AVIATION SECURITY AND SAFETY ASSESSMENT OF INTERNATIONAL LEGAL INSTRUMENTS

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1.0 INTRODUCTION

> *... No science has been developed so quickly in its practical application to the activities of men as the science of aeronautics. No other activity has held such vast potentials for the lives of people and destinies of nations. No other activity so needs the law to keep pace with it from one country to another and from one stage of its development to the next. The use of aircraft has destroyed all effective frontier barriers, even the barriers of the ocean.*[1]

Indeed, it is safe and perhaps indisputable to posit that "aviation" which is defined as including "flying, designing and building, and operating aircraft in the earths surface," [(a)] has made tremendous impact on human history, advancement and development. Aviation has bridged continents, broken geographical, cultural and other primodial barriers, transformed the air space into a net work of air routes, a global highway for inter and intra continental commerce.[2]

Aviation has therefore, now changed the face of the world, affected global relationships as well as impacted economies. Revenues earned from the aviation industry for example accounts for the mainstay of Ethiopia as a country[3]. On air services pact alone, the Nigerian government got N2.65

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[1] Shawcross and Beaumont, *"Air Law"* fourth Ed. Vol. 1 General Text, London Butterworths, 1977, page 1

a. "Aircraft", a publication of Macdonald Junior Reference Library, Published by B.P.C. Publishing Ltd, 1969, page 20

[2] Imasuen, S. *"Overview of Development in Aviation"* Being a Paper Presented at Airport Management Course, organized by the Nigeria Institute of Transport Technology (NITT) Zaria, in October, 2002 page 1.

[3] The News Magazine, August 1, 2005 page 42

billion in 2005,[4] Hong Kong's Chek Lap Kok Airport is a USD $20 billion facility.[5] Boeing company projected an income of $2.1 trillion in a few years[6]. Nigerian air traffic rose to 8.920 million in 2004 through the nations 22 airports which recorded no fewer than 191,011 aircraft movements[7].

Aviation, as a mode of transportation has the advantage principally of speed over other modes of transportation. While earlier aircrafts flew at less than the speed of sound,[8] currently there are planes that fly at Mach 2.5 (i.e two and half times the speed of sound). If scientific calculations, projections, research and technology proceed apace without going awry, in a few years from now there will be planes that will move at Mach 25 (25 times the speed of sound) and it will be possible to fly across the globe in minutes. A distance of about 1,000 kms, for example Kano to Lagos may be covered in 0.25 seconds, less than half a minute.[9]

The impact of aviation on human history and advancement has been both salutary and negative. Besides speed, time saving and comfort in transportation, aviation has facilitated diplomacy, sadly, warfare and a potpouri of factotum developments such as aerial survey, usage in the courier industry,[10] rescue mission,[11] dropping of relief supplies to war torn areas[12] and border patrol among others.[13]

The most negative impact of aviation on the history and development of mankind are in the areas of safety and security. Consequently, we shall examine in this paper the concept, place and problems of security and safety in the aviation industry, the necessity for law in aviation, as well as state, examine and assess international legal instruments addressing the issues of safety and security in the aviation industry and their compliance or otherwise. Finally, it is hoped that through the identification of lacunae,

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[4] The Guardian Newspaper, Monday July 25, 2005 page 6.
[5] Daily Trust Newspaper, February 4, 2004 page 20
[6] Business Times Newspaper, June 29-July 2, 2005 page 30
[7] Vanguard Newspaper, May 10, 2005 page 24
[8] Johnson, D.H.S. *"Rights in Airspace"* Manchester University Press Occana Publication Inc. 1965 page 7
[9] South Magazine, May 1991, page 67
[10] Viva Weekly Newspaper, August 2, 1993 page 32, Newswatch Magazine, October 18, 1999, page 36
[11] Time Magazine, April 22, 1996 page 21
[12] Time Magazine, March 8, 1993 page 25
[13] Newswatch Magazine, October 18, 1999, page 36

deficiencies and desiderata in these international legal instruments, the suggestions proferred will help in showing the way forward.

