

**Securitizing Air Spaces:
How the Pan Am 103 Bombing Led to a New Extraterritorial Aviation Regime**

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Abstract

The introduction of security in airspace management presented an interesting problem as the United States inserted itself as the new arbiter of international aviation security. By its very nature, aviation security requires strict policing standards on both ends of travel, at both the departure and arrival airports. This requires unique territorial cooperation between states. But in a world of uneven power, one powerful state with network centrality has the capacity to impose its security demands on the system. How this is created, which I term conceptually as an “extraterritorial aviation regime,” is what this dissertation seeks to explain.

Hijackings and bombings of airplanes in the 1970s and 1980s culminated in a significant bombing in 1988: the destruction of Pan Am flight 103 over Lockerbie, Scotland. This event became a critical juncture in the management of airspace. The U.S. state used its desire to impose certain security standards to create a new extraterritorial aviation regime, directly placing U.S. security personnel in the airports of other states, and regulating international air carriers, which were controlled and often owned by other states.

My research argues that the U.S. used its centrality in the aviation network to institute a new regime for the security management of international airspace. But while security was a public motivation for this new regime, aviation deregulation and economics were also drivers behind the U.S. policy change.

Understanding why the new regime was formed in Pan Am’s wake helps to understand why the U.S. state became the security standard-maker in international aviation and what led the U.S. to assume control of other states’ airports and airplanes under the rubric of U.S. law.

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General Audience Abstract

The introduction of security in airspace management presented an interesting problem as the United States inserted itself as the new arbiter of international aviation security. Hijackings and bombings of airplanes in the 1970s and 1980s culminated in a significant bombing in 1988: the destruction of Pan Am flight 103 over Lockerbie, Scotland. This new need for security in aviation created a critical juncture that led to a new extraterritorial aviation regime, with the United States at the core of regulating international airports and international carriers.

My research question argues that the U.S. used its position in the international aviation network to institute a new regime, led by the United States. My research also uncovered the element of aviation deregulation and economics as a driver behind the U.S. policy changes in this space.

Understanding why the new regime was formed in Pan Am's wake helps to understand why the U.S. state became the security standard-maker in international aviation and what led the U.S. to assume control of other states' airports and airplanes under the rubric of U.S. law.

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Acronyms

A4A: Airlines for America
AAAE: American Association of Airport Executives
ACSSP: Air Carrier Standard Security Program
AOSSP: Aircraft Operator Standard Security Program
ASAC: Aviation Security Advisory Committee
ATA: Air Transport Association
CASLO: Civil Aviation Security Liaison Officer
CDG: Charles de Gaulle Airport, Paris
CFR: Code of Federal Regulations
DfT: Department for Transport (U.K.)
DOT: Department of Transportation (U.S.)
EA: Emergency Amendment
EC: European Commission
ECAC: European Civil Aviation Conference
EDS: Explosives Detection Systems
EU: European Union
FAA: Federal Aviation Administration
FAAP: Foreign Airport Assessment Program
FAMs: Federal Air Marshals
FASA: Foreign Airport Security Act
FBI: Federal Bureau of Investigation
FIR: Flight Information Region
FSD: Federal Security Director
FSM: Federal Security Manager
GAO: Government Accountability Office
GATT: General Agreement on Tariffs and Trade
IATA: International Air Transport Association
ICAO: International Civil Aviation Organization
ITWF: International Transport Workers' Federation
JFK: John F. Kennedy Airport, New York City
LHR: London Heathrow Airport
LGW: London Gatwick Airport
MSP: Model Security Program
NACA: National Air Carrier Association
NTSB: National Transportation Safety Board
OMB: Office of Management and Budget
PPBM: Positive Passenger Bag Match
SARP: Standard and Recommended Practice
SD: Security Directive
SRA: Security Restricted Area
TDY: Temporary Duty Assignment
TNA: Thermal Neutron Analysis
U.K.: United Kingdom

UN: United Nations

UNSC: United Nations Security Council

U.S.: United States

WTMD: Walk Through Metal Detector

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Chapter 1: Introduction

“The world of aviation security was changed forever as a terrorist bomb tore apart Pan American World Airways Flight 103...The nation’s civil aviation security system [was found] to be seriously flawed.”

– *Statement of Congressman James L. Oberstar*

*Chairman, Subcommittee on Aviation, Committee on Public Works and Transportation
Hearing on Aviation Security Improvement Act, July 26, 1990*¹

On December 21, 1988, a bomb went off on Pan Am Flight 103, breaking up the airplane over Lockerbie, Scotland and killing the 259 passengers and crew as well as 11 Lockerbie residents.² Carried out by Libyan nationals, the bomb was an act of terror against the United States in response to its ongoing operations in Libya.³ ⁴ In this dissertation, I argue that this event was a pivotal moment in aviation history, resulting in significant changes to how states with aviation capabilities managed airspace.⁵ My dissertation argues that the Pan Am 103 explosion led the U.S. to create a new, U.S.-dominated extraterritorial aviation security regime that was imposed on the international aviation system..

Though situated in an era of hijackings and explosive devices, Pan Am 103 served as a shock event. Because the bomb went off over land instead of the ocean, large pieces of the airframe

¹ United States Congress House Committee on Foreign, *The Aviation Security Improvement Act of 1990*.

² Jenifer Van Vleck, *Empire of the Air: Aviation and the American Ascendancy* (Cambridge, UNITED STATES: Harvard University Press, 2013). p. 286

³ Jennifer M. Ramos, *Changing Norms through Actions: The Evolution of Sovereignty* (New York: Oxford University Press, 2013). p. 56

⁴ John Harrison, *International Aviation and Terrorism: Evolving Threats, Evolving Security*. pp. 59-60

⁵ Schwartz and Bayer, “Pan Am Flight 103 and the Aviation Security Improvement Act of 1990.” P. 2

remained intact – though significantly damaged – as they fell to the ground. Images from the plane and constant media coverage became emblematic of what felt like to U.S. audiences as a new age of terror.⁶ Not only did the attack kill many Americans onboard (including dozens of Syracuse University students returning from a study abroad program), but Pan Am had also been a longstanding emblem of American air power.⁷ Growing fear led to a drop in commercial aviation ticket purchases as people were unwilling to fly, citing an increased concern about safety and security of airplanes.⁸

As Toal and O’Loughlin point out in the wake of a similar aviation disaster, “shocking events have historically created windows of opportunity for transformational political action and change.”⁹ In this case, the United States reacted by issuing an Executive Order to investigate Pan Am’s loss. Presidential commissions in the United States were not unique per se. For instance, the U.S. has constituted famous commissions to investigate the attack on Pearl Harbor in 1941, John F. Kennedy’s assassination in 1963, and the Challenger space shuttle explosion in 1986.¹⁰ However, the Commission on Aviation Security and Terrorism was the first to look at aviation disasters. The Commission was composed of a group of government and industry experts charged with providing major policy recommendations to Congress and the President of the United States. Similar commissions were later formed after the TWA Flight 800 explosion in 1997 and the September 11, 2001, attacks in New York City and Washington, D.C.

⁶ John Harrison, *International Aviation and Terrorism: Evolving Threats, Evolving Security* (London, UNITED KINGDOM: Taylor & Francis Group, 2009). pp. 59-60

⁷ Van Vleck, *Empire of the Air*. P. 6

⁸ Van Vleck. Pp 286-287

⁹ Gerard Toal and John O’Loughlin, “‘Why Did MH17 Crash?’: Blame Attribution, Television News and Public Opinion in Southeastern Ukraine, Crimea and the De Facto States of Abkhazia, South Ossetia and Transnistria,” *Geopolitics* 23, no. 4 (October 2, 2018). p. 884

¹⁰ Butler, “5 Times U.S. Presidential Commissions Rocked the Country | American Experience | PBS.”

The President's Commission on Aviation Security and Terrorism, referred to afterwards as the Commission, produced a final report in 1990 after months of field work, research, and interviews.¹¹ The Commission's final report, published in May of 1990, declared the Pan Am 103 bombing the "worst security-related disaster in U.S. civil aviation history."¹² While Commission members found security concerns with Pan Am – a U.S. carrier – its recommendations were for change to the security practices of the whole aviation system. These changes were targeted at all airports in states outside of the U.S. with direct service to the territorial U.S., as well as non-U.S. or "foreign" air carriers. Per the report, "foreign governments have not imposed equally stringent requirements on carriers under their jurisdiction, and the U.S. has relied on weak international standards for foreign carrier security. As a result, there are significant imbalances."¹³ This perception of lax security practices abroad, and the need for new standards that were acceptable to, and overseen by, U.S. officials is a key element of my research findings, and will be discussed at length in this dissertation.

Another element of the impact of Pan Am 103 on the international system can be attributed to terrorists' technological capabilities outpacing the ability of aviation security policies and equipment to detect explosive threats. Aviation systems worldwide had adapted to address the hundreds of hijackings over the previous few decades, installing metal detection equipment at airports and implementing procedures for crew in the event of aircraft takeover. However, "security systems were designed to prevent the hijackings of the 1970s but were not meant to

¹¹ *Report of the President's Commission on Aviation Security and Terrorism*. P. 1

¹² *Report of the President's Commission on Aviation Security and Terrorism*. p. 14

¹³ *Report of the President's Commission on Aviation Security and Terrorism*. p. iv

deal with the airline bombings of the 1980s...The bomb planted aboard Pan Am Flight 103 may have consisted of no more than 300 grams of explosives concealed in a way that made its detection by conventional means practically impossible at most airports. X-ray and metal detectors can spot guns and grenades but plastic explosives cannot be detected either by X-ray machines or trained dogs.”¹⁴ States, their citizens, and their air carriers were vulnerable to the iterative development of more sophisticated technologies of terrorism.

This gap in terrorist capability and states’ countermeasures provided an opportunity for the kinds of policy shifts that followed, where the U.S. used its central position in the aviation network to require that others follow its preferred security policies. The density and interconnectedness of the aviation network gave the U.S. an opportunity to weaponize that connection, as Drezner, Farrell and Newman theorize.¹⁵ They argue that networks provide powerful states the opportunity to “weaponize networks to gather information or choke off economic and information flows, discover and exploit vulnerabilities, compel policy change, and deter unwanted actions.”¹⁶ The consequence of not following U.S. demands was a price too high for many to pay – loss of access to U.S. airports, which represented a significant economic market for states and their airlines.

Problem identification and solution specification are two vital processes in public policy analysis, meaning what is provided as a problem as well as how it is framed and understood. In his discussion of this, Maarten Hajer notes: “Framing of the discussion makes certain elements

¹⁴ Sochor, *The Politics of International Aviation*. Pp. 150-151

¹⁵ Drezner, Farrell, and Newman, *The Uses and Abuses of Weaponized Interdependence*.

¹⁶ Drezner, Farrell, and Newman, *The Uses and Abuses of Weaponized Interdependence*. P. 1

appear as fixed or appropriate while other elements appear problematic...The political conflict is hidden in the question of what definition is given to the problem, which aspects of social reality are included and which are left undiscussed.”¹⁷

This dissertation argues that a newly manifested instance of aviation terrorism (the problem) created the circumstances where the U.S. sought to impose its own response (the solution) onto the whole international regime of civilian aviation. In regime theory terms, one powerful state with central network power, in the form of chokehold power, sought to impose its own security standards on the system as a whole. In response to the Pan Am 103 explosion, the U.S. decided that the previous regime was inadequate and must be changed to its preferred regime. However, the investigation found that Pan Am 103 was entirely preventable by following existing U.S. procedure and international standards. Yet, instead of limiting its focus to addressing vulnerabilities with a U.S. carrier, the Commission initiated a policy change that involved the entire world’s aviation system.

This dissertation brings together several key concepts in social science and international affairs: securitization, network theory, extraterritoriality, and critical junctures. Securitization is the act of declaring an issue outside the realm of normal politics such that it requires extraordinary and urgent measures. In a variation on the Copenhagen School’s definition, Higgott refers to securitization as “a socially constructed, contextual speech act and a process in which ‘an issue is framed as a security problem.’”¹⁸

¹⁷ Maarten A. Hajer, *The Politics of Environmental Discourse: Ecological Modernization and the Policy Process*. Pp. 44, 54

¹⁸ Richard Higgott, “US Foreign Policy and the ‘Securitization’ of Economic Globalization,” *International Politics* 41, no. 2 (June 2004): p. 148

Network theory examines the structures and connections in areas such as finance, transportation, telecommunications, and energy. These linkages “shape what actors can or cannot do” and “have important consequences for the distribution of power.”¹⁹ The concept of network power is central to my dissertation. This is the capacity of a critical node in a network to exercise asymmetrical power over other points in the network. In political science, this concept has recently been refined by Drezner, Farrell, and Newman as weaponized interdependence.²⁰ The globalized nature of aviation gave the United States a platform to securitize airspaces.

Exterritoriality is the act of claiming the right to regulate space beyond one’s own designated borders. This act of claiming is not necessarily the occupation of physical space. Rather, it is the imposition of one state’s legal standards over territory located in a foreign country. Finally, critical junctures represent a break from longstanding structures and policies in place, usually provoked by a shock event that compels policymakers to break from the norm in search of a new approach.²¹

The U.S. response to the shock event of Pan Am 103’s loss was newly intensified securitization through extraterritoriality of international aviation spaces and places. Using securitization, the U.S. moved asymmetrically within the aviation realm to claim space in the name of security needs. Following the Commission’s final report, the U.S. Congress passed the Aviation Security Improvement Act in 1990. This legislation codified the Commission’s recommendations and

¹⁹ Drezner, Farrell, and Newman, *The Uses and Abuses of Weaponized Interdependence*. P. 25

²⁰ Daniel W. Drezner, Henry Farrell, and Abraham L. Newman, eds., *The Uses and Abuses of Weaponized Interdependence*. P. 1

²¹ Capoccia and Kelemen, “The Study of Critical Junctures.”

made several notable changes to U.S. law by exporting its policies onto the international aviation system. Not only did the law institute a position designed to oversee and manage foreign airports, but it also created a requirement for the U.S. to manage and oversee foreign air carriers with flights to the United States.²² This unprecedented unilateral airspace management caused significant concern and pushback by other countries for an egregious sovereignty and treaty violation.²³

What the Commission proposed, and Congress ratified, was a significant departure from the existing regime of governance of civil aviation across the world. It was, in essence, the U.S. declaring what standards it wanted and then using its powerful position in the aviation network to impose these on the rest of the international regime. The new regime was the U.S. exercising extraterritorial power.

Aviation Security and Sovereignty

My research focused on the Pan Am 103 bombing as a critical juncture in aviation. That shift can be understood as a move from a multilateral regime to a hegemonic one, marked by U.S. power positioning and extraterritorial policies. This shift is significant, as it extended U.S. regulations onto international air space, impacting international airports and air carriers, both in security and economics. The main thesis of my dissertation is that the Pan Am 103 terrorist attack led the United States to use its centrality in the dense and interconnected aviation network to project its preferred domestic policies onto other states in the system. This is network power.

²² “Aviation Security Improvement Act of 1990.”

²³ Federal Register, “Security Programs for Foreign Air Carriers; Final Rule,” March 16, 1989, 14 CFR Part 129.

While new to aviation, this type of extraterritoriality had been deployed by the U.S. in other sectors such as finance and narcotics,²⁴ which I will discuss further in Chapters 2 and 3. In addition to the security issues, my research uncovered U.S. business interests providing some of the impetus for these changes. Network power and weaponized interdependence are critical elements to the interplay of security and economics that I found in the shift to airspace management.

I argue that what made Pan Am 103 notable is its unique impacts across the international aviation system even though aircraft bombings were not uncommon in the 1980s. Security incidents in aviation had been increasing since the 1950s as airplane hijackings became common and violence escalated.²⁵ Airplane and airport bombings also emerged as a new tactic for political protest and retaliation against various states' aircraft, including the United States, France, Czech Republic, Russia, Lebanon, Ethiopia, Canada, and the United Kingdom, who all experienced major bombings of flag carriers in the 1970s and 1980s.²⁶ What set Pan Am 103 apart from the others is that it prompted the United States to extend security policies outwards, with its senior government officials, U.S. businesses, the American public, and the newly formed Victims of Pan Am 103 lobby calling for the U.S. to manage an aviation system that had been a collective effort since creation of the International Civil Aviation Organization (ICAO) in 1944.²⁷

²⁴ Walter Mattli and Ngaire Woods, *The Politics of Global Regulation*. P. 265

²⁵ Harrison, *International Aviation and Terrorism*. p. 53

²⁶ Harrison. p. 54

²⁷ Sochor, *The Politics of International Aviation*. p. 154

Prior to Pan Am 103, the aviation system was managed through ICAO, a United Nations agency charged with a unified approach to commercial airspace and air carrier safety and security.²⁸ Since creating the multilateral organization, states with aviation capabilities followed these arrangements, which respected state sovereignty and relied on collective airspace management to resolve issues. That all changed when the United States made significant regulatory and legal changes, such as passage of the Aviation Security Improvement Act into law on November 16, 1990. Using its new domestic law, the United States sought to – and eventually did - assume management and oversight over security of airports or air carrier with service to the United States. This meant that the United States superseded ICAO in overseeing worldwide civil aviation security.²⁹

The Aviation Security Improvement Act, along with additional aviation security measures implemented by the United States, expanded U.S. policies extraterritorially. Rather than conquering and absorbing airports, the United States used its powerful economic and strategic position in a dense network to demand its preferred domestic policies of other states, including directing and regulating their airports and airlines. In Chapters 5 and 6, I provide specific examples of the policies in place before and after Pan Am 103 and discuss the ways in which post-Pan Am policies demonstrate this extraterritoriality.

²⁸ Christer Jönsson, “Sphere of Flying: The Politics of International Aviation,” *International Organization* 35, no. 2 (1981). p. 275

²⁹ Drezner, Farrell, and Newman, *The Uses and Abuses of Weaponized Interdependence*. pp. 21, 52

My research ultimately focused on what happens when a powerful state in the international system unilaterally decides to change other states' aviation security practices to enhance its own security posture. As Harrison argues, "the U.S. is the predominant state actor in the international civil aviation community. Thus, how it responds to international civil aviation directives has enormous impact on the rest of the community."³⁰ I researched previous aviation regimes for comparison and to clearly identify the critical juncture of Pan Am 103, including how practices of security for international aviation travel were produced and adopted across the international system prior to 1989.³¹

While my dissertation argues that Pan Am 103 was a critical juncture that led to regime change and new extraterritorial aviation security policies, I also considered a counterfactual hypothesis that Pan Am 103 was a tipping point rather than a juncture – the culmination of incremental changes from previous aviation security incidents. This alternative approach would have been evident had there been more gradual change, rather than a rupture from path dependency where systems are constrained until a significant shock event.³² I will discuss this further in Chapter 3 as I discuss my methodology and findings, but ultimately my research demonstrated a clear break from previous practices in aviation security from a multilateral to extraterritorial bent. Subsequent institutional layering from additional laws, regulations, and practices further cemented the new regime.

³⁰ Harrison, *International Aviation and Terrorism*. p. 137

³¹ James Mahoney and Kathleen Thelen, eds., *Explaining Institutional Change: Ambiguity, Agency, and Power* (Cambridge: Cambridge University Press, 2009). p. 65

³² Orfeo Fioretos, ed., *International Politics and Institutions in Time* (Oxford: Oxford University Press, 2017). pp. 62-63

This dissertation discusses these regimes in Chapter 5, looking at how commercial airspace was managed before ICAO's creation, as well as Chapter 6, looking at the period before Pan Am 103 and how states addressed aviation multilaterally. The core of my research focuses on a period from 1970 to 1998 to understand the policies immediately preceding and following Pan Am's explosion in 1988. This time frame allowed me to explore the various security incidents before and after Pan Am 103 and demonstrate how the event was unique among these incidents. My research used process tracing and discourse analysis to find patterns³³ as well as "trajectories of change and causation."³⁴

This research contributes to an enhanced understanding of how networks allow for change toward asymmetrical, hegemonic orders. Per Nexon and Wright, "hegemonic orders encourage the formation of cross-cutting political ties among states" as they "reap gains from... creation of a network of security guarantees."³⁵ Likewise, they describe how a dense network enables "positions of brokerage, in which they facilitate 'transactions or resource flows.'"³⁶ Examining U.S. extraterritoriality in the aviation network provides insight into the use of core location and infrastructural requirements to project domestic security preferences onto the international system. It also provides insight into the relationship between consent and coercion, where a state's agreement with these policies may not be preferred, but is less costly than dissenting.³⁷ As Higgott describes it: "So why do many states, including a large number of allies, seem to put up

³³ Peter A. Hall, "Aligning Ontology and Methodology in Comparative Research," in *Comparative Historical Analysis in the Social Sciences*, n.d. p. 391

³⁴ David Collier, "Understanding Process Tracing," *PS: Political Science & Politics* 44, no. 04 (October 2011): 823–30. p. 823

³⁵ Daniel H. Nexon and Thomas Wright, "What's at Stake in the American Empire Debate," *American Political Science Review* 101, no. 2 (May 2007). p. 257

³⁶ Nexon and Wright. P. 256

³⁷ John Agnew, *Hegemony: The New Shape Of Global Power* (Temple University Press, 2005). p. 226

with U.S. policies with which they are not happy? In short, because they believe that they need the U.S. more than the U.S. needs them.”³⁸

Many scholars have noted U.S. use of extraterritoriality in banking, narcotics, and warfare.^{39 40}

As Farrell and Newman note, “to protect America, Washington has slowly but surely turned thriving economic networks into tools of domination.”⁴¹ My research contributes to this understanding of extraterritoriality and weaponized interdependence⁴² by exploring how Pan Am 103 caused the United States to change norms and standards in the aviation system and what this did to the network as a whole. There is a longstanding tendency in U.S. geopolitical culture to think of security as a matter of managing the outside not the inside. Threats are seen as external. One implication is that there is a desire to address threats “over there.”⁴³ My research expands on these critical views of territory by looking at extraterritoriality through these techniques and strategies of control over air spaces.

Economics & Securitization

More important than either institutions or strategic choice is the role of economic change...Although social and economic conditions external to the policy-making system generally serve as stabilizing factors for relatively long durations, major disruptions of these conditions can alter the meanings and salience of pertinent policy ideas.

³⁸ Richard Higgott, “US Foreign Policy and the ‘Securitization’ of Economic Globalization,” *International Politics* 41, no. 2 (June 2004): p. 169.

³⁹ Stuart Elden, *Terror and Territory: The Spatial Extent of Sovereignty* (U of Minnesota Press, 2009). p. 139

⁴⁰ Andrew Lakoff, *Unprepared, Unprepared* (University of California Press, 2017).

⁴¹ Farrell and Newman, *Underground Empire: How America Weaponized the World Economy*. P. 5

⁴² Drezner, Farrell, and Newman, *The Uses and Abuses of Weaponized Interdependence*. P. 1

⁴³ Bethany Albertson and Shana Kushner Gadarian, *Anxious Politics: Democratic Citizenship in a Threatening World* (Cambridge: Cambridge University Press, 2015). p. 33

- *Frank Fischer, Reframing Public Policy: Discursive Politics and Deliberative Practices*⁴⁴

My research demonstrated Pan Am 103's subsequent influence in aviation through the linkage of economics and securitization. Higgott notes that during the 1980s and 1990s, the U.S. was in a "period of heightened economic tension between the US and Europe across the Atlantic, and with Japan across the Pacific...Economic growth in Europe and Asia was such that U.S. economic primacy, and indeed, the Anglo-American way of organizing a capitalist economy, appeared to be challenged."⁴⁵ This tension was reflected as U.S. air carriers struggled in the era following the Airline Deregulation Act of 1978. Carriers faced significant upheaval as government-mandated routes and fares disappeared, and many airlines went out of business.⁴⁶ "Struggling to survive, airlines cut wages and benefits, but this strategy resulted in strikes and lower productivity."⁴⁷

Carriers were struggling and fighting through the quagmire of challenging economics at a time when security needs – and therefore costs – were increasing. To address the growing issues in security, the U.S. government placed requirements on its carriers to purchase equipment and hire staff for passenger and baggage security screening.⁴⁸ The Air Transport Association (now Airlines for America), testified before the House of Representatives in 1991 that "these requirements are very expensive and detract from the ease and speed of processing the

⁴⁴ Fischer, Frank. *Reframing Public Policy: Discursive Politics and Deliberative Practices* (Oxford, UNITED KINGDOM: Oxford University Press, Incorporated, 2003),

⁴⁵ Higgott, "US Foreign Policy and the 'Securitization' of Economic Globalization." P. 151

⁴⁶ "What Prompted Airline Deregulation 20 Years Ago?"

⁴⁷ Smithsonian, "Airline Deregulation."

⁴⁸ U. S. Government Accountability Office, "Aviation Security: Immediate Action Needed to Improve Security."

passenger.”⁴⁹ ATA likewise testified before the President’s Commission that there was a significant economic advantage foreign air carriers had that U.S. carriers did not – namely that U.S. carriers were required to invest in security measures and so their flights had longer lines and customers paid higher fares. Then-Vice President of ATA Richard Lally stated that “Not only does it place U.S. carriers at a competitive disadvantage, more importantly it deprives a significant number of air travelers of needed security protection – some 50% of U.S. citizens who travel abroad fly on foreign air carriers.”⁵⁰

The economic issues faced by U.S. carriers along with a competition issue with foreign air carriers provided the U.S. with another compelling reason to flex its network power and insist on externally-focused changes in the aftermath of Pan Am 103. Despite the U.S. government not directly owning and operating its carriers unlike most of its foreign government counterparts, the U.S. had strong relationship with U.S.-based air carriers from the early days of flight.⁵¹ Moreover, economic competition in aviation was of significant importance to U.S. lawmakers and executive branch officials, with multiple carrier interest groups regularly lobbying U.S. officials for action, particularly regarding perceived economic disparities in the international aviation market.⁵²

⁴⁹ “Implementation of the Aviation Security Improvement Act of 1990.”

⁵⁰ President’s Commission on Aviation Security and Terrorism, “Statement of Richard F. Lally, Vice President - Security, Air Transport Association of America Before the President’s Commission on Aviation Security and Terrorism.”

⁵¹ Jenifer Van Vleck, *Empire of the Air: Aviation and the American Ascendancy* (Cambridge, UNITED STATES: Harvard University Press, 2013)

⁵² Eugene Sochor, *The Politics of International Aviation* (Iowa City : University of Iowa Press, 1991).

In the wake of Pan Am, economic issues that U.S. carriers had complained about for years had a moving vehicle for action via the Commission Report, Aviation Security Improvement Act, and FAA regulations to address the public outcry for activity following the flight's destruction. By taking the actions it did to regulate foreign air carriers in particular, the U.S. used Pan Am 103 to "justify the imposition of conditions and measures in the area of foreign economic policy that would not be considered the norm in this policy domain."⁵³ From the perspective of U.S. carriers, U.S. extraterritoriality 'leveled the playing field' in the international aviation business.

Outline of the Dissertation

To address the ideas and arguments laid out above, this dissertation first moves into the theory behind major concepts to my dissertation, such as sovereignty, regimes, network, extraterritoriality, discourse, securitization, and the manner in which securitization and economics intersect throughout the response to the Pan Am 103 bombing.

Chapters 3 lays out the methodology of my research, including objective, concepts, terminology, and general approach to examining Pan Am 103 as a critical juncture in aviation security and airspace management.

⁵³ Richard Higgott, "US Foreign Policy and the 'Securitization' of Economic Globalization," *International Politics* 41, no. 2 (June 2004): p. 149

Following discussion of relevant literature, my dissertation explores previous regimes. While Jonsson⁵⁴ and Harrison⁵⁵ have broken aviation into three regimes with different break points and focus areas, I developed my own regime types and eras based on how airspace was managed. Chapter 4 describes what I term the Aviation Building Regime from 1919 to 1944. This chapter captures the initial setup of airspace management among leading aviation powers at the time, including the United States, Great Britain, Canada, and France.⁵⁶ Chapter 5 discusses the key elements in place prior to Pan Am as part of what I refer to as the Multilateral Management Regime from 1945 to 1988. The multilateral management regime demonstrates the shift from individual state airspace sovereignty to creation of the UN's ICAO to manage the ever-increasing grid of flights around the globe, as well as their safety and security concerns. It also shows many elements the U.S. considered in addressing security as hijackings, and eventually bombings, against commercial airplanes and airports increased.

From there, I move into discussion of aviation deregulation and the impact of changes to U.S. government regulation of its air carriers in Chapter 6. This is an important element given what my research uncovered as to the economic drivers behind securitization and extraterritoriality in this space.

Chapter 7 provides evidence from my research about Pan Am 103's loss, contributing causes, and issues the investigation uncovered about how a U.S. carrier failed to follow U.S. regulations.

⁵⁴ Christer Jönsson, "Sphere of Flying: The Politics of International Aviation," *International Organization* 35, no. 2 (1981): 273–302,

⁵⁵ Harrison, John. *International Aviation and Terrorism: Evolving Threats, Evolving Security* (London, United Kingdom: Taylor & Francis Group, 2009)

⁵⁶ David MacKenzie, *ICAO: A History of the International Civil Aviation Organization* (University of Toronto Press, 2010).

Had Pan Am followed existing procedures, investigators posit the aircraft would not have been destroyed. This is another crucial element to understanding why economics and securitization drove the critical juncture that followed: despite a domestic failure, the U.S. broke from the previous regime and established one in which it regulated everyone else's commercial aviation security. Chapter 8 describes the main actors involved and the importance of various U.S. interest groups, business, and politics involved in this change, as well as the international and multilateral groups in opposition.

Chapter 9 and 10 discuss the President's Commission and the Aviation Security Improvement Act of 1990 to understand what policy outcomes the U.S. put in place to address its domestic problem by regulating foreign governments and their businesses. Chapter 11 analyzes these changes under what I term the U.S. Extraterritorial Security Regime from 1989 to present. The extraterritorial regime is a shift from the previous collective, multilateral management of airspace to one driven by U.S. concerns and priorities.

I discuss the major outcomes from these efforts in Chapters 12 and 13. These chapters outcome the creation of U.S. personnel to be placed overseas in charge of other states' airport security as well as the U.S. regulation of foreign carriers. The latter is particularly important from the lens of economics and securitization, and is one in which the U.S. used its position in the aviation network to compel other states to comply. I discuss significant evidence of pushback from other countries, including accusing the U.S. of violating ICAO's governing treaty, the Chicago Convention on International Civil Aviation. Chapter 14 explores many of the sovereignty issues

and politics at play with the United States' extraterritorial decisions as part of its new laws and regulations.

In Chapter 15, I discuss the implications of these changes and the concern that by 1996 when the next major aviation disaster – TWA Flight 800's explosion – occurred, the U.S. continued to have the same aviation security issues identified during Pan Am's investigation. I argue that this is primarily due to the U.S. not addressing the major failing with its own carrier and regulations and instead focusing on international airports and carriers. The outward focus on extraterritorial security did not address the issues that the investigation uncovered, but rather used the opportunity the bombing presented to shift U.S. posture in aviation security and airspace management.

This dissertation concludes with Chapter 16, providing a summary analysis of my research and findings, as well as discussing other avenues for research. My research uncovered economic and security alignment in U.S. politics, as well as implications from Pan Am's explosion for the rise in person-based, mobile bordering. Additional research in this area may prove fruitful.

Additionally, while my research ends in the 1990s, there have been notable developments in the aviation security network, particularly from 2019 to today. States that have long acceded to U.S. power positioning in this space, such as the United Kingdom and China, have begun to break from the regime. I conclude with a discussion on implications for current aviation security policies given these developments.

Chapter 2: Conceptual Foundations and Working Concepts

There are many areas of research and theory that provide context for my examination of how Pan Am 103 served as a critical juncture, using network power to shift a well-established international aviation security system according to hegemonic policy preferences. This juncture served as an extraterritorial regime change. As illustrated above, foundational concepts of networks, sovereignty, and regimes feature heavily in my research findings, as well as working concepts of extraterritoriality, securitization, and economics. This chapter discusses existing scholarship in these areas.

Conceptual Foundations

The three major concepts that are foundational to my research are sovereignty, networks, and regimes. These concepts are interrelated and provide theories on how space is allocated into states and power maintained by those states in the international system, as well as how – and why – the status quo of states and their power changes into new regimes.

Sovereignty

Turning first to sovereignty, Agnew has written extensively on this concept and is a major thought leader on sovereignty theory. He provides a critical underpinning of how states view sovereignty and how that interacts with international relations and security events. Agnew argues that sovereignty is constructed, a “fiction...in walled-off space.”⁵⁷ Over time, policy makers have come to understand sovereignty as a power over territory, but Agnew argues that in

⁵⁷ John Agnew, “Sovereignty Regimes: Territoriality and State Authority in Contemporary World Politics,” *Annals of the Association of American Geographers* 95, no. 2 (June 2005): p. 438

reality it is a strategy.⁵⁸ Sovereignty's constructed rules are often violated as states interfere with other states' sovereignty, usually the stronger interfering with states with few to no options for recourse. Krasner refers to this strategy as organized hypocrisy, where states enact sovereignty rules but more often than not use exceptions to these rules.⁵⁹

However, sovereignty also manifests as what Agnew refers to as the territorial trap: an assumption that sovereignty requires bounded territories, that domestic and foreign affairs are at odds, and that territorial states are the means by which society must operate.⁶⁰ The perpetuated fiction of sovereign spaces is important to my research, as it demonstrates why changing regime rules through extraterritoriality – overriding one sovereign nation's rules and practices with another's – is important. Moreover, the degree of this violation and manner of extraterritoriality in aviation is an important finding that my research demonstrates.

The international system's strong fixation with sovereignty over territory is also a key concept, particularly as it intersects with security. Elden discusses the word territory's origin in the Latin “terra,” or land, and “terrere,” meaning to “frighten away.”⁶¹ There is an act of division or exclusion inherent to the idea of sovereignty and territory that is important in understanding how space is defined, defended, and extended.⁶²

⁵⁸ John Agnew, “Sovereignty Regimes: Territoriality and State Authority in Contemporary World Politics,” *Annals of the Association of American Geographers* 95, no. 2 (June 2005): 437–61

⁵⁹ Stephen D. Krasner, *Problematic Sovereignty: Contested Rules and Political Possibilities* (Columbia University Press, 2001), p. 4

⁶⁰ John Agnew, *Hegemony: The New Shape Of Global Power* (Temple University Press, 2005), p. 41

⁶¹ John Agnew, *Globalization and Sovereignty: Beyond the Territorial Trap, Second Edition* (Rowman & Littlefield Publishers, 2018). P. 78

⁶² Agnew, *Ibid.* P. 78

Agnew argues that the world's division into sovereign territorial spaces is constructed, and that this construct continues because it serves stronger states' interests – the United States in particular.⁶³ This state system has been perpetuated over time as stronger states implement policies and laws that serve their interests, “limit[ing] the sovereignty of some and expanding it for others,” as well as through military power.⁶⁴ “Sovereign powers can be projected over space through alliances and base networks that usually involve the extraterritorial jurisdiction of the distant power trumping the local one.”⁶⁵

However, in his 2022 book, *Hidden Geopolitics*, he argues that it not the traditional geopolitical notion of states but instead the “everyday workings of actors in different places across space – a sort of low but hidden geopolitics” that manages the international system.⁶⁶ These actors transcend traditional boundaries of states such that “authority is increasingly outsourced by states and is quite different from traditional thought.”⁶⁷ Hidden geopolitics also involves inducing compliance in other states by pressured consent rather than coercion⁶⁸ This different power dynamic – where states are not forced into submission but led into it – is also a key part of the network concept central to my main argument and discussed further below.

Major global shifts such as technology and climate change all significantly impact sovereignty, which historically revolved around a singular sovereign and the space under his/her physical

⁶³ John Agnew, *Hidden Geopolitics: Governance in a Globalized World* (Lanham, Maryland: Rowman & Littlefield Publishers, 2022).

⁶⁴ Agnew. P. 9

⁶⁵ Agnew. P. 10

⁶⁶ Agnew. P. 3

⁶⁷ Agnew. P. 38

⁶⁸ Agnew. P. 7

control.⁶⁹ One significant part of this fiction is the idea that there is equality among sovereign states.⁷⁰ This idea was also common in aviation sovereignty and territory policies during the period after the creation of ICAO and prior to Pan Am. In aviation sovereignty, this manifested as the idea that each state controlled its own commercial airspace and could completely restrict other states from entering. In reality, as commercial aviation emerged as a major form of transit and economic boon to states and their airlines, there was no real way to stop the constant entry and exit of other states' aircraft. A state's only real options to bow out of an integrated airspace grid was to remove itself from all air transportation and constantly monitor and patrol airspace to prevent aircraft overflying one's state.

Much of the regime preceding the Pan Am 103 explosion revolves around strongly-held ideas of airspace sovereignty. This will be discussed more in Chapter 4 and 5, which describe the constructs in place during aviation's beginnings and its shift toward a UN-centric multilateral model in the 1940s. However, the ideas underpinning both eras revolve around sovereignty, and that borders extend upward into the air and belong to the state, not to be crossed without permission.

Networks

Agnew's work in *Hidden Geopolitics* also connects well with Farrell and Newman's *Underground Empire*, looking at how states' interconnectedness in a globalized economy often means that powerful states are able to push others into following the stronger states' preferred

⁶⁹ John Agnew, "Sovereignty Regimes: Territoriality and State Authority in Contemporary World Politics," *Annals of the Association of American Geographers* 95, no. 2 (June 2005): 437–61.

⁷⁰ Agnew, *Ibid.*

policy preferences.⁷¹ Agnew argues that these networks are key to the evolution of how actors wield the concept of sovereign power over others: “Governance can be engaged by a range of actors operating across networks and territories to encode and enforce rules, norms, and actions that meet with the active acquiescence of those organizations and entities...*it need not include coercive power but relies mainly on participation and assent. Enforcement, therefore, rarely if ever involves much more than the imminent threat of expulsion from the ‘club.’*”⁷² Agnew goes on to note that the U.S. gained its powerful position because of its ability to project outward, bringing other states along with its “potent brew of cultural and political-economic doctrines and rules of conduct.”⁷³

Farrell and Newman explain this as an underground empire – a new, modern version of a traditional sovereign kingdom that allows the United States in particular to use the interconnectedness of economics, technology, and more to get its way.⁷⁴ They argue that the line between consent and coercion is blurred, and that because states have no choice other than to stay connected in the modern world, they must go along with powerful states or be left behind.⁷⁵ Positioning in a network is so interlinked that one state has power over other states by virtue of their interdependence.⁷⁶ This phenomenon is enabled by globalization, where powerful states in the system can leverage connections to export preferred domestic regulations onto international

⁷¹ Henry Farrell and Abraham Newman, *Underground Empire: How America Weaponized the World Economy* (Henry Holt and Company, 2023).

⁷² Agnew, *Hidden Geopolitics*. P. 17

⁷³ Agnew, *Ibid.* P. 44

⁷⁴ Farrell and Newman, *Underground Empire: How America Weaponized the World Economy*.

⁷⁵ Farrell and Newman, *Ibid.* P. 3

⁷⁶ David Storey, “Territory and Territoriality: Retrospect and Prospect,” in *A Research Agenda for Territory and Territoriality*, by David Storey (Edward Elgar Publishing, 2020).. P. 7

partners.⁷⁷ While their construct centers around non-state actors, such as corporations, they also note the tie-in to states-of-origin, often by using state-approved rules and protocols. As such, the benefits the non-state actors receive in a network can also carry over to the state in which the actors operate.

Farrell and Newman describe this system as one that the United States didn't build but has been able to take advantage of as the private companies and entities that built these networks – the hidden geopolitics of Agnew's writings – were “overwhelmingly U.S.-based or U.S.-focused.”⁷⁸ “The networks that connected the world together didn't just follow the contours of past economic and political power relations. They froze a moment in time, the brief period when the United States was at the apex of its power and at the center of everything, so that it lasted for decades.”⁷⁹

Farrell and Newman use the banking system as an example of network dependency on the U.S. Not only did foreign banks become entangled with the U.S. dollar as the singular currency for transactions, but the transaction system known as the Society for Worldwide Interbank Financial Telecommunications (SWIFT) was so widely used that it soon became a requirement for participating in international banking transactions.⁸⁰ Based in Belgium, the SWIFT setup and resulting entanglement with U.S. currency created a dependency while also making the system and its state participants “vulnerable...to U.S. regulators.”⁸¹ Farrell and Newman show a similar

⁷⁷ Henry Farrell and Abraham L. Newman, *Of Privacy and Power: The Transatlantic Struggle over Freedom and Security* (Princeton University Press, 2019), pp. 31-36

⁷⁸ Farrell and Newman, *Underground Empire: How America Weaponized the World Economy*, pp. 5, 8

⁷⁹ Farrell and Newman, *Ibid.* p. 9

⁸⁰ Farrell and Newman, *Ibid.* pp. 24, 27

⁸¹ Farrell and Newman, *Ibid.* p. 24

U.S. anchor and dependency in the telecommunications industry as physical infrastructure was centralized in the U.S., along with U.S. oversight and interference.⁸²

This can also be seen in the security space, where threats drive protective requirements from a concerned and powerful state onto the rest of the system.⁸³ The other states are anxious to be protected by and/or not openly object to the more powerful state, and so agree to its preferred order and policies. Farrell and Newman argue that interdependence produces three main outcomes of note: rule overlap - where domestic and international rules begin to interact and potentially conflict, an increased number of political actors, and new platforms for changing global rules and regimes.⁸⁴

The more closely linked states are via this underground empire of hidden geopolitics, the more the U.S., in particular, was in a position for outsized influence. Refusing U.S. policy preferences meant that other states may not be able to fully participate in global economics, telecommunications, energy production and use, and more. Drezner, Farrell and Newman also termed this use of a network for one state's gain as weaponized interdependence.⁸⁵ They describe this phenomenon as a combination of coercion and "buy-in" from states "that accept the leadership position of the dominant state as legitimate and are also willing to accept the order the state creates, and the rules and values embedded within it, in exchange for benefits."⁸⁶ For

⁸² Farrell and Newman, *Underground Empire: How America Weaponized the World Economy*. pp. 30, 57

⁸³ Henry Farrell and Abraham L. Newman, *Of Privacy and Power: The Transatlantic Struggle over Freedom and Security* (Princeton University Press, 2019), p. 3

⁸⁴ Farrell and Newman, *Of Privacy and Power*. P. 8

⁸⁵ Daniel W. Drezner, Henry Farrell, and Abraham L. Newman, eds., *The Uses and Abuses of Weaponized Interdependence* (Washington: Brookings Institution Press, 2021).

⁸⁶ Drezner, Farrell, and Newman, *Ibid.* p. 70

example, they cite Europe's willingness to allow U.S. policy dominance because of a shared economic benefit, but that this willingness is still "a form of imperium in the domain of law."⁸⁷

Nexon and Wright add to this discussion, arguing that "every social and political environment is characterized by a particular network structure, one generated by the pattern of symbolic and material transactions ("ties") between actors."⁸⁸ Because of the universal spread of network ties, a state with outsized influence in an interconnected system can use these linkages to its advantage. In the aviation realm, network dependence emerged over the decades as states created an ever-increasing web of connected airports with associated economic dependencies. These networks provided a territory without the physical space of state borders, but with qualities just as tangible.

In addition to being conduits for commercial exchange, Cooley and Nexon argue these networks also embed and perpetuate norms among states.⁸⁹ The frequent establishment of asymmetrical arrangements and maintenance of these networks tends to privilege certain states who may "project power well outside their borders."⁹⁰ Like Farrell and Newman, Cooley and Nexon argue the United States has served in this role in a variety of networks. "Within broader international order we find an American hegemonic system within which the United States most directly

⁸⁷ Drezner, Farrell, and Newman, *The Uses and Abuses of Weaponized Interdependence*. P. 52

⁸⁸ Daniel H. Nexon and Thomas Wright, "What's at Stake in the American Empire Debate," *American Political Science Review* 101, no. 2 (May 2007). p. 255

⁸⁹ Alexander Cooley and Daniel Nexon, *Exit from Hegemony: The Unraveling of the American Global Order, Exit from Hegemony*. p. 9

⁹⁰ Cooley and Nexon, *Ibid.* p. 37

orders and takes leadership of economic, security, and political relations.”⁹¹ The U.S. is a ‘giver,’ not a ‘taker’ of norms, rules, and standards in the international environment.

While Cooley and Nexon refer to this phenomenon as the “American security system extortion,”⁹² this concept is also outlined in the hegemonic order theory. As contrasted with unipolar and empire network concepts, hegemonic order theory examines stability, power, and order based on economic, military, and technological network connections.⁹³ Nexon and Wright differentiate the three types of network orderings based on the strength and density of network connections, i.e. “the degree to which they are connected to other actors in the network.”⁹⁴ A hegemonic state is able to use connection density “to impose its set of rules on the interstate system, and thereby create temporarily a new political order.”⁹⁵ This hegemonic projection occurs by influencing and directing networks rather than directly controlling spaces, contrasting it with a more imperial concept.⁹⁶ By controlling highly connected systems without conquering territory, powerful states like the U.S. can push their preferred principles, norms, and/or regulations onto others. Nexon and Wright argue much of state consent to hegemonic or extraterritorial influence comes from the benefits of compliance.⁹⁷ For instance, in the realm of security, networked states have “security guarantees” that protect them from harm because of their participation in the powerful state’s security order.⁹⁸

⁹¹ Alexander Cooley and Daniel Nexon, *Exit from Hegemony: The Unraveling of the American Global Order, Exit from Hegemony* (Oxford University Press), accessed December 5, 2020, p. 46.

⁹² Cooley and Nexon, Ibid. p. 174

⁹³ Daniel H. Nexon and Thomas Wright, “What’s at Stake in the American Empire Debate,” *American Political Science Review* 101, no. 2 (May 2007). p. 254

⁹⁴ Nexon and Wright, Ibid. p. 256

⁹⁵ Patrick Karl O’Brien, Armand Clesse, and Niall Ferguson, “Hegemony or Empire?,” 2023. p. 156

⁹⁶ T.V. Paul, “Soft Balancing in the Age of U.S. Primacy,” *International Security* 30, no. 1 (July 2005). p. 54

⁹⁷ Daniel H. Nexon and Thomas Wright, “What’s at Stake in the American Empire Debate,” *American Political Science Review* 101, no. 2 (May 2007): p. 257.

⁹⁸ Nexon and Wright, Ibid. P. 257

Infrastructure is the key to enabling networked power relationships of this kind. de Goede and Westermeier refer to this as “infrastructural geopolitics,” a concept of hegemonic influence “in and through infrastructure.”⁹⁹ They argue that infrastructures are not just a means for international politics to use, but can themselves be sources of power.¹⁰⁰ While they primarily discuss examples of financial gamesmanship through infrastructure, highlighting U.S. extraterritoriality through “dollar hegemony,”¹⁰¹ one can also view the aviation system through this lens. States “who are better connected than others”¹⁰² within the system can provide significant economic, commercial, and security benefits to less connected states by continuing flight connections, opening access, and/or providing protection. For the U.S. and its networked states, this means more flights, increased revenue, and enhanced security against threats to economies and citizens. As Bacevich notes, the center role of a network is something U.S. politicians intentionally advanced during the 1990s.¹⁰³ “Describing her vision of the emerging global network, Albright declared that ‘America’s place is at the center of this system’...Clinton himself insisted that ‘We have to be at the center of every vital global network.’”¹⁰⁴

Mattli and Woods’ discussion of the United States’ hegemonic role in finance is also noteworthy.¹⁰⁵ They argue that the United States’ global position gives it the unique ability to

⁹⁹ Marieke de Goede and Carola Westermeier, “Infrastructural Geopolitics,” *International Studies Quarterly* 66, no. 3 (July 18, 2022): p. 2.

¹⁰⁰ de Goede and Westermeier, *Ibid* P. 2

¹⁰¹ de Goede and Westermeier, *Ibid*. P. 3

¹⁰² de Goede and Westermeier, *Ibid*. pp. 3-4

¹⁰³ Andrew J. Bacevich, *American Empire: The Realities and Consequences of U. S. Diplomacy* (Cambridge, UNITED STATES: Harvard University Press, 2002), p. 39.

¹⁰⁴ Bacevich, *Ibid*. P. 113

¹⁰⁵ Walter Mattli and Ngaire Woods, *The Politics of Global Regulation* (Princeton University Press, 2009). pp. 6-7

disproportionately influence the international economy.¹⁰⁶ “If divergence is costly to the United States...then [it] will mobilize political pressure to coerce foreign regulators to fall in line with U.S. rules. Specifically, when the sources of externalities are distinct or the externality is divisible, the United States will target its pressure through unilateral action or bilateral agreement.”¹⁰⁷ They argue that the U.S. only uses multilateral institutions as a fallback plan, and only then to influence these organizations as tools for externalizing U.S. policy under multilateral cover.¹⁰⁸

In security, interdependence can also be weaponized by using fear or threats of withdrawn protection to push states into adhering to the stronger state’s preferences. Elden discusses this concept, noting that the U.S. often uses extraterritoriality in security whenever incidents impact U.S. interests overseas “as if it had happened at home.”¹⁰⁹ Kaczmarek and Newman cite a post-9/11 example of Passenger Name Recognition (PNR) data.¹¹⁰ This situation arose when the United States desired to enhance its watchlisting capabilities for aviation and required collection of additional fields of data on individuals flying into the U.S., to include gender and date of birth. The European Union’s (EU) privacy norms conflicted with the U.S. information requirements, setting up a years-long negotiation between the two groups. Ultimately the United States prevailed through its economic bargaining power. Flights from the EU to the U.S. generate a lot of revenue for European states, and might suffer in the event of non-compliance.

¹⁰⁶ Mattli and Woods. pp. 6-7

¹⁰⁷ Mattli and Woods, Ibid. pp. 6-7

¹⁰⁸ Mattli and Woods, Ibid. pp. 6-7

¹⁰⁹ Elden, *Terror and Territory*. P. 25

¹¹⁰ Sarah C. Kaczmarek and Abraham L. Newman, “The Long Arm of the Law: Extraterritoriality and the National Implementation of Foreign Bribery Legislation,” *International Organization* 65, no. 4 (October 2011): 745–70.

The way the United States has positioned itself in global networks through its hidden geopolitical layer as well as the traditional sovereign state layer is a critical concept to my research. Its impacts can be seen as an exportation of policy preferences that manifests as extraterritoriality – a projection of one state onto one or more other states. This will be discussed further below as part of my dissertation’s secondary/working concepts.

Regimes

According to two major theories for regime change, shifts may occur through a gradual process of regime change, which Mahoney and Thelen argue is the most common type of regime emergence,¹¹¹ or through critical junctures, which Capoccia and Kelemen propose.¹¹² Capoccia and Kelemen describe regimes as locked into path dependence and unlikely to change unless/until there is an exogenous shock to the system: the critical juncture.¹¹³ They discuss these as sudden events rather than gradual, cumulative events.¹¹⁴ Wars are examples of critical junctures that cause significant change.¹¹⁵ World War II, for example, was a shock to the system that created a new multilateral regime with the United Nations managing many aspects of international relations.

Similarly, terror events can act as significant shock events per this theory. Luke describes September 11, 2001 (9/11) as event that brought attention to American’s “empire of bases” and hegemonic need to access to places and spaces to expand its own territorial boundaries and

¹¹¹ James Mahoney and Kathleen Thelen, eds., *Explaining Institutional Change: Ambiguity, Agency, and Power* (Cambridge: Cambridge University Press, 2009)

¹¹² Giovanni Capoccia and R. Daniel Kelemen, “The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism,” *World Politics* 59, no. 3 (April 2007): 341–69

¹¹³ Capoccia and Kelemen, *Ibid.* p. 368

¹¹⁴ Capoccia and Kelemen, *Ibid.* p. 348

¹¹⁵ Orfeo Fioretos, ed., *International Politics and Institutions in Time* (Oxford: Oxford University Press, 2017).

reach.¹¹⁶ He claims that the need to make “incursions” and their accompanying “extraterritorial privileges” is a U.S. tactic to address threats from change, allies, and/or enemies.¹¹⁷ Agnew argues that 9/11 enabled concepts like contingent sovereignty, where the U.S. bent norms for its own purposes.¹¹⁸ Examples include permitting torture in Guantanamo Bay, sending troops into spaces in violation of non-intervention clauses, and flouting domestic norms by implementing the USA Patriot Act and other privacy violations.¹¹⁹

Mattli and Woods as well as Newman and Posner argue that the U.S. tends to change others when it is less costly than changing its own regime, but events like the Pan Am 103 bombing, 9/11, and other shock events also reveal a pattern of changing others to export fear and risk away from U.S. soil.^{120 121} Toal also notes that American consumer culture and self-interest (what Agnew refers to as democratization of desire) fuels politics of regime change, as it continues to serve that interest.¹²² There is a strong case to be made that when a strong power in the system wants to change a regime, there is little for others to do but follow, however reluctantly.¹²³ This is also a key feature of Farrell and Newman’s weaponized interdependence concept, discussed further below.¹²⁴

¹¹⁶ Timothy W. Luke, “Democracy and Imperialism: The United States and Three Modes of Empire,” *Telos* 2018, no. 185 (2018): 9–34.

¹¹⁷ Timothy W. Luke, “Democracy and Imperialism: The United States and Three Modes of Empire,” *Telos* 2018, no. 185 (2018). Pp. 13, 15, 17

¹¹⁸ John Agnew, *Hegemony: The New Shape Of Global Power* (Temple University Press, 2005), p. 17

¹¹⁹ Elden, *Terror and Territory*. p. 55

¹²⁰ Mattli and Woods, *The Politics of Global Regulation*.

¹²¹ Abraham L. Newman and Elliot Posner, *Voluntary Disruptions: International Soft Law, Finance, and Power. Transformations in Governance* (Oxford: Oxford University Press, 2018).

¹²² Lasha Tchantouridze, *Geopolitics: Global Problems and Regional Concerns*. Toal, Ch. 6: “Geopolitical Structures and Cultures.” P. 86

¹²³ Stephen D. Krasner, *Power, the State, and Sovereignty: Essays on International Relations* (Florence, UNITED STATES: Taylor & Francis Group, 2009).

¹²⁴ Farrell and Newman, *Underground Empire: How America Weaponized the World Economy*.

Regime norms are important in understanding the longevity of regimes and why critical junctures are rare events. Ramos argues that norms often become embedded in the system when “a norm entrepreneur promotes the norm.”¹²⁵ Strong actors ensure that the norm is distributed, making it hard for weaker actors in the system to diverge from the new norm.

Ramos discusses shifts in norms as regime changes that can be directly attributed to “actor-induced events” and are “generally large in scale, humanly dramatic, and have a global reach.”¹²⁶ Her examples include events such as 9/11, the Rwandan genocide of 1994, and the Hiroshima and Nagasaki bombings of 1945.¹²⁷ She argues that while these events provide the ingredients for regime change, “change is not inevitable.”¹²⁸ It is important, therefore, to examine other factors that can lead to regime change, and are at play in the critical juncture of Pan Am 103.

This dissertation highlights three regimes that I propose under the Capoccia and Kelemen’s critical juncture theory. Under this model, regimes are long standing rather than temporary, and combine behavior with the application of norms to create a system.¹²⁹ New regimes arise out of changes to these principles and norms.¹³⁰ This can be through threats to the underlying norms¹³¹ but also

¹²⁵ Jennifer M. Ramos, *Changing Norms through Actions: The Evolution of Sovereignty* (New York: Oxford University Press, 2013), p. 31.

¹²⁶ Ramos, Ibid. p. 33

¹²⁷ Ramos, Ibid. p. 33

¹²⁸ Ramos, Ibid. p. 33

¹²⁹ Stephen D. Krasner, *Power, the State, and Sovereignty: Essays on International Relations* (Florence, UNITED STATES: Taylor & Francis Group, 2009), p. 113.

¹³⁰ Krasner, Ibid. P. 114

¹³¹ Barry Buzan et al., *Security: A New Framework for Analysis* (Lynne Rienner Publishers, 1998). P. 22

through critical junctures that break from the status quo.¹³² The change is distinguished from normal historical development and should show a profound change from established processes.¹³³

Aviation scholars typically separate its evolution into three regime periods. Jönsson's trio is broken into the unrestricted sovereignty regime from 1919-1944, the Chicago-Bermuda regime from 1945-1970s, and the non regime solution from the 1970s to today.¹³⁴ His first regime begins with the 1919 Paris Convention, where states agreed to exclusive airspace sovereignty above their territory, and ends with the 1944 Chicago Convention, where flying states established a multilateral oversight body in ICAO.¹³⁵ His second Chicago-Bermuda regime captures the evolution of ICAO into a central body for airspace management and technical oversight.¹³⁶ The final regime focuses on economic challenges and industry deregulation in shifting aviation toward a period of ad hoc exceptions rather than adherence to previous norms.¹³⁷

Where Jönsson focuses on sovereignty and airspace management, Harrison conceives of aviation regimes according to security developments. His phases focus on the evolution of tactics and are termed: flight from persecution from 1948 to 1969 (trends of hijacking to flee political unrest), political from 1968 to 1994 (trends of sabotage), and weapon/warfare from 1994 to today (trends of shooting down aircraft and assaults on airports).¹³⁸

¹³² Giovanni Capoccia and R. Daniel Kelemen, "The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism," *World Politics* 59, no. 3 (April 2007): p. 352

¹³³ Capoccia and Kelemen, Ibid. P. 348

¹³⁴ Christer Jönsson, "Sphere of Flying: The Politics of International Aviation," *International Organization* 35, no. 2 (1981): pp. 276-286

¹³⁵ Jönsson, Ibid. p. 276

¹³⁶ Jönsson, Ibid. p. 280

¹³⁷ Jönsson, Ibid. p. 286

¹³⁸ John Harrison, *International Aviation and Terrorism: Evolving Threats, Evolving Security* (London, UNITED KINGDOM: Taylor & Francis Group, 2009). pp. 53-57

I propose a different construct for understanding major aviation shifts over time: (1) the Aviation Building Regime from 1919-1944, (2) the Multilateral Management Regime from 1945 to 1988, and (3) the U.S. Extraterritorial Security Regime from 1989 to today. This conception merges a focus on airspace management with security to provide a more fulsome picture of regime evolution. My Aviation Building Regime captures the initial setup of airspace management among leading aviation powers at the time, including the United States, Great Britain, Canada, and France.¹³⁹ The Multilateral Management Regime demonstrates the shift from individual state airspace sovereignty to creation of an international group to manage the ever-thickening grid of flights around the globe. The U.S. Extraterritorial Security Regime is a shift from a collective management of airspace to one driven by U.S. concerns and priorities.

In these regime outlines, the latter two are of most importance to my research. In the Multilateral Management Regime, ICAO becomes a technical body to “develop the principles and techniques of international air navigation and to foster the planning and development of international air transport.”¹⁴⁰ Key states involved in the development and management of ICAO include the U.S., UK, Europe (France, Italy, Germany, Sweden, Spain, Norway, Switzerland, Netherlands), Canada, Australia, New Zealand, South Africa, and India.¹⁴¹ Toward the end of this era, security becomes an area of concern to states as hijackings and bombings against aircraft increased.¹⁴²

¹³⁹ MacKenzie, *ICAO*. pp. 7-8

¹⁴⁰ MacKenzie, *Ibid.* P. 51

¹⁴¹ MacKenzie, *Ibid.* P. 68

¹⁴² John Harrison, *International Aviation and Terrorism: Evolving Threats, Evolving Security* (London, UNITED KINGDOM: Taylor & Francis Group, 2009), p. 53.

These will be further explored in Chapters 5, 6 and 12 respectively.

Secondary Concepts

Within these large-scale theoretical concepts, there are additional working concepts important to my research and argument. Among these major ideas are extraterritoriality, securitization, the intersection of economics with each.

Extraterritoriality

The concept of extraterritoriality extends territory, or the “reach of domestic rules,” beyond “geographic borders.”¹⁴³ It also suggests foreign occupation, whether *de facto* or *de jure*. Farrell and Newman describe this as “a presence standard,” where one state may make an extraterritorial claim on another “so long as a firm has an economic or legal presence in it.”¹⁴⁴ This phenomenon is one they note that United States and the European Union in particular have deployed, with growing use by Japan and China.¹⁴⁵ Strating and Willis also discuss China’s use of extraterritoriality particularly in the maritime environment, noting China has been “enacting domestic legislation to either undermine or supersede international law.”¹⁴⁶ They refer to the use of extraterritoriality as a “strategy for ordering and controlling space.”¹⁴⁷ Farrell and Newman

¹⁴³ Henry Farrell and Abraham L. Newman, *Of Privacy and Power: The Transatlantic Struggle over Freedom and Security*. p. 27

¹⁴⁴ Farrell and Newman, *Ibid.* p. 27.

¹⁴⁵ Farrell and Newman, *Ibid.* p. 27.

¹⁴⁶ Rebecca Strating and Joanne Wallis, “Maritime Sovereignty and Territorialisation: Comparing the Pacific Islands and South China Sea,” *Marine Policy* 141 (July 2022). p. 3

¹⁴⁷ Strating and Wallis, *Ibid.* P. 5

further this idea, arguing that states also use extraterritoriality not just to control space but for states to “influence the behavior of actors outside their own jurisdiction.”¹⁴⁸

Agnew argues that states externalize their preferred policies by rewarding or punishing state activity in spaces of common interest.¹⁴⁹ This “state affinity for remote control”¹⁵⁰ is a tactic of expanding and controlling territory without direct physical oversight, using coercion, consent, or both. Remote control allows for a powerful state to use its core position within a network to apply indirect power from a distance, without conquering and accumulating territory under an imperial umbrella.¹⁵¹ Even though Agnew argues sovereignty is a construct or a fiction (i.e. the system itself does not require this setup – it is one that states chose), it is still a fiction that has significant roots in international regimes and societal constructs. As such, extraterritorially inserting external norms onto another state is an important phenomenon.

The U.S. is a frequent user of extraterritorial projection, particularly when it comes to economic interests. Agnew argues that the marketplace society of the U.S. and its “commodification of people and goods”¹⁵² is so important to its policy preferences and societal organization, that it often results in a hegemonic or extraterritorial application of those preferences. He notes that the “U.S. government has consistently expanded its grip territorially and economically beyond the juridical limits of the United States,” a trend he refers to as the “urge to empire.”¹⁵³ This “social

¹⁴⁸ Henry Farrell and Abraham L. Newman, *Of Privacy and Power: The Transatlantic Struggle over Freedom and Security* (Princeton University Press, 2019), p. 27.

