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Notes

AIR PIRACY: THE ROLE OF THE INTERNATIONAL FEDERATION OF AIRLINE PILOTS ASSOCIATIONS

Ira M. Shepard

I. THE AIR PIRACY PROBLEM

On August 29, 1969, the problem of air piracy assumed new and frightening dimensions. Two "well-dressed" Arab commandos hijacked¹ a Trans-World Airlines jet over southern Italy with 113 persons aboard and forced it to fly to Syria. Upon landing, only seconds after the passengers were evacuated, the commandos blew up the cockpit of the jet in what they described as a counterblow against the sale of Phantom Jet fighters to Israel by the United States. On October 14, 1969, Syria released the two Arab guerrillas who had hijacked the passenger jet, but the two Israelis who were passengers aboard the Boeing 707 were held political prisoners of the Syrian government.² Thus, in addition to the hijacking, there were violent acts of reprisal, an international kidnapping, and the release of known hijackers with no charges placed against them.

On September 1, 1969, the International Federation of Airline Pilots Associations voted to call a 24-hour world-wide strike unless Syria released the two Israeli passengers held since the hijacking.³ The Federation of Pilots Associations declared that the growth of hijacking

1. For an account of the hijacking see N.Y. Times, Aug. 30, 1969, at 1, col. 8 and at 2, col. 3.

2. N.Y. Times, Oct. 14, 1969, at 4, col. 3.

3. N.Y. Times, Sept. 2, 1969, at 1, col. 2.

might threaten world peace and demanded that the United Nations Security Council take action.⁴ The Federation instructed two of its officers to present its demands to Secretary General U Thant. In its formal statement the organization called upon the United Nations "to take such measures as are necessary to secure immediate release of two passengers detained in Syria and further imposition of suitable punishment on the hijackers."⁵ Although the Pilots Associations' demands were not met, U Thant diplomatically assuaged the pilots' ruffled feathers to the extent that the threatened labor boycott never became a reality.⁶ Nevertheless, the threat of a world-wide strike raised the novel possibility of a united labor movement acting to settle perplexing world-wide problems which international organizations and bilateral and multilateral efforts failed to resolve. However, before examining the possible role the Federation might play in the successful resolution of the air piracy problem and the implications of such a success, it would be helpful to explore the problem of air piracy, early attempts of international law to deal with it, and the current effectiveness of international organizations and existing treaties.

The August 1969 hijacking of the Trans-World Airlines jet was the twenty-sixth hijacking of a United States plane in 1969.⁷ In October 1969, U.S. News & World Report stated⁸ that the total of attempts to seize civilian airplanes by force on the world's airlines since 1950 numbered 144. Of those 144 attempts, 102 had occurred in the previous 21 months; 80 were reported "successful."⁹ Quite clearly, hijacking has become a serious problem of world-wide significance. Charles F. Butter, the United States representative to the International Civil Aeronautics Organization, addressed himself to this point when he stated, "No state in the world is immune from having this kind of activity (air piracy) used against it. . . ."¹⁰ Indeed, no state is free from the danger of air piracy, the possible destruction of its plane, and the death of large numbers of its nationals.

To accentuate the problem of the increasing frequency of hijacking, one need only look to the three-fold projected growth in scheduled airline traffic by 1975.¹¹ The advent of new and larger aircraft with a

4. *Id.*; see further discussion, at 9.

5. N.Y. Times, *supra* note 3.

6. N.Y. Times, Sept. 4, 1969, at 15, col. 1, reported *Thant to see Pilots on Air Piracy Issue*. The outcome of the meeting and what was discussed was not reported.

7. N.Y. Times, *supra* note 1, at 2, col. 5.

8. U.S. NEWS AND WORLD REPORT, Oct. 20, 1969, at 34-35.

9. *Id.* at 35. Figures covered the period through Oct. 9, 1969.

10. Lindsay, *The U.S. is Moving on Two Fronts in Effort to Halt Sharp Increase in Plane Hijacking*, N.Y. Times, Sept. 5, 1969 at 26, col. 1.

