

THE LEGAL ROLES OF NIGERIA AVIATION SECTOR IN NATIONAL SECURITY AND TRANS-BORDER MOVEMENT

Dr. Ismail Adua Mustapha*
Abdulraheem Mahmud**
&
Abdulganiyu Bello***

Abstract

Nigeria national security has become a major concern in recent years, especially due to the increasing number of potential and real threat to national security, peace and order. The paper therefore examines the legal roles of the Nigerian Civil Aviation Authority (NCAA), as a member of the International Civil Aviation Organization (ICAO); and the Federal Airport Authority of Nigeria (FAAN) in preventing and suppressing threat to national security, peace and order through its aviation security programmes. For the purpose of discussion, aviation security is divided into Airport and Aircraft security programmes. Airport security programmes deal with prevention and suppression of threat to national security within Airport and its surrounding on one hand, on the other hand, Aircraft security programmes deal with the screening and checking of passengers who are coming and going out of Nigeria. The paper further examines some challenges militating against proper implementation of Aviation security programmes in Nigeria. It concludes that failure to take adequate Aviation security measures or arrangement will lead to Trans-border insecurity.

KEYWORDS: Aviation, Nigeria, Security, Trans-border, Regulators, Operators

1.0 INTRODUCTION

Airport is a mini state within a particular state. Many business activities such as movement of people to and fro as well as within the airport, transportation of passenger, local and international, and exchange of trade and commerce take place at the airport, particularly commercial airport. Due to these activities, security measures are put in place to see the smooth operation of the aviation business, since airport is designed to be a public place for the purpose of air transport of goods and passenger to and from Nigeria.

Be that as it may, the airport regulators and operators are required to comply with International and National Security measures for the protection of lives and properties, not within the airport alone but inclusive of Nigeria as whole and international community in general. The Nigerian government has for the purpose of maintaining national security at the airport, adopted certain international law and National regulations regulating the security at the airport.

This paper will therefore present a practical role of aviation sector in maintaining national security and trans-border movement through its aviation security measures designed by aviation regulators and implemented by the operators.

* Department of Business Law, Faculty of Law, University of Ilorin. Email: ismadua@yahoo.com
ismailaduam@gmail.com.

** Department of Mass Communication, Faculty of Information Technology, University of Ilorin. Email: alhajimahmud@yahoo.com.

*** Institute of General Studies, Department of Liberal Studies, Kwara State Polytechnic, Ilorin. Email: lawyerbello@yahoo.com.

2.0 AVIATION SECURITY REGULATORS AND OPERATOR

2.1 Aviation Security Regulators

Aviation Security Regulators as used in this paper are the bodies responsible to carry out oversight functions toward the implementation of aviation security provisions to maintain international and national security. It is not an understatement to conclude that compliance with aviation security provisions (international and national) is a means to prevent and suppress aviation offences. It is further posit that security of civil aviation is a security of international community as a whole. That is why each International Civil Aviation Organisation Member State is under an obligation to comply with ICAO directives on aviation security. In this circumstance, aviation security regulators are the International Civil Aviation Organisation and in Nigeria, the Nigerian Civil Aviation Authority.

2.1.1 INTERNATIONAL CIVIL AVIATION ORGANISATION (ICAO)

International Civil Aviation Organisation is a United Nations specialised agency with the responsibility to administer the principles laid down in the International Convention on Civil Aviation.¹ The ICAO was created by the Convention on International Civil Aviation² in Chicago on December 7, 1944. Its purpose is to "Secure International Cooperation and highest possible degree of uniformity in regulations and standards, procedures, and organisation regarding civil aviation matters".³ One of such aviation matters includes the security of civil aviation to maintain national security of her member States.

Pursuant to its purpose and article 37 of the Chicago Convention, the ICAO has adopted International Conventions for the purpose of maintaining International and National Security at the airport. These Conventions are the Tokyo Convention⁴, the Hague Convention⁵, Montreal Convention⁶ and in recent time, the 2010 Beijing Convention and the Protocol to the Hague

¹ Convention on International Civil Aviation 1944, adopted on 7 December 1944 and entered into force on 4 April 1947, ICAO Doc. 7300/9, Ninth Edition, 2006 [hereinafter referred to as Chicago Convention 1944], see article 44 for the main functions of the ICAO. See also Huang J, "Aviation Safety, ICAO and Obligation *Erga Omnes*", Vol 8 (1), Chinese Journal of International Law (2009) at 63; See also Abeyratne R. "Aviation Security Law" Springer Berlin Heidelberg, 2010, at p. 267. Malaysia ratified and adhered to it on 7 April 1958. See < http://www.icao.int/secretariat/legal/Listof_parties/chicago_EN.pdf > (accessed on 11 February 2013). While Nigeria ratified and adhered to it on 14 November 1960. See < http://www.icao.int/secretariat/legal/Listof_parties/chicago_EN.pdf > (accessed on 11 February 2013).

² Convention on International Civil Aviation, article 43.

³ Preamble to the Chicago Convention 1944.

⁴ Convention On Offences and Certain Other Acts Committed On Board Aircraft adopted in Tokyo on 14 September 1963 and entered into force on 4 December 1963, 704 UNTS 219, 20 U.S.T 2941, T.I.A.S No. 6768. [Hereinafter referred to as The Tokyo Convention, 1963].

