



INTERNATIONAL LAW ON AIRCRAFT HIJACKING:
THE PRACTICE IN MALAYSIA AND NIGERIA

BY

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ABSTRACT

The offence of aircraft hijacking has been a major threat to the growth and development of civil aviation in the 21st century in particular after 9/11. Due to its consequences, such as loss of lives, properties, distortion of international trade and psychological disorder, the international community has come up with adopting successive international Conventions to suppress hijacking. The International Civil Aviation Organization (ICAO) also has adopted measures such as Annex 17 to the Convention on International Civil Aviation 1944 to prevent and suppress the offence. Malaysia and Nigeria are parties to these Conventions and the Annex 17. Despite this, there are cases of security breaches in these countries. For instance, the situation in Nigeria is serious owing to the incessant threats of a deadly terrorist group known as “*Boko Haram*”. This shows that implementation of these Conventions and Annex 17 in these countries requires further investigation. To achieve this, the research critically examines the application in Malaysia and Nigeria of these anti-hijacking Conventions and the International Civil Aviation Standards and Recommended Practices on aviation security (Annex 17 to the Chicago Convention 1944) in order to investigate whether they are properly implemented by these countries. The qualitative method of legal research is applied in this research, which includes content analysis of the existing literature and interviews with the aviation security practitioners and passengers in Malaysia and Nigeria. It also adopts the comparative method to make a comparison of the implementation of the aviation security measures in these countries. The research finds that aviation security provisions in Malaysia and Nigeria are adequate, but their implementations are inadequate due to the challenges of high cost of providing aviation security, and inadequate resources and human factor. It also finds that the consequence of these challenges is the security breaches in these countries’ airports. The research suggests that more funds should be injected into the aviation sectors in these countries to purchase modern day aviation security screening devices. Nigeria should adopt Public-Private Partnership to improve its resources in all the Nigerian airports.

ملخص البحث

صارت جريمة اختطاف الطائرات من أعظم المخاطر التي تعيق تطور الطيران المدني في القرن الواحد والعشرين ولا سيما بعد أحداث الحادي عشر سبتمبر ١١/٩؛ لما خلفت من آثارها السلبية مثل الخسائر في الأرواح والممتلكات والخلل في التجارة الدولية والاضطراب النفسي. فقد جاء المجتمع الدولي اتفاقيات دولية متعاقبة ومتتالية لقمع اختطاف الطائرات. وأتت المنظمة العالمية للطيران المدني بمعايير كالمرفق ١٧ على الاتفاقية الدولية للطيران المدني ١٩٤٤م، للوقاية ضد وقمع جريمة اختطاف الطائرات. ماليزيا ونيجيريا من أعضاء دول هذه الاتفاقيات والمرفق ١٧، على الرغم من هذا، هناك قضايا اختراقات أمنية فيهما. فمثلاً، الحالة في نيجيريا خطيرة بسبب استمرار تهديد الجماعة الإرهابية المميتة المعروفة "بيوكو حرام". هذا يشير إلى أن تطبيق تفعيل هذه الاتفاقيات والمرفق ١٧ في هاتين الدولتين يتطلب البحث، تحقق هذه الأطروحة مدى تطبيق ماليزيا ونيجيريا الاتفاقيات ضد اختطاف الطائرات ومستوى المنظمة العالمية للطيران المدني على أمن الطيران (المرفق ١٧ إلى الاتفاقية الشيكاغو ١٩٤٤م)؛ ليعرف هل هي يتم تطبيقها في هذه الدول. استخدم هذا البحث منهج البحث القانوني النوعي، الذي يتضمن تحليل الدراسات الموجودة، والمقابلات مع العاملين في مجال الطيران المدني والمسافرين في ماليزيا ونيجيريا. كما تبنت الدراسة المنهج المقارن لمقارنة مدى تطبيق وتفعيل المعايير الأمنية للطيران في ماليزيا ونيجيريا. توصل البحث إلى أنّ الأحكام المتعلقة بسلامة الطيران في ماليزيا ونيجيريا كافية غير أن تطبيقها ليس بكاف؛ بسبب التحديات من ارتفاع تكلفة توفير أمن الطيران، وعدم كفاية الموارد والعامل البشري، وأشار البحث إلى أنّ عواقب هذه التحديات هي اختراقات أمنية للطيران المدني في مطارات هذه الدول. ويتفرح البحث وجوب زيادة حقن الأموال في مجالات الطيران في هذه الدول؛ لشراء أجهزة فحص سلامة الطيران المعاصرة. وعلى نيجيريا أن تتبنى الشراكة بين القطاعين العام والخاص لتطوير الموارد وتحسينها في جميع مطارات نيجيريا.