11. K. Hammarskjöld, *The Role of I.A.T.A.*, in *THE FREEDOM OF THE AIR* at 32

capacity of nearly one thousand passengers by 1980 will add further magnitude to the dangers of air piracy.¹²

The following statement by Oliver J. Lissitzyn expresses in general terms the present state of the laws on international air travel:

The regime of law and policy within which world air transport continues to operate and develop is quite complex. It consists of a few multilateral treaties, a multitude of bilateral agreements and informal arrangements, and policies. It rests, moreover, on customary international law which includes the principle of *national sovereignty* in airspace.¹³

The basic obstacle impeding the resolution of the air piracy problem by the customary means of international organizations or multilateral treaties seems to be the notion of national sovereignty. Although air piracy is a world problem, the world community has acted weakly and non-uniformly. The myopic interests often connected with individual state sovereignty seem to preclude states from agreeing to act in concert to eliminate air piracy. The conflict between national sovereignty and the development of the "common good" (world interest) has deep philosophical underpinnings, which may be loosened by the coercive effect of a world labor movement. Before examining the possible role of a world labor movement, it may be useful to explore the failure of the world community to resolve the piracy problem by customary means.

II. THE CHICAGO CONVENTION

In 1944, the Chicago Convention on International Civil Aviation formulated the basic outline which governs the contemporary international regulation of air transportation.¹⁴ The major effort involved in the Chicago convention was not aimed at the resolution of problems such as hijacking, but rather at preserving friendship and understanding among nations and insuring the "safe and orderly development of inter-

(E. McWhinney and M. A. Bradley eds. 1968). Mr. Hammarskjöld speaking of I.A.T.A.'s Role stated, "The extent of the challenge is illustrated by some recent forecasts. By 1975, world scheduled airline passenger traffic will triple that of 1965, and by 1980 will be 4 times as great. This means that in 1975 there will be 580 million airline passengers, and 770 million in 1980 . . . forecast that scheduled aircraft movements will go up from the 15 million total in 1965 to 24 million in 1975, and 30 million in 1980. Fortunately the aircraft which are coming into service will be progressively larger — some may take almost a thousand passengers *apiece* (emphasis added)."

12. *Id.*

13. Lissitzyn, *Freedom of the Air: Scheduled and Non Scheduled Air Services*, in THE FREEDOM OF THE AIR 89 (E. McWhinney and M. A. Bradley eds. 1968) (emphasis added).

14. Convention on International Civil Aviation (Chicago 1944), Dec. 7, 1944, 61 Stat. 1180, T.I.A.S. No. 1591 (effective April 4, 1947). The Convention laid the basis for the International Civil Aviation Organization (I.C.A.O.).

national civil aviation."¹⁵ The convention failed in its attempt to adopt a wide measure of freedom for international air transport on a multilateral basis.¹⁶ Attempts to win support for the "Five Freedoms" failed and they were relegated to a separate International Air Transport Agreement¹⁷ which was signed by a small number of states. The United States withdrew from it in 1946.¹⁸

The Chicago Convention illustrated the momentous stumbling block that the concept of sovereignty poses to multilateral air agreements. The failure to gain wide multilateral acceptance of a document as unobtrusive as the "Five Freedoms" demonstrates vividly the massive obstacle individual state sovereignty has proven to be to resolution of international aviation problems.

III. ROLE OF INTERNATIONAL ORGANIZATIONS

There are two major international organizations which provide regulations concerning international civil aviation. The International Civil Aeronautics Organization (I.C.A.O.) and the International Air Transit Association (I.A.T.A.). Sir William Hildred, the former Director General of the I.A.T.A., describes the two organizations as follows:

. . . I.C.A.O. works . . . at the Government level with Government representatives accredited to it and is affiliated with the United Nations but exists by virtue of a separate convention to further the development of International Civil Aviation. I.A.T.A. is a Trade

15. Binaghi, *The Role of I.C.A.O.*, in *THE FREEDOM OF THE AIR* (E. McWhinney & M. A. Bradley eds. 1968.) sets forth the reasons governments signed the Chicago Convention as stated in the preamble which reads:

- (a) that international civil aviation can help to create and preserve friendship and understanding among the peoples of the world,
- (b) that international civil aviation should be developed in a safe and orderly manner; and
- (c) that international air transport services should be established on the basis of equality of opportunity and operated soundly and economically.