¹⁴⁹ John Agnew, *Globalization and Sovereignty: Beyond the Territorial Trap, Second Edition*. pp 144, 146

¹⁵⁰ Peter Adey, *Aerial Life*, 2010, p. 74

¹⁵¹ Michael Barnett and Raymond Duvall, “Power in International Politics,” *International Organization* 59, no. 01 (January 2005). p. 51

¹⁵² John Agnew, *Hegemony: The New Shape Of Global Power* (Temple University Press, 2005), p. 5

¹⁵³ Agnew, *Ibid.* P. 16

domination”¹⁵⁴ has led to the U.S. – particularly since the 1970s and collapse of the Bretton Woods system – to serve as an “enforcer of global norms of political and economic conduct.”¹⁵⁵

This enforcement often occurs *de facto*, not through direct territorial control, but remote control as Adey describes it.¹⁵⁶ This is essentially the opportunity, through one’s hierarchical position in the system, to exert control beyond borders.¹⁵⁷ Agnew argues that this is only successful with the consent or recognition of other states in the system.¹⁵⁸ “It need not include coercive power but relies mainly on participation and assent. Enforcement, therefore, rarely if ever involves much more than the imminent threat of expulsion from the ‘club.’”¹⁵⁹

The U.S. has deployed extraterritoriality in security, as well as narcotics, cybercrime, and banking.¹⁶⁰ ¹⁶¹ The U.S. has likewise made demands on the European Union in immigration through new international visa requirements, which “stoked transatlantic tension.”¹⁶² Even in areas where the U.S. and other nations or international organizations have mutual policy interests, U.S. extraterritorial policies can alter global dynamics.¹⁶³

¹⁵⁴ John Agnew, *Hegemony: The New Shape Of Global Power* (Temple University Press, 2005), p. 21.

¹⁵⁵ Agnew, *Ibid.* P. 251

¹⁵⁶ Peter Adey, Mark Whitehead, and Alison Williams, eds., *From above: War, Violence, and Verticality*, First edition, Critical War Studies Series (New York, NY: Oxford University Press, 2013).

¹⁵⁷ Agnew, *Globalization and Sovereignty*. p. 141

¹⁵⁸ Agnew, *Ibid.* pp. 109-112

¹⁵⁹ Agnew, *Hidden Geopolitics*. p. 17

¹⁶⁰ Sarah C. Kaczmarek and Abraham L. Newman, “The Long Arm of the Law: Extraterritoriality and the National Implementation of Foreign Bribery Legislation,” *International Organization* 65, no. 4 (October 2011): 745–70

¹⁶¹ Agnew, *Globalization and Sovereignty*. p. 141

¹⁶² Abraham Newman, “Transatlantic Flight Fights: Multi-Level Governance, Actor Entrepreneurship and International Anti-Terrorism Cooperation,” *Review of International Political Economy* 18, no. 4 (October 2011). p. 497

¹⁶³ Sarah C. Kaczmarek and Abraham L. Newman, “The Long Arm of the Law: Extraterritoriality and the National Implementation of Foreign Bribery Legislation,” *International Organization* 65, no. 4 (October 2011): p. 745

While soft power influence is the dominant and preferred extraterritorial approach, there is often a lingering threat to compel participation by threatening noncompliance states with sanctions, punishments, and political consequences.¹⁶⁴ Jaeger notes that the U.S. has deployed such sanctions despite protests by other states and in violation of international law.¹⁶⁵ “U.S. sanctions subject their targets to U.S. power, but also project U.S. power beyond its borders, by imposing its jurisdiction extraterritorially onto foreign territories not directly involved in the conflict...The costs that may result from violating U.S. sanctions regulations can be quite substantial, or even ruinous.”¹⁶⁶ I argue that both of these elements of weaponized interdependence – security and economics – are at play in the Pan Am 103 critical juncture.

While the above primarily notes the use of extraterritoriality through interconnectedness to provide a virtual control of an environment, there is also a physical element of control that is worth examining. The U.S. has long both held an expansive military and diplomatic footprint that includes the physical placement of many U.S. embassies and military bases overseas. While embassies and military are different in scope and mission, the physical footprint of U.S. spaces is the commonality worth noting. In 2015, media reporting showed that the U.S. had approximately 800 military bases in 70 international locations.¹⁶⁷ The Lowy Institute Global Diplomacy Index showed that in 2023, the U.S. had 271 embassies in 173 countries worldwide.¹⁶⁸ Until 2018, the

¹⁶⁴ Agnew, *Globalization and Sovereignty*. P. 115

¹⁶⁵ Mark Daniel Jaeger, “Circumventing Sovereignty: Extraterritorial Sanctions Leveraging the Technologies of the Financial System,” *Swiss Political Science Review* 27, no. 1 (March 2021). p. 180

¹⁶⁶ Jaeger, *Ibid*. Pp. 183, 186

¹⁶⁷ David Vine, “Where in the World Is the U.S. Military?,” Politico Magazine.

¹⁶⁸ “Lowy Institute Global Diplomacy Index 2024.”

U.S. had the most expansive foreign diplomatic footprint of any country, only surpassed by another state (China) for the first time in 2019.¹⁶⁹

Andrew Lakoff describes the phenomenon as a philosophy that began to be expressed even more by the U.S. during the Cold War as a desire to fight threats “over there” rather than facing them domestically.¹⁷⁰ He argues that U.S. strategies became about vigilance and mobility, constantly trying to protect its potential targets by expanding its reach outside of its shores.¹⁷¹ Johnson provides an example of how this has manifested in physical expansion in what he terms an empire of bases.¹⁷² This push by the U.S. to have military and diplomatic sites far beyond its shores was an attempt to establish a presence everywhere in the hopes of facing threats elsewhere.¹⁷³

Extraterritoriality became the overarching U.S. strategy to address its concern about the ‘other.’ The U.S. was deeply concerned about meeting threats elsewhere, as Lakoff described, but also culturally concerned about walling itself in from the external threat. Brown discusses this as an almost obsession of walls and gated communities to segregate and protect from the threat of the unknown external.¹⁷⁴ She argues that the desire to uphold the fiction of sovereignty and associated state desires for power and control over territory lead to a wish for protection and containment from “enemies without.”¹⁷⁵ Newman likewise writes that “the stronger the barrier

¹⁶⁹ “Lowy Institute Global Diplomacy Index 2024.”

¹⁷⁰ Andrew Lakoff, *Unprepared, Unprepared* (University of California Press, 2017).

¹⁷¹ Lakoff, *Ibid.* P. 22

¹⁷² Timothy W. Luke, “Democracy and Imperialism: The United States and Three Modes of Empire,” *Telos* 2018, no. 185 (2018): 9–34.

¹⁷³ Luke, *Ibid.*

¹⁷⁴ Wendy Brown, “Desiring Walls,” in *Walled States, Waning Sovereignty* (Zone Books, 2010), p. 33

¹⁷⁵ Brown, *Ibid.* pp. 37-38

function of the border, the more powerful the imagined, the more abstract the narrative of what is perceived as lying on the other side,”¹⁷⁶ while pointing out that the United States, particularly during the Cold War, “fail[ed] to respect the borders and sovereignty of other states” by pushing its own physical and legal presence into other states’ territories.¹⁷⁷ Toal describes the shock and surprise Americans experienced during 9/11 that a threat could truly face them on their own soil in contravention of this “over there” philosophy.¹⁷⁸

Outsized, extraterritorial U.S. influence can also be seen in transportation spaces, where the U.S. has long been a dominant player in aviation.¹⁷⁹ While Europe dominated airplane production and use from its invention to World War II, the U.S. quickly took over to leave its counterparts behind.¹⁸⁰ As such, it has consistently had an outsized influence in aviation spaces, particularly through constructing physical airports.¹⁸¹ Adey describes airports as “gateways to the nation,” a link and node network that would both defend as well as potentially strangle competitors’ aspirations in the air.”¹⁸²

The U.S. raced to build its own airports, as well as to make arrangements with other states’ airports to establish a U.S. presence within them. As Salter, Adey, and Mountz discuss, since the

¹⁷⁶ David Newman, “On Borders and Power: A Theoretical Framework,” *Journal of Borderlands Studies* 18, no. 1 (March 2003): p. 20

¹⁷⁷ David Newman, *Boundaries, Territory and Postmodernity*, [Cass Studies in Geopolitics, 1466-7940, no. 1] (London ; F. Cass, 1999), p. 35.

¹⁷⁸ Lasha Tchantouridze, *Geopolitics: Global Problems and Regional Concerns*. Toal: “Geopolitical Structures and Cultures: Towards Conceptual Clarity in the Critical Study of Geopolitics.” P. 85

¹⁷⁹ Jenifer Van Vleck, *Empire of the Air: Aviation and the American Ascendancy* (Cambridge, UNITED STATES: Harvard University Press, 2013).

¹⁸⁰ Tom D. Crouch, *Wings : A History of Aviation from Kites to the Space Age* (Washington, D.C. : Smithsonian National Air and Space Museum, 2003).

¹⁸¹ Adey, Whitehead, and Williams, *From Above*.

¹⁸² Peter Adey, *Aerial Life*, 2010, p. 67

1960s, the U.S. has held facilitation agreements known as preclearance arrangements.¹⁸³ ¹⁸⁴The U.S.-Canada preclearance arrangement was implemented in 1974, which Adey described as a setup in which the “borders of the United States do not remain at its geographical limits, but are extended over ‘variegated authority and overlapping sovereignties.’”¹⁸⁵ These agreements have allowed the U.S. to export its territory in 18 international airports in Canada, Ireland, the Bahamas, Bermuda, the United Arab Emirates, and more, and place its customs processing away from U.S. soil. The space is considered the United States, and all U.S. border and customs laws apply.¹⁸⁶

The U.S. desire to control external spaces is also an important finding in my research and is a key area I highlight in the aftermath of Pan Am 103. I discuss this in greater detail in Chapter 12.

Securitization

Securitization theory is notably attributed to Ole Weaver and the Copenhagen school. The idea of security, per this theory, is a type of discourse or speech act designed to present an issue “as one of an ‘existential threat,’ which calls for extraordinary measures beyond the routines and norms of everyday politics.”¹⁸⁷ Issues become cast in a storyline of crisis that needs an immediate – potentially disproportionate – response. Buzan likens security to a type of network, or complex, in and of itself.¹⁸⁸ Within this complex, states are “so interlinked that their national

¹⁸³ Mark B. Salter, *Politics at the Airport*, NED-New edition (University of Minnesota Press, 2008).

¹⁸⁴ Alison Mountz, *Seeking Asylum: Human Smuggling and Bureaucracy at the Border*, NED-New edition (University of Minnesota Press, 2010).

¹⁸⁵ Peter Adey, *Aerial Life*, 2010, p. 76

¹⁸⁶ Mark B. Salter, “Governmentalities of an Airport: Heterotopia and Confession: Governmentalities of an Airport,” *International Political Sociology* 1, no. 1 (February 12, 2007): 49–66.

¹⁸⁷ Michael C. Williams, “Words, Images, Enemies: Securitization and International Politics,” *International Studies Quarterly* 47, no. 4 (December 2003): p. 513.

¹⁸⁸ Buzan et al., *Security*. P. 12

security problems cannot reasonably be analyzed or resolved apart from each other.”¹⁸⁹ Within an interconnected system, rhetoric is key to asymmetric power movements: “by labeling it as security, an agent claims a need and right to treat it by extraordinary means.”¹⁹⁰

The link between security and urgency gives powerful states the influence to make claims on others through new requirements, much like Drezner, Farrell, and Newman’s weaponized interdependence concept.¹⁹¹ Buzan’s version of this is a “security complex,” which he refers to as “a set of states whose major security perceptions and concerns are so interlinked that their national security problems cannot reasonably be analyzed or resolved apart from each other.”¹⁹²

Securitization is a means of exercising extraterritoriality by applying domestic security regulations on the international system. Williams defines securitization as “a specific kind of speech act that casts the issue as one of an ‘existential threat,’ which calls for extraordinary measures beyond the routines and norms of everyday politics.”¹⁹³ This process perceives threats within the international system and moves them into a category requiring extraordinary means to address the situation.¹⁹⁴ Anxiety and fear are important drivers in networked states consenting to these requirements, as the fallout from rebellion is not only restricted network access but vulnerability to threats. Albertson and Gadarian argue that people in extreme fear and anxiety tend to choose aggressive, protective policies, which often turn into securitization, or a power

¹⁸⁹ Buzan et al. P. 12

¹⁹⁰ Buzan et al, Ibid. p. 26

¹⁹¹ Buzan et al, Ibid. p. 21

¹⁹² Buzan et al, Ibid. P. 12

¹⁹³ Michael C. Williams, “Words, Images, Enemies: Securitization and International Politics,” *International Studies Quarterly* 47, no. 4 (December 2003). p 514

¹⁹⁴ Williams, Ibid. pp 512-513

grab in the name of security.¹⁹⁵ Buzan argues that “by saying ‘security,’ a state representative declares an emergency condition, thus claiming a right to use whatever means are necessary to block a threatening development.”¹⁹⁶

Securitization, then, allows states to make exceptions, declare emergencies, and use means in contravention of traditional arrangements or international agreements in the name of protecting against a threat.¹⁹⁷ Buzan describes the effect of this phenomenon in areas of environment, politics, and economics. Economic securitization is usually used to defend against concern about “a comprehensive unraveling of the system” and either real or imagined resulting chaos.¹⁹⁸ Much as Agnew argues in the fiction of sovereignty, Buzan notes that an issue can only be securitized if the actors in play accept that it is.¹⁹⁹

While airplanes have long been a source of inspiration and expansion for humanity, they also quickly came to represent a new means of warfare and so also instigated an element of terror. From air raids to current drone warfare, Elden argues there is something particularly terrifying about killing from the skies, and that it tends to cause the most emotional responses from states and their inhabitants.²⁰⁰ Sochor gives an example of this as the Pakistani military shot down an Afghan commercial aviation flight for accidentally violating its territorial airspace – no one survived the crash.²⁰¹

¹⁹⁵ Bethany Albertson and Shana Kushner Gadarian, *Anxious Politics: Democratic Citizenship in a Threatening World* (Cambridge: Cambridge University Press, 2015).

¹⁹⁶ Buzan et al., *Security*. P. 21

¹⁹⁷ Buzan et al, Ibid. P. 21

¹⁹⁸ Buzan et al, Ibid. P. 116

¹⁹⁹ Buzan et al, Ibid. P. 25

²⁰⁰ Elden, *Terror and Territory*. p. xxii

²⁰¹ Eugene Sochor, *The Politics of International Aviation* (Iowa City : University of Iowa Press, 1991). p. 133

The role of emotion and affect in securitization is also important, as much of the time in a security incident, there is a significant element of fear and anxiety at play. Massumi refers to this as the concept of shocks – some macro, some micro, but always at play in political environments.²⁰²

The affective nature of security discourse provides opportunity for securitization's exceptionalism. The shock of an event, particularly with visuals, leads to public affect and provides an opportunity for securitization. As Buzan describes it, the speech act of invoking security in a situation "declares an emergency condition...claiming a right to use whatever means are necessary to block a threatening development."²⁰³ However, also key to this is public acceptance – the discourse of securitization works when people believe and perpetuate its necessity.²⁰⁴

Anxiety and securitization merge in aviation as airplanes increasingly became targets for political statements and eventually terrorist attacks, such as hijackings and airplane bombings.²⁰⁵ In the U.S. in particular, fear and anxiety often drove to politicians proposing policies for strict bordering or more aggressive "othering."²⁰⁶ ²⁰⁷ Emerson argues that this is enabled through speech acts of labeling something as a "security" issue, thus "claim[ing] a special right to use

²⁰² Brian Massumi, *Politics of Affect* (Polity, 2015), P. 53

²⁰³ Buzan et al., *Security*. P. 21

²⁰⁴ Buzan et al, *Ibid.* p. 25

²⁰⁵ John Harrison, *International Aviation and Terrorism: Evolving Threats, Evolving Security* (London, UNITED KINGDOM: Taylor & Francis Group, 2009).

²⁰⁶ Wendy Brown, "Desiring Walls," in *Walled States, Waning Sovereignty* (Zone Books, 2010).

²⁰⁷ David Newman, "On Borders and Power: A Theoretical Framework," *Journal of Borderlands Studies* 18, no. 1 (March 2003): 13–25.

whatever means are necessary.”²⁰⁸ Securitizing an issue, he notes, “declares that the current normative order is unable to cope with the threat and thus requires new possibilities within a state of emergency.”²⁰⁹ Pan Am 103 serves as an example of this, providing an opportunity for anxiety-induced securitization policies, culminating in an extraterritorial U.S. move made possible by a dense and interconnected network.

Suda also gives an important example of how securitization occurred in the aviation environment after the 9/11 attacks, 13 years after the Pan Am 103 bombing. After this significant event of fear and destruction, the U.S. addressed vulnerabilities in aviation by seeking to overrule international privacy laws. This change was made through a program known as Passenger Name Recognition, where the U.S. decided to gather additional data on any individual flying to, or above, the United States, and possibly deny them access to flights based on this information.²¹⁰ As part of this program, the U.S. required new passenger information such as name, date of birth, phone numbers, addresses, payment, and more.²¹¹

Though in direct conflict with strict EU privacy regulations for its citizens, the U.S. forced the requirement onto the aviation system with threats of extensive fines and/or revoking airplane access to the U.S.²¹² This example demonstrates the way a strong state in an interconnected network was able to use securitization to impose its domestic requirements externally. Suda argues that “the requirement to transfer PNR data was an expression of the American

²⁰⁸ Emerson, “Towards a Process-Orientated Account of the Securitisation Trinity.” P. 519

²⁰⁹ Emerson. P. 519

²¹⁰ Yuko Suda, “Transatlantic Politics of Data Transfer: Extraterritoriality, Counter-Extraterritoriality and Counter-Terrorism,” *JCMS: Journal of Common Market Studies* 51, no. 4 (2013). P. 778

²¹¹ Suda. P. 778

²¹² Suda. P. 778

government's desire to 'exercise extraterritorial control over the movement of goods and people' flying into its territory."²¹³ Ultimately, the U.S. position security position won out over privacy regulations, with the EU providing U.S. expanded passenger information.²¹⁴

Economics and Securitization

The hegemon in finance is argued to be the United States; it is in a position unilaterally to change the context for financial markets worldwide. Regulators in other countries can choose to emulate new U.S. regulation or diverge. If divergence is costly to the United States, in other words, it is a source of negative externality for the United States, then the hegemon will mobilize political pressure to coerce foreign regulators to fall in line with U.S. rules.

- Mattli and Woods, *The Politics of Global Regulation*²¹⁵

Buzan notes the special category of economic security, proposing that the fragile nature of the economic system leads to additional concern and care to avoid "a comprehensive unraveling of the system."²¹⁶ Economics and security also frequently come together in extraterritorial discourse. Newman discusses the economic and security extraterritorial stretches by the United States following September 11, 2001.²¹⁷ In extending banking laws and security laws, he describes how the United States worked to bend the world rather than being the one to bend. Mattli and Woods argue that for a powerful state in the system, this is the cheaper and least

²¹³ Yuko Suda, "Transatlantic Politics of Data Transfer: Extraterritoriality, Counter-Extraterritoriality and Counter-Terrorism," *JCMS: Journal of Common Market Studies* 51, no. 4 (2013): p. 778

²¹⁴ Suda, *Ibid.* p. 779.

²¹⁵ Mattli and Woods, *The Politics of Global Regulation*. Pp 6-7

²¹⁶ Buzan et al., *Security*. p. 116

²¹⁷ Sarah C. Kaczmarek and Abraham L. Newman, "The Long Arm of the Law: Extraterritoriality and the National Implementation of Foreign Bribery Legislation," *International Organization* 65, no. 4 (October 2011): 745-70.

burdensome option for a state to make.²¹⁸ This is particularly the case for the United States, as it has become intertwined in the network of security and economic systems set up following World War II, such as the commercial aviation network.

Keohane likewise argues that states seek to burden others rather than “absorbing costs of adjustments.”²¹⁹ Keohane also discusses that it is important to understand how economics can motivate states even more than patriotism or rule of law.²²⁰ Newman and Posner argue that the U.S. uses extraterritoriality as pressure and a condition for access to the economic markets it dominates.²²¹ O Tuathail and Agnew argue that the economic freedom and power centrality has become a staple of culture and replicated itself through U.S. exportation onto other states and cultures.²²² Sassen argues that both the U.S. and U.K. economic systems are built on domestic preferences prevailing over others.²²³

Mattli and Woods term this phenomenon “capture,” which they describe as “control of the regulatory process” such that the “regulatory outcomes favor the narrow ‘few’ at the expense of society as a whole.”²²⁴ Their concept mirrors many aspects of weaponized interdependence, arguing that network density and interconnectedness means a powerful few – or one – can take the others hostage to serve its own needs. Drezner describes this as change following “the

²¹⁸ Mattli and Woods, *The Politics of Global Regulation*.

²¹⁹ Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton University Press, 1984), p. 18

²²⁰ Keohane, *Ibid.* P. 22

²²¹ Abraham L. Newman and Elliot Posner, *Voluntary Disruptions: International Soft Law, Finance, and Power. Transformations in Governance* (Oxford: Oxford University Press, 2018), p. 12.

²²² Gerard O Tuathail and John Agnew, “Geopolitics and Discourse: Practical Geopolitical Reasoning in American Foreign Policy,” ed. Virginie Mamadouh, *Political Geography* 11, no. 2 (March 1, 1992).

²²³ Saskia Sassen, *Territory, Authority, Rights*, 2008, p. 137.

²²⁴ Mattli and Woods, *The Politics of Global Regulation*, p. 12

preferences of dominant powers” to “minimize adjustment costs” that would be involved in changing aspects of its domestic system to follow that of other states.²²⁵ This, Mattli and Woods argue, is the real reason for U.S. extraterritoriality – not a desire for empire or conquering, but a means of minimizing or eliminating disruptions to domestic regulatory order, particularly in economics.²²⁶ They refer to this as “emulation or else,” with examples such the U.S. using its economic position to “enforce its regulatory preferences” in an attempt to address money laundering and drug trafficking.²²⁷ Freedom to follow its own economic preferences has dominated U.S. policy for so long that it has “given rise to an attempt to reconstruct foreign places in an American image.”²²⁸

U.S. economic hegemony intersects with aviation due to the significant commercial revenue in play. This also linked with success of U.S. businesses in the aviation network’s international market, and politics of 1980s deregulation and debt policies.²²⁹ Per Bailey, due to economic deregulation, three U.S. carriers (TWA, Pan Am, and Eastern), were facing bankruptcy in the 1970s.²³⁰ U.S. economic concerns and significant aviation interests then intersected with security as the 1970s and 1980s brought an increase in hijackings and bombings. Bailey argues this represented “a new focus of American on financial stabilization and on improving its ability to provide security.”²³¹

²²⁵ Mattli and Woods, *The Politics of Global Regulation*. P. 119

²²⁶ Mattli and Woods, *Ibid.* p. 262

²²⁷ Mattli and Woods, *Ibid.* p. 265

²²⁸ Gerard O Tuathail and John Agnew, “Geopolitics and Discourse: Practical Geopolitical Reasoning in American Foreign Policy,” ed. Virginie Mamadouh, *Political Geography* 11, no. 2 (March 1, 1992), p. 196.

²²⁹ “What Prompted Airline Deregulation 20 Years Ago? What Were the Objectives of That Deregulation and How Were They Achieved?,” Findlaw.

²³⁰ Elizabeth E. Bailey, “Aviation Policy: Past and Present,” *Southern Economic Journal* 69, no. 1 (2002): p. 19.

²³¹ Elizabeth E. Bailey, “Aviation Policy: Past and Present,” *Southern Economic Journal* 69, no. 1 (2002): p. 19.

Agnew argues that the outsized role of economics in foreign policy is unique in United States, and that American financial hegemony and its increasingly “asymmetric position in the world economy” has bled into its international relations writ large.²³² Kaczmarek and Newman note that many extraterritorial claims by the U.S. are due to economic drivers but also have much broader consequences,²³³ which Chapter 6 discusses in the case of Pan Am 103. This also includes the extraterritoriality that the U.S. exercises through the Department of Justice and Securities and Exchange Commission (SEC) in prosecuting foreign companies well outside U.S. jurisdiction.²³⁴

The above literature on key concepts of network power, extraterritoriality, and securitization is important to evaluating the impact of Pan Am 103 and U.S. actions on the international aviation system. In the next chapter, I discuss the methods and tools of analysis to my key argument of Pan Am as a critical juncture.

²³² John Agnew, *Hegemony: The New Shape Of Global Power* (Temple University Press, 2005), p. 219.

²³³ Sarah C. Kaczmarek and Abraham L. Newman, “The Long Arm of the Law: Extraterritoriality and the National Implementation of Foreign Bribery Legislation,” *International Organization* 65, no. 4 (October 2011): p. 746.

²³⁴ Kaczmarek and Newman, *Ibid.* P. 747

Chapter 3: Methods and Tools

Several key analytical areas inform the arguments in this dissertation, particularly public policy analysis, discourse, and critical juncture theory. This chapter highlights these areas as well as providing an overview of the causal claims and evidence analysis in my research.

Tools for the Discourse Analysis of Public Policy

Hajer and Wagenaar propose the idea of a network society, where these groupings and their dynamics become “a critical source of power.”²³⁵ Their work stems from efforts by Manuel Castells to understand and describe the criticality of networks to society.²³⁶ This section discusses Hajer and Wagenaar’s arguments as their work is important in mapping out policy, discourse, and power through an approach to interpretive policy analysis.

Hajer and Wagenaar argue that these networks have forced an understanding of interdependence and trust. Innes and Booher’s take on this idea shows its more benevolent side, where an incident like 9/11 demonstrated to the United States its inability to address problems like security and terror alone, instead needing the global network for solutions.²³⁷ Within the network society and how it may be used for power or for cooperation, it is important to examine policy discourse and get a sense of “vocabularies, story lines and generative metaphors,” how networks establish themselves around discourse, and the practices that emerge.²³⁸ Hajer and Wagenaar argue that “any discourse analysis aims to show how language shapes reality.”²³⁹ They defines discourse as

²³⁵ Hajer and Wagenaar, *Deliberative Policy Analysis*. Introduction. pp. 4-5

²³⁶ Manuel Castells, *The Rise of the Network Society: The Information Age: Economy, Society, and Culture Volume I*, 2nd ed. (Wiley-Blackwell, 2011).

²³⁷ Hajer and Wagenaar. p. 35

²³⁸ Hajer and Wagenaar. p. 103

²³⁹ Hajer and Wagenaar. P. 103

“a specific ensemble of ideas, concepts, and categorizations that are produced, reproduced, and transformed in a particular set of practices and through which meaning is given to physical and social realities.”²⁴⁰

Within discourse, Hajer and Wagenaar note there is a “policy vocabulary” that lays out the coding or instructions for resulting policy actions and underlying structures.²⁴¹ “Each policy discourse comes with its own power effects as it shapes the knowing and telling one can do meaningfully,” which Hajer and Wagenaar propose is the way to understand how conflicts are shaped via power relationships, resulting in policy outcomes.²⁴² In the case of Pan Am 103, Hajer and Wagenaar’s work provides an understanding of how actors intentionally used language to claim and reframe the incident. Instead of being a U.S. failure or something under the purview of the United Nations ICAO to manage, the bombing was framed as a failure of the international system that needed U.S. security oversight and intercession. Discourse provided the U.S. with a tactical opportunity for U.S. network positioning and extraterritorial policy outcomes in aviation.

Hajer ties the network society concept and its use of discourse for policy outcomes to the term storylines. This he defines as a “narrative that allows actors to draw upon various discursive categories to give meaning to specific physical or social phenomena.”²⁴³ Storylines serve as a library to house various discourse terms, bringing them all together in one place for policymakers to pick and choose according to the problem they face and outcome they seek to

²⁴⁰ Maarten A. Hajer, *The Politics of Environmental Discourse: Ecological Modernization and the Policy Process*, Repr (Oxford: Clarendon Press, 2005). P. 44

²⁴¹ Maarten A. Hajer and Hendrik Wagenaar, *Deliberative Policy Analysis: Understanding Governance in the Network Society* (Cambridge, UNITED KINGDOM: Cambridge University Press, 2003), pp. 105-106.

²⁴² Hajer and Wagenaar, Ibid. P. 107

²⁴³ Hajer, *The Politics of Environmental Discourse*. p. 56.

shape.²⁴⁴ Hajer argues that storylines “become ‘tropes’ or figures of speech that rationalize a specific approach to what seems to be a coherent problem.”²⁴⁵ Storylines also form the glue, or “cement” in coalitions forming around discourse.²⁴⁶ They enable groupings to come together and rally around the storyline, perpetuating these stories as they work to enact policies according to the chosen narrative.²⁴⁷ Given my research findings and the importance of network power and weaponization of that interconnectedness in the Pan Am 103 case, Hajer’s understanding of discourse and storylines to networks and power dynamics provide an important body of work.

Fischer’s work in *Reframing Public Policy* is also important to this discussion, as he argues that “normative concepts and images” are important to understanding why and how policies emerge.²⁴⁸ He gives the example of former President Ronald Reagan’s use of discourse in the economic deregulation space in the 1980s, promoting terms such as “free markets” to appeal to individuals and promote major policy change.²⁴⁹ “It is not that institutions cause political action; rather, it is their discursive practices that shape the behaviours of actors who do...discourse cannot be *the* cause, but it is often *a* cause of political change”²⁵⁰ This is a particularly cogent example to my research, as economics and deregulation in the 1970s and 1980s emerged as a major theme for air carrier regulation under the auspices of security.

²⁴⁴ Hajer, pp. 56, 63

²⁴⁵ Hajer, Ibid. P. 63

²⁴⁶ Hajer, Ibid. P. 65

²⁴⁷ Hajer, Ibid. P. 65

²⁴⁸ Frank Fischer, *Reframing Public Policy: Discursive Politics and Deliberative Practices* (Oxford, UNITED KINGDOM: Oxford University Press, Incorporated, 2003), p. 249.

²⁴⁹ Fischer, Ibid. p. 25

²⁵⁰ Fischer, Ibid. pp. 28, 30

Like Hajer, Fischer notes the importance of coalitions or networks that he refers to as policy network theory. This theory proposes that policy networks “takes ideas as well as interests to bind together the groups and individuals in a policy sector. It assumes that what keeps networks functioning are common ideas about solutions to public problems.”²⁵¹ Discourse and language is important as it frames how the world is viewed as well as providing an intentional toolset to push various policies and outcomes through to action.²⁵² Fischer argues that policymaking is full of discursive tug-of-war – a constant push and pull in policymaking to promote action according to a preferred set of outcomes.²⁵³

Discourse analysis is important to “show how these actions and objects come to be socially constructed and what they mean for social organization and interaction.”²⁵⁴ The concept of securitization in Chapter 2 is intricately linked with the idea of discourse, or “representational practices through which meanings are generated.”²⁵⁵ The analysis of this conveyance of language through symbols or words involves understanding how and why discourse carries the meaning that it does.²⁵⁶ Emerson argues that speech acts are critical to understanding securitization’s intent and impact.²⁵⁷ Labeling something as a security issue suddenly imbues it with certain qualities and actions, which state actors can use to claim extraordinary rights and “instill...the

²⁵¹ Frank Fischer, *Reframing Public Policy: Discursive Politics and Deliberative Practices* (Oxford, UNITED KINGDOM: Oxford University Press, Incorporated, 2003), p. 32.

²⁵² Fischer, *Ibid.* P. 41

²⁵³ Fischer, *Ibid.* P. 60

²⁵⁴ Fischer, *Ibid.* P. 73

²⁵⁵ Kevin C. Dunn and Iver B. Neumann, *Undertaking Discourse Analysis for Social Research* (Ann Arbor, UNITED STATES: University of Michigan Press, 2016), p. 2

²⁵⁶ Dunn and Neumann, *Ibid.* P. 4

²⁵⁷ R. Guy Emerson, “Towards a Process-Orientated Account of the Securitisation Trinity: The Speech Act, the Securitiser and the Audience,” *Journal of International Relations and Development* 22, no. 3 (September 2019): p. 516.

required sense of caution among the audience.”²⁵⁸ Vuori argues that “the need of security against aggression...allows for taking risks that are unimaginable in other contexts.”²⁵⁹

Discourse analysis was, therefore, critical to understanding my own research as terms such as economics, competition, security, extraterritoriality, foreign, and more appeared in archival documentation with high frequency. Fischer’s understanding of discourse use within network spaces is an important element for analyzing these terms in the weaponization of interconnection. He argues that it is “fundamental” to discourse analysis that one questions how an issue is framed or presented, per Hajer’s idea of storylines and social narratives.²⁶⁰

Yanow’s four methodological steps for interpretative policy analysis are helpful here, and much of what guides the remaining chapters of this dissertation in presenting my main argument: 1) identify items of meaning, 2) identify communities of meaning, 3) identify the meanings being communicated, 4) and identify the points of conflict.²⁶¹

Tools for Process Tracing and the Analysis of Path Dependence and Critical Junctures

Process tracing also served as my analytical method for understanding Pan Am 103’s role in aviation security. I chose process tracing for evaluating my hypothesis because it allows for analysis of “trajectories of change and causation” in my argument that Pan Am 103 was a critical

²⁵⁸ R. Guy Emerson, “Towards a Process-Oriented Account of the Securitisation Trinity: The Speech Act, the Secritiser and the Audience,” *Journal of International Relations and Development* 22, no. 3 (September 2019): pp. 519-520.

²⁵⁹ Juha A Vuori, “Deterrence as a Speech Act,” p. 42.

²⁶⁰ Frank Fischer, *Reframing Public Policy: Discursive Politics and Deliberative Practices* (Oxford, UNITED KINGDOM: Oxford University Press, Incorporated, 2003), p. 86

²⁶¹ Fischer, *Ibid.* P. 147

juncture.²⁶² Process tracing also lends itself well to within-case examination “to make inferences about causal explanations of that case.”²⁶³

As described by Bennett and Checkel, process tracing is a way to analyze events within a case to test a hypothesis about the causes and explanations.²⁶⁴ It provides a method to review the various steps along a timeline, as well as dovetailing nicely with discourse analysis in understanding “ways in which actors privately frame or explain their actions.”²⁶⁵ Per the authors, an important piece of process tracing is “case-specific observable implications” which means there must be enough evidence to observe items of note, particularly patterns or trends where available.²⁶⁶

Some best practices for process tracing include being open to and also critical of alternative explanations, recognizing biases of source material, making reasoned decisions about where to start and stop research, comparing cases where feasible, and understanding that process tracing may not produce conclusive outcomes.²⁶⁷ Helleneir also notes the importance for researchers using process tracing to conduct “detailed archival work” and explore events or details that others have not explored.²⁶⁸ Because my research focused around one case as a critical juncture, process tracing allowed me to evaluate the previous regime leading up to Pan Am 103 and then compare against specific temporal steps that followed. In the case of Pan Am 103, process tracing helped me to determine the event’s qualification as a critical juncture and to test my

²⁶² David Collier, “Understanding Process Tracing,” *PS: Political Science & Politics* 44, no. 04 (October 2011).. Pp 823-824

²⁶³ Andrew Bennett and Jeffrey T. Checkel, “Process Tracing,” in *Process Tracing*, p. 4

²⁶⁴ Bennett and Checkel, Ibid. P. 4

²⁶⁵ Bennett and Checkel, Ibid. P. 7

²⁶⁶ Bennett and Checkel, Ibid. P. 18

²⁶⁷ Bennett and Checkel, Ibid. P. 21

²⁶⁸ Orfeo Fioretos, ed., *International Politics and Institutions in Time* (Oxford: Oxford University Press, 2017), p. 227.

proposed causal mechanisms, described further below. My use of the term critical juncture aligns with Capoccia and Kelemen's - as a significant break in the status quo - ushering in the conversion of one regime type to another. My thesis contends that Pan Am 103 served as a critical juncture and examines the how and why of this event's criticality in aviation security history.

Methodological approaches to path dependence and critical junctures are also important to my research and arguments. To understand how major policy change occurs, one must first understand the idea that policy structures are resistant to change. Capoccia and Kelemen argue that institutions are relatively stable and reproduce themselves to stay that way, but are occasionally interrupted by "brief phases of institutional flux," or critical junctures.²⁶⁹ This stability is one referred to as path dependence, a type of "institutional persistence" that occurs "when it is ever less likely that alternatives will take [its] place."²⁷⁰

Capoccia and Kelemen recommends several points of analysis in determining whether an event serves as a critical juncture: 1) decisions taken and rejected, 2) consequences of decisions taken, 3) comparison of similar junctures with a focus on actors, moment, and choices.²⁷¹ This marries well with process tracing methodology, which focuses on analyzing "evidence on processes, sequences, and conjunctures of events within a case for the purposes of either developing or

²⁶⁹ Giovanni Capoccia and R. Daniel Kelemen, "The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism," *World Politics* 59, no. 3 (April 2007): p. 341.

²⁷⁰ Orfeo Fioretos, ed., *International Politics and Institutions in Time* (Oxford: Oxford University Press, 2017), pp. 8, 14.

²⁷¹ Capoccia and Kelemen, Ibid. pp. 357, 359

testing hypotheses about causal mechanisms that might explain the case.”²⁷² This tool for analysis helps to address a “temporal sequence of events of phenomena.”²⁷³

Critical junctures serve as a shock and/or break to the system – a rapid developing in a lazy river – to significantly change the course of an institution’s status quo. Capoccia and Kelemen describe this as “relatively long periods of path-dependent institutional stability and reproduction that are punctuated occasionally by brief phases of institutional flux.”²⁷⁴ The 2008 economic crisis is an example of a critical juncture – a shock that resulted in “demands for radical reform.”²⁷⁵ Security or military “threats to or attacks on the physical security of powerful states” are other examples, such as September 11, 2001.²⁷⁶ Ikenberry agrees, noting most major change occurs following significant conflict, “offering opportunities for these states to lay down new rules and institutions of order.”²⁷⁷ At these junctures, he posits, “powerful states have been given extraordinary opportunities to shape world politics.”²⁷⁸ I argue that Pan Am 103’s destruction falls into this category. Once a critical juncture has occurred, Capoccia argues it is challenging to adjust course, as institutions once again revert to path dependence in their new structure.²⁷⁹

²⁷² Andrew Bennett and Jeffrey T. Checkel, “Process Tracing,” in *Process Tracing*, ed. Andrew Bennett and Jeffrey T. Checkel (Cambridge: Cambridge University Press, 2014) p. 7.

²⁷³ David Collier, “Understanding Process Tracing,” *PS: Political Science & Politics* 44, no. 04 (October 2011): 823–30.

²⁷⁴ Giovanni Capoccia and R. Daniel Kelemen, “The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism,” *World Politics* 59, no. 3 (April 2007): 341–69.

²⁷⁵ Orfeo Fioretos, ed., *International Politics and Institutions in Time* (Oxford: Oxford University Press, 2017), p. 16.

²⁷⁶ Fioretos, *Ibid.* P. 53

²⁷⁷ Fioretos, *Ibid.* Pp. 62-63

²⁷⁸ Fioretos, *Ibid.* P. 63

²⁷⁹ Capoccia and Kelemen, *Ibid.* P. 342

Path dependence is the accumulation of policies, rules, norms, etc. that keeps a particular structure in place over time. Ikenberry argues that once a system is established, it “can be difficult to change even when underlying social forces continue to evolve.”²⁸⁰ He proposes that the order centered around U.S. influence in particular is so integrated in modern society that it would be severely disruptive to everyday life to propose an alternative.²⁸¹

Thelen theorizes that such ruptures in path dependence are not typical, and that institutions have other more common ways of changing.²⁸² An alternative notion of institutional evolution is the concept of a tipping point, where change gradually occurs and then eventually spills over into a new regime. Thelen also posits the idea of institutional layering, where structures evolve over time through additions rather than wholesale substitutions.²⁸³ She refers to this type of change as “subtle but very significant.”²⁸⁴ Critical junctures, by contrast, are short bursts of activity that differ from the “‘normal’ historical development of the institutional setting of interest.”²⁸⁵

Jupille, Mattli, and Snidal argue that power is an important element to path dependence. They note that states/actors that benefit from institutions remaining in place work to keep them there, whereas when they are disadvantaged by the status quo, they work to bring about change.²⁸⁶

Thelen likewise argues that actors seek to determine structures with rules that most support their

²⁸⁰ Orfeo Fioretos, ed., *International Politics and Institutions in Time* (Oxford: Oxford University Press, 2017), p. 65.

²⁸¹ Fioretos, Ibid. P. 70

²⁸² Kathleen Thelen, *How Institutions Evolve: The Political Economy of Skills in Germany, Britain, the United States, and Japan*, Cambridge Studies in Comparative Politics (Cambridge: Cambridge University Press, 2004), p. 30.

²⁸³ Thelen, Ibid. Pp. 35-36

²⁸⁴ Thelen, Ibid. Pp. 35-36

²⁸⁵ Giovanni Capoccia and R. Daniel Kelemen, “The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism,” *World Politics* 59, no. 3 (April 2007): p. 348.

²⁸⁶ Fioretos, Ibid. P. 128

goals and desires.²⁸⁷ This can be a powerful force behind path dependence and keeping structures arranged to suit the actors benefitting most.

This interplay of path dependence – or the everyday status quo – and critical juncture – or the break that causes a new system or regime to emerge – is important duality to examining Pan Am 103’s arguable impact on international aviation.

Hypothesis, Research, and Causal Claims

My research proposal theorizes that the 1988 bombing of Pan Am 103 served as a critical juncture, causing the United States to use the density and interconnectedness of the aviation network to project its preferred domestic policies onto other states in the international system. This event and resulting actions led to a break from the previous aviation regime. Prior to Pan Am 103, aviation was managed multilaterally by a United Nations organization known as the International Civil Aviation Organization (ICAO). After Pan Am 103, the United States implemented a new extraterritorial security regime.

Research Overview

My research focused on archival data using process tracing and discourse analysis. I chose process tracing for evaluating my hypothesis because it allows for analysis of “trajectories of change and causation” in examining Pan Am 103 as a critical juncture.²⁸⁸ Process tracing also

²⁸⁷ Kathleen Thelen, *How Institutions Evolve: The Political Economy of Skills in Germany, Britain, the United States, and Japan*, Cambridge Studies in Comparative Politics (Cambridge: Cambridge University Press, 2004), p. 32.

²⁸⁸ David Collier, “Understanding Process Tracing,” *PS: Political Science & Politics* 44, no. 04 (October 2011). Pp 823-824

lends itself well to within-case examination “to make inferences about causal explanations of that case.”²⁸⁹ This method allowed me to determine the “diagnostic evidence”²⁹⁰ and explore the various steps in the process regarding my event of interest. Because my research focused around one case as a critical juncture, process tracing allowed me to evaluate the previous regime and then compare against specific temporal steps that followed. This method provided a good understanding of the data to determine whether my hypothesis was correct.

I also conducted discourse analysis, using the tools outlined above, as much of my hypothesis centered around various themes, such as sovereignty, extraterritoriality, securitization and economics. Focusing on specific key words, storylines, images, and constructs utilized in archival documentation allowed me to examine various actors’ intentionality in making changes to the international aviation system. For instance, as U.S. officials considered expanding their reach to oversee other states’ air carriers, they debated sovereignty and extraterritoriality with those states in Federal Register documentation. Discourse analysis supported my understanding of these debates and allowed me to convey their importance through my dissertation.

My research focused on states as the key players in the aviation system, and the primary actors in my research question. Specifically, I focused on the main aviation players at the time of my proposed regime change/critical juncture: European Union member states, UN Security Council member states (China, France, Russia, the United Kingdom, the United States), FVEY partners (Australia, Canada, New Zealand, the United Kingdom, the United States), and ICAO. I chose

²⁸⁹ Andrew Bennett and Jeffrey T. Checkel, “Process Tracing,” in *Process Tracing*, ed. Andrew Bennett and Jeffrey T. Checkel (Cambridge: Cambridge University Press, 2014), p. 4.

²⁹⁰ Bennett and Checkel, *Ibid.* P. 7

these states because of their historic role in aviation, power dynamics in the international environment and with ICAO, and their role in addressing security following the Pan Am 103 bombing. My research also uncovered important contrasts and protests by other states in the aviation system, including Iran, Russia, and Cuba. Their dissent and comments on U.S. hypocrisy are noted in discussing the ICAO debates following Pan Am, in particularly to contrast U.S. proposals and efforts in aviation security.

My research also focused on entities within states, such as the U.S. Federal Aviation Administration (FAA) and the U.K. Department for Transportation (DfT). This also includes industry entities such as air carriers and associations. These entities within states became important through my research in understanding various sovereignty and extraterritoriality debates occurring within states – particularly within the U.S.

Through my research, I found evidence of intentional U.S. extraterritoriality and a hegemonic approach to airspace following Pan Am 103, which I will explain in the following chapters. Following economic deregulation in the 1970s in the U.S., American air carriers lobbied for what they referred to as a “level playing field,” where the U.S. would require foreign air carriers to follow the same security requirements – and pay the same cost to implement and maintain these requirements – as was required of them. Following Pan Am 103, the U.S. carriers had an opportunity to couch this economic issue as a security issue, and claim that foreign carriers were not providing the same level of protection to U.S. citizens as they were required to do. As they were called to testify before Congress and the President’s Commission on Aviation Security and Terrorism in investigations about Pan Am’s destruction, they actively lobbied for a requirement

that all air carriers flying to the U.S. provide the same security measures of foreign air carriers that were required of U.S. air carriers.²⁹¹

U.S. carriers argued that the competitive impacts and costs of differing security requirements of U.S. versus foreign carriers had led to direct revenue losses from passengers choosing other, non-U.S. airlines.²⁹² In addition, the argued that the costs of staff and resources to conduct FAA-required security measures as well as resulting delays in aircraft turnaround times contributed to a direct economic disadvantage.²⁹³ During hearings on Pan Am 103 and the President's Commission's final report, U.S. Representative Oberstar described these concerns:

The American carriers have been very concerned about these differences in levels of security and the effect upon economics. Face it, it does have an effect. I remember seeing a sign in the Frankfurt Airport. Here were folks lined up, standing in line for quite some distance in the airport at the Northwest Airline counter. All the security questions were being asked and the checks and so on, and just across the way was a little sign in front of Lufthansa that said "Tired of standing in line? Fly us."²⁹⁴

²⁹¹ President's Commission on Aviation Security and Terrorism, "Memorandum: Meeting with Northwest Airlines," February 6, 1990, President's Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

²⁹² President's Commission on Aviation Security and Terrorism.

²⁹³ President's Commission on Aviation Security and Terrorism, "Memorandum: Meeting with Representatives of Pan Am," November 6, 1989, President's Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

²⁹⁴ "Implementation of the Aviation Security Improvement Act of 1990" (U.S. Government Printing Office, July 24, 1991).

My research uncovered a similar advertisement to the one Rep. Oberstar mentioned, pictured below. The implication is that while U.S. carriers were requiring additional security checks and queues prior to boarding, flying Lufthansa would allow the public's last "check" to be tying their shoes. My dissertation explores this line of argument further in Chapter 7 on economic deregulation, and Chapter 14 presents the post-Pan Am 103 efforts by the U.S. to regulate foreign air carriers as requested by the U.S. carriers.



Figure 1: Lufthansa Advertisement, 1983

Causal Claims

In proposing the evaluation of Pan Am 103 as a critical juncture in aviation security, my research proposal outlined a plan to explore its efforts on airport management, air carrier security, and borders/identity resulting in a new airspace regime of extraterritorial security. The original diagram for my causal mechanism of these changes is shown in Figure 2, below.

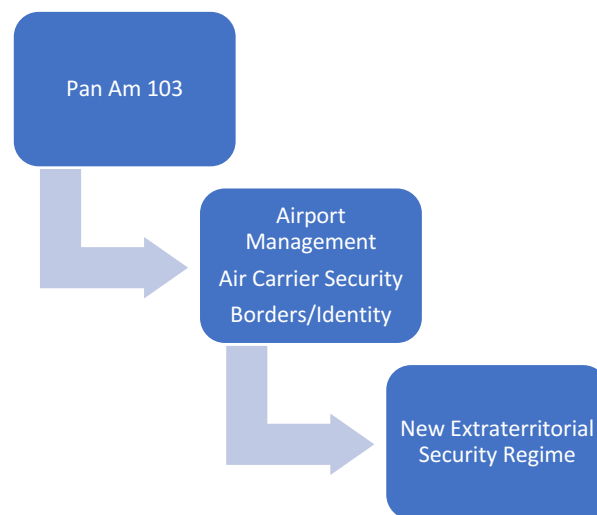


Figure 2: Initial Hypothesis: Causal Model for Aviation Regime Change

After conducting my research, I reevaluated the causal mechanism and proposed a new impact flow chart illustrated in Figure 3. My research determined that while borders and identity were an important element of Pan Am 103's change to the aviation system, the impact to aviation bordering did not fully develop until later. The immediate aftermath of Pan Am 103 and U.S. efforts to change the aviation system primarily focused on other states' airports and air carriers, with significant changes to both. The economic element also needed to be captured as a factor that resulted in much of the change I discuss throughout the dissertation. As such, I proposed a new causal mechanism showing the destruction of Pan Am 103 resulted in significant economic

and security concerns that led to changes in airport and air carrier security. The end result is an extraterritorial regime whereby the U.S. leads and oversees global aviation security.

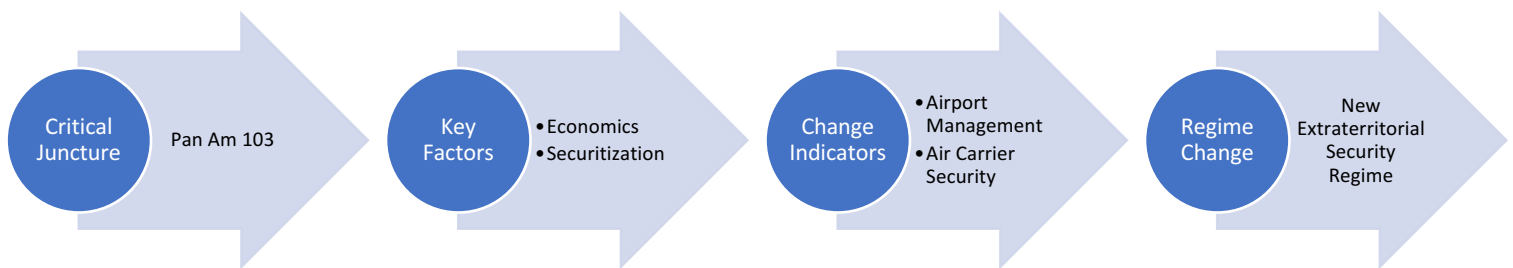


Figure 3: Revised Hypothesis: Causal Model for Aviation Regime Change

Van Evera proposes four kinds of evidence in determining theory viability.²⁹⁵ Hoop tests - “evidence that is certain, but not unique,” smoking gun tests – evidence that is “unique, but not certain,” doubly decisive tests – evidence that is “unique and certain,” and straw-in-the-wind tests – evidence that is “weak or circumstantial.” In my proposal I laid out several options for what I might expect to find under each circumstance:

- Hoop test
 - Change to the aviation regime following Pan Am, but not significant or different from previous security or safety incidents

²⁹⁵ Andrew Bennett and Jeffrey T. Checkel, “Process Tracing,” in *Process Tracing*, ed. Andrew Bennett and Jeffrey T. Checkel (Cambridge: Cambridge University Press, 2014), pp. 16-17.

- Smoking gun test
 - Archival documents or interviews reference plans for regime change
 - Some indication of U.S. asymmetrical intervention on the system
- Doubly decisive test
 - Clear archival evidence of regime change attributed to Pan Am 103
 - Evidence of asymmetric security management change at the system level after Pan Am 103, specifically U.S. external imposition on other states' aviation management
 - Multilateral engagement and discussions about the incident and scope/plans for change
- Straw-in-the-wind test
 - Change to the aviation regime without clear cause or attribution

My research suggests evidence of doubly decisive results. The evidence I found indicates unique and certain events that are directly attributed to Pan Am 103, including extraterritoriality and securitization leading to aviation regime change. This will be further described in subsequent chapters of my dissertation.

Alternative Explanations

Thomas Birkland argues that aviation security policy has an incremental quality to it; it “does not change in leaps and bounds,” but evolves over time based on lessons that aircraft operators and

policymakers learn.²⁹⁶ I agree with his assessment of the incremental activity in aviation security, which many of the charts and graphs throughout my dissertation will illustrate. However, I argue that this makes the critical juncture of Pan Am 103 notable, for shifting regimes from a UN-managed airspace - via the International Civil Aviation Organization (ICAO) and its staff - to U.S.-managed airspace. The question of who is managing these changes and to what end can illustrate the significant shift from incremental changes under the UN for all commercial aircraft internationally to the changes under the U.S. to conform the system to its preferred policy outcomes.

Birkland's take on such events, and Pan Am 103 in particular, is that it is what he terms a focusing event – “the window of opportunity for policy change in aviation disasters [that] is rather short after a large, attention-grabbing event.”²⁹⁷ His larger focusing event theory is that these events are sudden, rare, and create a significant focus on problems that need policy solutions.²⁹⁸ Birkland argues that Pan Am 103, along with the TWA 800 crash in 1996 and the September 11 attacks of 2001 were all focusing events in aviation, but he makes the case that Pan Am 103 and TWA 800 were not significant because if they had “led to a reasonably broad range of legislative solutions to address aviation security lapses, how could September 11 have happened?”²⁹⁹

²⁹⁶ Thomas A. Birkland, “Learning and Policy Improvement After Disaster: The Case of Aviation Security,” *American Behavioral Scientist* 48, no. 3 (November 1, 2004): 341–64, <https://doi.org/10.1177/0002764204268990>. P. 341

²⁹⁷ Birkland. P. 342

²⁹⁸ Thomas A. Birkland, *After Disaster: Agenda Setting, Public Policy, and Focusing Events* (Georgetown University Press, 1997). P. 22

²⁹⁹ Birkland, “Learning and Policy Improvement After Disaster.” P. 356

While Pan Am 103 certainly has many characteristics of a focusing event – significant media attention, searches for solutions, policy blame and a narrative that the event would not have been so disastrous “if only” something had been in place to prevent it,³⁰⁰ there are other factors that set Pan Am 103 apart. For one, Birkland argues that focusing events are short-lived, as there is a narrow window of media and policymaker attention within which to operate – the farther away from the disaster, the harder to do something meaningful.³⁰¹ Additionally, he argues that Pan Am 103 did not make enough change in aviation security policy to be truly significant, even among focusing events. He points to September 11, 2001, as the real policy change vehicle in aviation security, as a culmination of Pan Am 103 and TWA 800’s respective presidential commission reports and resulting legislation enacted in the U.S.

I disagree with both assessments. Pan Am 103, as my dissertation will demonstrate, proved to have quite a long media attention-span, in part driven by the Victims of Pan Am 103 family lobby and their relationship with the media. Through vigils, campaigns, congressional activity, letter-writing, meetings with White House personnel, etc., they were able to keep the media spotlight on them much longer than traditional aviation disasters. I will discuss this more in Chapter 8 discussing stakeholders and advocacy groups. The President’s Commission on Aviation Security and Terrorism was created more than a year after the bombing, and presented a final report 18 months after the event. The resulting codification by Congress of much of the report, executive branch activity, and continued incremental activity under the new rubric post Pan Am 103 demonstrates the lasting power of this event.

³⁰⁰ Thomas A. Birkland, “Learning and Policy Improvement After Disaster: The Case of Aviation Security,” *American Behavioral Scientist* 48, no. 3 (November 1, 2004): 343.

³⁰¹ Birkland. P. 342

To Birkland's second point about the lack of significance, I argue that this depends on whether one is looking at the international or domestic environment, and at aviation or other dynamics. Birkland's argument that Pan Am 103 was less impactful to aviation security policy is true *within the United States* as compared to September 11, 2001. Repeatedly in the Pan Am 103 Commission report and resulting legislation and regulations, the U.S. government declined to change its own aviation security posture and instead focused outward on international airports and air carriers. However, the 9/11 attacks changed aviation security policy within the United States significantly and served as a critical juncture in aviation security domestically. The U.S. government finally acted on recommendations from the White House Commission on Aviation Security and Terrorism to address FAA organization and focus more on security in aviation by creating the Transportation Security Administration (TSA) in 2002.³⁰² However, this did not bring significant change to the international aviation network per se, as the U.S. federalized its screening workforce and began adding technology and policies for U.S. passengers. This is contrasted with Pan Am, where the U.S. broke from the multilateral regime to create its own aviation security policies that all states flying to the U.S. were required to follow.

My dissertation largely examines aviation security policy within the international aviation network, with some comparison to U.S. domestic policy where, particularly in areas of dichotomy in how the U.S. approached domestic versus international aviation security post-Pan Am. I maintain that Pan Am served as a critical juncture because it ushered in a new regime – one in which the United States claimed the role that the UN had previously served and began to

³⁰² "Aviation Security Transportation Act (ATSA)," Pub. L. No. 107–71 (2001).

regulate and oversee international aviation security for any location that could send an airplane to U.S. territory. Pan Am 103 and 9/11 are not zero sum critical junctures; rather, I argue they are using different measuring sticks. This dissertation is more concerned with how the international aviation system changed following the 1988 bombing.

Another alternative to my critical juncture argument is that Pan Am 103 served as a tipping point. Per Capoccia and Kelemen, tipping points are not critical junctures, but instead are points in time where a “cumulative cause finally passes a threshold and leads to a rapid change in the outcome.”³⁰³ Yanusch, Mucha, Schwanholz, Lorberg, and Reichwein describe tipping points as a culmination of previous activity – a “steady path or trend” that eventually experiences a “critical mass” or “boiling point” indicating a “reversal.”³⁰⁴ They give an example of this as a norm that society may initially fight, but over time the norm is accepted and so public sentiment shifts, or reverses, into a supportive posture.³⁰⁵ They contrast tipping points with critical junctures by discussing a critical juncture’s possibility for a new path as well as the agency and opportunity for political actors to create something new.³⁰⁶

I argue that Pan Am 103 has more in common with the critical juncture attributes than those of a tipping point. I have provided a list of these below in table format to compare/contrast the various characteristics of each.

³⁰³ Giovanni Capoccia and R. Daniel Kelemen, “The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism,” *World Politics* 59, no. 3 (April 2007): p. 351.

³⁰⁴ Holger Janusch et al., *Turning Points: Challenges for Western Democracies in the 21st Century* (Berlin/Boston, Germany: Walter de Gruyter GmbH, 2023), p. 5

³⁰⁵ Holger Janusch et al. Ibid.

³⁰⁶ Holger Janusch et al. Ibid.

Tipping Point	Critical Juncture
Long-term, cumulative causes	Often indicated with a break or shock event
Path continues with “reversal” (i.e. previous resistance becomes support)	Path likely changes
Accumulation of previous actions/activities	Immediacy; moment where pathways are chosen/decisions forced; opportunity for powerful political actors
New developments layered	Period of uncertainty; former path dependence loses hold
Moment of critical mass; boiling point	Brief phase of flux; dramatic change possible

Figure 4: Tipping Point and Critical Juncture Comparisons

Sources: Capoccia and Kelemen³⁰⁷; Janusch, Mucha, Schwanholz, Reichwein and Lorberg³⁰⁸

The Pan Am 103 bombing more closely aligns with the critical juncture criteria. It was a shock event with a change in direction from multilateral to extraterritorial governance of airspace. Powerful actors within the United States made choices to change the dynamic of aviation, and took advantage of the uncertainty and flux to make dramatic changes. The policies that the United States developed through regulation, Commission activity, and legislation were all developed after the bombing, rather than being stacked and layered in advance and awaiting an opportunity for a final push to change. While U.S. aircraft operators had long complained about competitive advantage with foreign air carrier counterparts, dating back to the hijacking era and deregulation policies of the 1970s, the U.S. was not pursuing any policies to address that issue.

³⁰⁷ Giovanni Capoccia and R. Daniel Kelemen, “The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism,” *World Politics* 59, no. 3 (April 2007): 341–69.

³⁰⁸ Holger Janusch et al., *Turning Points: Challenges for Western Democracies in the 21st Century* (Berlin/Boston, Germany: Walter de Gruyter GmbH, 2023).

Instead, along the lines of critical juncture theory, aviation security was in a “relatively long period of path-dependent institutional stability,”³⁰⁹ with the continued incremental nature of changes common to aviation security, per Birkland, but within the Multilateral Management Regime I have termed to describe the era of UN ICAO dominance. The shock event of Pan Am 103 created the choice point common to critical junctures, where the U.S. decided among alternatives to change the status quo of ICAO-led aviation security, and to create policy actions for other states rather than to address the problem of the event itself.

Through process tracing of the various events during and after Pan Am 103, as well as analysis of the discourse and narratives used for ushering in a new extraterritorial regime, my dissertation will make the case that Pan Am 103 did act as a critical juncture that changed how airspace is managed.

Terminology

In my dissertation, there are many terms I use that are frequently used in the aviation industry, many of which have a U.S.-based viewpoint. For instance, I frequently refer to the airlines operating in the U.S. as U.S. air carriers, or U.S. aircraft operators. These terms are frequently used in the research documents to refer to airlines owned and operated by private (not government-owned/operated) U.S. companies within the United States, operating within its bounds and in direct overseas flights. Per U.S. law, U.S. air carrier owners must be U.S. citizens to provide domestic or international air service within, to, or from the United States, and any corporate interest in aviation must have at least two-thirds U.S. citizens on its board, and at least

³⁰⁹ Giovanni Capoccia and R. Daniel Kelemen, “The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism,” *World Politics* 59, no. 3 (April 2007): p. 341

75 percent voting interests by U.S. citizens.³¹⁰ For the purposes of this dissertation, I will refer to these carriers as U.S. aircraft operators or U.S. air carriers.

By contrast, documents refer to any non-U.S. air carrier operating to/from the U.S. and/or within another country as a foreign air carrier or foreign aircraft operator. These terms are interchangeable but are applied by U.S. regulation to any non-U.S.-based carrier. Examples include British Airways, Air France, and Lufthansa.

During the period where the U.S. regulated foreign air carriers, the U.S. created a Foreign Air Carrier Model Security Program (MSP), which will be discussed further in Chapter 14. The MSP is still in use today (2025), and all carriers flying to the U.S. refer to themselves by U.S. terminology within U.S. regulations and the MSP – as foreign air carriers.³¹¹ Throughout the dissertation, I refer to air carriers, aircraft operators, and airlines interchangeably, but differentiate them by U.S. or foreign to both use the appropriate industry terminology and also to demonstrate a point: as the U.S. regulated carriers beyond its shores, it referred to them all as foreign, or ‘other.’

Last Point of Departure, or LPD, airports are also important concepts in my research and again demonstrate a U.S. gaze. LPD airports are considered the last touchpoint, or last airport, before a direct flight hits U.S. airspace and enters U.S. territory. There are (in 2025) approximately 280 LPD airports around the world with direct service to the United States. Under the International

³¹⁰ Edward Rivera, “Limitations on Foreign Investment in the United States” (U.S. Department of Commerce).

