

## Legal and Ethical Considerations in the Use of Force against Civilian Aircraft

**Csaba Török**

Aviation Lawyer, Hungary,

E-mail: [csaba.torok.db@gmail.com](mailto:csaba.torok.db@gmail.com)

*Submitted: Dec 23, 2023; Reviewed: Jan 26, 2024; Accepted: Feb 27, 2024.*

Article Info	Abstract
<p><b>Keywords:</b>  <i>Civil Aircraft, International Law, Human Rights, Armed Attack, Use of Force.</i></p> <p><b>DOI:</b> 10.25041/lajil.v6i1.3259</p>	<p><i>Using weapons against civilian aircraft intersects with several critical areas: international legal responsibility, the prohibition of force, the right to self-defense, ethical dilemmas, and the protection of human rights. The arguments presented in this paper emphasize that while self-defense may theoretically allow for the use of weapons against aircraft, there are substantial ethical challenges and strict international legal norms that cannot be ignored. Therefore, employing weapons against civilian aircraft poses numerous challenges that necessitate thorough consideration of both legal and moral aspects. This paper discusses the international legal liability regime for using weapons against civilian aircraft, as well as the associated human rights and ethical responsibilities.</i></p>

### A. Introduction

Civil aircraft, defined as non-military aircraft used for civilian purposes such as commercial air transportation and recreational flying, have revolutionized global travel, enabling people to traverse the globe in mere hours. The importance of these aircraft continues to grow in response to the demand for rapid, safe, and comfortable transportation.<sup>1</sup> To ensure the safety of passengers, flight crews, aircraft, and cargo, operations must adhere to regulations set forth by the International Convention, governing both international and national civil aviation. During conflicts, countries must independently regulate their airspace and manage both military and civilian aircraft.<sup>2</sup>

International law strongly emphasizes the prohibition of the use of force to prevent war.<sup>3</sup> The use of force is generally considered a last resort in governmental administration, as excessive or unjustified force could lead the state into chaos or what Hobbes describes as a "state of nature." The UN Charter outlines that force should only be used if a country is acting

<sup>1</sup> Andika Immanuel Simatupang. (2016). State Responsibility over Safety and Security on Air Navigation of Civil Aviation in International Law Indonesian Journal of International Law. Vol. 13. No. 2. P. 275.

<sup>2</sup> Maurice Pearton. Diplomacy war and Technology Since 1830. University Press of Kansas. P. 205.

<sup>3</sup> Cindy Nur Fitri. (2013). Unauthorized Airspace Infringements and Use of Weapons Against Civilian Aircrafts from an International Law Perspective. *Juris Gentium Law Review*. P. 49.

in self-defense following an armed attack<sup>4</sup>. Accordingly, the lawful authorization of force under international law is contingent on meeting specific criteria.<sup>5</sup>

Importantly, international law explicitly prohibits the use of force against civil aviation and civilians, safeguarding them in both peacetime and wartime. The illegal status of using force against civilian aircraft in flight remains, even for purported humanitarian purposes.<sup>6</sup> However, the increase in aviation trespassing incidents has reignited discussions on the justification and legitimacy of defensive measures against unauthorized civil aircraft. This discourse explores the complex interplay between international legal frameworks, ethical considerations, and the fundamental rights of individuals. Given the potential security threats posed by the misuse of civilian aircraft as weapons of destruction, there is an urgent need for governments to adapt their policies accordingly.<sup>7</sup>

This research is novel as it examines the intricate balance between enhancing aviation security (public safety) and respecting airspace sovereignty. The misuse of civilian aircraft for malicious purposes presents complex challenges that touch upon human rights, international law, and humanitarian law, making this topic of critical importance. This research aims to explore the legal dimensions of using arms against civilian aircraft, highlighting the ethical and legal implications as well as proposing potential solutions and outcomes

Methodologically, this research employs normative research methods, utilizing secondary qualitative data. This data consists of primary and secondary legal materials. Primary legal materials include international conventions, and secondary legal materials are derived from expert opinions across various sources. The research provides an analytical description of the current provisions and status of the use of force under international law. Additionally, it delves into the moral and legal considerations involved in using force against civilian aircraft on a global scale, aiming to shed light on this complex issue from multiple perspectives.

