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AIR LAW IN NIGERIA: PROBLEMS AND PROSPECTS

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ABSTRACT

The historic relationship between Nigeria as a former British colony and Britain has significant influence on the development and problems of air law in Nigeria. The wobbling state of air law in the country after about 72 years of civil aviation's existence, and about 47 years since the evolution of a regulatory environment, bears glaring testimony to this fact. Essentially, some of the air law problems in the country are not entirely dissimilar to problems which have for over 50 years confronted the legal system of international civil aviation.

Within the span of about 72 years, various legal instruments, including Orders-in-Council, Royal Instructions of the British Government, Acts of the British Parliament, Acts of the Nigerian Parliament, Military Decrees, Rules, Regulations, Policy Framework, Federal Government and Ministerial Directives, have governed civil aviation.

This Dissertation attempts to provide an account of the nature of each air law instrument, and the source from which they derive, taking into consideration international air law requirements, the manner of their application, and a critical appraisal of their suitability to local circumstances, responsiveness to national and global changes and challenges in the economies and technologies of civil aviation.

Chapter I discusses the regulation, administration, and management of civil aviation in the colonial era. The effect of the country's independence on civil aviation generally, the regulatory and policy framework, institutions and their role of administration and management, regulation, application, implementation of legal principles and the problems

arising therefrom are examined in chapter II. Chapter III highlights the implications of global changes in the regulation of air transport economies and technologies on Nigerian air transport. Chapter IV assesses the adequacies and shortcomings of the existing air law instruments in the country, and provides a proposal for future reforms.

The conclusion in chapter V contains a recapitulation of the entire discussion and a summary of essential elements required for creating a sustainable and progressive air law system for Nigeria.

RÉSUMÉ

La relation historique entre le Nigéria, ancienne colonie britannique et la Grande Bretagne, a une influence considérable sur le développement et les problèmes du droit aérien au Nigéria. Le retard qu'a connu le droit aérien dans ce pays après environ 72 ans d'existence de l'Aviation Civile et 47 ans depuis le développement de l'environnement réglementaire est un témoignage de ce fait. Essentiellement, certains des problèmes du droit aérien dans ce pays ne sont pas entièrement différents des problèmes qu'a connus pendant 50 ans le système juridique de l'aviation civile internationale.

Divers instruments juridiques, notamment les décisions du conseil, les Instructions Royales du Gouvernement Britannique, les lois du parlement Britannique, les lois du parlement Nigérien, les décrets militaires, les règles, les cadres institutionnels, les directives gouvernementales et ministérielles ont régi l'aviation civile Nigérienne.

La présente thèse traite de la nature de chaque instrument de droit aérien et de la source dont elle est tirée, tenant compte des dispositions qui émanent des spécifications du droit aérien international, de la forme et de la manière dont elles sont appliquées et d'une évaluation critique de la façon dont elles s'appliquent aux circonstances locales, dont elles réagissent aux changements au niveau national et mondial et aux défis qu'elles représentent pour les économies et les technologies de l'aviation civile.

Le chapitre I traite de la réglementation de l'administration et de la gestion de l'aviation civile pendant la période coloniale. Le cadre réglementaire et institutionnel, les institutions et leur rôle dans l'administration et la gestion, la réglementation, l'application

et la mise en oeuvre des principes juridiques ainsi que les problèmes qui en découlent sont examinés au chapitre II. Les implications des changements intervenus au niveau mondial sur la réglementation des économies et des technologies du transport aérien au Nigéria sont examinés au chapitre III. Le chapitre IV fait une évolution des avantages et des inconvénients des instruments de droit aérien du pays et propose des réformes futures.

La conclusion au chapitre V contient un résumé des éléments essentiels qui sont nécessaires pour la création d'un système de droit aérien durable et avantageux pour le Nigéria.

DEDICATION

**To God's Glory,
and my family,
Felix, Dooyum, Tomdoo and Mary.**

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In the course of this work, the saying that "one with God is one with a majority" was truly manifested. To God then be the glory, for against many odds, this work was accomplished.

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PREFACE

Nigeria is a country with a population of about 88 million people. Only a very small fraction of this population would seem to be aware of the existence of the aviation industry and are privileged to participate in it. Not many people, consequently, have conducted research into aviation, especially in regards to the legal aspects. As a result, there is very little material existing today for the purpose of future reference.

Nigeria has had over 72 years of aviation experience, 47 of which cover the era of the regulatory environment. These 47 years of Nigeria's air law system call for scholarly scrutiny and critical appraisal particularly to unearth the problems inherent therein, with a view to suggesting ways of improvement.

This research is the first comprehensive attempt to bring to light the air law system in Nigeria and particularly to address the problems associated with it. It would appear then to be a forerunner or a pathfinder, and a major contribution to legal jurisprudence in Nigeria, because it would have excavated an aspect of law which hitherto was difficult to navigate because of its uncharted course.

Though restricted to Nigeria, the work has attempted to expose certain problems being encountered at the international level, in relation to air law. The experience from other jurisdictions where similar problems have been grappled with or are still being confronted would present very relevant lessons for Nigeria.

Unless the Nigerian government would embark upon a comprehensive review and update of their air law system, there could not be much progress in the development of civil aviation in the country generally and of the regulatory environment in particular.

Essentially, the regulatory problems including amongst others, absence of reviewing and updating of existing laws; lack of notification of difference from, compliance with, and implementation of International Standards and Recommended Practices (SARPs); non-ratification of protocols relating to amendments to the Convention on International Civil Aviation and other related private and public international air law instruments, are not insurmountable.

A coherent, constructive and dynamic air law system is imperative for the purpose of ensuring the safety and efficiency of air navigation, which is also of high economic relevance for the present and future civil aviation industry in Nigeria. Moreover, the interdependent nature of international civil aviation has rendered inevitable the uniform application of civil aviation standards, thus placing the onus on all states to find means of overcoming their difficulties, a lot of which tend to affect the progressive development of air law worldwide.

Nigeria, like other countries, has to develop and implement a program of action for the systematic reform of its present air law system, as well as evaluate and adopt an appropriate legal framework to govern present and future civil aviation requirement in the country. Firm commitment and determination are indispensable ingredients in this direction. It is noteworthy that the fact that policy makers and other participants in the aviation industry have for the last three years been convening annually to canvass solutions to the problems affecting the industry, is a progressive development towards this end. Nevertheless, it is equally important that relevant data gathered at such meetings should be transformed into concrete policies and incorporated into a solid legal framework.

TABLE OF ABBREVIATIONS

AFCAC	African Civil Aviation Commission
AFI/RAN	African Indian Ocean Regional Air Navigation
AFRAA	African Airlines Association
AIC	Aeronautical Information Circular
AFS	Aeronautical Fixed Services
AIS	Aeronautical Information Service
AMS	Aeronautical Mobile Services
ATM	Air Traffic Management
ATS	Air Traffic Services
BOAC	British Overseas Airways Corporation
CAEP	Committee on Aviation Environmental Protection
CAD	Civil Aviation Department
CANO	Colonial Air Navigation Order
CAS	Collision Avoidance System
CRS	Computer Reservation System
CNS	Communication Navigation Surveillance
DCA	Director of Civil Aviation
DME	Distance Measuring Equipment
ECAC	European Civil Aviation Commission
FAAN	Federal Airports Authority of Nigeria

FANS	Future Air Navigational System
FCAA	Federal Civil Aviation Authority
FIR	Flight Information Region
FMA	Federal Ministry of Aviation
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
ILS	Instrument Landing System
JSC	Justice of the Supreme Court
LACAC	Latin American Civil Aviation Commission
NAA	Nigerian Airports Authority
NCAPN	National Civil Aviation Policy for Nigeria
NDCA	Nigerian Department of Civil Aviation
NOTAM	Notices to Airmen
NDB	Non Directional Beacon
NDP	National Development Plan
OPC	Operations Control
SARPS	Standards and Recommended Practices
SAR	Search and Rescue
TCPC	Technical Committee on Privatization and Commercialization.
TIBA	Traffic Information Broadcast by Aircraft
UN	United Nations
UHF	Ultra High Frequency

VDF	Very High Frequency Direction Finding
VHF	Very High Frequency
VMC	Visual Meteorological Conditions
VOR	Omni Directional Radio Range
WAAC	West African Airways Corporation
WAATA	West African Air Transport Authority

CASES CITED

<i>Air France</i>	v.	<i>Saks</i>
<i>Burnett</i>	v.	<i>TWA</i>
<i>Eastern Airlines</i>	v.	<i>Flody</i>
<i>Eichstedt</i>	v.	<i>Cessna</i>
<i>Emeloyne</i>	v.	<i>State</i>
<i>Mcgee</i>	v.	<i>Cessna</i>
<i>Okon</i>	v.	<i>State</i>
<i>Saidu</i>	v.	<i>Cessna</i>
<i>Savannah Bank</i>	v.	<i>Ajilo</i>
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CHAPTER ONE:

HISTORY AND DEVELOPMENT OF AIR LAW IN NIGERIA

1.1 Introduction

Historical facts are considered to be an essential requirement for evaluating the present, determining the success levels of defined objectives and visualising the future and planning for it. The past, present and future are interwoven. A history precedes every present and future. To live only in the present is to have no place in the future. In law, history has been accorded relevance in determining the sources of law¹ and of its interpretation. In the United States of America (USA), Judge Bratton, in a District Court of New Mexico, once said that:

the legislative history of a treaty comprises a highly relevant source as an aid to interpretation of its provisions..²

Referring to the importance of history in law in a US Supreme court, Justice O'Connor had

¹ The validity of Norms and Practices as principles of national and international customary laws, among other qualities, would depend on historical facts.

² See the case of *Burnett v. TWA* (1973), as found in M. Milde and M. Sicillano, eds., (*Cases and Materials on Private International Air Law Conventions*, McGill University, Fall 1993), at 391.

the following to say:

When interpreting a treaty, we begin with the text of the treaty and context in which the written words are used, and to ascertain their meaning we may look beyond the written words to the history of the treaty, the negotiation and practicality of construction adopted by the parties....³

According to Justice O'Connor, the essence of dealing with history in the present is to give true meaning consistent with the intent and the shared expectations of the parties.

Reasoning in line with the decision in the American courts, Justice Nnaemeka-Agu (as he then was) of the Nigerian supreme court said that:

The first observation I must have to make is that unless I put the legislation on armed robbery in their proper historical setting I cannot reach a correct decision in the matter. This is because there has been a good deal of legislative pollution in terms of legislative listing in the matter. It is only a deep insight into the history of the legislation that can give us the correct answer. I feel entitled to call in aid the historical background of the enactments in order to correctly comprehend the impact thereof. In short I can only use this historical setting of the enactment as an aid to their interpretation.⁴

In *Okon v. State*⁵ a Nigerian court held that previous legislation may be relevant to the interpretation of a later one for the reasons that: (a) the course which the legislation on a particular point has followed often provides an indication as to how the present statute

³ In the case of *Air France v. Saks* (1985). See further, the pronouncement of Justice Marshall in *Eastern Airlines Inc. v. Floyd* (1991), Milde and Sicillano, *supra* note 2, at 401 and 415. In all these cases, the US courts had relied extensively on the drafting history of the Warsaw Convention 1929, to ascertain the meaning of the terms "lesion corporelle" and "less blessures" as used in article 17 of the Convention.

⁴ In the case of *Emeloy v State*, part 78 *Nigerian Weekly Law Reports (NWLR)*, (June 1988), at 528.

⁵ Part 69 *NWLR*, (March 1988), at 174. See also the case of *Saidu Garba v. Federal Civil Services Commission*, Part 71 *NWLR*, (11 April 1988), at 453; and *Savannah Bank v. Ajilo*, Part 57, *NWLR*, (June 1987), at 423.

should be interpreted; and (b) it throws light on the meaning of a phrase or word in an earlier statute.

Likewise, in the annals of aviation, the anniversary marking the 50 years of existence of the International Civil Aviation Organisation (ICAO)⁶ was seen worldwide as a yardstick by which to measure the achievements of ICAO and reconsider the relevance and applicability of ICAO Standards and the activities in the industry in the light of current development since 1944. According to Dr. Milde,

the 50th anniversary of the Convention on international civil aviation has become a catalyst for renewed attention to this backbone of the international regulation of civil aviation, and an opportunity to revisit its historic roots, its current application and to question its future value for the 21st century.⁷

Based upon its past records, ICAO's achievement has been rated as second to none in the entire system of the United Nations.

Bearing in mind the significance of rejuvenating history, it is considered very crucial that the 72 years of Nigerian aviation history, particularly the regulatory environment, receive a critical appraisal in order to lay a clear background to understanding the air law system, and unveiling the problems affecting it.

1.2 The Beginning of Aviation in Nigeria

⁶ ICAO was established by the Convention on International Civil Aviation Organization signed in Chicago in 1944 to amongst other things, develop the principles and techniques of international air navigation. See *Convention on International Civil Aviation*, (hereinafter Chicago Convention), ICAO DOC 7300/6, article 44.

⁷ See M. Milde, "The Chicago Convention - Are Major Amendments Necessary Or Desirable 50 Years Later", *Annals of Air and Space Law*, Vol. XIX-I, (1994), at 401; Donato, M., "ICAO Golden Anniversary - The Necessity of Golden Rules for the International Air Transport", *Annals of Air and Space Law*, Vol. XIX-II, (1994), at 221; See also L.W. Pogue, "The International Civil Aviation Conference (1944) and its Sequel the Anglo - America Bermuda Air Transport Agreement 1944", *Annals of Air and Space Law*, Vol. XIX-II, (1994), at 4.

The trading relationship between British merchants and indigenous Nigerians along the Nigerian territories of Lagos, Benin, Bonny Brass and Calabar triggered the involvement of Britain in the affairs of Nigeria. In response to a request for protection by British traders, Mr. J. Beecroft was appointed consul in 1849, to facilitate and extend commerce between British subjects and Nigerians. In 1872, an Order-in-Council was promulgated by Britain to make rules and regulations for peace, order and good conduct of the British subjects in these areas.⁸ Thus, what began as mere meddling with the regulation of trading activities on Nigerian territories, was to culminate in Britain's occupation of Nigerian territories and the cession of their jurisdiction to Britain. By 1914, Nigeria was completely subjected to the control and governance of Britain. This subjection was considered indispensable for the purposes of suppressing the slave trade and supporting the development of commerce and external defence.⁹

As a result of the relationship between Nigeria and Britain, revolutionary changes were witnessed in the political, economic and social sectors of Nigerian society.¹⁰ Economically, Nigeria boomed in the exportation of goods, such as tin, groundnut, rubber, cocoa, palm oil and cotton. This in turn, facilitated the rapid advancement of trade.¹¹ Due to the increase in the economic activities of the country, high priority was given to the development of transport and its integration with the rest of the British empire, to facilitate

⁸ B.O. Nwabueze, *A Constitutional History of Nigeria*, Chapters 1 and 11, (London, Longman, 1982), at 5.

⁹ O.I. Odumosu, *The Nigerian Constitution: History and Development*, (1963), at 6.

¹⁰ *Ibid.* at 37

¹¹ The economic significance of Nigeria as an export country was evidenced in the volume of goods exported during this period. For instance, Nigeria's exports rose from 17.9 million to 169 million pounds sterling. See M.O. Kayode and Y.B. Usman, *Nigeria Since Independence: The 1st 25 Years*, Vol.11, (1989), at 134.

the movement of export goods to Europe, and the import of manufactured goods from Europe and North America.¹²

The first recorded flight in the annals of aviation in Nigeria took place in the dry season of 1925, when a Royal Air Force Officer stationed in Sudan decided to undertake a long cross-country flight from Khartoum to the northern parts of Nigeria and landed on the race course in Kano.¹³ Except for the Royal Air Force flight which became an annual event and continued for 11 years until the Imperial Airways introduced weekly flights in 1936, no significant growth in aviation was known to have taken place.

As in other parts of the world,¹⁴ World War II had a great influence on the expansion of aviation in Nigeria.¹⁵ Between 1935 and 1940, 24 aerodromes were constructed¹⁶ and communication facilities were installed.¹⁷ These rapid changes were attributed to the collapse of France and the entry of Italy in the war, and this resulted in total closure of the Mediterranean and so an alternative reinforcement route to the Middle

¹² *Ibid.* at 135-138. Primary focus was on the development of roads, railways, and water ways. A capital expenditure of 1.2 million pounds sterling went into road construction and road maintenance alone. See also Odumosu, *supra* note 9, at 37-40.

¹³ E.N. Coleman, *How Aviation Came to Nigeria*, (1960), at 10. That aviation started in the form of adventure, is not something peculiar to Nigeria alone. Worldwide, aviation is believed to have its roots in the foremost Greek legend about Icarus, and the trials and errors of adventurous minds like the Germany's Oltolilienthal, America's Langley and Wright Brothers. See Shawcross and Beaumont, *Air Law* (London, Butterworth, 1977).

¹⁴ For example, USA and United Kingdom. See Pogue, *supra* note 7.

¹⁵ See Coleman, *supra* note 13, at 16.

¹⁶ The Khartoum/Kano service started without an aerodrome at Kano. The aircraft landed and took off from the polo ground which comprised a length of about 1,200ft. *Ibid.* at 13.

¹⁷ *Ibid.* The Imperial Airways operations on the Kano and Lagos routes followed the railway line mile by mile because of the absence of radio and other communication aids.

East and India was opened, to facilitate the ferrying of aircraft and military personnel during the war.¹⁸

The boost in aviation activities after the war enabled the British Overseas Airways Corporation (BOAC), successor of Imperial Airways, to introduce the Hanibal and the Handley Page 42 aircraft type for international flights on the Khartoum-Kano-Lagos route. On domestic routes, the De-Hallviland (DH 86) aircraft was used for Kano-Lagos and Maiduguri. A private air service between Lagos and Warri was introduced by an individual known as Bud Carpenter. The West Africa Airways corporation (WAAC) was established in 1946 with its headquarters in Lagos, as a regional airline to provide air services for the four English-speaking British West African territories: Gambia, Ghana, Nigeria, and Sierra-Leone. In partnership with Elder Dempster and BOAC, the Nigerian government formed the WAAC Nigeria Limited in 1958 when WAAC was dissolved after Ghana had attained independence. Nigeria had 51 % shares, Elder Dempster 33 % and BOAC 16 %. International traffic also witnessed an up rise with new entrants such as KLM, Sabena and Air France.¹⁹

By 1959, a year before Nigeria's independence, aviation activities had reached a level which recorded over one hundred daily aircraft movements within and over the airspace, and carriage of over 70,000 passengers and 1500 tons of cargo yearly. Landing charges yielded about 85,000 pounds sterling in yearly revenue.²⁰ The first three Nigerians

¹⁸ *Annual Report on Civil Aviation*, (1953-1954), at 8.

¹⁹ *Annual Report on Civil Aviation*, (1952-1953), at 3-5. See also, "Nigerian Aviation Industry - The Beginning", 4 *Journal Aviation and Allied Business*, No 2 (1995), at 9-10.

²⁰ See Coleman *supra*, note 13, at 28-30

qualified for Commercial Pilots Licenses and Instruments Ratings. Five Nigerian engineering apprentices commenced overseas training, while a plan was produced to meet the immediate and future needs of air traffic control services.²¹

1:3 Nature of Aviation in the Colonial Era

Aviation had various uses in colonial days. In one area, leisure and adventure featured prominently for over 10 years as the cross country flights begun by the Royal Air Force in Sudan remained the main aviation activity²² and were followed by skeleton private flying.²³ Rudimentary surveying was conducted with WAAC Dove aircraft.²⁴

As a means of communication, aviation provided fast links for postal services within the country and the vast British colonial empire. Mail was carried between Kano and Khartoum and Khartoum and Europe.²⁵ The British administration ensured that close

²¹ *Annual Report on Civil Aviation*, (1954-55), at 5.

²² *Milestones in the Development of the Nigerian Aviation Industry*, Federal Ministry of Aviation, (Lagos, 1991), at 7.

²³ A tin miner who was based in Jos owned a light Cessna aircraft which he used privately over a wide distance of the Northern parts of the country. See *Annual Report on Civil Aviation*, *supra* note 21, at 9. Apart from leisure, we believe that the flights could have been undertaken to prospect for minerals, as operational costs could have rendered leisure flights unattractive.

²⁴ *Ibid.* at 10.

²⁵ In the USA, commercial aviation does not only have its roots in but also owes much of its initial development to the transportation of mail and influence of the post office department dating back to 1918. See F. Lowenfeld and J. Burger, *Aviation Law, Cases and Materials*, (1972), at 1.

Recent developments have also shown that air mail cargo constitutes a significant share of international and domestic air traffic. Between 1981 and 1992, for instance, world total revenue mail traffic carried varied from 3.800 million tonnes in 1981 to 5.180 million tonnes in 1992. See *The World of Civil Aviation 1992-1995*, ICAO Circular 244 - AT/99, at 59.

In Nigeria, air mail transported between 1987 and 1993 varied from 1,556,788 in 1987 to 1,324,439 in 1993. The highest recorded figure was 1,993,215 in 1990. See *Annual Report*, (1994), Nigerian Airports Authority, Lagos, Nigeria, at 40.

aerial communication was maintained throughout the colony to facilitate imperial solidarity, goals and objectives.²⁶

As a mode of transport, aviation predominantly provided military services during World War II by ferrying aircraft and personnel to the Middle East and India.²⁷ Skeletal passenger services were provided on domestic and international routes by Imperial Airways. The formation of WAAC and WAAC Nigeria Limited²⁸ enhanced the growth in the transportation of export and import goods between Nigeria and Europe.²⁹

It is believed that the exportation of cash crops and other raw materials produced in Nigeria to Europe, and the import of manufactured goods from Europe, plus the deployment of the police and military forces in Nigeria to ensure effective control of the population, were the primary reasons why civil aviation was set up in Nigeria by Britain.³⁰ To further this objective, the construction of aerodromes and the provision of communication facilities was embarked upon to facilitate movement of aircraft and military personnel to the Far East during World war II. Consequently, Nigeria was fortunately

²⁶ To facilitate the colonial administration, Imperial Airways was formed by the British Government on November 8th, 1935. The Airways started operations in 1936, providing links between Kano and Lagos and to Khartoum and Europe. See W.O. Odubayo, *Air Transport Bilaterals of Nigeria: A Study in Treaty Law*, (Masters Thesis, McGill University, Montreal, 1968), at 1. See further, L.G. Kamau, *Recent Activities of the African Civil Aviation Commission (AFCAC) and the Association of African Airlines (AFRAA) in the field of Traffic Rights and Tariffs*, (Master's Thesis, McGill University, Montreal, 1985) at 116.

²⁷ See Coleman, *supra* note 13, at 28-30; *Annual Report On Civil Aviation*, *supra* note 18 at 18.

²⁸ Not only was traffic on international and local routes increased, but aircraft types like the Argonauts were replaced with the larger American stratocruisers on international routes. For improved comfort and efficiency in ensuring competition, more international routes like London/Kano/Lagos and local routes like Port-Harcourt/Enugu, Jos/Kaduna/Kano were further opened and charter services were also offered. See Coleman, *supra* note 13 at 16-17.

²⁹ See Kayode and Usman, *supra* note 11.

³⁰ *Ibid.* at 133

provided with large numbers of aerodromes with main runways of between 5000/6000ft which became of great value for post-war commercial aviation.³¹

It has been argued that Britain's main motive for developing the air transport system in Nigeria was: the high prospects for increasing the volume of air traffic, and for the expansion of the air traffic market, by reason of Nigeria's strategic location on the fringes of the Sahara, thereby making the airports the most convenient intermediate stopping point on the air route between Europe and Africa south of the Sahara.³²

Present day realities leave no one in doubt of the need to set up air transport in any part of the world today.³³ In developing countries particularly, where surface transport is severely underdeveloped, and there exist long distances and extreme climatic conditions, air transport has remained the only real alternative means of movement.³⁴ No country can ignore the immense benefits from meeting social needs brought to world commerce through air transport: The facilitation of commerce through the rapid movement of people, freight and mail within and outside the territory of each country; development of international and local highways and opening up of isolated areas; tourism, trade, and

³¹ See *Report on Civil Aviation*, *Supra* note 18.

³² See Coleman, *supra* note 13, at 9. see also, Odubayo, *supra* note 26, at 6-8. The need to schedule many intermediate stops on long haul flights has been linked to the limited ability of the post war airplanes which were used for operations. The improvement in aircraft technology and the significance now placed on the economics of air transport means that long haul flights have been replaced by hub and spoke. See H.A. Wassenbergh, "World Air Transport Regulatory Reforms", *Annals of Air and Space Law*, Vol. XIX-1, (1994), at 491-492.

³³ About 185 countries world wide belong to ICAO, and they have created a global air network, making it impossible for any country to be left out.

³⁴ See Kamau, *supra* note 26, at 111; *Bringing Africa Together: The Story of An AirLine*, Ethiopian Airlines, (1988), at 18-26.

agriculture.³⁵ These factors are a very strong reason for the existence of air transport anywhere in the world and are also clear indications that even without Britain Nigeria could not have remained out of the air transport world.

1:4 Aviation Administration in the Colonial Era

Increased aviation activities after World War II created the need for the proper organisation and control of civil aviation, in order to eliminate as far as humanly possible accident risks in Nigerian airspace and other West African countries.³⁶ To this effect, the West African Territories Air Transport Authority (WAATA) was established under the West African Air Transport Order-in-Council in 1946.³⁷ WAATA comprised an officer in charge of civil aviation matters in Nigeria as the president, three other officers who were assigned to the other three West African territories, and a chief secretary.³⁸ A Director for Civil Aviation (DCA) for West Africa was appointed in 1948, but he had no executive powers. Executive responsibilities were vested in the Director of Public Works (DPW) until 1950, when this policy was changed, and a separate Department of Civil Aviation was created headed by the DCA who was acting as the Director of Civil Aviation in Nigeria

³⁵ *The Economic Situation of Air Transport - Review and Outlook, 1978 to the Year 2000*, ICAO Circular, 222/AT/90, at 4.

³⁶ See *Annual Report on Civil Aviation*, *supra* note 19, at 3-5.

³⁷ *Ibid.* The governing council of WAATA consisted of the four governors of the English-speaking West African countries. See also *Safara*, (Jan/March, 1996), at 22.

³⁸ Squadron leader H. C Brilliant together with three other British officials and 424 supporting staff, were responsible for administering the affairs of WAATA, which had an organizational structure similar to that of Britain's Ministry of Civil Aviation. See Federal Ministry of Aviation, *Report of the Fact-Finding Panel into the Activities of the Civil Aviation Department*, (Lagos, 1980), at 18.

and as adviser to the four West African countries and WAATA.³⁹

The DCA embarked upon several measures to reorganize aviation to civilian standards. These included the establishment of the Nigerian Department of Civil Aviation (NDCA) to control and manage what was then known as the Kano Flight Information Region (FIR) and the division of civil aviation into several branches. While the Department of Post and Telecommunication (P&T) provided aeronautical telecommunication at the airports and aerodromes, the NDCA was solely responsible for administering other civil aviation matters.⁴⁰ For effective administration, the 26 aerodromes, 2 airports and 30 airstrips were categorised into four groups: Grade I, the Kano and Lagos airports which were equipped for long range aircraft; grade II, aerodromes designed for international service but not equipped with such services; grade III, aerodromes partially equipped with aeronautical ground facilities for scheduled domestic services; and grade IV, aerodromes for non-schedule operations but not equipped with standard facilities.⁴¹

The NDCA set up an aeronautical information distributing centre for West Africa under its approach control and in-flight information unit, which in discharging this function supplied air traffic services and in-flight information, and advised aircraft operating

³⁹ *Ibid.* at 16. Wing Commander E. H. Coleman remained the DCA for Nigeria until he was succeeded by Mr. V.A. Roberts, retired from the Royal Air Force, as Deputy Director of Civil Aviation in 1965. See also *Milestones*, *supra* note 22, at 8. The responsibilities vested in the public works department covered a diversity of tasks ranging from maintenance of aerodromes, grass cutting, painting of signboards, the construction of new runways and buildings, and general co-ordination of all aeronautical facilities.

⁴⁰ See M.M.A. Agbabiaka, "Peculiar Challenges of the Nigerian Airspace", (unpublished) paper presented at the Seminar on Towards a Better Aviation Industry in Nigeria, (Lagos, June 1994), at 3. See further Coleman, *supra* note 13, at 18 - 20.

