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### **Concept of acts of unlawful interference in the activities of civil aviation in international law and domestic law of Ukraine**

*The authors make a comparative analysis of the concept of the act of unlawful interference in the activities of civil aviation in international and domestic law of Ukraine.*

Since the second half of the last century, the problem of ensuring the aviation security – safeguarding against acts of unlawful interference in the activities of civil aviation – has attracted the increased attention in international law. At present, safeguarding against acts of unlawful interference is the highest priority among other aspects of aviation security in the direction of international cooperation. According to paragraph 2.1.1 of the Annex 17 “Security” to the Convention on International Civil Aviation (hereinafter – “Chicago Convention of 1944”) [1; 2], each Contracting State shall have as its primary objective the safety of passengers, crew, ground personnel and the general public in all matters related to safeguarding against acts of unlawful interference with civil aviation.

As stated in the preamble to the Convention on Suppression of Unlawful Acts in Civil Aviation (hereinafter – “Beijing Convention of 2010”), “unlawful acts against the safety of civil aviation jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation” [3]. Ukraine was an exception to these statistics for a long time, but scientists have repeatedly warned that the main merit in this goes to the absence of political factors of terrorism in our country, and not to the perfect mechanism of aviation security, which, unfortunately, on July 17, 2014 was confirmed by shoot-downing Malaysia Airlines Flight 17 (MH17/MAS17) occurred during the war in Donbas over territory controlled by Russian separatist forces [4].

Since the middle of the 20<sup>th</sup> century, the world community has adopted only a few conventions in this area. Only in 2020 and 2014, at the ICAO level, some of the leading aviation states of the world signed documents aimed to introduce a new international legal order safeguarding against acts of unlawful interference, namely: the Beijing Convention of 2010 [3], the Beijing Protocol of September 10, 2010 [5] and the Montreal Protocol of April 4, 2014 [6]. These three documents directly relate to three outdated conventions (the Tokyo Convention of 1963 [7], the Hague Convention of 1970 [8], and the Montreal Convention of 1971 [9]), which in their entirety constitute the effective conventional mechanism for safeguarding against acts of unlawful interference.

In this period, the equally long-awaited new Air Code of Ukraine of 2011 was adopted in Ukraine [10]. On March 21, 2017 the Law of Ukraine N 1965-VIII approved a new State Civil Aviation Security Program [11] as the previous one of 2003 was definitely outdated and needed updating.

The concept of aviation security, since its inception, has been defined through the concept of an acts of unlawful interference, which in its nowadays sense did not develop immediately. In the Tokyo Convention of 1963, the concept of “offences and certain other acts committed on board aircraft” was used instead of the concept of “acts of unlawful interference in the activities of civil aviation” [7]. In the Montreal Convention of 1971, the phrase “unlawful acts against the safety of civil aviation” was used for the first time, the meaning of which is close to the meaning of the concept of “acts of unlawful interference”. Unlike the Tokyo Convention of 1963, the Montreal Convention of 1971 applies to other acts that threaten the safety of an aircraft in flight, even if they are not carried out on board [9].

The Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation of February 24, 1988 amending the Montreal Convention of 1971 extended its scope also to the acts of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death and acts which destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport [12].

In 2006, only in the eighth edition of the Annex 17 to the Chicago Convention of 1944, a definition and a list of acts of unlawful interference appeared, which are defined as the acts or attempted acts such as to jeopardize the safety of civil aviation and air transport, i.e.: a) unlawful seizure of aircraft in flight; b) unlawful seizure of aircraft on the ground; c) hostage-taking on board aircraft or on aerodromes; d) forcible intrusion on board an aircraft, at an airport or on the premises of an aeronautical facility; e) introduction on board an aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes; f) communication of false information such as to jeopardize the safety of an aircraft in flight or on the ground, of passengers, crew, ground personnel or the general public, at an airport or on the premises of a civil aviation facility [1].

The Beijing Convention of 2010 is actually an attempt at a more complete codification of international legal norms on safeguarding against “unlawful acts in relation to civil aviation” than previous conventions in this area. It provides a detailed but not exhaustive list of such acts and contains a number of important innovations. Thus, paragraph 1 of Article 4 determines the responsibility of legal entities for committing acts of illegal interference by officials responsible for the management or control of this legal entity. Such liability may be criminal, civil or administrative. The Beijing Convention of 2010 in Article 1 also recognizes that person also commits an offence if that person attempts to commit, organizes or directs others to commit, participates as an accomplice in, unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offence [3]. Ukrainian scientist Filippov A.V. quite rightly believes that among the weaknesses of the 2010 Beijing Convention is that its norms (as well as the norms of previous conventions in this area) do not apply to the state aircraft, as well as to the unlawful acts against civil aviation by the armed forces of states [4].

The effective Air Code of Ukraine of 2011 does not contain the definition of acts of unlawful interference, which was in paragraph 2 of Article 72 of the old Air Code of Ukraine of 1993. Instead, the effective Air Code of Ukraine of 2011 in Article 86 sets a list acts of unlawful interference, which is a literal translation of the list from Chapter 1 of the Annex 17 to the Chicago Convention of 1944 [10].

The State Civil Aviation Security Program [11] in subsection 6 of paragraph 2 contains a list of acts which are identical to the ones in the effective Air Code of Ukraine of 2011, and to which the term “act of unlawful interference” is used. Acts determined by Article 86 of the Air Code of Ukraine of 2011 and by subsection 6 of paragraph 2 of the State Civil Aviation Security Program contain the features of crimes defined by Articles 258, 259, 261, 269, 270, 277-282 of the Criminal Code of Ukraine of 2001 [13].

**Conclusions.** As a conclusion, it can be noted that the gradual introduction of the effective legislation of Ukraine in the field of aviation security in accordance with the international (in particular, European standards) is at present a necessary step on the path of Ukraine’s integration into the EU. However, Ukraine will never catch up the EU, if it will simply copy the effective EU law, without taking into account its latest trends of development that takes place in the context of modern international law.

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