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INTERNATIONAL LAW RESPONSE TO HEALTH INSECURITY IN THE CONTRACT OF CARRIAGE BY AIR

ISMAIL Adua Mustapha * ISMAILA Shehu Salaudeen* & JOHN Afolabi Ogedengbe*

Abstract

This paper appraises the various options for controlling the emergence and spread of these diseases by key players in the fight against the transport of disease in the contract of passengers by air. The paper adopts doctrinal research method wherein information's are sourced from primary and secondary sources of law. The paper finds and concludes that despite the laws, regulations, and guidelines on the control of diseases of international concern, failure to have a core preparedness plan and weak implementation is negatively affecting the adequate control of the spread of infectious diseases especially in the carriage of passengers by air. The paper in its final analysis, recommends that State parties should prepare to implement the legal and practical guidelines on the control and prevention of diseases through the implementation of the doctrine of "no vaccination no flying".

Keywords: Health insecurity; International Law; Response; Contract; Carriage by Air

*Ph.D. Department of Business Law, Faculty of Law, University of Ilorin, Nigeria
ismailam@unilorin.edu.ng; ismadua@yahoo.com +2348062643265; +2349022265228
*Ph.D. Candidate, Faculty of Law, University of Ilorin issigbaja@gmail.com +2348062621604
*Department of Jurisprudence and International Law, Faculty of Law, University of Ilorin,
+2347068245777 ogedengbe.ja@unilorin.edu.ng

1.0. Introduction

In the last and current decades, civil aviation has turned into an agent of spreading communicable diseases, the consequences of which national and international travel have suffered from bans or restrictions. Consequently, the international community witnessed retarded growth and development due to restrictions and bans placed on the movement of passengers and goods from one destination to another via air transport. However, despite the patent demonstration of health insecurity in the aviation industry, human beings still prefer to travel by air not minding the fact that their movement is vulnerable to contacting communicable diseases declared to be of public risk.¹

While air transportation is known for speed and bringing the world closer. Its negative characteristics include the speedy spread of diseases of international concern by carriage of infected, affected, and contaminated goods, and cargoes just to mention but a few.² It is an evident fact that diseases such as SARS in 2003, the Ebola virus, and the Coronavirus (COVID-19) have been greatly affecting the health security and peaceful coexistence of the international community more than the war in Iraq was noticed.³ The issue of health security during the execution of the contract of carriage of passengers by air entails the swift application of the laws, regulations, and guidelines on the control of diseases that will affect civil aviation objects and subjects as a whole. While objects include but are not limited to aircraft, Aerodromes, and Airport facilities, the subject of civil aviation are airline passengers, Pilots and crews, and other airport workers; they must be safe and secured during the process of transporting already

¹ An example on 20th July 2014, Ebola got into Nigeria by Patrick Sawyer, a passenger carried by air. See F. Shuaib et al. 'Ebola virus disease outbreak - Nigeria, July-September 2014' 63 (2014) *Morb. Mortal Wkly. Rep.* 867-872. See also Fasina F.O. 'Transmission dynamics and control of Ebola virus disease outbreak in Nigeria, July to September 2014' 19 (2014) *Euro Surveill* 209; and Althaus C.L. et al. 'Ebola virus disease outbreak in Nigeria: Transmission dynamics and rapid control' 11 (2015) *Epidemic* 80-84.

² Courtney Clegg, 'The Aviation Industry and the Transmission of Communicable Disease: The Case of H1N1 Swine Influenza' 75 (2010) *J. AIR L. & COM.* 438.

³ "Coronavirus: Worldwide cases overtake 2003 SARS outbreak" BBC NEWS 31 January 2020 <https://www.bbc.com/news/world-51322733>.

⁴ For the meaning of the Contract of carriage of passengers by air see Ismail M. Adua, 'Rights of Passengers in the Contract of Carriage by Air: A critical Approach under the Nigerian Civil Aviation Law' 6(1) (2018) *African Nazarene University Law Journal* 2.

infected passengers from one destination to other parts of the world⁵ for adequate treatment. Because it is easier for passengers to contract these diseases by mere slightest contact with the already infected persons on board the aircraft, contact with contaminated surfaces, and faulty ventilating or filtering systems of the aircraft.

It is on this note that this article attempts to answer the question: Is there health insecurity in the contract of carriage by air? What is the response of international law to prevent and suppress health insecurity in the contract of carriage by air? And Who are those internationally responsible for maintaining health security in the contract of carriage by air? These posers are dealt with in the paper to achieve its aim and objectives. The article is doctrinal research. It therefore adopts a qualitative legal research method wherein primary and secondary sources of law are called in aid to achieve the aim and objective(s) of the article. Consequently, the Paper is divided into five parts. Part, one introduces the title of the paper; part two examines the institutional framework for preventing and suppressing health insecurity in the contract of carriage by air. Part three discusses the existing regulatory response to secure air transport from the carriage of communicable diseases and to maintain health security; part four dwells on the discussion and findings of the paper; and the last part concludes and makes suggestions to ambivalences discovered in the implementation of the responses.

2.0. Institutional Responses to Control and Prevent Health Insecurity in the Contract of Carriage by Air

National and international institutions have been at the forefront of combating the transport of communicable diseases worldwide. Their efforts toward outright eradication of communicable diseases are noticed within the context of aviation security laws and safety policies. The institutions and their legal responses are quickly examined hereunder.

World Health Organisation (Who)

Under Article 57 of the United Charter, the WHO was established as a United Nations specialised agency in 1948 with its main objective of "attainment by all peoples of the highest possible level of health."⁶ To effectively and efficiently accomplish the objectives, the World Health Assembly,

⁵ Diego. A. Tabares, 'An Airport Operations Proposal for A Pandemic-Free Air Travel' 90 (2021) *Journal of Air Transport Management* 101.
⁶ World Health Organization Constitution, 1946, art. 1. The Constitution was adopted by the International Health Conference held in New York from 19 June to 22 July 1946, signed on 22 July 1946 by the representatives of 61 States (*Off. Rec. Wld Hlth Org.*, 2, 100), and entered into force on 7 April 1948. Amendments adopted by the Twenty-sixth, Twenty-ninth, Thirty-ninth and Fifty-first World Health Assemblies (resolutions WHA26.37, WHA29.38, WHA39.6).

