

**AN APPRAISAL OF THE LEGAL FRAME WORK IN  
COMBATING AVIATION CRIMES AND TERRORISM IN  
NIGERIA**

**BY**

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**BEING A DISSERTATION SUBMITTED TO THE  
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## DECLARATION

I hereby declare that this Dissertation has been produced by me under the supervision and guidance of my supervisor and it has never been presented anywhere for the award of higher degree, to the very best of my knowledge. All ideas and views referred to and paraphrased are duly acknowledged and their sources, accordingly provided.

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Date

## CERTIFICATION

This is to certify that the research work for this dissertation and all the preparations that are necessary or incidental to the dissertation by Elelegwu Anthonia Efe, **SPS/11/LLM/00018**, was carried out under my supervision.

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## APPROVAL PAGE

This Dissertation titled “AN APPRAISAL OF THE LEGAL FRAME WORK IN COMBATING AVIATION CRIMES AND TERRORISM IN NIGERIA” has been well examined by us and we hereby approved it for the award of MASTERS DEGREE OF LAWS (LL.M).

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## **DEDICATION**

This work is dedicated to the memory of my late father, Hon. Justice A. M. Elelegwu – a hero at rest, and to my son, Ryan Chimereze Egbujiobi.

## **ACKNOWLEDGEMENT**

I am grateful to the Almighty God for keeping me sound and healthy throughout the programme. When kindness cannot be returned, it should be appreciated and passed on to others. Accordingly, I would like to appreciate all those who in one way or another contributed to the success of this work. Special thanks go to my beloved husband, Engr. Declan Obi Egbujiobi for his priceless assistance and support. He was of immense help in the production of this piece of legal literature even though he is not a learned colleague!

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## TABLE OF CONTENT

Topic Page	-	-	-	-	-	-	-	-	-	-	-	i
Declaration	-	-	-	-	-	-	-	-	-	-	-	i
Certification	-	-	-	-	-	-	-	-	-	-	-	ii
Approval	-	-	-	-	-	-	-	-	-	-	-	iii
Dedication	-	-	-	-	-	-	-	-	-	-	-	iv
Acknowledgement	-	-	-	-	-	-	-	-	-	-	-	v
Table of Content	-	-	-	-	-	-	-	-	-	-	-	vi-ix
List of Cases	-	-	-	-	-	-	-	-	-	-	-	x
List of Statutes	-	-	-	-	-	-	-	-	-	-	-	xi
International Instruments	-	-	-	-	-	-	-	-	-	-	-	xi
Table of Abbreviations	-	-	-	-	-	-	-	-	-	-	-	xiii
Abstract	-	-	-	-	-	-	-	-	-	-	-	xiv

### **Chapter One: General Introduction**

1.1	Introduction	-	-	-	-	-	-	-	-	-	-	1-5
1.2	Statement of Problem	-	-	-	-	-	-	-	-	-	-	5-6
1.3	Aims and Objectives	--	-	-	-	-	-	-	-	-	-	6
1.5	Justification	-	-	-	-	-	-	-	-	-	-	7
1.6	Scope of the Research	-	-	-	-	-	-	-	-	-	-	7
1.7	Methodology	-	-	-	-	-	-	-	-	-	-	7-8
1.8	Literature Review	-	-	-	-	-	-	-	-	-	-	8-14
1.9	Organisational Layout	-	-	-	-	-	-	-	-	-	-	14-15
	References	-	-	-	-	-	-	-	-	-	-	15

### **Chapter Two: CONCEPTUAL CLARIFICATION OF KEY TERMS**

2.1	<b>Introduction:</b>	-	-	-	-	-	-	-	-	-	-	16
2.2	Civil Aviation	-	-	-	-	-	-	-	-	-	-	16-17
2.3	Aviation Security	-	-	-	-	-	-	-	-	-	-	17-18
2.4	Aviation Crime and Terrorism	-	-	-	-	-	-	-	-	-	-	18-20
2.5.1	Global Aviation Crime and Terrorism Incidents	-	-	-	-	-	-	-	-	-	-	20-21
2.6	Notable Aviation Terrorist Attack	-	-	-	-	-	-	-	-	-	-	21-23
2.6.1	Cubana Flight 455	-	-	-	-	-	-	-	-	-	-	23-25

2.6.2	Air India Flight	-	-	-	-	-	-	-	25-31
2.6.4	The Lod Air Massacre	-	-	-	-	-	-	-	32-33
2.6.5	Philippine Airlines Flight 43k-	-	-	-	-	-	-	-	33-35
2.6.6	The Rome and Vienna Airport Attacks	-	-	-	-	-	-	-	35-37
2.6.7	The September 11 Attacks	-	-	-	-	-	-	-	37-39
	Conclusion	-	-	-	-	-	-	-	39-40
	References	-	-	-	-	-	-	-	40

### **Chapter Three: Historical Development of Aviation Legislation in Nigeria**

3.1	<b>Introduction-</b>	-	-	-	-	-	-	-	41
3.2	Aviation Legislation in Nigeria	-	-	-	-	-	-	-	41-46
3.3	International Civil Aviation Organization	-	-	-	-	-	-	-	46-49
3.3.1	ICAO Membership	-	-	-	-	-	-	-	49
3.3.2	ICAO Standards	-	-	-	-	-	-	-	49-51
3.3.3.	ICAO Register Codes	-	-	-	-	-	-	-	51
3.4	International Air Transport Association	-	-	-	-	-	-	-	52
3.5	Nigerian Civil Aviation Authority	-	-	-	-	-	-	-	53-54
3.6	Nigerian Federal Ministry of Aviation	-	-	-	-	-	-	-	54-55
3.7	Federal Airport Authority of Nigeria	-	-	-	-	-	-	-	55-57
3.8	Nigerian Airspace Management Agency	-	-	-	-	-	-	-	57-58
	Conclusion	-	-	-	-	-	-	-	58
	References	-	-	-	-	-	-	-	58-59

### **Chapter Four: An Appraisal of Aviation Legal Framework in Combating Crime and Terrorism in Nigeria**

4.1	<b>Introduction:</b>	-	-	-	-	-	-	-	60-61
4.2	Nigeria Aviation Security and Terror Threat	-	-	-	-	-	-	-	61-65
4.3	Aviation Security Regimes: Prospects and Constraints-	-	-	-	-	-	-	-	65
4.3.1	The Civil Aviation Act, 2006	-	-	-	-	-	-	-	65-70
4.3.2	Terrorism Act	-	-	-	-	-	-	-	70-73

4.3.3	The National Civil Aviation Policy 2013-	-	-	-	-	-	-	-	73-76
4.4	Aviation Security Techniques: The Challenge of Human Right	-	-	-	-	-	-	-	77-79
4.5	African Union and ECOWAS on Aviation Security	-	-	-	-	-	-	-	79-80
4.5.1	African Civil Aviation Commission	-	-	-	-	-	-	-	80-81
4.5.2	ECOWAS Declaration on Terrorism	-	-	-	-	-	-	-	82-63
4.6	Nigerian Aviation Security Compliance with ICAO Preventive Standards: A Comparison with Selected Countries.	-	-	-	-	-	-	-	83-85
	Conclusion	-	-	-	-	-	-	-	85
	References	-	-	-	-	-	-	-	85-86

**Chapter Five: Summary, Observations, Recommendations and Conclusion**

5.1	<b>Summary:</b>	-	-	-	-	-	-	-	87
5.2	Observation	-	-	-	-	-	-	-	88-89
5.3	Recommendations	-	-	-	-	-	-	-	89-91
5.4	Conclusion	-	-	-	-	-	-	-	91-92
	Bibliography	-	-	-	-	-	-	-	93-94

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- Civil Aviation (Repeal and Re-enactment) Act, Cap 51 LFN, 1990.
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- Nigerian Civil Aviation Training Centre Act, CAP 298 LFN,1990
- National Civil Aviation Policy, 2013(Nigeria)
- Nigerian Civil Aviation Regulations, 2012(Nigeria)
- Protection of Children Act, 1978
- Terrorism (Prevention) (Amendment) Act, 2013.

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- Havana Convention, 1928
- International Air Navigation Convention
- Montreal Agreement,1988
- Montreal Agreement, 1966 and 1999
- Paris Peace Conference, 1919
- The Chicago Convention
- The Rome Convention, 1952
- The Tokyo Convention for Suppression of Unlawful Seizure of Aircraft
- The Warsaw Convention, 1929.

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15. Tende and Ors V. A. G. Federation (1988) NWLR pt 17.p 43
16. United States v. Jones 132 S. Ct 945 (2012).

## LIST OF ABBREVIATIONS

ACI	Airports Council International
AIB	Accident Investigation Bureau
AIP	Aeronautical Publication Information
AMHS	Aeronautical Message Handling System
ANC	Air Navigation Commission
ANO	Abu Nidal Organization
ASQ	Air Service Quality
ATC	Air Traffic Control
ATO	Air Traffic Organization
BSP	Billing and Settlement Plan
CASS	Cargo Account Settlement System
CCTV	Close Circuit Television
CIA	Central Intelligence Agency
CKA	Computerised Knowledge Assessment
CNS/ATM	Communication Navigation Surveillance/Air Traffic Management.
CVR	Cockpit Voice Recorder
EASA	European Aviation Safety Agency
ECOSOC	Economic and Social Council (of the United Nations).
EU	European Union
FAA	Federal Aviation Administration
FAAN	Federal Airports Authority of Nigeria
FBI	Federal Bureau of Investigation
FCAA	Federal Civil Aviation Authority
FIR	Flight Information Region
ICAN	International Commission for Air Navigation
ICAO	International Civil Aviation Organisation
IATA	International Air Transport Association
JAA	Joint Aviation Authorities
JAI	Japan Airlines International
NAMA	Nigerian Airspace Management Agency
NCAA	Nigerian Civil Aviation Authority

NOTAM	Notice To Air Men
NTSB	National Transportation Safety Board
PICAO	Provisional International Civil Aviation Organisation
PLO	Palestine Liberation Organisation
SARP	Standard and Recommended Practices
TIP	Threat Image Protection
TSA	Transport Security Administration
UN	United Nations
WTC	World Trade Centre

## ABSTRACT

*With the reality of terrorism, it became clear that the act can be perpetrated anywhere in the country. The porosity of Nigerian Airports makes the aviation sector vulnerable to potential attacks. This work analysis the various security challenges in the Nigerian Aviation Sector. It did an in depth introduction to the concept of airport security and promptly draws attention to various incidents of crime in the global aviation business owing to lack of security. To bring to the fore the latent threat of terrorism in the Nigerian aviation sector, this dissertation, adopting doctrinal approach, did detailed appreciation of the various legal regimes and administrative policies in connection with aviation security in Nigeria. It is discovered among other things that the country lacks a comprehensive National strategy and Law for Aviation security and so, recommendations such as mandating aviation agencies to utilize their delegated legislation to make laws that will give effect to ICAO standards among others and to ensure appreciable preventive/security atmosphere at the Nigerian airports.*

## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 Background of the Study

Airport Security refers to the techniques and methods used in protecting passengers, staff and aircraft which use the airports from accidents, malicious harm, crime and other threats<sup>1</sup>.

Large numbers of people pass through airports every day. This presents potential targets for terrorism and other forms of crime because of the number of people located in a particular location.<sup>2</sup> Similarly, the high concentration of people on large airliners; the potential high death rate with attacks on aircraft, and the ability to use a hijacked airplane as a lethal weapon may provide an alluring target for terrorism.

Airport security would responsibly strive to prevent any threats or potentially dangerous situations from arising at the airport. If airport security does succeed in this, then the chances of any dangerous situations, illegal items or threats entering into aircraft or airport are greatly reduced. As such, airport security serves several purposes: To protect the airport and country from any threatening events; to reassure the travelling public that they are safe and to protect the country and their people. In a nutshell, the goal of aviation security is to prevent harm to aircraft, passengers, and crew, as well as support national security and counter-terrorism policy<sup>3</sup>.

The world, without doubt, has had notable terrorist attacks before now but the one targeted at US on September 11, 2001, is the most widely recognized terrorist attacks in recent times involving air travel.<sup>4</sup> Nineteen members of the Islamic terrorist group, Al-Qaeda, took control of 4 airplanes on the east coast of the United States and deliberately crashed them into both World Trade Centre towers in New York, New York and into Pentagon in Arlington country, Virginia. A fourth plane crashed in Pennsylvania, not reaching its intended target. The attacks resulted in the deaths of almost 3000 people, including the civilians in the airplanes and the hijackers who assumed control of the aircraft<sup>5</sup>.

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<sup>1</sup> Department of Homeland Security, “S & T Snapshots-Human Factors: Deception Detection.” July 27, 2009. Available at [www.dhs.gov>news](http://www.dhs.gov>news). Accessed October 26, 2011

<sup>2</sup> David R. “Does Heighten Airport Security Make US Safer?” available at [www.aviation.about.com/.../air/us...](http://www.aviation.about.com/.../air/us...) accessed October 26, 2011

<sup>3</sup> Belger R. “Technology, Terrorism and Government Information on Security” available at [www.ll.mit.edu/.../mit-lincoln](http://www.ll.mit.edu/.../mit-lincoln), accessed 14/11/2014.

<sup>4</sup> See the National Commission Report on Terrorism and attack upon the United States. Available at [www.9-11commission.gov.accessed](http://www.9-11commission.gov.accessed) 24/3/13

<sup>5</sup> *ibid.* See however, ‘Secrete 9/11 documents’ at [www.globalresearch.ca](http://www.globalresearch.ca), accessed 24/3/2013, wherein there are opinions that some governments supported the terrorist attack

Crime and terrorism in the aviation sector are global threats and as such Nigeria is not an exemption. On Christmas day, December 25, 2009, a Nigerian youth, Mr. Umar Farouk Abdulmutallab, is alleged to have attempted to suicide-bomb a Detroit-bound flight. This should serve as a strong warning signal to Nigeria on Aviation Terrorism in Nigeria or by Nigerians.

It is observed that Boko Haram is an anarchist Islamic sect that focuses its campaign against western education and democracy, and that the sect has become a vehicle of disunity and religious conflict in Nigeria. Through the Islamic sect, Al Qaeda is finding its root in Nigeria and by extension Africa, after the death of Osama Bin Laden<sup>6</sup>.

The fear that Boko Haram could be a threat to peace and security is further highlighted in the Mirror Newspaper of London report of July 3, 2011, quoting the British Prime Minister David Cameron that Al Qaeda “is determined to make Nigeria a base for plotting terror attacks on the west<sup>7</sup>”. The Newspaper opined that with regular daily flight from Nigeria to Britain the British Airways, Arik Air, and Virgin Atlantic could be used to attack the West through Nigeria<sup>8</sup>. In the same vein, Agbo,<sup>9</sup> further observed that a General and head of Moroccan intelligence claimed to have contacted the Nigeria Intelligence Service to avail them of credible evidence linking Al Qaeda with Boko Haram. The report also observed that the Boko Haram members were being trained by Al Qaeda in several training camps in Mauritania and Somalia<sup>10</sup>. It is against this backdrop that the numerous security breaches in Nigeria airports seems to genuinely reveal the inadequacy in aviation legal frame work as well as poor implementation of existing laws, which attract great worries.

Some of the recent notable incidents include the scare caused by a passenger in an Arik airplane flying from Maiduguri to Abuja on October 23, 2012<sup>11</sup>. On September 19, 2010, a Nigerian man was discovered crushed dead in the wheel well of Arik Air flight, which arrived from Johannesburg, South Africa<sup>12</sup>. In March 2013, a stowaway was found dead at the wheel well of Arik aircraft and that was the third time a stowaway was found dead at the wheel well of aircraft at the Murtala Muhammed International Airport, Lagos<sup>13</sup>.

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<sup>6</sup> Agbo A. “*Boko Haram: Jonathan’s Big Dilemma*” at [www.thewillnigeria.com](http://www.thewillnigeria.com). Pp 20-27. accessed 1/8/2013.

<sup>7</sup> Dayo A., “*Terrorism in Nigeria: An analysis of North/South Media Coverage of Boko Haram*” (November 2011 to March 2012) pg 50. Available at [www.pprogressivegeographies.com/.../boko](http://www.pprogressivegeographies.com/.../boko). Accessed 18/6/2013

<sup>8</sup> *ibid*

<sup>9</sup> *op’cit*

<sup>10</sup> *Agboop’cit P. 27*

<sup>11</sup> See the Post Newspaper, 13/8/2013. Available at [thepost-ng.com/?dm\\_redirected...](http://thepost-ng.com/?dm_redirected...) accessed 13/2/2013

<sup>12</sup> *ibid*

<sup>13</sup> Olumide Ohunayo, described stowaways generally as people who enjoy a free ride who may not get to their destination alive, because they are ignorant of the technology and the condition in the plane, and they tend to be

The success of the stowaway in accessing the tarmac and the aircraft on which he probably attempted to enter the United States illegally is a serious security breach. Whether the stowaway accessed the wheel well on his own or through connivance with airport security or airline officials, he was a security risk to the aircraft and all its passengers. Such a stowaway could maliciously turn out to be a suicide bomber intent on planting bombs in the aircraft. This goes further to question the diligence of airport security personnel who are expected to secure both the tarmac and the aircraft on it. Unfortunately since 2010, when the forgoing event took place till date, there has not been any security report made available to explain how the deceased came to the airport and how they were able to access the undercarriage of aircrafts like the Airbus A340 and Boeing B777, which are very high from the ground<sup>14</sup>. Other recent incidents include the identification of a mad man on runway at about 4:30 pm on November 13, 2012, at the Murtala Muhammed International Airport Lagos<sup>15</sup>. This incident reaffirms the fact that in spite of the efforts made by the Federal Airports Authority of Nigeria (FAAN), the airport is still porous. The porosity of Nigerian airports is much that cattle herdsmen access the runway like other paths for grazing. Incidentally, few years ago Air France flight nearly hit herd of cattle at the runway of the Port Harcourt International Airport Omagwa<sup>16</sup>.

Runway incursions have become regular occurrences at the Nation Airports and this attributed to lack of perimeter fencing at most of these airports. This lack of perimeter fence, primarily, is one of the reasons why the International Civil Aviation Organization (ICAO) has not certified any of these airports because they have not met accepted security and safety standards for their consideration<sup>17</sup>.

The trend of domestic terrorism in the country, especially the activities of the dreaded sect popularly known as Boko Haram, has become a major concern for both the Nigeria government and the international community<sup>18</sup>. Unfortunately the Nigerian aviation sector has not, in its policies and operations, adequately responded in terms of safety and preventive measures against terrorism. There is no doubt that over the years, there have been a number of treaties on aviation security which have been concluded under the auspices of ICAO

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pretty desperate to achieve their selfish desires. Available at [www.nationalmirroronline.net/.../expertcaution](http://www.nationalmirroronline.net/.../expertcaution). accessed 15/12/2013

<sup>14</sup> *op'cit*

<sup>15</sup> *ibid*

<sup>16</sup> *ibid*

<sup>17</sup> See Thisday, Thursday 21 March, 2013

<sup>18</sup> Abimbola, J.O., & Adesote, S.A, “*Domestic Terrorism and Boko Haram*” (PDF) available at [www.cenresinpub.org/.../page%2011-19](http://www.cenresinpub.org/.../page%2011-19). Accessed 15/3/2013

criminalizing acts against International Civil Aviation, such as hijacking, sabotage, and other unlawful acts jeopardizing the safety of the civil aviation.<sup>19</sup> Also there are domesticated relevant legislations in Nigeria for this purpose but which are not adjudged enough to adequately tackle terrorism due to its socio-political and religious undertone.

Since the catastrophic event of 11 September 2001, for Instance, there has been a stringent legal measure taken by the United States to attack terrorism. This move in America was not just to curb terrorism,<sup>20</sup> rather it was accompanied with the famous phrase “war on terror” denoting pre-emptive and preventive strikes carried out through applicable provisions of legitimately adopted provisions and legislations.

Other countries like India, Kenya, South Africa, Egypt, Singapore, Ghana, and the United Kingdom have also taken reasonable measures to fight insecurity and terrorism in the aviation sector through enactment and enforcement of several legislations. This goes to demonstrate that law plays a significant role in ensuring aviation security. In line with this, there is need for Nigeria to enact stringent and unambiguous laws to handle potential terrorism in the Aviation sector via the appraisal of similar laws in the diasporas. This is basically what prompts this research work.

## **1.2 Statement of Problem**

From the foregoing background a reasonable number of security challenges are manifest in the aviation sector. First, it is obvious that there is lack of adequate preventive measures on ground to dissuade the latent threat of terrorism in Nigerian airports. Secondly, the existing legal regimes are manifestly inadequate to curb crime and the threat of terrorism in the aviation sector. Thirdly, there is lack of prompt desire to effect modification to be in tune with international standard. Fourthly, the problem of enforcement is also a serious issue. Existing regulations are not adhered to due to number of factors like sovereignty of member states, corruption, poor funding, inadequate training, and poor infrastructure. These lapses among other things have created the safe haven impression for the mischief makers to prompt the numerous violent domestic terrorist attacks in the country, such as the attacks on the UN Building and Nigeria Police Headquarters in Abuja. Police and military formations and barracks mostly in Abuja and Kaduna, SSS and Immigration offices and buildings, prisons, churches, mosques, even motor parks as well as the many security outfits in our airports have

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<sup>19</sup> Twelfth meeting of the AFCAC Air Transport Committee (Dakar, Senegal, 30-31 October 2012)-Mechanisms Adopted to Implement the African Aviation Security Road Map.

<sup>20</sup> Abeyratne R., “*Aviation Security Law*” (Springer Heidelberg Dordrecht, New York, 2010) p.250

all suffered same fate. The airports with large volume of human and economic activities could likely be the next target of terrorist attack.

### **1.3 Research Questions**

1. What are the legal regimes for Aviation Security in Nigeria?
2. Can the existing laws adequately curb crime and terrorism at the airports and inside the aircrafts?
3. What are the preventive measures on ground in the aviation sector?
4. Are such mechanisms adequate in protecting the airports, aircrafts and passengers?
5. What is the legal approach for proper checkmating of aviation crime and terrorism?

