

SKYJACKING AND THE BONN DECLARATION OF 1978: SANCTIONS APPLICABLE TO RECALCITRANT NATIONS

On July 14, 1978, at a high-level summit meeting in Bonn, West Germany, leaders from seven industrialized countries produced a declaration aimed at eliminating sanctuaries for skyjackers.¹ The declaration called for the imposition of an aircraft boycott against any state that refuses to extradite or prosecute skyjackers.² As an international effort to deter skyjacking it is unique, because it focuses exclusively on the acts or omissions of nations.

Skyjacking is an offense against the right of civilized people to be secure from fear, violence, and unlawful deprivation of liberty while traveling by air. It is a crime that burdens international civil aviation and causes tension between nations. In essence, skyjacking is an offense against international public order.³ There is a pressing need to establish more rigorous legal means to deter this offense. The elimination of sanctuaries for skyjackers is crucial to the fulfillment of that need.

International measures have largely failed to deter skyjacking.⁴ International conventions addressing the offense do not set forth standards for sentencing convicted skyjackers.⁵ In addition, the

1. Bonn Declaration on Hijacking of 1978 (copy on file with the *California Western International Law Journal*), reported in *Industrialized Nations Conclude Anti-Hijacking Agreement*, 15 *WORLD JURIST* 8 (July-Aug. 1978) [hereinafter cited as Bonn Declaration]. The Declaration was set forth on July 17, 1978, at the European Economic Community (EEC) Summit, Bonn, Germany; source: United States Department of State. There is no record available on the discussions that precipitated the Declaration. The Bonn Declaration is set out in full in the text accompanying note 125 *infra*.

2. Bonn Declaration, *supra* note 1.

3. See Whiteman, *Jus Cogens in International Law, With a Projected List*, 7 *GA. J. INT'L & COMP. L.* 609, 625 (1977).

4. Abramovsky, *Multilateral Conventions for the Suppression of Unlawful Seizure and Interference with Aircraft, Part III: The Legality and Political Feasibility of a Multilateral Air Security Enforcement Convention*, 14 *COLUM. J. TRANSNAT'L L.* 451, 452 (1975) [hereinafter cited as Abramovsky (pt. 3)].

5. Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft, done Sept. 14, 1963, 20 *U.S.T.* 2941, *T.I.A.S.* No. 6768, 704 *U.N.T.S.* 219. See Fitzgerald, *Offenses and Certain Other Acts Committed on Board Aircraft: The Tokyo Convention of 1963*, 2 *CAN. Y.B. INT'L L.* 191 (1964). Fitzgerald states:

The Tokyo Convention is intended to achieve two main objectives: (1) to ensure that, in the case of offenses against penal law committed on board aircraft, there

conventions are silent regarding the treatment of political refugees, who comprise a significant segment of skyjackers. The continued recognition of political refugees' rights as being paramount has limited the effectiveness of international measures to deter skyjacking.⁶ In practice, political refugees are virtually immune to extradition, and prosecution generally results in light sentences.⁷ International terrorists are another favored kind of skyjacker. They often receive political asylum and reward rather than punishment for their criminal acts.⁸

The essential point to consider is that skyjackings continue to occur, and the threat of additional occurrences is evident in light of the increasing number of coordinated terrorist activities worldwide.⁹ Although considerable efforts have been made to eradicate

will always be a jurisdiction (namely, the state of registration of the aircraft) in which a suspected offender may be tried, and (2) to authorize the aircraft commander and other specified persons to take certain steps, including the imposition of measures of restraint, in relation to persons who commit or are about to commit on board the aircraft an offense or act which jeopardizes the safety of the aircraft, or of persons and property therein.

Id. at 192. Hague Convention for the Suppression of Unlawful Seizure of Aircraft, done Dec. 16, 1970, 22 U.S.T. 1641, T.I.A.S. No. 7192, reprinted in 10 INT'L LEGAL MATS. 133 (1971) [hereinafter cited as Hague Convention]. See Abramovsky, *Multilateral Conventions for the Suppression of Unlawful Seizure and Interference with Aircraft, Part I: The Hague Convention*, 13 COLUM. J. TRANSNAT'L L. 381 (1974) [hereinafter cited as Abramovsky (pt. 1)]. The Hague Convention has been codified at 49 U.S.C. § 1472(n)(1)(A) & (B) (1976). Sentencing provisions are included therein:

Whoever aboard an aircraft in flight outside the special aircraft jurisdiction of the United States commits "an offense," as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, and is afterward found in the United States shall be punished

(A) by imprisonment for not less than 20 years; or

(B) if the death of another person results from the commission of the offense, by death or by imprisonment for life.

Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done Sept. 23, 1971, 24 U.S.T. 565, T.I.A.S. No. 7570, reprinted in 10 INT'L LEGAL MATS. 1151 (1971). The Montreal Convention sets forth procedures for dealing with alleged perpetrators of unlawful acts that interfere with civil aviation — for example, saboteurs — and does not deal with skyjacking *per se*. See Abramovsky, *Multilateral Conventions for the Suppression of Unlawful Seizure and Interference With Aircraft, Part II: The Montreal Convention*, 14 COLUM. J. TRANSNAT'L L. 268 (1975). See Abramovsky (pt. 3), *supra* note 4.

6. These rights flow from the widely ratified Convention Relating to the Status of Refugees, done July 28, 1951, 19 U.S.T. 6250, T.I.A.S. No. 6577, 189 U.N.T.S. 150, modified, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577 [hereinafter cited as Refugee Convention].

7. West German courts have generally sentenced East European skyjackers to terms of from two to four years. Trimborn, *Bonn's Handling of East Bloc Skyjackers Criticized*, L.A. Times, Oct. 3, 1978, pt. 1, at 16, col. 1.

8. Arab terrorists were rewarded by Syria and Algeria for activities involving skyjacking. See Abramovsky (pt. 1), *supra* note 5, at 383.

9. For a statistical analysis of the fact that "from 1968 on, hijacking evolved into the weapon, or the platform, of persons acting for 'public' or political reasons, and has been

skyjacking on national¹⁰ and international¹¹ levels, none have effectively dealt with the problem of states systematically giving refuge to skyjackers.¹²

This Comment will examine the need for international sanctions to discourage states from providing sanctuaries for skyjackers and the effectiveness of existing sanctions in fulfilling the global desire to eradicate skyjacking. The lack of international sentencing standards will be discussed as a fundamental obstacle to the effectuation of that goal.

As background to this discussion, the provisions of the Hague Convention of 1970,¹³ pertaining to the prosecution, punishment, and extradition of skyjackers, will be analyzed. This will be contrasted with the limitations on enforcement of those provisions imposed by the Protocol to the Refugee Convention,¹⁴ which mandates that signatory states grant asylum to political refugees. Particular attention will be given to the "political offense"¹⁵ and the "political refugee"¹⁶ exceptions to extradition agreements, insofar as they pose a substantial barrier to the eradication of skyjacking.

Following the discussion of the Hague Convention, this Comment will examine the Bonn Declaration on Hijacking,¹⁷ the most recent formulation of international sanctions to deter states from refusing to extradite or prosecute skyjackers. This section will include a justification for the application of these sanctions to non-party states of the Bonn Declaration and the feasibility of the enforcement of the sanctions. In conclusion, this Comment will suggest that mandatory sentencing standards be adopted and implemented to enforce the sanctions in the Bonn Declaration so that skyjacking will effectively be deterred.

largely successful in terms of the perpetrators' goals; for example, between 1968 and 1973, the Popular Front for the Liberation of Palestine (PFLP) have, via skyjacking, obtained the release of 78 of their comrades," see Evans, *Aircraft Skyjacking: What is Being Done*, 67 AM. J. INT'L L. 641, 644-46 (1973). See Sterling, *The Terrorist Network*, THE ATLANTIC, Nov. 1978, at 37, for a broad analysis of the increased coordination, sophistication, and effectiveness of worldwide terrorist activities.

10. E.g., 49 U.S.C. § 1472(n)(1)(A) & (B) (1976), set forth, in part, at note 5 *supra*.

11. Montreal, Hague, and Tokyo Conventions, *supra* note 5.

12. Abramovsky (pt. 3), *supra* note 4.

13. Hague Convention, *supra* note 5.

14. Refugee Convention, *supra* note 6.

15. See text accompanying notes 39-62 *infra*.

16. See text accompanying notes 63-79 *infra*.

17. Bonn Declaration, *supra* note 1.

I. THE HAGUE CONVENTION

In response to the sharp increase of skyjackings in 1968 and 1969,¹⁸ and the lack of effective deterrent measures,¹⁹ the Council of the International Civil Aviation Organization (ICAO) conducted a study in 1970 of the skyjacking problem.²⁰ This effort produced what was to be the framework for the Hague Convention.²¹ The purpose of the Hague Convention was to deter skyjacking by assuring punishment for any person committing the act.²² The language of the Convention, however, implicitly betrays this purpose by not mandating prosecution of alleged offenders.²³

A. *The Host State's Alternatives: Extradite or Submit to Prosecution*

The Convention appears to require rigorous treatment of alleged offenders. Article 7 provides a mandatory procedure:

The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offense was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offense of a serious nature under the law of that State.²⁴

This Article and the entire Convention are binding upon all signatories by virtue of the rule of general international law *pacta sunt servanda*.²⁵ Article 26 of the Vienna Convention on the Law of

18. See Evans, *supra* note 9, at 643, for a discussion of total worldwide skyjackings: from 1961 through 1967, there were 31; in 1968, there were 31; and in 1969, there were 88.