The Executive Board, and the Secretariat are designated as the organs to carry out the functions of the Organisation as specified in Article 2 of its Constitution.⁸ However, the relevant organ of the Organisation relating to the right to good health is the WHO Health Assembly. The Assembly is to perform the major functions of the Organization as prescribed in the Organization's Constitution including but not limited to the adoption of health regulations as may be required from time to time to control and prevent the transport of communicable diseases through the air the transport.⁹

Historically, the need to adopt an international agreement/convention to suppress and prevent the spread of diseases from one country to another through air navigation began in 1933. Thus, the need for a comparable code of practice to apply to transport by air with that of water navigation is relevant. Subsequently, the Office International d'Hygiène Publique, in agreement with appropriate bodies, made and presented a draft text of a convention for signature at The Hague in 1933. Thus, the adoption of the 1933 International Sanitary Convention for Aerial Navigation which was later modified by the International Sanitary Convention for Aerial Navigation, 1944, came into force on 15 January 1945, having been signed by 17 governments. The Protocols to prolong the 1944 conventions were signed in Washington in 1946.¹⁰

It should be noted that by the first half of the twentieth century, there were a multiplicity of conventions and or arrangements having a diplomatic character on health control procedures, not completely superseding their predecessors, to be taken at frontiers. Consequently, these created the problem of multiplicity of the obligations undertaken by States to some of these conventions; thereby resulting in trouble and confusion in international ways. Also, each convention has its special procedure by which it has to be signed subject to ratification which might not allow simultaneous application of the agreed text everywhere, or could not be readily and easily brought up to date to take into account the changing epidemiological situation, "the experience gained or the progress of science and technique". In March and April 1946, the Technical Preparatory Committee of the International Health Conference considered these challenges and made resolutions to revise and

and WHA51.23) came into force on 3 February 1977, 20 January 1984, 11 July 1994 and 15 September 2005 respectively and are incorporated in the present text.

⁸ Ibid; article 2. The Article is all encompassing with wide range of functions empowering the Organization to contact and liaise with the other specialized agencies of United Nations in dealing with emergency health concern affecting international community.

⁹ Ibid, article 9.

¹⁰ See generally World Health Constitution 1946, articles 21 and 22 respectively.

¹¹ See Official World Record of World Health Organization, No. 37; International Sanitary Regulations: Proceedings of the Special Committee and of the Fourth World Health Assembly on WHO Regulations No. 2, World Health Organization, Palais Des Nation, Geneva, April 1952, pp. 1-2.

consolidate all the conventions into an agreed single text of the International Sanitary Conventions applicable to all means of transport. In June and July of the same year, the Conference took up the resolutions and it was universally recognised the need to unify all the international sanitary arrangements which was later drafted into the Constitution of the World Health Organisation, particularly Article 21, which empowers the Health Assembly to adopt regulations concerning sanitary and quarantine requirements as well as other procedures designed to prevent international spread of disease,¹¹ with the flexibility in revising the Regulations subject to present advancement in medical and technical knowledge, and means of transportation. This was however incorporated as Article 22 of the Constitution.¹²

A further comparison of the predecessor's Sanitary Regulations with the 1946 Regulations revealed that the amendment procedure in the latest regulation is simple. All that is required is an exercise of the World Health Assembly's discretionary power to revise the Regulations promptly and continually subject to changing circumstances and needs of the members. Consequently, in the early months of its existence, the Interim Commission of the World Health Organisation established expert committees to prepare a revision of existing sanitary conventions subject to the sanitary control of the Mecca Pilgrimage and modern advances in epidemiology and methods of disinfecting.

Consequently, the Expert Committee on International Epidemiology and Quarantine adopted the technical documentation of the Interim Commission of WHO in framing a set of principles to serve as a guide to preparing the new international sanitary regulations. Thereafter, the Second World Health Assembly approved the principles of the Expert Committee thereby leading to a preliminary draft that was produced with the help of a legal sub-committee. A further study of comments and suggestions from governments led to another draft to which the Special Committee¹³ produced a final draft for the Fourth World Health Assembly to adopt. It should be

¹¹ This position was adopted by the second session of the Interim Commission of the World Health Organization, in November 1946. See second session of the Interim Commission of the World Health Organization, in November 1946. United Nations, World Health Organization, Interim Commission. <https://apps.who.int/iris/handle/10665/85583>

¹² WHO Constitution, art. 22.

¹³ The Special Committee established by the Third World Health Assembly (resolution WHA3.71.1 to consider the draft International Sanitary Regulations met from 9 April until 15 May 1951 in the Palais des Nations, Geneva, and held 36 plenary meetings under the chairmanship of Dr. M. T Morgan (United Kingdom). See International Sanitary Regulations: Proceedings of the Special Committee and of the Fourth World Health Assembly on WHO Regulations No. 2, World Health Organization, Palais Des Nation, Geneva, April 1952, pp. 1-2.

¹⁴ The Fourth World Health Assembly, also held in the Palais des Nations (7 to 25 May), appointed as one of its main committees the Committee on International Sanitary Regulations-again with Dr. Morgan as Chairman-which considered the text of the Regulations prepared by the above Special Committee. See Official World Record of

noted that the cardinal principles which must be considered when amending the Regulations must be "the search for maximum security against the international spread of disease with minimum interference with world traffic". Thus, the final draft was adopted unanimously on 25 May 1951 by the representatives of the 60 governments present at the Fourth World Health Assembly.¹⁵

It needs to be stated that the institutional efforts of the WHO and ICAO to secure air transport of communicable diseases are patently clear by the adoption of International Sanitary Regulations 1951 and 1969; International Health Regulations 2005; and ICAO Chicago Convention 1944 and its related health annexes and guidelines. These Regulations have been at the forefront of maintaining health security in contracts of carriage by air.

1. *Adoption of International Health Regulations*

The International Sanitary Regulations 1951, Health Regulations 1969, and 2005 regulating health security of the world were adopted in pursuance to articles 2(k), 21 (a), 22, 23, 33, 62, 63, and 64 of the World Health Organisation Constitution to provide for international standardised procedures for disease eradication and those that are necessary to limit the extension of outbreaks of disease which will effectively ensure the highest security against the world spread of disease with the minimum interference with international traffic.¹⁶ The 2005 Regulations being the current law regulating the control and prevention of the spread of disease shall be examined in the next section of this paper.

2. *Introduction of International Certificate of Vaccination or Prophylaxis*

Also known as the Yellow Card,¹⁷ it is an official vaccination record created by WHO that covers diseases ranging from cholera to yellow fever. The Yellow Card serves as a sort of medical passport that may be a prerequisite for traveling to countries where there are increased health risks for travelers.¹⁸ It is part of pre-airport or pre-flight screening measures to save time and also prevent infected persons from arriving at airports where there may exist a higher probability of transmitting the

World Health Organization No. 37; International Sanitary Regulations: Proceedings of the Special Committee and of the Fourth World Health Assembly on WHO Regulations No. 2, World Health Organization, Palais Des Nation, Geneva, April 1952, 1-2.

¹⁵ See Official World Record of World Health Organization No. 37; International Sanitary Regulations: Proceedings of the Special Committee and of the Fourth World Health Assembly on WHO Regulations No. 2, World Health Organization, Palais Des Nation, Geneva, April 1952, 1-2.

¹⁶ See Preamble to World Health Organization, International Sanitary Regulations No. 2 1951.

¹⁷ "The Nigerian Yellow Fever Card; How to Get Yours in 2020",

<<https://www.zeegees.com/how-to-get-the-e-yellow-card-in-nigeria/?amp>> accessed 21 May, 2021.

