
| RESEARCH ARTICLE

Criminal Protection of Aircraft

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| ABSTRACT

Human transportation, including travel, tourism, trade and transportation of goods through airspace has become one of the necessities and features of this era. Because of the technological development that the world has witnessed and its reflection on transportation, especially air transportation which is distinguished from other means in terms of the merit of speed, comfort and costs, the criminal protection of civil aviation, in addition to the national protection law, has organized it through international conventions such as Chicago Convention, Geneva Convention on the High Seas, Tokyo and Montreal Conventions. However, national and international protection did not prevent crimes against aircraft, rather, due to these developments, this crime has taken many other new forms. After the September 11 attack, even the aircraft was being used to attack civilians and governmental organs. Although substantive and procedural rules in international and national legislations protect aircraft, new forms of this crime which have emerged shall be addressed and complementary jurisdiction shall be adopted not to leave any legal gaps in criminal protection for aircraft.

| KEYWORDS

Aircraft, Crimes, Criminal Protection, National Law, International Law

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1. Introduction

Air navigation is currently one of the most important means of transportation globally. As it is characterized by advantages that are not available in other means of transportation, such as the high speed, low costs, good services, and safety, the demand for using this transportation has increased. However, air regulation of this transportation within national law and international convictions needs to be reviewed to maintain its main function properly and safely. The importance of research lies within the increase of using aircraft which is accompanied by the increase of the phenomenon of attacking them. Hijacking aircraft and exposing its passengers to harm, and even taking it as a means of revenge against states, or using them as terrible offensive tools against buildings, facilities and other targets, i.e. using them as the means and the target in criminal acts, all put aircraft, crew, passenger in danger. This research aims to assess the adequacy of criminal protection for civil aircraft, from the various crimes that aircraft are exposed to such as hijacking, illegal seizure, piracy, bombing and killing their passengers and using them as a weapon against people and states, and other crimes. Of these, criminal protection is granting substantive and procedural protection of such crimes. The research problem is defined in the following aspects: Due to the fact of special nature of the onboard crime, a unified definition of the crime is not achieved; the lack of effectiveness of legal regulation increases the consequences of such crimes committed against aircraft or on board, or against its passengers; finally, conflict between the jurisdiction of the country that the plane carries its nationality with the jurisdiction of the country in which the crime is committed on its territory. The scope of this research is limited to the international convictions that regulate criminal aircraft

protection with the Iraqi criminal law policy. This research follows the descriptive and analytical approach, presenting the types of crimes committed against civil aircraft.

1.1. Nature And Types of Offences Committed on Board Aircraft

This chapter is devoted to clarifying the nature of crimes committed on board aircraft, whether they are national or international, and elucidates types of these crimes.

1.1.1 The Nature of Crimes Committed on Board Aircraft

Some crimes committed on board aircraft are deemed national crimes on the sovereignty concept. Because these crimes might transcend national boundaries, penal codes usually classify them in the universal category of their jurisdictions. Of these codes, the Iraqi legislators have dealt with the nature of crimes committed onboard aircraft variably between considering them as national crime and national crime with international nature, the same as Geneva Convention of (1958) regarding air piracy. On the one hand, the Iraqi Penal Code No. (111) of 1969 (IPC) in article (6) has subjected the offender to the Iraqi law jurisdiction, considering it a national crime if the crime occurred within the Iraqi territory based on the principle of sovereignty. On the other hand, the last part of this article stipulated that even if only the consequence of the crime is intended to be committed in Iraq, it is subjected to Iraqi law. Along with this, article (13) of (IPC) has stipulated that the provisions of this law apply to everyone, whether as principals or accessories, who is found in Iraq, regardless of his/her nationality after committing one of the following offences abroad: Sabotaging or disrupting international means of communications or transportations...". Article 7 of the (IPC) also considered crimes onboard aircraft, purportedly within the Iraqi state's territory. Hence, in these specific conditions, the Iraqi legislator, like many others, considered crimes onboard aircraft that transcends national boundaries and are international (Al-Bustani, 2009, p. 194).

Usually, crimes on board aircraft are committed by more than one perpetrator. In its traditional form, perpetrators may belong to an armed group that is not classified as terrorists. For instance, when they aim to divert a flight to land at an airport other than its actual destination to express their protest against specific political, economic or social abnormal conditions that a particular government practices against a particular ethnic or religious minority. (Al-Dalabeh, 2015).