⁴¹ See *Annual Report on Civil Aviation*, *supra* note 18, at 8-10.

within the Nigeria flight information region (FIR) and beyond.⁴² Due to a shortage of qualified air traffic control officers in the country, a plan to meet the immediate and future needs of air traffic control could not be implemented.⁴³ In the fire-fighting and patrol services, some reforms were made and the number of patrol men was increased to 120. Although the duties of the fire patrol service consisted primarily of specialized work in airport fire-fighting, only unprofessional local labourers provided the services using ordinary trucks containing cylinders of fire-fighting foam.⁴⁴ Besides, the patrol men also had to combine their regular work with the provision of guard duties on the runways, taxiway, inside the main building and at all buildings within the airport boundary housing technical equipment, while customs shouldered responsibility for water guards and regular police duties at designated customs areas and public areas and special services in emergency situations.⁴⁵

Inspection of aircraft, certification and renewal of aircraft airworthiness certificates, conduct of technical examination necessary for the validation of both aircraft maintenance engineer's and operating crew's licenses were duties performed by the resident surveyor of the British Air Registration Board (ARB).⁴⁶

A decision was reached to form government communications flights in the northern

⁴² See *Annual Report on Civil Aviation*, *supra* note 21, at 3-5. See also "Nigerian Aviation Industry - The Beginning", *supra* note 19.

⁴³ See "*Nigerian Aviation Industry*", *supra* note 19.

⁴⁴ The fire-fighting patrol service was only available at Kano airport and could not be extended to the other airports and aerodromes. See Coleman, *supra* note 13, at 36-38.

⁴⁵ *Ibid.*

⁴⁶ *Ibid. supra*, at 11-13. The certification process conformed with ICAO procedure in respect of Annex 1. However license could not be granted because of the lack of training and examination facilities to ICAO standards.

part of Nigeria in order to convey government officers on duty. As a result, a plan was designed for the construction of 15 landing airstrips and 12 aerodromes tailored to meet the flying specification for light aircraft.⁴⁷

Britain's policies regarding the administration and management of aviation have been criticised for lacking proper planning, coherence and constructive objectives, which were needed to establish civil aviation on a firm footing.⁴⁸ The ill-mannered pattern of Britain's administration is also believed to be the root cause of some of the problems which have confronted the country's aviation sector.⁴⁹

While not disagreeing with this criticism, we think that at the time of this assessment, Nigeria was only a young country when compared with the rapid pace of aviation development which had taken place. The growth in aviation no doubt required improved equipment and skilled management know-how, regarding which much had been achieved. The fact that aviation management was itself becoming very complex, demanding much more specialised skill, ought to be taken into account while evaluating the pros and cons of Britain's style of administration. With memories of the devastating impacts of the two World Wars still fresh, the world's elites perceived that air transport was one of the tools with which to unify the world by creating a viable, firm and solid framework for commercial aviation and setting standardized rules and procedures for worldwide

⁴⁷ *Ibid.* at 16-18. This policy has been criticized on the ground that it made no economic sense to have an aerodrome in an area only to serve the needs of some government functionaries, because of the enormous costs required to construct, maintain and operate the airport.

⁴⁸ See T.O. Elias, *The British Commonwealth - the Development of Its Laws and Constitutions (Nigeria)*, Vol. 14, (London, 1966), at 4.

⁴⁹ See Odumosu, *supra* note 9, at 5.

application.⁵⁰ It is also crucial to remember that even at the international level, civil aviation was very much in its infancy, and was in the process of growth, reorganization and improvement. That the formation of air transport in countries like the USA and the UK which played leading roles in building air transport at the international level, staggered on for many years before being streamlined, would go to show that the management of civil aviation was complex and more time was required for its regularization.⁵¹

1.5 Legal Framework Prior to Independence

The introduction of English law in Nigeria dates back to March 4th, 1863 with the cession of jurisdiction and the signing of the Treaty of Cession between Britain and chief Dosumu of Lagos⁵². Commencing with the promulgation of an Order-in-Council in 1872 which empowered the British council to exercise jurisdiction to bring law and order in Nigeria and particularly to make rules and regulations for peace, order and good governance, a great number of English laws were introduced comprising principally the Common law of England, the Doctrines of Equity and the Statutes of General Application in force in England on the 1st of January, 1900. These laws covered a variety of social and

⁵⁰ See K. Hammersjold, "One World or Fragmentation, the Tool of Evolution in International Air Transport" *Annals of Air and Space Law*, Vol IX, (1994), at 79-80.

⁵¹ For early formation of air transport in the USA and the UK, see Lowenfeld and Burger, *supra* note 25; Shawcross and Beaumont, *supra* note 13.

⁵² A.O. Obilade, *The Nigerian Legal System*, (1979), at 18. See also Elias, *supra* note 48 at 20. It has been argued that in international law a treaty is valid only if its terms are fully understood by both parties. Thus the Treaty of Cession to which an ignorant local chief affixed his mark without understanding a word of it or having any correct idea as to its consequence lacks validity to bind the natives.

economic activities especially in the administration of criminal and civil justice.⁵³

Law making in the country remained the supreme instrument with which the British crown controlled the constituted government in Nigeria, except in a few cases where for practical reasons an internal local machinery was adopted and vested with legislative powers subject to varying degrees of control by the Crown.⁵⁴ British enactments were extended to Nigeria by a mandate of the parliament which empowered Her Majesty (H.M) by Order-in-Council to make provisions extending any British enactment to Nigeria.⁵⁵

The Civil Aviation Act 1949 (hereinafter the 1949 Act) which repealed the Air Navigation Acts 1920-1947, made provisions for His Majesty by Order-in-Council to direct that any provisions of the Act could be extended to the colonial territories therein specified. Thus, section 66 (1) of the Act provided that:

His Majesty may by Order-in-Council direct that any of the provisions of this Act set out in part II of the Ninth schedule to this Act shall extend with exception, adaptations, if and as may be specified in the Order-in-council to any colony, any British protectorate or any territory.⁵⁶

⁵³ Obilade, *supra* at 19-20. A supreme court with original and appellate jurisdiction was established alongside consular, equity and indigenous courts. The indigenous court however, had jurisdiction only over the local people but not, over the British subjects and other foreigners.

⁵⁴ In such instances, legislative authority such as that which existed under the 1946 Constitution, was vested in the Nigerian legislative council. It has however been argued that the legislative council was merely semi representative as its purpose was not necessarily to associate the native Nigerians in the conduct of the country's governmental affairs but merely to enable the British officials on the Council to avail themselves of local opinion. See Nwabueze, *supra* note 8, at 30-32.

⁵⁵ *Ibid.* Some British enactments extended to Nigeria before 1946 included: (1) The Custom (Aircraft) Regulations 1932, for controlling the movement of aircraft at custom aerodromes; (2) Aircraft Accident Regulations 1936, for Notification of Accident to aircraft which occurs in or over Nigeria; and (3) Air Navigation Regulations, 1945, for the registration and inspection of aircraft.

⁵⁶ See preamble, The Colonial Air Navigation (Amendment) order 1953, Public Notice No.56 of 1953, Supplement to Nigerian Gazette No. 47, Vol.40 6/8/1953, Part B, at B195. See also the Civil Aviation Act 1949, Shawcross, Issue 5, at B39-B40. Earlier legislation relating to civil aviation in the UK was consolidated in the Civil Aviation Act 1949. This earlier legislation was applied to the colonies by virtue of the Colonial Air Navigation (Application of Acts) Orders, 1937-1947 which have also been replaced by virtue of section 6, the Colonial Air Navigation (Application of Act) Order 1952(A).

Back in 1946, an Order-in-Council was made to set up the West African (Air Transport) Authority (WAATA), which was to control the flying of aircraft and to develop efficient air transport services.⁵⁷

The Order provided for WAATA to hold biannual meetings on air transport matters, and to regulate the economic operation of aircraft within the territories specified therein. Section 5 (1) (a) prohibited the use of aircraft in the territories for carriage of passengers and goods except under the authority of a license. Section 5 (1) (b) contained procedure for application and 5 (1) (c), contained condition for the granting, refusal, revocation and suspension of license. Sub paragraphs 5 (1) (d) to (f), specified the conditions as to fares to be charged by a license holder, fees to be paid in respect of a license and information to be furnished by a license holder.⁵⁸

Pursuant to section 66 of the 1949 Act, the Colonial Civil Aviation (Application of Act) Order 1952 (A), (hereinafter the " Application of Act Order") was promulgated. The Application of Act Order provided for certain provisions of the Civil Aviation Act 1949 to be extended to Nigeria.⁵⁹ Section 8 of the 1949 Act incorporated under paragraph three

⁵⁷ See preamble, West African Territories (Air Transport) Order-in-Council 1946 (a), Laws of the Federation of Nigeria and Lagos, 1958, Vol XI, at 657-684.

⁵⁸ This type of regulatory control shows the position of the British government regarding commercial aviation at this time. At the Chicago Conference on International Civil Aviation in 1944, the views of UK and the US on the pattern of control over commercial aviation were irreconcilable as Britain favoured a protectionist approach against America's liberal concept. See Wassenberg, *supra*, note 32.

⁵⁹ See preamble and paragraph 3, Colonial Civil Aviation (Application of Act) Order 1952(A), where sections 8, 9, 10, 11, 13, 14, 19, 27, 38, 40, 41, 49, 51, 53, 57, 58, 59, 60, 61, 62 and 63, were extended to Nigeria, (No 868, Laws of the Federation of Nigeria and Lagos, Vol.XI, 1958), at 590-611.

and schedule one of the Application of Act Order, dealt with powers to give effect to the Chicago Convention and the regulation of air navigation. Section 8(1) provided that:

Her Majesty may by Order-in-Council make such provision as appears to Her to be requisite or expedient;

(a) for carrying out the Chicago Convention, any Annex thereto relating to International Standards and Recommended Practices (being an Annex adopted in accordance with the Convention) and any amendment of the Convention or any such Annex made in accordance with the Convention; or

(b) generally for regulating air navigation.

Section 8 (2)(a)-(f) of the 1949 Act made provision for the requirement of the registration of aircraft, certificate of airworthiness of aircraft, licensing, inspection, regulation of aerodromes, aircraft factories, licensing of personnel employed at aerodromes, conditions under which aircraft can fly within the colony, conditions for the carriage of passengers and goods for commercial and other gainful purpose.

Section 8(2)(g)-(n), contained provisions for preventing interference with air navigation apparatus, securing the safety, efficiency and regularity of air navigation and safety of aircraft and persons, meteorological information, signals and communication, signs, use of civil ensigns, prohibited areas, and custom matters. Conditions for the issue, validation, renewal, extension or variation, cancellation, suspension, endorsement and surrender of certificates or licenses or other documents required for air navigation, regulation of fees and charges to paid in respect of certificate or license and exemptions thereof were embodied in section 8(2)(n) -(q).⁶⁰

Other sections of the 1949 Act extended to Nigeria include those providing for

⁶⁰ See paragraph 3, and schedule 1 of the Application of Act Order *supra*.

control of aviation in time of war or emergency;⁶¹ investigation of accident;⁶² dangerous flying;⁶³ licensing of air transport and commercial flying;⁶⁴ information as to air transport undertakings and use of custom aerodromes;⁶⁵ power to provide aerodromes and acquire land;⁶⁶ obstructions near aerodromes;⁶⁷ trespass on aerodromes;⁶⁸ liability of aircraft in respect of trespass, nuisance and surface damage;⁶⁹ nuisance caused by aircraft on aerodromes;⁷⁰ responsibility for aircraft on hire;⁷¹ application of law of wreck and salvage to aircraft;⁷² exemption of aircraft and parts thereof from seizure on patent claims;⁷³ detention of aircraft;⁷⁴ and offenses and jurisdiction.⁷⁵

The Carriage by Air (Colonies, Protectorates and Trust Territories) Order 1953

⁶¹ Section 9.

⁶² Section 10.

⁶³ Section 11.

⁶⁴ Section 13.

⁶⁵ Section 14.

⁶⁶ Section 19.

⁶⁷ Section 27.

⁶⁸ Section 38.

⁶⁹ Section 40.

⁷⁰ Section 41.

⁷¹ Section 49.

⁷² Section 51.

⁷³ Section 53.

⁷⁴ Section 58.

⁷⁵ Sections 60 and 62.

(hereinafter the "Carriage by Air Order"), was adopted to extend some provisions of the Carriage by Air Act 1932 to Nigeria, and to give effect to the application of the Convention for the Unification of Certain Rules on International Carriage by Air signed at Warsaw on 12th October, 1929, (hereinafter the "Warsaw Convention").⁷⁶

In pursuance of the powers conferred on Her Majesty by the 1949 Act, and under the authority of the Application of Act Order, the Colonial Air Navigation Order 1955(A), (hereinafter "CANO"), which repealed the Colonial Air Navigation Orders 1949-1954,⁷⁷ was promulgated to bring in- force air navigation regulations in Nigeria.⁷⁸

The CANO consist of 6 parts, 81 articles and 6 schedules. Part I provided for the registration and marking of aircraft; Part II deals with maintenance of aircraft; Part III with operation of aircraft and prevention of excessive fatigue of operating crew; Part IV regulates navigation and management of aircraft; Part V deals with aerodromes, aerial light houses and dangerous lights and Part VI with general items.⁷⁹ Schedule I made provisions

⁷⁶ Preamble and 1st Annex, Carriage by Air (Colonies, Protectorates and Trust Territories) Order 1953, Laws of the Federation of Nigeria and Lagos, Vol. XI, (1958), at 618-634. In the 1st Annex to the Carriage by Air Order, articles 1 to 40 of the Warsaw Convention were extended to Nigeria.

⁷⁷ See preamble, Colonial Air Navigation Order, 1955 (A), Laws of the Federation of Nigeria and Lagos, Vol. XI, (1958), at 417.

⁷⁸ *Ibid*, article 80 (1).

⁷⁹ Part I contained 10 articles dealing with the following matters: Prohibiting aircraft not registered in the colony from flying, permission for aircraft to fly unregistered, registration of aircraft, restrictions on registration of aircraft, cancellation of registration, status of registered aircraft on change of ownership, status of registered aircraft permanently withdrawn from use, prohibition of aircraft without appropriate marks from flying, marks on registered aircraft in the colony and use of state marks. Articles 11 - 16 under Part II dealt with certificate of airworthiness to be in force, issue, renewal and validation of certificate of airworthiness, access to factories, application for certificate of airworthiness, inspection, weighing overhaul, repair, and modification of aircraft, licensing of aircraft maintenance engineers and certificates of maintenance. In Part III articles 17 to 34(a) provided for: (1) precautionary action to be taken by person in command and pilot, operation and training manuals, aerodromes' meteorological minima, operating crew and grant of licenses, other certificates and licenses, and log books. Articles 35 to 50 under part IV made provisions for prohibited areas, rules of the air and air traffic control, special signals and other communications, carriage, conditions and restrictions. Articles 51 to 62 in Part V dealt with licensing and use of aerodromes, charges, noise, lights and other restrictions at aerodromes. Articles 63 to

for the fixing and painting of nationality and registration marks on aircraft registered in Nigeria. Schedules II-VI, provided for rules of the air and air traffic control, customs, fees, table of general class, function of aircraft, and territories to which the Order applied.

The CANO also provided for regulations to be made prescribing anything which under the provisions of the Order is to be prescribed.⁸⁰ By virtue of article 68 CANO, the Air Navigation (Nigeria) Regulations 1954, effective 1956, extended the U.K. Air Navigation (General) 1954 and the Air Navigation (Radio) Regulations 1954 to Nigeria.⁸¹ Similarly, the Air Navigation (Fees) Regulations 1953, made pursuant to section 64 Colonial Air Navigation Order 1949 but retained by section 80 (2) CANO 1955(A) and the Customs Airport (Designation) Order 1953 made under article 55 CANO 1949 became applicable to Nigeria.⁸²

By virtue of paragraph 3 of the 1st schedule of the Colonial Civil Aviation (Application of Act) order 1952, the Civil Aviation (Investigation of Accident) Regulations 1953 were made to provide for the investigation of aircraft accidents which occur in Nigeria.⁸³

It would be noticed that the legal framework of civil aviation under British rule

81 in Part VI made provision for civil air ensigns access to aerodromes, obstructions, fees and penalties etc.

⁸⁰ See section 68.

⁸¹ Preamble, Air Navigation (Nigeria) Regulations, 1956, the Laws of the Federation of Nigeria and Lagos, (1958), Vol.XI, at 581.

⁸² Laws of the Federation of Nigeria and Lagos, Vol.XI, (1958), at 583.

⁸³ Preamble, Civil Aviation (Investigation of Accidents) Regulations 1953, Laws of the Federation of Nigeria and Lagos, (1958), Vol. XI, at 612.

witnessed a series of changes from one legal instrument to the other.⁸⁴ The need to make new laws and review and amend exiting ones, has been attributed to the developments and changing nature of civil aviation which required corresponding changes in the laws, in order to keep pace with its development.⁸⁵ The trend of one air law instrument succeeding another in very quick succession, has proved that air law is dynamic in nature, an attribute which is yet to be matched because:

no science has been developed so quickly in its practical application to the activities of man as the science of aeronautics ...No activity so needs the law to keep pace with it from one stage of development to the next..⁸⁶

It is recognised that reforms carried out in respect of the British air law system were related to the events in civil aviation both at home and internationally. It is however doubtful whether the changes in the aviation scene in Nigeria justified the mass of regulatory instruments extended by British enactments at that time. It would seem that once changes were made in the British air law system, the same were automatically made in the case of Nigeria, without much regard whether such laws were indeed required. A scenario such as this raises the question whether consideration was given to prevailing local circumstances and the pattern of future growth of civil aviation in Nigeria.

⁸⁴ From 1911 when the first Aerial Air Navigation was passed in the United Kingdom, a variety of aviation instruments came into existence which have been amended, re-amended, consolidated and reconsolidated in order to keep track of the development of civil aviation at the international level. See Shawcross and Beaumont, *supra* note 13, at 117.

⁸⁵ *Ibid.* For example, in the UK, the 1911 and 1913 Aerial Air navigation Acts were repealed by Air Navigation Act 1920 and in turn the Civil Aviation Acts 1920-1947 were consolidated and repealed by Civil Aviation Act 1949 which has also been repealed by the Civil Aviation Act 1982.

⁸⁶ Shawcross and Beaumont, *supra* note 13, at 118-119.

1.6 Legal Status of Air Law Instruments at the Time of Independence

The territories which make up present-day Nigeria were controlled by Britain from the late 18th to mid 19th century.⁸⁷ During this period, Nigeria was deemed to lack attributes such as people, government and absolute sovereign authority, which are recognised in international law as features of a state.⁸⁸ Before October 1st 1960, Nigeria was subordinated to Britain whose parliament reserved powers to make laws generally and indirectly for Nigeria. Consequently, only Britain at this time had the responsibilities of dealing with Nigeria's foreign relations since Nigeria was not recognised as a state.⁸⁹ Invariably, the signing of a treaty or agreement by Britain was sufficient to bind Nigeria. For example, article 2 Chicago Convention on International Civil Aviation 1944 which until it was amended recognized that the territory of a Contracting State included its "Sovereignty, Suzerainty, Protectorate or Mandate."⁹⁰

As a policy, Britain made laws for Nigeria except where express authority was delegated to Nigerians. Even so, it has been argued that the locally constituted legislative assembly was given merely consultative powers.⁹¹ With the end of Britain's domination

⁸⁷ With the signing of the Treaty of Cession of Lagos in 1861, Britain assumed effective control of Nigeria until 1960 when Nigeria gained self rule. See Nwabueze, *supra* note 8.

⁸⁸ See Odubayo, *supra* note 26, at 43.

⁸⁹ See Nwabueze, *supra* note 8 at 46.

⁹⁰ Chicago Convention, *supra*, note 6. It has been argued that the Nigerian communities prior to cession of powers to Britain possessed a form of political unit which was capable of being accorded recognition as a state.

⁹¹ On the other hand, it has also been argued that once representative legislative authority has been granted in a dependency the powers to legislate for that colony ceases. In the case of Nigeria in 1950, 50 Nigerians and three British officials participated in the Nigerian constitutional conference. Could it then be correct to say that this

signified by an enactment of the British parliament for Nigeria's independence, full sovereign authority for Nigeria was reclaimed from Britain on October 1st 1960. The act of Nigeria's independence entitled "An Act to Make Provisions for and in Connection with the Attainment by Nigeria of fully responsible Status within the Commonwealth otherwise known as Nigeria Independence Act", stated that:

As from October 1st 1960, Her Majesty's government has no responsibility for Nigeria government, no act of British parliament passed on or after 1960 shall extend or be deemed to extend to Nigeria.⁹²

The transition to statehood by Nigeria's independence brings with it some crucial legal issues to do with the extent to which Nigeria could be bound by the air law instruments enacted by Britain prior her to independence.

From a historical account, the process of decolonization in Africa was greatly enhanced by the foreign policies undertaken by Britain and France around 1958. The attainment of independence by some Afro-Asian states had stimulated a lot of debate on the theory of state successions to law, particularly treaties brought into existence in the dependencies by the colonial powers.⁹³ It has been argued based on the principle of international law regarding the theory of state succession, that heirs succeed to all rights and obligations of their predecessor and thus in the same way a state succeeds to the rights

legislative assembly possessed sole powers to make laws for the country without any outside interference? See T.O. Elias, *British Colonial Law: A Comparative Study of the Interaction Between English and Local Law in British Dependencies*, at 39.

⁹² *Ibid.* at 60.

⁹³ H.W. Halleck, *International Law*, 4th Edition, Vol. 11, Chapter 34, Section 27, (New York, D. Van Nostrand, 1861), at 530.

and obligation of its predecessor.⁹⁴ According to Halleck,

Complete conquest by whatever mode it may be perfected carries with it all the rights of the former government or in other words the conqueror by the completion of his conquest becomes as it were, the heir and universal successor of defunct or extinguished State.⁹⁵

In his submission Hall has argued that a state upon attaining independence inherits all the obligations and property in the state.⁹⁶

Evidence of states practice in international law over the years has also shown that states have accepted and applied this principle of international law without much difficulty. For example, states which gained independence in the 50s and subsequently joined the United Nations by adhering to the charter also accepted the Legal Order of the UN and the international community without question and have consistently conducted their international affairs in conformity with the tradition of state which dates back to the sixteenth century.⁹⁷

On the date of Nigeria's independence, letters exchanged between the High Commissioner of the United Kingdom to Nigeria and the then Nigerian Prime Minister transferred all rights, duties and obligations arising from treaties entered into by Britain

⁹⁴ *Ibid.* The theory of state succession has its origin in Roman private law but has been adopted and modified by several writers.

⁹⁵ *Ibid.*

⁹⁶ W.E. Hall, *A Treatise on International Law*, 7th edition, Section 29, (Oxford, The Clarendon Press, 1895), at 101.

⁹⁷ For instance, states like Ghana, Pakistan, Burman and Ceylon which got independence between 1947 and 1958, filed declaration accepting the compulsory jurisdiction of the International Court of Justice in matters of dispute concerning International Conventions Customs and General Principles of law. No newly independent state has ever denied the customary right of inviolability of a diplomatic envoy and his retinue, customary right of legislation, reception of aliens, right of asylum and duty to pay compensation for exploration of properties of foreign nationals. See Odubayo, *supra* note 26, at 39-40.

on behalf of Nigeria.⁹⁸ From that day, Britain's powers to legislate for Nigeria were abolished and Nigeria was conferred powers to amend and repeal any British enactment, since it was considered not meaningful for any state to legislate for another and Britain was no exception to this principle. Subject to such amendments and repeals, British enactments which were in force in Nigeria before 1st October, 1960 continued to be applied.⁹⁹

Prior to Nigeria's independence, in 1958 a revised edition of the Laws of the Federation of Nigeria containing ordinances in force on June 1st 1958 was prepared. The 12 volume law edition contained subsidiary legislation and English statutes which had been extended to Nigeria by Britain. Nigerian statutes were deemed to consist of Ordinances and Act, being laws passed by the federal legislature before October 1st, 1954.¹⁰⁰ By virtue of the Designation of Ordinance Act 1961, ordinances made before October 1st 1954 and deemed to be enactments of the federal legislature which were still in force on October 1st, 1960 were designated¹⁰¹ as English Laws and comprised: the Common Law, the Doctrine of Equity and Statutes of General Application, and were applicable in Nigeria after independence, subject to any modification by Nigerian legislation. To the extent that the subject matter of the received English law has been dealt with by a local enactment, the

⁹⁸ *Ibid.*

⁹⁹ See Nwabueze, *supra* note 8, at 61.

¹⁰⁰ Obilade, *supra* note 52, at 56. The 1st revision of the Laws of Nigeria was carried out in 1923, the 2nd in 1947 after a period of 25 years. The 1958 revision produced the 3rd revised edition of the Laws of Nigeria, while the 4th revision which is the latest was carried out in 1990. Pursuant to paragraph 1 Authority Omissions Order 1990 made under the Authority of section 3 (1) Decree No. 21, Laws of the Federation of Nigeria, (1990), some of the Imperial Statutes and Royal Order-in-Council relating to aviation have either been repealed or omitted from the current edition of the revised Laws of Nigeria. See Laws of the Federation of Nigeria, (1990), Vol.1, at vii-xxx.

¹⁰¹ Under the Nigerian Constitution Order in Council, 1960, the federal legislature was empowered to make laws for the country on all matters within the exclusive legislative list. See Obilade, *supra* note 52, at 64.

local enactment prevails and where there is conflict between the received English law and local law, the local law will also prevail.¹⁰²

Recently, following the dissolution of the former USSR, its successors had to deal with issues of succession to air law treaties which were signed by the former Soviet Union. In a statement declared by the newly formed Russian countries, the government unequivocally accepted to succeed to all rights and obligations existing under the former regulatory framework.¹⁰³

The argument and examples provided are a strong basis for the conclusion that on the October 1st 1960, when Britain relinquished all legal powers over Nigeria thereby signifying a change of sovereign control, Nigeria inherited all rights and obligations of the existing laws. In fact, some of the received English laws still form part of the Nigerian legal system, even though these laws have been repealed in Britain.¹⁰⁴

1:7 Conclusion

Although aviation began in Nigeria in an unofficial and unceremonial manner¹⁰⁵ it

¹⁰² *Ibid.* at 78. It is the writer's view that some of the received English laws included international treaties and other obligations which were binding on Nigeria by virtue of signature by the UK, and which Nigeria also independently has adhered to after her independence, for example the Convention on International Civil Aviation Organization. Therefore the limitation of the application of foreign laws by local enactment would seem to be inconsistent with international obligations assumed by Nigeria under such international treaties or agreement. Considering that it is a well-established principle of international law that local circumstances cannot be used as a supervening factor for a state's failure to comply with international obligations, this principle of law must itself be applied subject to the limitation of international obligations assumed by Nigeria.

¹⁰³ See V. Bordunov, "Air Law Development in the CIS: Modern Trends", *Annals of Air and Space Law*, Vol. XIX-11, (1994) at 107.

¹⁰⁴ See Obilade, *supra* note 52, at 81.

¹⁰⁵ The arrival of the first air plane in Ethiopia on 18th August, 1929, preceded a colourful ceremony involving both the rank and file of people of the city of Addis Ababa who showed great excitement over such an

did nevertheless succeed in expanding very rapidly, and recorded positive progress in a very short period. The coming of aviation no doubt left a remarkable impact on social and commercial activities of Nigerian society. Little wonder that the pressure to ensure its continued advancement was overwhelming. That priority had to be given to the planning, provision of efficient and adequate standards and facilities and to a legal framework, was not in question. This enormous task became the sole responsibility of Nigeria, as it was at this juncture in the history of Nigerian aviation that Nigeria became a political entity in international law, thus inheriting the challenge of ensuring that aviation in Nigeria matched the requirements of aviation worldwide.

historic event. See *Ethiopian Airlines*, *supra* note 34.

CHAPTER TWO:

EVOLUTIONARY TRENDS IN CIVIL AVIATION AFTER INDEPENDENCE

2:1 Effects of Independence on Civil Aviation

Moves towards Nigeria's independence were marked by significant changes such as Britain's passing over of the airline to Nigeria.¹ Barely about four months after Nigeria's independence, the Nigerian government began reorganising the aviation industry. The share capital of WAAC Nigeria limited was wholly acquired from the other two foreign partners. Control and management of the airlines was taken over, and a national airline, known as Nigerian Airways Limited, was set up on January 22nd, 1961.² Nigeria

¹ Following Ghana's independence and subsequent pull out from the WAAC in 1957 and the critical stage of preparedness for Nigerian independence in 1960, the British colonial government in collaboration with two of its companies BOAC and Elder Dempster lines formed the WAAC (Nigeria) limited airlines in 1958 in which Nigerian government held 51% shares, BOAC 16% and Elder Dempster lines 33% shares in the airlines. See *Report of the Committee on National Civil Aviation Policy*, Ministry of Aviation, (Lagos, Nigeria, 2nd August, 1988), at 63-64.