APPROVAL PAGE

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DECLARATION

I hereby declare that this thesis is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any degree at IIUM or other institutions.

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Date.....

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To

(i)

The living memory of my late father

Alhaji Ismail Adua

(ii)

My mother

Alhaja Adamoh Ismail Adua

(iii)

My darling wife and children

Habeelat Omowumi; Ismail; Hameedat; Solahudeen; Maryam; and Ibrahim

For their love, patience and understanding

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LIST OF ABBREVIATIONS

ABAJ	American Bar Association Journal
AC	Appeal Court
AJIL	The American Journal of International Law
All FWLR	All Federation Weekly Law Report
ATD	Air Traffic Division
BBC	British Broadcasting Corporation
BC int'l & Comp. L. Rev.	Boston College International and Comparative Law Review
Cap	Chapter
Case W. Res. J. int'l	Case Western Reserve Journal of International Law
CEDAW	Convention on Elimination of all forms of Discrimination against woman
CHR	Committee on Human Right
CYIL	Canadian Yearbook of International Law
DC	District Court
DDC	District Court Division
DENV. J. INT'L L & POL'Y	Denver Journal of International Law and Policy
Doc	Document
EPIL	Encyclopedia of Public International Law
FAAN	Federal Airport Authority of Nigeria
GEN ASS	General Assembly
GYBIL	German Yearbook of International Law
Harv. Int'l Law	Harvard International Law
HRC Res	Human Right Committee Resolution
I.L.M	International Legal Materials
I.L.R	International Law Report
ICAO Doc	International Civil Aviation Document
ICAO Res	International Civil Aviation Resolution
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
KLIA	Kuala Lumpur International Airport
MAB	Malaysia Airport Berhad
MAHB	Malaysia Airport Holdings Berhad
MAS	Malaysia Airline System
MICH. TELCOMM. TECH. L. REV.	Michigan Telecommunication Technology Law Review
NCAA	Nigerian Civil Aviation Authority
NWLR	Nigerian Weekly Law Report
OAU Doc	Organization of Africa Unity Document
OAU	Organization of Africa Unity
PCIJ	Permanent Court of International Justice

Res	Resolution
RGDIP	Revue Genere de Droit int'l Public
SCRes	Security Council Resolution
Syracus.J.Int'l L& Comm.	Syracus Journal of International Law and Commerce
UN Doc S/Res	United Nations Document Series Resolution
UNDoc	United Nations Document
UNSCOR	United Nations Security Council Resolution
UNTS	United Nations Treaty Series
US	United States
WLR	Weekly Law Report
MRTD	Machine Readable Travel Document
SARPs	Standard and Recommended Practices
USOAP	Universal Safety Oversight Audit Programme
USOP	Universal Security Oversight Programme
ID	Identity card
DPP	Director of Public Prosecutor
CPC	Criminal Procedure Code
FRN	Federal Republic of Nigeria
Pt.	Part
SCNJ	Supreme Court of Nigeria Judgement
NLR	Nigerian Law Report
NWLR	Nigerian Weekly Law Report
All NLR	All Nigerian Law Report

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CHAPTER ONE

INTRODUCTION

1.0 BACKGROUND OF THE RESEARCH

At the early days of air transportation, the international community regarded the air transport as the most secured and fastest of all the means of transportation.¹ The concern of the international community was the level of competency of the pilot and the condition of the aircraft.² This is because security of the air transport was never in doubt. Thus, the offences of unlawful interference (including aircraft hijacking) were unknown. Therefore, there was neither international law nor the practice of aviation security provision(s) to secure the air transportation.