16. Lissitzyn, *supra* note 13, at 90.

17. International Air Transport Agreement, Dec. 7, 1944, 59 Stat. 1701; E.A.S. 448 (accepted Feb. 8, 1945). Art. 1, §1 provides:

Each contracting state grants to the other contracting states the following freedoms of the air in respect of scheduled international air services:

- (1) The privilege to fly across its territory without landing;
- (2) The privilege to land for non-traffic purposes;
- (3) The privilege to put down passengers, mail, and cargo taken on in the territory of the State whose nationality the aircraft possesses;
- (4) The privilege to take on passengers mail, and cargo destined for the territory of the State whose nationality the aircraft possesses;
- (5) The privilege to take on passengers, mail, and cargo destined for the territory of any other contracting State and the privilege to put down passengers, mail, cargo coming from any such territory. . . "

18. See 15 DEPT. STATE BULL. 236 (1946).

Organization existing by virtue of its own Act of Parliament (9-10 Geo. VI, c. 31), a voluntary non-exclusive non-political association of scheduled airlines and any airline certified to render scheduled service by a State which is itself eligible to join I.C.A.O. may be a member. It is not affiliated with the United Nations but I think the United Nations knows it is there.¹⁹

While the I.C.A.O. and the I.A.T.A. are technically independent organizations, a close interrelationship and interdependence exists between the two organizations. Knut Hammarskjöld, present Director General of the I.A.T.A. and nephew of the late Dag Hammarskjöld, stated:

I.A.T.A. and I.C.A.O. are independent and complement one another. Without the I.C.A.O., or rather the Chicago Convention, the aircraft of the I.A.T.A. member airlines would lack the legal and operational framework to fly. Without the aircraft of the airlines, the work of the I.C.A.O. would have no practical value.²⁰

The Chicago Convention, which gave birth to the I.C.A.O., contains in its preamble²¹ the fundamental ideas which were intended to unite all the contracting states of the I.C.A.O.²² The Legal Committee of the I.C.A.O. is of particular importance in assessing the I.C.A.O.'s role vis-à-vis air piracy. It was created by a resolution of the First Assembly of I.C.A.O. on May 23, 1947.²³ Since its creation, the Legal Committee has spent most of its time dealing with the problems of liability in the field of international civil aviation.²⁴ It is the role of the Committee to write the drafts of "air" law for approval at the International Air Law Conventions called by the I.C.A.O.²⁵ The Legal Committee prepared the draft for the Tokyo Convention which was addressed to the problem of air piracy.

The problem of sovereignty precluded the I.C.A.O., its Legal Committee, and the resulting International Conventions from making any real progress with respect to the problem of air piracy. Walter Binaghi, the present President of the I.C.A.O. Council, pointed out this limitation on the I.C.A.O. when he stated, "The fact is that I.C.A.O. cannot undertake more than its states wish it to undertake."²⁶ This limitation prevented the Tokyo Convention of 1963 from reaching an acceptable

19. Hildred, *Interdependence Between the I.C.A.O. and I.A.T.A.*, in *THE FREEDOM OF THE AIR* at 47 (E. McWhinney & M. A. Bradley eds. 1968).

20. K. Hammarskjöld, *supra* note 11, at 31.

21. Binaghi, *supra* note 15.

22. *Id.*

23. See I.C.A.O. Doc. 4, 635, L.C. 71 of 5/9/47, Res. A1-46.

24. Boyle, *International Air Law*, 38 *OKLA. B. ASS'N. J.*, 711, 714 (1968).

25. *Id.*

26. Binaghi, *supra* note 15, at 27.

solution to hijacking. Notwithstanding the Convention's neutral effect with respect to any encroachment on individual state sovereignty, it has been ratified by only 12 states in the last six years.²⁷

The I.A.T.A. is not hampered by the sovereignty concept. This trade organization, through its "Traffic Conference Machinery," has the primary function of establishing fares, rates, and charges for scheduled international air services.²⁸ All conference agreements must be reached by unanimous vote of all airlines regardless of size.²⁹ Unanimity is required to safeguard the interests of the small international airlines and shield them from the possibility of being driven out of the market by the more efficient larger international airlines.

