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THE USE OF FORCE AGAINST CIVIL AIRCRAFT
INTRUSIONS: LEGAL CHALLENGES AND CHRISTIAN
ETHICAL PERSPECTIVES IN GREY ZONE CONFLICTS

INTRODUCTION

The growing threats posed by the misuse of civil aircraft in contemporary conflicts underscore significant gaps in international law [Geiß 2005]. Traditionally viewed as non-military, civil aircraft can be exploited for illicit purposes, including reconnaissance, smuggling, and terrorism. The events of September 11, 2001, demonstrated the devastating consequences of using commercial airliners as weapons [Bergen 2025], leading to renewed discussions on the legal parameters of self-defence [Szabó 2011], and the interception of civil aircraft [Schubert, 2021]. These aircraft, often under the guise of legitimate flights, were used for reconnaissance and transporting illicit goods like weapons and drugs.

This dual-use potential highlights the alarming risk to civil aircraft in hybrid warfare contexts. For example, an aircraft on a routine commercial flight may simultaneously collect intelligence or conduct psychological operations, such as influencing or intimidating adversaries. In some instances,

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non-state actors, insurgents, or terrorists may hijack or exploit these aircraft for attacks [Bergen 2025], as demonstrated in the September 11, 2001, attacks in the United States, where commercial airliners were weaponised for mass destruction.

Furthermore, current issues continue to grow in complexity, especially in “grey zones” where actions blur the line between peace and war, exploiting legal ambiguities to achieve political or military objectives without escalating into open conflict [Robertson 2022]. These tactics incorporate strategic ambiguity, wherein actions remain deliberately unclear to complicate legal accountability [ibid.]. Robertson demonstrated how such tactics were conducted below the war threshold to avoid direct military engagement and prevent escalation. Such multidimensional approaches incorporate cyberattacks, propaganda, economic pressure, unconventional military manoeuvres, and deniability through proxies, in which states use nonstate actors to conceal their involvement [ibid.]. Robertson explained how these complexities hindered effective legal responses, highlighting the need for more precise international regulations.

Subsequently, aircraft intrusions in grey zones exploit legal and strategic ambiguities to challenge security and international legal responses. These intrusions often rely on ambiguity in intent and identity, where civilian planes may be used for military surveillance, further complicating their classification under the Chicago Convention (1944/2006),¹ as seen in the Korean Air Flight 007 incident [Grier 2013]. Additionally, the use of proxies and hybrid warfare allows states to support non-state actors in airspace violations while maintaining plausible deniability, as evidenced by the MH17 tragedy involving pro-Russian separatists [Kellman 2014]. Additionally, intruders also exploit legal loopholes and ambiguities, as in the case of Iran Air Flight 655,² through leveraging gaps in the Chicago Convention’s enforcement and invoking national security justifications.

Beyond the legal and security aspects of civil aircraft intrusions, the debate over using force against a civilian plane with innocent passengers raises deep ethical and religious issues. The situation becomes especially critical when a hijacked plane is turned into a weapon that can cause mass

¹ Convention on International Civil Aviation – Doc 7300/9, https://www.icao.int/publications/Documents/7300_cons.pdf [accessed: 19.03.2025].

² See <https://fair.org/extra/kal-007-and-iran-air-655/> [accessed: 05.06.2026].

casualties on the ground. While international law aims to balance state sovereignty, self-defense, and civilian protection, Christian moral theology has historically tackled similar dilemmas through principles like Just War Theory, proportionality, necessity, and safeguarding innocent lives [Syse 2007; Popovski and Turner 2007]. Consequently, a comprehensive analysis of the use of force against civil aircraft requires not only a legal assessment but also consideration of the ethical principles that continue to influence contemporary debates on the legitimacy of defensive action in situations involving imminent threats to human life.

In this context, we examined the international legal aspects of the use of force against intruding civil aircraft, focusing on deficiencies and inconsistencies in the regulatory framework, thereby raising awareness of existing challenges in the grey zones. We also explored historical and contemporary examples by investigating the legal challenges of preventing and suppressing unlawful acts involving civil aviation. We used A.I. Travnikov's (2014) theoretical framework, which underscored the necessity for a more robust international legal regime addressing both civil aircraft misuse and state authorities' appropriate application of force [Travnikov 2014]. Thus, we integrated a Russian perspective through Travnikov's concept: "It would be more accurate to use a narrower term – aircraft – as presented in nearly all universal international treaties in the field of air law" [ibid., 8]. Through this framework, we examine Russia's position regarding civil aircraft intrusions and how it utilises ambiguities in international aviation law.

Generally, in conflict or war conditions, state actors, driven by domestic interests, seek to exploit ambiguities in international aviation law [Jasiuk, Konert, Detyniecka, et al. 2019]. Through this research, we highlight critical events, such as the 9/11 terrorist attacks, and examine legal frameworks emerging in response to those threats, including the provisions of the Chicago and Beijing Conventions, identifying their limitations and implementation delays. Through comparative legal analysis and case studies, we provide key insights into international air law, future developments, and the creation of a cohesive legal regime better to regulate airspace security and the use of force. Thus, our primary purpose in this study is to improve the international civil aviation legal framework to counter misuse and the problems it causes for the world community.