### **1.4 Aims and Objectives**

The main aim of this research is to make a critical appraisal of the legal framework in combating aviation offences and terrorism in Nigeria with the view to achieving the following objectives:

1. To analyze aviation security challenges in the Nigerian aviation sector.
2. To study and analyze the existing legal regime regulating aviation activities in order to determine the adequacy or otherwise of its provision for security and ascertain level of compliance
3. To appraise aviation security laws of other countries and compare it with what is obtainable in Nigeria.
4. To proffer suggestions by way of recommendation that will establish a legal framework for aviation security

### **1.5 Justification**

This research is justifiable because it will help to enrich and bridge the literature gap on the existing legal regime vis-à-vis aviation security with respect to crime and terrorism.

The research work is equally justified because of the latent threat of incessant terrorist attacks on the aviation sector of the country, despite existing legal framework on aviation security.

Also, the public and the authorities concerned will be sensitized.

### **1.6 Scope of the Research**

This research work is limited to the analysis of the existing legal regimes dealing with civil aviation security in Nigeria. The research also did an appraisal of other countries aviation security laws comparing it with what is obtainable in Nigeria, with the desired view for improvement.

### **1.7 Methodology**

The study adopted the doctrinal approach based on primary and secondary sources of information. The work adopted the methodology that deals with the black letter approach to legal research. It is directed at using legal text, statutory provisions and other materials drawn

from primary and secondary sources to explain the law<sup>21</sup>. The research work also had recourse to some secondary sources of legal literature such as journals, articles, opinions of learned authors in text books, newspapers, online materials, reports on aviation terrorism incidents, dissertations on aviation law topics. All these materials were critically analyzed with the aim of determining the existence or otherwise of lacuna in the law on aviation security as well as impediments on enforcement. A critical analysis of the state of insecurity and potential terrorism in our airports, making a case for the establishment of adequate legal framework that could help curb insecurity and potential terrorism in the Nigerian aviation sector.

## 1.8 Literature Review

**Abeyratne**<sup>22</sup> emphasized the importance of law to Aviation Security. He tried to bring to the fore how the American Aviation Sector has seen stringent legal measures since the event of 11 September 2001. He also opined that the issue of state responsibility for private acts of unlawful interference against civil aviation was not a contentious issue until the paradigm shift of 11 September 2001, when terrorists engaged in hijacking aircraft with a view to using them as weapon of mass destruction, causing damage to civilians on ground<sup>23</sup>.

**Frederick**<sup>24</sup> tries to trace the history of aviation security. He also analyzed the conventions and legislations related to aviation security.

Importantly, **Jennifer**<sup>25</sup> posited that screeners who were then hired by the airlines, often failed to detect threat objects located on passengers or in their carryon luggage. She identified principal causes of screeners' performance as rapid turnover and insufficient training. She stated that turnover rates exceeded 100 percent a year at most large airports, leaving few skilled and experienced screeners, primarily because of low wages, limited benefits, and repetitive monotonous work<sup>26</sup>. She also addressed the progress that has been made since

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<sup>21</sup> Kabir A, A. “*Manual for Law Dissertations*” (Clear impressions Ltd, Kano, 2008) p.17

<sup>22</sup> Abeyratne R, *Aviation Security Law op cit*

<sup>23</sup> *ibid*

<sup>24</sup> Frederick C. D. “*Aviation Security*” (Van Nostrand, Reinhold, New York, 1983) p.82

<sup>25</sup> Zellan J. “*Aviation Security: Current Issues and Developments*” (Butterworth-Heinemann, 2006.) p30

<sup>26</sup> US General Accounting Office, *Aviation Security: Long Standing Problems Impair Airport Screeners' Performance*, GAO/RCED-00-75 (Washington, D.C. June 28, 2000) and US General Accounting Office, *Aviation Security: Terrorist Acts Illustrate Severe Weakness in Aviation Security*, GAO-01-1166T. (Washington, D.C., Sept, 20, 20010).

September 11 to strengthen aviation security. The work of these authors serves as a complete guide to the aviation security system, from crucial historical event to the policies and policy makers, and the major terrorist and criminal acts that have shaped the procedures in use today, to the tip-of-the-spear technologies that are shaping the future. Areas focused by the authors include overview of the aviation industry and security in the post-9-11 world, crime and terrorism in aviation, policies and procedures, the role of government in aviation security, commercial aviation airport security, introduction to screening, commercial aviation aircraft operator security, general aviation airport security, general aviation aircraft operator security, air cargo, and countering existing and emerging threats.

**Yonah A. & Eugene S.**<sup>27</sup> These authors apart from analyzing aviation security and airlines, aerial piracy, and international aviation laws, also treated damage resulting from air terrorism criminal liability. They stated that the Warsaw Convention struck a balance between passenger and airline interest by establishing a threshold liability while imposing presumption of liability upon the carrier<sup>28</sup> pursuant to Art. 22 (1) of the Warsaw Convention the carriers liability was limited to 125, 000 Francs (8, 300\$) per person<sup>29</sup> Warsaw Convention (1929) 49 stat. 3000, T.S. 876. (Entered into force, 13<sup>th</sup> Feb., 1933). This threshold was raised by numerous occasions; first it was doubled by the Hague Protocol in 1955.<sup>30</sup> (the Hague Protocol, Article 11 (1955) ICAO Doc 7 632. Entered into force 1 Aug, 1963). The authors also analyzed the Montreal agreement of 1966 and proposed an alternative, based upon state responsibility and involvement.

**Okeke**<sup>31</sup> reviews the salient provisions of the Nigerian Civil Aviation Laws and points out the flaws in them. For instance he pointed out that it is in conformity with ICAO requirement that Nigerian Civil Aviation Authority was established with accompanying National Safety oversight function. This power however cannot and should not be shared with any other parastatals or bodies<sup>32</sup> yet the Act provide to the officer that the Minister shall be responsible for Control and Supervision of Civil Aviation<sup>33</sup>. By extension, the Minister at the request of

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<sup>27</sup> Alexander Y. & Sochor E., “*Arial Piracy and Aviation Security*” (Martinus, Nijhoff Publishers, 2008) p.182

<sup>28</sup> Warsaw Convention, Arts 17-21. It is to be noted however, that since the Montreal Agreement, this presumption of liability has become an absolute liability. Indeed, pursuant to art. 1(2) of the agreement, the carriers agreed to waive the defence that Art. 20(1) of the Warsaw Protocol afforded them in cases where they could prove that they had taken all necessary measures to avoid the damages or that it was impossible for them to take such measures.

<sup>29</sup> *ibid*

<sup>30</sup> *ibid*

<sup>31</sup> Okeke, L.O. “*Nigeria’s New Aviation Laws*” ( A case of Haste in Legislation) at [www.academicjournals.org](http://www.academicjournals.org). accessed 12/05/2013

<sup>32</sup> Art 12,37 and 38 Of the Chicago Convention 1944

<sup>33</sup> Section 1 Civil Aviation Act

the DG NCAA can extend clearance of foreign non scheduled aircrafts flying into and out of Nigeria. This strategy is ultra vires the powers of the Minister under the Act<sup>34</sup> It is worthy of note that recommended practices set forth in each ICAO annex while not mandatory, provide information about what standard should be adhered to in order to ensure aviation safety. The Civil Aviation Act 1990 as the basic Aviation regulation, give the legitimacy to our regulation and hence must be consistent and have an overlapping function with other parastatals. The author calls on the National Assembly to have a second bite at the cherry by making necessary amendments to the legislation.

**Samuel**<sup>35</sup>, in a seminar paper traced the history of International carriage by air. He holds that the Montreal Convention, 1999 heralds the single biggest change in the International liability regime since the diplomatic efforts in the mid 1920's which resulted in the enactment of the Warsaw Convention in 1929 and concludes that there are big changes ahead in the field of aviation law.

**Uwanna**<sup>36</sup>, in his paper discussed insecurity and violence perpetrated by destructive passengers in aircraft. The presenter analyzes the trends of violence on aircrafts and referred to International regulatory (such as the Tokyo Convention, Convention for the Suppression of Unlawful Seizure of Aircraft) regimes for the carriage of destructive persons on board and air carrier, the unlawful seizure of aircraft. He concludes that these Conventions support

**Omoleke**<sup>37</sup>, in his paper examined aviation law with respect to loss of lives and properties. He observed that aviation industries in Africa in general, and Nigeria in particular were grossly underfunded. This gave rise to myriad of problems like lack of cargo screening machines, inadequate security personnel and obsolete navigational facilities among others. He observed that legal policy/reform needs to be complemented with adequate funding, timely release of funds/subventions to all the agencies charged with the responsibility of air transportation and elimination of corrupt practices.

It is stated in The National Aviation Security Policy Strategy and Mode-Specific Plans<sup>38</sup> that the United States lacked a comprehensive national policy and strategy for aviation security prior to September 11, 2001. It further stated that the 9/11 Commission concluded that the

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<sup>34</sup> Ibid Section 76

<sup>35</sup> Samuel I. Carriage of Goods By Air-Post Warsaw.(2007). A seminar paper presented at OAU, Ile Ife.

<sup>36</sup> Uwanna, I. Violence in the Skies: Rights & Liabilities of Air Carriers when dealing with Destructive Passengers (2007). Pg 25

<sup>37</sup> Omoleke, I. I. "Legal Policy & Aviation Industry in Nigeria": Constraints to Optimal Safety of Air Transportation (2012). Vol 4(1).Journal of Public Administration & Policy Research, pp. 9-22, Available at <http://www.academicjournals.org/JPAPR>. Accessed 15th March, 2011

<sup>38</sup> The National Aviation Security Policy, Strategies and Mode-Specific Plans: Background and Considerations for Congress.

terrorist attacks of September 11, 2001, revealed failures of imagination, policy, capabilities, and management by both the Federal Aviation Administration (FAA) and the US intelligence community. The paper revealed that in April 2001, the Federal Aviation Administration issued a strategic plan for civil aviation security titled “A Commitment to Security”. The vision was for the FAA and the US aviation security system to be recognized as the world leader in civil aviation security-identifying and countering aviation-related threats to citizens worldwide<sup>39</sup>. In addition to improving technical capabilities to detect explosives in checked baggage, strategies identified by the FAA included:

- Establishing security screening operations and training standards (which, at that time did not exist) ensuring that Federal Air Marshals were available to protect selected high risk flight, although their numbers had dwindled to 33 at the time of the 9/11 hijacking<sup>40</sup>.
- Ensuring that certified explosives canine teams were available at major US airports and
- Ensuring preparedness and crisis management to respond to incidents that may occur.

**Maccario**<sup>41</sup> on his own part suggests that the detection of threat items like gun, knife, and bomb could not adequately curb insecurity in the aviation sector. He thus tactically suggested the use of what he termed “Behavior Detection” Approach. He called for a better balance between detecting the behavior of individuals with nefarious intentions and detecting the dangerous weapons or explosives through technological means. He stated that video and eye witness accounts of the under wear bomber (Abdulmutallab) behavior and demeanor before he passed through security clearly showed that he was acting extremely nervous.

**Cletus**<sup>42</sup> in their paper examines economic issues underlying the regulation and provision of aviation security. The authors questioned whether the federal role should be restricted to setting and monitoring security standards or whether the role should also include the financing and implementation of security.

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<sup>39</sup> Federal Aviation Administration. A commitment to Security, Civil Aviation Strategic Plan 2001-2004, April 2001, p.3.

<sup>40</sup> National Commission on Terrorist Attacks on the United States; The 9/11 Commission Report. (Authorized Edition) New York, NY: W.W. Norton & Company, p.85’

<sup>41</sup> Maccario C.J., *Aviation Security and Non-verbal Behaviour*. (sage publishers, London, 2012) p.76

<sup>42</sup> Cletus C. C., Jeffrey P. & Khan R., ‘*Aviation Security and Terrorism: A Review of the Economic Issues*’ Working paper 2002-009 A. Available at <http://research.stlouisfed.org/wp/2002/2002-009>. Accessed March 6, 2013.

**Amzat**<sup>43</sup> examines various questions regarding terrorism in Nigeria. In his paper he submits that Nigeria is prone to terrorism either internally or externally motivated.

The **Street Journal**<sup>44</sup> examines how the wave of terror attacks in Nigeria is taking a new turn as an alleged suicide bomber attempts to blow up an Arik airplane flying from Maiduguri to Abuja. The paper also quoted that Arik Air management denied tied the incident saying that the passenger only caused a scare when he started shouting Allah Akbar shortly before the plane landed at the Nnamdi Azikiwe International Airport Abuja.

**Ladan**<sup>45</sup> emphasized that there is loose security at airports in Nigeria. He mentioned the absence of solid perimeter fencing at all the airports in the country as one of the security challenge.

**Umuzurike**,<sup>46</sup> outlined that civil aviation today is mainly regulated by the Chicago Convention of 1944<sup>47</sup>. He stated that the Tokyo Convention on Offences & Acts Committed on Board Aircraft 1963<sup>48</sup> reaffirms the responsibility of the state over crimes committed on board aircraft. The Hague Convention for the Suppression of Unlawful Seizure of Aircraft 1970<sup>49</sup> he said is similar to the previous one but this is primarily directed towards preventing attacks and sabotage of civil aircrafts rather than hijacking. The Montreal Convention for the Suppression of Unlawful Act against Safety of Civil Aviation 1971<sup>50</sup> is also directed towards the punishment of crimes on board aircraft or for actions that damage or interfere with the operation of navigational facilities.

**Shaw**<sup>51</sup> in his book states that the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation 1971 makes it an offence unlawfully and intentionally, inter alia, to perform an act of violence against a person onboard an aircraft; to destroy an aircraft in service or so to damage it as to make flight unsafe or impossible; to destroy damage or interfere with the operation of air navigation facilities or to communicate knowingly false information if this is likely to endanger an aircraft in flight. He stated that the terrorist attacks of the 1970s in particular gave rise to a series of cases, which have

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<sup>43</sup> Jimoh A., “*Nigeria and the Threats of Terrorism: Myth or Reality?*” Volume 10, No 2, 2008. Journal of Sustainable Development in Africa. Available at [www.academia.edu/.../Nig...](http://www.academia.edu/.../Nig...) Accessed March 5, 2013.

<sup>44</sup> The Street Journal: News Admin, October 23 2012. Passenger Escape Death as Boko Haram Attacks Plane Mid-Air.

<sup>45</sup> Ladan S.I., “*An Analysis of Air Transportation in Nigeria*” Vol.10, No 21, 2012. Available at [www.ajol.info/journals/jorind.230](http://www.ajol.info/journals/jorind.230). Accessed March 5, 2013

<sup>46</sup> Umuzurike U. O., “*Introduction to International Law*” (London University Press, 2006).

<sup>47</sup> 15 UNTS 295.

<sup>48</sup> 704 UNTS 219

<sup>49</sup> 22 UST 1641; 10(1971) 133

<sup>50</sup> 10 ILM: 1151

<sup>51</sup> Shaw M. N., “*International Law*” (Butterworth Heinemann, 2006.)

established, for example, that recovery for mental distress arising out of an airplane hijack was possible under the Warsaw Convention as amended by the Montreal Agreement of 1966<sup>52</sup> and that a carrier was liable for injuries to passengers that occurred in a terrorist attack at Hellenickon Airport, Athen, at the departure gate of the terminal<sup>53</sup>.

**Abimbola et al**<sup>54</sup> in their paper trace the origin of terrorism in Nigeria as well as the various terrorist activities that have taken place in the country. The authors also recommended some solutions to the problem.

It is obvious from the foregoing that the viability of aviation sector of every economy has made them attractive to crimes and particularly terrorism which after effect can be more catastrophic than imagined. This review, to reasonable extent has brought to fore, the area of strength as well as the weakness of the Nigerian legal framework and policy strategies in combating aviation crime and ensuring that terrorism does not manifest in the aviation sector. This thesis will explore the legal framework and cover the lacuna in the aviation crimes and terrorism literatures existing in the country.

### **1.9 Organizational Layout**

This research is divided into five chapters. Chapter one traditionally is the general introduction to the thesis; consisting of the background to the study, statement of the problems, the aims and objectives of the research, the research questions and the organizational layout of the thesis. The chapter also contains justification, literature review, scope, and methodology adopted in the course of research.

Chapter two contains the conceptual clarification of some relevant key terms. In it the terms including Civil Aviation, Aviation Security, Aviation Crime and Terrorism and also some notable Aviation Terrorist attacks were portrayed extensively.

Chapter three contains the historical development of Aviation Legislature in Nigeria and also discussed the International Civil Aviation Organization, its Standards, Registered Codes, Membership and finally the regulatory authorities in Aviation in Nigeria.

Chapter four is exclusively reserved for an Appraisal of the Legal Framework in Combating Aviation Crimes and Terrorism attacks in Nigeria, the Aviation Security regimes, their prospects and constraints.

Finally, chapter five contains the Summary of the thesis, Observations, Conclusion and proffered Recommendations.

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<sup>52</sup> *Karysta v. BOAC* 403 F. Supp. 1322 (1975)

<sup>53</sup> *Day v. TWA Inc.* 528 F. 2d 31 (1975), cert. denied 429 US 890

<sup>54</sup> Abimbola, *op'cit*

## CHAPTER TWO CONCEPTUAL CLARIFICATION OF KEY TERMS

### 2.1 Introduction

Further to the hitherto military purpose, aviation has at appropriate times extended to personal and business purposes such as transportation of goods and services with its attendant complex safety and security challenges. Zeroing-in-on civil aviation, this chapter, attempts a conceptual clarification of key terms including aviation, aviation security, aviation crime and terrorism. In the quest to create awareness in the security reality of the aviation industry and hence the desire for preparedness in the industry, effort is made in this chapter to draw attention to notable global aviation crime and terror attacks

### 2.2 Civil Aviation

Air transport facilitating the movement of people, goods and services, is one of the industries that have developed at tremendous pace over the years. It has helped reduced the distance of communities, states and even countries, second only to telecommunication industry. Air transport remains an important aspect of economic development credited globally for its influence in gauging development.<sup>55</sup> Notwithstanding the challenges in aviation industry, there are over two thousand (2,000) airlines operating more than twenty-three thousand (23,000) aircrafts that serve about three thousand seven hundred (3,700) airports around the world.<sup>56</sup>

In Nigeria, the first commercial flight was recorded in 1935. From this year, as a result of series of economic activities, in particular, oil industry business, the industry has been witnessing tremendous patronage.<sup>57</sup> In 2010, the International Aviation Safety Assessment (IASA) in United States Federal Aviation Administration (FAA) certifies Nigeria aviation with category 1 status because of the high performance in the transport sector (aviation industry).<sup>58</sup> Following this rating Nigerian air safety got the enhancement that put the country in the perimeter league of nations that are highly rated in air transport.<sup>59</sup> It became obvious that the growth in aviation cannot be matched by any other transport units (road, rail and water) due to its unique technical skills and new innovations. Such rapid growth makes it obvious that the industry is the gateway to any economy aspiring to develop, enable

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<sup>55</sup> Abeyratne *op'cit*

<sup>56</sup> Aerospace Global Report, 2011

<sup>57</sup> Filani M. O., *Air Transport Development and Traffic Trends* (Ibadan, Macmillan, 1986) 58

<sup>58</sup> *ibid*

<sup>59</sup> Thisday Newspaper. United States Federal Aviation Authority Air Transport: FAAAT to Visit Nigeria for Category 1 Safety Assessment. Thursday 16 October, 2014. By Chinedu Eze

globalization, to facilitate trade, tourism and promote foreign direct investment (FDI).<sup>60</sup> It is on record that air transportation in Nigeria has gainfully employed about 159,000 indigenes and foreigners. Civil aviation contributes over 4% of Nigerian GDP.<sup>61</sup>

These and many more are clear reasons for the Nigerian government to strive and ensure that safety is guaranteed at airports. The civil aviation industry is not like its military counterpart whereby access is restricted; in the vicinity of civil aviation, there are hardly restrictions as it is usually a beehive of commercial activities. Thus the airport authorities, airlines and governmental agencies are to be constantly aware of these complexities in their duties to keep the airports safe.

### **2.3 Aviation Security**

Considering the socio-economic attraction of the air travel business, the need for provision of quality security outfit in the aviation industry cannot be overstressed. Historically, aviation security had been provided by the three major partners in the air transport system; airlines, airports and Air port Authorities.<sup>62</sup> The airlines are responsible for screening of passengers and luggage. They usually do these by providing trained screeners and appropriate gadgets at security check points. The airports on their own part provides the general security in the airport vicinity, including exterior packing areas, airport perimeters and the interior areas up to the security check points. While the government agency such as FAAN as in the case of Nigeria, is responsible for provision of threat information, establishing security policies, regulations and protocols. The government agency also conducts security audits of airlines and airports; supporting research and development of security technology and overseeing the installation of security equipments and devices in airports.<sup>63</sup>

This division of duties and responsibilities among stakeholders and authorities of the aviation sector has always been in place but the ugly incidence of crime and even terrorism keep recurring. This buttresses the point that providing aviation security is a difficult and complex task. This complexity as shall be examined in subsequent chapters ranges from human rights challenge, through lack of sophisticated gadgets and trained personnel to corruption and general lack of political will on the part of government.

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<sup>60</sup> Ladele M., "What Are the Impacts of FDI Inflow on Economics Growth of Emerging economics"? (A look at BRICS)," *M.Sc. Thesis*, submitted to the department of Economics, University of Hulls, UK.(2012)

<sup>61</sup> Oxford Economics Brochure (2012), Economics Benefits from Air Transport in Nigeria.  
<http://www.oxfordeconomics.com/my-oxford/projects/129034> 19 September, 2014

<sup>62</sup> Coughlin *et al*, *op'cit*

<sup>63</sup> See Part 11, particularly Section 4 of the FAAN Act, Cap. F5 LFN 2004.