³¹¹ “14 CFR Part 129 -- Operations: Foreign Air Carriers and Foreign Operators of U.S.-Registered Aircraft Engaged in Common Carriage,” accessed January 30, 2025.

Security and Development Cooperation Act of 1985, authorizing the Foreign Airport Assessment Program, Congress directed the FAA to assess all LPD airports and to suspend service to any that demonstrated insufficient security standards (using the ICAO methodology of its Annex 17 Standards and Recommended Practices – discussed further in Chapter 6). LPD airports are an important concept in my dissertation as they represent a risk from the U.S. perspective, and one that the U.S. increasingly tries to protect against, eventually by taking over operations at these airports altogether.

Many of the research documents, particularly those from the FAA, also refer interchangeably to states, countries, and host governments. While I primarily use the word state throughout this dissertation, references to research documentation sometimes necessitates using the terms country or host government.

Finally, much of the industry terminology and archival documentation language is filled with jargon and acronyms. While I attempted to spell out everything as much as possible for ease of reading, there are times where I will repeat the acronym in parentheses so the dissertation term can easily be aligned with industry references. Additionally, there are a few acronyms that I will use frequently throughout the dissertation given their length and importance (therefore consistent use).

These are agency names, such as the Federal Aviation Administration (FAA) and International Civil Aviation Organization (ICAO), as well as policy terms such as the Foreign Airport

Assessment Program (FAAP) and Positive Passenger Bag Match (PPBM). These are also listed in the acronym references on pages 5-6.

Timeline

My dissertation covers various key events and topics, such as interest group advocacy, blue ribbon commissions, sovereignty debates among international partners, and extraterritorial regulatory reach. To help the reader follow the major events in time chapter by chapter, I have developed a timeline graphic below, which I will utilize in various chapters by bolding the event of note for that particular chapter's content.

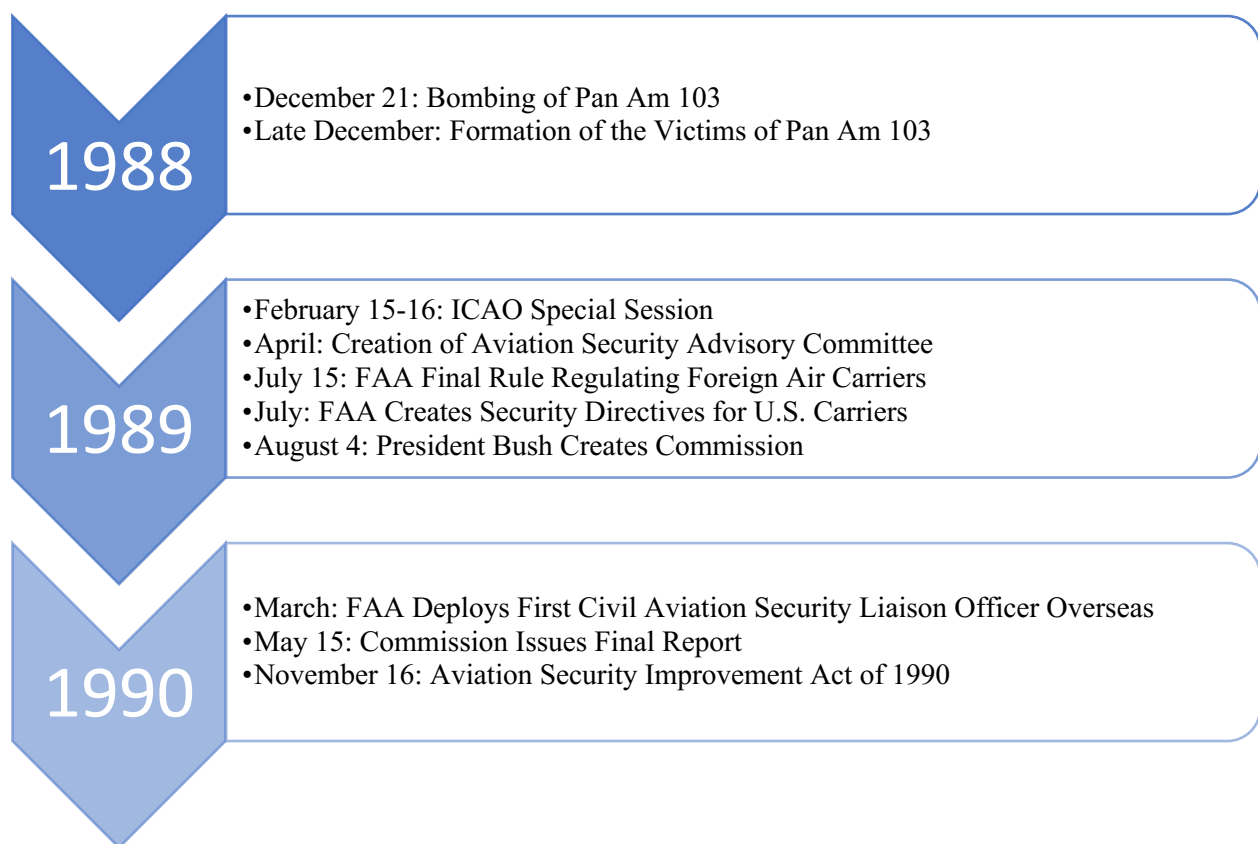


Figure 5: Timeline of Pan Am 103 Events
Source: Author

Chapter 4: The Aviation Building Regime, 1919-1944

Ristow describes the period following invention of aerial transportation such as balloons, blimps, and airplanes, as the era of air age geography.³¹² In this way of looking at the world, he argues, people begin to account for distance between places by measuring time rather than space.³¹³

While there was initially interest in aerial transportation as a form of exploration and transportation, it also had strategic benefits for states.³¹⁴ After the airplane's invention in the early 1900s, Europe – followed closely by the United States – began to invest in airplanes for military use.³¹⁵ As states headed into World War I, many raced to have a greater quantity and quality of airplane to defend state borders in the air.³¹⁶

Following World War I, states that had invested in aviation for use in war began to convert their fleet to use in public transportation as commercial passenger aircraft. These states primarily consisted of the United States, Great Britain, and France. Italy and Germany had also invested significantly in airplanes, but as a result of World War II and sanctions on their actions throughout the war, they were both banned from building new aircraft until 1950.³¹⁷ In 1927, Pan American Airways – or Pan Am – was founded in the United States and served as a major commercial airline until its bankruptcy and dissolution in 1991.³¹⁸ Pan Am was the sole U.S.

³¹² Walter Ristow, *Air Age Geography: A Critical Appraisal and Bibliography*, 1944. P. 332

³¹³ Ristow, *Ibid* P. 333

³¹⁴ Jenifer Van Vleck, *Empire of the Air: Aviation and the American Ascendancy* (Cambridge, UNITED STATES: Harvard University Press, 2013)

³¹⁵ Van Vleck, *Ibid*.

³¹⁶ Tom D. Crouch, *Wings : A History of Aviation from Kites to the Space Age* (Washington, D.C. : Smithsonian National Air and Space Museum, 2003).

³¹⁷ Crouch, *Ibid*. p. 529.

³¹⁸ Van Vleck, *Ibid*.

airline serving international destinations through 1944.³¹⁹ Between World War I and World War II, the airplane's role in war – and later, commerce – increased dramatically. The U.S. added significant resources to aviation production and capacity, eventually overtaking France, Germany, and the United Kingdom in size and quality of its airplane fleet.³²⁰

As states expanded commercial services, they ran into new geopolitical issues: namely, how to map out sovereign and territorial boundaries in the air. Up to this point, states had treated air's boundaries as an upward extension of land and property borders: “*cujus est solum ejus est usque ad coelum*—he who owns the soil owns up to the sky.”³²¹ However, as airplanes increasingly crossed into these spaces and companies built out commercial air routes for passengers, states were forced to reevaluate traditional territorial rights and legal ownership boundaries.

Governments had to decide whether states could overfly and overrule their citizen's property lines. They were also forced to address issues of territory height – i.e. at what point a citizen's vertical property rights ended and the state's began. States also faced new international territory questions, such as whether they could bar another state's (non military) airplanes from entry into their skies as they traditionally had with their land borders, or if the air was a boundary-free zone with no lines or borders.³²²

States ultimately came to the conclusion that each state in the international system had a “full and absolute sovereignty” over its own airspace, with the right to deny entry as if the air was a

³¹⁹ Van Vleck. P. 2

³²⁰ Jenifer Van Vleck, *Empire of the Air: Aviation and the American Ascendancy* (Cambridge, UNITED STATES: Harvard University Press, 2013), p. 27

³²¹ Stuart Banner, *Who Owns the Sky?: The Struggle to Control Airspace from the Wright Brothers On* (Cambridge, UNITED STATES: Harvard University Press, 2008). P. 6

³²² Banner, *Ibid.* pp. 32, 42.

land border.³²³ Prior to the United Nations International Civil Aviation Organization's (ICAO) founding, states primarily arranged for crossing air borders via bilateral agreements with key partners. Through these agreements, which served as legal contracts between states, commercial airplanes could fly above and into territory with permission.³²⁴

The bilateral mode of managing air territory created complex territorial access issues as the commercial aviation became a more popular mode of transportation, and the network grew more and more dense with flights. Each state managed commercial aviation differently, with varying privileges and restrictions based on unique relationships with partners.³²⁵ Jönsson refers to this as a period of “horse trading” with extensive conflicts between and among states. For example, he writes that in 1939, Spain refused air carriers from countries that were allies of France, Türkiye refused any commercial flights over its territory, and Italy granted conditional landing rights to U.K. carriers if they entered into a profit-sharing agreement with Italian carriers.³²⁶

By 1943, the United States had a “near monopoly on long-haul traffic,” creating access issues for other aviation states in airports with limited capacity.³²⁷ This patchwork of negotiations, which Sochor terms international aviation power struggles, created a very uneven and complicated web of territorial agreements. To address this issue, some states proposed a multilateral organization to manage territorial, economic, and safety issues.³²⁸ While there was some initial hesitancy to

³²³ Eugene Sochor, *The Politics of International Aviation* (Iowa City : University of Iowa Press, 1991), p. 107

³²⁴ Sochor, *Ibid.* p. 107.

³²⁵ Christer Jönsson, “Sphere of Flying: The Politics of International Aviation,” *International Organization* 35, no. 2 (1981): 273–302, p 275

³²⁶ Jönsson, *Ibid.* p. 279.

³²⁷ Eugene Sochor, *The Politics of International Aviation* (Iowa City : University of Iowa Press, 1991). p. 6

³²⁸ Sochor, *Ibid.*

cede any control of airspace to an international body, many states began to see the need for a coordinated approach to commercial aviation. As such, representatives from some of the initial World War I and II-era aviation powers, as well as an emerging block of states with aviation capacity from South America, met in Chicago in 1944 to establish ICAO. From these discussions, ICAO was formed, and the resulting international agreement led to a new multilateral aviation regime.

The Chicago Convention

The agreement that created ICAO in 1944 is referred to as the Convention of International Civil Aviation, or the Chicago Convention.³²⁹ Part of the United Nations, ICAO would serve as a multilateral organization to organize and manage international airspace for commercial flights. It would also provide baseline requirements for safety and navigation that all signatory states would agree to follow in commercial aviation.³³⁰ ICAO was formed at the 1944 Chicago Conference after debates by key states with significant aviation assets, including the U.S., U.K., Europe (France, Italy, Germany, Sweden, Spain, Norway, Switzerland, Netherlands), Canada, Australia, New Zealand, South Africa, and India.³³¹ Designed to “ensure and enhance the safety of air travel through the standardization of international regulations and rules and procedures,”³³² a total of 55 states signed the Convention within the first few years of the agreement, primarily consisting of World War II Allied nations and neutral states, with no initial inclusion of Germany, Austria, Italy, or Japan.³³³

³²⁹ MacKenzie, *ICAO*.

³³⁰ “The History of ICAO and the Chicago Convention,” <https://www.icao.int/about-icao/History/Pages/default.aspx>.

³³¹ MacKenzie, *ICAO*. P. 68

³³² MacKenzie, *Ibid.* P. 98

³³³ MacKenzie, *Ibid.* P. 25

While all states agreed on the final product, there was significant discussion and disagreement among states during the Convention's meetings on a few key items.³³⁴ Some states wanted an ICAO-run airline that would provide international service for everyone rather than having individual state-owned or privately-run airlines. Others wanted strict sovereign control of airspace in alignment with their land-based territorial borders, particularly in the aftermath of air raids during World War II.³³⁵ The U.S. landed somewhere in the middle of many of these debates, wanting open borders but eschewing the ICAO airline idea – particularly as it had wanted its major commercial airline, Pan Am, to have unrestricted access globally.³³⁶

ICAO's final agreement, allowing each state to run its own airlines and opening borders to each other's aircraft, allowed the U.S. to capitalize on its aviation dominance during that era.³³⁷ The U.S. brought a representative from Pan Am to the Chicago conference – while no other states had private airline interests present - and worked to expand markets to U.S. carriers while maintaining its own sovereign airspace from international carrier traffic.³³⁸ Not only was this unique, but it was also indicative of how the U.S. was attentive to U.S.-owned private companies, but also forecasts how economic factors played into security after the Pan Am 103 bombing.

³³⁴ MacKenzie, *ICAO*.

³³⁵ MacKenzie, *Ibid*.

³³⁶ Eugene Sochor, *The Politics of International Aviation* (Iowa City : University of Iowa Press, 1991).

³³⁷ MacKenzie, *ICAO*.

³³⁸ MacKenzie, *Ibid*.. p. 57.

Pan Am's presence at the ICAO conference became particularly important during debates on cabotage. The concept of cabotage would allow airlines to take passengers between two or more destinations within another country instead of only being allowed to fly between its home state and another country.³³⁹ Only a few states advocated for cabotage, and the United States was one of the idea's biggest detractors, wanting to preserve domestic air service for its own air carriers. The final agreement was that a state's carriers may fly into and out of another country, but not within, except in the event of an emergency.³⁴⁰ By virtue of these agreements, the sovereignty of a state's airspace, airlines, and airports were meant to be respected by others, while also permitting the state to manage its own carriers.

Finally, and very significantly to the formation of this multilateral regime, signatories to the Chicago Convention agreed that ICAO would produce standards and recommended practices for all members to follow.³⁴¹ Member states drafted the initial standards at the Chicago conference, including creating the Convention's Annexes that would govern various aviation needs, such as safety, flight standards, and navigation principles.³⁴² States then agreed to implement these new processes, known as Standards and Recommended Practices (SARPs) within their own aviation systems.³⁴³

While the Standards were binding (with some caveats for signatories to file a difference and deviate from the Standards) under the Chicago Convention's treaty obligations, Recommended

³³⁹ MacKenzie, *ICAO*. p. 6

³⁴⁰ "49 U.S. Code § 40103 - Sovereignty and Use of Airspace."

³⁴¹ MacKenzie, *ICAO*. pp. 98-99.

³⁴² MacKenzie, *Ibid.* pp. 98-99.

³⁴³ MacKenzie, *Ibid.* pp. 98-99.

Practices served as guiding principles with no obligation for states to follow them.³⁴⁴ However, ICAO was not created with an oversight or enforcement body to ensure that states were following these processes as agreed under the Convention.³⁴⁵ ICAO Standards also provided a relatively loose framework for a standard that a state was intended to achieve, but left the method for accomplishment up to states as long as the outcome was sufficient. Negotiating among such a large group of states with various capabilities also meant that the standards could be a lowest common denominator to ensure that all states were capable of accomplishing the goal.³⁴⁶

Bermuda Agreements

The solution to the Chicago Convention's debates about how to manage state sovereignty of airspace was modeled on a bilateral agreement the U.K. had entered into with Bermuda.³⁴⁷ The agreement outlined rights for flying over another state's territory, known as overflights. The U.K.-Bermuda agreement also covered areas such as managing technical stops for fuel, and how states managed foreign carriers' passenger pickup and drop-off.³⁴⁸ As described above, most countries had already entered into similar bilateral agreements among themselves.³⁴⁹ Without agreement on one integrated multilateral airspace agreement, ICAO signatories agreed instead to continue managing airspace bilaterally, but to standardize the agreements and model them on the Bermuda Agreement.³⁵⁰ Known thereafter as Bermuda Agreements, these arrangements allowed

³⁴⁴ "The History of ICAO and the Chicago Convention."

³⁴⁵ MacKenzie, *ICAO*. p. 100

³⁴⁶ Eugene Sochor, *The Politics of International Aviation* (Iowa City : University of Iowa Press, 1991).

³⁴⁷ MacKenzie, *Ibid*.

³⁴⁸ Christer Jönsson, "Sphere of Flying: The Politics of International Aviation," *International Organization* 35, no. 2 (1981): 273–302.

³⁴⁹ Tom D. Crouch, *Wings : A History of Aviation from Kites to the Space Age* (Washington, D.C. : Smithsonian National Air and Space Museum, 2003)/

³⁵⁰ MacKenzie, *Ibid*.

states to retain sovereignty over airspace entry, but to have ICAO oversee the system and address airspace safety and flight grid management.³⁵¹ As Sochor describes this arrangement: “The international system which evolved from the Chicago Convention and was institutionalized in ICAO was meant to protect the sovereign rights of states and assure the safety, regularity and orderly development of civil aviation on the basis of equality of opportunity.”³⁵²

Overseeing international airspace and pathways for commercial air carriers to fly was an incredibly important aspect of ICAO’s creation. By the time of the Chicago Convention’s signing, commercial aviation had grown to such an extent that states created a map to overlay flights in space and prevent any in-flight collisions, known as the Flight Information Region (FIR). Sochor argued that creation of this grid led to many states treating the air they flew in – regardless of the country they were traveling over – as if it was their own.³⁵³ This set up a potential conflict in the air, as commercial airplane might consider itself sovereign over its flight arc in the FIR, but it would still be passing over many other states’ territories, who considered the air above their state to be sovereign regardless of what states’ planes were in the air above.

The Chicago conference addressed this issue under Article 12 of the Convention. Article 12 outlines that states retain sovereignty of the air above them, but that any areas beyond state territory (i.e. over oceans or unclaimed spaces) were divided up by ICAO based on operational safety requirements rather than being part of a bilateral sovereignty dispute.³⁵⁴ This was important to the aviation industry, as airlines argued that unclear or disputed airspace boundaries

³⁵¹ MacKenzie, *ICAO*.

³⁵² Eugene Sochor, *The Politics of International Aviation* (Iowa City : University of Iowa Press, 1991), p. 72.

³⁵³ Sochor, *Ibid.* p. 108.

³⁵⁴ Sochor, *Ibid.* p. 108

created safety hazards for them.³⁵⁵ These hazards could significantly impact international relations, but they would have significant commercial and financial impacts in the event of a mid-air collision or miscommunication about a technical and/or fuel stop.³⁵⁶ Airlines argued that states should not “extend...their rivalries over the airspace outside their jurisdiction.”³⁵⁷

FIRs are part of the global airspace, which is divided into nine regions by ICAO. Maps of FIRs are shown below in Figures 5 and 6, showing how ICAO divides up the world into airspace grids. Figure 5 depicts a grid of the nine Volcanic Ash Advisory Centers, an airspace map managed by ICAO with centers responsible for reporting ash clouds and/or volcano advisories to aircraft in flight.³⁵⁸ Figure 6 shows the nine ICAO Global Air Navigation Regions, further divided into FIRs.

³⁵⁵ Eugene Sochor, *The Politics of International Aviation* (Iowa City : University of Iowa Press, 1991), p. 108

³⁵⁶ Sochor, Ibid. p. 108

³⁵⁷ Sochor, Ibid. p. 108

³⁵⁸ NOAA US Department of Commerce, “Volcanic Ash Advisory Centers” (NOAA’s National Weather Service), accessed November 29, 2024, <https://www.weather.gov/aviation/vaac>.

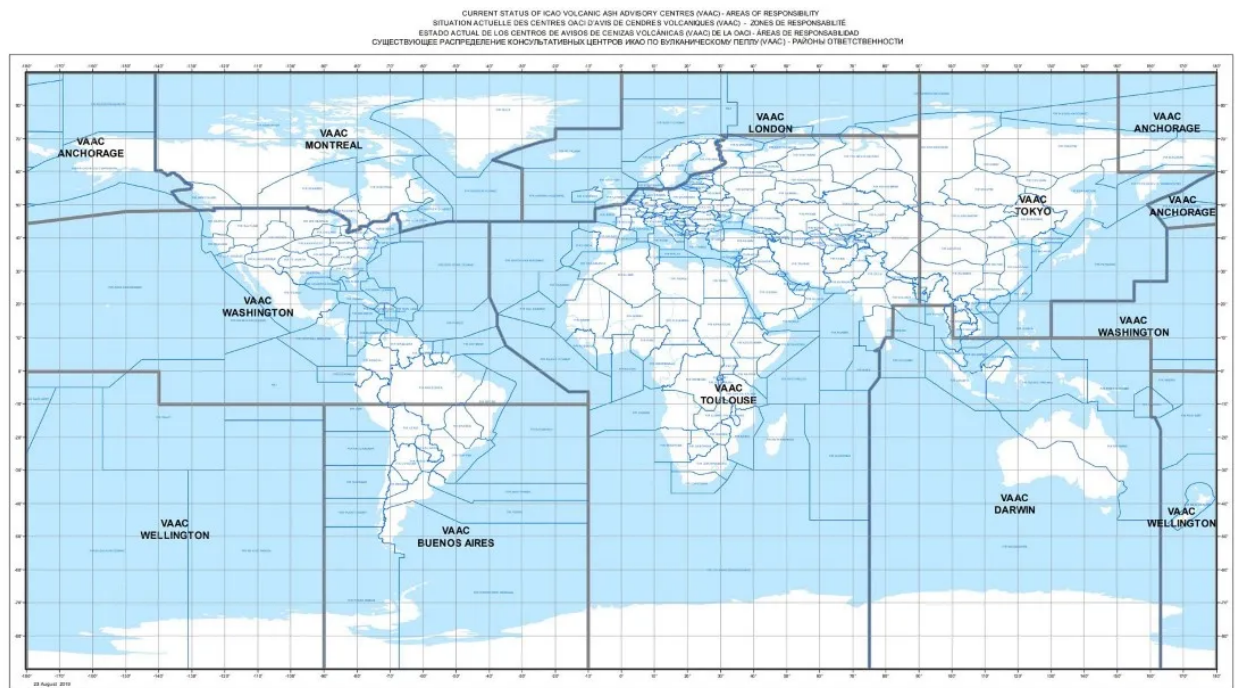


Figure 6: Global Flight Information Region (FIR) depicting Volcanic Ash Advisory Centers
 Source: ICAO

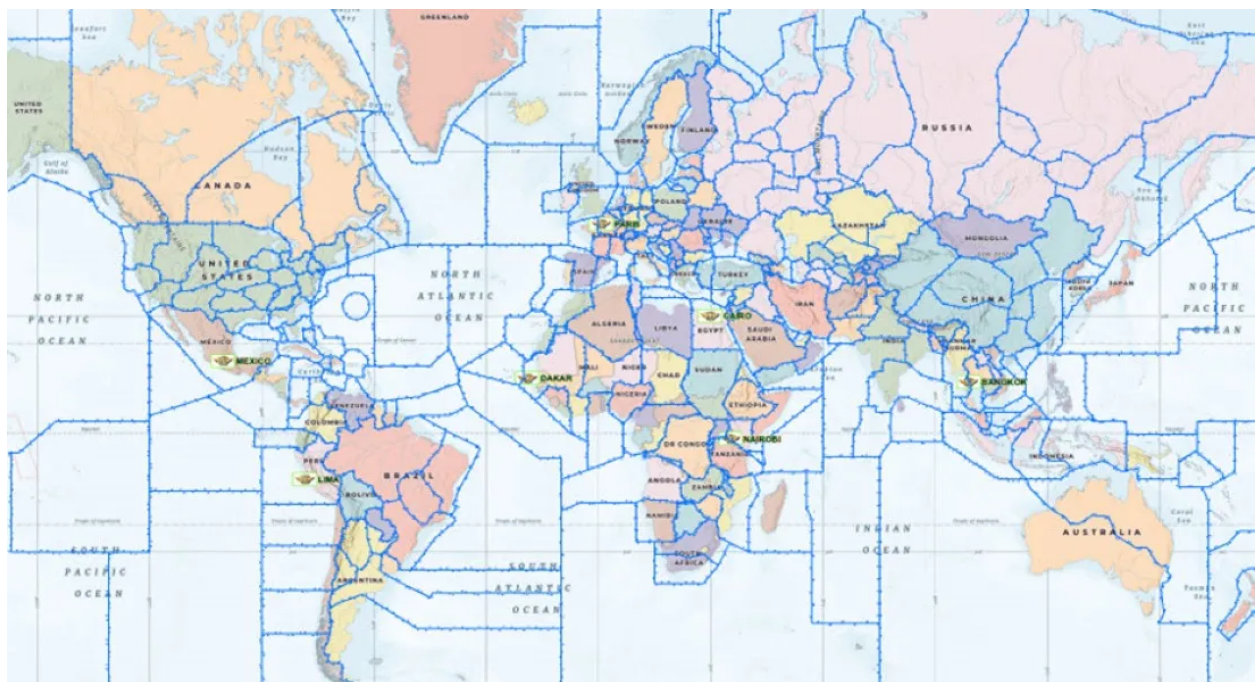


Figure 7: Global Air Navigation Plan Region
 Source: ICAO

The Bermuda Agreement model was important because it allowed stronger aviation states like the U.S. to strongarm other states into agreeing with its demands through bilateral treaties, rather than moving to a United Nations of the air with international airlines.³⁵⁹ Sochor argues that the U.S. gained much and gave little because many other states were in no position to bargain.³⁶⁰ However, ICAO was charged with managing this network of bilateral agreements and maintaining the overall system under a multilateral model, which was a shift away from the previous wild west of aviation sovereignty.

The creation of ICAO and signing of the Chicago Convention are the key developments from this era, ending a time of aviation building and moving toward a multilateral system, where ICAO emerged as the international hall monitor for commercial flights.

³⁵⁹ Eugene Sochor, *The Politics of International Aviation* (Iowa City : University of Iowa Press, 1991).

³⁶⁰ Sochor, Ibid. p. 15

Chapter 5: Before Pan Am: Multilateral Management Regime 1945-1988

Where the aviation building regime established a new framework for aviation sovereignty and territory, the multilateral management regime after ICAO's creation focused on expansion of the airspace grid and increased international cooperation for air safety and navigation.

Following ICAO's creation and the Chicago Convention's signing, states began to provide dues for a staff and building space to manage the various aspects of aviation newly under its purview.

An ICAO headquarters was built in Montreal, with dedicated staff along with aviation experts loaned by member states on a temporary basis – known as secondees – to support its work.³⁶¹

ICAO member states set up a structure with a Secretary General, initially chaired by a representative from France from 1944 to 1951, along with five main divisions focusing on air navigation, air transport, legal affairs, technical cooperation, and administrative services.³⁶²

Member states began using ICAO's new processes and worked through various committees to propose aviation standards that would be presented to the newly implemented ICAO Assembly during their triannual meetings.³⁶³ While ICAO and state staff met more frequently, Assembly brought together heads of state every three years to address major issues and vote on inclusion of new Standards and Recommended Practices for aviation.³⁶⁴ States proposed the standards, and the ICAO Secretariat provided the structure, oversight, and support for agreement on wider international aviation principles among states. As more and more states signed the Convention

³⁶¹ MacKenzie, *ICAO*. pp. 131-132

³⁶² "About ICAO," <https://www.icao.int/about-icao/Pages/default.aspx>.

³⁶³ "About ICAO."

³⁶⁴ "About ICAO."

and joined ICAO, this became an increasingly significant task. By 1989, ICAO had 162 member states.³⁶⁵

ICAO was designed to protect the sovereign rights of states while assuring the safety, regularity, and orderly development of civil aviation within the international aviation network.³⁶⁶ Within this structure, states managed their airlines and agreements for sovereign entry while ICAO established and oversaw airport controls, health and customs, and safety regulations.³⁶⁷

Historical Context

Between 1945 and 1988, aviation continued to grow as commercial service expanded worldwide. In the United States, service increased to the point of needing U.S. government intervention to manage traffic flows, pricing, safety requirements, and more.³⁶⁸ In 1958, Congress passed the Federal Aviation Agency Act (P.L. 85-726) to create the Federal Aviation Administration (FAA) as an agency charged with responsibility for managing civil aviation safety.³⁶⁹ The FAA replaced the previous Civil Aeronautics Authority that managed aviation accidents, regulated air fares, and oversaw U.S. commercial airspace flight routes.³⁷⁰

Congress gave the FAA expanded oversight scope of U.S. aviation and airspace, stating that the United States held “complete and exclusive national sovereignty in the airspace of the United

³⁶⁵ “United Nations Yearbook,” 1989.

³⁶⁶ Eugene Sochor, *The Politics of International Aviation* (Iowa City : University of Iowa Press, 1991), p. 72

³⁶⁷ MacKenzie, *ICAO*. p. 52

³⁶⁸ Federal Aviation Administration, “FAA Historical Chronology, 1926-1996.”

³⁶⁹ “A Brief History of the FAA | Federal Aviation Administration,”
https://www.faa.gov/about/history/brief_history.

³⁷⁰ “A Brief History of the FAA.”

States, including the airspace above all inland waters and the airspace above those portions of the adjacent marginal high seas, bays, and lakes, over which by international law or treaty or convention the United States exercises national jurisdiction.”³⁷¹ The law also extended U.S. authority to land, water, or air outside of the U.S. if a treaty with another country permitted it.³⁷² This allowed the U.S. to move its airspace sovereignty beyond the traditional land borders of the United States.

While the FAA focused on safety and authority over airspace within the United States, security was not yet a feature in domestic or international aviation. At the time, there was no need to check passengers or baggage other than in accordance with any international customs and duty laws. Passengers, bags, mail, and cargo on passenger aircraft were not screened or checked. Cargo or bags intended for passenger aircraft could be left unattended or unguarded on the tarmac, as it was unnecessary to keep tabs on them other than as safety and customer service issues.³⁷³

Trouble in the Skies

In 1955, all of that changed as U.S. faced its first known security incident on an aircraft. On November 1, 1955, a United Airlines flight from Denver, Colorado to Portland, Oregon had a bomb in a suitcase onboard, which killed everyone on the flight.³⁷⁴ The Federal Bureau of

³⁷¹ “Federal Aviation Act of 1958,” Pub. L. No. 85–726.

³⁷² Federal Aviation Act of 1958.

³⁷³ *Report of the President’s Commission on Aviation Security and Terrorism* (DIANE Publishing, 1989).

³⁷⁴ “Jack Gilbert Graham — FBI,” <https://www.fbi.gov/history/famous-cases/jack-gilbert-graham>.

Investigation (FBI) determined that a man had placed the bomb on the aircraft to kill his mother for her life insurance.³⁷⁵

In 1961, the FAA began to address its first series of security issues with aircraft hijackings. To address this new threat, Congress amended the FAA Act making it illegal to hijack aircraft, carry a lethal or dangerous weapon on an aircraft, or interfere with the flight crew on an operating aircraft.³⁷⁶ This led to the creation of Sky Marshals – known later as Federal Air Marshals (FAMs), who would serve as armed law enforcement officers on airplanes and manage any interference as necessary.³⁷⁷

Between 1969 and 1972, there were 319 aircraft hijackings worldwide, prompting a new focus on aviation security both at the state and multilateral levels. In the U.S., the FAA began testing magnetometers, or metal detectors, as its main form of weapons detection technology for use at airports by 1969. The idea was to find any metallic weapons – namely firearms – used during previous hijacking incidents.³⁷⁸ This helped to minimize hijacking occurrences, which went from 319 hijackings between 1969 and 1972 to 45 hijackings between 1977 and 1980.³⁷⁹

³⁷⁵ Federal Aviation Administration, “FAA Historical Chronology, 1926-1996.”

³⁷⁶ Federal Aviation Administration, Ibid.

³⁷⁷ Federal Aviation Administration, Ibid.

³⁷⁸ “FAA Feels Anti-Hijack System Working Well After Three-Week Tryout,” *Hartford Courant*, November 5, 1969.

³⁷⁹ Federal Aviation Administration, “FAA Historical Chronology, 1926-1996.”

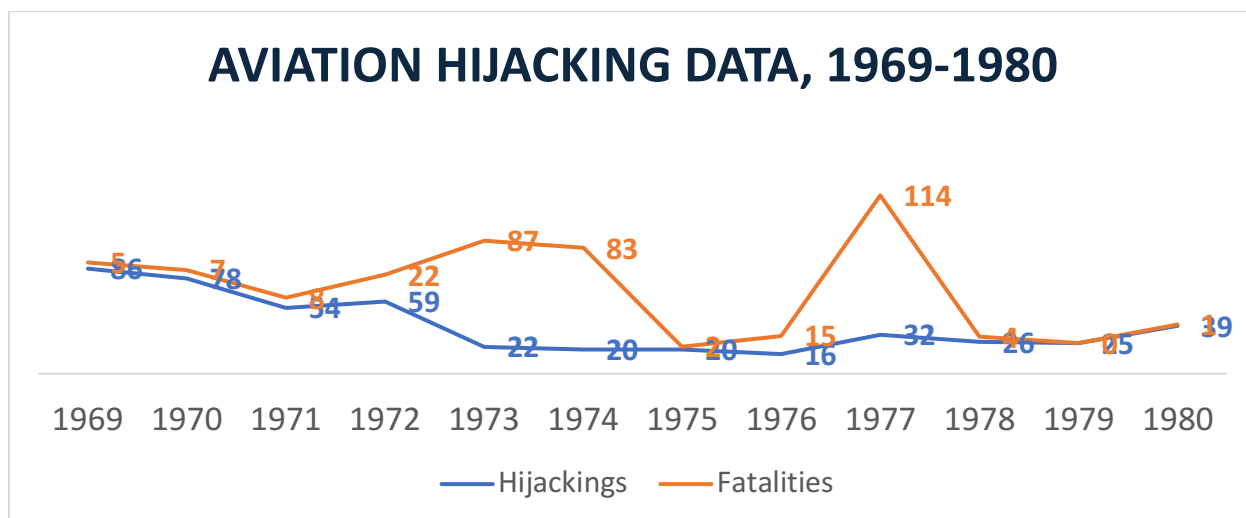


Figure 8: Hijacking Attempts on U.S. Air Carriers, January 1, 1977-December 31, 1980
Source: Aviation Safety Network/Flight Safety Foundation

Security Takes the Stage

By the early 1970s, airplane and airport bombings became a more serious and distinct concern. In the U.S., the FAA investigated numerous bombing attempts in 1972, including a bomb placed on a TWA flight in New York City, one on a TWA flight in Las Vegas, and another on a United flight in Seattle.³⁸⁰ To address this threat, the United States implemented requirements for U.S. carriers to create security program documents that the FAA would review and oversee.³⁸¹ This was implemented as a federal rulemaking effort, submitted to the Federal Register in March of 1972, and became known as Part 121 of the Code of Federal Regulations – 49 USC 121.³⁸²

³⁸⁰ Federal Aviation Administration, “FAA Historical Chronology, 1926-1996.”

³⁸¹ “A Brief History of the FAA | Federal Aviation Administration,” https://www.faa.gov/about/history/brief_history.

³⁸² Federal Register 37, No 44. 37 no 44, March 4, 1972

Under this new rule, U.S. air carriers were responsible for financing and implementing security measures for passengers, their baggage, and any cargo on their aircraft.³⁸³ The FAA also required U.S. carriers to implement new hijacking and bomb threat protocols.³⁸⁴ Subsequently, the U.S. added requirements for all passengers to go through a metal detector and for their carry-on baggage to be screened for threats.³⁸⁵ In 1976, after more hijackings and bombings, the FAA added new requirements for U.S. carriers, including screening for checked baggage.³⁸⁶

Internationally, ICAO implemented a new Convention in 1971, known as the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.³⁸⁷ The Montreal Convention addressed aircraft sabotage and unlawful interference, as well as bombings or destruction of the flight.³⁸⁸ Up until that point, ICAO's work had primarily focused on safety and navigation. After the significant rise in attacks on aircraft, ICAO began new security discussions and enacted a new Annex to the Chicago Convention with baseline security measures for its states to follow.³⁸⁹

The new security requirements were known as Annex 17 to the Chicago Convention, entitled "Safeguarding International Civil Aviation against Acts of Unlawful Interference."³⁹⁰ Annex 17

³⁸³ Department of Transportation News: Federal Aviation Administration, "FAA Issues Security Rules Governing Foreign Air Carriers," *FAA Press Release*, July 1, 1975.

³⁸⁴ Department of Transportation News, *Ibid*.

³⁸⁵ "Federal Register 37 No 235." No 235

³⁸⁶ Federal Aviation Administration, "FAA Historical Chronology, 1926-1996."

³⁸⁷ President's Commission on Aviation Security and Terrorism, "International Civil Aviation Organization Statement." March 8, 1990 p. 14

³⁸⁸ "Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation 1971" (United Nations, 1971).

³⁸⁹ "Annex 17 - Aviation Security," <https://www.icao.int/Security/SFP/Pages/Annex17.aspx>.

³⁹⁰ "Annex 17 - Aviation Security."

addressed emerging threats that states were seeing worldwide to commercial aviation. ICAO signatory states were drafted, negotiated, and agreed on these requirements, and laid out new Standards and Recommended Practices for managing bombings, hijackings, and other threats to aircraft. This included directing states to secure aircraft from hijacking by implementing preventive measures at their airports such as access control and weapons detection technology.³⁹¹ These standards laid the groundwork for states to determine how they would implement requirements for passenger, baggage, and aircraft security against threats. ICAO argued that “these violent criminal acts are a worldwide problem, [and] are not limited by geographical or political boundaries.”³⁹²

In 1977, states amended ICAO’s Standards and Recommended Practices to Annex 17 to add more protections against security threats. These included: airport security patrols, capacity development and assistance for security, ensuring screened passengers remained separated from un-screened passengers, guarding entry to aircraft, limiting checked baggage, and sharing aviation threats among ICAO member states for awareness and action.³⁹³ The Secretariat also worked closely with states to create a standard clause for state bilateral air services agreements with each other on security, making international aviation security “an integral part of the model bilateral cooperation of States.”³⁹⁴

³⁹¹ Eugene Sochor, *The Politics of International Aviation* (Iowa City : University of Iowa Press, 1991), p. 146..

³⁹² President’s Commission on Aviation Security and Terrorism, “International Civil Aviation Organization Statement,” March 8, 1990, President’s Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

³⁹³ C Pinkerton, “AIR TRANSPORTATION CONFERENCE,”.

³⁹⁴ President’s Commission on Aviation Security and Terrorism, “International Civil Aviation Organization Statement.” Ibid.

Since ICAO had no compliance regime at the time, it had no method of ensuring states were conducting operations in accordance with the security standards. The lack of ICAO oversight in this space left a gap that the U.S. filled over the coming years, as will be discussed below.

International Airport Security

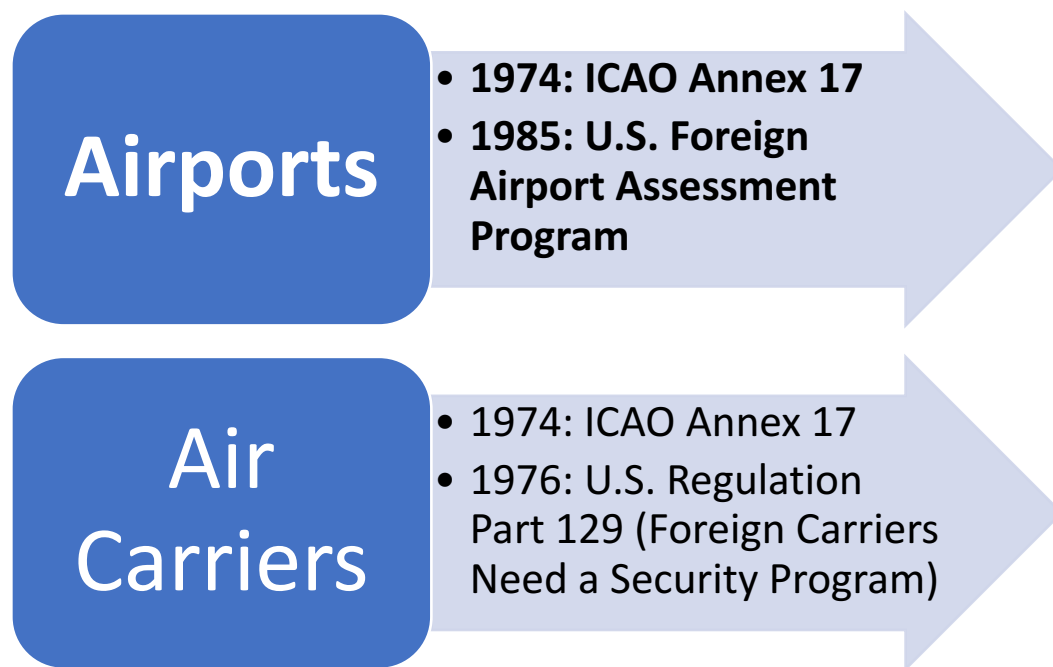


Figure 9: Airport and Air Carrier Timelines Pre Pan Am
Source: Author

International airport management at this time was under the purview of ICAO, as agreed by signatory states at the Chicago Convention. This meant that States followed ICAO standards to ensure that airport security functions were in alignment with Annex 17 requirements. For example, Annex 17 Standard 4.1.1 states that “Each Contracting State shall establish measures to prevent weapons, explosives or any other dangerous devices, articles or substances, which may be used to commit an act of unlawful interference, the carriage or bearing of which is not

authorized, from being introduced, by any means whatsoever, on board an aircraft engaged in civil aviation.”³⁹⁵

States might choose to layer on additional security measures of their own, but they would do so only to their own domestic airports and carriers – not to any other state’s airports or air carriers. Most states in the international aviation regime also used private companies for airport operations, including passenger or aircraft checks, rather than requiring air carriers or government officials to perform these security duties.³⁹⁶ As hijackings emerged to threaten state aviation operations, more and more states began to implement measures to address them, primarily aimed at metal detection to stop firearms. These efforts were not deemed to be terribly effective, stopping “on average 19 percent of terrorist hijackings at the time.”³⁹⁷ Figure 7 shows the detection capabilities of magnetometers from 1977 to 1980. Like many others, the U.S. also implemented metal detection equipment broadly at domestic airports throughout the 1970s.

³⁹⁵ “Annex 17 - Aviation Security.”

³⁹⁶ Eugene Sochor, *The Politics of International Aviation* (Iowa City : University of Iowa Press, 1991), p. 183

³⁹⁷ John Harrison, *International Aviation and Terrorism: Evolving Threats, Evolving Security* (London, UNITED KINGDOM: Taylor & Francis Group, 2009), p. 59

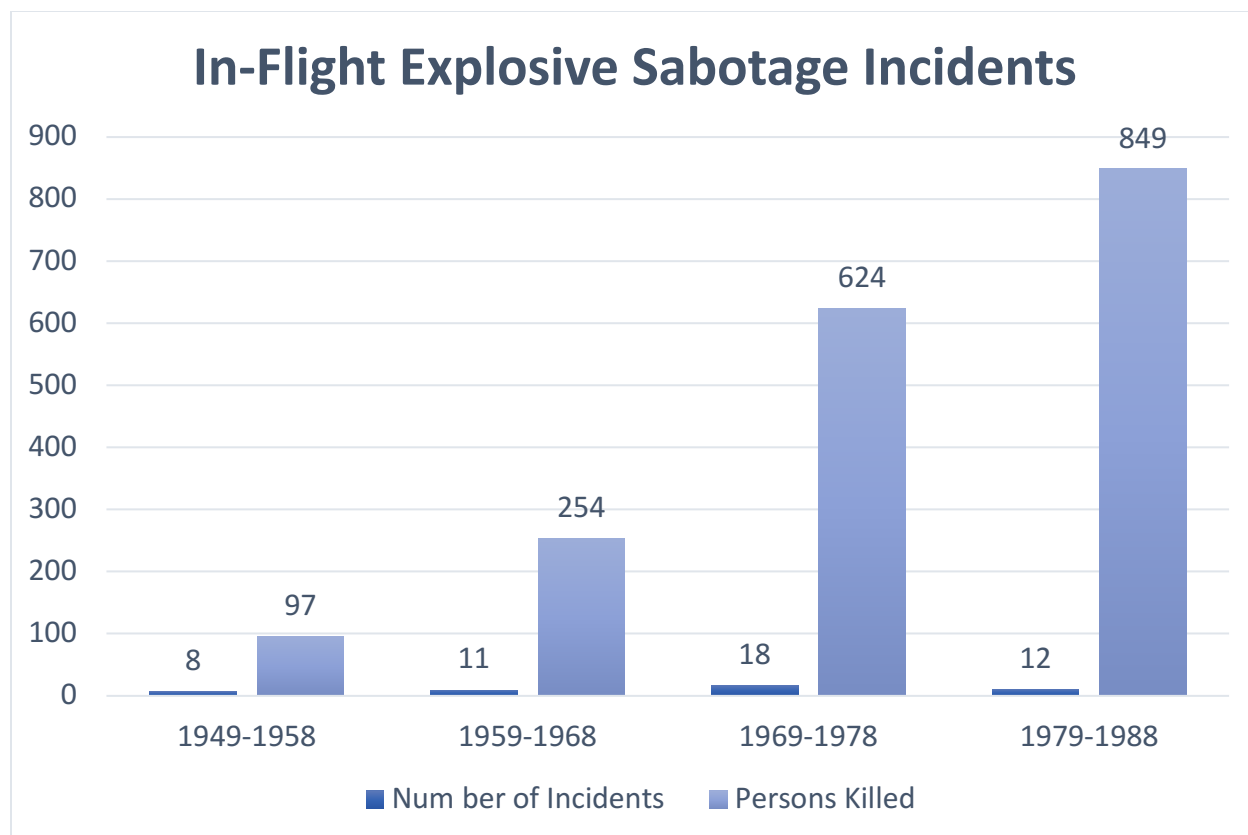


Figure 10: In-Flight Explosive Sabotage Incidents
Source: Criminal Acts Against Civil Aviation – 1988

Aircraft bombings increased in the early 1980s, notably with the bombing of Air India in 1985 and TWA in 1986. Air India was a complete loss, with the aircraft exploding over the ocean, killing all onboard,³⁹⁸ whereas TWA's bomb detonated just before landing, resulting in minimal casualties.³⁹⁹ The increase in bombings worldwide began to draw the U.S. gaze externally, causing unease about the state of the international aviation security system, leading to the beginnings of extraterritorial airport control.

³⁹⁸ John Harrison, *International Aviation and Terrorism: Evolving Threats, Evolving Security* (London, UNITED KINGDOM: Taylor & Francis Group, 2009), p. 54.

³⁹⁹ Harrison, *Ibid.* p. 51

To address these concerns, in 1985, the U.S. Congress passed the International Security and Development Cooperation Act of 1985. The law introduced a new program known as the U.S. Foreign Airport Assessment Program (FAAP). Under the program, the FAA would have U.S. inspectors assess international airports that served as Last Point of Departure (LPD) airports to the United States.⁴⁰⁰ Assessments would use ICAO's standards to determine whether airports were meeting ICAO's prescribed security mandates.⁴⁰¹ Rather than imposing new U.S. standards, policymakers were content to continue working with and through ICAO to manage airspace.

Where states were found to be out of compliance with ICAO requirements, the law laid out a methodology for the U.S. to act within a period of 90 days with escalating options. These included public notice of violations through publication in the Federal Register, signage of violations posted at all U.S. airports with service to the foreign airport of concern, written notice on the passenger ticket, and/or cessation of U.S. service to the location until such time as the airport addressed the security concerns.⁴⁰² Images of Public Notice, or notification to the public of poor aviation security at a specific airport (according to U.S. government standards), from the 2000s are below.

⁴⁰⁰ "International Security and Development Cooperation Act of 1985," Pub. L. No. P.L. 99-83, § Foreign Airport Security Act, 49 USC 44907 (1985).

⁴⁰¹ International Security and Development Cooperation Act of 1985.

⁴⁰² International Security and Development Cooperation Act of 1985.



Figure 11: Public Notice by the Department of Homeland Security
Source: Craig Lynes, Former Deputy Assistant Administrator for International Operations, Transportation Security Administration



*Figure 12: Public Notice by the Department of Homeland Security
Source: Craig Lynes, Former Deputy Assistant Administrator for International Operations,
Transportation Security Administration*

This gave the U.S. significant leverage to overcome any sovereignty concerns and ensure compliance with its oversight. It also marked the beginning of the U.S. using its network power in aviation security at international locations. However, the law and associated U.S. activity was still under the ICAO rubric and using ICAO standards, which ameliorated some of the sovereignty objections of other states. The economic threat to a state of losing access to the U.S. aviation market was significant enough that states permitted U.S. inspectors to visit airports and assess ICAO compliance on a periodic basis, usually once every few years. Additionally, as

noted above, ICAO had no compliance regime at the time, so there was no way to review or enforce state laxity in complying with Annex 17 security requirements.

International Air Carrier Oversight



Figure 13: Airport and Air Carrier Timelines, Pre Pan Am
Source: Author

As with airports, ICAO member states managed their own air carrier operations, including safety and security programs.⁴⁰³ Most international commercial airlines were state-owned, making them an extension of their governments. In the U.S., private companies owned and operated commercial aircraft.⁴⁰⁴ States negotiated and managed bilateral air services on airlines' behalf, enabling access to specific countries for pre-planned flight routes and overflights along the

⁴⁰³ MacKenzie, *ICAO*. pp. 98-99

⁴⁰⁴ MacKenzie, *Ibid.* P. 4

airspace grid.⁴⁰⁵ The U.S. brought its major airlines to international negotiations, even having them join high-level state meetings at ICAO.⁴⁰⁶

Following the increase in security incidents discussed above, in 1976 the U.S. required foreign air carriers to have a security program to fly to the United States. This became Part 129 of the Code of Federal Regulations and required that carrier programs include a plan for screening passengers and carry-on baggage prior to boarding.⁴⁰⁷ This requirement had limited parameters and no oversight or enforcement within the U.S. The security plans were merely required to exist and be shared with the FAA if asked.⁴⁰⁸ States responding the Federal Register notice determined this to be in comportment with ICAO's allowances for state security measures under Annex 17.⁴⁰⁹

The FAA regularly inspected American carriers both domestically and overseas to ensure compliance with U.S. and ICAO standards.⁴¹⁰ However, foreign carriers operated under their own state policies as well as any additional ICAO rules necessary for international service.

Positive Passenger Bag Match

To address the growing explosives threat on aircraft, the FAA began requiring U.S. carriers to implement a new checked baggage procedure in 1985 at what it considered to be high-risk

⁴⁰⁵ MacKenzie, *ICAO*. P. 118

⁴⁰⁶ MacKenzie, *Ibid*.

⁴⁰⁷ Federal Aviation Administration, "FAA Historical Chronology, 1926-1996."

⁴⁰⁸ Department of Transportation News: Federal Aviation Administration, "FAA Issues Security Rules Governing Foreign Air Carriers."

⁴⁰⁹ "14 CFR Part 129 -- Operations: Foreign Air Carriers and Foreign Operators of U.S.-Registered Aircraft Engaged in Common Carriage," p. 11118

⁴¹⁰ Eugene Sochor, *The Politics of International Aviation* (Iowa City : University of Iowa Press, 1991), p. 154.

locations overseas.⁴¹¹ This baggage procedure, known as Positive Passenger Bag Match (PPBM), required that no checked baggage be allowed to fly without being tied to a passenger who had physically checked in to board the flight.⁴¹² This would theoretically prevent a bomber who planted explosives in a checked bag and then failed to board the aircraft. If checked bags could not be reconciled to a passenger, they were not to be loaded on the plane without being physically opened and searched for explosives.^{413 414}

The PPBM requirement was meant to address a scenario like the Air India bombing of 1985 with a non-suicide bomber.⁴¹⁵ The cause of that explosion was found to be a plastic explosive bomb hidden in a checked bag whose passenger had not boarded the flight.⁴¹⁶

By 1987, the FAA had expanded this requirement to all U.S. airlines on all international flights.⁴¹⁷ The FAA also expanded its efforts to detect plastic explosives through passenger and baggage screening at the airports, recognizing that metal detectors and luggage x-rays would not show the explosives being used in aircraft bombings.^{418 419} States also proposed PPBM standards through ICAO, which were enacted in 1987 under a revision to Annex 17.⁴²⁰ These procedures were unified between the U.S. and ICAO, as well as among ICAO member states. The U.S. and

⁴¹¹ Federal Aviation Administration, “FAA Historical Chronology, 1926-1996.”

⁴¹² *Report of the President’s Commission on Aviation Security and Terrorism.*

⁴¹³ *Report of the President’s Commission on Aviation Security and Terrorism.*

⁴¹⁴ President’s Commission on Aviation Security and Terrorism, “Family Questions and Answers,” n.d., Pan Am 103 Special Collections Research Center, Syracuse University, Beth Ann Johnson Papers, Box 7.

⁴¹⁵ *Report of the President’s Commission on Aviation Security and Terrorism.*

⁴¹⁶ “Air India Flight 182: 1985 Bombing Back in News after Canada Row,” September 27, 2023, <https://www.bbc.com/news/world-asia-india-66909820>.

⁴¹⁷ Federal Aviation Administration, “FAA Historical Chronology, 1926-1996.”

⁴¹⁸ President’s Commission on Aviation Security and Terrorism, “Family Questions and Answers.”

⁴¹⁹ U. S. Government Accountability Office, “Meeting the Aviation Challenges of the 1990s,” July 1991.

⁴²⁰ “Milestones in International Civil Aviation.,” <https://www.icao.int/about-icao/History/Pages/Milestones-in-International-Civil-Aviation.aspx>.

ICAO timelines for implementation of PPBM requirements were fairly well aligned, as were the timelines for measures ICAO and the U.S. implemented both at airports and airlines. Even with safety, air navigation, and commercial interests as the major components of air travel, ICAO took significant steps through its member states to ensure a harmonized international approach to aviation security.⁴²¹

By 1988, the U.S. had several measures in place to address hijacking and explosive threats on U.S. carriers. Figure 10 below shows some of the key security measures in place prior to Pan Am 103 for airports and air carriers. These measures are displayed in the chart with a brief description of the policy, the date of enactment, sponsoring or driving state/agency, legal or regulatory mechanism for policy implementation, state of applicability, and which state or organization enforced the measure. Collectively, these security policy practices illustrate the regime governing aviation security prior to Pan Am 103. These requirements were extensive for U.S. carriers, but minimal for foreign air carriers.

⁴²¹ John Harrison, *International Aviation and Terrorism: Evolving Threats, Evolving Security* (London, UNITED KINGDOM: Taylor & Francis Group, 2009).

Figure 14: Pre Pan Am Multilateral Management Regime

Source: Author

AIRPORTS						
Policy	Date	Status	Sponsor	Mechanism	Application	Enforcement
Safeguarding civil aviation against unlawful interference (access control, weapons detection)	1963	New	ICAO Member States	ICAO Annex 17	All	None
Walk thru metal detectors (WTMD)	1972	New	U.S. FAA	Regulation – 49 USC 121	U.S.	Removal of metallics/weapons prior to boarding
Screening of accessible property (carry-on bags)	1972	New	U.S. FAA	Regulation – 49 USC 121	U.S.	Removal of metallics/weapons prior to boarding
Assessments of airport security to ICAO Standards	1985	New	U.S. FAA, U.S. Congress	U.S. law (FASA)	U.S.	U.S. law: public notice and travel advisory issuance, possible cessation of service
AIR CARRIERS						
Policy	Date	Status	Sponsor	Mechanism	Application	Enforcement
Extra security for U.S. airlines in regions of concern	1972	New	U.S. FAA	U.S. law	U.S.	FAA inspections
Requirement for foreign air carriers to have a security program	1976	New	U.S. FAA	Regulation – 49 USC 129	International	No direct oversight – carriers should produce a copy of the program if asked
Positive Passenger Bag Match	1985	New	U.S. FAA	Regulation via Air Carrier Standard Security Program	U.S.	FAA inspections, fines
Positive Passenger Bag Match	1987	New	ICAO	Annex 17	International	None

Toward a New Regime

The international community writ large took significant measures to address the growing security threat to commercial aviation with a series of Conventions and Annexes setting the standards for aviation security. These new standards were designed to address growing threats to hijacking and bombings, and were implemented relatively quickly by UN standards.

As aviation security incidents increased, the U.S. struggled to find a robust, inexpensive solution to the problem. Unlike most other states that shouldered the burden of security for its government-owned carriers, the U.S. required its private aviation industry to pay for security on its own. This set up an economic element to Pan Am 103 bombing that is important to understand prior to moving into the event itself. The next chapter discusses aviation deregulation and how that factored into securitization of airspaces.

Chapter 6: Aviation Deregulation

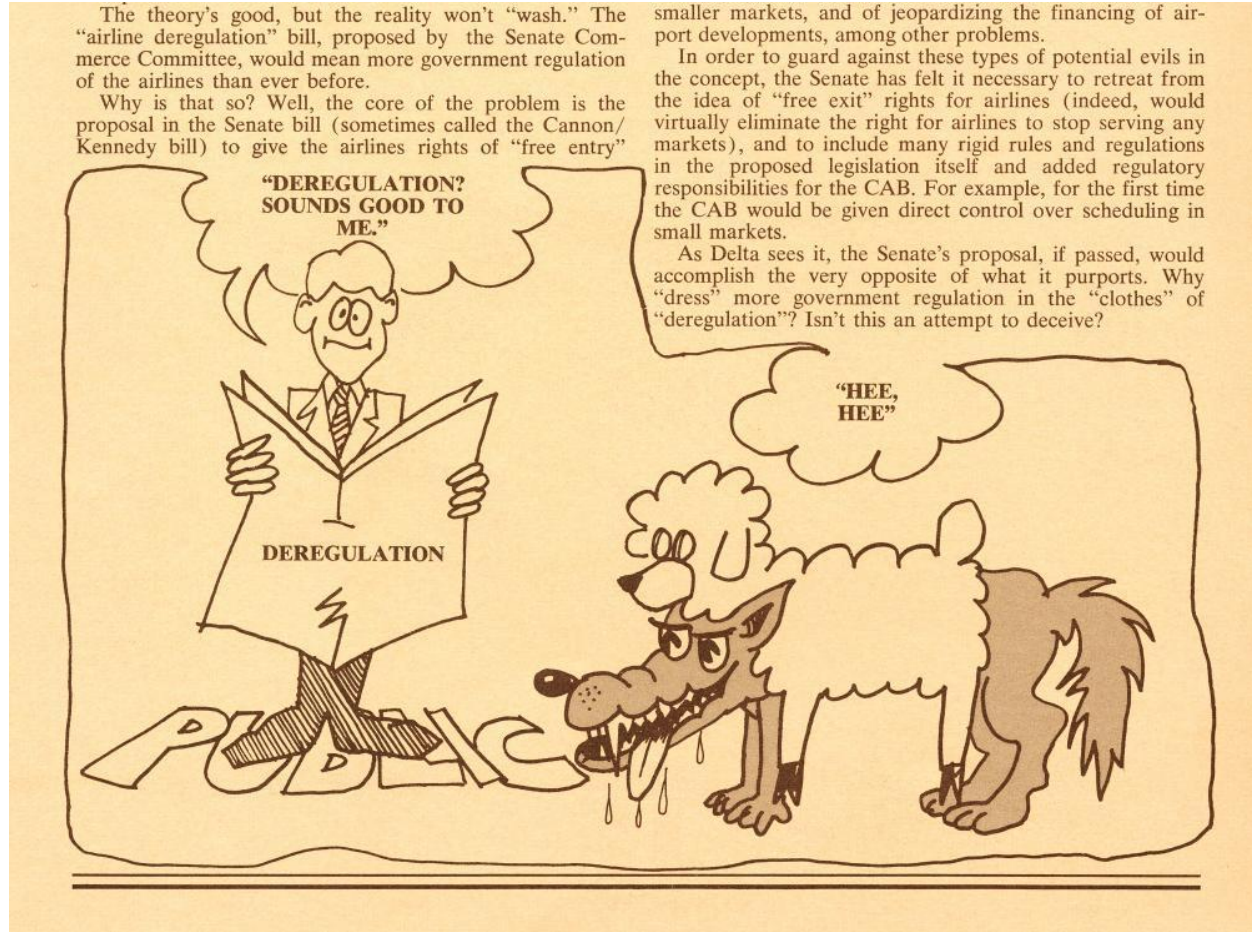


Figure 15: Deregulation Political Cartoon
Source: Smithsonian National Air & Space Museum

In 1975, U.S. Senator Edward “Ted” Kennedy (D-MA) oversaw congressional hearings examining how the U.S. government regulated U.S. privately-owned passenger airlines, and whether that should continue.⁴²² Three major American carriers in particular – Eastern, TWA, and Pan Am – were struggling with high fares and empty seats.⁴²³ Many in government argued that U.S. aviation oversight and regulation was directly contributing to these issues.⁴²⁴

⁴²² “Airline Deregulation, Revisited - Bloomberg,”

⁴²³ Elizabeth E. Bailey, “Aviation Policy: Past and Present,” *Southern Economic Journal* 69, no. 1 (2002): p. 14.

⁴²⁴ “Airline Deregulation, Revisited - Bloomberg.”

The Carter Administration laid out several policy objectives for deregulation in 1977, namely that it would create more competitive air carrier pricing, remove unfair advantages in the international space and expand international markets, increase nonstop/direct service, increase service capacity, allow for more competitive air cargo operations, and remove restrictions on charter flights.^{425 426} In 1978, President Carter issued the “International Air Transportation Negotiations Statement of U.S. Policy for the Conduct of Negotiations,” which stated that deregulation would benefit the U.S. significantly. “The United States believes this interest is best served by a policy of expansion of competitive opportunity rather than restriction. By offering more services to the public, in a healthy and fair competitive environment, the international air transport industry can stimulate the growth in traffic which contributes both to profitable industry operations and to maximum public benefits.”⁴²⁷

However, U.S. airlines were concerned about what deregulation might do, particularly to their bottom line.⁴²⁸ They also raised concerns about effects on pilot pay, union structures, safety, and maintenance.⁴²⁹ Deregulation moved forward all the same, as Congress passed the Airline Deregulation Act of 1978 (P.L. 95-504). This new law removed direct federal oversight and

⁴²⁵ Federal Aviation Administration, “Semi-Annual Report to Congress on the Effectiveness of the Civil Aviation Security Program,” July 1, 1977.

⁴²⁶ Federal Aviation Administration, “FAA Historical Chronology, 1926-1996.”

⁴²⁷ “International Air Transportation Negotiations Statement of U.S. Policy for the Conduct of the Negotiations. | The American Presidency Project.”

⁴²⁸ “What Prompted Airline Deregulation 20 Years Ago? What Were the Objectives of That Deregulation and How Were They Achieved?” Findlaw.