It is important to note that after a relatively brief discussion of airplane hijacking on the opening day of the I.A.T.A. Convention in Amsterdam in October 1969, the I.A.T.A. settled down to its primary business of fixing rates for trans-Atlantic flights. One is impelled to conclude that the I.A.T.A.'s role in international air transit is one primarily directed toward the promotion of profitable passenger prices. The organization's concern for passenger and pilot safety appears to be secondary.

The role played by the United Nations in the air piracy problem is strictly limited. The Security Council has not concerned itself with the matter. On October 9, 1969, the General Assembly agreed to a full debate on airplane hijacking and ways to reduce it.³⁰ To date, no positive steps have been taken by either of these United Nations Organizations.

IV. THE TOKYO CONVENTION

The most recent international convention, developed by the Legal Committee of the I.C.A.O., was the Convention on Offenses and Certain Other Acts Committed on Board Aircraft,³¹ commonly referred to as the Tokyo Convention of 1963. The Convention was opened for signature in 1963 at a Diplomatic Conference sponsored by I.C.A.O. in Tokyo³² and became effective on December 4, 1969, when the United States ratification was sent to Montreal.³³

This convention is the first international agreement which has at-

27. Lindsay, *supra* note 10.

28. K. Hammarskjöld, *supra* note 11.

29. *Id.*

30. U.S. NEWS AND WORLD REPORT, *supra* note 8.

31. T.I.A.S. No. 6768, signed Sept. 14, 1963 (effective Dec. 4, 1969).

32. Boyle, *supra* note 24, at 716.

33. Lindsay, *supra* note 10. By the terms of the treaty it became effective on ratification by 12 nations; the United States was the twelfth nation to ratify.

tempted to grapple with the problems involved in hijacking. While the convention was a noble effort and a step in the right direction, the treaty fails to deal effectively with the hijacking problem. In addition to the substantive weakness of the treaty, it is important to note the problem of gaining general acceptance. As R. P. Boyle, the chief United States delegate to the Tokyo Convention, observed,

. . . whether the Convention can be adjudged successful will depend not on its ratification by merely 12 or even 16 states but in extent to which nations with important aviation interests ratify it. Indeed if the countries which are the major providers of air transportation, or which generate or attract large amounts of air traffic, or whose geographic location is such that a heavy volume of flights traverse their air space, do not ratify the Convention, it can have only limited success as an instrument of international legislation. . . .³⁴

Furthermore, the treaty's effectiveness would be substantially impaired if a state that was a frequent or potentially frequent landing territory of hijacked craft (e.g. Cuba or Syria) did not ratify even though its aviation interests are minimal. Even if the Tokyo Convention had produced an agreement which substantively dealt with the major issues involved in the curtailing of hijacking, it would still be a multilateral agreement of extremely limited acceptance. To date, only twelve states have ratified the weak treaty actually produced.

In exploring the substantive merit of the Tokyo Convention, Mr. Boyle stated:

. . . to obtain the largest number of adherents, the terms of such a treaty must not be *fundamentally objectionable*, and in addition, each ratifying nation must either consider that the Covenant is necessary or at least a *positive contribution* to international relations among states.³⁵

Thus, one might question if Mr. Boyle was defining an area which does not exist. It seems that the "fundamentally acceptable" and "positive contribution" areas may be mutually exclusive in this instance. The nations of the world do not seem ready to accept a treaty which would incorporate uniform punishment of airplane hijackers as an international crime, or in the alternative, the stipulation that all nations be required by treaty to punish hijackers uniformly by individual domestic laws without exception for immunity. Such a treaty would be a significant "positive contribution" to the problem of air piracy, but at the present time it remains "fundamentally unacceptable" to the world

34. Boyle & Pulsifer, *The Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft*, 30 J. AIR L. & COM. 305 (1964).

35. *Id.* at 306 (emphasis added).

community.³⁶ The Tokyo Convention, which falls far short of general support, barely reaches into the category of "positive contribution." It seems that any treaty that could be termed "fundamentally acceptable" to the world community would be so diluted of substantive merit that it would not be considered a "positive contribution" to the status quo.

