AVIATION SAFETY AND SECURITY UNDER THE NIGERIAN CIVIL AVIATION ACT 2006: A CRITIQUE*

Abstract

Aviation safety and security constitute top priority of air travellers, the Government of every country and the international community. The concepts are subjects of great international and domestic concerns. They are central to the growth, sustenance and continued relevance of civil aviation. Accordingly, every endeavour is made by the international community in general and Nigeria in particular to ensure safe and secure air operations. In Nigeria, the Civil Aviation Act, 2006 is the principal legislation in the field of Civil Aviation, and it was deliberately crafted to guarantee safe and secure air operations in Nigeria. By the use of doctrinal legal research methodology, this article examined the provisions relevant to aviation safety and security under the Civil Aviation Act, 2006. It was found that though the Act is a good piece of legislation in the field of aviation safety and security, it had its shortfalls. Lack of impressive implementation of the provisions of the Act relating to safety and security; failure to provide for commission of aviation offences by technological means; failure to make adequate provisions to address the offence of irresponsible hoaxes; and failure to provide for the offence of hostage taking of passengers were some of the identified shortfalls of the Act within the context of safety and security. The article called for a change of attitude by the relevant agencies, regarding implementation of the safety and security provisions under the Act. The article also recommended that the Nigerian Civil Aviation Act, 2006 be amended to make provisions for the offences omitted, as well as to make adequate provisions for the offence(s) inadequately provided for, or alternatively, that a distinct legal regime be instituted to address aviation safety and security issues as it is the case in other jurisdictions such as Canada and the United Kingdom, among others.

Keywords: Aviation Safety, Aviation Security, Civil Aviation, Law

1. Introduction

Civil Aviation is considered, worldwide, as one of the indices for measuring a nation's depth of economic development and prosperity. It, arguably, offers the most organized the safest, most convenient and fastest means of transportation not only for locals but also for international businessmen and women. Civil Aviation, therefore, has tremendous impact on the economic and social fabric of the nation and helps towards international understanding, co-operation and commerce[1]. Despite its enormous gains, civil aviation has continued to suffer series of unlawful interferences, and threats to its safety. Terrorists, criminals and hostile nation states have long viewed civil aviation as a target for attack and exploitation[2]. The threat of terrorism, the very numerous incidences of hijackings and air rage, damaging or destroying aircrafts and nearby arrears with bombs, hostage taking of passengers, destruction of airports and airports facilities as well as other acts of violence in the skies by unruly and disruptive passengers remain part of the history of civil aviation. With advances in science and technology, which make possible for Wi-Fi and internet services to be available on airplanes today, these acts of criminality have been on the increase, both in propensity and sophistication. It is consequent upon the foregoing that the regulation of both safety and security in aviation is central in order to sidestep injuries to persons and property and to ensure the protection of life[3]. In Nigeria, the Civil Aviation Act (CAA), 2006 is the principal extant legislation in the field of Civil Aviation, and *a fortiori* aviation safety and security. The promulgation of the Act was a pragmatic legislative response to the trying moments of 2005 and 2006 in Nigeria, when there was devastating and attention-catching number of fatal air accidents.[4] In order to prevent the trend of fatalities and secure safety in the future of the civil aviation industry, the CAA, 2006 contains impressive provisions relating to safety and security of aviation in Nigeria. The issue is whether the provisions relating to aviation safety and security under the CAA, 2006 are adequate enough to guarantee the desired safety and security in Nigeria. Flowing from the above, this article attempts a critique of the aviation safety and security provisions under the CAA, 2006. The desideratum is to determine the adequacy and operational efficacy or otherwise of the said provisions. In order to achieve that, the article is divided into five parts. While part one is the introduction, part

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[1] GS Sachdeva, *International Transportation: Law of Carriage by Air* (Deep and Deep Publication, 1987), 5

[2] US National Strategy for Aviation Security of March 26, 2007 1.

[3] Paul Stephen Dempsey, 'Compliance and Enforcement in International Law: Achieving Global Uniformity in Aviation Safety' (2004) 30 NCJ. INT'L L & Comm. REG.4

[4] Three fatal accidents were recorded within a space of barely one year within the Nigeria airspace, namely, the crash of Bellview Airlines Lisa, Nigeria Boeing 737-2L9 (Adr) 5N-BFN on the 23rd October, 2005; the crash of Sosoliso Airlines, McDonnell Douglas DC-9 – 325N BFN on the 10th December, 2005; and the crash of Aviation Development Corporation Boeing 737 – 2B 75N – BFK on the 29th October, 2006.

two is on conceptual clarifications. In part three, the aviation safety and security provisions under the CAA, 2006 are examined. Part four deals with the shortfalls of the CAA, 2006 within the context of aviation safety and security. Part five is the conclusion.

2. Conceptual Clarifications

For ease of appreciation of the discussion in this article, it is important to clarify the key concepts. The concepts clarified are: 'aviation', 'aviation safety' and 'aviation security'.