⁴²⁹ “What Prompted Airline Deregulation 20 Years Ago?”

regulation of airlines' service plans, including routes and fares, for transportation within the United States.⁴³⁰

Air carrier fears began to materialize as the removal of oversight turned into somewhat of a free-for-all in the industry. The federal government's former stabilization of fares and resulting predictability of airline profits was removed. Instead, airlines began to cut costs to compete with others, dipping into bottom lines as many tried to merge to survive.⁴³¹ These changes were compounded by the economic recession from 1980-1982⁴³² as well as the 1981 air traffic control strike and subsequent firing of 11,000 control staff.⁴³³ Many longstanding U.S. airlines went out of business, such as National, Western, and Pacific Southwest.⁴³⁴ Pan Am also showed signs of financial distress from costly mergers to stay competitive in a deregulated market, including selling major assets such as routes and buildings.⁴³⁵

Per GAO, the resulting changes did result in cheaper fares for passengers and presented a wider choice in service.⁴³⁶ While the majority of air service in the U.S. was still run by eight airlines, the price drop meant that airlines were carrying around significant cuts to their operating budgets.⁴³⁷ Some industry representatives lobbied for re-regulation; others pursued avenues for international competition.⁴³⁸ However, opening up the U.S. aviation space to more foreign

⁴³⁰ "Airline Deregulation Act of 1978," Pub. L. No. 95-504 (1978).

⁴³¹ Smithsonian, "Airline Deregulation: When Everything Changed," <https://airandspace.si.edu/stories/editorial/airline-deregulation-when-everything-changed>.

⁴³² "Recession of 1981-82 | Federal Reserve History," <https://www.federalreservehistory.org/essays/recession-of-1981-82>.

⁴³³ Simon and Malone, "Looking Back On When President Reagan Fired The Air Traffic Controllers."

⁴³⁴ Smithsonian, "Airline Deregulation."

⁴³⁵ Smithsonian, "Airline Deregulation."

⁴³⁶ U. S. Government Accountability Office, "Meeting the Aviation Challenges of the 1990s." Pp. 13-14

⁴³⁷ U. S. Government Accountability Office, Ibid. pp. 13-14

⁴³⁸ U. S. Government Accountability Office, Ibid, pp. 13-14

carriers also meant the possibility of even more competitive fares for passengers and less economic revenue for domestic carriers.⁴³⁹

The increasingly global nature of aviation led to more industry concern, particularly whether the U.S. would open its market to more European traffic, and/or whether Europe would do the same following the European Union's launch of the Economic and Monetary Union (EMU), implementing a common currency and economic structure for the region.⁴⁴⁰ As European carriers requested the opportunity to start airlines in the U.S., domestic carriers attempted to block any arrangement that increased competition and decreased stability.⁴⁴¹

Economic Drivers in Security

By the late 1980s, airlines continued to struggle financially. GAO noted that major challenges included an aging system, staffing shortages – especially air traffic controllers, and security.⁴⁴² As part of the growing security environment described in Chapter 5, U.S. carriers paid for the security measures newly required by the FAA. This included staff to perform passenger screening prior to boarding, and in many cases the equipment to screen passengers and carry-on baggage. It also included any guards for the aircraft, ground crew to pull passenger checked bags for passenger bag match, and any/all other planned or emergency procedures to address possible threats.⁴⁴³

⁴³⁹ U. S. Government Accountability Office.

⁴⁴⁰ “What Is the Economic and Monetary Union? (EMU) - European Commission.”

⁴⁴¹ U. S. Government Accountability Office, “Meeting the Aviation Challenges of the 1990s.” p. 15

⁴⁴² U. S. Government Accountability Office, “Meeting the Aviation Challenges of the 1990s.” p. 6

⁴⁴³ “eCFR :: 49 CFR Part 1544 -- Aircraft Operator Security: Air Carriers and Commercial Operators.”

When combined with the post-deregulation financial environment, this led the U.S. carriers to be increasingly concerned about the costs of doing business.⁴⁴⁴ Meanwhile, since foreign air carriers flying into and out of the United States were only required to have a general security plan, U.S. carriers saw an unfair competitive advantage.

Charles Barclay, then-Executive Vice President of the American Association of Airport Executives (AAAE), argued that it was important any security measures required of U.S. carriers be effective rather than “an emotional security blanket.”⁴⁴⁵ Given the costs the carriers must invest in security, he recommended ensuring it was worthwhile rather than “doing something, anything” by the FAA.⁴⁴⁶

As will be discussed further in Chapter 7, many of the security failures that allowed the Pan Am 103 bombing to occur happened because a U.S. carrier failed to follow its security plan.⁴⁴⁷ Pan Am reported that it frequently ignored the time-consuming requirements to make connection times.⁴⁴⁸ Airline schedules were crucial in a deregulated environment to prevent passengers from switching to a different airline, not to mention costs for delays to passengers and/or crew, especially if the delay meant the flight couldn’t leave until the following day.

⁴⁴⁴ President’s Commission on Aviation Security and Terrorism, “Statement of Richard F. Lally, Vice President - Security, Air Transport Association of America Before the President’s Commission on Aviation Security and Terrorism,” November 17, 1989, President’s Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁴⁴⁵ U. S. Government Accountability Office, “Meeting the Aviation Challenges of the 1990s.”

⁴⁴⁶ U. S. Government Accountability Office, “Meeting the Aviation Challenges of the 1990s.” p. 68

⁴⁴⁷ *Report of the President’s Commission on Aviation Security and Terrorism.*

⁴⁴⁸ President’s Commission on Aviation Security and Terrorism, “Memorandum: Meeting with Representatives of Pan Am.”

During the 1990 hearing before the U.S. House of Representatives Committee on Public Works and Transportation, Subcommittee on Aviation, Rep. Hammerschmidt stated that: “I am also aware that US airlines continue to feel that they are at a competitive disadvantage against foreign airlines that do not have to implement the same security arrangements.”⁴⁴⁹ Rep. Oberstar added to the discussions: “the American carriers have been very concerned about these differences in levels of security and the effect upon economics. Face it, it does have an effect.”⁴⁵⁰

Thomas Kelly, Vice President for the Air Transport Association (now Airlines for America or A4A – an association representing U.S. carriers) testified before the Committee that “we have competition out there between our carriers and the foreign carriers, flying from the same airports to the same airports...yet, we are affording security that heretofore has never been thought or heard of while our competitors are not coming anywhere close to affording that same type of security...it certainly puts us at a tremendous competitive disadvantage with our competitors...Our airlines are in such dire financial straits.”⁴⁵¹ The Pan Am 103 bombing created an opportunity for that very ‘leveling of the playing field,’ per U.S. interests, which I will discuss more in Chapter 13.

⁴⁴⁹ “Implementation of the Aviation Security Improvement Act of 1990.”

⁴⁵⁰ “Implementation of the Aviation Security Improvement Act of 1990.”

⁴⁵¹ “Implementation of the Aviation Security Improvement Act of 1990.”

Chapter 7: Pan Am 103

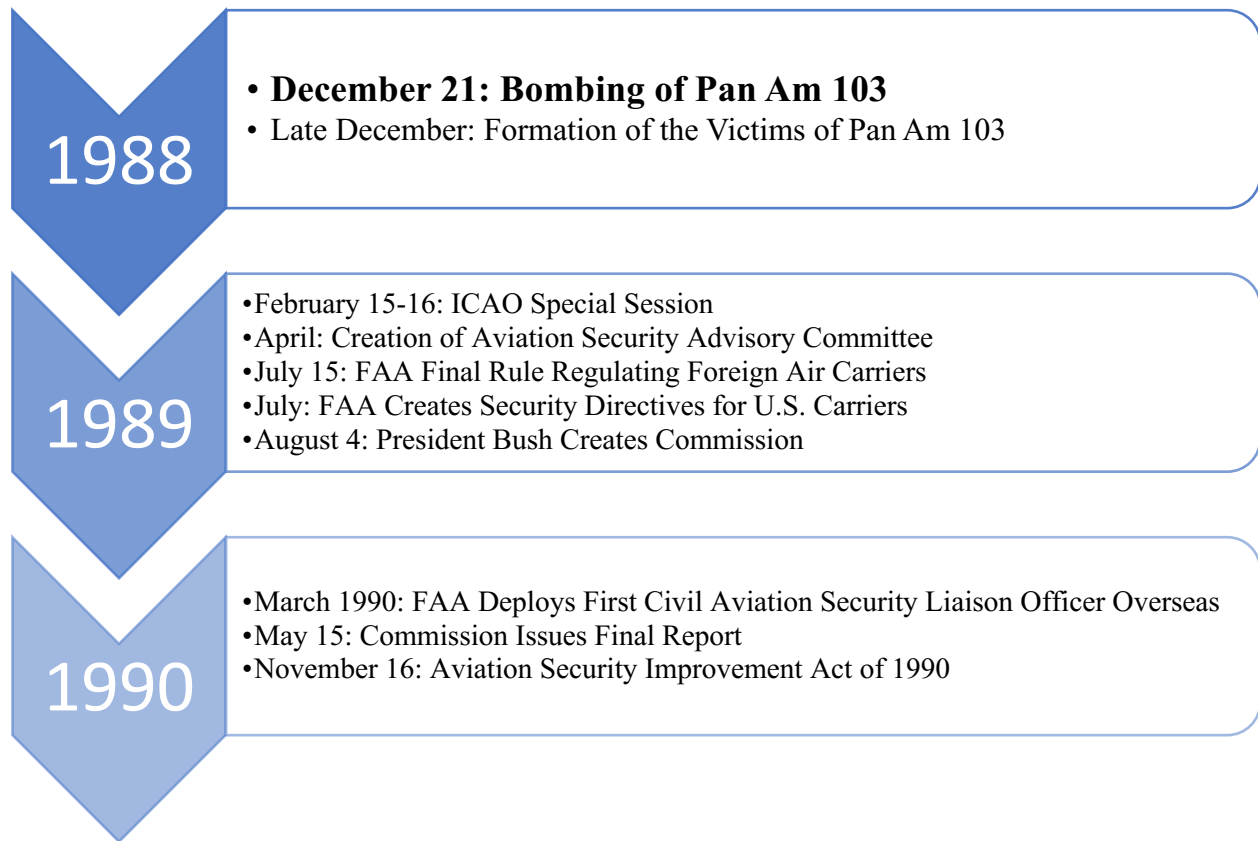


Figure 16: Timeline of Pan Am 103 Events
Source: Author

The aircraft that would be used for Pan Am Flight 103 arrived in London, England on December 21, 1988, and began receiving transfer passengers from a separate flight (103A) arriving from Frankfurt, West Germany. The passengers and their baggage were moved onto the 103 flight at London Heathrow Airport (LHR) headed for John F Kennedy Airport (JFK) in New York.⁴⁵²

⁴⁵² Air Accidents Investigation Branch, U.K. Department for Transport, “AAIB Bulletin Special S1/89,” 1989, Pan Am 103 Special Collections Research Center, Syracuse University, Victims of Pan Am 103 Inc. Collection, Box 3.

Additional originating passengers (those starting their travel journey at London Heathrow) joined the transfer passengers for a total of 243 passengers, 3 pilots, and 13 cabin crew.⁴⁵³

Pan Am 103 took off and then disappeared from radar about seven minutes after reaching cruising altitude of 30,000 feet. Another aircraft flying over Scotland reported seeing fire on the ground, where the aircraft had landed in various pieces in and around the town of Lockerbie.⁴⁵⁴ Debris spread up to 130 kilometers away from the impact due to trajectory and wind velocity upon breakup.⁴⁵⁵ Bodies and luggage were strewn about.⁴⁵⁶ Per the United Kingdom accident report, the wing boxes with a significant amount of fuel landed and then ignited in Lockerbie, producing a deep impact crater.⁴⁵⁷ Eleven residents were killed in the town from the impact, bringing the total dead to 270.

⁴⁵³ Ronald Reagan Library, "Department of State Operations Center: Crash of Pan Am 103 in the UK Situation Report," December 24, 1988, Box 92453; Pan American Flight 103 Crash Lockerbie, Scotland; Folder 3.

⁴⁵⁴ Air Accidents Investigation Branch, U.K. Department for Transport, "AAIB Bulletin Special S1/89."

⁴⁵⁵ Air Accidents Investigation Branch, U.K. Department for Transport.

⁴⁵⁶ Steven Emerson and Brian Duffy, *The Fall of Pan Am 103 : Inside the Lockerbie Investigation* (New York, NY : Putnam, 1990).

⁴⁵⁷ UK Air Accidents Investigation Branch, "Report on the Accident to Boeing 747-121, N739PA at Lockerbie, Dumfriesshire, Scotland on 21 December 1988."



Figure 17: Pan Am 103 Debris
Source: USA Today

Through a joint investigation of United Kingdom officials and the FBI, officials determined that an improvised explosive device was detonated onboard, triggered by the altitude of the aircraft.⁴⁵⁸ ⁴⁵⁹ The device was placed in the checked baggage/forward cargo hold area of the aircraft, where surrounding areas demonstrated damage from explosives.⁴⁶⁰

⁴⁵⁸ UK Air Accidents Investigation Branch, "Report on the Accident to Boeing 747-121, N739PA at Lockerbie, Dumfriesshire, Scotland on 21 December 1988,"

⁴⁵⁹ "Remembering Pan Am Flight 103: 30 Years Later," Video, Federal Bureau of Investigation, accessed March 17, 2024, <https://www.fbi.gov/video-repository/lockerbie-pan-am-103-fbi-2018.mp4/view>.

⁴⁶⁰ "UK Air Accidents Investigation Branch."

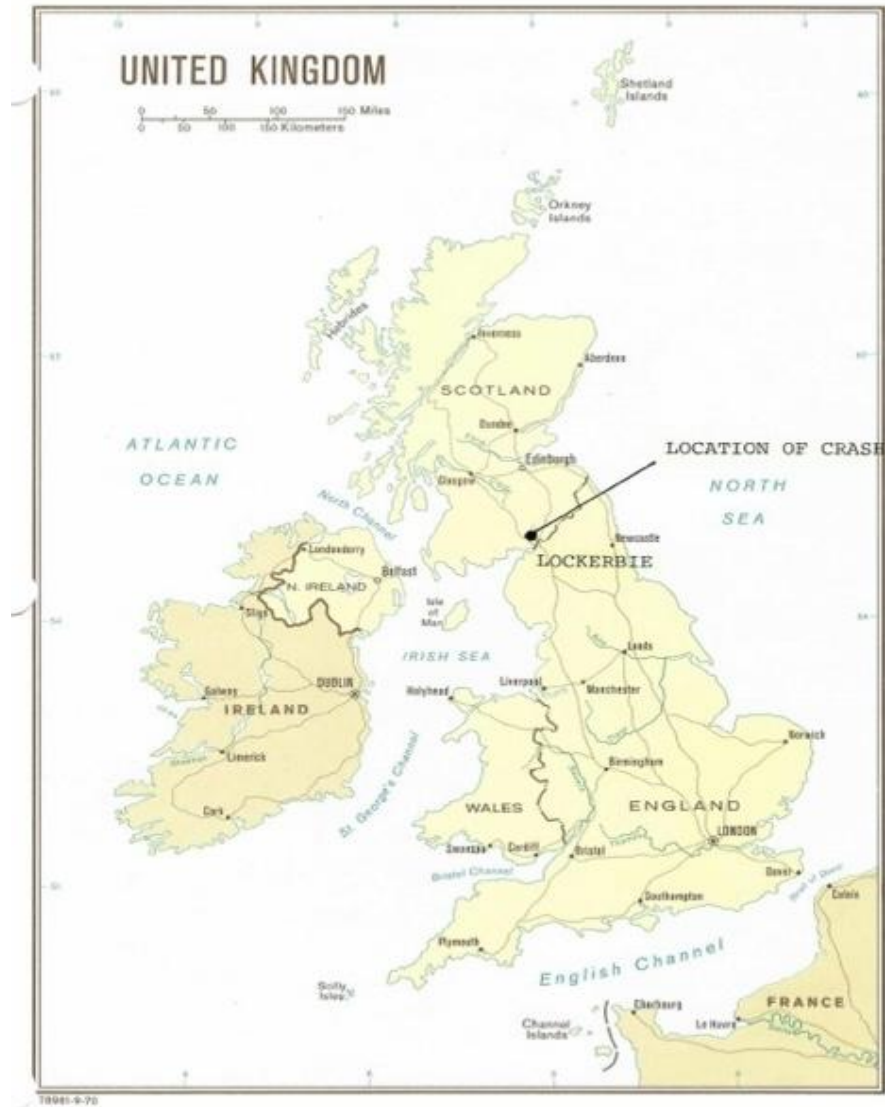


Figure 18: Pan Am 103 Crash Site Map

Source: Reagan Presidential Archives, Situation Room Staff Records, 1989⁴⁶¹

American Carrier, American Failure

“The existing U.S. security system, had it been enforced by Pan Am or the FAA, would have saved the 270 lives at Lockerbie.”

⁴⁶¹ Ronald Reagan Library, “Situation Support Staff, White House Records,” December 1988, Box 92453; Pan American Flight 103 Crash Lockerbie, Scotland; Folder 1.

- Omar Malik, “Aviation Security Before and After Lockerbie”⁴⁶²

Not long into the investigation of Pan Am 103, officials determined that an explosive device was hidden in a radio cassette player of a checked bag.⁴⁶³ This bag was loaded onto Flight 103A in Frankfurt with no accompanying passenger.⁴⁶⁴ The bag was not properly screened using PPBM at the originating flight, nor was it screened during transfer/transit processing to be placed onboard Flight 103 in London.^{465 466}

As discussed in Chapter 5, U.S. carriers were required to conduct PPBM at international airports to ensure that all luggage not matched to a passenger was hand searched prior to takeoff.⁴⁶⁷

Under its Air Carrier Standard Security Program (ACSSP), Section XV.C.1. (a), “the carrier may only physically inspect the bag or remove it; transporting it is not an option.”⁴⁶⁸ However, the investigation revealed that Pan Am did not conduct any of the required searches under PPBM at either London or Frankfurt, including identifying and searching unaccompanied baggage for originating or transfer passengers. Pan Am used x-ray, which could not detect explosives and was not allowed as a search method under PPBM requirements, and then loaded the bags on the

⁴⁶² Omar Malik, “Aviation Security before and after Lockerbie,” *Terrorism and Political Violence* 10, no. 3 (September 1998): p. 116

⁴⁶³ U. S. Government Accountability Office, “Aviation Security: Training Standards Needed for Extra Security Measures at Foreign Airports,” December 1989. P. 7

⁴⁶⁴ Federal Aviation Administration, “FAA Historical Chronology, 1926-1996.”

⁴⁶⁵ “Remembering Pan Am Flight 103: 30 Years Later,” Video, Federal Bureau of Investigation, <https://www.fbi.gov/video-repository/lockerbie-pan-am-103-fbi-2018.mp4/view>.

⁴⁶⁶ *Report of the President’s Commission on Aviation Security and Terrorism*.

⁴⁶⁷ Malik, “Aviation Security before and after Lockerbie.”

⁴⁶⁸ Federal Aviation Administration, “Memorandum: Investigation into Pan Am’s Operations at London Heathrow Airport; Entitled ‘Facts and Analysis,’” n.d., President’s Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

flight.⁴⁶⁹ Per the investigations, “any one of these security measures, correctly applied, should have averted the loss of Pan Am 103”⁴⁷⁰

Moreover, investigators uncovered even more areas of concern with Pan Am’s security efforts at both Frankfurt and London airports. These issues included failing to search cargo properly, failing to track and screen passengers requiring enhanced security screening, and failing to conduct carry-on baggage searches of those passengers.⁴⁷¹ Pan Am’s subsidiary company responsible for performing security services, Alert Management, did not know about and had not seen Pan Am’s Air Carrier Standard Security Program. This security program was a requirement of all air carriers following FAA’s issuance of security requirements as described in Chapter 5, and would have been essential for Alert Management to know about and see in order to perform the security measures for which Alert was responsible under ACSSP requirements. That the company charged with carrying out security functions was unaware of its existence caused investigators great concern.⁴⁷² Following inspections at LHR and Frankfurt, the FAA proposed \$630,000 in fines against Pan Am for security violations.⁴⁷³

⁴⁶⁹ Malik, “Aviation Security before and after Lockerbie.” P. 117

⁴⁷⁰ Federal Aviation Administration, “Letter to Edward Cunningham, Managing Director, Corporate Security, Pan American World Airways, Inc.,” September 20, 1989, President’s Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁴⁷¹ Steven Emerson and Brian Duffy, *The Fall of Pan Am 103 : Inside the Lockerbie Investigation* (New York, NY : Putnam, 1990).

⁴⁷² Federal Aviation Administration, “Pan Am Investigation and Inspection Report,” January 1989, President’s Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁴⁷³ Federal Aviation Administration, “FAA Historical Chronology, 1926-1996.”

In response to the investigation, the FAA noted that the economic pressure to move passengers and flights quickly may have led to Pan Am being out of compliance with their requirements.⁴⁷⁴

Pan Am countered that in many countries they were forbidden from having flight delays and had to comply with all overseas air traffic control commands even where they conflicted with the time required to perform U.S. security checks.⁴⁷⁵

While Pan Am failed to follow basic security instructions, the FAA also failed to flag these issues during its foreign airport assessments. As part of these assessments, authorized under the 1985 International Security and Development Cooperation Act, the FAA periodically visited both London Heathrow and Frankfurt airports to review airport security measures as well as to inspect U.S. air carriers for compliance with their security programs.⁴⁷⁶ In its 1989 report to Congress, the GAO noted that the Pan Am 103 investigation demonstrated “clear deficiencies in carrying out security procedures.”⁴⁷⁷ Further, the GAO argued that much of the carrier’s failure to follow security procedures could be attributed to lack of training.⁴⁷⁸ The GAO recommended that the FAA refine its training requirements to ensure U.S. carrier personnel had a higher minimum training regimen to follow, particularly in bomb detection and passenger screening.⁴⁷⁹

⁴⁷⁴ Federal Aviation Administration, “Letter to Edward Cunningham, General Manager, Security, Pan American World Airways, Inc.,” May 5, 1989, President’s Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁴⁷⁵ Pan American World Airways, Inc., “Letter to Frank Burns, Manager, Civil Aviation Security Staff, Federal Aviation Administration,” July 7, 1989, President’s Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁴⁷⁶ Federal Aviation Administration, “Letter to Edward Cunningham, General Manager, Security, Pan American World Airways, Inc.,” May 5, 1989.

⁴⁷⁷ U. S. Government Accountability Office, “Aviation Security: Training Standards Needed for Extra Security Measures at Foreign Airports.”

⁴⁷⁸ U.S. Government Accountability Office, *Ibid.* p. 1

⁴⁷⁹ U.S. Government Accountability Office, *Ibid.* p. 1

This is a crucial point in my research to note, as the U.S. reaction is primarily about international airports and air carriers. However, international airports and air carriers had little to do with the bombing, and certainly not with requiring a U.S. carrier to follow U.S. laws – which multiple investigations cited as the solution to the bombing. Instead, U.S. officials made extraterritorial moves to address what was a U.S. failure by a U.S. carrier in following U.S. regulations.

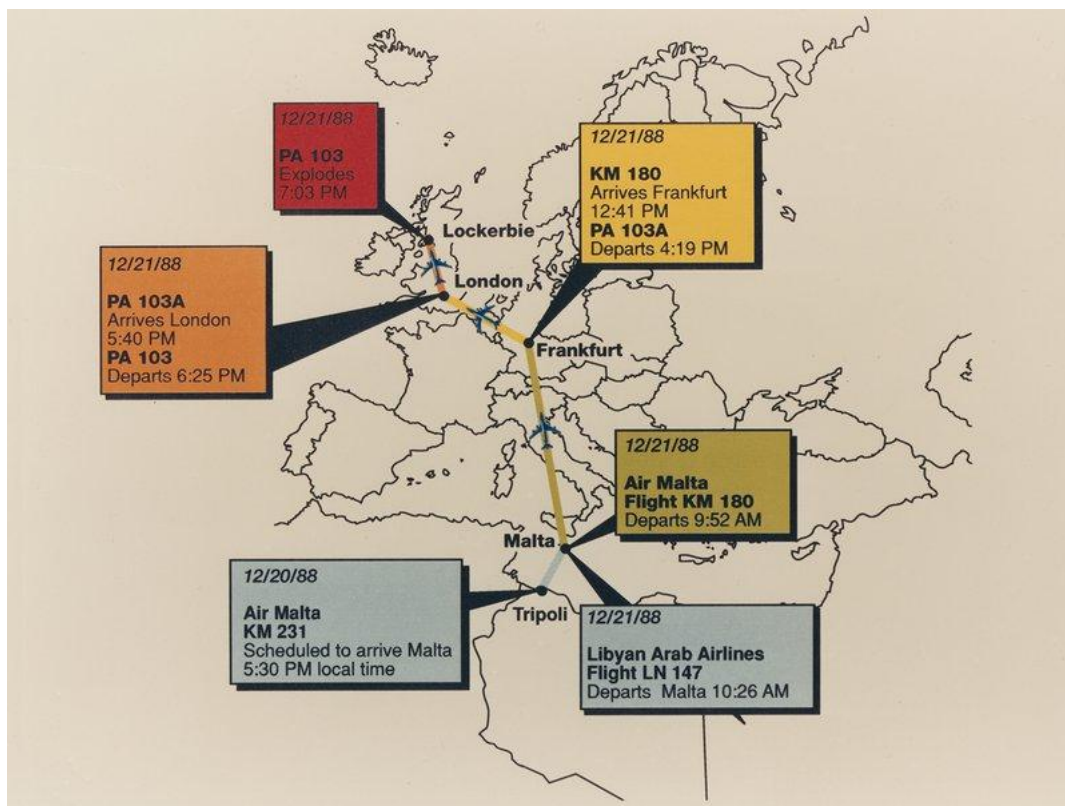


Figure 19: Map of Flights Connecting to Pan Am 103, Circa 1990s
Source: Syracuse University Archives, Richard A. Marquise Collection

Immediate Security Actions

By December 29, the FAA had already issued new security measures for U.S. carriers to implement within 48 hours in Europe and the Middle East.⁴⁸⁰ These included screening all checked baggage, not just PPBM bags; prohibiting passenger access to checked bags once screened; passenger profiling; and additional scrutiny of electronics in passengers' carry-on baggage.⁴⁸¹ The U.S. also expanded its airspace territory from three to 12 nautical miles from its coastal borders, with expanded air traffic rules to restrict access by aircraft near or over the United States.⁴⁸²

In early January of 1989, the FAA also issued a regulation to require sophisticated access control systems at domestic airports. These systems would restrict access to security restricted areas (SRAs) of airports and ensure that only authorized staff could enter.⁴⁸³ The FAA further added regulations that year to mandate at least \$1,000 fines for passengers attempting to bring firearms through airport screening, and to require that U.S. carriers install explosives detection systems (EDS) for checked baggage on international flights.⁴⁸⁴ The FAA also issued a security bulletin reminding U.S. carriers that any carrier with scheduled international operations must ensure that it fully complies with its requirements under the Air Carrier Standard Security Program (ACSSP).⁴⁸⁵ While FAA security bulletins were voluntary, the ACSSP requirements were not.

⁴⁸⁰ Federal Aviation Administration, "FAA Historical Chronology, 1926-1996."

⁴⁸¹ U. S. Government Accountability Office, "Aviation Security: Training Standards Needed for Extra Security Measures at Foreign Airports." P. 7

⁴⁸² Federal Aviation Administration, "FAA Historical Chronology, 1926-1996."

⁴⁸³ Federal Aviation Administration, "FAA Historical Chronology, 1926-1996."

⁴⁸⁴ Federal Aviation Administration, "FAA Historical Chronology, 1926-1996."

⁴⁸⁵ Ronald Reagan Library, "Situation Support Staff, White House Records."

This served as a message to carriers that lax air carrier compliance with the ACSSP would not be tolerated.

Meanwhile, the U.K. continued to work with ICAO by calling for a Special Ministerial meeting to address aviation security concerns in 1989.⁴⁸⁶ The U.K. also worked with the European Civil Aviation Conference (ECAC) - a body created in 1955 to provide a more focused multilateral forum for European ICAO member states.⁴⁸⁷ The U.K. shared many of its major updates since Pan Am 103 with the Victims of Pan Am 103 lobby via a letter dated 5 October 1989. Many of the U.K. measures included enhanced security for passengers and their carryon and checked baggage, particularly for U.S. flights.⁴⁸⁸ This included aircraft search prior to boarding as well as guards and monitors for the aircraft to ensure no possibility of terrorist or criminal access via employees.⁴⁸⁹ The U.K. also added passenger questioning regarding electronic devices, staff identity checks, random security patrols, baggage monitoring, and additional security inspectors who could ensure all appropriate measures were being followed.⁴⁹⁰

The Ronald Reagan Presidential Library houses a number of documents from the Reagan Administration White House Situation Room addressing the Pan Am 103 bombing. These provided additional insight into the British aviation security response, namely that the above

⁴⁸⁶ U.K. Department of Transport, "Letter to Bert Ammerman, President Board of Directors, Victims of Pan Am Flight 103," October 5, 1989, Pan Am 103 Special Collections Research Center, Syracuse University, Victims of Pan Am 103 Inc. Collection, Box 6.

⁴⁸⁷ "About ECAC," <https://www.ecac-ceac.org/about-ecac>.

⁴⁸⁸ U.K. Department of Transport, "Letter to Bert Ammerman, President Board of Directors, Victims of Pan Am Flight 103," October 5, 1989.

⁴⁸⁹ U.K. Department of Transport, "Letter to Bert Ammerman, President Board of Directors, Victims of Pan Am Flight 103," October 5, 1989.

⁴⁹⁰ U.K. Department of Transport, "Letter to Bert Ammerman, President Board of Directors, Victims of Pan Am Flight 103," October 5, 1989.

measures were done in consultation with the U.S. before being implemented.⁴⁹¹ The U.K. also engaged with the British Airports Authority to ensure that the government's solutions to tightening security were operationally feasible at the airport and air carrier level.⁴⁹² Further, the U.K. provided additional support for U.S. measures, ensuring that London Heathrow and London Gatwick with direct flights to the U.S. were enabling U.S. air carriers to fully follow all U.S. security requirements without any hindrances.⁴⁹³ While the U.K. Department of Transport (DoT) had authority to implement all security procedures without consultation, they chose to engage with the FAA and U.S. carriers first.⁴⁹⁴

By contrast, U.S. officials implemented security requirements without consulting with foreign governments or air carriers, both before and after Pan Am 103. The U.K. measures also make sense given that Pan Am departed London Heathrow Airport before exploding over Scotland, whereas the U.S. reaction would extend well outside of the immediate issue of a U.S. carrier failure to follow U.S. regulations.

By the end of the year, President George H.W. Bush authorized a President's Commission on Aviation Security and Terrorism, referred to hereafter as the Commission. This will be discussed in the following chapters, along with the role of a newly formed Aviation Security Advisory Committee (ASAC) and the efforts of Pan Am 103 victim families.⁴⁹⁵

⁴⁹¹ Ronald Reagan Library, "Situation Support Staff, White House Records."

⁴⁹² Ronald Reagan Library, Ibid.

⁴⁹³ Ronald Reagan Library, Ibid.

⁴⁹⁴ Ronald Reagan Library, Ibid.

⁴⁹⁵ Federal Aviation Administration, "FAA Historical Chronology, 1926-1996."



Figure 20: Pan Am 103 Impact Crater
Source: USA Today

Chapter 8: Stakeholders and Advocacy Coalitions

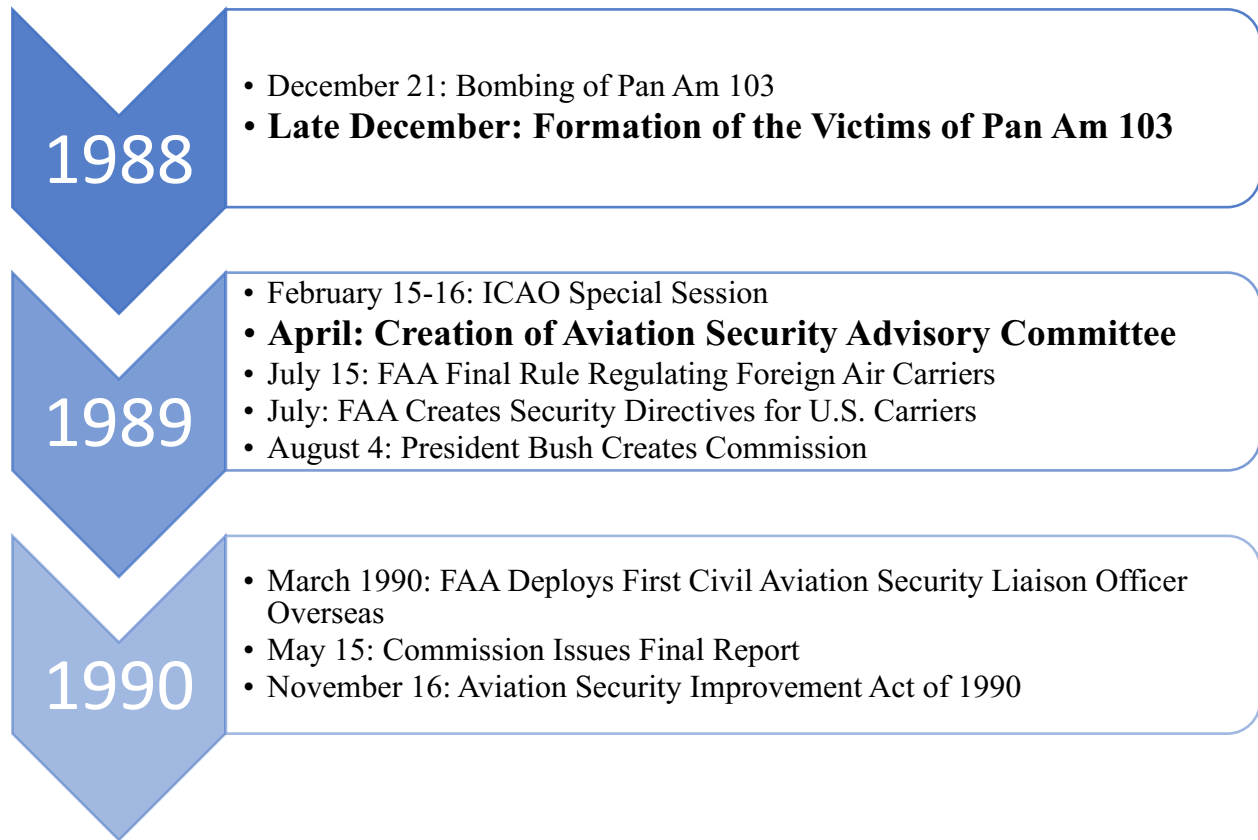


Figure 21: Timeline of Pan Am 103 Events (Stakeholders)

Source: Author

As discussed in Chapter 3, networks and associated advocacy and interest groups (hidden geopolitics and underground empire) are important in understanding why Pan Am 103 became the critical juncture that many previous aviation security incidents before were not. The images of pieces of aircraft crushed in a Scottish field, and a crater in the middle of the nearby town of Lockerbie made for a compelling story ripe for reaction. The resulting affect and discourse surrounding the need for security – as well as a perceived economic disparity in U.S. and foreign air carriers – caused the U.S. to use the aviation network to its advantage and conform the international system to its preferences.

Key to understanding how the U.S. as a state responded to the incident is examining the underlying stakeholders and advocacy groups that formed in the wake of Pan Am 103. Because of the unique nature of Pan Am's imagery, as well as the groundbreaking involvement of industry and the public in U.S. aviation policies, this chapter discusses the various factors at play with both phenomena. This is important as the involvement of these advocacy groups was a new development in aviation security. Their efforts significantly shaped the encroachment of securitization into airspaces.

Fischer describes advocacy coalitions as "an alliance of political groups...sharing the same interests and ideas that come together to argue against other policy coalitions concerned with the same policy issues."⁴⁹⁶ He argues that they may involve a wide range of participants such as public interest groups and media, which is in line with what occurred following Pan Am 103. The resulting alliance among groups with disparate interests outside of aviation is noteworthy and, as my research demonstrates, proved critical to resulting significant regime change in aviation security.

Media Coverage and Public Reaction

Airspace has long held wonder for the people bound to earth below. Adey, Whitehead, and Williams argue that as the airplane grew in popularity, especially through World Wars I and II, people looking for hope saw progress in the air.⁴⁹⁷ Pan Am became an embodiment of that for

⁴⁹⁶ Frank Fischer, *Reframing Public Policy: Discursive Politics and Deliberative Practices* (Oxford, UNITED KINGDOM: Oxford University Press, Incorporated, 2003), p. 95.

⁴⁹⁷ Adey, Whitehead, and Williams, *From Above*.

the United States, as its biggest airline with greatest reach past U.S. shores.⁴⁹⁸ Founded in 1927, Pan Am became integral in government and military operations despite being privately owned.⁴⁹⁹ While other countries sent government representatives to the first meeting of ICAO and the signing of its convention in Chicago in 1944, the American delegation included Pan Am representatives as well. Through advertising, discourse, and unlimited U.S. support, Pan Am was a symbol of America as an ideal.⁵⁰⁰ Its logo, uniforms, and ads were incredibly popular and well-known.⁵⁰¹

The destruction of Pan Am 103 became a symbol for aviation terrorism as the United States experienced its biggest aviation attack against a U.S. aircraft largely containing U.S. citizens. While the wings fell and ignited the fuel, causing a massive crater where a neighborhood once stood, the nose cone of the airplane fell almost intact in a Scottish field. Its symbol of power was replaced with one of fear.

The imagery of Pan Am 103 caused a visceral public reaction.⁵⁰² Per the CIA, the bombing was “widely regarded assault on a symbol of the United States, with 189 of the victims being Americans, stood as the deadliest terrorist attack on American civilians until the attacks of

⁴⁹⁸ Jenifer Van Vleck, *Empire of the Air: Aviation and the American Ascendancy* (Cambridge, UNITED STATES: Harvard University Press, 2013).

⁴⁹⁹ MacDonald, Hughes, and Dodds, *Observant States*. – Williams, Alison: “Flying the Flag: Pan American Airways and the projection of US power across the interwar Pacific.”

⁵⁰⁰ Van Vleck, *Empire of the Air*.

⁵⁰¹ “Nostalgia Takes Flight with Pan Am Logo Line - Los Angeles Times,” <https://www.latimes.com/archives/blogs/all-the-rage/story/2010-08-18/nostalgia-takes-flight-with-pan-am-logo-line>.

⁵⁰² Johnathan D. Salant, “Critics: Airline Security Can’t Prevent Another Flight 103,” *Syracuse Herald-Journal*, September 4, 1989, Pan Am 103 Special Collections Research Center, Syracuse University, Pan Am 103 Clippings Collection, Box 2.

September 11, 2001.”⁵⁰³ GAO also referenced public fear and anxiety resulting from the Pan Am 103 bombing, as well as other crashes and attacks since.⁵⁰⁴

While investigations were underway and government information was limited, public speculation was rampant. Much of this was fueled by press reporting of what information could be found at the time – much of it from incomplete documentation or interviews with partial information. In particular, the press seized on a report that government officials had been warned away from the flight due to a bomb threat via U.S. intelligence warnings, referred to as the Helsinki warning.⁵⁰⁵

The public’s fear presented as a reluctance to fly, at least on Pan Am. Per the Wall Street Journal, Pan Am lost between \$140 million and \$170 million in the first quarter after the Pan Am 103 explosion.⁵⁰⁶ They further had a 16% drop in international travel.⁵⁰⁷ By January 8, 1991, Pan Am had filed for bankruptcy.⁵⁰⁸ Van Vleck argues that Pan Am 103’s destruction is the day Pan Am as a company ended.⁵⁰⁹

While the images galvanized the public around a desire to do something, so did the loss of 35 Syracuse University students on the flight. The University established a Pan Am 103 archive to

⁵⁰³ “Terrorist Bombing of Pan Am Flight 103 - CIA,” accessed November 9, 2023, <https://www.cia.gov/legacy/museum/exhibit/terrorist-bombing-of-pan-am-flight-103/>.

⁵⁰⁴ U. S. Government Accountability Office, “Aviation Security: Immediate Action Needed to Improve Security,” August 1996.

⁵⁰⁵ Victims of Pan Am Flight 103, “Terrorism and Aviation Security: A National Priority,” n.d., Pan Am 103 Special Collections Research Center, Syracuse University, Victims of Pan Am 103 Inc. Collection, Box 3.

⁵⁰⁶ Judith Valente, “Pan Am 1st-Period Loss Nearly Doubled as Transatlantic Passenger Traffic Fell,” *Wall Street Journal*.

⁵⁰⁷ Valente, Ibid.

⁵⁰⁸ Van Vleck, *Empire of the Air*.

⁵⁰⁹ Van Vleck, *Empire of the Air*.

memorialize the bombing and response, as well as to remember student victims.⁵¹⁰ It also established remembrance scholarships for its students to continue honoring the victims' memories.⁵¹¹ U.S. government leadership also established a Lockerbie Memorial Cairn at Arlington National Cemetery and continues to hold a ceremony each year on December 21.⁵¹²

Fischer notes that “despite the fact that symbols and the multiple meanings create problems for the systematic empirical study of politics and public policy, there is no escaping their central role in the world of political action.”⁵¹³ Pan Am 103's explosion challenged a U.S. narrative of American progress and domination of the skies. It also challenged U.S. response significantly as the State Department and FAA struggled to meet victims' families' needs while also managing the investigation with the U.K. and its own over Pan Am.⁵¹⁴

At the time there was no regulation requiring U.S. carriers to provide passenger manifests to the government; these were solely the property of airlines and were maintained in a variety of fashions.⁵¹⁵ It took Pan Am several days to find a comprehensive list that it might use to notify families of their loved ones' deaths.⁵¹⁶ By that time, many families had already arrived at

⁵¹⁰ “History of Pan Am Flight 103 Lockerbie Air Disaster Archives,” Syracuse University Libraries, 103.

⁵¹¹ “Remembering Pan Am 103 - Syracuse University,” <https://www.syracuse.edu/about/history/remembering-pan-am-103/>.

⁵¹² “Pan Am Flight 103 Memorial,” <https://www.arlingtoncemetery.mil/explore/monuments-and-memorials/pan-am-flight-103>.

⁵¹³ Frank Fischer, *Reframing Public Policy: Discursive Politics and Deliberative Practices* (Oxford, UNITED KINGDOM: Oxford University Press, Incorporated, 2003), p. 56

⁵¹⁴ Ronald Reagan Library, “Department of State Operations Center: Crash of Pan Am 103 in the UK Situation Report.”

⁵¹⁵ President's Commission on Aviation Security and Terrorism, “Family Questions and Answers.”

⁵¹⁶ “Fact Sheet: Additional Information on the Bombing of Pan Am Flight 103 Report,” *US Department of State Dispatch* 2 pt2 (1991): 854–57.

Lockerbie to seek more information, collect personal effects, and in many cases attempt to view and identify the deceased.⁵¹⁷

After Pan Am and the State Department made some significant strategic errors, such as telling families to pick up the bodies of their loved ones as cargo in a livestock warehouse, anxious families and an anxious public were eager for action.⁵¹⁸ The families' poor experiences with the State Department, Pan Am, and investigative authorities led them to create a lobbying group known as the Victims of Pan Am 103.⁵¹⁹

Interest Groups and Advocacy Coalitions

Out of the Pan Am 103 event, new stakeholder groups formed and aligned to advocate for changes to international aviation. Using public outrage and lingering, impactful images, these groups attempted to control the meaning of the event for their own purposes. I will highlight four major actors – some with sub-actors of note – and their prevailing interest in advocating for action in aviation security.

⁵¹⁷ Ronald Reagan Library, "Department of State Operations Center: Crash of Pan Am 103 in the UK Situation Report."

⁵¹⁸ Ronald Reagan Library, Ibid.

⁵¹⁹ President's Commission on Aviation Security and Terrorism, "Testimony of Families of Pan Am 103/Lockerbie, Paul S. Hudson, Chairman, Before the President's Commission on Aviation Security and Terrorism Public Hearing," November 17, 1989, Pan Am 103 Special Collections Research Center, Syracuse University, Richard Paul Monetti Papers, Box 38.

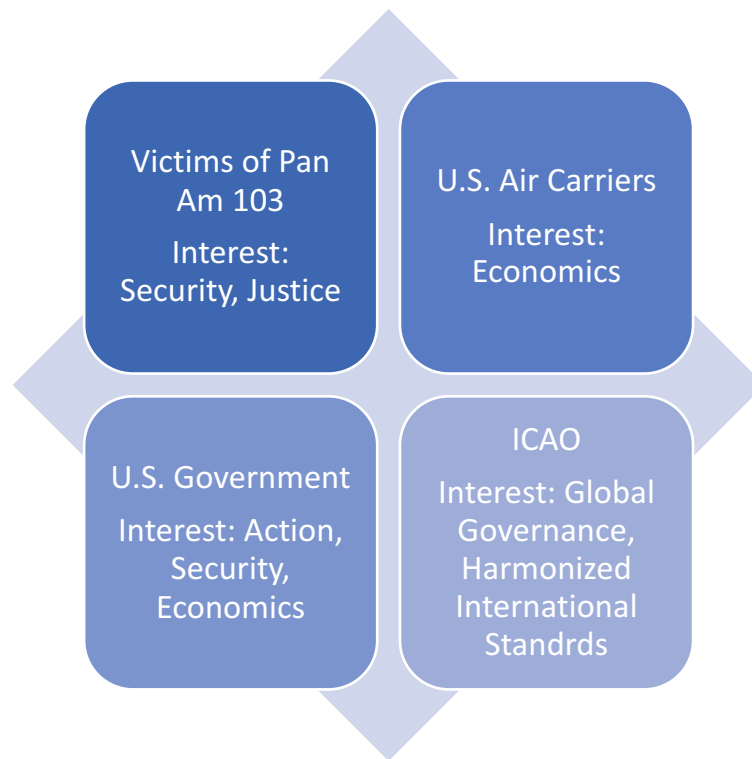


Figure 22: Pan Am 103 Advocacy Groups and Interests
Source: Author

Victims of Pan Am 103

The Victims of Pan Am 103 lobby was originally formed as a family grief support group, but then turned into a formalized organization on September 24, 1989.⁵²⁰ Many were families of the 35 Syracuse University students killed in the crash who had been traveling home from a semester abroad in London.⁵²¹ The treatment of victim families and reporting indicating that the U.S. government may have known about the bomb and done nothing was a significant driver for the Victims of Pan Am 103 organization's shift from a support group to a lobbying organization. Their initial founding documents indicate they sought to find the truth about what happened to Pan Am 103, as well as advocating for stronger security and counterterrorism policies in the

⁵²⁰ President's Commission on Aviation Security and Terrorism.

⁵²¹ "Remembering Pan Am 103 - Syracuse University."

United States.⁵²² As the group evolved from grief support to interacting with U.S. and other government partners, the organization's mission statement became about improving aviation security so that no one else experienced such a tragedy.⁵²³

Bert Ammerman, whose brother Thomas was killed on the flight, was the first President of the Victims of Pan Am 103. In one of his letters to the Department of Transportation in 1989, Ammerman stated that the group would be seeking legislation on a variety of topics, including creation of an independent agency to oversee airport and air carrier security issues, as well as providing American civilians killed by terrorists with the same honor and recognition as was given to the military.⁵²⁴ With more than 300 members by summer of 1989, the group established various action committees for media relations, the investigation, lobbying activities, and legal interactions.⁵²⁵ They advocated for public notification of aviation security threats, better security technology, more rigorous training and procedures, better intelligence-sharing and cooperation among government partners, and mandatory industry standards for crises.⁵²⁶

As Emerson and Duffy reported that per their research into the crash, the Victims lobby was the “most cohesive and determined group” that U.S. government officials had encountered, “more so

⁵²² President's Commission on Aviation Security and Terrorism, “Testimony of Families of Pan Am 103/Lockerbie, Paul S. Hudson, Chairman, Before the President's Commission on Aviation Security and Terrorism Public Hearing.”

⁵²³ President's Commission on Aviation Security and Terrorism, “Testimony of Families of Pan Am 103/Lockerbie, Paul S. Hudson, Chairman, Before the President's Commission on Aviation Security and Terrorism Public Hearing.”

⁵²⁴ Victims of Pan Am Flight 103, “Letter to Samuel Skinner, Secretary of Transportation,” January 11, 1989, Pan Am 103 Special Collections Research Center, Syracuse University, Victims of Pan Am 103 Inc. Collection, Box 6.

⁵²⁵ Steven Emerson and Brian Duffy, *The Fall of Pan Am 103 : Inside the Lockerbie Investigation* (New York, NY : Putnam, 1990), p. 222

⁵²⁶ Emerson and Duffy, *Ibid.* p. 222

even than the families of the American hostages held in Iran.”⁵²⁷ They created a newsletter to share information among members and organize public rallies, press conferences, and plan engagement with Congress and the Executive Branch.⁵²⁸ The group created a board to better organize their efforts, particularly later as the Victims of Pan Am 103 group was invited to join the U.S. government-created Aviation Security Advisory Committee, which I will discuss further below. The organization has a dedicated board member for efforts in that advisory committee.⁵²⁹

The Victims of Pan Am 103 also pushed for the U.S. White House and Congress to create a Commission that would independently investigate not only the Pan Am 103 explosion itself, but the FAA and its carrier requirements that made Pan Am vulnerable to the attack.⁵³⁰ The group used media for this purpose, creating a vigil 103 days after the bombing, on April 3, 1989, to “get publicity and put some pressure on the administration” to create an independent commission.⁵³¹ They also advocated for public notification of security threats to airlines, better airport security, more coordination within and among governments on aviation, and improved victim services.⁵³² Their lobbying efforts was often successful in garnering media attention, particularly once legislation was introduced to address aviation security and victim compensation.⁵³³ Jeff and Susan Cohen, whose daughter was killed in Pan Am 103, note in their memoir that the public relations director for Pan Am stated that most airlines are able to move on

⁵²⁷ Steven Emerson and Brian Duffy, *The Fall of Pan Am 103 : Inside the Lockerbie Investigation* (New York, NY : Putnam, 1990), p. 221.

⁵²⁸ “Victims of Pan Am Flight 103 Newsletter,” June 1989, Volume 1 Issue 3.

⁵²⁹ “Board,” Victims of Pan Am Flight 103, <https://www.victimsofpanamflight103.org/board>.

⁵³⁰ George H.W. Bush Presidential Library and Museum, “Statement on Signing the Aviation Security Improvement Act of 1990,” November 16, 1990, Public Papers.

⁵³¹ Susan Cohen and Daniel Cohen, *Pan Am 103: The Bombing, the Betrayals, and a Bereaved Family’s Search for Justice* (New American Library, 2000). p. 78

⁵³² Emerson and Duffy, *The Fall of Pan Am 103*. P. 222

⁵³³ Richard Gazarik, “Aviation Act Passage a Struggle,” *Tribune-Review*, October 25, 1990, Pan Am 103 Special Collections Research Center, Syracuse University, Pan Am 103 Clippings Collection, Box 2.

after disaster after a few months, but the “families just wouldn’t let go of the issue,” keeping Pan Am and aviation security at the center of public attention for years.⁵³⁴

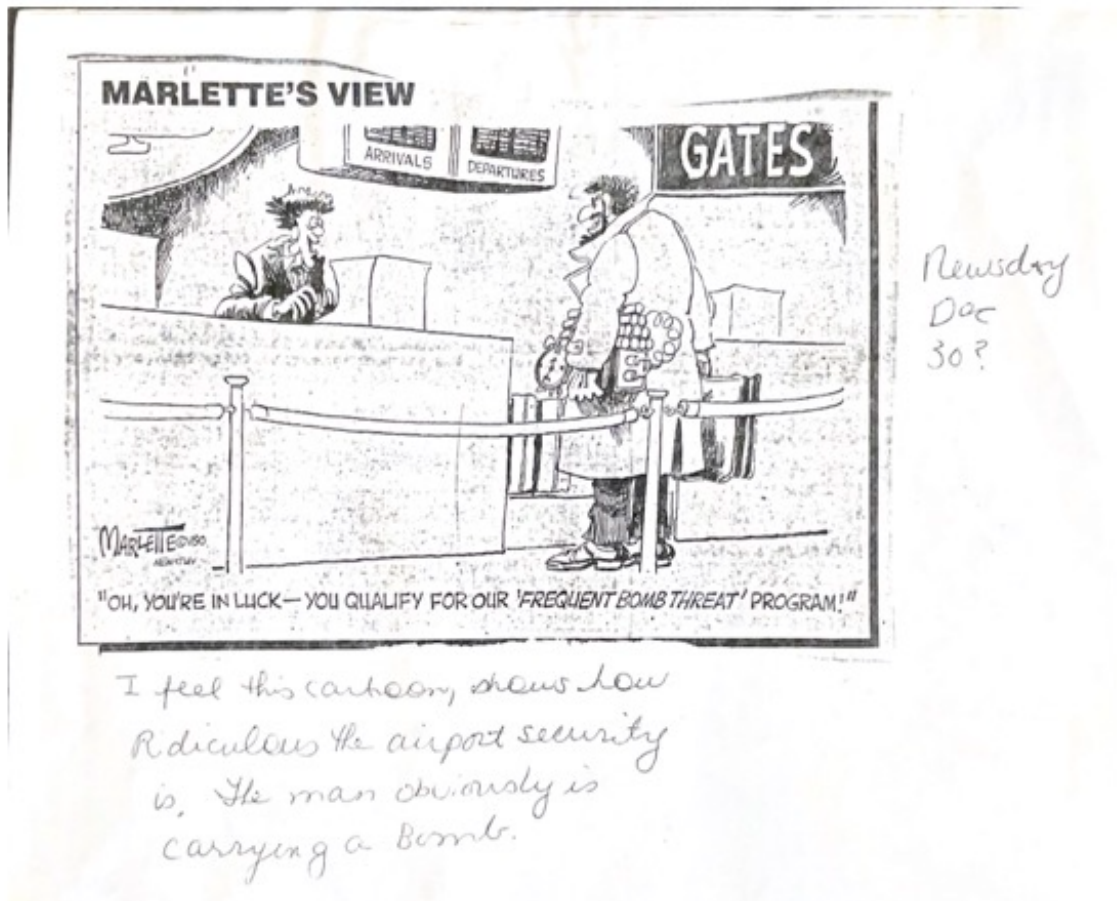


*Figure 23: Airport Security Political Cartoon
Source: Syracuse University Archives*

This political cartoon and handwritten note are part of the Victims of Pan Am 103 papers at Syracuse University’s archives. They illustrate the frustration some members felt at the state of

⁵³⁴ Cohen and Cohen, *Pan Am 103: The Bombing, the Betrayals, and a Bereaved Family’s Search for Justice*. p. 88.

airport security worldwide, as well as government and carrier responses (or lack thereof) to the growing threats to aviation.⁵³⁵

The Victims of Pan Am 103 group was not content to merely have a voice in aviation security; its members regularly used the opportunity to openly and consistently criticize the U.S. government, the air carriers, and the aviation security system for being too lax. In a statement to Congress by then-FAA Administrator James Busey regarding FAA's efforts to improve aviation security, Victims of Pan Am 103 member Glenn Johnson wrote "bullshit" in large letters across the page.⁵³⁶ Johnson's daughter was a victim of the crash, and he served for many years in the role of Aviation Security Advisory Committee representative for the group. He also led many of the organization's lobbying efforts with Congress, including "confronting" congressional staffers to ensure passage of the Aviation Security Act of 1990.⁵³⁷

In their testimony before the Commission, the group argued that aviation security standards are "are vague, contradictory, often ignored or not complied with and cannot form the basis for an adequate U.S. airline security system."⁵³⁸ The group considered themselves "watchdogs" for the "monitoring aviation security."⁵³⁹ In particular, this was a point of frustration from investigation documents that demonstrated Pan Am had not been following required security measures for at

⁵³⁵ Victims of Pan Am Flight 103, "FAA Issues," n.d., Pan Am 103 Special Collections Research Center, Syracuse University, Richard Paul Monetti Papers, Box 33.

⁵³⁶ Federal Aviation Administration, "Statement of Honorable James B. Busey, Federal Aviation Administrator, Before the House Committee on Public Works and Transportation, Subcommittee on Aviation, Concerning Civil Aviation Security," July 24, 1991, Pan Am 103 Special Collections Research Center, Syracuse University, Victims of Pan Am 103 Inc. Collection, Box 6.

⁵³⁷ Richard Gazarik, "Aviation Act Passage a Struggle."

⁵³⁸ President's Commission on Aviation Security and Terrorism, "Testimony of Families of Pan Am 103/Lockerbie, Paul S. Hudson, Chairman, Before the President's Commission on Aviation Security and Terrorism Public Hearing."

⁵³⁹ Victims of Pan Am Flight 103, "Terrorism and Aviation Security: A National Priority."

least several years prior to the bombing, and even claimed FAA had advised the carrier that their lack of compliance was acceptable.⁵⁴⁰

Additionally, the Victims of Pan Am 103 lobby understood the importance of the fact that Pan Am 103 had not followed current security rules, nor had the FAA enforced them.⁵⁴¹ They wrote to then-Secretary of Transportation Samuel Skinner that they would be proposing legislation to “create an independent security management agency to train, monitor and most importantly evaluate airport and airline security.”⁵⁴² They argued that airlines should not be at the forefront of aviation security, but that the U.S. government needed to take a more active role.⁵⁴³ They further expressed their frustration that more than one year after the bombing, aviation security seemed largely the same.⁵⁴⁴ Jim Swire, the spokesman for the UK version of the group (UK Families Flight 103), went so far as to construct a fake bomb to bring through security in an attempt to highlight the need for accelerated government and air carrier action.⁵⁴⁵

Documentation indicates the more the Victims of Pan Am 103 researched aviation security measures, the more frustrated they became. They argued that governments and air carriers had no interest in aviation security.⁵⁴⁶ Instead, they stated that “industry has gotten its way on virtually every issue as the FAA has gone along with the industry-sponsored roll backs of security

⁵⁴⁰ Pan American World Airways, Inc., “Letter to Gregory Walden, Chief Counsel, Federal Aviation Administration,” October 19, 1989, President’s Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁵⁴¹ President’s Commission on Aviation Security and Terrorism, “Family Questions and Answers.”

⁵⁴² Victims of Pan Am Flight 103, “Letter to Samuel Skinner, Secretary of Transportation,” January 11, 1989.

⁵⁴³ Victims of Pan Am Flight 103, Letter to Skinner.

⁵⁴⁴ Victims of Pan Am Flight 103, Letter to Skinner.

⁵⁴⁵ Cohen and Cohen, *Pan Am 103: The Bombing, the Betrayals, and a Bereaved Family’s Search for Justice*.

⁵⁴⁶ “Implementation of the Aviation Security Improvement Act of 1990.”

measures.”⁵⁴⁷ They also argued that the public’s role and interest in aviation security would not diminish over time, and that they would continue to follow FAA and air carrier activity to ensure security was paramount.⁵⁴⁸ The group requested a meeting with the Secretary to review DOT and FAA’s security proposals and provide feedback.⁵⁴⁹ This was unprecedented activity in the aviation space for a public group and demonstrated the power of this interest group in defining and driving aviation security policies.



Figure 24: Victims of Pan Am 103 Rally, April 3, 1989
Source: Syracuse University Archives, Richard Paul Monetti Papers

⁵⁴⁷ “Implementation of the Aviation Security Improvement Act of 1990.”

⁵⁴⁸ “Implementation of the Aviation Security Improvement Act of 1990.”

⁵⁴⁹ Victims of Pan Am Flight 103, “Letter to Samuel Skinner, Secretary of Transportation,” January 11, 1989.

U.S. Air Carriers and Associations

U.S. air carriers represented another distinct group of stakeholders within the aviation security space. Long charged with implementing the security measures required by the FAA and U.S. government, U.S. carriers had their own views on the appropriate roles and responsibilities of these efforts.⁵⁵⁰ They were also joined in these efforts by the Air Transport Association (ATA) group, a lobbying group representing U.S. carrier interests dating back to 1936. Rep. Oberstar described the carriers as “major participants in the shaping of security action taken by the carriers, taken by the United States, and taken by Congress.”⁵⁵¹

While the Victims of Pan Am 103 lobby was adamant about security, the air carrier lobby was seemingly motivated by financial implications from any new security investments. Throughout documents, hearings, and investigative reports, the carriers and associations repeatedly discussed being in “dire financial straits.”⁵⁵² They specifically expressed concern with foreign air carriers not being regulated to the same degree as U.S. carriers, and not being required to expend financial resources to address security.⁵⁵³ This parity argument comprised their main efforts in the wake of Pan Am 103 – not that additional security was warranted, but that economic differences should be addressed. Some examples of this language are phrases like “competitive disadvantage” repeated often in statements, testimony, letters, etc. “[Passengers] can walk 50 or 100 feet down a concourse and go on a foreign carrier taking them to the very same city and not

⁵⁵⁰ “Implementation of the Aviation Security Improvement Act of 1990.”

⁵⁵¹ “Implementation of the Aviation Security Improvement Act of 1990.” pp. 40-41

⁵⁵² “Implementation of the Aviation Security Improvement Act of 1990.” p. 68

⁵⁵³ “Implementation of the Aviation Security Improvement Act of 1990.” pp. 41-42

be exposed to all that, we can't compete with that and we really can't argue other than to say that our airlines are a lot safer."⁵⁵⁴ Additional repeated themes involve language such as "same requirements on foreign carriers" as well as how security requirements are "very expensive" and "detract from the ease and speed of processing the passenger."⁵⁵⁵

To the U.S. carriers, passenger facilitation and turnaround times were of paramount importance, because every additional minute of delay on the ground had financial impacts. Air carriers often prioritized speed over safety, and the U.S. carriers in particular resented bearing the additional cost of security duties on top of the costs of delays to their aircraft turn times.^{556 557}

These excerpts contain a sample of the consistent language regarding economic damage and parity concerns of interest to U.S. carriers lobbying in this space. While the Victims of Pan Am 103 lobby complained throughout archival documentation about the FAA bowing to industry's desire for less security and fewer costs, the two groups were aligned in desiring parity for U.S. and foreign air carriers. While the lobbying group sought this for security, and the U.S. carriers for economics, the outcome was a joint effort to extend U.S. sovereignty to foreign air carriers.

⁵⁵⁴ "Implementation of the Aviation Security Improvement Act of 1990." pp. 41-42

⁵⁵⁵ Air Transport Association, "Statement of Thomas C. Kelly, Vice President, Security, Air Transport Association Before the Committee on Public Works and Transportation, Subcommittee on Aviation, U.S. House of Representatives," July 24, 1991, Pan Am 103 Special Collections Research Center, Syracuse University, Richard Paul Monetti Papers, Box 33.