During the second half of the last century, new types of crimes on aircraft have emerged. These crimes were much more dangerous with different characteristics than traditional forms. This has led to facing a new form of this crime with more seriousness and severe consequences to the extent that the occurrence of one of them leads to a human catastrophe. (Al-Asi, 2019, p. 2), Thus, traditional offences no longer solely threaten civil air navigation's security and safety. Still, it is accompanied by other criminal acts with more violence affecting the lives of innocent people, (Security Council Resolution No. 635 of July 14, 1989). This threat took a more dangerous path on September 11, 2001, after civilian aircraft was used as a lethal weapon with enormous destructive power in a terrorist attack to strike various civilian, economic, civil and governmental targets on the World Trade Center and other targets in New York and Washington in the United States of America, leaving thousands of innocent dead and wounded. (Security Council resolution 1368 (2001). At present, as air transport facilities have become a target for terrorist activities, these crimes have also taken other forms, such as remotely destroying aircraft while they are in the air or firing missiles at aircrafts. Consequently, interest in protecting civil aircraft is no longer confined to national laws only, but has extended to the international scope (Al-Asi, 2019, p. 3). Especially after UN Security Council Resolution No. 1373 on terrorism in the aftermath of the September 11, 2001 attacks, which obligated states to criminalize terrorist attacks. Nonetheless, it is difficult to consider crimes against civil aviation as international crimes even though it has some of its elements. On one aspect, it is not stipulated in the Statute of the International Criminal Court. On the other aspect, states did not agree on a unified definition of terrorism. (Mohamed Shoukry, 1991, p. 200). From all of the above, we conclude that the crimes committed on civil aircraft have a special nature that differs between ordinary, international and terrorist crimes.

1.2 Types of Crimes Committed on Board Aircraft

Several forms of crime are committed onboard aircraft, including the unlawful seizure of aircraft (hijacking), air piracy, terrorist attack and other crimes that endanger the safety of civil aircraft, as follows:

1.2.1 Unlawful Seizure of Aircraft

Article One of Hague Convention of suppression unlawful seizure of aircraft in 1970 prohibited any unlawful seizure of aircraft by force or threat or intimidation, seizing or attempting to seize control of an aircraft; and being an accomplice like a person who performs or attempts to perform any such act. The seriousness of this crime lies in the impact on the lives of travelers, the disruption of air navigation, international trade, the safety of international transport, and the speed of exchange of goods and services. (Al-Tunaiji, 2018, p. 233). Controlling the plane and changing its destination and disabling it may result in horrific air disasters. Even if the perpetrators do not use any action, the threat suffices to lead aircraft to fall in a populated area. In addition, such aircraft are not equipped to land on water (Zuhair, 2016, p. 34).

1.2.2 Piracy

The Geneva Convention of 1958 defined the acts of air piracy, in its fifteenth article as " any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (a) On the high seas, against another ship or aircraft, or persons or property on board such ship or aircraft; (b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State." Upon this definition, piracy of aircraft is any act of violence, detention and assault directed against persons or property on a plane (Abdul Wahhab Muhammad, 2019, p. 186). The most important threat facing aircraft is attacking them with explosives to kill innocent people and cause massive damage, as happened in the Lockerbie incident in 1988 as a result of bombing (229) people on board died, as well as (11) residents of the village on which the plane crashed (Sapphire. 2009, p. 122).

1.2.3 Endangering Aircraft

The Montreal Convention, in 1971, criminalized endangering aircraft. Based on this conviction endangering aircraft can be defined as: Any person, principal or accomplice, unlawfully and intentionally commits an offence or attempt to commit violence against a person on board an aircraft or causes damage to such an aircraft which renders it incapable of flight or places or causes to be placed a device or substance or give false information about the aircraft that is likely to endanger the safety of aircraft. Noteworthy, international conventions only define criminal acts and behaviors to protect aircraft without determining appropriate punishment for them, leaving that to domestic legislations.

The Iraqi legislator has criminalized these crimes in article (354) of (IPC) states "whoever willfully endangers the safety of air navigation by any means shall be punished with imprisonment ... and the penalty shall be life imprisonment if the act results in a disaster for the aircraft and the penalty shall be death or life imprisonment if this leads to the death of a person." Also, in article (355) punishes whoever deliberately causes sabotage or damage at an airport, and makes the penalty life imprisonment in the event that the offender uses explosives or if it results in the death of a person.

2. Elements of Crimes Committed on Board Aircraft And Criminal Jurisdiction

With the tremendous development in aircraft industry and an increasing number of aircraft and the quality of their services, the number of passengers using air transportation increased to hundreds of millions. Along with this development, the crime on board aircraft has also increased. To explain these two aspects, this chapter is divided into two main parts. The first part focuses on the elements of crimes that are committed on board aircraft and the second part will elaborate on criminal jurisdiction over these crimes.

2.1. Elements of onboard aircraft crime

Despite the common basic elements among crimes committed onboard aircraft, they differ in a form of Acts Rea, special intention, and international elements. Accordingly, we will explain the elements of the crime of unlawful seizure of aircraft as a model for the elements of all crimes committed on aircraft.

2.1.1. Acts Rea of the unlawful seizure crime onboard aircraft

The Acts Rea of the unlawful seizure crime onboard aircraft is using violence or threat on board during the flight which results in controlling it. Thus, the following conditions are required for this element:

First: The illegal seizure shall occur either by using force, threat or other forms of intimidation. The concept of force includes physical force and other means of threat and coercion, such as threatening the pilot-in-command by killing a family member or using fraud, such as announcing that the perpetrator is in command (Abdul Wahhab Muhammad, 2019, p. 190). Also, it occurs by threatening to use force, such as if the perpetrator points his weapon at the pilot and threatens to shoot him if he does not change the plane's direction in the way the perpetrator wants (Obeid, 1979, p. 212-213).