## B. Discussion

In international law, the principle of non-use of force has been long discussed. The international legal responsibility for the use of weapons against civilian aircraft was first initiated in the general prohibition against violence in Article 2.4 of the United Nations Charter:

*“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”*

The Charter identifies two specific exceptions to the prohibition of force: actions that the Security Council may authorize or take, and the use of force for individual or collective self-defense.<sup>8</sup> The definition of 'force' played a crucial role in establishing this general prohibition. At the 1945 San Francisco Conference, the Brazilian delegation proposed that economic coercion be considered as force, but this was rejected by those favoring a more limited interpretation. For many years, varying interpretations of 'force' led to challenges in numerous instances until the United Nations General Assembly adopted Resolution 2625 (XXV) in 1970, which helped clarify the issue. Presently, there is a general agreement that 'force' should be narrowly interpreted to mean only physical military actions, excluding broader coercive measures like political or economic sanctions, which are not covered by the prohibition of force.

<sup>4</sup> Eric J Miller. (2023). The Concept of the Police. *Criminal Law and Philosophy*. 17(573). P. 590.

<sup>5</sup> Joseph C. Sweeney. (2003). The Just War Ethic in International Law. *Fordham International Law Journal*. 27(6). P. 1865.

<sup>6</sup> Gaurav Lomes. (2020). Legal Dimensions of Use of Force against Civilian Aircraft. Available at SSRN. P. 3-4.

<sup>7</sup> Robin Geib. (2005). Civil Aircraft as Weapons Large-Scale Destruction: Countermeasures, Article 3BIS of the Chicago Convention, and the Newly Adopted German “Luftsicherheitsgesetz”. Vol. 27. Issue. 1. P. 229

<sup>8</sup> Michael Wood. (2013). International Law and the Use of Force: What Happens in Practice?. *Indian Journal of International Law*. Vol. 53. P.352.

Article 1 of the Chicago Convention affirms that states possess complete and exclusive sovereignty over the airspace above their territory. Nonetheless, the 1983 incident involving the downing of South Korean flight KAL-007 by the Soviets highlighted the necessity for guidelines on the use of force against civilian aircraft under the Convention's framework. In response, Article 3 bis was introduced to the Chicago Convention in 1984 and came into effect in 1998. This addition does not provide an unconditional right; it outlines specific circumstances under which a state may take action against an aircraft, in alignment with exceptions provided by the UN Charter.<sup>9</sup> Paragraph a) of Article 3 bis restricts this sovereignty by prohibiting the shooting down of civil aircraft in flight, thereby imposing limits on the 'full sovereignty' initially stated in Article 1.

*"The contracting States recognize that every State must refrain from using weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered. This provision shall not be interpreted as modifying the rights and obligations of States outlined in the Charter of the United Nations."*

The terms "in-flight" and "civil aircraft" are significant in their respective applications. Each term necessitates its own definition; however, it is widely recognized—and I agree—that precisely defining these terms is challenging and lacks complete consensus among international legal experts. The Chicago Convention provides protection for civil aircraft legally flying within a state's airspace and also addresses aircraft that violate overflight rules.<sup>10</sup> However, the convention primarily defines "state aircraft" as those used in military, customs, and police services. This definition is quite broad and leads to numerous interpretative questions that necessitate further clarification and detail. In contrast, civil aircraft are defined by exclusion, categorized simply as non-state aircraft.

