

Hijacking of Aircraft, Aviation Security and Terrorist Activity

Latest Update

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The traditional view of aircraft hijacking is the armed hijacker entering the aircraft's cockpit, holding a gun to the pilot's head and telling the pilot to fly to a certain destination. Since the turn of the 21st century we have witnessed terrorists deploy a variety of tactics related to aircraft hijacking and aviation security. These have ranged from groups of terrorists taking over control of aircraft and using the aircraft as a weapon and fly into buildings as we saw in Al Qaeda's attack on the US cities of New York and Washington on the 11th September 2001 (9/11) that resulted in 2996 deaths to attempted suicide bombings on aircraft by members of jihadist terror groups (Burke 2003 p.22). This article will examine the current legislation governing aircraft hijacking and aviation security, focusing where it relates to terrorist activity.

Overview of the Topic

1. The offence of hijacking aircraft– section 1 Aviation Security Act 1982

provides the offence of aircraft hijacking. In essence the offence is committed where a person unlawfully seizes the aircraft or exercises control of it. In doing so the person gaining control of the aircraft must either use force or threaten to use force (s1(1)). If a person is convicted of the offence it carries with it a potential life sentence (s.1(3)). As this is a UK statute, its limitations only apply where the persons taking control of the aircraft is a UK national or the act is committed in the UK or if the aircraft is registered or used in military service in the UK (S.1(2)(i) – (iii)). Because the offence was committed in the US on US

registered aircraft the 1982 Act' offence would not apply, but what the Al Qaeda operatives did was a classic example of hijacking as each of the four aircraft were hijacked a group of men who took control of the aircraft. While not known exactly what force the four groups of Al Qaeda operatives used, from the little evidence that does exist it is suspected that they were armed with small knives and box cutters and claimed they had a bomb (Jenkins 2001 pp.2-3). As a result of events such as these explains why travellers at airports see constantly changing regulations as to what can and cannot be carried on board an aircraft in their hand luggage. Following the 9/11 hijacking even innocuous items such as nail clippers were prohibited items of hand luggage. Another example of how counter-terrorism investigations impacted not only in preventing acts of aircraft hijacking, but also in increasing restrictions on what passengers can bring on board the aircraft as hand luggage was seen in the UK with Operation Overt in 2006. A joint investigation between counter-terrorism agencies from the UK and the US resulted in the arrest of a number of Al Qaeda operatives in the UK. The operatives planned to board a number of flights in the UK bound for the US and detonate improvised liquid explosives contained in everyday containers over UK and US cities (BBC News 2010a). As a result, severe restriction on what liquids can be taken on board aircraft in passengers' hand luggage have been introduced.

2. The offence of destroying, damaging or endangering the safety of aircraft –

section 2 of the Aviation Security Act 1982 covers a wide range of activities that comes under the offence of destroying, damaging or endangering the safety of aircraft. For the purposes of this article, the relevant offence related to hijacking is in s.2(1) where a person unlawfully and internationally commits an

act of violence which is likely to endanger the safety of aircraft. While the terrorist may not actually board a flight with the explosive, the device can be stored within cargo carried by the aircraft. What is key in the terrorist tactic of detonating an explosive device during the flight is the intention of maximising casualties both on board the aircraft and on potential victims on the ground where aircraft debris will land. A tragic example of this was the explosion of Pan-Am flight 103 on the 21st December 1988 over the Scottish town of Lockerbie where a bomb on board the aircraft detonated killing 259 passengers and crew and 11 persons on the ground (Martin 2013 p.107). The aircraft debris was scattered across 845 square miles and the impact of the main part of the aircraft's fuselage reached 1.6 on the Richter scale causing major devastation to the town of Lockerbie (BBC News 1988).

- 3. Recent examples where Lockerbie style attacks were prevented** - Shortly after the 9/11 attacks on US, on the 22nd December 2001 a UK citizen Richard Reid boarded an American Airlines flight in Paris to Miami. A convert to Islam, Reid placed explosives in his shoe and once the aircraft was flying over US air space he attempted to detonate the explosives in his shoe with a match, but struggled to detonate the device. After a passenger complained of a smell of burnt matches, the cabin crew eventually restrained and arrested Reid who pleaded guilty in a US Federal Court to eight counts of terrorism (BBC News 2001). Another recent example is when Umar Farouk Abdulmutallab boarded a Northwest Airline flight (a US carrier) on the 25th December 2009. Abdulmutallab had received terrorist training at a camp in the Yemen by the group Al Qaeda in the Arabian Peninsula. On the day of the attack he flew from the Gambia to Amsterdam, where he boarded the flight from Amsterdam to

Detroit. As the plane was approaching Detroit he tried to detonate the plastic explosives he had sewn into his underwear. Although he set off the detonating trigger, he failed to ignite the main explosives and a passenger sitting close to him restrained Abdulmutallab, preventing him from detonating the main explosives. Tried in a US Federal Court, Abdulmutallab pleaded guilty to eight counts of terrorism (BBC News 2010). In relation to airport and aircraft security it is these events that explain why passengers have to undergo extensive security scrutiny, including going through body scanners prior to boarding the aircraft (House of Commons Library 2011 p.13).

