

Air Marshal's Investigation Power's Research in Dealing with Hijacking Criminals

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Abstract

The power of investigation refers to the country's investigation organ and investigators in order to achieve the purpose of the investigation: in accordance with legal procedures, using special investigative means to carry out the investigation activities of power. As the youngest police classification in China, Chinese air marshal is the important member that first faces the hijacking suspects, and the effective implementation of its investigation right is crucial on how to identify, investigate and prevent the hijacking behavior. This paper, using empirical analysis, comparative analysis and other research methods, aims to analyze and discuss how to overcome the defects of current Chinese air marshal's investigation power existing in the hijacking in criminal cases, in order to obtain the earliest direct investigation clue, find the suspect, define the direction and determine the specific target of investigation, and then puts forward the conception and suggestion of some reform.

Keywords

Air Marshal, Hijack, Investigation, Power

1. Definition of Air Marshal's Investigation Power

In January 2003, the air marshal has been built in China for complying with the requirements in the international environment, and the air marshal troops belong to the people's police according to the program of The State Council of the People's Republic of China and The Civil Aviation Administration of China, which should follow the provisions of "Police Law of the People's Republic of China" and perform all the powers of polices for the investigation power as an important police power and which shall be included into the power of air marshal. So far, the investigation power of air marshal in dealing with hijacking criminals is conducted by less in-depth discussion and research by scholars and practitioners, which are in relatively obscure operation condition and

without the agreed understanding. Therefore, it is necessary to clearly and deeply define the air marshal's investigation power in dealing with hijacking criminals for grasping the operation rules and characteristics of the air marshal's investigation power, perform the relevant systems and achieve the optimal configuration.

The definitions of investigation power can be mainly divided into two kinds by the scholars in China. Generally, the narrow investigation power refers to the detective activity on the criminal cases conducted by the special investigation organ, and the broad investigation power owns the broad subject and even has the power to investigate the security departments of partial units. In January 2003, the air marshal has been built in China for complying with the requirements in the international environment, and the air marshal troops belong to the people's police according to the program of The State Council of the People's Republic of China and The Civil Aviation Administration of China, which should follow the provisions of "Police Law of the People's Republic of China" and perform all the powers of polices for the investigation power as an important police power. Thus, the investigation power of air marshal shall be a kind of narrow power.

Some scholars believe that the compulsory violence hidden in the investigation power is the main characteristics in all investigation powers [1]. Hijacking criminals are strong sudden, and have special crime locality, more difficult investigation before incidents, serious consequence after incidents and other characteristics, of which, the compulsory violence is first requested. Thus, it is obviously important to strengthen the investigation before cases and make prevention. As the youngest police classification in China, Chinese air marshal is the important crew member who first contacts with the hijackers, and the effective implementation of its investigation right is crucial on how to identify, prevent and detect the occurrence of critical hijacking behavior. In the current legislative standards and enforcement environment, the comprehensive and systematic research in the investigation power of air marshal is important and urgent, which shall provide sufficient theoretical basis for reshaping the structure of criminal proceedings, regulating the operation of air marshal's investigation power and realizing the fair entity and procedure on the criminal proceedings in China [2]. The basic elements of investigation power are subject to the requirements of the investigation power in China. Different investigation powers are requested by our country; different natures and basic elements are for the investigation powers [3]. This paper is to systematically research and analyze the air marshal's investigation power to summarize some suggestions and ideas in view of the investigation power of air marshal in the hijacking criminals in the main airplane transport countries including America, Australia, Japan and China including Taiwan, Hong Kong and Macao, as well as the legal relationship of investigation power between aircraft commander and air marshal.

2. Air Marshal's Investigation Power in Dealing with Hijacking Criminals

Since 9.11 event of the United States, every country has considered the particularity of hijacking criminals, greatly strengthened and attached importance to the hijacking investigation, which are reflected on the investigation subjects and permission, especially on the differences between the air marshal investigation powers and ordinary investigation subjects. Here's the analysis on the air marshal investigation powers in dealing with hijacking criminals in main airplane transport countries around the world.