19. *Hearings on Resolutions Concerning Aircraft Hijacking and Related Matters Before the House Committee on Foreign Affairs*, 91st Cong., 2d Sess. 6 (1970).

20. ICAO Ass. Res. A16-37, ICAO Doc. 8779, at 92 (1968) called for the Council to conduct the study.

21. Hague Convention, *supra* note 5.

22. The preamble, in part, states that "for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders." Article 1 defines the "offense":

Any person who on board an aircraft in flight: (a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or (b) is an accomplice of a person who performs or attempts to perform any such act commits an offense.

Id.

23. *Contra*, Comment, *Skyjacking and Refugees: The Effect of the Hague Convention Upon Asylum*, 16 HARV. INT'L L.J. 93, 97 (1975).

24. Hague Convention, *supra* note 5.

25. The rule *pacta sunt servanda* literally translated means "contracts (treaties) are to be kept." G. SCHWARZENBERGER & E. BROWN, A MANUAL OF INTERNATIONAL LAW 564 (6th ed. 1976).

Treaties in regard to this rule states that "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith."²⁶ The essence of *pacta sunt servanda* is that treaties have binding force between signatories and create law which must be observed. This means that "the treaty is or creates a norm establishing obligations and rights of the contracting parties."²⁷

According to the terms of Article 7, a party to the Hague Convention must, therefore, either extradite or subject an alleged skyjacker to prosecution. It has been suggested that the language of Article 7 obligates a signatory state, absent extradition, to prosecute an alleged offender without consideration of motive.²⁸ A more precise interpretation would be that there is only the obligation of *presenting* the case to the appropriate authorities who then decide whether or not to prosecute.²⁹ The only legal consequences a skyjacker can expect now is arrest; punishment and extradition (usually to the illegally seized aircraft's state of registration) are mere possibilities.³⁰ Prosecution of offenders frequently results in relatively light sentences,³¹ a practice that flows from the Convention's ambiguous penalty provision.³²

B. Prosecution and Non-deterrent Punishment

Even assuming the mandatory prosecution interpretation is correct, the deterrent effect of punishment is largely nullified by the ambiguity of the Hague Convention's penalty provision: "Each contracting state undertakes to make the offense punishable by *severe penalties*."³³ On its face, this article seems to obligate a signa-

26. Vienna Convention on the Law of Treaties, *opened for signature*, May 23, 1969, U.N. Doc. A/CONF. 39/27, art. 26, *reprinted in* 63 AM. J. INT'L L. 875, 884 (1969) [hereinafter cited as Vienna Convention]. This convention is codified international law and has been cited as authority for customary law in court decisions and state practice. *See* Barcelona Traction Case, [1970] I.C.J. 3, 303, 305; Nambia Case, [1971] I.C.J. 16, 47; Fisheries Jurisdiction Case, [1973] I.C.J. 3, 14, 18, 21, 43, 47; Nuclear Tests Case, [1974] I.C.J. 253, 334-38, 349, 357, 418.

27. H. KELSEN & R. TUCKER, PRINCIPLES OF INTERNATIONAL LAW 456 (2d ed. 1966).

28. Comment, *supra* note 23.

29. Abramovsky (pt. 1), *supra* note 5, at 398.

30. The delegate of France described the Hague Convention as containing "the obligation of apprehension of the alleged offender, a possibility of extradition, the obligation of reference to the competent authority and the possibility of prosecution." ICAO Doc. 8877-LC/161, at 17.15, *reprinted in* S. AGRAWALA, AIRCRAFT HIJACKING AND INTERNATIONAL LAW 132 (1973).

31. As of 1973, international sentences for skyjacking had ranged from two to seven years. Evans, *supra* note 9, at 659.

32. Hague Convention, *supra* note 5, art. 2.

33. *Id.* (emphasis added).

tory state to rigorously punish a convicted skyjacker, but state practice indicates that skyjackers often escape actual liability. Apparently this is due to the Convention's failure to delineate the scope of the "severe penalties" contemplated.³⁴

The effect of the optional prosecution provision and the ambiguous penalty provision is a substantial loophole through which a signatory state may allow a skyjacker to evade harsh punishment.³⁵ In practice, a state may comply with its treaty obligations by prosecuting an offender, but conviction may be followed by only a light sentence³⁶ or a heavy sentence with early eligibility for parole.³⁷ It can be argued, therefore, that substantial and certain punishment of skyjackers does not yet exist. To identify the incipient reasons for this failure to punish skyjackers, the inconsistency between theory and practice will be examined.

II. "LOOPHOLES" IN STATE PRACTICE: POLITICAL EXCEPTIONS

The benign treatment of skyjackers is largely due to sympathies inherent in the "political offense" and "political refugee" exceptions to extradition,³⁸ exceptions firmly established in international practice and the political ideologies of many nations.

A. *The Political Offense Exception*

Although there is not a recognized definition of "political offense" in international law, there are cases frequently cited that es-

34. There are two basic reasons for the ambiguity of the penalty provision (art. 2): the drafters sought wide ratification and felt mandatory penalties would hinder that goal; many states felt mandatory penalties would interfere with sovereign discretion. Abramovsky (pt. 1), *supra* note 5, at 399.

35. *Id.*

36. In 1978 a Czechoslovakian skyjacker seeking political asylum was sentenced to four years imprisonment by a West German court. L.A. Times, Oct. 5, 1978, pt. I, at 23, col. 1.

37. In 1972 a Canadian court convicted and sentenced a skyjacker to life imprisonment; however, the local press reported he would be eligible for parole in 1979. Calgary (Alberta) Herald, Apr. 12, 1972, at 1, col. 5; *id.*, Apr. 13, 1972, at 4, col. 1, *cited in* Evans, *supra* note 9, at 658 n.79. It is clear, therefore, that rigorous sentencing standards alone will not provide "severe penalties." United States courts have held that mandatory sentences are not required by the standards set forth in 49 U.S.C. § 1472(i) (1976) (domestic skyjacking law which has the same penalty provision as 49 U.S.C. § 1472(n)(1976)); *see* note 5 *supra*. "49 U.S.C. § 1472(i) does not provide for a mandatory penalty, therefore allowing the trial judge to impose an indeterminate sentence . . . the statute does not expressly prohibit early parole." United States v. Remling, 548 F.2d 1974, 1975 (6th Cir. 1977).

38. *See* Abramovsky (pt. 1), *supra* note 5, at 398-405.

establish the parameters of the concept.³⁹ The landmark British case, *In re Castioni*,⁴⁰ established the proposition that political offenses were acts that “were incidental to and formed a part of a political disturbance . . . in which [the perpetrator] was taking part.”⁴¹ The requirement that the acts in question be part of a larger political movement was subsequently liberalized and the political offense concept expanded in *Ex parte Kolczynski*.⁴² In that case, the British courts refused to extradite Polish seamen who were guilty of mutiny, on the grounds that they acted to “prevent themselves [from] being prosecuted for a political offence and . . . , therefore, the offence had a political character.”⁴³ In other words, the defendant need not be taking part in a political movement *per se*. It is sufficient that he seek to escape state prosecution for political acts. This interpretation of the political offense exception is presently employed by certain states upon the minimal grounds that the offender would be subject to prosecution by his state for political reasons.⁴⁴

Two kinds of skyjackers have been considered to fall within the political offense exception.⁴⁵ The first, and most widely acknowledged kind, is the person who resorts to skyjacking in an attempt to escape an oppressive political system.⁴⁶ The second kind of skyjacker is the international terrorist who seeks global recognition of his cause by methods of “political blackmail, destruction of . . . aircraft, and the incarceration or death of its passengers.”⁴⁷

Terrorist skyjackers have been consistently granted political asylum, aid, or both by certain states.⁴⁸ In two recent cases (*Holder-*

39. Abramovsky (pt. 1), *supra* note 5, at 400. Note, *Bringing the Terrorist to Justice*, 11 CORNELL INT’L L.J. 71 (1978).

40. [1891] 1 Q.B. 149.

41. *Id.* at 159, 166.

42. [1955] 1 Q.B. 540.

43. *Id.* at 550.

44. France has refused extradition to the United States on these grounds in two recent cases (*Holder-Kerkow* and *Brown*). 1975 DIG. U.S. PRAC. INT’L L. 168; 1976 DIG. U.S. PRAC. INT’L L. 124; *see* note 49 *infra*.

45. *See* Abramovsky (pt. 1), *supra* note 5, at 382-84.

46. *Id.*

47. *Id.* An accepted legal definition of “international terrorism” has not been formulated. 1 R. FRIEDLANDER, *TERRORISM, DOCUMENTS OF INTERNATIONAL AND LOCAL CONTROL* 3 (1979). However, a useful definition is: “[A]cts of violence waged outside the accepted rules and procedures of international diplomacy and war. Jenkins, *International Terrorism: A New Mode of Conflict*, in *INTERNATIONAL TERRORISM AND WORLD SECURITY* 20 (D. Carlton & C. Schaeff eds. 1975).