1. METHODOLOGY, REVIEW, AND SCOPE

We combine several methodological approaches to thoroughly investigate the legal challenges posed by civil aircraft intrusions. We used Comparative Legal Analysis as the primary methodology to examine the gaps in international law governing airspace security. This method compares the regulatory frameworks in key international agreements, such as the Chicago and Beijing Conventions, with national legal responses from countries that have experienced such intrusions [Gill and Tibori-Szabó 2023]. Additionally, we used a case study method to explore historical precedents, including the September 11 attacks, providing real-world context for the legal analysis. By layering these methods, we offer a comprehensive view of theoretical and practical shortcomings in international aviation law. Delving deeper into the intricacies of aviation law, we employed Doctrinal Legal Research (“black letter law”). Black letter law focuses on systematic interpretation and the relevant provisions of key international legal instruments (e.g., Article 4 of the 1944 Chicago Convention), as well as their enforcement and interpretation by member states [Aliyari and Mohebi 2022]. Historical Legal Analysis complemented this doctrinal approach, which enhanced understanding of international aviation law, especially in response to terrorist acts involving civil aircraft. This combined framework identified shortcomings in updating laws following events like the September 11 attacks and the Chicago and Beijing Conventions. Qualitative analysis deepened our research by examining non-numerical data such as texts, documents, and reports, enabling us to analyze legislative texts and legal commentaries from international organizations – including the United Nations (UN) and the International Civil Aviation Organization (ICAO) – to find legal gaps and suggest improvements. Given our focus on international security, terrorism, and air law, this interdisciplinary method was essential for gaining a broader understanding of how air terrorism and the misuse of civil aircraft challenge international law. It also underscored the necessity of amending international law to effectively counter these threats. Besides legal methodologies, this study adopts a normative-ethical perspective to explore the moral issues related to the use of force against civilian aircraft. Using selected sources from Christian moral theology, Just War Theory, and comparative religious ethics, the analysis assesses how principles like the sanctity of human life, proportionality, necessity, self-defense, and the doctrine

of double effect shape current views on the legitimacy of force in cases involving hijacked or weaponized civilian aircraft. This combined approach offers a comprehensive evaluation by merging legal reasoning with ethical considerations that have historically shaped international norms around the use of force.³

2. THEORETICAL AND ETHICAL FRAMEWORK: JUST WAR THEORY AND THE PROTECTION OF INNOCENT LIFE

The legal debate on force against civilian aircraft hinges on ethical principles from the history of armed force regulation. Although modern international law covers self-defence, proportionality, and civilian protection, these ideas have roots in the Just War tradition from Christian moral theology. Originating with Augustine of Hippo and developed by Thomas Aquinas, this tradition aimed to balance moral prohibitions on killing with authorities' duty to protect society. It states force is justified only if conditions like just cause, legitimate authority, last resort, chance of success, and adherence to proportionality and discrimination are met [Syse 2007]. The principle of non-combatant immunity is central to modern law and Christian moral thought, emphasizing that innocent persons must not be intentionally targeted. This remains challenging when civilian aircraft are transformed into weapons, risking innocent passengers in acts that threaten many. Christian ethics often rely on the doctrine of double effect, which justifies actions with both positive and negative outcomes if harm isn't intended, the action pursues a legitimate goal, and the good outweighs the harm. This framework helps evaluate if defending against hijacked aircraft is justified to prevent greater loss of life [ibid.; Schulzke 2017]. Comparable ethical considerations exist in other religions. Islamic law permits force only against aggression and stresses protecting innocents, while Jewish law prioritizes saving human life via *Pikuach Nefesh*. Despite differences, these traditions agree on necessity, proportionality, and minimizing civilian harm [Popovski and Turner 2007]. This ethical framework complements international air law. While instruments like the Chicago and Beijing Conventions

³ *Catechism of the Catholic Church* (1997), https://www.vatican.va/archive/ENG0015/_INDEX.HTM [accessed: 05.06.2026].

set legal boundaries, ethical analysis evaluates the legitimacy of decisions in exceptional cases where civilian aircraft are weapons. The debate on using force against civil aircraft is both legal and moral, balancing security, humanitarian duties, and human dignity.

3. HISTORICAL INCIDENTS DEMONSTRATE THE COMPLEXITIES OF USING FORCE AGAINST CIVIL AIRCRAFT

In a related investigation of aircraft behaviour during unintentional airspace violations [Bordunov et al. 1988], observed interesting behavioural patterns and identified two intruder types: unlawful intruders and illegal intruders. Accordingly, unlawful intruders are aircraft that enter a state's airspace for reasons such as navigation errors, emergency landings, or technical issues and do not pose a direct threat. When an unlawful aircraft commits such an act, such as a reconnaissance mission or a forced landing at a specified airfield, it actively seeks 'external contact', prepared to follow any given command [ibid.]. Thus, their cooperative behaviour indicates no hostile intent, reducing potential threat and allowing for a measured, non-aggressive response.

Conversely, illegal intruders are aircraft that enter a country's airspace with hostile or suspicious intent, such as conducting reconnaissance or engaging in smuggling [ibid.]. An aircraft involved in illegal actions often disregards commands or signals from air traffic control and defence units. In such cases, interceptor aircraft or fighter helicopters may resort to warning fire with tracer projectiles [ibid.]. Subsequently, the crew's disregard for the warning fire indicates their intent to violate regulations. Logically, reliable information from ground sources, like citizens or ATC authorities, is crucial.