Aviation

The word 'aviation' is from the Latin word, *avis* which means 'Bird'. It was coined in 1863 by French aviation pioneer Guillaume Joseph Gabriel de la Landelle in his work '*Aviation ou Navigation Aerienne*'.[5] The Aviation Dictionary for Pilots and Aviation Maintenance Technicians[6] defines aviation as the 'branch of science, business or technology that deals with any part of the operation of machines that fly through the air'. This definition is quite encompassing as it recognizes the multi-disciplinary dimension of aviation – as a concept in science, business or technology. In another vein, aviation is considered as a general term which includes the science and technology of flight through air. The term applies to the mode of travel provided by aircraft as carriers of passengers and cargo, and as such is part of the total transport system.[7] It also describes the employment of aircraft in such fields as military aviation[8]. The world of the airplane including the people who manufacture, market, and repair aircraft or work in allied industries, is often spoken of as aviation.[9] It is in this sense that aviation is conceived as dealing with designing, building and flying of aircraft.[10] For the purpose of this article, the word 'aviation' is used to mean the operation of aircraft in all its ramifications within the purview of air transportation, and the maintenance of its facilities. Aviation can be conveniently divided into three namely, military aviation, civil aviation (air transport aviation) and general aviation. Military aviation includes all aviation activity by the armed services, such as combat, reconnaissance, and military air transport. Military aviation is grouped into different types, to wit – Fighters aircraft used primarily for the destruction of other aircraft; Ground attack aircraft used against tactical earth-bound targets; Bombers generally used against more strategic targets such as factories and oil fields; Cargo transport aircraft used to transport hardware and personnel; Projectile used for goods only, normally explosives, but also things like leaflets; Surveillance aircraft used for reconnaissance; and Helicopter used for assault support, cargo transport and close air support.[11] Civil aviation otherwise called air transport aviation consists mainly of the operation of commercial airlines essentially as a public utility for the movement of persons and commodities.[12] General aviation includes non-scheduled civil flying, both private and commercial. It consists of business flights, air charter, parachuting, gliding, hand gliding, aerial photography, foot launched powered hand gliders, air ambulances, crop dusting, charter flights, traffic reporting, police air patrols, and forest fire fighting.[13]

Aviation Safety

To look at aviation safety, it is desirable to first of all look at the word, 'safety'. Safety is a word which means different things to different people. In the Merriam – Webster Online Dictionary[14], safety is defined as 'the condition of being safe from undergoing or causing hurt, injury, or loss'. What is disturbing about this definition is whether safety is attainable. In other words, is it possible to avoid being hurt or injured completely? The answer appears more in the negative, from whatever angle viewed. In the words of Huang[15]: 'If aviation must be free from any dangers or risks, it will not exist at all. Flight is inherently a risky venture, carried out in a hostile environment at great speed. The only way to assure risk free flight is never to allow the airplane to leave the gate'. There is a tendency to link the concept of safety with accident prevention. In that sense, 'safety' may be considered to mean 'no (avoidable) accidents', or more realistically, 'as few accidents as possible'. From the operational point of view, this definition is helpful since much of the safety concern is related to accident prevention. However,

[5]Online Etymology Dictionary <www.etymonline.com/index.php%3Fterm> of accessed 10th April, 2020
[6]Jeppesen, The Aviation Dictionary for Pilots and Aviation Maintenance Technicians (Jeppesen Sanderson Inc.,2012), 35
[7]Meaning of Aviation <http://www.answers.com/topic aviation > accessed 10th April, 2020
[8]Ibid
[9]Ibid
[10]Hornby, AS *Oxford Advanced Learner's Dictionary of Current English*, Sally Wehmeier (ed) (Oxford University Press, 2004), 66
[11]Meaning of Aviation (n 7), 7 & 16
[12]Ibid, 14
[13]Ibid,15
[14]Merriam – Webster Online Dictionary. < www.websters-online-dictionary.org> accessed 10thApril, 2020
[15]Jiefang Huang, *Aviation Safety and ICAO* (Kluwer Law International, 2009), 4

from a policy-oriented point of view, Huang[16] pontificates that 'accident prevention is too tight a straight-jacket to coat the much broader policy consideration underlying safety issues. Aviation safety includes, but is not limited to operational flight safety. It goes beyond accident prevention and extends to more profound political, strategic and legal dimensions. It includes preventive, remedial and punitive measures. Broadly speaking, therefore, safety is said to connote 'risk management'.[17] Risk may be at a lower or higher level. Depending on the risk involved, the scope of its management may take the form of routine suspension of a license of an unqualified pilot to the temporary grounding of all civil aircraft at the time of a crisis. Thus, aviation safety requires a multidisciplinary approach.[18] According to ICAO[19], safety is 'the state in which the risk of harm to persons or of property damage is reduced to, and maintained at or below, an acceptable level through a continuing process of hazard identification and risk management'. The beauty of this definition lies in the fact that it recognizes that the risk in the activity is not completely done away with but rather is reduced to an acceptable level. More importantly, the definition recognizes that safety is maintained by a process – a process which involves identifying the hazards that impede safety and managing risks. Accordingly, to safety professionals, safety implies 'constant measurement, evaluation and feedback into the system'[20]. A number of issues beg for answer in this definition – what does acceptable risk entail? Who will actually decide the standards of safety or the threshold of acceptable risk? In an attempt to answer these questions, Huang[21] opines convincingly as follows:

> …While aviation safety is a multidisciplinary matter, the Legislator of a sovereign state may, subject to its international obligations imposed by the Chicago Convention and other sources of international law, determine how safe is safe for aviation within its areas of competence, such as aircraft registered or operated in its territory, personnel licensed in its country and airports as well as air traffic service agencies under its jurisdictions. From this perspective, it may not be difficult to argue that aviation safety is ultimately a matter of law, namely; a matter of legislation and its implementation. From the international view point, ICAO, as the specialized agency of the UN responsible for aviation, is the guardian of the safety of international civil aviation, the global manager of risk relating to civil aviation, and the worldwide decision-making body on behalf of sovereign states with respect to aviation safety.