² The move to establish a national airline by the Nigerian government is hardly surprising considering the fact that during this period the nationalistic feeling which encouraged the growth of national airlines was based on political considerations rather than commercial. Newly independent states perceived that the setting up of national carriers was a tool to advertise their attainment of puberty rather than of economic significance. See D. Olowu, "Nigerian Civil Aviation Law and Policy", 3 *Journal Aviation and Allied Business*, No 2, (January/February, 1994), at 18; A., Mensah, "An Overview of Government Policies in West African Sub-region in Relation to the Promotion of Air Transport" (unpublished) speech delivered at the Seminar on the Aviation Industry in the West African Sub-region by the year 2000 AD, (Abuja, Nigeria, 8th to 12th, April, 1991) at 2. However, changes in

also joined the players in the field of international civil aviation by becoming a member of the International Civil Aviation Organization (ICAO) on January 25th, 1961. Nigeria's membership in ICAO became an impetus for charting the course of aviation development, and was a boost for other commercial activities.³

Commercial aviation was greatly enhanced by the strategic location of Kano airport as a major transit base for trans-Saharan flights. The growth in air traffic led to the establishment of the African India Ocean Aeronautical Region in 1963 on ICAO's recommendation, in order to facilitate the positive control of air traffic services in Nigeria. The air routes which were opened from Kano and Lagos and Kano and Daula became long-haul routes. Modern jet aircraft were introduced to facilitate international air services.⁴

With the expansion of air route networks, airport facilities at Kano and Lagos were upgraded to international standards. The aerodromes at Maiduguri, Yola, Sokoto, Jos, Kaduna, Calabar, Ibadan, Port-Harcourt and Benin were improved to facilitate domestic flights.⁵

Consistent with international principles of conducting international affairs amongst states, in April 1963 a Pool Partnership Agreement was signed by Nigeria and Britain to govern traffic operations on the Nigeria-British route and to ensure that the flag carrier of

international air transport are now forcing many states to re-examine their policies and legislation regarding ownership and control of airlines in order to ensure that the government totally or substantially divert their interest in the airlines to the public to attract foreign investment. See ICAO, *The World of Civil Aviation 1992 - 1995*, ICAO Circular 244-AT/99, at 3-10.

³ Nigeria's prominence in international civil aviation is seen from her position as category III member on ICAO Council in 1962 and category II member since 1983. See *Safara*, (Jan/March 1996), at 25.

⁴ *Ibid.* at 23.

⁵ "Nigeria Aviation Industry - The Beginning", 4 *Journal Aviation and Allied Business*, No 2, (1995), at 11.

each country derived mutual benefit from the operations.⁶

The eminent need to ensure effective, efficient control and management of aviation in Nigeria was however hampered by an acute shortage of trained and experienced manpower. Only five Nigerians professionally trained to work in aviation were available at the time of Nigeria's independence. To address this problem, International Aerodio Limited (IAL) was contracted to handle some of the highly technical areas.⁷ As a long-term solution, the training of Nigerians abroad was begun and a technical training institution then known as the Nigerian Civil Aviation Training Centre (now the Nigerian College Of Aviation Technology, NCAT) was set up in 1964 under the auspices of ICAO's and UNDP's technical assistance program as a joint venture with the Nigeria government.⁸ To address managerial problems, the Department of Civil Aviation (DCA), then vested with airspace control and management was integrated with a fully fledged ministry set up for the transport and aviation sectors in 1964, and a minister in charge of the ministry was appointed in the same year.⁹

⁶ This Agreement is believed to be the first Bilateral Air Services Agreement signed by Nigeria. *Ibid.* at 22.

⁷ *Milestones in the Development of the Nigerian Aviation Industry*, Federal Ministry of Aviation (Lagos, 1991), at 8.

⁸ The establishment of the institution was approved in 1959 during the 12th session of ICAO Assembly and was partly funded under the UNPD special funds during its first phase which ended on 31st December, 1974. Since then the Nigerian government took full financial responsibility for its operations. The institution has lived up to its primary objective, having remained the only training institution in Nigeria which has produced over 4000 professionally trained manpower, including 201 foreigners from over 21 countries. These include pilots, aircraft maintenance engineers, and air traffic controllers. See S. Abba-Gana, "ICAO and Aviation Training- The Nigeria Experience", (unpublished) speech, delivered at the Seminar on Aviation in the 21st century - Challenges for a Developing Economy, (Lagos, Nigeria, 1994), at 6.

⁹ Dr. Kingsley O. Mbadiwe was appointed as the minister in charge of the ministry with effect from March 10th, 1964. Before him, Hon. Z.B. Dipcharime and Chief S.L. Akintola had served under the colonial administration between 1955 to 1959, though without specific executive functions over aviation since aviation was still manned by the DCA. See "Aviation Ministers Since 1955", 4 *Journal Aviation and Allied Business*, No 2 (1995), at 17.

The ministry which is the aeronautical authority for Nigeria has continued to discharge various functions, such as management of airspace which entails implementing operational and fiscal policies and directives, provision of a wide range of services relating to installation and maintenance of navigational and communication facilities at all airports, provision of meteorological and air traffic services, regulation of the use and performance of aircraft, licensing of personnel and air transport services, investigation of accident, charging and collection of landing, parking and over-flyer fees, and liaison with international civil aviation bodies such as ICAO, African Civil Aviation Commission (AFCAC) and International Air Transport Association (IATA). Due to structural and policy reforms undertaken by the ministry since its creation, some of its functions have been shuffled and re-shuffled between the ministry and its parastatals. For example, the defunct Nigerian Airports Authority (NAA) took over the management and control of the airports from the ministry in 1976. Between 1990 and 1995, the defunct Federal Civil Aviation Authority (FCAA), was responsible for the provision, installation and maintenance of communication and navigational facilities. Following the reforms carried out by the ministry in 1995, the FCAA and NAA were merged to form the Federal Airports Authority of Nigeria (FAAN). As a result some of the functions hitherto transferred by the ministry to the parastatal have again been taken over by the ministry.¹⁰

The modification and standardization of aviation facilities and services, coupled with the quality of the control and management of airspace put in place after independence,

¹⁰ See, *Report of the Fact Finding Panel into the Activities of the Civil Aviation Department of the Ministry of Civil Aviation*, Federal Ministry of Aviation (Lagos, 1980), at 16 to 22.

enhanced the increase and smooth flow of passengers and cargo traffic.¹¹ With this background, the task of continuing the development of aviation and sustaining the safety, speed, efficiency and regularity of air navigation, and the regulation and formulation of policy, was substantially met.

2:2 Emerging Civil Aviation Policies

Unlike the road transport sector which received early attention in terms of regulation, policy formulation, co-ordination and proper planning, it was only in 1965 that a transport policy for the country was issued by the government. The policy laid down a general framework for the development and coordination of various forms of transport, emphasising those considered to require low capital investment but capable of mass transportation of people and goods.¹² Between 1962 and 1974, road and other transport sectors continued to gain prominence both in policy matters and allocation of funds, until, in the 3rd National Development Plan (NDP) of 1975 to 1980, the air sector received attention. The policy objective embodied in the 3rd NDP laid down a systematic and gradual development plan for some aspects of civil aviation, particularly airport

¹¹ Approximately, 88 aircraft have been registered in the country since independence, while over 2,804,000 passengers have been airlifted both on scheduled and unscheduled domestic services. See *Report of the Committee of Experts on National Transport Policy for Nigeria*, Federal Ministry of Aviation, (October, 1987), at 96.

¹² *Ibid.* at 87. A Proposal for development plans on transport was first drawn up in 1954 for a period of seven years from 1955 to 1962. A second plan was made for 3 years from 1962 to 1965. However all the plans paid attention to only road transport development for which the total sum of 191.2 million (pound sterling) was expended. See M.O. Kayode, and Y.B. Usman, *Nigeria Since Independence: The First 25 Years*, Vol.11, (1989), at 132 -133. We believe that the huge capital investment requirement for air transport may have caused the delay in adopting air transport policy.

infrastructure.¹³ The philosophy behind the policy emphasised the need for adequate attention to the development of air transport as the policy clearly recognised that:

present civil aviation facilities, that is airports facilities, ground services, air traffic control and aeronautical communication are generally inadequate even for the major international airports of Lagos and Kano. It is government objective for 1975 - 1980 plan to provide all twelve states as well as other important commercial centres with modern airports capable of taking the heavier medium haul jet.¹⁴

In addition to the consideration given to the development of new airports, the policy considered the setting up of a modern network for air navigational facilities. The framework for the network of communication comprised communication and landing aids, and the provision of improved navigational aids which were to include national radar coverage. The policy also considered the reorganization of the aviation ministry which was set up in 1964, and in particular, attention was to be given to the recruitment and training of staff.¹⁵

Until 1989, policies on aviation matters were adopted intermittently and on an ad hoc basis according to specific government projects. These policies changed with time and according to the government in power, and could only be found amongst national

¹³ Under the third NDP, capital allocation for the transport sector was the highest amounting to 23% of total budget of N=800 million (about \$400 million) leaving other sectors like education behind with 2%, manufacturing 8.7%, agriculture 7% and power 5.9%. See *Report of Committee supra* note 1, at 67 to 68. It is believed that the reason for this sudden change of policy was the impact of the damage and disruption to transport facilities caused by the Nigerian civil war which lasted for a period of five years from 1967-1972. Prior to the 3rd NDP, provision was first made in the second NDP of 1970 to 1974 for the rehabilitation and reconstruction of all transport sectors particularly the redesigning and upgrading of all airport facilities. See *Safara, supra* note 3, at 24.

¹⁴ See *Report, of Committee of Experts, supra* note 11, at 1.

¹⁵ See *Report of Fact Finding Panel, supra* note 10, at 23.

development plans, widespread government white papers and budget speeches.¹⁶ This style of policy framework lacks of coherence and clarity, and this shortcoming was acknowledged by the Government where in addressing the need for a new policy framework, it was pointed out that:

there is already in existence some policy statements which if taken together may amount to some semblance of all aviation policy. The problem with this type of approach is that an incoherent objective is produced and it is sometimes difficult to discern whether there is a policy as contradictions do sometimes occur. A responsible government would therefore wish to have a coherent policy that is capable of redressing inconsistencies that exist in the system in order to achieve its declared goals and objectives.¹⁷

In order to rectify the inadequacies, a Committee on National Civil Aviation Policy was set up in 1988. The Committee produced a report which in conjunction with the report of the Seminar on National Civil Aviation Policy, was adopted as the first and only existing National Civil Aviation Policy for Nigeria.¹⁸ The National Civil Aviation Policy for Nigeria (NCAPN) is aimed at addressing the needs and aspirations of civil aviation up to the year 2000 and beyond. Some of the issues addressed by the Policy include:

airport development and maintenance, equipment procurement and maintenance aircraft acquisition, aircraft and component overhaul and maintenance route allocation, national air traffic services, scheduled

¹⁶ See A. Sagay, "An Over View of Government Policies in the West African Sub-region to the Promotion of Air Transport Deregulation, Commercialization and Privatization" (unpublished speech) delivered at the Seminar on the Aviation Industry in the West African Sub-region to the Year 2000 A.D., (Abuja, Nigeria, April 8th to 12th, 1991), at 3. Nigeria as an independent political unit has come under both the military and civilian system of government. Military rule has spanned a period of 23 years and 11 years for civilian government. Most governments have changed in very quick succession.

¹⁷ See *Report of the Committee*, *supra* note 1, at vii-ix.

¹⁸ The Report of the Committee on National Civil Aviation Policy formed the basis of the working paper at the Seminar on National Civil Aviation Policy which additionally had the benefits of contributions by aviation experts from around the world such as the Civil Aviation Authority (CAA) in the UK, and the FAA in the USA. See *Milestones*, *supra* note 7, at 20.

operations flight safety, aircraft accident investigation, relationship with international aviation bodies, Bilateral Air Services Agreement (BASA), multinational flag carriers, communications, manpower development and other relevant aspects.¹⁹

Action programming is an issue which ICAO has examined in the past. ICAO has established that the development of a civil aviation master plan is a pre-requisite for the rational development of civil aviation and an essential tool for development of programs worldwide. Based on this principle the 29th session of the ICAO Assembly adopted a Strategic Action Plan (SAP) which has the aim of reviewing ICAO's policies, procedures and priorities to ensure that ICAO continues to remain the world forum for creating an environment for the exploration and development of aviation issues of multilateral nature in the legal, economic and technical regulations and to be able to respond positively to rapid changes in civil aviation.²⁰ The importance which ICAO has attached to the Action Plan can be seen in ICAO's resolve particularly to assist developing countries in the proper formulation of a national, sub-regional and regional master plan as a guide for the future implementation of aviation standards.²¹

In some countries, the concept of programming actions has been embraced. Canada's International Air Transport Policy adopted in 1994 is aimed at pursuing a

¹⁹ See *Report of the Committee*, *supra* note 1, at v. Another committee known as VISION 2010 presently in existence, is addressing the needs of aviation up to the year 2010. See "Strategy for VISION 2010", *Guardian Newspapers*, (December 1, 1996), at 1.

²⁰ For this purpose, an eleven point agenda has been identified by ICAO as the areas of major challenges for ICAO to address in the next 1996 to 1999 triennium. These are: CNS/ATM, airport and airspace congestion, commercial development and economic regulation, financial resources, unlawful interference, human factors in flight safety, environmental protection, human resources, advancement of ICAO standards, safety oversight and legal issues. See ICAO Doc. A31 - Wp/38/EX/7/, (1995), at 2-3.

²¹ See ICAO Doc. A31-WP/35, EX /6, (1995), at 6.

comprehensive strategy for enhancing policy issues on international air transport for the purpose of ensuring the continuous safety, efficiency and viability of an air transport system in Canada. To this end, a National Airport Policy which aims at commercializing air navigation systems was also considered.²²

Like the NCAPN, the general principle of Canada's International Air Transportation Policy is designed to accommodate Canada's best interest and this includes prospects for providing better international air services for Canadians, support for Canada's international trade and tourism objectives, responding to the needs of import and export communities, ensuring the protection of consumer interest by guaranteeing access to all information necessary to make travel choices, and creating a growth oriented environment for the air transport industry.²³

In the USA, the House of Representative's Committee on Transportation and Infrastructure has continued to address numerous aspects of civil aviation, including the deregulation of airlines which occurred in 1978, the revitalization of the aviation industry through the adaptation and re-authorization of important legislation such as the Federal Aviation Administration Authorization Act 1994, which establishes an 18 year statute of repose for general aviation aircraft and components. Safety, security and capacity enhancement have remained important issues for discussion by the House's Committees and Sub committees.²⁴

²² See Statement by Canada's Minister for Transport, Douglas Young, *Canada International Air Transport Policy*, News Release Communique, (December 20th, 1994), at 2.

²³ *Ibid.* at 5.

²⁴ *104th Congress, Compilation of Selected Aviation Laws*, (89 to 872, May 1995, US Government Printing office, Washington), at v.

In Europe, Expanding Horizons was introduced in 1994 as an action program for the future with the aim of setting up strategies designed to closely monitor the aviation industry and to ensure that European civil aviation is not deprived of the tools necessary to reap full benefits from the industry.²⁵

Considering the global trend in setting up policies for the realisation of civil aviation objectives, the birth of the NCAPN is consistent with evolution in international civil aviation. An examination of some aspects of the NCAPN in the latter part of this discussion will ascertain whether the framework has adequately met the requirements of civil aviation in Nigeria.

2:2:1 Policy Objective

The benefits of aviation to world commerce (such as the facilitation of tourism and economic development), has contributed in boosting the awareness of most states about the vital role which aviation has played in their national economies.²⁶ Today, aviation has been recognised in the periphery of the affairs of states as a means to compensate for various geographical disadvantages (such as inadequacy of surface communications, isolated island territories, or land-locked areas), and as an instrument of trade in serving and improving both imports and exports and growth in national economies.²⁷

²⁵ See *A Report by the Comité des Sages for Air Transport to the European Commission*, (January, 1994).

²⁶ See ICAO Doc. A31-WP/78, EC/12, (18/18/1995).

²⁷ See K. Hammersjold, "One World or Fragmentation, the Tool of Evolution in International Air Transport", *Annals of Air and Space Law*, Vol. IX, (1994) at 86. Conclusions which emerged from the 4th ICAO world wide Air Transport conference would further bear witness to the overwhelming importance which states have attached to air transport as a vital instrument for national economies.

In most developing countries, the lack of an adequate alternative transport system, long distances and remoteness of communication has made aviation the most essential infrastructure for the economic development of the states.²⁸

In Nigeria the NCAPN has looked at improvement of aviation standards and the enhancement of economic growth. Though the principal objective of the NCAPN is to provide a safe, efficient and reliable air transport system for Nigeria, through the provision of air services at reasonable cost without compromising safety, the need to strengthen economic growth by guaranteeing a reasonable return on investments has been clearly outlined.²⁹

States have emphasised the relevance of air transport to national economies, and have adopted regulatory measures to control the economic aspects of aviation, such as routes, capacity, carrier designation and tariff. The process of liberalisation which is placing more emphasis on the economic gains of air transport is however watering down the rigid controls on the economic market of air transport.³⁰

2:2:2 Airport Development and Management Policy

With only two standard airports and over 30 airfields existing in Nigeria over a period of about 50 years, airport development took a dramatic turn with the launching of

²⁸ ICAO Doc. A31-wp/72, P/19, (14/8/1995).

²⁹ See *Report of the Committee*, *supra* note 1.

³⁰ Until the late 1970s most states had considered the principle of territorial sovereignty codified in article 1 and 6 of the Chicago Convention as a means to restrict access to their air transport market. The moves towards liberalization of routes, capacity, designation and fares is now gradually doing away with this practice. See H. A. Wassenbergh, "World Air Transport Regulatory Reforms", *Annals of Air Space Law*, Vol.XIX-11, (1994), at 494-497.

the National Aerodrome Development Programme (NADP) in 1970. This was followed by the allocation of huge funds for the development of 12 standard airports in the 3rd National Development Plan (NDP) of 1975 to 1980. Between 1981 and 1995, the number of airports increased from 12 to 19 under the 4th NDP.³¹

The present airport structure consists of 19 modern airports,³² two aerodromes³³ and 46 airstrips.³⁴ Airport policy has witnessed a departure from the ad hoc and incoherent style which was dictated by political and economic factors, to a clearly defined long term policy for the year 2000 and beyond. Under the policy enshrined in the NCAPN, the objective for airport systems is to ensure that the airports meet national goals as well as conform with international airport standards.³⁵

The NCAPN framework on airport systems could be given credit for its dynamism, but the case is not the same with its objective of meeting national requirements, such as providing support for an economically viable aviation system. Not only have the airports suffered economically for the prolonged delay in formulating a coherent and consistent airport policy, but the number, location and sizes of airports have adversely affected the economic fortunes of the airports, to the extent of reducing them to mere

³¹ See "Charting the Course of Aviation Development", 4 *Journal Aviation and Allied Business*, No 2, (April/June 1995), at 14.

³² The 19 airports are located at: Abuja, Akure, Benin, Calabar, Enugu, Ibadan, Ilorin, Jos, Kaduna, Kano, Katsina, Lagos, Maiduguri, Makurdi, Minna, Owerri, Port-Harcourt Sokoto, and Yola, *ibid.* at 16.

³³ The aerodromes are located at Bauchi and Zaria. *Ibid.*

³⁴ See *Aeronautical Information Publication (AIP)* Federal Civil Aviation Authority, Nigeria. The airstrips are scattered in different location throughout the country.

³⁵ See *Report of the Committee*, *supra* note I, at viii; Kayode and Usman, *supra* note 12, at 87.

money-draining ventures.³⁶

To ensure the attainment of national goals and to enhance aviation, the policy ought to have harmonised the pre-existing order of airports and prescribed a concrete pattern with a view to optimum economic and social benefits. The existing airport system has been criticised on the grounds of incompatibility with social and economic gains. The criticism is aimed at proving that social and political ends usually dictate the siting of airports and that airport construction is often based on the importation of man power and foreign design, which are incompatible with the social needs of Nigerian society.³⁷

To ensure that the massive airport structures and huge capital invested in airports was properly utilised, the Nigerian Airports Authority was set up in 1976 to take over the development, management and maintenance of the airports from the ministry of aviation.³⁸

The fundamental objective for the operation and management of the airports which was to ensure that airport facilities conformed with the highest level of international safety standards, and guaranteed maximum comfort for air travellers³⁹ was pursued by NAA for almost 20 years, through regular inspection of licensed airports, aerodromes, and air strips, provision, installation and maintenance of approach, landing and signals lights, fire

³⁶ The explosion in the number of airports from 2 to 19 modern equipped airports including 5 internationally sized ones is seen to have no relevance other than mere expression of political power. It is however progressive to note that the NCAPN has attempted to correct this anomaly by stipulating that future consideration on all airport matters must be based on sound economic reasons. See *Report of the Committee*, *supra* note 1.

³⁷ See *Report of the Committee of Experts*, *supra* note 11, at 91-92.

³⁸ See *Safara*, *supra* note 3 at 24. See also section 3 (1)(a),(b), (c), (f) and (g), Nigeria Airports Authority Act, 1976, Chapter 292, Laws of the Federation of Nigeria, 1990. Until July 11th 1978 when NAA functionally took charge of airport matters, the aviation ministry was in charge of performing all functions relating to air transport including airport management. See *Charting the course*, *supra* note 31, at 2-14.

³⁹ Such a policy commitment and operational strategy is found to concord with the letter and spirit of international obligation under Chicago Convention. See generally the preamble and specifically Article 37.

equipment and fire services.⁴⁰ However, with the structural and functional re-organisations carried out by the Aviation Ministry in August 1995, the Federal Airport Authority of Nigeria (FAAN) was established from the former NAA and FCAA,⁴¹ to take over responsibility for providing air traffic services, and navigational and telecommunication facilities.⁴²

The structural and functional reforms carried out by the ministry of aviation were intended to keep current with airport development programmes worldwide in order to facilitate airport operations, management and services.⁴³ In addition the structural reforms were aimed at implementing the autonomous airport system recommended by ICAO. Under this system, airports, airspace safety and management, and services are to be geared towards improving operational quality and economic viability.⁴⁴

The reforms exercise cannot be elaborated at this point, but a general analysis has revealed that the reforms were not exhaustive since the perennial problems such as lack of regular maintenance of airport facilities and interruption of airport services because of power failure, were not addressed.⁴⁵ Several reasons including insufficient cash flow for the procurement of new facilities, and spare parts for maintenance of existing facilities

⁴⁰ See *Report of Fact Finding Panel*, *supra* note 10, at 21 - 22.

⁴¹ S. D. Makama, "The Gains of Restructuring", 5 *Journal Aviation and Allied Business*, No 1, (Jan/March 1996), at 16.

⁴² See Section 3 (1) (a) -(e), Federal Airport Authority of Nigeria Decree No. 9 1996, supplement to official Gazette extra ordinary No. 21 vol. 83, 9/4 (1996), at A173 - A 192.

⁴³ Makama, *supra* note 41.

⁴⁴ The 7th AFI RAN meeting held from 12th to 23rd May, 1997, adopted ICAO recommendations on setting of autonomous aviation bodies in the AFI region. See ICAO AFI/7-WP/12 and 13.

⁴⁵ "The State of Nigeria's Airspace", 2 *Journal Aviation and Allied Business*, No 2 (1993).

abroad, shortage of trained and experienced personnel to effectively man airport facilities, are believed to be the root causes of major problems for the running in the airports.⁴⁶ It is feared that most airports are operational but with marginal facilities. This has costly impact on air navigation safety as a whole and falls short of set global safety standards.⁴⁷ Due to the technological background of Nigeria, aviation machinery and spare parts are not produced locally. A lot of foreign currency has to be spent on the import of aviation equipment and the servicing of the equipment abroad. It is now very likely that the problem of importation could soon be mitigated if only the government could pay more attention to local production of aviation equipment.⁴⁸ In order to encourage return on investment, the idea of running the airports for social reasons rather on sound commercial and economic principles, should be discontinued.

2:2:3 Civil Aviation Infrastructure

Civil aviation infrastructure is considered to mean the existence of airports, radio facilities, meteorological services, other navigation facilities such as appropriate standard systems of communication procedures, codes, markings, signals, lightings, operational

⁴⁶ I. Mamman, "Airport and Passenger Security", (unpublished) paper presented at the National Civil Aviation Seminar, (Lagos, 21-22 June, 1994).

⁴⁷ See *Report of Committee of Experts*, *supra* note 11, at 88.

⁴⁸ Recent development in aircraft technology in Nigeria has shown that it is feasible to locally produce aviation equipment, after almost 70 years of aviation development. The first ever Air Beetle Trainer aircraft was locally manufactured by the Nigerian Air force on Jan 27th, 1995. Though this is a military venture the skill can be expanded to accommodate the needs of civil aircraft. See "Aircraft Manufacturing and Maintenance", 4 *Journal Aviation and Allied Business*, No 2 (April/June 1995), at 40-43. With respect to aircraft maintenance problems, NCAPN mandatorily requires both government and private aviation enterprise to develop maintenance facilities capable of executing in-house maintenance on medium size aircraft within a period of 7 years of commencing operations in order to minimize the need for overseas maintenance. See *Report of the Committee*, *Supra* note 1, at 288-338.

practices and rules as well as the publication of aeronautical maps and charts within the territorial jurisdiction of an ICAO member state.⁴⁹

In Nigeria, provision has been made at strategic locations throughout the country for air-ground and inter- facility communication systems.⁵⁰ Procurement, installation, maintenance and calibration of navigational aids are categorised as radio navigational and communication facilities. These include Instrument Landing System (ILS), Omini-directional Radio Range (VOR), Distance Measuring Equipment (DME), Non Directional Beacon (NDB), Very High Frequency Direction Finder(VDF), Primary and Secondary Surveillance Radar Systems, Aeronautical Fixed and Aeronautical Mobile Communication Services (AFS) and (AMS) respectively, calibration, Search and Rescue (SAR) and Aeronautical Information Services (AIS).⁵¹

The application of the radio navigation and communication facilities has been hampered by, among other things, the unserviceable status of some facilities,⁵² which

⁴⁹ See Convention on International Civil Aviation, 1944, ICAO Doc.7300/6, (hereinafter Chicago Convention), article 28.

⁵⁰ These locations are: Abuja, Akure, Azare, Benin, Bida, Calabar, Enugu, Gboko, Ibadan, Ilorin, Jos, Kaduna, Kano, Kwasero, Lagos, Maiduguri, Port-Harcourt, Potiskum, Sokoto, Yola, and Zaria.

⁵¹ The objective of the NCAPN on airspace infrastructure is concerned with the articulation of a comprehensive strategy for the establishment of a modern airspace infrastructure which aims to guarantee the safety, efficiency and regularity of air navigation. See *Report of the Committee, supra* note I, at 154. An Air Navigation Services Plan (ANSP) has been drawn up for the country with the assistance of ICAO but has never been implemented. Its main objectives include the development and implementation of a complete Nigerian ANSP, integration of the system with existing components in the country and those of neighbouring states, and implementation of all plans agreed at sub-regional levels. See M.M.M. Agbabiaka, "Peculiar Challenges of the Nigerian Airspace", (unpublished) paper delivered at the seminar on Towards a Better Aviation Industry in Nigeria, (Lagos, June 1994).

⁵² Available statistics shows that as at 1980, out of 13 ILS installed in the country, only 2 were serviceable. 14 VOR were serviceable out of 217, 10 DME were serviceable out of 18, 5 NDB were serviceable out of 13, 12 locator beacons out of 14, and 3 radars in working condition out of 6. See *Report of the Committee, supra*, note I, at 175. As at January, 1997, the ILS at 7 of the nation's airports, namely Calabar, Ilorin, Jos, Yola, Makurdi, Port-Harcourt and Sokoto are unserviceable. Others though serviceable are not accurately responding to proper adjustment. The aviation authorities in the country have however concluded arrangements to procure category II

operate on an efficiency level of less than 10% as against the 97% standard recommended worldwide. Other problems are the inadequate supply of spare parts for maintenance, unreliable power supply and the shortage of trained personnel according to the required standards of operation and management.⁵³

There are also problems with reliability and accurate performance of the navigational facilities such as VOR, DME, NDB and ILS, which were installed in the country over 27 years ago. These problems arise from a lack of regular checking and inspection to ensure that facilities are properly adjusted and aligned to expected working conditions. In fact, it is believed that some of the facilities have never been calibrated, an exercise which is essential for ensuring that the performance of the equipment is consistent with set standards.⁵⁴ The continued absence of a functioning Search and Rescue Agency in Nigeria is seen to have an adverse impact on the safety of civil aviation because of the lack of effective and efficient mobilization, organisation and proper co-ordination of Search and Rescue Operations during emergency situations. Though this problem has been

ILS for 19 airports at the colossal sum of N3.3 billion (Naira) estimated to be in the of sum 2.2 million USD per unit. See *Journal Aviation and Allied Business*, Update, Issue 2, (Jan 1997), at 5.

⁵³ Intensive efforts are being made to rectify some of these problems especially in the area of radio navigation communication. For example, the EEC funded satellite communication project (SATCOM) in Africa including Nigeria has provided in Nigeria alone 8 earth receiving stations which are aimed at improving communication between ground stations and aircraft and to also provide good foundation for the future implementation of the new ICAO CNS/ATM system. Similarly, the non-existence of airways within the country's airspace caused by poor and unreliable communication aids is soon to receive serious attention with the improvement in the Aeronautical Fixed Telecommunication Network (AFTN) and the introduction of computer based HF communication for data and modern Ex rad communication equipment as well as the introduction of controller's direct speech circuit. See Agbabiaka, *supra* note 51.