¹⁸ "What You Need to Know About Vaccine Passports", The Washington Post 30 December 2020

¹⁹ Ismail M. Adua "Nigeria's Aviation Law Framework for the Prevention of Communicable Disease: A perspective on the Ebola virus Disease" The Gravitas Review of Business & Property Law, 7 no.2, (2016): 145-147.

communicable disease to others. Nigeria currently has an e-yellow card mandatory requirement for travelers traveling to and from Nigeria.²⁰ The electronic database reduces the incidence of fake yellow cards peddled at the airports.

A. *International Civil Aviation Organisation (ICAO)*

The ground norm for civil aviation, the Chicago Convention on International Civil Aviation 1944 adopted on 7 December 1944, and entered into force on 4 April 1947²¹ created ICAO to oversee the affairs of world civil aviation in all its ramifications. Thus, the Organisation is to perform functions as advertised in the Convention among which is the safety and security of civil aviation-related health measures. The responsibilities are possibly carried out through her organs including the Assembly, the Council, and the Air Navigation Commission. The organ made it possible to perform functions such as the adoption of Standard and Recommended Practices and designated them as Annexes under articles 37 and 57(l) of the Convention; adoption of Universal Safety and Security Oversight Audit Programs made under Resolutions A33-1 and Resolution A32-11 respectively. Other institutional responses to maintain health security in the contract of carriage by air are the adoption of Collaborative Arrangement for the Prevention and Management of Public Health Events in Civil Aviation (CAPSCA); and the ICAO Aviation Medicine Section.

1. *Implementation of Chicago Convention, 1944*

Contracting States to the Convention covenant to imbibe the spirit of friendship and understanding among each other, thereby promoting friendship and avoiding friction to attain the required peace between the nations.²² Consequently, none of the nations is to use civil aviation in a manner that is in consistence with what they covenant.²³ It is submitted that one of the international communities can attain peace is through the absolute eradication of diseases of international concern. Diseases such as the Ebola virus and in recent times, COVID-19 which is rampaging the world order by posing public health risks are matters of concern to WHO and ICAO among international organizations. There is evidence that lays claim to the fact that air transport has contributed immensely to the spread of these diseases, the implication of which is that air transport is one of the agents that is distorting world peace. Therefore, efforts in controlling and preventing diseases must be at the utmost level through the cooperation of

²⁰ "The Nigerian Yellow Fever Card; How to Get Yours in 2020" <<https://www.zeegees.com/how-to-get-the-e-yellow-card-in-nigeria/?amp>> accessed on 21 May 2021

²¹ Chicago 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. [Herein after referred to as Chicago Convention].

²² Preamble to Chicago Convention, 1944.

²³ Chicago Convention, art. 4.

member states by way of implementing the provisions of the Chicago Convention and its annexes on the control and prevention of diseases as envisaged in the IHR 2005. Weak implementation of IHR 2005 and ICAO Regulations on Public Health, whether willfully or negligently, that gives rise to the transport of diseases, pathogens, carriers of diseases, and vectors may amount to inconsistent with the aim of the Convention to foster unity; thus, qualify as a misuse of aircraft under Art. 4 of the Convention.²⁴

To guard against misuse, the member states are obliged to have a national preparation plan against controlling the spread of communicable diseases, consultation with the public health agency and full implementation of International Health Regulations and various annexes are the key factors in achieving this preventing measure under Art. 4 of the Convention.²⁵

It is submitted that IHR 2005 is wider in scope and application than Art. 14 cited above. While Art. 14 is restricted to "communicable disease" the IHR 2005 provides for general application in so far as the disease will constitute a public health risk. The ICAO as the enforcement machinery has dutifully coordinated global efforts aiming at ensuring contracting states have preparedness plans or procedures to avert or mitigate risks associated with the spread of communicable diseases capable of causing public health emergencies.²⁶ For effective control of the spread of disease, the ICAO has been having collaborative efforts with WHO, IATA, ACI, and several other interested bodies to discharge this health security function.

2. Adoption of Annexes, and Resolutions

The ICAO through the international community has adopted various Annexes and Resolutions to give effect to the practical implementation of the Chicago Convention of 1944. Consequently, articles 13, 14, and 22 of the Convention adopted as the framework within which the ICAO shall curtail the spread of communicable diseases by air. The ICAO has also passed resolutions to prevent the spread of disease through civil aviation;²⁷ to protect the health of aviation stakeholders including but not limited to passengers, pilots, and crews through air

²⁴ Ismail. M. Adua 'Nigeria's Aviation Law Framework for the Prevention of Communicable Diseases: A Perspective on the Ebola Virus Disease' 7(2) (2016) *The Gravitas Review of Business and Property Law*

²⁵ Chicago Convention 1944, art. 14.

²⁶ ICAO, 'Managing Communicable Diseases in Aviation', accessed on 3rd April 2021 <<https://www.icao.int/safety/aviation-medicine/pages/healthrisks.aspx>> accessed on 20 March 2022.

²⁷ See ICAO Assembly Resolutions A37-13 (2010), adopted by The Assembly-37th Session Montréal, Provisional Edition, 28 September-8 October 2010 International Civil Aviation Organization, <https://www.icao.int/Meetings/AMC/Assembly37/Documents/ProvisionalEdition/a37_res_prov_en.pdf> accessed 23 January 2023.

transport;²⁸ to suppress the spread of disease through various methods such as aircraft disinfection and vector control methodology, and as well setting up of performance-based criteria and guidance procedures on vector control measures;²⁹ and, mitigate and protect the international community against the spread of communicable disease.³⁰

3. Introduction of Collaborative Arrangement for the Prevention and Management of Public Health Events in Civil Aviation (CAPSCA)

CAPSCA is an ICAO-adopted program established in 2006³¹ to assist the member states and other civil aviation stakeholders aiming to improve their preparedness plans to prevent the spread of communicable diseases.³² It holds a voluntary cross-sectoral and multi-organisational status on one hand, and on the other hand, brings combined collaborative efforts of the international, regional, national, and local to improve preparedness planning and response to global health risks such as communicable diseases, bioterrorism, volcanic ash, nuclear power accidents and water and food safety among others.³³ In addition, the program is being operated in the six geo-political zones, the annual meeting is coordinated in each of the regions to provide, develop, and harmonise the approaches to global planning on public health management events in civil aviation. This was done among others to assist with state concerns during natural and man-made health risks.³⁴

The need for Cross-Sectoral Collaborative efforts of the CAPSCA in the world aviation sector was noticed. For instance, ICAO multi-sectoral and multi-organisational approaches were adopted to build capacity and increase preparedness to manage, mitigate, and suppress the 21st-century communicable diseases (Ebola and COVID-19) that are rampaging the global community. First, the ICAO's provision of guidelines at a Conference hosted by the Airport Cooperative Research to assist in building airport capacity on how to manage the spread of communicable diseases on arriving flights is a worthwhile development. Second, the ICAO participation and facilitation of "Train the Trainer"

²⁸ See ICAO Assembly Resolution A35-12 (2004).

²⁹ See ICAO Assembly Resolution A39-28 (2016).

³⁰ See ICAO Assembly Resolution A40-14 (2019).