## 2.4 Aviation Crime and Terrorism

Aviation, especially the international air transport aspect, has become one of the marvels of our generation. It tends to make the world smaller by conquering distance and time. Everyone around the world is fast becoming a neighbor. This is a significant contribution to global economy.<sup>64</sup> Unfortunately however, smart criminal minds have capitalized on this global attracting speed of the air transport to perpetuate trans-boarder crimes of drug trafficking, human trafficking, arms peddling, and worse of all, terrorism which modern trend has damaged global peace.

Apart from crimes of drug, human trafficking, arms peddling, robbery and stealing of valuables, Nigeria had only stared on terrorism from afar until recently, when Boko Haram made terrorism a reality in Nigeria. Aviation terrorism may have not happened to Nigeria, but with the involvement of Muttalab,<sup>65</sup> it became obvious that it can happen anywhere and by anybody, including Nigerians.

It should be noted fearfully that from the starting date of modern aviation terrorism, 22 July, 1968<sup>66</sup> till the most notorious date of 9/11, airplane hijacking were for specific goals politically pressurizing opponent and using the incident as a propaganda message to bring a political cause to the world's notice; and typically seizing an airliner, high jacking to a safe airport and issuing demands of political nature under threat of execution of hostages thereby achieving *de-facto* form of recognition.<sup>67</sup> But in recent times, the dynamics aviation crime, especially terrorism are being perpetuated by suicide pilots and instead of used as leverage for negotiation or as platform for putting forward demands, the airlines are now used for annihilation/destruction and as a weapon used in destroying other targets not minding the lives on board.<sup>68</sup> The 9/11 incident remains notorious as the culminating mega terrorist attack within this category, the capture of four passenger airlines on 11<sup>th</sup> September, 2001 and their subsequent use as cruise missiles against targets in Washington DC and New York City. Since this incident, security measures at the airport have been heightened. It should be noted with caution however that in spite of this safety measures and introduction of appropriate technologies, the threat of aviation terrorism has not decreased. An eloquent testimony to this

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<sup>64</sup> Akyantne *op'cit*

<sup>65</sup> mutallab *op'cit*

<sup>66</sup> Bruce H., *Terrorism: The Insight* (Moscow, 2003) 77.

<sup>67</sup> Arasly J., Paper Presented to a Meeting of the Combating Terrorism Working Group of PFP Consortium, Sarajevo, February, 2014.

<sup>68</sup> Kozhushko E., *Modern Terrorism; An Analysis of Modern Trends* (Moscow, Harvest, 2000) 330

fact is I the information that has been gathered about Al-Qaeda operatives' testing of innovative techniques of seizing and high jacking airplanes aiming to actualize in practice, a form of *kamikaze* (airplane as delivery device and the suicide pilot as guidance unit)<sup>69</sup> that is why it is not surprising today to see SAM firing unit and radar arrays in capitals around the world, from Washington to Colombo to thus protect key government facilities against 'uninvited guests',<sup>70</sup>

The safety question remains whether Nigeria is aware of this testimony. Nigeria is a country where stowaways have always had their ways into the various airports. This has already created the impression that criminal minds and even suicidal terrorists can take advantage of these lapses. To keep surviving the threat of terrorism in our airports requires a-round-the-clock vigilance with cutting edge technology and personnel who are being updated and developed on timely bases as regards the techniques of modern crimes and terrorism constantly threatening the aviation industry.

### **2.5.1 Global Aviation Crime and Terrorism incidents**

Protecting the aviation sector demands high level of vigilance because a single lapse in aviation security can result in hundreds of deaths, destruction of equipment worth hundreds of millions of dollars. It also has immeasurable negative impacts on the economy and the public's confidence in air travel<sup>71</sup>. The terrorist attacks exploiting weaknesses in U.S. aviation security on September 11, 2001 did indeed produce the catastrophic results identified earlier.<sup>72</sup> Immediately after the attacks, security issue in the aviation sector attracted premium attention worldwide.

If airplanes and passengers, as well as property and people on the ground, are to be protected, potential perpetrators of aviation terrorism must be prevented from breaching security check points and gaining access to "secure" airports areas and aircrafts. Given the inter connectedness of the air transportation system; Flexibility to respond quickly to new information about aviation security threat is veritable. It is equally vital that incentives must be offered to the regulators and security providers so that aviation security and improvements can be devised and implemented.

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<sup>69</sup> Gunaratna R., "Al-Qaeda Adapts to Disruption" *Intelligence Review* (February, 2004)

<sup>70</sup> Arasly *op;cit*

<sup>71</sup> See Cletus C. C., *et'al*, *Aviation Security and Terrorism*: available at [www.research.stlouisfed.org](http://www.research.stlouisfed.org). Accessed 22/10/13.

<sup>72</sup> Visit [www.9-11commission.gov](http://www.9-11commission.gov). accessed 13/8/13

Living with the ever-present risk of security attacks by terrorists and extremists is one of the many challenges facing the aviation industry in the 21<sup>st</sup> century. The need for security has not changed but the level at which it is required has increased dramatically in line with the perceived threat of attack on air transportation and the resultant legislation that has been introduced in most countries to tackle that risk. At the same time, travelers are becoming more demanding and less forgiving; whilst they expect high security standards, they don't want to be delayed at the check-in desk or spend hours waiting for long security queues. It's a difficult balance to strike, but a challenge that the industry has to tackle head on.

## **2.6. Notable Aviation Terrorist attacks:**

Terrorism as an independent and self-reproducing socio-political phenomenon of violence can be seen throughout the history of human civilization. However, in the twenty-first century, it has evolved into a major geopolitical factor, capable of causing a systemic crisis at the global level. Some of the distinctive (albeit not unique) characteristics of modern terrorism-also labeled” international terrorism,”<sup>73</sup> Some of the trends in modern time terrorism are as follows:

- Qualitative change of content;
- Shift to a strategic approach and a particular type of warfare;
- Perpetual reproduction and build-up;
- Transformation into mass movements;
- Permanent dynamics;
- Increasing importance of non-state actors;
- Growing professionalization;
- Escalation of technological sophistication;
- Weapons of mass effect, techno-terrorism;
- Increase reliance on information technologies and networks.

The above- mentioned elements make it possible to identify the overall scope of a modern global process that some politicians and experts in terrorism are referring to as “World War Four.”<sup>74</sup>

It should be noted that the conflict outlined above is closely connected to another no less significant and all-encompassing phenomenon-the process of globalization. It's most crucial aspect even more than the revolution in information technologies is the spread of the “transportation revolution” around the world, which paves the way for the rapid and free

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<sup>73</sup>Jangir A, *Combating Terrorism*: Works Group of the PEP“Paper Presented at Consortium Sarajer” February 2004

<sup>74</sup> Aras J., *World War Four; Non-Governmental Systems* (Sada Publishing House, Baku, 2002) p.6

movement of people, commodities, and services on a global scale. Regretfully, this positive tendency also has negative side. By virtue of its functional significance and vulnerability, civil aviation is increasingly becoming the focus of operational activity of different terrorist structures.

It should be noted that the appearance of terrorism has practically concurred with the rise of aviation as a mode of transportation. The first registered incident of aviation terrorism dates back to 1930, when Peruvian insurgents seized an airplane to scatter Propaganda leaflets<sup>75</sup>. But this practice did not become customary in the subsequent four decades, primarily owing to the effect of global factor such as World War II

The start date of modern aviation terrorism, as we see it now, is 22 July 1968, when three gun men from the notorious Front for the liberation of Palestine (PFLP) hijacked a passenger airliner of the Israeli airline El Al on a flight from Rome to Tel-Aviv, and demanded to exchange hostages for their comrades-in-arms who were imprisoned in Israel<sup>76</sup>.

Over the years, there have been a number of aviation terrorist attacks all over the globe. Some of the prominent ones that involved huge loss in human life and economic havoc are discussed in the subsequent section as follows.

### **2.6.1 Cubana Flight 455**

Cubana de Aviacion Flight 455 was a Cuban flight from Barbados to Jamaica that was brought down on October 6, 1976 by a CIA-sponsored terrorist attack. All 78 people on board the Douglas DC-8 aircraft were killed in what was then the deadliest terrorist airline attack in the western Hemisphere<sup>77</sup>. Two time bombs were used, variously described as dynamite or C-4.

General CIA- linked anti-Castro Cuban exiles and members of the Venezuelan secrete police DSIP were implicated by the evidence. Political complications quickly arose when Cuba accused the US government of being an accomplice to the attack. CIA documents released in 2005 indicate that the agency “had concrete advance intelligence, as early as June 1976, on plans by Cuban exile terrorist groups to bomb a Cuban airliner”. Former CIA operative Posada Carriles denies involvement but provides many details of the incident in his book “Ways of The Warrior”<sup>78</sup>

Eleven minutes after takeoff from Barbados Seawell Airport (now Grantley Adam International Airport) and at an altitude of 18,000 feet, two bombs exploded on board. One

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<sup>75</sup>Gubavev O., *Secrets of Air Terrorism*.(Veche Publishers, Moscow, 2002) p.77.

<sup>76</sup>Bruce H., *Terrorism; The Insight*(Veche Publishers, Moscow, 2003) p.72

<sup>77</sup>Available at [www.globalsearch.ca/cubanna-thigh-455](http://www.globalsearch.ca/cubanna-thigh-455). accessed 2/2/14

<sup>78</sup>See the confession of posada carriles. Available at [www.voltairenet.org/theconfession](http://www.voltairenet.org/theconfession) of... accessed 15/2/13

was located in the aircraft's rear lavatory, and another in the midsection of the passenger cabin. The former ultimately destroyed the aircraft's control cables while the later blasted a hole in the aircraft and started a fire.<sup>79</sup>The plane went into a rapid descent, while the pilots tried unsuccessfully to return the plane to Seawell Airport.<sup>80</sup>

The captain, Wilfredo Perez Perez, radioed to the control tower; "We have an explosion on board, we are descending immediately... We have fire on board! We are requesting immediate landing! We have a total emergency!" Realizing a successful landing was no longer possible, it appears that the pilot turned the craft away from the beach and towards the Caribbean Sea off porters St James, saving the lives of many tourists. This occurred about eight kilometers short of the airport, all the 73 passengers and 5 crew members aboard the plane died: the passengers comprised 57 Cubans, 11 Guyanese, and five North Koreans<sup>81</sup>.Among the dead were all 24 members of the 1975 National Cuban fencing team that had just won all the gold medals in the Central American and Caribbean Champions; many were teenagers. Several official of the Cuban government officials were also aboard the plane. Manuel Permuy Hernandez, director of the National Institute of Sports ; Jorge de la NuezGuarez, secretary for the shrimp fleet; Alfonso Gonzalez, National Commissioner of fire arm sports; and Domingo Chacon Coello, an agent from the Interior Ministry<sup>82</sup>. The 11 Guyanese passengers included five travelling to Cuba to study medicine<sup>83</sup> and the young wife of a Guyanese diplomat. The five Koreans were government officials and a camera man. Hours after the explosions, Trinidad authorities arrested Freddy Hugo and Herman Ricardo Lozano, two Venezuelan men who had boarded the plane in Trinidad and checked their baggage to Cuba, but who had exited the plane in Barbados and flown back to Trinidad. Lozano had been travelling with a false identity under the name of Jose Vazquez Garcia<sup>84</sup>.Lugo and Lozeno confessed, and declared they were acting under the orders of Luis Posada Carriles, a CIA operative. Their testimony, along with other evidence, implicated Posada and fellow CIA operative. Orlando Bosch, an anti- Castro Cuban living in Venezuela. On 14 October 1976, Posada and Bosch were arrested in Caracas, Venezuela, and the offices of Investigaciones Comerciales Industriales C.A. (ICICA), a private investigator's company

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<sup>79</sup>Philips D. E.*Security and Terrorism in the Caribbean*: available at [www.emeraldinsight.com/.../1572](http://www.emeraldinsight.com/.../1572). accessed 15/2/14

<sup>80</sup> Staff writer " *Ex-Airport Boss recalls Cubana Crash*". Nation Newspaper, v 26 September,2010.accessed 16 October 2011.

<sup>81</sup>*op'cit* at pg 42

<sup>82</sup> In 2005, the U S ignored Costa Rica proposal to extradite Bosch.availableat [www.dominican today.com/us-cr/extradi..](http://www.dominican today.com/us-cr/extradi..) accessed 22/6/2013

<sup>83</sup>*ibid*

<sup>84</sup>*op'cit*

owned by Posada, were raided. Weapons explosives and a radio transmitter were found. Lozaro was an employee of ICICA at the time of the attack, while Lugo worked as a photographer for the Ministry of Mines and Hydrocarbons. On October 20, authorities of Trinidad, Cuba, Barbados, Guyana and Venezuela held a meeting in Port of Spain during which the decision was taken to hold the trial in Venezuela, since the four accused were citizens of the country.

### **2.6.2. Air India Flight 182:**

Air India Flight 182 was an Air India flight operating on the Montreal-London Delhi route. On 23 June 1985, the aircraft operating on the route—a Boeing 747-237B (c/n 214B/330 reg. VEFU)—was blown up by a bomb at an altitude of 31,000 feet (9,400m). It crashed into the Atlantic Ocean while in Irish airspace.<sup>85</sup> A total of 329 people were killed, including 268 Canadians, 27 British citizens and 24 Indians.<sup>86</sup> The incident was the largest mass murder in Canadian history and the deadliest aviation disaster to occur over a body of water. It is also the worst disaster in India aviation history, and worst aviation disaster in Irish territory<sup>87</sup>.

On 22 June 1985, at 13:30 GMT, a man calling himself “Manjit Singh” called to confirm his reservation on Air India Flight 181/182. He was told he was still wait-listed, and was offered alternative arrangements which he declined. At 15:50 GMT (7:50am), M. Singh checked into a busy line of 30 people for the CP flight from Vancouver to Toronto, which was scheduled to leave at 9:18am. He asked agent Jeannie Adams to check his dark brown, hard-sided Samsonite suitcase, and have it transferred to Air India Flight 181 and then to Flight 182 to India. The agent initially refused his request to inter-line the baggage since his seat from Toronto to Montreal and from Montreal to Bombay was unconfirmed. He insisted, but the agent again rebuffed him, telling him “your ticket doesn’t read that you are confirmed” and “we’re not supposed to check your baggage though.” The man said “Wait, I’ll get my brother for you.” As he started to walk away, she relented and agreed to accept the bag, but told him he would have to check in again with Air India in Toronto. After the crash, Adams would realize this deception got the bag on its way to Flight 182. The anxious man was never identified<sup>88</sup>

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<sup>85</sup> Peter W. “Pilot was snoring before Air India Crash” (The Guardian, US, 17<sup>th</sup> November, 2010).

<sup>86</sup> “The Victims” Canadian Broadcasting Corporation, 16 March 2005. Archived from the original on 4 July 2010. accessed 24 June 2010

<sup>87</sup> See *Thisday in History: 23 June, 1985* (The Sun, 23<sup>rd</sup> June, 2012, Vancouver)

<sup>88</sup> “Agent recalls checking fateful Air India bag” CBCnews.com. Retrieved 25 June, 2010.

Canadian Pacific Air lines Flight 60 to Toronto Pearson International Airport departed without Singh.<sup>89</sup> Sometime before 20:22 GMT (1:22pm), L. Singh (also never identified) checked in for the 1:37 CP Air Flight 003 to Tokyo with one piece of luggage, which was to be transferred to Air India Flight 301 to Bangkok.<sup>90</sup> However, L.Singh, did not board the flight.<sup>91</sup> At 20:22 GMT, Canadian Pacific Airlines Flight 60 arrived in Toronto with twelve minutes late. Some of the passengers and baggage, including the bag Singh had checked in, were transferred to Air India Flight 182. In response to threats from Sikh activists leading Canada to assign extra policemen in terminals in Toronto and Montreal, and all baggage was to be checked by X-ray or by hand<sup>92</sup>, but after the x-ray machine broke down that day, inspectors used a portable PDD-4 explosive sniffer. Between 5:15 and 6:00, the sniffer was heard to beep at a soft-sided maroon suitcase with a zipper going all around; it beeped in a low volume near the zipper lock. But Air India was not informed since checkers were not instructed on how to react to only a short beep, and they allowed the bag pass on its way. Later investigation would determine that the two containers that could have contained M.Singh's bag were placed close to the sensitive electronic bay of the aircraft.<sup>93</sup>

At 00:15 GMT on 23 June, Air India Flight 181, a Boeing 747-237B named "Emperor Kanishka" departed Toronto Pearson International Airport for Montreal- Mirabel International Airport. The plane arrived in Montreal-Mirabel International Airport at 01:00 GMT. There, it became Flight 182. Departing for London at Heathrow Airport, enroute Pakun International Airport, Delhi, and Sahar International Airport, Bombay, 329 people 22crew., Captain Hanse Singh Nanendra served as the commander,<sup>94</sup> with captain Satwinder Singh Bhinder as the flight officer<sup>95</sup> and Dara Dumasia as the flight engineer<sup>96</sup>. Many of the passengers were going to visit families and friends<sup>97</sup>. At 07:14:01 GMT, the crew of the Boeing 747 "squawked 2500"<sup>98</sup> (a routine activation of its aviation transponder) as requested by International Airport Air Traffic Control (ATC), then disappeared.

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<sup>89</sup>Summers C., "Deadly puzzle remains a misery" BBC. Archived from the original on 1 July 2010. accessed 24 June 2010.

<sup>90</sup> CBC News online March 15, 2005" Canadian Broadcasting Corporation. accessed 19 February 2011.

<sup>91</sup>*ibid.*

<sup>92</sup> New York Times 24 June, 1985.

<sup>93</sup> 9/11 Explosive Evidence Expert Speak *op'cit*

<sup>94</sup> "Keel P *et'al*" *Jumbo crashes killing 325*". The UK Guardian, 24/6/1985

<sup>95</sup> The Tribune (India), Associated Press. 28 October, 2000

<sup>96</sup> Special Report: *Air India Flight 182*". Archived from the original on 7 October 2009, accessed 16 September 2009

<sup>97</sup>*ibid*

<sup>98</sup> "CVR transcript, Air India Flight 182-23" <http://aviation-safety.net/index.php>. aviation safety network. accessed 21 July 2008

A bomb in a Sanyo tuner<sup>99</sup> in a suitcase in the forward cargo hold had exploded while the plane was at 31,000 feet (9,400m) at 51° 3.6 N 12° 49'.<sup>100</sup> It caused rapid decompression and break-up the aircraft in mid-air. The wreckage settled in 6,700 feet (2,000m) deep water off the South-west Irish coast, 120 miles (190km) offshore of country Cork.

The second bag, checked in by L. Singh went on Canadian Pacific Air Lines Flight 003 from Vancouver to Tokyo. There were no x-ray inspections of luggage on this flight.<sup>101</sup> Its target was Air India Flight 301, due to leave with 177 passengers and crew bound for Bangkok-Don Mueang, but 55 minutes before the Flight 182 bombing, it exploded at the terminal in Narita Airport. Two Japanese baggage handlers were killed and four other people were injured<sup>102</sup>. Investigation and prosecution lasted many years, making this the most expensive trial in Canadian history. It cost nearly CAD \$130 million. Canadian law enforcement determined that the main suspects in the bombing were members of the Sikh militant group Babbar Khalsa and their related groups based in Canada. Though a handful of members were arrested and tried, Inderjit Singh Reyat, a Canadian resident, was the only person convicted of involvement in the bombing and thus sentenced to 15 years in prison for manslaughter in 2003.<sup>103</sup>

### **2.6.3. Pan Am Flight 103**

A Pan Am Trans Atlantic flight from Frankfurt to Detroit via London and New York City was destroyed by a terrorist bomb on Wednesday, 21 December 1988, killing all 243 passengers and 16 crew on board<sup>104</sup>. Large sections of the aircraft crashed into Lockerbie, Scotland killing 11 more people on the ground. On 5 December 1988 (16 days prior to the attack), the Federal Aviation Administration (FAA) issued a security bulletin saying that on that day, a man with an Arabic accent had telephoned the U.S Embassy in Helsinki, Finland, and told them that a Pan Am Flight from Frankfurt to the United States would be blown up within the next two weeks by someone associated with the Abu Nidal Organization; he said a Finnish woman would carry the bomb on board as an unwitting Courier.<sup>105</sup> The anonymous warning was taken seriously by the U.S Government, and the State Department cabled the bulletin to dozens of embassies. The FAA sent it to all U.S carriers including Pan Am, which

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<sup>99</sup> Vancouver, “*The Portrait of a Bomber*” [www2Canada.com/vancouverUN/features/airindia..](http://www2Canada.com/vancouverUN/features/airindia..) accessed 18 June 2010

<sup>100</sup> *ibid*

<sup>101</sup> *ibid*

<sup>102</sup> “The Tribune (India), 26 November 2003. Archived, accessed 24 June 2010

<sup>103</sup> Dowd A., “*Canadian convicted of lying in Air India Bomb Case*”, Reuters Sept 18, 2010. accessed 19 February, 2011.

<sup>104</sup> “See CNN Report at [www.cnn.com/.../pan-am-flight...](http://www.cnn.com/.../pan-am-flight...) accessed 20/03/13.