Determining an aircraft's status involves multiple 'flexible' criteria, which may change depending on the situation. Considerations include the aircraft's use, the qualifications of the flight crew, flight plans, cargo, and ownership details. Additionally, the roles of the operator, controller, and commander, as well as the aircraft's flag, registration, and onboard documentation, are all critical in establishing its classification. These factors contribute to the complexity of distinguishing between state and civil aircraft, especially in scenarios where these elements may overlap or shift.<sup>11</sup> For example, such complexities are highlighted when:

- a. a civil aircraft temporarily or periodically performs state tasks (during the COVID pandemic, it happened several times that privately owned, predominantly civilian aircraft were used under state orders to transport medical equipment or vaccines, but even in non-emergency situations, similar aircraft are used to fulfill partially or entirely state tasks);
- b. when a civilian aircraft carries military or other state-used equipment or items (e.g., transporting military supplies, weapons, or their accessories under state orders or for the benefit of state organizations, or even state archival materials, state-owned artworks, etc.);
- c. when (in an extraordinary situation) an otherwise state-owned aircraft transports civilian passengers or conversely, when an otherwise civilian aircraft transports military personnel (as it has happened on multiple occasions, for example, during the COVID pandemic; in such cases, the question becomes particularly intriguing regarding how the presence of soldiers mingling with civilian passengers 'requalifies' the aircraft as a state (military) aircraft).

<sup>9</sup> Michał Byczyński. (2021). Conditions for lawful shooting down a civilian aircraft in light of Article 3bis (a) of the Chicago Convention. *Polish Journal of Political Science*, vol. 7, no. 1P. 11.

<sup>10</sup> *Ibid.*, P. 47.

<sup>11</sup> Sipos, Attila, "A polgári légi jármű jogi státusza", *Repüléstudományi Közlemények*, Vol. 2017 Nr. 3. p. 278.

Furthermore, the dynamic nature of aircraft use introduces additional complexities to these considerations: an aircraft primarily used for civilian purposes may temporarily undertake state functions, and vice versa. In specific instances, the San Remo Manual on International Law Applicable to Armed Conflicts at Sea can assist in determining the status of an aircraft. However, it is important to note that this Manual is not a primary legal source and does not have binding force, particularly in the context of routine civil aviation.<sup>12</sup> The Manual does offer practical distinctions between civilian, state, and military aircraft, though these categories do not align with the terminology I prefer. Ultimately, there is no universally accepted definition of civilian aircraft in international law.

Regarding the concept of an "airborne" aircraft, the situation is slightly simpler, though still complex. An aircraft can be defined as airborne based on various criteria and perspectives. In accordance with the provisions of the Chicago Convention, I propose that an aircraft should be considered airborne from the moment its doors are closed post-boarding with the intention of initiating flight, until the doors are reopened for disembarkation. This definition effectively separates the concept from the aircraft's current location and other conditions. It should be noted, however, that discussions concerning the use of weapons against aircraft generally refer to those that are in flight, which should categorically be considered as airborne.

The relationship between the general prohibition of the use of force under the UN Charter and the specific prohibition against using weapons on civilian aircraft is important. While these prohibitions are expressed with different wording, they both carry profound implications for international legal responsibilities.<sup>13</sup> Using weapons always constitutes a form of violence, yet it is crucial to distinguish between harsher forms of violence, such as shooting down an aircraft, and milder forms, such as coercion or the act of 'capture,' which do not inherently involve prohibited uses of weapons. Chicago Convention does not explicitly prohibit milder forms of violence against aircraft, provided that such actions do not endanger the lives of those on board or compromise the safety of the aircraft. Thus, the prohibition specifically targets more severe actions, such as shooting down an aircraft.<sup>14</sup>

The general prohibition of the use of force, including the prohibition on shooting down civilian aircraft while in flight, admits only one exception, which is grounded in the principles of individual and collective self-defense as outlined in Article 51 of the UN Charter.