(1) Air Marshal in US. When 9.11 terrorist attacks of the United States happening, the project on the air marshals in US almost not exists, and the number of air marshals is only 32 persons. However, 5000 armed air marshals are additionally increased to protect the safety of commercial flights after that. The training and management on the air marshals are more sophisticated and perfect, the project on the air marshals is managed by US Immigration and Customs Enforcement transferred from US Transportation Security Administration, and the project of the customs and immigration safety and the project of the air marshals are combined in order to the participants of two projects receiving the cross-training. Therefore, the government can transfer parts of personnel from the customs and immigration safety project to protect the aviation safety once American shipping departments incurs serious terrorist attacks, which further facilitates to transfer the resources of Department of Homeland Security and provides additional safety force when the terrorist attacks increasing or during the period of the occurrence of terrorist attack. However, there are more than 30,000 flights in America at present, even if there is one air marshal per aircraft, the size of air police forces is equivalent to the current number of marines in America, which is obviously unrealistic. Thus, the air marshals should be selectively dispatched to some flights based on various information provided by the intelligence department. The task of air marshal is to serve for the passengers largely depending on their trainings. There are mainly two levels of trainings for the air marshals in America: one is the enforcement training, another is the actual combat training in techniques for the

police, including the performance of investigation means, the behavior identification of hijacking criminals, the proficiency of specific tactics in firearms and machines, the self-defense measures at short range, in order to safeguard the public safety of flight.

As the federal law enforcement officers, the US air marshals own major enforcement and investigation permissions on hijacking criminals, such as repeated search and arrest without a search warrant on the aircraft. Therefore, some scholars believe that the constitutionality of these behaviors can be discussed from three aspects [4]. First of all, major aviation safety is the fundamental interests gained exceptionally for the warrant due to the air marshals in charge of dealing with the hijacking, terrorist attack and other behaviors. Secondly, the special environment and emergency as well as the applicable requirements in line with the writ principles exceptionally for the “emergency”. Finally, substantial elements requested in the Constitution should be met under the condition of the search and arrest without writ for the air marshals, namely, the substantial grounds shall be possessed for different cases when take action. For example, there was an American passenger who declared that he carried bomb in his carry-on bag, and lastly he was shot dead by a federal air marshal in the jetway of Miami, Florida International Airport. However, the marshals found no bomb in the carry-on bag after that. That was the event that the US air marshal shot the passengers since 9.11 event for the first time. As can be seen from the case, the US air marshals have been given the great investigation power to determine.

(2) Air Marshal in Australia. Since the program of “Air Marshal” installed in the commercial aircraft is proposed in the United States, the Australian government subsequently decide to adopt this program as a plan for anti-terrorist action. The plan stipulates that the armed polices or intelligence officers shall be placed in the flight aperiodically selected to prevent terrorists from hijacking incidents that may occur. But some local experts raised objections. They believe that it may not play any original role of the air marshal. The domestic airlines in Australian said that the proposal has not been negotiated yet, but they are skeptical on the actual function of air marshals. The former Qantas Airways security minister Armstrong also pointed out that the prevention of terrorists’ boarding was more important and effective that the arrangement of polices on the plane. Thus, it is fine to prevent terrorists from boarding, while the investigative function of the air marshals is the last defense line for the prevention of hijacking criminals after the terrorists’ boarding.

(3) Air Marshal in Japan. For the prevention of the hijacking and other terrorist activities, Tokyo Metropolitan Police Department decides to dispatch the plainclothes polices with guns to be on duty for the international flights at Haneda Airport. With the further expansion of the number of international flights at Haneda Airport, the Japanese government expressed to strengthen the alert on the terrorist activity for the upcoming of the world’s eight-nation summit conference in 2016 and the Olympic Games in Tokyo in 2020. The Japanese police officials by flight to Japan is the special force “Sky Marshal” in the aircraft. The force was originally set up in the United States in 1960, and then successively introduced by every country. The mechanism is experimentally introduced in World Cup in 2002 in Japan, and officially imported as the “anti-terrorism plan” on December 2006. Under the considerations of security, the police officers did not disclose the specific actions of air marshals, but one thing is clear that these officers are equipped with pistols and can be always coordinated with the aircraft commander to control the terrorists when a terrorist attack might occur. It is understood that the daily direct flight is respectively towards San Francisco, Los Angeles and Hawaii from Haneda Airport. The discussion on the introduction of air police officers has been made by Tokyo Metropolitan Police Department a few year ago, the excellent police officers are selected from the original “Special Assault Team (SAT)” to learn the relevant aviation knowledge and trainings. With the increase of the number of international flights at Haneda Airport at the end of March 2014, Tokyo Metropolitan Police Department has set up the “Strategic Response Unit” directly subordinate to Security Bureau on April 1 to cooperate with the air police officers to safeguard the safety of airport and airplane together.