<sup>105</sup> Available at [www.trackingterrorism.org/.../abudinnal.html](http://www.trackingterrorism.org/.../abudinnal.html) accessed 20/03/14

had surcharged each of the passengers a \$5 security levy, promising a “Program that will screen passengers, employees, airport facilities, baggage’s and aircraft with unrelenting thoroughness”<sup>106</sup> the security team in Frankfurt found the warning under a pile of papers on a desk the day after the bombing.<sup>107</sup> One of the Frankfurt security screeners, whose job was to spot under X-ray, told ABC News that she had first learned what Sentex (a plastic explosive) was during her ABC interview 11 months after the bombing.<sup>108</sup>

On 13 December, the warning was posted on bulletin boards in the U.S Embassy in Moscow and eventually distributed to the entire American community there including journalists and business men. As a result, a number of people allegedly booked flights with carriers other than Pan Am, leaving empty seats on PA 103 that were later sold cheaply in “bucket shops”. Just days before the sabotage of the aircraft, security forces in a number of European countries, including the UK, were put on alert after a warning from the Palestine Liberation Organization (PLO) that extremists might launch terrorist attacks to undermine the ongoing dialogue between the United States and the PLO.<sup>109</sup> The aircraft operating Pan Am Flight 103 was N739PA, a Boeing 747-121 named Clipper Maid of the Seas.<sup>110</sup> The jumbo jet was the fifteenth 747 built and was delivered in February, 1970.<sup>111</sup>

One month after the first 747 entered service with Pan Am.<sup>112</sup> In 1988, it had undergone a complete overhaul. The Clipper Maid of the Seas operated the Trans Atlantic leg of flight 103, which had originated in Frankfurt, West Germany, on Boeing 727. At London Heathrow, passengers and their luggage on the feeder flight transferred directly onto the Boeing 747, along with unaccompanied interline luggage. The aircraft pushed back from the terminal at 18:04 and took off from runway 27R at 18:25 en route for New York JFK. The Clipper Maid of the Seas approached the corner of the Subway first at 19:01 and crossed the coast at 19:02 UTC. At 18:58, the aircraft established two-way radio contact with Shan wick Oceanic Area Control in Prestwick on frequency 123.95 MHZ. At 19:02:44, the clearance delivery officer at Shan wick transmitted its oceanic route clearance. The aircraft did not acknowledge this message. The Clipper Maid of the Seas “squawk” then flickered off. Air traffic Control tried to make contact with the flight, with no response. It was at this time that a loud sound was recorded on the cockpit voice recorder (CVR) at 19:02:50. Five radar

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<sup>106</sup>The Independent, 29 March 1990.

<sup>107</sup>Cox M. and Foster T. (1992). *Their Darkest Day; The Tragedy of Pan Am 103*, ISBN 0-8021-1382. P.6

<sup>108</sup>Prime Time Live, November 1989

<sup>109</sup>Elliot H. “ UK’s Worst Air Disaster” *The Times*, (London). Retrieved 31 October 2009

<sup>110</sup>See Lockerbie Disaster. Available at [www.dailymotion.com](http://www.dailymotion.com) accessed 18/10/14.

<sup>111</sup> Cody E., “Pan Am Jet crashes in Scotland, killing at least 273”. *The Washington Post*. accessed 21 May 2010

<sup>112</sup>*ibid* at pg 38

echoes fanning out appeared, instead of one.<sup>113</sup> Comparison of the cockpit voice recorder to the radar returns showed that, eight seconds after the explosion, the wreckage had a 1-nautical-mile (1.9 km) speed.<sup>114</sup>

A British Airways pilot, flying the Glasgow London shuttle near Carlisle, called Scottish authorities to report that he could see a huge fire on the ground.<sup>115</sup> Following three-year joint investigation by Dumfries and Galloway Constabulary and the U.S. Federal Bureau of Investigation arrest warrants were issued for two Libyan nationals in November 1991. In 2001, Libyan intelligence officer Abdelbaset al-Megnahi was jailed for the bombing. In August 2009, he was released by the Scottish government on compassionate grounds after being diagnosed with Prostate cancer. He died in May 2012, remaining the only person to be convicted of the attack.

In 2003, Gadaffi accepted responsibility for the Lockerbie bombing and paid compensation to the families of the victims, although he maintained never having given the order for the attack<sup>116</sup>. During the Libyan civil war, in 2011, a former government official contradicted Gadaffi claiming that the Libyan leader had personally ordered the bombing<sup>117</sup>. Despite these assertions, numerous conspiracy theories have developed regarding responsibility for the destruction of Pan Am Flight 103. Till date, in the United Kingdom; it remains the deadliest aviation incident, as well as the deadliest act of terrorism.

#### **2.6.4. The Lod Airport Massacre.**

The Lod Airport massacre<sup>118</sup> was a terrorist attack that occurred on May 30, 1972, in which three members of the Japanese Red Army recruited by the Palestinian group called the popular Front for the Liberation of Palestine-External Operations (PFLP-EO)<sup>119</sup>, attacked Tel Aviv's Lod airport (now Ben Gurion International Airport), which killed 26 people and

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<sup>113</sup>“Lockerbie Accident Investigation.” Dnausers.d-n-a.net. Retrieved 5 June 2010

<sup>114</sup> “AAIB report on the Boeing 747-121 accident, N739 PA at Lockerbie, Dumfresshire, Scotland on 21 December 1988”

<sup>115</sup>The Guardian (UK). accessed 8 September 2014

<sup>116</sup> Colonel Kaddafi “ordered Lockerbie bombing” BBC NEWS.23 February 2011.

<sup>117</sup>*ibid*

<sup>118</sup>“This week in History” on the Lod Airport Massacre, but ‘Jerusalem post’. Available [www.jpost.com/.../thisweek-in-history-accessed](http://www.jpost.com/.../thisweek-in-history-accessed) 11/7/13.

<sup>119</sup>*Ibid*

injured 80 others.<sup>120</sup> Two of the attackers were killed, while Kozo Okamoto was captured after being wounded.<sup>78</sup>

At 10pm the attackers arrived at the airport aboard an Air France flight from Rome.<sup>121</sup> Dressed conservatively and carrying slim violin cases, they attracted little attention. As they entered the waiting area, they opened up their violin cases and extracted Czech Vz 58 assault rifles with the butt stocks removed. Immediately afterwards, they began to fire indiscriminately at airport staff and visitors, which included a group of pilgrims from Puerto Rico, tossing grenades as they changed magazines. Yasuda was shot dead by one of the other attackers, and Okudaira moved from the airport building into the landing area, firing at passengers disembarking from an E1 A1 aircraft before being killed by a prematurely exploded grenade. Okamoto was shot by security, brought to the group by an E1 A1 employee, and arrested as he attempted to leave the terminal.<sup>122</sup> The dead comprised seventeen Christian pilgrims from Puerto Rico, a Canadian citizen, and eight Israelis including Professor Aharon Katzir an internationally renowned protein bio-physicist, whose brother Ephraim Katzir, was elected President of Israel the following year.

Because airport security was focused on the possibility of a Palestinian attack, the use of Japanese attackers took the guards by surprise. The attack has often been described as a suicide mission, but it has also been asserted that it was the outcome of a larger operation (The particulars of which remain unpublicized) that went away. The three perpetrators; Okamoto, Tsuyoshi Okudaira and Yasuyuki Yasuda- had been trained in Baalbek, Lebanon; the actual planning was handled by Wadie Haddad (Abuttai), head of PFLP External Operations with some input from Okamoto.<sup>123</sup> In the immediate aftermath, news magazine Der Spiegel speculated that funding had been provided through the \$5m ransom paid by the West German government in exchange for the hostages of hijacked Lufthansa Flight 649 in February 1972.<sup>124</sup>

### **2.6.5. Philippine Airlines Flight 43k:**

Philippine Airlines Flight 434 (PAL 434, PR 434) was the route designator of a flight from Ninoy Aquino International Airport, Pasay City, the Philippines, to New Tokyo

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<sup>120</sup> 246. "In what became known as the Lod Airport Massacre, three members of the terrorist group, Japanese Red Army, arrived.

<sup>121</sup> John F. "Fate of 5 Terrorists Hangs Between Japan and Lebanon". The York Times, 13<sup>th</sup> July, 2011.

<sup>122</sup> Schweiber M. "Shocking Crimes of Postwar Japan" (Tuttle publishing). see also Burleigh M. "Blood and Rage; a Cultural History of Terrorism, Harper Perennial P161.

<sup>123</sup> W. David "Interview: Dr Patricia Stein hoff 4". Neo.japonisme. accessed February 20, 2013.

<sup>124</sup> see Skyjack-Aviation Terrorism Research. Available at [www.skyjack.co.il/chronology/](http://www.skyjack.co.il/chronology/)... Accessed 13/6/2013

International Airport (now Narita International Airport), Narita near Tokyo, Japan, with one stop at Mactan-Cebu International Airport, Cebu, the Philippines. On December 11, 1994 the Boeing 747-283B, tail number E1-BWF, was flying on the second leg of the route from Cebu to Tokyo, when a bomb planted by terrorist Ramzi Yousef exploded, killing one passenger and damaging vital control systems. It was a part of the unsuccessful Bojinka terrorist attacks. 57-year old Captain Eduardo Reyes<sup>125</sup> an experienced pilot, was able to land the aircraft, saving the plane and all the remaining passengers and crews<sup>126</sup>

Yousef boarded the aircraft for the Manila to Cebu leg of the flight. After the plane was airborne, he went into the lavatory with his dope kit in hand and took off his shoes to get out the batteries, wiring and spark source hidden in the heel (below a level where metal detectors in use at the time could detect anything). Yousef removed an altered Casio digital watch from his wrist to be used as a timer, unpacked the remaining materials from his dope kit, and assembled his bomb. He set the timer for four hours later, which was approximately the time at which the plane would be far out over the ocean en route to Tokyo, put the entire bomb back into his doppel kit and returned to his current seat. After asking a flight attendant for permission to move to seat 26k, saying he could get a better view from that seat, Yousef moved to that seat and tucked the assembled bomb into the life vest pocket under that seat. He exited the aircraft in Cebu<sup>127</sup>. Philippine domestic flight attendant Marina dela Cruz noticed that Yousef had switched seats during the course of the Manila to Cebu flight and got off the plane in Cebu with the rest of the domestic flight crew, but did not pass the information along to the international flight crew that boarded at Cebu for the trip to Tokyo. 25 other passengers also got off the plane at Cebu, where 256 more passengers and a new cabin crew boarded the plane for the final leg flight to Tokyo.<sup>128</sup>

After about 38 minutes delay the flight took off with a total of 27 passengers on board and 24- year old Haruki Ikegami, a Japanese industrial sewing machine maker returning from a business trip to Cebu, occupying 26k<sup>129</sup> four hours after Yousef planted his bomb, the device exploded underneath Ikegami, killing him and injuring an additional 10 Passengers in adjacent seats in front and behind seat 26k.<sup>130</sup> Fortunately, this particular 747, formerly operated by Scandinavian Airlines, had a different seating configuration and seat 26k was

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<sup>125</sup>PAL ICCT 12-Anoomi-online. At [www.anoomi.com/index.php?action...](http://www.anoomi.com/index.php?action...) Accessed 16/8/2013

<sup>126</sup> *ibid*

<sup>127</sup>Simon Reeve published the book “*The New Jackals*” which popular views hold to be tragically prophetic of the 9/11 terrorism incidents in America. See [www.amazon.co.uk/dp/0233050485](http://www.amazon.co.uk/dp/0233050485). accessed 22/3/13UPNE. p.79.

<sup>128</sup> *op'cit*

<sup>129</sup> *ibid*

<sup>130</sup> *ibid*

two rows forward of the centre fuel tank so that the hole in the floor punched through to the cargo hold instead and spared the plane from fiery explosion<sup>131</sup>.

After the blast, Reyes asked Dador to survey the blast site to check for damage. Reyes placed the May Day call requesting landing at Naha Airport, Okinawa Prefecture.<sup>132</sup> The Japanese air traffic controller experienced difficulty in trying to understand Reye's request, so an American air traffic controller from a United States military base on Okinawa took over and processed Reye's landing.<sup>133</sup> The auto pilot had stopped responding to Reye's command and the aircraft flew past Okinawa.<sup>134</sup> Finally the flight crew disengaged the auto- throttles and resorted to steering via throttle control reminiscent of United Airlines Flight 232.<sup>135</sup> The captain landed the damaged Boeing 747-283B at Naha Airport at 12.45pm, one hour after the bomb exploded.<sup>136</sup> The aircraft's other 272 passengers and 20 crew members survived.<sup>137</sup> Manila Police were able to track the batteries used in the bomb and many of its contents from Okinawa back to Manila. Police uncovered Yousef's plan on the night of January 7, 1995, and Yousef was arrested a month later in Pakistan.<sup>138</sup>

#### **2.6.6. The Rome and Vienna Airport Attacks**

The Rome and Vienna airport attacks were two major terrorist strikes carried out on 27 December 1985. At 08:15 GMT, four gunmen walked to the shared ticket counter for Israeli's El Al Airlines and Trans World Airlines at Leonardo da Vinci- Fiumicino Airport outside Rome, Italy. They fired assault rifles, and threw grenades. They killed 16 and wounded 99 before three of the attackers were killed, while the remaining one, Mohammed Sharam, was wounded and captured by the Italian police.

Minutes later, at Schwechat Airport (Vienna International Airport) in Vienna, Austria, three terrorists carried out a similar attack. Hand grenades were thrown into crowds of passengers queuing to check in for a flight to Tel Aviv, killing two people instantly and wounding 39 others. A third victim died on 22 January 1986, of hand grenade wound sustained in the attack. After the attack, the terrorists fled by car, and Austrian Police gave them chase. They killed one terrorist and captured the other two. In all, the two strikes killed 19, including a

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<sup>131</sup>*op'cit*

<sup>132</sup>*op'cit at 54*

<sup>133</sup>*op'cit*

<sup>134</sup>*ibid*

<sup>135</sup>*ibid*

<sup>136</sup>Yousef Bombs Philippines Airline Flight 434, Global Security org report on incident

<sup>137</sup>*ibid*

<sup>138</sup>*op'cit*

child, and wounded around 140. Some contemporary reports claimed the gunmen originally intended to hijack E1 A1 jets at the airports and blew them up over Tel Aviv.<sup>139</sup> Others concluded that the attack on waiting passengers was the attack on plain and that the Frankfurt airport was meant to be hit as well.<sup>140</sup>

These attacks were first blamed on the Palestine Liberation Organization (PLO), but its leader, Yasser Arafat, denied the accusations and denounced the strikes. The PLO asserted that the attacks were intended to force Austria and Italy into severing ties with the Palestinians.<sup>141</sup> However, responsibility for the two attacks was later claimed by the Abu Nidal Organization (ANO) in retaliation for Operation Wooden Leg, the Israeli bombing of PLO headquarters in Tunis on 1 October 1985. Libya was accused of funding the terrorist who carried out the attacks; although they declined the charges, they did praise the assaults. According to published reports, sources close to Abu Nidal said Libyan intelligence supplied the weapons and the ANO's head of the Intelligence Directorate's Committee for Special Missions. Dr. Ghassan al-Ali, organized the attacks. Libya denied these charges as well, notwithstanding that it claimed they were "heroic operation carried out by the sons of the martyrs of Sabra and Shatila."<sup>142</sup>

### **2.6.7. The September 11 Attacks:**

The September 11 attacks (popularly known as 9/11)<sup>143</sup> were a series of four coordinated terrorist attacks launched by the Islamic terrorist group al-Qae da upon the United States in New York City and the Washington DC Metropolitan area on Tuesday, September 11 2001. Four passenger airliners were hijacked by 19 al-Qaeda terrorists so they could be flown into buildings in suicide attacks. Two of those planes, American Airlines Flight 11 and United Airlines Flight 175, were crashed into the North and South towers, respectively, of the World Trade Centre complex in New York City. Within two hours, both towers collapsed with debris and the resulting fires causing partial or complete collapse of all other buildings in the WTC complex, as well as significant damage to ten other large surroundings structures. A third plane, American Airlines Flight 77, was crashed into the Pentagon (the headquarters of the United States Department of Defense), leading to a partial collapse in its western side.

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<sup>139</sup> [http:// www.tkb.org/incident.jsp](http://www.tkb.org/incident.jsp).

<sup>140</sup> See Patrick S., "Abu Niddal: A Gun for Hire" (Philadelphia, Hutchison, 1990) pp 224-268

<sup>141</sup> *ibid*

<sup>142</sup> *op'cit*

<sup>143</sup> *Al- Qaeda leader Osama bin Laden appeared in a new message aired on an Arabic TV station Friday night, for the first time claiming direct responsibility for the 2001 attacks against the United States.*

The fourth plane, United Airlines Flight 93, was targeted at Washington DC<sup>144</sup> but crashed into a field near Shanksville, Pennsylvania, after its passengers tried to overcome the hijackers. In total, almost 3,000 people died in the attacks, including the 227 civilians and 19 hijackers aboard the four planes. It also was the deadliest incident for firefighters in the history of the United States.

The event took place in the following sequence: At 8:46am, five hijackers crashed American Airlines Flight 11 into the Northern façade of the World Trade Centre's North Tower (1WTC), and at 9:03 am, another five hijacker crashed United Airlines Flight 175 into the southern façade of the South Tower (2 WTC)<sup>145</sup> Five hijackers flew American Airlines Flight 77 into the Pentagon at 9.37 am. A fourth flight United Airlines Flight 93, under the control of four hijackers, crashed near Shanksville, Pennsylvania, Southeast of Pittsburg, at 10: 03, after the passengers fought the hijackers. Flight 93's target is believed to have been either the capitol or the white House.<sup>146</sup>

Suspicion quickly fell on al-Qaeda. Although the group's leader Osama bin Laden, initially denied any involvement, in 2004, he claimed responsibility for the attacks.<sup>147</sup> Al-Qaeda and bin Laden cited U.S. support of Israel, the presence of US troops in Saudi Arabia, and sanctions against Iraq as motives for the attacks. Immediately after the attacks, the Federal Bureau of Investigation started PENTT BOM, the largest criminal inquiry in the history of the United States. At its height, more than half of the FBI's agents worked on the investigation and followed a half-million leads.<sup>148</sup>

Within hours of the attacks, the FBI released the names and in many cases the personal details of the suspected pilots and hijackers. By midday, the U.S. National Security Agency had intercepted communications pointing to Osama bin Laden.<sup>149</sup> The National Commission on Terrorist Attacks upon the United States (9/11 Commission), chaired by former New Jersey Governor Thomas Kean, was formed in late 2002 to prepare a thorough account of the circumstance surrounding the attacks.<sup>150</sup> On July 22, 2004, the 9/11 commission issued 9/11 Commission Report. 9/11, found the attacks were carried out by members of al- Qaeda, and

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<sup>144</sup> Inside 9/11: Zero Hour, National Geographic Channel Documentary, 2005.

<sup>145</sup> "Flight path Study – American Airlines Flight 11" (PDF). National Transportation Safety Board. February 19, 2002.

<sup>146</sup> "The Attack Looms". 9/11 Commission Report. National Commission on Terrorist Attacks upon the United States. 2004. Retrieved 01-09-2011.

<sup>147</sup> *op' citat* 68

<sup>148</sup> "9/11 Investigation (PENTTBOM)". Federal Bureau of Investigation, Accessed 11-04-2012

<sup>149</sup> "Piece by piece, the jigsaw of terror revealed". The Independent, September 30, 2001. Archived from the original on 15-10-2009

<sup>150</sup> "Fore sight – and Hindsight". National Commission on Terrorist attacks upon the United States. Accessed 04-09-2011

examined how security and intelligent agencies were inadequately coordinated to prevent the attacks.<sup>151</sup>

As a result of the attacks, many governments across the world passed legislations to combat terrorism.<sup>152</sup> In Germany, where several of the 9/11 terrorists had resided and taken advantage of that country's Liberal asylum policies, two major anti-terrorism packages were enacted. They first removed legal loopholes that permitted terrorists to hire and raise money in Germany. The second addresses the effectiveness and communication of intelligence and law enforcement.<sup>153</sup> Canada passed the Canadian Anti-terrorism Act, that nations first anti-terrorism law,<sup>154</sup> the United Kingdom passed the Anti- Terrorism, Crime and Security Act 2001 and the Prevention of Terrorism Act 2005,<sup>155</sup> In the United States, the Department of Homeland Security was created. The United States further responded to the attacks by launching the War on Terror and invading Afghanistan to depose the Taliban, for harboring al-Qaeda. Having evaded capture for years, Bin Laden was located and killed by U.S. forces in May 2011.

## **CONCLUSION:**

This chapter has clarified some relevant key terms in the thesis and has discussed some notable aviation attacks that occurred in several places including United States of America, Rome, Phillipines and several other countries at different times. The modern terrorism approach as examined in this chapter can be more catastrophic than imaginable. The experiences of the various countries as reviewed in this chapter are enough to ignite consciousness of the fact that terrorism can be perpetrated anywhere in the country; including particularly, the airport. And so, the government, as a matter of determination, should setup security apparatus to match latent terror threat in the aviation sector of Nigeria, especially now that the Boko-Haram sect has made terror attack common place in Nigeria.

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<sup>151</sup>Scobell, Andrew (2004). "*Terrorism in the Asia- Pacific: Threat and Response.*" The Journal of Asian Studies 6.3(4). 1078-9. Retrieved 02-07-2012.

<sup>152</sup>MikoF.*et al* (December 27, 2004) "Germany's Role in Fighting Terrorism: Implications for U.S. policy" Federation of American Scientists. Available at [fas.org/irp/crs/RL32710.pdf](http://fas.org/irp/crs/RL32710.pdf). accessed 12/4/13.

<sup>153</sup>"*Anti-Terrorism Act*". CBC News. February 27, 2007. Retrieved 12-11-2011.

<sup>154</sup>"*Q and A: Anti- Terrorism legislation*". BBC News. October 17, 2003. Retrieved 04-09-201.

<sup>155</sup> See the Terrorism Suppression Act – New Zeal and legislation. Available at [www.legislation.govt.nz/act/.../accessed](http://www.legislation.govt.nz/act/.../accessed) 18/8/13.

## CHAPTER THREE

### HISTORICAL DEVELOPMENT OF AVIATION LEGISLATION IN NIGERIA

#### 3.1 INTRODUCTION

The gap between sufficiency of aviation security and the realistic latent threat of terrorism in the aviation sector has been an issue of serious concern to governments of many countries from inception. The continuous and meaningful effort approach towards achieving safe aviation atmosphere cannot be traded off for any contrary interest because of the obvious social economic and security relevance of the aviation industry. Thus this chapter zeroed-in on the historical development of aviation laws in Nigeria, the requirements by International Civil Aviation Organization (ICAO) for safety, aviation crime and the latent threat of terrorism in the aviation sector especially considering the fact that Boko Haram has made terrorism apparent in Nigeria.