⁵⁵⁶ Federal Aviation Administration, "Pan Am Investigation and Inspection Report."

⁵⁵⁷ U. S. Government Accountability Office, "Aviation Security: Additional Actions Needed to Meet Domestic and International Challenges," no. RCED-94-38 (January 27, 1994), <https://www.gao.gov/products/RCED-94-38>.

U.S. Government

While containing multiple subgroups with their own agendas, the U.S. government was itself a stakeholder seeking to respond to the Pan Am 103 bombing. Given the media and public response, as well as vocal and active lobbying by U.S. carriers and the Victims of Pan Am 103, the U.S. government was very interested in showing activity. I have identified a few notable subgroups as well as their positions on U.S. involvement in breaking with previous regimes for new aviation policy actions.

Congress

The political parties in Congress agreed on the issue of aviation security. Unlike in later aviation incidents such as the September 11, 2001 attacks where there was a political divide on policies such as U.S. airport federalization, during the Pan Am investigation and aftermath, U.S. political parties agreed on proposed policy items to address the bombing. Congress held multiple hearings, served in the President's Commission, passed legislation, and spoke out against the executive branch's actions (or lack thereof) in a unified manner. The significance of this will be discussed further in Chapter 14, but is notable for lining up both U.S. political parties behind a more realist security-based approach to foreign affairs.

FAA

The FAA served as a unique actor with decades of expertise in safety, but security was newer to its policy remit. Following an increase in hijackings and bombings over several years, the FAA had grown quickly to accommodate, but security remained subordinate to safety, navigation, and

airspace issues that had dominated U.S. and international policy for decades.⁵⁵⁸ While Congress created programs like the Foreign Airport Assessment Program (FAAP), requiring FAA assessments of overseas airports, the FAA responded with concern that this requirement was extraterritorial and violated state sovereignty rights.⁵⁵⁹ They reiterated that hesitation and their limitations over aviation security outside of U.S. airspace with the Commission as well, noting that they had no authority to require foreign airports to conduct security in a certain way, nor could they do anything to advance standards beyond those promulgated by ICAO.⁵⁶⁰

After Pan Am and per the Commission's recommendations and Congress' new requirements, the FAA moved as the implementing network of these activities. This included enhancing PPBM, issuing regulations on foreign carriers operating into the United States, and increasing security staffing. Per then-Civil Aviation Security Division manager Raymond Salazar, "The FAA has the authority presently to insist upon security measures like any sovereign nation...the U.S. role is clearly to lead by example and then insist upon a refocus of are those international standards adequate to deal with the existing global threat."⁵⁶¹

⁵⁵⁸ *Report of the President's Commission on Aviation Security and Terrorism.*

⁵⁵⁹ Federal Aviation Administration, "Civil Aviation Security Improvement Program," December 14, 1989, President's Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁵⁶⁰ President's Commission on Aviation Security and Terrorism, "Investigative Notes: Meeting with FAA Officials," December 27, 1989, President's Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁵⁶¹ Federal Aviation Administration, "Aviation Security Advisory Committee Transcript," October 20, 1989, Pan Am 103 Special Collections Research Center, Syracuse University, Richard Paul Monetti Papers, Box 9. P. 47

State Department

The State Department represented a unique actor within the U.S. government as an opposing force to outward expansion of U.S. aviation security. While Congress insisted on placing U.S. security personnel overseas to manage foreign airports, many of the U.S. diplomatic missions were reluctant to approve the personnel.⁵⁶² These Ambassadors and staff argued that State's existing footprint could handle any aviation security matters, that there was not enough work to justify the extra personnel, and/or that there were significant sovereignty issues with having U.S. personnel in charge of overseas airport operations, even for U.S.-bound flights.⁵⁶³

Members of Congress made repeated comments concerning this lack of support from State, hiding all economic motivations behind a cloak of security.⁵⁶⁴ This was also contrary to FAA plans, where they moved out to hire individuals as authorized without yet having the positions available at U.S. missions overseas.⁵⁶⁵ I will discuss the airport sovereignty issues further in Chapter 12.

Aviation Security Advisory Committee (ASAC)

One of the biggest, most lasting shifts in the intersection of government and public in aviation security was the creation of the Aviation Security Advisory Committee (ASAC), a Federal

⁵⁶² U.S. Department of State, "Letter to Chairman Dante Fascell, Committee on Foreign Affairs, U.S. House of Representatives," January 29, 1990, President's Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁵⁶³ Federal Aviation Administration, "Memorandum: FAA Initiatives," January 12, 1990, President's Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁵⁶⁴ "Implementation of the Aviation Security Improvement Act of 1990."

⁵⁶⁵ Federal Aviation Administration, "Civil Aviation Security Improvement Program."

Advisory Committee (FAC) formed in April 1989 in the wake of Pan Am 103.⁵⁶⁶ The FAA created the ASAC to serve as a formalized way to continue relations and discussions with groups such as the Victims of Pan Am 103 lobby as well as industry groups.⁵⁶⁷ The ASAC was open to the public for all unclassified discussions regarding aviation security policies and recommendations. The ASAC provided recommendations regularly to the FAA Administrator for response and implementation.⁵⁶⁸ This was the first advisory group of its kind for security, and novel in permitting industry and the public to have direct access to how aviation policies were implemented in the U.S. It also demonstrates the lasting effect of the Victims of Pan Am 103 lobby in creating both a time-limited Commission and permanent access to the U.S. agency Committee responsible for aviation security.

As the first Federal Advisory Committee in aviation security, the ASAC is notable for “collaboration between the executive and civil society organizations on public relations efforts in the domain of national security politics.”⁵⁶⁹ However, unlike some other executive-appointed advisory committees, ASAC wasn’t meant to bridge a divide between Congress and the executive branch,⁵⁷⁰ but to bridge a divide between the U.S. government and the industry-public alliance seeking significant and rapid action. Particularly given the gap between the bombing (December 21, 1988) and the creation of a Commission (August 4, 1989), issuance of its final report (May 15, 1990) and eventual legislation (November 16, 1990), the ASAC served as a way

⁵⁶⁶ “Aviation Security Advisory Committee | Transportation Security Administration,” <https://www.tsa.gov/for-industry/aviation-security>.

⁵⁶⁷ “FAA Fact Sheet – Improvements in Civil Aviation Security Since Pan Am 103,” December 15, 1998.

⁵⁶⁸ “Aviation Security Advisory Committee | Transportation Security Administration.”

⁵⁶⁹ Chad Levinson, “Gilt by Associations: Appointments to Federal Advisory Committees in U.S. National Security Politics,” *Presidential Studies Quarterly* 49, no. 1 (March 2019): 97–129, <https://doi.org/10.1111/psq.12491>. P. 98

⁵⁷⁰ Levinson. P. 98

to provide “damage control” without “specific legislation to determine a definite policy outcome.”⁵⁷¹

Balla and Wright note that advisory committees vary in terms of their symbolic or policy value. They cite the U.S. Department of Agriculture’s National Advisory Committee on Microbiological Criteria for Food as instrumental in publishing a rule to prevent E.coli outbreaks.⁵⁷² By contrast, the Environmental Protection Agency’s National Environmental Justice Advisory Council has not provided the same level of significant interactions or outcomes.⁵⁷³ ASAC was a bit of both. Previously, the FAA determined safety and security decisions within the U.S. government as well as among partner governments and with ICAO, but never with the regulated parties and/or the public. The ASAC’s ability to make recommendations for the FAA Administrator that required response and action, as well as congressional notification, made it a powerful tool for outside voices looking to make change within the government.

In October of 1989, the FAA held its first Aviation Security Advisory Committee (ASAC) meeting to bring in outside consultation about aviation security policies and programs.⁵⁷⁴ Representatives attended from the Department of State, Department of Justice, Central Intelligence Agency (CIA), U.S. Secret Service, Federal Bureau of Investigation (FBI), U.S. Air Force, FAA, Pan Am Airlines, National Air Carrier Association, Airline Pilots Association, Air

⁵⁷¹ Levinson. Pp. 101-102

⁵⁷² Steven J. Balla and John R. Wright, “Interest Groups, Advisory Committees, and Congressional Control of the Bureaucracy,” *American Journal of Political Science* 45, no. 4 (October 2001).

⁵⁷³ Balla and Wright. P. 802

⁵⁷⁴ Federal Aviation Administration, “Aviation Security Advisory Committee Transcript.” P. 3

Transport Association, and more.⁵⁷⁵ The Victims of Pan Am 103 representatives were in attendance as well, and later became permanent ASAC members.⁵⁷⁶

In its first meeting, U.S. government involvement in the ASAC consisted of about 50% government to 50% industry, with senior representatives representing the government. In particular, FAA Administrator Busey and his senior security staff participated and highlighted in remarks as well as responses to questions the variance in how the U.S. and other governments managed aviation security. He noted that where most countries' governments own and operate air carriers, the United States government oversees privately owned carriers via regulations.⁵⁷⁷ As such, where other countries managed safety and security as federal responsibilities, in the U.S., private companies held the responsibility. He remarked that "we at FAA approve those air carrier programs. Air carriers are responsible for screening passengers and all carry-on items...for security of the baggage and cargo and protecting aircraft against unauthorized access."⁵⁷⁸

This was a significant division point between FAA representatives and other interest groups, as they argued the government – not private industry – should be responsible for securing airspace. This is an area where air carriers, the Victims of Pan Am 103, and the public largely converged: the idea that the FAA did not need to do more was insufficient from their perspectives. This is an

⁵⁷⁵ Ibid.

⁵⁷⁶ "Aviation Security Advisory Committee | Transportation Security Administration," <https://www.tsa.gov/for-industry/aviation-security>.

⁵⁷⁷ Federal Aviation Administration, "Aviation Security Advisory Committee Transcript." P. 23

⁵⁷⁸ Federal Aviation Administration, Ibid. p. 24

argument I discuss in more detail in Chapter 14 as I present international sovereignty objections to U.S. airspace management in the wake of Pan Am 103.

While ASAC was initially created by the executive branch, Congress eventually codified it into law in the Aviation Security Stakeholder Participation Act of 2014, P.L. 113-238, which requires the government to act on any/all ASAC recommendations within 90 days of receipt.⁵⁷⁹ The ASAC and its Victims of Pan Am 103 representative still advises government on aviation security to date.

ICAO and International Partners

ICAO and major international partners represented another key actor in the aviation security space at this time. While composed of the member states it relies on for activity and implementation of safety and security standards, by this point ICAO also had its own staff in the ICAO Secretariat at its headquarters in Montreal, Canada, as well as various regional offices around the world.⁵⁸⁰

In the aftermath of Pan Am 103, ICAO held a special session to consider proposals to address the attack in February of 1989. They were also charged with implementing United Nations Security Council (UNSC) Resolution 635, “urging to ICAO to intensify work aimed at preventing all aspects of terrorism against international civil aviation, and in particular its work in devising an international regime for the marking of plastic or sheet explosives for the purpose of

⁵⁷⁹ U.S. Congress, “Aviation Security Stakeholder Participation Act of 2014,” Pub. L. No. P.L. 113-238 (2014).

⁵⁸⁰ “ICAO Secretariat,” <https://www.icao.int/secretariat/Pages/default.aspx>.

detection.”⁵⁸¹ Despite this immediate activity by ICAO following the Pan Am 103 bombing, which was quicker than U.S. action, the U.S. pursued policy actions unilaterally. Continuing to use ICAO may well have been more prudent, given that ICAO’s span of control in aviation went well beyond security to include air navigation, air pollution, technology, and illegal materials such as narcotics and weapons.⁵⁸² This comprehensive look at aviation management and the U.S. role in forming and contributing to ICAO was dismissed, and ICAO described as “basic” with a “low level of security.”⁵⁸³

While security was important in this network, being one of only many significant areas of focus to its member states meant that it was focused on things of benefit to and implementable by its states. Following direction by the UN Security Council, ICAO focused its efforts primarily on explosives marking. Canada strongly supported these efforts and advocated for a new “international regime” addressing explosives. Iceland also registered concerns, arguing that while there was a worldwide aviation security issue burgeoning, “it could be dangerous to move faster than ICAO.”⁵⁸⁴

ICAO Secretary General Shivinder Singh Sidhu described ICAO’s multilateral work on aviation security since 1968, to include passing Annex 17 (its new security standards document), as well as the special assembly in 1989 to consider a resolution on security standards and countering aviation terrorism.⁵⁸⁵ ICAO and most of its Member States considered its work to be the ultimate

⁵⁸¹ ICAO Assembly, “ICAO Assembly 27th Session: Plenary Meeting Minutes” (UN Secretary General, 1989).

⁵⁸² ICAO Assembly, *Ibid.* P. 2

⁵⁸³ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 27

⁵⁸⁴ ICAO Assembly, “ICAO Assembly 27th Session: Plenary Meeting Minutes.” p. 96

⁵⁸⁵ President’s Commission on Aviation Security and Terrorism, “International Civil Aviation Organization Statement.”

authority on aviation security as the multilateral body that had managed global security incidents and responses for 20 years. Its staff and network of states stood strongly in support of continuing down this path.⁵⁸⁶

Here I think it is important to examine the use of language and the associated imagery of the disaster to better highlight how speech acts⁵⁸⁷ provided an opportunity for U.S. action in aviation networks to its own advantage. Per Austin’s speech act theory, some “utterances” tie “directly into psychological and sociological concerns,” and a time of heightened fear and emotion provides ample opportunity for the “right beliefs.”⁵⁸⁸ This is depicted below by interest group in a chart as well as a word cloud depicting some of the most common words across interest groups.

Interest Group	Preferred Terms
President’s Commission	Low, least common denominator, basic, inadequate, limited, slow, reform, high-risk, jurisdiction, authority, inconsistency, extraterritorial application of U.S. laws, security
Victims of Pan Am 103	Terrorism, airline/airport security, truth, watch dog, government policies
U.S. Air Carriers & Associations (ATA)	Competitive disadvantage, lost business, same level of protection, government responsibility
U.S. Congress	Foreign, security, deployment, same level of protection, standards, ICAO, competitive disadvantage, sovereignty
U.S. Executive Branch (FAA, State)	Sovereignty, threat, overseas, similar level of protection, authority, security, terrorism, extraterritorial

⁵⁸⁶ ICAO Assembly, “ICAO Assembly 27th Session: Plenary Meeting Minutes.”

⁵⁸⁷ Michael C. Williams, “Words, Images, Enemies: Securitization and International Politics,” *International Studies Quarterly* 47, no. 4 (December 2003): 511–31.

⁵⁸⁸ S. Wetherell and S. Yates, *Discourse Theory and Practice: A Reader* (Sage Publications, 2001). Pp. 39-46

Chapter 9: President's Commission on Aviation Security and Terrorism

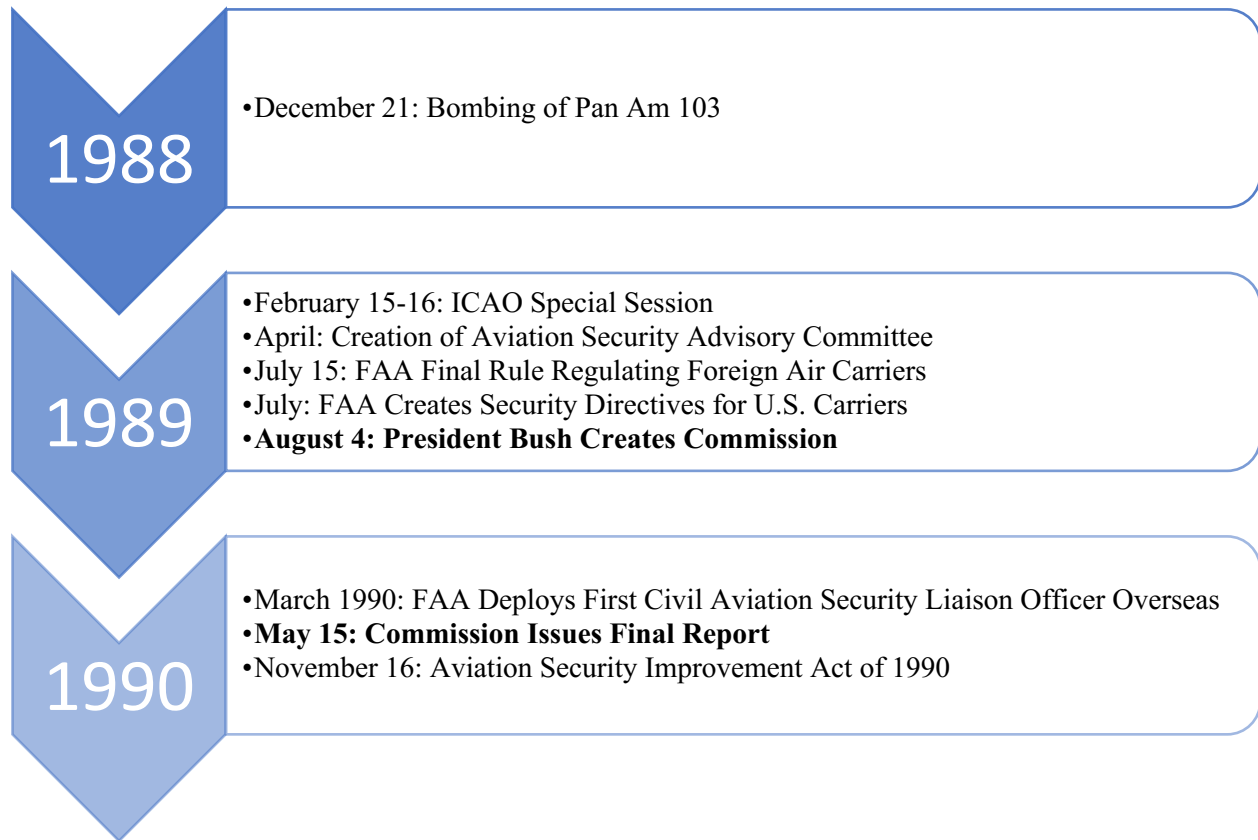


Figure 27: Pan Am 103 Activity Timeline (Commission)
Source: Author

The President's Commission on Aviation Security and Terrorism was a significant actor in the shift to the Extraterritorial Aviation Security Regime. Through its investigation, hearings, and final report, it brought U.S. industry and government actors together in a unique network. Its efforts created the conditions that allowed for the U.S. to extend its borders into the aviation space through extraterritoriality in the name of security. These actions will be discussed further in this chapter.

Presidential commissions were not new by the time of Pan Am 103 and dated back to at least Theodore Roosevelt's creation of the Commission on Public Lands in 1903, if not all the way

back to George Washington.⁵⁸⁹ These commissions in modern times have several defining characteristics: they must be time-limited, be appointed by the president, have external (non-executive branch) membership, and produce a final report to the president.⁵⁹⁰

Scholars have created various categories to describe the varying commissions depending on their purpose. Zegart classifies them into three types: those that have a political agenda, those that provide new policy considerations, and those that seek to align competing interests.⁵⁹¹ Wolanin also describes a type of commission that exists to address unexpected events or crises.⁵⁹² Crisis commissions, he argues, are created to reassure the public that the government is doing something, however symbolic that something might be.⁵⁹³ Moffitt notes that this can also be an attempt for leaders to avoid embarrassment or political threats from said crisis.⁵⁹⁴

Kitts also notes the existence national security commissions, which are often a variant of the crisis commission. Examples of these are the Tower Commission to examine Iran Contra in 1986 and the 9/11 Commission following the terrorist attacks on aviation in 2001.⁵⁹⁵ Mirroring the involvement of the Victims of Pan Am 103, the 9/11 Commission had significant involvement

⁵⁸⁹ Thomas R. Wolanin, *Presidential Advisory Commissions: Truman to Nixon* (The University of Wisconsin Press, 1975).

⁵⁹⁰ Kenneth Kitts, *Presidential Commissions and National Security: The Politics of Damage Control* (Lynne Rienner Publishers, 2006). P. 7

⁵⁹¹ Amy B. Zegart, "Blue Ribbons, Black Boxes: Toward a Better Understanding of Presidential Commissions," *Presidential Studies Quarterly* 34, no. 2 (June 2004): 366–93, <https://doi.org/10.1111/j.1741-5705.2004.00049.x>. P. 366

⁵⁹² Wolanin, *Presidential Advisory Commissions: Truman to Nixon*. P. 21

⁵⁹³ Wolanin. P. 21

⁵⁹⁴ Susan L. Moffitt, "Promoting Agency Reputation through Public Advice: Advisory Committee Use in the FDA," *The Journal of Politics* 72, no. 3 (July 2010): 880–93, <https://doi.org/10.1017/S002238161000023X>.

⁵⁹⁵ Kitts, *Presidential Commissions and National Security: The Politics of Damage Control*.

from the 9/11 Families lobbying group to ensure the Commission's recommendations were passed into law.⁵⁹⁶

The Reagan Administration was no stranger to using Commissions, and had just received the Report to the President by the Presidential Commission on the space Shuttle Challenger Accident in June of 1986 a few years before disaster struck with the Pan Am 103 bombing.⁵⁹⁷ Zegart notes that the Reagan Administration used Commissions a total of 338 times during his two terms on office.⁵⁹⁸ She also notes that George H.W. Bush used commissions 181 times during his first term.⁵⁹⁹ However, documentation from the Syracuse University Archives indicates that Congress and the Victims of Pan Am 103 families had been pressing the Bush Administration for months to establish an independent Commission without much traction.⁶⁰⁰ On March 17, 1989, Senators Hollins, Lautenberg, and Ford wrote a letter to the President on behalf of the Victims of Pan Am 103, noting that the government had been in minimal contact with them, as well as asking questions based on congressional hearings earlier that month. The Victims of Pan Am 103's June 1989 newsletter indicates their concern that Senate interest in a commission was waning in the face of executive branch inaction, and that the group had initiated a petition campaign, with 10,000 to 15,000 being delivered to "key legislators" daily.⁶⁰¹

⁵⁹⁶ Kitts. P. 136

⁵⁹⁷ Presidential Commission on the Space Shuttle Challenger Accident, "Report to the President by the Presidential Commission on the Space Shuttle Challenger Accident," June 6, 1986.

⁵⁹⁸ Amy B. Zegart, "Blue Ribbons, Black Boxes: Toward a Better Understanding of Presidential Commissions," *Presidential Studies Quarterly* 34, no. 2 (June 2004): p. 384.

⁵⁹⁹ Zegart. P. 384

⁶⁰⁰ Frank Lautenberg, Senator, "Letter to President George H.W. Bush," March 17, 1989, Pan Am 103 Special Collections Research Center, Syracuse University, Victims of Pan Am 103 Inc. Collection, Box 3.

⁶⁰¹ "Victims of Pan Am Flight 103 Newsletter."

Wolanin argues that reluctance to establish commissions after crises is not unusual when public interest and outcry forces a president's hand.⁶⁰² He notes that these "crisis-induced" commissions may receive less than full presidential support, noting the President's Commission on Campus Unrest of 1970 as one of a handful of examples.⁶⁰³ In this case, the executive branch eventually succumbed to public and congressional interest, and President George H.W. Bush signed Executive Order 12686 on August 4, 1989, to create the President's Commission on Aviation Security and Terrorism. The Commission's charge was "to review and evaluate policy options in connection with aviation security, with particular reference to the destruction on December 21, 1988, of Pan American World Airways Flight 103."⁶⁰⁴ It was tasked with a holistic look at aviation security and an examination of any policy necessary to address aviation attacks.⁶⁰⁵

President Bush stated – perhaps understated given the above - that Commission would not have come into being without the intervention of the Victims of Pan Am 103 lobby.⁶⁰⁶ However, records from his presidential archives indicate that may not have been a compliment. Files from the National Security Council at the time indicate a preference for the executive branch to avoid micromanagement and to proceed with reminders and bolstering of existing processes.^{607 608}

From the Victims of Pan Am 103's perspective, this reluctance was quite clear, as the

⁶⁰² Wolanin, *Presidential Advisory Commissions: Truman to Nixon*. P. 193

⁶⁰³ Wolanin. P. 193

⁶⁰⁴ President's Commission on Aviation Security and Terrorism, "Mission Statement," n.d., President's Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁶⁰⁵ President's Commission on Aviation Security and Terrorism, *Ibid.*.

⁶⁰⁶ George H.W. Bush Presidential Library and Museum, "Statement on Signing the Aviation Security Improvement Act of 1990."

⁶⁰⁷ William Sittmann, "Memorandum: President's Commission on Aviation Security and Terrorism," June 21, 1990, Folder ID Number 99061-006, Bush Presidential Records/National Security Council/Commission on Aviation Security and Terrorism/David J. McMunn Files.

⁶⁰⁸ Ede Holiday, "Memorandum for the President: Status Report on Aviation Security and Terrorism Report (Pan Am 103)," August 13, 1990, Folder ID Number 99061-012, Bush Presidential Records/National Security Council/Commission on Aviation Security and Terrorism/David J. McMunn Files.

Administration “didn’t want to get involved” and only did so after relentless media and congressional campaigns from the group.⁶⁰⁹ Emerson and Duffy reported that by summer of 1989, the group had “picket[ed] the offices of Pan Am in New York, and was well on its way to meeting with all 100 United States Senators or their aides.”⁶¹⁰

Wolanin notes that this is not necessarily unusual, as interest groups and/or the public may instigate the formation of a commission (such as President Truman’s Civil Rights Committee for which the NAACP advocated).⁶¹¹ Where this Commission was unique was its first use in the aviation security space. Commissions have been convened twice since the President’s Commission on Aviation Security and Terrorism: the White House Commission on Aviation Safety and Security in 1997, and the National Commission on Terrorist Acts Upon the United States (9/11 Commission) in 2001.

Charter

The Commission’s Charter was effective as of September 5, 1989, laying out the scope and objectives, duties, duration, staffing and compensation, budget, membership, and public access to meetings and hearings.⁶¹² The Commission’s scope included the following three areas: 1) an evaluation of existing procedures for aviation security in terms of adequacy, compliance, and enforcement 2) a review of options for handling terrorist threats, including prior notification to the public, and 3) an investigation of the practices, policies, and laws with respect to the

⁶⁰⁹ Cohen and Cohen, *Pan Am 103: The Bombing, the Betrayals, and a Bereaved Family’s Search for Justice*. Pp. 74, 78

⁶¹⁰ Emerson and Duffy, *The Fall of Pan Am 103*. P. 223

⁶¹¹ Wolanin, *Presidential Advisory Commissions: Truman to Nixon*.

⁶¹² President’s Commission on Aviation Security and Terrorism, “Charter: President’s Commission on Aviation Security and Terrorism,” Pan Am 103 Special Collections Research Center, Syracuse University, Richard Paul Monetti Papers, Box 8.

treatment of families of victims of terrorist acts. The charter was effective as of September 5, 1989, and provided for membership and funding for the Commission's activities through February 4, 1990 (eventually extended to May 15, 1990).⁶¹³

The Executive Order created seven spots on the Commission's panel: four Members of Congress from each party of the House and Senate, and three private sector representatives with experience in security and/or aviation.⁶¹⁴ The President chose Ann McLaughlin, former Secretary of Labor, to chair the Commission, as well as the following members to support her:

- Edward Hidalgo, former Secretary of the Navy
- General Thomas C. Richards, United States Air Force, retired
- Senator Alfonse D'Amato (R-NY)
- Senator Frank Lautenberg (D-NJ)
- Rep. John Paul Hammerschmidt (R-AR)
- Rep. Jim Oberstar (D-MN)

Representing a range of political parties and experience in government, these officials and their staff held positions of great influence. Representatives Jim Oberstar (D-MN) and Alfonse D'Amato (R-NY), for example, were leaders in Congress, Chairing the House of Representatives Committee on Public Works and Transportation's Subcommittee on Aviation, and the Senate Committee on Banking House and Urban Affairs Subcommittee on Housing and Urban Affairs,

⁶¹³ President's Commission on Aviation Security and Terrorism.

⁶¹⁴ President of the United States, "Executive Order 12686"

respectively. This was not a Commission of experts but it was designed to be a policy-making project.

As the Commission formed and began its work, its members created a mission statement to further define the scope of activities. While the FAA and FBI investigations were well underway by this point and had already pointed at a failure to follow current U.S. requirements, the Commission's mission statement makes it clear that it would go much further, to evaluate "whether and how the U.S. Government can assure that adequate security measures are used at foreign airports and by foreign air carriers, and, if not, what steps should be undertaken. This assessment should also consider the effects of the U.S. Government imposing requirements on U.S. carriers that are more stringent than those imposed on foreign air carriers by their governments."⁶¹⁵ This also specifically include the costs of any security measures and how that might impact competitive among and between air carriers, specifically U.S. versus foreign carriers.⁶¹⁶

Since the U.S. carriers had been complaining about economic concerns and a "level playing field" with foreign air carriers since deregulation in the 1970s, it is notable that their argument was included in the Commission's Mission Statement, particularly since that was not one of the items requested by the White House in the Commission's signing statement or charter. Instead, it was added by the Commission itself and finalized and published on November 20, 1989, more than three months after the executive order establishing the Commission.⁶¹⁷ Interviews with the

⁶¹⁵ President's Commission on Aviation Security and Terrorism, "Mission Statement."

⁶¹⁶ President's Commission on Aviation Security and Terrorism, Ibid.

⁶¹⁷ President's Commission on Aviation Security and Terrorism, "Mission Statement."

Air Transport Association (ATA) showed that U.S. carriers had long been frustrated with what they perceived to be a dichotomy in security requirements and costs.⁶¹⁸ The Air Transport Association represented that in 1985 and 1988, the FAA had raised security requirements in Europe and the Middle East – but only for U.S. carriers.⁶¹⁹ However, the U.S. Department of Transportation was never able to substantiate their claims about competitive disadvantage to their international counterparts.⁶²⁰

The Commission’s Mission Statement also included evaluating plastic explosives, to include marking explosives for better detection.⁶²¹ This was included despite the United Nations Security Council tasking ICAO to address these efforts for the international community.⁶²² Finally, the Commission noted that its charge would include determining whether Pan Am 103 was an isolated issue or more significant in scope, requiring sweeping changes to international aviation management.

Investigation

To address its Charter and Mission Statement, the Commission investigated Pan Am 103’s bombing as well as FAA, ICAO, and international aviation policies and requirements. This work was primarily done by the Commission’s support staff, as created in its charter, and included site visits to London Heathrow, Frankfurt, and Brussels airports to meet with government and

⁶¹⁸ President’s Commission on Aviation Security and Terrorism, “Statement of Richard F. Lally, Vice President - Security, Air Transport Association of America Before the President’s Commission on Aviation Security and Terrorism.”

⁶¹⁹ President’s Commission on Aviation Security and Terrorism, Ibid.

⁶²⁰ U. S. Government Accountability Office, “Aviation Security: Additional Actions Needed to Meet Domestic and International Challenges,” no. RCED-94-38 (January 27, 1994).

⁶²¹ President’s Commission on Aviation Security and Terrorism, “Mission Statement.”

⁶²² ICAO Assembly, “ICAO Assembly 27th Session: Plenary Meeting Minutes.”

industry officials. Commission members and staff met with various officials from the U.S. and foreign governments, airports, and air carriers at these locations to interview them about aviation security requirements pre- and post-Pan Am as well as to better understand the chain of events on December 21, 1988. The Commission also interviewed individuals in Washington, D.C. Transcripts of interviews are available at the National Archives and Records Administration and cited in footnotes and the dissertation's bibliography.

In Brussels, the Commission staff met with the FAA inspectors and Belgian officials in charge of the country's aviation security at the airport. In Frankfurt, meetings included the U.S. Consulate General, the Frankfurt airport and Germany government officials, and air carriers to include TWA, Northwest, American, Delta, Lufthansa, Pan Am, and Pan Am's security contractor Alert.⁶²³ In London, the Commission met with Pan Am officials, FAA inspectors and investigators, and representatives from the U.K. Department of Transport.

Several key issues emerged from the site visits. Among these was the significant frustration by other governments with U.S. requirements impeding their airport operations. Even though security measures were only imposed on U.S. carriers at the time, they were conducted at the LPD locations overseas prior to entering the United States. The Germans had, in fact, made it illegal for U.S. carriers to conduct additional passenger screening prior to boarding.⁶²⁴ They would only allow German officials to perform screening activities and disliked that the

⁶²³ President's Commission on Aviation Security and Terrorism, "Memorandum: Results of Trip to Brussels and Frankfurt," President's Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁶²⁴ President's Commission on Aviation Security and Terrorism.

Americans were using their resources to accomplish U.S. goals.⁶²⁵ Further, the FAA noted that the German authorities had “inadequate passenger screening” using outdated technology in a “haphazard” manner.⁶²⁶ However, there was a tacit agreement in place with Germany where airlines could conduct any additional security measures from German airports as long as it was “out of sight of the German screening.”⁶²⁷

In London, investigators noted that following Pan Am 103, U.K. officials had imposed new security requirements. In many cases, these now conflicted with or duplicated U.S. requirements on its carriers, such that carriers would need to perform both for each government to clear the flight for departure.⁶²⁸ Investigation notes revealed an example of the U.K. requiring a 10% minimum search of carryon bags, while the U.S. requirements were for 1%.⁶²⁹ U.S. carriers were left with confusion regarding whether they were required to do 11% (10 for the U.K. and 1 for the U.S.) or if the U.S. 1% was included in the 10% U.K. total.⁶³⁰ Pan Am blamed these conflicting requirements in Germany and the U.K. for its inability to execute security

⁶²⁵ “Memorandum: Results of Trip to Brussels and Frankfurt,” President’s Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁶²⁶ President’s Commission on Aviation Security and Terrorism, Ibid.

⁶²⁷ President’s Commission on Aviation Security and Terrorism, Ibid.

⁶²⁸ Federal Aviation Administration, “Memorandum: Investigation into Pan Am’s Operations at London Heathrow Airport; Entitled ‘Facts and Analysis,’” President’s Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁶²⁹ Federal Aviation Administration. “Memorandum: Investigation into Pan Am’s Operations at London Heathrow Airport; Entitled ‘Facts and Analysis.’”

⁶³⁰ Federal Aviation Administration, “Memorandum: Investigation into Pan Am’s Operations at London Heathrow Airport; Entitled ‘Facts and Analysis.’”

appropriately.⁶³¹ Inflaming competition issues further, foreign air carriers were not required to meet the same requirements, often having little to no additional measures to follow.⁶³²

Overall, the Commission noted that there were significant extraterritorial issues at play as U.S. aviation security requirements conflicted with foreign government regulations.⁶³³ They flagged this as an issue in Spain and France particularly, where U.S. requirements were against national laws.⁶³⁴ While both countries allowed the FAA to informally begin additional security screening for U.S. carriers at their airports following Pan Am 103, staff noted that “it is questionable as to how long they will continue.”⁶³⁵

Interviews with State Department officials at the U.S. Consulate in Frankfurt revealed additional issues for consideration. For instance, State Department officials did not support having an FAA field office or additional overseas personnel dedicated to aviation security.⁶³⁶ Per the investigation notes, the suggestion of adding FAA personnel came at a time when many other U.S. government resources were trying to expand to Germany, and the Germans were “increasingly opposed to more U.S. presence.”⁶³⁷ Per the Consulate, this would “only create more headaches and security problems.”⁶³⁸

⁶³¹ Federal Aviation Administration. “Memorandum: Investigation into Pan Am’s Operations at London Heathrow Airport; Entitled ‘Facts and Analysis.’”

⁶³² Committee on Foreign Affairs, “Memorandum: Principal Findings and Recommendations: Staff Study Mission to Madrid, Seville, Barcelona, Paris, and London,” March 8, 1990, Pan Am 103 Special Collections Research Center, Syracuse University, Beth Ann Johnson Papers, Box 8.

⁶³³ Committee on Foreign Affairs, Ibid.

⁶³⁴ Committee on Foreign Affairs, Ibid.

⁶³⁵ Committee on Foreign Affairs, Ibid.

⁶³⁶ President’s Commission on Aviation Security and Terrorism, “Memorandum: Results of Trip to Brussels and Frankfurt.”

⁶³⁷ President’s Commission on Aviation Security and Terrorism.

⁶³⁸ President’s Commission on Aviation Security and Terrorism, Ibid.

Interviews with air carriers revealed similar frustrations with varying country requirements. In addition to Germany, U.S. carriers mentioned issues with countries such as Norway, Belgium, France, and Denmark as they conducted screening.⁶³⁹ In the U.K., carriers reported concerns that the British government would impose so many additional measures on them on top of the U.S. requirements that it would “bring their operations into gridlock.”^{640 641}

The carriers were bringing U.S. requirements and associated lines and operational impacts into these foreign airports. Many countries resented the implication that their security was insufficient.⁶⁴² German officials, for instance, noted to the investigators that they had installed state-of-the-art technology for security.⁶⁴³ Additionally, they expressed frustrations with any U.S. security requirements impacting their airport, which they saw primarily as a business.⁶⁴⁴ To address these issues, the U.S. carriers were in full support of placing FAA personnel overseas who would be the main interlocutors with governments on aviation – a function the carriers were currently doing themselves.⁶⁴⁵

However, Air Transport Association Vice President for Security Richard Lally, representing the association for U.S. air carriers, testified before the Commission that carriers still supported

⁶³⁹ President’s Commission on Aviation Security and Terrorism, *Ibid.*

⁶⁴⁰ Committee on Foreign Affairs, “Memorandum: Principal Findings and Recommendations: Staff Study Mission to Madrid, Seville, Barcelona, Paris, and London.”

⁶⁴¹ Committee on Foreign Affairs, “Committee on Foreign Affairs Memorandum: Aviation Security.” *Ibid.*

⁶⁴² President’s Commission on Aviation Security and Terrorism, “Memorandum: Results of Trip to Brussels and Frankfurt.”

⁶⁴³ President’s Commission on Aviation Security and Terrorism, *Ibid.*

⁶⁴⁴ President’s Commission on Aviation Security and Terrorism, *Ibid.*

⁶⁴⁵ President’s Commission on Aviation Security and Terrorism, “Memorandum: Results of Trip to Brussels and Frankfurt.”

working through traditional multilateral channels with ICAO.⁶⁴⁶ He advocated for ICAO issuing stronger standards for all states that would help to level the playing field, as well as additional resources from ICAO to states to improve their programs, and a sanction process for those that fall behind.⁶⁴⁷

Commission interviews also revealed the same frustrations among U.S. carriers that had been expressed in the aftermath of economic deregulation – namely that they were losing business to foreign competitors who were not required to follow the same security measures for U.S.-bound flights.⁶⁴⁸ Northwest Airlines argued that they had lost business specifically because of U.S. security requirements.⁶⁴⁹ During the Commission’s meeting with Pan Am in November of 1989, interview notes record that Pan Am “bemoaned that more security requirements are imposed on domestic than on foreign airlines, which harms U.S. carriers competitively.”⁶⁵⁰ Pan Am also argued that “only” 16 major security events had occurred on U.S. air carriers and “the rest” on foreign air carriers, with foreign carriers managing 58% of U.S. citizen air traffic.⁶⁵¹ Pan Am stated that travel agents recommended against flying U.S. carriers when arranging travel plans, noting the “hassle” of security measures in place on those airlines.⁶⁵²

⁶⁴⁶ President’s Commission on Aviation Security and Terrorism, “Statement of Richard F. Lally, Vice President - Security, Air Transport Association of America Before the President’s Commission on Aviation Security and Terrorism.”

⁶⁴⁷ President’s Commission on Aviation Security and Terrorism, *Ibid.*

⁶⁴⁸ President’s Commission on Aviation Security and Terrorism, “Investigative Notes: Meeting with Pan Am Personnel at Heathrow Airport, U.K.,” January 17, 1990, President’s Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁶⁴⁹ President’s Commission on Aviation Security and Terrorism, “Memorandum: Meeting with Northwest Airlines.”

⁶⁵⁰ President’s Commission on Aviation Security and Terrorism, “Memorandum: Meeting with Representatives of Pan Am.”

⁶⁵¹ President’s Commission on Aviation Security and Terrorism, *Ibid.*

⁶⁵² President’s Commission on Aviation Security and Terrorism, *Ibid.*

In reviewing the FAA's proposed rulemaking to manage foreign air carrier security going forward, the Air Transport Association argued it did not go far enough: "FAA in currently reviewing foreign air carrier security programs has no intention of requiring the heightened security measures now in place for U.S. carriers. It also is our understanding that FAA intends to require that foreign airline programs meet only current ICAO standards which as previously noted fall short of desired levels and far short of the extraordinary standards being met by U.S. airlines."⁶⁵³ U.S. carriers wanted not just regulation of foreign carriers, but for them to be held to the same standard as U.S. carriers. In his statement before the Commission, the Air Transport Association complained that the inequity U.S. carriers perceived between foreign and U.S. carriers represented a deficiency in U.S. government oversight and significant competitive disadvantage for U.S. industry.⁶⁵⁴ He argued that "if the U.S. government is serious about the safety of American travelers, it must impose the same requirements on foreign airlines that serve the U.S. from the same high-threat foreign airports."⁶⁵⁵

U.S. carriers also expressed frustration with the U.S. government model writ large, where industry was responsible for security.⁶⁵⁶ This was contrasted with the European model – largely also in place in the rest of the world – where the governments held responsibility for security and associated costs.⁶⁵⁷ Since U.S. carriers were left to negotiate with governments on their own,

⁶⁵³ International Air Transport Association, "Statement of the International Air Transport Association Regarding Aviation Security and Terrorism," n.d., Pan Am 103 Special Collections Research Center, Syracuse University, Richard Paul Monetti Papers, Box 37.

⁶⁵⁴ President's Commission on Aviation Security and Terrorism, "Statement of Richard F. Lally, Vice President - Security, Air Transport Association of America Before the President's Commission on Aviation Security and Terrorism."

⁶⁵⁵ President's Commission on Aviation Security and Terrorism, Ibid.

⁶⁵⁶ President's Commission on Aviation Security and Terrorism, Ibid.

⁶⁵⁷ President's Commission on Aviation Security and Terrorism, Ibid.

they stated that they were “totally dependent on the cooperation and goodwill of the host government and its airport authorities.”⁶⁵⁸

This also meant that U.S. carriers had inconsistent arrangements even among themselves with host governments, such that favored carriers may be able to lessen operational impacts to flights as compared with those who had fewer personal connections and/or worse negotiating tactics.⁶⁵⁹

U.S. officials noted that “the resulting uneven implementation of FAA security requirements needs immediate attention. We strongly recommend that any new FAA security enhancements be negotiated by the United States Government through the American Embassy directly with the relevant host government authorities. In addition, the United States government should intercede on behalf of American carriers with respect to the implementation of the existing security requirements.”⁶⁶⁰

Commission staff flagged five major areas for follow up out of their site visits: (1) lack of standardized security requirements at LPD airports; (2) State Department opposition to posting FAA personnel overseas; (3) FAA’s management of airports, air carriers, and Federal Air Marshal programs; (4) time lapse between Pan Am 103’s bombing and adverse action by the FAA “despite continued findings of inadequate security measures at Frankfurt;” and (5) differences in X-Ray screening technology for baggage.⁶⁶¹

⁶⁵⁸ Committee on Foreign Affairs, “Committee on Foreign Affairs Memorandum: Aviation Security,” n.d., President’s Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁶⁵⁹ Committee on Foreign Affairs, “Memorandum: Principal Findings and Recommendations: Staff Study Mission to Madrid, Seville, Barcelona, Paris, and London.”

⁶⁶⁰ Committee on Foreign Affairs.

⁶⁶¹ Committee on Foreign Affairs, *Ibid.*

These investigative areas all have varying degrees of relevance to Pan Am's failure to follow procedures leading to the explosive being allowed on the airplane. Much as U.S. carriers and associations, as well as their unlikely allies in the Victims of Pan Am 103 were hoping to see, the Commission focused much of their gaze externally. Their number one follow-up area of security requirements at Last Point of Departure, or overseas, airports, primarily places the blame on the "other." The narrative of a problem/unknown airport overseas out of U.S. control allowed the U.S. through the Commission's report and executive branch policies to extend its reach through the resulting policies, which I discuss below in the report and recommendations.

In addition to staff interviews and site visits, the Commission held five hearings open to the public in November 1989 with the Victims of Pan Am Flight 103, pilots, and air carriers; December 1989 with the General Accounting Office (GAO), FAA, and Department of State; February 1990 with scientists, FAA, and airport security experts; March 1990 with Congress, State Department, and Pan Am representatives; and April 1990 with airlines and the FAA.⁶⁶²

Commission Report

On May 15, 1990, the Commission finalized its report and presented it to President George H.W. Bush after 9 months of work and one extension. They specifically thanked the Victims of Pan Am 103 organization "who sought this inquiry" as they presented a "series of recommendations designed both to improve aviation security and the ability of the government to respond to a Pan Am 103."⁶⁶³ The report criticized the state of both U.S. and foreign aviation security, with

⁶⁶² *Report of the President's Commission on Aviation Security and Terrorism.*

⁶⁶³ *Report of the President's Commission on Aviation Security and Terrorism.* p. 6

specific commentary on failures by the FAA and Pan Am. Specifically, the Executive Summary states that “the Commission’s inquiry also finds that the U.S. civil aviation security system is seriously flawed and has failed to provide the proper level of protection for the traveling public. This system needs major reform...Pan Am’s apparent security lapses and FAA’s failure to enforce its own regulations followed a pattern that existed for months prior to Flight 103, during the day of the tragedy, and – notably – for nine months thereafter.”⁶⁶⁴ However, much like the mission statement foretold, the report also focused significantly on U.S. extraterritorial measures and how the U.S. can and should extend its requirements to other countries and their airlines.⁶⁶⁵

Archives show a muted response from the Bush Administration to the Commission’s final report. While publicly praising efforts through press releases, staff memos in the National Security Council folders instead show phrases indicating the things the executive branch was already pursuing and so needed no further guidance/interference on, and/or outright opposition to Congress codifying the recommendations into law via that Aviation Security Act.⁶⁶⁶ One memo to the Deputy Assistant to the President and Director of Cabinet Affairs wrote that “hopefully our objections will be registered in the subsequent interaction with Committee staffers...I hope...that there is too little time to pass it.”⁶⁶⁷ Staff also continued to emphasize how many recommendations were already underway through normal courses of business, while also highlighting some areas where the Administration disagreed with recommendations for being too

⁶⁶⁴ *Report of the President’s Commission on Aviation Security and Terrorism*. p. i

⁶⁶⁵ Federal Aviation Administration, “FAA Historical Chronology, 1926-1996.”

⁶⁶⁶ Holiday, “Memorandum for the President: Status Report on Aviation Security and Terrorism Report (Pan Am 103).”

⁶⁶⁷ David McMunn, “Memorandum: Hearings on the Hill,” July 26, 1990, Folder ID Number 99061-013, Bush Presidential Records/National Security Council/Commission on Aviation Security and Terrorism/David J. McMunn Files.

expensive and/or expansive.⁶⁶⁸ Indeed, many of their final report recommendations were contrary to White House positions, and set up a conflict later among the Commission, the White House, and Congress.⁶⁶⁹

The Commission also notably dubbed the report a “new beginning,” signaling a desire for a clean break from past practices, unlike the Administration’s preferences – at least from external sources like the Commission or Congress. This in combination with many of the other efforts from the Executive Branch combined to create a unique response to the crisis.

U.S. Security Failures

The Commission highlighted both Pan Am’s failures to execute security procedures as well as FAA’s laxity in enforcing them, calling it a “pattern of complacency.”⁶⁷⁰ This was a compounding issue on FAA’s part as it had been granted authority to do Foreign Airport Assessments along with its air carrier inspections as mentioned earlier in Chapter 5. The FAA not only failed to hold Pan Am accountable for repeated failures, but it did so after its authority to thoroughly review airport and airline postures had been expanded several years prior. The Commission found that no FAA security management officials had even visited Frankfurt to see Pan Am operations prior to the bombing.⁶⁷¹ The FAA argued that its inspectors tried to avoid

⁶⁶⁸ Frank E. Moss, “Memorandum: Recommendations (New Version),” July 12, 1990, Folder ID Number 99061-006, Bush Presidential Records/National Security Council/Commission on Aviation Security and Terrorism/David J. McMunn Files.

⁶⁶⁹ “Implementation of the Aviation Security Improvement Act of 1990.”

⁶⁷⁰ *Report of the President’s Commission on Aviation Security and Terrorism*. p. iii, 22

⁶⁷¹ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 24

testing airport security overseas “out of respect for sovereignty,” which the Commission noted had changed post Pan Am in 1990.⁶⁷²

Once the FAA fully engaged following Pan Am 103, its next inspection report from June of 1989 found that all other U.S. carriers flying through Frankfurt had no issues of concern, whereas Pan Am’s security measures were abysmal.⁶⁷³ The FAA inspection noted that passengers were “at great risk” aboard Pan Am flights.⁶⁷⁴ However, the Report found that following the inspection, Pan Am solved its issues in Frankfurt through retraining and proper implementation of FAA regulations.⁶⁷⁵ In theory, that would solve all identified issues regarding the Pan Am disaster. However, the Commission went much further than their Charter and instead looked at international standards as the problem.

Language in the Commission Report held significant critiques for the multilateral system run by ICAO that the U.S. had co-created and championed. Bolded words below from the Commission’s Report were repeated in documentation throughout the archives, representing a new U.S. position on ICAO’s security abilities. “ICAO standards prescribe a very **basic** or **low level** of security that is **inadequate** for high threat international airports...Despite ICAO’s inherent limitations in the area of civil aviation security, it does serve an important function in countries where the terrorist threat is low and host country security is otherwise **minimal**. In high threat countries, nations rely on additional measures. ICAO **limitations** include – no

⁶⁷² *Report of the President’s Commission on Aviation Security and Terrorism*. p. 32

⁶⁷³ *Report of the President’s Commission on Aviation Security and Terrorism*. p. iii, 6

⁶⁷⁴ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 6

⁶⁷⁵ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 23

enforcement mechanism, state sponsors of terrorism are ICAO members, standards based on the **lowest common denominator**, **slow** to react. Following the bombing of Air India in 1985, ICAO took two years to enact new standards requiring baggage-passenger reconciliation.”⁶⁷⁶

U.S. Security Expansion

“We had a dispute with a foreign government that went on for six months, where we were out of compliance with the FAA mandate...Sometimes we were in violation of American laws. Sometimes we were in violation of the foreign laws of the airport where we operated. We were in the middle.”

- *Commission Report, Testimony from Northwest Airlines*⁶⁷⁷

The Commission first addressed what it considered to be subpar foreign airport security measures as compared to U.S. airports,⁶⁷⁸ especially at airports the U.S. considered to be high threat, or what the FAA referred to as “extraordinary locations.” The Commission recommended that the U.S. update current bilateral air services agreements, and negotiate new ones where necessary, to insist on higher aviation security standards.⁶⁷⁹ To accomplish this, the Commission urged the State Department to negotiate for U.S. security requirements to supersede foreign laws, removing duplicative requirements, as well as placing U.S. personnel in country to oversee airports as Civil Aviation Security Liaison Officers (CASLOs).⁶⁸⁰ Using air services agreements would allow the U.S. to threaten other states with removing landing rights and therefore flying to

⁶⁷⁶ *Report of the President’s Commission on Aviation Security and Terrorism*. pp. 27, 37-38

⁶⁷⁷ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 32

⁶⁷⁸ *Report of the President’s Commission on Aviation Security and Terrorism*. p. iv

⁶⁷⁹ *Report of the President’s Commission on Aviation Security and Terrorism*. pp. iv, v

⁶⁸⁰ *Report of the President’s Commission on Aviation Security and Terrorism*. pp. v, 12, 37

the U.S. if the state was unwilling to let the U.S. conduct security measures according to its preferred standards.⁶⁸¹ The Commission noted that governments strongly opposed the U.S. imposing its requirements on their airports but urged U.S. officials to proceed anyway.⁶⁸²

The Commission also took issue with ICAO's security under the Multilateral Management Regime, which had previously not presented a significant issue for states. Now, the Commission argued, ICAO Standards and Recommended Practices were "basic or low level of security inadequate for high threat international airports" with "no uniform international civil aviation security system in place to assure a consistent level of security for passengers."⁶⁸³ They went further, saying that "ICAO is most effective at low-threat airports in smaller, less industrialized countries," a very damning statement given that ICAO was largely created and maintained by U.S. support and represented U.S. interests.⁶⁸⁴ They went on to say that ICAO could be useful where there were few, if any, security threats and where infrastructure was minimal.⁶⁸⁵ However, they advocated for countries, especially the U.S., to go beyond ICAO and create additional requirements.⁶⁸⁶

Additional Commission issues with ICAO included lack of enforcement of state adherence to Standards and Recommended Practices, ICAO membership including states with significant terrorist actors (Libya, Iran), and lack of agility and responsiveness to security incidents.⁶⁸⁷ An

⁶⁸¹ *Report of the President's Commission on Aviation Security and Terrorism*. pp. 31, 32

⁶⁸² *Report of the President's Commission on Aviation Security and Terrorism*. p. 39

⁶⁸³ *Report of the President's Commission on Aviation Security and Terrorism*. p. 27

⁶⁸⁴ *Report of the President's Commission on Aviation Security and Terrorism*. p. 27

⁶⁸⁵ *Report of the President's Commission on Aviation Security and Terrorism*. p. 37

⁶⁸⁶ *Report of the President's Commission on Aviation Security and Terrorism*. p. 37

⁶⁸⁷ *Report of the President's Commission on Aviation Security and Terrorism*. pp. 37-38

example included the two years it took for ICAO to agree on a standard on Positive Passenger Bag Match following the 1985 Air India bombing.⁶⁸⁸

The Report also advocated for stronger unilateral or extraterritorial action by the United States government, going beyond any ICAO standards to advocate for U.S. security requirements at foreign airports.⁶⁸⁹ By contrast, the U.K. used its legislative authority through Parliament to advance aviation security measures through ICAO as the established means of addressing security incidents and policy changes.⁶⁹⁰

To address this issue, the Commission recommended permanently placing Civil Aviation Security Liaison Officers at foreign airports.⁶⁹¹ By April of 1989, the FAA had created and filled nearly 20 liaison officer positions, despite pushback by the Department of State.⁶⁹² This mirrored their recommendation on the domestic side for Federal Security Managers to run security operations at major U.S. airports.⁶⁹³ The recommendation was supported by U.S. air carriers who had registered concerns about advocating with foreign governments without the “authority or the clout to negotiate.”⁶⁹⁴ Northwest Airlines told the Commission during interviews that “when the FAA tells us to do one thing at a foreign airport and the foreign government tells us to do another, we are in an impossible situation.”⁶⁹⁵ U.S. carriers also expressed concern that they were

⁶⁸⁸ *Report of the President’s Commission on Aviation Security and Terrorism*. pp. 37-38

⁶⁸⁹ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 36

⁶⁹⁰ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 31

⁶⁹¹ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 29

⁶⁹² *Report of the President’s Commission on Aviation Security and Terrorism*. p. 33

⁶⁹³ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 56

⁶⁹⁴ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 56

⁶⁹⁵ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 56, footnote 53

often required to hire foreign government-approved local staff to implement U.S. security program requirements, thereby losing control of oversight and quality control.⁶⁹⁶

The liaison officers were meant to address these problems. To do so, the Commission recommended they be positioned at airports to manage foreign air carrier and airport operations.⁶⁹⁷ They would also reconcile differences between foreign government laws, regulations, and/or cultural requirements with U.S. security regulations. Recognizing this might be challenging to achieve, the Commission assigned collateral duties such as supporting State Department negotiations with foreign partners.⁶⁹⁸

Economics, Security, and Competition

The Commission also addressed the air carrier complaints about competition from their investigation by arguing that “foreign governments have not imposed equally stringent requirements on carriers under their jurisdiction, and the U.S. has relied on weak international standards for foreign air carrier security.”⁶⁹⁹ Further, they noted that existing regulations and agreements did not provide FAA with the authority to make requirements of foreign air carriers above and beyond ICAO’s Standards and Recommended Practices.

While the Commission continually emphasized the “less stringent requirements” on foreign carriers, their investigation documents repeated carrier arguments and terminology about

⁶⁹⁶ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 179

⁶⁹⁷ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 60

⁶⁹⁸ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 60

⁶⁹⁹ *Report of the President’s Commission on Aviation Security and Terrorism*. pp. iv, v

competition and economics.⁷⁰⁰ This demonstrates Hajer's concept of "policy vocabulary" at work, as the Commission's discourse served as a vehicle for U.S. airlines' preferred outcome of regulating their competition. The report specifically cited the financial disadvantages to U.S. carriers stemming from their monetary responsibility for security that foreign air carriers did not have to perform.⁷⁰¹

Notably, though the Report continually addressed the security risk from lax measures overseas, it did not discuss the discrepancy in U.S. domestic aviation security compared to what the U.S. was requiring of others. For instance, while insisting on PPBM for international locations, the FAA decided not to implement the policy domestically, as it would be too costly and operationally disruptive.⁷⁰² Further, the Commission reported that domestic U.S. flights had no security measures for checked baggage, cargo, catering, or other items set to board the aircraft.⁷⁰³ The FAA had not even listed security as an agency priority until 1990, and even then, it sat among a list of 22 other objectives.⁷⁰⁴ This aligns with Bush Administration memos citing the sufficiency of U.S. aviation security and supporting organizational structures and pushing for status quo with the Commission and with Congress.⁷⁰⁵

⁷⁰⁰ *Report of the President's Commission on Aviation Security and Terrorism.*

⁷⁰¹ *Report of the President's Commission on Aviation Security and Terrorism.* p. 34

⁷⁰² Federal Aviation Administration, "Positive Passenger Baggage Matching (PPBM) R&D Project Plan (Revision 1)," August 1994, Technical Center Library, Atlantic City International Airport.

⁷⁰³ *Report of the President's Commission on Aviation Security and Terrorism.* p. 47

⁷⁰⁴ *Report of the President's Commission on Aviation Security and Terrorism.* p. 90

⁷⁰⁵ Samuel K. Skinner, "Memorandum: Issuance of Interim Response to President's Commission on Aviation Security and Terrorism," October 10, 1990, Folder ID Number 99061-004, Bush Presidential Records/National Security Council/Commission on Aviation Security and Terrorism/David J. McMunn Files.

Extraterritorial Security

The Commission proposed significant security policies to be applied internationally, while arguing that nowhere in the world is aviation taken more seriously than the United States.⁷⁰⁶

They cited the escalating trends of aviation security hijackings and bombings, as well as the 6,322 bomb threats the FAA had received against U.S. air carriers from 1980-1989.⁷⁰⁷

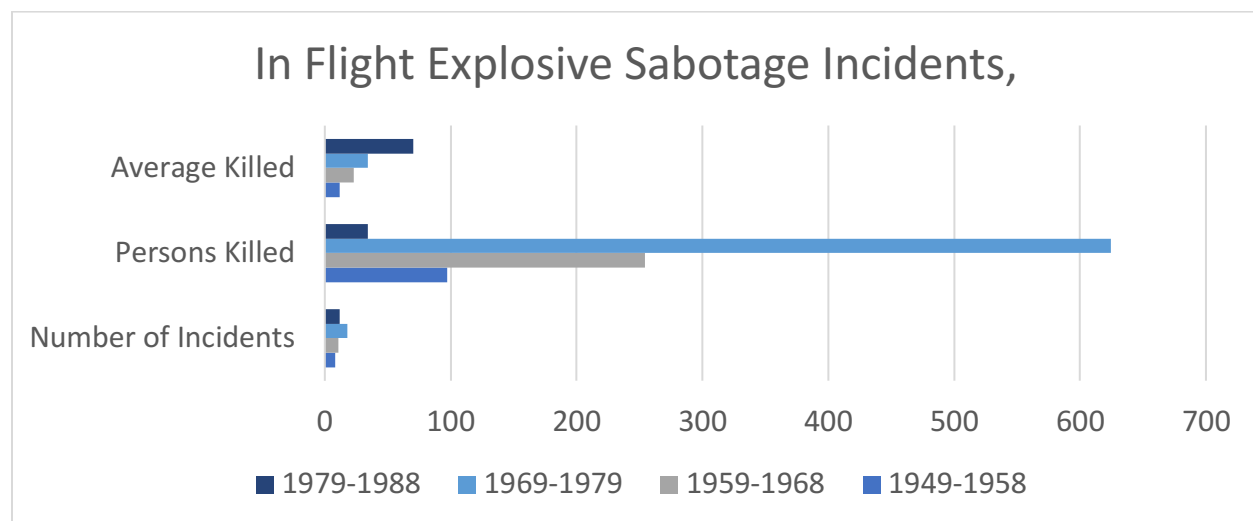


Figure 28: In-Flight Explosive Sabotage Incidents
Source: President's Commission Report/Criminal Acts Against Civil Aviation – 1988

With Pan Am 103 serving as the pinnacle disaster among escalating trends, the Commission recommended an aggressive U.S. foreign policy stance in aviation.⁷⁰⁸ “The United States must be ready to view some terrorist attacks as a matter of national security, and...recommends planning, training and equipping for direct preemptive or retaliatory military actions against known terrorist hideouts in countries that sanction them.”⁷⁰⁹

⁷⁰⁶ *Report of the President's Commission on Aviation Security and Terrorism*. p. 115

⁷⁰⁷ *Report of the President's Commission on Aviation Security and Terrorism*. p. 86

⁷⁰⁸ *Report of the President's Commission on Aviation Security and Terrorism*. p. 115

⁷⁰⁹ *Report of the President's Commission on Aviation Security and Terrorism*. p. 115

They also argued that the United States could only remain a world leader by taking charge of international aviation, “otherwise, terrorism will force a change in the world balance of power fundamentally adverse to the United States.”⁷¹⁰ This appeal to hegemony and exceptionalism supported U.S. domestic politics with an “antipathy toward multilateral institutions.”⁷¹¹ The argument that only by regulating the rest of the world could airspace be safe was one that appealed to all the stakeholder arguments following Pan Am at the same time. The economic interests, anti-UN attitude, security focus, and victim outrage all converged to fuel a policy of regulating the ‘other’ – in this case, international airports and airlines flying to the U.S. The Commission strongly cautioned against foreign policy as rhetoric only, which is demonstrated through their recommendations, particularly the overseas expansion of U.S. policies.⁷¹²

U.S. government discourse about ICAO and its role in aviation security worsened during the Pan Am investigation, Commission report, and even by U.S. officials speaking at ICAO Assembly. The U.S. repeatedly conveyed that ICAO was incompetent at best and untrustworthy at worst.⁷¹³ ⁷¹⁴ Arguably, the U.S. painted ICAO in such a dismal light to justify the need for its own actions: there was a hole in aviation security, and so U.S. management of the world’s system filled the gap. ICAO was not useless, U.S. officials argued, but it was only for the underdeveloped aviation states, not for those with robust infrastructure and commercial flights.⁷¹⁵

⁷¹⁰ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 116

⁷¹¹ Stewart Patrick and Shepard Forman, *Multilateralism and U.S. Foreign Policy: Ambivalent Engagement* (Lynne Rienner Publishers, 2002).