⁵⁴ Calibration of navigational aids is a standard for checking the accuracy, reliability and overall performance of the aids. This requirement is set out in ICAO Doc 8071, Volumes 1 & 2. The system of navigational aids existing in the country are considered to be obsolete and being as such the government has been called upon to phase them out in the same way as it is being done in other countries of the world, notwithstanding that the system would eventually be replaced by the global implementation of the ICAO CNS/ATM in the near future. See "The State of Nigeria's Airspace", *supra* note 45, at 12-14.

discussed at aviation forums and recommendations have been made, these are yet to be implemented.⁵⁵

Aeronautical information has been disseminated through the issuance of notices to airmen (NOTAM), aeronautical information circulars (AIC), and aeronautical information publications (AIPs). However, the radio telephony network has been so irregular that its existence is doubted. The main problem affecting it is the absence and /or poor state of communication facilities in the country.⁵⁶

Probably, due to the deficiencies in the civil aviation infrastructures, some critical suggestions have been put forward that Nigerian airspace should to be declared a total disaster zone, isolated, probed and refurbished with modern navigational facilities, while a proper and adequate maintenance programme, training of personnel, regular implementation and monitoring of activities should be started without delay.⁵⁷

It seems that Nigerian standards of aviation infrastructure go unnoticed by ICAO because there is no evidence of any reported infraction in the standards.⁵⁸ Aviation safety is in the interest of the aviation community worldwide, therefore Nigeria ought to find a

⁵⁵ The establishment of SAR Agency was enshrined in the NCAPN about 10 years ago. See *Report, supra* note I, at 160-170.

⁵⁶ See *Report of the Committee, supra* at 171-174.

⁵⁷ "FAAN a Disaster Agency", *The Punch Newspaper*, (November 22, 1996). The 7th AFIRAN meeting noted with concern that some of the airspace in the region is critically deficient due to the defective facilities and inadequate communication navigational aids available in the region. See ICAO Doc. AFI/7-WP/13, (1997).

⁵⁸ Article 69 Chicago Convention requires that the ICAO Council could hold consultation with any state if in its opinion the air navigation facilities are considered reasonably inadequate for safe, regular efficient and economic operations of international air services. Perhaps the situation which could warrant the council to fall back on article 69 may not arise since the requirement under article 28 of the same Convention for setting up air navigational aids does not prescribe any level of the navigation aids to be established by states, but rather leaves it to the discretion of states according to what they deem practical. See article 38 Chicago Convention; see also M. Milde, "Enforcement of Aviation Safety Standard : Problems of Safety Oversight", (unpublished), at 1-20.

solution to these problems. Recently, Nigeria hosted the ICAO 7th African-Indian Ocean Regional Air Navigation (AFI-RAN) meeting.⁵⁹ This occasion was a golden opportunity for Nigeria to draw the attention of ICAO and other aviation bodies to Nigeria's problems especially those of air navigation safety.⁶⁰

2:2:4 Civil Aviation Safety

The cardinal issue in civil aviation is its safety and the formulation and adoption of safety standards⁶¹ which are to be applied, implemented and enforced world wide by states in their territorial jurisdiction.⁶²

Consideration is given to the safety of air navigation in Nigeria through the formulation of safety policies dealing with the registration and airworthiness of aircraft, crew licensing and aircraft operations.⁶³ It has been observed that the principle on air safety enshrined in the NCAPN has narrowed the scope of air safety to some specific aspects only, whereas the scope of air safety under article 37 of Chicago Convention is wide

⁵⁹ The 7th ICAO AFI RAN meeting took place in Abuja, Nigeria from 13th to 23rd May, 1997. The areas on the agenda included: Aerodromes and ground aids, rules of the air and air traffic services, search and rescue, navigational aids, meteorology, aeronautical services, charts and communications. See ICAO DOC. AFI/WP/1, 1997. This agenda ought to be of interest to Nigeria because Nigeria aviation suffers certain deficiency in all of these areas.

⁶⁰ Financial assistance to provide funding to address civil aviation infrastructure problems in the country may be sought through the ICAO Council, (article 70 Chicago Convention), and other technical assistance.

⁶¹ For the purpose of securing the safety, regularity and efficiency of air navigation, ICAO is mandated to adopt and amend from time to time, International Standards and Recommended Practices (SARPS) (also called Annexes to the Convention) on a variety of issues for application by contracting states. See article 37 Chicago Convention. To date 18 SARPS have been adopted.

⁶² However, states can enforce international standards outside their jurisdiction when an aircraft registered in that state is over the high seas. See article 12 Chicago Convention.

⁶³ See *Report of the Committee*, *supra*, note 1, at 181-182.

enough to include unforeseen related safety matters.

Until 1984, foreign-registered aircraft could operate in Nigeria without re-registering. Due to problems arising from lack of proper maintenance of aircraft and the lack of legal and administrative powers by the Nigerian regulatory authority, in order to ensure that a scheduled maintenance programme for aircraft was strictly adhered to, a new policy was introduced making it mandatory for foreign-registered aircraft to be deregistered and re-registered in Nigeria before starting operations.⁶⁴ Concern has arisen over the role of states in continually enhancing air safety by taking measures such as the setting up, application, implementation, monitoring, surveillance and inspection of safety programmes. Therefore ICAO has established a safety oversight programme to ensure that the same level of compliance with and implementation of set safety standards is achieved by all states.⁶⁵

ICAO member states are not under mandatory obligation to adopt the new ICAO Safety Oversight Programme.⁶⁶ However, certain events in safety oversight indicate that states will have to co-operate with others in implementing the Safety Oversight Programme

⁶⁴ Concerns over the discharge of certain obligations by a state where an aircraft has been registered, such as responsibilities for issuance of the proper documents required for the operation of aircraft, where the aircraft is operating in a state other than the state of registry, led ICAO to adopt article 83 bis to the Convention. When this article comes into force, it will be possible for a state of registry to transfer its legal obligations to the state where the aircraft is actually in operation. See P., Fitzgerald, "The Lease Charter and Interchange of Aircraft in International Operation: Amendments to the Chicago Convention", *Annals of Air and Space Law*, Vol II, (1977), at 103.

⁶⁵ ICAO Doc. C-WP/10 161 dated 2/3/ 1995. The idea of safety oversight arose out of the controversial safety assessment programme, unilaterally embarked upon by USA's FAA to evaluate the ability of some states in providing safety oversight of their aviation system. See N. G., Tompkin, "Enforcement of Aviation Safety Standards", *Annals of Air and Space Law*, Vol. XX-1, (1995), at 319 -334.

⁶⁶ The ICAO Safety Oversight programme prescribes no form of sanction and it is to be applied only when a state requests ICAO to do so. See ICAO Doc. A31 C-WP/10, *supra*, note 65.

or else stand the risk of sanctions, including the denial of landing right.⁶⁷ The Association of African Airlines (AFRAA) at its 28th Annual General Assembly called on their governments to reaffirm safety oversight responsibilities and not to allow persons and aircraft without valid certificates of airworthiness or licenses to operate within their airspace. This measure aims to make good the lapses in enforcing safety standards and to ensure conformity with safety standards worldwide.⁶⁸

The lapses in application, implementation and enforcement of safety standards shows that the policy on civil aviation safety embodied in the NCAPN 10 years ago, has not been satisfactorily met. This clearly calls for further improvement, especially in the implementation, compliance, enforcement and safety oversight of safety standards.⁶⁹

2:2:5 Economic Policy

At the Chicago Conference in 1944, some issues concerning the economic aspects of civil aviation came up, but could not be adequately accommodated under the multilateral framework adopted at the conference. Instead states that were present at the conference opted to retain absolute control over these issues.⁷⁰ Since then, states have exercised

⁶⁷ Following the results of the unilateral assessment of safety oversight of foreign countries by the USA in 1994, some countries whose safety system was found to be below ICAO prescribed minimum standards were conditionally suspended from using USA airspace until the deficiencies were normalised. See Tompkins *supra*, note 65. Though Nigeria was not among the countries assessed by the USA in 1994, the USA unilaterally severed air links between Nigeria and the USA and suspended the BASA between Nigeria and USA on account of perceived security deficiencies at one of the country's airports.

⁶⁸ "African Airlines Worry Over Safety", *5 Journal Aviation and Allied Business*, No 2 (April/June, 1996), at 23.

⁶⁹ "Air Safety in West African Sub-region", *Third Eye Daily*, (December, 1996), at 13.

⁷⁰ Articles 1, 5 and 6 Chicago Convention have created an absolute legal regime for states to control within their sovereign territorial airspace the free movement of foreign commercial flights.

regulatory control of the economic operations of air transport through Bilateral Agreements⁷¹ by imposing restrictions on capacity, fares, routes and designations of national foreign carriers.⁷²

In Nigeria, control over air fares, routes, capacity and carrier designation is seen as a tool to lessen competition and to serve as a means of protecting the weak and ill-equipped national carrier from the well-established mega carriers. Aviation in developing countries is largely undeveloped and mostly characterised by frail market structure, small aircraft fleet, poor route networks, high operational costs, massive losses and inadequate air facilities. It is therefore a matter of grave concern amongst developing countries that unchecked access to the national air traffic market will give additional advantages to foreign carriers which are already a threat to the existence of small carriers. Hence the need for adopting protectionist formulae by the governments of these countries, (Nigeria not being an exception), to preserve the interest of their national carriers.⁷³ Against this background, the NCAPN has codified an economic policy which lays emphasis on deriving maximum economic benefits from BASAs by ensuring fair and equal opportunities for the designated carriers of participating countries. This has been achieved through the principle

⁷¹ The impasse which resulted from the Chicago Conference over the international regime for economic air transport was resolved with the signing of a Bilateral Air Services Agreement in 1946, otherwise known as Bermuda 1, between the UK and US. The UK/US BASA has remained a model Agreement for most ICAO states until Bermuda II in 1978. See Wassenbergh *supra*, note 30, at 494-500. To date, Nigeria has entered into 64 BASAs all modelled after Bermuda 1. See "Report of Fact Finding Panel" *supra*, note 10.

⁷² ICAO Doc. AT CONF/4-WP/7, 18/4/1994.

⁷³ See "Challenges and Changing Nature of the International Air Transport Market: African Airlines and the Future", 5 *Journal Aviation and Allied Business*, No 2, (April/June, 1996), at 6-7. See also ICAO Docs. A31-WP/24, EC/4, 7/7/1995; A31-WP 172, P/19, 14/8/1995.

of equal sharing of capacity on agreed services, predetermination of tariff, specification of routes and single carrier designation.⁷⁴ Changes have however emerged regarding the approach to some issues of market access in international air transport which appear to be a threat to the continued application of the principles of market access embodied in the NCAPN.⁷⁵ The chances that these economic policies will survive is even more limited, considering events around the world which would indicate that new regulatory arrangements geared towards the removal of restriction on market access have reached a critical stage.⁷⁶ The new air transport policy adopted by the African nations back in 1988, recognises the need to introduce changes in the economic activities of air transport. The African countries are being encouraged to adopt a more flexible approach to granting traffic rights, carrier designation, use of capacity, and tariff, while at the same time evolving strategies for a common market access when dealing with non-African nations.⁷⁷

African and other developing countries have expressed the view that the existing disparities in world economies and human resources are a barrier to the competence of their air carriers to effectively and efficiently cope with competition from foreign

⁷⁴ See *Report of the Committee*, *supra* note 1, at 311-349.

⁷⁵ Factors which have exerted enormous influence on the change in the method of dealing with market access in international air transport include the liberalization, privatization and globalization of air services and the changes in world trading arrangements. See ICAO Doc. A31-WP122, EC/2, 14/6/ 1995.

⁷⁶ The ICAO World Wide colloquium held in April, 1992 provided an avenue for a preliminary discussion on these issues. This was followed by a meeting of the Group of Experts on Future Regulatory Arrangement on International Air transport in 1993 and the World Wide Air Transport Conference on International Air Transport Regulation: Present and Future in 1994. ICAO Doc. AT CONF/4-WP/2, 12/5/1994.

⁷⁷ In October, 1988, about 40 African nations met in Côte d'Ivoire and adopted the Yamoussoukro Declaration whose objectives include among others the strengthening of co-operation in air transport by integrating and creating consortium airlines on regional basis. The implementation of the policy is divided in phases, phase II dealing mainly with issues of market access in air transport. See "Yamoussoukro Declaration: Myth or Reality", 5 *Journal Aviation and Allied Business*, No 2 (April/June 1996), at 12-13.

countries. For this reason, the countries have objected to the idea of allowing free access to their air transport market and have also warned that measures which do not guarantee their participation in aviation can seriously limit the sustainable participation of all states in international aviation.⁷⁸ Analysis of the aviation market in Nigeria shows that air operators and users strongly support the changes in aviation policies which will lessen restrictions on market access and remove government control on fares, routes, traffic rights, capacity and carrier designation. Towards this end, the government has been called upon to put in place such policies that would encourage the development and attainment of a free, sound and competitive air transport environment and that would satisfy the needs of the air transport consumer.⁷⁹

2:2:6 Consumer Interest

Until the NCAPN was adopted in 1988, there was no policy safeguarding the air transport users against the practices, actions and decisions of government and other bodies which tend to affect the interest of air transport users and of the travelling public.⁸⁰

Actions which have been identified as having an adverse effect on the interest of the air traveller include unfair competition by airlines through under-pricing of fares, capacity dumping with the aim of severely limiting competition, and dissemination of information by the airlines or their agent which could misguide air users on the

⁷⁸ See ICAO Doc. A31-WP/37, EC/6, 11/7/ 1995, also Doc.A31-WP/127.

⁷⁹ "Deregulate Air Fares", *Journal Aviation and Allied Business*, (Jan/March, 1996), at 12.

⁸⁰ See *Report of the Committee*, *supra* note 1, at 357-359.

availability, sale and use of airline products.⁸¹ The absence of machinery in some states to eliminate the excessive competitive and other trade abuses by the airlines was discussed at the ICAO's 4th World Wide Air Transport Conference on International Air Transport Regulation. ICAO has requested states to adopt safeguards that can guarantee so far as possible, protection of the interests of air travellers and other air users.⁸² Having observed that air users represent an important factor in air transport, and without them, revenue generation will fall and airlines collapse, some aviation analysts have advocated that the needs of the consumer should not be overlooked.⁸³

In Nigeria, the needs which are essential to the air transport user including:

- having prompt and easy access to available airline's products and services;
- option of making choice from wide range of airlines' products;
- availability of and timely information relevant to enhance consumer's knowledge and choice of airline's market;
- means of seeking redress in the event of the market product failing to meet prescribed standards or damages arising from the use of such product;
- opportunity of being part of the decision-making process which determines the types, quality, cost and manner of market products available to the consumer.

⁸¹ ICAO Doc, AT CONF/4-WP/12, 19/4/ 1994, at 1-9.

⁸² *Ibid.*

⁸³ A. Agom, "Airlines Operations in Developing Economies and the ICAO Standards: An Airline Operator's Perspective" (unpublished) paper presented at the National Seminar on Civil Aviation, (Lagos, Nigeria, 3rd November, 1994), at 3.

That these needs have not been met has been blamed on stringent regulations which constrain free market forces and vigorous competition.⁸⁴ Important aspects of the NCAPN dealing with the establishment of an air transport users body, to take responsibility for air users' needs⁸⁵ has not been realised outside paper work.⁸⁶

The importance of air users' bodies is viewed from the far-reaching contributions their activities have been making to the development of aviation standards and the environment. These standards are relevant to the operational and economic regulation of air transport, and contribute to safety standards, service standards, pricing of product choice, competition, airports and route developments.⁸⁷

There has been an increase in public awareness and demand for the establishment of a proper air users' body in Nigeria, which will bring to the forefront aviation policies and safeguards for protecting air users. For this reason, the policy makers in Nigeria are called upon to give positive consideration to the needs of air travellers, whenever the

⁸⁴ H.O. Demuren, "The Relevance of Consumer Interests to the Development, Promotion and Enhancement of Civil Air Transport in the West African Sub-region" (unpublished) speech delivered at the Seminar on the Aviation Industry in the West African Sub-region by the Year 2000 AD, (Abuja, Nigeria, 8th to 12th April, 1991).

⁸⁵ See *Report supra*, note 1, at 358.

⁸⁶ In the UK, the air Transport User's Committee has been created and funded by the C.A.A. In other cases, the Federation of Air Transport Users Representatives in the European Community (FATUREC), the Bureau des Unions des Consommateurs (BEUC), on the Pan Europe Basis, the International Foundation of Airline Passengers Association (IFAPA) representing amongst others interest of passengers at national, regional and international levels, The Airport Infrastructure Roundtable (AIR) and the Partnership for Improved Air Travel in the United States of America are some examples of air users bodies around the world. See A. T. Laleye, "The Relevance of Consumer Interests to the Development, Promotion and Enhancement of Civil Air Transport" (unpublished paper) Presented at the Seminar on Aviation Industry in the West African Sub-region to the year 2000 A.D", (Abuja, Nigeria, 8th to 12th April, 1991).

⁸⁷ The air transport users bodies have been making representations about the high level of airline tariffs, supporting the licensing of or substitution with existing carriers of those carriers perceived to have lower costs capable of offering lower fares, regularly making objections or representations to regulatory bodies over cases of overbooking, denial of boarding pass, smoke hoods, passenger accident compensation, CRS abuses, and terrorism, as well as publicizing passenger opinions and ensuring that passenger view points are taken into consideration in the decision making process. *Ibid.*

NCAPN is considered for review.

2:2:7 Environmental Protection

The impact of aviation activities on the environment was not foreseen during the era of reorganization of international civil aviation, but ICAO has had to address it within the past 50 years of its existence.⁸⁸

Increased air traffic and the modernization achieved in aircraft technology since the 1960s, culminated in the use of jet and supersonic aircraft.⁸⁹ The adverse impact on the environment by the activities of new and older aircraft has caused a lot of public concern.⁹⁰ These environmental problems have been identified as including aircraft noise within the immediate vicinity of the airports,⁹¹ aircraft engine emissions containing air pollutants (such as carbon monoxide (CO) Nitrogen Oxide (NOX), Hydro carbons (HC) or volatile organic compounds (WC), Sulphur dioxide (SO₂) and solid particles), pollution on water

⁸⁸ The desire of realising the dream of creating a viable framework for post war commercial air transport, perceived to be a symbol of achieving international friendship, was the ultimate task that confronted the aviation founding fathers during the Chicago Conference on international civil aviation in 1944. Notwithstanding, a legal framework was adopted at the conference and is flexible to embrace new situations related to safety of the civil aviation. See Shawcross and Beaumont, *Air Law*, Butterworth, London, (1977).

⁸⁹ Aircraft technology has witnessed rapid changes over the years. Beginning with the King's piston engines, lockheed constellations, Boeing Stratocruisers, Douglas DC-6, DC 7, Vickers - Viscount, Bristol Britannia, De Havilland Comet, Boeing 707, Aviation Caravelle, Douglas DC-8, Boeing 727, BAC1-11, McDonnal Douglas DC-9, Tupolev TU-144, aircraft making has been perfected with the introduction of supersonic concord and the jumbo jet such as the Boeing 747, B777, the Lockheed L-1011, and McDonnal Douglas DC-10. See D.O. Eniojukan, "ICAO at 50 - Past, Present and Future challenges" (unpublished) paper presented at the National Seminar on Civil Aviation in the 21st Century Challenges for a Developing Economy, (Lagos, Nigeria, November 3 - 4, 1994), at 5-9.

⁹⁰ ICAO Doc. A31-WP/69, EX/34, 12/9/1995.

⁹¹ Apart from health hazards such as early hearing loss, other problems like nuisance in the form of persistent disturbance and annoyance have been associated with aircraft noise. *Ibid.*

and soil, land loss and soil erosion, and the degradation of flora.⁹²

ICAO and individual states⁹³ have been tackling environmental problems through regulatory and policy frameworks, such the Annex 16, Volumes 1 and 2 to the Chicago Convention, adopted by ICAO in 1971 and 1981, and the amendments made thereto in 1993, Assembly Resolutions A22-13, A28-13, and A29-12, International Agreements/Protocols, and national legislation and policies.⁹⁴

Efforts undertaken by ICAO to solve environmental problems have focused primarily on controlling the level of environmental impact at source, by minimizing the production of pollutants. In the case of aircraft noise, a balanced programme of noise reduction at source,⁹⁵ operational measures and land use planning has been set out in Annex 16 Vol.1,⁹⁶ while standard limits have also been established in ICAO Annex 16

⁹² However, the result of a study conducted by ICAO CAEP has indicated to the contrary that aircraft are not major contributors to air pollution in the vicinity of airports. See ICAO Doc.A31-WP/39, EX/8, TE/9,27/7/1995.

⁹³ Example: ECAC States in 1974 set up a group of experts on noise caused by air transport, and in 1976, adopted Recommendation CAC/9-19 urging member states to adopt positive measures to promote early retirement of older subsonic aircraft. A similar Recommendation-ECAC 14-18 was made in 1979 for early retirement of jet aircraft which was followed in 1988 by Recommendation ECAC 113-2 and supplemented in 1991 by Recommendation ECAC/14/2 for the gradual phasing out of chapter 2 aircraft until the final ban in the year 2002. See ICAO Doc. A31-WP/69 *supra*, note 90.

⁹⁴ Most of the policy recommendations made by ECAC have been enacted in European Union legislation. ECAC and AFCAC have been holding consultation with the aim of reaching agreement on certain exemptions to be applied to AFCAC member states during the period of the ban on continued use of aircraft. *Ibid*.

⁹⁵ A study carried out by CAEP and the industry, has shown that the lack of prospect for significant future reduction of noise at source and the result in performance penalties in the form of reduced payload and range would increase in operation and therefore increased in higher operating costs. In view of the limited benefits for using noise suppression materials in the aircraft engines as compared with performance penalties, the systematic phasing out of aircraft types categorized as chapters 2 and 3 generation fleets is being pursued.

⁹⁶ Based on the recommendation by CAEP/2, four amendments were made to Annex 16 Vol.1 by ICAO Council in 1993. See ICAO Doc. *supra*, note 92.

Vol. 11 for reduction of aircraft engine emissions.⁹⁷

The implementation of standards prescribed for the reduction of aircraft noise and engine emissions has been a matter of deep concern for developing countries which have expressed financial and practical difficulties in complying with the time frame for the implementation of these standards.⁹⁸

African countries have maintained that aircraft registered in their countries should be exempted from compliance with current noise standards.⁹⁹ Approximately, 112 aircraft registered in the continent that will be affected by the application of the noise standards would cease operations and this could lead to the collapse of many airlines within the continent.¹⁰⁰

In Nigeria, it has been established that most people are ignorant about the adverse environmental impact arising from aviation activities. This is obvious from the increasing construction of residential buildings near the airports. The NCAPN has categorically pointed out that:

⁹⁷ *Ibid.*

⁹⁸ *Ibid.* Arrangements have been made to accommodate the concerns of developing countries, while provisions for certain exemptions for up to 2 years also exist. For example: ECAC hopes to develop a dialogue with AFCAC and LACAC on its environmental work programme to improve understanding of each other's perception of environmental issues.

⁹⁹ Meanwhile the African countries, through the AFRAA and Advisory Committees on Aircraft Noise Restriction, have adopted technical, financial and commercial measures as a solution to the problems of aircraft noise. The Committee has considered the option of hush-kits marketed as a technical solution to aircraft noise and have concluded that this option is unsuitable because of the high capital involvement and performance penalty. Neither has the Committee found the replacement of fleet option a feasible measure because of the high economic burden this would have on African airlines and their governments. Instead, the Committee has recommended an intra regional co-operation arrangement for African Airlines who are not able to replace their fleets, to lease from their counterparts who may be in a position to re-equip their fleets, as a means to continue to participate in the international market. See "AFRAA Seeks More Technical Co-operation", *African Airlines*, (Sept/Oct, 1993), at 14.

¹⁰⁰ *Ibid.*

..even when airports are sited away from residential areas, people migrate and build houses and even industries around the new airport vicinity. The consequences of this ill informed decision is increasing rate of deafness and loss of hearing by such people since they are exposed to noise of moderate to high intensity especially during take-off and landing of aircraft.¹⁰¹

Available data have revealed that the issue of restriction of aircraft noise and engine emission has not been seriously addressed in Nigeria. This is based on the continued acquisition of aircraft which do not conform with current noise and engine emission standards, and the non-existence of appropriate procedures and policy frameworks long after the stipulated period for implementing noise and engine emission standards.¹⁰²

Observers who have closely analyzed the aviation environment in Nigeria have expressed grave concern over the increasing possibilities of Nigeria becoming a primary market for the disposal of chapters two and three aircraft which are being retired or phased out from other countries.¹⁰³ Regulatory authorities and policy makers in Nigeria have been called upon to establish clear and adequate measures for standardization of aircraft acquired for use in Nigeria. This is considered necessary because the existing policy is found to be grossly inadequate to solve environmental problems caused by aircraft activities.¹⁰⁴ It is pertinent to mention that about the same time that the NCAPN was

¹⁰¹ See *Report of the Committee, supra*, note 1, at 370. This would suggest a lack of policy measure or regulatory control against setting up residential and industrial buildings around airports.

¹⁰² The time frame established by ICAO for implementing standards for chapter 2 aircraft was 1st January, 1988, and 1st January, 1990 for chapter 3 aircraft. In the European Union, however, this period has been extended up to the year 2002. See ICAO Doc. A31-WP/69, *supra*, note 90.

¹⁰³ "Africa's Ageing Long Haul Work Horse", *African Airlines*, (Jan/Feb, 1992), at 21.

¹⁰⁴ Some provisions in the NCAPN require that no residential building should be allowed within 1 kilometre of the airport perimeters (Buffer Zone) and purchase of second hand aircraft for international transportation should conform with the noise abatement requirements. However, these policies have failed to address the cases of residential houses already affected by noise level as well as aircraft registered and operating in the country which

adopted, a national policy on environment was established in Nigeria, and national environmental guidelines and standards for the abatement and control of all forms of pollution were set up. These standards have prescribed tolerable levels of air pollution and noise limits.¹⁰⁵ The extent to which these standards have been complied with is however uncertain.

2:3 The Legal Framework

The relationship between law and policy has been examined from the background of air law in the past. It has been established that there exists such a close relationship between air policy and air law that the two are considered to be one and the same thing.¹⁰⁶ But the inter-dependence of air law and air policy goes only as far as the meaning accorded to the two terms. With respect to legal authority, air policy is subordinate to air law, as it is said to represent mere political desire which derives legal strength from the tenets of air law.¹⁰⁷

Air law has emanated from national statutes and subordinate legislation, multilateral

do not conform to current noise restriction standards. It has been suggested that there is need to examine this provision with a view to accommodating the situation not sufficiently addressed in the policies.

¹⁰⁵ *Guidelines and Standards for Environmental Pollution Control in Nigeria*, Federal Environmental Protection Agency, (1991), at 59 - 67.

¹⁰⁶ M.O. Folchi, "Air Transport Policy in Latin America", *Annals of Air and Space Law*, Vol.XIX-11, (1994), at 311.

¹⁰⁷ A policy has been defined as a rule which is a subsidiary instrument that derives its power from an enacted law. See Olowu *supra*, note 2.

treaties and bilateral agreements.¹⁰⁸ In Nigeria, the powers to make laws on aviation matters have been traced to the post-independence constitution which vested legislative powers exclusively in the parliament¹⁰⁹ to legislate on all matters contained in the exclusive list in the schedule to the constitution.¹¹⁰ Under item three of the exclusive legislative list, the Federal Government was empowered to make laws on aviation matters including airports, safety of aircraft and other related services. Under item 15 of the exclusive legislative list, the Federal Government had powers to make laws for the purpose of implementing any treaty or agreement between Nigeria and other countries. This provision provided the legal basis for acceding to the Chicago Convention by Nigeria in 1961.

Pursuant to the powers conferred by the 1963 constitution, the Civil Aviation Act (hereinafter the 1964 Act) was enacted in 1964. The Minister of aviation is empowered by the Act to make regulations which appear to him necessary or expedient for carrying out the Convention on International Civil Aviation 1944, Annexes thereto, and any amendment of the Convention or such Annex and to generally regulate air navigation.¹¹¹ The Minister

¹⁰⁸ For example the source of German air law. See W. Schwenk, "Air Law and Aviation Administration in the Federal Republic of Germany", *Annals of Air and Space Law*, Vol.II, (1977), at 181 - 197.

¹⁰⁹ After Nigeria had attained independence, the responsibility for law making was conferred upon the Nigerian legislative. See B. O. Nwabueze, *A Constitutional History of Nigeria*, Chapters I and II, (London, Longman 1982).

¹¹⁰ The 1963 constitution has been superseded by the 1979 constitution which in turn vested exclusive powers of law making regarding aviation matters including airports, safety of carriage of passengers and goods by air in the parliament. See section 4 (1) and (2), Chapter 62, Laws of the Federation of Nigeria, Vol.IV, (1990), at 2342. However, section 4 and other provisions of the said constitution have been suspended from operation by section 1 (1) of the Constitution (Suspension and Modification) Act (1983), which has vested same powers in the Federal Military Government of Nigeria exercisable through the Armed Forces Ruling Council (now Provincial Ruling Council). See chapter 64, Laws of the Federation of Nigeria, Vol.IV, (1990), at 2954, 2959, and 2969.