Second: According to article one of the Hague Convention, the perpetrator must conduct violence or threat on board the aircraft. Meaning that if the act occurs off the aircraft such as threatening the pilot or missile is used for such acts, the Acts Rea of the unlawful seizure onboard aircraft is not fulfilled for this crime. (Abdul Wahhab Muhammad, 2019, p. 188). However, we believe that the unlawful seizure of civil aircraft, whether it occurs by a perpetrator on or off board, endangers the safety of the aircraft, personnel and property.

Third: The act must occur during the flight. According to article three of the Hague Convention "the aircraft is considered in flight from the moment all its external doors are closed after following the embarkation until the moment any of these doors are opened for the purpose of disembarkation. Also, in the case of an emergency landing, the aircraft remains in flight until the competent authorities take responsibility over it."

2.1.2. Mens Rea of the unlawful seizure crime onboard aircraft

An act does not make a person guilty unless the mind is guilty, except in rare circumstances. Mens Rea is defined as vicious will in its general meaning and as a particular mental state of mind provided for in the definition of offence (Dressler, 2012:117). The crime of unlawful seizure of aircraft is an intentional crime. It requires the perpetrator's intention based on knowledge and vicious will. Specifically, the perpetrator shall have knowledge and vicious will in that his/her acts rea is directed to the act of seizing or controlling

aircraft (Ibrahim, 2003, pp. 59-60). The existence of this intent to seize aircraft is sufficient to establish Mens Rea. It does not require any other intention such as killing the plane's passengers, harming them, or stealing their money (Obeid, 1979, p. 215). Therefore, when Criminal activity, violence, threat, and viciousness result in controlling the aircraft, which is the interest that the law protects, elements of this crime are established (Abu Al-Wafa, 2012, p. 499).

2.1.3. Legal Element

Generally, a legal element is presented in criminalizing behavior, whether an act or a omission. This element shall be coded in international conventions regulating air navigation and national laws, especially the law of the country in which the plane is registered. For this, the relevant international conventions have stipulated the criminalization of the illegal seizure of civil aircraft" (Tokyo 1963, The Hague 1970, and Montreal 1971). Also, the Iraqi national law in the article (13) criminalizes acts involving air navigation; articles (354) and (355) criminalize endangering the safety of air navigation; and article (357) criminalizes endangering private aircraft.

2.1.4. International element

The crime of unlawful seizure of aircraft is not established unless the international element is available. This occurs when a crime is committed by one country against another country to violate proper civil aviation, international human relations, or in the event of terrorist act. This requires that the goal of this crime shall not be for private interest. This crime does not occur in the case of domestic flight (Shukry, 1991, p. 200). consequently, this characterization of the crime of hijacking an aircraft is achieved if the offender does not belong to the nationality of the country which the plane belongs; if he commits the crime in a country other than the state he belongs to; or if it takes place at the landing and taking-off airports in two different countries, regardless of whether the original flight of the plane was international or domestic (Abdul Wahhab Muhammad, 2019, p. 195). Moreover, the Hague Convention of 1970 applies to all cases of unlawful seizure, whatever the nationality of be except for the kidnapping that takes place from one country to another that is not a party to a conviction; if the place of take-off and the place of actual landing of the aircraft on board which the offence is committed are situated within the territory of the same State; those aircraft that their route is diverted over the high seas connected to the territory of the state that owns it if the state retrieves it without this aircraft passing through the airspace of another country, or if both the actual take-off and landing of the aircraft are located within the territory of one of the member states of the institution or agency (Shukri, 1991, p. 196).

2.2. Criminal jurisdiction over crimes committed onboard aircraft.

This part of the research explains criminal jurisdiction from two levels, criminal jurisdiction at territorial airspace level and at international airspace level.

2.2.1. Criminal Jurisdiction at territorial airspace level

2.2.1.1. Jurisprudence's theory of the territorial Airspace level

The issue of jurisdiction of the crimes committed on board aircraft has raised jurisprudential controversy. Their opinions are divided into six theories, each of them adheres to a specific applicable law as follows:

First: Territorial law theory

According to this theory, a state has exclusive control over its people and property within its territory and all other states must respect the sovereignty of territorial jurisdiction. Therefore, all crimes committed on board aircraft are subjected to the law of the state which the aircraft flies over based on the principle of territoriality jurisdiction (Sorour, 1981, p. 192). Although this theory is logical and grants the protection of state's sovereignty and jurisdiction over its territory, it has several difficulties; Including, and obstacles to determining the territory specifically, and it is also impossible to implement this theory if the country of jurisdiction has no information about the crime or when the evidence of crime is not found (Al-Kuraiti, 2017, pp. 41-42).