48. Algeria, Libya, Lebanon, and Syria have repeatedly granted asylum or given aid. Abramovsky (pt. 3), *supra* note 4. In 1979, Libya was involved in an incident where three Tunisian men seized an Air Tunis jetliner in an attempt to coerce the release of a labor

Kerkow and Brown)⁴⁹ involving extradition requests by the United States, a French court of appeal refused to extradite United States citizens on the grounds that their acts of skyjacking fell within the political offense exception of the United States-France Extradition Treaty.⁵⁰ In *Holder-Kerkow*,⁵¹ the French court held that the skyjackers had a "political motive" that qualified their act as a political offense.⁵² In *Brown*,⁵³ the same court held that the skyjackers were escaping racial and political oppression, and viewed the United States charges against them as political persecution.⁵⁴ Although skyjacking is included in the United States-France Extradition Treaty,⁵⁵ it is subject to the provision setting forth the political offense exception,⁵⁶ and the application of the extradition process is subject to the discretion of the requested state.⁵⁷ The decisions of the French court⁵⁸ indicate that the extradition provision of the Hague Convention⁵⁹ is not controlling. In *Brown*,⁶⁰ however,

leader held by Tunisian authorities. The plane was eventually directed to Libya where local authorities provided the skyjackers with fuel and food. L.A. Times, Jan. 13, 1979, pt. 1, at 2, col. 1.

49. *Holder-Kerkow* involved the seizure of a domestic United States flight in 1972, which eventually was directed to Algeria. The alleged skyjackers were indicted in the United States for skyjacking (aircraft piracy), kidnapping, and extortion (\$50,000) — all extraditable offenses under Article II of the United States-France Extradition Treaty, *infra* note 50. Holder, at one point in the incident, demanded that the flight go to Hanoi, Vietnam. France refused extradition under Article IV of the treaty, stating that Holder's demands were evidence of a political motive and, therefore, brought the matter within the scope of the political offense exception to extradition. 1975 DIG. U.S. PRAC. INT'L L. 168. *Brown* also involved the seizure of a domestic U.S. flight in 1972, which eventually landed in Algeria. The alleged skyjackers, supposedly affiliated with the Black Panther Party, demanded and received one million dollars ransom, most of which was returned by the Algerian government. They were arrested in Paris in 1976, and extradition to the United States was refused on the basis of Article IV of the United States-France Extradition Treaty, *infra* note 50. 1976 DIG. U.S. PRAC. INT'L L. 124. For the final disposition of this case, see notes 104-07, 62-70 *infra*, and accompanying text.

50. United States-France Extradition Treaty, Feb. 12, 1970, 22 U.S.T. 407, T.I.A.S. No. 7075.

51. See 1975 DIG. U.S. PRAC. INT'L L. 168.

52. *Id.* at 169.

53. See 1976 DIG. U.S. PRAC. INT'L L. 124.

54. *Id.* at 125.

55. United States-France Extradition Treaty, *supra* note 50, art. IV.

56. *Id.*

57. Article IV also provides: "If any question arises as to whether a case comes within the provisions of this subparagraph, the authorities of the Government on which the requisition is made shall decide." *Id.*

58. See 1975 DIG. U.S. PRAC. INT'L L. 168; 1976 DIG. U.S. PRAC. INT'L L. 124.

59. Hague Convention, *supra* note 5, art. 8.

60. See 1976 DIG. U.S. PRAC. INT'L L. 124.

France did fulfill its obligations under the Hague Convention⁶¹ by prosecuting the offenders.⁶²

B. The Political Refugee Exception

Although the political offense exception is somewhat amorphous, the political refugee exception is well-defined as a bar to extradition.⁶³ The Protocol Relating to the Status of Refugees⁶⁴ defines a refugee as a person who would be subject to political persecution if he returned to his state of nationality.⁶⁵ Article 33 of the Protocol extends this definition by prohibiting the extradition of a refugee to *any* state that would subject him to racial, religious, social, or political persecution.⁶⁶

61. See Hague Convention, *supra* note 5.

62. See text accompanying notes 104-07 *infra*. There have not been any steps taken towards extradition or prosecution in *Holder-Kerkow*. See text accompanying note 129 *infra*. The French declaration issued at the signing of the European Convention, *infra* note 81, is a straightforward explanation of the French position in regard to limitations on the suppression of terrorism. In part it states:

It is self-evident that efficiency in this struggle must be reconciled with respect for the fundamental principles of our criminal law and of our Constitution, which states in its Preamble that "Anyone persecuted on account of his action for the cause of liberty has the right to asylum on the territory of the republic."

15 FORWARD IN EUROPE, LEGAL SUPPLEMENT 9 (1977), reprinted in 16 INT'L LEGAL MATS. 1329 (1977) (emphasis added).

63. See Abramovsky (pt. 1), *supra* note 5, at 402-03.

64. Refugee Convention, *supra* note 6.

65. The Refugee Convention in part provides:

[A person] having a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Id. art. 1, para. A(2). This provision is, however, limited by a subsequent provision which states:

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Id. art. 1, para. F.

66. Article 33, Prohibition of Expulsion or Return (*Refoulement*), provides:

1. No Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Subsection 2 of Article 33 limits the scope of subsection 1:

The practice of West Germany underscores the primacy of political refugees' rights. Since the ratification of the Hague Convention in 1970, West Germany has categorically refused to extradite skyjackers seeking political asylum from East European countries.⁶⁷ This practice is generally attributable to ideological differences between nations, and to the conflicts and sympathies that develop from them.⁶⁸

The Constitution of the Soviet Union⁶⁹ "affords the right of asylum to foreign citizens persecuted for defending the interests of working people, or for scientific activities, or for struggling for national liberation."⁷⁰ The Soviet provision is clearly polemical while the West German Constitution⁷¹ simply states that "persons persecuted for political reasons shall enjoy the right of asylum."⁷² In practice such formal distinctions are insignificant, because decisions regarding asylum and extradition are frequently based upon the political allegiance of the refugee in question and the degree of ideological antagonism between the host state and the state requesting extradition.⁷³ As with the political offense exception, these decisions are often influenced by the political climate of the host state.⁷⁴ If a Soviet Jew, for example, were to skyjack a plane in the Soviet Union and fly to the United States, it is unlikely the offender would be extradited, irrespective of the hard-line United States policy on skyjacking.⁷⁵

West German practice regarding East European skyjackers, by comparison, is understandable even though it conflicts with the for-

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Id. art. 33.

67. Trimborn, *supra* note 7.

68. Green, *Extradition v. Asylum For Aerial Hijackers*, 10 *Is. L. Rev.* 207, 208-09 (1975).

69. КОСТИТУЦИЯ (Constitution) (U.S.S.R.), reprinted in Hazard, *The Constitution of the Union of Soviet Socialist Republics*, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, HISTORIC CONSTITUTIONS (G. Flanz & A. Blaustein eds. 1972).

70. *Id.* art. 129.

71. GRUNDGESETZ (W. Ger.), reprinted in Flanz, *Basic Law for the Federal Republic of Germany*, V CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (G. Flanz & A. Blaustein eds. 1974).

72. *Id.* art. 16.

73. Green, *supra* note 68, at 209.

74. Abramovsky (pt. 1), *supra* note 5, at 400.

75. 49 U.S.C. § 1472(n)(1)(A) & (B) (1976).

mally expressed German opposition to acts of skyjacking.⁷⁶ It is important to note that the West German government does not deny extradition solely on the grounds that the alleged skyjacker comes under the political refugee exception. Extradition is refused on jurisdictional grounds when portions of the alleged crimes took place in West German territory.⁷⁷ This is consistent with the jurisdictional provisions of the Hague Convention, which clearly say that a state may establish jurisdiction over the offense and the perpetrator when the skyjacked aircraft lands in its territory with the alleged offender on board.⁷⁸ The West German practice of prosecuting and sentencing East European skyjackers also complies with the letter of the Convention.⁷⁹

Use of the political exceptions has caused considerable consternation in the world community, as evidenced by the Bonn Declaration.⁸⁰ Though the exceptions conflict significantly with international measures to deter skyjacking,⁸¹ they are deeply rooted in international practice;⁸² the political offense exception, for example, is often included in extradition treaties.⁸³ In effect, a suspect may be subject to extradition by the terms of a treaty yet exempt

76. West Germany has *inter alia* ratified the Hague Convention and is a party to the Bonn Declaration. Hague Convention, *supra* note 5; Bonn Declaration, *supra* note 1.

77. Trimborn, *supra* note 7.

78. Hague Convention, *supra* note 5, art. 4, para. (1)(B).

79. *Id.* art. 7; see text accompanying note 24 *supra*.

80. Bonn Declaration, *supra* note 1. The preamble sets forth the intent of the party nations to "intensify their joint efforts to combat international terrorism."

81. Article 7 of the Hague Convention states that offenders are to be extradited or subject to prosecution "without exception whatsoever," and Article 2 states that offenders ought to be subject to "severe penalties." Hague Convention, *supra* note 5. This conflict has international legal recognition; the recent European Convention on the Suppression of Terrorism expressly eliminates employment of the political offense exception as a bar to extradition requests for alleged skyjackers. Article 1 provides, in part:

For the purposes of extradition between Contracting states, none of the following offenses shall be regarded as a political offense or as an offense connected with a political offense or as an offense inspired by political motives:

a. an offense within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1971 . . . [that is, skyjacking].