*"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security. Members' measures to exercise this right of self-defense shall be immediately reported to the Security Council. They shall not affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary to maintain or restore international peace and security."*

The interpretation of the concept of force is crucial from various perspectives, particularly in the legal terminology of an "armed attack." Based on the established concept of force, it is clear that self-defense justifies only the gravest forms of force. International legal consensus

<sup>12</sup> Csaba, Török, "From Athens to Vilnius with A Near-Fatal Detour to Minsk? The Issue of Demarcation Between Civil and State Aircraft", *Nurani Hukum Jurnal Ilmu Hukum*, Vol. 2023 No. 1. p. 4.

<sup>13</sup> Geiß, Robin, "Civil aircraft as weapons of large-scale destruction: Countermeasures, Article 3bis of the Chicago Convention, and the newly adopted German „Luftsicherheitsgesetz", *Michigan Journal of International Law*, Vol. 2005 No. 1. p. 255.

<sup>14</sup> Geiß, Robin, "Civil aircraft as weapons of large-scale destruction: Countermeasures, Article 3bis of the Chicago Convention, and the newly adopted German „Luftsicherheitsgesetz", *Michigan Journal of International Law*, Vol. 2005 No. 1. p. 255.

suggests that the level of aggression must be significant to warrant a response.<sup>15</sup> Moreover, for self-defense to be legitimate, the armed attack must be attributable to another state—a principle clarified by the International Court of Justice in the Nicaragua case—and the response must adhere to the principles of necessity and proportionality.<sup>16</sup>

The complexity of self-defense further unfolds when considering the scenario of a civilian aircraft used in an armed attack or as a weapon. The unusual behavior of an aircraft, such as violating air traffic rules, ignoring air traffic control instructions, or transmitting unauthorized signals, does not alone justify its destruction.<sup>17</sup> However, these factors are critical in the decision-making process that may lead to such an extreme measure. The debate over the legitimacy of shooting down an aircraft was notably highlighted during the events of September 11, 2001,<sup>18</sup> when the U.S. faced criticism for not destroying the hijacked planes. Though such an action would have ended the lives of passengers, it could have potentially saved thousands more on the ground and within the targeted buildings.

This dilemma led to a broader interpretation of the right to self-defense, exemplified by the Bush Doctrine of preemptive strikes. According to this doctrine, a state may initiate an attack against another state if it faces a perceivable threat where inaction would lead to greater harm. In this context, a state anticipates an armed attack and takes proactive measures against the perceived aggressor, justifying its actions as preventive self-defense. This expansive interpretation after September 11 underscores the complex balance between immediate threats and the ethical implications of preemptive military action.<sup>19</sup>

At this stage, it is essential to discuss the concept of anticipatory self-defense. The core tenets of self-defense are grounded in the principles of necessity and proportionality. This means that any force used in self-defense must be proportional to the threat faced, and a state should only take the measures needed to counteract and prevent an attack, steering clear of both retaliatory and preventive actions. Generally, preventive self-defense is not allowed under international law.<sup>20</sup> However, the advancements in modern warfare and technology, international law tends to allow a specific type of preventive self-defense known as preemptive self-defense. Yet, it is still unclear whether preemptive self-defense is fully sanctioned under international law or if it is acceptable only under specific circumstances.<sup>21</sup>

Preemptive self-defense is justified when an attack is considered both imminent and unavoidable, and no alternatives exist to prevent it. Conversely, preventive self-defense is used when an attack is neither imminent nor immediate, merely anticipated due to a perceived

---

<sup>15</sup> Az agresszió egy vagy több állam fegyveres erejének súlyos következményekkel járó, elsőként való alkalmazása más állam vagy államok szuverenitása, területi épsége vagy politikai függetlensége ellen vagy az Alapokmánnyal össze nem férő bármely más módon.

<sup>16</sup> Siska, Katalin, 2010, *A nemzetközi jog alapkérdései a nemzetközi kapcsolatok elméletének és történetének viszonylatában: tankönyv közigazgatási menedzsereknek*, Debrecen: Debreceni Egyetemi Kiadó, Debrecen, p. 69-82. and Siska, Katalin–Szemesi, Sándor, 2006, *A nemzetközi jog története*, Debrecen: Kossuth Egyetemi Kiadó, p. 66-81.

