

INTERNATIONAL CIVIL AVIATION LAW INSTRUMENTS AGAINST AIR TRANSPORT TERRORISM: AN ANALYSIS FROM THE ISLAMIC LAW PERSPECTIVE

Ismail Adua Mustapha¹
Abdulraheem Taofeeq Abolaji²
Ismael Funsho Yusuph³

ABSTRACT

Air transport terrorism is as old as the emergence of civil aviation itself. Illegal acts such as “air piracy” (aircraft hijacking); “aircraft destruction”; and kidnapping of passengers (“hostage-taking of passengers”) were popular ways of terrorizing air transport. To guide against the continuous perpetration of these heinous acts, the International Civil Aviation Organization member states waged war through certain instruments such as definition, punishment, extradition of the offenders and the State with jurisdiction over the offence are stated in the anti-air terrorism conventions. Yet the various acts of terrorism persist to the extent that new emerging aviation terrorism activities are springing up either for political, economic or religious ideology. It is on this note that this paper analyses the instruments from the Islamic law perspective to the

¹ Corresponding Author. Associate Professor, Department of Business Law, Faculty of Law, University of Ilorin, Nigeria, ismail.am@unilorin.edu.ng

² Senior Lecturer, Department of Islamic Law, Faculty of Law, University of Ilorin, Nigeria, taofeeqbj@gmail.com

³ Lecturer 1, Department of Private and Property Law, Faculty of Law, University of Ilorin, Nigeria, yusuph.if@unilorin.edu.ng

dynamism and development of Islamic law in its interaction with modern issues or practices such as civil aviation terrorism. The paper is doctrinal wherein qualitative legal research methodology is adopted. The primary and secondary sources of international civil aviation and Islamic law are analysed to achieve the aim and objectives of the paper. It is found that the act of air terrorism is rightly impermissible under Islamic law. It further finds that the definition of the offence under Islamic Law is wider than that of conventional law; jurisdiction is universal; punishment is more severe; and extradition is compulsory. The paper concludes that the act of terrorism in whatever form is tantamount to waging war against the principle of Maqāṣid al-Sharīah. The paper therefore recommends an urgent review of international civil aviation law instruments against air terrorism, particularly the provisions relating to punishment and jurisdiction, to be in line with Islamic law.

Keywords: *air transport terrorism, Islamic law, international law instruments, civil aviation, Maqāṣid al-Sharīah*

INTRODUCTION

In the early days of the civil aviation business, air transport was no doubt the most secure of all the means of transportation across the globe.⁴ At that period, the global concern was the expertise of the pilot and his co-pilots; and the status of the aircraft in question.⁵ Thus, the security of civil aviation was never in doubt. Civil aviation terrorism was unknown and no effort of the International Civil Aviation Organization (ICAO) member states was urgently needed to regulate the security and safety of air transport by either adopting the International Convention and/or any practice to counter air terrorism.

However, air piracy as a form of air transport terrorism started in 1931. Between the 1960s and 1970s, civil aviation witnessed a geometric increase in the number of unlawful seizures of aircraft with over 240 aircraft reportedly seized from one state to another. Most important or

⁴ Ruwantissa Abeyratne, *Aviation Security Law* (Heidelberg: Springer Dordrecht, 2010), 41.

⁵ Paul Stephen Demsey, 'Aviation Security: The Role of Law in the War Against Terrorism', *Columbia Journal of Transnational Law*, vol. 41/1 (2003): 649.

prominent was the unlawful seizure of the United States of America's aircraft to Cuba. These 1960s and 1970s unlawful acts seemed unconscious terrorism because they were carried out neither to terrorize nor kill but for political reasons⁶.

In the middle of the 19th century, the acts of unlawful interference with civil aviation later turned to war and became bloody as the use of dangerous weapons such as knives, axes, guns and other dangerous materials were adopted to terrorize civil aviation. It is therefore submitted that these marked the beginning of air transport terrorism, the consequences of which include loss of lives, and properties, and distortion of international trade. Others include the breakdown of diplomatic relations between the states, psychological disorder among the individuals, and geometric reduction in the passenger flow as a result of a lack of confidence in the security of air transport.⁷

In response, the international community under the umbrella of ICAO was saddled with the responsibility to secure air transport against the terrorists' event(s). To achieve this aim, both practical and theoretical approaches were quickly adopted to restore the eroded security of civil aviation. The theoretical method is the adoption of various international anti-air transport terrorism accords such as the "Tokyo Convention on Offences and Certain Other Acts Committed On Board Aircraft 1963",⁸ "the Hague Convention on the Suppression of Unlawful Seizure of Aircraft

⁶ Jeffrey C. Price and Jeffrey S. Forrest, *Practical Aviation Security: Predicting and Preventing Future Threats* (Netherland: Elsevier Inc., 2009), 47; See also Ruwantissa Abeyratne, *Aviation Security Law*, 103.

⁷ Brian Michael Jenkins, 'The Terrorist Threat to Commercial Aviation', (paper presented at the International Seminar on Aviation Security, Herzeliyya, Israel, 5-9 February 1989), 11; Adam Z. Rose, Gbadebo Oladosu, Bumsu Lee and Garrett Beeler Asay, 'The Economic Impacts of the September 11 Terrorist Attacks: A Computable General Equilibrium Analysis', *Peace Economics, Peace Science and Public Policy*, vol. 5/2 (2009): 1-31, <https://doi.org/10.2202/1554-8597.1161>; Bill Barnhart, 'Markets Reopen, Plunge', *Chicago Tribune*, 17 September 2001. Rodney Wallis, *How Safe Are Our Skies? Assessing the Airlines Response to Terrorism* (USA: Praeger Publishers, 2003), 1.

⁸ The Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft was adopted on 14 September 1963 and entered into force on 4 December 1963, 704 UNTS 219, 20 U.S.T 2941 [Herein after referred to as The Tokyo Convention 1963].

1970”,⁹ “the Montreal Convention for the suppression of Unlawful Acts against the Safety of Civil Aviation”,¹⁰ and “the 2010 Convention on the suppression of unlawful interference relating to international civil aviation and its Protocol”.¹¹ The primary aim and objective of these Conventions are to prevent and suppress air transport terrorism through instruments which include the definition of the various offences, giving State parties the right to exercise jurisdiction to prosecute or extradite to another *locus standi* state to punish the offender.

It is on the above background that this paper asks a question: What are the Islamic law’s positions on the above instruments to suppress and prevent air transport terrorism? It needs to be stated right from the onset that the paper is not in any way engaging in a comparison between Islamic law and conventional position. Rather it seeks to contribute to the knowledge based on the principle of Islamic law on one hand, and to show the dynamics and developmental nature of Islamic law in its interaction with modern day practices of suppressing air transport terrorism, on the other hand.

CONCEPTUALIZING AIR TRANSPORT TERRORISM

In this paper, air transport terrorism is adopted in the context of unlawful interference with civil aviation. It is therefore narrowly defined in this paper as acts such as air piracy, aircraft destruction and kidnapping of passengers while onboard aircraft otherwise referred to as “hostage-taking of passengers”. Thus, the discussion shall be limited to the aforementioned unlawful acts as ways of committing air transport terrorism.

Conventionally, air piracy which is also referred to as “aircraft hijacking” or “unlawful seizure of aircraft” can be defined as:

⁹ The Hague Convention on the Suppression of Unlawful Seizure of Aircraft 1970, adopted on 16 December 1970 and entered into force on 14 October 1970, 80 UNTS 105, 22 U.S.T 1641, T.I.A.S No. 7192. [Herein after referred to as The Hague Convention 1970].

¹⁰ The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, adopted on 23 September 1971 and entered into force on 26 January 1971, 974, UNTS 177, 24 U.S.T 564, T.I.A.S. No 7570. [Herein after referred to as The Montreal Convention 1971].

¹¹ Convention on Suppression of Unlawful Interference relating to International Civil Aviation, done in Beijing on 10 September 2010, 50 *ILM* 144 (2011).

*“an unlawful, by force or threat thereof, or by any form of intimidation, seizing or exercising control of an aircraft with the intent to cause any person on board the aircraft to be confined or imprisoned against his will; to cause any person on board aircraft to be transported against his will to any place other than the next scheduled place of landing of the aircraft; to hold any person on board the aircraft for ransom or to service against his will or to cause the aircraft to deviate in a material respect from its flight plan”*¹²

Sabotage is:

“an unlawful and intentional act or attempt to destroy or damage the aircraft in-flight or on the ground by the use of any explosive instrument(s) or missile attack which endanger or likely to endanger the aircraft, passengers and/or properties”.¹³

Hostage is where an “innocent person is held captive by another who threatens to kill or harm that person if one or more demands are not met.”¹⁴ International Convention against the Taking of Hostages, 1971 described the offence of Hostage-Taking as “an attempt to or seizure or detention and threat to kill, or injure or continue to detain another person”.¹⁵

A combined reading of the definitions of civil aviation terrorism as conceptualized in this paper reveals the following consequences- (1) the acts are carried out by the use of threat, violence or intimidation; (2) they are adopted to endanger human (passenger) life or property-including but not limited to aircraft, luggage and other valuable items; and (3) they serve as a means of taking over the property of another illegally or unlawfully.

¹² Daphne A. Dukelow, *The Dictionary of Canadian Law* (Canada: Thompson Professional Publishing Co., 1991), 475. See also Hague Convention for the Suppression of Unlawful Seizure of Aircraft 1970, [herein after referred to as Hijacking Convention], article 1.

¹³ Montreal Convention, 1971, art. 1 (1) (b) and (c) and the Beijing Convention, 2010, art. 1 Explosive Convention, 1991, art. 1 (1).

¹⁴ Bryan A. Garner, *Black Law Dictionary* (USA: West Group, n.d.), 1452; Bryan A. Garner, *A Handbook of Criminal Law Terms* (USA: West Group, 2000), 599.

¹⁵ Convention against the Taking of Hostages, 1971. (Hereinafter referred to as the Hostages Convention, 1971). Article 1 (1).

AIR TRANSPORT TERRORISM: A CONTRADICTION TO MAQĀṢID AL-SHARĪAH

All the Islamic law jurists agree that lives, properties, family lineage, intellect and religion are protected under the Islamic fundamental principle called *Maqāṣid al-Sharīah*. It has been interpreted to mean principle and objective, goal, purpose, intent, and end.¹⁶ It is a principle of Islamic law aiming at realizing the worldly benefit to the people concerning this world affair and in the hereafter. Thus, the ultimate goal of Islamic law is to protect the people against corruption and evil (including any form of terrorism), and at the same time to secure the enjoyment of what is beneficial to mankind in this world (*Maqāṣid al-Sharīah*).¹⁷ Therefore, *Maqāṣid al-Sharīah* requires adequate protection of “Human lives”, “religion”, “intellect”, “family lineage” and “property” against air transport terrorism. It may therefore be summed up as a problem (societal and individual) solving instrument that is consistent with the objective of Islamic law as ordained by the Lawgiver-Allah, the Almighty.¹⁸ To adequately protect these fundamental objectives, the jurists have classified *Maqāṣid al-Sharīah* into three main categories: *Darūriyyāt*, *Hājīyāt* and *Taḥsīniyyāt*.¹⁹

¹⁶ Muhammad al-Tahir Ibn Ashur, *Treaties on Maqāṣid al-Shari'ah*, trans. Mohamed El-Tahir El-Mesawi, vol. 1 (USA: International Institute of Islamic Thought, 2006), ii; Jasser Auda, *Maqasid Al-Shariah, An Introductory Guide* (USA: International Institute of Islamic Thought, 2008) cited in Muhammad Adil Khan Afridi, ‘Maqasid Al-Shariah and Preservation of Basic Right Under the Theme “Islam and Its Perspective on Global & Local Contemporary Challenges,” *Journal of Education and Social Science*, vol. 4 (2016): 278; Ismail Adua Mustapha, ‘Machine Readable Travel Documents in Aviation Security and Information Privacy: An Islamic Law Perspective’, *IJUMIJ*, vol. 28/1 (2020): 149.