Considering the two intruder variations, intruder aircraft behaviour is the only criterion for the interceptor aircraft's attitude towards each intruder. It is important for national defence systems to clearly understand the behavioural differences between these two types of intruders [Diederiks-Verschuur 2001]. Understandably, these behavioural differences (cooperative or evasive) should guide the type of State response toward the intruder aircraft, thereby guiding the actions of interceptor aircraft. On the one hand, misidentifying a cooperative (unlawful) aircraft as hostile (illegal) often results in unnecessary escalation or international incidents [ibid.] on

the other hand, failing to react firmly to a truly illegal intrusion could compromise national security.

Historically, the responsibility for deciding whether to use force against a civilian aircraft has rested with various military commanders, who, despite their roles and experience, face immense challenges in assessing the immediate threat and determining the potential for damage [Luli 2021]. Complicating matters, every state has unique approaches to the use of force against civil aircraft, shaped by its internal legal provisions on border protection and national security. For example, in presidential republics, such critical decisions could rest with the president, the head of state, the commander-in-chief of the armed forces, and the nation's highest representative, which often differs from neighbouring territories. Over the past 35 years, the Aviation Safety Advisory Agency (ASAA) reported that armed force was used against more than 17 passenger aircraft [Lednicer 2025]. Thus, to fully understand the complexity of these decisions, we analysed specific examples from different nations.

3.1. Korean Air Flight 007, 1983

In 1983, a South Korean passenger aircraft conducting a reconnaissance flight posed a threat to state security and was shot down. The Korean Air Flight 007 incident of 1983 involved the Union of Soviet Socialist Republics (USSR) shooting down a commercial airliner that had entered restricted Soviet airspace under suspicion of espionage [Foont 2007]. At the time, Article 3 Bis of the 1944 Chicago Convention,⁴ prohibiting the use of force against civilian aircraft, had not yet been adopted, allowing the USSR to justify its actions on grounds of national security.

At the time, Soviet law on state borders permitted the use of force against aircraft that violated state borders if other coercive measures had been exhausted; thus, the USSR's actions aligned with its domestic legislation [Butler 1983]. During the investigation, Soviet military and civilian experts simulated the Boeing 747 flight, concluding with certainty that the aircraft's crew should have detected the Kamchatka coastline on their onboard radar [Foont 2007]. This incident underscored the tension between state

⁴ *Protocol Relating To An Amendment To Convention On International Civil Aviation Article 3 Bis* (10.05.1984), https://www.icao.int/secretariat/legal/Administrative%20Packages/3bis_en.pdf [accessed: 04.04.2025].

sovereignty and airspace security, as the USSR prioritised its right to protect its territory over civilian aviation safety [Hassan 1984]. Thus, the absence of an international accountability mechanism meant no legal action was taken against the USSR, despite widespread diplomatic protests.

However, in 1985, Bin Cheng [Cheng 2017] recounted the global outcry over the incident, which accelerated the adoption of Article 3 Bis, establishing more precise legal protection for civil aircraft against military forces. While this determination reinforced the view that the plane had deviated from its planned route over the Pacific Ocean toward South Korea, the subsequent adoption of ICAO Article 3 Bis in 1984 was not enough to prevent such catastrophes from recurring.

3.2. Iran Air Flight 655, 1988

In 1988, the U.S. Navy shot down an Iranian commercial airliner, Iran Air Flight 655, over the Persian Gulf, mistakenly identifying it as a hostile fighter jet [Linnan 1991]. The U.S. justified the attack under self-defence, exploiting ambiguities in the Chicago Convention (1944), which lacked clear definitions of what actions constitute a legitimate threat. Additionally, state immunity under international law protected the U.S. military from prosecution. The absence of an international tribunal meant there was no formal legal adjudication [ibid.]. While the U.S. expressed regret, it did not accept legal liability. Instead, the International Court of Justice (ICJ) later provided compensation to the victims' families through a subsequent ICJ settlement [Portmes 1992], but no individuals or entities were held accountable for the attack. Such escalations continued and extended beyond standard air traffic, such as passenger and commercial planes, to sports, leisure, and other types of air traffic.

3.3. American Hot Air Balloon, 1995

One sad example occurred on September 12, 1995, when an American hot air balloon was shot down by a Mi-24 military helicopter in the airspace of the Republic of Belaru [Browne 1995]. The balloon was participating in a planned route competition through Polish airspace. However, changes in wind patterns caused it to deviate into Belarusian territory [Shalayeva and Wesolowsky 2020]. Despite notifying Belarusian authorities about the potential for this deviation, the balloon was shot down, leading to the deaths

of two American balloonists [Lippman and Hoffman 1995]. Unfortunately, innocent events like these become clouded and convoluted by legitimate air-space threats like terrorist attacks.

3.4. Terrorist Attack, September 11, 2001

On September 11, 2001, some coordinated terrorist attacks were carried out by the Islamist extremist group al-Qaeda against the United States. Nineteen hijackers took control of four commercial aeroplanes, crashing two into the Twin Towers of the World Trade Centre in New York City [Bergen 2023]. And a third into the Pentagon near Washington, D.C. The fourth plane was headed for another target in Washington, but crashed in Pennsylvania after passengers attempted to retake control. Nearly 3,000 people were killed, making it one of the deadliest terrorist attacks in history [ibid.].