(4) Air Marshal in Singapore. Parliament of Singapore has passed a bill to allow Singapore Airlines and its subsidiary SilkAir to develop air polices for the purpose of preventing the airplane from threat of terrorists. Interior Minister of Singapore in Congress has made debate on the matter and said that “9.11” event has made significant changes for the worldwide aviation safety. Due to Singapore Airlines and SilkAir are the interesting attack target by terrorists, it is necessary for these two airlines to have air polices, which will made more difficult terrorist actions adopted by the terrorists against the aircrafts of Singapore Airlines. The members of the air polices shall be selected from Singapore Police Force, will receive the special trainings in emergency situations and learn how to deal with terrorists.

(5) Air Marshal in Turkey. The air marshals are equipped in the airplanes to guarantee the safety of civil

aircrafts in Turkey, and the suspicious passengers are not allowed to go aboard. The draft of the bill on air polices in Turkey is the result that there are often the steal attempts of civil aircrafts and police station almost receives the alarm information about the aircraft placed the bomb every day, but most of which are false. Ministry of Transportation in Turkey formulating the civil aviation bill is to improve the aircraft safety and modify the existing regulations. The stipulation is that a special safety branch composed by polices or a private security company shall be on duty with weapons on the plane and can use the Headquarters of the General Staff to resolve issues related to “the elimination of air threat” if necessary.

(6) Air Marshal in Hong Kong. There are there are anti-smuggling police, railway police, maritime police, air police, forest police in Hong Kong, like in the mainland of China, but there are different institution. These special police classifications are all centrally led and managed by Hong Kong Police Force (equivalent to municipal Public Security Bureau), with exception that the anti-smuggling police is led and managed by Hong Kong Customs, and other institutions (including the chief executive) have no right to intervene their work. For example, the air marshals in Hong Kong has a police service room, but the airlines have no right to interfere with the works of air marshals. The air marshals can investigate cases and organize police forces on their own, and the airlines can also build their own security forces to help maintaining order, but can't command the air marshals. As for treatment, the polices in Hong Kong are treated as the highest level of civil servants. The civil servants in Hong Kong are divided into three categories: the general treatment (civil service), the disciplined service treatment (customs, fire protection, prisons, etc.) and the police treatment. Of which, the police treatment is the highest. All polices in Hong Kong, without regard to what kinds of polices, enjoy the treatment as the highest level of civil servants. Only this, the excellent talents can be attracted to join the police forces, but also to prevent the loss of talents.

(7) Inspiration of Foreign Air Marshal System to China.

a) Lack of Independence for Air Marshals in China. Although the air marshals in China are prepared into the Public Security Bureau of the Civil Aviation Administration, the main economic incomes, working hours and trainings are basically and respectively completed by their own airlines. For the management of air marshals in China, the air marshals can all be handed over to the public security department to manage like in Hong Kong. The police is the public sector, which can't be conducted the enterprise-style management by the airlines. Meanwhile, the specialty of a lot of works of the police is very strong and most of the staff in enterprise do not understand, the work of air marshal will be difficult to carry out if the captain or the aircraft commander to direct the air police work.

b) Limited Enforcement Permissions for Air Marshals in China. The US air marshals have more independent enforcement and investigation permissions, such as search and arrest without a search warrant. However, the air marshals in China mainly manage the public security and order of general airplanes, and follow the security responsibility and power equipped by airlines. If the law enforcement permissions weakening, it will not dispose the serious and strong hidden hijacking criminal activities and can't function as the air marshals at a crucial time.

c) Limited Enforcement Means for Air Marshals in China. Generally, hijacking criminals have the characteristics of strict organization and specialized and intellectualized criminal way. The air marshals are easy to be identified by the criminal suspects and unable to get the latest activities information on the key criminal suspects for the air marshals are under the condition of information isolated island. Meanwhile, the air marshals in China are not equipped with the appropriate anti-hijacking weapons like the foreign air marshals, and the relevant enforcement measures are not clear in law. Thus, the air marshals in China are in a weak position for the hijacking criminal activities.