Second: Nationality law theory

Based on this theory, a state has jurisdiction over aircraft which carries its nationality regardless of the criteria of territory where the crime occurred. This theory is based on the principle that the other state's public interest or security is not threatened. This theory has been criticized on the basis of lack of relationship, other than the nationality, sometimes between the country and committed crime either because the perpetrator and the victim are not citizens of this country, or because the committed crime does not affect its security and interests (Al-Kuraiti, 2017, p. 44).

Third: Landing state law theory

Land state law gives jurisdiction to the law of the state in which the plane lands immediately after the commission of the crime. This theory relies on several justifications, including; the landing state authority being more capable than others to arrest the perpetrator and preventing him from escaping, also, they are more capable of collecting evidence more than other states. However, this theory has also been criticized in that the jurisdiction will be upon the will of the pilot. (Al-Kuraiti, 2017, p. 47).

Fourth: Take-off state law theory

In line with take-off state law theory, the applicable law is the law of the state that the aircraft takes-off to not confront the difficulties of determining the place where the crime is committed. However, the take-off state law may not have sufficient interest in subjecting these crimes to its law (Al-Kuraiti, 2017, p. 48).

Five: Mixed theory

This theory's proponents believe no law should prevail over others. Rather, a comparison should be made between all possible laws that might apply according to the circumstances and considerations of each crime separately. For example, if the crime arises from violating the laws and regulations of air navigation, or if it is committed while the aircraft is still at the airport, then the law of that country shall prevail over others, while priority is given to the law of the country of nationality of the aircraft when the crime has been committed in violation of the internal regulations of the aircraft or when the crime occurred among crews. Nevertheless, this concept leads to potential conflicts, especially between the law of the state of nationality and the law of the territorial state.

Six: Analogy law theory

Analogy theory law adopts the maritime provision to onboard aircraft crimes. Notwithstanding, maritime law differs and its nature distinguishes it from air space law (Al-Arini and Fakhry, 1994, p. 35). Finally, we prefer the theory of nationality within the scope of criminal jurisdiction in crimes committed onboard aircraft because nationality is based on legal principle interest.

2.2.1.2. International jurisdiction at the territorial airspace level

First: Prior to the Chicago Convention of 1944, Numerous international efforts were held to solve the problem of conflict of jurisdiction in crimes committed on aircraft. The state of nationality law has received the most support in the conferences held by the International Aeronautical Legal Commission since 1910. The Paris Convention on Air Navigation in 1919 adopted the sovereignty, territorial law theory principle. In contrast the conference of the International Aviation Legal Committee in 1930 concluded that the main jurisdiction is for the nationality state of aircraft except in two cases: (1) if the act would disturb security and public order of another state, (2) if the act had harmed the population of another state (Al-Kuraiti, 2017, p. 57).

Second: After 1944 Chicago Agreement, the issue of criminal jurisdiction of crimes committed on board aircraft intensified. In 1959, the Legal Committee of the International Civil Aviation Organization drafted an agreement, and then this project was replaced by another project discussed by the Legal Committee held in Rome 1962, which was presented to the International Conference on Civil Aviation in Tokyo on August 1963, eventually it was approved on 9/14/1963. After that, efforts of the International Aviation Organization resulted in the signing of Convention for the Suppression of Unlawful Seizure of Aircraft in 1970, and then the Convention for the Suppression of offences and other acts directed to the safety of Civil Aviation in Montreal 1970 (Convention No. 95 issued on 4/24/1980).

Pertaining to the Tokyo Convention regarding criminal jurisdiction over offences committed on board aircraft, the main jurisdiction of the registration country of the aircraft was adopted. Other jurisdictions in accordance with that is in the article four which gives the jurisdiction to a described state as follows; first, in the cases of the country that owns the territory may exercise its jurisdiction over the crimes that occur on board the aircraft; second, if the crime was committed against a national of this state or a person with permanent residence; third, If the crime was committed against the security of the state; four, if the crime violates the rules and regulations related to aviation or aircraft movements in force in the state ; five, if exercising this competence is necessary to ensure that this country observes any of its obligations in accordance with an international multilateral agreement.

2.2.1.3. National jurisdiction at the territorial airspace level

jurisdiction at the national legislation level varies among national law. The jurisdiction at national legislation level will be explained as follows:

The Iraqi Penal Code clarified its legal stance in articles (7 and 8) on crimes committed on board aircraft beyond Iraqi territory. As article (7) stipulates that: (... Iraqi ships and aircraft are subject to the territorial jurisdiction of the Republic of Iraq wherever they may be.). It is justified that these ships and planes are part of the Iraqi belongings. Moreover, the state desires to protect its individual's interests as, mostly, they use their national transportations. Finally, this type of crime threatens Iraq's economy as it damages and affects the reputation of national air companies (Al-Awaji, 1995, p. 357). However, this legal standing of the Iraqi law may lead to conflict with the state's law that crime is committed on its territory. (Ibrahim, 1988, p. 108). To avoid this contradiction, we suggest amending the code as (... Iraqi ships and aircraft are subject to the territorial jurisdiction of the Republic of Iraq wherever they may be as long as they do not conflict with the law of another competent country according to the rules of international law). As for crimes committed on board foreign aircraft in the Iraqi airspace, article (8) stipulates the following: (... The Code is not applicable to offences committed on board foreign aircraft in Iraqi airspace unless the aircraft lands in Iraq after the offence has been committed or if it affects the security of Iraq or the offender or victim holds Iraqi nationality or assistance is requested from the Iraqi authorities.). we suggest that the case of the foreign plane's violation of aviation rules and regulations in force in Iraq shall be added to this article.