¹⁷ Muhammad Adil Khan Afridi, ‘Maqasid Al-Shariah and Preservation of Basic Right Under the Theme “Islam and Its Perspective on Global & Local Contemporary Challenges,” 278.

¹⁸ Nor Razinah Mohd Zain and Engku Rabiah Adawiah Engku Ali, ‘An Analysis of an Islamic Societal Finance and Maqasid Shariah’, *Journal of Islamic Finance* (2012): 134.

¹⁹ Mohammed Akram Laldin, *Islamic Law: An Introduction* (Kuala Lumpur: Research Center IIUM, 2006), 17; Abdurraheem Taofeeq Abolaji, ‘An Expository Study of Right of Children to Health under the Shariah and Nigerian Law’ (Ph.D. Thesis, Department of Islamic Law, University Sains Malaysia (USM), 2016), 66; Wabbah al-Zuhaylī, *al-Fiqh al-Islāmī wa*

1. *Darūriyyāt*

Darūriyyāt means “necessity or mandatory”. It has been defined as something mandatory or necessary for human existence²⁰ the absence of which the whole essence of *Maqāṣid* will collapse. That is why life (*nafs*), property (*māl*), intellect (*‘aql*), family (*nasl*) and religion (*dīn*) must be preserved and protected against air transport terrorism.

a) Protection of Life Against Air Transport Terrorism

Life is one of the fundamental objectives of *Sharī‘ah* that must be preserved, secured and protected²¹ against any form of aggression or illegal taking. Therefore, the effect of terrorizing the passenger on board aircraft will lead to aggression and/or taking the lives of passengers illegally. Thus, the need to protect the lives of passengers on board aircraft is, on one hand, premised on the fact that life is a necessity to achieve what human beings are ordained to do in this world as contained in the Holy Qur’an thus: ‘I did not create the jinn and mankind except to worship Me’.²² Therefore, the preservation and protection of the lives of passengers on board aircraft against any form of terrorism, which may lead to death, is according to Islamic law.

It is therefore, the responsibility of the government to ensure the lives of those who are on board aircraft are adequately preserved, secured and protected against any form of aggression and/or terrorism. This protection must be daily. If the lives of those on board aircraft are unjustly terminated because the government fails to provide adequate security against terrorism, the heirs of the deceased have the right to institute action against the government and the authority in charge as the case may be.²³ Because,

Adillatuh, vol. 4 (Dimashq: Dār al-Fikr, 1997) cited in Hasliza Mohd Ali et al, ‘Implementation of Islamic Quantity Management System MS1900 and its Benefits: A Case Study at the Department of Hajj and Zakkah, Malaysia’, *GJAT*, vol. 6/2 (2016): 88; Ismail Adua Mustapha, ‘Machine Readable Travel Documents in Aviation Security and Information Privacy: An Islamic Law Perspective’, 150; Nor Razinah Mohd Zain and Engku Rabiah Adawiah Engku Ali, ‘An Analysis of an Islamic Societal Finance and Maqasid Shariah’, 134.

²⁰ Hasliza Mohd Ali et al, ‘Implementation of Islamic Quantity Management System MS1900 and its Benefits: A Case Study at the Department of Hajj and Zakkah, Malaysia’, 88.

²¹ Muhammad al-Tahir Ibn Ashur, *Treaties on Maqāṣid al-Shari‘ah*, 107.

²² Surah al-Dhāriyāt 51:56.

²³ Abū al-Walīd Muḥammad Ibn Rushd, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, vol. 2 (Bayrūt: Dār Ibn Ḥazm, 2007), 436.

life as a form of *darūriyyāt* must be preserved, secured and protected and must not be terminated unjustly.²⁴ It is therefore considered a great sin and violation of the *Sharī'ah* objective to terminate the lives of those who are on board an aircraft intentionally.²⁵ The Holy Qur'an encapsulates thus:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيَّهِ سُلْطٰنًا فَلَا يُسْرِفُ فِي الْقَتْلِ إِنَّهُ كَانَ مَنْصُورًا ﴿٣٣﴾

“And do not kill anyone whose killing Allāh has forbidden, except for a just cause. And whoever is killed wrongfully (Mazlūman intentionally with hostility and oppression and not by mistake), We have given his heir the authority [to demand Qiṣāṣ, - Law of Equality in punishment - or to forgive, or to take Diyah (blood money)]. But let him not exceed limits in the matter of taking life (i.e he should not kill except the killer). Verily, he is helped (by the Islamic law)”.

(Surah al-Isrā', 17: 33)

In another verse, Allah revealed to the Prophet Muhammad thus:

مِنْ أَجْلِ ذٰلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرٰوِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِعَٰدِرِ نَفْسٍ أَوْ
فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ
جَمِيعًا وَلَقَدْ جَاءَهُمْ رُسُلُنَا بِالْبَيِّنٰتِ ثُمَّ إِن كَثِيرًا مِّنْهُمْ بَعَدَ ذٰلِكَ فِي الْأَرْضِ
لَمُشْرِكُونَ ﴿٣٢﴾

“Because of that We ordained for the Children of Israel that if anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land - it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind. And indeed, there came to them Our Messengers with clear proofs, evidence, and signs, even then

²⁴ Wahbah al-Zuhaylī, *al-Ushrah al-Muslimah fī al-‘Ālam al-Mu‘āṣir* (Bayrūt: Dār al-Fikr, 2000), 26; Abd Aziz Shamarahayu, ‘Basic Human Right in Islam’, in *Human Rights Law: International, Malaysian and Islamic Perspectives*, ed. Abdul Gafur Hamid@Khin Maung Sein (Malaysia: Sweet and Maxwell Asia, 2012), 65.

²⁵ Masoud Rajabi-Ardeshiri, ‘The Rights of the Child in the Islamic Context: The Challenges of Local and Globalization,’ *International Journal of Children*, vol. 17 (2009): 475-489.

after that many of them continued to exceed the limits (e.g. by doing oppression unjustly and exceeding beyond the limits set by Allah by committing the major sins) in the land!”.

(Surah al-Mā'idah, 5: 32)

The sacred nature of the lives of those on-board aircraft was also established by Prophet Muhammad (SAW):

فَإِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَعَلَيْكُمْ حَرَامٌ، كَحُرْمَةِ يَوْمِكُمْ هَذَا، فِي شَهْرِكُمْ هَذَا،
فِي بَلَدِكُمْ هَذَا، إِلَى يَوْمِ تَلْقَوْنَ رَبَّكُمْ

“...verily, Allah the Exalted has made sacred your lives, your wealth, and your honour except by right justice, just as your day, your city, and your months are sacred...”²⁶

Sharīah has a set of rules that collectively contribute to preserving and protecting human life. These rules enjoin a person to take care of his body to be strong and to be free from illness.²⁷ Therefore, a healthy body is not only attributed to the soundness of one's limbs but also makes for individuals to interact with life and fellow human beings.²⁸ That is why it is very necessary and mandatory to protect aircraft passengers against any form of air transport terrorism because of the consequential results that follow it which include death or personal injury of the victims on board aircraft and unimaginable psychological disorder to the family of the victim.

Therefore, taking the lives of human beings unjustly by any act of terrorism whether land, water or air is prohibited in the Sight of Allah. That is why terrorism of any kind, according to *Surah al-Mā'idah* 5:32 is classified as *ḥarām*. Consequently, it is a grave sin to unlawfully kill human beings as in the case of hijacking of US aircraft that led to the death of hundreds of passengers without just cause. *Sharīah* has established the punishment for unlawful killing in this World and in the Hereafter. In this

²⁶ Mohammad Ben Ismail Al'Bukhari, *Al'Bukhari's Sahih: The Correct Traditions of Al'Bukhari*, trans. Mohammad Mahdi Al'Sharif (Dar Al-Kotob Al-Ilmiyah, 2007), 423, *ḥadīth* no. 1739.

²⁷ Masoud Rajabi-Ardeshiri, 'The Rights of the Child in the Islamic Context: The Challenges of Local and Globalization,' 475-489.

²⁸ Zaman Hasina, 'Islam, Well-Being and Physical Activity: Perceptions of Muslim Young Women', in *Researching Women and Sport*, eds. Gill Clarke, Barbara Humberstone and Jo Campling (London: Palgrave Mamillan, 1997), 50-67.

world, the doctrine of *Qisās* is established in a matter of unlawful killing. Therefore, the punishment for unlawful killing, according to Allah as stated in Qur'an 5:45, is killing. Allah states:

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ
وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصًا فَمَن تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ
لَّهُ وَمَن لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ ﴿٤٥﴾

“We ordained therein for them: “Life for life, eye for eye, nose for nose, ear for ear, mouth for mouth, and wounds equal for equal...”

(Surah al-Mā'idah, 5: 45)

On the other hand, the hereafter punishment for a murderer, a terrorist who perpetrates an act that leads to unlawful killing is hell fire. This position is founded in Qur'an 4:93 where Allah ordained:

وَمَن يَقْتُلْ مُؤْمِنًا مُّتَعَدًّا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَعَظِيبَ اللَّهُ عَلَيْهِ وَلَعْنَهُ.
وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا ﴿٩٣﴾

“And whoever kills a believer intentionally, their reward will be Hell-where they will stay indefinitely...”

(Surah al-Nisā', 4: 93)

b) Protection of Property Against Air Transport Terrorism

Islam does not oppose lawful acquisition of wealth and property. The Holy Qur'an states: 'Once the prayer is ended, disperse through the land and seek Allah's grace/bounty...' ²⁹. Allah further ordained mankind to eat that which is lawful and good on the earth and to refrain from following the paths of Iblīs because he is the first-class enemy of mankind. ³⁰ The Prophet Muhammad (SAW) attested to the word of Allah when he said that every Muslim must seek lawful wealth. ³¹

Therefore, every human being has the right to own lawful property regardless of gender. Consequently, air transport passengers' belongings constitute what we refer to as wealth that is subject to adequate protection

²⁹ Surah al-Jumu'ah 62:10.

³⁰ Surah al-Baqarah 2:168.

³¹ Sulaymān Ibn Aḥmad Ṭabarānī, *al-Mu'jam al-Kabīr* (Bayrūt: Dār Iḥyā' al-Turāth al-'Arabī, 2009), *ḥadīth* no. 9993.

and guard against air transport terrorism or any form of destructive acts of air transport terrorists. For instance, the properties of those onboard aircraft during the 9/11 incident³² were subject to adequate protection against unlawful destruction from terrorist acts. That is why, under Islamic law, it is a mandatory duty for the government to protect the properties of those onboard aircraft in all ramifications. This position is evident in the Holy Qur'an where Allah prohibits the destruction of the properties of fellow human beings and commands thus:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبُطْلِ ﴿١٨٨﴾

“And eat up not one another’s property unjustly (in any illegal way e.g. stealing, robbing, deceiving, etc.)”

(Surah al-Baqarah, 2: 188)

Prophet Muhammad (SAW) in his farewell message, while addressing the Muslims on the need to prohibit the destruction of lives and property of fellow human beings unjustly, stated that:

فَإِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ، كَحُرْمَةِ يَوْمِكُمْ هَذَا، فِي شَهْرِكُمْ هَذَا، فِي بَلَدِكُمْ هَذَا، إِلَى يَوْمٍ تَلْقَوْنَ رَبَّكُمْ

“No doubt, your blood and your properties are sacred to one another like the sanctity of this day of yours, in this month of yours, in this town of yours, till the day you meet your Lord.”³³

c) Protection of Progeny Against Air Transport Terrorism

Allah states thus: ‘It is He who created you from a single person...³⁴ Therefore, the progeny referred to here is that of the generality of Muslim *ummah* as one family which, as a matter of obligation, must be protected

³² On the 9th of September, 2001, terrorists unlawfully seized aircraft and crashed into the Pentagon, causing a mass casualty incident with 189 deaths and 106 persons sustained serious injuries. See Marion H. Jordan, Kathleen A. Hollowed, Dale G. Turner, Dennis S. Wang and James C. Jeng, ‘The Pentagon Attack of September 11, 2001: A Burn Center’s Experience,’ *Journal of Burn Care & Research*, vol. 26/2 (2005): 109-116.