#### 3.2 Aviation Legislation in Nigeria

Aviation law in Nigeria historically dates back to 1952, when by virtue of Article 3; the Civil Aviation Act of 1949 in England was made applicable to Nigeria. The law “the Colonial Air Navigation Order, 1952” empowered the Governor-General by Article 53 thereof, to make regulations for Nigeria in respect of air navigation. To this end, acting under that power, Governor-General made the Air navigation (Nigeria) Regulations of 1954 of the United Kingdom and the Air Navigation (Radio) Regulations of 1954.<sup>156</sup>

In effect the Colonial Air Navigation Order 1955 extended to Nigeria; the application of the General Regulations and the Radio Regulation of the Air navigation Order of 1954 of the United Kingdom. In the same vein, the Air Transport (Licensing) Regulations, 1953 made under Section of the Civil Aviation, 1949 and made applicable to Nigeria by Article 3 of the Colonial Civil Aviation (Application Act) Order 1952 was made applicable to Nigeria by Governor-General. In like manner the Air Navigation (Safety of Navigation) Ordinance of 1941 was an Ordinance to ensure the safety of aircraft in flight by imposing restrictions upon the use and enjoyment of land and erection of building in the vicinity of aerodromes merely empowered the Governor-General to make declaration imposing restrictions on user of land albeit with compensation where necessary.

Furthermore, the British Settlement Act, 1987 and foreign jurisdiction empowered the king of England to make Order in Council in 1946 in establishing the West African Air Transport

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<sup>156</sup> Peter B. k., *Shaw, Cross and Beaumont on Air Law* (London, Butterworth, 1966) 38.

Authority, whose duty was to ensure the development of efficient air transport services in and between the West African territories. And such services are operated at reasonable charges. These Orders extended the application of Warsaw Convention of 1929, to Nigeria as a high contracting party to those conventions.<sup>157</sup>

The 1999 Constitution of the Federal Republic of Nigeria listed aviation matters in the Exclusive Legislative List, Schedule II, Part I, item 3. Thus “aviation including airports, safety of aircraft, and carriage of passengers and goods by air” meaning the provision can exclusive be entertained by the National Assembly. Performing this duty, the National Assembly has enacted series of laws and as well created appropriate bodies in the course of time to order and manage the affairs of the aviation industry. In addition to this domestic laws and institutions, the aviation sector of the global economy which is chiefly coordinated by International Civil Aviation Organization (ICAO), is replete with Conventions and protocols which Nigeria is signatory to and ranked top among nations for ratification.

Civil aviation today is mainly regulated by the Chicago Convention of 1944<sup>158</sup> which reaffirms state sovereignty over air space but creates rights and duties for member-states. The convention established the regulations for air navigation and transportation and established the International Civil Aviation Organization (ICAO) to administer the rules. The achievement of International Civil Aviation Organization (ICAO) includes the adoption of annexes to the convention and subsequent conventions relating to recognition of rights in aircraft, surface damage due to their parties and the liability of carriers to passengers and for cargo. The convention confers the right to make non- scheduled flights into or above airspace without prior permission but subject to regulation that must be applied without discrimination.<sup>159</sup>

Scheduled flights can only be conducted with prior permission and in accordance with the terms of the grant. Cabotage may be retained by the Grantor State if an aircraft has the nationality of the state of registration and may not be registered in more than one state. Although these may vary amongst states, the convention applies to civilian aircrafts. Military, Custom and Police aircrafts may only be flown over or land in another state with the latter’s consent.

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<sup>157</sup> Taylor S.E.T., *Aviation Law for Pilots* (London, Blackwell, 1983) 103.

<sup>158</sup> *ibid*

<sup>159</sup> Chicago Convention *op’cit*

The Convention enjoins all States to promote the ease of International air navigation. Civil transport is now based on a great number of bilateral treaties between states that designate the airline, route, parts of arrival and departure frequency and capacity for passengers and freight. The Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface 1952<sup>160</sup> tries to balance the rights of operators with those persons suffering damage on land by placing a limit on the amount paid

The last few decades have seen the havoc caused by aggrieved groups who demonstrated their grievances or retaliate against those with whom they are dissatisfied by seizing planes and sometimes destroying them protractedly with considerable loss of life and property. Planes have also been seized in order to escape from authoritarian regimes or simply to extort money. A number of conventions have been entered into to suppress and punish these criminal activities. The Tokyo convention on Offences and Other Acts Committed on Board Aircraft 1963<sup>161</sup> reaffirms the primary responsibility of the state over crimes committed on board aircraft. This is so, particularly if;

1. The offence has effect in that territories or is against their security;
2. The offence was committed by or against a national or permanent resident;
3. The offence relates to the rules of navigation in the state;
4. The exercise of jurisdiction is in furtherance of an obligation under a multilateral treaty.

The convention ensures that offenders are punished and resolves the conflict of jurisdiction that may arise. The Hague Convention for the suppression of Unlawful Seizure of Aircraft 1970<sup>162</sup> is similar to the previous one but is primarily directed towards preventing attacks or sabotage of civil aircraft rather than hijacking. It does not however, include political offences, and since most hijacking and sabotage take a political complexion, the convention fails to offer an effective deference to prevent such cases.

The Montreal Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation, 1971 makes it an offence to carry out an act of violence against a person on board an aircraft in flight where the act is likely to endanger the safety of the aircraft, to destroy, damage or interfere with the operation of air navigation facilities or to communicate knowingly false information if this is likely to endanger an aircraft in flight.<sup>163</sup> The ambit of this convention was extended by the Montreal Protocol, 1988 to include acts of violence

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<sup>160</sup> see particularly Article 3, Rome Convention, 1952, (PDF) available at [www.mcgil.ca/iasl/files/.../rome1952.pdf](http://www.mcgil.ca/iasl/files/.../rome1952.pdf). Accessed 23/9/2013

<sup>161</sup> Available at [www.oas.org/.../en-conven...accessed 18/10/2013](http://www.oas.org/.../en-conven...accessed 18/10/2013)

<sup>162</sup> Shaw *op'cit*

<sup>163</sup> See the Aviation and Maritime Security Act 1990. Note that the ICAO Convention on the Marking of plastic Explosives for the purpose of detecting, 1991 calls upon all states to take measures to prohibit the manufacture of unmarked explosives, and established an International Explosives Technical Commission.

against a person at an airport, serving international civil aviation which cause or are likely to cause serious injury or death; destroying or seriously damaging the facilities of such an airport or aircraft not in service located thereon and disrupting the services of the airport.<sup>164</sup>

The terrorist attacks of the 1970s in particular gave rise to a series of cases; claim for damages for mental distress arising out of an airplane hijack was possible under the Warsaw Convention as amended by the Montreal Agreement of 1966,<sup>165</sup> and that a carrier was liable for injuries to passengers that occurred in a terrorist attack at Hekerikon Airport, Athens, at the departure gate of the terminals.<sup>166</sup> However, there were no liabilities in the case of an attack in the baggage retrieval area of an air terminal building while the passengers were waiting for their luggage as this was not disembarking within the meaning of article 17.<sup>167</sup>

The question of liability for damage caused by aircraft to persons on the surface has also been dealt with. The Rome Convention on Damage caused by foreign aircraft to third parties in the surface, 1952, and the Montreal Protocol of 1978, provide for compensation to be paid upon proof only of damage caused by an aircraft in flight or by any person or thing taking there from.<sup>168</sup> It is the operator of the aircraft that bears the responsibility and under the 1952 convention, the registered owner of the aircraft is presumed to be the operator. The extent of reasons for the low level of ratification has been the relatively limited level of compensation being established between the damage and the act causing the injury.

In 1977, the General Assembly of the UN adopted, by consensus, a resolution condemning acts of aerial hijacking or other interference with civil air transport. It also condemned violence which may be directed against passengers, crew or aircraft whether committed by individuals or states. The resolution urged states who have not done so, to become parties to the anti-hijacking conventions.

The International Convention against the Taking of Hostages 1979<sup>169</sup> is also aimed at International terrorism. Parties must either prosecute offenders or extradite them to states wishing to try them<sup>170</sup>. A State may use reasonable force against an aircraft that breaches its sovereignty such as ordering it to land but care must be taken to safeguard the safety of lives and the aircraft.

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<sup>164</sup> *Krystal v. BOAC supra*

<sup>165</sup> *Day v. TWA supra*

<sup>166</sup> *Hernandez v. Airfrance* 545 F.2d 279 (1976). See also 549 F. 2d 1256 (1977), Cert. denied, 45 Law Week 3801 (1977). see also e.g. *Korean Airlines v. Ethiope*, RGDIP, 1983, P.231, 89 ILB , P. 23, *Haddad v. Societe Air France*, RSDIP, 1983, p. 468, 89 ILR, p. 26, and *Air Inter v. Bormier*, AFDI, 1983, p. 848

<sup>167</sup> *ibid*

<sup>168</sup> *ibid* at note 91 p. 29

<sup>169</sup> *ibid*

<sup>170</sup> [www.icao.int/accessed22/10/2013](http://www.icao.int/accessed22/10/2013)

### 3.3 International Civil Aviation Organization (ICAO)

The International Civil Aviation Organization (ICAO) is a specialized agency of the United Nations. It codifies the principles and techniques of International air navigation and fosters the planning and development of international air transport to ensure safe and orderly growth<sup>171</sup>. Its headquarters is located in the Quarter International of Montreal Quebec, Canada.

The ICAO council adopts standards and recommended practices concerning air navigation, its infrastructure, flight inspection, prevention of unlawful interference, and facilitation of border-line crossing procedures for international civil aviation.<sup>172</sup> ICAO defines the protocols for air accident investigation followed by transport safety authorities in countries signatory to the Convention on International Civil Aviation.

Worthy of mention is the Air Navigation Commission (ANC), which is the technical body within ICAO. The Commission is composed of 19 Commissioners, appointed by the Council.<sup>173</sup> These Commissioners serve as independent experts, who although nominated by their states, do not serve as state or political representatives. The development of Aviation Standards and Recommended Practices is done under the direction of the ANC through the formal process of ICAO Panels. Once approved by the Commission, standards are sent to the Council, the political body of ICAO, for consultation and coordination with the member States before final adoption<sup>174</sup>.

The forerunner of ICAO was the International Commission for Air Navigation (ICAN). It held its first convention in 1903 in Berlin, Germany but no agreements were reached among the eight countries that attended. At the second convention in 1906, also held in Berlin, 27 countries attended the third convention, held in London in 1912 allocated the first radio call signs for use by aircraft. ICAO continued to operate until 1945.<sup>175</sup>

Fifty two countries signed the convention on International Civil Aviation, also known as the Chicago Convention, in Chicago, Illinois, on 7 December 1944. Under its terms, a provisional International Civil Aviation Organization (PICAO) was to be established, to be replaced in turn by a permanent organization when 26 countries ratified the convention. Accordingly, PICAO began operation on 6 June 1945, replacing ICAN. The 26<sup>th</sup> country ratified the convention on 5 March 1947 and consequently PICAO was disestablished on 4 April 1947

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<sup>171</sup> *ibid*

<sup>172</sup> *op'cit* at note 95 p.30

<sup>173</sup> *ibid*

<sup>174</sup> Registration *ibid*

<sup>175</sup> This period was popularly referred to as Golden Years of Aviation. see [www.airhistory.org.uk.accessed2013](http://www.airhistory.org.uk.accessed2013)

and replaced by ICAO, which began operations the same day. In October 1947, ICAO became an agency of the United Nations linked to the United Nations Economic and Social Council (ECOSOC)<sup>176</sup>.

In April 2013, the state of Qatar offered to serve as the new permanent seat of the Organization starting in 2016. The offer must be considered by all of ICAO's 191 member states at the next convening of the triennial ICAO Assembly, which will take place from 24 September through 4 October 2013. A minimum of three-fifths (60%) of ICAO's Member States must agree to the Qatar proposal for it to be approved. Accordingly to ICAO spokesman Anthony Philbin, there has never been an official request to move the ICAO since its creation. Qatar, which has promised to construct a massive new headquarters for the ICAO and cover all moving expenses, has stated that Montreal "was too far from Europe and Asia", it was also added that it "has cold winters" and hard to attend due to the refusal of the Canadian government to provide visas. There was also the claim that the taxes imposed on the ICAO by Canada are too high.<sup>177</sup>

According to the Globe and Mail, the move to relocate the ICAO is at least partly motivated by the Pro-Israel foreign policy of Canadian Prime Minister Stephen Harper. Citing anonymous sources, the Globe and Mail reported that Arab ambassadors to the United Nations met in April 2013 in New York, where, among other things they "devoted a section of their agenda to countering Canada"<sup>178</sup> including mustering allies from other countries to vote against Ottawa in international organizations.<sup>179</sup> It was also reported that "Some Arab countries were considering moves to back Qatar, by campaigning to win the votes of other states"

The Globe concluded that "Arab nations are already looking to deal a blow to Ottawa for its stand on Palestinian issues could wield influence if they unite behind the ICAO's Montreal headquarters would be more than the diplomatic embarrassment to the Harper Conservatives."<sup>180</sup> France, Britain and the United States announced that they opposed moving the organization.<sup>181</sup>

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<sup>176</sup>*ibid.*

<sup>177</sup>Baird fighting 'tooth and nail' to keep UN Aviation office in Montreal, CBC News, May, 2013.

<sup>178</sup>*ibid.*

<sup>179</sup>Distinguished Arab States look to strip Canada of UN agency by Campbell Clark, Globe and Mail, May 2, 2013

<sup>180</sup>*ibid.*

<sup>181</sup> CBC News 24 May 2013.

Approximately one month later, Qatar withdrew its bid to move ICAO headquarters, meaning that the organization will remain in Montreal. Reportedly, Qatar's withdrawal came after a separate proposal to the ICAO triennial conference to Doha was defeated by a vote of 22-14. According to French delegate, Micheal Nachenheim "This conference of the general assembly was to be held in Montreal, as it always is..... And twenty two of the 36 said no, they thought that moving it (to Doha) four months before a general assembly was far too complicated." Nachenheim also stated that, "at our meeting this (Friday) morning, we learned that Qatar had withdrawn its offer to move the HQ."<sup>182</sup>

### **3.3.1 ICAO Membership**

As of November 2011, there were 191 ICAO members, consisting of 190 of the 193 UN members (all but Dominica, Liechtenstein and Tuvalu) plus the Cook Islands<sup>183</sup>. All members are expected to maintain a common standard. By virtue of its function and membership, it could be deduced that ICAO is one of the largest and most important international organization that cut across all the continents.

### **3.3.2 ICAO Standards**

ICAO standardizes certain functions for use in the airline industry, such as the Aeronautical Message Handling System (AMHS), making it a standard organization<sup>184</sup>. Each country should have an accessible Aeronautical Information Publication (AIP), based on standards defined by ICAO, containing information essential to air navigation. Countries are required to update their AIP manuals every 28 days and so provide definitive regulations, procedures and information for each country about air space and aerodromes. ICAO standards also dictate that temporary hazards to aircrafts regularly be published NOTAM.<sup>185</sup>

ICAO defines an International Standard Atmosphere (also known as ICAO Standard Atmosphere), a model of the standard variation of pressure, temperature, density and viscosity with altitude in the Earth's atmosphere. This is useful in calibrating instruments and designing aircraft.<sup>186</sup> It also standardizes machine readable passports worldwide.<sup>187</sup> Such passports have an area where some of the information written in textual form is written as strings of alpha numeric characters, printed in a manner suitable for optical character recognition. This enables boarders' controllers and other law enforcement agents to process such passports quickly, without having to input the information manually into a computer.

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<sup>182</sup>ICAO Newsroom, May 24, 2013.

<sup>183</sup>*op'cit @ footnote 26*

<sup>184</sup>South Sudan becomes 191st member of ICAO- Sudan Tribune. Plural news and views on Sudan. Sudan Tribune Accessed on 2013-07-12.

<sup>185</sup>*ibid*

<sup>186</sup> Manual of the ICAO Standard Atmosphere: extended to 80 kilometers (262, 500 ft) (CD-ROM) (in en, fr, es, ru) (3rd ed). Montreal: ICAO. 1993. ISBN 92-9194-004-6. Retrieved 2012-09-06

<sup>187</sup>"Welcome to the ICAO Machine Readable Travel Documents Programme". ICAO Retrieved 2012-09-06

ICAO publishes Doc 9303 Machine Readable Travel Documents, the technical standard for machine readable passports.<sup>188</sup> A more recent standard is for biometric passports. These contain biometrics to authenticate the identity of travelers. The passport's critical information is stored on a tiny RFID computer chip, much like information stored on smartcards. Like some smartcards, the passport look design calls for an embedded contactless chip that is able to hold digital signature to ensure the integrity of the passport and biometric data.

ICAO has an active infrastructure management, including communication, Navigation, Surveillance/Air Traffic Management (CNS/ATM) systems, which employ digital technologies (e.g. satellite systems with various levels of automation) in order to maintain a seamless global traffic management system.<sup>189</sup>

### **3.3.3 ICAO Registered Codes**

ICAO uses 4 –letter airport codes. The ICAO code is based on the region and country of the airport- for example, Charles de Gaulle Airport has an ICAO code of LFPG, where L indicates Southern Europe, F, France, PG, Paris de Gaulle, while only Airport has the code LFPO (the 3<sup>rd</sup> letter sometimes refer to the particular flight information region (FIR) or the last two may be arbitrary)<sup>190</sup>. ICAO also provides telephony designators to aircraft operators worldwide, a one-or-two- word designator used on the radio, usually, but not always similar to the aircraft operator name: for example, the identifier for Japan Airlines International i.e. JAI and the designator is Japan Air thus, a Japan Airlines flight numbered 111 would be written as “JAL 111” and pronounced “Japan Air One OneOne” on the radio

ICAO maintains the standards for aircraft registration (“tail numbers”), including the alpha numeric codes that identify the country of registration. For example, airplanes registered in the United States have tail numbers starting with N. ICAO is also responsible for issuing alphanumeric aircraft type codes containing two or four characters. These codes provide the identification that is typically used in flight plans. The Boeing 747 would use B741, B742, B743, depending on the particular variant.

### **3.4 International Air Transport Association**

International Air Transport Association (IATA)<sup>191</sup> is an international industry trade group of airlines with its headquarters in Montreal, Quebec, Canada, where the International Civil Aviation Organization is also headquartered. The executive offices are at the Geneva Airport in Switzerland. IATA was formed on 19 April 1945 in Havana, Cuba. It is the successor to

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<sup>188</sup>Machine Readable Travel Documents, Doc 9303 (Sixth ed.). ICAO. 2006. accessed 2013-08-09

<sup>189</sup>Infrastructure Management”. ICAO. Retrieved 2012-09-06

<sup>190</sup>*op cit* at note 33pg 35

<sup>191</sup>IATA”. Oxford Dictionaries. Oxford University press. 11 July 2013.

the International Air Traffic Association, founded in The Hague in 1919, the year of the world's first international scheduled services.<sup>192</sup> At its founding, IATA had 57 members from 31 nations, mostly in Europe and North America. Today it has about 243 members (as of April 2012) from more than 126 nations in every part of the world. One of the core functions of the IATA was to act as a price setting body for international airfare.

Originally, both domestic and international aviation were highly regulated by IATA. Since 1978 in US and later in Europe, domestic deregulation highlighted the benefit of open markets to consumers in terms of lower fares and compares in terms of more efficient networks. This led to the formation of bilateral "open skies" agreement that weakened IATA's price fixing role. Negotiations are under way since 2003 to create a completely by deregulated aviation market covering European and US airspace.<sup>193</sup> Other functions of the IATA includes: worldwide accreditation of travel agents, worldwide administration of Billing and Settlement Plan (BSP) and Cargo Accounts Settlement Systems (CASS), publishing of the standards for use in the airline industry, regulation of the shipping of dangerous goods, etc.

### **3.5 Nigerian Civil Aviation Authority (NCAA)**

In line with ICAO requirement of all member states to establish an appropriate state organization to be known as Civil Aviation Authority charged with the responsibility of ensuring compliance with standards and recommended practices (SARPs), the then Federal Government enacted Decree 49 of 1999 establishing the Nigerian Civil Aviation Authority (NCAA).<sup>194</sup> It has its head office on the grounds of Nnamdi Azikiwe International Airport in Abuja, and its Lagos office is in Aviation House on the grounds of Murtala Mohammed Airport in Ikeja, Lagos State.<sup>195</sup>

The Nigeria Civil Aviation Authority became autonomous with the passing into law of the Civil Aviation Act, 2006, by the National Assembly and assent of the President of the Federal Republic of Nigeria<sup>196</sup>. The Act not only empowers the Authority to regulate Aviation safety and security without political interference, but also to carry out oversight functions of

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<sup>192</sup> *supra* at note 118 pg 36

<sup>193</sup> visit [www.dw.de/eu-and-us...negotiations.accessed 2/10/13](http://www.dw.de/eu-and-us...negotiations.accessed%202/10/13)

<sup>194</sup> see the History of NCAA. Available at [www.ncaa.gov.ng/about.../history-of-ncaa...](http://www.ncaa.gov.ng/about.../history-of-ncaa...) Accessed 15/10/2013. See also the Nigerian Civil Aviation Act, 2006

<sup>195</sup> *op'cit*

<sup>196</sup> See Muhammed L., *Nigerian Civil Aviation Authority in Brief*, 2012. available at [http://muhalawal.worldpress.com.accessed 22/9/13](http://muhalawal.worldpress.com.accessed%2022/9/13)

Airports, Airspace, Meteorological services, as well as economic regulations of the industry<sup>197</sup>.

The Nigerian Civil Aviation Authority has eight main directorates which include: Flight Standards Group, Directorate of Air worthiness Standards, Directorates of Licensing, Directorate of Operations and Training, Directorate of Aerodrome and Air spaced Standards, Directorate of Finance and Administration, Consumer Protection Department and Directorate of Air Transport Regulation.

One of the key tools used by NCAA in regulating the Nigerian aviation sector is the Nigerian Civil Aviation Regulations (Nigerian CAR) which was first promulgated in 2006, to provide national requirements in line with the provisions of the Civil Aviation Act, 2006. The Nigerian Civil Aviation Regulations 2012 is also another framework that provides guidelines for standardized operational procedures, equipment and infrastructure including safety management and training system in conformity with Standard and Recommended Practices (SARPs) contained in the Annexes to the Chicago Convention<sup>198</sup>.

