Chapter 33

Civil Aviation Offences under the Nigerian Civil Aviation Act, 2006

Ismail Adua Mustapha, Ph.D*,
N.O.A Ijaiya, Ph.D**,
and Isau Olatunji Ahmed***

Abstract

Aviation offence is an act of unlawful interference with civil aviation that is punishable by the State. Civil aviation across the globe has suffered from these offences the consequence of which affected the international community as a whole. The paper therefore examines the nature of civil aviation offences under the Nigerian Civil Aviation Act 2006 with a view to knowing what ambivalence(s) are there in the Act. To achieve this aim, the paper adopts doctrinal legal research methodology. It is found that some offences are inexcusably omitted in the Act and that non-inclusion of technological means to commit any of the offences is a grave omission in this 21st century. The paper therefore called for a review of the Act to include these omitted offences so as to be in line with the current Aviation Security Convention, which is 2010 Beijing Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, and Protocol Supplementary to Hague Convention 1970 done at Beijing on 10 September 2010

Introduction

The safety and security of civil aviation against unlawful interference is an obligation *orga omen* of the states of the world. Aviation and its institutions have suffered series of unlawful interferences from the external influence across the globe. Acts such as unlawful seizure of aircraft, sabotage of aircraft, hostage taking of passengers, destruction of airports and their facilities amongst others constitute what is known as Aviation Offences. Aviation offence is an act of unlawful interference with civil aviation that is punishable by the State.

* **Business Law Department, Faculty of Law, University of Ilorin; Email**: ismadua@yahoo.com, ismailaduam@gmail.com; Phone no: +2348062643265, +2348181003642

** **Public Law Department, Faculty of Law, University of Ilorin;** Email: ijaiyanao@yahoo.com ; Phone no: +2348062643265

*** **International Business Law Department, College of Law, Kwara State University,** Malete; Email: ahmed.isau@yahoo.com, ahmed.isau@kwasu.edu.ng ; Phone Number: +2347030070078, +2348054942865

For the sake of peaceful co-existence and security of air transport and its environ, the States of the World were either adopted the international instruments on Aviation Security[1] and applied them directly, or adopted them and transformed same into their laws for them to be applicable to their local circumstances. In Nigeria, the constitutionality of the adoption and transformation of these international instruments is derived from section 12 of the 1999 Constitution as amended.[2] In addition, the Constitution goes further to protect individual from being punished for an unwritten or non-existing law, thus, the need for adoption, codification and transformation of these offences into the Nigerian Civil Aviation Act, 2006.[3]

In this connection, offences such as unlawful seizure of aircraft, sabotage of aircraft, and destruction of airport and its facilities, acts of unruly passengers among others are mentioned in the Act. All these offences are recognised as crimes under the international Conventions on Aviation Security.

In the light of the foregoing, the paper examines all these offences under the Nigerian Act, the elements of each offence and the punishment attached thereto. The paper ends with conclusion and recommendation(s).

Civil Aviation Offences under the Nigerian Civil Aviation Act, 2006

Unlawful seizure of aircraft: This is the most committed of the offences against the international civil aviation. The offence is committed once in Nigeria on June 12, 1993, during Ibrahim Babangida military era. Some of the historical antecedents of the offence are reproduced hereunder.

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[1] International Instruments on Aviation Security include Tokyo Convention On Offences and Certain Other Acts Committed On Board Aircraft, 1963, 704 UNTS 219, 20 U.S.T 2941, T.I.A.S No. 6768; Hague Convention for the Suppression of Unlawful Seizure of Aircraft, 1970, 80 UNTS 105, 22 U.S.T. 1641, T.I.A.S No. 7192; Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1971, UNTS 177, 24 U.S.T 564, T.I.A.S. No. 7570; 2010 Beijing Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, and Protocol Supplementary to Hague Convention 1970 done at Beijing on 10 September 2010, 50 ILM 144 (2011).

[2] See Constitution of the Federal Republic of Nigeria, 1999 as amended, section 12 which is to the effect that all international law must be transformed into Nigeria law before they can be applicable to local circumstance.

[3] Nigerian Civil Aviation Act No. 6, 2006, FRN Official Gazette, Vol.93 (No.61) Pp. A 133-A279.

History of unlawful seizure of aircraft

The first reported hijacking of commercial aircraft was on 21 February 1931 in Peru[4]when "Bryon Rikards flying a Ford Tri-Motor", was hijacked on the ground by armed revolutionaries.[5] In 1948, a Bulgarian commercial aircraft was hijacked to Istanbul, Turkey by a discharged Diplomat and his family. The hijacker shot the co-pilot[6]and the radio operator in order to escape to the West.[7] It was reported that between 1947 and 1953, there were Twenty-Three hijackings worldwide.[8] In 1954, a Syrian Airways Civilian Jet was hijacked with intent to take hostage of passengers. The offence was committed in order to secure the release of prisoners in Damascus, who had been captured spying on Syria.[9] In 1958, with the coming into power of Fidel Castro[10] in Cuba, the officials of the overthrown government hijacked a commercial aircraft in order to escape from Cuba.[11]

In 1961, the first U.S. aircraft was reportedly hijacked when Antuilo Ramierez Ortiz, with a gun, hijacked a U.S domestic aircraft and forced it to land in Cuba.[12] Between 1961 and 1968, about 66 aircrafts were hijacked and most of them diverted to Cuba.[13] Furthermore, on July 23, 1968, the Palestinian militants violently hijacked El-Al aircraft Boeing 707. The aircraft was diverted from Rome to Algiers.[14] By 1969, aircraft hijacking between USA and Cuba drastically got to its peak.[15] In 1970, three aircrafts from United

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[4] Holden, T.R, *The Contagiousness of Aircraft Hijacking,* vol.91, No 4 (1986) AJS, 874-904; Solution for safer skies<http://www.airdisaster.com/features/hijack/hijack.shtml> (accessed, 11 April 2012).

