



EMERGING THREATS IN A CHANGING WORLD: BEIJING CONVENTION ON AVIATION SECURITY TO ENTER INTO FORCE ON 1 JULY 2018

Following the recent ratification by the Turkish government, the International Civil Aviation Organisation ("ICAO") has announced that the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (the "Beijing Convention") will enter into force on 1 July 2018.

In this briefing we identify the key aspects of the Beijing Convention, its ramifications for the airline industry, and preparatory steps airlines should consider to ensure their observance.



The Beijing Convention in brief

The Beijing Convention creates a new international legal framework by requiring States to criminalise a number of emerging threats to the safety of civil aviation. These include using an aircraft as a weapon and the organising, directing and financing of acts of terrorism.

Major trading nations that have signed the treaty include the United States, United Kingdom, People's Republic of China and South Korea. However, none of these countries have, to date, formally deposited their instruments of ratification with ICAO. A link to the list of States that are parties to the Beijing Convention can be found on the ICAO website¹.

Why was a new security convention required?

The tragic events of 11 September 2001 highlighted several weaknesses in the international legal regime relating to aviation security which the international community was struggling to address. This created the impetus for a nine-year process that led to the adoption of the 2010 Beijing Convention and Supplementary Protocol.

At the conclusion of the Beijing Diplomatic Conference on 10 September 2011, the US delegate

noted that "On the eve of the anniversary of the 9/11 terrorist attacks, the United States can think of no more fitting and hopeful way to mark that occasion than with the adoption of these two new major counterterrorism instruments."

What are the key points of the Beijing Convention?

The Beijing Convention and Supplementary Protocol modernises the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971 and its Supplementary Protocol of 1988 (both signed in Montréal).

Parties that ratify the Beijing Convention agree to criminalise:

- The use of civil aircraft as weapons
- The use of dangerous materials to attack aircraft or other targets on the ground
- The illegal transport of Biological, Chemical, and Nuclear ("BCN") weapons and related material
- Hijacking and attacks on air navigation facilities by coercion or technological means. For example, ICAO has stated that cyber attacks on air navigation facilities are likely to constitute an offence under the Beijing Convention

Both the Convention and Supplementary Protocol also specifically cover the criminal liability of directors and organisers of an offence. Making a threat to commit an offence may also be criminally accountable when the circumstances indicate that the threat is credible.

The Beijing Convention also expands the grounds of jurisdiction under the earlier instruments by requiring each State Party to establish jurisdiction when the offence is committed by its national, and by enabling each State Party to establish jurisdiction when the victim of the offence is its national.

Of important note is that a legal entity (i.e. a company or other body corporate, such as an airline) may be held criminally liable if the applicable national law so provides.

What does the Beijing Convention mean for the airline industry?

While the airline industry has been generally supportive of any efforts by the international community to enhance aviation safety and security, the Beijing Convention has created a number of concerns, namely:

- **Inadvertent transportation of dangerous goods and BCN materials:** airlines legally transport

1. https://www.icao.int/secretariat/legal/List%20of%20Parties/Beijing_Conv_EN.pdf.

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certain categories of dangerous goods on a regular basis. There is a concern that in trying to stop criminal activities, the legitimate and lawful transport of these items may be negatively impaired

- **Transportation of military assets and weapons:** governments frequently lease, wholly or partly, aircraft to transport equipment (including BCN) for military purposes. While the Beijing Convention contains a military exclusion clause, it appears that this does not apply to military assets onboard civil aircraft

When considering the transport offences – which are likely to be of greatest concern to most carriers – the International Air Transport Association (“IATA”) proposed language at the Beijing Diplomatic Conference, whereby a carrier would have been conclusively deemed not to have committed one of these offences, if the carrier could demonstrate compliance with the requirements of the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air. Unfortunately, the Conference was not persuaded by IATA’s proposal and the issue remains one of uncertainty for the industry.

The Beijing Convention may create criminal exposures for carriers if processes and procedures are not properly managed. There is, therefore, a genuine concern in the industry that innocent carriers and their employees may find themselves embroiled in costly and time-consuming defences to criminal investigations for matters that arise out of the normal course of their operations.

How should airlines prepare for the Beijing Convention coming into force?

Questions still remain as to implementation on a national level, and how widespread global ratification will actually be, but the coming into force of the Beijing Convention may now be an opportune time for carriers to:

- Audit supply chain and cargo processes to ensure strict compliance with dangerous goods regulations
- Review contracts with government/military entities (including lease agreements where the lessee is a military entity)
- Consider seeking additional contractual indemnities to cover criminal defence costs (fines

are unlikely to be contractually recoverable) from business partners such as freight forwarders/ shippers/consignees, whose operations may inadvertently expose the carrier

- Check whether criminal defence costs for Beijing Convention (or connected) offences may be covered under their insurance policies
- Liaise with national government(s) to seek assurances in relation to particular areas of concern and/or interpretations of relevant terms

For further information on how the Beijing Convention may impact your business or any connected issues, please contact your usual contact at HFW or the author of this briefing:



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