Aviation safety may, therefore, be defined as 'the state of freedom from unacceptable risk of injury to person or damage to aircraft and property'[22]. This definition with the use of 'unacceptable risk' implies that there may be 'acceptable risk'. Hence, aviation safety does not mean complete absence of risk of injury. Uwakwe[23] posits that aviation safety 'relates with the actual operational aspects of aviation and deals with issues like personnel licensing, certification and airworthiness of aircraft, aerodrome design and engineering, communication and navigational systems and other related issues. This definition is rather descriptive but it is herein adopted for analytical purpose.

Aviation Security

Aviation security is defined as a 'combination of material and human resources and measures intended to counter unlawful interference with aviation'.[24]Uwakwe[25] opines that security deals with third party elements that seek to interfere with the safe operation of the aircraft or endanger the lives of passengers, crew, other persons and property including air navigation facilities either on board the aircraft, in flight or on the ground. The implication of the foregoing is that the goal of aviation security is to prevent harm to aircraft, passengers and crew as well as support national security and counter terrorism policy.[26] Aviation security includes both airline security and airport

[16]Ibid
[17]Ibid
[18]Ibid
[19]Alan J. Stolzer and Carl D. Halford and John J. Goglia, *Safety Management Systems in Aviation* (Ashgate Publishing Limited, 2008), 15; ICAO, Safety Management Manual, 1st ed., 2006 (Doc.9859) para. 1.2
[20]Ibid
[21]Huang (n 15)
[22]Air Navigation Commission Working Paper. 'Determination of a Definition of Aviation Safety'. <http://www.icao.intICBD/HTML/English> accessed 3rd June, 2020.
[23]Callistus E. Uwakwe, *Introduction to Civil Aviation Law in Nigeria* (Aviation Publishing and Consultancy Co. Ltd, 2006), 171
[24]Security –<http://en.wikipedia.org.wiki/security> accessed 3rd June, 2020
[25]Uwakwe (n 23), 171.
[26]Statement of Monte R. Belger, Acting Deputy Administrator of the Federal Aviation Administration, Before the Committee on the Judiciary, Sub-committee on Technology, Terrorism and Government Information on Security

security. The former deals specifically with the procedures and infrastructures designed to avoid security problems aboard aircraft[27] while the later refers to the techniques and methods used in protecting airports and aircraft from crime (Hijacking/Bombs attempts). Airport security attempts to prevent would be attackers from bringing weapons into the airport.[28] Many devices are used for the purposes of ensuring aviation security. Some of these include metal detectors, watch dogs, and guard that do random checks. Many airports now use advanced forms of identification such as security identification display area. Identification cards that identify a person as an airline or airport employee or authorized personnel are the most common measures. Another critical security measure utilized by several regional and international airports is the use of fibre optic perimeter intrusion detection systems which allow airport security to lock and detect any intrusion on the airport perimeter, ensuring real-time, immediate intrusion notification that allows security personnel to assess the threat and track movement and engage necessary security procedures.[29] Generally, therefore, aviation security exists to protect airport from attacks and crime; to protect the aircraft from attack; and to reassure the traveling public that they are safe.

3. Aviation Safety and Security Provisions under the Civil Aviation Act 2006

The CAA, 2006 contains very fundamental provisions relating to Aviation safety and security and seeks to comply with international standards and recommended practices as contained under the annexes to Chicago Convention. To start with, the CAA, 2006 has domesticated the major international conventions in the field of aviation safety and security. These Conventions are: Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo, 1963 (The Tokyo Convention)[30]; Convention for the Suppression of Unlawful Seizure of Aircraft, Hague, 1970 (The Hague Convention)[31]; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Montreal, 1971 (The Montreal Convention)[32]; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Montreal, 1988 (The Montreal Protocol).[33] The Act does not merely domesticate these Conventions, but has also introduced certain improvements as well as complied with certain obligations imposed on contracting states under the Conventions. For instance, under the CAA, 2006 any person who commits the offence of hijacking shall be liable on conviction to imprisonment for life and also to a fine of not less than ₦10,000,000.[34] This provision clearly, is a deterrent one which, presumably is aimed at discouraging the offence of hijacking. It is, however, submitted that the provision is merely superficially pragmatic as it lacks the underlying potency to curb the menace of hijacking. The provision appears to ignore an inescapable fact that there would always be fanatical hijackers and/or terrorists who are not deterred by the retributive punishment of the law. Such fanatical offenders are willing and able to sacrifice their own lives for their ideologies, however errant and misguided they may be. In such instance, therefore, no legal rule, be it international or domestic, is enough to deter and possibly fight with success, the menace of hijacking. The solution, therefore, lies in putting in place a sophisticated and formidable layered security network capable of identifying hijackers and/or terrorists and preventing them from having access to aircraft wherein they would commit the offence. Accordingly, the utilization of technologically advanced equipment and the use of bomb-sniffing dogs, law enforcement officers, biological/chemical detectors, closed circuit TVs, as well as security checkpoints such as screening passengers by observation techniques, boarding pass check, identification check, metal detectors, trace portals/puffers, carry-on baggage screening, checked baggage screening and secondary screening of individuals would be very useful.

Technology, US Senate, November 14th, 2001 <http://www.iwar.org.uk/comsec/resources/senate biometrics/te 11140/st-belger-htm> accessed 7th January, 2020.