[5] Dawson, H.G, "Hijacking and International Terrorism-An Historical and Legal Review", Vol. 57 (1987) *Int'l Bus. Law,* 58; Aggarwala, N, Political Aspect of Hijacking. In Patricia (ed.), Air Hijacking: International Perspective, Vol. 39, (1970-1972), *Int'l Conciliation*, 8; Ruwantissa A, *Aviation Security,* Aldeshort, Ashgate Publishing Co. Ltd., 1998, at 103; New World Encyclopedia <http://www.newworldencyclopedia.org/entry/Hijacking,> (accessed 20 February 2012).

[6]The Co-pilot was the Head of Bulgarian Civil Aviation. See <http://www.newworldencyclopedia.org/entry/Hijacking>(accessed 20 February 2012).

[7]See .<http://www.newworldencyclopedia.org/entry/Hijacking >(accessed 20 February 2012).

[8] Jefferey, M.A and Jefferey, S.F, *Practical Aviation Security: Predicting and preventing Future Threats*, Elsevier Inc., USA, 2009, 46.

[9] This was described as the first country hijacking. Ibid.

[10] Elias, B, *Airport and Aviation security: US Policy and Strategy in the Age of global Terrorism,* Auerbach Publications Taylor & Francis Group, USA, 2010, 2.

[11] Ruwantissa, 103; See also Elias, 2.

[12] Ibid.

[13] Ruwantissa, 103.

[14] This is the longest hijacking incident that happened for a period of forty days. The Algerian authorities later held 22 hostages, releasing the final 12 only after a boycott by international pilots. See BBC News: History of airliner hijackings <http://news.bbc.co.uk/2/hi/157813.htm> (accessed 20 February 2012).

[15] Jefferey, and Jefferey, 47.

Kingdom, United States and Switzerland were hijacked and blown up by the Palestinian hijackers.[16] However, in 1973, the U.S and Cuba entered adopted an Extradition treaty to stop the frequent hijacking of U.S aircrafts to Cuba. The treaty provides for extradition and punishment of the hijackers as preventive measures to combat the offence. The implementation of this Treaty dramatically reduced the rate of aircraft hijackings in the axis. In October 1976, Cuba denounced the treaty as a protest to U.S action in the bombing of Cuba aircraft where 73 passengers and crew members lost their lives.[17]

On 28 June 1976, the Palestinian hijackers hijacked an Air France aircraft on a flight from Tel Aviv to Paris and diverted to Entebbe, Uganda. This hijack was brought to an end after a week by the Israelis commandos who entered the Ugandan airspace, without permission, on a rescue mission and landed at Entebbe, Uganda.[18] During the operation, seven hijackers, three hostages and several Ugandans and Israelis lost their lives.[19] As a result of the act of retaliation by the Israelis, the Mauritius authority filed a complaint on behalf of Uganda against the aggressive act of the Israelis. Consequently, on 9 July 1976, the United Nations Security Council began hearing of the complaint so filed[20].

However, in order to curb further occurrence of such act, two draft resolutions were made, one by US and UK and the other by fellow African states: Tanzania, Libyan and Benin Republic.[21] All these resolutions condemned the act of hijacking and at the same time condemned the Israel's violation of Ugandan sovereignty.[22]

In October 1977, the Palestinian hijackers hijacked another aircraft, a Lufthansa aircraft with 82 passengers and five crew members on board on a flight from Majorca to Frankfurt, Germany. The passengers were held hostages for a period of five days. However, the aircraft and the passengers were saved by the German commandos in Mogadishu, Somalia.[23] In the same year, precisely on 4 December, 1977, a Malaysian Airlines Flight MH653, a Boeing 737 aircraft registered as 9m-MBD was hijacked and crashed at a

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[16] The three hijacked aircrafts loaded with 400 passenger on board, fly to the Jordan desert before they were been blown up. See BBC News: History of airliners <http://news.bbc.co.uk/2/hi/157813>(accessed 20 February 2012).

[17] Ruwantissa, 103.

[18] Ibid. Elias, 3.

[19] Ibid, 104.

[20] UN Doc S/12126. See also 15 International Legal Materials (1976) at 1226-1227.

[21] Ibid. See also 15 International Legal Materials (1976) at 1226-1227.) also Ruwantissa ,104.

[22] UN Doc S/ 12126. See also 15 International Legal Materials (1976) at 1226-1227.

[23] The German commandos saved about 86 hostages after the aircraft pilot have been killed by the Palestinian hijackers. See Ruwantissa, 104; See also, BBC News, (accessed 20 February 2012).

placed called *"Tanjung Kupang"*, Jahore, Malaysia. In this incident, 93 passengers and 7 crew members died.[24]

On 2 March 1981, a Pakistan airline was hijacked and forced to land in Kabul, Afghanistan. The hijackers demanded for the release of 92 political prisoners from Pakistani jail. When the Pakistan government could not meet the hijackers' demand after a week, a passenger was killed and dumped on the tarmac. The aircraft was later flown to Damascus,[25] where the hijackers released more than 100 hostages and threatened to blow up the aircraft.[26] On 29 September 1981, seven hijackers hijacked Indian Aircraft Boeing 747 with 117 on board and forced it to land at Lahore, Pakistan. All the passengers were held hostage. On the next day, 30th September, 1981, several Pakistani commandos dressed and pretended to be Aircraft maintenance workers gained entrance into the hijacked aircraft and freed all the hostages. All the hijackers were arrested and prosecuted. While three of the hijackers were sentenced to death, two to life imprisonment and the remaining two were acquitted.[27]