³³ Syed Abul A’la Mawdudi, ‘Human Rights in Islam’, *al-Tawhid Journal*, vol. 4/3 (Rajab-Ramadhan 1407).

³⁴ Surah al-A’raf 7:89.

against the destructive activities of terrorists. The need for preventing evil against family is not farfetched from the fact that air transport can carry a fairly large number of worshippers of Allah as one family in Islam from one destination to another to either perform one form of *'ibādah* or the other.

For example, air transport has been resorted to as a means of transporting pilgrims from different destinations to Makkah to perform *Hajj* or *'Umrah*.³⁵ Thus, there is the need to preserve the family against destructive terroristic activities.

d) Protection of Intellect Against Air Transport Terrorism

The Arabic word *'Aql*' is interpreted to mean "intellect".³⁶ Ismail Adua Mustapha defined it as an avenue to distinguish men from animals; and as a mechanism wherein men can distinguish between what is good and evil.³⁷ Consequently, human beings are mandated to use their faculty of intellects bestowed on them to do good and avoid evil in all ramifications. Crow asserts that it is through the intellect that human beings are assigned roles to perform in their worldly affair.³⁸ Therefore, intellect must be preserved and protected by lawful means against any form of aggression, oppression and air transport terrorism including but not limited to aircraft hijacking, sabotage of aircraft and hostage-taking of passengers.³⁹

Many passengers on board aircraft possess human faculties that enable them to interpret sensory information from the environment to gain new knowledge, think and formulate ideas to distinguish right from wrong and control involuntary human behaviours. The Qur'an says: "He grants

³⁵ Ismail Adua Mustapha, 'Machine Readable Travel Documents in Aviation Security and Information Privacy: An Islamic Law Perspective', 158.

³⁶ Kabuye Uthman Sulaiman, 'An Islamic Perspective on the Protection of the Mind and Attainment of Happiness,' *Journal of Education and Social Sciences*, vol. 6 (2019): 46; Ismail Adua Mustapha, 'Machine Readable Travel Documents in Aviation Security and Information Privacy: An Islamic Law Perspective', 155.

³⁷ Ismail Adua Mustapha, 'Machine Readable Travel Documents in Aviation Security and Information Privacy: An Islamic Law Perspective', 155; Kabuye Uthman Sulaiman, 'An Islamic Perspective on the Protection of the Mind and Attainment of Happiness,' 46.

³⁸ Crow Karim Douglas, 'The Intellect Islamic Thought: Mind and Heart, KATHA,' *The Official Journal of the Centre for Civilisational Dialogue*, vol. 2/1 (2018): 1-22.

³⁹ Ismail Adua Mustapha, 'Machine Readable Travel Documents in Aviation Security and Information Privacy: An Islamic Law Perspective', 156.

Hikmah to whom He wills, and he, to whom *Hikmah* is granted, is indeed granted abundant good...⁴⁰. It is a need to further state that it is because of the intellect that human beings would be accountable to Allah on the Day of Judgment. This argument is found in the Hadith of the Prophet Muhammad where He was reported to have said:

رَفَعَ الْقَلَمُ عَنْ ثَلَاثَةٍ عَنِ الصَّبِيِّ حَتَّى يَبْلُغَ وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ وَعَنِ
الْمَعْتُورِ حَتَّى يَبْرَأَ

*“Three categories of persons will be exempted from accountability on the day of judgment. These include (1) he who sleeps until wakes up; (2) an infant until he matures; and (3) the insane until he is lucid”.*⁴¹

The three categories of individuals mentioned in the above hadith lack intellect. A sleeping person loses his intellect immediately he sleeps until he wakes up, a minor until puberty and as well an insane individual. Their non-accountabilities for any action or inaction are a result of loss of intellect.

In addition, it is through the intellect that human beings can invent some valuable machines and equipment which make it easier to worship Allah. These include, for example, the invention of aircraft, other modes of transportation, the public address system, and the construction of befitting mosques just to mention but a few. That is why passengers’ intellect should be preserved and protected against injurious things that might harm the ability and function of the brain.⁴²

e) Protection of Religion Against Air Transport Terrorism

As a matter of necessity, all Muslims must protect Islam as a religion. This is a means to facilitate the duty placed on every individual in Holy Qur’an (*Surah al-Dhāriyāt* 51:56) when Allah ordained that He essentially creates *jinn*s and men to worship Him alone. This is achievable through the observance of various acts of *ibādah* such as *ṣolāh*, *zakāh*, fasting, and *ḥajj*.

⁴⁰ Surah al-Baqarah 2:269.

⁴¹ Muḥammad bin Yazīd al-Rabʿī Ibn Mājah al-Qazwīnī, *Sunan Ibn Mājah*, vol. 3, trans. Nāṣir al-Dīn al-Albānī (Riyāḍ: Dār al-Salām, 2007), 168, *ḥadīth* no. 2041; Aḥmad bin Muḥammad bin Ḥanbal, *Musnad*, vol. 2 (Riyāḍ: Dār al-Salām, 2012), 11, *ḥadīth* no. 940; Abū Dāwud al-Sajistānī, *Sunan Abū Dāwud*, vol. 6 (Lebanon: Dār al-Kutub al-ʿIlmiyyah, 2008), 452.

⁴² Mohammed Akram Laldin, *Islamic Law: An Introduction*, 25.

While Islam is synonymous with harmony and peace, terrorism has been mentioned to be one of the evils which *Maqāṣid al-Sharī'ah* is preaching against. Consequently, Islam and terrorism are two opposite terms that can never be met in whatever circumstance. That is why the underlying goals and benefits⁴³ in observance of *'ibādah* as a matter of obligatory are to prevent mankind from committing evil wicked deeds such as terrorism in all ramifications. The Holy Qur'an states thus:

﴿٤٥﴾ ... إِنَّ الصَّلَاةَ تَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ ...

“...Verily, *al-Ṣolāh* (the prayer) prevents from *al-Faḥshā'* (i.e., great sins of every kind, unlawful sexual intercourse) and *al-Munkar* (i.e., disbelief, polytheism, and every kind of evil wicked deed) ...”

(Surah al-'Ankabūt, 29: 45)

It is submitted that the above verse raises an important prayer antidote to the prevention of *evil wicked deeds* of which air terrorism is classified as one. It is therefore safe to conclude that the protection of places of worship and other means of worshipping Allah against any form of terrorism including air terrorism is tantamount to the preservation of religion as envisaged under *Maqāṣid al-Sharī'ah*. This is an obligatory duty as Prophet Muhammad (SAW) enjoined all Muslims to prevent the commission of evil wicked deeds when he ordered that:

مَنْ رَأَىٰ مِنْكُمْ مُنْكَرًا فَلْيَعْبِرْهُ بِيَدِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِقَلْبِهِ وَذَلِكَ أَضْعَفُ الْإِيمَانِ

“He who amongst you sees something abominable should modify it with the help of his hand; and if he has not strength enough to do it, then he should do it with his tongue, and if he has not strength enough to do it, (even) then he should (abhor it) from his heart, and that is the least of faith.”

⁴³ Tijani Musa Buba, ‘Role of Maqasid al-Shariah as a Social Welfare Concept in the Interpretation of the Sources of Shariah,’ *Unilorin Shariah Journal* (2014): 66.

Therefore, it is an act of *'ibādah* to preserve Islam against the destruction of any form and as well to prevent evil by all means and encourage good as stated in the authorities earlier cited.

2. *Hājiyā*

Hājiyāt has been interpreted to mean “complementary”⁴⁴ or “needs”.⁴⁵ It has widely been defined as “benefits that seek to remove severity and hardship in cases where such hardship does not pose a threat to the very survival of normal order”.⁴⁶ Therefore, it connotes any interests or needs whose neglect will lead to hardship for the individual or community but does not lead to disruption of normal life. In civil aviation parlance, it is complementary and needed for the aircraft pilot to ply another route where the attack is envisaged in the original route the aircraft is to fly. This is complementary to the preservation and protection of *Maqāsid al-Sharī'ah*.

3. *Taḥṣīniyā*

Taḥṣīniyāt has been interpreted to mean “luxuries”⁴⁷ or “embellishment”,⁴⁸ benefits that lead to the improvement and attainment of that desire. The government therefore must do everything that will make the lives of people on board aircraft meaningful, such as improving the security outfit of aircraft to prevent air terrorism.

⁴⁴ Azila Ahmad Sarkawi, Alias Abdullah, Norimah Md. Dali and Nur Amilin Mohd Khazani, ‘The Philosophy of Maqasid al-Shari’ah and Its Application in the Built Environment’, *Journal of Built Environment, Technology, and Engineering*, vol. 2 (2017): 216.

⁴⁵ Nur Kholish, Muhammad Roy Purwantob, Supriadic, Tamyiz Mukharromd and Hamidullah Marazi, ‘The Significance of Maqasid Syariah Principles in Improving Islamic Economic and Finance,’ *International Journal of Innovation, Creativity, and Change*, vol. 13/3 (2020): 1345.

⁴⁶ Azila Ahmad Sarkawi, Alias Abdullah, Norimah Md. Dali and Nur Amilin Mohd Khazani, ‘The Philosophy of Maqasid al-Shari’ah and Its Application in the Built Environment’, 217.

⁴⁷ Nur Kholish, Muhammad Roy Purwantob, Supriadic, Tamyiz Mukharromd and Hamidullah Marazi, ‘The Significance of Maqasid Syariah Principles in Improving Islamic Economic and Finance,’ 1345.

⁴⁸ Azila Ahmad Sarkawi, Alias Abdullah, Norimah Md. Dali and Nur Amilin Mohd Khazani, ‘The Philosophy of Maqasid al-Shari’ah and Its Application in the Built Environment’, 216.

INTERNATIONAL CIVIL AVIATION LAW TO PROTECT AIR TRANSPORT AGAINST TERRORISM: ISLAMIC LAW POSITION

The aim and objective of the Air Transport Security Conventions (herein referred to as Anti-air Transport Terrorism Conventions) are to suppress and prevent in their entirety the acts of unlawful seizure, aircraft destruction, and hostage-taking of passengers just to mention a few which herein referred to as air transport terrorism. Consequently, the Conventions as a matter of necessity, state some instruments that would assist in achieving their main aim and objectives. These include the definition of the offence, punishment, jurisdiction and extradition of the offender. What therefore is the Islamic law position on these instruments? The answers to this poser are supplied and discussed hereunder.

1. Definition of The Offence

Emphatically, the offences of “air piracy”, “aircraft destruction”, and “hostage-taking” are herein referred to as air terrorism. In Islamic law parlance, terrorism has been used as a form of *ḥirābah* which has been interpreted to mean “to quarrel” or “to fight to take away the property from the custody of another person by terrorizing either threatening to use force or using force”.⁴⁹

According to the Maliki School, *ḥirābah* is an ‘act of terrorizing people for robbery or other purposes’⁵⁰. Shabbir, while explaining Mālikī’s definition concedes that it is not an essential ingredient of the offence for the terrorist to be armed with a weapon, rather the use or threat to use force to terrorize people is a sufficient ingredient in the proof of the offence.⁵¹ Imām Shāfi‘ī defines it as when a group of people armed with offensive weapons rob another group either in the desert or on the highway’.⁵²

⁴⁹ Anwarullah, *The Criminal Law of Islam*, 1st edition (Brunei, Darussalam: Islamic Da’awah Centre, Ministry of Religion Affairs, 1995), 190; Mohammad Shabbir, *Outlines of Criminal Law and Justice in Islam* (Petaling Jaya, Selangor Darul Ehsan: International Law Book Series, 2002), 173.