³¹ See ICAO SAFETY: Collaborative Arrangement for the Prevention and Management of Public Health Events in Civil Aviation - CAPSCA <<https://www.icao.int/safety/CAPSCA/Pages/About-CAPSCA.aspx>> accessed 10 January 2023).

³² ICAO SAFETY: Collaborative Arrangement for the Prevention and Management of Public Health Events in Civil Aviation.

³³ ICAO SAFETY: Collaborative Arrangement for the Prevention and Management of Public Health Events in Civil Aviation.

³⁴ ICAO SAFETY: Collaborative Arrangement for the Prevention and Management of Public Health Events in Civil Aviation.

workshops in China and Zimbabwe on how WHO could build State capacity to manage public health risk emergencies in aviation is an idea that was welcomed by the international community.³⁵ Third, the ICAO has collaborated with the WHO, adopting the ICAO Risk Assessment and Disinsection Decision-Making Tool on vector control mapping and disinsection initiatives, which later has the effect of reviewing the WHO recommendation adopted in July 2018. Fourth, ICAO is continuing to collaborate with WHO on the implementation of the IHR 2005 and other Public Health related documents.³⁶ It is submitted that the collaborative efforts of the ICAO with the governmental and non-governmental organisations were made possible by several factors including but not limited to (1) a meeting of minds (*Consensus ad idem*) of the collaborators, (2) the intention to secure the health of the international community; (3) provision of the technical knowhow of members; (4) cooperation of the collaborators; and (5) financial capacity of the collaborators.

4. The ICAO Aviation Medicine Section

The ICAO also has a specialized section known as the Aviation Medicine Section in charge of reviewing and maintaining the Manual of Civil Aviation Medicine with particular reference to infectious disease. The section's responsibilities are to develop SARPs on one hand, and on the other hand to publish guidance materials to contain risks of transmission of communicable diseases by air.³⁷ The Section also hosts lectures and seminars for sensitisation of all stakeholders.

B. International Air Transport Association (IATA)

The IATA guidelines on the transportation of Human Remains require the use of PPEs while handling such bodies; avoidance of contact with bodily fluids, cleaning and sanitisation of aircraft after handling of such bodies, and total adherence to WHO guidelines on handling such.

The IATA also cooperates with WHO, ICAO, and CDCs and has also had various briefings on the issue of containing communicable diseases and through its Medical Advisory Group issued various guidelines to deal with such occurrences.³⁸

C. Other Relevant International Bodies

³⁵ ICAO SAFETY: Collaborative Arrangement for the Prevention and Management of Public Health Events in Civil Aviation.

³⁶ ICAO SAFETY: Collaborative Arrangement for the Prevention and Management of Public Health Events in Civil Aviation.

³⁷ Usha Balasubramaniam, "Air Passenger Health and Consumer Protection" 73, no. 3 JALC (2008): 675.

³⁸ IATA, "Air Transport and Communicable Diseases" <<https://www.iata.org/en/programs/safety/health/diseases/>> accessed 29 March 2021.

This consists mainly of the Airports Council International (ACI) and the African Civil Aviation Commission (AFCAC). ACI works closely with partners like the ICAO and IATA to defend airport positions and develop SARPs in areas of safety, security, and environmental initiatives. The ACI also has an Airport Health Accreditation program³⁹ and an Airport Health Measures Audit program⁴⁰ alongside other measures like planning tools for testing.⁴¹ The ACI also collaborates with the ICAO and WHO on the ICAO Collaborative Arrangement for the Prevention and Management of Public Health Events in Civil Aviation (CAPSCA) program. The major strengths of bodies like ACI and the African Civil Aviation Commission (AFCAC) lie in collaboration with the ICAO for the implementation of ICAO SARPs on health issues.⁴²

3.0. Regulatory Responses to Suppress and Prevent Health Insecurity in the Contract of Carriage by Air

The WHO and ICAO have adopted various international laws and regulations to maintain health security in the contract of carriage of passengers by air. The laws and regulations are hereunder examined.

A. International Health Regulations 2005

The process of revising the 1969 Health Regulations started when the international community through WHO saw the need to address the re-emergence and emergence of old and new health risks that are probably caused by rapid development in technological, globalisation, chemical, and bioterrorism threats in 1995. The World Health Assembly (WHA) therefore mandated the WHO Director-General to initiate the process of revising and updating the IHR 1969 to find lasting solutions to the current challenges.⁴³ In December 1995, the WHO took the first step by organising an informal consultation wherein the Consultation advised that the purpose of the old sanitary convention be maintained in the proposed Revised IHR.⁴⁴ Consequently, in 1998,

³⁹ ACI, "ACI Airport Health Accreditation Programme" <<https://aci.aero/about-aci/priorities/health/aci-airport-health/>> accessed 29 March 2021.

⁴⁰ ACI, "Airport Health Measures Audit Programme".

⁴¹ ACI, "Health", <<https://aci.aero/about-aci/priorities/health/>>.

⁴² Africa Civil Aviation Commission adopted in 17 January 1969, Registered number 14690, UNTS v. 1001 (p.35); art.4 obliged member states to implement and support ICAO SARP.

⁴³ World Health Assembly, Revision and Updating of the International Health Regulations, WHA48.7, 12 May 1995 (hereinafter WHA Resolution 48.7). See also Fidler D.P., 'From Sanitary Conventions to Global Health Security: The New International Health Regulations' vol. 4 (2) (2005) *Chinese Journal of International Law* 342.

⁴⁴ World Health Organization, The International Response to Epidemics and Applications of the International Health Regulations: Report of a WHO Informal Consultation, Geneva, Switzerland, 11-14 December 1995, WHO/EMC/IHR/96.1 (hereinafter WHO Informal Consultation Report).

⁴⁵ David. P. Fidler, 'Globalisation, International Law and Emerging Infectious Diseases' 2 (1996) *Emerging Infectious Diseases* 77; David. P. Fidler, 'Mission Impossible? International Law and Infectious Diseases' 10 (1996)

WHO adopted the proposal of the Consultation and issued the proposed new IHR called Provisional 1998 IHR Draft.⁴⁶ The process of revising was continually delayed due to political, technical, and legal problems for 5 years (between 1998-2003), thus the WHO adopted a new platform called Global Outbreak Alert and Response Network (GOARN) to monitor and survey infectious diseases.⁴⁷

Even though by 2003 the Proposal for IHR had slowly taken shape, the outbreak of SARS in that same year catalyzed to put more effort into completing the process. Consequently, the first New IHR draft was made available and referred to as the January 2004 IHR Draft.⁴⁸ The processes to finalize the 2004 Draft copy were initiated by consulting the regional government wherein comments were taken from governments and other interested bodies.⁴⁹ The Revised Draft revised IHR 2004 along with the documents explaining the changes made so far to the January 200 Draft were distributed to the governments in September 2004 (September Revised IHR).⁵⁰ Continuation of negotiation to arrive at the final copy of IHR with the non-governmental organisations began with the first session in November 2004; however, the agreement was not reached thereby necessitating to resuming of session for the second term in February 2005⁵¹ where the proposal called the Chair's text was circulated to ease smooth deliberation of negotiations that were not able

Temple ICLJ 493; Plotkin B.J, 'Mission Possible: The Future of the International Health Regulations' 10 (1996) *Temple ICLJ* 503; D. P. Fidler, 'Return of the Fourth Horseman: Emerging Infectious Diseases and International Law' 81 (1997) *Minnesota LR* 771; Taylor A.L. 'Controlling the Spread of Infectious Diseases: Toward a Reinforced Role for the International Health Regulations' 33 (1997) *Houston LR* 1327; Plotkin B and Kimball A.M, 'Designing an International Policy and Legal Framework for the Control of Emerging Infectious Diseases: First Steps' 3 (1997) *Emerging Infectious Diseases* 1. See also World Health Organization, 'The International Response to Epidemics and Applications of the International Health Regulations: Report of a WHO Informal Consultation, Geneva, Switzerland, 11-14 December 1995, WHO/EMC/IHR/96.1 (hereinafter WHO Informal Consultation Report).