On 22 June 1983, two armed men hijacked a Libyan Aircraft Boeing 707 during its flight from Athens, Greece, to Tripoli, Libya. The hijacked airline was diverted to Rome airport for refuelling before heading way to Larnaca, Cyprus. After several hours of negotiations, the hijackers surrendered and released the aircraft to the authorities. The two hijackers were later prosecuted and sentenced to a prison term of seven years for hijacking and another three years for possession of explosives.[28]

In 1984, *Shia* gunmen hijacked a Kuwait aircraft and forced it to Tehran for six days. Two American passengers were killed.[29] Equally, on 28 August 1984 and 8 September, 1984, two Iranian aircraft, Airbus 300 and Boeing 737, were hijacked during a domestic flight, having stopped to refuel at Bahrain and Cairo respectively. They were diverted to Iraq. The hijackers surrendered and were granted political asylum.[30]

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[24] Azuan, *"Remebering the 4th Dec. 1977 Tanjung Kupang Tragedy* <http://www.azuanzahdi.com/index.php/2010/12/04/remembering-the-4th-dec-1977-tanjung-kupang-tragedy/> (accessed 20 April 2012).

[25] In this hijacked incident, a passenger was killed and many hostages were released when the Pakistani government agrees to free more than 50 political prisoners. See BBC News, n.p.

[26] Ruwantissa, 104-105.

[27] Ibid, 105.

[28] Ibid.

[29] Note that this aircraft was reclaimed by the Iranian security forces having disguised as aircraft cleaners. BBC News.

[30] Ruwantissa, 105.

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In 1985, specifically on 11 June, a TWA Flight 847 Boeing 727 was hijacked at Beirut Airport. After a long period and unsuccessive negotiations, the hijackers released all the hostages, destroyed the aircraft with explosive and escaped.[31] In the same year, the Lebanese *Shia* gunmen hijacked TWA flight from Athens to Beirut with 153 passengers on board. The hijacked aircraft was however released when the Israeli government released 31 Lebanese *Shi'a* prisoners.[32] Equally, an Egyptian airline was hijacked by Palestinians to Malta, with 159 passengers who later lost their lives as a result non-peaceful settlement of the rift between the hijackers and the Egyptian commandos.[33]

The unlawful act against civil aviation continued with the hijacking of a Pakistan aircraft in 1986. 22 passengers found dead out of 400 people on board.[34] Also, on 25 December 1986, hijackers attempted to hijack an Iraqi Airways Boeing 737 on flight schedule from Baghdad, Iraq to Amman, Jordan. This resulted in the crash of the aircraft near Arar, Saudi Arabia, killing 65 persons including three crew members, while 35 persons were seriously injured.[35]

On 23 December 1987, a KLM Boeing 737 with 91 passengers on board was hijacked on a schedule flight from Amsterdam, Holland to Milan, Italy. The hijacked aircraft was forced to land at Rome. There were no casualties and the hijacker was eventually arrested.[36] In 1988, a Kuwait airway was hijacked by the Shi'a gunmen on a flight from Thailand to Algiers.[37]

In 1991, a Singaporean airliner was hijacked by four hijackers. In this incident, a rescue mission was successfully carried out by the Singaporean commandos, killing all the four hijackers.[38] In 1993, Nigerian Airways was hijacked while on its way from Lagos to Abuja and diverted to Niger Republic.[39] Similarly, 1993-1999, Ethiopian airline was hijacked in Eastern Ethiopia.[40] The hijacking of a Pakistan international airline at Hyderabad

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[31] Ibid., Elias, 21.
[32] BBC News.
[33] Ibid.
[34] Ibid.
[35] Ruwantissa, 105.
[36] Ruwantissa, 105-106.
[37] Ibid.
[38] Ibid.
[39] Wale, A, The June 12 Nigeria Airways Plane hijack: The Untold Story. *The Nation*, 22/06/2009., Foes of Nigeria Rulers Hijack Plane to Niger <http://www.nytimes.com/1993/10/26/world/foes-of-nigeria-rulers-hijack-plane-to-niger>. html (accessed 14 April 2012).
[40] BBC News.

airport[41] and an Indian Airlines to Afghanistan[42] followed that of Ethiopian airlines.

In year 2000, two incidents of aircraft hijackings occurred. Precisely, in February 2000, Afghans hijacked an Internal Ariana flight and diverted same to Stansted airport near London.[43] The second incident was in October 2000, a Saudi Arabian citizen hijacked Saudi Arabia aircraft to Baghdad before surrendering to the Iraqi Authorities.[44]

In 2001, Chechens separatists, hijacked Russian plane, "*Vnukova* Airlines Tupolev" 154 jet during a flight from Istanbul to Moscow and later parked at Medina airport in Saudi Arabia.[45] It is worthy of note that the worst aircraft hijacking occurred on 11 September, 2001 when four United States of America airlines[46] were hijacked. The act was executed by Al-Qaeda. The four hijacked planes were used as missiles and weapon of mass destruction to destroy the two World Trade Centre Towers in New York City; Pentagon in Washington D.C and rural Pennsylvania. All the 266 passengers lost their lives instantly, nearly 200 people at Pentagon were killed and some 3000 people in the World Trade Centre Tower died when the building collapsed.[47]

In 2006, Turkish Airlines Flight 1476, with 107 passengers and six crews on board, flying from Tirana to Istanbul was hijacked in Greek airspace; the pilot transmitted two coded hijack signals which were picked up by the Greek air force. The flight was subsequently intercepted by a military aircraft and landed safely at Brindisi, Italy.[48]

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[41] BBC News.