⁷¹² *Report of the President’s Commission on Aviation Security and Terrorism*. p. 115

⁷¹³ ICAO Assembly, “ICAO Assembly 27th Session: Plenary Meeting Minutes.”

⁷¹⁴ *Report of the President’s Commission on Aviation Security and Terrorism*.

⁷¹⁵ *Report of the President’s Commission on Aviation Security and Terrorism*.

Commission Before Congress: The Public Presentation

After so much public outcry, victim lobbying, and media attention, the Commission's eventual testimony before Congress was also an update to the public through its elected officials.

Following the Report's release, Commission Chairwoman Ann McLaughlin testified before the U.S. Congress on several occasions as Members of Congress prepared their own response to Pan Am's aftermath. In May of 1990, the House of Representatives Committee on Foreign Affairs held a hearing on the Commission's Report. Chairwoman McLaughlin's prepared statement highlighted the involvement of the Victims of Pan Am 103 lobbying network, and noted that the Commission's investigation attempted to address all avenues of inquiry the families had brought to their attention.⁷¹⁶ The Victims of Pan Am 103, indeed, expressed their surprise that the Commission's recommendations were so strong, and endorsed immediate action before Congress and via correspondence to the Bush Administration.⁷¹⁷ Media coverage of the Commission's efforts⁷¹⁸ gave the Bush Administration an opportunity to demonstrate accountable government to the public through the Commission's investigation and final report.

Much like the Commission's investigation, McLaughlin confirmed to Congress that had Pan Am followed existing FAA regulations, the bombing of Pan Am 103 could have been prevented.⁷¹⁹ However, Pan Am did not follow positive passenger bag match requirements, and as such, the

⁷¹⁶ United States Congress House Committee on Foreign, *The Aviation Security Improvement Act of 1990*.

⁷¹⁷ Cohen and Cohen, *Pan Am 103: The Bombing, the Betrayals, and a Bereaved Family's Search for Justice*.

⁷¹⁸ Cohen and Cohen. P. 136

⁷¹⁹ United States Congress House Committee on Foreign, *The Aviation Security Improvement Act of 1990: Joint Hearing and Markup Before the Committee on Foreign Affairs and Subcommittee on Aviation of the Committee on Public Works and Transportation, House of Representatives, One Hundred First Congress, Second Session, on H.R. 5200 and H.R. 5732, July 26 and September 27, 1990* (U.S. Government Printing Office, 1990).

unaccompanied bag with a bomb inside was loaded onto the aircraft at London.⁷²⁰ Further, Pan Am violated additional requirements by having the checked baggage trolleys unattended and unmonitored prior to being loaded on the aircraft.⁷²¹ “Pan Am’s generally poor performance on security requirements at Frankfurt existed not only for months before the tragedy but – incredibly – for 9 months thereafter.”⁷²²

However, rather than focusing on these U.S. failures, McLaughlin testified about the need for the United States government to lead the rest of the world on aviation security, appealing again to ideas of U.S. exceptionalism.⁷²³ She emphasized a few key items from the report in her statement, notably U.S. issues with foreign airports, and foreign air carriers.⁷²⁴ Regarding the perceived carrier inequity, she stated that “currently, U.S. carriers are required to attain, we feel, a higher standard of security than foreign carriers serving the United States. This is so even though many terrorist attacks are directed against foreign carriers carrying American passengers.”⁷²⁵ The FAA, however, had noted that most threats were against U.S. carriers not foreign carriers.⁷²⁶

Further, McLaughlin recommended that the take an aggressive stance with foreign governments, including supporting FAA’s plans to take over management of foreign air carrier security. She

⁷²⁰ House Committee on Foreign Affairs, Ibid.

⁷²¹ House Committee on Foreign Affairs, Ibid.

⁷²² House Committee on Foreign Affairs, Ibid.

⁷²³ United States Congress House Committee on Foreign Affairs, *Report of the President’s Commission on International Aviation Security and Terrorism: Hearing Before the Committee on Foreign Affairs, House of Representatives, One Hundred First Congress, Second Session, May 17, 1990* (U.S. Government Printing Office, 1990).

⁷²⁴ House Committee on Foreign Affairs, Ibid.

⁷²⁵ House Committee on Foreign Affairs, Ibid.

⁷²⁶ Federal Aviation Administration, “Civil Aviation Security Improvement Program.”

used the same language that carriers used to advocate for a “level economic playing field” under the guise of security, stating that passengers flying on U.S. and foreign air carriers should be “afforded the same level of protection.”⁷²⁷ She also strongly supported placing U.S. personnel overseas to manage foreign government security measures for them.⁷²⁸

These key storylines of dismal international security and a global aviation network in need of U.S. guidance are repeated throughout the Committee’s report, testimony, correspondence, and other materials. Yet again, the storyline had little to do with the reality of the investigation, where the failure could be placed squarely on U.S. assets and regulations. Instead, these narratives became the narrative of Pan Am, taken up by the airline itself, the families, the U.S. airlines, Congress, and others. Through the tradition and order of congressional hearings, government officials could offer solutions that the public and victims’ families had been clamoring for, whether or not they were appropriate or applicable.

McLaughlin acknowledged the sovereignty and extraterritorial issues these ideas presented: “we recognize that a federal aviation security manager of course in a foreign airport would have jurisdiction only over the American air carriers” but stated that she hoped the posting would influence and oversee international airports all the same.⁷²⁹ She argued that it was vital the FAA send security personnel overseas to manage current international standards at airports, as well as attempting to “raise” them per U.S. policy designs.⁷³⁰

⁷²⁷ Affairs, *Report of the President’s Commission on International Aviation Security and Terrorism*.

⁷²⁸ House Committee on Foreign Affairs, *Ibid*.

⁷²⁹ Affairs, *Report of the President’s Commission on International Aviation Security and Terrorism*.

⁷³⁰ House Committee on Foreign Affairs, *Ibid*.

Her testimony also takes on a somewhat colonial discursive tone while going on to describe the need for “less developed airports” with “less than adequate security” to receive U.S. security guidance and oversight⁷³¹ To achieve this, McLaughlin recommended that the FAA establish a technical assistance program to provide capacity development for countries such that they might improve their aviation security infrastructure and programs.⁷³² Her statement concludes by saying: “the Free World has been lurching from terrorist attack to terrorist attack, attempting to agree on how to respond to each event, and we do not feel that approach will work. The commission believes strongly that the time is now for the United States to take a more active leadership role in the fight against international terrorism. The American public must be prepared to exercise its national will and support United States government action.”⁷³³ This imaginary of the American public fighting for security at overseas airports with poorly designed and executed security was important in designing a securitized airspace with the U.S. at its center.

During exchange with Committee members, Congressman Smith of Florida asked if the U.S. would be able to achieve the level of extraterritoriality the Commission was seeking. He specifically asked how the U.S. could “have clout” with a country “with equal jurisdiction,” seeking ways to override a country’s own sovereignty to manage its aviation security within its territory.⁷³⁴ McLaughlin noted the sovereignty issues with the Committee’s proposals, but determined that there was a “willingness” due to Pan Am 103 that had created opportunities for

⁷³¹ House Committee on Foreign Affairs, Ibid.

⁷³² Affairs, *Report of the President’s Commission on International Aviation Security and Terrorism*.

⁷³³ House Committee on Foreign Affairs., Ibid

⁷³⁴ *Report of the President’s Commission on International Aviation Security and Terrorism*.

U.S. security expansion: “I think that we found a willingness because terrorism is global and we are not the only country.”⁷³⁵

Other Representatives made strong statements in support of the Commission’s recommendation for U.S. expansion, using words that indicate a strong believe in the narrative of U.S. exceptionalism and security policy exportation:

The sense we had at the hearing that we conducted about a year ago was that there was such sensitivity on our part about how the foreign governments would react to our pressuring them that we did not want to take the chance of offending their sensibilities. And what I am asking I guess really is has that changed at all, are we still playing that kind of game...It seems to me that there are certain parts of this that we should be able to get under control simply by cooperation and our insistence on cooperation from foreign governments whose airports we are using...We can just insist that in fact that if you do not allow our people to enforce security or if you do not maintain security to our satisfaction that we are not going to allow you to use our airports, that you are not going to be able to take advantage of our market..

- *Rep. Weiss (D-NY), United States Congress Committee on Foreign Affairs*⁷³⁶

The phrase ‘insistence on cooperation’ neatly encapsulated the policy-making sentiment emerging from the Congressional hearings.

⁷³⁵ House Committee on Foreign Affairs, Ibid.

⁷³⁶ Affairs, *Report of the President’s Commission on International Aviation Security and Terrorism*.

U.S. Carrier Response

Perhaps not surprisingly, the U.S. carriers strongly endorsed the Commission's Report and its stance on international airspace. The Air Transport Association (ATA), representing U.S. carriers, drafted a position document on behalf of its members to concur with the "unfairness" of foreign air carriers not being held to the same security standard as U.S. carriers.⁷³⁷ As in McLaughlin's testimony, the carriers used a phrase about protection: "as the report properly notes, passengers traveling to and from the United States on foreign air carriers, many of whom are U.S. citizens, are less well protected than on U.S. carriers."⁷³⁸ However, as noted earlier, the U.S. carrier interest was really about economic and competitive advantage couched in a metaphorical security blanket.

ATA also expressed support for removing the perceived burdens from private industry and placing it on the U.S. government.⁷³⁹ All the while domestic U.S. airports made no aviation security changes. They instead maintained basic screening technology, had no PPBM requirements, and did not insist upon aircraft security measures beyond metal detection for firearms.⁷⁴⁰

⁷³⁷ Air Transport Association, "U.S. Airlines' Response to the Report of the President's Commission on Aviation Security and Terrorism" (Pan Am 103 Special Collections Research Center, Syracuse University, Richard Paul Monetti Papers, Box 33, 1990).

⁷³⁸ Air Transport Association, *Ibid.*

⁷³⁹ Air Transport Association, *Ibid.*

⁷⁴⁰ Federal Aviation Administration, "Positive Passenger Baggage Matching (PPBM) R&D Project Plan (Revision 1)."

Media Coverage

Press coverage of the Commission's report was largely positive as a strong step toward improving aviation security. The Victims of Pan Am 103 used their media committee to strategically agree to on-air interviews and print articles to ensure the recommendations were more than "the report in the bottom drawer."⁷⁴¹ For instance, the Tribune Review from October 25, 1990, focused largely on family lobbying efforts and dire security needs, while depicting Congress as a slow organization, not responding to either victims' needs or danger to the U.S. traveling public writ large.⁷⁴²

Pan Am, meanwhile, attempted to use the press strategy to their advantage as well.⁷⁴³ A three-page advertisement in the Washington Post from May of 1990 expressed strong support for the Commission's Report and recommendations while making it clear that the foreign airlines and U.S. government were the problem. Phrases like "for U.S. carriers, patchwork laws have been enacted" in their government section, or "foreign airlines benefit from lower security standards" demonstrate their use of discourse to make security a problem for someone else.⁷⁴⁴ Media coverage provided yet another opportunity for interests to align and provide support for externalizing security policies.

⁷⁴¹ Cohen and Cohen, *Pan Am 103: The Bombing, the Betrayals, and a Bereaved Family's Search for Justice*.

⁷⁴² Richard Gazarik, "Aviation Act Passage a Struggle."

⁷⁴³ Cohen and Cohen, *Pan Am 103: The Bombing, the Betrayals, and a Bereaved Family's Search for Justice*.

⁷⁴⁴ Pan American World Airways, Inc., "Airline Security: It Is Now Time to Deal with the Issue From a Realistic Perspective," *Washington Post*, May 16, 1990, Pan Am 103 Special Collections Research Center, Syracuse University, Pan Am 103 Clippings Collection, Box 2.

In the next chapter, I will discuss congressional activity that followed the Commission's work, and how the various efforts by the executive branch and Commission were codified into U.S. law.

Chapter 10: Legalizing Extraterritoriality: The Aviation Security Improvement Act of 1990

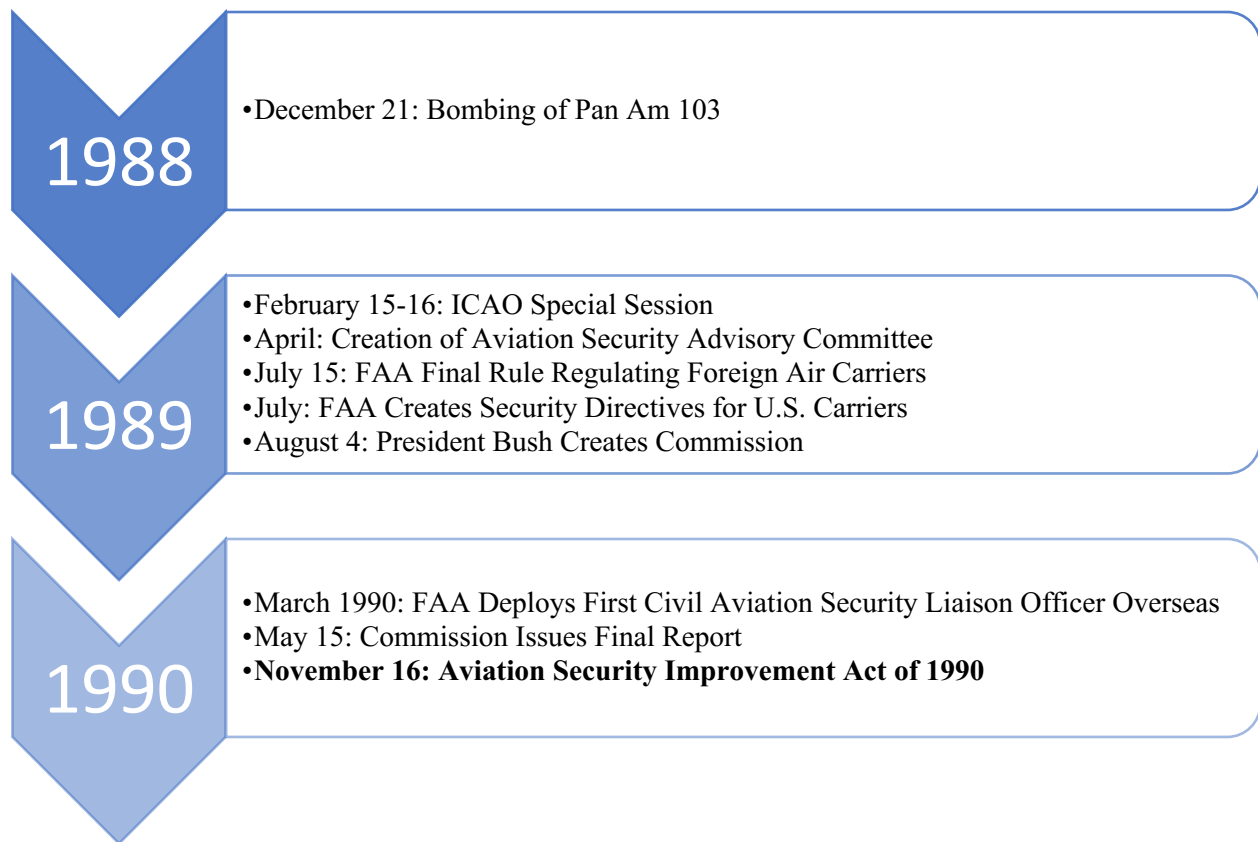


Figure 29: Pan Am 103 Activity Timeline (Congress)
Source: Author

Economic freedom has been a central element in American culture. This has given rise to an attempt to reconstruct foreign places in an American image.

- Gerard O Tuathail and John Agnew⁷⁴⁵

Per Wolanin's work on Presidential Advisory Commissions, "some commissions evoke such a favorable response or deal with problems of such high priority that their findings and

⁷⁴⁵ Gerard O Tuathail and John Agnew, "Geopolitics and Discourse: Practical Geopolitical Reasoning in American Foreign Policy," ed. Virginie Mamadouh, *Political Geography* 11, no. 2 (March 1, 1992), p. 196.

recommendations are almost immediately incorporated into messages, legislative proposals, and administrative actions.”⁷⁴⁶ The President’s Commission on Aviation Security and Terrorism was such a report. Once the Commission published their report, Congress acted to codify many of its recommendations into law, particularly with regard to regulating international airspace.

Rep. Jim Oberstar (D-MN), who had been a member of the Commission, introduced House Resolution (H.R.) 5732, the Aviation Security Improvement Act of 1990 in September of 1990. While various committees held hearings within their jurisdiction, by and large debate between political parties was limited, as the parties agreed on the new security approach. For instance, Rep. Weiss, a Democrat who had sponsored a resolution to impeach former President Ronald Reagan in 1983, had strong agreement from Rep. Snowe, a Republican, to intervene in foreign government management of their air carriers. During Snowe’s questioning of McLaughlin before the House Committee on Foreign Affairs, Snowe offered support for the U.S. regulating foreign air carriers to ensure the same security for U.S. passengers, regardless of airline.⁷⁴⁷ This unique alliance of Republicans and Democrats on U.S. foreign policy proved interesting, as they otherwise strongly disagreed on multilateral, foreign policy, and economic issues at the time.⁷⁴⁸

After several hearings and strong support within Congress for passage of the legislation, the House and Senate passed the Act, and on November 16, 1990, President Bush signed the bill into law, which became Public Law (P.L.) 101-604. The swift two-month period from introduction to passage indicates some of the desire from Congress to move the aviation security hot potato from

⁷⁴⁶ Wolanin, *Presidential Advisory Commissions: Truman to Nixon*.

⁷⁴⁷ United States Congress House Committee on Foreign, *The Aviation Security Improvement Act of 1990*.

⁷⁴⁸ Joshua W. Busby and Jonathan Monten, “Republican Elites and Foreign Policy Attitudes,” *Political Science Quarterly* 127, no. 1 (2012): 105–42.

their lap onto the executive branch.⁷⁴⁹ Inherent in the bill's requirements was the mandate for vigilant enforcement, as well as a more proactive approach to defeating potential threats. The law's content demonstrates that much like the President's Commission, Congress addressed a U.S. aviation problem with an extraterritorial solution.

Aviation Security Improvement Act of 1990

The Aviation Security Improvement Act of 1990 contained a number of provisions relevant to my examination of securitization and extraterritoriality, namely a major finding that the United States government should work directly with foreign governments to address aviation security of foreign carriers and at foreign airports.⁷⁵⁰ The finding, or sense of Congress, also recommended working through ICAO, almost as a legacy nod to the previous regime while pushing through toward a new one. Committee staff referenced this in their report on the Aviation Security Improvement Act, calling ICAO the "floor" of aviation security, and insisting that the U.S. "exceed ICAO standards."⁷⁵¹ Much like the Commission's report and testimony, Congress included commentary that the United States needed a more active approach to addressing terrorism and security.⁷⁵²

Continuing to expand U.S. security interests outwards, Congress specifically authorized the U.S. aviation security personnel to be placed at airports overseas. The law stated that the FAA should establish the position within 90 days at each overseas location, to be placed at high-threat

⁷⁴⁹ Skinner, "Memorandum: Issuance of Interim Response to President's Commission on Aviation Security and Terrorism."

⁷⁵⁰ "Aviation Security Improvement Act of 1990." P.L. 101-604

⁷⁵¹ U.S. House of Representatives Committee on Public Works and Transportation, "Committee Report: Aviation Security Improvement Act of 1990," October 10, 1990.

⁷⁵² "Aviation Security Improvement Act of 1990."

locations within two years.⁷⁵³ While the establishment of the positions carried an aggressive deployment timeline, Congress recognized the need for negotiation between the U.S. State Department and other countries for personnel placement. This process, known as the National Security Decision Directive (NSDD) 38, was established in 1982, and provided the U.S. Department of State's Chief of Mission the authority to manage all positions at overseas posts for the U.S. government writ large.⁷⁵⁴

The Act's accompanying Committee report mirrored the Commission's intention that these overseas security experts were meant to be the foreign equivalent of the domestic airport managers recommended by the Commission to be placed at U.S. airports. Per the Committee, the overseas security personnel were to "have the same responsibilities as [domestic airport managers], to the extent practical."⁷⁵⁵ The President's Commission had outlined domestic responsibilities as: 1) creating airport security plans with airports and carriers, 2) approving airport security plans once complete, 3) overseeing airport and air carrier operations as described by the plan, 4) penalizing airport and air carrier officials for non-compliance, 5) serving as the point of contact for all security intelligence and analysis.⁷⁵⁶

This is a vast scope of duties for a domestically based airport manager, so for Congress to state that they intend for the overseas personnel to carry on the same responsibilities at a foreign airport essentially served as notice of a sovereignty infraction: any airport flying to the United

⁷⁵³ "Aviation Security Improvement Act of 1990." Section 104

⁷⁵⁴ "National Security Decision Directive (NSDD) 38," <https://2009-2017.state.gov/m/pri/nsdd/index.htm>.

⁷⁵⁵ U.S. House of Representatives Committee on Public Works and Transportation, "Committee Report: Aviation Security Improvement Act of 1990." P. 25

⁷⁵⁶ *Report of the President's Commission on Aviation Security and Terrorism*. p. 60

States would become an extension of the U.S. aviation construct. Creation and deployment of the position may have been a de jure requirement, but it still relied on international acknowledgement of it as such, since the new U.S. law set up sovereignty conflicts with longstanding international airspace practices, treaties, and laws.

However, the effectiveness of the personnel would depend on whether or not the country actually allowed them to be placed at an airport, as opposed to being attached to a U.S. Embassy within the country. The direct oversight opportunities would be minimized at an Embassy, reducing the individual to more of an advisor role than a manager. The Committee clearly intended that it be a manager, however, and directed the FAA to station the personnel at airports with major service to the United States, not posted in one centralized location and traveling around to airports temporarily.⁷⁵⁷ In theory, this would ensure they were based at the airport, performing the functions of managing the day-to-day security on behalf of foreign government officials.

Congress also authorized the FAA's new foreign air carrier security program regulations – Part 129.25 of the Code of Federal Regulations (CFR) – which the FAA put into effect following the Pan Am 103 bombing. The law states that the FAA should continue the requirement to regulate and oversee foreign air carriers, providing air carriers with a “similar level of protection as such passengers would receive under the security programs of air carriers serving the same airports.”⁷⁵⁸ Foreign air carriers had one year to comply with the law before the FAA was authorized to enforce it as a condition of flying to the U.S.⁷⁵⁹

⁷⁵⁷ U.S. House of Representatives Committee on Public Works and Transportation, “Committee Report: Aviation Security Improvement Act of 1990.” P. 18

⁷⁵⁸ “Aviation Security Improvement Act of 1990.” Section 105k

⁷⁵⁹ Federal Register, “Security Programs for Foreign Air Carriers; Final Rule.”

The Committee Report noted that nearly half of U.S. citizens travel on foreign air carriers as opposed to U.S. carriers, and the Committee wanted to ensure the “same level of protection” regardless of carrier flown.⁷⁶⁰ From the Committee’s perspective, the carriers should give up their right and responsibility to be governed exclusively by their own host government for the privilege of flying to the United States.⁷⁶¹ They argued that the “U.S. has the right to insist that [foreign carriers] upgrade their security programs to the extent necessary to provide the same level of protection to passengers as do U.S. carriers.”⁷⁶² The Committee further made it clear that following ICAO guidelines is insufficient, and the FAA should not approve anything that meets “the floor...of aviation security precautions” that is the ICAO Standards and Recommended Practices.⁷⁶³ Again, given that the U.S. led the drafting of ICAO standards in the first place, that is a significant statement for the Committee to make. This discourse also provides additional evidence for the critical juncture away from multilateral airspace management via the United Nations and toward an extraterritorial regime.

Congress engaged in a lengthy debate with the Bush Administration as to whether the regulations for U.S. and foreign air carriers should be “similar” or “the same” as part of the bill’s drafting and negotiation process. Congress desired that the language require the exact same measures of both entities, whereas the White House objected.⁷⁶⁴ During a hearing on the Act’s

⁷⁶⁰ U.S. House of Representatives Committee on Public Works and Transportation, “Committee Report: Aviation Security Improvement Act of 1990.”

⁷⁶¹ Committee Report: Aviation Security Improvement Act of 1990, p. 19.

⁷⁶² Committee Report: Aviation Security Improvement Act of 1990, p. 19.

⁷⁶³ Committee Report: Aviation Security Improvement Act of 1990, p. 20.

⁷⁶⁴ Skinner, “Memorandum: Issuance of Interim Response to President’s Commission on Aviation Security and Terrorism.”

implementation in July of 1991, Rep. Oberstar lamented the White House's position, and argued it did not go far enough in extraterritorial security application because of international sovereignty considerations: "For whatever reason, the White House policy folk who were directing the DOT thought that this was a benefit to air travel to use the word similar rather than same. For some reason they didn't want to offend our foreign trading partners by saying your carriers have to be subjected to the same level of security to protect our passengers that our carriers are required to meet. I think it was a serious misjudgment. They took cover under the rubric of this as a commercial matter, not a security issue."⁷⁶⁵

In the end, negotiations between Congress and the White House resulted in the term "similar protection" rather than "the same." While resolved for the moment, the debate over similar and same continued for several years. Even in 1994, the GAO noted that U.S. carriers were still complaining that they were "taking important steps that their European counterparts are not."⁷⁶⁶ GAO noted that the "similar level of protection" language was too broad and challenging for the FAA to truly determine security comparability among air carriers.⁷⁶⁷

The Act also made clear that the U.S. would seek security provisions as part of existing or new bilateral air services agreements. As described in Chapter 4, many of these agreements dated back to the 1940s under the Bermuda Agreement model. The State Department was charged with updating those agreements with countries to ensure a security provision was contained therein.⁷⁶⁸

The Act stated that it was U.S. policy to advance its security policies internationally through

⁷⁶⁵ "Implementation of the Aviation Security Improvement Act of 1990." pp. 46-47

⁷⁶⁶ U. S. Government Accountability Office, "Aviation Security," January 27, 1994.

⁷⁶⁷ Ibid p. 26.

⁷⁶⁸ "Aviation Security Improvement Act of 1990." Section 201

these agreements, through the Foreign Airport Assessment Program, while continuing to work with ICAO.⁷⁶⁹ While these bilateral agreements were negotiated and required agreement among both parties, the leverage the U.S. had with states where the partner could not fly to the U.S. without its preferred security provisions included essentially served as a one-sided agreement. States now had aspects of U.S. law negotiated into their rights to the fly to the U.S., allowing the U.S. to implement any required/necessary security provisions at overseas airports.

Congress addressed other significant issues identified during the Commission's investigation and the FAA's investigation, as well as ones highlighted by the Victims of Pan Am 103 lobby. These included research on explosives detection, the importance of government access to passenger manifests, victim support and response roles in the U.S. government, and victim compensation in the event of a security event.⁷⁷⁰ Most of the law, therefore, related to actual needs and addressed issues identified as contributing to, or responding to, the Pan Am 103 bombing. However, Congress also added the same extraterritorial measures that the Commission recommended – namely U.S. exportation of security policies to foreign airports and airlines.

Implementing the Law: Progress Updates

In July of 1991, Congress held a hearing through the House of Representatives Committee on Public Works and Transportation's Subcommittee on Aviation to examine progress in implementing the Aviation Security Improvement Act of 1990. In its memo to Committee members to prepare them for the hearing, congressional staff once more emphasized the role of

⁷⁶⁹ "Aviation Security Improvement Act of 1990." Section 201a, 201b

⁷⁷⁰ "Aviation Security Improvement Act of 1990." Titles I-II

the Victims of Pan Am 103 organization in pressing for changes to aviation security.⁷⁷¹ Media coverage continued to portray reluctance and slow movement both on the part of the U.S. government and airlines. While praising the legislation's content, CSPAN noted that articles continued to run with headlines such as "preventable," as well as the Tribune-Review's focus on the "struggle" to pass the legislation, highlighting the role of the victims' families in lobbying for passage.^{772 773} Families continued to express their concern and frustration that not enough was being done, particularly to implement and execute the law quickly.⁷⁷⁴ Victims of Pan Am 103 continued to lobby both the Bush and subsequent Clinton Administration's for attention and action to ensure full implementation of the law, and to continue pressing for broad-sweeping foreign policy and counterterrorism engagement in aviation.⁷⁷⁵

The Committee's main area of focus in following up on implementation was how well and to what extent the FAA was able to expand U.S. security overseas. Staff reminded the members that the FAA was to place U.S. security personnel at overseas airports with high traffic and/or security needs within two years of the law's enactment, and recommended discussion with FAA representatives set to testify.⁷⁷⁶ The staff noted progress on air carrier regulations, once again highlighting the perceived disparity with regard to foreign air carrier and U.S. carrier security requirements.⁷⁷⁷ They made no effort to disguise the economic drivers for U.S. carriers and the U.S. government behind this parity requirement: "U.S. air carriers claim that FAA's security

⁷⁷¹ Committee on Foreign Affairs, "Committee on Foreign Affairs Memorandum: Aviation Security."

⁷⁷² "Aviation Security | May 18, 1990 | C-SPAN.Org," accessed November 29, 2024, <https://www.c-span.org/video/?12350-1/aviation-security>.

⁷⁷³ Richard Gazarik, "Aviation Act Passage a Struggle."

⁷⁷⁴ Cohen and Cohen, *Pan Am 103: The Bombing, the Betrayals, and a Bereaved Family's Search for Justice*.

⁷⁷⁵ Cohen and Cohen.

⁷⁷⁶ Committee on Foreign Affairs, "Committee on Foreign Affairs Memorandum: Aviation Security." P. 3

⁷⁷⁷ Committee on Foreign Affairs. Pp. 3-4

requirements impose cost and convenience penalties on their passengers, to the advantage of their foreign competitors, and will argue for imposition of the same security measures and procedures for foreign airlines.”⁷⁷⁸ The memo finally notes that the Pan Am 103 bombing has created an opportunity for these changes, as “most foreign governments are now more amenable to maintaining a stronger commitment to security.”⁷⁷⁹

In discussing these issues at the hearing, Rep. Hammerschmidt (R-AK), who had been a member of the President’s Commission, asked the FAA about the sovereignty concerns other countries might have with the new U.S. law.⁷⁸⁰ He also raised the competitive economic advantage from disparate security arrangements.⁷⁸¹ FAA Administrator Busey responded by noting that the FAA had been able to place nine CASLOs overseas in the months since enactment.⁷⁸² However, an important note that will be discussed in Chapter 12 – these officials were eventually placed at embassies, not at airports. So, however amenable foreign governments were to U.S. officials being placed overseas to manage their airport security, they were unwilling to accept the personnel in direct oversight roles at their airports.

Rep. Oberstar discussed this during the hearing from his view as a Presidential Commission member, saying that in their investigations, foreign governments had raised significant objections to the United States evaluating and overseeing their airport and airline security.⁷⁸³ He noted a change during the Gulf War where everyone seemed to believe that additional security

⁷⁷⁸ Committee on Foreign Affairs. Pp. 3-4

⁷⁷⁹ Committee on Foreign Affairs. P. 6

⁷⁸⁰ United States Congress House Committee on Foreign, *The Aviation Security Improvement Act of 1990*.

⁷⁸¹ House Committee on Foreign Affairs, Ibid.

⁷⁸² House Committee on Foreign Affairs, Ibid.

⁷⁸³ United States Congress House Committee on Foreign, *The Aviation Security Improvement Act of 1990*.

was warranted, but then settled back to ICAO standards, which the U.S. had come to see as lackadaisical status quo.⁷⁸⁴ FAA Assistant Administrator for Civil Aviation Security, Major General Steele, noted that the FAA was still seeing significant sovereignty issues with placement of U.S. personnel overseas.⁷⁸⁵ This was particularly true as many foreign airlines were nationally owned and, as such, extensions of foreign governments. FAA Administrator Busey also mentioned a Belgian law in place where only Belgian citizens could search individuals, so even U.S. carriers would have issues following U.S. security requirements, much less foreign carriers.⁷⁸⁶

Rep. Oberstar also raised again his concern with the debate on similar versus same level of security and expressed his displeasure with Congress losing the argument.⁷⁸⁷ He noted that the Administration insisting on the word similar left Americans vulnerable to subpar foreign airport security i.e. non-American airport security.⁷⁸⁸ Again, given the state of domestic airport security, this is an interesting statement. FAA Administrator Busey, interestingly, responded that the FAA was not acting because of “dollars” but because of “threats.”⁷⁸⁹

The Government Accountability Office (GAO) examined the Aviation Security Act of 1990 to provide an update on progress toward implementing the requirements. While GAO is an independent body from the Executive Branch and often seen as a neutral party, GAO reports to

⁷⁸⁴ House Committee on Foreign Affairs, Ibid. p. 27

⁷⁸⁵ House Committee on Foreign Affairs, Ibid. p. 27

⁷⁸⁶ House Committee on Foreign Affairs, Ibid. p. 29

⁷⁸⁷ House Committee on Foreign Affairs, Ibid. p. 10

⁷⁸⁸ United States Congress House Committee on Foreign, *The Aviation Security Improvement Act of 1990*.

⁷⁸⁹ House Committee on Foreign Affairs, Ibid. p. 11

Congress and still maintains a strong U.S. viewpoint on issues.⁷⁹⁰ GAO's examination of FAA's response in 1994 noted that the FAA still had significant issues with understanding and addressing terrorist threats to aviation.⁷⁹¹ They also noted that the FAA had failed to develop guidance for foreign air carriers or governments on how the requirement for the air carrier security programs should be implemented or how the FAA intended to enforce it.⁷⁹² They wrote that "this issue is important for the security of U.S. passengers traveling on foreign airlines, and it may have competitive implications."⁷⁹³

In a separate 1994 GAO report entitled Aviation Security: Additional Actions Needed to Meet Domestic and International Challenges, Congress had asked GAO specifically to evaluate whether FAA had managed to achieve a similar protection for U.S. citizens flying on foreign air carriers.⁷⁹⁴ GAO argued that because foreign air carriers were permitted to have varying measures to that of U.S. carriers even under the new U.S.-regulated model, Congress and the FAA may need to legislate further. Additional measures would need to ensure that foreign airlines were following the exact same regulations as U.S. carriers, not allowing for any variation or deviation.⁷⁹⁵ GAO continued to note the competitive and economic implications of allowing any differences: "This complex issue...will remain controversial until FAA develops guidelines on the specific actions foreign carriers must take to safeguard U.S. passengers."⁷⁹⁶

⁷⁹⁰ U. S. Government Accountability Office, "About | U.S. GAO," <https://www.gao.gov/about>.

⁷⁹¹ U. S. Government Accountability Office, "FAA Budget: Management Attention Needed for Future Investment Decisions," April 1994. P. 2

⁷⁹² U. S. Government Accountability Office, Ibid. p. 2

⁷⁹³ U. S. Government Accountability Office, Ibid. p. 2

⁷⁹⁴ U. S. Government Accountability Office, "Aviation Security," January 27, 1994. p. 2

⁷⁹⁵ U. S. Government Accountability Office, Ibid. p. 4

⁷⁹⁶ U. S. Government Accountability Office, Ibid. p. 4

Chapter 11: After Pan Am: U.S. Extraterritorial Security Regime 1989 to Present

We cannot reduce the threats to our people without reducing threats to the world beyond our borders. That's why the fight against terrorism must be both a national priority and a national security priority. We have pursued a concerted national and international strategy against terrorism on three fronts: First, beyond our borders, by working more closely than ever with our friends and allies; second, here at home, by giving law enforcement the most powerful counterterrorism tools available; and, third, in our airports and airplanes by increasing aviation security.

- *U.S. President Bill Clinton, August 5, 1996*⁷⁹⁷

Pan Am 103 provided a choice point to shift from one security regime to another,⁷⁹⁸ and as demonstrated throughout the dissertation, the discourse U.S. officials used showed that the bombing provided an opportunity to insert a narrative of U.S. exceptionalism. The bombing and its aftermath aligned various U.S. interests (political parties, commercial and government interests, media and public attention, etc.) in such a way that the U.S. was able to use security to dominate the global aviation network. Higgott's work on U.S. Foreign Policy and the Securitization of Economic Globalization provides context for this by describing U.S. antipathy to multilateral organization like ICAO, because of "an American belief that the international institutions to which it is a party are just one – but not the only – option for international policy implementation."⁷⁹⁹

⁷⁹⁷ Federal Aviation Administration, "Study and Report to Congress on Civil Aviation Security Responsibilities and Funding," 1998.

⁷⁹⁸ Capoccia and Kelemen, "The Study of Critical Junctures."

⁷⁹⁹ Richard Higgott, "US Foreign Policy and the 'Securitization' of Economic Globalization," *International Politics* 41, no. 2 (June 2004): p. 165

He goes on to describe asymmetrical negotiations in trade deals that have many corollaries to the U.S. position in aviation security.⁸⁰⁰ This context provides some additional historical narratives to understand how Pan Am fits in with the prevailing sentiments toward international relations at the time. The aviation network's density and connectivity provided the means for the U.S. to require that states with flights to the U.S. accept its preferred security regulations. This deployment of weaponized interdependence in the aviation network meant that the U.S. was able to override previous multilateral norms with its security – and economic – concerns. The U.S. preferred tactic of moving threats as far away from U.S. shores as possible, and attempting to neutralize them from afar, is often in conflict with other States' sovereignty and policy preferences.^{801 802}

In the aftermath of Pan Am 103 and the new U.S. laws governing the international aviation network, states agreed to these new U.S. measures for a variety of reasons, including interdependence, economic ties, and sentiment/affect over the impact of Pan Am 103. However, there was some reservation about the impact to sovereignty resulting from U.S. internationalization of its domestic desires, which will be discussed further in Chapter 14.⁸⁰³ In ICAO minutes from the 1990 Aviation Security Panel, states expressed a desire for a “new binding security regime” to address new security vulnerabilities in the aviation system – but

⁸⁰⁰ Higgott, *Ibid.* p. 165

⁸⁰¹ Andrew Lakoff, *Unprepared, Unprepared* (University of California Press, 2017).

⁸⁰² Abraham Newman, “Transatlantic Flight Fights: Multi-Level Governance, Actor Entrepreneurship and International Anti-Terrorism Cooperation,” *Review of International Political Economy* 18, no. 4 (October 2011): 481–505.

⁸⁰³ Eugene Sochor, *The Politics of International Aviation* (Iowa City : University of Iowa Press, 1991), p. 154.

within the existing multilateral bounds.⁸⁰⁴ States were not expressing concern about levels of security outside their own or using language that indicated ICAO standards – promulgated by the states themselves – were insufficient.⁸⁰⁵

The culmination of U.S. changes following Pan Am is shown below in Figure 29. This chart illustrates the impact this event had on airport and airspace sovereignty, providing a visual of some of the major policy changes. Most of these are U.S. changes, but there was some movement by the U.K. through ICAO, following the tenets of the Multilateral Management Regime. A more detailed discussion on airport and air carrier changes from U.S. extraterritoriality is in the chapters that follow.

Figure 30 shows a list by date of U.S. activities and policy changes to international aviation security. These measures show U.S. use of a densely interconnected aviation network to achieve its preferred security outcomes through extraterritoriality. The charts illustrate a broad push by the U.S. to manage the system writ large. These changes most immediately followed Pan Am 103, but there were many adjustments and additions that followed, particularly in regulating foreign air carriers, which I will discuss in Chapter 13.

⁸⁰⁴ ICAO Assembly, “ICAO Assembly 27th Session: Plenary Meeting Minutes.” Pp. 37, 50, 76

⁸⁰⁵ ICAO Assembly.

Figure 30: Post Pan Am: Extraterritorial Security Regime

Source: Author

AIRPORTS						
Policy	Date	Status	Sponsor	Mechanism	Application	Enforcement
Civil Aviation Security Liaison Officers (CASLOs)	1990	New	U.S. Presidential Commission	U.S. law (1990 Aviation Security Act)	International	Bilateral Air Services Agreements
Foreign Airport Assessment Program (FAAP) updates	1990	Preexisting with changes	U.S. Congress, FAA	U.S. law (1990 Aviation Security Act)	International	FAA inspections, legal action through carriers: public notice, rescission of air service to the United States
ICAO security staff, processes for addressing plastic explosives	1989	New	UNSC, U.K. Department for Transport	ICAO Annex 17	International	None (ICAO security and safety audits began in the 2000s)
AIR CARRIERS						
Policy	Date	Status	Sponsor	Mechanism	Application	Enforcement
Expansion of Positive Passenger Bag Match	1990	Preexisting with changes	ICAO Assembly & U.S. Presidential Commission & Victims of Pan Am lobby	ICAO Annex 17 and U.S. law	International	FAA inspections, U.S. fines, denial of service to the U.S.
Foreign Air Carrier Regulation	1989, 1990	New	U.S. FAA, Congress	Regulation – CFR 129, 1990 Aviation Security Act	International	FAA oversight of foreign air carriers, requirements for similar security to U.S. carriers
Security Directives	1989	New	U.S. FAA	Regulation	U.S. and International	New mandatory security requirements for U.S. and foreign air carriers
No Fly Lists	1990	New	U.S. Congress	U.S. law	U.S. and International	Denial of passenger boarding
Passenger Profiling – from manual assessments to electronic profiling system	1990 (1997 effective)	Preexisting with changes	U.S. Congress, Presidential Commission	U.S. law	U.S. and International	Enhanced/additional passenger screening or denial or boarding

Figure 31: Milestones in Aviation Security

Source: FAA Fact Sheet – Improvements in Civil Aviation Security Since Pan Am 103⁸⁰⁶

Post Pan Am 103 Milestones in Aviation Security	
Date	Action
Dec 1988	U.S. requires U.S. carriers to implement Positive Passenger Bag Match internationally (PPBM) – no bag on flight without accompanying passenger
Jan 1989	U.S. issues new rule enhancing domestic Airport Access Control
Feb 1989	Special ICAO Session on security (called by U.S. and U.K.) discussing more stringent security for passengers, baggage & cargo
Mar 1989	U.S. requires foreign airlines to submit security plans to FAA for review and approval (Part 129 Rule)
Jun 1989	U.S. deploys personnel to oversee international airport security, particularly in Europe & Middle East
Jul 1989	U.S. requires U.S. airlines to install explosives detection systems at domestic & international airports
Aug 1989	Executive Order establishes President’s Commission on Aviation Security and Terrorism to review Pan Am 103 and make recommendations
Oct 1989	First meeting of new Aviation Security Advisory Committee
Jan 1990	FAA sends first two personnel (secondments) to staff ICAO
Mar 1990	First permanent FAA liaison officer (CASLO) stationed in London
May 1990	President’s Commission releases final report
Jun 1990	FAA creates new senior positions at Headquarters to oversee aviation security
Aug 1990	FAA sends 27 new CASLOs overseas to manage aviation security
Nov 1990	President signs Aviation Security Improvement Act of 1990 to codify Commission recommendations
Apr 1991	U.S. requires foreign carriers to increase standards on x-ray/metal detection, security procedures, and PPBM
Nov 1991	FAA completes review of foreign airport assessment program, issues first public notice for Ezeiza International Airport in Argentina not meeting security standards

Change Analysis

These charts help to illustrate the critical juncture in aviation security that my research proposal hypothesis described. All of these changes occurred following the Pan Am 103 bombing, and

⁸⁰⁶ “FAA Fact Sheet – Improvements in Civil Aviation Security Since Pan Am 103.”

while they occurred over time, Pan Am was the driver behind them all through various methods of implementation (Commission, Congress, and U.S. executive branch regulations). While many of the changes were contemplated before Pan Am 103, such as the U.S. carrier request to have the U.S. government and/or foreign air carriers bear a greater financial burden for aviation security, none were being seriously contemplated in U.S. legislation or regulation prior to Pan Am.

I consider Pan Am 103 to be the critical juncture, and the subsequent flurry of policy activity can be demonstrated through the preceding and subsequent chapters to be directly related to the event. While an alternative hypothesis is that these events were largely a continuation of existing security evolutions, there are three major policy changes resulting from the bombing and subsequent Commission, Congress, and executive branch activity that I think demonstrate that this hypothesis is not viable: regulating foreign air carriers, attempting to oversee foreign airports, and breaking from ICAO security requirements to do both. I will describe many of the changes listed in the chart above with further detail, and focus on the foreign airport and foreign air carrier extraterritorial reach, as well as state reactions, in the chapters to follow.

In December of 1988, immediately following the Pan Am disaster, the FAA further expanded PPBM requirements. The initial requirement was to physically search all checked bags with no accompanying passenger – which Pan Am and its contractor neglected to do for the 103 flight, leading to its destruction. The FAA's revised requirement was to physically search all bags, as

well as to remove an unaccompanied bag (one not matched to a passenger) from the flight altogether. The FAA also began requiring random checks of passenger carryon bags.⁸⁰⁷

Post-Pan Am, but before passage of the Aviation Security Act of 1990, the FAA was working toward significant changes discussed during the Commission's investigation and eventually recommended in the final Report. In March of 1989, the FAA announced a regulation through the Federal Register to require all foreign air carriers to provide security plans to the FAA for approval.⁸⁰⁸

The new oversight rule was significant as it placed foreign air carriers – many of which were owned by foreign governments and under the governance of a sovereign nation – under U.S. purview and control. The FAA wrote to Congress that “foreign authorities responsible for aviation security have strongly dissented with the intent for Federal Acquisition Regulation [Part] 129. They believe states, not airlines, should be held responsible for aviation security.”⁸⁰⁹

The FAA also noted the “strong congressional interest” and pressure within the U.S. from government and industry out of a desire for an equal security and economic/competitive environment among airlines.⁸¹⁰ Foreign carriers were required to provide their programs for review and approval to the FAA by July 15, 1989.

The FAA issued the Foreign Air Carrier Model Security Program (MSP) to carriers on June 13, 1989, so they had the option to follow an FAA standard security program in lieu of their own. In

⁸⁰⁷ “FAA Fact Sheet – Improvements in Civil Aviation Security Since Pan Am 103.”

⁸⁰⁸ “FAA Fact Sheet – Improvements in Civil Aviation Security Since Pan Am 103.”

⁸⁰⁹ Federal Aviation Administration, “Civil Aviation Security Improvement Program.”

⁸¹⁰ Federal Aviation Administration, Ibid.

1991, the FAA issued its final rule for Part 129 covering foreign air carriers, requiring them to provide “a similar level of protection as that afforded by U.S. air carriers serving the same airport.”⁸¹¹ The FAA noted that the rule presented a challenge, as many foreign air carriers were not directly responsible for aviation security, creating diplomatic and operational issues as it was implemented worldwide.⁸¹²

By 1992, the FAA moved to exclusively use the Model Security Program for all foreign air carriers, no longer allowing carriers to use their own government-approved programs for flight security.⁸¹³ The FAA enforced this through its compliance inspections and large fines against carriers it found to be out of compliance with the Model Security Program requirements.⁸¹⁴

While regulating the foreign air carriers provided a means of extraterritoriality through policy, the U.S. also issued changes to physically place its personnel overseas to run aviation security at international airports for U.S. bound flights. In April of 1989, the U.S. Department of Transportation and FAA announced the intention to deploy the security personnel overseas.⁸¹⁵ In June of 1989, the FAA began deploying these personnel on temporary duty assignments (TDY) while waiting for permanent authority from Congress and authorization from the State Department.⁸¹⁶ Almost a full year later, in March 1990, the U.S. sent its first permanent Civil Aviation Security Liaison Officer (CASLO) to the American Embassy in London.⁸¹⁷ By August

⁸¹¹ “FAA Fact Sheet – Improvements in Civil Aviation Security Since Pan Am 103.”

⁸¹² Federal Aviation Administration, “Civil Aviation Security Improvement Program.” P. 8

⁸¹³ Federal Aviation Administration, “Annual Report to Congress on Civil Aviation Security,” 1994.

⁸¹⁴ Federal Register, “Security Programs for Foreign Air Carriers; Final Rule.”

⁸¹⁵ “FAA Fact Sheet – Improvements in Civil Aviation Security Since Pan Am 103.”

⁸¹⁶ “FAA Fact Sheet – Improvements in Civil Aviation Security Since Pan Am 103.”

⁸¹⁷ “FAA Fact Sheet – Improvements in Civil Aviation Security Since Pan Am 103.”

of 1990, the FAA had finalized agreements for 27 Civil Aviation Security Liaison Officers (CASLOs) to be stationed in Europe and the Middle East “to monitor U.S. airline compliance with FAA security requirements” and had plans for another 27 CASLOs to be deployed to the Western Hemisphere and Asia Pacific Regions.⁸¹⁸

In April of 1989, the FAA also issued the first of its new Security Directives (SDs) to U.S. aircraft operators. Previously, the FAA had issued guidance or advisements, but post Pan Am, SDs were revised from bulletins to directives – requiring specific, urgent, threat-based changes to U.S. air carrier programs. The corollary for foreign air carriers is referred to as Emergency Amendments (EAs) and was developed in 1992.⁸¹⁹ The June 1989 Security Directive for U.S. carriers required significant portable electronic device screening to ensure that no explosives were placed inside electronic devices like laptops or cassette players.⁸²⁰

Finally, the FAA proposed a rule in June of 1990 to update security technology and explosives detection equipment, including requiring all foreign air carriers flying to the United States to use screening technology for all passenger carryon luggage and accessible property.⁸²¹ In October of 1990, the FAA issued a revised Model Security Program for foreign air carriers, which provided standards for screening, technology use, PPBM, and security checkpoint oversight/supervision for all foreign air carriers operating to the U.S.⁸²² Once the U.S. had the security program in

⁸¹⁸ “FAA Fact Sheet – Improvements in Civil Aviation Security Since Pan Am 103.”

⁸¹⁹ Federal Aviation Administration, “Annual Report to Congress on Civil Aviation Security,” 1994. P. 25

⁸²⁰ “Fact Sheet.”

⁸²¹ “FAA Fact Sheet – Improvements in Civil Aviation Security Since Pan Am 103.” P. 6

⁸²² “FAA Fact Sheet – Improvements in Civil Aviation Security Since Pan Am 103.” P. 7

place for air carriers, it could – and did – amend the program regularly to require the international aviation system to suit its evolving needs.

In contrast to the U.S. extraterritorial means of addressing aviation security, the U.K. and other ICAO member states utilized ICAO's established multilateral mechanisms for change, continuing with the multilateral regime. The U.K. requested a special session of ICAO to "consider measures which might be developed to deal with the growing trend in sabotage of civil aircraft," which ICAO adopted in February of 1989.⁸²³ U.K. aviation officials also proposed measures to better screen plastic explosives as an addition to Annex 17. This was designed to address the technology and detection issues of concern to ICAO member states about potential continued use of well-disguised explosive devices. The U.K. measure also proposed adding security specialists to the ICAO staff to better address emerging threats.

These major changes in the aftermath of Pan Am 103 demonstrate a decided shift in how airspace was managed and how the U.S. expanded its security policy requirements extraterritorially. Due to the density in networks and the complication of Flight Information Regions (FIRs), as well as the reliance on ICAO from member states like the U.S., the preferred U.S. method prevailed. At a time when the U.S. had strong public sympathy, an alignment from various interests, and ICAO was at an all-time low in member dues with perceptions of slow response (cite Commission report, ICAO minutes), the U.S. had an advantage that it certainly used.

⁸²³ President's Commission on Aviation Security and Terrorism, "International Civil Aviation Organization Statement."

The next two chapters will discuss the airport and air carrier changes in greater detail, as these demonstrate the most significant shifts in U.S. extraterritoriality and securitization of air spaces.

Chapter 12: Air Carrier Securitization

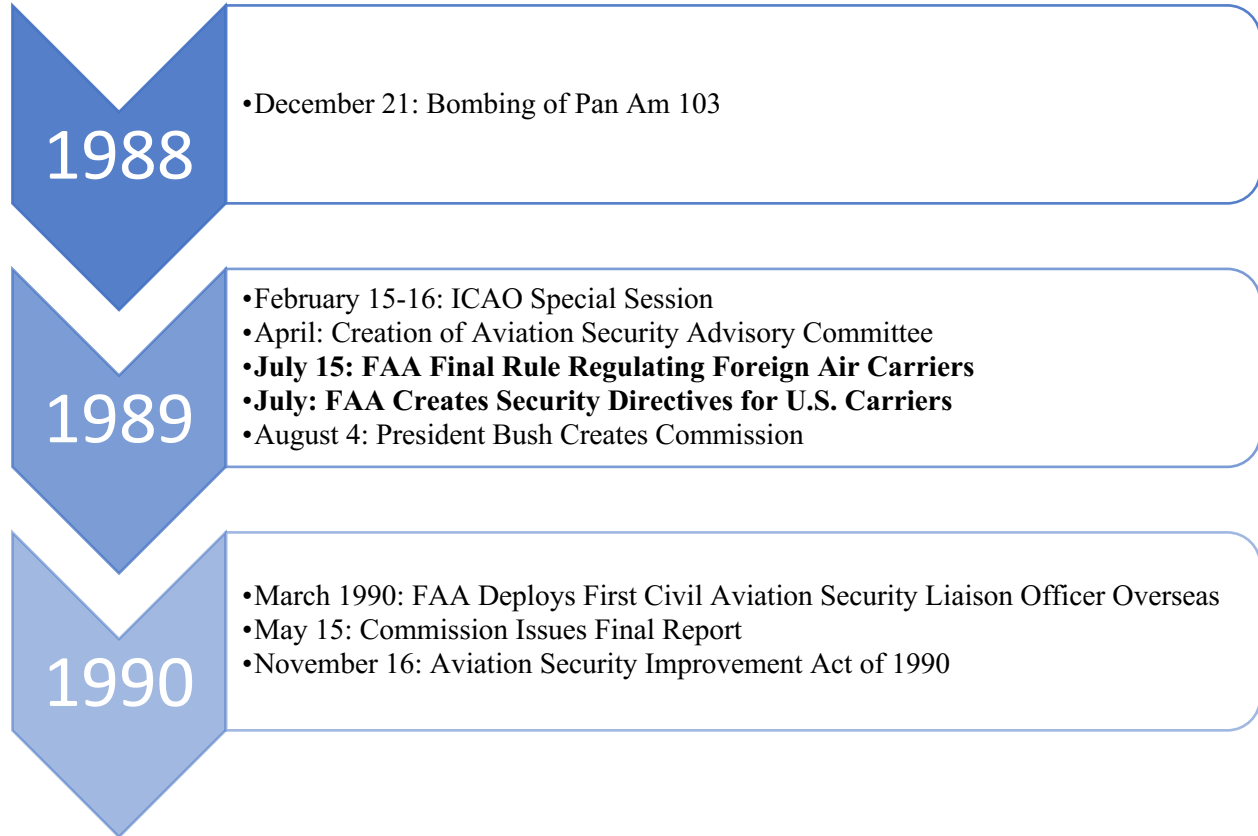


Figure 32: Pan Am 103 Action Timeline (Air Carriers)
Source: Author

Under U.S. and international aviation law, carriers are considered to be the property and sovereignty of the owning/operating state.⁸²⁴ Perhaps the most significant extraterritorial change following the bombing of Pan Am 103 is the movement by the U.S. to regulate foreign air carriers. As discussed in Chapter 5 and 12, most foreign air carriers were owned by governments, making them extensions of the state itself. Every state managed its own airline under its sovereign authority, including the U.S. However, unlike most of the world, in the U.S. carriers were owned by private companies.

⁸²⁴ “49 U.S. Code § 40103 - Sovereignty and Use of Airspace.”

After the Aviation Deregulation Act of 1978, U.S. carriers were only loosely regulated by the government in terms of structure, flight routes, passenger fares, and overall management. Prior to Pan Am 103, the U.S. and the rest of the world were aligned under the Multilateral Management Regime, where each government managed their own carrier's safety and security requirements under the ICAO rubric. A state could require whatever it needed for the safety and security of its own carriers, but trusted that each other's carriers were likewise following all necessary regulations.

The U.S. also followed a different model from other states in requiring its air carriers as private companies to be responsible for implementation of aviation security.⁸²⁵ Other states' governments provided resources for implementation of security for airlines and airports. By contrast, under the U.S. model the FAA mandated measures that U.S. carriers were required to implement without funding. U.S. carriers frequently complained about this model as an unfunded mandate and significant economic drain.⁸²⁶

By 1996, GAO testified that the FAA required U.S. carriers to not only meet ICAO standards but also security requirements unique to the U.S. that were "additional, more stringent measures—including interviewing passengers that meet certain criteria, screening every checked bag, and screening supplementary carry-on baggage—at all airports in Europe and the Middle East and many airports elsewhere."⁸²⁷ GAO noted that placing measures on carriers was costly and

⁸²⁵ Eugene Sochor, *The Politics of International Aviation* (Iowa City : University of Iowa Press, 1991).

⁸²⁶ U. S. Government Accountability Office, "Aviation Security: Immediate Action Needed to Improve Security."

⁸²⁷ U. S. Government Accountability Office, *Ibid.* p. 4

impactful, which is a direct consequence of impact from U.S. law making airlines the responsible party for all security regulations and requirements.⁸²⁸

Following Pan Am, the U.S. broke with these rules by implementing major changes for international air carrier management, including requiring all foreign air carriers to follow U.S. rules and seek U.S. approval for operations.⁸²⁹ This new U.S. oversight caused a significant sovereignty concern through American management of foreign government assets.

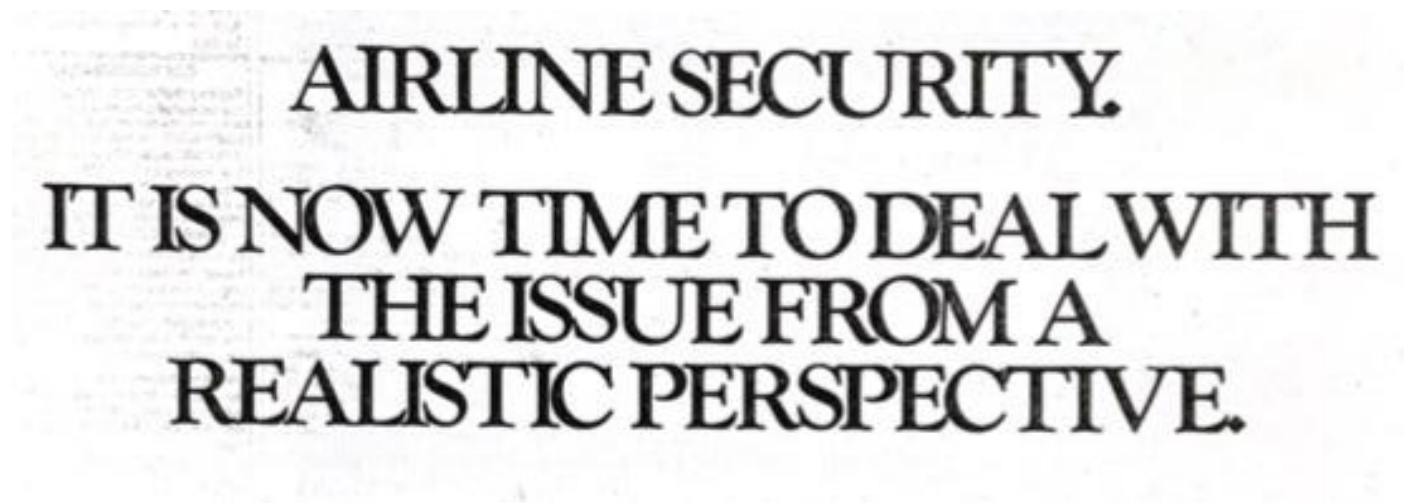


*Figure 33: Pan Am Advertisement in Washington Post, May 16, 1990
Source: Syracuse University Archives*

Part 129 – Regulating Foreign Carriers

In March of 1989, FAA Regulation Part 129.25 was amended to require foreign airlines flying to the U.S. to submit their security programs in writing and in English to the FAA for acceptance...A total of 136 foreign air carriers are required to submit security

⁸²⁸ U. S. Government Accountability Office, “Aviation Security: Immediate Action Needed to Improve Security.” P. 10

⁸²⁹ Eugene Sochor, *The Politics of International Aviation* (Iowa City : University of Iowa Press, 1991), p. 154.

programs or acceptable interim responses. All except 2 new carriers have done so and 65 have been reviewed and accepted...Cooperation has been good, **considering the sensitivities involved with issues of extraterrestrial application of U.S. laws.**

- *Report of the President's Commission on Aviation Security and Terrorism*⁸³⁰

Following the Pan Am 103 bombing, the FAA implemented rulemaking to regulate foreign air carriers, as described in the Commission Report excerpt above. For the first time in aviation security history, this placed other states' carriers directly under control of U.S. requirements. However, as discussed in Chapters 6 and 9, economics also played a significant role in the reason behind the change. The rule was proposed in March of 1989 and effective as of April 17, 1989.⁸³¹

As part of this regulation, all foreign air carriers providing service to the U.S. from an overseas Last Point of Departure airport as well as departing a U.S. airport to fly internationally were required to seek U.S. FAA approval for their security. No foreign carrier would be allowed to fly to the U.S. without FAA approval, and as later discussed by Congress during the June 1991 hearing "Implementation of the Aviation Security Improvement Act of 1991," without a "similar level of protection."⁸³² Per the Federal Register notice advising other countries of this new requirement, the "final rule is needed to ensure that adequate security measures are being implemented by foreign air carriers that land or take off in the U.S."⁸³³

⁸³⁰ *Report of the President's Commission on Aviation Security and Terrorism*. pp 180-181

⁸³¹ Federal Register, "Security Programs for Foreign Air Carriers; Final Rule."

⁸³² "Implementation of the Aviation Security Improvement Act of 1990."

⁸³³ Federal Register, "Security Programs for Foreign Air Carriers; Final Rule."

An FAA Report and associated policy documentation from the National Archives and Records Administration (NARA) highlights some of these requirements and their significance. The carrier was able to adopt the FAA's "model security program" in its entirety and use the FAA template, use the FAA's program with some exceptions or caveats, provide its own security program, or refer the FAA to its foreign government for additional information on security procedures.⁸³⁴ The FAA document states that officials used ICAO Standards and Recommended Practices as the baseline for review, but then layered on additional "Performance Standards" with requirements unique to the United States.⁸³⁵ These included screening of passengers and accessible property (carry-on items), screening of checked bags, cargo handling, aircraft and airport security, crew training, incident planning, and measures to address hijacking or other attacks (referred to as "unlawful interference").⁸³⁶

The United States also imposed Positive Passenger Bag Match (PPBM) on the international system by requiring all carriers with service to the U.S. to implement 100% baggage to passenger matching and checks. A key finding of the Commission report, this would ensure that no bag could board an aircraft without an accompanying passenger, and all unmatched baggage would be subject to search and disposal.⁸³⁷ Though it was applying these measures externally, the Commission noted that the U.S. was still not meeting this standard, and that Pan Am continued to violate this requirement after the bombing.⁸³⁸

⁸³⁴ Federal Aviation Administration, "Briefing Material Submitted for the Record; President's Commission on Aviation Security and Terrorism Public Hearing," December 18, 1989, President's Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁸³⁵ Federal Aviation Administration, Ibid.