2.2.2. Criminal jurisdiction at the international space level

Jurisdiction for the crime are the principle and exceptions of the criminal jurisdiction of ships in high seas govern committed onboard aircraft in international spaces. Therefore, if the crime is committed on aircraft in international airspace, the jurisdiction is given to the state that holds the aircraft's nationality. This is because other countries other than the one which the aircraft holds its nationality have no interest and should not be entitled to exercise their criminal jurisdiction.

2.2.2.1 Aircraft nationality principle at the international level

The principle of criminal national aircraft jurisdiction has received the attention of international conventions on crimes committed on board aircraft. The Tokyo Convention of 1963 in article one, stipulates that " Except as provided in Chapter III, this Convention shall apply in respect of offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State."

2.2.2.2. Aircraft nationality principle at the national level

The principle of national jurisdiction in high public space is adopted in Iraqi law when it gives the pilot-in-command or his assistant authority over the judicial enforcement police with regard to crimes committed on board the aircraft they are in command of (article 39 of IPC and 41-42-43 of ICPL).

2.2.2.1 Exceptions of aircraft nationality principle

First: piracy, piracy consists of any of the following acts: "Any illegal acts or any act of inciting or of intentionally facilitating an act of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; or against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; also it is any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft." (Article (15) of the Geneva Convention on the High Seas of 1958, and Article (101) of the Convention on the Law of the Sea of 1982). Pertaining to the criminal jurisdiction in the crime of piracy, the Geneva Convention on the High Seas of 1958 in article (14) stipulates that "All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State." This provision is repeated in The High Seas Law of 1982 as well. Also, in article (19) stipulated that " On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken concerning the ships, aircraft or property, subject to the rights of third parties acting in good faith." It is explicitly stated in the above provisions that all countries are responsible for confronting piracy and they have authority to seize the plane subject to piracy as well as the plane subject to attack in the crime of piracy, as well as to arrest perpetrators even if it was outside of their jurisdiction based on the principle of universal jurisdiction. (Rashid, 1974, p. 196)

Second: Crimes arising from air collision, a collision occurs between two or more aircraft, whether this collision occurred in flight or in the event that one of the two planes is parked. and air collisions takes various types, including: Air collision out of the control of the crew; the collision due to the unilateral error of one due to his violation of air navigation rules or in the case, unserviceable of the aircraft for air navigation; the collision might result from a joint error; finally, the cause of collision might be mixed among previous causes or unknown (Al-Kuraiti, 2017, p. 122). The crimes arising from air collisions are complicated and problematic pertaining to determining the criminal jurisdiction over them when the colliding planes belong to different countries. These crimes cannot be subject to the principle of national criminal jurisdiction on crimes committed onboard aircraft because states have jurisdiction alike. Also, the universal criminal jurisdiction does not govern this crime because it is not characterized as an international crime.

3. Role of international legislation in providing aircraft protection

The necessity of providing criminal aircraft protection at the national and international levels has led the international organs to work in order to provide criminal protection for civil aircraft through many attempts such as holding conferences and signing international agreements. For this purpose, criminal policy in national and international legislations is based on complementarity. In this part of research, substantive and procedural criminal protection will be explained.

3.1. Substantive criminal protection

We will elaborate this protection through three levels to clarify substantive criminal protection regarding crimes committed onboard aircraft.

3.1.1. Unlawful acts in the Tokyo Convention of 1963 and amended by the Montreal Protocol of 2014

The Special sub-committee of the Legal Affairs Committee was appointed to update the Tokyo Convention which proposed three categories offenses:

3.1.1.1. The first category is the most serious crimes

The crew members of aircraft must be protected because they are responsible for maintaining not only order and discipline on board the aircraft, but also the safety of the aircraft. Based on this interest and protection, the special sub-committee suggested that crimes that are committed against them are considered the most serious crimes. For instance, assault and other acts of interference against a crew member on board a civil aircraft, threats and intimidation against a cabin crew member and refusal to follow instructions are included in this category. (Beera, 12/7/2021, p. 4)

3.1.1.2. The second category, less serious crimes

Other crimes committed against others on aircraft or breach the instructions are considered less serious. These crimes include assaulting or intimidating other passengers, causing damage or destruction of property, consuming alcohol or using narcotic drugs.

3.1.1.3. The third category is breaching instructions in less serious acts

The third category includes other crimes committed on board aircraft and considered less serious than the second category, such as smoking in the toilet, tampering with a smoke detector, and operating any portable electronic devices. However, one of the prominent defects of the Tokyo Convention is that it is left out to each state party to determine what constitutes crimes. (Beera, 12/7/2021, p. 4).