⁵ Convention for the Suppression of Unlawful Seizure of Aircraft, 1970 signed at Hague on 16 December 1970 and entered into force on 14 October 1971, 80 UNTS 105, 22 U.S.T. 1641, T.I.A.S No. 7192 [Hereinafter referred to as The Hague Convention, 1970]. 185 parties have ratified the Convention. Nigeria adopts same on 16th December, 1970 and ratified it on the 3rd, July 1973. See ICAO Doc. 8920/860UNTS105/[1972]ATS16/101LM133(1971). The aim and objective of the Convention is to suppress the offence of aircraft hijacking. See the preamble to the Hague Convention, 1970.

⁶ Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971 and entered into force on 26 January 1971, 974, UNTS 177, 24 U.S.T 564, T.I.A.S. No. 7570. [Hereinafter referred to as The Montreal Convention, 1971]. 176 parties have ratified the convention. Nigeria ratified same on 3rd July 1973. See ICAODoc.8920/860UNTS105/[1972]ATS16/101LM133(1971). The aims and objectives of the convention is to combat all acts of unlawful interference with international civil aviation

Convention done at Beijing 2010⁷. The examination of these Conventions is outside the scope of this paper.

The ICAO Standards and Recommended Practices (SARPs) as Annexes to the Chicago Convention is a very important document on technical aviation security matters. The thrust of the Annexes is theoretical measures and directives on how airport operators are to carry out security measures within the airport perimeter for maintaining airport security. This is because airport and aircraft carry nationality of a particular country.⁸

The Annexes are numbered from 1-18. However, the relevant Annex relating to the role of Aviation sector in maintaining National Security is Annex 17.⁹ The purpose of this Annex is to recommend standard practices to be adopted by a particular ICAO member in the screening and checking of passengers and their luggages and baggages as well as maintaining general security of the airport for the purpose of National Security.

Neither the Chicago Convention 1944 nor any of its annexes define "Standard and Recommended Practices". However, in 1947, the First ICAO Assembly Session defined Standard as:

Any specification for physical characteristics, configuration, material, performance, personnel, or procedure, the uniform application of which is recognized as necessary for the safety or regularity of international air navigation and to which member states will conform in accordance with the Conventions in event of impossibility of compliance notification to the Council is compulsory under Article 38 of the Convention.¹⁰

On the other hand, Recommended Practices is defined as:

Any specification for physical characteristics, configuration, material, performance, personnel, or procedure, the uniform application of which is recognized as desirable in the

including but not limited to aircraft sabotage. See preamble to the Montreal Convention, 1971. In fact this Convention is otherwise known as sabotage Convention

⁷ Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, done at Beijing on 10 September 2010, but not yet in force. <<http://www.icao.int/secretariat/legal/Lists/Current%20lists%20of%20parties/AllItems.aspx> > (accessed 7 May 2013). [Hereinafter referred to as 2010 Beijing Convention]. This Convention came into existence as a result of dreadful event that happened in the 11th September, 2001, where four of the American aircraft were hijacked and used as a weapon of mass destruction killing about 3,000 people. As a result of this incident, all the preceding Conventions were screened to see the lapses. As a result of the screening, a diplomatic meeting was conveyed where the Convention was adopted on the 10th September, 2010. See Diplomatic Conference Adopts Beijing Conventions and Protocol <<http://icaopressroom.worldpress.com/2010/09/10/diplomatic-conference.adoptsbeijing-conventions-and-protocol>. Note that the convention is yet to be enforced; Nigeria signed the convention on the 10th September, 2010. see Convention on suppression of unlawful interference relating to International Civil Aviation done at Beijing on 10th September, 2010<http://www.icao.int/en/leb/list%20Parties/beijing_conv_EN.pdf. The aim and objective of the Convention is to strengthen the aviation security programmes and to cater for new threats of terrorism affecting civil aviation. See the preamble to the Chicago Convention.

⁸ Chicago Convention, Article 17. The article provides that "Aircraft have the nationality of the state in which they are registered".

⁹ Annex 17 is International Standards and Recommend Practices for Safeguarding International Civil Aviation against acts of unlawful interference. See Aviation Security Manual (Restricted) or Doc. 8973 Restricted. Note that pursuant to Article 37 of the Chicago Convention 1944, this Annex has been amended 12 times to meet new current security challenges at the airport.

¹⁰ See ICAO Assembly Resolution A1-31: Definition of International Standards and Recommended Practices", ICAO Doc. 7670, Resolution and Recommendations of the Assembly 1st to 9th Session (1947-1955), Montreal 1956.

interest of safety, regularity or efficiency of international air navigation, and to which member states will endeavour to conform in accordance with the Convention.¹¹

Kotaite, and Haung are of the opinion that SARPs are binding on all the contracting states, unless notification of difference is filed before the ICAO.¹² They based their arguments on the first Assembly Session's definition of SARPs as contained in the ICAO Resolution. On the other hand, Ruwantissa is of the view that SARPs do not carry a mandatory provision. He argued that the legality of SARPs' depends on the Chicago Convention 1944. It is only when the provision of the Chicago Convention is breached that a contracting state would be punished and not when the SARPs is breached.¹³

The word "Standard" is interpreted to mean "official rule",¹⁴ "Recommended" is interpreted to mean, "To advise to do a particular course of action".¹⁵ It is therefore submitted that the ICAO "Standard" is an official rule of ICAO that must be complied with for the suppression of aircraft hijacking, while the "Recommended" Practices are the ICAO's advice to the contracting states on what to do in order to suppress the offence of aircraft hijacking. In addition, the phrases "will conform" and "necessary" in the definition of "Standard" are commanding in nature, while the clause "endeavour to conform", and "desirable" in the definition of "Recommended Practices" are advisory in nature. It therefore connotes that the ICAO "Standard" is binding while the "Recommended practice" is not.