European Convention on the Suppression of Terrorism, done Jan. 27, 1977, entered into force Aug. 4, 1978, reprinted in 15 INT'L LEGAL MATS. 1272 (1976) [hereinafter cited as European Convention]. The following countries have ratified the Convention: Austria, Denmark, West Germany, Sweden, and England. 17 INT'L LEGAL MATS. 1043 (1978). It should be noted that France is a signatory of, but did not ratify, the European Convention. Therefore, France is not bound by its terms. 14 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 45 (1968).

82. For a terse discussion of the international development of the political offense doctrine, see FRIEDLANDER, *supra* note 47, at 72-82.

83. Article II of the agreement between the United States and France provides, in part:

from extradition if a political character can be attributed to the alleged criminal act.⁸⁴

One writer suggests, however, that Article 8(1) of the Hague Convention, contradicts the effect of political offense provisions,⁸⁵ because it states that skyjacking shall "be included as an extraditable offense in any extradition treaty between contracting states."⁸⁶ Applying the customary rule of international law that treaties which are later in time prevail,⁸⁷ a state bound by both a prior extradition treaty containing a political offense exception and by the Hague Convention⁸⁸ could not lawfully invoke the exception to refuse extradition to another signatory state.⁸⁹ A different result is possible, however, by applying the customary rule of *jus aequum*.⁹⁰ Under *jus aequum*, conflicting treaties are applied in a "reasonable and equitable manner";⁹¹ one treaty is not necessarily superior to the other because it came into force at a later date.⁹² State practice indicates that the rule of *jus aequum* is being applied to treaty conflicts concerning extradition of skyjackers.

The international law principle of *jus cogens* may also apply in the case of skyjacking.⁹³ Because *jus cogens* implies norms from which no derogation is permissible, the political exceptions might not justify failure to prosecute and penalize skyjackers. Under *jus cogens*, if the crime is committed, the perpetrator(s) must be pun-

Extradition shall be granted for the following acts if they are punished as crimes or offenses by the laws of both States:

19. Revolt on board an aircraft against the authority of the captain; any seizure or exercise of control, by force or threat of force or violence, of an aircraft.

Article IV provides, in part:

Extradition shall not be granted in any of the following circumstances:

4. If the offense for which the individual's extradition is requested is of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character.

United States-France Extradition Treaty, *supra* note 50, arts. 2, 4.

84. *Id.*

85. Abramovsky (pt. 1), *supra* note 5, at 403.

86. Hague Convention, *supra* note 5.

87. The Vienna Convention states: When all the parties to the earlier treaty are parties also to the later treaty . . . the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty. Vienna Convention, *supra* note 26, art. 30, § 3.

88. Hague Convention, *supra* note 5.

89. Abramovsky (pt. 1), *supra* note 5, at 403.

90. Rules of international law must be interpreted and applied in a reasonable and equitable manner. SCHWARZENBERGER & BROWN, *supra* note 25, at 23, 24, 131.

91. *Id.*

92. *Id.*

93. See text accompanying notes 162-69 *infra*.

ished; the political quality of the crime can at best be considered as a mitigating circumstance in determining punishment.⁹⁴

Nevertheless, political exceptions are recognized in state practice. As discussed above, all that is required where extradition is refused is the mere *submission* of the alleged offender to the appropriate prosecuting authorities.⁹⁵ West German practice described above may go beyond the letter of the Hague Convention, but the question remains whether this sort of treatment complies with the spirit and purpose of the Convention to eradicate skyjacking through deterrence.⁹⁶

III. TOKEN SENTENCES AS "SEVERE PENALTIES": UNDERMINING THE GOAL OF DETERRENCE

It is important to keep in mind the underlying purpose of the Hague Convention — to make the benefits of skyjacking unattractive in view of punishment for the offense.⁹⁷ State sentencing practices, however, do not carry out this fundamental purpose; this is especially evident regarding the treatment of political refugees.⁹⁸

94. AGRAWALA, *supra* note 30, at 133. *Contra*, E. McWHINNEY, THE ILLEGAL DIVERSION OF AIRCRAFT 104-05 (1975), where it is concluded on the basis of empirical evidence . . . [that] the "freedom of the air" is certainly *not regarded today as an absolute or paramount principle*, but a relative one, the degree of whose compromise with other competing interests will be determined only in concrete cases, depending in part on the particular State-participants in those cases.

Id. at 105 (emphasis added). The "empirical evidence" relied upon by McWhinney is, however, largely comprised of the fact that as of 1975, none of the "leading 'airline' states" had actually taken material steps towards applying obvious, effective deterrent sanctions to states that are havens for skyjackers. Clearly, the Bonn Declaration is a statement of intent by "leading 'airline' states" to do just that; therefore, if these intentions are carried into action, the "freedom of the air" would be at least a developing *jus cogens*. *Id.* at 105.

95. See text accompanying note 29 *supra*.

96. See the preamble of the Hague Convention, which in part provides: "Considering that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders . . ." Hague Convention, *supra* note 5. It should be noted that prosecution of skyjackers seeking political asylum does not violate the Refugee Convention, *supra* note 6. Evans, *supra* note 9, at 660.

97. See *id.*

98. For the case of Ladislav Molnar where a four-year sentence was meted out, see L.A. Times, Oct. 5, 1978, pt. I, at 23, col. 3. Special treatment for political refugees has been underscored in the more recent case of Tiede, an East German seeking asylum. He skyjacked a Polish airliner on Aug. 30, 1978, to Templehof, a United States airbase, in West Berlin. Since United States jurisdiction prevailed, Tiede was tried by a United States district court judge under West German law before a West German jury. Although Tiede had used bodily force, threats of death, and caused the airliner to land at a runway of insufficient length, he was convicted only of hostage-taking. He was acquitted of all other charges, including air piracy, and subsequently released by the presiding judge who noted that nine months pretrial confinement constituted sufficient punishment. L.A. Times, May 29, 1979, pt. I, at 5, col. 6.

Generally, people who employ skyjacking to leave an oppressive situation are escaping from what would effectively be a life sentence. Faced with a lifetime of intolerable conditions, skyjackers apparently consider a few years in a sympathetic nation's jail and a promise of asylum and citizenship upon release a worthwhile investment.⁹⁹

West Germany, for example, has sentenced East European skyjackers to prison terms averaging from two to four years.¹⁰⁰ As recently as October 4, 1978, a Czechoslovakian skyjacker, who sought political asylum, was sentenced to a four-year term.¹⁰¹ According to West German practice, the skyjacker's request for asylum will be decided after he serves his sentence; however, West Germany has never extradited an East European refugee.¹⁰² This treatment cannot be said to have a genuine deterrent effect upon potential skyjackers seeking political asylum. Considering the steady influx of skyjackers seeking political asylum in West Germany and the minimal sentences imposed on offenders, West German practice is so contrary to the goal of deterrence¹⁰³ that it undermines that goal.

A more striking example of state sentencing practice frustrating the goal of deterrence is found in the *Brown* case.¹⁰⁴ A jury found the defendants guilty of skyjacking, hostage-taking, and extortion, but noted "extenuating circumstances" in accord with the defense argument that the crimes were committed as a "political act" in response to "American racism."¹⁰⁵ Consequently, two of the defendants were sentenced to five years imprisonment; the other two were given five-year sentences, with two-year suspensions.¹⁰⁶ Because the defendants spent two and one-half years in a French jail awaiting trial, their actual periods of imprisonment are expected to range from a few days to six months.¹⁰⁷

Compared with West German practice, France's treatment of

Trimborn, *W. Berlin Jury, Under a U.S. Judge, Convicts East German*, L.A. Times, May 27, 1979, pt. 1, at 5, col. 1.

99. See Abramovsky (pt. 1), *supra* note 5, at 383.

100. Trimborn, *supra* note 7.

101. Ladislav Molnar was convicted of skyjacking a Czechoslovakian airliner to Frankfurt in February, 1978. L.A. Times, Oct. 5, 1978, pt. 1, at 23, col. 3.

102. Trimborn, *supra* note 7.

103. See Hague Convention, *supra* note 5.

104. See 1976 DIG. U.S. PRAC. INT'L L. 124.

105. *4 Americans Sentenced in Jet Hijacking*, L.A. Times, Nov. 25, 1978, pt. 1, at 5, col. 1.

106. *Id.*

107. *Id.*

the defendants in *Brown* is perhaps even more contrary to the goal of deterrence. The French court rather blatantly imposed light sentences upon persons convicted of skyjacking and concomitant crimes, who were certainly not fleeing from a nation that restricts emigration. Although the defendants in *Brown* may have been subjected to "racist treatment"¹⁰⁸ in the United States, they were not categorically denied the right to leave the country.¹⁰⁹ The distinction between French and West German treatment of skyjackers is readily apparent. In France, offenders may expect lenient consequences to flow from a political offense exception analysis, while in West Germany, treatment will be based upon the political refugee exception. It can be argued that France's treatment of skyjackers is more damaging to the goal of deterrence, because application of the political offense exception is less acceptable internationally than is the political refugee exception,¹¹⁰ but the crucial point is that lenient treatment *per se* is contrary to the goal of deterrence.¹¹¹

Due to the inconsistency between state sentencing practice and the goal of deterrence as expressed in the Hague Convention, the question arises whether the lack of internationally consistent sentencing practice presents an unsolvable problem. The treatment a skyjacker receives will most likely depend to a great degree upon the national politics and attendant laws of the prosecuting state, because a specific international definition of what constitutes a "severe penalty," as contemplated by the Hague Convention, does not exist.¹¹² An example would be the right of asylum; the granting of asylum depends upon the political ideology or laws of each particular nation.¹¹³ In light of the agreement among the signatory states that penalties should deter skyjacking, national treatment should reflect that policy.¹¹⁴ This is frequently not the case because of an

108. See 1976 DIG. U.S. PRAC. INT'L L. 124.

109. It should be noted that three of the skyjackers in *Brown* were fugitives, two being escapees from prison on sentences for murder and armed robbery, respectively, and the third a United States Army deserter. *Id.* at 125.