Generally, the Tokyo Convention covers four major areas. At the outset, the Convention recognizes extra-territorial jurisdiction in the state of aircraft registration. The registering state has the authority to apply its laws to the events occurring on board the aircraft while it is in flight.³⁷ Secondly, the Convention provides the aircraft commander with authority to use reasonable force in dealing with prevention of crimes on board which would jeopardize the safety of the aircraft and the passengers. The use of reasonable force immunizes the pilot from civil suit.³⁸ Thirdly, the Convention delineates the responsibilities of a state to any perpetrator of a crime during flight who has disembarked after the flight lands.³⁹ The fourth major subject of concern is the crime of hijacking.

Article 11 of the Convention deals specifically with the crime of "unlawful seizure of aircraft" or "hijacking." The Article provides as follows:

1. When a person on board has unlawfully committed by force or threat thereof an act of interference, seizure, or other wrongful exercise of control of an aircraft in flight or when such an act is about to be committed, contracting States shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft.

2. In the cases contemplated in the preceding paragraph, the contracting State in which the aircraft lands shall permit its passengers and crew to continue their journey as soon as practicable and shall return the aircraft and its cargo to the persons lawfully entitled to possession.⁴⁰

As Boyle points out, Article 11 does not define hijacking as an international crime, nor does it attempt to make hijacking a crime under principles of international law.⁴¹ The Article also fails to make it mandatory for contracting states to make hijacking of an international

36. Only after six years and the occurrence of an inordinate number of hijackings, the vast majority of which involved the planes of American carriers, did the United States agree to ratify the convention.

37. Boyle & Pulsifer, *supra* note 34, at 328.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* at 345.

flight a crime under their domestic law. The legality of the hijacking is left up to the domestic law of the state of aircraft registration or the state in which the aircraft has landed.⁴² While Article 11 does provide for the "continued journey" of the passengers and crew, it does not provide for the return of the hijacker. The Article would therefore appear to add no significant deterrence to potential hijackers. Credit must be given, however, to the Convention's codification of the principle of quick return of plane, crew, and passengers.

While Article 16, paragraph 1, enunciates the extra-territorial jurisdiction concept in treating offenses committed on board the aircraft as being committed within the state of registration of the aircraft, paragraph 2 expressly states that nothing in the Convention creates an obligation to grant extradition.⁴³

The Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft fails to provide effective deterrence to air piracy and thus cannot resolve the problem. While the Convention does provide for the exercise of extraterritorial jurisdiction by the state of aircraft registration for overt acts occurring on the plane, Boyle points out the problem that there is no system of priorities governing the order of the different possible criminal jurisdictions.⁴⁴ Furthermore, there is no provision for the question of double jeopardy.⁴⁵

V. THE REQUIREMENTS OF A PRACTICAL SOLUTION

The practical solution to the problem of air piracy is not conceptually elusive. While air piracy, like all other domestic and international crimes, may not be subject to total control, measures are needed which will serve to deter it. Generally, hijacking must be recognized as a crime punishable by all nations under either domestic or international law and an international agreement should be drawn up to provide a universal warning to would-be hijackers that the result of their act would be imprisonment.

The above measures are not novel but seem to be the only practical

42. *Id.*

43. Article 16 of the Convention reads as follows:

1. Offences committed on aircraft registered in a Contracting state shall be treated, for the purpose of extradition, as if they had been committed not only in the place in which they have occurred, but also in the territory of the State of registration of the aircraft.

2. Without prejudice to the provision of the preceding paragraph, nothing in this Convention shall be deemed to create an obligation to grant extradition.

44. Boyle & Pulsifer, *supra* note 34, at 328.

45. *Id.*

way of dealing with the problem. Knut Hammarskjöld expressed similar beliefs when he stated: "The problem of hijacking and armed attacks on commercial aircraft will be solved only if perpetrators of these acts face the certainty of severe punishment for their potentially fatal activities."⁴⁶ Heinz Klunker, chairman of the labor union representing pilots for Lufthansa Airways, expressed similar sentiments in stating that the decisive factor in stopping hijacking "is for governments to decide, on the international level, to punish such criminals with sharpest measures and jail sentences."⁴⁷

The crucial question remains: will the nations of the world community agree to the proclaiming of hijacking as an international crime punishable everywhere with no exception for special immunity? Put in terms stated earlier by Mr. Boyle, while the creation of this international crime would be a "positive contribution" to the status quo, would it be "fundamentally acceptable" to the nations of the world?