The 2001 attacks exemplify the global community's unpreparedness and the shortcomings of international law in preventing and responding to terrorist attacks involving civil aircraft. Only after the September 11 attacks did international organisations such as the UN and ICAO begin addressing these critical issues in earnest. The Beijing Convention in 2010, along with previous conventions in the field of aviation security, has raised the question of offences against civil aviation. Unfortunately, they do not contain norms to establish uniform grounds and procedures for the use of force against civil aircraft hijacked by suicide bombers. The norms of the 2010 Beijing Convention only become effective after the commission of unlawful acts using civil aircraft.

The terrorist attack of 11 September has been defined as a crime against humanity by a prominent French jurist and former Minister of Justice, Robert Badinter, by the UN Secretary-General Kofi Annan, as well as by the UN High Commissioner for Human Rights, Mary Robinson [Dinstein 2011]. Indeed, that atrocious action exhibits all the hallmarks of crimes against humanity: the magnitude and extreme gravity of the attack, as well as the fact that it targeted civilians, is an affront to all humanity and part of a widespread or systematic practice [Cassese 2008].

3.5. Malaysia Airlines Flight MH17, 2014

The Malaysia Airlines Flight MH17 [Stempel 2025]. The incident of 2014 involved the shooting down of a commercial airliner over Eastern Ukraine,

allegedly by pro-Russian separatists using a Buk missile system supplied by Russia. The hybrid warfare context complicated the case, as the conflict was a non-international armed conflict involving both state and non-state actors, making the application of International Humanitarian Law (IHL) challenging [Mack 2008].

4. RELIGIOUS AND MORAL PERSPECTIVES ON THE USE OF FORCE AGAINST CIVIL AIRCRAFT

Contemporary conflicts like suicide bombings, using civilian aircraft as weapons, and asymmetric warfare raise ethical challenges in force. These highlight the need to examine how major religious traditions – such as Hinduism, Buddhism, Judaism, Christianity, and Islam interpret and apply just war principles. While these traditions adapt to political changes, debates over the ‘clash of civilisations’, targeting non-combatants, and the rise of terrorist and counter-terrorist tactics emphasise the importance of distinguishing genuine religious doctrines from political uses.

Religious traditions generally agree that force should be used only for self-defence, rejecting revenge or conquest. Self-defence is seen as the primary, sometimes the sole, reason for war, grounded in the natural law of self-preservation. In Hinduism, Protestant Christianity, and Islam, it is not just a right but an obligation [Popovski and Turner 2007]. Many religious traditions distinguish between two types of warfare: defensive and offensive. Islam, Catholicism, Orthodoxy, Hinduism, and Judaism recognise this difference, with stricter criteria for offensive war. Jewish thought states even defensive wars need state and high priest approval. Catholic doctrine allows defensive war without special permission, viewing offensive war as political discretion [ibid.].

Several religious traditions emphasise that force should be used only after all peaceful options have been exhausted. Protestant thought considers warfare legitimate only in response to actual attack and after rejection of peace efforts. Shi’ite scholars advocate a graduated approach: oppose conflict, seek help, and only use force if necessary. Catholic doctrine teaches that humans have non-violent means of resolving disputes, encouraging communication of grievances and reconciliation before armed action. These principles received limited practical attention until the twentieth century,

when pacifism and the League of Nations highlighted peaceful conflict resolution.

Major religious traditions promote restraint in the use of force, highlighting the protection of innocents and principles reflected in secular just war doctrine. They emphasise safeguarding civilians, even when enemies exploit noncombatants or use civilians as weapons. Under international law, employing 'human shields' is a war crime, with responsibility falling on those who intentionally endanger civilians [Popovski and Turner 2007]. Referring more explicitly to instances in which civilian aircraft are employed as instruments of attack to inflict mass casualties on persons on the ground, it can be noted that religious perspectives on the use of force in relation to civilian aircraft tend to reject the intentional shooting down of non-combatants, in line with Just War Theory and broader moral doctrines [Schulzke 2017]. While all major faiths uniformly prohibit harming innocents, ethical issues are more complicated in extreme cases – like hijacked planes used as weapons – where 'lesser of two evils' and saving more lives influence moral choices.

Christian jurisprudence. Rooted in teachings from figures like Augustine and Thomas Aquinas, Christian ethics draw on the Just War framework, which holds that the use of force must always be an absolute last resort [Syse 2007]. A central principle is protecting civilians, and deliberately killing non-combatants is viewed as intrinsically sinful and a breach of the commandment against murder. In cases like a hijacked plane heading toward a skyscraper, debates arise over whether killing on board can be morally justified if it prevents a bigger catastrophe. Here, downing the aircraft isn't seen as targeting civilians but as neutralising a weapon of mass destruction, with civilian deaths seen as tragic, unintended, yet proportionate side effects.

Sharia. The Sharia prohibits targeting non-combatants, women, and children. Force is only a last resort against active aggressors [Shah 2013]. If a civilian aircraft poses a threat, scholars invoke Maqasid al-Sharia, which considers lesser harm, like passenger loss, acceptable to prevent greater community harm. Islamic jurisprudence also permits military action against enemies hiding among women and children, even risking unintended harm to Muslims. For terrorist attacks on civilian aircraft with innocent passengers, like September 11, 2001, Islamic jurisprudence likely permits force to protect lives.

Jewish law. Jewish law prioritises human life (*Pikuach Nefesh*). If a hijacked civilian plane is used as a weapon, hijackers are considered *rodef* [Schwab 2023]. Traditional texts, like the Jerusalem Talmud, discuss survival math, but modern *poskim* argue that when a suicide-plane threatens many on the ground, passengers inside are trapped in an inevitable death scenario, and the goal is to save the larger population.

