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AIRSPACE SOVEREIGNTY: BASIC PRINCIPLES AND THEIR SIGNIFICANCE FOR STATE SECURITY

Starting from February 24, 2022, all of Ukraine suffers from illegal, terrorist, barbaric interference on its territory, which takes place both on the ground and in the air. It is a pity that the basic principles, which are clearly defined by international agreements adopted after the Second World War in order to avoid further military conflicts, are now again rudely and brazenly violated by some and do not receive effective protection from others.

Therefore, the purpose of this report is to recall again the basic principles of airspace sovereignty, established by the Chicago Convention and main international treaties.

The Second World War, which made necessary the rapid organization of a world network of airways, focused particular attention on the needs and possibilities of civil air transport. Inevitably, one of the effects of the war was the development and evolution of uniform rules for the conduct of international civil aviation by the nations of the world. Given the ominous surge of air power that nations had demonstrated during the war, there was no doubt that this objective was stimulated by the urgent need for ensuring the security of nations.

Out of these fears and hopes emerged the International Civil Aviation Conference, which began on November 1, 1944, The Conference was a result of an initiative of the Government of the US, which invited 54 states [1, p. 3-4] and representatives of two governments-in-exile, to discuss uniform principles

that would lead to the development of international air transport as a post-war measure. This conference led to the adoption of its Final Act which contained the texts of four instruments. The first of these agreements was the Chicago Convention — one of the most effective international treaties entered into by the nations of the world, signed by 52 states

The Convention has served as a useful and powerful vehicle to restate certain principles of international law applicable world-wide, irrespective of ICAO membership, namely, sovereignty of each state in its airspace.

Article 1 of the Chicago Convention states that ‘the contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory’ [2, Art. 1]. It is true that between 1900 and 1914 there were certain over-emphasized doctrinal disputes as to whether the ‘air’ as free. The quoted article means that every member state of ICAO has formally acknowledged: airspace above national lands and waters is an integral part of the territory of a state whether the latter is or is not a member of ICAO. Article 1 thus states international law believed to have already had world-wide acceptance when the Chicago Convention was signed.

The decision to include this important provision at Chicago was not accidental [1, p. 18]. It had been recommended in substance in the British statement of position and had been included practically verbatim in the Canadian draft convention. The US, on the other hand, had presented a draft convention which would have provided that the high contracting parties recognized that each contracting state has complete and exclusive sovereignty over its airspace. The conference did not accept the limited US proposal but reasserted the broad provisions of the Paris and Havana Conventions, thereby accepting again the principle of airspace sovereignty as an existing part of international law applicable world-wide.

There needs to be an effective, truly international agreement on a more reasonable international air law, based on the understanding that such law will apply primarily to commercial use. Even if it is expressly agreed that the entire space above five miles is free space, analogous to the high seas, each country can still prohibit suspicious or threatening military vehicles from passing through its territory or even coming too close, according to the application adopted the doctrine of self-defense [3, p. 56-57].

It should be emphasized any such international agreement will certainly not be unanimously accepted by the nations concerned. Regardless of the advantages such a plan may have over the existing situation or other proposed ideas, there will be a natural reluctance based on selfish interests and mutual distrust that will slow the rate of adoption by individual states. In any case, such an agreement, if it is really beneficial to all nations, will become more popular in time.

State Sovereignty is a fundamental principle of international law. However, the term is very often used in a political sense, with differing interpretations depending on context and intention. The notion of sovereignty is dynamic, evolving with the development of the global institutional environment. In aviation, sovereignty refers to the ownership of airspace. In other words, to the exclusive competence of a State to exercise its legislative, administrative and judicial powers within its national airspace [4, p. 98-99]

However, air navigation services require a global, seamless, and performance-based approach to govern of airspace, rather than one based on national borders. For this to materialise, all stakeholders need a fully developed understanding of the meaning of national sovereignty consistent with present and future political, economic and social realities. Such an understanding of the concept of sovereignty does not require any amendment to the Chicago Convention.

State sovereignty is closely connected to the definition of States' obligations under Article 28 of the Chicago Convention. The text and spirit of Article 28 do not oblige States to provide air navigation services over their territory themselves. Rather, Article 28 prescribes that when and where States elect to provide facilities and services to support international air navigation, these facilities and services must comply with ICAO Standards and Recommended Practices [2, Art. 28]. In other words, States' responsibilities are of a regulatory and supervisory nature. States are required to take appropriate measures to ensure compliance in respect of safety and operational efficiency. National sovereignty cannot be delegated. But the responsibility for the performance of functional responsibilities, such as the provision of air navigation services, can be delegated to third parties. States retain complete freedom to designate a third party service provider, be it a national or foreign entity [5, p. 331]. Delegation to a foreign organisation is not an abandonment of sovereignty; sovereign competences are not impacted. On the contrary, delegation of service provision is an act of sovereignty. The delegating State prescribes the conditions under which the delegation is agreed, and the delegation can be revoked at any time. There are examples of successful cross-border air navigation services provision in all regions of the world. There is a mutual delegation between the USA and Canada; Tonga and Samoa have a delegation to New Zealand; there are various delegations in Europe from and to Finland, France, Norway, Sweden and Switzerland. The legal basis for these delegations is not in question [6, p. 338]. When delegating the functional responsibility for service provision to a foreign entity, the delegating State retains a residual liability under Article 28 of the Chicago Convention. However, that liability is limited to the obligation to ensure that the service delivery activity is properly regulated, the service provider duly certified, and that adequate and effective supervision is exercised.

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СУЧАСНИЙ КІБЕРТЕРОРИЗМ ЯК ЗАГРОЗА НАЦІОНАЛЬНІЙ БЕЗПЕЦІ

Модернізація суспільства та розвиток інформаційних технологій призвели до масового використання ресурсів Інтернету. З появою глобальної мережі виник один з найбільш небезпечних різновидів кіберзлочинності, а саме кібертероризму, який під час терористичних акцій вдається до новітніх досягнень науки і техніки.

Уперше термін «кібертероризм» був використаний 1980 року старшим науковим співробітником Каліфорнійського інституту безпеки і розвідки Баррі Колліном. У ті роки мережа ARPANET Управління перспективних розробок Міноборони США об'єднувала всього кілька десятків комп'ютерів. Дослідник був упевнений, що з часом можливості кібермереж будуть використані терористами, хоча і вважав, що станеться це приблизно у першому десятилітті XXI ст. [1].

На сучасному етапі терористи активно використовують можливості мережі Інтернет, а саме: легкий доступ до мережі, практично повна відсутність цензури, великий масштаб аудиторії, анонімність тощо. У наші дні вони розглядають глобальну мережу головним чином як засіб пропаганди та передачі інформації.