⁴⁶ World Health Organization, 'International Health Regulations: Provisional Draft (January 1998)' (hereinafter Provisional 1998 IHR Draft).

⁴⁷ See David P. Fidler, 'From Sanitary Conventions' 347 and 349.

⁴⁸ See World Health Organization, 'International Health Regulations: Working Paper for Regional Consultations, IGWG/IHR/Working paper/12.2003, 12 January 2004 (hereinafter January 2004 IHR Draft), Annex 10, para. 14.

⁴⁹ See World Health Organization, 'Summary Report of Regional Consultations, A/IHR/IGWG/2, 14 September 2004 (hereinafter Summary Report of Regional Consultations), para. 2. See also, Gostin L.O, 'International Infectious Disease Law: Revision of the World Health Organization's International Health Regulations' 291 (2004) *JAMA* (2004) 2623; Lawrence O. Gostin, 'The International Health Regulations and Beyond' (2004) *The Lancet Infectious Diseases* 606.

⁵⁰ See World Health Organization, 'Review and Approval of Proposed Amendments to the International Health Regulations: Draft Revision, A/IHR/IGWG/3, 30 September 2004 (hereinafter September 2004 IHR Draft and World Health Organization, 'Review and Approval of Proposed Amendments to the International Health Regulations: Explanatory Notes, A/IHR/IGWG/4, 7 October 2004 (hereinafter Review and Approval of Proposed IHR Amendments). All documents circulated by WHO for the intergovernmental negotiating session that took place in from 1 to 12 November 2004 (www.who.int/gb/ghs/e/index.html).

⁵¹ See World Health Organization, 'Revision of the International Health Regulations (www.who.int/gb/ghs/e/index.html) and World Health Organization, 'Update on Recent Developments in the International Health Regulations Revision Process, 14 December 2004 (www.who.int/csr/ihr/revisionprocess/igwgsummary/en/index.html).

to complete.⁵² In May 2005, a third session was convened to complete and finalize the new IHR which was agreed upon on the 14th May 2005.⁵³

The New IHR 2005 is divided into ten parts consisting of sixty-six articles; nine annexes and two appendixes. The relevancy of the Regulations to the prevention and containment of the spread of communicable diseases are discussed hereunder:

1. *Role of National Civil Aviation Authority under the IHR 2005*

The main role of the National Civil Aviation Authority is to adequately prepare for the containment of the disease from being spread. The Regulation obliged the State Party to designate or establish a National IHR Focal Point which shall be accessible at all times for communication with WHO on information concerning the implementation of Regulations on one hand and the other hand, disseminate information to and consolidate input from the relevant concerned health authority.⁵⁴ The exchange of contact details of National Focal Point and WHO Focal Point are mandatorily required for the effective implementation of this role.⁵⁵

In addition, the State Civil Authority shall designate airports for developing, strengthening, and maintaining capacity to detect, assess, notify, and report events to WHO.⁵⁶ Accordingly, the Core capacity requirements for a designated airport to secure the health of passengers are (1) provision of medical facilities including a diagnostic center for proper assessment and care of ill passengers; (2) provision of premises equipped with qualified staff and equipment; (3) provision of transport facility for the transport of ill health passenger to the medical health center; (4) provision of safe and clean environment for passengers using point of entry facilities; and (5) provision, in and at the point of entry, program, and personnel for the control of vectors and reservoir.⁵⁷

In responding to any disease that may constitute a public health emergency of international concern, paragraph 2 of Annex 1 to the Regulations obliged the state party concerned to (1) establish and maintain a public health emergency plan; (2) assess and provide medical care for the affected passenger; (3) provide appropriate space and separate from other passengers to interview the suspect or affected passenger(s); (4) assess and, if need be, quarantine the suspected passengers, preferably in place

⁵² Chair's January 2005 IHR Draft Review and Approval of Proposed Amendments to the International Health Regulations: Proposal by the Chair, A/IHR/IGWG/2/2, 24 January 2005 (hereinafter Chair's January 2005 IHR Draft).

⁵³ World Health Organization, 'Revision of the International Health Regulations: Note by the Secretariat, A58/4, 16 May 2005.

⁵⁴ IHR 2005, art. 4 (1) and (2 and b) respectively.

⁵⁵ IHR 2005, art. 4 (4).

⁵⁶ IHR 2005, art. 5 (1).

⁵⁷ IHR 2005, Annex 1 paragraph 1 (a)-(e).

away from the point of entry; (5) apply the recommended measures at a location specially designated and equipped for the purpose; (6) conduct entry or exit control measures for arriving and departing passengers; and (7) availability of assess to specially designated equipment, and as well train medical personnel on personal protection against infection or contamination from the transfer passengers who may carry diseases.

It is submitted that even though this measure is not a hundred percent fully proven, practical implementation of these guidelines will go in long way to contain the spread of communicable diseases on the one hand, and on the other hand, assist in maintaining international peace through sound health. That is why WHO is ready to assist any State Party, "upon request, who may find it difficult to develop, strengthen and maintain the capacities" as provided in the IHR 2005 and its annexes.

2. *IHR 2005 control, preventive and suppressive devices against the spread of diseases*

A cursory reading of IHR 2005 suggests that it is an international *organ* to controls, protects, and prevents the spread of diseases that are of international concern by any method that will avoid "unnecessary interference with international traffic and trade". "International traffic" has been defined to "means the movement of persons, baggage, cargo, containers, conveyances, goods or postal parcels across an international border, including international trade". It therefore means contract of carriage of passengers by air across various countries is a form of international traffic. While executing the contract, ill passengers or contaminated baggage or cargo may be carried, thus requiring the need to contain the spread of diseases of international concerned.

The IHR 2005 obligates the contracting states to practically implement the following devices to control and prevent the spread of disease: These include medical examination, vaccination, quarantine, isolation; and surveillance. Others include inspection, disinsection, disinfection; derrating and decontaminating. An affected or suspected person or cargo may undergo any of the listed methods.