⁵⁰ Nikrahim Nik-Wajis, ‘The Crime of Hirabah in Islamic Law’ (Ph.D. Thesis, Glasgow Caledonian University, U.K, 1990), 62-63.

⁵¹ Ibn Qudāmah, *al-Mughnī*, vol. 10 (Qāhirah: Dār al-Ḥadīth, 2009), 262-264. See also Anwarullah, *The Criminal Law of Islam*, 195.

⁵² Muḥammad bin Idrīs al-Shāfi‘ī, *al-Umm*, vol. 6 (Cairo: Dār al-Wafā’, 1968), 140.

It is submitted that the Mālikī and Shāfi‘ī definitions of the term are similar in that both refer to acts of terrorism as robbery. However, they differ in respect of the number of perpetrators, means of perpetrating the offence, and *locus in quo*. While Shāfi‘ī maintains that a group of people should perpetrate the offence, Mālikī remains silent. Also, Shāfi‘ī maintains that the offence can only be committed in the desert or highway while Mālikī leaves it open. It therefore means that according to Shāfi‘ī, the offence containing ingredients of terrorism will not be an offence of terrorism if it is committed anywhere other than in the desert or highway. Also, it will not amount to terrorism where a person armed with a weapon robs another or group of persons since according to Shāfi‘ī it is a group of people that can perpetrate the offence.⁵³

Al-Māwardī defines the term as an act of waylaying and obstructing the movement of road users or travelers on the highway to steal their properties by force.⁵⁴ It is instructive to note that this definition is similar to that of Imām Mālikī in that both definitions did not place priority on the use of a weapon to commit the offence. It therefore means that the slightest application of force that will instill fear into the mind or body of the victim would suffice to prove the commission of the offence.⁵⁵ However, a fundamental difference in Mālikī’s and Al-Māwardī’s definitions is noticeable in that the former did not emphasize the place of commission while the latter emphasised that it shall be committed on the road. It is therefore submitted that, according to Al-Māwardī, the victims of the offence must be passengers who are traveling by any of the means of transportation including but not limited to air, water and land.

Ḥanbalī School describes the offence as an act of engaging in an armed robbery of people in the desert where the “victim cannot reasonably expect help from anyone”⁵⁶. This opinion is supported by Sarakhsī.⁵⁷ Therefore, it will not be regarded as *ḥirābah* if the offence is committed in a place other than a desert or habitable area to the extent that the victim can seek

⁵³ Ahmed al-Dawoody, ‘International Terrorism and the Jurisdiction of Islamic Law,’ *International Criminal Law Review*, vol. 15 (2015): 573; Nikrahim Nik-Wajis, ‘The Crime of Hirabah in Islamic Law’, 64

⁵⁴ Abī al-Ḥasan ‘Alī bin Muḥammad bin Ḥabīb al-Māwardī, *al-Aḥkām al-Sulṭāniyah*, (Qāhirah: al-Maktabah al-Tawfiqiyyah, 1978), 62.

⁵⁵ ‘Alī bin Aḥmad Ibn Hazm al-Andalusī, *al-Muḥallā*, vol. 11 (Cairo: Maktabah al-Jamhūriah al-‘Arabiyyah, 1967), 38; Saḥnūn, *Al-Mudawwanah al-Kubrā*, vol. 4 (Bayrūt: Dār al-Kutub al-‘Ilmiyyah, 1994), 429-430.

⁵⁶ Muslim, *Ṣaḥīḥ Muslim*, vol. 8 (Bayrūt: Dār al-Fikr, 1995), 288.

⁵⁷ Mohammad Shabbir, *Outlines of Criminal Law and Justice in Islam*, 177.

reasonable help from anyone. It is submitted that this description of the offence is similar to a definition espoused by Imām Shāfi‘ī in that they emphasized the use of dangerous weapons to commit the crime. They however differ concerning the place of commission. While Ḥanbalī restricts it to the desert, Shāfi‘ī and Ḥanafī go further to include highways or cities.

Ibn ‘Abd al-Barr, a Spanish Mālikī jurist (d. 463/1070) was of the view that *ḥirābah* is an act of disturbing free movement in the street, the consequences of which result in unsafe travelling; spreading corruption in the land by extorting money; the unlawful killing of innocent soul or indulging in unlawful activities in defiance to the word of Allah. Such a person may be a Muslim or non-Muslim, free or slave, and whether his goal was realized or not.⁵⁸ It is submitted that Ibn ‘Abd al-Barr’s contribution is meaningful to the extent of bringing out who a terrorist is and the various acts that constitute *ḥirābah* (terrorism). In another contribution, al-Kāsānī, a Ḥanafī jurist (d. 587/1191) defines the offence as “attacks upon pedestrians to take money by force and in such a way that people are rendered unable to pass freely through the streets...”⁵⁹ Accordingly, it is therefore important to note that the act of terrorism is majorly embedded in the use of force on the people to carry out terroristic acts of any kind.

Ibn Qudāmah’s (d. 620/1223) treatise on the definition of *ḥirābah* requires great attention. He defines the term as “the act of openly holding people up in the desert with weapons to take their money”⁶⁰ Thus, Qudāmah, Ḥanbalī and Sarakhsī shared the same view. It is significantly worthwhile to examine the position of the Muslim World League on the definition and meaning of terrorism. The League defines it as

“an outrageous attack carried out either by individuals, groups or states against the human being (his religion, life, mentality, property and honour). It includes all forms of

⁵⁸ Yusuf bin ‘Abd Allāh Ibn ‘Abd al-Barr, *al-Kāfī fī Fiqh Ahl al-Madīnah al-Mālikī* (Bayrūt: Dār al-Kutub al-‘Ilmiyyah, 1987), 582-583; Sherman A. Jackson, ‘Domestic Terrorism in the Islamic Legal Tradition,’ *The Muslim World*, vol. 91 (2009): 295.

⁵⁹ Abū Bakr ibn Mas‘ūd al-Kāsānī, *Badāi’ al-Ṣanā’i’ fī Tartīb al-Sharā’i’*, vol. 9 (Bayrūt: Dār al-Kutub al-‘Ilmiyyah, 1997), 360. See also Mohammad Hashim Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation* (New York: Oxford University Press, 2019), 115.

⁶⁰ Ibn Qudāmah, *al-Mughnī*, vol. 10 (Qāhirah: Dār al-Ḥadīth, 2009), 315.

*intimidation, harm, threatening, killing without just cause and everything connected with all forms of armed insurgence, making pathways insecure, banditry, every act of violence or threatening intended to fulfil a criminal scheme individually or collectively, so as to terrify or horrify people by hurting them or by exposing their lives, liberty, security or condition to danger; it can also take the form of inflicting damage on the environment or on a public or a private utility or exposing a national or natural resource to danger”.*⁶¹

It is submitted that according to the definition of the Muslim World League, any attack on the principle of *Maqāṣid al-Sharīʿah* without lawful justification is regarded as terrorism. The attack could be carried out by an individual or group of individuals or collectively. Thus, the mode of carrying out the attack could be by way of threat, intimidation or harm to distort the constituents of *Maqāṣid al-Sharīʿah*.

In light of the above definitions, it is submitted that the following are the main ingredients of terrorism and as such must be proved to grant conviction under Islamic law:

1. That there was an intimidation or threat or violence against the victim(s);
2. That the consequence of (1) above was an attack by an individual or group of individuals or by states;
3. That the attack was against any of the constituents of *Maqāṣid al-Sharīʿah*; and
4. That the attack was carried out in the city or highway; and
5. That the attack resulted in a consequential loss of any of the constituents of *Maqāṣid al-Sharīʿah*.

It is submitted that it is this kind of terrorism that is being carried to the air and subsequently attacks on civil aviation. This is a linkage between terrorism and civil aviation. Therefore, the modes of air transport terrorism can simply be hijacking of aircraft, sabotage of aircraft or hostage of

⁶¹ The Muslim World League’s Position towards Terrorism: Makkah Declaration issued by the 16th Session of the Fiqh Council Islam’s Definition of Terrorism and How to Deal with it; n.d, p.12; Makkah Declaration issued by the 17th Session of the Fiqh Council Concerning Explosions and Terrorist Intimidations, Cause, Consequence, Religious opinion and means of Protection, n.d, 9-12.

passengers as these heinous acts are carried out by force, intimidation, violence and the use of threat.

2. Jurisdiction

The issue of jurisdiction is very important in the conventional system of adjudication. What therefore is the position under Islamic law about the offence of air transport terrorism?

Conventionally, jurisdiction is the power and authority which a state has as a sovereign state to prescribe rules and regulations as well as enforce and adjudicate those rules and regulations. It is also the means of making the law functional.⁶² State parties to the Conventions should be able to establish and exercise jurisdiction to carry out their obligations to prosecute, punish or extradite the offender(s) as stipulated by the Conventions.⁶³ A sovereign state can exercise prescriptive jurisdiction and enforcement jurisdiction. Prescriptive jurisdiction entails the exercise of the power of a sovereign state to make a rule(s) that will apply to —any person, property, territory or event, wherever they may be situated or wherever they may occur, while enforcement jurisdiction entails the ability of a sovereign state to enforce its national law, either by administrative action or through the court of law.⁶⁴ In this connection, the general rule on the establishment of jurisdiction is that a sovereign state is not allowed to exercise enforcement jurisdiction beyond its territory, except in cases provided by international customary law and international treaties.⁶⁵ This is often referred to as territorial jurisdiction.⁶⁶ However, a state may extend

⁶² Abdul Ghafur Hamid@Khin Maung Sein, *Public International Law: A Practical Approach*, 2nd edition (Petaling Jaya, Malaysia: Prentice Hall, Pearson Malaysia Sdn Bhd, 2007), 125; Yana Shy Kraytman, 'Universal Jurisdiction-Historical Roots and Modern Implications,' *Brussels Journal of International Studies*, vol. 2 (2005): 94.

⁶³ Anthony A. Colangelo, 'Constitutional Limits on Extraterritorial Jurisdiction: Terrorism and the Intersection of National and International Law,' *Harv. Int'l LJ*, vol. 48/1 (2007): 126.

⁶⁴ Abdul Ghafur Hamid@Khin Maung Sein, *Public International Law: A Practical Approach*, 125-126.

⁶⁵ Yana Shy Kraytman, 'Universal Jurisdiction-Historical Roots and Modern Implications,' 118. See also *Lotus case* (1927) PCIJ Series A No 10, 35. One of such Treaties is International Conventions on Aircraft Hijacking.

⁶⁶ Abdul Ghafur Hamid@Khin Maung Sein, *Public International Law: A Practical Approach*, 125; See also Frederick A. Mann, 'Legislative Jurisdiction, The Doctrine of International Jurisdiction,' in *Jurisdiction in*

its prescriptive jurisdiction beyond its territorial limit, which is known as the extraterritorial exercise of jurisdiction.

State claims are based on five principles of criminal jurisdiction. They are the territorial principle, nationality principle, protective principle, universality principle and passive personality principle. A jurisdiction is said to be territorial when a jurisdictional power is exercisable by a state over a person, object or any event within its territory.⁶⁷ A territorial jurisdiction can be subjective or objective. It is subjective when the commission of an offence is initiated in a particular state and ends in another state. While the authority to assert subjective territorial jurisdiction is within the jurisdictional competence of the state where the offence is commenced,⁶⁸ the objective territorial jurisdiction is exercisable by a state in which the perpetrator of an offence completed it.⁶⁹ That is why the objective principle of territorial jurisdiction is widely acceptable in the international community on the ground that the elements of the offence in question are completed in a state that is willing to establish objective territorial jurisdiction.⁷⁰ For instance, a conspirator who conspires with another air terrorist to terrorize the aircraft in a particular state commences the commission of the offence of air terrorism in that particular state but the actual commission of the offence in another state will warrant the state

International Law, ed. W. Michael Reisman (Aldershot, U.K: Dartmouth and Ashgate Publishing Limited, 1999), 154.