[42] See Kandhar Plane Hijacked: Two detained<http://english.samaylive.com/nation-news/676485381/chile-handhar-plane-hijack-cbi-abdul-rauf-indian-airlines-igi-ne.htm,>(accessed 20 February 2012); Abdul Rauf not IC-814 hijacker, says CBI <http://www.indiablooms.com/NewsDetailsPage/newsDetails200411m> (accessed 21 February 2012). It should be noted however that one passenger lost his life while the hijack lasted. See http://news.bbc.uk.

[43] See also http://news.bbc.co.uk/2/ji/uk_news/637552.>(accessed 21 February 2012).

[44] In this incident 105 passengers and crew, including 40 Britons were released safely four hours after the London- bound plane was forced to land in Baghdad. Note that this incident ended peacefully. See BBC News: Relatives relief as hijack ends <http://news/bbc.co.uk/2/hi/uk_news/972697> (accessed 21 February 2012).

[45] See BBC Bloody end to Chechen hijack <http://new.bbc.c.uk/2/hi/middle_east/1223972> (accessed 21 February 2012).

[46] The Airplanes are American Airlines Flight 11; United Airlines Flight 175; American Airlines Flight77 and United Airlines Flight 93.

[47] New World Encyclopaedia <http://www.newworldencyclopedia.ng/entry/hijacking ,> (accessed 22 February 2012); Elias, 49-50; Jefferey, 72-76.

[48] Danielle's Cabin Crew Blog<http://danielleindubai.blogspot.com/2009/04/aircraft-hijackings-since-2000.html>(accessed 25 April 2009).

In 2007, four airplanes were hijacked, the first was Air West Boeing 737 which was hijacked over Sudanese airspace but landed safely at N'Djamena in Chad Republic. The second was air Mauritanie Boeing 737 flying from Naiak Chott to Las Palmas hijacked by a Moroccan.[49] The third was hijacking of Atlasjet MD80 flying from Nicosia to Istanbul by two Arab students,[50] the plane landed safely in Antalya where all the hijackers were arrested.[51] The fourth aircraft was Aeroflot Airbus A320 flying from Moscow to Geneva which was hijacked by a drunken man in Prague but was subsequently arrested by the Czech police.[52]

The available report of aircraft hijacking in 2008 was that of Sun Air Boeing 737 flying from Nyala, Western Sudan to Khartoum. In this incident the hijacker demanded to be taken to France, but the plane subsequently landed at Kufra, Libya where the hijackers gave themselves up after twenty four hours of hijacking.[53]

In 2009, "*Aerimexico*, Boeing 737-800 flying from Cancun to Mexico" was hijacked by Jose Marc Flores Pereira when he claimed to have explosive and that the crew should allow him to talk to Mexico president. The aircraft subsequently landed in Mexico City International Airport.[54]

In 2011, an attempt was made to hijack a Turkish Airline Flight 1754, flying from Oslo to Istanbul when it was in Belgian airspace. However the attempted hijacking failed when some passengers over-powered the hijacker and the aircraft safely landed at Ataturk International Airport where the suspect was arrested.[55] Again, in April 2011, an Italia aircraft A321-100 with registration no 1-BIXA enroute Paris, France to Rome with 131 passengers was attempted to be hijacked thirty minutes prior to its landing in Rome. A man, one of the Kazakhstan delegates to the UNESCO turned into a lunatic, stood up from his seat in front of the airbus, walked towards a flight attendant,

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[49] The Moroccan hijacked was subsequently arrested when the airbus landed safely in Las Palmas. See passengers overpower plane hijacker in Spain Canary Islands, suspect arrested USA today February 15, 2007 and http://www.usatoday.com/news/world/2007-02-15-air-mauritania_x.htm,> (accessed 25 April 2012).

[50] The two Arab students claimed to be Al-Qaeda operatives of which one is trained in Afghanistan and wanted to go to Tehran, Iran.

[51] Danielle's Cabin Crew Blog, 51.

[52] See New World Encyclopaedia, 49.

[53] Ibid.

[54] Hijacking Drama on Aeromexico Boeing 737-800 ends safely in Mexico, in Aircrew Buzz.com<http://aircrewbuzz.blogspot.com/2009/09/hijacking-drama-on-aeromexico-boeing.htm> (accessed 25 April 2009).

[55] Wires & Bergens, Turkish Airlines hijack attempt foiled by passengers, *Daily News*, 1/5/2011 <http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=man-attempts-to-hijack-thy-plane-in-istanbul-reports-say-2011-01-05> (accessed 11 April 2012).

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pulled what appeared to be a small knife and threatened to cut the throat of the attendant. The cabin crew and other passengers subdued him. A doctor who was one of the passengers on board pulled him down and injected the attacker with sedative. The aircraft continued for safe landing, the attacker was arrested and put in custody by the Italian police.[56]

Recently, in 2016, two aircraft were hijacked and diverted to unlawful destinations. On March 29, 2016 an EgyptAir with 172 passengers and crew on board from Alexandria to Cairo was hijacked and diverted to Cyprus. The hijacker claimed to have carried out the unlawful seizure on the ground "to underscore the wrongs of Egypt's military-backed government". Also on 24 December 2016, two hijackers seized a Libyan *Al-Afriqiyah* Airway with 118 passengers including the crew members and diverted same to Malta.[57]

It is submitted that the historical antecedent of the offence of aircraft hijacking reveals that the feature of the period before 1960 was that aviation sector was not regulated since the offence of aircraft hijacking was uncommon as such passengers and their baggage were not subjected to aviation security screening. Thus, the motives behind aircraft hijacking include escape from prosecution and persecution of the opposition government; extortion; and political asylum. No deadly incident was recorded during this period.[58]

It was in the Post 1960 that the hijackers began to used guns or grenades or weapons, and the threat of using bombs to explode the hijacked aircraft.[59] Hijacking of aircrafts turned bloody with the emergence of Middle East terrorists who resorted to hijacking and hostage-taking of passengers while bargaining for the release of their colleagues who were either in the custody of enemy government or facing trial in their own country for revolutionary activities. It sets a tactical precedent for other hijacking by adopting the pervious methods of hijacking to press for political demand. They therefore regarded aviation sector as part of battle field.