3. Comparison of Investigation Power between Air Marshal and Aircraft Commander in Hijacking Criminals

New challenge has been raised for the national aviation security after the Malaysia Airlines lost contact event. How to do if a pilot's security is threatened? The aircraft commander and the air marshal are in one airplane with different identities and privileges due to different positions; it is inevitable to have various legal dilemma. From the legal sense, the air police represents the public right, the captain is the staff of aviation business who stands for the private rights without doubt, and the investigative powers conflict between aircraft commander and air marshal in hijacking criminals actually reflects the conflict of public right and private right. According to

the provisions of Article 25 in “Provisions on the Procedures for Handling Criminal Cases by Public Security Organs” (The Ministry of Public Security No. 127), the public organs of the civil aviation are in charge of institution, plant, sector, hospital, school, station, team and work area of civil aviation system, as well as the criminal cases occurred in the airport and civil aviation aircraft. The criminal cases of serious flight accidents are administered by the public security organs that the criminals occurring. There are no public security organs or without the jurisdiction of public security organs of airport in the occurring criminals, which should be governed by local public security organs and assisted by the relevant public security organs in airports. At the same time, the provisions of Article 120 shows that the public security organs can make detention firstly for the active criminals or major suspects if one of the following circumstances appears: preparing a crime, committing a crime or discovered immediately after committing a crime and so on. According to the regulations, the air marshals fully deserve with a clear investigative powers.

However, more extensive provisions have been made for the power of aircraft commander whether domestic or international laws, which clearly define the legal status, the basic rights performed and the corresponding responsibilities borne during the whole operation of the aircraft. “An important duty for aircraft commander is to prevent the violation of state criminal law” [5]. In terms of the behaviors on preventing and combating the illegal crimes damaging the aviation safety, the laws and regulations of “Tokyo Treaty” and “Civil Aviation Law” in China have endowed the aircraft commander the rights to custody, expulsion, transfer, collection of evidence and exemption of their own liabilities for the persons endangering the aviation safety. Article 6 in “Tokyo Treaty” stipulates: “The proper measures including the necessary restrain shall be taken on the persons who are reasonably suspected by the aircraft commander to have committed or will commit crimes or behaviors in the airplane.” Meanwhile, “Tokyo Treaty” stipulates that the airplane can be landed in any country and the person shall be expelled from the plane if the person is suspected by the aircraft commander to have endangered or will endangered the safety of airplane or passengers and the fine order and discipline on the airplane, as well as whether commit a crime or not. Term 1 of Article 9 in “Tokyo Treaty” stipulates that “if the aircraft commander reasonably believes that the person has committed serious crimes according to the criminal law of aircraft registration suspected by the commander, the commander can transfer the person to any competent authorities of the agreed countries that the aircraft landing”. Moreover, Term 3 of Article 9 in “Tokyo Treaty” stipulates that “the aircraft commander shall follow this provision to provide the legally possessed evidence and information as per the laws of aircraft registration country to the local authority when the suspects are transferred to the authority”. Article 10 in “Tokyo Treaty” states that “whether the aircraft, other members of the crew, passengers, owner or operator of aircraft or the person in the flight for the interest are all not declared to undertake the duty for the proceedings instituted due to these measures suffered according to the measures taken in the treaty”. But only the air marshals shall have powers even capacities to enforce the compulsive control, expulsion or detention in the plane. However, the current laws have very broad stipulation on the investigation power on the air marshals, with not strong operability. If there are different opinions with the aircraft commander, even if the aircraft commander violate the stipulation or hijacking cases appear, the investigation powers of air marshals are further limited.