110. Abramovsky (pt. 1), *supra* note 5, at 403, asserts that Article 8, paragraph 1, of the Hague Convention forecloses designation of skyjacking as a political offense, but does not legally prevent designating offenders as political refugees. *Id.* See European Convention, *supra* note 81.

111. See Hague Convention, *supra* note 5, art. 2, and text accompanying note 33 *supra*.

112. The Hague Convention is silent both as to classification of the offense of skyjacking (for example, as equivalent to attempted homicide) and in regards to a minimum sentence. Abramovsky (pt. 1), *supra* note 5, at 399.

113. Green, *supra* note 68.

114. It is important to keep in mind the nature of deterrence. As a fundamental element of sentencing, it refers to criminal sanctions imposed to discourage the general public from

aspect inherent in the nature of criminal punishment.¹¹⁵

The primary consideration of most penal systems, in regard to penalties, is that the punishment should fit the crime — the penalty should be proportional to the culpability of the crime.¹¹⁶ In practice, however, the degree of culpability will be predicated upon the social, political, and economic interests of the state;¹¹⁷ that is, the penalty imposed upon a convicted skyjacker will be relative to the sustained harm to the prosecuting state's interests.¹¹⁸ The question of whether a penalty imposed upon a skyjacker is severe will therefore depend upon the national interests of the inquiring party. While the Hague Convention signatories agree that skyjacking should be deterred by severe penalties,¹¹⁹ the frequent result is the imposition of penalties that are severe according to the standards of the prosecuting state, but which fail to deter subsequent acts of skyjacking.¹²⁰

The argument can be made that any substantial deprivation of liberty is a severe penalty, but if the sum of the prosecuting state's punishment does not have a genuine deterrent effect, then it fails to fulfill the purpose of the Hague Convention.¹²¹ The Bonn Declaration on Hijacking is an attempt to discourage states from harboring skyjackers, thereby deterring commission of the offense.

committing a crime, to discourage repeat offenses by individuals, or both. In short, the aim is crime prevention. *See* A. CAMPBELL, *LAW OF SENTENCING*, § 5, at 24 (1978).

115. In broad terms, the principle of sovereignty accounts for variance in state practice. *See generally* SCHWARZENBERGER & BROWN, *supra* note 25, at 51-54.

116. *See generally* CAMPBELL, *supra* note 114, at 6-12. In practice, sentences are often determined by other considerations. H. GROSS, *A THEORY OF CRIMINAL JUSTICE* 437 (1979).

117. This follows from the *function of sanctions*, which "is the way in which the law protects life, freedom, economics and other interests against delicts." 1 M. WHITEMAN, *DIGEST OF INTERNATIONAL LAW* 63 (1952). For example, certain Caribbean and Middle Eastern states are effectively *unable* to punish skyjackers from other states, due to political or security reasons or both; consider the September 1970 incident in Jordan where several planes were blown up by Arab guerrillas, and the Jordanian government did nothing about it. In addition, states are not likely to punish refugees oppressed by an opposing state, who enter by way of skyjacked aircraft. AGRAWALA, *supra* note 30, at 128 n.275.

118. AGRAWALA, *supra* note 30, at 134.

119. Hague Convention, *supra* note 5, art. 2.

120. In light of the West German policy of refusing extradition of East Europeans, Trimborn, *supra* note 6, and the fact that East Germans have an automatic right to West German citizenship, Wash. Post, Aug. 31, 1978, § A, at 21, col. 1, it is likely that even two years imprisonment is considered severe by West German standards.

121. *See* Hague Convention, *supra* note 5, preamble.

IV. THE BONN DECLARATION ON HIJACKING

There is an urgent need to formulate viable, effective sanctions which can be imposed upon states that systematically give refuge to skyjackers¹²² — a need compounded by the threat of expanding tactical use of skyjacking by coordinated global terrorist groups¹²³ and the absence of widely ratified international measures to deal effectively with recalcitrant states.¹²⁴ The Bonn Declaration seeks to provide a remedy for this problem:

The Heads of State and Government, concerned about terrorism and the taking of hostages, declare that their Governments will intensify their joint efforts to combat international terrorism.

To this end, in cases where a country refuses extradition or prosecution of those who have hijacked an aircraft and/or do not return such aircraft, the Heads of State and Government are jointly resolved that their Governments should take immediate action to cease all flights to that country.

At the same time, their Governments will initiate action to halt all incoming flights from that country or from any country by the airlines of the country concerned. The Heads of State and Government urge other Governments to join them in this commitment.¹²⁵

122. From 1969 to 1978, there have been 393 skyjackings attempted, 201 of which have been successful, according to the International Air Transport Association (IATA). FRIEDLANDER, *supra* note 47, at 140.

123. "[F]rom 1968 on, hijacking evolved into the weapon, or the platform, of persons . . . acting for . . . 'public' or political reasons . . . primarily . . . terrorist or guerrilla groups. This type of skyjacking has been largely successful in terms of the offenders' goals." See Sterling, *supra* note 9, at 71. Between 1968 and 1973, the Popular Front for the Liberation of Palestine (PFLP) have, via skyjacking, obtained the release of 78 of their comrades. Evans, *supra* note 9, at 644-48.

124. The Montreal, Hague, and Tokyo Conventions, *supra* note 5, do not contain provisions concerning recalcitrant states.

125. The parties to the Declaration are Britain, Canada, France, West Germany, Italy, Japan, and the United States. The codification of the Declaration in the United States Code reads, in part:

Whenever the President determines that a foreign nation is acting in a manner inconsistent with the Convention for the Suppression of Unlawful Seizure of Aircraft, or if he determines that a foreign national permits the use of territory under its jurisdiction as a base of operations or training or as a sanctuary for, or in anyway arms, aides, or abets, any terrorist organization which knowingly uses the illegal seizure of aircraft or the threat thereof as an instrument of policy, he may, without notice or hearing and for as long as he determines necessary to assure the security of aircraft against unlawful seizure, suspend (1) the right of any carrier or foreign air carrier to engage in foreign air transportation, and the right of any person to operate aircraft in foreign air commerce, to and from that foreign nation, and (2) the right of any foreign air carrier to engage in foreign air transportation, and the right of any foreign person to operate aircraft in foreign air commerce, between the United States and any foreign nation which maintains air service between itself and that foreign nation.

49 U.S.C. 1472 § 1114(a) (1974).

Although the Declaration succinctly sets forth rigorous sanctions to be imposed upon a recalcitrant state, the actual meaning of these words, as seen against the background of global reality, may be something less than rigorous. To understand this, it is necessary to first positively determine the purpose of the Declaration.

A. Suggested Purpose of the Declaration

Article 31 of the Vienna Convention on the Law of Treaties¹²⁶ establishes a general rule that a treaty's language is to be assigned ordinary meaning within the treaty's context, which is to be determined from the treaty's preamble. The preamble (first paragraph) of the Bonn Declaration establishes the Declaration as an effort to facilitate existing defenses against international terrorism. Assuming the focus of the Declaration is on terrorism, does the Declaration contemplate only terrorist skyjackers?

There are two key phrases in the second paragraph of the Declaration that indicate the kind¹²⁷ of skyjacker contemplated: "[t]o this end," and "those who have skyjacked."¹²⁸ If this language is considered in light of the preamble's focus on terrorism, the "end" referred to is clearly the intensification of "joint efforts to combat international terrorism." Because the word "those" closely follows the phrase "to this end" in the same sentence, it most likely refers to terrorists. A literal analysis of the Declaration, therefore, strongly suggests that only terrorist skyjackers were contemplated; this conclusion is reasonable in view of the consequences of a broader interpretation.

An interpretation applying the Declaration to all skyjackers would obligate parties to the Declaration to apply the provided sanctions to nations that refuse to extradite or prosecute political refugees or political offenders. Such an interpretation would apply to France, which has neither extradited nor prosecuted the suspects in *Holder-Kerkow*.¹²⁹ A reprimand by the United States Department of State has been the only action taken against France.¹³⁰ Considering the commitment of the Declaration's parties to politi-

126. Vienna Convention, *supra* note 26.

127. See generally Abramovsky (pt. 1), *supra* note 5, at 382-84, for a discussion of the various kinds of skyjackers.

128. Bonn Declaration, *supra* note 1.

129. See 1975 DIG. U.S. PRAC. INT'L L. 168.

130. *Id.*

cal refugees,¹³¹ the prevailing recognition of the political offense exception,¹³² and the severe economic consequences that would flow from an aircraft boycott,¹³³ this limited response is a wise one. The limited interpretation of the Declaration — that it only applies to terrorist skyjackers — is, therefore, the most reasonable. This concern with terrorism among parties to the Declaration is more than a matter of public policy; it is derived from fundamental interests shared by those nations.¹³⁴

B. *The Effect on National Interests*

Consider first the national interests promoted and impaired by the Bonn Declaration. The parties to the Declaration are the seven major capitalist nations.¹³⁵ Marxist revolution, advocated by many of the terrorist organizations,¹³⁶ is by definition in opposition to capitalist control of economic systems; simultaneously, nationalist Middle Eastern terrorists are determined to diminish Western influence in their countries. It is these seven nations, parties to the Bonn Declaration, which stand to suffer the most from an increase in international terrorism.¹³⁷ Because terrorist groups frequently employ skyjacking to further their ends,¹³⁸ it is not surprising that these states have consistently advocated stringent approaches to deterring the offense.¹³⁹

131. The parties to the Bonn Declaration have also ratified the Refugee Convention, *supra* note 6.

132. See text accompanying notes 39-62 *supra*.

133. States on both sides of an aircraft boycott will suffer, especially if the offending state normally grants transit facilities to major international carriers or imports heavily or both. AGRAWALA, *supra* note 30, at 135.