<sup>17</sup> Sulyok, Gábor, 2019, *A terrorcselekmény elkövetéséhez használt polgári légi jármű lelövésének alkotmányjogi megítélése az új szabályozási környezetben*, Budapest: Gondolat Kiadó, p. 36.

<sup>18</sup> Many authors refer to the events of September 11, 2001 as having changed the world and brought international terrorism to a new level; it is common to distinguish between the “pre-September 11” and the “post-September 11” worlds. (See for instance: Ernst, Ildikó, 2007, *A nemzetközi légiközlekedés védelme*, Pécs: University of Pécs, and Siska, Katalin, “Gondolatok a török külpolitika 21. századi útkereséséről”, *Jura*, Vol. 2018 Nr. 1., see more: Csaba, Török op. cit. p. 11.).

<sup>19</sup> Ádány, Tamás Vince–Bartha, Orsolya–Törő, Csaba, 2009, *A fegyveres összeütközések joga*. Budapest: Zrínyi kiadó, p. 18.

<sup>20</sup> Simma B., *The Carter of the United Nations a commentary*, second edition, Volume I, 2002, New York: Oxford University Press, P. 805.

<sup>21</sup> Sean D. Murphy. (2005). The Doctrine of Preemptive Self-Defense. *Villanova Law Review*. Vol. 50. No. 3. P. 702.

threat,<sup>22</sup> or when other means to mitigate the threat are available. In my view, the Bush Doctrine, which promotes the idea of preemptive strikes, should rather be seen as an example of preventive self-defense given the lack of an immediate threat. In this doctrine, the mere existence of a threat does not necessarily indicate an impending attack. Generally, the Bush Doctrine does not align with international law.

Another critical aspect of self-defense is the principle of attribution.<sup>23</sup> In the scenario of the September 11 terrorist attacks, the window for recognizing a situation of preemptive self-defense, if at all applicable, was extremely brief. Answers regarding the attribution of these attacks came even later. Determining the responsibility of an international state requires more than just the state's involvement in financing, training, or planning by the perpetrators. It is also crucial for the state to have actual control over the perpetrators and effective oversight of the operations they carry out.<sup>24</sup>

For an aircraft's shootdown to be legally justified under international law, the aircraft must be engaged in actions that can be attributed to a state. This includes acts of armed aggression that are directly controlled or instructed by that state. For example, if an armed aircraft employs its weaponry in a manner that threatens the safety of life and property—through violent actions or causing significant destruction—it could potentially justify a defensive response. Determining the validity of self-defense, therefore, requires that a civilian aircraft be considered as operating under the control of a state, akin to a state aircraft.<sup>25</sup> This is crucial, especially considering the earlier discussed complexities of distinguishing between civilian and state aircraft.

These complexities become even more pronounced when civilian aircraft are utilized as tools of aggression, as seen in the attacks of September 11, 2001. These attempts are based on various factors and considerations, including:

- a. Article 89 of the Chicago Convention states that the Convention is not applicable during war and emergency. Therefore, in the case of a civilian aircraft carrying out an armed attack (using a civilian aircraft as a weapon), this action alone triggers an armed conflict, causing the cessation of the applicability of the Chicago Convention. Instead, the principles of *ius in bello*<sup>26</sup> come into play; the legal framework and concepts of humanitarian law do not exclude shooting down a civilian aircraft under the principle of military necessity and in consideration of the concept of military objectives (humanitarian law does not prohibit civilian casualties in attacks against military targets);
- b. According to the Chicago Convention, aviation cannot be used for purposes contrary to the objectives of the Convention, and this provision can provide a basis for considering aviation used for purposes contrary to the objectives of the Convention as unlawful. Therefore, such use may create an exception to the prohibition on the use of force.