For the management of air marshals, the air marshals shall be positioned as national public servants, and their treatment will be divided two parts: the basic salary and the post wage shall be paid by the national finance and mastered by the Public Security Bureau of the Civil Aviation Administration, as well as the subsidy is handled by the airline. Because they have the dual identities of national public servants and crew members, the treatments are subsidies for police rank paid by national finance and allowances for the air duty of aircrew paid by airlines. However, the civil servants take part-time jobs outside the office as per the demands of work and don't receive the part-time payment through the approval of the relevant authorities according to the provisions of Article 42 of “Civil Servant Law of the People's Republic of China”. The air marshals, as the civil servants, have main incomes from airlines, and their enforcement powers are limited by the company. Generally speaking, the aircraft should be managed for cockpit and cabin, the aircraft commander manages all transactions in the aircraft, the crew chief is mainly charge of the cabin, and the air marshal mainly works in the environment of the cabin. Thus, many airlines even put the air marshals as the subordinates of crew chief or part-time flight attendants to be busy with the service for passengers, and of course, neglect to carry out their own investigation.

With the rapid development of civil aviation industry in China, more and more complex crimes appear in the aircraft. In view of the particularity of police environment, the aircraft commander must have the sufficient powers to enforcement. Thus, the aircraft commander shall be requested to effectively enforcement to ensure

aviation safety and the power of aircraft commander not abused. The emphasis is different between the ordinary trainings between the aircraft commander and the air marshal. The aircraft commander is mainly on flying skills with the work space of the cockpit and responsible for the air safety of airplane. The air marshal is more focused on investigation and enforcement of criminal activity with the main work space of cabin and in charge of the air defense safety of aircraft. The cabin not only is space where the airline services for the passengers, but also is the battleground for the air marshals finding the clues of crime to prevent the criminal activities occurring. Therefore, it is necessary to clearly define the division of labor and the legal status of aircraft commander, air marshals and crew chief to carry out their own duties in the legal level and the corporate management manual.

4. Main Contents of Investigation Power of Air Marshal in Handling Hijacking Criminals

Claus Roxin, the scholar of Criminal Procedure Law in German, briefly pointed out that the principle of investigation on the crimes actively conducted by country can't be found in the old laws. For the young air marshals in China, the main contents on the criminal investigation against hijacking are also hard to be found in a variety of provisions at present. In general, the investigation powers include four main contents—enforcement subject, operation mode, jurisdiction scope and configuration contents [6]. However, the air marshal is in the special working environment and the main contents of investigation powers performed naturally have some of its own characteristics. For example:

1) From the enforcement subject and the legislative and judicial practice of all the countries, there are mainly two types for the investigation of ordinary criminal cases if the specific legal provisions excluded: one is that the procuratorial organ and the judicial police have the investigation powers. Sometimes, the procuratorial organ is positioned as the investigation organ and in charge of the leadership and command of the cases. The second is that the policeman is in charge of investigation and the procuratorial organ is responsible for the prosecution of the cases. Compared with the air marshals, the international civil aviation organization has formulated and approved the “Treaty on Committing Crimes or Some Other Behaviors in Aircraft” (hereinafter referred to as “Tokyo Treaty”) in 1963. The treaty endows the important public security power to the aircraft commander, which doesn't exist in other transportation, as well as the aircraft commander is recognized as the representative of one country, has the qualification of national administrative officers and enjoys the immunity as the representative. Article 44 to Article 52 of “Civil Aviation Law of People's Republic of China” are all the provisions on air safety responsibility and power of the aircraft commander of civil aviation. The “Regulations of the People's Republic of China on Safety and Security of Civil Aviation” (hereinafter referred to as “Defense Ordinance”) has made further clear and specific provisions on the ways of enforcement power, which has defined the legal status of the aircraft commander and defined the aircraft commander's enforcement power to the aviation crimes in the cabin to provide the legal support for the enforcement power of aircraft commander. But for the provisions of investigation power of the air marshals, the general provisions only are made in the “Police Acts of People's Republic of China”, “Criminal Procedure Law of People's Republic of China” and some provisions of cases handling procedures. Our country has established that the position of the procuratorial organ as the national law supervisory authority. Therefore, the investigation of air marshals should be subject to the supervision of the prosecutor. For example, the police shall not decide on the arrest of the criminal suspect by himself. As a result, the air marshal is not only controlled by the aircraft commander even the crew chief, but also approved by the prosecutor, and the efficiency and positivity of investigation are inevitably and greatly reduced, which is to establish the investigation powers of air marshals and is a legal issue that can't be ignored.