⁶⁷ Dalila V. Hoover, 'Universal Jurisdiction not so Universal: A Time to Delegate to the International Criminal Court', *Cornell Law School Inter-University Graduate Student Conference Papers*. Paper 52 (April 2011), http://scholarship.law.cornell.edu/Ips_clacp/52, accessed on 3 May 2012; Daniel O'Donnell, 'International Treaties Against Terrorism During Armed Conflict and by Armed Forces,' *International Review of the Redcross*, vol. 88 (2008): 856; Darrel C. Menthe, 'Jurisdiction in Cyberspace: Theory of International Spaces,' *Michigan Telecommunications and Technology Law Review*, vol. 4/69 (1998): 71-72.

⁶⁸ Christopher L. Blakesley, *Terrorism, Drugs, International Law, and The Protection of Human Liberty* (New York: Transnational Publishers, Inc., Ardsley-on-Hudson, 1992), 106-107.

⁶⁹ Abdul Ghafur Hamid@Khin Maung Sein, *Public International Law: A Practical Approach*, 129. The learned author states that the principle of subjective and objective territorial jurisdiction is traceable to the provision of the Harvard Research Draft Convention, 1935. See Harvard Research in International Law, Draft Convention on jurisdiction with Respect to Crime, *America Journal of International Law*, vol. 29 (1935): 387.

⁷⁰ Abdul Ghafur Hamid@Khin Maung Sein, *Public International Law: A Practical Approach*, 129.

in which the alleged offence is completed to establish and exercise objective territorial jurisdiction. This is because the essential elements of the offence of air piracy were completed in that particular state where the aircraft was pirated.

A state may assume jurisdiction to try air terrorists on the ground that one of its nationals is a terrorist who participated in terrorizing air transport.⁷¹ This is referred to as the Nationality principle of jurisdiction. Also, jurisdiction may be protective and assumed to try and punish air transport terrorist who perpetrates any terroristic act anywhere but likely endanger the national security of such state.⁷² Thus, a law may be made to screen foreign act (s) that are likely to “endanger the security, integrity, sovereignty or any other interest of a state.”⁷³ A jurisdiction may be exercised to protect the citizen of a state who is a victim of an offence committed against him out of his state. This is called a passive personality principle of jurisdiction. The purpose of this jurisdiction is to protect the citizens of that particular state and to punish the offender.⁷⁴ This kind of jurisdiction can only be exercised whenever a state where the offence is committed fails to punish the offender, then the state of a national of the victim may assert passive personality jurisdiction to prosecute and punish the offender. Otherwise, it may lead to a conflict of jurisdiction.⁷⁵ A Universal jurisdiction principle can be defined as “a legal principle allowing or requiring a state to bring criminal proceedings in respect of

⁷¹ Abdul Ghafur Hamid@Khin Maung Sein, *Public International Law: A Practical Approach*, 130; Darrel C. Menthe, ‘Jurisdiction in Cyberspace: Theory of International Spaces,’ 72; United Nation, *Legislative Guide to the Universal Anti-Terrorism Convention and Protocols* (New York: United Nation on Drug and Crime, 2003), 25; Christopher L. Blakesley, *Terrorism, Drugs, International Law, and The Protection of Human Liberty*, 125.

⁷² Abdul Ghafur Hamid@Khin Maung Sein, *Public International Law: A Practical Approach*, 131-132; Darrel C. Menthe, ‘Jurisdiction in Cyberspace: Theory of International Spaces,’ 72.

⁷³ Adeno Addis, ‘Imagining the International Community: The Constitutive Dimension of Universal Jurisdiction’, *Human Right Quarterly*, vol. 31 (2009): 133-134; *Joyce v DPP* [1946] AC 347.

⁷⁴ This is otherwise known as the Passive Personality or Active Nationality Principle. See Abdul Ghafur Hamid@Khin Maung Sein, *Public International Law: A Practical Approach*, 136.

⁷⁵ Abdul Ghafur Hamid@Khin Maung Sein, *Public International Law: A Practical Approach*, 136-137.

certain crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim”.⁷⁶

It is submitted that all the above principles or classifications of jurisdiction are permissible under Islam for administrative convenience. However, the basis for the assertion that the Islamic state can assume universal jurisdiction can justifiably be found in the Holy Qur’an where Allah (SWT) said:

﴿ وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ ﴾ ﴿١٠٧﴾

“And We have sent you (O Muhammad) not but as a mercy for the ‘Ālamīn (mankind, jinn and all that exists).”

(Surah al-Anbiyā’, 21: 107)

It can therefore be concluded that the universality of Islamic law is not in doubt.⁷⁷

a) Universal Jurisdiction of Islamic Law

Islamic law scholars have canvassed arguments and counter-arguments as to whether Islamic law is universally applicable or not. The ground for their arguments and counter-arguments stems from Western legal influence. The pro-universal jurisdiction of Islamic law relied on *Surah al-Sabā’* 34:28 where Allah stated that the Prophet Muhammad was sent to all mankind, to argue that Islamic law is universal in nature.⁷⁸ The Hadith of the Prophet Muhammad further establishes this position when the Prophet is reported to have said:

وَكَانَ النَّبِيُّ يُبْعَثُ إِلَى قَوْمِهِ خَاصَّةً، وَبُعِثْتُ إِلَى النَّاسِ كَافَّةً

“Every Prophet (SAW) used to be sent to his nation exclusively but I have been sent to all mankind.”⁷⁹

Arguing against the position of classical scholars, ‘Abd al-Qādir ‘Awdah, and Maḥmūd Naguib Ḥusnī,⁸⁰ were of the view that Islamic law is

⁷⁶ Kenneth C. Randall, ‘Universal Jurisdiction Under International Law,’ *Texas Law Review*, vol. 66 (1988): 785-788.

⁷⁷ Surah Al-A‘rāf 7:158; Surah Al-Sabā’ 34:28.

⁷⁸ Ahmed al-Dawoody, ‘International Terrorism and the Jurisdiction of Islamic Law,’ 579.

⁷⁹ Muhammad b. Isma‘il al-Bukhari, *Sahih Bukhari*, vol. 1, book 7 (Damascus: Dar Ibn Kathir, n.d.), 89, *ḥadīth* no. 331; Abū Ḥusayn Muslim Ibn al-Ḥajjāj Ibn Muslim, *Ṣaḥīḥ Muslim*, vol. 5 (Riyāḍ: Dar-us-Salam Publications Inc, 2007), *ḥadīth* no. 3.

not universal in nature and cannot be a subject of universality because most of the world states are not Islamic States and, thus, they do not apply the rule of Islam. Despite this, ‘Abd al-Qādir ‘Awdah, and Maḥmūd Naguīb Ḥusnī opine that “Universal jurisdiction should be invoked where the commission or omission of certain crimes affects the Islamic State and the common interest of human society”. They state further that the Islamic State may assert jurisdiction to try and punish offender(s) who commit offences such as “piracy, drug trafficking and currency counterfeiting” as universal crimes that affect the peace and harmonious relationship of human existence.⁸¹ Usāmah ‘Abd Allāh Qāyid, aligned with the position of ‘Abd al-Qādir with an addition of offences of “terrorism and multinational gangs” and pointed out that the interest of the international community would be protected in preventing the offenders from seeking asylum if the universal jurisdiction is exercised.⁸²

It is further submitted that although arguments and counter-arguments are still ongoing as to which offence universal jurisdiction applies it is generally agreed by a majority that universal jurisdiction shall be exercised in offences such as “piracy, slavery and slave-related practices, war crimes, crimes against humanity, genocide, and by international convention, torture and some international terrorism crimes”.⁸³ Air transport terrorism has proven to be one of the most international crimes that has happened to mankind. The terror acts directed at civil aviation in September 2011 where aircraft were hijacked and used as weapons of mass destruction are still fresh in the minds of mankind. Many scores of human beings were killed, property destroyed, billions of dollars were lost and international trade was distorted. What could have qualified to be international terrorism warranting the exercise of jurisdiction than this heinous crime against air transport?

It is further argued that the destructive tendency of the offence of air transport terrorism makes it qualified as one of the serious offences that has

⁸⁰ The Islamic Fiqh Council, ‘Makkah Declaration on Terrorist Explosions and Threats: Causes, Consequences, Legal Opinions and Means of Protection,’ *The Islamic Fiqh Council Journal*, vol. 17 (2004): 34.

⁸¹ The Islamic Fiqh Council, ‘Makkah Declaration on Terrorist Explosions and Threats: Causes, Consequences, Legal Opinions and Means of Protection,’ 34.

⁸² ‘Abd al-Qādir ‘Awdah, *al-Tashrī‘ al-Jinā‘ī al-Islāmī Muqāranan bi al-Qānūn al-Waḍ‘ī*, vol. 1 (Bayrūt: Dār Iḥyā’ al-Turāth al-‘Arabī, 1985), 77-78.

⁸³ Cherif Bassiouni, ‘Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice,’ *Virginia Journal of International Law*, vol. 42/1 (2001-2002): 156.

been characteristically described in the Holy Qur'ān (*Surah al-Mā'idah* 5:33) as *fasād* (destruction, damage) on the land. Thus, its prevention and suppression to guard against loss of lives and property is a form of obligatory duty on all Muslims. Consequently, it is patently clear in the Qur'anic where Allah states:

مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ
فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ
جَمِيعًا ﴿٣٢﴾

“Because of that We ordained for the Children of Israel that if anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land - it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind”.

(*Surah al-Mā'idah*, 5: 32)

It is further submitted that the exercise of universal jurisdiction is an important preventive and suppressive instrument in preventing criminals from adopting a country as a safe haven state for escaping prosecution and/or punishment. Its application to international terrorism such as air transport terrorism “will deter criminals and provide retribution”.⁸⁴

3. Punishment of the Offenders

Conventionally, member states of the Anti-air terrorism conventions are obliged to punish the offender(s) severely.⁸⁵ Surprisingly, what amounts to severe punishment is neither defined nor interpreted in the Conventions. Consequently, determining what amounts to severe punishment and procedure for executing same is a discretionary power of the state concerned. For instance, the punishment for the offence of aircraft hijacking, a form of air terrorism, in Nigeria is a Life sentence and a fine of Ten Million naira, while in the United States of America, it is Twenty

⁸⁴ Cherif Bassiouni, ‘Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice,’ 96.

⁸⁵ See Hague Convention, 1970, art. 2; Montreal Convention, art.3; and 2010 Beijing Convention, art. 3 respectively.

million dollars or death. In Malaysia, it is Life imprisonment while in India it is Life imprisonment and fine.⁸⁶

It is submitted that the nature and quantum of punishment for air transport terrorists is not universal. The anti-air transport terrorism conventions only directed the state parties to “punish the offender severely”.⁸⁷ This is not farfetched from the fact that there is no agreement as to the nature and quantum of punishment for the offence in question. It is therefore not surprising that such a discrepancy will exist. The lack of equality in punishing the offender is another weakness of the Conventions. For instance, when offender A unlawfully hijacks an aircraft in Nigeria and triable in Nigeria, he/she will be sentenced to the punishment as stated above under the Nigeria law. However, where B commits a similar offence in the USA, the likelihood of not being sentenced to death is minimal. Therefore, equity and fair play in the imposition of punishment under the conventional system are missing.