There are at least three threshold objections which could prove insurmountable in the effort to achieve voluntary world-wide acceptance. The first is based on the state's cherished right to give immunities either stemming from diplomatic relations or from the highly valued concept of political asylum. The second, and closely related objection, is who is to determine the scope of political crimes. In September 1969, Cuba published a decree stating that it might agree to the extradition of boat and plane hijackers to their country of origin. The decree expressly excluded "political refugees." On October 8, 1969, Cuba stated it would handle each case separately and would base such extradition only on bilateral agreements, thus expressly excluding Cuba's adherence to a voluntary multilateral agreement.⁴⁸ The problem of the determination of political crimes on an individual basis is exemplified by the hijacking of a Mexican plane to Cuba by two Mexican students in June 1969. Although Cuba had been close to a bilateral agreement with Mexico providing for extradition of hijackers,⁴⁹ Cuba refused to extradite the two Mexican students claiming they were "political refugees." Mexico stated that they were not being charged with any political crime.⁵⁰ This conflict resulted in an unfortunate impasse with the hijackers remaining in Cuba.

46. N. Y. Times, Sept. 3, 1969, at 3, col. 5.

47. Lindsay, *supra* note 10.

48. *Id.* Lindsay stated in discussing a world wide agreement for extradition or punishment of hijackers, ". . . In a world split by deep ideological and political differences where giving of political asylum is a long and respected tradition there are doubts . . . that any such agreement will work."

49. Lindsay, *supra* note 10.

50. *Id.*

The third and all-inclusive objection to the suggested multilateral world agreement is also based on the overriding concept of sovereignty. The nations of the world are generally opposed to having crimes defined in international terms. Speaking directly of the historic and perhaps now archaic notion of air sovereignty, Sir William Hildred quite profoundly stated:

When the Wright Brothers started all this flying, it could be said that the national sovereign state was an indispensable device for carrying on the business of each nation and for safeguarding its interests and the interests of its nationals. But today it has become an unworkable, out-moded, precarious and lethal mechanism though we shall obviously have to live with it a good while longer. . . .⁵¹

Dissatisfaction with the obstacle that the notion of sovereignty has placed upon the development of international law is not novel. Manifestations of the sovereignty problem have been dealt with domestically in the United States by the Supreme Court's deference to the State Department on questions of sovereign immunity.⁵² Judge Musmano in his dissenting opinion in the case of *Chemical Natural Resources Inc. v Republic of Venezuela* severely attacked the current manifestation of the sovereignty problem in the United States domestic courts:

This Court's decision promotes the idea of a promiscuous, general allowance of absolute sovereign immunity which could undermine the whole structure of international trade. . . . The sovereign immunity doctrine . . . is no longer a healthy manifestation of society. It is, in fact, an excrescence on the body of the law, it encourages irresponsibility to world order, it generates resentments and reprisals. *Sovereign immunity is a stumbling block in the path of good neighborly relations between nations*, it is a sour note in the symphony of international concord, it is a skeleton in the parliament of congress, it encourages governments towards chicanery, deception and dishonesty. Sovereign immunity is a colossal effrontery, a brazen repudiation of international moral principles, it is a shameless fraud.⁵³

Looking at the realities of the present world situation, a "voluntary" world-wide agreement providing for international definition of hijacking as a crime, or the requirement of domestic punishment or extradition of international hijackers is precluded by individual state interests in determining questions of political asylum and political crimes. This leaves the world in a dismal impasse with respect to the creation of a uniform deterrent to aircraft hijackers.

51. Hildred, *supra* note 19, at 48.

52. *National City Bank of New York v. Republic of China*, 348 U.S. 356 (1955).

53. *Chemical Natural Resources v. Republic of Venezuela*, 420 Pa. 134, Musmano dissent 140 (emphasis added), cert. denied, 385 U.S. 822 (1963).