1.2 SECURITY AND SAFETY IN THE AVIATION INDUSTRY

1.2.1 SECURITY

"Security" is defined as:

> *"The activities involved in protecting a country, building or person against attack danger, etc..."*[14]

And also as:

> *"Those methods that promote a safe and protected environment so people can pursue their daily activities..."*[15]

Security therefore, may imply the activities or methods employed to protect a country, buildings, objects, goods, property and human beings from being attacked or from being exposed to danger, real or apprehended. It involves all measures taken to forestall the occurrence, re-occurrence or stoppage of danger or harm in a given situation.

Indeed, danger, attack or violation of a countrys' territorial integrity could occur in any number of ways- through aerial attack using aircraft to drop bombs, noxious gas or objects or to carry out reconnaissance and spying mission or even to deploy the aircraft itself as a weapon of destroying buildings, installations or other objects. In such situations of actual, apprehended or threatened attack the steps and measures employed by the country to ensure its safety are interpreted as security measures.

Aeroplanes similarly are susceptible to danger from various sources - attacks from terrorists, from the vagaries of the weather, from other planes (deliberate or accidental), from accidents and from several other almost inexhaustible sources.

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[14] *The Oxford Advanced Leaners Dictionary.* Special Price Edition, 2001, Oxford University Press.

[15] Purpura P.P ""*The Security Handbook*" 2nd Ed., Butterworth Hein, 2003 page 4.

1.2.2 SAFETY

"Safety" is defined as:

> *"The state of being safe and protected from danger or harm... 2 the state of not being dangerous..."*[16]

From the above definition it is necessary to consider the word "safe"
"Safe" is defined as:

1. *Protect from any danger or harm...*
2. *(To do Sth) – (For Sb) not likely to lead to any physical harm or danger...*
3. *Where Sb/Sth is not likely to be in danger or to be lost.*
4. *(To do Sth) not involving much or any risk...*
5. *Doing an activity in a careful way...*[17]

From the above definitions of the words "Safety" and "Safe" it is apparent that the word safety connotes and embraces security; absence of danger or harm; as well as the state of reasonable assurance and certainty within human limitations and contemplation from absence of danger, harm and risk.

1.2.3 SAFETY AND SECURITY

It must be added that in civil aviation, safety and security aside from being pivotal issues are highly interrelated and interdependent in scope and magnititude. Security and safety are basically set to achieve the same goals and objectives in civil aviation.[18]

Safety and security in the aviation industry concerns the protection and or safeguarding, that is, prevention of anything that is undesirable. In aviation parlance:

> *Security is known as a combination of measures, human and material resources, intended to safeguard international civil aviation against acts of unlawful interference.*

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[16] *The Oxford Advanced Learners Dictionary* Special Price Edition, 2001 Oxford University Press.

[17] Ibid

[18] Mamman, I. *"Security and Safety in Nigerian Airports"*. The Annual Aviation Law and Business Digest vol. 2, 2003 page 11-15

> *Emphasis in this regard is on safeguarding passengers or people and airport infrastructures against attacks of any form. It may simply be stated as prevention of violent crimes of hijacking, piracy, sabotage, or other serious breach of security. Safety, on the other hand in aviation, entails the use of devices, machinery and other resources for the prevention of accidents, injury, mishaps and undesirable things.*[19]

:ed the primary objective of international civil aviation security is to ıre protection and safeguarding of passengers, ground crew personnel, general public and facilities of airports against acts of unlawful rference perpetrated on the ground or in flight.[20]

:ly, we need to add that the place of safety and security in the aviation ıstry cannot be overemphasized for the following reasons:

Aviation is a dynamic industry which borders on safety and security;

Aviation is international and has no indigenous culture.

In a situation of accident, the effect, the consequences usually cuts across continents, countries and all manner of divide.

In case of any aviation accident or security breach, the effect and consequence is, on the average usually catastrophic and irredeemable.

The reciprocal factor in the industry demands that all contracting states of the International Civil Aviation Organization (ICAO) must be up and doing to ensure that its immediate environment is as good and safe as others worldwide, and in accordance with ICAO regulated standards.

All the regulations, annexes, when looked at closely have to do with how safety and security is ensured, on how to move people from one airport to the other. As long as air remains the fastest means of

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)zenua, S.J *"Aviation security and safety at Nigerian Airports: A Status Report"* The ınnual Aviation Law & Business Digest, vol 1 2002 page 33-40

transportation the issue of safety and security therefore remains relevant.[21]

7. Lastly, virtually the whole objective, mission, vision and focus of the Chicago Convention is on ensuring, facilitating or guaranteeing safety and security.