In addition, the last clause of the definition of the "Standard" goes thus: "... in the event of impossibility of compliance notification to the Council is compulsory under Article 38 of the Convention" shows the status of a "Standard" as binding. This is because if the "Standard" is not binding, the definition would not have imposed a "mandatory duty of notification of the impossibility of compliance" with the "Standard".

It should be noted that these International Conventions and Annexes are not sole effort of ICAO as a body; they are made and adopted by the joint efforts of the International Community of which Nigeria is a member.¹⁶

2.1.2 THE NIGERIAN CIVIL AVIATION AUTHORITY (NCAA)

The Nigerian Civil Aviation Authority¹⁷ was established pursuant to the provision of the Nigerian Civil Aviation Act.¹⁸ Among the functions of the Authority is to ensure safety of air transport and safeguarding aviation sector in general for maintaining national security,¹⁹ through its oversight responsibilities. By virtue of these responsibilities, the Authority has, by virtue of section 30 of

¹¹ Ibid. See also Blumenron. J, *Implementations of Transparency in the International Civil Aviation Organizations Universal Safety Oversight Audit Programme*. (Thesis: Institute of Air and Space Law, McGill University, Montreal, February 2009), 8.

¹² See Kotaite S, "Sovereignty under Great Pressure to Accommodate the Growing Need for Global Cooperation", Vol. 50 (1995), *ICAO Journal* at 20; See also Huang, 66-67.

¹³ See R. Abeyrtne, *Aeronautical Law*, 160.

¹⁴ See Wehmeier S, and Ashby M (eds.), *Advanced Learner's Dictionary of current English*, Oxford University Press, New York, 2000, 1164.

¹⁵ Ibid., 977.

¹⁶ The representative of Nigeria in ICAO is the Nigerian Civil Aviation Authority.

¹⁷ Herein after referred to as NCAA.

¹⁸ Nigerian Civil Aviation Act No. 6, 2006, section 2.

¹⁹ Ibid., section 31 (f).

the Act, made Regulations 2009²⁰ and 2012²¹ to maintain national security in the context of air transport business in Nigeria.²²

Section 30 provides:

- (1) "The Authority may by regulation make such provision as expedient:
 - (a) For carrying out the convention on International Civil Aviation..., 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) For carrying out any other treaty or agreement in the field of civil aviation to which Nigeria is a party;..."²³

The above provisions empower the Nigerian Civil Aviation Authority (NCAA) to make regulation(s) with respect to the implementation of Convention on International Civil Aviation (Chicago Convention 1944), the annexes, particularly the Annex 17 therein relating to the international standard and recommended practices on the security of civil aviation, and any amendment thereto; and to implement other aviation security treaties and agreements to which Nigeria is a party. It is assumed that the aim of this section is to secure the civil aviation including but not limited to the airport, passengers and crew, and aircraft whether on the ground or in-flight. Thus, the application of this section has been demonstrated in the Nigerian Civil Aviation Regulations, 2012.²⁴

It is therefore the responsibility of the NCAA to ensure strict compliance with the International Civil Aviation Standard and Recommended Practices, the Nigerian Civil Aviation Act 2006, and the Nigerian Civil Aviation Regulations 2009 and 2012 respectively. The power of the NCAA is derived from the Act itself. The Act states thus:

Section 42 states:

"No aerodrome operator shall permit its aerodrome to be used for operation of air transport service unless he or it has airport security programme approved by the Authority"²⁵

Section 43 provides:

"No airline operator shall operate air transport to, from and within Nigeria unless he has a security programme approved by the Authority"²⁶

The aim and objective of the above sections is to make sure that both the airport and airline operations are conducted in accordance with the ICAO standards and recommended practices on aviation security. The importance of these sections is therefore to secure civil aviation against the unlawful interference that will jeopardise national security in all ramifications. It is assumed that

²⁰ See the Federal Republic of Nigeria official Gazette Vol. 96 (51) Government Notice No. 236, (2009)

²¹ Federal Republic of Nigeria official Gazette Vol. 99. No 78, Government Notice No 207 (2009). See also the Nigerian Civil Aviation Regulations 2012.

²² NCAA Act, 2006, Section 30 of the Act empowers the NCAA to make regulation for the smooth operation of air transport.

²³ Ibid., section 30.

²⁴ See chapter 6.3 for full discussion on Nigerian Civil Aviation Regulation 2012.

²⁵ Ibid., section 42.

²⁶ Ibid., section 43.

the NCAA will not approve any of the airlines or airport operators programmes that failed to meet the minimum security requirements of the ICAO.

Section 44

The Authority or any other person authorized by it by general or special order in writing in this behalf may-

- a. Conduct surveys and inspections of security measures relating to passengers and their cabin baggage, checked baggage, cargo and other goods, access controls and aerodrome design;
- b. Conduct an exercise to check the professional efficiency of those personnel responsible for implementing the aviation security procedures and also to test the adequacy of security measures at any aerodrome in Nigeria"²⁷

It is submitted that the section relates to audit function of the Authority. The Authority in this respect is empowered to audit the security procedures and practices of the airport and airlines operators. This is done through an examination of the entire security programmes and procedures of both the airline and airport operators with the aim of discovering lapse(s) so that adequate suggestion(s) in line with the ICAO standards and recommended practices would be proffered. Further to this is the auditing of both the airport and airline staffs for the purpose of determining how efficient and effective they are in maintaining aviation security in Nigeria. It can be safely concluded that this section allows the Authority to see how the airport and airline operators are implementing the ICAO standards and recommended practices relating to aviation security in Nigeria.

