁶⁹ The basic goal of the ICAO security program as set out in the annexes is to prevent unlawful access to aircraft.¹⁷⁰ The ICAO also attempts to assist states in the implementation of their national security programs by organizing regional seminars and introducing courses on security at regional aviation institutes.¹⁷¹

In response to the wave of attacks against aviation in mid-1985, the ICAO drafted a model clause on aviation security for possible insertion into existing bilateral air services agreements.¹⁷² This clause is a composite of the security-based clauses found in most such agreements. It provides for the cooperation of parties in the prevention and aftermath of attacks against flights in aviation.¹⁷³ In addition, it could provide for sanctions against a party for any non-compliance with the parties' security agreement.¹⁷⁴ The clause has been submitted to the ICAO member states for comment. These comments are expected to be incorporated into a final draft of the clause by the Spring of 1986, at which time the ICAO Assembly will vote on the final proposal.¹⁷⁵

¹⁶⁶. EVANS & MURPHY, supra note 26, at 49.
¹⁶⁷. A “standard” is defined as:
[a]ny specification for physical characteristics, configuration, matériel, performance, personnel or procedure, the uniform application of which is recognized as necessary for the safety or regularity of international air navigation and to which Contracting States will conform in accordance with the Convention; in the event of impossibility of compliance, notification to the Council is compulsory under Article 38.

ICAO Convention, Annex 17, foreword, sect. (1)(a), supra note 100, at 5, 6.

¹⁶⁸. A “recommended practice” is defined as:
[a]ny specification for physical characteristics, configuration, matériel, performance, personnel or procedure, the uniform application of which is recognized as desirable in the interests of safety, regularity, or efficiency of international air navigation, and to which Contracting States will endeavor to conform in accordance with the Convention.

ICAO Convention, Annex 17, foreword, sect. (1)(a), supra note 100, at 6.

¹⁶⁹. Kotaite, supra note 101, at 98.
¹⁷⁰. Id.
¹⁷¹. Id. at 99.
¹⁷². See ICAO News Release No. 13-85, Sept. 1985, Report by the Secretary-General, at 19 (available from Document Sales Unit, ICAO, Montreal, Quebec, Canada).
¹⁷³. Id. at 5, 6.
¹⁷⁴. Id.
¹⁷⁵. Telephone interview with John Marrett, supra note 118.
B. The Problem of Voluntary Compliance

Following the wave of attacks against aviation in June 1985, one member of the United States House of Representatives' Foreign Affairs Committee, during a discussion on the international laws governing aviation security, succinctly stated that the ICAO's measures "are nothing; they're voluntary." The congressman was alluding to the fact that most of the ICAO Convention's security measures are merely "recommended practices" which states are urged to incorporate into their national regulations. In addition to the recommended practices, there are several measures which are considered to be required as minimum "standards." However, Article 38 to the ICAO Convention allows a state to observe lower standards, conditional upon notification of the ICAO, if that state "finds it impracticable to comply in all respects with any such international standard or procedure."

Hijacking and terrorism had not been foreseen when the ICAO Convention was first drafted in 1944. The structure of the ICAO focuses on the facilitation of aviation and not upon the urgency of increasing preventive measures restricting aviation. ICAO officials admit that the ICAO has no penal authority. The ICAO has established relevant international guidelines for security measures but, due to the sovereignty of nations, adherence to the standards and recommended practices depends upon the willingness of individual countries to comply.

C. Sanctions Against States That Fail to Prevent Attacks

On several occasions during the seven months prior to the June 1985 hijacking of the American aircraft from the Athens airport, international inspection teams attempted to contact high-level officials in Greece in order to advise the latter that they found several security deficiencies in that airport. The inspection teams additionally offered technical assistance to Greece to correct the situation. The inspectors were unsuccessful in convincing the Greek authorities...

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177. See supra note 168.
178. See supra note 167.
179. ICAO Convention, supra note 10, at art. 38.
183. See id; see also EVANS & MURPHY, supra note 26, at 7 (concerning the preference of ICAO to assume passive stance on the issue of sanctions).
184. See *Terrorist Hijack Spurs U.S.*, supra note 59, at 32; Skrzycki, supra note 125, at 31.
that corrections needed to be made.\textsuperscript{186} Even after the June hijacking, the Greek Government resented accusations that its airport security had been lax. It instinctively took a defensive political position and refused to accept immediate assistance to improve security.\textsuperscript{186}

Whether such a government attitude violates the Annex 17 recommendation that each “Contracting State should co-operate with other States, particularly with . . . those with which it has major air transport relationships, in developing complementary civil aviation security programmes” is questionable.\textsuperscript{187} In retaliation for the perceived apathy of the Greek Government, the United States issued a travel advisory warning Americans that “there was an above-average potential danger of terrorist acts aboard flights departing from the airport in Athens, Greece due to lax security at that airport.”\textsuperscript{188} The travel advisory significantly hurt the tourist industry in Greece as potential summer vacationers cancelled plans to travel there. Several American air carriers also suspended flights to the Athens airport.\textsuperscript{189}

After criticizing the United States initially, the Greek Government began to improve its airport security with respect to the screening of passengers, baggage and airport personnel. In addition, the Government began construction of a new fence around the airport.\textsuperscript{190} As a result of these improvements, the United States revoked its travel advisory five weeks after its issuance.\textsuperscript{191}