<sup>22</sup> Kajtár, Gábor, 2018, “Az erőszak tilalma”, Available on website: <http://ijoten.hu/szocikk/az-eroszak-tilalma>. [53]-[54], Accessed August 29th, 2023.

<sup>23</sup> V. Upeniece. (2018). Conditions for the lawful exercise of the right of self-defence in international law. SHS Web of Conferences (40). P. 3.

<sup>24</sup> In accordance with the pronouncements of the International Court of Justice in the Nicaragua Case. See: Papp, Zoltán “Az MH-17 légi járat lelövésének nemzetközi jogi megítélése a nemzetközi polgári repülésről szóló Chicagói Egyezmény tükrében”, *Debreceni Jogi Műhely*, Vol. 2016 Nr. 1-2. p. 50.

<sup>25</sup> According to Article 63 of the San Remo Manual, a civil aircraft may become a military target, for example, if it participates in acts of war on behalf of the enemy, acts as an auxiliary aircraft to the enemy's armed forces, infiltrates the enemy's intelligence system, or contributes to it, is armed with air-to-air or air-to-ground weapons, or in any other effective way contributes to military operations, etc.

<sup>26</sup> *Ius in bello* is the entirety of law applicable during armed conflicts, essentially encompassing humanitarian law.

While certain parts of the previously stated arguments may be uncontroversial, I believe adhering to such reasoning could compromise the ban on using force and raise legal and ethical concerns about employing weapons against civilian aircraft, particularly when considering the ambiguities related to the aircraft's status. Consequently, no exceptions should be allowed. Even if we argue that weapon use against aircraft is legally justifiable based on these arguments, serious ethical and human rights issues remain unresolved.<sup>27</sup>

The state has a fundamental duty to respect and protect human life, which includes safeguarding the lives of those onboard a civilian aircraft and any potential ground victims. The state must avoid taking lives unnecessarily and actively work to protect its citizens' lives.<sup>28</sup> The only possible rationale for using force against an aircraft must be the state's commitment to protect potential victims on the ground. Viewing this matter through a human rights lens, it is crucial to recognize that passengers are innocent victims caught in situations they did not choose and cannot influence. By deciding to shoot down a civilian aircraft, the state risks not only making terrorists the captors but also positioning itself as such.<sup>29</sup> Destroying an aircraft under these circumstances strips passengers of their human dignity and breaches their fundamental right to life.

As pointed out by the German Federal Constitutional Court, "[...] it is completely unthinkable to deliberately kill innocent people such as the crew and passengers of the hijacked aircraft, based on legal authority." <sup>30</sup> It is not a valid argument to claim that the use of armed force (shooting down) against a civilian aircraft would result in fewer casualties compared to a scenario in which the state refrains from using force. Employing armed force against a civilian aircraft could also lead to additional unintended consequences, such as debris scatter and shockwaves, which might increase the number of innocent victims who have no control over their fate. Furthermore, the human rights of the victims' families must also be considered. The simultaneous destruction of the aircraft and its unfortunate passengers introduces further ethical complexities. Considering the points discussed earlier, it should be recognized that the detailed deliberation and modeling of ethical consequences by decision-makers can lead to irreparable delays, thereby jeopardizing the success and legality of preemptive measures. This situation forms a vicious cycle within a closely intertwined system of legal and ethical dilemmas.

---

<sup>27</sup> For long time, there was no concept of human rights (see: Siska, Katalin, "A rabszolgaság az iszlám jogban. Véget ért, vagy még mindig tart?", Miskolci Jogi Szemle, Vol. 2016. p. 15). The first appearance of human rights is associated with the English, French, and American constitutions, yet according to some authors, the 1923 Treaty of Lausanne, signed in Switzerland, was already a human rights treaty (see: Siska, Katalin, "A kisebbségi jogok alakulása Törökországban, különös tekintettel a Lausanne-i Szerződés rendelkezéseire", Iustum Aequum Salutare, Vol. 2016 Nr. 3. p. 177. and see also: Siska, Katalin, "Az oszmán közigazgatási rendszer dimenziói", Pro Publico Bono, Vol. 2017 Nr. 1. p. 190). Human rights were first codified in the United Nations Charter, and then the Universal Declaration of Human Rights was adopted in 1948.