Section 45

- (1) Every person entering an aerodrome and every person before proceeding for boarding an aircraft and his hand baggage, if any, shall be liable to be searched and shall permit to be searched by an aviation security officer or any other person authorized in that behalf in writing by the Minister;²⁸
- (2) (i) Baggage of every person boarding an aircraft and all accompanied baggage shall be screened or subjected to prescribed security control before they are placed on board or carried on an aircraft.²⁹

The section expressly provides for the screening and checking of the passengers, airport and airline workers, hand and checked baggage when entering the aerodrome or before boarding the aircraft. Even though the section did not mention the method of conducting the screening and checking, it assumed that the screening and checking should be by the use of electronic devices, hand wand metal detector or by pat down. The purpose of this section is therefore to detect weapon and other unauthorised materials that may aid the commission of hijacking of aircraft and other related offences. It is also to maintain the security of airport against any of the unlawful interference with the aviation including but not limited to aircraft hijacking.

The authority is to the exclusion of others, is duty bound to represent Nigeria government in matters concerning aviation related issues at National and International conferences. At the Aviation International Security Conferences, it has adopted some Conventions relating to aviation security, such as Tokyo, Hague, Montreal and Beijing on behalf of Nigeria government, for

²⁷ Ibid., section 44 (a) and (b).

²⁸ Ibid., section 45 (1).

²⁹ Ibid., section 45 (2).

smooth operation of air transport in Nigeria. It should be noted that all other aviation agencies are responsible to Nigeria Civil Aviation Authority.

Apart from the oversight function of the NCAA, the Authority is statutorily empowered to make regulation for the prevention of communicable disease(s) in Nigeria. This power is derived from the NCAA Act which reads thus:

The Authority in consultation with other relevant government agencies may, make regulations for the prevention of danger arising to public health by the introduction or spread of any infectious or contagious.....³⁰

For clarification purpose, the term 'Authority' has been defined to mean the "Nigerian Civil Aviation Authority."³¹ The word "May" as contained in the section carried mandatory status. This is because, it is used in a section in which penalty is stated for its breach. The above submission is based on the case of *Iyoho v. Effiong*³² where the Nigeria Supreme Court concluded that it is not all cases that the word "May" is used as discretionary, in some instances, it may be synonymous with "shall" or "must" usually in an effort to effectuate legislative intent.³³ Considering the intention of the legislature to prevent the disease and its spread in Nigeria, the word 'may' should in this instance be interpreted to carry mandatory status, otherwise justice will be enslaved to grammar.³⁴ It is submitted that it is only when the word "may" is interpreted to mean mandatory word that the aims and objectives of the section would be realised.

While the general aims and objectives of section 64 are: to prevent the importations of infectious disease, such as EVD to Nigeria; to prevent the spread of communicable disease to any part of Nigeria; and to prevent the exportation of such disease(s) to any other part of the world, the specific aim and objective of the section is to protect the public health against disease. The application of this section is vested in the NCAA to maintain national security against transport or spread of disease in Nigeria. Its implementation has been shown by the NCAA and the Port Health Service when a South African woman on arrival to Lagos was checked for EVD having being suspected of contracting the disease. According to the Port Health Authority, the purpose is to detect whether or not she has been infected, since she has been in Guinea and Sierra Leone.³⁵

Having vested with power to make regulations in respect of the prevention of spread of the disease, the duty of the Authority is not only to regulate the spread of disease but to monitor the implementation of the regulations on the prevention and spread of the disease. All other agencies that are connected in one way or the other with civil aviation matters (apart from the Federal Airport Authority of Nigeria) are for aviation safety as opposed to aviation security.

2.2 Aviation Security Operator

Aviation Security Operator is referring to the agency responsible for managing all the Nigeria airports. Thus the agency responsible for operating all Nigeria airports except one is the Federal

³⁰ See section 64 of the Nigerian Civil Aviation Act, 2006.

³¹ See Nigerian Civil Aviation Act, 2006; sec. 78 (i). The Nigerian Civil Aviation Authority (NCAA) was established under section 2(1) of the Act to perform certain functions and power under the Act. See section 30 of the Act.

³² *Iyoho v Effiong* (2007) All FWLR (pt. 374) S.C 204.

³³ Ibid, 206. See also the definition of "may" as contained in the Black's Law Dictionary, Eight Edition, at 1000.

³⁴ See *Orakul Resources Ltd v. N.C.C.* (2007) All FWLR (pt. 390), 1489.

³⁵ See Reuters, 'Nigeria checking S/A woman as suspected Ebola case' Daily Trust, 12th September, 2014. P.3; Nigerian Civil Aviation Act, 2006; Sec 65. Note that Guinea and Seria Leone are the other two West Africa Countries that have declared unsafe because of EVD.

Airport Authority of Nigeria.³⁶ To effectively carry out its responsibilities, the FAAN shall exercise power, subject to the approval of the Minister of Aviation, to make bye-laws for; (1) the security of airport, aircraft, and the airport users; (2) to prevent danger arising from the use and operation of the airport and its facilities to the public; and (3) to prohibit and restrict access to any part of the airport.³⁷

To further facilitate, and maintain national security, the Act empowers the Minister of Aviation, to give directive with regard to any matter concerning national security.³⁸

Section 8 provides:

Notwithstanding any other provision of this Act, the Minister may give to the Authority directions to do a particular thing which it has power to do or refrain from doing a particular thing if the Minister considers it appropriate to give such directions

(a) in the interest of national security; or

Therefore, very important role of FAAN is to operate all Nigeria airports in safe and secure manner that will protect passengers, aircrafts and other airport users from danger and other aviation offences. In fact, the Minister is under obligation to direct the FAAN to do or from doing any act that will or likely to jeopardise the national safety and security.