Although international air law is a secular regime, many principles such as necessity, proportionality, restraint, and the protection of innocent lives parallel religious and ethical concepts. Therefore, legal assessments of force against civilian aircraft are intertwined with moral considerations. These ethical principles highlight that debates on aviation security involve both legality and moral responsibility, emphasising human dignity.

5. DISCUSSION ON LEGAL PERSPECTIVES

The use of force against a civilian aircraft presents one of the most difficult dilemmas in contemporary security policy. While international law focuses on legality, questions concerning moral responsibility remain equally significant when innocent passengers are placed at risk. This article analyses the legal framework governing the use of force against intruders aboard civil aircraft, highlighting deficiencies in international treaties and state practices. International air law regulates the rights, responsibilities, and conduct of civil and state aircraft in global airspace. The foundational instrument is the Chicago Convention (1944), which affirms that states have complete and exclusive sovereignty over their airspace (Article 1). It prohibits the use of weapons against civil aircraft (Article 3 bis) (ICAO, 2006).

In the case of Korean Flight 007 in 1983, international law lacked provisions specifically criminalising espionage. Pilots of intruding aircraft suspected of reconnaissance who are intercepted by military forces should be held accountable for violating state borders. This legal gap must be addressed by establishing international laws against the unauthorised use of civilian aircraft for espionage. Without such measures, similar incidents may happen again in the global community [Kido 1997].

In the case of Iran Air Flight 655 in 1988, this incident has raised a critical question: “how can state authorities accurately determine whether a civilian aircraft has been hijacked or is engaged in unlawful activities, such

as intelligence reconnaissance?” The question of whether passenger aircraft can be used for intelligence gathering in regions with tense relations between neighbouring states remains pertinent. Currently, international law does not provide clear regulations regarding intelligence activities [Duroy 2023]. A notable incident occurred during reconnaissance flights by Air France passenger aircraft from Paris via Moscow to Tokyo, which was ultimately resolved through diplomatic channels.

The case of Belarus has raised another question: “can weapons be used to intercept a reconnaissance flight of a passenger aircraft if it does not comply with the authorities’ order to land?” In the context of the 1995 incident in Belarus [Travnikov 2014]. It is not difficult to speculate about who might have given the order to destroy the hot air balloon, especially given the subsequent justification that it was flying over a restricted area housing secret military facilities, potentially for reconnaissance purposes. By the end of the 20th century, such explanations began to appear either absurd or chillingly cynical to the international community [ibid.].

In Addition, the events of 11 September have dramatically altered this legal framework because, on 12 September, the UN Security Council unanimously passed a resolution on the terrorist strikes.⁵ This resolution is *ambiguous and contradictory*. In its preamble, it recognises the right of individual and collective self-defence; however, in the operative para. 1, it defines the terrorist acts of 11 September 2001 as a “threat to the peace”, hence not as an “armed attack”, legitimising self-defence under Article 51 of the UN Charter.⁶ In operative para. 5 the resolution expresses the Security Council’s “readiness to take all necessary steps to respond to the terrorist attacks... in accordance with its responsibilities under the Charter of the United Nations”; in other words, it declares itself to be ready to authorise military and other action, if need be. Thus, by this resolution, the Security Council wavers between the desire to take matters into its own hands and resignation to the US’s unilateral action. Probably the will of the US to manage the crisis by itself (‘with the possible assistance of states of its own choice’), without having to go through the Security Council and regularly report to it, accounts for the ambiguity of the resolution [Cassese 2008].

⁵ *Security Council Resolution 1368 (2001): Condemning the terrorist acts of 11 September 2001 in New York*, [https://docs.un.org/en/S/RES/1368\(2001\)](https://docs.un.org/en/S/RES/1368(2001)) [accessed: 04.04.2025].

⁶ *Adopted by the Security Council at its 4385th meeting, on 28 September 2001*, https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf [accessed: 04.04.2025].

In essence, the response to the 9/11 tragedy could lead to positive legal changes in the international community if the actions taken are reasonable, collective, and respectful of widely accepted principles. Otherwise, it risks leading to the very anarchy that terrorists aim to create [ibid.].

Also, in the case of Malaysia, legal difficulties arose in attributing responsibility to Russia, as international law requires proof of "effective control" over proxy forces, which is difficult to establish [Yanev 2022]. Furthermore, jurisdictional fragmentation meant that, in the absence of a dedicated international aviation tribunal, legal proceedings were brought before multiple national courts, including the Netherlands. In 2022, a Dutch court convicted three individuals linked to pro-Russian separatists in absentia. Still, Russia did not cooperate, leaving legal and political disputes unresolved and highlighting the limitations of enforcement under international law [ibid.].