<sup>28</sup> Citizenship defines the relationship between the state and the individual (see: Siska, Katalin, "Mustafa Kemal Atatürk hatása a török identitás és állampolgárság koncepciójára, különös tekintettel az alkotmányjogi szabályozásra" Jog-Állam-Politika, Vol. 2016 Nr. 1. p. 61.). The essential content of citizenship, including the status of the state and its citizens, their rights, obligations, etc., is established by the constitution of the state. The first general definition of citizenship likely appeared in the 1835 inaugural edition of the Dictionnaire de l'Académie Française (see: Siska Katalin, "Fear Not...! Turkish Nationalism and the Six Arrows System – A State in Search of a Nation", Hungarian Journal of Legal Studies, Vol. 2016. p. 277. and Siska, Katalin, "A női jogok alakulásának áttekintése a Török Köztársaság megalakulásától napjainkig" Jog-Állam-Politika, Vol. 2017 Nr. 2., see also: Siska, Katalin, "Thoughts on the Special Relationship between Nationalism and Islam in Particular the Late Ottoman Empire and the Early Turkish Republican Era", Journal on European History of Law, Vol. 2017. Nr. 8. p. 123-128.).

<sup>29</sup> Zakariás, Kinga, 2019, *Az emberi méltósághoz való alapjog. Összehasonlító jogi elemzés a német és magyar alkotmánybírói gyakorlat tükrében*, Budapest: Pázmány Péter Katolikus Egyetem, p. 138-139, 151-152, 266-267, 330.

<sup>30</sup> BVerfGE 115, 118 (157).

### C. Conclusion

In conclusion, the use of weapons against civilian aircraft is fraught with complex dilemmas, shaped by the intersection of international legal standards, ethical considerations, and fundamental human rights. The international legal framework, with its core principles such as the prohibition of the use of force and the right to self-defense, forms the basis for evaluating armed interventions against civilian aircraft. The complexities of armed conflict and the criteria for preemptive self-defense further complicate this issue.

The ethical dilemmas inherent in the potential loss of innocent lives provoke deep questions about the morality and justification of using lethal force. The potential repercussions for both passengers and individuals on the ground necessitate a meticulous evaluation of the outcomes. Upholding the intrinsic value of human life, respecting human dignity, and protecting the innocent pose significant challenges to endorsing such forceful measures.

To prevent such incidents, the following actions should be taken.

- a. Implementing rigorous checks for those involved in aviation to swiftly identify and mitigate risks;
- b. Rapid and effective information sharing among states is crucial for addressing all terrorist threats and suspicious activities;
- c. Increasing awareness among industry participants through education and ongoing training, including aviation security measures, threat identification, protocols, and necessary and expected actions.

Despite all aviation security measures and methods, the destruction of civilian aircraft raises concerns about violating the right to life of passengers on board as well as the international obligations of the state.