134. See text accompanying note 125 *supra*.

135. They are: Britain, Canada, France, West Germany, Italy, Japan, and the United States. The seven nations collectively account for almost 70% of all capitalist nations' air traffic. N.Y. Times, Aug. 6, 1978, § 1, at 44, col. 4. See *Industrialized Nations Conclude Anti-Hijacking Agreement*, *supra* note 1.

136. The Red Brigades' chief, Renato Curcio, is quoted as saying the various terrorist groups are forming into a single "organization of communist combat . . . [for the purpose of striking at the] vital centers of multinational imperialism." Sterling, *supra* note 9, at 38.

137. *Id.*

138. See Evans, *supra* note 9.

139. In 1973, the Legal Committee of the ICAO decided by vote to reject a proposal that if a suspension of air services convention could be established, collective action should be taken against recalcitrant nonparty states. The proponents of the proposal included Canada, West Germany, Britain, and the United States. France and Japan voted against the measure, and Italy abstained. See ICAO Doc. 9050-LC/169-1, at 88-89 (1973); Abramovsky (pt. 3), *supra* note 4, at 470. Note that the proposal for 2 convention discussed by the Legal Committee was never considered in plenary discussion in an International Air Conference on Air Law and an Extraordinary Assembly of the ICAO held at Rome from August 28 to Septem-

The United States has advocated that mandatory extradition of skyjackers be international practice, regardless of the individual circumstances.¹⁴⁰ In light of public safety and financial interests affected by skyjacking, political exceptions should not be considered. Not surprisingly, states strongly opposed to tougher sanctions are those which harbor skyjackers, sympathize with their ideological motivations, or both.¹⁴¹ Due to this divergence of interests, apparently rigorous international measures¹⁴² prior to the Declaration were equivocally enforced.¹⁴³ Significantly, the Bonn Declaration is a reactionary measure intended to force recalcitrant states to deal harshly with skyjackers.¹⁴⁴

C. *A New Approach to Deterrence: Sanctions Imposed for State Actions that Encourage Commission of the Offense*

In addition to measures designed to deter skyjackers, the Bonn Declaration focuses on sanctions designed to deter nations from encouraging the commission of the offense. In effect, the spirit of the Declaration is a recognition of the fact that states are frequently *de*

ber 21, 1973. Murphy, *International Legal Controls of International Terrorism: Performance and Prospects*, 63 ILL. B.J. 444, 447 (1975).

140. A Department of State memorandum of law submitted to the French Foreign Ministry and to the Justice Ministry in support of the request for extradition of Willie Roger Holder and Mary Katherine Kerkow summarizes the United States' position. That memorandum in part states:

While there are cases in years past in which states held a particular hijacking to be a *political offense* where the persons involved were fleeing from tyranny and faced severe political persecution if they returned, the danger inherent in the increasing incidence of aircraft hijacking in more recent years has . . . given grounds for a presumption that *aircraft hijacking is a most serious common crime regardless of the circumstances*.

1975 DIG. U.S. PRAC. INT'L L. 172 (emphasis added).

141. Algeria and Lebanon have repeatedly given aid or granted asylum to skyjackers, Abramovsky (pt. 3), *supra* note 4, at 461, and were among the nations, as ICAO members, that voted against the inclusion of any provisions in proposed conventions that would call for joint action against nonparty states. It should be noted that France also voted against such provisions, yet was a party to the Bonn Declaration, which contemplates joint action against recalcitrant nonparty states. See ICAO Doc. 9050-LC/169-1, at 88-89.

142. In particular, the "severe penalties" urged in the Hague Convention. See text accompanying note 33 *supra*.

143. Abramovsky (pt. 1), *supra* note 5, at 398-99.

144. Abramovsky predicted the promulgation of a measure like the Bonn Declaration: *Failure to adopt a significant Convention could lead states with a substantial interest in international air transport to resort to unofficial collective or unilateral action which might seriously affect the economic well-being and sovereignty of states deemed by them to have acted contrary to the best interests of international civil aviation.*

Abramovsky (pt. 3), *supra* note 4, at 463 (emphasis added). Compare note 158 *supra*.

facto accomplices to acts of skyjacking.¹⁴⁵ Giving safe refuge to a skyjacker amounts to aiding and abetting the offender,¹⁴⁶ and the existence of havens of refuge encourages the perpetration of skyjacking.¹⁴⁷ The rationale of the Declaration would appear to be that foreclosing the possibility of a skyjacker finding refuge reduces the attractiveness of the offense.¹⁴⁸

In addition to eliminating refuge for skyjackers, the Declaration mandates that states actually prosecute offenders rather than merely submit their cases to prosecution.¹⁴⁹ It does not appear, however, that this will have a substantial deterrent impact. The prosecution and light sentencing practices of West Germany have failed to discourage refugees from skyjacking aircraft and landing in that state.¹⁵⁰ It is foreseeable that if states which have traditionally harbored terrorist skyjackers begin prosecuting them, they will imitate the lenient West German and French practice. As a Bonn Justice Ministry official stated in reference to the Declaration, "An offending nation could conform to the letter, if not the spirit of the demand by merely imposing token sanctions on skyjackers."¹⁵¹ If a state violates the terms of the Declaration, the question arises whether a legal basis exists for application of the consequent sanctions — does the Bonn Declaration have internationally valid legal force?

D. Legal Enforceability of the Bonn Declaration

Between parties, the legal force of the Declaration is uncertain. According to customary international law, an unsigned declaration

145. Abramovsky (pt. 3), *supra* note 4, at 462, 483. National complicity must be considered in light of the fact that a state can, with impunity, refuse to implement its obligations under the Tokyo, Hague, or Montreal Convention, but no penalty can be attached to such breach. AGRAWALA, *supra* note 30, at 120.

146. See text accompanying note 94 *supra*.

147. *Id.*

148. This is clear considering the absurdity of skyjacking a plane with nowhere to go. Although aircraft has been skyjacked merely for the purpose of seizure and the immediate attention to the individual which follows, such cases are rare; this type of offender has been described as: "[T]he mentally deranged individual who has chosen hijacking either as a device to gain recognition and notoriety or as a mode of escape from intolerable psychological pressures." Abramovsky (pt. 1), *supra* note 5, at 383. Moreover, since 1968, skyjacking has evolved from a crime committed primarily for personal reasons into a tactic employed primarily by terrorists. Evans, *supra* note 9, at 648.

149. The Hague Convention, merely required the *submission* of alleged offenders to prosecutorial authorities. Hague Convention, *supra* note 5. See note 29 *supra*, and accompanying text.

150. See note 98 *supra*; see also text accompanying note 101 *supra*.

151. Trimborn, *supra* note 7.

has moral but not legal effect; it is at best a promise to enact the contents in a legally enforceable form.¹⁵² Conversely, the Vienna Convention implies that such agreements do have legal force, but fails to elaborate on the point.¹⁵³ The question becomes academic when one considers the substantial interests shared by the parties to the Declaration, for they are among the nations most susceptible to terrorist skyjacking¹⁵⁴ and have repeatedly suffered from such incidents.¹⁵⁵ The more important question lies in the last sentence of the Declaration, which implies that in order for anti-skyjacking laws to be effective, all states must comply with the provisions of the Declaration.¹⁵⁶

The legal force of the Declaration upon non-party states is of critical importance; it is against these nations that the Declaration's sanctions were most likely intended to apply.¹⁵⁷ The Declaration calls for the imposition of its sanctions upon *any* state that violates its provisions, whether or not the state in question is a party to the Declaration or any other civil aviation convention.¹⁵⁸ Certain principles of international law suggest that such application would be valid; some suggest otherwise.

As a matter of customary international law, a state may not be bound to the terms of an agreement to which it is not a party. The Vienna Convention states that "[a] treaty does not create either obligations or rights for a third state without its consent."¹⁵⁹ Furthermore, it seems that imposing sanctions upon non-party states is repugnant to the customary international law concept of state sovereignty.¹⁶⁰ While this argument is viable, it is susceptible to the

152. 5 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW 34, 35 (1943).

153. "The fact that the Convention does not apply to international agreements . . . not in written form, shall not effect . . . the legal force of such agreements." Vienna Convention, *supra* note 26, art. 3(a).

154. See note 137 *supra*, and accompanying text.

155. See generally Evans, *supra* note 9, for a statistical analysis.

156. This has been stated by one writer as an obvious necessity: "*Only the imposition of international obligations on all states, and consequent national legislation to give effect to such obligations, could prove really fruitful . . . since the states most willing to punish hijackers are not the ones wherein the hijackers generally land or escape to.*" AGRAWALA, *supra* note 30, at 21, 132 (emphasis added). It has also been noted that in order for the Tokyo, Hague, and Montreal Conventions to be effective, "adherence by all states is necessary." Abramovsky (pt. 3), *supra* note 4, at 482.