⁸³⁶ Federal Aviation Administration, Ibid.

⁸³⁷ *Report of the President's Commission on Aviation Security and Terrorism*. p. 196

⁸³⁸ *Report of the President's Commission on Aviation Security and Terrorism*. p. iii

Federal Register documentation provides insight into state reactions to this change by the United States. States such as the United Kingdom, Switzerland, Japan, Malaysia, the Soviet Union, Canada, the European Union and European Civil Aviation Conference (ECAC) all opposed the U.S. air carrier rule and expressed very strong concern, specifically regarding U.S. extraterritoriality.⁸³⁹ Specifically, the states used language to express “concerns about the extent of U.S. authority,” and argue that the U.S. is expressly forbidden as a signatory to the ICAO Chicago Convention from “exercising any jurisdiction over the security of foreign aircraft entering its territory from a foreign airport.”⁸⁴⁰

European states were particularly upset with what they viewed as an extraterritorial move and provided statements in the Federal Register, objected at ICAO, and engaged with the U.S. through diplomatic channels to dispute U.S. authority to regulate their carriers.⁸⁴¹ These states “did not dispute the right of the United States to impose security measures on its own carriers but considered the extraterritorial application of these measures to foreign carriers constituted an infringement of Article 1 of the Chicago Convention.”⁸⁴² Many European aviation officials also noted that security at European airports was better than those in the U.S.⁸⁴³

These states’ main argument was that the U.S. was breaking not only with its obligations by treaty under ICAO, but was violating state sovereignty.⁸⁴⁴ They believed that the U.S. was

⁸³⁹ Federal Register, “Security Programs for Foreign Air Carriers; Final Rule.”

⁸⁴⁰ Federal Register. P. 11117

⁸⁴¹ Eugene Sochor, *The Politics of International Aviation* (Iowa City : University of Iowa Press, 1991), p. 155.

⁸⁴² Sochor, Ibid. p. 155.

⁸⁴³ Sochor, Ibid. p. 155

⁸⁴⁴ Federal Register, “Security Programs for Foreign Air Carriers; Final Rule.”

directly contradicting the Chicago Convention and Annex 17 on security, all of which put international aviation security under the UN's purview.⁸⁴⁵ States argued that while the U.S. was free to require security measures of its carriers and at its airports, it was not free to do so in other states' airports or with its carriers.⁸⁴⁶

Dissenting states' (U.K., Switzerland, Japan, Canada, EU, and Malaysia) complaints also highlighted that the Chicago Convention provided each signatory state with the right and responsibility for managing all aviation operations within its own territory, including security.⁸⁴⁷ Additionally, they argued that trying to circumvent this fundamental airspace sovereignty right through bilateral air services agreements, as the Commission recommended and U.S. later implemented, were also a violation of the Chicago Convention. "Bilateral air transport agreements do not contemplate one State unilaterally imposing on the airports of another State security requirements to be implemented in the territory of that other State. Air transport agreements provide no authority for one State to regulate the security procedures employed by the airline of another."⁸⁴⁸ The arguments concluded by noting that the U.S. imposition of a new regime was the "first step forward overlapping, inconsistent security requirements across the world."⁸⁴⁹

The U.S. countered these arguments in the Federal Register to resolve state concerns and proceed with regulating their carriers as required by Federal Acquisition Regulation requirements for

⁸⁴⁵ Federal Register, Ibid.

⁸⁴⁶ Federal Register, Ibid.

⁸⁴⁷ Federal Register, Ibid.

⁸⁴⁸ Federal Register, Ibid.

⁸⁴⁹ Federal Register, Ibid.

federal rulemaking. They argued that regulating foreign air carriers was permitted under ICAO's Annex 17 for security as a way to legitimize the effort. The FAA wrote that its efforts were an evolution of the ICAO-managed multilateral regime, rather than a complete break from prior practices.⁸⁵⁰ While this was a storyline of denial meant to appease foreign states, the activities themselves belie the narrative, which the commenting states listed above argued in their dissent against the proposed regulation.

The U.S. also argued that Article I of the Chicago Convention recognizes each state's sovereign right to manage the airspace above its territory and the logical extension of that argument was Part 129 as a state's sovereign rights to manage airspace security.⁸⁵¹ "An inherent aspect of this sovereignty is the right of each State to protect its inhabitants from potential threats to their safety from foreign aircraft entering its airspace from foreign locations."⁸⁵² The U.S. also argued that it had the right to insert a universal provision in bilateral agreements that "airlines are obligated to comply with the rules for entry and departure in the other contracting party."⁸⁵³

The bilateral air services agreement language ensured that all countries flying to the U.S. agreed to this language and U.S. security oversight as a condition of flight. In 1989, the Federal Register's economic impact statement noted that this would impact 111 foreign air carriers in operation at the time, and cost them \$749,340 to implement.⁸⁵⁴ Adjusted for inflation, this equates to \$1.9 million in 2024.

⁸⁵⁰ Federal Register, "Security Programs for Foreign Air Carriers; Final Rule."

⁸⁵¹ Federal Register, Ibid.

⁸⁵² Federal Register, Ibid.

⁸⁵³ Federal Register, Ibid.

⁸⁵⁴ Federal Register, "Security Programs for Foreign Air Carriers; Final Rule."

The Commission's final report highlighted Part 129 as a key element needed to address aviation security following the Pan Am 103 disaster. Interestingly, the Commission highlighted that Part 129 not only required carriers to submit their security programs to the U.S. for approval, but that they should be required to do so in English.⁸⁵⁵ Symbolically, this served as another U.S. stamp on aviation security by forcing other states to operate in a U.S. language under U.S. requirements. It also demanded another cost of air carriers for translation and written submission to the FAA.

By the time of the final report's issuance on May 15, 1990, the Commission noted that the FAA's estimate of 111 foreign air carriers covered by Part 129 had expanded to 136 carriers.⁸⁵⁶ The FAA noted that 41 of those carriers referred the FAA to their government to resolve the requirement, as the carriers were government-owned and managed, and the new requirement put them in direct conflict with their own state.⁸⁵⁷ The Commission noted that "cooperation has been good, considering the sensitivities involved with issues of extraterritorial application of U.S. laws."⁸⁵⁸ The U.S. was not ignorant of the application of its measures externally, but instead used the opportunity of Pan Am 103's destruction to its security and economic advantage.

⁸⁵⁵ *Report of the President's Commission on Aviation Security and Terrorism*. p. 180

⁸⁵⁶ *Report of the President's Commission on Aviation Security and Terrorism*. p. 180

⁸⁵⁷ *Report of the President's Commission on Aviation Security and Terrorism*. p. 180

⁸⁵⁸ *Report of the President's Commission on Aviation Security and Terrorism*. p. 180

It's the Economy, Stupid

In 1992, James Carville famously said “it’s the economy, stupid” in discussing the major underpinnings of U.S. politics and elections.⁸⁵⁹ Economic interests continued to be at the forefront for U.S. carriers even after Part 129 was in place. U.S. industry wasn’t satisfied with the language in the regulation nor in the Aviation Security Improvement Act of 1990. At an ASAC meeting in 1989, Ed Driscoll, president and chief executive of the National Air Carrier Association (NACA), asked the FAA whether foreign air carriers would have the exact same requirements as U.S. carriers. FAA Civil Aviation Security Division manager Raymond Salazar responded that “the FAA has the authority presently to insist upon security measures like any sovereign nation. Under the provisions of international law at this point dictated by ICAO, the way that those security conditions are imposed upon others is as a result of a threat. If in fact there is a demonstration that is shown against foreign carriers serving the United States, we would not hesitate to insist upon additional security measures.”⁸⁶⁰

With this argument, Salazar effectively that the United States had equal right to impose security measures in response to threat of aviation terrorism as the United Nations body (ICAO) that other states had vested authority in to manage the aviation system. However, the request for equality by the carriers was economic securitization – the desire to have the U.S. regulate foreign counterparts to have them feel the pain of security investments that U.S. carriers claimed were creating disparities in commercial aviation.

⁸⁵⁹ Author Taegan Goddard, “It’s the Economy Stupid - Political Dictionary.”

⁸⁶⁰ Federal Aviation Administration, “Aviation Security Advisory Committee Transcript.”

Like NACA, individual U.S. air carriers also continued to lobby for more foreign air carrier regulation. Pan Am placed an advertisement in *The Washington Post* on May 16, 1990, to argue that U.S. carriers remained at a competitive economic disadvantage, and that U.S. passengers were less safe flying on foreign carriers. “Foreign Airlines benefit from lower security standards: In other words, the very security precautions that U.S. airlines now employ are sending great numbers of American citizens to foreign airlines where lower security standards make boarding procedures easier and faster...but less secure.”⁸⁶¹

Speaking before the President’s Commission on April 4, 1990, Robert Crandall, Chairman and President of American Airlines argued that “all airlines flying in international markets to or from the United States should be required to follow exactly the same security procedures”⁸⁶² He went on to say that “holding U.S. carriers to a higher security standard than that required of foreign flag carriers is eroding the competitive position of U.S. airlines and worsening the already troublesome U.S. trade deficit” and that “we have received many complaints from frequent business travelers – and from the travel agents with whom they deal – objecting to our security procedures and telling us of their intention to use foreign flag carriers for their future international travel. Such action damages us; it also adversely impacts the nation’s perennially negative balance of payments.”⁸⁶³

⁸⁶¹ Pan American World Airways, Inc., “Airline Security: It Is Now Time to Deal with the Issue From a Realistic Perspective.”

⁸⁶² President’s Commission on Aviation Security and Terrorism, “Statement of Robert L. Crandall, Chairman and President, American Airlines, Inc.,” April 4, 1990, President’s Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

⁸⁶³ President’s Commission on Aviation Security and Terrorism, Crandall Statement, Ibid.

While carriers and associations continued to use the cover of security that the Pan Am explosion provided, archival documentation showed it was always paired with an economic argument, as illustrated in the quotes above. Pan Am's appeal to the public led with security but then brought in the convenience – a big economic issue for U.S. carriers – to plea for the public to avoid ease of travel in the name of getting to their destination in one piece. To the Commission, Congress, the FAA, and the Aviation Security Advisory Committee (ASAC), U.S. groups focused intently on the impact to the bottom line for their businesses as well as impact to the U.S. economy writ large. Since aviation deregulation's major impact to the United States' longtime status as an aviation leader in the international arena, these arguments appear to have overruled sovereignty norms and chipped away at other states' rights to manage their own aviation security.

An example of this is the private sector panel of witnesses' testimony before Congress on the Implementation of the Aviation Security Improvement Act in July of 1991. Thomas Kelly, the President of the Air Transport Association representing U.S. carriers, testified that the U.S. carriers were in "dire financial straits" and linked that back to not having a level playing field with the foreign air carriers.⁸⁶⁴ He argued that U.S. carriers were losing first class and business class passengers, in particular, as they avoided the inconvenience of security checks and associated long lines.⁸⁶⁵

⁸⁶⁴ Air Transport Association, "Statement of Thomas C. Kelly, Vice President, Security, Air Transport Association Before the Committee on Public Works and Transportation, Subcommittee on Aviation, U.S. House of Representatives."

⁸⁶⁵ Air Transport Association, Kelly Statement, Ibid.

Kelly went on to say the final rule does “almost nothing in terms of establishing a truly ‘level playing field’ to address “competitive disadvantage with foreign airlines.”⁸⁶⁶ This is an extraordinary statement in light of the unprecedented extraterritorial extension of U.S. regulations onto another state’s infrastructure and operations. Throughout his statement, he repeats the phrase “competitive disadvantage” multiple times, referring to security requirements as “expensive” and impactful to the “ease and speed of processing the passenger.”⁸⁶⁷

In response to Kelly’s testimony, Congressman Oberstar stated that the White House “policy folk” removed the “similar level of security” language due to sovereignty issues and not wanting to “offend our foreign trading partners.”⁸⁶⁸ He went on to say that the White House saw it as an economic and “commercial matter not a security matter,” which Oberstar called “nonsense.”⁸⁶⁹

To address the continued complaint of U.S. carriers and associations, in July of 1991, the FAA revised Part 129 further, and its annual report to Congress on aviation security noted that foreign air carriers were now being required to provide a “similar level of protection” as U.S. air carriers at the same airport.⁸⁷⁰ This more closely mirrors language in the Aviation Security Improvement Act of 1990, but is difficult to demonstrate in effect. In 1994, GAO evaluated this particular provision, and the idea that foreign air carriers were providing less security protection to U.S.

⁸⁶⁶ Air Transport Association, “Statement of Thomas C. Kelly, Vice President, Security, Air Transport Association Before the Committee on Public Works and Transportation, Subcommittee on Aviation, U.S. House of Representatives.”

⁸⁶⁷ Air Transport Association Kelly Statement, Ibid.

⁸⁶⁸ “Implementation of the Aviation Security Improvement Act of 1990.”

⁸⁶⁹ United States Congress House Committee on Foreign, *The Aviation Security Improvement Act of 1990*.

⁸⁷⁰ Federal Aviation Administration, “Annual Report to Congress on Civil Aviation Security,” 1991, Pan Am 103 Special Collections Research Center, Syracuse University, Richard Paul Monetti Papers, Box 35. P. 3

citizens while simultaneously maintaining a competitive advantage.⁸⁷¹ As part of the audit, FAA responded to GAO that U.S. carriers were required to maintain and pay for security standards even in the absence of threat, where foreign carriers had not been.⁸⁷² The ATA continued to message that U.S. carriers were at a competitive advantage because of the difference in security requirements.⁸⁷³

GAO discussed Part 129 in light of those arguments, discussing how FAA provided a “model security program” that carriers may adopt to comply with FAA regulations.⁸⁷⁴ While the FAA initially received foreign air carrier’s own operating plans, in September of 1992, the FAA required all foreign carriers to adopt the FAA’s program.⁸⁷⁵ This program was later named the Foreign Air Carrier Model Security Program (MSP) and is still (in 2025) a mandatory written program that all foreign air carriers flying to the United States must follow.

In 1994, U.S. carriers were still not placated by the significant legislative burden placed on their foreign counterparts. Per the GAO, “Domestic carriers argue that they are losing full-fare business travelers-lucrative passengers for U.S. airlines—who are not willing to wait in check-in lines or to arrive at airports 2 hours ahead of schedule to pass screening. This effect is difficult to measure, and airline officials with whom we spoke could not provide us with data indicating that they are at a competitive disadvantage.”⁸⁷⁶ GAO noted that this narrative was difficult to

⁸⁷¹ U. S. Government Accountability Office, “Aviation Security: Additional Actions Needed to Meet Domestic and International Challenges,” no. RCED-94-38 (January 27, 1994), p. 20

⁸⁷² U. S. Government Accountability Office, Ibid.

⁸⁷³ U. S. Government Accountability Office, Ibid.

⁸⁷⁴ U. S. Government Accountability Office, Ibid. p. 21

⁸⁷⁵ Federal Aviation Administration, “Annual Report to Congress on Civil Aviation Security,” 1994.

⁸⁷⁶ U. S. Government Accountability Office, “Aviation Security: Additional Actions Needed to Meet Domestic and International Challenges,” no. RCED-94-38 (January 27, 1994), p. 26.

quantify, though the U.S. Department of Transportation (DOT) attempted to do so in 1990.⁸⁷⁷

Data was inconclusive, and DOT could not determine whether a competitive disadvantage was actually occurring.⁸⁷⁸ Since these efforts were all conducted in the name of security, the lack of data proving a disadvantage is problematic. Further, the study occurred a full year after the new regulation had been implemented, rather than before.

While this perhaps speaks more to the shock impact of Pan Am 103 and the desire to do something, however relevant, it is significant that the landscape of aviation security was changed without any evidence that the change was needed. Further, the GAO noted that U.S. carriers could have offset their security costs with passenger surcharges as far back as 1985, but never elected to do so, again for “competitive reasons,” fearing a passenger fee would further diminish their customer base.⁸⁷⁹

Security Directives and Emergency Amendments

Airlines fly planes, serve food, and generally do a pretty good job of getting people from one place to another. They are not equipped to fight wars, however...It is unfair and unwise...to ask air carriers to serve as the front line in the terrorists’ war against the West.

- *Steven Emerson and Brian Duffy, The Fall of Pan Am 103*⁸⁸⁰

⁸⁷⁷ U. S. Government Accountability Office, Ibid. P. 26

⁸⁷⁸ U. S. Government Accountability Office, Ibid. P. 26

⁸⁷⁹ U. S. Government Accountability Office, Ibid. P. 26

⁸⁸⁰ Steven Emerson and Brian Duffy, *The Fall of Pan Am 103 : Inside the Lockerbie Investigation* (New York, NY : Putnam, 1990), p. 274

Another significant change following the loss of Pan Am 103 is the creation of U.S. FAA Security Directives. Previously, the FAA issued security bulletins, outlining various threats to aircraft operating into and out of a certain region based on intelligence reporting and recommending a series of actions.⁸⁸¹ These bulletins provided information and guidance, but did not mandate that the U.S. carriers respond. In July of 1989, the FAA revised security bulletins into Security Directives, which became required instructions for U.S. air carriers to follow immediately in response to a threat to aviation.⁸⁸²

Per FAA documentation, Security Directives would be a new means of conveying threats based on location, carrier targeting, attack method, and/or timeframe for activity of concern. The information would also include “mandatory countermeasures and the air carriers are required to acknowledge receipt of the directive and provide specific information on implementation of the countermeasures with a prescribed timeframe.”⁸⁸³ The Commission reviewed this change during their investigation and approved as an important step in addressing growing security issues.⁸⁸⁴ As part of the new requirement, the FAA directed U.S. carriers to immediately draft an implementation plan for Security Directives that it would provide to the U.S. government within 24 hours of the Directive’s issuance. Carriers were then required to produce a report on all actions taken within 72 hours.⁸⁸⁵

⁸⁸¹ Federal Aviation Administration, “Annual Report to Congress on Civil Aviation Security,” 1991.

⁸⁸² Federal Aviation Administration, Annual Report. P. 23

⁸⁸³ Federal Aviation Administration, Annual Report.

⁸⁸⁴ *Report of the President’s Commission on Aviation Security and Terrorism*. pp. 78-79

⁸⁸⁵ Federal Aviation Administration, “Department of Transportation Selected Aviation Security Initiatives,” May 9, 1990, Pan Am 103 Special Collections Research Center, Syracuse University, Richard Paul Monetti Papers, Box 34.

The U.S. also developed a corollary of the Security Directive model to use with foreign air carriers, known as an Emergency Amendment (EA). Per its 1994 Report to Congress, the FAA noted that it first issued EAs in October of 1992.⁸⁸⁶ That same year, the FAA assessed Murtala Mohammed Airport in Lagos, Nigeria and determined that security measures were not in compliance with ICAO's minimum requirements for aviation security. As a result, not only did the FAA proceed with action against the state to revoke air service, it also issued an EA to the foreign air carriers operating to and from Nigeria while the revocation process was underway.⁸⁸⁷

Per the GAO, during the process of assessing its authority to issue Emergency Amendments, the FAA determined it could not issue Security Directives to foreign air carriers like it did with U.S. carriers. U.S. legal authority did extend to foreign carriers under the FAA Act that created programs and requirements for U.S. carriers.⁸⁸⁸ However, the FAA determined it could use its authority under Part 129 to institute an emergency amendment to the Foreign Air Carrier Model Security Program, and demand immediate action.⁸⁸⁹ This enabled the FAA to keep U.S. and foreign carrier programs and requirements similar.

This is also an important development because as part of foreign air carrier security program, the FAA could consult and negotiate with foreign governments through the State Department over any foreign air carrier dispute to instituting a U.S. security program. However, with the new Emergency Amendments, information was limited to regulated parties or those with a "need-to-

⁸⁸⁶ Federal Aviation Administration, "Annual Report to Congress on Civil Aviation Security," 1994. P. 25

⁸⁸⁷ Federal Aviation Administration, Ibid. P. 25

⁸⁸⁸ U.S. Government Accountability Office, "International Aviation Security: TSA Should Improve Industry Coordination and Its Security Directive and Emergency Amendment Review Process." p. 5 footnote

⁸⁸⁹ U.S. Government Accountability Office. p. 5 footnote

know.” This need-to-know clause included the foreign air carriers but not their governments.⁸⁹⁰

As such, the U.S. began to effectively order foreign air carriers to change operations immediately with no opportunity for dispute or intervention by foreign government officials.

For context in more recent events, the U.S. has used these emergency amendments to require U.S. and foreign air carriers to immediately implement screening measures for shoes after Richard Reid attempted to detonate a shoe bomb in 2001.⁸⁹¹ Security Directives and Emergency Amendments were also issued to carriers following the disrupted 2006 plot to use liquid explosives onboard aircraft.⁸⁹²

Extraterritoriality and Economics

Along with foreign government objections via the Federal Register and ICAO meetings, an FAA White Paper published in 1990 also shows the U.S. government was very intentional about its extraterritorial efforts and how they impacted security and economics in aviation. The paper argues that ICAO’s work is insufficient and too slow, and that “it is the U.S. government position that aviation security must be improved for all air carriers throughout the world in order to avoid the perception that the problem is limited to U.S. carriers only.”⁸⁹³

During 1991 testimony before the House Committee on Transportation, Rep. Oberstar noted that the Committee staff’s inquiries found U.S. carriers were complaining about conflicting measures

⁸⁹⁰ Federal Register, “Security Programs for Foreign Air Carriers; Final Rule.”

⁸⁹¹ “‘Shoe Bomber’ Richard Reid Attempts to Detonate Bombs on Paris-Miami Flight | December 22, 2001,”

⁸⁹² “Liquid Bomb Terror Threat Failures, Archive Papers Reveal,” January 1, 2022, <https://www.bbc.com/news/uk-scotland-59687706>.

⁸⁹³ Federal Aviation Administration, “Civil Aviation Security Improvement Program.”

and having to follow U.S. requirements while overseas, where host government security regulations applied. Rather than easing its own restrictions and allowing another state's measures to stand, the U.S. pushed to have its own security regulations supersede the others.⁸⁹⁴ ATA President Kelly responded to this line of inquiry that "you are absolutely accurate in the fact that we do have some mandates from FAA which we cannot carry out overseas because of national sovereignty laws in those countries."⁸⁹⁵ Rep. Oberstar commented that Congress hoped that placing FAA security officials overseas would "ease these frictions, resolve those differences, and work out the U.S. carrier problems."⁸⁹⁶

The FAA's 1991 Annual Report to Congress on Civil Aviation Security described issues with the U.S. approach to aviation following Pan Am 103. In particular, the report noted that while the Aviation Security Improvement Act of 1990 required a similar level of protection between U.S. and foreign carriers, "foreign governments, however, remain concerned about the extraterritorial application of U.S. law and possibly infringement of their sovereignty...Information other than that relating to compliance with Annex 17 has been difficult to obtain in view of foreign government concerns regarding the extraterritorial application of U.S. law."⁸⁹⁷ The Report noted that all countries the U.S. had extended its requirements to were signatories of ICAO's Chicago Convention and had agreed to those standards – not U.S. standards. Yet the Report also noted compliance with all foreign air carriers, as the consequences to the aviation network and associated revenue losses of not being able to the fly to the United States were too great.⁸⁹⁸ A

⁸⁹⁴ "Implementation of the Aviation Security Improvement Act of 1990."

⁸⁹⁵ "Implementation of the Aviation Security Improvement Act of 1990."

⁸⁹⁶ "Implementation of the Aviation Security Improvement Act of 1990." P. 66

⁸⁹⁷ Federal Aviation Administration, "Annual Report to Congress on Civil Aviation Security," 1991. pp 9-10.

⁸⁹⁸ Federal Aviation Administration.

1994 GAO letter to Congress noted that airlines worldwide remained in a “precarious financial position,” and were therefore unable or unwilling to deny U.S. extraterritorial measures.⁸⁹⁹

In examining these changes, a 1994 GAO Report described the FAA’s attempts to ensure a similar level of protection between carriers and determined that the FAA had not completed its analysis of foreign air carrier program implementation.⁹⁰⁰ The report went on to describe how the FAA had not begun work with foreign carriers to determine the level of compliance with its measures.⁹⁰¹ The U.S. had issued the requirements but had not measured the implementation or effectiveness.⁹⁰² GAO noted that doing so would require “close cooperation with foreign carriers and their governments” but that “FAA officials believe that some foreign carriers will resist efforts to change their policies and procedures. More importantly, FAA officials told us that several issues-including diplomatic sensitivities and the manner in which disagreements regarding the need for additional countermeasures will be resolved-need to be addressed.”⁹⁰³ Given the continued pushback on U.S. extraterritoriality, the FAA advised GAO that compliance with aviation security policies would require bilateral negotiations through the Department of State.⁹⁰⁴

GAO interviews found that negotiations challenging for the U.S., as “some foreign governments, most notably the Western European and Pacific Rim nations, have not been willing to share

⁸⁹⁹ U. S. Government Accountability Office, “Correspondence to Committee on Science, Space, and Technology; U.S. House of Representatives,” September 1994.

⁹⁰⁰ U. S. Government Accountability Office, “Aviation Security,” January 27, 1994. P. 3

⁹⁰¹ U. S. Government Accountability Office, Ibid. P. 23

⁹⁰² U. S. Government Accountability Office, Ibid.

⁹⁰³ U. S. Government Accountability Office “Aviation Security,” January 27, 1994. p. 23

⁹⁰⁴ U. S. Government Accountability Office, Ibid.

some security information with FAA and, according to agency officials, resent FAA for attempting to exert control over their carriers.”⁹⁰⁵ Documents noted that attempts to do more, which domestic interests advocated, could jeopardize foreign relations well beyond just the scope of aviation.⁹⁰⁶ The only place the FAA proposed it might have an easier time with aviation extraterritoriality was “countries that have not developed the sensitivities against the extraterritorial application of U.S. law.”⁹⁰⁷

Indeed, its attempt to gather implementation data, GAO noted that most states in Western Europe refused to allow the FAA to inspect its air carriers for compliance with U.S. security requirements.⁹⁰⁸ Since European governments were responsible for the security they considered the U.S. inspecting their carriers to be a significant sovereignty incursion.⁹⁰⁹ However, GAO found that the FAA was able to inspect carriers from “developing nations” that “view the inspection as a means of joining the growing international aviation community.”⁹¹⁰

GAO concluded that “this complex issue may have competitive implications for domestic airlines in terms of costs and passenger-processing times and will remain controversial until FAA develops guidelines on the specific actions foreign carriers must take to safeguard U.S. passengers.”⁹¹¹ GAO’s documentation revealed that U.S. air carrier and association experts continued to argue that the U.S. had not gone far enough with its changes, and that the FAA

⁹⁰⁵ U. S. Government Accountability Office, Ibid. p. 24

⁹⁰⁶ U. S. Government Accountability Office, Ibid. p. 26

⁹⁰⁷ U. S. Government Accountability Office, Ibid. p. 34

⁹⁰⁸ U. S. Government Accountability Office, Ibid. p. 24

⁹⁰⁹ U. S. Government Accountability Office, Ibid. p. 25

⁹¹⁰ U. S. Government Accountability Office, “Aviation Security: Additional Actions Needed to Meet Domestic and International Challenges,” no. RCED-94-38 (January 27, 1994), pp. 24-25.

⁹¹¹ U. S. Government Accountability Office, Ibid. p. 4

should instead require completely identical requirements of U.S. and foreign carriers.⁹¹²

However, the FAA “could find no instance of a foreign carrier having been targeted by a terrorist group because the United States was the flight’s destination.”⁹¹³ Once again, economics and air carrier interests was a not-so-subtle lurking factor behind U.S. extraterritoriality in aviation security.

In an attempt to separate security from economics, the FAA told GAO investigators that it was unfair and unwise to implement security measures because of economic competition.⁹¹⁴ They expressed concern that “this issue undermines the seriousness of security and plays into the hands of those foreign governments that believe the issue of a similar level of protection is a pretext for introducing nontariff trade barriers.”⁹¹⁵

FAA officials further noted that extraterritorial application of aviation security for commercial means violated the General Agreement on Tariffs and Trade (GATT) (now World Trade Organization) elimination of trade preferences and barriers.⁹¹⁶ It seems from these comments and arguments as well as FAA documentation from the National Archives that the agency was quite concerned about perception that the money was the major drive for post-Pan Am measures. GAO commented that until the FAA had data by which to judge foreign air carrier implementation of U.S. measures, “this issue will remain controversial with domestic carriers.”⁹¹⁷

⁹¹² U. S. Government Accountability Office, Ibid. p. 23

⁹¹³ U. S. Government Accountability Office, Ibid. p. 34

⁹¹⁴ U. S. Government Accountability Office, Ibid. p. 34

⁹¹⁵ U. S. Government Accountability Office, Ibid. pp. 34-35

⁹¹⁶ U. S. Government Accountability Office, “Aviation Security: Additional Actions Needed to Meet Domestic and International Challenges,” no. RCED-94-38 (January 27, 1994), p. 35.

⁹¹⁷ U. S. Government Accountability Office, Ibid. p. 35.

Chapter 13: U.S. Security and International Airports

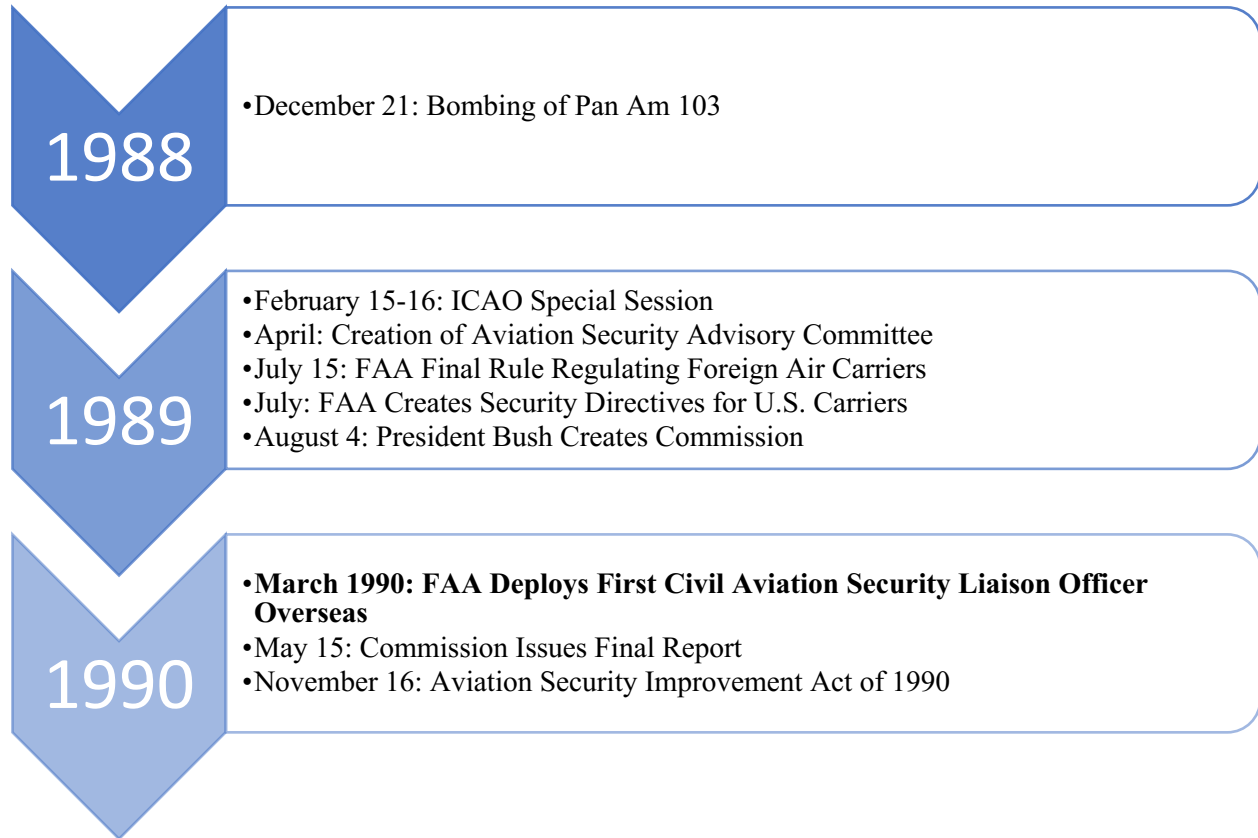


Figure 34: Pan Am 103 Action Timeline (Airports)
Source: Author

At foreign airports, security is generally the responsibility of the host government. To bolster the overall security for U.S. airline passengers, FAA augments host country security at designated high-risk airports by requiring U.S. airlines to provide additional security measures. These measures include passenger questioning and physical searches of passengers and their carry-on baggage.

- *Government Accountability Office Testimony before President's Commission on Aviation Security and Terrorism*⁹¹⁸

⁹¹⁸ U. S. Government Accountability Office, "Proactive Management of FAA's Security Program Needed," December 1989. P. 3

In the years following Pan Am 103, the U.S. changed its posture regarding international airport management. The President's Commission put the U.S. on a path to manage international airspace on its own, even though the U.S. and 162 countries had agreed to ICAO's oversight in the Multilateral Management Regime. However, anything bound for U.S. airspace was deemed a U.S. interest, and so with the push of various coalitions described in Chapter 8, the U.S. expanded outward. The irony of the U.S. holding other airports to ICAO standards was not lost on other states.⁹¹⁹ However, ICAO did not have its own inspection regime until 2002 and therefore had no enforcement mechanisms for enforcing state compliance with its Standards and Recommended Practices.⁹²⁰ The U.S. saw an opportunity and stepped in to oversee the aviation network. This chapter provides more detail about the ways in which the United States expanded its territory outward onto international airports, using securitization to achieve its own policy and economic preferences.

Foreign Airport Security Changes

While noting that states were by and large following ICAO standards – which member states formulated together and the U.S. played a significant role in forming – in the aftermath of Pan Am 103, the U.S. government referred to these standards as “basic or low level of security inadequate for high threat international airports.”⁹²¹ Rather than work through established means and draft stronger ICAO Standards, the U.S. reaction to Pan Am 103 was to update its bilateral air services agreements to take security out of the multilateral space, and insist on its preferred

⁹¹⁹ ICAO Assembly, “ICAO Assembly 27th Session: Plenary Meeting Minutes.”

⁹²⁰ “The Creation of the USAP,” <https://www.icao.int/Security/USAP/Pages/The-Creation-of-the-USAP.aspx>.

⁹²¹ *Report of the President's Commission on Aviation Security and Terrorism*. p. 27

policies with partners directly.⁹²² The U.S. government revised these agreements to include security clauses requiring the partner state to allow any/all U.S. aviation security measures it deemed necessary at Last Point of Departure (LPD) airports.⁹²³ Language from the U.S.-U.K. bilateral agreement, for example, reads:

Each Party agrees to observe the security provisions required by the other Party for entry into, for departure from, and while within the territory of that other Party and to take adequate measures to protect aircraft and to inspect passengers, crew, and their baggage and carry-on items, as well as cargo and aircraft stores, prior to and during boarding or loading. Each Party shall also give positive consideration to any request from the other Party for special security measures to meet a particular threat.⁹²⁴

The reasoning for including security language of this kind was that the LPD airport was the last touchpoint before a flight was bound for the U.S., and therefore the riskiest to U.S. interests and citizens.

The U.S. government also decided to address airport security at foreign airports using money and training to ensure its preferred security outcomes via capacity development.⁹²⁵ Capacity development in the international aviation environment usually involved a state with more experience and/or resources in aviation provided training, technology, or both to a state with poor aviation security (in effect or perception). At international airports, an example might be an

⁹²² *Report of the President's Commission on Aviation Security and Terrorism.*

⁹²³ *Report of the President's Commission on Aviation Security and Terrorism.*

⁹²⁴ "U.S.-UK Air Transport Agreement of November 2020," *United States Department of State*.

⁹²⁵ *Report of the President's Commission on Aviation Security and Terrorism.*

airport with little to no technology and/or understanding of how best to prevent attacks against airports or aircraft.⁹²⁶

Under the 1985 U.S. law, the International Security and Development Cooperation Act, states with Last Point of Departure air service to the U.S. and with poor airport security results could either address the findings themselves, or do it under the capacity development regime with the support of the U.S. or ICAO resources. However, any state wishing to continue service to the U.S. was required to take corrective action. If they did nothing, it would trigger the U.S. requirements for 90-day review and Secretarial Action. This process began with notice to the public of an airport's failures and, if still not addressed, culminated with termination of air service to the U.S.⁹²⁷ Referred to as 90-day action, this process served as a significant punishment to states that resisted U.S. measures, particularly on the economic front. Flying to the U.S. was – and remains – a major revenue driver for international airlines, and serves as a great incentive to submit to U.S. oversight.⁹²⁸ The U.S. initiated four 90-day actions against airports from the period of 1986-1990.⁹²⁹

While the Foreign Airport Assessment Program predated Pan Am, FAA documentation from 1990 revealed significant pushback from other states as to U.S. impositions on their sovereignty. This is notable since all of the new activity post Pan Am 103 expanded on each of these concerns. An FAA White Paper from January 12, 1990, cites significant “friction” with host

⁹²⁶ ICAO Assembly, “ICAO Assembly 27th Session: Plenary Meeting Minutes.”

⁹²⁷ Nancy Jean Strantz, “Aviation Security and Pan Am Flight 103: What Have We Learned,” *Journal of Air Law and Commerce* 56, no. 2 (1991 1990): 413–90. p. 467.

⁹²⁸ “Economic Impact of Commercial Aviation,” Airlines For America. <https://www.airlines.org/impact/>.

⁹²⁹ *Report of the President's Commission on Aviation Security and Terrorism*.

governments.⁹³⁰ “Some foreign authorities have expressed strong objections to the foreign airport assessment program. These authorities claim they alone are responsible for determining whether or not their airports meet ICAO Annex 17 security standards. **They believe the U.S. assessments are unnecessary, violate extraterritorial principles, and in some cases, are insulting.**”⁹³¹

Given these concerns and significant sovereignty issues, it is interesting that the Commission and Congress expanded on an idea fraught with diplomatic issues. In 1990, following Pan Am 103, the FAA reported requesting 120 new security positions, including 41 to be based overseas. Many of these included international security inspectors designed to be based abroad for easy access to international airports.⁹³² The FAA’s 1991 budget request included 164 new security positions, including a regional FAA office to be placed in Brussels, Belgium. Many positions in security functions that were not directly placed overseas still supported U.S. security efforts by traveling to assess international Last Point of Departure airports.⁹³³

The GAO testified before the President’s Commission in December of 1989 that the FAA needed more oversight of international airport security postures and how governments were managing their airports.⁹³⁴ GAO also outlined how after Pan Am, the FAA required that airports they deemed high-risk, or extraordinary, have additional security measures on U.S.-bound flights.⁹³⁵

⁹³⁰ Federal Aviation Administration, “Civil Aviation Security Improvement Program.”

⁹³¹ Federal Aviation Administration, Ibid. P. 25

⁹³² Federal Aviation Administration, “Department of Transportation Selected Aviation Security Initiatives.”

⁹³³ Federal Aviation Administration, Ibid.

⁹³⁴ U. S. Government Accountability Office, “Proactive Management of FAA’s Security Program Needed.” p. 10.

⁹³⁵ U. S. Government Accountability Office, Ibid. P. 10

The FAA also required U.S. carriers to use expensive security technology at international airports, such as Walk Through Metal Detectors (WTMD), X-Ray machines and/or Thermal Neutron Analysis (TNA) explosives detection equipment.⁹³⁶ This equipment had a significant footprint in cost, weight, and space – often needing reconfiguration of foreign airports to accommodate the gate area needed for U.S.-bound screening.⁹³⁷ Using U.S. air carriers as a mechanism for security allowed the U.S. government to manage another state’s airport by proxy, taking over its space such that it extended its own sovereignty onto another state with no reciprocation.

As the U.S. government had no direct means to take over sole control of airport security short of an invasion of U.S. security personnel, it used the claim of U.S. sovereignty in landing rights. The FAA required that U.S. air carriers conduct screening, manage baggage security, and examine battery operated/electronic devices, which it mandated at both U.S. and international airports.⁹³⁸

Civil Aviation Security Liaison Officers

However, influencing international aviation security at foreign airports just via U.S. air carriers was not sufficient in the larger security scheme. The U.S. further enhanced its extraterritorial reach by placing permanent personnel overseas to serve as aviation oversight officials in locations of concern to U.S. aviation and intelligence officials.⁹³⁹ To determine these locations,

⁹³⁶ U. S. Government Accountability Office, “Aviation Security: Development of New Security Technology Has Not Met Expectations,” no. RCED-94-142 (May 19, 1994).

⁹³⁷ *Report of the President’s Commission on Aviation Security and Terrorism*.

⁹³⁸ U. S. Government Accountability Office, “Aviation Security,” January 27, 1994.

⁹³⁹ *Report of the President’s Commission on Aviation Security and Terrorism*. pp 39-40

the FAA received information via U.S. intelligence channels about areas of high-threat for terrorism, and dubbed the corresponding airports as “extraordinary locations.”⁹⁴⁰

The creation of the Civil Aviation Security Liaison Officer (CASLO) put other countries in an interesting position. By law, the CASLO position was established “for each airport outside the United States at which the Administrator determines that such an Officer is necessary for air transportation security.”⁹⁴¹ The intention was to create almost a mini-Embassy or diplomatic sphere within another country’s territory. Salter referred to this as “up-streaming of international borders” in discussing a similar concept known as Preclearance.⁹⁴² Preclearance is a program that allows the U.S. to position customs officials at overseas airports and claim designated space within that airport as sovereign U.S. territory. Canada was an early partner in this program, with a formalized agreement signed in 1974.⁹⁴³ In this agreement, “the borders of the United States do not remain at its geographical limits, but are extended over ‘variegated authority and overlapping sovereignties.’”⁹⁴⁴

While the Commission recommendations and congressional testimony indicate these liaisons were meant to be stationed at the foreign airports directly, the Aviation Security Improvement Act of 1990 stopped short of requiring this in statute.⁹⁴⁵ Archival documentation indicates this appears to be based on pushback both from the Department of State as well as foreign partners at

⁹⁴⁰ U. S. Government Accountability Office, “Aviation Security,” January 27, 1994.

⁹⁴¹ “Aviation Security Improvement Act of 1990.”

⁹⁴² Peter Adey, *Aerial Life*, 2010, p. 76.

⁹⁴³ Adey, Ibid. P. 76

⁹⁴⁴ Adey, Ibid. P. 76

⁹⁴⁵ *Report of the President’s Commission on Aviation Security and Terrorism.*

the idea of the U.S. being directly responsible for foreign airport management.⁹⁴⁶ FAA documentation shows that not only were some countries opposed to – and in many cases insulted by – the positioning of U.S. personnel overseas to manage their airports, but they also requested information on “what actions the United States government is taking to enhance security measures at [U.S.] airports since so many additional procedures have been implemented/required by FAA regulations abroad.”⁹⁴⁷ This included many European partners in particular, such as the U.K, Switzerland, Germany, and the European Civil Aviation Conference (ECAC).

The FAA also indicated that many foreign governments wanted to understand not only why the U.S. was focusing abroad when it should be implementing security at its own airports, but they wanted to invert the Foreign Airport Assessment Program back on the U.S. and receive reports on how U.S. was complying with ICAO Standards.⁹⁴⁸ The document indicates strong diplomatic concern with U.S. measures and personnel at international airports, and refutation of the U.S. assertion that the U.S. did not face the same threat of attack on civil aviation at its own airports as existed overseas.⁹⁴⁹

Since other states resisted placement of U.S. personnel at airports, CASLOs were posted at U.S. embassies as part of the U.S. diplomatic contingent. Placing CASLOs at U.S. embassies allowed for the use of established and internationally recognized methods for placing personnel at an overseas location versus creating a new, event-based, aviation-specific cadre. However, with the weight of U.S. ambassadors behind them, American aviation experts still had significant

⁹⁴⁶ Federal Aviation Administration, “Civil Aviation Security Improvement Program.”

⁹⁴⁷ Federal Aviation Administration, Ibid.

⁹⁴⁸ Federal Aviation Administration, Ibid.

⁹⁴⁹ Federal Aviation Administration, “Civil Aviation Security Improvement Program.”

bargaining and enforcement power with their counterparts to require the U.S. preferred security posture at international airports. Based on their recommendations, the U.S. government could move to provide or withhold money for training, technology, or assistance; move toward adverse actions against a state to withhold landing rights in the U.S.; and/or require additional security measures at the international airport for both U.S. and foreign air carriers.

FAA documentation also shows that U.S. personnel had anticipated Pan Am 103 shifting the climate and making the CASLO concept more palatable to foreign governments.⁹⁵⁰ Congress appears to have attempted to use global sentiment and sympathy to push for additional personnel in spite of international – and even U.S. Department of State – concerns.⁹⁵¹ The same report notes that the U.S. Senate Foreign Relations Committee asked for the FAA to report on plans for deploying another 27 to 30 personnel to be based overseas in Fiscal Year 1990.⁹⁵²

By that point the FAA was able to report that it had received approval for CASLOs based in Brussels, Belgium; London, United Kingdom; Frankfurt, Germany; and Ankara, Türkiye.⁹⁵³ However, other countries denied the U.S. denied permission for CASLOs in their States, including Denmark, India, Italy, France, Egypt, Switzerland, Spain, and Türkiye.⁹⁵⁴ In the face of rejection from many strong partners, the FAA began to explore the possibility of CASLOs in Asia Pacific and South America regions, though the direction from the Commission and Congress had been Europe and the Middle East regions.⁹⁵⁵

⁹⁵⁰ Federal Aviation Administration, Ibid.

⁹⁵¹ Federal Aviation Administration, Ibid.

⁹⁵² Federal Aviation Administration, Ibid.

⁹⁵³ Federal Aviation Administration, “Civil Aviation Security Improvement Program.”

⁹⁵⁴ Federal Aviation Administration. pp. 4-5

⁹⁵⁵ *Report of the President’s Commission on Aviation Security and Terrorism.*

While measures such as PPBM, cargo and mail screening, and other aviation security concepts were considered for the U.S., the Commission, Congress, and the Executive Branch/FAA decided against implementation.⁹⁵⁶ Such rejection was mostly on the grounds of increased airport processing times and associated costs.

Imposition of additional security measures for domestic airports or air carriers operating within the U.S. would result in increased inspection times [and]... impose increased costs upon airports and air carriers... There has been strong support from some Members of Congress on a number of international security initiatives, yet these same Members have joined with industry in taking positions against domestically focused initiatives.

- Federal Aviation Administration Document: "Civil Aviation Security Improvement Program"⁹⁵⁷

The dual standard of lax U.S. restrictions domestically and increased security requirements internationally was not lost on foreign partners, and was a significant point of contention with the CASLO concept as well as regulation of foreign air carriers. By 1994, the GAO reported that only 17 CASLOs had been placed of the 30 that Congress wanted in 1990.⁹⁵⁸ GAO noted that the CASLOs primarily "assist[ing] U.S. carriers by negotiating with foreign aviation authorities to satisfy the security requirements of FAA and the host country," which was a far cry from the

⁹⁵⁶ Federal Aviation Administration, "Positive Passenger Baggage Matching (PPBM) R&D Project Plan (Revision 1)."

⁹⁵⁷ Federal Aviation Administration, "Civil Aviation Security Improvement Program."

⁹⁵⁸ U. S. Government Accountability Office, "Aviation Security: Additional Actions Needed to Meet Domestic and International Challenges," no. RCED-94-38 (January 27, 1994),

original intent of running international airport operations, and yet still demonstrated a shift toward a U.S.-based and U.S.-driven aviation security model. The GAO reported that part of the importance of the CASLO role was to promote consistency between FAA's and host countries' security requirements."⁹⁵⁹ The consistency was less about shifting U.S. security requirements to that of the international domain, and more about using the aviation network to shift the international domain toward U.S. preferences.

Capacity Development and Technical Assistance

The final notable change post-Pan Am 103 at international airports was the insertion of capacity development assistance. Discussed briefly above, capacity development typically included technical support, training, and/or equipment donation provided to international airports to help them meet their requirements under ICAO Annex 17. However, this also provided a method for the United States to imprint its own method of conducting aviation security on other locations. The Commission referred to ICAO standards as "basic or low level of security that is inadequate for high threat international airports"... that would "be most effective at low-threat airports in smaller, less industrialized countries."⁹⁶⁰ The U.S. determined that any link in the international aviation security chain was a potential risk if only following ICAO requirements. Capacity development provided a means for introducing U.S. requirements anywhere and everywhere by providing the equipment and training to under the U.S. model.

⁹⁵⁹ U. S. Government Accountability Office, "Aviation Security," January 27, 1994. pp. 16-17

⁹⁶⁰ *Report of the President's Commission on Aviation Security and Terrorism*. pp. 27-28

Internationally, capacity development was already well established under ICAO, which had its own program for poorly resourced countries funded by the United Nations Development Program (UNDP).⁹⁶¹ ICAO provided funds for security upgrades, personnel training, and regional assistance seminars.⁹⁶² In 1990, ICAO provided \$1.2 million for the Asia Pacific region alone in technical assistance, particularly looking at training for passenger and baggage screening.⁹⁶³

In the U.S., capacity development was initially authorized under Section 572 of the Foreign Assistance Act of 1961.⁹⁶⁴ It provided a “small portion” of funds through the State Department to direct training and equipment where the U.S. found issues under the FAAP.⁹⁶⁵ However, the scope was limited and ad hoc, as “the State Department views aviation security as merely one portion of its larger counterterrorism program” and “the FAA has only provided direct technical assistance on civil aviation security...in specific and unusual cases.”⁹⁶⁶ Under the Aviation Security Act of 1990, Congress added a requirement that all training on aviation security should be reported to Congress for their awareness and visibility.⁹⁶⁷ Both the Commission and Congress urged use of this method to advance global aviation security measures.

In response, the FAA reported to Congress that it was “currently evaluating the need to provide a formal technical security assistance program which would assist many airports in reaching and

⁹⁶¹ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 35

⁹⁶² *Report of the President’s Commission on Aviation Security and Terrorism*. p. 35

⁹⁶³ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 35

⁹⁶⁴ “Foreign Assistance Act of 1961,” Pub. L. No. P.L. 87-195 (1961).

⁹⁶⁵ *Report of the President’s Commission on Aviation Security and Terrorism*.

⁹⁶⁶ *Report of the President’s Commission on Aviation Security and Terrorism*. pp. 35-36

⁹⁶⁷ “Aviation Security Improvement Act of 1990.” Section 213

maintaining an acceptable level of compliance with the ICAO SARPs.”⁹⁶⁸ FAA officials also wrote that this kind of partnering might “reduce friction” between the U.S. and international partners regarding the FAAP, particularly with regard to sovereignty concerns over the U.S. determining ICAO compliance extraterritorially.⁹⁶⁹ The FAA further saw this as an opportunity to reduce concern over its extraordinary measures – mandatory policies that were applied to regions of concerns to the U.S., such as Western Europe and the Middle East.⁹⁷⁰

As the FAA issued measures post-Pan Am, it also sent a team of inspectors to “ensure compliance,” which was likewise met with concern by foreign counterparts. The FAA reported that countries pushed back on requirements by not permitting the technology’s installation, nor providing space for passenger screening per FAA requirements.⁹⁷¹ Capacity development allowed the FAA to lessen international concerns somewhat, as the U.S. provided. The FAA provided money and equipment rather than demanding it of other countries. However, the U.S. still encountered pushback, such as the government of The Netherlands prohibiting U.S. aviation security activities.⁹⁷²

By 1994, the GAO reported that the FAA was “also helping foreign countries develop new technology because officials believe that equipment deployed at foreign airports benefits

⁹⁶⁸ Federal Aviation Administration, “Briefing Material Submitted for the Record; President’s Commission on Aviation Security and Terrorism Public Hearing.”

⁹⁶⁹ Federal Aviation Administration, Ibid.

⁹⁷⁰ Federal Aviation Administration, Ibid.

⁹⁷¹ Federal Aviation Administration, Ibid.

⁹⁷² Federal Aviation Administration, “Briefing Material Submitted for the Record; President’s Commission on Aviation Security and Terrorism Public Hearing.”

Americans traveling abroad.”⁹⁷³ Over the course of 1990-1994, the FAA capacity development program had become more established, and grown into a multi-government cooperative agreement.⁹⁷⁴ GAO also noted that FAA officials had become regular participants in international aviation security forums and were often invited to support equipment installation and testing at foreign airports.⁹⁷⁵

ICAO had offered capacity development and technical assistance prior to Pan Am 103, but the bombing gave the U.S. an opportunity to create its own program. While the FAA initially resisted creating a new program, the Commission’s report and passage of the Aviation Security Implementation Act provided strong motivation to create an assistance mechanism.⁹⁷⁶ This also provided another method for U.S. security dominance via a carrot rather than a stick. By incentivizing countries to comply by providing training, technology, and funds, the U.S. had another avenue to imprint its own aviation security blueprint on other states. As such, many countries that would have resisted U.S. expansion agreed to its aviation security approach.⁹⁷⁷ In some cases, this appears to be due to the U.S. providing a cost-free means of complying with ICAO Standards and Recommended Practices.⁹⁷⁸ In others, these exchanges appear to have reduced the international barrier to U.S. policy and personnel exportation.

⁹⁷³ U. S. Government Accountability Office, “Aviation Security: Development of New Security Technology Has Not Met Expectations,” no. RCED-94-142 (May 19, 1994), p. 11.

⁹⁷⁴ U. S. Government Accountability Office, *Ibid.*

⁹⁷⁵ U. S. Government Accountability Office, *Ibid.*

⁹⁷⁶ McMunn, “Memorandum: Hearings on the Hill.”

⁹⁷⁷ Federal Aviation Administration, “Annual Report to Congress on Civil Aviation Security,” 1991.

⁹⁷⁸ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 180

Additionally, most of the equipment purchased, used, and donated by the United States at the time (and in 2025) are manufactured by U.S. companies. This included Science Applications International Corporation (SAIC) whose thermal neutron analysis (TNA) machines for detection of plastic explosives were referenced repeatedly in the Commission's report.⁹⁷⁹ It also included the required X-ray and walk-through metal detectors required at U.S. airports and by U.S. carriers wherever they flew. These two types of security technology were primarily produced by Philips Electronic Instruments and Bendix Corporation.⁹⁸⁰

Through these various avenues of personnel, funds, and technology, the U.S. had opportunities to provide other countries with both carrots and sticks to comply with its policy preferences, demonstrating once more the use of network positioning and power for weaponized interdependence in aviation.

⁹⁷⁹ *Report of the President's Commission on Aviation Security and Terrorism*. P. iv

⁹⁸⁰ David J. Haas, "The Two Inventors Who Made Airline Travel Safer," *Smithsonian*, 2021, <https://invention.si.edu/invention-stories/two-inventors-who-made-airline-travel-safer>.

Chapter 14: The Politics of Sovereignty

In December of 1989, nearly one year after the Pan Am 103 bombing, the FAA held a Regulatory Review Meeting with the public. At the meeting, Frank Moss, a State Department representative, mentioned the “extreme bilateral diplomatic problems” that the United States was experiencing in aviation security.⁹⁸¹ He noted that this was particularly challenging in executing the new Aviation Security Improvement Act of 1990 requirements for airport and air carrier security measures.

That same month, in a meeting with the President’s Commission’s investigative staff, FAA Director of Civil Aviation Security Ray Salazar shared the limitations in addressing security overseas – namely that the FAA could recommend improvements but had “no authority to tell foreign governments what to do...if FAA had a security concern and the only standards foreign countries have are the basic ICAO standards, then FAA can do no more.”⁹⁸² The FAA strongly recommended using ICAO to address aviation security, as that was the longstanding method for addressing global aviation security standards.⁹⁸³ Utilizing the authority that Congress provided in the wake of Pan Am 103 proved extremely challenging for the U.S. government.

This chapter explores the politics of sovereignty, exploring the geopolitical issues involved in U.S. securitization and extraterritoriality following the bombing of Pan Am 103.

⁹⁸¹ Federal Aviation Administration, “Regulatory Review Meeting,” December 15, 1989, Pan Am 103 Special Collections Research Center, Syracuse University, Richard Paul Monetti Papers, Box 34.

⁹⁸² President’s Commission on Aviation Security and Terrorism, “Investigative Notes: Meeting with FAA Officials.”

⁹⁸³ President’s Commission on Aviation Security and Terrorism, Investigative Notes, Ibid.

U.S. Politics

“Whether states balance against threats is not primarily determined by systemic factors but rather, like all national security decisions, by the domestic political process.”

- *Randall Schweller, Unanswered Threats: Political Constraints on the Balance of Power*⁹⁸⁴

Throughout the 1980s, U.S. politics generally split along nationalist (Republican) and internationalist (Democrat) lines on foreign policy. The nationalist view supported a policy of U.S. power in the international sphere, rather than ceding U.S. power to liberal institutions like the United Nations.^{985 986} As Mearsheimer notes, “international politics has always been a ruthless and dangerous business, and it is likely to remain that way” and “multipolar systems with powerful states are the most dangerous.”⁹⁸⁷ With a goal of power in the state system versus cooperation, Republican politics supported a strong U.S. approach to security generally, moving away from the multilateral management era. Jervis also notes that “technology and geography are the two main factors that determine whether the offense or the defense has the advantage.”⁹⁸⁸ With terrorists able to outstrip detection technology in the aviation environment, the Republican approach was to push outward and move the risk from U.S. shores to all other international airports.

⁹⁸⁴ Randall L. Schweller, “Unanswered Threats: A Neoclassical Realist Theory of Underbalancing,” *International Security* 29, no. 2 (October 2004): 159–201, p. 166.

⁹⁸⁵ John J. Mearsheimer, *The Tragedy of Great Power Politics (Updated Edition)* (W. W. Norton & Company, 2003). P. 2

⁹⁸⁶ Hans J. Morgenthau, *Politics among Nations: The Struggle for Power and Peace*, 5. ed., rev (New York: Knopf, 1978). p. 21.

⁹⁸⁷ Mearsheimer, *The Tragedy of Great Power Politics (Updated Edition)*. Pp. 2, 5

⁹⁸⁸ Mearsheimer. P. 194

Busby and Monten report that polling data from 1982 to 2004 shows the American public to have been more supportive of international institutions than the Republican party, but less supportive of military deployments overseas or foreign aid.⁹⁸⁹ Republican leadership demonstrated significant investment in, and rhetoric for, U.S. power overseas – whether military or commercial.⁹⁹⁰ The Republican Party Platform from 1984 laid out several noteworthy views, including the importance of the U.S. having supremacy in foreign policy, pledging to “keep the peace by keeping our country stronger than any potential adversary” and insisting on competitive advantage for U.S. companies with foreign counterparts.⁹⁹¹

Patrick and Forman discuss the struggle the U.S. had with multilateral engagement in the 1980s under more Republican/realist leadership, noting that it had become “more difficult for the United States to use the UN as an instrument of U.S. policy and, consequently, made Washington less interested in strengthening the capacities of the world body.”⁹⁹² Further disagreements on capitalism and economics, they argue, made the U.S. less interested in supporting UN efforts, withholding UN dues throughout the 1980s.⁹⁹³ Higgott argues this was also a time of significant economic tension between the U.S. and its foreign counterparts, particularly with Europe and Asia given its significant economic growth.⁹⁹⁴ This may shed

⁹⁸⁹ Busby and Monten, “Republican Elites and Foreign Policy Attitudes.” . 106.

⁹⁹⁰ Busby and Monten, *Ibid.*

⁹⁹¹ “Republican Party Platform of 1984 | The American Presidency Project.”

⁹⁹² Patrick and Forman, *Multilateralism and U.S. Foreign Policy*. p. 269.

⁹⁹³ Patrick and Forman, *Ibid.* p. 274

⁹⁹⁴ Richard Higgott, “US Foreign Policy and the ‘Securitization’ of Economic Globalization,” *International Politics* 41, no. 2 (June 2004): 147–75.

additional light on both the U.S. interest in economics of aviation security as well as the pushback from Europe and Asia in particular with regulating and overseeing its carriers.

Democratic politics at the time supported a more liberal internationalist view, with integration in the international space through a variety of multilateral institutions that emerged after World War II. However, as Keohane points out, “interdependence can transmit bad influences as well as good ones: unemployment or inflation can be exported as well as growth and prosperity.”⁹⁹⁵ In other words, it is important to understand the drawback to these institutions and networks as well as their benefits. Keohane also notes that the United States had a significant role in shaping the multilateral system since 1945⁹⁹⁶ as seen in Chapter 4 and 5 discussing the Aviation Building and Multilateral Management aviation regimes. While the U.S. helped build and supported these institutions, it also had a complicated relationship with them given its own interests in global politics.

In 1980, Democratic party politics centered around a “constructive and secure” relationship with foreign partners.⁹⁹⁷ Democrats supported alliances and institutions, but were also focused on security and economic strength, which created some opportunity for alignment with Republicans, as seen in the aftermath of Pan Am. The 1984 Democratic Party Platform added new concern about foreign competition “changing the face of American industry.”⁹⁹⁸ The focus on foreign competition was also linked to deregulation and the “serious threats to our traditional financial

⁹⁹⁵ Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton University Press, 1984), p. 5.

⁹⁹⁶ Keohane, *After Hegemony*. Pp. 5, 26

⁹⁹⁷ “1980 Democratic Party Platform | The American Presidency Project.”

⁹⁹⁸ “1984 Democratic Party Platform | The American Presidency Project.”

goals.” By this time, as noted in Chapter 7, aviation deregulation was creating significant turmoil in the aviation industry.

Of particular note and importance to shed light on the Democratic take on Pan Am and discussions by Democratic Members of Congress at subsequent hearings, is this Party Platform quote: “We believe in a responsible defense policy that will increase our national security. We believe in a foreign policy that respects our allies, builds democracy, and advances the cause of human rights. We believe that our economic future lies in our ability to rise to the challenge of international economic competition by making our own industries more competitive.”⁹⁹⁹ The focus on international economics sheds light on much of the alignment between parties to address the U.S. industry complaints of competitive advantage among air carriers.

Both Republicans and Democrats converged around their support for U.S. businesses and economic interests during congressional hearings on Pan Am 103, the Presidential Commission, and the Aviation Security Improvement Act of 1990. The leaderships of both parties strongly supported regulating foreign air carriers, even as the U.S. deregulated its own carriers. In the name of security, they managed to overcome significant differences in approach to foreign policy at the time. Hearing records indicate that Democrats chose the economics of an American labor issue over their usual support for multilateral solutions to international issues. As Rep. Oberstar repeatedly said, the competitive disadvantage to passengers, pilots, crew, and the airline business structure itself, was paramount.¹⁰⁰⁰ Republicans, meanwhile, were opposed to government regulation, but supported it in the name of a realist foreign policy. In their view, U.S. policy and

⁹⁹⁹ “1984 Democratic Party Platform | The American Presidency Project.”