¹¹¹ See section 1,(a) and (b), Civil Aviation Act, (1964), Chapter 51, No 30, Laws of the Federation of Nigeria, Vol.2, (1990), at 1090. This section is similar to section 8 (1) (a) and (b) of U.K Civil Aviation 1949, which was extended to Nigeria, under section 3, Colonial Civil Aviation (Application of Act) Order 1952(A). See Laws of the Federation of Nigeria and Lagos, Vol. XI, (1958), at 590 - 611.

is further empowered under section 1 (2) of the Act to make regulations as to:

- (a) registration of aircraft;¹¹²
- (b) conditions under which aircraft may fly in Nigeria;¹¹³
- (c) the licensing, inspection and regulations of access to and use of airport, places where aircraft are parked and the use and inspection of aircraft factories;¹¹⁴
- (d) licensing of persons employed at the airport in connection with inspection, testing or supervision of aircraft and the conditions thereof;¹¹⁵
- (e) conditions under which aircraft may enter and leave Nigeria and fly to or from one part of Nigeria to the other;¹¹⁶
- (f) the conditions for carriage of passengers and goods and use of aircraft for other gainful purpose;¹¹⁷
- (g) the use of air navigation and prevention of interference thereof;¹¹⁸
- (h) generally securing the safety, efficiency and regularity of air navigation and

¹¹² See sub section 1 (2)(a). The provision of this section has the same wording as section 8 (2)(a) 1949 Act. The regulations on registration of aircraft is in line with article 19 Chicago Convention which requires that the registration of aircraft in any contracting state should be in accordance with its laws.

¹¹³ Section 1 (2)(b) Civil Aviation Act, 1964. This is also similar to section 8(2)(b) Civil Aviation Act, 1949.

¹¹⁴ Section 1 (2) (c), is similar to section 8 (2)(c) Civil Aviation Act 1949.

¹¹⁵ Section 1 (2) (d), is similar to section 2 (d), Civil Aviation Act, 1949. The requirement for these sections can be found in article 32 of the Chicago Convention.

¹¹⁶ Section 1 (2) (e). This subsection is a replica of section 8 (2) (d) and (e) of the Civil Aviation Act 1949. This provision corresponds with the requirements under articles 10 and 11 Chicago Convention. These provisions require that states' regulations relating to entry and departure of foreign aircraft should be uniformly applied.

¹¹⁷ Section 1 (2) (f), is the same as section 8(2) (f) of the 1949 Act.

¹¹⁸ Section 1 (2) (g), is found to be similar with section 8(2) (g) of the 1949 Act.

the safety of aircraft and of persons and property carried in aircraft and for preventing aircraft from endangering other persons and property.¹¹⁹

Other matters which the Act has empowered the Minister to regulate include: meteorological services, signs marking, and other communication. Within the legislative competence of the minister are regulations pertaining to designation of custom airports, prohibited areas, conditions for the certification and licensing of licenses required for air navigation, the registration of births and deaths occurring in aircraft, charges and fees in respect of use of airports, certification, licensing and other documents required for air navigation.¹²⁰

Provisions have been made under the 1964 Act for the investigation of accidents occurring to aircraft registered in Nigeria, whether the accident occurs in Nigeria or abroad;¹²¹ actions which may be taken if an aircraft is flown in a dangerous manner;¹²² and the requirement for licensing of air transport undertaking¹²³. Matters such as acquisition of land for civil aviation purpose, establishment and maintenance of airports¹²⁴, obstruction

¹¹⁹ Section 1 (2) (h), is similar to section 8(2) (h), of the 1949 Act. The principle of this section is in line with the objective of article 37 and the preamble to the Chicago Convention.

¹²⁰ See section 1 (2) (i) - (r), and compare with section 8 (2) (i) - (q) of the 1949 Act. Some of the matters dealt with under these sub sections are requirements of the Chicago Convention. See in particular, articles 9, 15, 28, 31, 32.

¹²¹ See section 2. This section corresponds with the requirement for investigation of accidents under article 26 Chicago Convention.

¹²² See section 3.

¹²³ Sections 4 and 5.

¹²⁴ Sections 6 and 7. The power of the Minister to provide and maintain airports was first transferred to the defunct Nigerian Airports Authority under the Nigerian Airports Authority Act of 1976 and later to the present Federal Airports Authority of Nigeria under Decree No 9, Federal Airports Authority of Nigeria. However, no amendments has been made to the Act regarding these changes despite the fact that these Changes have occurred since 20 years.

at the airports, liability in respect of trespass and nuisance caused by aircraft¹²⁵, seizure of aircraft¹²⁶, offenses and penalties¹²⁷ are regulated under the Act.

The Minister has made several subsidiary legislation in exercise of the powers conferred upon him under the Act. Some of the notable subsidiary legislation include:

(a) Civil Aviation (Air Transport) Licensing Regulations 1965 made in pursuance to section 4 of the Act. These Regulations govern:

the scheduled operations of aircraft for the carriage of passenger, mails and cargo for hire or reward;

the procedure for the granting of licenses, the types of licenses and duration of licenses;

fees payable on the licenses; and

offenses and penalties - the penalties range from imprisonment for three months and up to two years,- fines, from the sum of N1,000 up to N10,000, and suspension and revocation of licenses.¹²⁸

Under the Air Transport Regulations "any person" can apply for a license or permit

¹²⁵ Sections 9 and 10. Section 10 (i) in particular has empowered the Minister to make regulations for the control of aircraft noise and vibrations in the country. However, the extent to which this provision has been complied with is still unknown. This requirement if implemented will to an extent address the requirement of ICAO's standard in Annex 16 Vol.1.

¹²⁶ Section 12, is also in line with article 27 Chicago Convention.

¹²⁷ Section 1 (3) under which an aircraft flying in a prohibited area may be fired. This provision will no longer conform with the provisions of article 3 *bis* Chicago Convention when in force and other relevant ICAO Assembly Resolutions. See for other offenses Section 13, imprisonment not exceeding 6 months or fine.

¹²⁸ See paragraphs 3 to 27, Chapter 51, Laws of the Federation of Nigeria, (1990) at 1108 - 1122.

to use in Nigeria for the purpose of carrying passengers, mail and cargo for hire or reward on schedule services only.¹²⁹

(b) Civil Aviation (Aircraft Performance) Regulations 1965

(Aircraft Performance Regulation - "APR") emanates from Regulation 24(1) of the Civil Aviation (Air Navigation) Regulations 1965, which in turn is made pursuant to section 1 of the Act. The APR comprises 10 paragraphs dealing with the maximum total weight including take-off and landing altitude for aircraft undertaking public transportation in Nigeria.¹³⁰

(c) Civil Aviation (Birth, Death and Missing Persons)

Regulations (B.D.M.P.R.) 1965. These Regulations consist of 8 paragraphs, which deal with the requirements for the owner of an aircraft registered in Nigeria to make returns to the Minister in relation to birth or death occurring in an aircraft registered in Nigeria in any part of the world. The Minister is in turn required under these Regulations to establish a record for recording any returns made in pursuance of the regulations.¹³¹

(d) Civil Aviation (Rules of the Air and Air Traffic Control) Regulations 1965 are

¹²⁹ See paragraphs 5 and 14. This appears to suggest that in principle, investment in air transport is not restricted to Nigerian nationals.

¹³⁰ See paragraphs 3 to 10, Civil Aviation (Aircraft Performance) Regulations 1965, Chapter 51, Laws of the Federation of Nigeria, Vol.III, (1990), at 1124 - 1146.

¹³¹ See paragraphs 3 to 6, Chapter 51, Laws of the Federation of Nigeria, Vol.III, (1990), at 1148 - 1150.

made up of 58 paragraphs. These Regulations provide for the requirements for operation of all aircraft in Nigeria, that is: the responsibilities of pilots, air traffic controllers, correct use of signals and markings on aerodromes, and different conditions under which the pilot may operate aircraft. The general rules of right of way for flights conducted under visual meteorological conditions, (VMC), rules relating to aircraft operations within the aerodromes, traffic zones, signs and type of light to be used, persons who may control aircraft at the aerodrome are all covered by the Regulations.¹³²

(e) Regulations relating to accident which may occur to any civil aircraft in or over Nigeria or elsewhere and to aircraft which are registered in Nigeria, that is the notification of accidents, access to and removal of damaged aircraft, appointments and functions of inspectors of accident and the institution of public inquiry.¹³³

(f) Regulations pertaining to the conditions and other requirements for the registration of aircraft in Nigeria, issue and renewal of airworthiness certificates to aircraft, issuance of maintenance certificate, licensing of maintenance engineers, minimum requirements for equipping aircraft, such as radio equipment, aircraft engine and propeller log books, weight and balance schedule, crew requirements, operators and pilots' responsibility for ensuring safety of life and property, and the power in respect

¹³² See Civil Aviation (Rules of the Air and Air Traffic Control) Regulations, 1965, chapter 51, Laws of the Federation of Nigeria, Vol. 111, (1990), at 1158 - 1205. The existence of Rules of the Air and Air Traffic Control is a requirement provided under Annex 2 of the Chicago Convention for compliance by all states except those who have notified ICAO of any established difference in accordance with article 38 of the Convention.

¹³³ See Civil Aviation (Investigation of Accidents) Regulations, 1965, chapter 51, Laws of the Federation of Nigeria, Vol.111, (1990), at 1206 - 1217. Article 26 Chicago Convention makes provisions for the procedure for investigation of accident occurring in any ICAO member state.

of control of flight operations and the use of aerodromes and their facilities.¹³⁴

(g) Provisions for aircraft landing fees, parking fees, registration of aircraft, licensing of maintenance engineers, pilots, air traffic controllers, airport users fees as well as navigational aids charges.¹³⁵

(h) an Order relating to the control of some areas in the vicinity of Lagos Airport.¹³⁶

In exercise of the Minister's powers under the Act, the Minister has issued rules in the form of policy statements, aeronautical information circular (AIC) and notices to airmen (NOTAM).¹³⁷

Apart from the 1964 Civil Aviation Act and the regulations made thereunder, other relevant legal instruments, such as Federal Airports Authority of Nigeria, Decree No 9, 1996, Nigerian Airports Authority Act 1976, and Federal Civil Aviation Authority Decree No 8, 1990, have come into force.

In addition to the municipal legal instruments, multilateral treaties and related

¹³⁴ See Civil Aviation (Air Navigation) Regulations 1965, chapter 52, Laws of the Federation of Nigeria, Vol.111, (1990) at 1224 - 1346.

¹³⁵ See Civil Aviation (fees) Regulations 1965, Chapter 52, Laws of the Federation of Nigeria, Vol.111, (1990), at 1349 - 1365. Some of the fees contained in these Regulations have been reviewed over and over in line with paragraph 14 of the Regulations. However, the Regulations have not been up dated to incorporate the new fees.

¹³⁶ See Civil Aviation (Controlled Areas) Order 1966, Laws of the Federation of Nigeria, Vol.111, (1990), at 1366 - 1368.

¹³⁷ T. Momoh, "Contractual Road Block to Running an Airline", (unpublished) paper presented at the Seminar on Aviation in Nigeria, (Lagos, 21-22, June, 1994).

protocols, and bilateral agreements constitute an integral part of the air law system in Nigeria. Out of about 32 public and private international air law instruments known to exist¹³⁸, only about 13¹³⁹ have been signed or ratified by Nigeria. About 64 bilateral air services agreements have been signed between Nigeria and other countries.¹⁴⁰ Except for the Chicago Convention and the Annexes thereto, to which the Minister, under section 1(a) of the Civil Aviation Act 1964 has been specifically empowered to make provisions necessary to carry out their provisions, there is yet to be established a clear policy concerning the application of those international air law instruments to which Nigeria is party.¹⁴¹ Even in the case of the Chicago Convention and its Annexes, no specific provision has been made for the requirements of this section. Rather, some of the regulations adopted under the Act have incorporated the provisions of some of the Annexes.¹⁴²

¹³⁸ Not all of these instruments are in force. For more details on the type and nature of the instruments, see *Annals of Air and Space*, Vol. XVII-11, (1993), at 5 - 597.

¹³⁹ These are: Convention on International Civil Aviation 1944 and the Annexes; Protocol relating to an Amendment to the Convention on International Civil Aviation 1984 (Article 3 *bis*); Convention on Offenses and Certain Other Acts Committed on Board Aircraft 1963 (Tokyo Convention); Convention for the Suppression of unlawful Seizure of Aircraft (The Hague Convention) 1970; Convention for the Suppression of Unlawful Acts Against Safety of Civil Aviation 1971 (Montreal Convention); Convention for the Unification of Certain Rules Relating to International Carriage by Air (Warsaw Convention) 1929; Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12th October, 1929, done at the Hague on 28th September, 1955 (The Hague Protocol); Convention Supplementary to the Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier 1961, (Guadalajara Convention) 1961; Protocol Relating to an Amendment to the Convention on International Civil Aviation (Articles 50(a)) 1961 and 1971; Authentic Trilingual Text 1968; Transit Agreement 1944 and Rome Convention 1952.

¹⁴⁰ See *Report of Fact finding Panel supra*, note 10.

¹⁴¹ It is a well established practice of international law that an international instrument does not automatically become applicable in a state unless there is put in place domestic machinery allowing the application of the instrument in the state.

¹⁴² For example, Civil Aviation (Air Navigation) Regulations, 1965, have incorporated some of requirements contained in Annex 8(2). This practice has been recommended to states by ICAO, as a way whereby global uniformity in the application of standards could be achieved.

Legal problems are bound to arise in a situation where no local provision has been made for a particular aspects of civil aviation, for which there is in place an international legal instrument or even where there is in fact an existing local provision, which has not been updated in line with the modifications made to the international instrument. A glaring example comes from the Warsaw System, which by its application, is limited only to international air carriage: Could it be applied without any local legal provisions, enabling it to be applied to domestic air travel in Nigeria? This question arises from the great difficulty relating the inscriptions usually made on air tickets issued for international air carriage, to similar provisions inscribed on air tickets issued by some domestic air carriers in Nigeria, for air carriage performed exclusively within Nigeria. An example of such an inscription taken from one of the airline's tickets, reads as follows:

carriage under here is subject to the rules and limitations relating to liability established by the Warsaw Convention unless such carriage is not international carriage as defined by that convention. To the extent not in conflict with the foregoing carriage and other services performed by each carrier are subject to (i) provisions contained in the ticket, (ii) applicable tariff (iii) carrier's conditions of carriage and related regulations which are made part hereof, except in transportation between a place in the United States or Canada and any places outside thereof to which tariff in force in those countries apply. ¹⁴³

Information of this nature could misguide air users as far as matters relating to liability of the airline are concerned. Legal problems could arise if anyone seeks to apply this in a law court. The state of the law in respect of the air carriers's liability for domestic carriage is far from

¹⁴³ The legal system is certainly incomplete, since over 15 relevant international conventions and related protocols have not been adopted by Nigeria. Even with the Chicago Convention some protocols amending the Convention are yet to be adopted by Nigeria in line with article 94 of the Convention.

clear. The appropriate authorities must look into this area with a view to making the law clear, in order to protect the interests of air users.¹⁴⁴

2:4 Problems of the Legal Framework

Aviation activities have opened and reopened numerous regulatory problems which, by the nature of aviation itself, are not common to a particular state, regional or global body. Aviation has some unique attributes. That is, aircraft have are not hindered by geographical boundaries, and there are uniform standards for aviation operations. These factors have combined to create common problem areas especially in the regulatory aspects.¹⁴⁵

From the outset, legal research which was aimed at formulating standard and acceptable regulatory frameworks for international civil aviation has failed to achieve satisfactory results. This was due to the lack of consensus in harmonising the different goals and objectives of the different states.¹⁴⁶ ICAO has had to devise ways of addressing regulatory problems in order to meet outstanding and emerging legal challenges. The World Wide Air Transport Conference, preceded by the Worldwide Air Transport Colloquium and the meeting of Groups of Experts between 1992 and 1994, provided an opportunity for the aviation community to explore solutions to some long standing

¹⁴⁴ So far, no case has been decided based on the Warsaw Convention. The stagnation of aviation case law has been attributed to the lack of awareness by the air users of the legal obligations owed to them by the air operators and civil aviation authorities. See *Olowu supra*, note 2.

¹⁴⁵ See N. M. Matte, *Treatise on Air Aeronautical Law*, (Institute and Centre for Air and Space Law, McGill University, Montreal, Carswell Co. Ltd., Toronto, 1981), at 33 - 32.

¹⁴⁶ Attempts at the Paris and Chicago conferences in 1919 and 1944 respectively, all failed to exhaustively resolve some crucial legal issues. As a result, new legal solutions are still being explored. *Ibid*, at 83 - 85.

regulatory issues on the regulation of economic aspects of air transport.¹⁴⁷ With respect to the technical regulation of air transport, ICAO has for decades been confronted with fundamental problems regarding the inadequate and non-representative levels of responses from states, on the implementation and compliance with International Standards and Recommended Practices (SARPs) and the non ratification of protocols for amending the Chicago Convention and other private and public international air law instruments adopted under the auspices of ICAO.¹⁴⁸

At the 29th Session of the ICAO Assembly, contracting states expressed concern over the importance of states ensuring compliance with and notification of differences from SARPs as required of states under articles 37 and 38 of the Chicago Convention. As of 1994, the level of states' responses to their obligations to compliance with and notification of differences with SARPs, was still far from being adequate, with the level of responses varying between 16% to 58%. Consequently, ICAO has found it impossible to indicate with a degree of accuracy and certainty what the actual state of implementation and compliance with regulatory material really is. This situation is seen to pose a threat to the safety of air navigation because of the possible watering down of safety standards.¹⁴⁹

To address this problem, ICAO has adopted Resolution A29-3, which is aimed at finding ways of improving the level of implementation and compliance with ICAO

¹⁴⁷ The rapidly changing environment of air transport is characterised by global trends of market economies, the liberalization of air route technological changes and the commercialization of aviation activities all leading ICAO to find ways of ensuring that the regulations keep pace with the changes. To this effect ICAO organised the 4th World wide Air Transport Conference in 1994. See ICAO Doc. A31-WP/22 EC/2, 14/6/ 1995.

¹⁴⁸ See ICAO Docs. A31-WP/56, EX/19, 1/8/95 and A31 WP/124/EC/4, 7/7/95.

¹⁴⁹ *Ibid.*

standards by states. This is to be accomplished through a future strategy by which ICAO would carry out a systematic analysis of the reasons for non-implementation and compliance with ¹⁵⁰ and notification of differences from SARPs. At the same time the actual status of implementation, compliance or notification of differences with SARPs will be monitored by ICAO.¹⁵¹ ICAO has adopted a Strategic Action Plan (SAP) with the aim of encouraging states to discharge their duties regarding the implementation of ICAO SARPs, and to participate more in the ratification of instruments of international air law, with a view to maintaining as much as possible, uniform safety standards worldwide.¹⁵² ICAO has also sought to address the problem of ratification of international air law instruments¹⁵³ which has remained a crucial factor over the years, through educational and

¹⁵⁰ A study conducted by ICAO has revealed that the reasons that may be responsible for non implementation, compliance or notification of differences from SARPs, by states, might include: insufficient resources within states to expeditiously process ICAO documentation and to implement the relevant standards into national legislation, difficulty in comprehending and interpreting Annex material, subject matter of the material being beyond the level of expertise of the recipient states, insufficient communication between ICAO and recipient states, loss of documentation by recipient states, delays in delivery of the documents to the responsible body beyond the target dates for reply, bad organisation of civil aviation authorities complicating the identification of and routing of materials to the responsible party and the lack of understanding about the role of states in consultation phases of the development of ICAO standards. *Ibid.*

¹⁵¹ ICAO has established a Safety Oversight Programme whose objective is the assessment of aviation programmes of states by ICAO on a voluntary basis with the aim of ensuring that states are effectively implementing SARPs and associated procedures.

¹⁵² See ICAO Doc A31 WP/38, EX/7, 8/7/95. The Strategic Action Plan was formally launched by ICAO on 22 May, 1997. The Plan, "Guiding Civil Aviation into the 21st Century", has repositioned ICAO to deal more effectively with the constantly evolving challenges facing civil aviation. The Plan focuses on eight major objectives and 43 related key activities. See *ICAO News Release*, PIO/10/97.

¹⁵³ An examination of the regulatory system of ICAO has shown that reaching an appropriate number of ratification required the coming entry into force of some instruments of international law, has continued to pose major problems. Attempts to amend the Chicago Convention have proved difficult because of the time involved in attaining the required number of ratification necessary for entry into force of the Protocols amending the Convention and even some international air law instruments. For example: Protocol Relating to Article 93 bis took 14 years, the Protocol Relating to Article 48(a) took 13 years. The Protocol relating Article 50(A) took 5 1/2, the Protocol relating to Final Clause on the ICAO Convention 1977, the Protocol relating to the Authentic Quadrilingual Text are still not yet in force after 18 years, Protocol relating to Article 83 bis is not in force after 15 years, Protocol relating to Article 3 bis not yet in force after 11 1/2 years, the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface of the Earth took 43 years. Protocols 1, 2, 3 and 4 amending the Warsaw Convention have failed to enter into force after over 20 years. See ICAO Doc. A31 WP/26, LE/2,

information programmes like legal seminars and workshops¹⁵⁴, states letters¹⁵⁵ and Assembly Resolutions¹⁵⁶.

The problems encountered at the ICAO level regarding the non-implementation of and compliance with, and ratification of public and private international air law instruments by Contracting States, have affected air law at the national level with the result that some legislation, rules and regulations are not updated and are trailing far behind obligations created under the international air law instruments. This problem has in turn been a major obstacle in the progressive development of air law at the international and national levels.

In Nigeria, investigation has shown that some of the air law instruments are not entirely in tune with ICAO standards and other domestic requirements. As is the case with ICAO, implementation of and notification of difference from ICAO SARPS and ratification of international air law instruments have been the major problem affecting the air law system. International standards have not been completely domesticated in line with ICAO requirements. Of the number of protocols relating to amendments to the Chicago Convention, only 3 have been signed or ratified by Nigeria,¹⁵⁷ while about 19 international

4/7/95.

¹⁵⁴ The ICAO Council has organised regional legal seminars which were held in Lebanon, Mauritius and Thailand. *Ibid.*

¹⁵⁵ Since 1992, ICAO has sent five states letters, showing a list of states which have signed, ratified, accepted, approved or acceded to the instruments on international air law. *Ibid.*

¹⁵⁶ Assembly Resolution A27-3 adopted during the 27th Session urged states which have not yet ratified protocols of amendments to the Chicago Convention and private and public air law instruments to do so. The 29th Session of the Assembly reconfirmed the importance of Resolution A27-3 and in particular the necessity for states to ratify ICAO international air law instruments.

¹⁵⁷ See Correspondence of the Representative of Federal Republic of Nigeria on the Council of ICAO, to Honourable Minister of aviation, Ref. N.g/Gov/09-89/113 dated 26th october, 1989. The instruments which have entered into force are the latter ones. There is no evidence whatsoever of the action which is being taken in relation

air law instruments and related protocols are yet to be signed and or ratified¹⁵⁸.

An examination by a panel¹⁵⁹ which evaluated the extent to which Nigeria has conformed with ICAO SARPs shows that only some provisions of some of the Annexes have been incorporated into domestic laws¹⁶⁰, partially or fully applied and implemented,¹⁶¹ while others are not being implemented entirely¹⁶². ICAO has been notified of compliance with or difference from the Annexes in line with the requirement under articles 37 and 38 of the Chicago Convention.¹⁶³ Crucial questions concerning the level of defective facilities,

to those instruments which Nigeria is not yet a party to.

¹⁵⁸ Some of the instruments are: Convention on the International Recognition of Rights in Aircraft, 1948; Protocol to Amend the Convention on Damage caused by Foreign Aircraft to Third Parties on the Surface, 1987; Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12/10/29 as Amended by the Protocol done at the Hague on 28/9/55 (Guatemala City) 1971; Additional Protocols Nos 1, 2, 3 and Montreal Protocol 1975; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the suppression of unlawful Acts Against the Safety of Civil Aviation 1971.

¹⁵⁹ The Panel of Fact-Finding into the Activities of the Civil Aviation Department (CAD) of the Federal Ministry of Aviation (MCA) was constituted by the then president and commander-in-chief of the Federal Republic of Nigeria, following a series of reported cases and media reports which portrayed Nigerian airspace as totally unsafe for air navigation. The panel had the mandate to appraise the adequacies or otherwise of existing aviation programmes with particular emphasis on organizational structure, airspace planning and utilization, provision of infrastructure and regulatory provisions. See *Report of Fact Finding Panel supra*, note 10, at v - vii.

¹⁶⁰ Some requirements of Annex 2 (Rules of the Air and Air Traffic Control) can be found in the Civil Aviation (Rules of the Air and Air Traffic Control) Regulations 1965, Annex 8 (Airworthiness of Aircraft), in Civil Aviation (Air Navigation) Regulations 1965, while some provisions of Annexes 3 and 7 can be found in either of these Regulations. *Ibid*, at 111 - 113.

¹⁶¹ This relates to the provisions under Annexes 4, 10 and 11.

¹⁶² These are Annexes 16, 17 and 18.

¹⁶³ All 18 the Annexes.

¹⁶⁴ inadequate communication¹⁶⁵ and lack of trained and experienced manpower¹⁶⁶ show that the standards of aviation in Nigeria have not adequately met the standards for international civil aviation. The air law instruments at the national level also lack of review and amendment with a view to updating them with new changes in aviation), and application, implementation, compliance and enforcement.

Law review is undertaken for the purpose of updating laws, some of which often undergo various changes in terms of amendments or repeal.¹⁶⁷ The practice of law revision has not been regularly followed in Nigeria. The laws of Nigeria have been reviewed only four times since 1923. The time lag between the third and fourth review was three decades.¹⁶⁸ Even so not all areas of law have been reviewed. Aviation law is one such area that is yet to be reviewed.¹⁶⁹ In effect Aviation laws which were adopted during the beginning of statehood in the 1960s have never been reviewed, amended and/or updated,¹⁷⁰ with the result that certain aspects of the laws, like fees, metric weight and measurement,

¹⁶⁴ See "The State of the Nigeria's Airspace" *supra*, note 45.

¹⁶⁵ See Mamman *supra*, note 46.

¹⁶⁶ See "Nigerian Aviation Suffers from Manpower Constraints", *Journal Aviation and Allied Business*, (1993), at 14.

¹⁶⁷ Laws of the Federation of Nigeria, Vol.1, (1990), at xi.

¹⁶⁸ *Ibid*, p.vii. The 1st revision of the editions of laws of Nigeria was prepared in 1923. A period of 25 years elapsed before the 2nd revision was undertaken in 1947. The 3rd reform took another 10 years to come into effect in 1958 and the last edition took about 32 years.

¹⁶⁹ The last law review was undertaken in 7 areas, namely: company law; law relating to bank frauds and other financial malpractice; law relating to corruption and other economic crimes; unification of nigerian criminal laws and procedures; compensation, restitution and other remedies for victims of crime; law relating to children and women, and law relating to drug law enforcement. *Ibid*, at x.

¹⁷⁰ The Civil Aviation Act 1964, Chapter 51, Laws of the Federation of Nigeria and the Regulations made thereunder, came into existence just about 4 years after Nigeria had attained independence in 1960.

currency, table of calculation¹⁷¹, cruising level¹⁷² flight crew composition and fatigue requirements,¹⁷³ and penalties¹⁷⁴ have been changed while the framework has not been amended to reflect the changes.¹⁷⁵ Because of this the air law system has been found to be uncoordinated and haphazard, making its proper application and implementation difficult and at the same time retarding any prospects for its speedy growth and development and that of aviation at large.¹⁷⁶

The problem of the implementation of air laws in Nigeria has not been associated with the nature and state of the laws alone. Other considerations such as the provision of facilities and their working condition, availability of spare parts required for the necessary maintenance of the facilities, lack of proper and regular maintenance of the facilities, the absence of adequate and qualified manpower resources, bureaucratic procedures, lack of commitment and determination on the part of those charged with the responsibility of applying and implementing the laws, and political, social and cultural values have been the

¹⁷¹ See Civil Aviation (fees) Regulations 1965.

¹⁷² Civil Aviation (Rules of the Air and Air Traffic Control) Regulations 1965.

¹⁷³ Civil Aviation (Air Navigation) Regulations 1965.

¹⁷⁴ Regulation 79, Civil Aviation (Air Navigation), 1965. See further O.A. Onadeko, "Offenses Relating to Airport Security and Safety in Nigeria" (unpublished) paper, presented at the Seminar on the Legal Aspects of Airports Security and Safety and the Legal and Procedural Rules for Arrest, Investigation and Prosecution of offenses, (22 to 24 October, 1996, Lagos, Nigeria).