The Nigerian Civil Aviation Regulations, 2012, comprises of 20 parts representing area like Offences, Aviation Security, and Carriage of Dangerous Goods by Air, Air Navigation Services, and Environmental Protection Regulations. Each part of these regulations contains Implementing Standards which provides detailed requirements that support the intent of the regulation in the Part and unless otherwise indicated have the legal force and effect of the referring Regulation. The Nigerian Civil Aviation Act made clear definition of offences, categories and attendant punishments. For example, section 56 sub-section (2) states that whosoever on board an aircraft either on ground or in flight unlawfully, by force or threat of force, or by any other form of intimidation, seizes or exercises control of that aircraft, commits the offence of hijacking of such aircraft. It is based on these stipulations of the Nigerian Civil Aviation Act, 2006 that the Nigerian Civil Aviation Authority (NCAA) carry out its numerous functions.

### **3.6 Nigerian Federal Ministry of Aviation**

The Nigeria Federal Ministry of Aviation is a ministry of the Nigerian government that regulates air travel and aviation services in Nigeria. The ministry is responsible for formulation and management of the government's aviation policies in Nigeria. It is directly responsible for overseeing air transportation, airport development and maintenance, provision

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<sup>197</sup> *ibid*

<sup>198</sup> Nigerian – Civil – Aviation – Regulation – 2012 – Vol.1 – 11.pdf

of aviation infrastructural services and other needs<sup>199</sup>. The ministry is headed by a Minister appointed by the President, assisted by the Permanent Secretary, who is a career civil servant<sup>200</sup>. The Ministry is responsible for parastatals such as the Nigerian College of Aviation Technology<sup>201</sup>. The Ministry has its headquarters in Abuja.<sup>202</sup> Previously the head office was in Lagos<sup>203</sup>.

Before 1989, the Ministry's Civil Aviation Department was responsible for investigating aircraft accidents. But following the creation of Federal Civil Aviation Authority in 1989, the Civil Aviation Department became the FCAA Department of Safety Services. During the same year, the Accident Investigation Bureau (AIB), subordinate to the Ministry of Aviation was established, and the FCAA no longer had accident investigation responsibilities. The name of the bureau was later changed to the Accident Investigation and Prevention Bureau as part of the Civil Aviation Act, 2006. Thus the AIB became an autonomous agency.

### **3.7 Federal Airport Authority of Nigeria**

Federal Airport Authority of Nigeria (FAAN) is a service organization statutorily charged to manage all commercial Airports in Nigeria and provide service to both passenger and cargo airlines,<sup>204</sup> generally to create conditions for the development in the most economic and efficient manner of air transport and the services connected with it. The agency has its head office on the grounds of Murtala Muhammed International Airport in Ikeja, Lagos State.<sup>205</sup>

FAAN is entrusted with the following functions:

To develop, provide and maintain Airports necessary services and facilities for safe orderly, expeditious and economic operation of Air Transport.

To provide adequate conditions under which passengers and goods may be carried by air and under which aircraft may be used for other gainful purposes as well as prohibiting the carriage by air, goods of such classes as prescribed.

To charge for services provided by the authority at airports

To provide accommodation and other facilities for the effective handling of passengers and freight

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<sup>199</sup> Visit [www.Nigeriagovernance.org](http://www.Nigeriagovernance.org). For more on the responsibilities of the Ministry of Aviation.

<sup>200</sup> *op'cit*

<sup>201</sup> *ibid*

<sup>202</sup> "List and Addresses of Federal Ministries in Nigeria". Embassy of Nigeria, Washington D.C Retrieved on 8 September 2010. "Federal Ministry of Aviation.Fed Secretariat, ShehuShagari Way Abuja".

<sup>203</sup> "Civil Aircraft Accident Report No. CIA129" (Archive) Federal Ministry of Aviation.accessed on 7 June 2012."Federal Ministry of Aviation, Joseph street Lagos.

<sup>204</sup> [www.fannigeria.org](http://www.fannigeria.org). accessed 18/9/13

<sup>205</sup> "Contact Information" *Federal Airports Authority of Nigeria*. Assessed on 8 September, 2010.

To develop and provide facilities for surface transportation within airport

To carry out at the airports (either by itself, its agents or in partnership with any other person) economic activities that are relevant to airport.

To provide adequate facility and trained personnel to ensure there is effective security operations at all airports.

All these are in a bid to create conditions for the development in the most economic and efficient manner of air transport and the services connected to it. The Federal Airports Authority of Nigeria (FAAN) has taken additional security measures to forestall runway incursions at all airports in the country, especially those without perimeter fences. In a statement by Yakubu Dati, the FAAN spokesman, this is in response to the recent stowaway incident that occurred at Benin Airport on August 24, 2013. The new measures he said include, “at every airport without fully functional perimeter fence, a FAAN security vehicle will be deployed to a point within full view of the aircraft as it taxis out to take and maintain visual scrutiny and if necessary until every departing aircraft is safely airborne”<sup>206</sup> He added that “static observation posts will be erected at strategic locations within the perimeter fence of all airports to forestall premeditated and inadvertent unauthorized access to the airside. This will be complemented by motorized and foot patrols. The absence of perimeter fences at most of our airports had always posed challenge to FAAN because of the huge capital outlay required in constructing perimeter fences, some of which are as long as 40 kilometer, across the 22 network of airports across the country”<sup>207</sup>

He advised further that

“bushes at all airports are to be cleared to ensure full view of the perimeter, to ensure that the control tower, Fire and Rescue observation posts and aviation security patrol teams have a sweeping view of the entire perimeter of an airport from their duty posts”

## **2.8 Nigerian Airspace Management Agency**

The Nigerian airspace Management Agency (NAMA), was created by Act No: 48 of 1999 with the mandate to develop the Nigerian Airspace to a level consistent with the requirements of ICAO standard and Recommended Practices (SARPs) and provides Air Navigation services to ensure safe, efficient, expeditious and Economic Flight Operations in the country<sup>208</sup>.

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<sup>206</sup>Yakubu Dati ‘*Airport Security Measures*’ Daily Trust Newspaper 30th Aug 2013, Lagos

<sup>207</sup>*ibid*

<sup>208</sup>aviation.gov.ng/Nigeria-airspace-management-agency accessed 15/10/2013

NAMA is committed to implementing, developing and improving strategies, management systems and processes to ensure that all Air Traffic Management activities uphold the highest level of safety performance and meet national and international standards. It embedded safety culture in all its operations, in order to improve safety through proactive management rather than reactive compliance with regulatory requirements<sup>209</sup>.

#### **CONCLUSION:**

No doubt, Nigeria has rapidly developed in the aspect of civil aviation; international airports for both domestic and international air travel businesses have been constructed in reasonable number of states across the country. But the security challenges still stand tall among all the airports in Nigeria as the result of the deaf ears accorded the recommendations severally made by ICAO designated experts consecutively from 2004 till date on numerous issues such as perimeter fencing among others. Hence it remains a common place in Nigeria for stowaways to gain access to the aisles of many Nigerian airports. This is an impression that terrorists as well can gain access. It remains pathetic as well that as lamented by the then Hon. Minister of Aviation (Stella Odua), AVSEC as well as other aviation safety and security related agencies lack skilled personnel to man the safety and security machineries at the airports. The Federal Government must earnestly develop a new security blue print that will meet up with ICAO Annex 17 Regulations among other things to guarantee security at the airports.

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<sup>209</sup> [www.nama.gov.ng](http://www.nama.gov.ng) accessed 22/10/2012

## CHAPTER FOUR

### AN APPRAISAL OF AVIATION LEGAL FRAMEWORK IN COMBATING CRIME AND TERRORISM IN NIGERIA

#### 4.1 INTRODUCTION:

Until recently, Nigeria seemed to have been immune to terrorist activities. This ostensible innocence and erstwhile smug satisfaction that it could not happen here have been lost to the terrorist incidents masterminded by MEND, Boko Haram<sup>210</sup> and other faceless groups that have become apparent on the nation's landscape with deleterious consequences for our reputation as a people. The Mutallab alleged attempt to suicide-bomb Detroit bound flight incident once again and against the backdrop of 9/11 inscribed the issue of terrorism and aviation safety on the global agenda. Effort is been made in this chapter to appraise the existing Legal Framework in Combating Aviation crimes and Terrorism in Nigeria i.e. the Terrorism Act, The Nigerian Civil Aviation Policy 2013, the provisions of the African Union and ECOWAS on Aviation Security and other relevant laws. The work endeavors a critique of these laws and policies, with the desire to technically come up with suggestive recommendations where necessary to ensure that the aviation sector does not suffer the catastrophic event of terror attack.

When in the early part of 2014, president Good luck Jonathan stated that some enemies within the government and the military are giving support to Boko – Haram, he was not found wanting as regards the proof.<sup>211</sup> It has been revealed that army generals have faced questions for alleged illegal arms deal with the Boko Haram sect that has bedeviled the country, not excluding the obviously brittle aviation sector.<sup>212</sup> The mutallab alleged attempt

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<sup>210</sup> Starting out as a stone-throwing and knife-wielding militant group, with an avowed hatred for state symbol (especially the security forces), Boko Haram has grown in influence and sophistication that the U.S. now considers them capable of posing a threat to its interests. See “Designating Boko-Haram Kingpins as Terrorists” <http://www.punching.com/editorial/designating>. Accessed 25 June 2014.

<sup>211</sup> Related facts were posted on the 20<sup>th</sup> of May, 2014 entitled “Insurgency: Army Generals face Questioning for illegal Arms Deal” [www.channelstv.com/2014/05/20/insurgency.accessid\\_6/06/2014](http://www.channelstv.com/2014/05/20/insurgency.accessid_6/06/2014). See also the unreported case of *FGN v. Senator Mohammed Ndume*, where the accused is alleged by the SSS, to have maintained a steady line of communication with a prosiest member of the Boko Haram group on [www.ofcounselnigeria.com/blog/fgn-v-senator-mohammed-ndume](http://www.ofcounselnigeria.com/blog/fgn-v-senator-mohammed-ndume). accessed June 13th, 2014.

<sup>212</sup> On the 28<sup>th</sup> of August 2013, at 4:02 am, the vanguard Newspaper reported one of the incidents that exposed how really brittle the Nigerian Aviation Industry is. A teenage stowaway, David Oikhens, 15 year old disembarked from the wheel well of an Arik flight from Benin City (Edo state) to Lagos; usually, without any security operatives amongst the bunch of security agencies (public and private) combing the airport being able to give account of him.

to suicide-bomb a Detroit bound flight incident,<sup>213</sup> once again, and against the backdrop of 9/11 inscribed the issue of terrorism and aviation safety on the global agenda.<sup>214</sup>

Effort is made to bring to the fore the reality of terror attacks in Nigeria. And further to review the various legal frameworks as well as governmental policies directly connected to issues concerning aviation security in Nigeria. The work endeavours a critique of these laws and policies, with the desire to technically come up with suggestive recommendations where necessary, to ensure that the aviation section does not suffer the catastrophic effect of terrorism at any time.

## **4.2 Nigeria Aviation Security and Terror Threat**

Although air travel is considered to be the safest and fastest mode of transport, it is vulnerable to willful attacks and accidents. While accidents in the aviation industry have resulted from pilot error, bad weather and malfunctions, attacks have come largely from international terrorist groups. The aircraft which is the symbol of aviation transport remains the major focus of attack, essentially because it represents an iconic, economic or mass casualty target and can be seized and used as a human guided missile to cause terrible devastation.

The September 11 al-Qaeda led terrorist attacks on the US is a perfect example of the devastation in human and material terms that terrorists can cause when they successfully target the aviation industry. The failed 2009 Christmas Day bombing of a US airliner by a Nigerian: Farouk Abdulmutallab also shows that the aviation industry remains a key target of terrorist attacks. In response to these persistent threats, aviation security has changed impressively in the post 9/11 era, and several measures have been undertaken to make passenger aircraft more safe. However, the Nigeria aviation industry is still considered vulnerable to terrorist attacks. It is against this backdrop that the growing act of domestic terrorism perpetrated by the Boko Haram underscores the need to tighten aviation security in Nigeria. This is very important given that the industry has remained a major target of terrorists around the world.

In the case of Nigeria, this is made all the more imperative given the disclosure by the violent Boko Haram sect that it maintains strong relationship with al – Qaeda and hopes to consolidate on it<sup>215</sup>, the attack on the UN house in Abuja in August 26, 2011 which it claimed responsibility for, clearly shows that the profile of its target is on the increase. A look at the list of their incidents below will show to common sense that Boko-Haram group is resolute.

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<sup>213</sup> As a result of which U.S. Air Marshals now protect flights from Nigeria to the U.S [www.mpac-ng.org/mpac-positons](http://www.mpac-ng.org/mpac-positons). Accessed 9/07/2014.

<sup>214</sup> *op'cit*

<sup>215</sup> The Punch Newspaper, September 28, 2011

A summary of the activities of the Sect is as shown below:

<b>DATE:</b>	<b>INCIDENTS:</b>
7 September, 2010	Bauchi prisons break <sup>216</sup>
31 December, 2010	December 2010 Abuja attack <sup>217</sup>
12 March, 2011	Boko-Haram assassinates Muslim Cleric Imam Ibrahim Ahmed Abdullah for criticizing the violent group in north east Nigeria <sup>218</sup>
22 April,	2011 Boko Haram frees 14 prisoners in Yola, Adamawa State <sup>219</sup>
29 May, 2011	May 2011 Northern Nigeria bombings <sup>220</sup>
16 June, 2011	The group claims responsibility for the 2011 Abuja police headquarters bombing <sup>221</sup>
26 June, 2011	Bombing attack on a beer garden in Maiduguri, leaving 25 dead and 12 injured
10 July, 2011	Bombing at the All Christian Fellowship church in Suleja Niger State <sup>222</sup>
11 July, 2011	The University of Maiduguri temporarily close down its campus citing security concerns. <sup>223</sup>
12 August, 2011	Prominent Muslim cleric Liman Bana was shot dead by Boko Haram <sup>224</sup> .
26 August, 2011	Abuja bombing <sup>225</sup> .
4 November 2011	2011 Damaturu attacks. <sup>226</sup>
25 December 2011	December 2011 Nigeria bombings. <sup>227</sup>
5-6 January 2012	Nigeria attacks. <sup>228</sup>
20 January 2012	Kano bombings. <sup>229</sup>
20 January 2012	Nigerian army says it killed 11 Boko Haram Insurgents <sup>230</sup> .

<sup>216</sup> Sani Muh'd Sani (8 September 2010) "Attack on Bauchi Prison- Boko Haram Frees 721 inmates."

<sup>217</sup> "Many dead in Nigeria market blast" Al Jazeera English. 14/6/2012

<sup>218</sup> "Boko Haram and Nigeria's Election/Sahel Blog". Sahel blog.wordpress.com. 25 April 2011

<sup>219</sup> "More bombs follow Nigeria inauguration". [www.upi.com](http://www.upi.com) (United Press International, Inc.) 30 May 2011

<sup>220</sup> Brock Joe (17 June 2011) "Nigeria Islamist sect claims bomb attack: paper". Reuters. Retrieved 2011-06-17

<sup>221</sup> Mark, Monica (22 January 2012) Scores dead in Northern Nigeria as Islamist militants terrorize the country. The Observer, Retrieved 22 January 2012.

<sup>222</sup> Atabor J., "BornoGov Escapes Death, Explosion Rocks Suleja". The Moment Newspaper. 2012-03-12

<sup>223</sup> "University of Maiduguri Shut Down as Boko Haram – Linked Killings Increased" Sahahra Reporters.

<sup>224</sup> "Muslim Sect kills prominent cleric in Nigeria's restless northeast as violence continues." Washington Post. August 13, 2011 "Abuja attack: Car bomb hits Nigeria UN building" BBC news 26 August 2011. accessed 26 August 2011.

<sup>225</sup> Nigeria Boko Haram attack kills 63 in Damaturu" BBC News. 5 November 2011. accessed 2011-11-05.

<sup>226</sup> *ibid.*

<sup>227</sup> "Nigerian Churches hit by blast during Christmas prayers. BBC News 25 December 2011. accessed 25 December 2011.

<sup>228</sup> Christians flee attacks in northeast Nigeria" Reuters. 7 January 2012. Retrieved 20 January 2012.

<sup>229</sup> "Breaking news: Boko Haram claims responsibility for Kano attacks." DailyTrust. 20 January 2012. accessed 20 January 2012

<sup>230</sup> Cocks, Tin (28 January 2012). "Nigeria army says kills 11 Boko Haram insurgents" Reuters. accessed 27 February 2012

8 February 2012	Boko Haram claims responsibility for a Suicide bombing at the army headquarters in Kaduna. <sup>231</sup>
16 February 2012	Another prison break staged in central Nigeria; 119 prisoners are released. <sup>232</sup>
8 March 2012	During a British hostage rescue attempt to free Italian engineer Franco Lamolinara and Briton Christopher Mc Manus, abducted in 2011 by a splinter group Boko Haram, both hostages were killed in Maidaguri. <sup>233</sup>
31 May, 2012	During a Joint Task Force raid on a Boko Haram's den, it was reported that 5 sect members and a German hostage were killed in Bauchi. <sup>234</sup>
3 June 2012	15 church-goers were killed and several injured in a church bombing in Bauchi State. Boko Haram claimed responsibility through spokes-Man <sup>235</sup>
17 June 2012	Suicide bombers strike three churches in Kaduna State; at least 50 people were killed. <sup>236</sup>
17 June 2012	130 bodies were found in Plateau state. It is presumed they were killed by Boko Haram members. <sup>237</sup>
19 September 2012	Nigeria Military arrest, Boko Haram members, reported death of Boko Haram's spokes man. <sup>238</sup>
3 October 2012	Around 25-46 people were massacred in the town of Mubi in Nigeria during a night-time raid. <sup>239</sup>
18 March 2013	2013 Kano Bus bombing: At least 22 people killed and 65 injured, when a suicide car bomb exploded in Kano
7 May 2013	At least 55 killed and 105 inmates freed in coordinated Attacks on army barracks, a prison and police post in Bama town. <sup>240</sup>
6 July 2013	Yobe State School shootings: 42 people, mostly student were killed in a school attack in northeast Nigeria. <sup>241</sup>
29 September 2013	College of Agriculture in Gusba: 40 students killed. <sup>242</sup>

<sup>231</sup> "Nigeria: Boko Haram claims Kaduna army suicide attack" BBC News. 8 February 2012. accessed 8 February 2012.

<sup>232</sup> "Profile of Nigeria's Boko Haram leader AbubakarShekau". BBC News 22 June 2012. accessed 18 March 2013.

<sup>233</sup> "Topic Galleries"Orlando Sentinel.com

<sup>234</sup> "Nigeria: kidnapped German, Six Gunmen killed as JTF invades BokoHaram's Den" All Africa. com 1 June 2012.

<sup>235</sup> "Nigeria: Bauchi church Bombing Boko Haram claims responsibility" All Africa.com. 5 June 2012

<sup>236</sup> "Nigeria Boko Haram bombed Kaduna churches."BBC. Retrieved 06-07-2012

<sup>237</sup> "Boko Haram Killss 130 Innocent Villagers in Plateau state."News 2.online Nigeria.com. 13 July 2012

<sup>238</sup> "Boko Haram spokesman killed." Nigeria: PM New. 17 September 2012. accessed 20 September

<sup>239</sup> "Nigeria: Gunmen kill 46 Students in Mubi." AllAfrica.com,2012.accessed 4 October 2012.

<sup>240</sup> "Dozens killed in Boko Haram raid in Nigeria." Al Jazeera. 8 May 2013.

<sup>241</sup> "Nigeria school attack claims 42 lives."The Australian.AFP.6July 2013.accessed 6 July 2013.

<sup>242</sup> "Nigeria College Attacked: At least 40 killed."Sky News. 29 Sep. 2013

15 April 2014

Borno State (Chibok): 276 female students were abducted by Boko Haram

Considering the foregoing profile of the attacks carried out by this terrorist group, it is not misplaced to suggest that the aviation industry may be on the list of future attacks. Therefore, to urgently scale up security in the sector is now, especially One can mention several indicators that point to the vulnerability of the aviation industry in Nigeria to terrorist attack.

First is the poor security situation across the country, shown in the high circulation and use of small arms and light weapons including improvised explosives that could be used in attacks at the airport or on an aircraft. Second, the lack of strong and resilient protective structures such as concrete walls around some of the nation's airport further heightens its vulnerability to successful attacks. The separation of possible intruders from vulnerable spots in an airport such as the tarmac by wire gauze is easily penetrable as well as disgraceful. This accounts for why aggrieved local residents or herds of cattle and goats have in the past jeopardized flights in some of the nation's airport.

Third is the large number of illegal users at the airport, including touts who extort money from passengers, especially at the Murtala Muhammed Airport, Lagos. Such a crowded environment makes it difficult for potential terrorist to be easily identified and neutralized.

Fourth, the habit of some airport and airline staff leaves little to be desired. Some have now turned to professional beggars, thereby losing sight of the sensitivity and criticality of the aviation sector in a nation's economy, than vulnerability to inducement in a manner that could compromise aviation security.

All these factors coupled with inadequate modern screening facilities as well as insufficient surveillance and security personnel in our airports makes them safe haven for terrorists.

To ensure adequate security in our airports, a suitable aviation legal framework and preventive measures are is imperative.

### **4.3 Aviation Security Regimes: Prospects and Constraints**

#### **4.3.1. The Civil Aviation Act, 2006**

Drafters of Acts/laws establishing legal entities especially of human endeavors would always make inherent provisions enabling punitive measures to deter/counter the malicious nature of man and also to ease prosecution in event of crime<sup>243</sup> The Civil Aviation Act<sup>244</sup> in its relevant

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<sup>243</sup> See the case of *Aoko v. Fagbemi* (1961) All NLR 406

<sup>244</sup> Hereinafter referred to as "*The Act*"

sections 56, 57, 59 as well as the National Civil Aviation policy, 2013, indicate the government desire to curb crime in the aviation sector of the economy.