3.1.2. Substantive protection in Hague Convention of 1970 amended by the Beijing Protocol of 2010

Substantive protections of Hague Convention of 1970 amended by the Beijing Protocol of 2010 are as follows:

3.1.2.1. Committing the crime by using force, threat, coercion, or any form of intimidation

The use of force is the dominant form in crimes of illegal seizure of civil aircraft conducted to put fear among people and eventually the perpetrators can reach their goals. The use of force or the threat has already been mentioned in article (11) of the Tokyo Convention of 1963(ICAO, 2009, pg. 2-16).

3.1.2.1. Committing onboard aircraft crime by using technological means

The Beijing Protocol of 2010 in article included committing a crime by technological means. This crime is achieved when the offender uses advanced technological devices to achieve his crime, such as using computers and the internet to penetrate the aircraft's systems and devices to control it. Also, accessories or whom attempt to commit such a crime are included in this protocol (Al-Asi, 2019, p. 117). Additionally, article (1) in paragraph four stipulated that "any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon without lawful authorization and with the intention that it will be used for such purpose; provided that for activities involving a State Party, including those undertaken by a person or legal entity authorized by a State Party, it shall not be an offence under subparagraphs (3) and (4) if the transport of such items or materials is consistent with or is for a use or activity that is consistent with its rights, responsibilities and obligations under the applicable multilateral non-proliferation treaty to which it is a party including those referred to in Article 7."

3.1.3. Substantive Protection in the Beijing Agreement in 2010 updating Montreal Convention of 1971 Amended by the Montreal Protocol of 1988

Beijing Agreement in 2010 provided substantive protection against onboard aircraft crimes. On one aspect, some of these substantive protections that have been criminalized by the Beijing Agreement in 2010 are traditional while others are new forms of protection. On other aspect, some of these crimes are directed to persons such as, any person who commits unlawfully and intentionally or makes a threat to commit or organize or participate of an act of violence against a person on board aircraft in flight if that act is likely to endanger the safety of that aircraft; or if it is against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death or is likely to endanger safety at that airport. While some others directed to aircraft such as, any acts destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or places or causes to be placed on an aircraft in service, destroys or damages air navigation facilities or interferes with their operation which is likely to endanger its safety in flight; additionally, Some other are related to using aircraft as a tool to releases dangerous substance such as, releasing or discharging from an aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; finally, crimes might take the form of the using aircraft as a tool to transport explosives such as, transporting, causes to be transported, or facilitating on board an aircraft any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act. (Beijing Agreement in 2010).

3.2. Procedural protection of onboard aircraft crime

In this part of the research, we will explore the protection of judicial jurisdiction of onboard aircraft crime.

3.2.1. Primary jurisdiction

When a state confront onboard aircraft crimes committed against its interests in certain conditions, it gives the jurisdiction to its national courts as follows:

3.2.1.1. Jurisdiction of the state of registration

Article Three of the Tokyo Convention in 1963 adopted Jurisdiction for the state of registration of aircraft, and it was replaced by article four of the Montreal Protocol in 2014. However, article four of the Protocol did not add new provisions regarding the jurisdiction of the state of registration other than an affirmation that the state of registration has the original jurisdiction and the most important interest in punishing crimes committed against its interest. That's why states give jurisdiction to their national court wherever these aircraft are located (Al-Far, 1996, p. 479).

3.2.1.2. Jurisdiction of the state of territory

Territorial jurisdiction is one of the strongest jurisdiction in this regard. All states have adopted it in their national law based on the sovereignty over territory. Unlike the Tokyo Convention of 1963 with its amended protocol of 2014 and The Hague Convention of 1970, it is adopted by the Montreal Convention of 1971 provisions, in Article 5, paragraph (1/a). Also, in contrast to the provisions of Hague Convention of 1970, the territorial jurisdiction is adopted by the Beijing additional Protocol in the article 7, which replaced of Article 4 of the Convention, as the latter stipulated this jurisdiction in Article 4, paragraph (1/a).

3.2.1.3. The jurisdiction of the country which the perpetrator or the victim holds its nationality or permanent residence

In contrast to Hague Convention of 1970, and the Montreal Convention of 1971, this type of jurisdiction is stipulated in the article (4 / b) of the Tokyo Convention in 1963. Same as Tokyo Convention, it was adopted in the Beijing Protocol of 2010, and the Beijing Convention of 2010, with the exception of the jurisdiction related to the permeant resident person. Instead, both the protocol and the convention included to this jurisdiction if a stateless person with a permeant resident committed an aircraft crime. (Article 9/1 of the Convention for the Suppression of Nuclear Terrorism of 2005)

3.2.1.4. Jurisdiction of the state that the crime affects its security

This form of jurisdiction is stipulated only in the Tokyo Convention of 1963. The reason for not affirming it in other conventions is that this kind of jurisdiction is recognized in national laws based on the principle of subject Jurisdiction of criminal law. This principle allows the state to have jurisdiction on crimes committed abroad against its security, regardless of the offender's nationality (Article IV, Paragraph C of the Convention Tokyo of 1963, amended by the 2010 Montreal Protocol).