¹⁷⁵ Some of the amendments have been reflected in circular letters issued by the ministry of aviation. But this does not have any legal effect of amending a legislation or subsidiary legislation which has a prescribed procedure for its amendment.

¹⁷⁶ M. Salihu, "Flying is Afterall a Worthwhile Risk", (Lagos, Nigeria, October), 1995.

main obstacles to the proper implementation of the laws.¹⁷⁷ Serious concern has been expressed regarding the level of compliance with and enforcement of air law instruments in Nigeria. In particular, cases involving non-adherence to and flagrant violation of legal provisions by foreign and local air operators, crew members, air travellers and other air users alike, have raised doubts about the role and competence of the relevant regulatory bodies in ensuring compliance with and enforcement of air law instruments, and applying sanctions where necessary.¹⁷⁸ The regulatory environment and in particular the compliance with and enforcement of air law has not been enhanced and facilitated by the kind of legal principles and policies which are considered to be inimical and incompatible with the environment and other local circumstances.¹⁷⁹ Except that the problems of air law have been blamed on the lack of zeal and commitment and failure on the part of the colonial administration to set up a well-articulated regulatory and institutional framework, other reasons have yet to be associated with these problems.¹⁸⁰ It has been argued that the non-existence of a legal framework suitable for the needs of the aviation industry in most

¹⁷⁷ For example, proper coordination and setting up of a well equipped search and rescue organization is yet to be achieved. See A. Shogbonyo, "The Endangered Industry" *Journal Aviation and Allied Business*, (May/June, 1994), at 30.

¹⁷⁸ See "Nigerian Airspace: Violation Galore", *The Aviation Quarterly Magazine*, (July/September, 1993), at 20.

¹⁷⁹ The airport development policy which led to the construction of airports of international size in every state capital has been seriously criticised for failing to give adequate consideration to economic or cultural factors. As a result, the airports have become money draining symbols for the government. Similarly, the design and construction of the terminal building at one of the airports in the country, that is Murtala Mohammed Airport Lagos, which is one of the nation's most busiest airports has been critically criticized for not being suitable for the Nigerian climate. Furthermore, some economic policy decisions taken in the country have in the past led to some air operators withdrawing from business. See "NAA - A Commitment to Better Facilities", 3 *Journal Aviation and Allied Business*, No.6 (1994), at 27; "ICAO Official Rates Nigeria", 3 *Journal Aviation and Allied Business*, No.6, (1994), at 27.

¹⁸⁰ See *Report of the Committee of Experts*, *supra*, note 11.

African countries should be seen from the inability of their governments to adopt or modify the regulatory system inherited from the colonialists to suits their needs.¹⁸¹ Although it has been argued that the aviation system in Africa is constrained by lack of resources and priority given to meet other social needs such as food, health, shelter and education and this has affected the efforts to revolutionize aviation system,¹⁸² the writer submits that with respect to review and updates of the air law, Nigeria has the resources, yet such an important action has been lagging behind for the past 36 years.¹⁸³

In other jurisdictions, for example the USA, regulatory issues have raised thorny problems, especially concerning route allocation and supplemental carriers. After continued court challenges, protracted, costly and tedious government deliberations, anxiety and frustrations, these problems have been partially addressed.¹⁸⁴

In the UK, the maze of regulatory activities between 1961 and 1993, leading to the introduction of new laws, amendments and re-amendments, consolidation and reconsolidation of existing ones, were considered necessary in order to keep pace with

¹⁸¹ See Mensah *supra*, note 2. In Nigeria, we have seen that the Civil Aviation Act 1964 and the Regulations made thereunder were adopted without any substantial changes from the provisions of the UK Civil Aviation Act 1949. It is the writer's view point that lack of attention rather than resources has contributed to the air law problems in Nigeria.

¹⁸² *Ibid.* In the case of Ethiopia for example, the established foreign canon of civil aviation had to improvise with local ingenuity in order to accommodate local realities of Ethiopian society. See *Bringing Africa Together: The Story of An Airline*, Ethiopian Airline, (1988).

¹⁸³ Nigeria has been represented on the ICAO Council, the body charged with the responsibility of formulating and adopting international standards since 1962. The weight of experience of its representative (even though they may not have specialised knowledge in the field of air law) could be of immense advisory importance when issues regarding review, amendments, updating of existing laws and formulating new ones are to be considered.

¹⁸⁴ See F., Lowenfeld and J., Burger, *Aviation Law: Cases and Materials*, Chapters I, VI, V, (Butterworth, 1972). Even today, regulatory issues concerning slot allocation and airline competition, have continued to pose more legal challenges for air transport in the USA.

legal challenges brought about by changes in domestic and international air transport.¹⁸⁵

In India, moves are under way to formulate a positive regulatory framework to replace the ad hoc system in existence, in order to revitalize and put the air transport industry in the country on a sound footing.¹⁸⁶

The Commonwealth of Independent States (CIS) subscribed to the regulatory system under the former USSR after their independence, but were also to find sooner that the legal system was incompatible with their sovereign interest not just because it has outlived its usefulness but also because its prospect for the future regulatory system seemed obscure, and so the CIS had to take new regulatory approaches to provide a comprehensive new legal regime for the air industry.¹⁸⁷

More examples of cases where the demand for dynamism and progressiveness in air transport have been treated with corresponding legal changes could be found in other jurisdictions of the world. In the case of Nigeria, a large amount of regulatory framework was achieved by putting in place the Civil Aviation Act 1964, and regulations and other legislative enactments, a good portion of which are still very relevant today. It is however pertinent to mention that some aspects of the laws have become obsolete and the effectiveness of such provisions have equally diminished. There is therefore a need for appropriate action to be taken in order to improve and update the air law system.

¹⁸⁵ Shawcross and Beaumont, *Air Law*, 4th edition Vol.1, (1977), at 1/7 -1/9.

¹⁸⁶ T. Ballantyne, " A Policy Please", 12 *Airline Business Magazine*, No.4, (April 1996), at 58 - 61.

¹⁸⁷ See V. Bordunov, "Air Law Development in the CIS: Modern Trends" *Annals of Air Space and Space*, Vol.XIX-II, (1994), at 113-119.

2:5 Conclusion

Significant developments have taken place in civil aviation in Nigeria, especially with regard to the air law system, by adopting the NCAPN in 1988. This action no doubt presupposes that the decision and policy makers have a clear vision and know exactly how to fashion and regulate aviation in Nigeria. It is however important to call attention to the fact that not all aspects of the air law system are still serving the needs aviation today. A number of developments have and are still taking place at international and at the national level which have brought about the need for overhauling the air law system. Timely action must be taken to harmonise the air law system with those of the rest of the world in order to create a modernised legal regime for civil aviation in Nigeria. To continue to remain in the shadow of the UK regulatory concept is to retard the development of air law and aviation in Nigeria.

CHAPTER THREE:

SOME CHANGES IN INTERNATIONAL CIVIL AVIATION AND THE IMPLICATION (VIS-A-VIS THE LEGAL FRAMEWORK) IN NIGERIA.

3.1 General Perspective

Technological and economic developments have taken place in aviation worldwide and these have drastically affected the structure, operations, and philosophical concepts of the aviation sector, in such a manner that the aviation environment is not just being gradually and systematically transformed, but is faced with several challenges.¹

As a result of developments and changes, civil aviation has witnessed particularly in the last decade, new trends involving the establishment of autonomous aviation agencies to operate airports and provide air navigation services.² A new satellite-based Communication, Navigation Surveillance (CNS) and Air Traffic Management (ATM)

¹ICAO Doc.A31-WP/67, EX/22, 8/8/95.

² In about five countries, governments have transferred partially or fully the responsibilities for the operation and management of airports and air traffic services to independent companies or private enterprises in which the government own some shares. For example, in Malaysia, the Airport Malaysia has taken over the management of the country's airports from the Department of Civil Aviation, similarly in Australia, Venezuela, New Zealand and the United Kingdom, while in Germany, preparations have been finalized for the establishment of an autonomous and financially independent body to provide air traffic services. See *The Economic Situation in Air transport - Review and Outlook 1978 to the Year 2000*, ICAO Circular 222/AT/90, at 37.

system has been introduced to replace the existing terrestrial air navigation system. Liberalization of economic aspects of air transport,³ continued privatization of state-owned airlines⁴ and increased foreign investment in national air carriers, have continued to increase.⁵ New global trading arrangements for the service sector have also been established. These changes are being accompanied by new strategies adopted by air carriers such as the establishment of alliances, co-operative arrangements in the form of joint services, code sharing, block space, hubs and spoke, marketing of common frequent flyer programmes and the setting up of computer reservation systems (CRS) to market and sell airline products.⁶

All these factors have opened new horizons in the aviation industry and have no doubt put in question the adequacy of the existing regulatory framework. As such, discussions on new regulatory measures have gained prominence at national, regional and global forums.⁷

³ In 1992, about 60 new Bilateral Air Services Agreements, and other 30 amended ones, were geared to further liberalised air transport. The EEC has also adopted measures aimed at freeing fares, rates, and capacity. *Ibid*, at 8.

⁴ In the Philippines, a majority of the shares in PAL have been sold to a consortium of local investors. The Mexican Government has reduced its stake in the state airlines from 40 to 33% with the intention of selling the remainder to the public. In 1992, 13 governments made known their objective to privatise their carriers, in addition to 17 others which had been targeted for privatization in the 3 previous years. For example, the government with shares in Air Afrique have plans to decrease their share holding from 79 to 57%. *Ibid*, at 10 - 11.

⁵ In Canada, consideration is under way to raise the limit of foreign investment in the national airlines from 25% to 49%. Similarly, in Europe, Air France has acquired about 37% shares in Sebea (Belgium airlines) while British Airways, a British company, acquired 49% of Deutsche BA (German Airlines) 49% of TAT (France Airlines) and 25% of Qantas (Australia Airlines). *Ibid*, at 12.

⁶ K. O. Rattray, "Towards a New International Aviation Order" (unpublished) paper delivered at The 8th IATA High level Aviation Symposium, (24 to 25 April, 1995).

⁷ *Ibid*.

3.2 The New ICAO CNS/ATM Systems

By the year 2010 when the existing air navigation system should have been fully replaced by the new ICAO Communication, Navigation and Surveillance (CNS) and Air Traffic Management (ATM) Future Air Navigation System (FANS), the dawn of a new order representing a significant departure from the convention under the Chicago Convention framework will have been opened for international civil aviation.⁸

Under Article 28(a) Chicago Convention, contracting states are required to provide communication and navigational facilities within their territorial airspace to facilitate international air navigation.⁹ There is no legal obligation on states to provide navigational facilities outside their territorial jurisdiction.¹⁰ By the designed nature of the new CNS/ATM system however, states would be required to adopt a global implementation approach in order to extract full benefit from the new system and to overcome deficiencies of the current system.¹¹ The new CNS/ATM system signifies a dramatic departure from the existing order, whereby each state provided and managed its navigation system. In this case, each state system will have to be integrated with one another at the regional levels in order to form one global system. All airspace users, such as aircraft operators, service providers and international organisations, would be required to play an active role by co-operating with one another to facilitate the implementation process. In effect, the large

⁸ N. Ostiguy, "ICAO CNS/ATM Systems" (unpublished) speech delivered at the CNS/ATM Seminar, (Casablanca, Morocco, 26th to 29th October, 1993).

⁹ ICAO Doc. 7300/6. See also ICAO Doc. AFI/7-WP/69, 1997.

¹⁰ M. Milde, "Legal Aspects of Future Air Navigation System", *Annals of Air and Space Law*, Vol. XII, (1987), at 92.

¹¹ B. O'Keelte, "Flight Path to the Future", *ICAO Journal*, (December, 1991) at 6.

measure of discretion enjoyed by states under the Chicago Convention in independently adopting and implementing their air navigation system¹² will be greatly reduced.

The drive to fill the limitations of the present air navigation system led ICAO to establish the Special Committee on the Future Air Navigation Systems (FANS) in 1983.

Among other things, FANS was given the mandate to study:

technical, operational, institutional and economic questions including cost/benefits relating to future potential of air navigation systems to identify and assess new concepts and new technology, including satellite technology which may have future benefits for development of international civil aviation including the likely implications they would have for users and providers of such systems and for an overall long term projection for the coordinated evolutionary development of air navigation for international civil aviation over a period of 25 years.¹³

The results of the examination undertaken by FANS Committee has revealed that there are certain inherent shortcomings in the existing air navigation system for which the only means of improvement and of finding a long term viable solution is the satellite-based CNS/ATM system concept, developed by the FANS Committee and adopted by the international aviation community at the ICAO Tenth Air Navigation Conference in 1991.¹⁴

The malfunctioning operations of electronics equipment over line vision (UHF) and distortions caused by atmospheric and ionospheric conditions to other communication frequencies seriously hampers the present communication component of air navigation system, that is: voice and data covering air - ground and ground - ground communication for air traffic services (ATS); search and rescue (SAR); operations control (OPC); collision

¹² B. Cheng, *The Law of International Air Transport* (London, Steven & Sons Limited, 1962).

¹³ Milde *supra*, note 10.

¹⁴ N.J.G. Ostiguy, "Potential Impact of FANS Far Reaching and Positive", *ICAO Journal*, Vol.46(12) (December, 1991), at 7.

and avoidance system (CAS) and traffic information broadcast by aircraft (TIBA).¹⁵ The new satellite system will generally enhance the nav aids system, that is the avionics in the aircraft which transmit to the pilot the exact position of the aircraft, and the surveillance system, a means of informing air traffic control through computers and radar of the exact position of the aircraft.¹⁶

With proper co-ordination of institutional and legal arrangements, geared towards the implementation of the CNS/ATM system, and the judicious monitoring of the implementation process, the system could provide great benefits in terms of economics, cost and efficiency.¹⁷

The ultimate task of implementing the ICAO CNS/ATM system lies with states and other airspace users. Due to the special nature and complexities of the system, another FANS Committee Phase II was adopted by the ICAO Council in 1989 to monitor and co-ordinate the development and transitional planning and design of a global coordinated plan, for a smooth and orderly implementation of the FANS.¹⁸ An extensive programme of action aimed at ensuring a progressive and orderly implementation of FANS has been undertaken by ICAO. A global coordinated plan for transition to CNS/ATM including guidelines and recommendations required for the global implementation of the CNS/ATM has been adopted by the ICAO Council. To assist states in the planning and implementation

¹⁵ Milde *supra*, note 10.

¹⁶ Milde *supra*, note 10, at 89.

¹⁷ B. Austin, "ICAO's Future CNS/ATM Concept: A Phased Approach to Implementation" (unpublished) paper delivered at CNS/ATM Seminar, Casablanca, Morocco, (26th to 29th October, 1993).

¹⁸ ICAO Doc.A31 - WP/40, EX/9, TE/6, 31/7/1995.

of the CNS/ATM, the 141 session of ICAO Council in 1994 developed and adopted a policy statement aimed at streamlining the system and associated provision of services, and guiding its implementation and operations.¹⁹

To provide a mechanism to ensure global and inter-regional coordination and the integration and rationalization of resources, a high-level task force of 23 members from 15 states was established in 1994. Based on the recommendation of the task force that ICAO continue to remain the only central organ to monitor and coordinate functions relating to planning and implementation of the CNS/ATM, and to provide advise and assistance to states, the CNS/ATM Implementation Committee (CAI) was set up at the 144th session of the ICAO Council. The Committee had the mandate to review the progress of the implementation of CNS/ATM, and its plans, at the global, state, organizational and airline levels.²⁰

For effective planning and implementation, regional planning groups have been established in six ICAO regional offices worldwide and these are:

- (1) The African Planning and Implementation Regional Group (APIRG) for the African States and Indian Ocean areas (AFI).
- (2) Asia/PAC Air Navigation Planning and Implementation Regional Group (APANPIRG) for the Asia and Pacific Region.
- (3) CAR/SAM Regional Planning and Implementation Group (GREPECAS) for all American States.
- (4) European Air Navigation Planning Group (EANPG) for Europe.

¹⁹ *Ibid.*

²⁰ *Ibid.*

(5) Middle East Air Navigation Planning and Implementation Regional Group for the Middle East.

(6) North Atlantic System Planning and Implementation Regional group for North America.

A circular on cost/benefit analysis, aimed at assisting states to assess the economic and financial implications of the transition to the new CNS/ATM system, has been produced by ICAO.²¹ Crucial matters relating to competition, ownership and control, role of ICAO and states, assistance to states, compensation, limit of liability, legal relationship of suppliers and users, sovereign rights of states, all of which are associated with implementation of the CNS/ATM system, will be carefully defined and crafted in an institutional and legal framework.²² More cooperation than has been seen before will be required from all the parties who will be affected, in-concluding the necessary legal and institutional arrangements.

The institutional and legal aspects of the CNS/ATM system are being studied by the Legal Committee of ICAO. Since 1992 the Committee has retained as an item of its working programme the subject of the "Desirability of a Legal Framework with regard to Global Navigation Satellite System."²³

The present legal framework of the Chicago Convention, in particular the preamble, is considered relevant and sufficient to govern the new FANS concept. Nonetheless, a new regulatory framework of a multilateral nature is still desired to cater

²¹ *Ibid.*

²² ICAO Doc.A31 - WP/85, EX/35, 23/8/95.

²³ *Ibid.*

for some of the new issues, which are not sufficiently covered by the existing legal framework.²⁴ Similarly, a different institutional and legal order will be required to regulate the different tiers of relationships that are likely to crop up in the new system.²⁵ It is envisaged that as part of the planning and implementation process of the new system, each state will first assess its needs and establish its specifications and thereafter co-ordinate with neighbouring states on a regional basis, before the systems are integrated globally.²⁶ With respect to the component of the system used and managed by a state exclusively within its territory, an institutional and legal framework of a national nature may be necessary to regulate the relationships that may arise. In the case of systems serving regions beyond a single state's territory, such as at regional or worldwide levels, legal instruments of regional and/or universal nature may be required.²⁷

Whether a new legal framework will be required at the national and global levels to regulate the relationships that might evolve as a result of the new CNS/ATM, will depend on the nature of the existing legal framework. At the international level, the all-encompassing language of the Chicago Convention is considered sufficient to accommodate the new CNS/ATM. A new legal framework of a treaty nature is no longer necessary. What is additionally important is for the ICAO Council to adopt Standard and Recommended Practices (SARPS) which will spell out in detail the standards and implementations procedures required of states, and the rights and obligations of states to

²⁴ *Ibid.*

²⁵ Milde *supra*, note 10, at 91.

²⁶ ICAO Doc.A31 - WP/96, EX/44 TE/2, 13/9/1995.

²⁷ Milde *supra*, note 10.

one another.

The existing legal framework for civil aviation in Nigeria has an in-built mechanism which automatically gives effect to any new SARP or amendment thereto, adopted by ICAO.²⁸ Therefore, if the legal framework adopted by ICAO for the new CNS/ATM is in the form of SARPs, a new legal framework may not be necessary to give legal effect to the application of the new CNS/ATM system. However, the role, rights and obligations of the state, and providers of the system, if different from the states, system users, airlines, service providers and other private organizations, will need to be clearly defined and crafted in a new legal instrument. State to state relationships within the CNS/ATM implementation regional plan, will also have to be defined and clearly spelt out in a different legal framework.

These legal relationships therefore involve a new legal framework, for the implementation and progressive transition to the new CNS/ATM, which might be necessary at national and global levels, to augment but not to replace, the existing one.

Planning and implementation of the CNS/ATM system in the AFI Region has reached an advanced stage.²⁹ In line with the AFI CNS/ATM planning and implementation plan, Nigeria should develop its implementation programme according to its requirements. Timely legal and institutional arrangements are required for preparing in particular the airlines for equipping their aircraft with necessary avionics and other communications

²⁸ Section 1 Civil Aviation Act 1964, Chapter 51, Laws of the Federation of Nigeria, Vol.III, (1990), at 1090.

²⁹ A. Cheiffou, "Regional Planning Activities", (unpublished) paper presented at the ICAO CNS/ATM Seminar, Casablanca, (26th to 29th October, 1993). APIRG held its 9th meeting in February, 1995, to review and adopt the AFI CNS/ATM Implementation Plan. Its next meeting was scheduled for May, 1996 to be held in Lagos, Nigeria.

equipment required for transition to the CNS/ATM system. The legal relationship of all parties concerned with the implementation and use of the CNS/ATM system needs to be well defined ahead of time, to allow for orderly and progressive transition to the (CNS/ATM) System. It is expected that all the parties involved with the CNS/ATM will contribute to the making of the new regulatory framework. The initiative of involving other air users in the decision- making process will serve to solve the long-standing criticism against the government for not involving air service providers and users in the regulation process of civil aviation in Nigeria.³⁰ Certain regulatory provisions relating to the terrestrial air navigation system will have to be abrogated as these would no longer be relevant in the era of the satellite-based CNS/ATM.

The ICAO CNS/ATM System is by far the most significant technological change to have happened in the aviation industry in recent times, and raises new legal issues likely to reshape the legal framework of aviation worldwide.

3:3 Some Changes in the Economic Regulation of Civil Aviation.

3:3:1 Deregulation

The belief that the removal of government control over some aspects of aviation would free the industry of the shackles of regulatory restriction on the economies of airlines and promote healthy competition, led the USA in 1975 to embark on the gradual removal of regulatory control especially over the airlines. To this effect, the Airline

³⁰ See M. Salihu, *Flying is Afterall a Worthwhile Risk*, (Lagos, Nigeria October, 1995).

Deregulation Act was adopted by US Congress in 1978.³¹

For over three decades, civil aviation was the most stringently regulated sector worldwide. The control of civil aviation has been considered logical against the background of providing safe, adequate, stable and economic public utility and other social services.³² With the exception of the USA, most countries had one flag carrier for scheduled domestic and international air services, most of which were wholly state owned.³³

It was envisaged that the abolition of regulatory oligopoly in the USA would result in free competition, giving air users the choice of a wide range of products at affordable prices.³⁴ On the contrary, the deregulation of airlines in the USA brought about the worst economic losses, which added up to billions of dollars, widespread bankruptcies, mergers and consolidation of airlines, monopoly and discriminatory pricing, emergence of hub and spoke and city pair market power, and poorer services. All of these combined to reduce the industry to a national oligopoly unprecedented in the industry prior to deregulation.³⁵

Some observers have concluded that airline deregulation in the USA has in many respects failed and for this reason the US government has been called upon to consider

³¹ P.P.P. Haanappel, "Deregulation of Canadian Air Transport: If it Happens", *Annals of Air and Space law*, Vol.IX, (1984), at 59 - 75.

³² *Ibid.*

³³ P.P.C. Haanappel, "Air Transport Deregulation in Jurisdiction Other than the US", *Annals of Air and Space Law*, Vol.XIII, (1988), at 79 - 106.

³⁴ P.S. Dempsey, "America's Grand Experiment in Airline Deregulation: Good Intention Producing Bad Results", *Annals of Air and Space law*, Vol.XIV, (1989), at 21.

³⁵ *Ibid.*

readopting some regulatory controls in order to re-establish protection for the public and the industry.³⁶

The deregulation of airlines in the USA attracted different reactions from around the world. In some states, the initial reaction was hostile and defensive. But no sooner, most of the industrialized states endorsed the idea of deregulation, and also adopted regulatory measures to give the process legal effect.³⁷

In Canada, deregulation of air transport began in 1984 and was backed by the National Transportation Act, 1987.³⁸ Liberalisation of the air transport market in the European countries in 1984 was seen principally as a response to deregulation of airlines in the USA.³⁹

In the light of the global trends towards the gradual deregulation and liberalization of air transport, the African states have adopted a new transport policy, with the aim of gradually establishing a common market within the African countries, strengthening co-operation and integrating African air transport. This policy is meant to act as a shield to protect the interest of African air transport from the negative effect of liberalisation and free competition in the international air transport market.⁴⁰

³⁶ *Ibid.*

³⁷ See Haanappel *supra*, note 33.

³⁸ *Ibid.*

³⁹ U. Lombolou, "Implication of the Liberalization of Air Transport in Europe by 1992 on the Operation of the Air Transport International Services in West Africa: Outline for Immediate Solutions and Long Term Survival Strategies", (unpublished) paper delivered at the Seminar on the Aviation Industry in the West African Sub-regional by the year 2000 AD, (Abuja, Nigeria, 8th to 12th April, 1991).

⁴⁰ See "Yamoussoukro Declaration: Myth or Reality", 5 *Journal Aviation and Allied Business*, No 2 (1996), at 12-13.

So far, the objectives of the policy are yet to be fully realised. Lack of political will, the inconsistency of national policy framework, lack of effective coordination, coupled with protectionist tendencies by African states to continue to protect their national carriers, are among the many problems that have hindered the implementation of the policy.⁴¹

African states are opposed to the total liberalization of air transport without any form of protection to guarantee their equal participation in international air transport. To show a lead in this direction, they have suggested that preferential measures be adopted as a condition to promote free competition and to liberalise their air transport markets.⁴²

In Nigeria, suggestions have been made to the government to remove regulatory controls in the air transport industry and allow a free market environment in order to encourage healthy competition.⁴³ For a very long time, air transport has been an all-government concern in Nigeria. The government virtually owns, operates and manages one flag carrier (Nigeria Airways), all airports and air traffic services.⁴⁴ Following worldwide changes in matters of regulation and free competition in air transport, the government decided to deregulate the entry of airlines in the market in 1986, but have continued to

⁴¹ See "The Changing Nature of International Air Transport Market: African Airlines and the Future", 5 *Journal Aviation and Allied Business*, No.2 (April/June 1996).

⁴² ICAO Doc. A31-WP/127, EC/17, 20/9/1995.

⁴³ M. Joji, "Airline Economics-An Overview" (unpublished) paper delivered at the Seminar on Towards a Better Aviation Industry in Nigeria, (21 to 22th June, 1994).

⁴⁴ See A. Agom, "Airlines Operations in Developing Economies and ICAO Standards: An Airline Operator's Perspective", (unpublished) paper delivered at the National Seminar on Civil Aviation, (Lagos, Nigeria, 3rd November, 1994).

retain regulatory control over fares.⁴⁵ With this policy change over 16 private scheduled and non-scheduled domestic airlines were licensed to operate scheduled and non-scheduled domestic passengers and cargo air services. This then put an end to the monopoly by the national carrier, which had been operating air services since the 1960s. Even for international air services, two private air carriers have been granted permission to operate some routes on the West African coast.⁴⁶

Observations on the partial deregulation of airlines entry shows that the industry is still not free of government regulation. The industry needs to be free from fare control, in order to create a free market and promote healthy competition. To this end suggestions have been made to the government to relinquish all regulatory control over the air transport industry and to adopt a legal framework to support free market and competition in the industry.⁴⁷

The idea of deregulation, and free competition in air transport was mooted in the report on the NCAPN.⁴⁸ There is however the need to enshrine the policy in a legislative framework, such as the kind adopted in the USA and Canada.⁴⁹ Such a regulatory framework should ensure that adequate protection against anti-competitive practice of airlines is provided for airlines and air users. For this reason, it would be necessary to

⁴⁵ "Deregulate Air Fares", *Journal Aviation and Allied Business*, (Jan/March 1996), at 12; "Nigerian Airlines Overburden by Fare", 2 *Journal Aviation and Allied Business*, (1993), at 6.

⁴⁶ See "Yamoussokro Declaration" *supra*, note 40.

⁴⁷ "Seminar on National Civil Aviation Policy, 24 to 26 August, 1988: Main Report of the Plenary Session", Ministry of Aviation, (Lagos, September, 1988), at 20.

⁴⁸ See *Report of the Committee on National Civil Aviation Policy*, Ministry of Aviation, (Lagos Nigeria August 1988).

⁴⁹ See Airlines Deregulation Act 1978, for USA, National Transportation Act 1984, for Canada.

adopt anti-trust or competition laws. The absence of such a legal framework or such regulatory flexibility will seriously undermine the positive impact of deregulation in promoting free market and healthy competition.

3:3:2 Privatization and Commercialization of Airports, Airlines, Air Traffic Services

The global economic recession of the early 1980s had a significant effect on the economy of air transport worldwide. Air traffic levels and revenue suffered a drastic fall, and the airlines recorded very low performance and huge losses.⁵⁰

Although the economic recession was partially overcome, many governments worldwide became reluctant to continue making huge financial investments in airlines, especially since the economic viability of some of the airlines seemed uncertain. This led to some governments relinquishing proprietary interest in airlines, airports and air traffic services to the private sector. The whole idea was to make the private sector fund and participate in the management of airlines and other related matters.⁵¹

The years that followed the period of economic recession therefore witnessed increasing privatization of airlines in the industrialised countries and the review and reform of policies and legislation regarding ownership and control of airlines, airports and air traffic services. In over 20 countries worldwide, more than 30 state-owned air carriers

⁵⁰ D. Adesanya " Commercial Aviation and Global Recession", *Journal Aviation and Allied Business*, (1994) at 20.