1.3 NATURE AND BASES OF THE PROBLEM OF SAFETY AND SECURITY IN THE AVIATION INDUSTRY

1.3.1 CRIMES AGAINST CIVIL AVIATION

In the first and second decades of the last century, the idea that aircraft might become a field for the application of criminal law was to legal pundits "fanciful" in the words of Lord Wiberforce[22] and therefore farfetched. However, since then, the potential of crime and breaches in security through aviation quickly became apparent in 1930.

The first recorded hijacking in history occurred in Peru in 1930 followed by isolated incidences of hijackings which heightened with series of hijackings to Cuba in the late 1950s and 1960s culminating in a flood of hijackings between 1968 and 1970.[23] Between 1948-1984 (a period of 36 years) there were not less than 520 hijackings of aircrafts worldwide.[24]

However, all these hijacking incidents pale in significance compared to the relatively recent, horrendous, barbaric, albeit novel deployment of hijacked aircraft as weapons of wanton destruction of lives, properties and choice targets with the hijackers on board the aircrafts committing as it were hara-kiri as epitomized by the September 11, 2001 attack on the twin towers of the World Trade Centre and the Pentagon in the United States of America.

Besides hijacking incidents, other issues of lesser magnitude in terms of publicity but equally potent in overall negative impact on development of aviation as a blot are those of crimes committed on board aircraft such as

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[21] Chikwe, K. Dr. (Mrs.). Keynote Address on the Occasion of the 2nd National Aviation Law and business seminar, Annual Aviation law & Business Digest, vol. 2 2003 page viii.s.

[22] Ibid

[23] Ibid

[24] The Economist Magazine, December 15, 1984 page 50.

theft, currency offences, drug smuggling, and offences against airline passengers amongst others.[25]

1.3.2 AVIATION ACCIDENTS

In the area of safety, figures on aviation accidents have been uncomfortable despite increased sophistication in air navigation, of aviation instruments and of better management of the airspace. A few isolated examples of previous air disasters will buttress the point. In 1970, a Japanese airliner, a Boeing 747 jet crashed into Mount Fuji killing all the 520 passengers on Board, in Paris on 3rd March, 1974, a Turkish DC-10 Jumbo Jet crashed shortly after take-off killing all 346 passengers and crew members; on 7th March, 1977, two Boeing 747 planes (KLM jet and Pan AM jet) collided at Tenerife in Spains' Canary Island leading to the loss of 583 lives (worst aviation accident in history); in the same year November 1977 a chartered Icelandic airlines DC-8 carrying 249 pilgrims from Mecca crashed in thunderstorms in Colombo Sri Lanka killing all on board, and on May 25, 1979, a DC-10 upon take off crashed at Chicago killing 272 people aboard.[26]

Nigeria, sadly had its own share of air crashes. A few examples will suffice. The first air crash in Nigeria appears to be 1944 in Kano without fatalities and the next one near Oni involving a Douglas DC-3 with 22 fatalities.[27] Since then there have been not less than 102 recorded air crashes between 1944 to 2006[28] in Nigeria with a total of 1,223 fatalities. This includes the C-130 military plane that crashed at Ejigbo canal on September 27, 1992, claiming the lives of 160 military officers,[29] the October 22, 2005 crash of Boeing 737 aircraft owned by Bell view Airlines at Lisa Village, Ogun State claiming the lives of all 117 passengers on board[30] followed closely by the Sosoliso plane crash at Port Harcourt on 12th October 2005 with a total of 108 fatalities[31] as well as the air crash involving ADC airlines aircraft of October 29, 2006 in Abuja which

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[25] Shawcross and Beaumont, Op.cit pages 521-522
[26] The Guardian Newspaper, August 19, 2005, page 25, page 25, and Business Day Newspaper, August 22, 2005 page 28.
[27] Leadership Newspaper, November 9, 2006 page 20
[28] Ibid
[29] Ibid'; also Newswwatch Magazine, May 20, 2002, page 23
[30] Tell Magazine, November 14, 2005 page 23, and leadership Newspaper, November 9, 2006 page 20.
[31] Leadership Newspaper, November 9, 2006 page 20.

claimed 76 lives including that of the Sultan of Sokoto, Sultan Muhammadu Maccido.[32]

1.4 THE IMPERATIVES OF LAW ON AVIATION

In the light of the nature and bases of the problem of safety and security in the aviation industry highlighted in this work, the questions that naturally arise by keen aviation watchers, analysts, operators, travelers, the concerned public and legal pundits includes: are there laws and regulations governing the aviation industry? Are there safety and security laws? What are the laws, regulations and standards if any, and how effective, potent and sufficient are they?