The success of the travel advisory as a unilateral sanction prompted the United States Government to pass legislation in August 1985.\textsuperscript{192} This legislation officially authorized the executive branch to issue such an advisory whenever a country, after ninety days’ notice, fails to improve airport security to a level equivalent to, “at a minimum, the standards and appropriate recommended practices contained in Annex 17 to the [ICAO Convention].”\textsuperscript{193} In addition, if the Secretary of State finds that a nation has permitted a “high terrorist threat” to exist, the President of the United States

\begin{enumerate}
\item[185.] Skrzycki, supra note 125, at 31.
\item[186.] See Greeks Claim Athens Needs No Security Upgrade, supra note 104, at 30. The United States Department of State had offered to Greece funds for equipment, training and counseling in security measures, in conjunction with the State Department’s Anti-Terrorist Training Program, but Greece rejected the offer. See Terrorist Hijack Spurs U.S., supra note 59, at 32.
\item[187.] ICAO Convention, Annex 17, para. 3.1.1, supra note 100, at 11.
\item[189.] See Greece Urges American to Ignore President’s Travel Warning, N.Y. Times, July 22, 1985, at A9, col. 1.
\item[191.] Id.
\item[192.] 1985 Act, 99 Stat. 190 (to be codified at 49 U.S.C. §§ \ldots).
\item[193.] Id. at § 551(a), 99 Stat. 190, 222-225 (to be codified at 49 U.S.C. § 1356b); see also id. § 552(a), 99 Stat. 190, 226 (to be codified at 49 U.S.C. § 1515a).
\end{enumerate}
may then suspend foreign assistance to that nation. Although the issuance of a travel advisory has proven to be an effective means of enforcing the aviation-security provisions of the ICAO Convention, several points should be made concerning its usage.

Advisories, boycotts, and similar sanctions which are intended to be only temporary cannot justifiably last forever because each country represents a valuable and necessary link in any fully-comprehensive aviation network. Such sanctions, if indiscriminately issued, could have major repercussions on all forms of commercial relations between nations, not just on the air commerce industry. Furthermore, one nation's suspension of commercial air relations with another could detrimentally affect the aviation industry of a third nation. By forcing nationals of the target nation onto the aircraft of a third nation, the risk of a potential terrorist attack would also be transferred to the carriers of that third nation. Therefore, the use of sanctions could foreseeably affect other states.

Another reason why the use of sanctions as a means of publicizing inadequate airport security within a state could be risky is that such criticism would be the equivalent of issuing an international airport guide to potential terrorist hijackers and saboteurs. However, as the 1985 wave of attacks against aviation has shown, terrorists probably have their own means of gaining intelligence concerning the most vulnerable aircraft and airports. Nevertheless, the American legislators who passed the August 1985 sanction provisions agreed that such provisions "should be closely monitored in [their] implementation" to prevent the dissemination of information that would otherwise be unavailable.

V. Conclusion

Although the understandings among states as to their legal responsibilities to punish aircraft hijackers and saboteurs have been made clear, there remains a challenge, more urgent than ever, for governments to work together to effectively prevent such hijackings and sabotage before they occur. Links between terrorist groups in different nations clearly demonstrate the need for the governments and security services of all civilized nations to work together against

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194. 1985 Act § 552(b), 99 Stat. 190, 226 (to be codified at 22 U.S.C. § 2151 note, 22 U.S.C. § 2751 note). Also, the 1985 Act recommends that the President take steps to achieve a total aviation boycott with respect to those states which the President determines to be supporters of terrorism. Id. § 555, 99 Stat. 190, 227.


196. See id.


such people.\textsuperscript{199} Despite the innovation of the most sophisticated technology in both aviation security and aviation in general, any lack of adequate supervision of security personnel may be exploited by terrorists. The catastrophic losses of lives and aircraft, as evidenced by the results of attacks against aviation in 1985 alone, are both inexcusable and avoidable. As an example, Israel has not had one of its aircraft successfully hijacked since it developed its security program in 1968.\textsuperscript{200} During the summer of 1985, Israel attributed an increased amount of bookings aboard its national air carrier, in part, to its thorough security program.\textsuperscript{201}

It is necessary that governments cooperate to punish terrorists who are apprehended for hijacking, sabotaging, or otherwise unlawfully attacking aircraft or airline patrons. However, it is equally important that states not rely on punishment and other ex post facto deterrents if they wish to significantly curtail the number of such attacks. Constant vigilance, inspection, and maintenance of national security programs, when combined with the threat of sanctions from other states to punish lapses in national vigilance, could go a long way toward eliminating the terrorist threat to aviation.

David L. Glassman

\textsuperscript{199} See Thatcher Urges the Press to Help 'Starve' Terrorists, N.Y. Times, July 16, 1985, at A3, col. 5.
\textsuperscript{200} See Trimble, supra note 144; Lowenfeld, supra note 25, § 2.31, at 8-44.
\textsuperscript{201} See Trips to Athens Are Being Canceled, N.Y. Times, June 20, 1985, at A18, col. 1. In evaluating the impressive record of Israel's national air carrier, however, it is important to remember (1) the small size of Israel and (2) the necessity for its investment in a comprehensive security program due to the number of terrorist groups opposed to Israel.