⁵¹ *Ibid.*

have been sold to local private and even foreign investors.⁵²

In Nigeria, the Privatization and Commercialization Decree 25, 1988 listed the only state-owned carrier for privatization.⁵³ As the era of the oil and economic boom ended in the early 1980s and economic recession set in, attention was directed at the activities of the public sector with its questionable standards of efficiencies and economic returns, most of which were the products of the oil boom era of the 1970s.⁵⁴ The Government began to address the issue of public enterprise reform, and in 1983, a Presidential Commission on Parastatals was established. The Commission was given the mandate, among others, to determine the basis for new funding and measures to enhance productivity and efficiency of public enterprises in Nigeria. The programme of privatization and commercialization designed by the Commission was accepted by Government and enshrined in the Privatization and Commercialization Decree 25 1988. The Technical Committee on Privatisation and Commercialization (TCPC) was set up with the mandate to privatise and commercialise over 600 Federal Government-owned and about 900 state-owned public enterprises, which are set out in the Decree.⁵⁵

So far, a total of 111 public enterprises have been partially or wholly privatised, and 35 others have been wholly or partially commercialised. Aviation is one of the sectors

⁵² See *The Economic Situation in Air Transport*, *supra* note 2.

⁵³ Schedule to Privatization and Commercialization Decree no 25 of 1988, Laws of the Federation of Nigeria, (1990).

⁵⁴ "Quantum of Privatisation Programme", *Public Enterprise Monitor*, (January/March, 1996), at 1 - 4.

⁵⁵ *Ibid.*

affected by the privatisation exercise.⁵⁶

In spite of the fact that prevailing changes worldwide brought the unshackling of the air transport industry most especially of the economic activities, and of government controls, the regulatory policies in Nigeria are still tilted towards substantial regulation of aviation. As in some cases, this policy position seems to attract the support of some groups in the air transport industry, who still believe that the process of privatisation of the industry and airlines in particular, should not lose sight of the importance of ownership structure, the need to ensure international relations amongst states, the provision of a public transport system to facilitate movement of goods and people, and support for military and diplomatic operations.⁵⁷ The removal of regulatory control in some areas of aviation, like airports, is believed to enhance better utility and sound financial returns; however, consideration has only been given to partial commercialisation of airport development and operations.⁵⁸ For security reasons, the area of air traffic services is not to be considered for privatisation or commercialisation.

The policies adopted on the privatisation of the airlines, airports and air traffic control services nonetheless show that the Nigerian air transport industry is progressively responding to worldwide changes in the industry. The question which arises is whether these policies adequately support the industry's requirements. An analysis of the industry reveals that the traffic and the set-up of the airline call for a free market environment. This can only be achieved where the environment is free of regulations that restrain free market

⁵⁶ *Ibid.*

⁵⁷ See Agom *supra*, note 44, at 3.

⁵⁸ *Ibid.*

forces. The Nigerian Government which has become a big debtor through public enterprise investment, is not in a position to vigorously compete against itself as the investor, owner, employer and consumer at the same time. Therefore, Government should consider disengaging from wholly investing in airlines and airports, and instead concentrate on the pursuit of clear policies aimed at encouraging the private sector to invest and actively participate in air transport.

3:3:3 Computer Reservation System, Code Sharing, Alliance and Mergers.

The changes in air transport brought about by the deregulation and liberalisation of air transport meant new challenges for airlines worldwide. The need to effectively respond to market demand became crucial. New market strategies such as computer reservation system (CRS), code-sharing, alliances and mergers, joint frequent flyers, and hub and spoke, have been adopted by airlines with a view to a wider market.⁵⁹ While the other forms of airline marketing strategies are of no less significance, the CRS has become the principal and most influential marketing tool of the airlines, especially in places with a big market and constant changes in schedules and fares, such as North America and Europe.⁶⁰ The operations of CRS have attracted criticism for the bias display of products of other carriers who are not the owners of the system. CRS are highly capital and technology intensive, owned and operated mostly by multinational companies and mega

⁵⁹ *Policy and Guidance Material on the Regulation of International Air Transport*, ICAO Doc 9587, (1992), at 28-30.

⁶⁰ ICAO Doc.A31-WP/76, EC/10, 18/8/ 1995.

carriers, and as such, beyond the control and resources of smaller carriers especially those from developing countries. The condition of service contracts between the CRS providers and users, the exorbitant user fees and general operating environment has made conditions unfavourable to those carriers who are not the owners of the system.

The ICAO Assembly in its Resolution A27-16, requested the Council to undertake a study of CRS, with a view to establishing a code of conduct for its operations worldwide. A code of conduct on the application of CRS developed by ICAO in addition to guidance material was issued at the 3rd Air Transport Conference in 1988, to assist states in the development of CRS policies and regulations.⁶¹ While recognising that the CRS is a powerful marketing tool which has played an important role in the effective distribution of airline products and markets, however with potential for great abuse, the ICAO 4th Worldwide Air Transport Conference recommended a review of ICAO's Code of Conduct aimed at addressing the problem of access and discriminatory application in order to guarantee a neutral CRS system worldwide.⁶²

In the USA and European Union, regulatory measures aimed at solving the problems associated with the use and application of CRS have been adopted.⁶³

CRS and other airline marketing strategies are not very popular with airlines in Africa, but it is expected that in the not distant future these strategies will be widespread. In the hope of increased bookings on a much wider air transport market, Sudan Airways

⁶¹ See J. Crayston, "Worldwide Code of Conduct Adopted for CRS Operators", 47 *ICAO Journal* No.3 (March 1992), at 7.

⁶² ICAO Doc. AT CONF/4-WP/15, 13/5/1994.

⁶³ Regulation on CRS are in fact known to exist in these countries but these regulations were not within the reach of the writer at the time of (this research) writing.

has joined Amadeus Global Travel Distribution SA, one of the leading players in the international CRS with a large market in Europe and South American and over 14 countries in Africa.⁶⁴ Over 27 African airlines in 22 African countries market their products on Galileo, Europe's leading CRS Company. Galileo operates through 25,000 travel agents worldwide, 8,800 in Europe alone with plans to gain more market in Africa.⁶⁵

Most African airlines have expressed discontent at paying CRS user's fees in foreign currency for bookings made in local currency.⁶⁶ As CRS has become very essential for the marketing and distribution of airline products worldwide, and its operations in some of the African countries is gaining more ground, there is the need for African states to adopt policy and regulatory frameworks to regulate the conduct of CRS and especially protect the African airlines which are already at a disadvantage by their economic position, from excessive abuse of the CRS system. Such legal frameworks should check the issue of paying CRS user fees in foreign currency which may even be contravening financial and monetary policies in some countries. This will ensure that the operations of CRS do not cause undue harm to the economies of the African airlines and their nations.

As air transport in Nigeria is gradually moving towards a free market, there is every likelihood that CRS and other strategies adopted by airlines for marketing their products will soon be embraced by airlines in Nigeria. Whether then or now, a legal framework should be provided for the smooth adaptation and application of these

⁶⁴ "Sudan Airways Joins Amadeus CRS System", *African Airlines Journal*, (November/December, 1993), at 23.

⁶⁵ "Leading CRS Network Targets African", *African Airlines Journal*, (May/June, 1992), at 16 - 17.

⁶⁶ *Ibid.*

principles. Particular attention should be paid to the areas of likely abuses.

3:4 Conclusion

Changes in air transport being addressed with counter policy and regulatory changes worldwide, is a testimony that law (and in particular, air law) is active and evolutionary in nature. Every new fact and new situation has influenced the birth of new laws or shaped or re-shaped existing ones. This is common practice which no state in the industry can afford not to follow. In this direction, the air transport industry in Nigeria has made positive progress, by providing policy support for some of the changes in air transport. However, these policies are yet to be firmly enshrined in legislative framework. This lacuna must not be allowed to continue unfilled for too long. New regulatory challenges must be met by the timely reshaping of existing laws, in order to meet the requirements of the industry.

CHAPTER FOUR:

PROPOSED REGULATORY REFORMS

4:1 General Background

The preceding chapters have examined the introduction and development of legal aspects of civil aviation in Nigeria. Since civil aviation took a firm course in Nigeria from 1960, a lot of changes have taken place. Civil aviation worldwide has grown rapidly and it is today on the threshold of transition into another significant technological, economic and legal phase.

Some schools of thought are of the view that¹ like civil aviation itself, its regulatory regime should undergo some relevant and necessary changes. Otherwise, civil aviation as a system will become stagnant. The significance of such changes will be aimed at tailoring and re-aligning civil aviation to the specific needs or expectations and requirements of its operating environment. To achieve this objective, it is also envisaged that a competent body be put in charge of the responsibilities of setting up a well structured civil aviation authority to operate, manage and oversee the activities of aviation in any given area. These requirements have been to a reasonable extent successfully met at the ICAO level and regional level by the European Union and some states like the USA and the UK.

In Nigeria, the result is mixed. Some success has been achieved with the setting up

¹ See M. Milde, "The Chicago Convention - Are Major Amendments Necessary Or Desirable 50 Years Later", *Annals of Air and Space Law*, Vol. XIX-II (1994), at 401; N. M. Matte, *Treatise on Air Aeronautical Law*, (Institute and Centre for Air and Space Law, McGill University, Montreal, Carswell Co Limited, Toronto, 1981).

of civil aviation structures. However, significant success still eludes the regulation, management, operations, and ensuring the realisation of the objective of civil aviation as a transport system. The state of affairs is such that:

(1) The air law system has become obscure because it has not seen any changes in the last 30 years. This conclusion is without prejudice to the changes to the four new legal instruments which were adopted between 1976 and 1995, 12 years after the first legal instrument was adopted in 1964.²

(2) The practical value of some of the laws made since 1964 which have not been reviewed is highly questionable.

(3) The role and competence of the relevant bodies charged to regulate civil aviation is increasingly questionable.

It is not in doubt that some constraints, some of which are clearly beyond the making of the regulatory authorities, but some evidently the result of their deliberate actions, have taken their toll on the regulatory system in Nigeria. Yet the fact remains that with regard to making changes and renewing the air law system, the authorities could take advantage of the law development programme of the Federal Ministry of Justice, which is mandated to carry out the revision of and updating of the Laws of Nigeria from time to time.³ Alternatively, a body could be set up within the aviation ministry, in accordance with the principle enshrined in the NCAPN, which in liaison with the Federal Ministry of

² These are: The Nigerian Airport Authority (NAA) Act, 1976; Federal Civil Aviation Authority Decree (FCAA) 1990; National Civil Aviation Policy for Nigeria (NCAPN) 1988; and Federal Airport Authority of Nigeria Decree, 1995. The NAA Act 1976 and the FCAA Decree 1990 have been superseded by the FAAN Decree 1996. The Civil Aviation Act which is the only major air law instrument in the country was adopted in 1964. Eight subsidiary laws were adopted in 1965, under the powers granted by the Act. The only modifications made to these laws have been administrative.

³ Laws of the Federation of Nigeria, Vol.I, (1990), at x.

Justice, should be for the purpose of examining, revising and updating aviation laws.

Some areas of the air law system deserving modifications are set out below. These areas are by no means exhaustive. At the most this should only act as a pointer to examination of further areas.

4:1:1 Some Amendments to the Civil Aviation Act 1964

As a first step, a comprehensive review of this 33 year old instrument should be embarked upon. The areas which are not entirely in tune with the present day needs of civil aviation should be modified. Some of these areas will include:

(a) **Section 1 Sub section 3**

Developments which have taken place in international civil aviation, led to the adoption of article 3 *bis* to the Chicago Convention in 1984. This article deals with the manner and condition in which aircraft flying in a prohibited area of a state may be intercepted. In the spirit of article 3 *bis*, the phrase "including firing on aircraft" used under this sub section needs to be rephrased or could be deleted, as it is inconsistent with article 3 *bis* which Nigeria has adopted.

(b) **Section 2 Sub section 1.**

It is not exactly clear why the phrase "occurring to Nigerian aircraft elsewhere" appears in this subsection. The subsection refers to the powers of the Minister to make regulations providing for accident investigation arising from air navigation in or over Nigeria or elsewhere. Whatsoever the powers of the minister (or as the case may be, Nigeria), they are limited in international law from conducting investigation outside the

Nigeria. As such this provision has little practical significance, because of its extra-territorial effect. The USA, which has adopted and tried to enforce extra-territorial laws, has met great opposition and such actions have even attracted the wrath and condemnation of the international community. A ministerial directive may well serve the purpose which this provision is to do. This provision could be considered for review.

(c) **Section 6 subsection (1)**

The responsibilities of the minister to establish and maintain airports was transferred in the first instance by the Nigerian Airports Authority Act 1976 (now superseded by the Federal Airports Authority of Nigeria (FAAN) Decree 1996) to the Federal Airports Authority of Nigeria. An amendment to this subsection should be made excluding the Minister's responsibilities in the airports now vested in FAAN in order to avoid duplication of functions and possible conflicts of interest.

(d) The responsibilities of the Minister under the Act and Regulations made thereunder for regulating air traffic services, provision, installation and maintenance of navigational facilities among many others was transferred in the first instance by the FCAA Decree 8 1990 to the FCAA, and by FAAN Decree 1996 to FAAN.

It is interesting to note that while the FCAA Decree was still in force, the provisions of the Act which transferred the responsibilities of the Minister to the FCAA under the FCAA Decree were not amended. The result was that there was dualisation of powers on certain issues between the Minister and the former FCAA. Confusion reigned supreme. The air operators in particular had to shuttle between the ministry and the former

FCAA and at the end of the day, still could not figure out who was really in charge of some of the regulatory matters. A repeat of this situation could be avoided by clearly amending the affected sections of the Act from which the Minister's powers have been transferred to FAAN.

(e) **Penalties under Sections 1(3), 3(1), 4(2)(b) and 5(2)(3)**

Penalties are provided under the Act against the contravention of certain regulations. The penalties in fines range from N40 (forty Naira being equivalent to less than USD \$1) to N10,000 (ten thousand Naira being equivalent to USD \$120), and for imprisonment, from 3 months to 2 years. For offenses like dangerous flying the fine is N400 (four hundred Naira - about USD \$5). Punishment is meant to serve as deterrence against future occurrence. With the high rate of inflation in the Nigerian economy N400 or about \$5 USD, N40 or \$.1 USD, has lost the monetary value it used to have in the 1960s, when these rates were adopted, and so no offender is deterred by these tiny sums. What then will be the effect on a foreigner, who for example is fined less than \$1 USD? Of course the legal effect of committing an offense and being found liable would be there but as to the financial effect, there would be none. It is therefore recommended that fines should be reviewed upward, to make them commensurate with the nature of the offenses.

4:1:2 Update of Civil Aviation Regulations 1965

Eight pieces of subsidiary legislation have been adopted pursuant to the Civil Aviation Act, 1964 and none of them have ever been modified. Some areas in the regulations which have caused controversies and difficulties in their applications and

deserve urgent review include:

(a) **Civil Aviation (Fees) Regulations, 1965.**

Fees contained in these regulations have been reviewed administratively upwards without following the legal procedure prescribed for amendment. Metric weight measures and currency still appear in the English system. It is an issue of fact and law that the procedures of the law must be followed in order to uphold the validity of action done under the law. The letter as well as the purpose of the law must be changed. Therefore, no act purportedly done before the law has been amended will be valid. The practice of amending legislation through circular letters is invalid in law, and should be discontinued. Amendments to any of the laws should be done through established legal procedures.

(b) **Civil Aviation (Rules of the Air and Air Traffic Control) Regulations, 1965.**

The quadrantal rules on aircraft cruising level have changed worldwide with the introduction of the semi-circular rules. In practice, the semi-circular rules are now applicable in Nigeria. However, the regulations have not been amended to this effect. There is therefore a need to review the regulations.

(c) **Civil Aviation (Air Navigation) Regulations, 1965.**

The Regulations relating to the composition of crew members, flight crew fatigue, table of calculation of weight and measurement have all changed. The current requirement however are yet to be incorporated in the Regulations. There is a need to revise these and other similar regulations.

4:1:3 Need to Notify, Sign, Ratify or Denounce Some International Conventions and Related Protocols.

ICAO had erroneously assumed that member states have been complying with their obligations under the Chicago Convention. Available data have revealed that this presumption is far from the truth. In fact, the percentage of states which have complied with their obligation under the convention is uncertain. The same situation applies to other public and private international law instruments and related protocols. Factors responsible for this situation include the absence of comprehensive national air legislation to give effect to the international air law instruments especially in the African states. In some states some aspects of the Chicago Convention, some Annexes and other air law instruments have doubtful legal status because they have never been signed, ratified and adopted as the case may be.

In Nigeria, since 1961, when the Chicago Convention was ratified and adopted, ICAO has never been notified, in accordance with article 38, as to whether Nigeria has complied with the Annexes or whether there are any established differences. Since 1961, when Nigeria joined ICAO, only 23 out of about 34 public and private international air law instruments have been signed, ratified or adopted. This state of affairs is unhealthy for the advancement of air law at the states and international levels.

All those involved in different activities in aviation require a predictable, consistent and coherent regulatory environment if their activities are to be planned and executed in a cost effective manner. The existing air law system must be harmonized in order to allow aviation to prosper. ICAO should be notified of the action taken in respect of each Annex.

This is important as available data have shown that some of the Annexes have been partially or fully complied with. The Protocols on article 83 *bis* Chicago Convention dealing with the transfer of certain regulatory functions from state of aircraft registration to actual operation should be adopted in order to facilitate Nigerian responsibilities in monitoring the operations and airworthiness of foreign-registered aircraft. With an economic background which has made aircraft leasing the only easy option for air operators to acquire aircraft in Nigeria, there is a need to ratify the Geneva Convention 1948 on the Recognition of Rights in Aircraft, in order to facilitate the financing and acquisition of aircraft and to guarantee protection for the rights and interests of secured and unsecured creditors in the event of disposal of the aircraft. The Geneva Convention has also provided for a system of national registration and recording rights in aircraft.

The Protocols on the Warsaw System also need to be ratified. Considering Nigerian's economic background, only a fixed limited liability such as the one established under the Warsaw System is good for the economic well-being of Nigerian airlines. Already the airlines profit margins are low compared to the high cost of aircraft maintenance and other operating costs. Higher liability will involve higher insurance premiums, which the airlines may not be in a position to pay, and this can affect their chances of continued existence.

For being a party to the Rome Convention 1952 on Damage Caused by Foreign Aircraft to Third Parties on the earth Surface, Nigeria's chances for recovery of huge material and financial compensation, in the event that damage is caused by foreign aircraft on the earth's surface, is at great risk. The Rome Convention 1952 has limited parties - about 38- and has been in force since 1958. The Convention among other issues has set the

limit of liabilities and compensation to be paid as a result of damage caused by foreign aircraft in another country, to the earth's surface. The Convention has unified the rules to be applied in determining liabilities and compensation worldwide.⁴ The objective of adopting the Rome Convention was to ensure that the development of international civil aviation (then considered to be in its infancy) was not hindered by enormous compensation paid by aircraft operators to other parties in the event of any damage caused by their aircraft on the earth's surface. This argument was then plausible because the states themselves were the air operators and therefore sought to protect themselves by limiting their liability for damages. This argument no longer holds, because the aircraft operators of most states are private enterprises and the industry has fully matured. So there is no longer any need to curtail the right of other private persons and the government themselves to the payment of compensation commensurate with damages that might be suffered. Some countries like Canada, which were parties to this Convention, have denounced it, probably because of the risk of losing huge benefits, which otherwise would be received if a state were not a party to this Convention. Nigeria is heavily endowed with natural resources and capital-intensive industries. Over 23 foreign airlines operate in Nigerian airspace. Nigeria has a flag carrier which operates in about five states. Therefore there are fewer chances for Nigeria to invoke this Convention than there are for the 23 states whose carriers operate in Nigeria. Moreover, airlines' liabilities are insured and no longer the responsibility of the states or airlines. Therefore it is not a prudent decision, from an economic point of view, to waive huge material and economic benefits by remaining a

⁴ See articles 3-4.

party to the Rome Convention. Nigeria would have better aviation protection if she were not a party to the Convention. It is recommended that Nigeria should denounce the Convention.

4:1:4 Modification of Some Clauses in the Standard Draft BASA

Civil aviation has been transformed from what used to be a closed market regime to a commercially oriented and free competitive regime. Privatization, deregulation and liberalization of air transport markets are now seen as the prerequisite for wooing private sector financing and participation in the industry. Even though global regulatory solutions are yet to be found to accommodate these new trends, some regional bodies and independent states have adopted regulatory measures to govern these changes, while more solutions are still being sought.

The African countries including Nigeria have agreed to a regional solution: The Yamoussokro Declaration aims to integrate their fragmented air transport market and harmonise regulatory provisions in order to be able to withstand competition in a deregulated and free competition market.

In Nigeria civil aviation is increasingly tilting towards a free competitive market structure. Even so there is increasing demand on Nigeria to deregulate and free market forces, as this is seen as the tonic to revitalize the fast-dying public enterprises. The impact of the Yamoussokro Declaration which Nigeria has adopted is being felt in the country. In the spirit of Yamoussokro, Bellview Airlines, a private Nigerian scheduled air operator, has been granted the rights by member states of Air Afrique as the designated carrier of Sierra Leone. Similarly, Togo has accorded the airline special rights to use Sierra Leone

traffic rights. All the changes in the manner and conduct of air transport issues support the conclusion that some of the ideas of the close bilateral regime can no longer be relevant in present day air transport. There must therefore be changes in some of the legal principles governing air transport in Nigeria, a substantial part of which are enshrined in the BASA.

Some model clauses in the standard draft BASA such as the ones enabling the government to exclusively determine fares, capacity, aircraft designation should be modified to reflect the free market environment which is gradually taking shape in the industry.⁵

It is to be noted however that once market regulations are lifted, and competition becomes free, dumping will become the airlines' only means of gaining competition advantage. The government must therefore ensure that while laying down flexible regulations for the operations of free and competitive air transport market, adequate control measures should be built in with the new regulatory measures in order to sustain reasonable and satisfactory competition among air operators, so as to guarantee that no one suffers from any adverse effects of a free market.⁶

4:2 Proposed Legal Framework for Liabilities of Manufacturers of Aircraft and Component Parts

⁵ See especially articles 3, 11 and 13 Standard Draft BASA for Nigeria.

⁶ For instance, the Competition Act 1985 adopted by Canada to regulate trade and commerce in respect of conspiracies, trade practices, mergers affecting competition, and the United States Anti-Trust Laws are commendable examples.

There has been a number of aircraft accidents caused by factors related to the integrity of the aircraft itself, rather than to the operator or the role of governmental regulation in ensuring the safe operations of the aircraft. In the USA, as far back as 1948, a North-West Airlines' Martin 202 came apart in flight because of factors relating to airplane design. A similar accident was witnessed in 1960 when a Lockheed Electra Aircraft came apart in the air for the same reasons. A Turkish Airline DC-10 crashed near Paris in 1974 as a result of a cargo door which blew off in flight causing the cabin to collapse and disrupt the aircraft control system. Another DC-10 aircraft's engine tore off in flight and damaged part of the control system killing 25 souls on board.⁷

These incidents provided a basis for defining the responsibilities for alleged improper design and manufacture of aircraft. The concept was later extended to aircraft crashworthiness, a theory which dwells primarily on the resistance capability of the aircraft to protect the occupants from enhanced or aggravated injuries in a survival air crash.⁸ Based on the principle of aircraft crashworthiness, a manufacturer can be made liable in an aircraft crash if the aircraft seat belts break loose from the floor and throw passengers, or if fire breaks out in the aircraft on impact with objects such as trees.⁹

A system of legal regime of product liability has been developed in some

⁷ L. Weber, ed., *Cases and Materials on Comparative Private Air Law*, (Institute and Centre for Air and Space Law, McGill University, Montreal, Canada, Fall 1993).

⁸ E. J. Saba, "Aircraft Crashworthiness and the Manufacturers Tort liability in the United States", *Annals of Air and Space Law*, Vol.7, (1982), at 171 ff.

⁹ See the cases of *Mcgee V. Cessna* decided by a Court of Appeal in United States in 1978, *Smith V. Cessna Aircraft* and *Eichstedt v. Cessna Aircraft*, Weber *supra*, note 7, at 181 - 187.

jurisdictions around the world.¹⁰ The theory of product liability deals with the safety of the product and aims to protect the safety of the user of the product or other third parties.¹¹ The general principles of product liability make it possible for an aircraft manufacturer to be held liable to a passenger, airline, pilot and even a by-stander, for negligently fabricating or assembling an aircraft or component part, negligent designing an aircraft or part, or even for the failure to warn users of its aircraft of known dangerous characteristics. This duty continues even after the sale of an aircraft. Where a claimant can show that an airplane accident resulted from the manufacturer's act or omission such as hooking up controls improperly, performing bad welding, omitting to install a safety wire, securing screws or bolts improperly or failure to inspect its product properly or failure to keep owners informed about characteristics of airline planes, a manufacturer can be held liable in strict tort liability.¹² The principles of product liability have been applied even in complex situations where the aircraft is manufactured in one state, sold in another state and had an accident in a third state. Under these circumstances, the manufacturer may be sued in a fourth state which may be the state of incorporation.

A manufacturer has been defined as including someone who holds himself as a manufacturer by putting his label on the product, such as distributors and other parties involved in marketing and distribution of a manufacturers products.¹³ There need not be

¹⁰ See "European Convention on Product Liability in Regard to Personal Injury or Death", Council of Europe, Directive, Strasbourg January 27, 1994; United States, Restatement (second) of Tort section 402 A, Comment I (1965).

¹¹ P.N. Ehlers, "Product Liability in Germany Today and Tomorrow", *Annals of Air and Space Law*, Vol XVI, (1991), at 41.

¹² *Ibid.*

¹³ See European Convention on Products Liability, Supra Note 10.

a pre-existing contractual relationship between the manufacturer and a party who suffers damage from the manufacturers' defective product. The claimant only needs to show that the damage suffered was caused by a defective product put on the market by a manufacturer.

In Nigeria, there is no legal framework of the nature discussed above. The Nigerian aviation market has become a big market for the disposal of used foreign aircraft whose safety has caused serious concern.¹⁴ A legal framework for product liability, if adopted in Nigeria, could ensure protection for the users of such aircraft and by-standers outside the ordinary principles of negligence in tort law or contractual relationship, and also serve as a check on foreign marketers and local importers of aircraft, as to the quality and safety status of aircraft imported into Nigeria. The Nigerian government, air operators, passengers, and ordinary citizens stand to derive immense benefit from this type of liability system. A legal framework for product liability similar to that which is in existence in the United States and the European Union is highly recommended for Nigeria.

¹⁴ D. Adesanya, "Foreign Registered Aircraft take Over Nigeria's Airspace", 3 *Journal Aviation and Allied Business*, No.3 (May/June 1994), at 22.

CHAPTER FIVE: CONCLUSION

About 72 years ago, an aircraft touched down on the soil of Nigeria for the first time since the era of aerospace became alive in the mid 1940s. About two decades later, aircraft activities had been transformed into a vital system of transport providing a fast and safe means of moving people and goods, facilitating the development of trade and commerce, and increasing economic benefits within Nigeria and the outside world.

Civil aviation expanded and progressed massively. Much planning, infrastructural and institutional arrangements were put in place to create a supportive environment for its continued growth. A regulatory framework was developed to ease the administration, implementation and enforcement of programmed activities. Nigeria's civil aviation became the largest and most developed sector in the whole of the West African sub-region. Unfortunately, the prospect for the continued development of the aviation sector has remained dim essentially because the pace of economic and technological changes within the sector have not been matched by the requisite regulatory environment to support and ensure the viability and the smooth management and administration of civil aviation.

A legal framework was first laid down during the colonial era four decades ago. This legal framework was adopted as Nigerian law after independence. Except for the introduction of a few new aspects, the framework has remained the only one governing civil aviation in Nigeria today. Some of the instruments have been abrogated, while the

existing ones have proved inadequate for aviation requirements.

Civil aviation has been undergoing tremendous changes in all spheres worldwide. Every era in civil aviation brings with it new regulatory challenges, and as the landscape continually changes new legal frameworks are required to meet every new situation.

At the global level, realisation of the objectives of the legal framework has been very difficult. In the technical area, the legal framework of the ICAO (Chicago Convention and Annexes) has continued to be relevant after 50 years of existence. However, problems of lack of notification of difference from, compliance with and implementation of Standards and Recommended Practices (SARPS) have remained a crucial issue for the aviation community. Likewise, the non-ratification of protocols amending the Chicago Convention and instruments of public and private international air law adopted under the auspices of ICAO have continued to hold back the progress in development of international air law. In the midst of all this, divergent political and economic goals and objectives of the 185 member states of ICAO have for five decades continued to pose a threat to finding a legal solution of multilateral nature to the problems of regulations in some economic aspects of international air transport. ICAO has vowed to tackle these problems through state letters, assembly resolutions and educational programmes such as legal workshops and seminars are aimed at reminding states of the need to fulfil their legal obligations. It is not in doubt that the future regulation of international air transport remains uncertain primarily because of these regulatory problems and especially due to the rapid changes in international civil aviation which will continue to open new legal challenges that will obviously shape and determine the future of air transport.