From the outset, we posit that there is not only a symbiotic relationship between law and the aviation industry but that law is a sine qua non, an imperative and an indispensable fulcrum but indeed in physiological terms, the heart of the aviation industry. This is because while aeronautics is based on precision, timing and information it is also based on instructions. Literally, every aspect of aeronautics is based on laws, rules, instructions and guidance. Slight departure from such rules could produce catastrophic results. Two cases will sufficiently buttress the point.

The two cases both involved disobedience to instructions from the control towers to the pilots leading to fatal results. On 27th March 1977, a KLM jet Boeing 747 departed Spain's canary Island without permission and collided with Pan A. Jet (also a Boeing 747) shortly at Tenerife leading to the death of 583 people. The second case in point occurred in November 1996 on an Iliyushin 11-76 cargo plane. As a result of disobedience to instructions it collided mid-air with a Saudi Boeing 747 killing 349 passengers.[33]

The imperatives for law on aviation was recognized at the turn of the last century with the increasing scale of conduct of aviation activities. Juristic preoccupation before 1914 had to turn to the issue of the status of the superjacent airspace above state and territorial waters amongst other issues.[34] Consequently, Article 1 of the Paris Convention for the regulation of Aerial Navigation, 1919, recognized the exclusive sovereignty of states over the airspace above its territory and territorial waters. Article 1 of the Chicago Convention of 1944 which superceded the Paris Convention also

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[32] Ibid.
[33] Business Day Newspaper, August 22, 2005, page 28
[34] Shaw, M.N. Op.cit page 390

reenacted the same provision.[35] The wisdom for the intervention of law in this regard became more evident later. The International Court of Justice (I.C.J.) in the case of ***Nicaragua V. US***[36] emphasized that the principle of respect for territorial sovereignty is directly infringed by the unauthorized over-flight of a states' territory by aircraft belonging to or under the control of the government of another state.[37]

Besides the issues of state sovereignty and freedom of the air, the issue of regulation of actual conduct of flights, the need for a code of international air traffic specifying procedures for air navigation;[38] and of safety regulations amongst others, law intervened in all these areas to bring order, certainty and uniformity.

Lastly, problems of unlawful acts against the safety of civil aviation such as crimes against aircraft, crimes on board aircraft, or against air facilities *et al* became more frequent. Part of the solution was again the intervention of law in the form of multilateral treaties some of which will shortly be examined.

1.5 ASSESSMENT OF THE INTERNATIONAL LEGAL REGIME ON SECURITY AND SAFETY

1.5.1 THE LEGAL CHALLENGES AND INSTRUMENTS

In recognition of all the challenges highlighted above as well as the challenges of the further development of aviation, the increases in the volume, range and frequency of international air traffic, coupled with the growing number of countries in which the aircraft of regular airlines are registered which brought to the fore further problems and challenges such as the problems of jurisdiction, the challenges of identifying and dealing with the burgeoning crimes against the safety and reliability of civil aviation; the challenges of ensuring the trial of suspects or of extraditing them for trial, law stepped in to ensure and assure the safety and or security of persons, goods, facilities and installations through four major ways viz:

1. The instrumentality of multilateral conventions to confront the scourge of offences and unlawful acts against the safety and

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[35] Shaw, M.N, Op.cit pages 369-370, and Shearer, I.A "*Starkes International Law*" Eleventh Ed. Butterworth's Publishers, London, 1944 page 155

[36] I.C.J reports, 1986 page 128, I.C.R.P 349, as referred to by Shaw, M.N. page 157.

[37] Shearer, I.A. Op.cit page 157

[38] Annex 2,11,15 and Articles 31 of the Chicago Convention, 1944.

advancement of civil aviation such as the Convention on Offences and Certain other Acts Committed on Board Aircraft 1963 otherwise known as the Tokyo Convention of 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft otherwise known as the Hague Convention of 1970; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation otherwise known as the Montreal Convention of 1971; and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation known as the Montreal Protocol 1988.