157. Abramovsky (pt. 3), *supra* note 4, at 452.

158. The Declaration implicitly refers to *any* nation where it states, "[I]n cases where a country refuses extradition or prosecution . . ." Bonn Declaration, *supra* note 1, and text accompanying note 125 *supra* (emphasis added).

159. Vienna Convention, *supra* note 26, art. 34.

160. This is one of the main arguments of "nations seeking to restrict the applicability of

rebuttal that a treaty may become binding upon a third state as a customary rule of international law. The Vienna Convention expressly states this principle as well.¹⁶¹ A more forceful rebuttal can be made, however, on the basis of two other principles of international law — *jus cogens*¹⁶² and the “protective principle.”¹⁶³

Whiteman states: “*Jus cogens* takes precedence in the realm of international law over *customary* and conventional international law.”¹⁶⁴ *Jus cogens* is defined by the Vienna Convention as a “[p]eremptory norm of general international law,” which is “accepted and recognized by the international community of states . . . as a norm *from which no derogation is permitted* and which can be modified only by a subsequent norm of general international law having the same character.”¹⁶⁵ This concept refers to certain obligations and rights to which no contradiction is acceptable.¹⁶⁶

The obligations incumbent upon nations flowing from *jus cogens* are owed to all nations; correlatively, each nation has the right to expect all other nations to honor those obligations. The International Court of Justice, in recognizing this axiom, has stated that “such obligations derive, for example, in contemporary international law from the outlawing of acts of aggression”¹⁶⁷ Skyjacking is an aggressive act which is so reprehensible as to be not only illegal but universally wrong (*malum in se*). Hence, it is a

proposed joint-action instruments to member states.” Abramovsky (pt. 3), *supra* note 4, at 467.

161. “Rules in a treaty become binding on third States through international custom. Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such.” Vienna Convention, *supra* note 26, art. 38. In a mock skyjacking trial, Chesterfield Smith argued that a rule set forth in a treaty may become binding upon a third state as a customary rule of international law in light of the Vienna Convention. WORLD PEACE THROUGH LAW CENTER, ABIDJAN DEMONSTRATION TRIAL ON AIRCRAFT HIJACKING 40-41 (1975).

162. *Jus cogens* literally means compelling law. Whiteman, *supra* note 3, at 609 n.1.

163. The “protective principle” is a legal concept which justifies a nation taking protective, extraterritorial action:

A state has jurisdiction to prescribe a rule of law attaching legal consequences to conduct outside its territory that threatens its security as a state or the operation of its governmental functions, provided the conduct is generally recognized as a crime under the law of states that have reasonably developed legal systems.

RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 33, para. 1 (1965) [hereinafter cited as RESTATEMENT (SECOND)].

164. Whiteman, *supra* note 3, at 609 (emphasis added).

165. Vienna Convention, *supra* note 26, art. 53 (emphasis added).

166. “Norm” refers to both obligations and rights. Kelsen & Tucker, *supra* note 27, at 456.

167. Whiteman, *supra* note 3, at 610.

violation of *jus cogens*.¹⁶⁸

Because skyjacking is an aggressive act violating *jus cogens*, providing sanctuary for skyjackers can also be considered to be a commission of the crime.¹⁶⁹ States providing sanctuary violate *jus cogens* irrespective of whether or not they are party to an international agreement such as the Bonn Declaration. Therefore, non-party states, as a consequence of their violating *jus cogens*, are subject to sanctions notwithstanding the Declaration. *Jus cogens* is not created by agreement (*ex contractu*); it is a set of fundamental "guiding principles reflecting the basic values of the international society in its actual stage of development."¹⁷⁰ *Jus cogens* provides a legal basis for considering non-party, harboring states to be in violation of international law. The protective principle, by analogy, provides a legal basis for imposing sanctions.

The protective principle allows a state to obtain jurisdiction over an individual who commits an offense outside its territory.¹⁷¹ Acts (or omissions) that have a "potentially dangerous effect" upon security or governmental functions justify a state in taking protective measures.¹⁷² This principle justifies the imposition of the sanctions prescribed by the Bonn Declaration against nations providing sanctuary for skyjackers. As one commentator forcefully states,

By serving as sanctuaries to offenders, states encourage the perpetration of unlawful acts, which, occurring outside their territorial boundaries, affect the social, economic, and political interests of other states. No rule exists in international law which condones such activity, nor does international law mandate inaction by states whose nationals and economic interests are victimized. While acts of force may be prohibited, no restriction is placed upon states which take affirmative action in the form of denial of goods or services in order to obtain compliance with interna-

168. Whiteman lists matters "outlawed or needed to be outlawed by world consensus under international law (*jus cogens*).” Included therein are both "[h]ijacking of air traffic" and "[p]olitical terrorism abroad, including terroristic activities.” *Id.* at 625. The fact that skyjacking violates a developing norm has been noted: "The safety and development of international civil aviation which greatly helps to create and preserve friendship and understanding among nations and peoples of the world, is *in the nature of a developing basic norm (jus cogens)*." AGRAWALA, *supra* note 30, at 133 (emphasis added).

169. See Abramovsky (pt. 3), *supra* note 4, at 483.

170. Whiteman, *supra* note 3, at 615 (statement of Prof. Suy).

171. RESTATEMENT (SECOND), *supra* note 163, and accompanying text.

172. *Id.* Comment C, in part, states: "Under the rule stated in Subsection (1) of this Section, a state may prescribe a rule of criminal law applicable to conduct outside its territory . . . that has a potentially adverse effect upon its *security* or governmental functions." *Id.* (emphasis added).

tional law and to ensure the safety of international civil aviation and world peace. States which systematically harbor perpetrators or otherwise aid and abet the perpetration of inimical acts should not be permitted to hide behind the shield of sovereignty in order to prevent reaction to acts which are designed to affect adversely beyond their own boundary. Thus [retaliatory sanctions] need not be predicated upon offending states' violations of treaties which they did not ratify, but rather acts or omissions which aid and abet the perpetration of unlawful acts outside their national boundaries.¹⁷³

This concept means that a state should not be barred, under the principle of sovereignty, from taking nonviolent action against a state whose acts or omissions materially and detrimentally affect it.¹⁷⁴ To hold otherwise is to deny the universal right of self-defense; when an injury is inflicted, it is the right of the injured to take steps to prevent a reoccurrence of the injurious offense.¹⁷⁵ Although, as argued above, there is a legal basis for application of the Declaration's sanctions, it is important to consider foreseeable problems of enforcement.

V. AIRCRAFT BOYCOTT: PROBLEMS OF ENFORCEMENT

There are three basic aspects to examine concerning enforcement of the Bonn Declaration's sanctions — the acceptance of such action by the international community, the willingness of states to engage in enforcement measures, and finally, in light of national practice regarding the treatment of skyjackers, the effectiveness of enforcement in achieving the goal of eradicating skyjacking.

A. *Historical Legal Basis for Enforcement*

While in theory it can be said that the Bonn Declaration applies to both party and non-party states, the question of how to effectively and legally enforce the Declaration remains. Is there an historical legal basis for assuming that the imposition of sanctions upon a recalcitrant state would produce the desired results and be tolerated by the international community? The Cuban Missile Crisis of 1962 provides a good example of this problem and suggests

173. Abramovsky (pt. 3), *supra* note 4, at 483-84.

174. See SCHWARZENBERGER & BROWN, *supra* note 25, at 150, where it is noted that retaliatory sanctions "are in themselves illegal. They receive however, their justification from being acts of retaliation against a *preceding* illegal act by a party against which reprisals are applied." *Id.* (emphasis added).

175. *Id.*

an answer to this question.¹⁷⁶

In response to the shipping and installation of medium-range nuclear missiles in Cuba by the Soviet Union, the United States imposed a "quarantine" on Cuba. This action consisted of a blockade by United States Naval Forces of all ships bound for Cuba. The quarantine was intended to prevent further missile shipments and to induce the Cuban government to remove the missiles.¹⁷⁷ Although Cuba and the Soviet Union strongly protested this action, shipments were discontinued and existing missiles were removed.¹⁷⁸ Two multilateral treaties provided legal foundation for the United States blockade: The Inter-American Treaty of Reciprocal Assistance (Rio Treaty)¹⁷⁹ and the Charter of the United Nations.¹⁸⁰

Under the Rio Treaty, if the "[p]eace of [the] America[s]" is endangered, then *inter alia* the "interruption" of sea communications and use of armed forces may be imposed.¹⁸¹ In appropriate circumstances, these actions are in conformity with Chapter VIII of

176. The analogy to the subject of this Comment is that insofar as nations within a region share certain territorial interests and can justify self-help on the basis of the protection of those interests, industrialized nations which mutually depend upon the security of air traffic can likewise justify collective self-help to protect that interest. See generally Meeker, *Defensive Quarantine and the Law*, 57 AM. J. INT'L L. 515 (1963), for an analysis and justification of regional response to situations that endanger regional peace.

177. Wright, *The Cuban Quarantine*, 57 AM. J. INT'L L. 545, 547-48 (1963).

178. *Id.* at 548.