Section 56 of the Act<sup>245</sup> particularly sub-sections 1 and 2 provide:

- (1) The provisions contained in the Convention<sup>246</sup> for the Suppression of Unlawful Seizure of Aircrafts, signed at the Hague on the 16<sup>th</sup> day of December 1970 set out in the First schedule to this Act<sup>247</sup> and as amended from time to time shall from the commencement of this Act<sup>248</sup> have force of law in Nigeria

The highlighted “First Schedule” provides as follows:

- (2) Whosoever on board an aircraft either on ground or in flight unlawfully, by force or threat of force or by any other form of intimidation, seizes or exercise control of that aircraft, commits the offence of hijacking.

Sub-section 4 is to the effect that any person convicted for the offence of hijacking is liable to imprisonment for life and also to fine of not less than ₦10,000,000.00 (Ten Million Naira). For what seems more direct, Section 57 of the Act<sup>249</sup> provides for offences of endangering safety, destroying or damaging of an aircraft in flight attracting the punishment of 5 years imprisonment or fine of not less than ₦2,000,000.00 (Two Million Naira). And for what seems most relevant to the gist of this work, Section 59 provides for offences at aerodromes.<sup>250</sup> Section 59 (1) provides that any person who, at any aerodrome, unlawfully uses any device, substance or weapon to;

- (a) Commit an act of violence which causes or is likely to cause grievous hurt on any person or
- (b) Destroys or seriously damage any aircraft or facility at an aerodrome, or disrupts any service at the aerodrome, commits an offence and liable on conviction to imprisonment for life or to a fine of not less than ₦10,000,000.00 (Ten Million Naira)

These amongst other provisions of law, ordinarily could suffice as punitive measures, enough to deter attempts at committing crimes in the aviation sector, no matter how satisfying the result could be to the perpetrators. However, considering the desperate security stance borne out of the acrimonious desire of some individuals, which has of late, dented the socio-cultural

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<sup>245</sup> *ibid*

<sup>246</sup> Apart from enacting statutes geared towards curbing crime and prevention generally, Nigeria also obliges to implement Treaty obligations on terrorism and matters related thereto, such as “*Protocol for the suppression unlawful acts of violence at airports, 1988. Nigeria has ratified 9 out of the 16 United Nations universal instruments against terrorism.* See s. 1 (2) (d) of the Terrorism Act, 2011

<sup>247</sup> *op'cit*

<sup>248</sup> *ibid*

<sup>249</sup> *ibid*

<sup>250</sup> Emphasis ours

fabrics of this country, same as informs the milieus that latently surround aviation safety practice in Nigeria, no amount of legal (punitive) provisions on paper would be adjudged as sufficient. Preventive measures, rather, are to be accorded premium attention, especially considering the fact that there is an alarming shift in tactics<sup>251</sup> by terrorists that have increasingly become a formidable foe in Nigeria.<sup>252</sup>

Terrorist attacks can come from any direction at anytime, in any manner; bombs, and fires, even biological and chemical weapons. Since practically, not every things can be protected. It is necessary to focus on protection of critical infrastructure such as public transport system like bridges, subways, railway and airports. These are essential elements of our economy and life and therefore attractive targets to terrorist groups. It is in view of this that this work has taken kin interest in examining the preventive measures available in the aviation sector of Nigeria.

Prior to the formulation of the National Civil Aviation Policy in 2013, Nigerian airport operated (as they still do) below the preventive standards set by International Civil Aviation Organization (ICAO).<sup>253</sup> Waking from this prolonged slumber, Nigeria has recently, via the Ministry of Aviation, formulated a sustainable policy framework for the sector. Part v of the policy<sup>254</sup> provides generally for aviation safety and security. This laudable effort is an adoption of annexes 9 and 17 of the Chicago Conventions.<sup>255</sup> Paragraph 2 of Part V of the Policy deals with security, and the policy statement is to the effect that the government will ensure that airports are provided with adequate security mechanisms and resources. In addition, individual airlines will conduct secondary security passenger screening at the airports.

Ordinarily, the reason for the new Act<sup>256</sup> should be among other things, consistency of all Nigerian laws, policies and measures with international security and preventive measures on paper and in practice, but the truism is without blemishes that Nigerian airports are still

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<sup>251</sup> The Movement for Emancipation of Niger -Delta (MEND), favoured kidnapping and mere protest. This pattern of terror actually changed at the wake of Boko-Haram. In June, 2011, the Boko – Haram successfully launched a suicide attack against the nations Police Headquarters in Abuja. In August 2011, it was United Nations compound in Abuja that was hit.

<sup>252</sup> Akin O. “*Legal Responses To The Boko Haram Challenge: An Assessment of Nigeria’s Terrorism (Prevention) Act, 2011*” (paper delivered at the Oxford Round table, Oxford University, 2012, July.) p8, describes the incident of Boko Haram as a festering sore which is threatening the very survival of Nigeria.

<sup>253</sup> ICAO is the specialised agency of the United Nations, responsible for the codification of principles and techniques of international air navigation to ensure safety and orderliness

<sup>254</sup> *op’cit*

<sup>255</sup> Annex 17 to the Convention on International Civil Aviation, borders on security “*safeguarding international civil aviation against acts of unlawful interference*”, i.e. the “*Montreal Convention for the Suppression of Unlawful acts Against the Safety of Civil Aviation*” that came into force on the 26 January, 1973.

<sup>256</sup> *op’cit*

negligently operating without these measures practically in place. Affirming this suicidal mode of operation, the Minister listed some of the reasons why 22 airports, including Murtala Muhammad International Airport (MMIA), in the country have remained uncertified by ICAO. Blaming it back on lack of infrastructure, the Minister lamented thus:

The airports lack adequate fire covers, efficient airspace communication infrastructure, water hydrant, fire siphoning vehicles, airfield lighting, while poor security of the airport coupled with lack of perimeter fencing...among others are militating against the standard airport-system stipulated by the global aviation regulatory body.<sup>257</sup>

It is quite hapless that one can hardly lend credence to the effort of government and relevant authorities on the implementation of security/preventive measure in such areas valued as public haciendas of the country, as the aviation sector.<sup>258</sup> It is the duty and responsibility of all organs of government, and all authorities and persons to conform to, observe and apply the “Fundamental Objectives and Directive Principles of State Policy.”<sup>259</sup> Any attempt at justifying laxity by taking advantage of the Achilles heel of relevant Conventions<sup>260</sup> or usurping Section 6 (6) c of the Constitution, which is to the effect that matters related to some rights, such as those under chapter II, are non-actionable in court,<sup>261</sup> considering the fact that the country is suffering pains and pangs of security challenges, could be grossly unpatriotic and abuse of public trust.

In dire security situation of a country, as in Nigeria now, it would be most appropriate that the security issue, though part of mission and vision of the government, should not be so merely considered. A reasonable government should consider it a matter of duty and responsibility accruing rights to its citizen. Such right, not second generation so called as construed in the trilogy construct of human rights under the Nigerian Constitution,<sup>262</sup> but such

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<sup>257</sup> See the Nigerian voice.com/mobile/012703/why-Nigerian-airports-have-not... Accessed 03/06/2024.

<sup>258</sup> Oxford Economics reports that despite the global economic meltdown that has taken a toll on aviation industry, air transport has been contributing 10 billion to Gross Domestic Products (GDP) of Nigeria and other African countries. [www.proshareng.com/news/6810.html](http://www.proshareng.com/news/6810.html). accessed 10/06/2004

<sup>259</sup> Chapter II, particularly Section 14 (2) b of the Constitution of the Federal Republic of Nigeria, 2011 (As Amended) hereinafter referred to as “*The Constitution*”

<sup>260</sup> For instance, Article 88 of the Convention providing that the Assembly shall suspend the voting power in the assembly and in the council of any contracting state that is found in default under the provisions of this charter as penalty for non-conformity by state party is weak enough for state to take advantage of.

<sup>261</sup> Juxtapose the decision of court in *Essi v. Nigerian Ports PLC* (2006) all FWLR (pt 311) p 1909 at 1922 and also *FAAN v. Courtney* (2011) LPELR – 19742 (CA), with the legal fact that a body corporate, such as Federal Airport Authority of Nigeria (FAAN), with perpetual succession and a common seal, have the power to sue and can be sued in its corporate name.

<sup>262</sup> Chapter IV of the Constitution, makes provision for “*Fundamental Rights*” expressly made actionable in court by section 46. On the other hand, chapter II provides for Fundamental Objectives and Directive principles of State Policy, expressly made non-judicial by provision of section 6(6)c of the Constitution.

as actionable in court against the government and especially agencies that are fond of taking advantage of the Attorney General's representation in court.<sup>263</sup>

No doubt, there are statutory provisions as well as workable administrative policies on ground, to serve as genuine starting point in ensuring that the fire of terrorism is not continually allowed to burn in this country, and to particularly bar insurgents from attempting a traverse on the aviation sector. But The government and its administrative agencies only would have to go beyond these good intentions to ensure security of life and property, which this work considers the least a well meaning government, in the light of social contract, can provide for its citizen.

#### **4.3.2 Terrorism Act**

Tarrying in Nigeria is the constant human rights violation perpetually occasioned by terrorism and violence in diverse manners, causing death, serious bodily injuries and destructions. The Nigerian society has suffered these pains both physically and psychologically. The effect is also economically catastrophic.<sup>264</sup> Though we have not really had it in our airports; terrorist attack remains a constant latent threat therein. Therefore, a proactive legal measure must be in place even as preventive mechanisms are given the enabled environment to gain sustained momentum.

Discharging its primary responsibility in this regard, the National Assembly enacted the Terrorism (Prevention) Act, 2011 with a quick successive amendment; Terrorism (Prevention) (Amendment) Act, 2013<sup>265</sup>. Prohibiting all acts of terrorism and financing of same.<sup>266</sup> Section 1 (2) of the Terrorism Act, provides thus:

A person or body corporate who knowingly in or outside Nigeria directly or indirectly wittingly:

- (a) Does, attempts, or threatens any act of terrorism
- (b) Commits an act preparatory to or in furtherance of an act of terrorism
- (c) Omits to do anything that is reasonably necessary to prevent an act of terrorism.
- (d) Assists or facilitates the activities or person engaged in an act of terrorism or offences under this act.
- (e) Participates as an accomplice in or contributes to the commission of any act of terrorism or offences under this Act

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<sup>263</sup> See *FAAN v. Courtney supra* at footnote 25

<sup>264</sup> *op'cit* at footnote 22

<sup>265</sup> The act prohibiting acts of terrorism and related offences, hereinafter referred to as "*Terrorism Act*

<sup>266</sup> See section 1(2) **b** and **F** of the Terrorism Act and also the Terrorism (Prevention (Proscription Order) Notice, 2013, Gazette 24<sup>th</sup> May, 2013

- (f) Assists, facilitates, organizes or directs the activities of person or organizations engaged in any act of terrorism
- (g) Is an accessory to any act of terrorism or
- (h) Incites promises or induces any other person by a means whatsoever, to commit any act of terrorism or any of the offences referred to in this Act, commits an offence under this Act, and is liable on conviction to maximum of death sentence.”

Considering the security situation of this country at the moment, this enactment can be adjudged a veritable watershed in law making in this country. Nigeria has not had such comprehensive law aimed at clipping the wings of one of the gravest threat to national survival.<sup>267</sup> Despite its convoluted drafting, the Act stands a good chance of bringing terrorist to heel and ensure that people live in peace and freedom, without let or hindrance. Nevertheless, a lot of informed opinions abound on the Statute,<sup>268</sup> Particularly the death penalty, in view of its harshness, inhumanity and failure as deterrence. By the same token, and like a counter to the foregoing revulsion, views abound that favour drastic measures as death sentence, on the basis that drastic disease warrants drastic remedy.<sup>269</sup>

These divergent opinions cannot be exhausted here. Due to both religious and academic biases, it remains constant in the polity. Against this back drop, the Judiciary would have to be wary of the fact that even as terrorism poses difficult questions for every country, it poses more challenges for democratic countries like Nigeria. Not every effective means is at all times, a legal means.<sup>270</sup> While other arms of government error in their hurried legislation<sup>271</sup> and policy making could easily be corrected with swift amendment or repeal, a slip on the part of the judicial arm of government in desperate situation like ours at the moment could be almost indelibly rocky to the polity. Justice Jackson<sup>272</sup> in his wisdom postulated that:

...a mistake by judiciary in times of war and terrorism is worse than a mistake of the legislature and the Executive in times of war and terrorism. The reason is that the judiciary’s mistake will remain with the democracy, when the threat of terrorism passes, and will be entrenched in the case law of the court as a magnet for the development of new and problematic laws. This is not so with

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<sup>267</sup> Akin, *supra* at footnote 16. Also according to Akani C. “2011 Terrorism Act in Nigeria: “Prospects and problems”, online International Journals of Arts and Humanities, vol.2, 2013. P220, while the Talibans ranks 1<sup>st</sup>, Boko Haram ranks second with 1,132 deaths in more than 364 terrorist attack. available at [www.onlineresearchjournals.org](http://www.onlineresearchjournals.org). accessed 15/07/2014

<sup>268</sup> *ibid*

<sup>269</sup> *ibid*

<sup>270</sup> Aharon B. “A Judge on Judging – The Role of Supreme Court in a Democracy” Harvard Law Review, November, 2002. P.9 pg9

<sup>271</sup> See the definition Section (46) of the EFCC Act, 2004

<sup>272</sup> See the Israeli case of *Pub. Comm. Against torture in Israel v. Govt. of Israel* Hc 5100/94/53 (4) P. d. 817 & 45

mistake of the other branches, which can be erased through legislation or executive action and easily forgotten’’<sup>273</sup>

The onus is therefore on the judiciary to give the desired life to these legislations<sup>274</sup> and to lighten up the Justice Administration system, such that critics would not see reasons to be skeptical. Thus without outright prejudice to the express provisions of the constitution<sup>275</sup> and decisions of court guaranteeing sharing of powers and functions in accord with the hallowed practice of separation of powers<sup>276</sup> it should however, remain in judges consciousness that they do more than just apply the law as it is. Of course as Lord Denning will always have it, judges have the power to fill the necessary gaps in law.<sup>277</sup>

### 4.3.3 The National Civil Aviation Policy, 2013

The delicate nature of the aviation sector of every economy especially the airport, makes it a reality that preventive measures, rather than punitive, be put in place to deter unlawful interference. Thus apart from the various Acts and ratified international instruments and protocols, ICAO compliant states should ideally put up feasible administrative policies, such that is constantly renewable, to be at par, if not proactively ahead of security threat that has become common place in the recent global community.

Being mindful of Nigeria obligations under Annex 17 to the Convention on International Civil Aviation, which is to ensure the implementation of adequate security measure at all airports, airstrips, helipads, the Ministry of Aviation 2013 reviewed the National Civil Aviation Policy.<sup>278</sup> Importantly, the policy in its part V is elaborate on safety and security, which it listed as the organization policy. Part 5.2 has the policy statement which states;

“Nigeria in cooperation with international partners will take all necessary actions, consistent with applicable laws, statutes, and international agreements and ICAD SARPS, to enhance aviation security.”<sup>279</sup>

Thus stating the objective of agreement as;

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<sup>273</sup> This is clearly what informed the caution exercised by the U.S. Supreme court in *United States v. Jones*, 132 s.ct. 945 (2012). Full regards for procedural safeguards such as presumption of innocence, right to counsel, fair hearing etc which are the hallmarks of modern criminal jurisprudence should not be jettisoned, regardless of what the perpetrators of crime and terrorism are doing to the polity

<sup>274</sup> Akin *supra* at footnote 31. P. pg 2, where he posited that “*law without enforcement agencies amounts very much to an oxymoron*”

<sup>275</sup> See sections (4) (5) and (6) of the constitution

<sup>276</sup> See *Tende&Ors v. Attorney-General of the Federation* (1988), NWLR (pt.17) 506

<sup>277</sup> In *Parker v. Parker* (1954) ALL ER p 22

<sup>278</sup> *op’cit* at note 8

<sup>279</sup> *op’cit*

...to have well-coordinated and effective Aviation Security Management Systems which will ensure prevention of unlawful interference with aviation.<sup>280</sup>

To actualize this vision and mission, the agreement has adopted the strategies as follows;

- Ratify and domesticate all international conventions and protocols on Aviation Security.
- Develop and put in place a National Aviation Security programme and National Security committees respectively.
- Deploy all available technology, equipment methodology and procedure to prevent and counter new and emerging threat to civil aviation.
- Strengthen the AVSEC Department in NCAA to ensure proper regulatory oversight.<sup>281</sup>

Additionally **part v.2.2** provides to the effect given to airlines/operators, such powers as to conduct secondary security passenger screening at the airports, in accordance with security manuals duly approved by NCAA.<sup>282</sup>

Talking about ratification of international instruments, it is evident from the level of ratification of the 16 global instruments on African countries chart<sup>283</sup> that Nigeria as at 2001, had already done reasonably well in terms of ratification, and even domestication, looking at the reflections had in the various laws such as the Terrorism Acts, Civil Aviation Act, Civil Aviation Policy. Amongst the strategies also is the mention of deploying technologies, methodologies, equipment and procedures as well as strengthening the AVSEC department to counter threats.

Seemingly, boastful, the Minister of Aviation in 2013 declared that the new NCAP, 2013, is designed to provide a platform for the way forward and future prospects of the aviation industry and importantly set new paradigms in air travel standard.<sup>284</sup>

Critically speaking it cannot be considered out of proportion for such morale booster to come from a minister that seemed ready to work. However, we wait to see effect being given to

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<sup>280</sup> *ibid*

<sup>281</sup> *ibid*

<sup>282</sup> *ibid*

<sup>283</sup> Jolyon F. “*African counter-Terrorism legal frameworks a decade after 2001*” (Institute for Security Studies) available at [www.issafrica.org](http://www.issafrica.org), adopted with acknowledgment from the United Nations office of drugs and crime (UNODC), Vienna. See also <https://www.unodc.org/tldb/uiuniversal> instruments. Accessed 22/08/2013.

<sup>284</sup> See the Honourable Minister’s forward to National Civil Aviation Policy 2013, in November 2012, precisely at P. iv

most of the policy statements – Domestication of international instruments is not an end itself, we have noticed that even where ratification is secured, it may not amount to much more. Some officials in African countries, according to a scholar<sup>285</sup> have suggested to researchers that where ratifications have occurred, terror – related laws may be drafted to satisfy minimum international obligation, but officials then pay little more than lip services to international instruments as their implementation is put in the back burner. Without much ado, it is detectable that gap exist between the plan to put in place state of the art technologies to curb crime and workable plans to ensure that personnel of the AVSEC and airports working communities are adequately trained to man these innovations professionally.<sup>286</sup> Above all, one area of the policy that deserves legislative attention is strengthening of the AVSEC personnel beyond the ordinary standard, to such extent that they can assume the status of a body established by an Act of the National Assembly capable of turning the dreams of aviation security to reality. He postulated that:

Touchstone of success in counter-terrorism in Africa ought to be whether authorities can, within a largely ordinary civil policing paradigm, lawfully prevent and deal with terrorist threat while complying with constitutional and international standards<sup>287</sup>

A well trained and equipped AVSEC outfit, no doubt, is capable of dealing with terrorists as mere criminals, thereby denying them the public space and attention that defines their violet actions. As we optimistically wait and persistently remind the appropriate authorities to ensure practicality in aviation security policies, one would not hesitate to conclude in the process that; having laws/policies on the book is necessary, but not sufficient. The wider challenge and indeed the challenge of rule of law among African countries, assuming law reform has taken place, is to translate law on the book into law on the streets.

Above all, since we rather embrace preventive measure than the punitive (considering the fact that terrorist action is better imagined), the Federal Airport Authority of Nigeria (FAAN), needs to wake up from its lax and be prompt in discharging its airports security responsibilities rather than the frenzy exchange of blames among coordinate authorities; such as the explanation FAAN gave blaming Arik airline operators on the Daniel Oikhena saga is at best puerile. This is in addition to the cases of frequent successful armed robbery attacks at airports, especially at Murtala Muhammad International Airport (MMA), Lagos, in the heavy

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<sup>285</sup> Jolyon *op.cit*

<sup>286</sup> Yeffet *op.cit*

<sup>287</sup> Jolyon *op.cit*

presence of police, SSS, NIS, NCS, and obviously the AVSEC, which is the security arm of FAAN, amongst other private security operatives.

#### 4.4 Aviation Security Techniques: The Challenge of Human Rights

As highlighted earlier in this discourse, there are considerable revulsions against enactments and promulgations, particularly from the human rights point of view. This is mostly against the Terrorism Prevention Act and also squarely at the preventive measures adopted by most countries, including Nigeria. It should be noted with caution, however, that there cannot be any trade – off to be made between human rights and terrorism. Upholding human rights is not at odds with battling terrorism, even though it often times has turned out, on the contrary, that the deep respect for the dignity of each person is among our most powerful weapons against it.<sup>288</sup>

This sub-chapter explores the human rights dimension of the use of bomb detectors and **Full body Scanners** at the airports, in the specific context of its possible implications for the right to privacy; not undermining the impacts of terrorism on human rights, but to underscore the imperatives of ensuring that counter terrorism measures do not end up terrorizing human rights.

The deployment of body scanners has raised global concerns for right to privacy.<sup>289</sup> According to a report in the U.K Guardian,<sup>290</sup> human rights campaigners have asserted that the rapid introduction of full body scanners at British airports threatens to breach child protection laws, including the Protection of Children Act, 1978<sup>291</sup> which bans the creation of indecent images or “pseudo-images” of children. According to the report,<sup>292</sup> the images created by the machines are so graphic that they amount to virtual *strip searching*.<sup>293</sup> Thus

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<sup>288</sup> Dakas C.J., *Terrorism in the Aviation Sector: the Human Rights Dimension of the Use of Body Scanners* Nigerian Institute of Advanced legal studies (NIALS), Lagos Campus, 2010,p 2

<sup>289</sup> Section 37 of the Constitution. See also the dictum of KayodeEso JSC (as he then was), in *Ransome Kutu v. Attorney-General of the Federation*, where he posits that fundamental right stand above the ordinary law of the land

<sup>290</sup> January 4<sup>th</sup>, 2010

<sup>291</sup> See the Child Rights Act, 2003 and corresponding Child Rights Laws in the States that have taken a cue from the Federal Legislation

<sup>292</sup> Vanguard, *op'cit*

<sup>293</sup> Muslims would not tolerate widespread use of the devices. According to Isaac Yeffet, a former head of EL-AL airlines, on Fox News interview, January 1<sup>st</sup>, 2010, “ a Muslim will know that his wife was seen naked in this machine, you know what would be the reaction?..