[27]Airline Security <http://en.wikipedia.org/wiki/ Airline> accessed 3rd June, 2020

[28]Airport Security <http://en.wikipedia.org/wiki/ Airport Security> accessed 3rd June, 2020.

[29]Airline Security (n 27)

[30]The Tokyo Convention represents the first substantial effort at the international level directed at dealing with aerial terrorism. The main purpose of the convention was to secure the collaboration of states in restraining terrorist activity directed at air transport. The convention makes provisions for the offences against penal law; acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board; and the offence of unlawful seizure of aircraft.

[31]CAA, 2006, section 56(1). The Hague Convention makes hijacking an offence and calls for severe punishment of any person who hijacked an aircraft.

[32]The Montreal Convention provides for the offences of sabotage committed on the ground, unlawful interference with air navigation facilities and services, and the communication of false information, knowingly, which endangers the safety of an aircraft in flight.

[33]Ibid, section 57. The Montreal Protocol was adopted to supplement the Montreal Convention. The protocol has extended the application of the Montreal Convention to International Airports

[34]Ibid, section 56 (4). This follows Article 2 of the Hague Convention which requires each contracting state to impose severe penalties for the offences created under the Convention.

Relatedly, any person who unlawfully and intentionally commits an act of violence against a person on board an aircraft in flight which is likely to endanger the safety of such aircraft or communicates such information which he knows to be false so as to endanger the safety of an aircraft in flight, commits an offence and shall be liable on conviction to imprisonment for 5 years or a fine of not less than ₦2,000,000.[35] There are also similar provisions with regards to the destruction and damage of aerodromes, and airport facilities and equipment.[36] It is safe to discern that the foregoing provisions are meant to be a reaction to the growing developments in world terrorism. Nevertheless, that is far from satisfactory as far as the menace of terrorism is concerned. In that light therefore, the failure of the CAA, 2006 to domesticate the International Convention on the Suppression of the Financing of Terrorism 1999, is one of its major shortcomings. In addition, the CAA, 2006 renders the pilot or any other person in charge of the aircraft and the owner or any person having responsibility for safe navigation of the aircraft liable to punishment in instances where an aircraft is flown dangerously. The punishment upon conviction is minimum of two years or a fine of not less than ₦1,000,000.00 or both.[37] The owner[38] may, however, avoid liability where the owner establishes that the act alleged to constitute the offence was done without the fault, privity and consent of the owner.[39] It is also an offence under the CAA, 2006 for any person to unlawfully and intentionally destroy or damage air navigation and meteorological facilities or interfere with the operations in such a manner as is likely to endanger the safety of aircraft in flight.[40] Any person who commits any of these acts is liable on conviction to imprisonment for a term of not less than one year, or to a fine of not less than ₦500,000 or both.[41] The CAA, 2006 has also empowered the Nigeria Civil Aviation Authority (NCAA) to 'regulate the standards for the provision of civil aviation security in Nigeria'[42] as well as all acts that directly or indirectly relate to civil aviation in Nigeria.[43]Moreover, the CAA, 2006 has made copious provisions which seek to satisfy some of the requirements of Annex 17 to the Chicago Convention. For instance, the Act requires aerodrome owners and operators to necessarily have in place an approved airport security programme[44]. The CAA, 2006 also requires airline operators to develop and implement their specific security programme[45]. The implication of these provisions is to ensure that air travel operations are carried out in line with international standards and recommended practices on aviation safety and security, with the ultimate aim of safeguarding civil aviation against acts of unlawful interference.

Furthermore, the Act makes it mandatory for persons and baggage to be searched by approved aviation security officer before proceeding to board an aircraft[46]. By section 45 of the CAA, 2006, therefore, it is mandatory to screen passengers, airport and airline workers, including the pilots, hand and checked baggage before boarding the aircraft. The section has, however, failed to stipulate the method of conducting the search. It is submitted that this leaves much to be desired considering the human rights concerns raised by the use of some of the gadgets deployed in the screening exercise. It will make better sense, therefore, if an express provision is made specifying how, and by what means, the screening exercise should be done. Be that as it may, if the section is proactively implemented, it will create a legal basis for detection of weapons and other unauthorized materials in airports and on aircrafts, thereby reducing security breaches. Section 38(1) of the CAA, 2006 empowers the Minister of Aviation to approve the establishment and development of aerodromes anywhere in Nigeria. Once the approval is given, roads, approaches, apparatus, equipment, buildings and other accommodations in connection to such aerodromes shall be maintained by the owners in conformity with rules and regulations made under the Act.[47] Such rules and regulations are by virtue of section 30(2)(c) of the CAA, 2006 to be made by the NCAA[48]. What is difficult to understand here is the unnecessary dichotomy created by the Act, by vesting approving power in the

[35]Ibid, section 57 (1)
[36]Ibid, section 59 which makes the unlawful and intentional use of any device, substance or weapon at any aerodrome to commit an act of violence which causes or is likely to cause grievous hurt of any person, or destroy or seriously damage any aircraft or facility at an aerodrome or disrupt any service at the aerodrome, an offence punishable on conviction to life imprisonment or to fine of not less than ₦10,000,000 (Ten Million Naira).
[37]CAA, 2006, section 55(1)
[38]Owner here includes any person by whom the aircraft is hired at the time of the alleged offence. See CAA, 2006, section 55(3)
[39]CAA, 2006, section 55(2)
[40]Ibid, section 60(1)
[41]Ibid.
[42]Ibid, section 30(3)(s)
[43]Ibid, section 30(2)(g), (h), (u),
[44]Ibid, section 42. Note that a breach of this provision attracts a fine of not less than ₦200, 000.
[45]Ibid, section 43
[46]Ibid, section 45
[47]CAA, 2006, section 38(2)
[48]See also Ibid, section 30(3) (k) which empowers the NCAA to certify/grant licenses in respect of aerodromes and certify airways, navigational approaches and landing aids in Nigeria to ensure safety of air navigation.