3.2.1.5. The jurisdiction of the state that its rules and regulations of civil aviation is violated

This jurisdiction is not adopted except within the Tokyo Convention of 1963 provisions, which is considered an implementation of article (12) of Chicago Convention in 944. In this case, the person, pilot-in-command, one of its navigators, or one of its passengers is subject to the jurisdiction of this country. (Article 12 of the Chicago Convention of 1994).

3.2.2. Complementary Jurisdiction

3.2.2.1. landing country jurisdiction

Enabling the landing country to exercise jurisdiction over onboard aircraft has many advantages including: investigating and collecting evidence quickly which helps establish the crime element and arrest perpetrators.

3.2.2.2. National law jurisdiction

Article (3), paragraph (3), of the Tokyo Convention of 1963 stipulates that: "This agreement does not exclude any criminal jurisdiction exercised in accordance with national law." Also, it was adopted by Article (4), Paragraph (3) of Hague Convention in 1970, as well as Article (5), Paragraph (3) of the Montreal Convention of 1971 (Beijing Agreement of 2010 in Article Eight, Paragraph (1/a).

3.2.2.3. The jurisdiction of the state in which the defendant turns to and it refuses to extradite the perpetrator

This jurisdiction is stipulated in Hague Convention of 1970, and its amended Protocol of 2010, as well as in the Montreal Convention of 1971, and the Beijing Convention of 2010. Jurisdiction in this case is given to the signing state which the defendant turns to. This case assumes that the accused leaves the territory of the country in which the plane landed with the knowledge of that country, or he flees from it without punishment and takes refuge in another country party to the Convention (Article 2/4 Hague Convention 1970 amended by the Protocol Beijing 2010, and Article 5/2 of the 1970 Convention (updated by the Beijing 2010 Convention).

3.2.2.4. The territory of the state that crime has an impact on

This jurisdiction is stipulated only in the provisions of the Tokyo Convention in 1963. The impact that might constitute the crime or one of its elements shall be directed. For example, when the pilot-in-command throws dangerous substances while the plane

passes over the territory of that country, or one of the passengers shoots at a country's citizen before taking-off. (Al-Nasiri, 1988, p. 282).

3.2.2.5. Obligated state by to The exercise jurisdiction internationally

The Tokyo Convention of 1963 adopted this form of jurisdiction. This provision is stipulated in absolute; therefore, it applies to all multilateral international agreements. (Al-Nasseri, p. 282).

4. Conclusion

Based on the results of the study, the following conclusions are drawn:

First: Crime committed onboard aircraft has a special nature. It is national, international and terrorist crimes.

Second: traditional offences on aircraft are no longer solely threatening the security and safety of civil air navigation. This threat took a more dangerous path on September 11, 2001.

Third: Many forms of crime are committed onboard aircraft, including the unlawful seizure of aircraft (hijacking), piracy, terrorist attack and other forms of this crime that endanger the safety of civil aircraft.

Four: Forms of onboard aircraft crime have common basic elements with different types of Acts Rea, special intention, and some forms include international elements.

Five: Territorial and nationality law principles are the two most criteria for crimes board aircraft jurisdiction.

Six: international legislation, like national law, provides substile and procedural aircraft protection; substantive protection is communalizing acts, while procedural protection is determining the jurisdiction of the court that tries the perpetrators and solve contradiction and of the laws by not letting perpetrators flee from punishment.

Seven: One of the most serious threats facing civil aircraft is attacking them with explosives, or using it as a weapon due to the seriousness of harm and causality.

Eight: The jurisdiction over crimes committed by a stateless person is for the country where the perpetrator has permanent residence.

Nine: International conventions do not apply to seizing aircraft outside the aircraft, such as when the perpetrator uses devices to threaten the aircraft's safety.

Ten: Iraqi aircraft are subject to the jurisdiction of Iraqi law wherever they are.

Eleven: There is a problem of defining criminal jurisdiction in crimes arising from air collision, which requires it to be regulated in accordance with general and private international agreements.

5. Recommendations

First: We recommend this legal code in the legal jurisdiction of Iraqi aircraft: (Iraqi aircraft are subject to the jurisdiction of Iraqi law wherever they are, as long as they do not conflict with the law of another country that is competent according to the rules of international law).

Second: we suggest adding another condition of Iraqi law jurisdiction over crimes committed against civil aviation, the case of a foreign aircraft's violation of aviation rules and regulations in force in Iraq.

Third: Addressing the problem of defining criminal jurisdiction in crimes arising from air collisions by regulating this issue in accordance with general and private international agreements.

Four: We recommend Iraqi legislation to ratify the Beijing Convention of 2010 on crimes against air navigation.

Five: We recommend addressing the problem of jurisdiction over crimes committed in the public airspace according to the complementary jurisdiction between national and international jurisdiction.