### References

#### A. Journal

- Ádány, Tamás Vince–Bartha, Orsolya–Törő, Csaba, 2009, *A fegyveres összeütközések joga*. Budapest: Zrínyi kiadó.
- Andika Immanuel Simatupang. (2016). State Responsibility over Safety and Security on Air Navigation of Civil Aviation in International Law. *Indonesian Journal of International Law*, 13(2).
- Cindy Nur Fitri. (2013). Unauthorized Airspace Infringements and Use of Weapons Against Civilian Aircrafts from an International Law Perspective. *Juris Gentium Law Review*.
- Csaba, Török. (2023). “From Athens to Vilnius with A Near-Fatal Detour to Minsk? The Issue of Demarcation Between Civil and State Aircraft”, *Nurani Hukum Jurnal Ilmu Hukum*, 6(1).
- Eric J Miller. (2023). The Concept of the Police. *Criminal Law and Philosophy*. 17(573).
- Ernszt, Ildikó, 2007, *A nemzetközi légiközlekedés védelme*, Pécs: University of Pécs, and Siska, Katalin, “Gondolatok a török külpolitika 21. századi útkereséséről”, *Jura*.
- Geiß, Robin. (2005). “Civil aircraft as weapons of large-scale destruction: Countermeasures, Article 3bis of the Chicago Convention, and the newly adopted German „Luftsicherheitsgesetz,” *Michigan Journal of International Law*.
- Joseph C. Sweeney. (2003). The Just War Ethic in International Law. *Fordham International Law Journal*. 27(6).
- Michael Wood. (2013). International Law and the Use of Force: What Happens in Practice? *Indian Journal of International Law*.



- Michał Byczyński. (2021). Conditions for lawful shooting down a civilian aircraft in light of Article 3bis (a) of the Chicago Convention. *Polish Journal of Political Science*, vol. 7, no. 1P. 11.
- Mustafa Kemal Atatürk hatása a török identitás és állampolgárság koncepciójára, különös tekintettel az alkotmányjogi szabályozásra" *Jog-Állam-Politika*.
- Robin Geib. (2005). Civil Aircraft as Weapons Large-Scale Destruction: Countermeasures, Article 3BIS of the Chicago Convention, and the Newly Adopted German "Luftsichereitsgesetz," 27(1).
- Sipos, Attila, (2017). "A polgári légi jármű jogi státusza", *Repüléstudományi Közlemények*,
- Sulyok, Gábor, 2019, *A terrorcselekmény elkövetéséhez használt polgári légi jármű lelövésének alkotmányjogi megítélése az új szabályozási környezetben*, Budapest: Gondolat Kiadó.
- Siska, Katalin, 2010, *A nemzetközi jog alapkérdései a nemzetközi kapcsolatok elméletének és történetének viszonylatában: tankönyv közigazgatási menedzsereknek*, Debrecen: Debreceni Egyetemi Kiadó, Debrecen.
- Sean D. Murphy. (2005). The Doctrine of Preemptive Self-Defense. *Villanova Law Review*. Vol. 50. No. 3. P. 702.
- Simma B., *The Charter of the United Nations a commentary*, second edition, Volume I, 2002, New York: Oxford University Press.
- Siska, Katalin, "Thoughts on the Special Relationship between Nationalism and Islam in Particular the Late Ottoman Empire and the Early Turkish Republican Era", *Journal on European History of Law*.
- V. Upeniece. (2018). Conditions for the lawful exercise of the right of self-defence in international law. *SHS Web of Conferences* (40).
- Zakariás, Kinga, 2019, *Az emberi méltósághoz való alapjog. Összehasonlító jogi elemzés a német és magyar alkotmánybíróági gyakorlat tükrében*, Budapest: Pázmány Péter Katolikus Egyetem.
- Zoltán "Az MH-17 légi járat lelövésének nemzetközi jogi megítélése a nemzetközi polgári repülésről szóló Chicagói Egyezmény tükrében", *Debreceni Jogi Műhely*,

## **B. Book**

- Maurice Pearton. *Diplomacy War and Technology Since 1830*. University Press of Kansas
- Gaurav Lomes. (2020). *Legal Dimensions of Use of Force against Civilian Aircraft*. Available at SSRN

## **C. Regulation**

- San Remo Manual  
Chicago Convention

## **D. Internet**

- Kajtár, Gábor, 2018, "Az erőszak tilalma", Available on website: <http://ijoten.hu/szocikk/az-eroszak-tilalma>. [53]-[54], Accessed August 29th, 2023