The justification for categorizing the movement of people from one place to another by air as *jāiz* (*permissible*) stemmed from the Islamic scholars' categorization of human acts as either permissible or obligatory. They therefore concluded that it is permissible to choose either of the modes of transportation to travel from one destination to another. In *Gobind Dayal v. Inayatullah*,⁸⁸ the court maintains that what is obligatory is patently clear and distinguishable from what is permissible under Islamic law. Therefore, it is argued that since travel by air is not *ḥarām* but permissible, all that it takes to protect the existence of *Maqāṣid al-Sharīah* must be strictly complied with.⁸⁹ Therefore, a disturbance against any of the elements of *Maqāṣid al-Sharīah* will amount to an offence of *ḥirābah* which has been condemned by Allah and punishable by the dictate of the

⁸⁶ See Ismail Mustapha Adua, ‘International Law on Aircraft Hijacking: The Practice in Malaysia and Nigeria’ (Ph.D Thesis, International Islamic University Malaysia, Kuala Lumpur, 2014), 124.

⁸⁷ For example, see 2010 Beijing Convention, art. 4.

⁸⁸ *Gobind Dayal v. Inayatullah* (1885) 7 All 775, 805.

⁸⁹ Mohammed Akram Laldin, *Islamic Law: An Introduction*, 18; Abdurraheem Taofeeq Abolaji, ‘An Expository Study of Right of Children to Health under the Shariah and Nigerian Law’, 66; Ismail Adua Mustapha, *Machine-Readable Travel Documents*, 139-164; Nur Kholish, Muhammad Roy Purwantob, Supriadic, Tamyiz Mukharromd and Hamidullah Marazi, ‘The Significance of Maqasid Syariah Principles in Improving Islamic Economic and Finance,’ 1342-1353.

primary source (Qur'an) of Islamic law as enshrined in *Surah al-Mā'idah* 5:33.

Under Islamic law, it is established that terrorism of any kind is a form of *hirābah*⁹⁰ constituting one of the *ḥudūd* crimes.⁹¹ It attracts a prescribed and fixed severe punishment as stated in the Qur'an.⁹² Anas bin Mālik, a companion of the Prophet Muhammad attested to the gravity and seriousness of the crime under Islamic law. He remarked that the Prophet (SAW) never imposed and executed severe punishment on any offender greater than the offender of terrorism.⁹³ The justification for his attestation is not unconnected to the fact that air terrorism affects societal values, human existence, and outright transgression against the dictate of Allah.⁹⁴ That is why the offender(s) must be severely punished by the dictate of Qur'an in *Surah al-Mā'idah* 5:33.

Accordingly, *Surah al-Mā'idah* 5:33 obligates that apart from the punishment in the Hereafter, four types of worldly punishments are prescribed for the offence of air terrorism. These are: (1) Death sentence; (2) Crucifixion; (3) Amputation of hand and foot from opposite sides; and (4) Banishment. It is submitted that the application of any of the listed punishments is subject to circumstance and the degree of damage that occur during the commission of air terrorism.⁹⁵ Therefore, for just determination of the offence, an Islamic state is obliged to apply the "principle of equity" enshrined in *Surah al-Shūrā* 42:40 in apportioning

⁹⁰ ElSayed M.A. Amin, *Reclaiming jihad: Acritique of Terrorism* (United Kingdom: The Islamic Foundation, 2014), 127-151; Muhammed Hashim Kamali, 'Terrorism and Cowardly Murder,' *New Straits Times*, 10 March 2015; Muhammed Hashim Kamali, 'Terrorism, Banditry and Hirabah, Advancing New Shariah Perspective,' *IAIS Malaysia*, vol.8/1 (2017); Muhammad Hameedullah and Md Khalil Ruslan, 'The Crime of Hirabah: Approach, Justification and Significance,' *Jurnal Syariah*, vol. 28/3 (2020): 393.

⁹¹ 'Abd al-Qādir 'Awdah, *al-Tashrī' al-Jinā'ī al-Islāmī Muqāranan bi al-Qānūn al-Waḍ'ī*, vol. 1 (Bayrūt: Maktabah 'Aṣriyyah, 2013), 61. See also Muhammad Hameedullah Md Asri and Md Khalil Ruslan, *The Crime of Hirabah*, 383-384.

⁹² *Surah al-Mā'idah* 5:33.

⁹³ Muḥammad bin Ismā'īl al-Bukhārī, *Ṣaḥīḥ Bukhārī* (Bayrūt, Lebanon: Dār Ibn Kathīr, 2002), 1442.

⁹⁴ Muhammad Hameedullah Md Asri and Md Khalil Ruslan, *The Crime of Hirabah*, 384-385.

⁹⁵ Muhammad Hameedullah Md Asri and Md Khalil Ruslan, *The Crime of Hirabah*, 401-411.

punishment for each of the offences. Consequently, *Surah al-Shūrā* 42:40 fits into this circumstance when it reads: “The recompense for an injury is an injury equal thereto...,” Muhammad Hameedullah Md Asri and Md Khalil Ruslan opined thus:

*“The principle of equity applied here suggests that the punishments of ḥirābah are predetermined for each type of crime. While they have set each punishment for each crime, the jurists have also restricted other forms of crime to be considered as ḥirābah and be punished with the punishment under al-Mā'idah 33”*⁹⁶

Where the act of terrorism claims lives it is treated as a homicide and where no life is claimed but a wound is sustained or loss of property occurs, the same will be treated accordingly. Hijacking is committed intentionally and not inadvertently. It consists of different legal cases of the same act, that affect the existence of the victim and the destruction or loss of his property. An intentional killing of a victim will be established without proof if life is lost during the process of hijacking or thereafter. According to Islamic Law, there are two kinds of homicide: Unlawful homicide and legitimate homicide.⁹⁷

Islamic law treats intentional homicide as a grave sin. The Holy Qur'an and Sunnah not only declare it unlawful but also lay the punishment thereof. Allah provides in the glorious Qur'an as follows:

وَلَا تَقْتُلُوا أَنْفُسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيَّهِ سُلْطَانًا فَلَا يَسْرِفُ فِي الْقَتْلِ إِنَّهُ كَانَ مَنْصُورًا ﴿٣٣﴾

“And do not kill anyone whose killing Allah has forbidden, except for a just cause. And whoever is killed wrongfully (Mazlūman intentionally with hostility and oppression and not by mistake), We have given his heir the authority [to demand Qiṣāṣ, - Law of Equality in punishment - or to forgive, or to take Dīyah (blood money)]. But let him not exceed limits in the matter of taking life (i.e he should not kill except the killer). Verily, he is helped (by the Islamic law).”

(*Surah al-Isrā'*, 17: 33)

⁹⁶ Muhammad Hameedullah Md Asri and Md Khalil Ruslan, *The Crime of Hirabah*, 397.

⁹⁷ Abdul Qader Qudah Saheed, *Criminal Law of Islam* (Delhi: Adam Publishers & Distributors, 2010), 5.

Allah explains those that are justified to be killed as follows:

وَالَّذِينَ لَا يَدْعُونَ مَعَ اللَّهِ إِلَهًا آخَرَ وَلَا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا
بِالْحَقِّ وَلَا يَزْنُونَ وَمَنْ يَفْعَلْ ذَلِكَ يَلْقَ أَثَامًا ﴿٦٨﴾

“And those who invoke not any other ilāh (god) along with Allah, nor kill such person as Allah has forbidden, except for just cause, nor commit illegal sexual intercourse - and whoever does this shall receive the punishment.”

(Surah al-Furqān, 25: 68)

The almighty Allah decrees that whoever kills a soul unless for a soul or corruption done in the land, it is as if he has slain mankind entirely. And whoever saves one is as he had saved mankind entirely. And our messengers had certainly come to them with clear proofs. Then, indeed, many of them even after that are transgressors.⁹⁸

Islamic state, therefore, has a mandatory duty to apply the punishment as fixed by Allah. Neither the State judge nor the victim can reduce or increase the nature of punishment to be inflicted on the terrorist. Doing so will contravene the limit set by Allah and be punishable in the hereafter. Qur'an states: "These are the limits imposed by Allah. Transgress them not. For whoso transgresseth Allah's limits: such are wrongdoers".⁹⁹ A combined reading of Qur'an *Surah al-Mā'idah* 5:33 and *Surah Hūd* 11:29 reveals that: (1) the concept of air terrorism is a form of terrorism which attracts any of the four categories of *Hadd* punishment; (2) the recommended punishments are fixed and severe to the extent that they can neither be reduced nor increased; and (3) that state is under obligation to apply such punishments by the degree of the offence committed.

While it is clear from the discussion thus far that the anti-air terrorism convention fails to identify and define or fix the applicable quantum of punishment, the other way is the position under Islamic law as a well-defined punishment is fixed with the commission of the offence of air terrorism. Accordingly, the severity of punishment under Islamic law is purely deterrence to other would-be criminals. However, such a punishment should be resorted to as the last resort having considered the good and well-being of the society. That is why no Islamic state is permitted to serve as safe haven. Thus criminal needs to be extradited to

⁹⁸ Surah al-Furqān 25:32.

⁹⁹ Surah Hūd 11:29.

face his trial and consequential punishment under the provisions of *Surah al-Mā'idah* 5:33.

4. Extradition (*aut dedere*) of Criminals

Historically, extradition as a legal nomenclature for returning the fugitive has been in existence as far back as the time before the Middle Ages in the whole of Europe.¹⁰⁰ It is a practice to guard against unlawful harbouring of criminals from prosecution. Thus, an air terrorist may be returned to a state that is willing to exercise jurisdiction to punish the offender.¹⁰¹ Under the

¹⁰⁰ Hugo Grotius, *II « De jure belli ac pacis »* (1646), 526-529; Jean Bodin, « *Lex Six Livres de la Republique* » (1576), (The Six Books of *Commonweale*, Havard Pol. Classic, K.D. McRae ed. 1962), 100-111; Christopher L. Blakesley, 'The Practice of Extradition from Antiquity to Modern France and the United States: A Brief History,' *B.C International and Comparative Law Review*, vol. 4 (1981): 39; M. Cherif Bassiouni, *International Extradition: United States Law and Practice*, 2nd edition (n.p: Oceana Publications, 1987); Luis Kutner, 'World Habeas Corpus and International Extradition', *U. Det. L.J.*, vol. 41 (1963-1964): 525; Arthur Nussbaum, *A Concise History of the Law of Nations* (New York: Macmillan Company, 1947), 37, 111, 208, 253, 260, all cited in Christopher L. Blakesley, *Terrorism, Drugs, International Law, and The Protection of Human Liberty*, 173-174.

¹⁰¹ For the various definitions see Christopher L. Blakesley, 'Extradition Between France and the United States: An Exercise in Comparative and International Law,' *Vand. J. Transnat'l L.*, vol. 13 (1980): 653; Roger Merle and Andre Vitus, *Traite De Droit Criminel: Problemes Generaux De La Science Criminelle*, 6th edition (Paris: Cujas, 1988), 403; Majorie M. Whiteman, *Digest of International Law*, vol. 6 (Washington D.C.: U.S. Government Printing Office, 1968), 727; Barner A. Garner, *Black's Law Dictionary*, 8th edition (n.p.: Thomson West, 2004), 623; F. de Cardaillic, *De l'extradition* (France: Impre .de E. chore (Tarbes), 1878), 3-4 cited in Christopher L. Blakesley, *Terrorism, Drugs, International Law, and The Protection of Human Liberty*, 171; Roger Merle and Andre Vitus, *Traite De Droit Criminel: Problemes Generaux De La Science Criminelle*, 5th edition (Paris: Cujas, 1984), 299; Oluwafemi Ladapo and Elijah Oluwatoyin Okebukola, *Cases and Materials on Extradition in Nigeria, United Nations Office on Drugs and Crime* (Abuja: United Nations, 2016), 3; Robert Jennings and Sir Arthur Watts, eds. *Oppenheim's International Law*, vol. 1, 9th edition (Harlow: Longman, 1992), 948-949; Abdul Ghafur Hamid@Khin Maung Sein, *Public International Law: A Practical Approach*, 142; Robert Louis Parrillo, 'Extradition: A Test of International Cooperation in the Enforcement of Domestic Criminal Law' (Ph.D Thesis, Department of Political Science Florida State University, College of Social Science, USA, 2009), 2.

anti-air terrorism convention, particularly the 2010 Beijing convention, the state is under obligation to either prosecute or extradite (*aut dedere aut judicare*) the offender.¹⁰² Consequently, a state that is not willing to prosecute the offender is under obligation to extradite and surrender the offender to a requesting state for prosecution and punishment.