VI. THE FEDERATION OF AIR PILOTS AS A RATIONAL SOCIAL FORCE

Many philosophers have recognized a sharp distinction between the "potential moral behavior of individuals" and the relative immoral tendencies of social groups such as nations.⁵⁴ Reinhold Niebuhr has quite profoundly attributed this discrepancy between potential individual morality and collective immorality to the difficulty a collectivity has in establishing a "rational social force" which is able to contend with the "natural impulses by which society achieves its cohesion."⁵⁵ Inherent in this philosophical view is the belief that patriotism or group cohesiveness transforms individual morality, selflessness, and humanitarianism into national egoism and societal immorality.⁵⁶ It may be possible that the Federation of Air Pilots Associations can play the role, cast in Niebuhrian terms, as a "rational social force" which possesses the power to mitigate the national impulses of individual states.

In order to understand what is meant by the term "rational social force" and how it relates to international relations, it is important to remember that historically nations have rarely, if ever, acted in the interest of international justice when that action did not coincide with their own national interest.⁵⁷ Niebuhr has further explained that in addition to a state acting in its own "national interest," a nation will be more inclined to act in response to the "self-interest of dominant groups" or "popular emotions or hysteria."⁵⁸

As stated earlier, no nation is immune from being the victim of air piracy. Thus it would seem to be in every nation's interest to become a party to a multilateral agreement which presents a united deterrence to hijacking. Until now most nations, or at least their ruling elites, have subordinated the threat of air piracy to considerations of national sovereignty and individual determination of political asylum. The Federation of Pilots may hold the power to make it very costly for a nation to neglect to reorder individual national priorities in favor of consideration of safety of their nationals as air passengers.

The crucial question is whether the Federation of Pilots can alter the perception of national interest to the adoption of the needed inter-

54. R. NIEBUHR, *MORAL MAN AND IMMORAL SOCIETY*, xi-xii (1932).

55. *Id.*

56. *Id.*

57. One must realize that self interest is the dominating if not the only motivating force that causes a nation to act in the sphere of international relations. As Niebuhr points out, *supra* note 54, at 84, "The selfishness of nations were not to be trusted beyond their own interest. 'No state,' declares a German author, 'has ever entered a treaty for any other means than self interest,' and adds, 'A statesman who has any other motive would deserve to be hung.'"

58. R. NIEBUHR, *supra* note 54, at 87-89.

national agreement which would effectively deter hijacking. The answer is arguably in the affirmative. The threat of a 24-hour boycott alone began to focus international thought on the problem of air piracy.

It must also be noted that a world-wide strike is not the only action that the Federation of Pilots could take. The Federation has the power to initiate selective boycotts against particular uncooperative states. The Federation could, for example, refuse to fly planes into those states that would refuse to become parties to an international agreement providing for effective deterrence to hijacking.⁵⁹ Certainly such action would go directly to Niebuhr's determinants of national selfishness by affecting emotions of the citizens of the boycotted nations and also affecting the economic and political interests of the "dominant groups." Other less coercive avenues are open to the Federation such as a boycott of nationals from non-cooperating countries. In any event, it is clear that the Federation has the power to influence, through coercion, the acceptance of an effective world-wide agreement. Charles H. Ruby, the president of the Air Line Pilots Association and a member of the International Federation of Air Pilots Associations, expressed the role the Federation could play given its ability to threaten or even effectuate boycott:

. . . to wake up the countries of the world that they have to get off the dime and do something about hijacking. Sometimes you have to get people's attention in very unorthodox ways. We've got to have international agreements making hijacking an international crime.⁶⁰

In light of the failure of the nations of the world to resolve this problem, the ramifications of a world strike or selective boycott by the Federation of Pilots, which if successful in coercing the adoption of an international treaty of adherence to principles of international justice, would be staggering indeed. Perhaps new and dramatic significance would be given to the old Marxian motto, "Workers of the World Unite!"⁶¹

59. Such a proposal was suggested by individual union presidents at the Federation's meeting after the Aug. 29, 1969 hijacking to Syria, N.Y. Times, Sept. 2, 1969, at 1, col. 2, and at 10, col. 1.

60. Lindsay, *supra* note 10.

61. Two *caveats* are offered. First, it must be asked whether even a selective strike or boycott by the Federation of Pilots would cause unjustifiable chaos in world transportation. Secondly, if the Federation of Pilots does effectuate a successful strike, the difficult question arises as to what the limits of its power are. The Federation is perhaps in an analogous position to that occupied by public service employees currently organizing in the United States.