Minister of Aviation, and the regulatory power in the NCAA. Apart from the dubious political utility, the dichotomy has no basis and ought to be jettisoned by vesting both the approving and regulatory powers in the NCAA.

Under the Federal Airports Authority of Nigeria (FAAN) Act[49] all airports hitherto maintained by the Ministry of Aviation have been transferred to the FAAN for management. FAAN is, therefore, the operator of the airports established by the Federal Government of Nigeria. It can be discerned from the foregoing that the regulation of aerodromes in Nigeria is done by the collaborative roles of the Ministry of Aviation, NCAA and the FAAN. The CAA, 2006 empowers the NCAA to certify/grant licenses in respect of aerodromes and certify airways, navigational approaches and landing aids[50]. To facilitate the performance of this important function, the NCAA has, by virtue of powers vested in her[51], promulgated and developed Aerodromes Regulations[52] and Standards and Certification Manual[53]. These instruments have stipulated the standards and procedures to be complied with in respect of aerodromes. Under the instruments, an applicant is required to apply in writing accompanied with relevant documents. The application is then thoroughly evaluated by the Ministry of Aviation. When the preliminary evaluation is favourable, the applicant proceeds to undertake a site survey and submit the report to the NCAA for evaluation and results. When the result is favourable, a site inspection visit is conducted and where successful, the applicant is asked to submit the requisite technical documents which include: layout plan, building drawing, structural drawings of pavements, soil evaluation documents, wind date, and obstacle analysis drawings. The documents are then evaluated based on standards, and where found to have met the standards; an approval to construct the aerodrome is then granted to the applicant. Even after the approval, the project is periodically monitored to ensure compliance with standards up to the point of completion. In carrying out her function in the approval and certification process, the NCAA shall have regard to the need to minimize, so far as practicable, any adverse effect the presence of such aerodromes may have on the environment.[54]

Most importantly, as a deliberate safety measure, the CAA, 2006 provides for the establishment of an independent and autonomous Accident Investigation Bureau as opposed to a government-controlled body.[55] The Bureau is charged with the responsibility of the investigations of any accident or incident arising out of or in the course of air navigation occurring in or over Nigeria or to Nigerian aircraft elsewhere. Unfortunately, however, the functional efficacy of the role of the Bureau has been greatly dwarfed by the provisions of Annex 14 to the Chicago Convention, the Civil Aviation Policy, 2001 and the CAA, 2006 itself. Annex 14,[56] provides that the sole objective of accident or incident investigation is the prevention of accidents and incidents. Its purpose is not the apportionment of blame or liability. Similarly, the Civil Aviation policy,[57] states that the aim of accident investigation is to determine the cause of accident and prevent further occurrence. The CAA, 2006 provides that the sole aim of the investigation of an accident 'shall be the prevention of accidents and incidents.[58] It is clear from the above provisions that apportionment of blame or liability is not within the professed aim of investigation. It, therefore, means that the role of the Bureau is to conduct investigation and make recommendations which when implemented would improve aviation safety. The Bureau lacks the coercive powers necessary for instituting a regime of sound professionalism and commitment for those involved in the air travel process. From the way the provisions are couched, it appears that where a claim for damages arises from an accident or incident, the report of any investigation to that effect will not be admissible in evidence. In accord with this reasoning, the CAA, 2006 expressly provides that accident investigation reports are not admissible in evidence as to form basis of liability in any criminal or civil proceedings.[59] It is respectfully submitted that this kind of provision runs foul of the doctrine of fair hearing as it prevents a party from using the 'best evidence' available in proof of his case, and therefore consequential amendment ought to be made. Another handicap of the Bureau is the fact of its being ill-equipped to effectively discharge its mandate due to the non-availability of the required investigative equipment.

[49]FAAN Act CAP F5, LFN, 2004, section 1(3)
[50]CAA, 2006, section 30(3)(k)
[51]Ibid, section 30(2)(c)
[52]Nig. CARs,2015, Part 12 entitled 'Aerodrome Regulations'
[53]Aerodrome Standards Manual Published by the Directorate of Aerodrome and Airspace Standards, NCAA, 2015 which took effect in 2016.
[54]CAA, 2006, section 40.
[55]Ibid, section 29.
[56]Cap 3.1, Annex 14 to the Chicago Convention
[57]Cap 5.2.1 of the Policy
[58]CAA, 2006, section 29(12)
[59]*Ibid*, section 29 (14)

For instance, in some instances, the black box is reportedly missing[60] thereby depriving investigators access to very vital information that would have been useful in unraveling the cause of the accident. Another dimension to the problem is that, even when the Bureau is well equipped and does its job up to expectation, the report is never properly utilized. For instance, it is reported that the Paul Dike's Committee Report on the Sosoliso Airlines crash of 2005 has never been utilized.[61] This report, it is submitted, would certainly have been the bane of infrastructural development that could not only support future aviation roadmap in Nigeria but also help in no small measure in averting future aviation accidents thereby enthroning safe and secure air operations. The report critically analysed the most serious problem affecting aviation development in Nigeria and made proper recommendations. Unfortunately, it is reported that no single minister of aviation since then, has bothered to peep into it until now.[62]