Under Islamic law, what is considered the basis for extradition is traceable to the ‘Treaty of *Hudaybiyyah*’ (*Ṣulḥ al-Ḥudaybiyyah*). It is a Peace Agreement between the Prophet Muhammad (SAW) representing the Islamic state of Madīnah and the People of *Quraysh* in Makkah in January 628 (*Dhū al-Qa‘edah*, 6 A.H).¹⁰³ The Treaty consisted of six clauses¹⁰⁴ one of which was indirectly related to ‘extradition’. The clause is hereby reproduced for ease of reference:

*“Anyone from the Makkah Quraysh who joins Muhammad PBUH without any permission from his chief or guardian must be returned to Makkah.”*¹⁰⁵

It is submitted that the word “return” as expressly adopted in the clause means ‘extradition’ as interpreted by another writer.¹⁰⁶ The above clause could be regarded as extradition based on the condition, ‘without any permission from his chief or guardian’ failure to adhere may be counted as an offence against the Muslim on one hand and on the other hand against the perpetrator (Fugitive). It can therefore be concluded that the doctrine of *aut dedere* is also applicable to prevent and suppress air terrorism under Islamic law. The purpose is the same as the conventional theory of

¹⁰² 2010 Beijing Convention, art. 10; The Hague Convention 1970, art. 7 and the Montreal Convention 1971, art. 7 respectively.

¹⁰³ Karen Armstrong, *Islam: A Short History* (New York: Modern Library, 2002), 23; Karen Armstrong, *Muhammad: A Prophet for Our Time* (New York: HarperCollins, 2007), 175-181; Asyiqin Ab Halim, ‘The Truce of al-Hudabiyyah Refers by the Qur’an as an ‘Open Victory: An Analysis,’ *Online Journal of Islamic Studies*, vol. 5/3 (2018): 31.

¹⁰⁴ Asyiqin Ab Halim, ‘The Truce of al-Hudabiyyah Refers by the Qur’an as an ‘Open Victory: An Analysis,’ 32.

¹⁰⁵ Adil Salahi, *Muhammad: Man and Prophet* (n.p.: The Islamic Foundation, 2002), 512 cited in Asyiqin Ab Halim, ‘The Truce of al-Hudabiyyah Refers by the Qur’an as an ‘Open Victory: An Analysis,’ 32.

¹⁰⁶ Sayyid Ali Asghar Razwy, ‘A Restatement of the History of Islam and Muslims’, Al-Islam.org., <https://www.al-islam.org/restatement-history-islam-and-muslims-sayyid-ali-asghar-razwy/treaty-hudaybiyya>, accessed on 19 April 2023.

extradition as canvassed under various anti-air terrorism treaties and conventions.

CONCLUSION

Air terrorism, whether under Conventional or Islamic law, is outright forbidden-*ḥarām* and it is therefore illegal and unlawful. This is not farfetched from its destructive nature, the consequences of which constitute evil wicked deeds such as taking lives unjustly, destruction of properties, and psychological disorder of the families of victims. To summarily put, it distorts the morality and rule of law that the Islamic state ought to preserve and protect. That is why there is a need under Islamic law to adopt certain instruments as contained in the anti-air transport terrorism Convention to preserve and protect the Muslim ummah against the heinous act.

Consequently, this article has been able to discuss and analyse the positions of Islamic law on such instruments stated in the Anti-air Transport Terrorism Convention. It is the findings of the article that the act of air terrorism is rightly impermissible under Islamic law; the definition of the offence under Islamic Law is wider than that of conventional law; jurisdiction is universal as opposed to territorial; punishment is more severe having been clearly stated in Holy Qur'an; and extradition is compulsory because Islamic law principle is applicable to the whole world. It is therefore concluded that those instruments are equally available under Islamic law with wider scope and application, but many people do not know as copiously mentioned in the Holy Qur'an where Allah said: 'Nothing have We left in the Holy Qur'an'. This article, therefore, contributes to the knowledge of Islamic aviation law regarding the ways and manner air transport terrorism can be suppressed or prevented on one hand and on the other hand, on how criminals must be treated whenever they are arrested over the heinous crime committed through terrorism. Thus, the dynamics and developmental nature of Islamic law in its interaction with modern civil aviation issues and practices is not in doubt.

The preventive and suppressive measures put in place under Islamic Law to forestall the occurrence of Air transport terrorism are wider in scope and application than that envisaged under the Conventional system of suppressing and preventing the act. The article hereby recommends: (1) an urgent review of the anti-air terrorism Convention to accommodate the position of Islamic law on the punishment of terrorist(s) as mandatorily fixed by Allah in the Qur'an *Surah al-Mā'idah* 5:33, and *al-Nisā'* 4: 93; and (2) the concept of jurisdiction as contained in the anti-air terrorism Convention should be made universal. This will treat air terrorism as a

universal crime, put an end to the concept of “safe haven” and as well be congruous with the principle of universal jurisdiction under Islamic law.

REFERENCES

- Abd Aziz Shamarahayu, 'Basic Human Right in Islam', in ed. *Human Rights Law: International, Malaysian and Islamic Perspectives*, ed. Abdul Gafur Hamid@Khin Maung Sein (Malaysia: Sweet and Maxwell Asia, 2012).
- ‘Abd al-Qādir ‘Awdah, *al-Tashrī‘ al-Jinā’ī al-Islāmī Muqāranan bi al-Qānūn al-Waḍ‘ī*, vol. 1 (Bayrūt: Dār Iḥyā’ al-Turāth al-‘Arabī, 1985).
- ‘Abd al-Qādir ‘Awdah, *al-Tashrī‘ al-Jinā’ī al-Islāmī Muqāranan bi al-Qānūn al-Waḍ‘ī*, vol. 1 (Bayrūt: Maktabah ‘Aṣriyyah, 2013).
- Abdul Ghafur Hamid@Khin Maung Sein, *Public International Law: A Practical Approach*, 2nd edition (Petaling Jaya, Malaysia: Prentice Hall, Pearson Malaysia Sdn Bhd, 2007).
- Abdul Qader Qudah Saheed, *Criminal Law of Islam* (Delhi: Adam Publishers & Distributors, 2010).
- Abdulraheem Taofeeq Abolaji, ‘An Expository Study of Right of Children to Health under the Shariah and Nigerian Law’ (Ph.D. Thesis, Department of Islamic Law, University Sains Malaysia (USM), 2016).
- Abū Dāwud al-Sajistānī, *Sunan Abū Dāwud*, vol. 6 (Lebanon: Dār al-Kutub al-‘Ilmiyyah, 2008).
- Abū Ḥusayn Muslim Ibn al-Ḥajjāj Ibn Muslim, *Ṣaḥīḥ Muslim*, vol. 5 (Riyāḍ: Dar-us-Salam Publications Inc, 2007).
- Abū al-Walīd Muḥammad Ibn Rushd, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, vol. 2 (Bayrūt: Dār Ibn Ḥazm, 2007).
- Adam Z. Rose, Gbadebo Oladosu, Bumsoo Lee and Garrett Beeler Asay, ‘The Economic Impacts of the September 11 Terrorist Attacks: A Computable General Equilibrium Analysis’, *Peace Economics, Peace Science and Public Policy*, vol. 5/2 (2009): 1-31, <https://doi.org/10.2202/1554-8597.1161>.
- Adeno Addis, ‘Imagining the International Community: The Constitutive Dimension of Universal Jurisdiction’, *Human Right Quarterly*, vol. 31 (2009).

- Adil Salahi, *Muhammad: Man and Prophet* (n.p.: The Islamic Foundation, 2002).
- Aḥmad bin Muḥammad bin Ḥanbal, *Musnad*, vol. 2 (Riyāḍ: Dār al-Salām, 2012).
- Ahmed al-Dawoody, 'International Terrorism and the Jurisdiction of Islamic Law,' *International Criminal Law Review*, vol. 15 (2015).
- Abū Bakr ibn Mas'ūd al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*, vol. 9 (Bayrūt: Dār al-Kutub al-'Ilmiyyah, 1997).
- Abī al-Ḥasan 'Alī bin Muḥammad bin Ḥabīb al-Māwardī, *al-Aḥkām al-Sulṭāniyah*, (Qāhirah: al-Maktabah al-Tawfīqiyyah, 1978).
- 'Alī bin Aḥmad Ibn Hazm al-Andalusī, *al-Muḥallā*, vol. 11 (Cairo: Maktabah al-Jamhūriah al-'Arabiyyah, 1967).
- Anthony A. Colangelo, 'Constitutional Limits on Extraterritorial Jurisdiction: Terrorism and the Intersection of National and International Law,' *Harv. Int'l LJ*, vol. 48/1 (2007).
- Anwarullah, *The Criminal Law of Islam*, 1st edition (Brunei, Darussalam: Islamic Da'awah Centre, Ministry of Religion Affairs, 1995).
- Arthur Nussbaum, *A Concise History of the Law of Nations* (New York: Macmillan Company, 1947).
- Asyiqin Ab Halim, 'The Truce of al-Hudabiyyah Refers by the Qur'an as an 'Open Victory: An Analysis,' *Online Journal of Islamic Studies*, vol. 5/3 (2018).
- Azila Ahmad Sarkawi, Alias Abdullah, Norimah Md. Dali and Nur Amilin Mohd Khazani, 'The Philosophy of Maqasid al-Shari'ah and Its Application in the Built Environment, *Journal of Built Environment, Technology, and Engineering*, vol. 2 (2017).
- Barner A. Garner, *Black's Law Dictionary*, 8th edition (n.p.: Thomson West, 2004).
- Bill Barnhart, 'Markets Reopen, Plunge', *Chicago Tribune*, 17 September 2001.
- Brian Michael Jenkins, 'The Terrorist Threat to Commercial Aviation', (paper presented at the International Seminar on Aviation Security, Herzeliyya, Israel, 5-9 February 1989).
- Bryan A. Garner, *Black Law Dictionary* (USA: West Group, n.d.).

- Bryan A. Garner, *A Handbook of Criminal Law Terms* (USA: West Group, 2000).
- Cherif Bassiouni, 'Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice,' *Virginia Journal of International Law*, vol. 42/1 (2001-2002).
- Christopher L. Blakesley, *Terrorism, Drugs, International Law, and The Protection of Human Liberty* (New York: Transnational Publishers, Inc., Ardsley-on-Hudson, 1992).
- Christopher L. Blakesley, 'Extradition Between France and the United States: An Exercise in Comparative and International Law,' *Vand. J. Transnat'l L.*, vol. 13 (1980).
- Christopher L. Blakesley, 'The Practice of Extradition from Antiquity to Modern France and the United States: A Brief History,' *B.C International and Comparative Law Review*, vol. 4 (1981).
- Convention against the Taking of Hostages, 1971. (Hereinafter referred to as the Hostages Convention, 1971).
- Convention on Suppression of Unlawful Interference relating to International Civil Aviation, done in Beijing on 10 September 2010, 50 *ILM* 144 (2011).
- Crow Karim Douglas, 'The Intellect Islamic Thought: Mind and Heart, KATHA,' *The Official Journal of the Centre for Civilisational Dialogue*, vol. 2/1 (2018).
- Dalila V. Hoover, 'Universal Jurisdiction not so Universal: A Time to Delegate to the International Criminal Court', *Cornell Law School Inter-University Graduate Student Conference Papers*. Paper 52 (April 2011), http://scholarship.law.cornell.edu/Ips_clacp/52, accessed on 3 May 2012.
- Daniel O'Donnell, 'International Treaties Against Terrorism During Armed Conflict and by Armed Forces,' *International Review of the Redcross*, vol. 88 (2008).
- Daphne A. Dukelow, *The Dictionary of Canadian Law* (Canada: Thompson Professional Publishing Co., 1991).
- Darrel C. Menthe, 'Jurisdiction in Cyberspace: Theory of International Spaces,' *Michigan Telecommunications and Technology Law Review*, vol. 4/69 (1998).