(a) *Medical examination and vaccination*

Under the IHR, public health purpose is a condition precedent for a State Party to carry out medical examination or vaccination of passengers on arrival or departure. This is however must be a non-invasive or invasive

⁵⁸ IHR 2005, art.2 (a-g).

⁵⁹ IHR 2005, art. 5 (3).

⁶⁰ IHR 2005, art. 2.

that would achieve the public health objective.⁶¹ While medical examination has been defined in the IHR, the term vaccination was copiously omitted. Medication examination has been defined to mean "The preliminary assessment of a person by an authorised health worker or by a person under the direct supervision of the competent authority, to determine the person's health status and potential public health risk to others, and may include the scrutiny of health documents, and a physical examination when justified by the circumstances of the individual case".⁶² Vaccination interchangeably used as inoculation or immunisation⁶³ is "the process of providing immunity against a disease by introducing a substance called a vaccine⁶⁴ into the body".⁶⁵ It is "the act of introducing a vaccine into the body to produce protection from a specific disease".⁶⁶

Thus, the public health authority of an airport is under obligation to conduct a less intrusive⁶⁷ or invasive⁶⁸ medical examination on a passenger, at the point of entry or departure, whether or not is suspected of having or being affected by a disease that constitutes a public risk of international concern. It should however be noted that the doctrine of less invasiveness or intrusiveness is not the only determination factor, the principle of express consent of an adult passenger or guardian of an infant passenger is mandatorily required before the Airport Public health authority can conduct a medical examination.⁶⁹

The requirements for medical examination and/or vaccination are not sacrosanct at the point of entry. However, their application is mandatory where there is evidence of imminent spread of disease that is likely to constitute a public health risk of international concern.⁷⁰ To maintain its mandatory status, "the doctrine of no vaccination no entry applies". Therefore, a passenger shall be denied entry based on his failure to consent to a medical examination or provide information relating to it on

⁶¹ IHR 2005, art. 23 (1).

⁶² IHR 2005, art. 1 (1)

⁶³ See New Standard Encyclopedia, Standard Education Society, inc., Chicago, Illinois, USA, 1965, V-2.

⁶⁴ Vaccine is "a preparation that is used to stimulate the body's immune response against diseases. Vaccines are usually administered through needle injections, but some can be administered by mouth or sprayed into the nose". See New Standard Encyclopedia, p. v-2.

⁶⁵ New Standard Encyclopedia.

⁶⁶ See Vaccines & Immunizations <<https://www.cdc.gov/vaccines/vac-gen/imm-basics.htm>> accessed 25 January 2023.

⁶⁷ A medical examination is "intrusive" where such examination is carried out to "possibly provoke discomfort through close or intimate contact or questioning". See IHR 2005, art. 1 (1)

⁶⁸ A medical examination is "invasive" where the skin is punctured or incision or insertion of an instrument or foreign material into the body or the examination of a body cavity. See art. 1 (1).

⁶⁹ IHR 2005, art. 23 (2) and (3) respectively.

⁷⁰ IHR 2005, art. 31 (1).

one hand, on the other hand, where the passenger had gained entry and it appears that he/she is likely to constitute an imminent public risk, the Public Health Authority may compel such passenger to undergo or advice to undergo less intrusive and/or invasive medical examination⁶⁸ however with due regard to fundamental human rights to privacy and none discriminatory manner.

The Regulations failed to define what less invasive and intrusive are. It is submitted that what the drafter of the Regulation probably meant by less invasive or intrusive includes "nonintrusive or invasive". Therefore, a medical examination is considered to be a non-invasive where the public health authority examines "the ear, nose and mouth, temperature assessment using an ear, oral or coetaneous thermometer, or thermal imaging; medical inspection; auscultation; external palpation; retinoscopy; an external collection of urine, feces or saliva samples; external measurement of blood pressure; and electrocardiography".⁶⁹ It is further submitted that by the meaning ascribed to non-invasive under the Regulations, the issue of the fundamental human right to privacy is whittled down.

It needs to be categorically stated that vaccination as a device to curb the spread of disease is neither hundred percent effective nor efficacious. That is why in some cases there may be what is called vaccination failure which may be due to failure of vaccine product or improper application of the vaccine.⁷⁰

(b) Quarantine; isolation; and surveillance

The New Standard Encyclopedia defined "Quarantine" as "an enforced isolation designed to prevent the spread of disease, infection or undesirable plants and animals".⁷¹ Black's Law dictionary interprets the term to mean "the isolation of a person or animal afflicted with a communicable disease or the prevention of such a person or animal from coming into a particular area, the purpose being to prevent the spread of disease".⁷² The IHR 2005 defined it to means the "restriction of activities and/or separation from others of suspect persons who are not ill or of suspect baggage, containers, conveyances or goods in such a manner as to prevent the possible spread of infection or contamination"; isolation is the "separation of ill or contaminated persons or affected baggage, containers, conveyances, goods or postal parcels from others in such a

⁶⁸ IHR 2005, art. 31 (2).

⁶⁹ IHR 2005, art. 1 (1).

⁷⁰ U. Heininger, et al, "The concept of vaccination failure", *Vaccine*, 30 no.7(2012): 1265-1268.

⁷¹ New Standard Encyclopedia, p. Q-5.

⁷² Byrne.A Garner, Black's Law Dictionary, 1256.

manner as to prevent the spread of infection or contamination".⁷³ It appears that the two terms have similar meanings and measures to prevent the spread of diseases. However, they are different in terms of usage and purpose. Quarantine is to restrict the movement or separate ill health passenger(s) from those that are healthy or select away the cargo or baggage from those that have been contaminated usually for a specified number of days to see if they are sick but do not know; isolation is a complete stay away from others when a passenger(s) is tested positive for a communicable disease or cargo or goods is contaminated.

In that regard, a suspected passenger may be quarantined for a specified number of days depending on international and national laws, to see if he/she is suffering from a disease that is of international concern. On another, an affected passenger may be completely separated from hail and healthy passengers till such an ill passenger's health is restored.

The New International Webster dictionary defines "Surveillance" as 'the act of watching, or the state of being watched, a very close watch; a spying supervision'.⁷⁴ According to Black's law dictionary, it could also mean "close observation".⁷⁵ The IHR 2005 defined it as "the systematic ongoing collection, collation and analysis of data for public health purposes and the timely dissemination of public health information for assessment and public health response as necessary".⁷⁶ Thus, a suspected passenger, who on arrival is placed under close observation of the airport public health authority, may be allowed to continue his journey provided he does not pose health insecurity.⁷⁷

(c) Inspection, Deratting, Disinfection, Disinsection, and Decontamination

The IHR provides that subject to existing scientific evidence that a conveyance is infected on board, the authority concerned shall disinfect, decontaminate, disinfect, or derat the conveyance, as appropriate, or cause these measures to be carried out under its supervision.⁷⁸ On arrival or departure, the airport authority through its Public Health Department or its agent is obliged to conduct a clinical examination of areas (restricted and non-restricted), baggage whether carried on or otherwise, containers, conveyances, facilities, goods or postal parcels, including relevant data and documentation, to determine if a public health risk of international concerned exists.