However, the offence of unlawful interference with civil aviation emerged with the commission of the offence of aircraft hijacking slowly in 1931. In the 1960s and early 1970s, there were tremendous increased in the rate of aircraft hijacking, especially the hijacking of United States of America's aircrafts to Cuba. This offence was committed for political reason.³ It marked the beginning of erosion of the security of air transport. The subsequent aircraft hijacking later turned bloody as there were use of dangerous weapons such as knives, axes, guns and other dangerous materials to commit the offence. The consequences of these aircraft hijackings are loss of lives, properties, distortion of international trade, creation of disagreement between the

¹ Ruwantissa Abeyratne ,A, *Aviation Security Law*, London : Springer Heidelberg Dordrecht,(2010),41

² Demsey, P.S, "Aviation Security: The Role of Law in the War Against Terrorism" vol.41, No 3, (2003), *Columbia Journal of Transnational Law*, 649.

³ Jefferey, M.A and Jefferey, S.F, *Practical Aviation Security: Predicting and preventing Future Threats*, USA, Elsevier Inc., 2009, 47; See also Ruwantissa Abeyratne, 103.

states, and psychological disorder to the individuals. In these circumstances, the much talked about security of the air transport has been eroded.

To regain the security of international civil aviation, the international community under the umbrella of the International Civil Aviation Organization adopted various international Conventions, such as the Tokyo Convention on Offences and Certain other Acts Committed On Board Aircraft 1963,⁴ the Hague Convention on the Suppression of Unlawful Seizure of Aircraft 1970,⁵ the Montreal Convention for the suppression of Unlawful Acts against the Safety of Civil Aviation,⁶ and the 2010 Convention on the suppression of unlawful interference relating to international civil aviation,⁷ and a technical response designed as an attachment to the Convention on International Civil Aviation 1944.⁸ This attachment is called Annex 17 to the Chicago Convention 1944. The primary aims and objectives of these Conventions and the attachment are to secure, through the exercise of jurisdiction to try the offender, extradition or prosecution of the offender and punishment of the offender. In addition, the Annex 17 was adopted to further secure the civil aviation through the screening of passengers and baggage, for the purpose of detecting unauthorised materials that are capable of aiding the commission of unlawful interference (aircraft hijacking) with the civil aviation. These International

⁴ The Tokyo Convention on Offences and Certain other Acts Committed On Board Aircraft adopted on 14 September 1963 and entered into force on 4 December 1963, 704 UNTS 219, 20 U.S.T 2941 [Herein after referred to as The Tokyo Convention 1963].

⁵ The Hague Convention on the Suppression of Unlawful Seizure of Aircraft 1970, adopted on 16 December 1970 and entered into force on 14 October 1970, 80 UNTS 105, 22 U.S.T 1641, T.I.A.S No. 7192. [Herein after referred to as The Hague Convention 1970].

⁶ The Montreal Convention for the suppression of Unlawful Acts against the Safety of Civil Aviation, adopted on 23 September 1971 and entered into force on 26 January 1971, 974, UNTS 177, 24 U.S.T 564, T.I.A.S. No 7570. [Herein after referred to as The Montreal Convention 1971].

⁷ Convention on suppression of unlawful interference relating to international civil aviation, done at Beijing on 10 September 2010, 50 *ILM* 144 (2011).

⁸ Convention on International Civil Aviation signed at Chicago on 7 December 1944, ICAO Doc. 7300/9, Ninth Edition, 2006.