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[56] Simeon Hradecky, Alitalia A321 enroute on April 24th 2011, attempt hijack, *Aviation Herald* 24th April, 2011 <http://avherald.com/h?article=43b7e3ef&opt=1>(accessed 11/4/12); Attempting hijacking 2011, ASN Aircraft accident 24-APR-2011 Airbus A321-1121-BIXA,<http://www.bbc.co.uk/news/world-europe-13184416> (accessed 11 April 2012). For fuller discussion on the history of unlawful seizure of aircraft see Ismail Adua Mustapha, *International Law on Aircraft Hijacking: The Practice in Malaysia and Nigeria* (Ph.D thesis international Islamic University, Malaysia, 2014), pp. 41-52.

[57] Jane Onyanga-Omara, Seizing Control: Recent plane hijacking around the world <http://www.usatoday.com/story/news/world/2016/12/23/seizing-control-recent-plane-hijackings-around-world >accessed 2 January 2017.

[58] Jafferey, M.A and Jefferey, 43; Elias, 2.

[59] Jefferey, 48.

In the same period, due to the high rate of threat of offence of aircraft hijacking, the international community under the auspices of the International Civil Aviation Organization adopted three international Conventions-The Tokyo Convention 1963, The Hague Convention 1970 and The Montreal Convention 1971, to prevent and suppress the offence. In addition, that aircrafts were being used as weapon of mass destruction to destroy those that are onboard aircraft in-flight and on the ground as well as their properties. Again, the hijackers were educated terrorists who were trained to fly modern aircraft.[60]

Nature and definition of unlawful seizure of aircraft

The term unlawful seizure of aircraft is also known as aircraft hijacking.[61] The origin of the word *hijacking* is unknown. It is however stated that the term was derived from the phrase "*High, jack*", "a command to raise one's hand before robbed",[62] which is literally means "to use violence or threats to take control of vehicle, especially a plane, in order to force it to travel to a different place".[63] But introduced into aviation sector in the 1960s when political activists began to seize commercial aircraft in the sky.[64] Black's Law Dictionary defines hijack to mean "to commandeer a vehicle or aircraft, to rob or steal from vehicle or plane at gun point".[65]

Adua defines aircraft hijacking as

> *an unlawful and intentional act of terrorism against international civil aircraft by seizing the control of its operation either by means of threat or use of violence or intimidation to assume superior authority over the lawful authority of the aircraft during the in-flight operation.*[66]

The Nigerian Civil Aviation Act 2006 in its section 56 (2) defines the offence of unlawful seizure of aircraft as:

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[60] Rodney, W., *How Safe Are Our Skies? Assessing the Airlines' Response to Terrorism*, USA, Praeger Publishers, 17.

[61] Ismail Adua Mustapha, *International Law on Aircraft Hijacking: The Practice in Malaysia and Nigeria* (Ph.D thesis international Islamic University, Malaysia, 2014), p. 252.

[62] Thomson Gale, *West's Encyclopedia of American Law*, The Gale Group Inc.,< http://www.answers.co/topic/hijack > (accessed 20 June 2012); Merria-webster, *An Encyclopedia Brittanica*, < http://www.answers.com/dictionary/hijack > accessed on 20 June 2012

[63] Sally Wehmeir (ed.), *Oxford Advanced Learner's Dictionary of Current English*, 6th edn., Oxford University Press, London, 2000, 565.

[64] David K.B and Allen A.M, *Houghton Miffin Word origin*, Houghton Maffin Co. 1997, < http://www.answers.co/topic/hijack > (accessed 20 June 2012). See also Thomson Gale.

[65] Gardner, B.A (ed.) , *Black's Law Dictionary*, 9th Edition, USA, West publishing Co ,2009,789.

[66] Ismail Adua Mustapha, *International Law on Aircraft Hijacking: The Practice in Malaysia and Nigeria* (Ph.D thesis international Islamic University, Malaysia, 2014), p. 61.

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Whosoever on board an aircraft either on ground or in-flight unlawfully, by force or threat of force, or by other form of intimidation, seizes or exercises control of that aircraft, commits the offence of hijacking of such aircraft.[67]

The elements of the offence of hijacking in Nigeria are:

1. The offender must by force or threat of force or by any form of intimidation seize or exercise control of the aircraft;
2. The offender must be on board aircraft on the ground or in-flight to commit the offence; and
3. The seizure or exercise of control must be unlawful.

The above elements are conjunctive and not disjunctive. Thus, the prosecution must prove all these elements before the offence of hijacking is established.[68] In compliance to the provision of the Hague Convention and its 2010 Protocol, the Act provides penalty of Ten million naira and life imprisonment for the hijackers.[69]

Sabotage of aircraft

Due to the changing of tactics to unlawfully interfere with the civil aviation, the terrorists resulted in complete destruction of aircraft thereby committing serious aviation offence against the international community, with grave consequences. The consequences include but not limited to killing of passengers, total destruction of properties including the aircraft, distortion of international market and psychological effect on the relatives of the victims. These can only be appreciated through a diagonised historical antecedent of the offence.