2. Through International Standards and Recommended Practices (SARPS) developed and published as annexes by the International Civil Aviation Organization (ICAO) which aim at achieving the objectives of security and safety pursuant to the powers conferred on ICAO by the Chicago Convention of 1944.
3. Resolutions of the United Nations Assembly on issues of safety and security of civil aviation.
4. Legal and administrative measures by individual nation states, such as the copious provisions in the area of safety and security in the Civil Aviation Act, 2006 of Nigeria.

We shall, however, concentrate on assessment of the multilateral conventions on security and safety as well as international standards and recommended practices only. This is because United Nations' Resolutions do not play a major role in aviation safety and security. In the case of a State, in view of the fact that the basic legal provisions and standards are largely as contained in the multilateral conventions and international standards and recommended practices, we shall not examine the legal provisions of state law and or compliance with international standards or recommended practices in detail or depth.

We shall briefly examine the nature of the challenges the multilateral conventions that sought to or that addressed the challenges as well as international standards and recommended practices in detail or depth.

1.5.2 LEGAL CHALLENGES TO AVIATION SAFETY AND SECURITY

The following are the challenges:

1.5.3 THE CHALLENGE OF JURISDICTION

When a crime is committed on board aircraft the possibility is that usually more than one state and, ipso facto, more than one jurisdiction may be involved. These states include:

(i) The state of registration of the aircraft;
(ii) The state in whose airspace the crime is committed;
(iii) The state of landing after the commission of the offence;
(iv) The state of the victim or victims of the crime; and
(v) The state of the offender.

Before 1963 the legal position was nebulous such that the offender may escape the:

> *Sanctions of the law as may be observed in the cases of US VS Cordova, and R.Vs Martin. In the former case, a United States aircrafts was flying from San Juan, Puerto Rico, to New York. During the flight and while the aircraft was over the high seas, Cordova was involved in a fight with another passenger. When the stewardess tried to stop the fighting, Cordova bit her and the pilot that also tried to intervene. The court held that there was no federal jurisdiction (then in 1950) to punish these acts of crime on the high seas unless they were committed on a vessel and thus set the accused free.*
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> *...In the later case, the defendants were employed on a British Aircraft. They were accused of carrying raw opium from Baxtin to Singapore in violation of the British's Dangerous Drugs Act of 1951. The prosecution relied on Section 62 of the Civil Aviation Act 1949 of the U.K which provides at its subection I that any offence whatever committed on a British aircraft shall for the purpose of conferring jurisdiction be deemed to have been committed in any place where the offender may from the time being is. Devlin J. as he then was quashed the indictment and therefore set the defendants*

free. The section in question was held to be a venue creating and not offence creating...[39]

1.5.4 CRIMES AGAINST THE SAFETY AND RELIABILITY OF CIVIL AVIATION

As pointed out earlier, in the beginning of civil aviation, the idea that aircraft might become a field for the application of criminal law appeared "fanciful".[40] Yet, within a short time, crimes committed on board aircraft became evident from the relatively insignificant- theft, assault, drug smuggling, currency offences and the like to the serious- hijacking, destruction of air navigation facilities, amongst others. In Nigeria the only recorded case of hijacking was that carried out by a pro-democracy body known as movement for the advancement of democracy (MAD).[41] The need for appropriate sanctions thus became evident.

1.5.5 THE CHALLENGE OF IDENTIFYING AND DEALING WITH BURGEONING CRIMES AGAINST THE SAFETY AND RELIABILITY OF CIVIL AVIATION

Like the octopus, crimes against the safety of civil aviation have not only been increasing but graduating from one level to the other to the point that aircraft are not only hijacked but used as a weapon for the destruction of targeted buildings and installations as epitomized by the notorious September 11, 2001 bombings in the United State of America (U.S) which led to the death of about 3,000 people;[42] to the massive ingenious and calculated attempt to bomb planes and trains using liquid bombs in the United Kingdom (U.K).