Aircraft operations are not confined to national frontiers, giving civil aviation an

interdependency which requires a legal framework of worldwide uniformity. As a result of this unique attribute, common legal problems are encountered at the international and national levels. One of the most notable problems with the air law system in Nigeria has to do with the lack of notification of difference from, compliance with and implementation of the ICAO SARPS and the non-ratification of protocols relating to amendments to the Chicago Convention and other public and private international air law instruments. This situation has created a wide gap between the development of air law at the international level and that of Nigeria with the result that Nigeria is lagging far behind.

The position is not dissimilar to the laws adopted at the national level. These too remained unrenewed and unamended for over three decades. This problem is nothing compared to the lack of corresponding legal responses to new challenges in aviation. The application, implementation and enforcement of air law instruments has not been without difficulties. As a result, the Nigerian air law system is fragmented, incoherent, far from definite, and insufficient to stimulate and promote the development of civil aviation in Nigeria. Even as the largest and most developed civil aviation set-up, the big and largest air transport market, with heavy natural and industrial resources, and high prospects for technological and economic growth, the advancement and progressive growth of civil aviation in Nigeria is still thwarted mainly because of the inadequate regulatory environment. To a very large extent the prosperity of civil aviation depends on the kind and type of regulatory framework that is put in place.

If civil aviation in Nigeria is to continue to grow and prosper, and not lag behind the waves of changes in and around the world, then it is time to examine the core objective of the air law system in order to ascertain whether it is still adequate for dealing with

present and future requirements of civil aviation in Nigeria and at the international level. This examination may require changes in the institutional, administrative and procedural practices of handling civil aviation matters and their regulation in particular. These changes may in turn create the need for developing and adopting new legal frameworks and amending, implementing and enforcing existing ones. In so doing peculiar local circumstances must be taken into consideration in order to avoid incompatibility.

Even as the educational and information programmes such as conferences, seminars and workshops which have become an annual event to explore new ways of dealing with aviation matters in Nigeria, present some hopes for the future development of civil aviation in general and perhaps the legal system, efforts should nevertheless be made (no matter how politically, economically and financially demanding), to take international legal commitments more seriously in order to keep the international and in particular national air law system effective and responsive to civil aviation needs.

Unless Nigeria is prepared to sacrifice the progressive development and immense economic and social benefits associated with a viable and sound civil aviation system at the altar of inadequate, ill-suited regulations, the creation of a comprehensive, up-to-date legal framework remains the first step and most important dimension in the regulatory process of civil aviation in Nigeria as much as anywhere else in the world. Civil aviation having been regarded as a strategic sector of the nation's economy, taking up this regulatory challenge is simply inevitable, be it now or in the future.

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CHAPTER 51

CIVIL AVIATION ACT

1964 No. 30. **An Act to make fresh provision as respects civil aviation; and for connected purposes.**

Commence-
ment.
L.N. 8 of
1966.

[1st December, 1965]

CONTROL OF AIR NAVIGATION

Power to
regulate air
navigation.

1. (1) The Minister may by regulations make such provision as appears to him to be necessary or expedient—

(a) for carrying out the Convention on International Civil Aviation concluded at Chicago on the seventh day of December, 1944, any annex to the convention which relates to international standards and recommended practices and is adopted in accordance with the convention, and any amendment of the convention or of any such annex which is made in accordance with the convention;

(b) generally for regulating air navigation.

(2) Without prejudice to the generality of the foregoing subsection, the powers conferred by that subsection shall in particular include power to make regulations—

(a) as to the registration of aircraft in Nigeria;

(b) for prohibiting aircraft from flying unless certificates of airworthiness issued or validated under the regulations are in force with respect to them and except upon compliance with such conditions as to maintenance and repair as may be prescribed;

(c) for the licensing, inspection and regulation of airports, for access to airports and places where aircraft have landed, for the inspection of aircraft factories, and for prohibiting or regulating the use of airports which are not licensed in pursuance of the regulations;

(d) for prohibiting persons from engaging in, or being employed in or in connection with, air navigation in

Civil Aviation Act

such capacities as may be prescribed unless they satisfy the prescribed requirements, and for the licensing of persons employed at airports in the inspection, testing or supervision of aircraft;

- (e) as to the conditions under which, and in particular the airports to or from which, aircraft entering or leaving Nigeria may fly, and as to the conditions under which aircraft may fly from one part of Nigeria to another;
- (f) as to the conditions under which passengers and goods may be carried by air and under which aircraft may be used for other gainful purposes, and for prohibiting the carriage by air of goods of such classes as may be prescribed;
- (g) for minimizing or preventing interference with the use or effectiveness of apparatus used in connection with air navigation, and for prohibiting or regulating the use of such apparatus and the display of signs and lights liable to endanger aircraft;
- (h) generally for securing the safety, efficiency and regularity of air navigation and the safety of aircraft and of persons and property carried in aircraft, and for preventing aircraft from endangering other persons and property;
- (i) for requiring persons engaged in, or employed in or in connection with, air navigation to supply meteorological information for the purposes of air navigation;
- (j) for regulating the making of signals and other communications by or to aircraft and persons carried in aircraft;
- (k) for instituting and regulating the use of a civil air ensign and any other ensign established by the Minister for purposes connected with air navigation;
- (l) for prohibiting aircraft from flying over such areas in Nigeria as may be prescribed;
- (m) for applying, with or without modifications, the enactments relating to customs in relation to airports and to aircraft and to persons and property carried in aircraft;
- (n) as to the manner and conditions of the issue, validation, renewal, extension or variation of any certificate,

licence or other document required by the regulations (including the examinations and tests to be undergone), and as to the form, custody, production, cancellation, suspension, endorsement and surrender of any such document;

- (o) for the registration of births and deaths occurring in aircraft and of particulars of persons missing from aircraft;
- (p) for regulating the charges that may be made for the use of airports licensed under the regulations and for services provided at such airports;
- (q) for specifying the fees to be paid in respect of the issue, validation, renewal, extension or variation of any certificate, licence or other document or the undergoing of any examination or test required by virtue of the regulations and in respect of any other matters in respect of which it appears to the Minister to be expedient for the purposes of the regulations to charge fees;
- (r) for exempting from the provisions of the regulations or any of them any aircraft or persons or classes of aircraft or persons.

(3) Regulations under this section may provide for the imposition of penalties for offences against the regulations, not exceeding in the case of any particular offence a fine of one thousand naira and imprisonment for a term of six months and, subject to Chapter IV of the Constitution of the Federal Republic of Nigeria (which relates to fundamental rights), for the taking of such steps (including firing on aircraft) as may be prescribed as respects aircraft flying over areas of Nigeria over which flying is prohibited by the regulations.

Cap. 62.

Investigation
of accidents.

2. (1) Without prejudice to the generality of subsection (1) of the foregoing section, the Minister may make regulations providing for the investigation of any accident arising out of or in the course of air navigation and either occurring in or over Nigeria or occurring to Nigerian aircraft elsewhere

(2) Without prejudice to the generality of the foregoing subsection, regulations under this section may in particular contain provision—

Civil Aviation Act

- (a) requiring notice to be given of any such accident as aforesaid in such manner and by such persons as may be prescribed;
- (b) applying, with or without modifications, for the purpose of investigations held with respect to any such accidents any of the provisions of any law in force in Nigeria relating to the investigation of deaths or accidents;
- (c) prohibiting, pending investigation, access to or interference with aircraft to which an accident has occurred and authorising any person, so far as may be necessary for the purposes of an investigation, to have access to, examine, remove, take measures for the preservation of, or otherwise deal with, any such aircraft;
- (d) authorising or requiring the cancellation, suspension, endorsement or surrender of any licence or certificate granted in Nigeria in pursuance of this Act or the withdrawal or suspension of any validation conferred in Nigeria of a licence granted by a competent authority elsewhere, where it appears on investigation that the licence, certificate or validation ought to be so dealt with, and requiring the production accordingly of any such licence or certificate.

3. (1) Where an aircraft is flown in such a manner as to cause danger to any person or property on land or water, the pilot or other person in charge of the aircraft and the owner of the aircraft shall be liable on summary conviction to a fine not exceeding ~~four hundred naira~~ or imprisonment for a term not exceeding ~~six~~ months or both.

Dangerous
flying.

(2) In any proceedings against the owner of an aircraft in respect of an alleged offence under this section, it shall be a defence to prove that the act alleged to constitute the offence was done without the knowledge and consent of the owner.

(3) In this section, "owner", in relation to an aircraft and an alleged offence, includes any person by whom the aircraft is hired at the time of the alleged offence.

(4) Nothing in subsection (1) of this section shall be construed as derogating from the powers conferred by section 1 of this Act.

CONTROL OF AIR TRANSPORT UNDERTAKINGS, ETC.

Licensing of
air transport
under-
takings.

4. (1) The Minister may make regulations—

(a) to secure that aircraft shall not be used in Nigeria by any person—

(i) for plying, while carrying passengers or goods for reward, on such journeys or classes of journeys (whether beginning and ending at the same point or at different points) as may be prescribed; or

(ii) for such flying undertaken for the purpose of any trade or business as may be prescribed, except under the authority of and in accordance with a licence granted to him by the prescribed authority;

(b) as to the circumstances in which a licence may or shall be granted, refused, revoked or suspended, and in particular as to the matters to which the licensing authority is to have regard in deciding whether to grant or refuse a licence;

(c) as to appeals (if any) from the licensing authority by persons interested in the grant, refusal, revocation or suspension of a licence;

(d) as to the conditions which may be attached to a licence (including conditions as to the fares, freight or other charges to be charged by the holder of the licence), and for securing compliance with any conditions so attached;

(e) as to the information to be furnished by an applicant for, or the holder of, a licence to such authorities as may be prescribed; and

(f) specifying the fees to be paid in respect of the grant of a licence, or enabling such fees to be specified by such person or authority as may be prescribed.

(2) Regulations made under this section may provide for the imposition of penalties for offences against the regulations, not exceeding—

(a) in the case of a first offence against any particular provision, a fine not exceeding one thousand naira or imprisonment for a term not exceeding three months or both; and

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- (b) in the case of a second or subsequent offence against the same provision, a fine not exceeding ten thousand naira or imprisonment for a term not exceeding two years or both.

5. (1) The Minister may make regulations—

- (a) requiring any person who carries on the business of carrying passengers or goods in aircraft for reward, on such journeys or classes of journeys (whether beginning and ending at the same point or at different points) as may be prescribed, to furnish to the prescribed authorities such information relating to the use of aircraft for the purpose of the business, and to the persons employed in connection with that use, as may be prescribed; and
- (b) specifying the times at which, and the form and manner in which, any information required under the regulations is to be furnished.

Duty to
furnish
information
about air
transport
under-
takings.

(2) Regulations under this section may provide for the imposition of penalties for offences against the regulations, not exceeding in the case of any particular offence a fine of forty naira and a further fine of ten naira for every day on which the offence continues after conviction of it.

(3) No information with respect to any particular undertaking which has been obtained by virtue of regulations under this section shall, without the consent of the person carrying on that undertaking, be disclosed otherwise than in connection with the execution of the regulations; and if any person discloses any such information in contravention of this subsection he shall be liable, on conviction, to imprisonment for a term not exceeding two years or a fine not exceeding two hundred naira or both.

No. 12 of
1966.

(4) Nothing in the last foregoing subsection shall apply to the disclosure of any information for the purposes of any legal proceedings which may be taken by virtue of that subsection or of regulations made under this section, or for the purposes of any report of such proceedings; but save as aforesaid that subsection shall, in relation to any legal proceedings (including arbitration), preclude any person who is in possession of any information obtained by virtue of such

regulations from disclosing, and from being required by any court or arbitrator to disclose, that information without the consent of the person carrying on the undertaking to which the information relates.

PROVISION OF AIRPORTS AND CONTROL OF LAND FOR AVIATION PURPOSES

Power of
Minister to
provide
airports, etc.

6. (1) The Minister may establish and maintain airports and may provide and maintain, in connection with airports established by him, roads, approaches, apparatus, equipment and buildings and other accommodation.

Cap. 202.

(2) For the avoidance of doubt it is hereby declared that the following purposes are public purposes of the Federation within the meaning of the Land Use Act, that is to say—

- (a) the purposes of subsection (1) of this section; and
- (b) the purpose of securing that land in the vicinity of the site of an airport which the Minister has established or acquired or is about to establish or acquire shall not be used in such a manner as to cause interference with, or danger or damage to, aircraft at, approaching or leaving the airport.

Control of
land in the
interests of
aviation.

7. (1) The Minister may, if he is satisfied that it is necessary so to do in order to secure the safe and efficient use for civil aviation purposes of any land, structure, works or apparatus vested in him or which he proposes to acquire or instal, by order declare that any area of land specified in the order shall be subject to control by directions given in accordance with the following provisions of this section.

(2) Where any such order is in force, the Minister may, in accordance with provisions of the order in that behalf, give directions—

- (a) for requiring the total or partial demolition of any building or structure within the area to which the order relates;
- (b) for restricting the height of trees and other vegetation upon any land within the area, or for requiring any tree

Civil Aviation Act

or other vegetation upon any such land to be cut down or reduced in height;

- (c) for extinguishing any private right of way over land within the area;
- (d) for restricting the installation of cables, mains, pipes, wires or other apparatus over, on or under any land within the area;
- (e) for extinguishing, at the expiration of such period as may be specified by the directions, any subsisting right of installing or maintaining any such apparatus as aforesaid over, on or under any land within the area; and
- (f) for requiring that, before the expiration of such period as may be specified by the directions, any such apparatus shall be removed from land within the area.

(3) An order under this section may contain provision for empowering any person authorised in that behalf by the Minister to move or alter, so as to bring it into conformity with the requirements of any directions given under the order, any building, structure, vegetation or apparatus which contravenes those requirements.

(4) Where the Minister makes or has under consideration the making of an order under this section in respect of any land, any person authorised in that behalf in writing by the Minister may at all reasonable times, on producing if so required evidence of his authority, enter upon any of the land in order to make any survey which the Minister requires to be made for the purposes of any steps to be taken in consequence of the order or, as the case may be, for the purpose of determining whether the order should be made:

Provided that admission shall not, by virtue of this subsection, be demanded as of right to any land which is occupied unless twenty-four hours notice in writing of the intended entry has been served on the occupier.

(5) The Minister shall give notice of any direction given in pursuance of this section by publishing the direction in the *Federal Gazette* of the Federation and by taking such steps as he considers reasonable for securing that a copy of the

direction is served on each person appearing to him to be the owner or occupier of any land to which the direction relates.

(6) A person who obstructs any other person in the exercise of any powers conferred upon that other person by virtue of subsection (3) or subsection (4) of this section shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine of an amount not exceeding two hundred naira or both.

(7) A person who incurs expense or suffers damage by reason of the giving of a direction in pursuance of this section shall be entitled to receive from the Minister adequate compensation in respect of the expense or damage.

(8) The powers of the Minister under this section shall not be construed as prejudicing his power to acquire land for the purpose of securing the observation of any requirement which might have been imposed under this section in relation to the land.

Indication of
presence of
obstructions
near airports.

8. (1) If the Minister is satisfied, with respect to any building or structure in the vicinity of an airport to which this section applies, that in order to avoid danger to aircraft flying in that vicinity in darkness or conditions of poor visibility, provision ought to be made (whether by lighting or otherwise) for giving to such aircraft warning of the presence of that building or structure, he may by order authorise (subject to any conditions specified in the order) the proprietor of the airport and any person acting under the proprietor's instructions—

(a) to execute, instal, maintain, operate, and as occasion requires to repair and alter, such works and apparatus as may be necessary for enabling such warning to be given in the manner specified in the order; and

(b) so far as may be necessary for exercising any of the powers conferred by the order, to enter upon and pass over (with or without vehicles) any such land as may be specified in the order:

Provided that no such order shall be made in relation to any building or structure if it appears to the Minister that there

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have been made, and are being carried out, satisfactory arrangements for the giving of such warning as aforesaid.

(2) The Minister shall, before making any such order as aforesaid—

- (a) cause to be published, in such manner as he thinks best for informing persons concerned, notice of the proposal to make the order and of the place where copies of the draft order may be obtained free of charge; and
- (b) take into consideration any representations with respect to the order which may, within such period not being less than two months after the first publication of the notice as may be specified therein, be made to him by any person appearing to him to have an interest in any land which would be affected by the order,

and at the end of that period the order may, subject to the provisions of this section, be made with such modifications (if any) of the original draft as the Minister thinks proper.

(3) Every such order as aforesaid shall provide—

- (a) that, except in a case of emergency, no works shall be executed on any land in pursuance of the order unless, at least fourteen days previously, the proprietor of the airport to which the order relates has served in the manner specified by the order on the occupier of that land, and on every other person known by the proprietor to have an interest in the land, a written notice containing such particulars of the nature of the proposed works, and the manner in which and the time at which it is proposed to execute them, as may be specified by the order; and
- (b) that if within fourteen days from the service of the said notice on any person having such an interest the proprietor of the airport receives written objection on the part of that person to the proposals contained in the notice then, except in so far as the objection is withdrawn, no steps shall be taken in pursuance of the notice without the specific authority of the Minister,

and shall also provide for requiring the proprietor of the airport to which the order relates to pay to any person having an interest in any land affected by the order adequate

compensation for any loss or damage which that person may suffer in consequence of the order; and for the purposes of this subsection any expense reasonably incurred in connection with the lawful removal of any apparatus installed in pursuance of such an order, and so much of any expense incurred in connection with the repair, alteration, demolition or removal of any building, structure or erection to which such an order relates as is attributable to the operation of the order, shall be deemed to be loss or damage suffered in consequence of the order.

(4) The ownership of any thing shall not be taken to be affected by reason only that it is placed in, or affixed to, any land in pursuance of such an order as aforesaid; and (subject to the provisions of the next following subsection) so long as any such order in respect of an airport is in force, no person shall, except with the consent of the proprietor of the airport, wilfully interfere with any works or things which, to the knowledge of that person, are works or things executed or placed in, on or over any land in pursuance of the order.

(5) If any person contravenes the foregoing provisions of this subsection, he shall be liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding four hundred naira or both; and every person who wilfully obstructs a person in the exercise of any of the powers conferred by such an order as aforesaid shall be liable on summary conviction to a fine not exceeding one hundred naira.

(6) Nothing in this section shall operate, in relation to any building or structure, so as to restrict the doing of any work for the purpose of repairing, altering, demolishing or removing the building or structure if—

- (a) notice of the doing of the work is given as soon as may be to the proprietor of the airport; and
- (b) the giving of warning of the presence of the building or structure in the manner provided by any order under this section in force in relation thereto is not interrupted.

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(7) In this section—

(a) the expression “airport to which this section applies” means—

(i) an airport under the control of the Minister or of the Minister of the government of the Federation responsible for defence; or

(ii) any premises which, in pursuance of regulations made under section 1 of this Act, are for the time being licensed as an airport for public use; and

(b) the expression “proprietor of the airport” means—

(i) in the case of such an airport as is mentioned in sub-paragraph (a) (i) of this paragraph, the officer in charge of the airport; and

(ii) in any other case, the holder of the licence issued in respect of the airport in pursuance of this Act.

**SPECIAL PROVISIONS AS TO TRESPASS, NUISANCE, SALVAGE
AND PATENTS, ETC.**

9. (1) No action shall lie in respect of trespass or nuisance by reason only of, or of the ordinary incidents of, the flight of an aircraft over any property at a height above the ground which is reasonable having regard to wind, weather and all the circumstances of the case.

amended.
Liability in respect of trespass, nuisance and surface damage from aircraft.

(2) Where loss or damage is caused to any person or property on land or water by, or by a person in or an article or person falling from, an aircraft while in flight, taking off or landing, then, without prejudice to the law relating to contributory negligence, damages in respect of the loss or damage shall be recoverable without proof of negligence or intention or other cause of action, as if the loss or damage had been caused by the wilful act, neglect or default of the owner of the aircraft:

Provided that where loss or damage is caused as aforesaid in circumstances in which—

(a) damages are recoverable from the owner in respect of the loss or damage by virtue only of the foregoing provisions of this subsection; and

(b) a legal liability is created in some person other than the owner to pay damages in respect of the loss or damage;

the owner shall be entitled to be indemnified by that other person against any claim in respect of the loss or damage.

(3) References in the last foregoing subsection to loss or damage include, in relation to any person, loss of life and personal injury; and where an aircraft has been *bona fide* demised or hired out for any period exceeding fourteen days to any other person by the owner of the aircraft and no pilot, commander, navigator or operative member of the crew of the aircraft is in the employment of the owner, the last foregoing subsection so long as the provisions of the regulations in force under that subsection as respects the airport are complied with.

Liability in
respect of
nuisance at
airports.

10. (1) The Minister may make regulations as to the conditions under which ~~noise and vibration may be caused by aircraft on airports~~ and may provide that subsection (2) of this section shall apply to any airport as respects which provision as to noise and vibration caused by aircraft is so made.

(2) No action shall lie in respect of nuisance by reason only of the noise and vibration caused by aircraft on an airport to which this subsection applies by virtue of the foregoing subsection so long as the provisions of the regulations in force under that subsection as respects the airport are complied with.

Application
to aircraft of
law of wreck
and salvage.

11. (1) Any services rendered in assisting, or in saving life from, or in saving the cargo or apparel of, an aircraft in, on or over the sea or any tidal water, or on or over the shores of the sea or any tidal water, shall be deemed to be salvage services in all cases in which they would have been salvage services if they had been rendered in relation to a vessel; and where salvage services are rendered by an aircraft to any property or person, the owner of the aircraft shall be entitled to the same reward for those services as he would have been entitled to if the aircraft had been a vessel.

The foregoing provisions of this subsection shall have effect notwithstanding that the aircraft concerned is a foreign aircraft, and notwithstanding that the services in question are rendered elsewhere than within the limits of the territorial waters of Nigeria.

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(2) The Minister may by regulations direct that any provisions of any law for the time being in force in Nigeria which relate to wreck, to salvage of life or property or to the duty of rendering assistance to vessels in distress shall, with such modifications (if any) as may be prescribed, apply in relation to aircraft as those provisions apply in relation to vessels.

(3) For the purposes of this section, any provisions of any law in force in Nigeria which relate to vessels laid by or neglected as unfit for sea service shall be deemed to be provisions relating to wreck.

12. (1) Any lawful entry into Nigeria or any lawful transit across Nigeria, with or without landings, of an aircraft to which this subsection applies shall not entail any seizure or detention of the aircraft or any proceedings against the owner or operator of the aircraft or any other interference with the aircraft by or on behalf of any person in Nigeria on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is or are infringement of any patent, design or model.

Exemption of aircraft etc. from seizure on patent claims.

(2) The importation into and storage in Nigeria of spare parts and spare equipment for an aircraft to which this subsection applies and the use and installation thereof in the repair of such an aircraft shall not entail any seizure or detention of the aircraft or of the spare parts or spare equipment or any proceedings against the owner or operator of the aircraft or the owner of the spare parts or spare equipment or any other interference with the aircraft by or on behalf of any person in Nigeria on the ground that the spare parts or spare equipment or their installation are or is an infringement of any patent, design or model.

(3) Subsections (1) and (2) of this section apply—

(a) to any aircraft (other than an aircraft used in military, customs or police services) registered in a country or territory as respects which there is for the time being in force a declaration made by the Minister, with a view to the fulfilment of the relevant provisions of the convention mentioned in section 1 of this Act, that the

benefit of those subsections extends to that country or territory; and

(b) to such other aircraft as the Minister may by order specify:

Provided that subsection (2) of this section shall not apply in relation to any spare parts or spare equipment which are sold or distributed in Nigeria or are exported from Nigeria for sale or distribution.

(4) Where it is alleged by any person interested that a foreign aircraft which is not an aircraft to which subsection (1) of this section applies and which is making a passage through or over Nigeria infringes in itself or part of it any invention, design or model which is entitled to protection in Nigeria, it shall be lawful, subject to and in accordance with rules made by the Minister, to detain the aircraft until the owner of it deposits or secures in respect of the alleged infringement a sum (hereafter in this section referred to as "the deposited sum"); and thereupon the aircraft shall not, during the continuance of the passage, be subject to any lien, arrest, detention or prohibition, whether by order of a court or otherwise, on account of the alleged infringement.

(5) The deposited sum shall be such sum as may be agreed between the parties interested or, in default of agreement, as may be fixed by the Minister; and the payment of the deposited sum shall be made or secured to the Minister in such manner as may be specified by rules made by the Minister.

(6) The deposited sum shall be dealt with by such tribunal and in accordance with such procedure as may be prescribed by rules made by the Minister, and the rules may provide generally for carrying the provisions of subsection (4) and (5) of this section into effect.

(7) For the purposes of subsection (4) of this section, the expression "owner" shall include the actual owner of an aircraft and any person claiming through or under him, and the expression "passage" shall include all reasonable landings and stoppages in the course of the passage.

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GENERAL

13. (1) Any act done by any person on a Nigerian aircraft outside Nigeria which, if it had been done by him in any part of Nigeria, would have constituted an offence under the law in force in that part shall, for the purposes of any criminal proceedings in that part of Nigeria against that person in respect of that act, be deemed to have been done by him in that part of Nigeria. Offences.

(2) Except with the consent of the Attorney-General of the Federation, no proceedings shall be instituted by virtue of the foregoing subsection against a person who was not a citizen of Nigeria at the time of the act in question.

(3) Where it is alleged that an offence under this Act or regulations made by virtue of this Act has been committed, proceedings in respect of the offence may be brought in any court in Nigeria which would have had jurisdiction in the matter if the offence had been committed in the part of Nigeria for which the court acts.

14. A person claiming compensation in pursuance of any provision in that behalf of this Act or of an instrument made by virtue of this Act may, for the purpose of determining his interest in the subject-matter of the claim and the amount of the compensation, apply— Compensation.

(a) where the subject matter of the claim or the usual residence of the claimant is situated in any territory within the meaning of the Constitution of the Federal Republic of Nigeria, to the High Court of that territory; Cap. 62.

(b) in any other case, to the Federal High Court.

15. (1) The Minister may by regulations provide that this Act shall bind the state to such extent as may be prescribed. Application of Act to the state.

(2) Nothing in the foregoing subsection shall be construed as prejudicing the operation of provisions of this Act referring expressly to a Minister or to a person subject to the control of a Minister.

Subsidiary
legislation.

16. (1) Any regulations, rules or order made by the Minister in pursuance of this Act may contain—

- (a) such incidental, supplemental, consequential and transitional provisions; and
- (b) such provisions as to the extra-territorial operation of the instrument in question, as the Minister considers expedient for the purposes of the regulations, rules or order.

(2) Without prejudice to the generality of the foregoing subsection, regulations under this Act may, for the purpose of securing compliance with the regulations, include provision for the detention of any aircraft to which the regulations relate.

Interpreta-
tion, etc.

17. (1) In this Act, unless the context otherwise requires, the following expressions have the meaning hereby assigned to them respectively, that is to say—

“airport” means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft;

“foreign aircraft” means an aircraft other than a Nigerian aircraft;

“Minister” means the Minister of the government of the Federation responsible for civil aviation;

“Nigerian aircraft” means an aircraft registered in Nigeria in pursuance of regulations made under section 1 of this Act; and

“prescribed” means prescribed by regulations made under this Act.

(2) Any power conferred by this Act is in addition to and not in derogation of any other power so conferred.

Repeals and
transitional
provisions.

18. (1) Subject to the following subsection, the enactments specified in the first and second columns of the Schedule to this Act are hereby repealed to the extent shown in the third column of that Schedule.

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(2) Anything done under any enactment repealed by subsection (1) of this section shall be deemed to have been done under the corresponding provision of this Act, so however that—

- (a) without prejudice to the provisions of section 16 of this Act, nothing in the foregoing provisions of this subsection shall be construed as continuing in force any order, regulations or other instrument of a legislative character having effect by virtue of an enactment so repealed; and
- (b) without prejudice to the operation of section 6 of the Interpretation Act (which relates to the effect of repeals), nothing in this subsection or in subsection (1) of this section shall affect any proceedings pending on the day when the foregoing subsection comes into force, and, accordingly any such proceedings may be continued as if that subsection had not been passed.

19. (1) This Act may be cited as the Civil Aviation Act and shall, without prejudice to the operation of any provision of this Act having or relating to extra-territorial effect, apply throughout the Federation.

SCHEDULE
ENACTMENTS REPEALED

Section 18.

<i>Chapter or number</i>	<i>Short title</i>	<i>Extent of repeal</i>
Cap. 8.	The Air Navigation (Safety of Navigation) Act.	The whole Act.
Cap. 33.	The Civil Aviation (Births, Deaths and Missing Persons) Act.	The whole Act.
1962 No. 30.	The Merchant Shipping Act, 1962.	In section four hundred and twenty-seven, paragraph (p).
1963 No. 17.	The Director of Civil Aviation (Transfer of Functions) Act, 1963.	The whole Act.

Note

The measurements in this Act are in English measurements but should be converted to the metric system of measurement when intended to be applied.