It is also the International Humanitarian Law IHL [Lorenz 2019] that plays a crucial role in governing the use of force. However, its applicability is limited to armed conflicts, creating ambiguities in hybrid warfare contexts. The MH17 incident illustrates this challenge, as the conflict in Eastern Ukraine was contested as either international or non-international, affecting the legal framework under which it was assessed. Additionally, IHL principles of proportionality and precaution require that military actions minimise civilian casualties, but their interpretation varies. The MH17 shootdown, involving a surface-to-air missile intended for military targets, raised concerns about whether proportionality and precautionary measures were adequately considered [ibid.]. The authors argue that the use of weapons and military equipment against a passenger aircraft can only be justified when there is a clear threat to lives outside the aircraft and a risk of an environmental catastrophe that could worsen the harm caused by destroying the aircraft. Legal measures should be the last resort in a state's response, with interception conducted in accordance with ICAO's Civil Aircraft Interception Rules.⁷ Maj Anne de Luca argues that when clear evidence shows that an aircraft will cause devastating damage, the protection under Article 3 no longer applies. At that point, the aircraft's legal status shifts from a means of transportation to a weapon of mass destruction, justifying the use of armed force [De Luca 2012].

⁷ *Manual concerning Interception of Civil Aircraft; Doc 9433-AN/926*. ICAO.

Determining state responsibility in aviation incidents remains highly complex, particularly in proxy conflicts. In MH17, attributing responsibility to Russia required proving ‘effective control’ over separatist forces, which presented significant legal challenges [Steinberg 2019]. Additionally, jurisdictional fragmentation has hindered consistent legal adjudication of aviation-related incidents. The lack of a dedicated international aviation tribunal has led to fragmented legal proceedings across multiple national courts, as seen in the MH17 case. This demonstrates the urgent need for a more cohesive international legal framework to address state accountability in aviation security incidents. To effectively address this problem, the authors advise drafting a model agreement under the auspices of ICAO that could serve as a basis for future bilateral or multilateral agreements aimed at preventing aircraft incidents at sea. It is about coordinated actions and the timely exchange of information between ATC units in the event of an aircraft crew losing orientation and crossing the state border of a neighbouring or other state. The authors also try to examine key legal principles, including Article 51 of the UN Charter on self-defence [Kolosov 1996], Article 3 bis of the Chicago Convention [Cheng 2017], and evolving interpretations of anticipatory self-defence in international law.

5.1. The Chicago Convention on International Civil Aviation, 1944/2006

The Chicago Convention (1944) serves as the foundational legal instrument for international civil aviation. Article 3 bis (1984 Amendment) explicitly prohibits the use of weapons against civil aircraft in flight and obligates states to avoid the use of force. However, significant legal gaps remain, particularly concerning self-defence and national security exceptions. One of the central ambiguities in Article 3 bis is the lack of a clear definition of what constitutes a legitimate threat justifying the use of force. This legal uncertainty allows states to interpret security threats subjectively, as seen in the Korean Air Flight 007 [Trapp 2011]. Incident, where the Soviet Union justified the aircraft being downed as a defensive measure against suspected espionage. Such vague provisions complicate the application of international law, particularly in cases involving terrorism or hybrid warfare, where threats may not fit traditional models of military engagement.

This analysis underscores the need for legal reform to clarify the scope of self-defence in aviation law, thereby ensuring a more consistent and enforceable framework for addressing threats posed by intrusions by civil aircraft. On the other hand, the 1944 Chicago Convention also lacks an enforcement body to hold states accountable. In the MH17 [Stempel 2025] case, legal proceedings have been prolonged due to jurisdictional disputes and the absence of a dedicated international aviation tribunal. The Chicago Convention upholds the principle of state sovereignty over national airspace, granting states the authority to regulate and control their territorial skies. However, this principle can conflict with international obligations to protect civilian aircraft, particularly when national security concerns justify military action against intruding or misidentified aircraft. This tension was also evident in the Iran Air Flight 655 incident, where U.S. forces mistakenly shot down a civilian airliner within Iranian airspace, citing self-defence. The incident highlights the legal ambiguity in balancing airspace sovereignty with civil aviation protections, as international law provides no clear guidelines on when a state may lawfully use force against civilian aircraft suspected of posing a threat. These legal gaps create challenges in *ensuring airspace* security while maintaining compliance with international aviation laws.

By 2006, the Chicago Convention had been updated to strengthen international norms after various incidents involving the downing of civil aircraft (such as Korean Air Lines Flight 007 in 1983). By 2006, more states had ratified Article 3 bis, thereby broadening its global acceptance.

5.2. The Beijing Convention on the Suppression of Unlawful Acts Against Civil Aviation, 2010

The Beijing Convention (2010)⁸ [Kraska 2016] it was introduced to modernise the legal framework for aviation security, particularly to address terrorist threats. It criminalises unlawful acts against civil aviation, including the use of aircraft as weapons. However, it has significant limitations, particularly concerning state responsibility. Furthermore, the Convention's focus on intentional attacks complicates legal responsibility in cases of misi-

⁸ *Convention on the suppression of unlawful acts relating to the international civil aviation*, https://www.icao.int/secretariat/legal/Administrative%20Packages/Beijing_Convention_EN.pdf [accessed: 04.04.2025].

dentification or human error, such as the Iran Air Flight 655 incident, which the U.S. claimed was a tragic mistake rather than an intentional attack [Linnan 1991].

5.3. United Nations Charter, Chapter VII: Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression

Article 51 [Kolosov 1996], of the UN Charter affirms a state's inherent right to self-defense in response to an armed attack. However, legal scholars continue to debate the applicability of this principle to acts of aerial terrorism. The key issue is whether the use of civil aircraft for terrorist attacks or unlawful intrusions qualifies as an 'armed attack' under international law, thereby justifying military responses. The lack of a universally accepted definition of an armed attack in the context of aviation security creates legal uncertainty, leading to inconsistent state practices in handling civil aircraft intrusions and potential terrorist threats. This ambiguity underscores the need for greater legal clarity in defining the thresholds for self-defence in civil aviation incidents.