As at the time of writing, the Nigerian International Airports managed by the FAAN are Murtala Muhammed International Airport, Ikeja, Lagos; Nnamdi Azikwe international airport, Abuja; Amino Kano international airport Kano; and Porthacourt international airport. The major domestic airports are Calabar airport; Enugu airport; Jos airport; Kaduna airport; Maiduguri airport; Sokoto airport; Yola airport; Akure airport; Bauchi airport; Ilorin international airport; Airport Ibadan; Benni Airport; Katshina airport; Makurdi airport; Minna airport; Owerri airport; Warri airport; and Zaria airport.³⁹

3.0 AIRPORT OPERATOR AND NATIONAL SECURITY

The airport operator, the FAAN is under obligation to adopt bye-law for implementing all the international laws, Standards and Recommended Practices on aviation security for the purpose of maintaining national security. Maintenance of national security at the airport is under the responsibility of Aviation Security Department of the FAAN.⁴⁰ The AVSEC Department works in synergy with other security agencies at the airport as required by the FAAN. Other security agencies include the Nigerian Air Force⁴¹, the Nigerian Police Force⁴² and the Nigeria Security and Civil Defence Corps⁴³; they therefore oblige to secure Airport and Aircraft respectively. The

³⁶ Federal Airport Authority Act cap F5 Laws of Federation of Republic of Nigeria, 2004. Section 1(1).

³⁷ See Federal Airport Authority of Nigeria Act, Cap F5 LFN, 2004, section 3

³⁸ Ibid, Section 8.

³⁹ See < <http://www.faannigeria.org/about-faan/safety-and-engineering.html> > (accessed on 18 May, 2015).

⁴⁰ Herein after referred to as AVSEC.

⁴¹ The Nigeria Air Force was established by the Armed Force Act Cap A20 LFN 2004. Amongst her functions are to enforce and assist in coordinating the enforcement of international law, Conventions, practices and customs ascribed or acceded to by the Nigeria; Coordinate and enforce national and international air laws accede or ascribed to by Nigeria; Delineate, demarcate and coordinate all aerial surveys and security zones of the Nigeria air space. See Section 1 (3) (b) (i-iii) Armed Force Act Cap A20 LFN 2004.

⁴² The Nigeria Police Force was established by Section 3 of the Nigeria Police Act, LFN 2004. Amongst the duties are to prevent and detect crimes, apprehension of offenders, preservation of law and order; protection of life and property; due enforcement of all laws and regulations; perform military duties within and outside Nigeria as may be required of them. See Section 4 of the Act.

⁴³ Nigeria Security and Civil Defence Corp was established by Section 1 of the Nigerian Security and Civil Defence Corp Act No 73, 2007. Amongst the duties are to assist in maintenance of peace and order and in the

practical security arrangement in maintaining national security through the aviation sector is divided into Airport and Aircraft security.

Airport and Aircraft bear nationality of a particular country where it is located and registered. Thus, insecurity of airport and aircraft means national insecurity. Therefore, it is very important to secure airport and aircraft for the purpose of maintaining national security.

The Airport perimeter is divided into two viz Restricted and Non-restricted areas. A Non-restricted Areas are those that are generally accessible to the general public. Such areas include Administrative Offices, and car park. Restricted areas of the airport are those that are not generally accessible to the public. These areas include sterile areas,⁴⁴ and aerodrome⁴⁵.

The airport and aircraft security arrangement is designed by the FAAN in collaboration with other Federal Government Security Agencies, such as the Nigerian Police Force, the Nigeria Security and Civil Defence Corps; and the Nigeria Air Force. The security arrangements include erection of physical barriers, security patrol of the airport, provision of fire service Unit; and screening of passengers, luggage and baggages.

Physical barriers are erected around the airport perimeter to demarcate the airport boundaries. The barrier may be in form of concrete fencing or chain linking fencing.⁴⁶ The security purpose of erection of physical barrier around the airport is to fence off the airport terminal from public access and for the smooth operation of airport business as well as maintaining aviation security as specified by ICAO Annex 17 to Chicago Convention.⁴⁷

Security patrol of the airport perimeter is another major step in securing aviation safety for the purpose of maintaining national security. The duty to patrol airport terminal is invariably vested in Nigeria Police⁴⁸, Airport command. The purpose of security patrol of the airport is to safeguard the airport terminal, aircraft and air navigation facilities as well as maintaining security of life and property of passengers.⁴⁹

Another security arrangement for the purpose of maintaining national security through aviation sector is the provision for Fire Service Unit. The Fire Service Unit in collaboration with the Nigeria Civil Defence Corps provides Fire Service rescue mission in case of emergency at the Airport. This is done to protect the life and property within the airport perimeter.⁵⁰

The major security arrangement in the aviation sector is the screening of passengers, hand luggage and baggages. Screening is the physical inspection of passenger and hand luggage manually or technologically. The screening of passenger started in the early 70s as a way to prevent and suppress unlawful interference with civil aviation.⁵¹

The screening of passengers and their luggage and baggages start at the Airport main entrance gate. This is conducted by the Nigeria Security and Civil Defence Corp in collaboration

protection and rescuing of civil population during the period of emergency; maintaining 24hours surveillance over infrastructures, sites and projects for the Federal, States and Local Government; Monitor, investigate and report same to appropriate Federal Security agency. See Section 3 of the Act.