179. Inter-American Treaty of Reciprocal Assistance, Sept. 2, 1947, 62 Stat. 1681, T.I.A.S. No. 1838, reprinted in H. DE VRIES & J. RODRIGUEZ-NOVAS, *THE LAW OF THE AMERICAS* (1965) [hereinafter cited as Rio Treaty]. See also Kunz, *The Inter-American Treaty of Reciprocal Assistance*, 42 AM. J. INT'L L. 111 (1948).

180. Meeker, *supra* note 176, at 519. Among the signatories to the treaty are Cuba and the United States. U.N. CHARTER, reprinted in [1946-1947] U.N.Y.B. 831, and every volume of U.N.Y.B. *seriatim*.

181. The Rio Treaty, in part, provides for collective action:

If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an aggression *which is not an armed attack . . . or by any other fact or situation that might endanger the peace of America . . .* [foreign ministers of the Member States will] meet immediately in order to agree on the measures which must be taken in case of aggression to assist the victim of the aggression or, in any case, the measure which should be taken for the *common defense* and for the maintenance of the peace and security of the Continent.

Rio Treaty, *supra* note 179, art. 6 (emphasis added). The sanction provision states:

For the purposes of this Treaty, the measures on which the [foreign ministers of the Member States] may agree will comprise one or more of the following: recall of chiefs of diplomatic mission; breaking of diplomatic relations; breaking of consular relations; partial or complete interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic, and radiophonic communications; and the use of armed force.

Id. art. 8.

the United Nations Charter, which provides that regional agencies may take security action to maintain international peace.¹⁸² Assuming Soviet and Cuban actions constituted a threat to international peace and security, the defensive blockade by the United States was a lawful response.¹⁸³

Harboring skyjackers is a threat to international security, because it encourages the commission of the offense.¹⁸⁴ If the Cuban quarantine can be considered an appropriate means to compel the removal of nuclear missiles, then an aircraft boycott can be considered an appropriate means to bring about the elimination of sanctuaries for skyjackers.¹⁸⁵ The effective employment of those means, however, is dependent upon the number of nations that will undertake enforcement measures.

B. Willingness of Nations to Enforce the Bonn Declaration's Sanctions

In the event a state refuses to adequately punish or extradite an apprehended skyjacker, sanctions must be imposed. This should involve multilateral action; collective application of sanctions have more impact than action taken by individual states.¹⁸⁶

Presently, the probability of this response is doubtful, because the detrimental economic consequences of an aircraft boycott would affect the boycotting states as well as the recalcitrant states.¹⁸⁷ The willingness of states to impose sanctions upon other states is a function of relative economic detriment,¹⁸⁸ unless a state

182. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

U.N. CHARTER art. 52, para. 1.

183. Meeker, *supra* note 176, at 519.

184. See Whiteman, *supra* note 3, at 625.

185. A successful international skyjacking is defined as one in which "an aircraft is diverted to a foreign destination from its scheduled domestic or foreign destination . . ." Evans, *supra* note 9, at 641-42. If there were no possible "destinations," that is, no nations where a skyjacker would benefit from landing, there would not be a possibility of a meaningful success.

186. AGRAWALA, *supra* note 30, at 136.

187. *Id.*; see note 133 *supra*.

188. [E]nforcement depends upon the willingness of the states. This willingness is born out of necessity, compulsion [, or both]. [The] U.S.A. has been the most ardent supporter of stringent measures against hijackers since the beginning because more U.S. aircrafts have been hijacked to date than of all other states put together. The Soviet Union joined hands with [the] U.S.A. only after the hijacking of Soviet planes. Japan ratified the Tokyo Convention only after its plane was hijacked in

significantly suffers from acts of skyjacking, it is unlikely to act in a manner that would ultimately cause more damage to itself than the damage sustained from incidents of skyjacking. The coordinated international response necessary to enforce effectively the Bonn Declaration sanctions will not be possible unless conditions exist that make enforcement of the Declaration an economic necessity.¹⁸⁹ Assuming such conditions will arise, the question then becomes whether enforcement of Declaration sanctions can succeed in deterring illegal seizures of aircraft.

C. *Preconditions for the Meaningful Imposition of Sanctions*

If the imposition of sanctions upon states is to be meaningful, there must be certainty, at the national level, of severe legal consequences for acts of skyjacking. This could be accomplished by instituting mandatory extradition provisions, rigorous sentencing of offenders, or both. Mandatory extradition would compel the limiting of the political offense and the political refugee exceptions; if only the political offense exception were limited, countries sympathetic to terrorists would be able to refuse extradition using the political refugee criteria.¹⁹⁰

The institution of effective sentencing would significantly avoid the problems that flow from conflicting views of extradition. Because skyjacking is recognized as an offense against international public order,¹⁹¹ it is reasonable that the criminal punishment of the offense be to the satisfaction of all states, rather than merely those prosecuting the offense.¹⁹² Although this solution would interfere with the judicial discretion of the prosecuting state, it would be less of an affront to that state's sovereignty than would be mandatory extradition, which would force a government to remove a person from its jurisdiction.¹⁹³ Moreover, assuming that a multilateral agreement can be reached defining what constitutes an effective "severe" penalty, the issues of sovereignty and judicial discretion

1970 The ratifications of the Hague Convention to date [do not include] the problem states of the Middle East, the Caribbean and the Mediterranean. Though some of the hijackings have been from such states too, but they have been relatively too few to outweigh the political compulsion of these states which encourage rather than deter and punish acts of unlawful interference with civil aviation.

AGRAWALA, *supra* note 30, at 137.

189. *Id.*

190. *Id.* at 133.

191. See Whiteman *supra* note 3, at 625.

192. See text accompanying note 173 *supra*.

193. See SCHWARZENBERGER & BROWN, *supra* note 25, at 51-54.

will be rendered moot for nations that regard their treaty obligations as supreme national law.¹⁹⁴

VI. CONCLUSION

Despite international measures of deterrence, skyjacking continues to be a considerable burden upon civil aviation and public order, largely due to the leniency of certain states.¹⁹⁵ The Bonn Declaration on Hijacking is a recognition of this situation in that it relates to international terrorism and is the first international agreement calling for the use of aircraft boycotts to force recalcitrant nations to deal firmly with skyjackers.¹⁹⁶ There are several factors, however, that will hinder the Declaration's effectiveness.

While the Bonn Declaration goes beyond existing international agreements by requiring prosecution of alleged skyjackers where extradition is denied,¹⁹⁷ it is unlikely to have much impact on current state practice,¹⁹⁸ because perfunctory prosecution resulting in token sentences complies with that mandate.¹⁹⁹ Nations, for economic and ideological reasons, differ regarding what constitutes a suitable penalty for the offense — sentencing policies and practices vary accordingly.²⁰⁰ The more lenient practices derive from political exceptions,²⁰¹ which pose a major, unresolved obstacle to the implementation of tough, mandatory sentencing standards.

So long as potential skyjackers can rely on light sentences from sympathetic states, they will continue to believe that the benefits of skyjacking outweigh the legal consequences.²⁰² As international terrorists continue to employ skyjacking, the world community will have to decide a difficult question — whether the “Pandora's box”

194. *Id.* at 123.

195. See notes 48-49 & 98 *supra*.

196. The likely effect of a Bonn Declaration-type sanction has been summed up elsewhere, but note should be taken of the central importance of *application and enforcement* of these sanctions, as discussed in this Comment:

Suspending all commercial air service to any state granting safe haven to skyjackers, disregarding any political motives, would be an effective deterrent at minimal cost with maximum effect. It would serve notice on members of the world community that sheltering skyjackers and their accomplices is a tortious act, the remedy for which is a *universally applied, collectively enforced* economic sanction.

FRIEDLANDER, *supra* note 47, at 121 (emphasis added).

197. See note 149 *supra*.

198. See note 49 *supra*.

199. See text accompanying note 151 *supra*.

200. See note 120 *supra*.

201. See notes 38-84 *supra*.

202. See note 99 *supra*, and accompanying text.

of political exceptions is worth keeping open for the benefit of a few people.²⁰³

If the safety of international civil aviation is considered to be a normative international standard (*jus cogens*),²⁰⁴ there can be no exceptions to the imposition of criminal liability for skyjacking, even where the skyjacking is politically motivated.²⁰⁵ In addition, nations that harbor skyjackers also violate *jus cogens* and are vulnerable to retribution from injured nations, regardless of the non-existence of applicable, binding treaties.²⁰⁶ The effectiveness of retribution, such as an aircraft boycott, is dependent upon collective action by many nations.²⁰⁷ Ultimately, however, cooperative international action is dependent upon economics; effective, joint international efforts to deter states from harboring skyjackers will not be implemented until skyjacking becomes economically intolerable.²⁰⁸

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203. This follows from the view that:

As long as even one safe haven remains, as long as the political offense exception . . . is still applied to ideologically motivated offenders, and as long as political considerations take precedence over *the public's absolute right to safe passage under any and all conditions*, fear will continue to ride the skies as an unwelcome companion for air travellers everywhere.

FRIEDLANDER, *supra* note 47, at 140-41 (emphasis added).

204. See Whiteman, *supra* note 3.

205. See Vienna Convention, *supra* note 26, art. 53, and text accompanying note 165 *supra*.

206. See Abramovsky (pt. 3), *supra* note 4, at 483.

207. See AGRAWALA, *supra* note 30, at 136.

208. *Id.* at 137.