The case studies discussed above, such as the downing of Korean Air Flight 007, underscore how differing national interpretations of air law can lead to catastrophic outcomes. These cases highlight the urgent need for a unified legal framework that addresses the use of force in such scenarios. Without a standardised international approach, state actors face significant ethical and legal uncertainties when deciding whether to use force against civil aircraft. National governments face a profound moral and legal quandary when balancing the need to protect national security with the imperative to safeguard the lives of innocent passengers. This dilemma is illustrated in cases such as the 1983 downing of Korean Air Flight 007, where the lack of clear international protocols led to devastating consequences. Such incidents highlight the urgent need for a cohesive legal framework. Although the international treaties, including the 1944 Chicago Convention and the 2010 Beijing Convention, provide some guidance on the use of force, significant gaps remain in their scope and application. The increasing involvement of civil aircraft in hybrid warfare and grey zone conflicts further complicates the situation. Non-state actors, including terrorists and criminal organisations, exploit the vulnerabilities in civil aviation law to achieve

their objectives, often turning civilian infrastructure into tools of conflict. The transformation of civil aircraft from peaceful transport vehicles into potential weapons of mass destruction was most tragically demonstrated during the terrorist attacks on September 11, 2001 [Bergen 2025]. These events highlight the inadequacy of international laws to handle such threats. A key issue is how states decide to use lethal force against civil aircraft, especially after 11 September 2001, which turned civilian planes into weapons of mass destruction and challenged assumptions about civilian immunity. According to Just War Theory, using force against hijacked aircraft must be necessary, proportional, and aimed at protecting innocent lives.

The absence of a universally accepted standard creates a patchwork of national laws, leading to inconsistent, sometimes controversial outcomes. For example, the 1983 downing of Korean Air Flight 007 by the Soviet Union, and more recent incidents involving civilian aircraft suspected of espionage or drug trafficking, illustrate the grave consequences of unclear legal norms. The decision-making process in such cases is fraught with uncertainties, particularly regarding the criteria for determining whether an aircraft poses a legitimate threat to national security. The legal framework for self-defence and sovereignty in aviation security is ambiguous, letting states justify force on security or sovereignty grounds. This causes inconsistent international law interpretations and legal uncertainty over threats and responses. These ethical principles align with modern international humanitarian and aviation law, especially necessity and proportionality.

A significant issue is the lack of a dedicated international tribunal to adjudicate aviation security cases [Papp 2016], resulting in prolonged legal battles and political disputes. Without a centralised enforcement mechanism, accountability remains fragmented, leaving victims without clear legal recourse and allowing states to evade responsibility in aviation-related incidents. Additionally, current laws struggle to address hybrid warfare scenarios, particularly where state and non-state actors operate simultaneously. The blurred roles between state forces and proxy groups complicate the attribution of responsibility in cases like MH17 [Stempel 2025], where pro-Russian separatists were allegedly involved in downing a commercial airliner with state-supplied weaponry. As hybrid warfare becomes more prevalent, the legal framework must evolve to regulate such conflicts effectively and establish more precise accountability mechanisms. The authors emphasise the need for a comprehensive international legal framework that

clearly defines the grounds and procedures for the use of force against civil aircraft. This includes establishing protocols for intercepting and identifying intruder aircraft, assessing the threat level, and deciding on the appropriate response. The role of national leaders in authorising the use of force is also crucial, as decisions of such magnitude should not rest solely with military commanders but should involve the highest levels of government, ensuring accountability and adherence to international law. To prevent incidents involving aircraft at sea, the authors of this paper consider it necessary to stimulate the conclusion of bilateral treaties that facilitate the timely and efficient coordination of ATC unit activities. The analysis shows that deciding whether force can be used against a civilian aircraft involves more than legal rules. Extraordinary cases like hijackings or weaponized aircraft require decision-makers to balance legal, security, and ethical concerns to protect innocent lives. Future international aviation law should include legal and moral considerations for clearer guidance in these threats.

6. RECOMMENDATIONS AND CONCLUSION

This study has underscored the critical gaps in international airspace law concerning the use of force against civil aircraft. While existing frameworks, such as the 1944 Chicago and 2010 Beijing Conventions, provide some guidance, they are inadequate to address the evolving nature of threats posed by the misuse of civil aviation, particularly in the context of hybrid warfare and global terrorism. As civil aircraft increasingly become instruments of modern conflict, the international community must develop a more cohesive legal regime to regulate airspace security. This regime must balance the need for national security with the protection of innocent lives, ensuring that decisions to use force are based on clear and universally accepted standards. The ambiguity in existing international treaties, particularly regarding the use of force, places national governments in precarious positions when responding to unlawful acts involving civil aircraft. To mitigate these risks, the international community, through organisations such as the International Civil Aviation Organisation (ICAO), urgently needs to develop more robust legal mechanisms to address the use of civil aircraft in modern conflicts. This includes adopting universal standards for intercepting and neutralising civil aircraft that pose legitimate threats, whether

through terrorism, espionage, or illegal trafficking. Given the deficiencies in the current legal framework, this study advocates strengthening Article 3 bis of the Chicago Convention, expanding discussions on anticipatory self-defence, and developing standardised interception procedures that align with international human rights law. Addressing these issues through multilateral cooperation and treaty modifications will ensure a balance between national security and the protection of civil aviation rights. Key challenges include ambiguity regarding self-defence and sovereignty, which allows states to justify actions on national security grounds without clear legal repercussions. The lack of accountability mechanisms, due to the absence of a dedicated international tribunal, has led to fragmented legal proceedings across multiple jurisdictions, delaying justice and enforcement. Additionally, hybrid warfare complexity, as seen in MH17, complicates the attribution of responsibility when both state and non-state actors are involved. The legal framework also struggles to distinguish between human error and intentional attacks, leaving gaps in cases such as the Iran Air Flight 655 incident.