1.5.6 THE CHALLENGE OF ENSURING THE TRIAL OF SUSPECTS OR OF EXTRADITING THEM FOR TRIAL

Prior to 1963, the challenge was that:

(i) The state of landing might not be prepared to or might not even have jurisdiction to try the suspect or be obligated to extradite him;

(ii) Many states refused to extradite their own nationals;

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[39] Douglas, T. *"Problems of Jurisdiction over Crimes on Board Aircraft"* The Punch Newspaper, April 10, 2006 page 58

[40] Shawcross and Beaumont, Op.cit page 521

[41] The Economist Magazine

[42] New Nigerian Newspaper, September 12, 2006 page 15.

(iii) A request for extradition was limited by the jurisdiction of the requesting state to try the offender;

(iv) States might grant extradition otherwise than in accordance with a treaty only if their national law allowed, but were under no international obligation to do so; and, ***inter alia.***

(v) Most states refused extradition for political offences and hijackings have largely been for political motives.

1.5.7 MULTILATERAL CONVENTIONS ON SAFETY AND SECURITY

Arising from the challenges identified above, the conventions enumerated above were entered into to tackle the challenges. We shall examine the conventions, their thrusts and the challenges solved or attempted to be solved. They are as follows:

1.5.8 THE TOKYO CONVENTION OF 1963

The Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963, otherwise known as the "Tokyo Convention" is essentially the seminal action to combat aviation crime including hijacking.

The Convention applies to acts which jeopardize or endanger the safety of aircraft, of persons or of property on board aircraft or puts in danger good order and discipline on board aircraft.[43]

The Tokyo Convention excludes application of its provisions to aircraft used in military, customs or police services as well as in respect of offences of a political nature.[44]

Under the convention contracting states are empowered to take the necessary measures to establish jurisdiction by municipal law. Beside the state of registration, another contracting state may exercise jurisdiction where the offence has effect on the territory of the state; is committed against the security of the state; or the exercise of jurisdiction is necessary to ensure the observance of any obligation of such state under a multilateral international obligation.[45]

The Convention also, basically vests diverse and enormous powers of enforcement of its provisions on the aircraft commander, contracting states,

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[43] Articles 1 and 2 of the Tokyo Convention of 1963
[44] Ibid, also Article 3 and 4 of the Convention
[45] *Ibid, Article 6*

crew and even on the passengers abroad the aircraft.[46] On the important issue of extradition, the Convention provides for extradition as between contracting states to the Convention who also have an extradition treaty between themselves but does not confer an obligation to grant extradition where there are no existing extradition treaties.[47]

While the Tokyo Convention represented the first major multilateral and concerted effort at tackling the challenge of crime against civil aviation and partially solved the intractable problems of jurisdiction and extradition by reducing the deficiencies then existing, the Convention actually failed to make a frontal attack on aviation crime particularly hijacking in that no offences were identified or listed with particularity, no specific punishments were prescribed; on extradition, the Convention reduced and whittled its potency by its refusal to create an obligation to extradite irrespective of existence or non-existence of extradition treaties.

Furthermore, the inexplicable and inexpedient exclusion of offences of a political nature and of aircrafts used for military, customs or police purposes from the purview of its application is difficult to justify as all such offences have at least adverse effect on good order and discipline, or even worse on board the aircraft.

Finally, the Convention did not foresee or address:

a. Acts committed against the aircraft from outside the aircraft;
b. Offences committed by the aircraft itself;
c. Acts of sabotage against aeronautical equipment and installations, such as may jeopardize the safety of the aircraft; and
d. Other burgeoning offences against the aviation industry generally.

1.5.9 THE HAGUE CONVENTION OF 1970

The Convention for the Suppression of Unlawful Seizure of Aircraft 1970, known otherwise as the Hague Convention of 1970 chiefly expanded and reinforced the terms of the Tokyo Convention by eliminating and filling in some of the gaps contained in its articles on diverse issues such as jurisdiction, extradition, powers of contracting states, amongst others.[48]

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[46] Ibid

[47] The Annual Aviation Law and Business Digest vol. 2, 2003, an Annual Publication of Agbeyegbe Seminars, Western House, 16th Floor 8/11 Broad St. Lagos.

[48] Preamble to the Hague Convention of 1970

The Convention specifies with greater clarity the offences targeted or sought to be curbed, that is, the offence of hijacking albeit the word "hijacking" was not employed.[49]

On the issue of jurisdiction, the Convention did not innovate or expand but rather specified with clarity the states vested with jurisdiction,[50] these are: the state of registration of the aircraft; the state of landing of the aircraft; the state where the offence is committed; and when the offence is committed on board an aircraft leased without crew, to a lessee who has his principal place of business, or if the lessee has no such place of business, his permanent residence, in that state. As with other Conventions, no attempt has been made to confer universal jurisdiction on the offence of hijacking notwithstanding that by the preamble to the Hague Convention, there is a general admission that the offence is contrary to the interest of the international community.