4. Terrorist action on aircraft bringing about changes in UK terrorism

legislation – Post the 9/11 events saw many states, including the UK, either amend or introduce new terrorism legislation. In relation to aviation security Part 9 of the Anti-terrorism, Crime and Security Act 2001 was introduced with the creation of new offences and extended powers to police and airport security staff. The aim of Part 9 of the Act was to prevent individuals from hijacking or destroying or endangering the safety of aircraft. These measures included increasing the sentencing for the offence of trespass on an aerodrome where s.83 of the Act amended section 39(1) of the Civil Aviation Act 1982. Section 84 of the Anti-terrorism, Crime and Security Act extended the powers of the police and persons acting on behalf of the aerodrome manager to remove, using reasonable force where necessary, unauthorised persons in restricted zones of aerodromes who fail to comply with request to leave that zone. Section 86 of the 2001 Act amended section 20 of the Aviation Security Act 1982 by introducing section 20B granting the police or staff working under the direction of the aerodrome manager to detain aircraft, including circumstances where a threat to

commit an act of violence on the aircraft or an act of violence is likely to be committed against the aircraft or persons on board the aircraft (section 20B (1) (c) and (d) Aviation Security Act 1983). Section 20B of the 1982 Act gives powers to the police or persons working under the aerodrome manager to enter the aircraft and arrange for a person or thing to be removed from the aircraft, and reasonable force can be used on the person to be removed from the aircraft (s.20B(3)).

- 5. *S and Others v Secretary of State for the Home Department* [2006] EWCA Civ 1157, the hijacking of an Afghan aircraft by Young Intellectuals of Afghanistan** - Although primarily concerned with the hijackers' claim to remain in the UK following their release from prison, the facts of the case give details of the hijacking. The hijack occurred in February 2000. The hijackers were members of the group Young Intellectuals of Afghanistan, who the then Taliban Afghan government saw as political opponents and took out severe retributive action on them. This included torturing members of the group the Taliban arrested. Armed with four firearms and two loaded grenades (*S and Others v Secretary of State for the Home Department* [2006] EWCA Civ 1157, paragraph 4) the hijackers took control of an aircraft of an Afghan national airline while on an internal flight. It landed in Stanstead Airport on the 7th February 2000 (*S and Others v Secretary of State for the Home Department* [2006] EWCA Civ 1157, paragraph 5). Up to their arrest on the 10th February 2000 when the hijackers surrendered, while the aircraft remained on the tarmac there was a tense stand-off between the hijackers and the police. At one point a passenger who was ejected from the aircraft was made to kneel on the tarmac while one of the hijackers pointed a gun at the passenger (*S and Others v*

Secretary of State for the Home Department [2006] EWCA Civ 1157, paragraph 5). All the hijackers were charged with five serious criminal offences linked to the hijacking and they served their sentences in full. Although fortunately there have been very few UK cases linked to hijacking what this case reveals is what Brooke LJ highlighted saying that hijacking is a ‘terrifying’ experience of innocent passengers. Fortunately it appears the tightening of aerodrome security be it related to air cargo (House of Commons Library 2011 pp15-16) or to passenger embarkation and the correlative increase in powers to police and aerodrome security has to date has made it far more difficult for individuals to breach aviation security and keep the number of incidents to a minimum.

Key Acts

Civil Aviation The Hijacking Act 1971 (Overseas Territories) Order 1971

Aviation Security Act 1982

Anti-Terrorism, Crime and Security Act 2001

Key Subordinate Legislation

1953 European Convention on Human Rights

Key Quasi-legislation

None

Key European Union Legislation

None

Key Cases

S and others v Secretary of State for the Home Department [2006] EWHC 1111 (Admin)

Key Texts

House of Commons Library (2011) ‘Aviation: security’ Standard note: SN/BT/1246

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Martin, M. (2013) *Understanding Terrorism: Challenges, Perspectives and Issues* (4th edition) London: Sage

Further Reading

BBC News (1988) '1988: Jumbo jet crashes onto Lockerbie 21st December 1988 retrieved from http://news.bbc.co.uk/onthisday/hi/dates/stories/december/21/newsid_2539000/2539447.stm

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BBC News (2010) 'Underwear bomber Abdulmutallab sentenced to life' 16th February 2010 retrieved from <http://www.bbc.co.uk/news/world-us-canada-17065130>

BBC News (2010a) 'Profiles: Operation Overt' 8th July 2010 retrieved from <http://www.bbc.co.uk/news/10455915>