History of Sabotage of aircraft

The changing of gear from hijacking of aircraft to sabotage of aircraft began on 7 May 1949[70] when a Philippine Airline crashed into the sea during a schedule flight from Daet to Manila. The crash was as a result of a time bomb placed on the aircraft by the two ex-convicts. All 113 passengers and crew members on board lost their lives. On 9 September of the same year, a Quebec airway DC-3 was sabotaged during a flight from Quebec City to Baie Comeau. The crash was reportedly caused by a bomb placed in the forward luggage

[67] Nigerian Civil Aviation Act 2006, section 56 (2).

[68] Ismail Adua Mustapha, *International Law on Aircraft Hijacking: The Practice in Malaysia and Nigeria* (Ph.D thesis international Islamic University, Malaysia, 2014), p. 61-62.

[69] Nigerian Civil Aviation Act, 2006, section 56 (4).

[70] Ismail Adua Mustapha et al, *An Overview of the International and Nigerian Framework for Prevention of Aircraft Sabotage*, Vol. 17 No. 2, Centre Point Journal (Humanities Edition) (2014), p.2.

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compartment of the aircraft. All 23 passengers and crew members were killed.[71]

On 6 January 1960, a National Airlines DC-6B exploded over the Bolivia during a flight from New York to Miami. The crash was caused as a result of detonation of dynamite by dry cell- batteries placed in the passenger compartment under the seat. All 34 passengers and crew members lost their lives.[72]

Furthermore, on 15 June 1972, a Cathay Pacific Airways (Hong Kong) CV-880 crashed over the airspace of Vietnam during a schedule flight from Bangkok to Hong Kong. The destruction was caused by a bomb located in the uitcase found under a passenger seat. All 81 passengers and crew members lied.[73] On 1 January 1976, a Middle East Airline was reportedly destroyed nto the Arabian Desert. The destruction was caused by a denoted bomb in the forward compartment of the aircraft during a flight scheduled between Beirut and Dubai. All 82 passengers and crew members lost their lives.[74]

On 23 September 1983, a Gulf Air Boeing 737 crashed after a bomb had exploded in the baggage compartment of the aircraft. The incident happened 30 minutes after take-off from Abu Dhabi, United Arab Emirate. All 112 passengers and crew members died instantly. On 23 June 1985, an Air India Boeing 747 crashed into the Atlantic Ocean during a schedule flight from Montreal, Canada to Bombay via London, United Kingdom. The crash was caused by a bomb explosion in the forward cargo hold of the aircraft.[75] On 29 November 1987, a Korean Boeing 707 on a scheduled flight from Abu-Dhabi to Seoul crashed into the Andaman Sea near the Thai-Burmese border. The crashed was caused by the explosion of time bomb hidden in a portable radio and liquor bottle. All 115 passengers and crew members died of the crash.[76]

A devastating and a shear blooded event in the history of aircraft sabotage occurred in 1988. Thus, on 21 December 1988, a PAN-AM Boeing 747 crashed over the Scottish airspace in Lockerbie during a flight from London to New York. The crash was caused by detonation of Semtex, a high performance plastic explosive. All 259 passengers, crew members and 11 persons on the ground lost their lives.[77]

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[71] Ruwantissa, p. 107-108.
[72] Ibid, 108.
[73] Ibid.
[74] Ibid.
[75] Ibid
[76] Ibid, 108-109.
[77] Ibid., 109.

It is submitted that from the onset, the intention of the terrorists is to absolutely destroy aircraft serving international civil aviation. The means of destruction is various forms of explosives which are meant to detonate and bomb the aircraft completely.

Nature and definition of Sabotage of aircraft

The term "Sabotage" is neither mentioned nor defined in the Aviation Security Conventions relating to unlawful interference with civil aviation. What is mentioned in all the Conventions dealing with sabotage of aircraft is the word "Destruction" or "Damage".[78] However, according to Black's Law Dictionary[79], "sabotage" means "destruction". Therefore, sabotage of aircraft can be used interchangeably with destruction of aircraft.

Adopting the provisions of article 1 of the Montreal Convention, 1971, the Nigerian Civil Aviation Act, 2006 made reference to offence of sabotage while describing offences of unlawful interference with civil aviation as:

> *Any person commits an offence if he unlawfully and intentionally....*
> *(b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger it safety flight;*
> *(c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which is likely to endanger it safety in-flight...*[80]

Similarly, Beijing Convention, 2010 made reference to this offence by adopting, in all its ramifications, the wordings of Montreal Convention, 1971.[81] Conversely, the Convention on the Marking of Plastic Explosive for the purpose of Detection, 1991[82] did not make reference to destruction or sabotage, the Convention merely made reference to "Plastic Explosive",

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[78] See Montreal Convention For the Suppression Of Unlawful Acts Against the Safety of Civil Aviation, 1971. (Herein referred to as Montreal Convention, 1971) Article 1 (1)(b) and (c). Convention For the Suppression of Unlawful Acts Relating to International Civil Aviation, 2010. (Herein referred to as Beijing Convention, 2010) Article 1 (1) (b) and (c)

[79] Garner B.A (ed), Black's Law Dictionary, Eight Edition, at 1452

[80] See Nigerian Civil Aviation Act, 2006,Section 57 (2) (a) and (b) which are in pari material with Montreal Convention 1971, Article 1 (1) (b) and (c) and Beijing Convention 2010, Article 1 (1) (b) and (c).

[81] Beijing Convention 2010, Article 1 (1) (b) and (c) respectively.