⁴⁴ These are the areas within the terminal where passengers wait after they have been screened. See Jeffrey and Jeffrey, *Practical Aviation Security: predicting and Preventing Future Threats* (Oxford, Butterworth, 2009) 197.

⁴⁵ This consists of Taxiway, airside and Runaway.

⁴⁶ For example, Ilorin International Airport is demarcated by chain linking barrier.

⁴⁷ See Chapter 8, attachment to Annex 17, particularly paragraph 8.4.

⁴⁹ Interview conducted with O/c Nigeria Police Force, Airport Command, Ilorin International Airport, Ilorin on 25th September, 2012.

⁵⁰ Interviews conducted with O/c Civil Defence Corp International Airport, Ilorin on 26th September, 2012.

⁵¹ Jeffery and Jeffrey, n.23 at 190

with AVSEC officer. The Corp shall question the passengers on their mission at the airport. They equally conduct screening by checking the boot of any vehicle due to enter the airport. According to the Civil Defence officer posted to Ilorin International Airport, Ilorin, Kwara State, Nigeria, the purpose of screening and checking of vehicle and people entering the airport is to detect prohibited items such as explosives, knife, guns and other prohibited items. He stated that the purpose of the general checking and screening is to safeguard the airport, aircraft and air navigational facilities.⁵²

Having passed through the entrance gate screening, the next stage is pre- boarding screening. Here, the passenger shall undergo Travel document verification. The Nigeria Immigration⁵³ personnel check the validity of passengers Travel documentation, review their reasons for entering Nigeria and determine the visitor's expected duration of stay. The purpose of verification of Travel document is to know the validity, authenticity and the duration of stay of the passengers, and at the same time to profile⁵⁴ the information supplied by the passenger. It is therefore noticeable that the aim and objective of the verification is to safeguard national security through detection of fake passport and false information that might have been provided by a passenger.

The functions and duties of custom officer⁵⁵ in aviation security cannot be over-emphasised. At the screening point, where they are due to check baggages and luggages for the purpose of detecting transportation of prohibited goods, and narcotic drugs. At the Muritala Muhammed International Airport, Lagos, Nigeria, most baggages and luggage are checked and inspected through the X-ray machine. The purpose of baggage screening and checking is to detect whether passenger carries prohibited item that could endanger aircraft navigation.

Having passed through baggage and luggage checking and inspection, the next stage is the screening of passenger. The AVSEC and Airline Security personnel are two agencies that conduct the physical screening of passenger.

The AVSEC conduct its screening through Walk Through Detector Machine, Hand-Wand Detector; X-ray machine for hand luggages and physical inspection.

The authors experienced the screening and checking procedure by the AVSEC at Muritala Muhammed International Airport, Lagos. The passenger is called by the AVSEC staff to remove outer attires and anything that may set off metal detector, such as Laptop, Belt, Hand phone, Coins, DVD players and any other metallic object. All these items are placed in a poly container and sent through the X-ray machine for inspection. Baggage or luggage that contains prohibited item or threat item is often checked physically using an Explosive Trace Detection Machine. If the bag contains apparent bomb, the suspected bag will then be kept in X-ray machine to further screen and prevent attempt by the owner to pull the bag away from the

⁵² Interview conducted with the Civil Defence Corp, Airport command Ilorin International Airport Authority, Ilorin on 25th September, 2012.

⁵³ Among the general functions of the Nigeria Immigration are to examine persons landing or embarking, and to furnish information in his possession to the appropriate authority in accordance with the provision of the Act; Control of visitors and transit of passengers; and to verify passengers travel documents. See sections 2 and 11 of the Immigration Act Cap I1, LFN, 2004.

⁵⁴ Passenger profiling is based on suspicious signs in a passenger's documentation, itinerary, appearance, or behaviour. This has been used to identify and deter terrorist attacks and to apprehended drug smugglers, money launderers, petty thieves, and illegal immigrants. See Jeffery, n. 21 at 207.

⁵⁵ Nigeria Custom was established by section 1 of the custom and Excise Management Act Cap C45 LFN, 2004. Among the general functions of the Custom are to restrict importation or exportation of goods in and out of Nigeria; examination of goods and payment of duty chargeable on any goods imported or exported in Nigeria.

AVSEC officer. At this stage, the screener will then notify the law enforcement agent for further screening and interrogation of the owner.⁵⁶

Pre-boarding of passenger starts when the passenger is requested to walk through metal detector. Passenger who set off the detector's alarm are asked to step aside until another search is conducted. A secondary search is conducted on suspected passenger through the use of Hand Wand or Pot-down metal detector after he might have removed the additional item that triggered the alarm. If such passenger passed the secondary screening, he will reunite with his luggage and be allowed to proceed to sterile area. However, if he failed, he will be handed to the law enforcement agent for further investigation and interrogation.⁵⁷

This procedure is generally recognised throughout the world as it is in line with the ICAO's standards and recommended practices relating to safeguarding International Civil Aviation against the acts of unlawful interference.⁵⁸

It is submitted that the purpose of this procedure is to detect the criminals from attacking the airport and aircraft which carry national flag of state of registration; and the safety of life and property of other passengers. The Airlines conduct the additional screening of passengers at the departure gate. The Airliner personnel questioned passenger on passport, Visa, Ticket and passenger's mission in the country he is going. Rodney is of the opinion that doubts the efficiency of the first screening conducted by the Airport operator, since it is their responsibility to maintain aircraft security.