Terrible” see chapter 33:59 of the holy Qur’an also 24:31 and the Hadith, Abu Dawud (32:4092). Also available at [www.thereligionofpeace.com/Quran/007/-veils.htm](http://www.thereligionofpeace.com/Quran/007/-veils.htm).

there is a passionate call to protect the privacy of passengers at the airports. In response, the UK Airport Security Department had it that they have deployed a code of practice to ensure lawful and proportionate search, such that those operating the scanners are separated from the device, making them unable to see the person to whom the image relates and these anonymous images are deleted immediately. The U.S. Transportation Security Administration (TSA)'s version of response is to the effect that, faces would be blurred, and the images cannot be transmitted to the internet<sup>294</sup>

In the specific case of Nigeria, Section 37 of the Constitution of the Federal Republic of Nigeria, 1999, expressly provides that “The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected”. This right is, however, not absolute.<sup>295</sup> It is clearly made, subject to an omnibus derogation clause embodied in Section 45(1), pursuant to which the right to privacy is subject to any law that is reasonably justifiable in a democratic society; (a) in the interest of defense, public order, public morality or public health or (b) For the purpose of protecting the rights and freedom of other persons”

It is understandable from the preceding, that the use of body scanners constitutes *prima facie* violation of the right to privacy. For any derogation from same to meet the rigorous standard set out in Section 45(1) of the Constitution, it must: (a) be backed by a law; (b) such law must be reasonably justifiable in a democratic society; in which case, its democratic credentials must not be in doubt; and (c) it must be predicated on a legitimate state purpose (i.e. defence, public safety etc). The response through the instrumentality of a specific law must, in turn, be proportionate to the circumstances warranting the resort to derogation. The Nigerian government, as pointed out earlier, has authorized the purchase and deployment of body scanners at major airports. Regrettably there is, to our knowledge, no law, so far, that authorizes the use of body scanners in the context of aviation security in Nigeria.<sup>296</sup> It is therefore imperative that the Nigerian government enacts a law to ensure the lawful use of body scanners at Nigerian airports. Such law, as highlighted earlier, must meet the rigorous standards set out in section 45(1) of the Constitution and reasonably take into account global best practices. Accordingly, the law must, for instance, make provision for the blurring of faces of passengers under search; instant deletion of information, as soon as the passenger

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<sup>294</sup> Notwithstanding the efforts of relevant authorities to allay the privacy fears of human right groups, Shami Chacrabati of Liberty, is quoted in Dakas, *supra* (footnote 36) at p11, asking “where are the government assurances that electronic strip searching is to be done in a lawful and proportionate manner; based on rational criteria rather than racial or religious bias?”

<sup>295</sup> [www.ourcivilisation.com/cooray/btof/chap225.html](http://www.ourcivilisation.com/cooray/btof/chap225.html), accessed 28/07/14

<sup>296</sup> Dakas *op'ci* tat note 52

under search gets an “all clear” signal; and importantly, confidentiality of information obtained where circumstances warrants the storage of same.

It would not be out of place to conclude at this juncture that as the government and its agencies in our airports must resist the temptation of unleashing terror on human rights in the name of fighting terrorism, people must also be wary of inventing or conjuring up “new” human rights in defence of terrorism. The Nigerian democracy is still the nascent type; the gate way to the economy remains the airport. If security at our airports is not assured to reasonable extent; apart from threat to life, the bid to attract foreign investors to revive our economy will continually suffer devastating blow.

#### **4.5 African Union and ECOWAS on Aviation Security**

Considering the trans-national mode of operation<sup>297</sup> adopted in recent times by modern criminals, particularly terrorists, improved preventive and security measures cannot be exhaustively discussed without adherence to International Conventions and related legal reforms generally. The international community and particularly the regional as well as sub-regional Africa have come up with common strategy to ensure close marking and harmonious front in the battle against terrorism. This work, in this chapter, examines efforts made by both African Union and ECOWAS at putting in place feasible legal frameworks and administrative policies to ensure safety and security in the African Civil Aviation setting. It also examines Nigeria’s level of compliance with these regional and sub-regional body policies and recommendations. This is done with a comparative study of the level of compliance obtained in selected countries within African and the West African sub-region

##### **4.5.1. African Civil Aviation Commission**

The African Civil Aviation Commission<sup>298</sup> in its mission statement clearly has it that a safe, secure, effective and sustainable aviation industry is what is desired. The commission designed African Civil Aviation Policy in 2011,<sup>299</sup> to promote a harmonized approach to management of the various aspects of civil aviation, including safety and security.<sup>300</sup> Chapter nine (9) of the policy which focuses on aviation security management clearly states the responsibilities of the states as well as those of the airline operators as follows:

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<sup>297</sup> Sanders T., “An Economic Perspective on Trans-national Terrorism” (European Journal of Political Economy, June,2004 Vol.20 p.2) see also Rollins J. “Terrorism and Transnational Crime: Foreign Policy Issue for Congress” available at [www.fas.org/sgp/crs/.../R41004.pdf](http://www.fas.org/sgp/crs/.../R41004.pdf)... Accessed 13/8/2013

<sup>298</sup> Hereinafter referred to as “The Commission”

<sup>299</sup> Hereinafter referred to as “The Policy”

<sup>300</sup> *ibid*

- i. Members states shall ratify and domesticate all international conventions and protocols on aviation security.
- ii. Members states shall develop and put in place National African Security Program and National Aviation Security Committees respectively in their states.
- iii. Members states shall deploy all available technology equipment, methodologies and procedures to prevent and counter emerging threats to civil aviation e.g. Man Portable Air Defense System (MANPADS) and Liquid Aerosols and Gels (LAGs)
- iv. AVSEC Department in Civil Aviation authorities will be strengthened and manned by qualified professionals to ensure proper regulatory oversight on aviation security services.
- v. AVSEC personnel in member states shall be well trained, properly equipped and adequately remunerated.
- vi. Members states shall cooperate with other countries and international organizations to ensure the security of international civil aviation.

In addition to these provisions, **Annex 3** sets out the aviation safety target for Africa. Thus at the Ministerial Conference on Aviation Safety, Abuja, 2012, they came up with such high points as:

- States should implement their various policy program (SSP) and ensure that all service providers implement a Safety Management System (SMS) by end of 2015.
- Certify all international aerodromes by end of 2015.
- Requires all African carriers to complete an IATA Operational Safety Audit (IOSA) by end of 2015.

To buttress member states, in such areas where difficulties could be encountered, such as technical know-how, the commission concluded a memorandum of understanding (MOU) with China, India, Korea, Singapore, Turkey, United Arab Emirate, in Indonesia, 2013.

#### **4.5.2. Ecowas Declaration on Terrorism**

In the West African sub-region, though ECOWAS lacks any protocols or strategies dealing with terrorism,<sup>301</sup> there are evolving peace and security architecture and numerous declarations in support of efforts on counter-terrorism. ECOWAS has a number of relevant protocols such as protocols on Legal Affairs, Mutual Legal Assistance and Extraditions, small arms, and combating illicit drugs.<sup>302</sup>

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<sup>301</sup> See the 1997 ECOWAS Defence and Security Commission. Available at [www.africa.org](http://www.africa.org)

<sup>302</sup> Jolyonop.citat p.32 pg. 3

No gain saying the fact that over the years the ministers of Aviation both at the regional and sub-regional level have promptly had several conferences initiating more than a few resolutions, declarations and action plans. It is appropriate that such conferences are ongoing, considering the dicey and sensitive nature of the crime of terrorism. The international community agrees that terrorism is a crime, however, the responsibility of combating it does not lie with the international organization, but with individual states themselves, i.e. there are no international tribunals that deal systematically with terrorism in the way that the International Criminal Court (ICC) and other bodies can adjudicate genocide, war crimes and crime against humanity. Yet it is advised that national level actions on terrorism should draw directly from joint negotiated global and continental instruments that create and describe various offences.<sup>303</sup> Hence the 2009 counter terrorism committee report on resolution 1373 encourages states to become party to all international counter terrorism instruments, and also incorporate the elements of those instruments into domestic laws.

At the African regional and West African sub regional level, what is expected is to, even as we bank on capacity of individual national justice system, embrace the international instruments and cooperation with each other based on identity of legal wrongs described in their respective laws. This will greatly assist the extradition and mutual assistance and support that are needed in the joint aviation security of the continent.

#### **4.6. Nigerian Aviation Security Compliance with ICAO Preventive Standards: A Comparison with Selected Countries**

Naturally, Nigerians have many questions such as how could the menace of terrorism be in Nigeria? How can we keep Nigeria safe? Where is the next target for Boko-Haram; *could it be the airports?*<sup>304</sup> Why the question connected to the aviation sector is so emphatic is because of the bizarre fact that Nigerian airports lack the basic attack-preventive measures.

In 1974, ICAO council adopted the new International Standards and Recommended Practices (SARPs) on aviation security embodied in the first edition of the Annex 17-security-safeguarding international civil aviation against acts of unlawful interference.<sup>305</sup> The primary duty of contracting state under this Annex 17 is to safeguard its passengers, ground personnel as well as the general public against any act of unlawful interference. Thus the security

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<sup>303</sup> *ibid*

<sup>304</sup> Majority of the terrorist targets are the aviation industry. CNN reported on the 18/07/2014, how terrorist attacked Malaysian aircraft *enroute* Ukraine to Melbourne on HIV/AIDS summit, most recent than the 9/11 the mutalab attempt and others elsewhere

<sup>305</sup> Following the tragedy of 9/11, a number of changes were recommended to Annex 17 by the ICAO council. Chapter 23 of the annexure provides for security and facilitation

manual for safeguarding civil aviation against unlawful interference was developed to assist contracting states in implementing this annexure to the Chicago Convention.

While some economically lowly rated countries like Mali, Mozambique, Rwanda, Zambia and Sudan, in Africa, have received commendation for attaining the 60% target of effective implementation of safety related SARPs with significant improvements,<sup>306</sup> the Nigerian Aviation Ministry is acknowledging the truism that Nigerian airports are still fledgling with the recommended basics such as perimeter fencing.<sup>307</sup>

At the end of 2004, it was reported<sup>308</sup> that the American Transport Security Administration (TSA) has installed Threat Image Protection (TIP) software on all scanners, and onward to another technique known as “Brain Waive Finger Printing or “Computerized Knowledge Assessment” (CKA), which could be used to determine if someone has a specific knowledge of terrorist training camp or a particular terrorist code. Typical America, following the Mutalab<sup>309</sup> failed attempt, via the TSA, resolved that aviation security must begin beyond American borders. Seeking extra-ordinary support from global aviation partners, they mandated every individual flying into the U.S from any part of the world, especially nations that are state sponsors of terrorism or other countries of interest (a total of 14) to go through enhanced screening.<sup>310</sup>

Israel airport security is rated as one of the best in the world.<sup>311</sup> Since the hijacking of flight 426 on July 23, 1968, by three members of the popular front for the liberation of Palestine, there has been no successful attempt of terror aboard Israeli carriers, although they remain prime targets and their airports being the major access to their economy.<sup>312</sup> To attain such height, even though Israel is known as world centre for hi-tech, they are recently very emphatic on personnel interaction with travelers. According to Yeffet<sup>313</sup>

Having a well-trained agent interview each passenger before boarding an aircraft has prevented terror in the air. Technology can help the qualified well trained human being but cannot replace him... the only sure way of dealing with the threat is to talk to every passenger and find out whether they can tell a convincing story or give account of their travel plans.

Ghana, on record, never had to wait for terrorism threat; the crime of stealing at the airports was enough to draw the attention of the Ghanaian government. At least, Ghana has gone

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<sup>306</sup> 2013, ICAO Safety Report [www.icao.int](http://www.icao.int)

<sup>307</sup> See ChineduEze *ICAO Audit and Security Challenge*, Thisday 05 June,2015,Lagos.

<sup>308</sup> [www.usa.comtdiscoveryguides/homeland/overviewphp](http://www.usa.comtdiscoveryguides/homeland/overviewphp) accessed 18/06/2014

<sup>309</sup> Mutallab*supra*

<sup>310</sup> Following the Mutallab (Nigerian) suicide bomb attempt, Nigeria is included in those countries

<sup>311</sup> See [dailyindependenting.com/2012/09/Israeli-experts](http://dailyindependenting.com/2012/09/Israeli-experts). accessed 12/06/14

<sup>312</sup> *ibid*

<sup>313</sup> Yeffet *op'cit* at footnote 50

beyond the standard of perimeter fencing to installation of state of the art surveillance systems at the airport; ultra-modern real time cameras with video analytics to provide 24 hours security surveillance, programmed to issue alert if someone tries to do something out of the ordinary.<sup>314</sup> In the case of Nigeria, it is so appalling that a decade after the Port Harcourt air mishap caused by cattle, and the reactive Minister of Aviation's assurance that perimeter fences would be put in place within a short time, it is yet to materialize in the airports. It is clear that Nigerian airports have no defined territory; making the business of security almost elusive.

## **CONCLUSION**

It is now obvious that Nigeria is getting her own share of the suffering terrorism has inflicted the entire world. But the good search, indeed, still remains for a clear, complete and consistent legal framework that specifies terrorist acts as serious criminal offences; analysis such acts according to their seriousness and helps the court bring terrorists to justice. Such legal framework should in essence provide the basis for the development of domestic counter-terrorism strategy that is rooted in a legal approach. Such laws should also ensure due process of law in the prosecution of terrorists and appropriately protects human rights, while combating terrorism as effectively as possible.

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<sup>314</sup> See [www.ghananewsagency.org/social/state-f-theairt-securityvisited](http://www.ghananewsagency.org/social/state-f-theairt-securityvisited) 12/07/2014

## CHAPTER FIVE

### SUMMARY, OBSERVATIONS, CONCLUSION AND RECOMMENDATIONS

#### 5.1 Summary

Terrorism is the greatest security challenge the country is facing at the moment. With the increase in threat level occasioned by globalization, and nationalities involved in recent times, it has become difficult to say who is or who is not a terrorist, neither can one say Nigerian airports are not the next prime targets.

In quick reaction, the government has acted by reviewing existing laws and enacted some such as the Civil Aviation Act, 2006, Terrorism (prevention) Act, 2011, the Civil Aviation Policy, 2013. And prominently, Nigerian has ratified reasonable numbers of International Instruments and Protocol, as well as Declarations at universal, regional and sub-regional levels.

The focus of this study is on preventive rather than punitive measures that are prevalent in the relevant Acts. This is deliberate because of the disastrous result of terrorist attack. In view of this, a critical analysis of what government and relevant authorities in the aviation sector have done as regards crime prevention is carried out. In the course of which, it is discovered that Nigeria, in spite of the obvious and realistic menace of terrorism, still remains below the ICAO minimum standards of such extent as security (perimeter) fencing in major airports, including the international ones. Basic training i.e. human resources development as required by ICAO is lacking. These and many more account for lack of proper explanation to the various stowaway cases we have had due to security ineptitudes at the airports in Nigeria.

The work concludes hence that effective practical implementation of counter-terrorism policies and procedures require a well-defined strategy, bolstered by a strong, well-coordinated domestic security and law enforcement apparatus that can detect, prevent and investigate terrorist activities. States such as Nigeria should ensure that counter terrorism measures are managed and conducted by appropriate law enforcement agencies, with coordinated national legislative mandate to guide their work. Apart from such enactments, the aviation policies should be given effect in the area of appropriate training and sophistication.<sup>315</sup> Such law enforcement agency if granted reasonable level of autonomy and needed support, can within a largely ordinary civil policing paradigm, lawfully prevent and deal with terrorist threats in compliance with constitutional and international standards.

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<sup>315</sup> See the African Civil Aviation Policy, 2011, particularly *strategy iii*, for instances of such training required for AVSEC personnel in modern times

## 5.2 Observations

1. Our efforts in this study centered simultaneously on the global reality of crime, particularly, terrorism, and the legal framework as well as the administrative preventive measures to curb the menace and obviate the incidence in the Nigerian aviation sector.
2. Having examined the various enactments and administrative policies formulated towards achieving these goals, we discovered the facts that people are taking advantage of the reality that Nigeria is a constitutional Republic that desires to prioritize the protection of liberty and human rights. The high degree of personal liberty which allows people the space and freedom to pursue their desires has left Nigerian society more vulnerable to terrorist threat.<sup>316</sup>
3. The National Assembly deserves commendations to have enacted such comprehensive law as the Terrorism Act, even though more need to be done, such as to further make laws institutionalizing the use of body scanners at the Nigerian airports to satisfy the rigorous standards set out in Section 45(1) of the Constitution.<sup>317</sup> Realizing that the dastardly act of terrorism and its devastating result should better be imagined, and the truism that the schemes of terrorist attacks were only discovered after incidence, we candidly observed that practical attention had better be shifted to the preventive measures than the punitive.
4. It is also our unbiased observation that Ministry of Aviation and the Federal Airport Authority of Nigeria (FAAN) have overtime, had innovative ideas on how to satisfy the preventive standards set by ICAO, but these ideas are yet to be turned to practical efforts. This has left the airports fledgling in their strides to get the recommended perimeter fencing amongst other vital security measures. In the same vein, it is frankly discovered that security personnel, perhaps, due to lack of training and dedication, are found wanting in the discharge of their duties.
5. It is our informed observation also that it is insufficient trying to prevent entry of terrorists in our airports, on board or departure, as there are still other countries in the world where the use of scanners is yet to be introduced. Passengers from some of such countries enter Nigeria, who could pose threat at our airports on arrival. It means therefore that there is hardly any security benefit to Nigeria, as terrorist may still attack Nigeria by boarding a plane from those countries. So it would not be out of proportion to say that our security measures at the moment, does not make our airports extremely unfriendly to terrorists but only serve the needs of other countries.

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<sup>316</sup> The 9/11 terrorists took same advantage of liberal United States of America, weakness of its security: its international borders, its immigration polices etc. Available at [www.csa.com/discoveryguides/homeland/overview](http://www.csa.com/discoveryguides/homeland/overview).

<sup>317</sup> *supra* at section 45(1)

### 5.3 Conclusion

Crime, particularly terrorism has become one of the horrendous realities of our time. The deleterious act of terrorism and its devastating effect has already had its mark on the Nigerian polity; so formidable-a national foe, that common place is the fear of where the next target would be. Could it be the obviously vulnerable airports?

Government's effort at providing the legal framework and administrative policies aimed at combating crime and terrorism could be considered a veritable watershed in lawmaking and administrative resolve to apprehend and deter the gravest threat to the aviation sector of Nigerian economy. With such sterling demonstration from these relevant authorities, it is hoped that if the recommendations earlier made are followed, the aviation sector solely can independently assure their clientele and the entire country of the desired security.

Finally, even as we endure the anguish from war against terrorism in all ramifications, it would not amount to derailing, if we take a cue from the US President, Obama's reaction to the Mutallab incident:

“...We will strengthen our defenses, but we will not succumb to a siege mentality that scarifies the open society and liberties and values that we cherish ...because great nation don't hunker down and hide behind walls of suspicion and mistrust. That is exactly what our adversaries want and we should never hand them that victory. We should define the character of our country, not some band of small men intent on killing innocent men, women and children... instead of giving in to cynicism and division, let's move forward with the confidence and optimism and unity that defines us as a people. For now is not for partisanship, it is time for citizenship – a time to come together and work together with the seriousness of purpose that our national security demands. That is what it means to be strong in the face of violent extremism”<sup>318</sup>

Nigeria, the true giant of African economy cannot afford terrorist attack on her aviation sector. Nigeria aviation sector remains one of the gateways to our economic development. In view of these and many more, efforts: formal, conscientious and otherwise must be made to keep the aviation sector (airports) safe.

### 5.4 Recommendations

1. There is the urgent need for the Civil Aviation Act to be amended in order to enable the lawful use of body scanners at the Nigerian Airport. This will satisfy the provision of section

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<sup>318</sup> Daka *sop'cit* at footnote p.21

45(i) of the Constitution. The Aviation Act must, for instance, also make provision for blurring of the faces of passengers; instant deletion of information as soon as passenger gets an all-clear-signal. It should also ensure confidentiality of information obtained there from.

2. We must also, as matter of urgency, go beyond the good intentions surrounding erection of perimeter fences, to giving it actual touch, so as to primarily determine territory, even as we also press for the installation of close circuit television (CCTV) and hi-tech security cameras with video analytics to provide 24 hours security surveillance, such that the system can issue alerts, if someone tries to do anything out of the ordinary. In this regard, the relevant aviation agencies should as a matter of obligation, utilize their delegated legislation privileges to make laws that will give effect to ICAO security/preventive standard.

3. The necessity for training and retraining of the airport security personnel cannot be over emphasized. Any resolve to put in place cutting edge security technology requires a corresponding technical know-how to make the operation smooth and result oriented. It would not be outrageous to undertake background checks on passengers before they come on board.

4. Finally, the issue of security at the Nigerian airports cannot be near perfection until Nigerian government liaises with other countries to enable dedicated Nigerian Air Marshals in such countries adopt safety measures to protect flights from there to Nigeria.

5. Importantly, as the National Assembly is playing its part in legislation, the judiciary should constantly wear the gauntlet and face the battle of the conflicting interests already in the polity and the global arena on terrorism and preventive measures. This would ensure that these enactments, both at the federal and states levels do not turn out to be instrument for suppressing legitimate descents. The Nigerian state must strive, even in the face of agony occasioned by terrorism, to ensure that any measure embarked upon to combat the menace of terrorism reasonably comply with her obligation under international laws.

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