The CAA, 2006 vests jurisdiction to try offences under it in the Federal High Court.[63] This is an endorsement of the provisions of the Constitution of the Federal Republic of Nigeria which confers exclusive jurisdiction over matters relating to 'aviation and safety of aircraft' in the Federal High Court.[64] This provision has received judicial recognition. In *Egypt Air v Abdullahi*[65], the respondent (Abdullahi) took out a writ of summons against the appellant at the High Court of Kano State claiming the sum of ₦378,024 being the value of textile materials and threads entrusted to the appellant for freight by air from Cairo to Kano and general damages for non-delivery of the goods. The High Court of Kano State entered judgment in favour of the Plaintiff/Respondent. On appeal to the Court of Appeal, the Appeal Court declared the judgment a nullity and ordered that the matter be transferred to the Federal High Court for trial *de novo*. Furthermore, it is provided under the CAA, 2006[66] that without prejudice to the power of the Attorney General of the Federation, the NCAA shall have the *locus standi* to initiate and undertake the prosecution, in its name, of any person in respect of any offence created under the provisions of CAA, 2006 or any regulation, rule or order made pursuant to the Act. The power of the NCAA herein is, however, subject to the consent of the Attorney General of the Federation. Another important provision of the CAA, 2006 which relates to aviation security is section 44 of the CAA, 2006. That section mandates the NCAA or any other person authorized by the NCAA to conduct surveys and inspections of security measures relating to passengers and their cabin baggage, checked baggage, cargo and other goods, access controls and aerodrome design; and to conduct an exercise to check the professional efficiency of those personnel responsible for implementing the aviation security procedures and also to test the adequacy of security measures at any aerodrome in Nigeria. This section is, indeed, internal enforcement and compliance machinery. It is meant to ensure compliance with set standards. It is, therefore, a welcome addition to our aviation security legal jurisprudence.

On the whole, the CAA, 2006 is a good piece of legislation in the field of aviation safety and security in Nigeria. It is the first comprehensive legislation,[67] in civil aviation generally. The aviation safety and security provisions of the CAA, 2006 deserve commendation in many respects. First, the CAA, 2006 has domesticated the major international treaties in the area of aviation safety and security.[68] Nigeria has also adopted the international SARPs as contained in the Annexes to the Chicago Convention, 1944 under Nigerian Civil Aviation Regulations, 2015. She has fulfilled her international obligations under the relevant international legal instruments such as creation of NCAA as an autonomous body to regulate *inter alia* aviation safety and security;[69] establishment of Accident Investigation Bureau with the responsibility of investigating aviation accidents and incidents;[70] and the criminalization of certain acts of unlawful interference with civil aviation.[71] Viewed closely, the CAA, 2006 lays down rules and standards on aviation safety and security. The rules and standards clearly set out responsibilities to airlines, operators of airports and ground handling agents to implement safety and security programmes. This

[60]It was reported that the black box of the Bellview Aircraft which crashed on 22nd October, 2005 could not be found. See Ehikhamenor Edeaghe and Okoro Esosa and Hestia Idiodii, 'Comparative Analysis of the Bellview and Sosoliso Air Crashes in Nigeria: Matters Arising' {2006} 5 (2) *The Internet Journal of Rescue and Disaster Medicine*. DO1: 10 5580/2162, 3

[61]D. Omale, 'Nigeria: Finally Aviation Development Roadmap Coming?' *(*2008) <http://allAfrica.com stories 200806060349.htm>Accessed 15th May, 2020, 1.

[62]Ibid

[63]CAA, 2006, section 63

[64]See Constitution of the Federal Republic of Nigeria, 1999 (As amended), section 251 (1) (k)

[65]*(1997) 11 NWLR (pt 528) 179*

[66]CAA, 2006, section 63(2)

[67]This is unlike the CAA, 1964 which had only 19 Sections and did not cover very important areas of civil aviation.

[68]The requirement of domesticating international treaties is in line with the CFRN, 1999 (as amended), section 12

[69]CAA 2006, section 30

[70]Ibid, section 29

[71]Ibid, sections 55, 56(4), 57(1), 59 and 60

demonstrates that Nigeria has substantially fulfilled her international obligations. It also shows that Nigeria is not a hiding place for perpetrators of acts of unlawful interference with civil aviation.