[82] Herein after referred to as Explosive Convention, 1991. This Convention was adopted following the adoption of UN Resolution and ICAO resolution to convey an International Conference on Air Law. The Conference was held in Montreal from February12 to 1 March 1991 where the Convention was unanimously adopted and in force on 21 June 1998 See ICAO Doc. S/22393/30 *ILM*721 (1991)/ [2007] ATS 25.

which is one of the means of committing offence of aircraft sabotage. The Explosive Convention, 1991 defines Explosive to mean "Plastic explosive whether inflexible or elastic".[84]

Having examined the International Convention relating to the offence of sabotage of aircraft, the pertinent question now is: What is sabotage of Aircraft? As stated earlier, the offence is not defined in the Conventions, but by the combined effects of articles 1(1) (b) and (c) of the Montreal Convention, 1971 and the Beijing Convention, 2010 together with Article 1 (1) of the Explosive Convention the paper defines the offence as:

> *Sabotage is an unlawful and intentional act or attempt to destroy or damage the aircraft in-flight or on ground by the use of any explosive device(s) or missile attack which endanger or likely to endanger the aircraft, passengers and/or properties.*

Therefore, the elements of the above offence are the same general elements of criminal act. Thus, the offender must have intended to commit the offence. The attempt or actual commission of the offence will warrant punishment of the offender. For instance, in *Lockerbie's case*, the suspected offenders were prosecuted for actual commission of the offence, while in the case of *USA v Richard Colvin Reid,*[85] the accused was convicted for an attempt to sabotage the aircraft. In this case, accused was on board American Airlines Flight 63 enroute from Paris, France to Miami, Florida, USA. He attempted to use a weapon of mass destruction, destructive devices consisting of explosive bomb placed in his shoe. The accused was caught, arrested and prosecuted for an attempt to destroy a civil aircraft. Having confessed, the court sentenced him to life imprisonment.[86] Under the Civil Aviation Act, 2006, the offence is punishable by life imprisonment.[87]

From the foregoing, the adoption of Explosive Convention is a giant step to prevent this act of terrorism against civil aviation. It needs be said at this juncture that much is still needed to be done particularly in the area of definition of the offence and inclusion of missile attack as another means of aircraft sabotage. For instance, in late 1978 and early 1979 two Rhodesia aircraft were destroyed by missile. While there are also other incidence of

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[83] Ismail Adua Mustapha, International Law on Aircraft Hijacking: The practice in Malaysia and Malaysia, (Ph.D Thesis, IIUM, Malaysia, 2014).

[84] Explosive Convention. Article 1 (1).

[85] *USA v Richard Colvin Reid* (a.k.a AbdulRaheem Abu, Ibrahim) (Criminal No 2-10013-w6y) ,<http://www.fas.org/irs/news/2002/reidindictment.pdf,> (accessed 17 March 2012).

[86] See http://english.turkcebilgi.com/Richard+Colvin+Reid> (accessed 17 March 2012).

[87] Nigerian Civil Aviation Act, 2006, Section 57 (2) and (3) for actual and attempt to commit the offence.

missile attack on aircraft by the ideological terrorist of Afghanistan over the airspaceSS

Destruction of Airport and its facilities

According to Ruwantissa, attacks at airports serving international civil aviation and other aviation facilities have been a threat to the air transport across the world. It has been a terrorists approach to sabotage civil aviation causing serious death, injury, and property damages.[89] Under the Nigerian Civil Aviation Act, 2006, the offence is titled "Offences at Aerodrome".[90] Some incidences of airport attacks and other facilities are hereunder stated.

Chronology of Airport Attacks and Other Aviation Facilities

On August 5 1973, two armed men approached the international transit lounge at Athens airport and proceeded to open fire on passengers in the lounge waiting embarkation. Four of the passengers lost their live; fifty-five others sustained severe injuries.[91]

On 29 December 1975, twenty-five sticks of dynamite exploded in a baggage claim area at La Guardia Airport in New York City. Several persons were killed and many sustained serious injuries. At the same airport, another explosion rocked the airport on 10 September 1976. In this incident, a Police officer lost his live while three other persons were wounded.[92]

On 11 August 1976, an attack on the international airport in Istanbul led to the deaths of four persons and caused serious injuries to four others. The incident happened when armed men set off explosive and fired machine guns at passengers boarding a flight.[93]

On 9 May 1985, a gunman fired several shots at the aircraft parked at the Buffalo International Airport in the state of New York. Two Boeings 727 were severely damaged, other properties were equally damaged to the tune of one million US Dollars.[94]

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[88] Ruwantissa, 75.

[89] Ruwantissa, at p. 109.

[90] Nigerian Civil Aviation Act, 2006, section 59.

[91] Faller, E.W. *Current Legal Activities in ICAO: Development of a Legal Instrument for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation', Zeitschrift fur Luft-Und Weltraumrecht,* (German Journal of Air and Space Law), p. 219.

[92] Ruwantissa, 109.

[93] Ibid.

[94] Ghosh, S.K., *Aircraft Hijacking and the Developing Law,* New Delhi, Ashish Pub. House, (1985), p.1. See also Ruantissa, pp.109-110.