2) From operational mode and scope of jurisdiction, the current operational mode of air marshals is as per the form of aviation security officer that established before the formulation of air marshals, which can be seen from the recent training program. The latest “Training Program on Aviation Security Officer” stipulates that the aviation security officer trainings include beginning training, regular training, instructor training and daily training. But in the beginning training, there are recognition and disposal of unlawful interference acts in the air, disturbing behaviors, exchange of crisis and communication subjects. The Police Acts stipulates the relevant provisions that the police has the rights to exercise more than ten kinds of powers, and the loss of investigation powers of air marshals will be directly caused if there are non-equivalent peacetime trainings and investigative powers. There are some differences of the enforcement environment and jurisdiction scope between the air marshals and other polices. Therefore, the enforcement of investigation powers should be more special, which shall be subject

to the legal supervision as per legal procedures and principle of proportionality and shall have larger space, as well as which is a relatively big test for developing the relevant laws and regulations in China.

3) The contents of investigation powers of air marshals include both the capacity to use force and the actual use of force, both the ability to sanction and the application of sanction capacity [7]. According to the provisions of Article 7 to Article 19 of “Police Acts of the People’s Republic of China”, the people’s police are legally entitled to more than ten kinds of rights, including: a) compulsory administrative measures and administrative penalties, b) away from the scene, c) cross-examination and inspection, d) the use of weapons and police equipment, e) detention, search, arrest or other coercive measures, f) priority access, g) protective measures to restrain, h) traffic control, i) technical investigation measures, j) live control, k) the national security organs, prisons, the people’s police and courts of correctional labor management, the judicial police of the People’s Procuratorate respectively perform the legal powers in accordance with the provisions of relevant laws and administrative regulations. Ordinary people’s police enjoys above privileges, and the air police should also enjoy these powers. The existing provisions of the criminal procedure law are still in the stage of registration before the investigation stage. For the working environment of the air marshals, the military operations will be hindered if the investigation after registration in accordance with the provisions of laws, and it is possible to break the law and have accountability if not by the provisions of laws. The air marshals can be more intuitive, efficient and subtle access to information in the cabin, or can firstly be able to issue the warning or caution to the aircraft commander through finding some suddenly abnormal behaviors of people. Thus, the investigation powers can be further played, and the function in this kind of early warning can’t be underestimated. For the investigation of hijacking criminals in advance, the air marshals can master more clues under promise of no panic on the passenger in the cabin, which is more appropriate and practical than the action that take direct force measures.

5. Basic Reform Conception of Air Marshal’s Investigation Power in China

The issuance of new features and situations for the hijacking criminals shows that it is difficult for the setup of current air marshal investigation powers to meet the needs of actual investigation against the hijacking criminal cases. The main conception for further reform on the air marshal investigation powers in hijacking cases is shown in the following aspects:

5.1. Setup of Independent Air Marshal Team

In China, the cases handling and the investigation resources of air marshals are further limited relatively compared with other investigation agencies. Under this power configuration mode, the air marshals in China are currently and nominally managed by the Public Security Bureau and the Civil Aviation Administration, but they are actually managed by the airlines in practical works for their main economic incomes are from their own airlines. With the change of physical quality, age and other factors of air marshal, the retirement will become an important factor to impact the stability of air marshal team. If set up the fully independent air marshal team, the initiative investigation in hijacking criminal cases shall be inevitably and greatly enhanced for all the expenditure are from the national finance. In addition, the specialized and unified hijacking criminal information and intelligence agency should be established and perfected, which is prerequisite and important background in the hijacking criminal case investigation. The mature retired air marshals can be organized for the specialized hijacking criminal information and intelligence agency to be in charge of receiving, collection, management and analysis of the relevant hijacking criminal information.