4. Shortfalls of the Civil Aviation Act, 2006 within the Context of Aviation Safety and Security

Despite the strengths of the provisions of CAA, 2006 relating to aviation safety and security, there are a number of identified shortfalls. The shortfalls relate to some of the provisions of the CAA, 2006 and omissions in the CAA, 2006. The first shortfall of the CAA, 2006 is the issue of implementation of the aviation safety and security prescriptions provided for. Some security breaches at Nigerian airports have questioned Nigeria's commitment in the implementation of the safety and security provisions. Few of such security breaches will suffice. To start with, there was an attempt by a man to attack a Medview Airline aircraft that was about to take off at Murtala Muhammed Airport (MMA), Lagos[72]. The incident forced the Pilot to return the aircraft to its base where security checks were conducted on all passengers, luggage and the aircraft before appropriate clearance was given. Another security breach occurred at Nnamdi Azikiwe International Airport, Abuja when, in protest over lost of luggage in transit, the passengers prevented Turkish Airlines aircraft from taking off on schedule, in gross breach of safety regulations.[73] It should be noted that, it is a fundamental breach of airport security to prevent an aircraft from taking off on schedule. Also, in July, 2005, an Air France Airbus 330 that flew in from France with 196 passengers on board ran into stray cows on the runway of the Port Harcourt International Airport, killing seven cows.[74] It took the officials of FAAN not less than three hours to dispel the surviving cows and clear the runway of debris of the killed cows. In another related development, Abdullahi,[75] reported as follows:

> In March, 2011 …a Hawker 850 aircraft carrying Vice Presidential candidate of the Action Congress of Nigeria, Mr. Fola Adeola experienced a runway incursion by goats at the Bauchi airstrip... Cows stray into runways and airside at the Kaduna Airport almost on daily basis... A commercial aircraft could not land, and had to hover round for some time to allow the animals move away from the airfield before initiating final descent…

Another incident is a teenage stowaway incident of 25th August, 2013 when Daniel Ihekina, a 13-year-old boy, was able to beat security at the Benin Airport, accessed and remained on Arik Air flight W3, 544 for 45 minutes from Benin to Lagos. The airline staff were alerted by passengers when the boy was seen emerging from a wheel cavity upon landing in Lagos.[76] These security breaches show that the Nigerian airport security is porous and that aviation security personnel at the Nigerian airports are either not competent or are ill-trained. The issue of training and retraining of aviation security personnel is seriously called to question here. Another shortfall of the CAA, 2006 in the area of aviation safety and security is its failure to provide for commission of aviation offences by technological means. In the 21st century where information and communication technology has had tremendous impact on virtually every aspect of human endeavor including aviation, Nigeria appears ill-prepared to confront the issue of cyber-attacks. There is no provision or legal regime in Nigeria capable of responding to emerging safety and security challenges which are largely a product of growth in information and communication technology. In the 21st century, the international civil aviation community is relying on computer based and information technology systems for their daily operations. This reliance will continue to grow as new and modern airports and aircraft are developed. Computer based systems are being used in almost every aspect of civil aviation operation. Tyson[77] identifies elements of aviation industry that rely on connectivity to include flight operations, passenger reservations, cargo handling and shipping, passenger embark/debark procedures, air traffic control systems and flight control navigation computers. Ogochukwu[78] is quoted as positing as follows: 'Aviation is one of the most complex and integrated systems of information and communications technology (ICT) in the world; the global aviation system, a highly technology driven environment, is a potential target for a large-scale cyber-attack'. Chapter 4 of Annex 17 to the Chicago Convention deals with cyber-threats. The chapter recommends as follows: 'Each contracting state must develop measures in order to protect information and communication

[72]The Nation Newspaper online, 'Man Attacks Medview Aircraft at Lagos Airport' <thecable.ng> accessed 3 December, 2019

[73]Danjuma Abdullahi, 'Nigeria: Aviation Security – Time for Reflection' <allafrica.com/stories/201601210424.html>accessed 15th May, 2020

[74]Ibid

[75]Ibid

[76]Ismail Adua Mustapha, 'Adequacy or Otherwise of the International Aircraft Security Laws in Nigeria (2016) 4 (2) ANULJ, 95

[77]Paul Tyson, 'Cyber-Security Challenges in Aviation' <https://www.advisenltd.com> accessed 12th February, 2020

[78]Peter Oluka, 'Cyber Threats: Nigeria's Aviation Sector under Scrutiny' <m.guardian.ng/business-services/communications> accessed 15th December, 2019

technology systems used for civil aviation purposes from interference that may jeopardize the safety of civil aviation'.

While it is conceded that the above provision is merely a recommendation, the need to address the concerns relating to cyber security should compel Nigeria to take steps in that direction. As it now stands, Nigeria is not well positioned, legally, to support responses to cyber-attacks. What is urgently needed, therefore, is the amendment of CAA, 2006 to include provisions that would check threats of cyber-attacks on aviation safety and security. The Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, Beijing, 2010 which came into force on 1st July, 2018 upon Turkey's accession thereto, but yet to be domesticated in Nigeria, and the Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft, Beijing, 2010 which entered into force on the 1st January, 2018 following the deposition of instrument of ratification by Uganda on the 28th November, 2017 appear to be the first comprehensive efforts made by the ICAO to secure the aviation industry by implicitly addressing the problem of cyber-threats and commission of aviation offences by 'technological means'. However, since the legal instruments are yet to be operational in Nigeria, the Nigerian situation is not in any way better off. An amendment of the CAA, 2006 to domesticate, and make provisions in line with these important legal instruments would be a welcome development. The CAA, 2006 has also failed to provide for the offence of hostage taking of passengers. What this means is that hostage taking of passengers is not an aviation offence in Nigeria. This is a grave omission which requires to be addressed by amending the CAA, 2006. The CAA, 2006 does not also adequately address the offence of irresponsible hoaxes. Section 57(1)(b) of the CAA, 2006 is the only section on hoaxes. The section provides that 'any person who unlawfully and intentionally communicates such information which he knows to be false so as to endanger the safety of an aircraft in flight, commits an offence…' This is glaringly inadequate. This is because irresponsible hoaxes are of different degrees. In Indonesia, for instance, there are three offences relating to hoaxes, namely, providing false information which endangers aviation safety; providing false information which results in aircraft accident or property loss; and providing false information which causes fatalities.[79] Nigeria requires an extensive treatment of hoaxes in the manner captured under the Indonesian law. The legal regime regulating accident investigation in Nigeria is also problematic. Of particular importance is the provision which renders inadmissible the final report of aviation accidents. Section 29 (14) of the CAA, 2006 expressly provides that investigation reports are not admissible in evidence as to form the basis of liability in any criminal or civil proceedings. That section appears to be justified on the ground that if information gathered in the accident investigation process is not protected by the civil aviation investigation authorities, there may be fear on the side of aviation personnel involved that in providing information related to the causes of the accident, they would be prosecuted and held accountable for the accident and damages resulted. Fear of criminal proceedings may lead to less contribution by aviation professionals in the course of safety investigation and the increase of judicial proceedings would lead to less reporting. So, the section is meant to encourage reporting and safety improvement. It is submitted that whatever may be the reason for it, that section cannot be justified in a democratic society like Nigeria. It is unconstitutional as it glaringly conflicts with the philosophical postulates of fair hearing[80]. In South Africa,[81] the position regarding the admissibility or otherwise of investigation reports is cast in a more liberal manner. It is provided as follows: 'The findings of or the evidence before the Aviation Safety Investigation Board are not binding on the parties to any legal, disciplinary or any other proceedings and may not be used in any civil, criminal or disciplinary proceedings against persons giving such evidence. (Emphasis provided)'.