The contribution of airline operators to national security needs to be analysed. The airline operators are the final agents of implementation of global and state laws and guidelines on aviation security. Security patrol of the airside and parked aircraft is one of the responsibilities of the airline operators to protect the aircraft is a responsibility of the airlines operator.⁵⁹ The importance of this procedure is therefore to detect the placement of explosives or other dangerous materials that will pose threat and danger to the airline, passengers and their properties.

Searching and checking of the aircraft to detect explosives, weapons and other dangerous devices is another major responsibility of the airline operators.⁶⁰ It is submitted that the combination of flight crew and cabin cleaners should search the aircraft before the aircraft departs to its original destination. Constant searching and checking of all the aircrafts itineraries, pillows, and blankets, usable and non-usable materials before the passengers should be allowed to board the aircraft is highly recommended. The importance of aircraft searching is to detect the placement of concealed explosives or weapons between flights.⁶¹

⁵⁶ Attachment to Annex 17: Extracts from Annex 9, Paragraph 3.30.

⁵⁷ Interview conducted with O/c Admin. AVSEC Ilorin International Airport, Ilorin on 26th September, 2012.

⁵⁸ See attachment to Annex 17: Extracts from Annex 9.

⁵⁹ Appendix B to ICAO resolution A17-10 (1970)- protection of aircraft of ground and ground installations and facilities, paragraph 3, cited as 9 ILM 1278, 1970; See also Appendix A to ICAO resolution A 17-10 (1970)- protection of aircraft on the ground and ground installations and facilities, paragraph 5, cited as 9 ILM 1278, 1970. See also Annex 17 chapter 4, standard 4.4.

⁶⁰ Appendix B to ICAO Resolution, A 17-10 (1970) - Protection of aircraft on the ground and ground installations and facilities, paragraph 8, cited as 9 ILM 1278, 1970.

⁶¹ For instance, searching of twelve US. Airline prevented its bombing in 1995 when Yousef and his co-offenders hide explosive that was timed to detonate at Pacific Ocean. See Jeffrey and Jeffrey, 270.

The ICAO Resolution A17-10 of 1970 obliges the airliners to always lock the cockpit door of the aircraft.⁶² The importance of this resolution is to guard and guide against unlawful interference with the operation of aircraft in-flight.

Armed Air marshal should be deployed to coordinate the in-flight security activity.⁶³ He is to prevent any attempt to hijack the aircraft.⁶⁴ There is controversy as to the deployment of air marshal. The United States of America, Germany, Britain France and Switzerland favour the deployment of air marshal, while South Africa and Thailand seriously oppose it on the ground that it would encourage the carriage of ammunition into the aircraft.⁶⁵ Wallis and Jeffrey posit that the Air Marshal must be intelligent and independent to make quick decisions, be knowledgeable about the geographical location and political situation of the route of the airline, and must approach issue (s) in "civilian style rather than military style".⁶⁶ Jeffrey further submitted that the Air Marshal is authorised to wear ordinary cloth that will not attract the attention of the passengers, and to armed with a lesser-armed ammunition that will not cause damage to the other passengers and aircraft.⁶⁷

It is submitted that, the nature of security duties of air Marshal resembles that of "*agent provocateur*".⁶⁸ The *agent provocateur* is like a security man who does not dress in a military or law enforcement attires and devoid of a military-style haircuts. They are informally dressed. This allows people to lose attraction and not pay attention to them. The thesis therefore agrees that Air Marshal should dress informally so that he will not be attractive to the passengers, due to the nature of the security duties he is deployed to perform.

Installation of the CCTV cameras in the aircraft is highly encouraged to survey the whole cabin of the aircraft.⁶⁹ This will serve as a means of seeing what is happening in the entire aircraft, particularly outside the cockpit door. Elias posits that it will serve as a "security device to control access to the flight deck".⁷⁰ The challenges on the use of CCTV are the ability of the viewer to concentrate; and the high cost of purchase, installation and maintenance.

⁶² Appendix A to Resolution A17-10(1970), paragraph 33 –General security measures aboard aircraft in-flight), cited as 9 ILM 1278. See also Extracts from Annex 6-operation of aircraft, part 1-international commercial air transport Aero planes, standard 13 section 1. Elias defined cockpit door locking as a "short term in-flight security measure that consist of door modifications for stronger internal locking devices that can only be unlocked from inside the flight deck and reinforced bars to bind attempted force entry into the cockpit". Elias, 236; See also Howard M, *Double door security system for aircraft and the like*, patent Number US 669679 B2, 6 March 2002 at 1; See also Gerald, D.S, *Aircraft security system*, Patent Number US 6474599, 5 November 2002, 1.

⁶³ Appendix B to ICAO Resolution A17-10(1970) paragraph 29-General measures aboard aircraft in-flight, cited as 9 ILM 1278, 1970.

⁶⁴ Thomas, 215.

⁶⁵ See generally Bruce Z, "U.S anti-terrorism prevention measures continues and produces negotiation and frictions abroad" Vol. 20 No 3, (2004) *International Enforcement Law Reporter*.

⁶⁶ Wallis, 123-124; See also Jeffrey and Jeffrey, 138.

⁶⁷ Jeffrey and Jeffrey, 137.

⁶⁸ The term '*agent provocateur*' is loosely used in two senses in Nigeria to include (a) police officers and their aides who positively incites or provoke then join in the commission of a crime; and (b) such officers and aides who being aware that a person or group of persons has manifested a clear intention to commit a crime but join in to facilitate the commission of the crime in order that the criminal(s) may be caught. These can best be described as Detection by deception. *Rv. Murphy [1953] N.I. 138 at 147-148*. See generally on agent provocateur, Aguda, T.A, *The Law of Evidence*, Spectrum Books Limited, Ibadan, 1999, 331.