With the advancement of the process of international rule of law, the air marshals in China have been actively exploring and improving a variety of methods for the level of investigation, positively learning and practicing from the internationally advanced countries, and have made some effective measures. For theory and practice and along with the continuous development of civil aviation, the flight volume has the explosive growth and the voice increasingly rises for the improvement of the level of police equipment, the enhancement of the technological investigation contents and the supplement of the number of air marshals. In fact, the investment and emphasis on the air marshals by the country shall also continue to increase. However, an increase in hardware alone does not directly and completely improve current environment of police, efficiency and the fairness of law enforcement. Moreover, in the current situation, the investigation resources of the air police are still difficult to achieve the significant improvement. Thus, the improvement in investigation level of hijacking criminal activity in the new legal environment is mainly to improve the hardware condition. At the same time, the soft environ-

ment of the investigation should be taken consideration, and the existing resources (including human, financial and material resources as well as information technology) shall be optimized to combine from perfecting the internal management of air marshals, improving the behavior mode of investigation and accelerating the institutionalized and standardized construction of investigation behaviors to achieve the excellent improvement.

5.2. Independent Performance of Investigation Power

The independent performance of investigation power means that the air marshal independently enforces the investigation power by law. The investigation behavior of air marshals in hijacking criminals is only subject to the supervision of Procuratorate Representative Law, other than the illegal intervene from other organs, groups and individuals. The following steps must be done: first one is in terms of selection and appointment of staffs for maintain the independence, so that must be free from the interference of external factors, endow the corresponding personnel management power to the air marshals and achieve the integration of personnel management of air marshals. Second one is in terms of financial security mechanisms. In order to ensure the achievement of the integration of air marshals, many countries have established the fiscal safeguard mechanism for the air marshals, which allows the air marshals are completely out of control and influence of unfavorable factors. Last one is related to the case report. The vertical leadership system should be implemented, only responsible for the higher level, not subject to the interference from other persons or departments, with the exception of the supervision of Procuratorate.

5.3. Improvement of Investigation Measures

The hijacking criminal is the special criminal offense, and the hijacking criminal investigation work also is the special criminal investigation work. With the continuous development of society, there are the characteristics of terror, complexity and concealment, and the hijacking criminal investigation work is facing new serious challenge. Thus, the investigation measures of air marshals in hijacking criminal should be accelerated to improvement and the investigation work efficiency of hijacking criminal shall be improved. In hijacking criminals, the criminal suspect is not a simple investigation bearer, and he often has a strong psychological readiness and alertness for the aircrafts are as the last criminal purpose achieved. Before hijacking criminals, the perpetrator needs to plan carefully to ensure the success of the crime and prevent the action exposed, and even make it difficult to obtain useful evidence for the air marshals when exposed. In the criminal process, there is the characteristic of concealment for the perpetrators, and the criminal suspects will conduct perpetration of a crime, fabricate the confused action information and conceal the whereabouts of his associates according to the passengers on the aircraft and other specific circumstances. Therefore, the investigation measures of air marshals should be improved, and the special investigation techniques should be endowed to the air marshals. It is difficult to obtain the valid evidence using the conventional investigation means for the hijacking criminals have the characteristics of high-intelligence and secrecy as a serious criminal acts endangering national security. Thus, the special investigation means becomes an important measure to anti-hijacking in many countries. In 1999, Article 3 of “Law of Monitoring Communications in Criminal Investigation” in Japan stipulates that the monitoring should be conducted for the communications related to the criminals as per the warrant issued by a judge when the prosecutor or the judicial police believes that there is sufficient reason to doubt a crime communications implemented. Article 186 in Criminal Procedure Law of the Russian Federation provides that the monitoring and recording are permitted in the serious crimes and particularly serious criminal cases if there is sufficient reasons to believe that the suspect, the criminal defendant and others’ telephone and conversations may contain meaningful content for criminal cases. Currently, the laws on the special investigation means are mainly “National Security Law” and “Police Acts” allowed in China, which only applicable to the serious criminal cases endangering national security. The second draft on “Anti-Terrorism Act of People’s Republic of China” will be approved, has improved the provisions on approval procedure of technical investigation measures adopted in Article 42 of the first draft, and increased the material provisions acquired on technical investigation measures adopted, which can only be used for anti-terrorism response handling and investigation, prosecution and trial of a crime, not for other purposes. At present, the investigation methods used by the air marshals for hijacking criminal cases are behind the development pace of times. Thus, the air marshals should be endowed the special investigation means, which includes: the first one is electronic surveillance, monitoring and other technical investigation means, including electronic intercepting, wiretapping, electronic surveillance, secretly photographed or recorded,