⁷³ IHR 2005, art.1 (1).

⁷⁴ See The New International Webster's Comprehensive Dictionary of the English Language, Encyclopedic Edition, (USA: Standard International Media Holding, 2003): 1384-1385.

⁷⁵ Byrne.A Garner, Black's Law Dictionary, 1486.

⁷⁶ IHR 2005, art. 1(1)

⁷⁷ IHR 2005, art. 30.

⁷⁸ IHR 2005, art. 27 1 (b).

This process is referred to as Inspection.⁷⁹ It is important in determining whether or not the items listed therein are contaminated and infected with rodents or insect vectors which are very dangerous to human health on one hand, and on the other hand that may constitute public health concerns.

The airport authority must ensure that conveyances are free from disease or contamination including vectors and reservoirs, which is of public concern. This is however subject to the availability of scientific evidence that such a conveyance among other goods is contaminated or affected.⁸⁰ A conveyance is contaminated where there is the "presence of an infectious or toxic agent or matter on a human or animal body surface, in or on a product prepared for consumption or on other inanimate objects, including conveyances that may constitute a public health risk".⁸¹ One very fundamental measure, according to WHO is to decontaminate the affected or infected conveyance.

Accordingly, the airport public health authority is obliged to adopt a procedural method of eliminating infectious or toxic agents or matter on a human or animal body surface, in or on a product prepared for consumption, or on other inanimate objects, including conveyances,⁸² that may constitute a public health risk. This process is called Decontamination of conveyance which where possible and appropriate be applied when such a conveyance is empty. The importance of decontamination is to prevent the spread of disease of international risk on one hand, and on the other hand is to avoid possible injury or discomfort to passengers or damage to the cargo, baggage, containers, conveyances, and other goods.⁸³

It needs to be stated that a conveyance, cargo, container, facility, goods, and postal parcel may have been affected by rodent vectors of human disease which necessitate the need to take control measures in containing its spread. Thus, where this is the case, the public health authority is under obligation to conduct a measure known as Deratting which has been defined as "the procedure whereby health measures are taken to control or kill rodent vectors of human disease present in baggage, cargo, containers, conveyances, facilities, goods, and postal parcels at the point of entry".⁸⁴

⁷⁹ IHR 2005, art. 1 (1) and 23 (1) (b) respectively.

⁸⁰ IHR 2005, art. 24 ©.

⁸¹ IHR 2005, art. 1(1).

⁸² IHR 2005, art. 1(1).

⁸³ IHR 2005, Annex 4, Paragraph B.

⁸⁴ IHR 2005, art. 1(1).

The practice of containment of the spread of disease or public risk caused by direct exposure to chemical or physical agents, basically adopted to control or kill infectious agents on a human or animal body surface or in or on baggage, cargo, containers, conveyances, goods, and postal parcels is referred to as "Disinfection", while another procedure "whereby health measures are taken to control or kill the insect vectors of human diseases present in baggage, cargo, containers, conveyances, goods, and postal parcels" is known as "Disinsection".⁸⁵ The difference between the two procedures is that while disinfection is a control measure for disease caused by chemical or physical reagents, disinsection is the one adopted to prevent the spread of disease caused by insects.

It needs to be submitted that the practice of Deratting, Disinfection, Disinsection, and Decontamination is practicable after a medical examination and inspection have been conducted on the subject of civil aviation. All these procedures are to be implemented subject to fundamental human rights as contained in the IHR 2005.

(d) Qualified Public Health Security Certificates

The Public Health Authority in the airport may require passengers, on arrival or departure, to complete a contact information form and questionnaire to know the status of their health and destination; and information concerning passengers' itinerary.⁸⁶ The purpose of the information on the document required is to (1) contact such a passenger who has been infected and affected with any of the diseases that are of international health concern; (2) to ascertain if the passenger is coming in or near an affected jurisdiction; (3) to know if the passenger's itinerary has had contact with infection or contamination before arrival; (4) to review the passenger's health documents if they are required under the IHR 2005 or those recommended by WHO; and (5) to serve as a documentary evidence of a passenger's good health.

It is therefore submitted that apart from health security devices earlier discussed in this paper, the health security documents as required under the IHR and as recommended by WHO in collaboration with ICAO, IATA, and ACI just to mention but few attested to the fact that security health documents are important in controlling the spread of disease that are of public risk. Such documents include *Certificates of vaccination or other prophylaxis* and Health Part of the Aircraft General Declaration.

i. Certificate of Vaccination or other Prophylaxis

⁸⁵ IHR 2005, art. 1(1).

⁸⁶ IHR 2005, art. 23 (1) and 35 respectively

Vaccination or prophylaxis certificate shall be issued and conform with the provisions of Annex 6 of IHR⁸⁷ on one hand, on the other hand, its application to a specified disease shall not be contrary to the provision of Annex 7 of the IHR.⁸⁸ Consequently, a passenger in lawful possession of this certificate by Annex 6 and/or 7 respectively shall not be entitled to denial to enter the country of destination merely because such a holder of the certificate is coming from an affected area unless the airport public health authority has cogent scientific evidence that the vaccination or other prophylaxis was not effective.⁸⁹ It is further submitted that grounds that invalidate the certificate include (1) departure from the model as specified under Annex 6; (2) adoption of vaccine or prophylaxis not approved by WHO; (3) failure of the clinician, medical practitioner to sign; (4) amendment, or erasure, or failure to complete any part to the certificate; and (5) collective use of the certificate.⁹⁰

It needs to be stated that an exception to possession of an international certificate of vaccination or other prophylaxis is when a passenger is an active member of the Armed Forces. Therefore, an equivalent document to an international certificate of vaccine will suffice for the purpose provided such a document substantially conforms to the provisions of Annex 6, otherwise, it would be invalidated.⁹¹ It is submitted that this exception may be rooted on the ground of the presumption that armed force men must be properly fit at all times.

ii. Health Part of the Aircraft General Declaration

The public health authority may request the Pilot in command of an aircraft or its agent to supply a health-related document called Health Part of the Aircraft General Declaration. Where this is the case, the Pilot in command shall furnish a recommendation and/or information concerning aircraft arriving from the affected jurisdiction or which might have otherwise carried infection or contaminated with the disease of the specified type. Furthermore, other required information shall include information as to health conditions on board during an international in-flight and any health measure applied to the aircraft.⁹² It should be noted that such a Declaration shall conform to provisions of Annex 9 to the IHR 2005.⁹³

⁸⁷ For conditions governing the admissibility of Vaccination or other Prophylaxis certificate. See IHR 2005, Annex 6.

⁸⁸ IHR 2005, art. 36.

⁸⁹ IHR 2005, art. 36 (2)

⁹⁰ IHR 2005, Annex 6.

⁹¹ IHR 2005, paragraph 10

⁹² IHR 2005, art. 38.

⁹³ IHR 2005, Annex 6 For condition governing the valid of Declaration.