⁶⁹ Appendix A to ICAO Resolution A17-10 (1970)–General security measures Aboard Aircraft in-flight, paragraph 34, cited as 9 ILM 1278, 1970.

⁷⁰ Elias, 239.

4.0 CHALLENGES FACING AVIATION SECTOR IN NIGERIA

Many challenges are facing the Nigeria aviation sector. These challenges hinder proper implementation of aviation security programmes designed to protect both airport and aircraft in the interest of Nigeria.

Such challenges include: interrupted power supply, inadequate funding, and inadequate modern equipment, lack of technocrats in the field of aviation security, Poor Welfarism of Aviation Personnel and corruption.

The ICAO Standards and Recommend Practices require all Airports to be under illumination or floodlight all the time for security purpose.⁷¹

It is recommended that Apron Floodlighting should be provided on an apron, and on a designated isolated aircraft parking position, intended to be used at night and at the Aerodrome where it is deemed desirable for security reason.⁷² The practical purpose of this recommendation is to safeguard airport facilities and aircraft especially with the current insecurity situation in Nigeria where “Boko Haram” is causing damages than what could be imagined. It is therefore submitted that interrupted power supply in Nigeria Airport for example at Ilorin International Airport poses a big challenge to smooth implementation of aircraft and airport security. This ia a big challenge to the Nigerian government.

Another challenge is inadequate funding of Nigeria aviation sector. New modern tools for screening and checking of passengers are expensive. Some of these modern equipment are grossly inadequate due to lack of fund to purchase them. For instance at the Ilorin International Airport, only one Walk Through Metal Detector machine and Baggage X-ray machine are provided at the sterile area of the airport. In fact, none of these machines is available at the checking hall for the International Passenger. This will considerably affect smooth and adequate operation of security programme of the airport operator.

In addition to the above challenges is corruption. Corruption has eaten deep into all the fabric of activities in Nigeria. Most aviation security officers are corrupt. Affected passenger relay experiences when travelling out of Nigeria. Some security officers allegedly demand for bribe to circumvent security procedure. The consequence of corrupt practices in aviation sector will therefore bring about breach of security programme and invariably result to insecurity of aviation sector; it is obviously bound to snowball into national insecurity, not only at the airport but the country at large.

A very fundamental challenge to the AVSEC departments across the globe is the issue of passengers’ fundamental human right to privacy. The human right activists contended that the use of scanning devices that display full body image of passengers is totally in contravention of the basic fundamental human right to privacy.⁷³ In response to the argument of the activists, the Aviation security practitioners canvass that they are duty bound to prevent and suppress any of the offences against civil aviation, thus, the need to adopt such devices to protect civil aviation. The practitioners further contend that even though the passengers’ image is fully displayed on the screen,

⁷¹ Attachment to Annex 17: Extracts from Annex 14 Vol.1 Paragraph 5.3 and 8.5.

⁷² Ibid.

⁷³ See American Civil Liberties Union, Airport Security: Increased safety needs not come at the expense of civil liberties < <http://www.adu.org/nationalsecurityfacts-airport-security> , accessed 20 January 2013. See also Ismail Mustapha Adua, *International Law on aircraft hijacking: The practice in Malaysia and Nigeria* (Ph.D Thesis submitted to the International Islamic University Malaysia, 2014), 180-181.

the operator is to analyse the result of the scanned passenger to know whether the passenger constitutes a danger to civil aviation.⁷⁴

It is submitted that the defence of the AVSEC department tends to outweigh the contention of the human right activists. The current insecurity in Nigeria is a patent circumstance where such a device could be adopted to secure the civil aviation. However, the AVSEC should still give regard to basic fundamental human right to privacy of passengers. It is our view that it is only when the civil aviation is threatened or likely to be threatened that such a device should be adopted.

5.0 CONCLUSION AND RECOMMENDATIONS

The airport is undoubtedly a mini state within a particular state that deserves special security attention. This is because whenever there is insecurity at the airport it will result in loss of lives and properties thereby affecting the national security of Nigeria.

To maintain National Security, the FAAN, NCAA in collaboration with other security agencies should perform security functions and duties at the airport perimeter. Both the outgoing and incoming passengers are being screened in order to meet the security programmes designed by the ICAO as specified by the Nigeria Aviation regulator and operator. The screening programmes include but not limited to screening of passengers, hand luggage and baggages, while other security arrangements include Airport patrol, fencing and lighting to prevent trespasser from trespassing the airport perimeter. All these are provided for the security of airport and Nigerian as a whole.

In as much as these security programmes and procedures are desirable, certain challenges are hindering their success. Such challenges, as stated in the body of the paper, need to be addressed positively. The paper therefore recommends the following as solutions to the challenges hindering smooth operation of security programmes at the airport.

Government should provide adequate fund to the aviation sector so that the sector will be able to purchase modern aviation security equipment in accordance with ICAO standards and recommend practices.

An improved staff welfarism should be designed to stem corruption within the security agencies at the airport. Adequate remuneration and conducive work environment should be provided by the relevant agencies and government.

Provision of independent power supply to the airport is desirable for proper illumination of the airport and aircraft areas. This will further improve security of airport, lives and properties.

⁷⁴ Director of Aviation Security, FAAN, interview conducted by the authors at the Ilorin International Airport, Ilorin on 25 October 2012.