Six: We suggest that stipulating the criminalization of acts of seizing aircraft that take place outside the aircraft is very necessary

References

First: Books:

1. Abu al-Wafa, M. (2012). *The crime of endangering the plane between relations, thefts, and punishment in the Tokyo Convention*, Center for Aviation, Studies and Research.
2. Al-Asi, M.(2019). *Risk Management in Providing Protection for the Safety of Air Transport*, The Arab Center for Publishing and Distribution, Egypt.
3. Al-Awaji,M. (1980). *Lessons in Criminal Science*, Nofal Foundation, Beirut.
4. Al-Awji,M.(1995) *Criminal Law, Part 1, The General Theory of Crime*, 3rd Edition, Dar Al-Kholoud, Beirut.
5. Al-Bustani, T.(2009). *The Principle of Universal Jurisdiction in Penal Law*, A Comparative Critical Analytical Study, 1st Edition, Erbil-Iraq.
6. Al-Far, W. (1996). *International Criminal Crimes*,Dar Al-Nahda Al-Arabiya, Cairo.
7. Al-Khalaf, A. Al-Shawi,S. (1982) *General Principles in Penal Code*, Higher Education Press, Baghdad.
8. Al-Nasser, H. (1988). *The Crime of Hijacking Aircraft, A Study in International Law and International Relations*, The Arab Institute for Studies and Publishing, Beirut.
9. Dressler, J., R (2012).*Understanding criminal law*. New Providence, Nj: Lexisnexis. A.C.
10. Fakhry, R. Al-Arini , M (1994). *Air Law*, University Press, Cairo.
11. Fathi Eid, M.(2007) *Aircraft Hijacking*, Naif University of Science, Jeddah, 2007.
12. Gharib, M. (1994). *Explanation of the Penal Code, Part One, General Section*, Wahba Hassan Sons Press, Cairo.
13. Hosni, M. (1973). *Explanation of the Penal Code, the general section, the general theory of crime and the general view of general precautionary measures*, 3rd edition, Dar Al-Nahda Al-Arabiya, Cairo.
14. Ibrahim, A. (1988). *General Rules in Comparative Penal Code*, 1st Edition, Al- Futan Press, Baghdad.
15. Ibrahim, O. (2003) *the crime of hijacking the civil plane*, Al-Halabi human rights publications, Beirut.
16. Jalal, M. (2005). *Principles of Criminalization and Punishment in Criminal Policy*, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo-Egypt.
17. Kreiti, H. (2017). *Criminal Crimes in Crimes Committed On Aircraft*, Dar Al-Nahda Al-Arabia, Cairo.
18. Omar, F. (2003), *Air Law*, Arab Renaissance House.
19. Moneim,S. and Abu Amer .M.(2002) *Penal Code, General Section*, New University Publishing House.
20. Obaid,H.(1979) *International Crime, An Analytical Study*, 1st edition, Dar Al-Nahda Al-Arabiya, Cairo.
21. Rashid, A. (1974). *Criminal Law, Introduction and Principles of General Theory*, 2, Dar Al-Nahda Al-Arabiya, Cairo.
22. Razaq, H. Dalabeh.N.(2015) *The Crime of Hijacking Aircraft in International Law*, Master Thesis, Faculty of Law, Jerash University.
23. Salbi, F.(2018). *Penal Code, General Section*, Sanhoury Library, Baghdad.
24. Shukri, M. (1991). *International Terrorism*, 1st Edition, Dar Al-Ilm for Millions, Beirut.
25. Sorour,M. (1981). *Mediator in the Penal Code*, Part 1, General Section, Dar Al-Nahda Al-Arabiya, Cairo.
26. Tahseen, D. *Fighting*; Beirut - Lebanon, 2017, p. 19.
27. Tunajji, O. (2018) published research, *Sharjah Journal of Legal Sciences*, United Arab Emirates, Volume 15, Issue 1.
28. University of Sharjah Journal of Legal Sciences,(2018) Volume 15, Issue 1.
29. Yaqut,B.(2009). *Securing Civil Aviation from the Risks of Terrorist Operations*, New University Publishing House, Alexandria.
30. Zuhair,T. (2016) *The Role of the Police in Terrorist Acts*, 2016.

Second: International resolutions:

- 1.Security Council resolution 1368 (2001).
2. UN Security Council Resolution No. 1373(2001).
3. Security Council Resolution No. 635 (1989).

Third: International conventions:

1. Geneva Convention (1958).
2. The Montreal Convention (1971)
3. The Hague Convention (1970)
4. Chicago Convention (1944)
5. The Paris Convention on Air Navigation in (1919)
6. Tokyo Convention (1963)
7. the Montreal Protocol (2014)
8. Convention for the Suppression of Nuclear Terrorism of(2005)
9. Beijing Agreement (2010)

Fourth: National Legislations:

- 1.Iraqi Penal Code No. 111 of 1969 (IPC)
2. Iraqi Criminal Procedure Code No. 23 of 1971(ICPC)