It is submitted that unlike the Certificate of Vaccination and other Prophylaxis, the Health Part of the Aircraft General Declaration as a health security document is not compulsory as it is within the State party's discretion to request it or not. It is assumed that the reason for making it not mandatory is because further health security measures as discussed above and certificates are required to clear both the aircraft and passengers of public health risk to the international community.

iii. Passengers Locator Form

Passenger Locator Form is not directly mentioned in IHR 2005. Its legality is traceable to collaborative efforts of the WHO in conjunction with other non-governmental organisations under articles 23 and 35 of IHR. One of the issues that caused the delay in the adoption of IHR till 2005 was the issue of passenger contact tracing. In 2004, WHO obliged the International Air Transport Association (IATA), to assist in the draft of a template for a Passenger Locator Card (now Passenger Locator Form or PLF) that was subject to recommendation of the countries that wanted to embark on contact tracing. Consequently, IATA came up with a document that was agreed upon by WHO, ICAO, and IATA.⁹⁴

The purpose of the Form is to locate the passengers who had been exposed to the disease of international concern having been in close contact with such passengers who have been infected or suspected of contracting a communicable disease. The necessity for locating such passengers is to control, prevent, and suppress the spread of disease that will constitute a public health risk.⁹⁵ The importance of the Public Health Locator Form has been noticed by many countries of the world. Countries such as the United Kingdom, Netherlands, and Belgium among others but to mention, have adopted the digital practice of the Form to locate suspected passengers who had close contact with the passenger(s) contracted disease or public health risk.⁹⁶

(e) IATA Travel Pass

It is a digital application that helps the passengers "in saving and managing their verified COVID-19 testing related certificate and vaccination certificate" in one single folder on one hand, and on the hand, it helps the airport public health authority in verifying the passengers' validity tests and as well identifying the identity of issuing authority of the required passengers' vaccination certificates.

⁹⁴ See IATA <<https://www.iata.org/contentassets/ccbd54681c24574bebf2db2b18197a5/health-passenger-contact-tracing.pdf>> accessed on 21 January 23

⁹⁵ Ibid. See also World Health Organization Public health passenger locator card: overview <<https://www.who.int/publications/m/item/public-health-passenger-locator-card>> accessed 21 January 23

⁹⁶ Passenger Locator Form accessed 21 January 2023 <<https://www.locator-form.com/>> 21 January 23

Consequently, the airlines would be able to provide adequate information concerning the requirements for travel and ascertain whether they meet them or not.⁹⁷ The IATA in her press release summarised the importance of the application this way:

"Informing passengers on what tests, vaccines, and other measures they require before travelling, details on where they can get tested, and giving them the ability to share their tests and vaccination results in a verifiable, safe, and privacy-protecting manner is the key to giving governments the confidence to open borders," IATA wrote on a press release.⁹⁸

It is submitted that the useful characteristics of the Travel Pass Application are that it serves as the repository of a conglomerate of travel documents required by WHO, ICAO, and other national and international organizations on air transport. It also keeps the business going smoothly by reducing delays in checking passengers and discomfort experienced by passengers when travelling.

4.0 Conclusion

It is never in contention that civil aviation being one of the means of transportation and disease carrier agents, is contributing to the spread of disease of international concern. The air transport through a contractual carriage of passengers by air had on many occasions served as a conduit pipe to transport sick passengers, contaminated cargoes, goods, and parcels from affected areas to another country. The effect of the carriage is the total spread of the disease which may be difficult to control or contain due to inadequacies in the application of International Health Regulations, Conventions, and guidelines on control and prevention of the spread of disease of public risk. Apart from the inadequacies, the control of the spread of disease may be hampered due to member states' lack of financial capability and technical knowledge. Many underdeveloped countries may find it difficult to pull the necessary resources together to control the disease. For instance, it has been so difficult for Nigeria, as a nation to control the spread of COVID-19 because it required huge financial implications.

Furthermore, conglomerates of efforts of WHO and ICAO at the international level to control and prevent the spread of disease are open to the international public, yet the implementation of their efforts at the local

level is nothing to write home about. The management plan to ensure communication at a rapid speed between the WHO and ICAO was easier because of their preparedness. However, the reverse is the case at the national level, because such a preparedness plan at the national level may not have been developed. For instance, the national public health authority may have not developed a speedy channel to communicate with the national civil aviation authority.

Another challenge to adequate control of the spread of disease is the poor attitude of passengers to undergo disease control security checks at departing and arriving airports. Many passengers find their way to beat public health officials to immunisation or give the wrong address in their passenger locator forms, thus finding them difficult to locate. Part of this is the presentation of fake vaccination certificates by the passengers. The incidence has become a phenomenon in Nigeria where many arriving passengers due to conduct a second Covid-19 test were issued with fake covid-19 vaccination certificates. The issuance was in conjunction with the insider clinicians among the public health authority at the airport.⁹⁹

5.0 Recommendations

Consequently, the paper suggests the following as measures of core preparedness plan to curb the identified challenges:

- There must be a synergy between the national civil aviation regulators, airport operators, airline operators, and public health authorities on effective control and prevention of the spread of disease. Adequate preparedness plan on how WHO IHR and ICAO Regulations and guidelines on the control of disease are fully implemented.
- There is a need for the national authority to be proactive in wiping out corrupt officials who are in connivance with passengers to present fake vaccination certificates or testing results.
- The national public health authority, as a matter of urgency needs to sensitize the public over the electronic media including Radio and television on the importance of vaccines as one of the means to contain the spread of diseases of international concern. Any passenger who fails to produce a vaccination certificate should be prosecuted.
- The airport public health officials need to undergo refresher courses seminars, and symposia on how, when, and the need to adequately implement the provisions of IHR 2005,

⁹⁷ Air Travel: IATA Travel Pass: Everything You Need to Know, *Shengevisa news*, 15 Nov. 2021 accessed 21 December 2023 <<https://www.schengenvisa.info.com/news/iata-travel-pass-everything-you-need-to-know/>> accessed 22 January 2023

⁹⁸ Air Travel: IATA Travel Pass: Everything You Need to Know.

⁹⁹ See Sahara Reporter, Nigerian Airport Officials Allegedly Collecting Money In Place of Covid-19 Test Results, 15th August, Sahara Reporter, New York, <<https://saharareporters.com/2020/08/15/nigerian-airport-official-allegedly-collecting-money-place-covid-19-test-results/>> accessed 25 January, 2023

- ICAO Guidelines on control and prevention of the spread of disease, and other regional and national guidelines on control and suppression of diseases of international concerned.
- Fundamentally, each passenger should see his/her health as a weapon to live a good life. A deteriorated health results in unhealthy life expectancy, thus resulting in high psychological disorder for the passenger's family.

¹⁰⁰ Air Travel: IATA Travel Pass: Everything You Need to Know, *Shengevisa news*, 15 Nov. 2021 accessed 21 December 2023 <<https://www.schengenvisainfo.com/news/iata-travel-pass-everything-you-need-to-know/>> accessed 22 January 2023

¹⁰¹ Air Travel: IATA Travel Pass: Everything You Need to Know.