By using the word 'may', the position in South Africa appears preferable to the Nigerian position. A rethink of the Nigerian position is urgently required. Another weakness of the CAA, 2006 is failure to domesticate certain relevant aviation security treaties. The Beijing Convention, 2010 and the Beijing Protocol, 2010 are neither ratified by, nor domesticated in Nigeria. It is submitted that the requirement of domesticating international treaties,[82] if it must be retained, should be made inapplicable to aviation safety and security treaties. Therefore, once Nigeria ratifies such a treaty, it should become applicable. That is the position in Kenya. By article 2(6) of the Constitution of Kenya, 2010, treaties or conventions ratified (whether before or after the promulgation of the Constitution in 2010) by Kenya, automatically form part of Kenyan law.

It can be discerned from the foregoing analysis that aviation safety and security are not treated with too serious commitment in Nigeria. This is not the case in other jurisdictions. The trend in other jurisdictions is to give aviation safety and security the deserved treatment by instituting a distinct legal regime to address aviation safety and security issues. In that regard, comprehensive treatment of all aviation safety and security issues is made. In

[79]Indonesia Aviation Law, No.1, 2009, article 437
[80]CFRN, 1999 (as amended), section 36(1)
[81]South African Civil Aviation Act, No.13, 2009, section 11. See also section 57 thereof.
[82]CFRN, 1999 (as amended), section 12

Canada, aviation security is regulated by the Canadian Air Transport Security Act, 2002. Pursuant to the Canadian Air Transport Security Act, 2002, Canadian Air Transport Security Authority is established with the primary responsibility of ensuring the security of air transport in Canada. This is contrary to the position in Nigeria where there are many agencies that are charged with the responsibility of ensuring security of air transportation. It is submitted that the Canadian approach would be better for Nigeria. In that case, it will be easier to know who to hold responsible for aviation security breaches. In the United Kingdom, there is Aviation Security Act, 1982 distinct from the Civil Aviation Act, 1982. The Aviation Security Act, 1982 covers offences against the safety of aircraft, protection of aircraft, aerodromes and air navigation installations against acts of violence. There are also Aviation and Maritime Security Act, 1990, and Anti-Terrorism, Crime and Security Act, 2001. In Europe, Regulation No. 300/2008[83] is the operative legal instrument in the field of aviation security. The Regulation provides the 'common basic standards for safeguarding civil aviation against acts of unlawful interference as well as the basic rules on inspecting the implementation of the basic security standards by the member states'.[84] The enactment of laws regulating different aspects of aviation safety and security in Canada, the UK and Europe is a clear indication of how aviation safety and security is prioritized in other climes. Nigeria requires such an approach, as an alternative to the amendment of the CAA, 2006, for a more formidable aviation safety and security architecture.

5. Conclusion

Aviation safety and security constitute top priority of air travellers, the Government of every country and the international community. They are very central to the growth and continued sustenance of civil aviation. It is, therefore, important that every endeavour is made to guarantee the safety and security of civil aviation. The CAA, 2006 has made far reaching provisions relating to aviation safety and security. This article has undertaken a critique of the aviation safety and security provisions under the CAA, 2006. The analysis has disclosed that what is needed to guarantee the safety and security of air operations in Nigeria is a committed implementation of the provisions of the CAA, 2006, and the amendment of the Act to make provisions for certain offences that are not covered under the Act. Better still, the CAA, 2006 may be left the way it is, and a distinct legal regime be instituted to comprehensively address aviation safety and security issues as it is the case in other jurisdictions like Canada and the United Kingdom, among others.

[83]Regulation (EC) No. 300/2008 of the European Parliament and of the Council of 11 March, 2008 on Common Rules in the Field of Civil Aviation Security

[84]George Leloudas 'Domestic Regulation of Security: The Example of the European Union' in Paul Stephen Dempsey and Ram S Jakhu (eds), *Routledge Handbook of Public Aviation Law* (Routledge, 2017), 167.