In that regard, it is submitted that such offences contrary to the interest of the international community be treated as delict jure gentium, (offence of a universal nature) entitling all states to apprehend and punish the offenders. This, however, sadly is not the case. When contrasted with the offence of piracy which appertains to maritime law but basically having the same ingredients and effects, which is an offence subject to universal jurisdiction, the comparison becomes difficult to justify.

The Hague Convention however made elaborate and succinct provisions with respect to extradition as contracting states undertake to include the offence as an extraditable offence in every treaty between them and most importantly, the Convention itself may be considered as the legal basis for extradition in respect of the offence or submit the case to its competent authorities for purpose of prosecution.[51] Contracting states are supposed to be more proactive and again unlike the penultimate Convention, this contained no exception for political offences.

Most of the shortcomings of the Tokyo Convention were inherited by the Hague Convention. For example while aviation crimes are not limited to hijacking, the Convention was confined to hijacking.

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[49] Article (a) (b) of the Hague Convention

[50] Article 4 and 8.

[51] Article 7, also Shawcross and Beaumont Op. cit Page 214

> *"Leaving the matter of armed attacks, sabotage and other forms of violent action directed against civil aviation and aviation facilities to be dealt with by a latter diplomatic conference."* [52]

Finally, while the threat of what the Convention refers to as "the offence" is hijacking, it is inexplicable why it fell short of calling the offence "hijacking".

1.5.10 THE MONTREAL CONVENTION 1971

The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation concluded at Montreal on 23rd September, 1971, otherwise known as the Montreal Convention 1971, differed from the earlier Conventions mainly in the area of enumerating and defining with clarity more offences and crimes. Thus, under the Montreal Convention of 1971, it is an offence unlawfully and intentionally to perform on board an aircraft in flight, an act of violence against any person which is likely to endanger the safety of an aircraft, to destroy an aircraft in service, or so to damage it as to make flight unsafe or impossible; to place or cause to be placed on board an aircraft in service, by whatever means, a substance likely to destroy it, or so to damage it, that it cannot fly or that its safety in flight is likely to be endangered; to destroy, damage or interfere with operation of air navigation facilities, if this is likely to endanger the safety of an aircraft in flight, or knowingly to communicate false information thereby endangering the safety of such an aircraft. To attempt to do any of these things is also an offence, as it is also to be an accomplice to such offence or attempt.[53]

The above Convention was later supplemented in 1988 by the "Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation" signed at Montreal on 24th February, 1988. the Protocol introduces a legal regime comparable to that under the Hague and Montreal Conventions. The Protocol provides for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation which cause or are likely to cause serious injury, and acts of violence which destroy or seriously damage the facilities of an Airport Serving

[52] Shaw, M.N. Op.cit page 214.
[53] Ibid page 476

International Civil Aviation or Aircraft not in service located thereon or disrupt the service of an airport.[54]

Besides the identification of more offences with clarity, virtually all the weakness and deficiencies of the earlier convention apply to the Montreal Convention and Protocol. Like the other Conventions, these instruments are grossly inadequate to address the present and potential problems such as the deployment of aircraft as weapon of destruction or the manufacture of liquid bombs intended to be unlawfully deployed on board aircraft.

1.5.11 INTERNATIONAL STANDARDS AND RECOMMENDED PRACTICES (SARPS)

Article 44 of the Chicago Convention sets out the aims and objectives of ICAO principal of which is safety and regularity of civil aviation. The Chicago Convention goes on to vest on the council of ICAO the mandatory function to amongst others:

> *"Adopt in accordance with the provisions of chapter vi of this convention international standards and recommended practices; for convenience designate them as Annexes to this convention."*[55]

This function is discharged in matters concerning the safety, regularity and efficiency of air navigation as may from time to time appear appropriate.[56] This is with a view to achieving the highest practical degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, personnel, airways, and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.[57]

Presently, there are 18 annexes which cover operational framework most of which are on security and safety. Eight examples are:

Annex 2 - Rules of the air
Annex 3 - Meteorological service for international air navigation
Annex 8 - Airworthiness of aircraft

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[54] Ibid.
[55] Article 54 (5) (&) of the Chicago Convention 1944
[56] Article 37, Chicago Convention, 1944
[57] Cheng, B. *"The Law of International Air Transport"* Published by the London Institute of World Affairs, Oceana Publications Inc. 1962 pages 70,71

Annex 9	-	Facilitation
Annex 11	-	Air traffic service
Annex 12	-	Search and rescue
Annex 17	-	Security
Annex 18	-	Safe transportation of dangerous goods by air

"Standards" and "Recommended practices" are defined as follows:

"Standard"

> *"Means any specification ...necessary for the safety or regularity of international air navigation and to which the member states will conform..."* *while*

"Recommended practices".

> *"Means any specification... recognized as desirable in the interests of safety, regularity or efficiency of international air navigation and to which member states will endeavour to conform..."* [58]

The international standards and recommended practices (SARPS) can however sadly be departed from for a variety of reasons by states chief of which is that the state finds it impracticable to comply in all respects with any such international standards or procedures.[59] Indeed, by article 90, a majority of the contracting states may register their disapproval to the annexes. The interpretation of what each state considers "impracticable" is left to be subjectively construed by each state. These provisions, needless to state have considerably reduced the weight and potency of enforcement of these SARPS, leading to a lowering of the SARPS especially by developing countries. Room has also been created for contracting states to have a pot pourri of SARPS other than the ones applied across the board internationally leading to a babel like situation creating a recipe for chaos.

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[58] see ICAO Lexicon 4th Edition (1974), see also Shawcross and Beaumont Op.cit pages 204, 205

[59] Articles 37 and 38 of the Chicago Convention, 1944

1.6 THE INTERNATIONAL LEGAL INSTRUMENTS AS APPLICABLE IN NIGERIA

Prior to 2006, Nigeria was a signatory to the Chicago Convention which gave birth to SARPS but was not a signatory to the multilateral conventions assessed in this paper.

The Civil Aviation Act of 2006 however, replicated and reproduced almost verbatim the provisions of the multilateral conventions above. The standards and recommended practices for which Nigeria was a contracting state and party to were observed more in the breach. This indeed was the case as found by the Federal Government in the wake of the air crashes that occurred in Nigeria in 2005.[60]

The report of the Task Force heavily indicted the relevant aviation authorities for dereliction of their duties. Aircrafts, equipments and aeronautical facilities were found to be obsolete, not sufficient or even totally unavailable. Training and manpower were insufficient. There was little or no maintenance of the available facilities. Indeed, the aviation legal instruments especially the standards and recommended practices were found to have been observed more in the breach. For example, there were allegations that airplanes that are not airworthy are allowed to fly, crew who should not be flying are allowed to fly.

1.7 CONCLUSION

Aviation, as a mode of transport has not only defined and changed the shape of transportation globally, it has changed the course of history serving as a means to foster advancement and development but paradoxically, a bridge facilitating crime and destruction. Yet the place of safety and security as well as the place of law in ensuring and attaining these objectives cannot be overemphasized.

Our conclusion from the discourse here is that the multilateral conventions and SARPS are inadequate in their provisions to tackle sufficiently the multifaceted challenges facing the aviation industry. Inadequate as they are, they have not been enforced or complied with.

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[60] *"Causes of Dereliction in the Nigerian Aviation Industry"* Punch Newspaper, 11/12/2006 – 29/02/2007

There is thus an urgent need to ensure the compulsory applicability of multilateral conventions on air law and such conventions should have universal force, applicability, jurisdiction and acceptability. As such, the offence of hijacking should be treated as delict jure gentium akin to piracy.

On SARPS it is necessary to insist on the same standards across the board globally. The lives of citizens of the United States of America or of Canada are of no higher value than those of Cambodia, Rwanda or Nigeria.

Finally, in view of the fact that the multilateral conventions considered did not cover burgeoning and novel crimes nor did they anticipate such crimes, those conventions ought to be supplemented by protocols providing for punishment for all kinds of aviation crimes whether provided for explicitly or not. Such omnibus provision for punishment of crimes should be wide enough to accommodate all kinds of crimes actual or anticipated.