¹⁰⁰⁰ United States Congress House Committee on Foreign, *The Aviation Security Improvement Act of 1990*.

security posture should override multilateral structures to keep the public safe and American businesses in the preeminent position overseas. The party politics at play are important elements to understand how and why the U.S. agreed on such a significant extraterritorial shift and overrode the previous regime's norms.

Geopolitical Aviation Security Issues

Over the period of 1987 to 1989, the U.S. saw an increase in confirmed or suspected terrorist activity, including aviation incidents. However, after 1989, GAO argued that geopolitical tensions and terrorist activity began to ease, as shown in the chart below using FBI data.¹⁰⁰¹

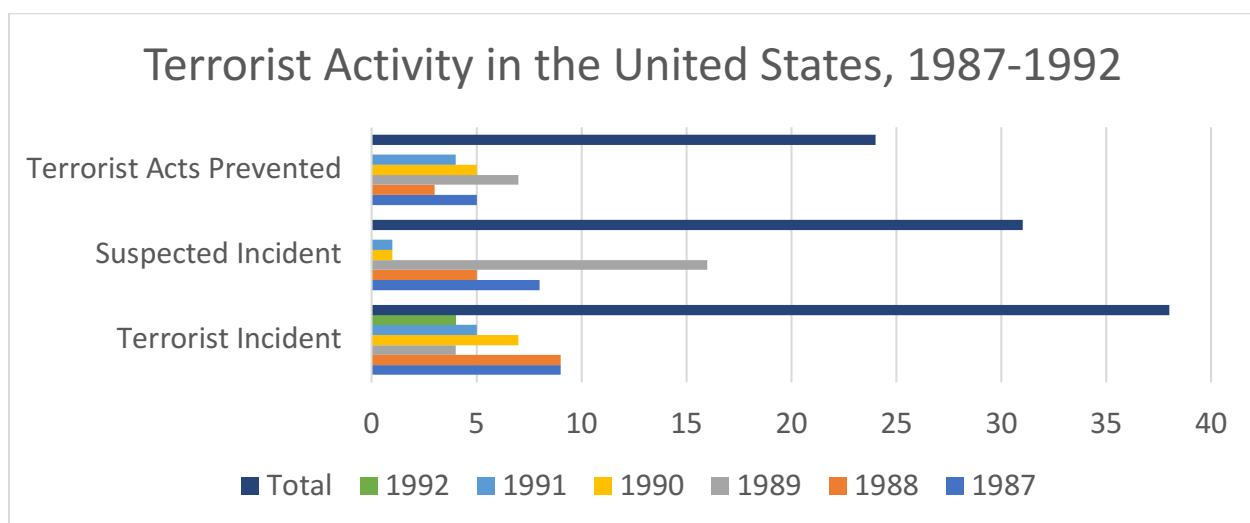


Figure 35: Terrorist Activity in the United States, 1987-1992
Source: GAO, FBI

The GAO argued that a combination of the Soviet Union dissolving, and Persian Gulf War activity led to a calmer environment in international relations, such that by 1992, terrorist

¹⁰⁰¹ U. S. Government Accountability Office, "Aviation Security: Additional Actions Needed to Meet Domestic and International Challenges," no. RCED-94-38 (January 27, 1994).

incidents fell to a low not seen since 1975.¹⁰⁰² While tensions eased, the U.S. worked to impress on domestic and international counterparts that even more should be done on the security front, especially in aviation.¹⁰⁰³ Further, U.S. officials at FBI, State, and FAA argued that terrorist activity was more likely to occur in Europe rather than the United States.¹⁰⁰⁴ This meant that there was not only a fight to make security relevant at a time when they began to dwindle, but there was also no direct threat to U.S. soil requiring this activity.

Where there were bombings and attempts to attack aviation, they occurred on and to a broad range of aircraft and countries worldwide, including Korean Airlines, Canadian Pacific, Ethiopian Airlines, Philippine Airlines, Austrian Airlines, Air India, Avianca, Gulf Air, etc.¹⁰⁰⁵ The Commission used this as an example of why the U.S. should regulate all carriers – U.S. and foreign, rather than demonstrating how each state was responsible for its own aircraft security in addition to ICAO’s responsibility to address this universally.¹⁰⁰⁶ Moreover, the U.S. argument does not consider a reasonable counterargument that other countries whose passengers flew on American aircraft could then attempt to regulate U.S. carriers to ensure the utmost security for passengers.

Meanwhile, U.S. aviation security measures continually grated against other states’ sovereignty, even prior to placing U.S. officials overseas and regulating foreign air carriers. For instance, up until 1989, French law prohibited anyone but French government security forces searching

¹⁰⁰² U. S. Government Accountability Office, “Aviation Security: Additional Actions Needed to Meet Domestic and International Challenges,” no. RCED-94-38 (January 27, 1994), p. 10.

¹⁰⁰³ U. S. Government Accountability Office, *Ibid.* p. 10.

¹⁰⁰⁴ U. S. Government Accountability Office, *Ibid.* p. 12.

¹⁰⁰⁵ *Report of the President’s Commission on Aviation Security and Terrorism.* p. 162

¹⁰⁰⁶ Committee on Foreign Affairs, “Committee on Foreign Affairs Memorandum: Aviation Security.”

individuals.¹⁰⁰⁷ This meant that “American carriers were forced to choose between loosening security or breaking French law.”¹⁰⁰⁸ Spain also permitted curbside parking, which worried American carriers given some of the airport bombings from 1985 and the possibility of a vehicle-borne explosive attack.¹⁰⁰⁹ Trans World Airlines Senior Vice President Charles Adams told the media that this only changed after the FAA pushed the Spanish to take carrier concerns seriously.¹⁰¹⁰

Inversely, examining the Pan Am 103 bombing from the British perspective, Omar Malik noted that Pan Am ignored U.K. requirements that were as “binding on them” as U.S. requirements, because they presumed the U.S. security requirements were better.¹⁰¹¹ Malik argues that even though the U.S. security requirements would have prevented Pan Am 103’s loss, there was “never any question of the British authorities enforcing the American rules” to ensure Pan Am followed them.¹⁰¹² The gridlines of sovereignty were firmly established in the Multilateral Management Regime, and even where they conflicted, there was still an attempt to honor them. “Demarcation dictated that each country inspected and enforced its own rules only.” Further, “U.S. attempts to inspect British security were rebuffed on the grounds of infringement of national sovereignty.”¹⁰¹³

¹⁰⁰⁷ Denise Gellene, “Long After Lockerbie, Air Safety Still a Worry,” *Los Angeles Times*, December 23, 1990.

¹⁰⁰⁸ Ibid.

¹⁰⁰⁹ Ibid.

¹⁰¹⁰ Ibid.

¹⁰¹¹ Omar Malik, “Aviation Security before and after Lockerbie,” *Terrorism and Political Violence* 10, no. 3 (September 1998): 112–33, p. 117.

¹⁰¹² Malik. P. 117

¹⁰¹³ Malik. P. 117

Malik argues that part of this is due to the fact that security was still not a household name in aviation by 1988.¹⁰¹⁴ Though ICAO member states had created and passed Annex 17 to address security in 1974, ICAO's work was predominantly about safety and navigation. Even in 2024, ICAO's organizational chart still showed security as a sub function of a larger Air Transport Bureau, while Air Navigation, or safety, remained a primary activity for ICAO.¹⁰¹⁵

Further complicating the aviation security developments and sovereignty debates was the European integration into the Schengen Zone in 1992.¹⁰¹⁶ Congress highlighted this as a significant area of concern for the United States, as "the internal abolition of border controls could increase the likelihood that terrorists will be able to move freely into and within Western Europe...Despite the fact that these matters will have a great impact on U.S. interests, the United States government has limited influence on the European Commission's decision-making process with respect to these issues."¹⁰¹⁷ Conceivably, U.S. involvement and attempts to put CASLOs largely in Europe, is a way to bring order to the chaos they perceived growing in international travel spheres, and subsequent risk to the United States via air travel.

International Objections to U.S. Expansion and Sovereignty Violations

Unsurprisingly, the world did not exactly welcome the new extraterritorial regime. At ICAO's 27th Assembly in 1989, many states registered their concern about sovereignty as well as carrier competition. Canada, home to ICAO's headquarters in Montreal, urged the continued use of

¹⁰¹⁴ Malik. P. 121

¹⁰¹⁵ ICAO Secretariat, "ICAO Organizational Chart."

¹⁰¹⁶ Committee on Foreign Affairs, "Committee on Foreign Affairs Memorandum: Aviation Security." pp. 11-12.

¹⁰¹⁷ Committee on Foreign Affairs. pp. 11-12

ICAO as the source for addressing security. The state's representative advocated for continuing to update Annex 17 and its SARPs to ensure all states were elevating their aviation security posture globally.¹⁰¹⁸ Canada endorsed a new international regime, but one led by ICAO, particularly lending its support to efforts to mark plastic explosives and improve their detection by airport technology.¹⁰¹⁹

Other states registered strong concern about U.S. activities in the aviation space, particularly its violation of longstanding sovereignty agreements. Cuba decried the “discriminatory manner” with which the United States treated its carrier, Cubana Airlines, with its routes overflying Canada and the United States.¹⁰²⁰ Overflights were usually granted on a bilateral consent basis, as a state's sovereignty was considered to be projected upwards to the Karman line, the space where Earth's atmosphere ends and space begins – approximately 62 miles above sea level.¹⁰²¹ However, it was also common for states to permit others to overfly their space while transiting to another location, particularly when rerouting around would be significantly impactful to the carrier and associated state.¹⁰²²

Cuba, however, alleged that the United States refused to allow Cubana Airlines to overfly U.S. territory, forcing the carrier to “use longer routes and are denied the more direct routes published internationally, and abundantly used by international civil aviation. Such action forces our flights to use excessive amounts of fuel, and is in violation of the Chicago Convention and in

¹⁰¹⁸ ICAO Assembly, “ICAO Assembly 27th Session: Plenary Meeting Minutes.” p. 8.

¹⁰¹⁹ ICAO Assembly. p. 9.

¹⁰²⁰ ICAO Assembly, “ICAO Assembly 27th Session: Plenary Meeting Minutes.” p. 76.

¹⁰²¹ “Karman Line | Definition & Facts | Britannica.” P. 8

¹⁰²² Peters, Kimberley, Steinberg, Philip, and Stratford, Elaine, *Territory Beyond Terra* (Rowman & Littlefield Publishers, 2018).

contradiction with Recommendation 7 of the Third Air Transport Conference.”¹⁰²³ Cuba insisted that the Assembly review U.S. violations of the Chicago Convention regarding airspace sovereignty.

Panama likewise expressed frustration with U.S. practices, but in the inverse of Cuba. Their issue was that the U.S. repeatedly crossed into Panama’s commercial airspace without permission to conduct military operations “without effecting the proper coordination with the civil [air traffic system] authorities of the Republic of Panama...all of which contravenes the ICAO Standards and Recommended Practices respecting civil-military coordination.”¹⁰²⁴ Panama argued that ignoring its requirements for notification and coordination was not only a violation of ICAO’s Standards but was putting its flight safety in jeopardy, as commercial carriers were not aware of nor tracking military operations that might be in their path of flight. Panama argued that the U.S. was escalating activity daily, violating its Flight Information Region (FIR) and putting its carriers and passengers in danger.¹⁰²⁵ The representative mentioned having brought this to the prior ICAO Assembly three years ago with no action on the part of other states to curb U.S. behavior.

The final and potentially most damning accusation lodged at the United States was its actions in shooting down passenger aircraft Iran Air 655 in 1988.¹⁰²⁶ The flight was transiting from Bandar Abbas to Dubai, carrying 290 passengers, and was brought down by the U.S. military firing

¹⁰²³ ICAO Assembly, “ICAO Assembly 27th Session: Plenary Meeting Minutes.” p. 76

¹⁰²⁴ ICAO Assembly, “ICAO Assembly 27th Session: Plenary Meeting Minutes.” p. 89.

¹⁰²⁵ ICAO Assembly. p. 89

¹⁰²⁶ “When the US Navy Shot down Iran Air Flight 655 in 1988 | CNN.”

missiles at the aircraft.¹⁰²⁷ While the U.S. representative discussed the tragedy of Pan Am 103's bombing, that same year it was responsible for just as many deaths via the destruction of a passenger aircraft. The Iranian representative to ICAO's remarks centered around this activity, calling it "the most outrageous and senseless crime, committed by the United States, violating the airspace of Iran and destroying the aircraft, taking the lives of its 290 innocent passengers and crew."¹⁰²⁸ As the U.S. called for more aircraft security, the Iranian delegation and those aligned with Iran in the Council pointed back at the U.S. as the problem, not the solution.

The U.S. representative ignored the allegations and instead focused on the need for the rest of the world to accelerate security action. "We believe that the time has come to do more... We recognize that the establishment of new and even stronger security measures will cost more money and create economic burdens on Member States. However, we believe that terrorism can be deterred only by the firm resolve and concerted action of all civilized countries."¹⁰²⁹ The U.S. representative went on to highlight its approach to aviation security – namely now requiring 100% checked baggage screening and checks at certain overseas airports, coordinating international counterterrorism efforts, and placing FAA officials overseas to address security at non-U.S. airports with flights heading to the U.S.¹⁰³⁰

¹⁰²⁷ ICAO Assembly, "ICAO Assembly 27th Session: Plenary Meeting Minutes." P. 108

¹⁰²⁸ ICAO Assembly, "ICAO Assembly 27th Session: Plenary Meeting Minutes." p. 117

¹⁰²⁹ ICAO Assembly. P. 41

¹⁰³⁰ ICAO Assembly. P. 42

International Arguments on Economic Concerns

International objections to U.S. activity weren't limited to sovereignty and extraterritoriality. Many countries also raised concern regarding economic politics, to include the U.S. and others deregulating aviation to allow for greater competition in the international.¹⁰³¹ Spain, for instance, urged a more coordinated and gradual approach by states to ensure fairness in the international market.¹⁰³² They also urged continued work through ICAO rather than bilaterally or unilaterally to address any security issues states might be facing.¹⁰³³

Türkiye noted they had also faced economic issues, particularly due to security and terrorism.¹⁰³⁴ Its representative discussed the problems states had been facing from the 1985-1986 timeframe after the significant incidents of TWA, Air India, and various airport bombings, and that it was critical states addressed security so as not to impede transportation and associated economic benefits for states.¹⁰³⁵ Like Spain, they also mentioned “deregulation politics” in the U.S. that had impacted airlines in the Western Hemisphere and Europe.¹⁰³⁶ By 1989, the Turkish representative noted, the market had still not steadied, and cautioned a coordinated approach both in security and aviation route and regulation management.¹⁰³⁷

The European Commission's (EC) observer to the Assembly also advocated for a continued multilateral approach. The observer discussed the EC's approach of broad rules across its

¹⁰³¹ ICAO Assembly. P. 17

¹⁰³² ICAO Assembly, “ICAO Assembly 27th Session: Plenary Meeting Minutes.” p. 17.

¹⁰³³ ICAO Assembly. p. 17.

¹⁰³⁴ ICAO Assembly. p. 22.

¹⁰³⁵ ICAO Assembly. p. 22.

¹⁰³⁶ ICAO Assembly. p. 22.

¹⁰³⁷ ICAO Assembly. p. 23.

member states for regulating air carriers with “specific rules for competition between air carriers.”¹⁰³⁸ The EC argued that its changes from bilateral to multilateral economics in aviation had been helpful in addressing access to the aviation market for European air carriers as well.¹⁰³⁹

An observer from the International Transport Workers’ Federation (ITF) brought deregulation to the Assembly’s attention as an issue that had “decimated industrial standards and working conditions of civil aviation by allowing economic interest to dominate all other principles.”¹⁰⁴⁰ The ITF was founded in the late 1800s and represented transportation employee unions before ICAO.¹⁰⁴¹ Its perspective that deregulation was disruptive and unsafe brought another voice to the concern regarding U.S. and others’ changes to the aviation industry: “they do not actually care about safety, quality of service or customer satisfaction; they support the free market approach because it is ‘good for business.’”¹⁰⁴²

Continued Multilateral Support

The U.K. continued to strongly advocate for addressing aviation security under the ICAO model, arguing that states were under obligation to follow the Chicago Convention’s treaty and associated international law.¹⁰⁴³ “The United Kingdom frequently mentions the obligations of a state to the international community, as well as the obligation, and sometimes even the right, of the international community to take charge when a state is unwilling.”¹⁰⁴⁴

¹⁰³⁸ ICAO Assembly. p. 48.

¹⁰³⁹ ICAO Assembly. p. 48.

¹⁰⁴⁰ ICAO Assembly, “ICAO Assembly 27th Session: Plenary Meeting Minutes.” p. 183.

¹⁰⁴¹ “Our History | ITF Global.”

¹⁰⁴² ICAO Assembly, “ICAO Assembly 27th Session: Plenary Meeting Minutes.” p. 183

¹⁰⁴³ Jennifer M. Ramos, *Changing Norms through Actions: The Evolution of Sovereignty* (New York: Oxford University Press, 2013), p. 63.

¹⁰⁴⁴ Ramos. p. 63

Within ICAO's 1989 Assembly, USSR's representative argued that ICAO was the primary body charged with solving security issues and terrorism incidents against aviation.¹⁰⁴⁵ His statement argued for states to use ICAO to adopt additional measures, and advocated for special sessions, like the February 1989 Council Meeting following the Pan Am 103 bombing, to address security.¹⁰⁴⁶ Like his colleagues, the Soviet Union representative continued to advocate for the multilateral regime rather than a single approach.

The United Kingdom representative thanked ICAO for swift action on U.K. and U.S. proposals to add security measures to Annex 17, and shared with the Assembly that the U.K. had provided additional funds and loaned U.K. government personnel for ICAO's work on explosives detection. Like many other states, the U.K. supported this "international regime," using ICAO's mechanisms to advance security globally.¹⁰⁴⁷ Despite Pan Am 103's explosion within its territory – the largest terrorist attack ever to occur in the U.K. to this day – the U.K. continued to advocate for the multilateral model to address growing security needs in aviation.

Many others spoke out specifically against unilateral action, including Cote d'Ivoire, Czechoslovakia, and Iceland. The Czech representative argued that any and all work on aviation security "should belong to the United Nations."¹⁰⁴⁸ Iceland stated that "a problem exists, but as I see it, it could be dangerous to move faster than ICAO."¹⁰⁴⁹ Chile recommended addressing

¹⁰⁴⁵ ICAO Assembly, "ICAO Assembly 27th Session: Plenary Meeting Minutes." P. 24

¹⁰⁴⁶ ICAO Assembly, "ICAO Assembly 27th Session: Plenary Meeting Minutes." p. 25.

¹⁰⁴⁷ ICAO Assembly. P. 29

¹⁰⁴⁸ ICAO Assembly. P. 68

¹⁰⁴⁹ ICAO Assembly. P. 96

security through capacity development and training rather than assuming some states are lagging behind others out of malice. They argued that states lacked resources, not the will to act.¹⁰⁵⁰ The Airport Associations Coordinating Council (AACC) observer agreed, stating that security measures are needed faster than states are able to implement them, and increased resources, training, and technology are the solution to the problem – all of which need a multilateral and coordinated approach.¹⁰⁵¹

The international record within ICAO demonstrates a divide between the U.S. and the rest of the world on aviation policies both in economics and security. In economics, clearly aviation deregulation and carrier bankruptcy was a common concern, where the U.S. continued to maintain a private sector, deregulated model for air carriers. Arguably, this divide led to the perceived issue of disadvantage U.S. carriers had with foreign carriers in the security space.

Additionally, while the U.S. made a strong case for doing more than ICAO was able or willing to do, other states backed ICAO's mission and urged continued collaboration within that space. Notably, this included the U.K., the other state most strongly impacted by the Pan Am 103 bombing and also a major objecting state to the U.S. regulation of foreign air carriers.¹⁰⁵²

As shown throughout this dissertation, the U.S. made significant efforts to export its preferences on the international system, regardless of how this overrode ICAO's primary functions. States

¹⁰⁵⁰ ICAO Assembly. P. 74

¹⁰⁵¹ ICAO Assembly, "ICAO Assembly 27th Session: Plenary Meeting Minutes." p. 170.

¹⁰⁵² Federal Register, "Security Programs for Foreign Air Carriers; Final Rule."

had very strong reactions to these activities, yet had no recourse to push back given the potential economic backlash its own carriers would incur if no longer allowed to fly to the U.S.

ICAO Security Actions

Meanwhile, states continued to make progress through ICAO to address security. Charged by the UN in 1989, ICAO embarked on efforts to address the marking of plastic explosives as a response to the Pan Am 103 bombing. This would make explosives easier to detect as states deployed aviation security screening technology and equipment. Additionally, per the Commission's investigation and report, ICAO had implemented 40 Standards and 17 Recommended Practices for security by 1990, including:

- Full implementation of PPBM
- New measures to secure transfer/transit passengers and their carryon bags
- Inspections of Security Measures
- Cargo and mail security
- Aircraft guarding and security
- Airport perimeter security
- Pre-flight aircraft search for explosives
- Prevention and detection of weapons
- Promotion of aviation security in any bilateral air services agreements¹⁰⁵³

¹⁰⁵³ *Report of the President's Commission on Aviation Security and Terrorism*. p. 171

By the 1992 Assembly, the U.S. representative noted that “as a result of these and other concerted security measures, the number of acts of unlawful interference with aircraft declined significantly in 1991...Furthermore, there were no acts of sabotage against aircraft during that year.”¹⁰⁵⁴

In 1992, states passed Amendment 8 to its security provisions in Annex 17, which covered screening of checked baggage, cargo, mail, introduction of preflight security checks, and requirements that security be part of airport design.¹⁰⁵⁵ Many states went beyond the required Standards and adopted many of the Recommended Practices voluntarily to ensure “uniformly high levels of safety and security within their borders.”¹⁰⁵⁶ ICAO also enhanced its capacity development programs to provide states with training and technology to enhance their aviation security capabilities.¹⁰⁵⁷ Between 1989 and 1996, 126 states requested capacity development assistance, which were primarily funded by 15 states.¹⁰⁵⁸ Much of these activities were funded by its biggest contributing donor states of the United States, Canada, and European partners. The U.S. in particular partnered with seven countries in 1990 to provide technical assistance and capacity building in aviation security.¹⁰⁵⁹ The U.S. also provided an additional \$100,000 to ICAO for international aviation security upgrades worldwide.¹⁰⁶⁰

¹⁰⁵⁴ International Civil Aviation Organization, “Assembly 29th Session Plenary Meeting Minutes,” October 1992. p. 54.

¹⁰⁵⁵ International Civil Aviation Organization. pp. x-xi

¹⁰⁵⁶ International Civil Aviation Organization. p. 54

¹⁰⁵⁷ International Civil Aviation Organization. p. 54

¹⁰⁵⁸ ICAO, “Annual Report of the Council,” 1996.

¹⁰⁵⁹ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 176

¹⁰⁶⁰ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 176

The 29th ICAO Assembly in 1992 Plenary Meeting Minutes also demonstrated a significant shortfall in ICAO funds.¹⁰⁶¹ As economic issues impacted states and they were pouring more resources into safety and security needs, states began to give to ICAO less. In addressing the member states, Council President Dr. Assad Kotaite noted that while he recognized states may be experiencing financial challenges, the trend in delaying or deferring ICAO membership payments was concerning. “For ICAO it means that parts of the work programme cannot be implemented or completed, and that technical co-operation cannot be provided. Adequate resources are essential for ICAO to manage the changes in our evolving aviation arena.”¹⁰⁶² ICAO receiving less money to execute its mission to advance aviation security initiatives globally demonstrates an indicator of the scales tipping toward the U.S. in its efforts to advance its own security interests worldwide.

Weaponized Interdependence and the ICAO Network

Pan Am 103 put a wedge between the longstanding multilateral model and the U.S. desire for more (favorable) action. Per Drezner, Farrell and Newman, this can be a common feature of weaponized interdependence, where states may “weaponize networks” to “compel policy change.”¹⁰⁶³ This may occur especially when a network has been in place, as the longstanding duration provides the states with opportunity to understand how best to use them to advantage.¹⁰⁶⁴

¹⁰⁶¹ International Civil Aviation Organization, “Assembly 29th Session Plenary Meeting Minutes.” p. 3

¹⁰⁶² International Civil Aviation Organization, “Assembly 29th Session Plenary Meeting Minutes.” p. 3.

¹⁰⁶³ Drezner, Farrell, and Newman, *The Uses and Abuses of Weaponized Interdependence*. p. 10.

¹⁰⁶⁴ Drezner, Farrell, and Newman. p. 10

Even while the U.S. moved forward with extraterritorial security policies, it continued to use the ICAO network for multilateral security work. For instance, the U.S. Secretary of Transportation worked with the United Kingdom on the Special ICAO Assembly in 1989. The purpose of the session was to address a joint U.S. and U.K. plan for international aviation security¹⁰⁶⁵ They were able to use the network successfully, and the Assembly adopted their resolution, which included recommendations for security worldwide to address growing threats, researching new ways to combat explosives on airplanes, and implementing a “new international regime for the marking or tagging of explosives to facilitate detection.”¹⁰⁶⁶

The U.S. noted its support of ICAO’s work on the joint plan but expressed skepticism and concern about ICAO’s ability to execute any further changes. Essentially, the U.S. had one foot in and one foot out as it worked with ICAO and executed its own strategy for aviation security globally. It provided FAA staff on a long-term detail, or secondment, to help draft ICAO Standards and help with speed to action on security, but at the same time the U.S. government actively spoke about ICAO as a bare minimum for security representing a lowest common denominator for security.¹⁰⁶⁷

While openly flexing hegemony, the U.S. still participated in ICAO meetings and pushed for enhanced standards under its umbrella. For instance, the FAA immediately issued emergency requirements for security for U.S. carriers – at the time its only directly regulated party – at

¹⁰⁶⁵ “International Coordination by the Secretary of Transportation and FAA,” n.d., President’s Commission on Aviation Security and Terrorism, Committee Records, 1989-1990; Entry A1 41090; Records of Temporary Committees, Commissions and Boards, Record Group 220 -- Stack 650/34/18/06.

¹⁰⁶⁶ “International Coordination by the Secretary of Transportation and FAA.”

¹⁰⁶⁷ *Report of the President’s Commission on Aviation Security and Terrorism.*

European and Middle East airports.¹⁰⁶⁸ This included searching all checked baggage, increasing random passenger and carryon baggage searches, and ensuring PPBM was followed.¹⁰⁶⁹ These measures were increased and expanded based on Commission Recommendations, the Aviation Security Improvement Act of 1990, and other FAA regulatory measures to enhance the U.S. security gaze and control of foreign airports and air carriers. At the same time, the U.S. engaged in the special ICAO session in Montreal in early 1989 to adopt the resolution and measures described above as well as “extraordinary measures for use when increased threat levels exist.”¹⁰⁷⁰ While the FAA expanded U.S. territory outwards, the U.S. Department of Transportation and Department of State continued to push ICAO to move faster and to model new security measures on U.S. objectives.¹⁰⁷¹ The Commission’s Report noted that “Generally, we are quite pleased with the results of the Assembly and very pleased with its new resolution on aviation security.”¹⁰⁷²

The FAA also worked to place personnel directly at ICAO to support its security efforts and hold greater influence over their development. These individuals, who were seconded to ICAO, held senior roles within the Secretariat staff in their newly formed Aviation Security branch.¹⁰⁷³ The secondments separated from the FAA temporarily to join ICAO as employees, but represented their sponsoring state’s interests and influencing various policies. This practice of seconding

¹⁰⁶⁸ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 175

¹⁰⁶⁹ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 175

¹⁰⁷⁰ *Report of the President’s Commission on Aviation Security and Terrorism*. pp. 175-176

¹⁰⁷¹ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 176

¹⁰⁷² *Report of the President’s Commission on Aviation Security and Terrorism*. p. 176

¹⁰⁷³ *Report of the President’s Commission on Aviation Security and Terrorism*. p. 176

security staff to ICAO continues in 2024, with at least two individuals representing U.S. aviation security interests within the Secretariat staff.¹⁰⁷⁴

From a discourse perspective, this represented two major storylines at play: one for the U.S. public where the U.S. government characterized ICAO as unable to address security threats, and one for other states where the U.S. claimed that ICAO Annex 17 on security was of paramount importance and that its new regulations were perfectly compatible with ICAO requirements.¹⁰⁷⁵

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Some of the language from the FAA shows this disparity, as the FAA noted that “up to this point, it appears that ICAO has been moving at the fastest possible productive speed considering the size of the organization and its diverse membership.”¹⁰⁷⁷ As bombings continued, including the Union de Transports Aériens (UTA) flight 772 bombing over Niger in September of 1989, the U.S. expressed concern that ICAO’s best was insufficient to address the problem with any real speed or competence.¹⁰⁷⁸

The International Air Transport Association (IATA) seemed to support this two-faced approach by the U.S. In its statement to the President’s Commission, IATA represented that “the United States has been a leader in promoting international actions and has itself ratified the major conventions, as has the vast majority of all other States. However, some States still have not

¹⁰⁷⁴ “Secondment Opportunities,” <https://www.icao.int/secretariat/Administration/Pages/secondment-opportunities.aspx>.

¹⁰⁷⁵ *Report of the President’s Commission on Aviation Security and Terrorism*.

¹⁰⁷⁶ Federal Register, “Security Programs for Foreign Air Carriers; Final Rule.”

¹⁰⁷⁷ “International Coordination by the Secretary of Transportation and FAA.”

¹⁰⁷⁸ “International Coordination by the Secretary of Transportation and FAA.”

accepted the full impact of this international machinery.”¹⁰⁷⁹ IATA went on to pledge support to whatever organization was able to provide effective and practical security procedures. The group stated it would support both national government actions to address security unilaterally as well as ICAO’s efforts multilaterally.^{1080 1081}

The GAO also conveyed the prevailing U.S. sentiment at the time, which was that ICAO’s standards were insufficient and had no enforcement mechanism other than U.S. airport assessments:

“ICAO’s security standards are based on the least common denominator and do not adequately address threats at some airports. In high-threat countries, carriers rely on additional measures that the inspections do not examine, such as controls over the transfer of baggage from one airline to another and enhanced passenger profiling. Cost is an issue because many countries cannot afford higher levels of security. Another weakness, according to the Commission, is that ICAO has no enforcement mechanism; it cannot impose sanctions on a member that violates the standards.”

- *GAO Report: Aviation Security – Additional Actions Needed to Meet Domestic and International Challenges.*¹⁰⁸²

¹⁰⁷⁹ International Air Transport Association, “Statement of the International Air Transport Association Regarding Aviation Security and Terrorism.”

¹⁰⁸⁰ President’s Commission on Aviation Security and Terrorism, “International Civil Aviation Organization Statement.”

¹⁰⁸¹ International Air Transport Association, “Statement of the International Air Transport Association Regarding Aviation Security and Terrorism.”

¹⁰⁸² U. S. Government Accountability Office, “Aviation Security: Additional Actions Needed to Meet Domestic and International Challenges,” no. RCED-94-38 (January 27, 1994), p. 25.

Staying within the ICAO network, however, allowed the U.S. to both use it to continue to advance interests in its favor, for instance blocking any adverse actions from countries like Cuba, Panama, or Iran who were opposed to U.S. sovereignty intrusions, while also maintaining a separate unilateral exchange with states: anyone wanting to fly to the United States must comply with U.S. security over their airports and airlines. This worked as a mechanism for weaponized independence because the U.S. remained a popular tourist destination and thus had significant economic incentive for countries to allow their government-owned carriers to continue flying and earning revenue.

Mindful of the game it was playing with sovereignty and extraterritoriality, the U.S. Congress and Executive Branch worked to appease its domestic constituents while also trying not to overtly violate its treaty obligations under ICAO. This led to a campaign of dual messaging as the U.S. strove to expand its security reach while pretending with international partners that the Multilateral Management Regime of old was still in effect.

Chapter 15: Implications for Sovereignty and Security

Given the significance of measures the U.S. put in place to address threats following Pan Am, this chapter discusses cascading impacts in the following years, viewing the critical juncture from the rearview mirror. As noted in Chapters 12 and 13, Part 129 regulating foreign air carriers and the Aviation Security Improvement Act of 1990 served as way to securitize aviation, with the U.S. moving to envelope and oversee the world's air carriers and airports.

Despite U.S. activity to expand its preferred security outcomes to other states, aviation security remained a problem worldwide. A 1995 report on Criminal Acts Against Aviation showed the following incidents between 1991 and 1995:

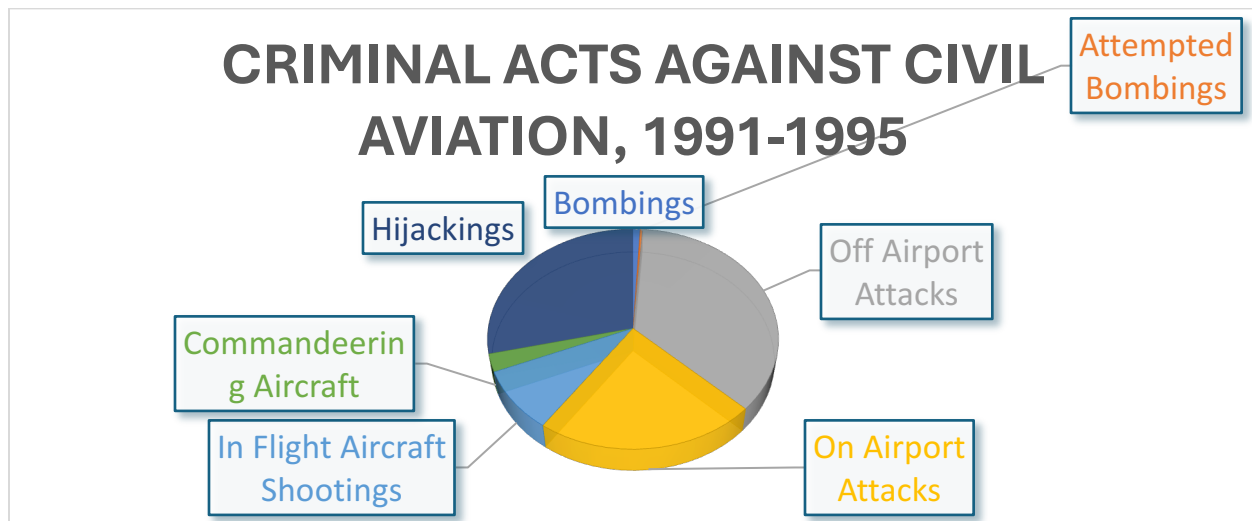


Figure 36: Criminal Acts Against Civil Aviation - 1991 to 1995
Source: Federal Aviation Administration, Syracuse University Archive

Moreover, the U.S. solved problems that the Pan Am investigations did **not** identify rather than solving the ones it did. Instead of addressing U.S. failures of a U.S. carrier, the U.S. moved to regulate the world instead for both security and economic reasons, as previously discussed. Because the U.S. did not implement the security measures it required of others, the very same issues from 1988 came back to haunt U.S. policymakers again in 1996.

TWA Explosion and New White House Commission

On July 17, 1996, Trans World Airlines (TWA) Flight 800 from JFK airport in New York headed to Charles de Gaulle (CDG) airport in Paris exploded mid-flight.¹⁰⁸³ The flight crashed into the ocean near Long Island with a total loss of aircraft. While the investigation commenced, the U.S. assumed that it was a bombing and once more focused on increased international aviation security.¹⁰⁸⁴ On August 21, 1996, President Bill Clinton formed a White House Commission on Aviation Safety and Security led by Vice President Al Gore.¹⁰⁸⁵ Much like the 1990 Commission, the new version was formed by Executive Order, charged to “develop and recommend to the President a strategy designed to improve aviation safety and security, both domestically and internationally.”¹⁰⁸⁶

As the National Transportation Safety Board (NTSB) investigated the TWA explosion, it determined that the explosion was an accident due to an electrical issue that caused a catastrophic fuel tank explosion.¹⁰⁸⁷ The NTSB provided recommendations for improved safety onboard aircraft to address the issue, and the FAA subsequently provided immediate safety directives for electrical inspections in fuel systems.¹⁰⁸⁸

Upon completion of its work in September of 1996, the White House Commission provided a preliminary report with 20 recommendations. A final report was completed in February of

¹⁰⁸³ Federal Aviation Administration, “FAA Historical Chronology, 1926-1996.”

¹⁰⁸⁴ Federal Aviation Administration. “FAA Historical Chronology, 1926-1996.”

¹⁰⁸⁵ Federal Aviation Administration. “FAA Historical Chronology, 1926-1996.”

¹⁰⁸⁶ “White House Commission on Aviation Safety and Security February 12, 1997.”

¹⁰⁸⁷ Federal Aviation Administration, “FAA Historical Chronology, 1926-1996.”

¹⁰⁸⁸ Federal Aviation Administration. “FAA Historical Chronology, 1926-1996.”

1997.¹⁰⁸⁹ Despite the determination of the TWA explosion as a safety issue, the report contained many recommendations related to security. One of the most significant of these was training, which was also found to be a critical issue in Pan Am 103. Likewise, PPBM is highlighted as an area needing additional attention for full implementation worldwide. Much like training, this was another key element to preventing the Pan Am bombing.

The report argued that “today’s aviation security is based in part on the defenses erected in the 1970s against hijackers and on recommendations made by the Commission on Aviation Security and Terrorism, which was formed in the wake of the bombing of Pan Am 103 over Lockerbie, Scotland. Improvements in aviation security have been complicated because government and industry often found themselves at odds, unable to resolve disputes over financing, effectiveness, technology, and potential impacts on operations and passengers.”¹⁰⁹⁰ In other words, eight years after the Pan Am bombing, one of the key 1990 Commission findings had not been addressed. Regulating partners internationally though, as discussed at length in the previous chapters, was a significant part of the post-Pan Am response.

The report pressed for further securitization of airspace, arguing that aviation security should be a “national security issue” with all due attention and funding due an issue of national focus and attention.¹⁰⁹¹ However, it again placed focus outward on international partners, recommending that the U.S. propose a requirement to ICAO that it establish a compliance program, similar to the U.S. program, to ensure states are adhering to all treaty obligations under the Chicago

¹⁰⁸⁹ “White House Commission on Aviation Safety and Security. 1997.”

¹⁰⁹⁰ “White House Commission on Aviation Safety and Security. 1997.”

¹⁰⁹¹ “White House Commission on Aviation Safety and Security. 1997.” Recommendation 3.1

Convention.¹⁰⁹² Recommendation 3.24 discusses the importance of providing funds and training assistance to other countries to address their training in areas such as “explosive detection, post-blast investigation, VIP protection, hostage negotiation, and incident management.”¹⁰⁹³

The report found the same issues that existed eight years prior (U.S. failure to train or implement procedures domestically), but once again focused outward on requirements for international oversight and conforming the world to the U.S.’ aviation security preferences. The new White House Commission also took the opportunities to further shape ICAO – recommending a new compliance program based on a U.S. model to expand U.S. reach at airports, as well as to create new airspace borders. These bordering recommendations came in the form of a series of recommendations on passenger profiling, serving effectively as mobile borders. Customs, immigration, terrorism, and criminal checks would be applied to passengers in advance of land border entry once arriving at a destination, and would instead be applied in the departing airport space, where the passenger presumably has a right to be.¹⁰⁹⁴ This idea was posed in the 1990 Commission report as well, but explored further in further in the 1997 report. The report also recommended having the air carrier perform all bordering/profiling work on behalf of the U.S. government, rather than having official personnel managing border entry.¹⁰⁹⁵

For example, recommendation 3.7 describes how the FAA should work with airlines and airports to help them manage passenger identification and tracking, while recommendation 3.19

¹⁰⁹² “White House Commission on Aviation Safety and Security. 1997.” Recommendation 3.8

¹⁰⁹³ “White House Commission on Aviation Safety and Security. 1997.”

¹⁰⁹⁴ “White House Commission on Aviation Safety and Security. 1997.” Recommendations 3.7, 3.19

¹⁰⁹⁵ “White House Commission on Aviation Safety and Security. 1997.”

describes airline technology upgrades for passenger profiling systems. As part of 3.19, the report notes that “the FAA and Northwest Airlines are developing an automated profiling system tailored to aviation security, and the Commission supports the continued development and implementation of such a system.”¹⁰⁹⁶ The recommendation goes on to highlight how U.S. intelligence services should provide research into the profiling system for a better predictor of criminal or terrorist activity.¹⁰⁹⁷

As this significant safety incident provided another opportunity to examine security, it is apparent that the U.S. failings identified during Pan Am still remained, while the U.S. continued to focus on regulating outwards. An FAA Report to Congress in 1998 showed there was even consideration of going further by not just demanding U.S. screening policies, but that U.S. personnel be placed overseas to do it themselves. “Foreign governments are willing to let private sector entities do redundant screening, but are loathe to allow foreign government employees to perform the same function. *A request to foreign governments to allow U.S. Federal Government employees to perform screening overseas would most likely be rejected as an infringement on the national sovereignty of the host governments.*”¹⁰⁹⁸ The report goes on to describe how the U.S. could instead capitalize on the deployed aviation security official concept following Pan Am and provide even more U.S. officials to “interface with foreign governments,” but that the “responsibility for the effective and efficient performance of screening functions would have to remain with either the host government or the air carriers.”¹⁰⁹⁹

¹⁰⁹⁶ “White House Commission on Aviation Safety and Security. 1997.”

¹⁰⁹⁷ “White House Commission on Aviation Safety and Security. 1997.”

¹⁰⁹⁸ Federal Aviation Administration, “Study and Report to Congress on Civil Aviation Security Responsibilities and Funding.” p. 29.

¹⁰⁹⁹ Federal Aviation Administration, Ibid. P. 29

September 11, 2001, and Beyond

On September 11, 2001, the U.S. was attacked directly in the aviation space for the first time, breaching U.S. airspace boundaries as terrorists used airplanes themselves as weapons to attack major targets in New York City, Washington, D.C., and through a thwarted attack that crashed in Shanksville, Pennsylvania.¹¹⁰⁰ This event led to a third aviation security commission, known as the 9/11 Commission. Unlike its predecessors, this report finally resulted in an examination of security in the U.S., not an immediate outward gaze, and resulted in significant policies reforming U.S. airports and airlines. Notably, the U.S. federalized its airport security workforce, previously private contractors hired individually by airports.¹¹⁰¹

While my dissertation scope and research ended in 1998, I would note that September 11, 2001 led to major changes in aviation security include electronic bordering, U.S. passenger data and privacy struggles with international partners,¹¹⁰² extraterritoriality and securitization in banking and finance, and more. The tools that the Aviation Security Improvement Act of 1990, the President's Commission on Aviation Security and Terrorism, Part 129, and other reports, recommendations, and requirements provided all laid the groundwork not only for these significant shifts in the name of security, but also paved the way for additional use following 9/11 and in future incidents such as the 2006 U.K. liquid explosives plot. Exploring this additional critical juncture from the lens of Pan Am 103 and U.S. securitization of airspace may be of interest to future researchers.

¹¹⁰⁰ "The 9/11 Commission Report," July 22, 2004.

¹¹⁰¹ "Aviation Security Transportation Act (ATSA)," Pub. L. No. 107-71 (2001).

¹¹⁰² Farrell and Newman, *Of Privacy and Power*.

Chapter 16: Conclusion

The U.S. response to the Pan Am 103 terrorist attack was the imposition of a new U.S.-driven extraterritorial regime of aviation security upon the existing international aviation regime. This dissertation has sought to explain how one instance of aviation terrorism became a critical juncture that forced change on the system as a whole. The case study, though, is rich in irony.

The investigations into Pan Am 103 determined that the bombing was preventable, because existing policies were designed to prevent the bombing. Both U.S. and international requirements were sufficient to mitigate against the threat of a non-suicide bomber who placed a bomb in a checked bag without boarding the plane. Positive passenger bag match (PPBM) had been in place for years beforehand, but Pan Am – a U.S. air carrier – did not follow the procedure, and the FAA – a U.S. oversight body – did not correct the issue during regular air carrier inspections. The correction for this issue, per the investigations into the bombing, was training and oversight.¹¹⁰³ The fact that the bomb was placed onboard an international airport makes no difference to that finding. Indeed, given the United States’ failure to implement PPBM domestically (even as of 2025), the same incident could have occurred at Dallas or Chicago rather than Frankfurt and London. The remedy to the problem was solely within the United States’ remit to solve – by enforcing existing procedures and insisting in better training for its carrier and staff.

Instead, the U.S. moved to solve an entirely different problem, and one that was not in need of a solution. Placing U.S. personnel in oversight roles for other states’ airports or regulating other

¹¹⁰³ U. S. Government Accountability Office, “Proactive Management of FAA’s Security Program Needed.”

states' carriers – extensions of foreign governments – would have done nothing to address the bombing. Instead, it created significant friction points, particularly with close allies of the U.S. in Europe, who Sochor describes as insulted by the U.S. attempting to solve its own failure by assuming control of everyone else's aviation assets.¹¹⁰⁴ Further, in spite of the U.S. using disparaging language to describe ICAO throughout the Commission reports and other documentation, ICAO moved more quickly than the U.S. to heighten security post-Pan Am, enhancing international standards without two months of the bombing,¹¹⁰⁵ whereas it took the United States about two years for investigations, regulations, and legislation.

These puzzling features of the Pan Am 103 case raised the question as to how the U.S. was able to shift the aviation security regime from a longstanding multilateral system to one in which the U.S. dominated through extraterritorial policies. There was no need for the U.S. to solve the problem the way it did, but the interdependence of the aviation network enabled a shock event to become a critical juncture because of powerful centrally located nodal actors and issue networks advocated for a different U.S.-led aviation security regime.

Commercial aviation by its very nature contains an economic element, as passengers are able to move from one place to another for a price. As state economies became more and more dependent on travel for tourism, transportation of goods via air cargo, and airports became thriving metropolis hubs, states were increasingly locked into the aviation grid as an economic dependence. Travel to the United States, in particular, with its 450 or so airports, has long been one of the most sought after flight routes, and states often invest significant amounts of money

¹¹⁰⁴ Sochor, *The Politics of International Aviation*.

¹¹⁰⁵ Affairs, *Report of the President's Commission on International Aviation Security and Terrorism*. Pp. 175-176

for the opportunity to reach that status.¹¹⁰⁶ Travel in a post-COVID era only continues to grow, with net profit across all regions of the world reaching \$27.4 billion in 2023.¹¹⁰⁷ Withdrawing from an aviation network dominated by the United States has not been an option for states. Instead, they have provided consensual compellence,¹¹⁰⁸ protesting vigorously but accepting the U.S. extraterritorial change nonetheless.

Possible Areas for Additional Research

In exploring the bombing of Pan Am 103 through archival research, I discovered a few different areas that this dissertation did not have the space to fully explore. For instance, Pan Am 103 began a series of aviation security border and privacy changes, such as watchlisting and profiling. The Commission's final report recommended expanding on person-based bordering, which is a change from managing borders as a physical line between states.

Borders "create difference" and attempt to create some sort of order in the larger globalized, interconnected world.¹¹⁰⁹ The U.S. has historically attempted to close the vulnerabilities of the "other," by continuing to keep that other away.¹¹¹⁰ While the threat to aviation was primarily safety and navigation, airports served as an extension of land borders, allowing people to pass through as long as a state's customs and immigration requirements were satisfied. With the introduction of security, borders become mobile and centered around individuals. Mountz

¹¹⁰⁶ "Indonesian Carriers Cleared for US Flights after Nine-Year Ban," *BBC News*, August 16, 2016, sec. Business.

¹¹⁰⁷ International Air Transport Association, "All Regions to See Higher Profits in 2024," June 14, 2024, <https://www.iata.org/en/iata-repository/publications/economic-reports/all-regions-to-see-higher-profits-in-2024/>.

¹¹⁰⁸ John Agnew, *Hegemony: The New Shape Of Global Power* (Temple University Press, 2005) p. 226.

¹¹⁰⁹ David Newman, "On Borders and Power: A Theoretical Framework," *Journal of Borderlands Studies* 18, no. 1 (March 2003): 13-25, p. 15.

¹¹¹⁰ Andrew Lakoff, *Unprepared, Unprepared* (University of California Press, 2017) pp. 21, 28

discusses this as a focus on bodies, with “smart cards and biometrics” to follow individuals with a border electronically.¹¹¹¹ The 1990 Commission’s focus on passenger vetting, no fly lists, and other virtual means of bordering as remediation measures following Pan Am 103 play a key role in this transformation.

With the rise of aviation and linkage of technological advancements with border control, borders are much more complex than the traditional linear vision of a regulating singular place at the ‘edge’ of a state. Particularly after 9/11 and during the Global War on Terror, mobile bordering became the primary way the United States attempted to deter illegal immigration and defend against terrorism.¹¹¹² Mobile bordering is common in aviation, as states with service to the U.S. must conduct electronic immigration and terrorism checks before individuals can enter the secure area of airports and board planes.¹¹¹³ The border becomes mobile by virtue of being attached to the individual rather than a physical geographic space.

The U.S. was quick to add additional layers of passenger security through creation of No Fly lists, a watchlisting capability that integrates U.S. and foreign intelligence to establish a set of individuals considered too dangerous to travel by airplane. The 1990 Aviation Security Improvement Act implemented a change to ensure that “intelligence reports concerning international terrorism are made available . . . to . . . the Department of Transportation and the Federal Aviation Administration [FAA].”¹¹¹⁴ This created a means of differentiating the “trusted

¹¹¹¹ Alison Mountz, *Seeking Asylum: Human Smuggling and Bureaucracy at the Border*, NED-New edition (University of Minnesota Press, 2010). pp. 128, 139

¹¹¹² Louise Amoore, “Biometric Borders: Governing Mobilities in the War on Terror,” *Political Geography* 25, no. 3 (March 2006): 336–51, p 339

¹¹¹³ Amoore. P. 342

¹¹¹⁴ Mark B. Salter, *Politics at the Airport*, NED-New edition (University of Minnesota Press, 2008), p. 62.

traveler” and the “risky body.”¹¹¹⁵ After Pan Am 103, risky bodies were of significant concern to the U.S., so this allowed the U.S. to differentiate passengers by threat. This was expanded further in the 1997 White House report that created a private/government partnership in management of risky bodies. As this dissertation did not have the space to dedicate to this piece of the puzzle, examining identity and bordering following Pan Am 103 is another area for research that may prove fruitful.

Additionally, the dissertation did not have the space to explore the role of Libya further. Over the course of the 1980s, Libya and the United States had several tense military and aviation exchanges, including shooting down Libyan aircraft in 1981, reports of Libyan plans to assassinate President Reagan, economic sanctions following Libyan attacks on airports in Vienna and Rome in 1986, and President Reagan referring to Libyan Colonel Qadhafi a “mad dog.”¹¹¹⁶ The Commission’s report makes reference to Libya with an except of the U.S. stance on counterterrorism: “make state sponsors of terrorism pay a price for their actions. This may entail the use of military force as was used in 1986 in the bombing raids of Libya.”¹¹¹⁷

The investigation into Pan Am found that two Libyan intelligence operatives planned and executed the bombing, and tried them in 2000.¹¹¹⁸ The long history of fraught U.S. relations with Libya had a role in the affect and public outcry regarding the bombing, as well as led to several

¹¹¹⁵ Salter. P. 137

¹¹¹⁶ Bureau of Public Affairs Department Of State. The Office of Electronic Information. “U.S. - Libyan Relations, 1786-2008: A Chronology” (Department Of State. The Office of Electronic Information, Bureau of Public Affairs., September 4, 2008).

¹¹¹⁷ Affairs, *Report of the President’s Commission on International Aviation Security and Terrorism*. P. 115

¹¹¹⁸ “Pan Am 103 Bombing,” Page, Federal Bureau of Investigation, accessed March 9, 2025, <https://www.fbi.gov/history/famous-cases/pan-am-103-bombing>.

other United Nations sanctions, debates in ICAO, and other policy activity. Additional research could further explore aspects of Libyan relations, affect, and impacts to network interdependence if and when a state is expelled from a network.

Current Aviation Security Developments: Hints of Additional Regime Change?

The United States had succeeded in mapping the world and hence in remaking it. But the more visible that its power became, and the more willing it was to use it, the more reason other governments and businesses had to create their own alternative maps.

- Farrell and Newman, *Underground Empire*¹¹¹⁹

As Farrell and Newman indicate, the model that the U.S. has had in place for years, dominating the networks that contain U.S. infrastructure, U.S. actors, U.S. companies, and U.S. interests, is beginning to demonstrate cracks. Other countries attempting to remake the world in an image other than a U.S. hegemony have begun to use networks to their own advantage, particularly in aviation security.

One of the more interesting examples of this is a break between the U.S. and Europe in the late 2010s. The United States has long protested the idea of requiring physical search of airport works – known as non-passenger or staff screening. In 2006, Congresswoman Nita Lowey introduced legislation to require 100% staff screening at all 450 United States airports.¹¹²⁰ TSA, in charge of airport security in the U.S. since 2002, opposed the idea largely because of costs and scope. A 2020 study estimated the costs of procuring equipment, reconfiguring checkpoints, and

¹¹¹⁹ Farrell and Newman, *Underground Empire: How America Weaponized the World Economy*. p. 78.

¹¹²⁰ “Screening Airport Workers,” Government Executive, December 19, 2006.

staffing this proposal to be somewhere between \$2.9 and \$3.6 billion for implementation, with similar recurring annual costs.¹¹²¹

However, even knowing the U.S. inability to afford such an effort and its intense opposition to such a policy, in 2018 and 2019, European representatives to ICAO proposed a new SARP for staff screening, with strong support from the United Kingdom.¹¹²² The proposed Standard reads: “Each Contracting State shall establish measures to ensure that persons other than passengers, together with items carried, are screened prior to entry into airport security restricted areas.”¹¹²³ The United States, Canada, Australia, and New Zealand formed a coalition to dispute the Standard going forward, but were ultimately overruled by a European-led majority of states.¹¹²⁴ The new Standard went into effect in 2019 as Standard and Recommended Practice (SARP) 4.2.5.

As a signatory of the Chicago Convention, the United States is required to follow all Annex 17 requirements, including the new staff screening measure. For the first time in its history as an ICAO member state, the U.S. had policies turned against it, when other states insisted on a security provision that the United States did not – and arguably could not – comply with. Because the U.S. was unable to overturn the ruling, its government representatives were forced to execute a policy option under the Chicago Convention known as filing a Difference, essentially diverging from the international standard of aviation security.

¹¹²¹ “Airport Worker Screening” (Government Accountability Office, February 2021).

¹¹²² “U.S., Europe Split over U.N. Efforts to Expand Airport Employee Screening: Sources | Reuters.”

¹¹²³ “Annex 17 - Aviation Security.”

¹¹²⁴ “U.S., Europe Split over U.N. Efforts to Expand Airport Employee Screening: Sources | Reuters.”

Per Article 38 of the Chicago Convention, “Any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard.”¹¹²⁵

For the U.S. to have such a significant break from European partners – and to lose the argument and bear significant costs with complying, or embarrassment with filing a Difference to not comply – is an important historic event. It may very well signal a regime change from the U.S. Extraterritorial Security Regime to something new.

The U.S. also faces significant change in aviation security from China’s efforts to remake the system. In 2020, the U.S. and China overtly accused each other of blocking access to regular airport operations. Both the U.S. and Chinese markets are significantly important to each other’s commercial aviation operations. China opened new airports with access to the United States throughout the 2010s and into the 2020s.¹¹²⁶ Following the reduction in flights during the COVID-19 pandemic, China’s Civil Aviation Authority cut U.S. flights to China, which triggered a U.S. response in 2020 to block China’s flights in kind.¹¹²⁷

¹¹²⁵ ICAO, “Convention on International Civil Aviation,” 2006, 9th Edition.

¹¹²⁶ “How China’s Major Airports Are Looking To Grow | Aviation Week Network.”

¹¹²⁷ “US Allows China to Boost Passenger Flights to 50 per Week as Summer Travel Season Nears | CNN Business.”

Aviation periodicals described the situation as tense, with the U.S. exerting increased oversight of Chinese airlines, threatening legal action for any flights outside U.S. restrictions.¹¹²⁸ The U.S. Department of Transportation was quoted as having “protested this situation to the Chinese authorities, repeatedly objecting to China’s failure to let U.S. carriers fully exercise their rights, [denying] U.S. carriers their right to compete on a fair and equal basis with Chinese carriers.”¹¹²⁹ Their resulting Order references a failure of China to abide by its bilateral air services agreement with the U.S., signed in 1980.¹¹³⁰ Farrell and Newman wrote about U.S./Chinese competition in a way that sums up the dispute: “As the United States considered new and harsher coercive options against China, it risked coming to resemble its adversary, driving other countries, businesses, and individuals away. That would mean the decline of America’s empire rather than the necessary rise of China’s.”¹¹³¹

While the U.S. has allowed additional flight access from China since the 2020 dispute, even increasing by 15 additional roundtrip weekly flights in 2024, the agreement appears to be somewhat tenuous.¹¹³² China’s ability to use the aviation network against the U.S. and stop flows of commerce represent the exact threat the U.S. has long held against states failing to comply with its airport or airline security measures. Further, the U.S. break with Europe in such a significant way – having ICAO used against it and three major allies – hints of a shift in the

¹¹²⁸ “DOT Accuses China of barring US Carriers from Resuming Ops,” <https://www.ch-aviation.com/news/91072-dot-accuses-china-of-barring-us-carriers-from-resuming-ops>.

¹¹²⁹ “DOT Accuses China of barring US Carriers from Resuming Ops.”

¹¹³⁰ Department of Transportation News: Federal Aviation Administration, “Notification and Order Disapproving Schedules.”

¹¹³¹ Farrell and Newman, *Underground Empire: How America Weaponized the World Economy*. P. 202.

¹¹³² “DOT OKs More U.S. Flights from Chinese Carriers,” February 27, 2024, <https://www.businesstravelnews.com/Global/DOT-OKs-More-US-Flights-from-Chinese-Carriers>.

future of aviation security. Another regime seems to be emerging in the aviation security domain, with an open question of which state(s) will lead the new era.

Aviation and the Future of American Hegemony

Stepping back from individual state examples, in *Exit from Hegemony*, Cooley and Nexon argue that U.S. policies are shifting away from the “American-led international order” and rather into international withdrawal and power struggles.¹¹³³ Other states and multilateral organizations have emerged to fill the gaps, with a goal of tipping economic, security, and other scales in their favor. This includes more established groups such as the European Union, as well as newer alliances like BRICS (Brazil, Russia, India, China, South Africa).¹¹³⁴ Cooley and Nexon argue that these states recognize the value of multilateral institutions, and are stepping in as the U.S. withdraws from its previous leadership role in and among various groups, particularly the United Nations,¹¹³⁵

Whether the U.S. will also choose to remain part of ICAO is unclear. However, with the recent divergence from other states within ICAO and the previously-discussed introduction of Standards against the U.S. and its closest partners, the U.S. government may well decide that continued participation in ICAO is not worthwhile. Should that happen, the United States could be setting back the clock to the Aviation Building Regime, a time when airspace had no central organization or management and states had hundreds of varying agreements and standards with each other. Whether other states would follow, whether ICAO could withstand the loss of U.S.

¹¹³³ Alexander Cooley and Daniel Nexon, *Exit from Hegemony: The Unraveling of the American Global Order, Exit from Hegemony* (Oxford University Press).

¹¹³⁴ Alexander Cooley and Daniel H. Nexon, “How Hegemony Ends,” *Foreign Affairs* (New York, United Kingdom: Council on Foreign Relations NY, August 2020).

¹¹³⁵ Cooley and Nexon, *Exit from Hegemony*.

participation and funds (as one of its main contributors), and what would happen to aviation security policies and partnerships is unclear. Cooley and Nexon describe and predict “American security system extortion,” where other countries must accept U.S. policies and personnel, and pay the U.S. to do so.¹¹³⁶

While the evolution of the U.S. political system and its relationship to the rest of the world - particularly in aviation - is in question, the need for aviation oversight and regulation remains. Security and safety in commercial airspace are as important and crucial as ever, and perhaps even more so as passenger volume has reached new record levels per day.¹¹³⁷ Additionally, the FAA has been tracking an increase in safety issues and accidents, including the January 29, 2025 collision of a regional air carrier with a U.S. army helicopter near Ronald Reagan Washington National Airport and a Delta airlines crash on February 17, 2025 in Toronto.^{1138 1139} A U.S. exit from international aviation, if coming, would leave a gap that others may willingly fill, and perhaps not to the United States’ benefit.

Final Thoughts

Thirty-six years after the bombing of Pan Am 103, both the name and legend of Pan Am and the pull of the bombing live on. The United Kingdom and United States debuted a new streaming

¹¹³⁶ Alexander Cooley and Daniel Nexon, *Exit from Hegemony: The Unraveling of the American Global Order, Exit from Hegemony* (Oxford University Press). p. 174

¹¹³⁷ International Air Transport Association, “Industry Statistics Fact Sheet,” 2025.

¹¹³⁸ “FAA Statements on Aviation Accidents and Incidents | Federal Aviation Administration,” https://www.faa.gov/newsroom/statements/accident_incidents.

¹¹³⁹ Vjosa Isai, Norimitsu Onishi, and Remy Tumin, “All on Board Survive After Plane Crashes and Overturms at Toronto Airport,” *The New York Times*, February 18, 2025, sec. World, <https://www.nytimes.com/live/2025/02/17/world/delta-toronto-plane-crash>.

series in January of 2025 titled *Lockerbie: A Search for Truth*.¹¹⁴⁰ Centered around Dr. Jim Swire, the leader of the U.K. chapter of Victims of Pam Am 103, the series stars Colin Firth and explores the bombing, the aftermath, and U.S. interactions with bombing suspect nations (at the time including Syria, Iran, and Libya).

The enduring nature of both Pan Am and its destruction have made this research timely and important in both understanding historic securitization policies and forecasting future regime change in the aviation security space.



Figure 37: Lockerbie Series Poster
Source: IMDb

¹¹⁴⁰ “Colin Firth Stars in *Lockerbie: A Search for Truth*, Peacock’s Pan Am Flight 103 Drama (WATCH),” NBC Insider Official Site, October 14, 2024, <https://www.nbc.com/nbc-insider/lockerbie-a-search-for-truth-peacock-first-look-trailer>.

The Pan Am 103 bombing changed how commercial aviation operated worldwide. By using its network power and leveraging the interconnectedness of the aviation system – as well as the public's dependence on it for travel and commercial industry's for economics – the U.S. was able to extraterritorially implement its preferred security policy's on the global aviation system.

This critical juncture in aviation served to usher in a U.S.-dominated, extraterritorial era. There are signs of a potential shift once more into a new regime, whether a return to the free-for-all of the Aviation Building Regime, use of the multilateral system, or creation of a new extraterritorial area led by a rival state power. Examining the case of Pan Am 103 provides valuable insight into these dynamics and struggles as an example of weaponized interdependence, and what that means for security in air spaces.

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