- ElSayed M.A. Amin, *Reclaiming jihad: A critique of Terrorism* (United Kingdom: The Islamic Foundation, 2014).
- F. de Cardaillic, *De l'extradition* (France: Impre .de E. chore (Tarbes), 1878).
- Frederick A. Mann, 'Legislative Jurisdiction, The Doctrine of International Jurisdiction,' in *Jurisdiction in International Law*, ed. W. Michael Reisman (Aldershot, U.K: Dartmouth and Ashgate Publishing Limited, 1999).
- Gobind Dayal v. Inayatullah* (1885) 7 All 775, 805.
- Harvard Research in International Law, Draft Convention on jurisdiction with Respect to Crime, *America Journal of International Law*, vol. 29 (1935): 387.
- Hasliza Mohd Ali et al, 'Implementation of Islamic Quantity Management System MS1900 and its Benefits: A Case Study at the Department of Hajj and Zakkah, Malaysia', *GJAT*, vol. 6/2 (2016).
- Hugo Grotius, *II « De jure belli ac pacis »* (1646), 526-529; Jean Bodin, « *Lex Six Livres de la Republique »* (1576), (The Six Books of *Commonweale*, Havard Pol. Classic, K.D. McRae ed. 1962),100-111.
- Ibn Qudāmah, *al-Mughnī*, vol. 10 (Qāhirah: Dār al-Ḥadīth, 2009).
- Ismail Adua Mustapha, 'Machine Readable Travel Documents in Aviation Security and Information Privacy: An Islamic Law Perspective', *IUMLJ*, vol. 28/1 (2020).
- Ismail Mustapha Adua, 'International Law on Aircraft Hijacking: The Practice in Malaysia and Nigeria' (Ph.D Thesis, International Islamic University Malaysia, Kuala Lumpur, 2014).
- Jasser Auda, *Maqasid Al-Shariah, An Introductory Guide* (USA: International Institute of Islamic Thought, 2008).
- Jeffrey C. Price and Jeffrey S. Forrest, *Practical Aviation Security: Predicting and Preventing Future Threats* (Netherland: Elsevier Inc., 2009).
- Joyce v DPP* [1946] AC 347.
- Kabuye Uthman Sulaiman, 'An Islamic Perspective on the Protection of the Mind and Attainment of Happiness,' *Journal of Education and Social Sciences*, vol. 6 (2019).

- Karen Armstrong, *Islam: A Short History* (New York: Modern Library, 2002).
- Karen Armstrong, *Muhammad: A Prophet for Our Time* (New York: HarperCollins, 2007).
- Kenneth C. Randall, 'Universal Jurisdiction Under International Law,' *Texas Law Review*, vol. 66 (1988).
- Luis Kutner, 'World Habeas Corpus and International Extradition', *U. Det. L.J.*, vol. 41 (1963-1964).
- Lotus case* (1927) PCIJ Series A No 10, 35.
- M. Cherif Bassiouni, *International Extradition: United States Law and Practice*, 2nd edition (n.p: Oceana Publications, 1987).
- Majorie M. Whiteman, *Digest of International Law*, vol. 6 (Washington D.C.: U.S. Government Printing Office, 1968).
- Marion H. Jordan, Kathleen A. Hollowed, Dale G. Turner, Dennis S. Wang and James C. Jeng, 'The Pentagon Attack of September 11, 2001: A Burn Center's Experience,' *Journal of Burn Care & Research*, vol. 26/2 (2005).
- Masoud Rajabi-Ardeshiri, 'The Rights of the Child in the Islamic Context: The Challenges of Local and Globalization,' *International Journal of Children*, vol. 17 (2009).
- Mohammad Ben Ismail Al'Bukhari, *Al'Bukhari's Sahih: The Correct Traditions of Al'Bukhari*, trans. Mohammad Mahdi Al'Sharif (Dar Al-Kotob Al-Ilmiyah, 2007).
- Mohammad Hashim Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation* (New York: Oxford University Press, 2019).
- Mohammad Shabbir, *Outlines of Criminal Law and Justice in Islam* (Petaling Jaya, Selangor Darul Ehsan: International Law Book Series, 2002).
- Mohammed Akram Laldin, *Islamic Law: An Introduction* (Kuala Lumpur: Research Center IIUM, 2006).
- Muhammad al-Tahir Ibn Ashur, *Treaties on Maqāṣid al-Shari'ah*, trans. Mohamed El-Tahir El-Mesawi, vol. 1 (USA: International Institute of Islamic Thought, 2006).
- Muḥammad bin Ismā'īl al-Bukhārī, *Ṣaḥīḥ Bukhārī* (Bayrūt, Lebanon: Dār Ibn Kathīr, 2002).

- Muhammad b. Isma‘il al-Bukhari, *Sahih Bukhari*, vol. 1, book 7 (Damascus: Dar Ibn Kathir, n.d.).
- Muhammad bin Yazīd al-Rab‘ī Ibn Mājah al-Qazwīnī, *Sunan Ibn Mājah*, vol. 3, trans. Nāṣir al-Dīn al-Albānī (Riyāḍ: Dār al-Salām, 2007).
- Muhammad Hameedullah and Md Khalil Ruslan, ‘The Crime of Hirabah: Approach, Justification and Significance,’ *Jurnal Syariah*, vol. 28/3 (2020).
- Muhammad Adil Khan Afridi, ‘Maqasid Al-Shariah and Preservation of Basic Right Under the Theme “Islam and Its Perspective on Global & Local Contemporary Challenges,”’ *Journal of Education and Social Science*, vol. 4 (2016).
- Muhammad bin Idrīs al-Shāfi‘ī, *al-Umm*, vol. 6 (Cairo: Dār al-Wafā’, 1968).
- Muhammed Hashim Kamali, ‘Terrorism and Cowardly Murder,’ *New Straits Times*, 10 March 2015.
- Muhammed Hashim Kamali, ‘Terrorism, Banditry and Hirabah, Advancing New Shariah Perspective,’ *IAIS Malaysia*, vol.8/1 (2017).
- Muslim, *Ṣaḥīḥ Muslim*, vol. 8 (Bayrūt: Dār al-Fikr, 1995).
- Nikrahim Nik-Wajis, ‘The Crime of Hirabah in Islamic Law’ (Ph.D. Thesis, Glasgow Caledonian University, U.K, 1990).
- Nor Razinah Mohd Zain and Engku Rabiah Adawiah Engku Ali, ‘An Analysis of an Islamic Societal Finance and Maqasid Shariah’, *Journal of Islamic Finance* (2012).
- Nur Kholish, Muhammad Roy Purwantob, Supriadic, Tamyiz Mukharromd and Hamidullah Marazi, ‘The Significance of Maqasid Syariah Principles in Improving Islamic Economic and Finance,’ *International Journal of Innovation, Creativity, and Change*, vol. 13/3 (2020).
- Oluwafemi Ladapo and Elijah Oluwatoyin Okebukola, *Cases and Materials on Extradition in Nigeria*, United Nations Office on Drugs and Crime (Abuja: United Nations, 2016).
- Paul Stephen Demsey, ‘Aviation Security: The Role of Law in the War Against Terrorism’, *Columbia Journal of Transnational Law*, vol. 41/1 (2003).
- Robert Jennings and Sir Arthur Watts, eds. *Oppenheim’s International Law*, vol. 1, 9th edition (Harlow: Longman, 1992).

- Robert Louis Parrillo, 'Extradition: A Test of International Cooperation in the Enforcement of Domestic Criminal Law' (Ph.D Thesis, Department of Political Science Florida State University, College of Social Science, USA, 2009).
- Rodney Wallis, *How Safe Are Our Skies? Assessing the Airlines Response to Terrorism* (USA: Praeger Publishers, 2003).
- Roger Merle and Andre Vitus, *Traite De Droit Criminel: Problemes Generaux De La Science Criminelle*, 5th edition (Paris: Cujas, 1984).
- Roger Merle and Andre Vitus, *Traite De Droit Criminel: Problemes Generaux De La Science Criminelle*, 6th edition (Paris: Cujas, 1988).
- Ruwantissa Abeyratne, *Aviation Security Law* (Heidelberg: Springer Dordrecht, 2010).
- Ṣaḥnūn, *al-Mudawwanah al-Kubrā*, vol. 4 (Bayrūt: Dār al-Kutub al-ʿIlmiyyah, 1994).
- Sayyid Ali Asghar Razwy, 'A Restatement of the History of Islam and Muslims', Al-Islam.org., <https://www.al-islam.org/restatement-history-islam-and-muslims-sayyid-ali-asghar-razwy-treaty-hudaybiyya>, accessed on 19 April 2023.
- Sherman A. Jackson, 'Domestic Terrorism in the Islamic Legal Tradition,' *The Muslim World*, vol. 91 (2009).
- Sulaymān Ibn Aḥmad Ṭabarānī, *al-Muʿjam al-Kabīr* (Bayrūt: Dār Iḥyāʾ al-Turāth al-ʿArabī, 2009), *ḥadīth* no. 9993.
- Syed Abul A'la Mawdudi, 'Human Rights in Islam', *al-Tawhid Journal*, vol. 4/3 (Rajab-Ramadhan 1407).
- The Hague Convention on the Suppression of Unlawful Seizure of Aircraft 1970, adopted on 16 December 1970 and entered into force on 14 October 1970, 80 UNTS 105, 22 U.S.T 1641, T.I.A.S No. 7192. [Herein after referred to as The Hague Convention 1970].
- The Islamic Fiqh Council, 'Makkah Declaration on Terrorist Explosions and Threats: Causes, Consequences, Legal Opinions and Means of Protection,' *The Islamic Fiqh Council Journal*, vol. 17 (2004).
- The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, adopted on 23 September 1971 and entered into force on 26 January 1971, 974, UNTS 177, 24 U.S.T 564, T.I.A.S. No 7570. [Herein after referred to as The Montreal Convention 1971].

- The Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft was adopted on 14 September 1963 and entered into force on 4 December 1963, 704 UNTS 219, 20 U.S.T 2941 [Herein after referred to as The Tokyo Convention 1963].
- Tijani Musa Buba, 'Role of Maqasid al-Shariah as a Social Welfare Concept in the Interpretation of the Sources of Shariah,' *Unilorin Shariah Journal* (2014).
- United Nation, *Legislative Guide to the Universal Anti-Terrorism Convention and Protocols* (New York: United Nation on Drug and Crime, 2003).
- Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuh*, vol. 4 (Dimashq: Dār al-Fikr, 1997).
- Wahbah al-Zuhaylī, *al-Usrah al-Muslimah fī al-‘Ālam al-Mu‘āṣir* (Bayrūt: Dār al-Fikr, 2000).
- Yana Shy Kraytman, 'Universal Jurisdiction-Historical Roots and Modern Implications,' *BSIS Journal of International Studies*, vol. 2 (2005).
- Yusuf bin ‘Abd Allāh Ibn ‘Abd al-Barr, *al-Kāfī fī Fiqh Ahl al-Madīnah al-Mālikī* (Bayrūt: Dār al-Kutub al-‘Ilmiyyah, 1987).
- Zaman Hasina, 'Islam, Well-Being and Physical Activity: Perceptions of Muslim Young Women', in *Researching Women and Sport*, eds. Gill Clarke, Barbara Humberstone and Jo Campling (London: Palgrave Mamillan, 1997).