Furthermore, on 19 June 1985, a bomb exploded in a crowded departure hall of the Frankfurt International Airport, France. The explosion occurred beyond the security zone when the baggages were inspected. The explosion killed three persons, several people were wounded, and destroying the ticket counter of the airliners.[95]

The new Tokyo international Airport has been a target of attacks and explosions and most of these incidents resulted in deaths, injuries and destruction of airport properties. For instance, investigators in a June 1985 incident revealed that on 23 June 1985, an explosion ripped through a baggage sorting area at Narita airport killing two cargo handlers and injuring four others. The explosive had been placed on a CP-Air Boeing 747 aircraft in Vancouver, Canada.[96]

On 23 December 1985, a bomb exploded in the parking lot at the Jorge Chavez International airport in Lima, Peru. Three persons were injured and several vehicles were severely damaged.[97]

On 27 December 1985, four Plastenians were assuated with gun fire in the international departure lounge of the Leonardo da Vinci Airport in Rome. During an exchange of gun fire between the group and airport police, at least thirteen persons lost teir lives in the departure area and another eighty wounded.[98] Also on the same date, three Plastenians with granades and automatic wepons carried out an attack on the departure area of the Schwechat Airport in Vienna. Four persons lost teir lives and approximately forty persons suffered severe injuries.[99]

In March 1988, a similar incident occurred at Bombey Airport when a gunman shot and wounded the captain of an Alitalia aircraft. Tha attack had occurred just as the crew members were climbing aboard an airport bus bound for a city hotel. The perpetrator had fired four shots and tossed two granades before he was arrested by the police.[100]

Nature and definition of the Offence

The need to protect the airports and its facilities necessitated the Nigerian Civil Aviation Act 2006 to define the offence as:

> *Any person who, at any aerodrome, unlawfully and intentionally, uses any device, substance or weapon to- (a) commit an act of violence which causes or is likely to cause grievous hurt of any person; or (b) destroy or seriously*

[95] Ruwantissa, p.110.
[96] Ghosh, pp-G1-25; Ruwantiss, p.110.
[97] Ibid.
[98] Ghosh, p.G-23-24.
[99] Ibid.
[100] Ruwantissa, pp.110-111.

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damage any aircraft or facility at an aerodrome or disrupt any service at the aerodrome.[101]

To ground conviction, the prosecution must proof the ingredients that the offender intentionally committed the offence; that the offence is committed at the aerodrome with intent to cause grievous bodily injury, or that he destroyed the aircraft or airport facility or acted violently to disrupt any service at the aerodrome. As a matter of emphasis, the *mensrea* and *actureus* of the offence are conjunctive but not disjunctive; otherwise it is a defence to the offender.

It needs be stated that the above provisions are similar to the definition offered by the Protocol to the Montreal Convention 1971.[102] The gamut of the definition under the Protocol is that it has global application unlike the Act that restricts its application to Nigeria. For example, where the Act is referring to aerodrome, the Protocol will be referring to international airport, meaning that it is applicable to all international airports including all international airports in Nigeria. In addition, the provision under the Act is a testimony that the practice of the Protocol in Nigeria is not in doubt. In fact Nigeria is a signatory to the Protocol.

Furthermore, the Act prescribed a grave penalty to any person who is found guilty of the offence. In this circumstance, a person convicted of the offence shall be sentence to life imprisonment or to a fine of ten million naira.[103] This provision is in line with the provision of the Protocol Supplementary to the Montreal Convention 1971 that urges the contracting states to punish the offender severely.[104]

It is submitted that the option of fine giving to the offender is at the discretion of the court which must be exercise judicially and judiciously. However, considering the serious nature of the offence, it is submitted that the option of fine should be deleted. This is due to the fact that an offender may easily pay the fine. Therefore, the deterrent nature of the punishment would be defeated.

Conclusion and Recommendation(s)

Theoretically, Nigeria has performed her obligation toward international community. This is evident in the Nigerian Civil Aviation Act 2006 where some of the unlawful acts have been criminalized. The purport of

[101] See Nigerian Civil Aviation Act 2006, section 59. See also Montreal Convention 1971, article 1.
[102] The Protocol Supplementary to the Montreal Convention 1971, article 1.
[103] See Nigerian Civil Aviation Act 2006, section 59
[104] See The Protocol Supplementary to the Montreal Convention 1971, article 3.

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criminalization of these offences is to proof to the global village that Nigeria is not a safe heaven. Even though the offences of this nature are not rampant in Nigeria aviation domain, yet giant steps have been taken to criminalize these offences. However, a careful reading of the Act reveals that offence of hostage taking of passengers, which is the consequential effect of aircraft hijacking, is inexcusably missing in the Act. Furthermore, the prosecution must prove the two criminal elements, *actus reus* and *mens rea* to the satisfaction of the court before the accused person can be lawfully convicted. One therefore wonder the extent to which the prosecution will gather evidence before he could reasonably prove the case beyond reasonable doubt. In addition, the Act failed to consider the use of technological means of committing any of the offences mentioned. In the 21st century, the offenders have resorted in the use of technological means to hijack or sabotage aircraft. That is why the International Civil Aviation Organization (ICAO), representing the international community, has adopted 2010 Beijing Convention and Protocol Supplementing Hague Convention 1970 to take care of this new development.

In the light of these shortcomings, the paper hereby recommends that,

1. As matter of urgency, sections 56, 57 and 59 of the Act should be reviewed to include technological means as an instrument to commit these offences.
2. Only the criminal element of *actus reus* (Wrongful act) should be maintained and *mens rea* of an unlawful act deleted. In this connection, it is suggested that the sections may be couched thus: "Whoever wrongfully seizes..." This will provide an opportunity for the prosecution to only proof any of the guilty acts. Therefore, offenders should be made strictly liable for the commission of any of these offences.
3. Hostage-taking of passengers as a twin offence to aircraft hijacking needs to be included in the Act. Therefore, a separate section should be dedicated to provide for the definition and punishment for whoever commits this offence.
4. The Act should be reviewed to be in line with or domesticate the 2010 Beijing Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, and Protocol Supplementary to Hague Convention 1970 done at Beijing on 10 September 2010, since Nigeria is a signatory to it.

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