The increasing use of civil aircraft in hybrid warfare and grey-zone conflicts further underscores the need for comprehensive legal standards. Without a clear and enforceable international framework, the risk of civil aviation being exploited in future conflicts remains high. It is better to establish a specific International Aviation Tribunal: An independent legal body specialising in aviation security cases is essential to address jurisdictional gaps and provide a standardised legal process for aviation-related incidents.

Efforts should be made to expand and strengthen the scope of the 2010 Beijing Convention to explicitly cover state actions and address legal challenges in hybrid warfare scenarios.

International legal scholars and organisations should develop clear guidelines on using force against civil aircraft, ensuring consistent application worldwide. Regulations need to address “grey zones” that complicate airspace security. Future rules should include ethical principles like protecting innocent lives, necessity, proportionality, and moral responsibility, especially regarding hijacked or weaponised aircraft. While legal clarity is vital, standards should also uphold humanitarian values and human dignity amid security threats. Legal reforms are needed to clarify engagement rules and improve accountability, with stronger international cooperation to safeguard global airspace and ensure compliance with law.

The legal status of civil aircraft must be re-evaluated, as some can be used as tools of mass destruction. Decisions on the use of force against civil aircraft should be made at the highest levels of government within clear legal frameworks to prevent tragedies caused by misjudgments. Future international air law needs a cohesive approach to prevent misuse, keeping global aviation secure while respecting international law and human rights. The use of force raises ethical questions about the value of human life and state responsibilities in extreme situations. The challenge is to determine not only what is legally permissible but also what is morally justifiable when innocent lives are at stake. As threats blur the lines between civilian and military, future laws should balance security with dignity, proportionality, and the protection of innocents. Norms and ethics should work together to resolve these dilemmas.

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The Use of Force Against Civil Aircraft Intrusions: Legal Challenges and Christian Ethical Perspectives in Grey Zone Conflicts

Abstract

This article examines the increasing threats from the misuse of civil aviation, especially in hybrid warfare, global terrorism, and illegal activities, while also exploring the moral and religious dilemmas related to force against civilian aircraft carrying innocent passengers. It reviews the international legal framework governing force against intruders on civil aircraft and identifies gaps in current aviation law. The research uses a comparative legal approach, analysing agreements like the Chicago and Beijing Conventions, as well as national laws from countries such as the US, Russia, and Iran that have experienced civil aircraft intrusions. Additionally, it considers religious and ethical perspectives, especially Christian Just War Theory, to evaluate the legitimacy of force against hijacked or weaponised civilian aircraft. The study also includes case studies like the September 11 attacks, the downing of Korean Air Flight 007 by the Soviet Union, Iran Air Flight 655, and MH17 to analyse historical precedents.

Keywords: misuse of civil aviation; international air law; use of force against aircraft intruders; just war theory; Christian ethics; protection of innocent life; moral theology.

Użycie siły wobec naruszeń przestrzeni powietrznej cywilnych statków powietrznych: wyzwania prawne i perspektywy etyki chrześcijańskiej w konfliktach szarej strefy

Abstrakt

Niniejszy artykuł analizuje rosnące zagrożenia wynikające z niewłaściwego wykorzystania lotnictwa cywilnego, zwłaszcza w wojnie hybrydowej, globalnym terroryzmie i nielegalnych działaniach, a także dylematy moralne i religijne związane ze stosowaniem siły wobec cywilnych statków powietrznych przewożących niewinnych pasażerów. Artykuł dokonuje przeglądu międzynarodowych regulacji prawnych odnośnie do stosowania siły wobec intruzów na pokładzie cywilnych statków powietrznych i identyfikuje luki w obowiązującym prawie lotniczym. W badaniu zastosowano podejście prawnoporównawcze, analizując umowy takie jak konwencje chicagowska i pekińska, a także przepisy krajowe państw takich jak Stany Zjednoczone, Rosja i Iran, które doświadczyły wtargnięć cywilnych statków powietrznych. Ponadto, artykuł uwzględnia perspektywy religij-

ne i etyczne, zwłaszcza chrześcijańską teorię wojny sprawiedliwej, aby ocenić zasadność użycia siły wobec porwanych lub uzbrojonych cywilnych statków powietrznych. Badanie obejmuje również studia przypadków, takie jak ataki z 11 września, zestrzelenie koreańskiego samolotu linii lotniczych 007 przez Związek Radziecki, lot Iran Air 655 i lot MH17, aby przeanalizować precedensy historyczne.

Słowa kluczowe: niewłaściwe wykorzystanie lotnictwa cywilnego; międzynarodowe prawo lotnicze; użycie siły przeciwko intruzom w statkach powietrznych; teoria wojny sprawiedliwej; etyka chrześcijańska; ochrona niewinnego życia; teologia moralna.

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