interception of computer networks and other formations. The second one is the secret investigation means including personnel of special circumstances, sky-investigation, temptation investigation and delivery under the control. The last one is to improve the principle that the investigation measures must be followed. While these secret investigation means and technical investigation means are legally endowed to the air marshals, the applicable scope and the specific procedure shall be clearly defined in order to prevent the use of special investigation means violating the fundamental human rights of citizens.

5.4. The Guarantee of Human Rights

There is the occurrence of human rights violations, such as extorting confessions by torture and obtaining evidence by violence in the process of the investigation of duty crime by the air marshal if the law is not strictly followed. In order to prevent the violations of legitimate rights, the interests of criminal suspects and even the innocent citizens in the hijacking criminal investigation, we must further strengthen the guarantee of human rights. In our justice system, The People's Procuratorate independently exercises the right of prosecution and unitedly takes charge of the investigation and prosecution for the criminal cases. Public Security Authority and National Security Authority are respectively responsible for the investigation and the implementation of criminal cases governed by themselves; the approval of the People's Procuratorate shall be requested when Public Security Authority and National Security Authority take the compulsory investigation behaviors in the investigation activities, and the approval of higher level of Procuratorate must be gained when Procuratorate Authority takes the compulsory investigation behaviors in the investigation activities. This design, which addresses the affiliation question of investigation power, is conducive to strengthen the supervision of the compulsory investigation behaviors, prevent the abuse of investigation means and achieve the goal of guaranteeing human rights. Above approaches on the supervision of the compulsory investigation may be the best choice at present due to the lack of implementation of "Judicial Writ" system in China. In the current situation, not only the alert of hijacking criminals should be improved, but also the theoretical study of hijacking crime should be strengthened. In form of organization, the organizational system that combating hijacking criminals should be established under the new situation; the plight of individual combat should be avoided; the occurrence and development rule of hijacking criminals should be raised effectively in the macro; and the effective information combined with Public Security Authority of every airport shall be sent to the air marshal in time in order to conduct effectively targeted striking. Meanwhile, the investigation means and measures shall be innovated; the exploration of on-site evidence should be improved; the ability of information collection, analysis and arrangement should be enhanced; and the accuracy and effectiveness of the fighting against crimes should be strengthened. Moreover, the law provisions should be made for the anti-hijacking investigation power of the air marshal in the legislative level. For this particular investigation under the law enforcement environment, the abuse of investigation power should be prevented and greater authority should be given to the air marshal.

References

- [1] Xu, M.J. (2009) Operation and Control of Investigation Power. Law Press, Beijing, 13.
- [2] Chen, G.Z. (1995) Encyclopedia on China Law, Volume for Procedure. China People's Procuratorate Press, Beijing, 748.
- [3] Chen, X.L. (2002) Restrictions and Separation of Power: Police Power in Criminal Justice. *Journal of Northwest Institute of Political Science and Law*, 1.
- [4] Yong, L.X. (1992) Criminal Investigation. Officer Education Press, Beijing, 13.
- [5] Zhou, X. (1999) Introduction to Foreign and Domestic on Criminal Investigation. China University of Political Science and Law Press, Beijing, 44.
- [6] Xu, M.J. (2009) Operation and Control of Investigation Power. Law Press, Beijing, 14.
- [7] Zhang, B.W. (2004) Research in Investigation Power. Doctoral Dissertation, Southwest University of Political Science and Law, Chongqing, 39.