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TOTTERING ON THE PRECIPICE OF UNSAFE SKIES: IMPERATIVES, CHALLENGES AND PROSPECTS OF CIVIL AVIATION REFORMS IN NIGERIA

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ABSTRACT

Safety culture is not yet entrenched in the civil aviation industries of many developing countries. This is in spite of the avalanche of international and domestic legal instruments applicable to the regulation of civil aviation in the world. The paper seeks to appraise the Nigerian civil aviation industry in the context of its unsafe skies and the applicable legal provisions. The paper relies on the relevant provisions of the Chicago Convention of 1944, including its Annexes, as well as recent happenings in the Nigerian civil aviation industry. The paper concludes that despite the challenges facing the Nigerian civil aviation industry, it can still rank among the best in the world if it complies with the regulatory ideals of the International Civil Aviation Organisation as contained in the Chicago Convention and the Annexes made pursuant thereto.

1.0 INTRODUCTION

Transportation by air is very critical to the development of any nation.[1] It is not only basic to military preparedness and alliances, it is also pivotal to peaceful international co-operation, mutual assistance, commerce and trade, including the spread of industrialization.[2] Aviation, by its nature, draws spatially remote locations closer, and by this very fact, it has

[1] There are many expressions that are interchangeably used to describe transportation by air. Such expressions include, but are not limited to, "air transportation", "air transport", "aeronautical transport", "civil aviation", "international civil aviation", "international air transport", "aerial transport" and "air travel". The basic thing is that all the expressions clearly differentiate this mode of transport from the other modes of transport. The expressions may, therefore, be used synonymously. See Ghosh, Bishwanath, *Tourism & Travel Management*, 2nd Ed. (Vikas Publishing House PVT. Ltd., New Delhi, 2000) Page 122.

[2] Jones, Harold A., "The Equation of Aviation Policy" (1960) Volume 27, No.3, *Journal of Air Law and Commerce*, Page 222.

revolutionized the provision of goods and services in a dimension not previously possible.[3] As such, it is not only a trade in services in itself, but also a catalyst of, and essential infrastructure for, an effective and functioning global trade regime, playing a primary role in fostering international trade.[4] The ultimate success of civil aviation in competition with other transport modes depends on what it has to offer in terms of speed, regularity, safety and working costs.[5] At both the domestic and international levels, transportation by air has fared excellently well in terms of speed, regularity, safety, convenience, comfort and costs.

Indeed, transportation is the basic infrastructure upon which major commercial activities are based whether domestically or internationally. It, therefore, serves as one of the most important industries in any country's economy. Air transportation has also been considered to be a common form of transportation for long-distance passengers and freight travel and the only reasonable alternative when time is of the essence.[6] The tremendous speed of the airplane has led to the growth of air transportation, particularly in the movement of passengers.[7]

Air transport has been described as the second most popular mode of tourist transport, next to automobiles especially for international travel.[8] It is attractive because of its speed and range and also because, for business visitors, it offers status as well as saves valuable work time when travelling on a long-haul journey.[9] Where geographical isolation exists, such as in the case of an Island, air is the dominant and often the fastest means of travel.[10] Dr. Steve Ofiaju Mahonwu, a Nigerian aviation expert, has aptly captured the situation in the following manner:

> Civil Aviation has become an important element in the transportation system of nearly all nations. For all nations, large

[3] Bonin,Jason R., "Regionalism in International Civil Aviation: A Reevaluation of the Economic Regulation of International Air Transport in the Context of Economic Integration" (2008) Volume 12, *Singapore Year Book of International Law*, Page 116.
[4] *Ibid*. at Page 116.
[5] Colegrove, Kenneth, "A Survey of International Aviation"(1931) Volume 11, No.1, *Journal of Air Law*, Page 3.
[6] See Bardi, Edward J., et al, *Management of Transportation*,1st Ed.(Thomson South-Western, Canada, 2006) Page 158.
[7] Ibid.
[8] See Ghosh, Biswanath, *Tourism and Travel Management*, 2nd Ed.(Vikas Publishing House PVT Ltd., New Delhi, 2000) Page 122.
[9] *Ibid*. at page 122.
[10] *Ibid*.

> and small, developed or developing, aviation also means progress. Aviation's speed and ability to overcome natural obstacles stimulates better communications, economic growth and opportunities. It enables people to travel with greater ease and speed and comfort to cover the globe with unique and beneficial contributions of their cultural systems. Aviation brings greater access to markets and facilitates the movement of people and products domestically and internationally. Aviation sophistication can lead to the development of a nation's technological experts which can have beneficial spin-offs to other parts of that nation's economy. By and large, the impact of aviation has been felt in all fields of human endeavour.[11]

In particular, air transportation has surpassed other means of transportation.[12] This paper will, therefore, appraise the imperatives, challenges and prospects of civil aviation reforms in Nigeria. The paper is divided into six parts. Part one is the introduction. Part two briefly traces the history of civil aviation in Nigeria. Part three discusses the areas in which civil aviation reforms are urgently required. Part four analyses the likely challenges that can militate against civil aviation reforms in Nigeria. Part five deals with the prospects of civil aviation reforms in Nigeria. Part six has to do with the conclusion and recommendations.

2.0 A BRIEF HISTORY OF CIVIL AVIATION IN NIGERIA

Very little is known of the early commercial aviation in Nigeria but available records have it that a gentlemen called Bud Carpenter owned a private de-Havillard Moth aircraft which he frequently flew between Kano and Lagos. He used the rail tracks as his guide and this meant additional distance for him. There is also a record of an enterprising pilot who carried a few passengers in a sea-plane between Lagos and Warri in the early 1930s.[13]

[11] See Mahonwu, Steve Ofiaju, *Evolution of Civil Aviation in Nigeria-(1925-2010)*, 1st Ed.(New Era Aviation Development Agency,Nigeria, 2010) Pages 7-8.
[12] Decker, 'Tunde, *A History of Aviation in Nigeria - 1925- 2005*, 1st Edition(Dele-Davis Publishers, Lagos, 2008) Pages 27-29.
[13] *Ibid.* at page 2.

The first recorded flight in the annals of aviation in Nigeria landed at the ancient and walled city of Kano in 1925.[14] The flight, which was in a British fighter-aircraft, was flown by the commanding officer of the Royal Air Force (RAF) Squadron based in Khartoum, Sudan. The pilot made a breath-taking but safe landing on the horse race course in Kano, thus going down in history as the first recorded aviation activity in Nigeria. The flight of the Royal Air Force was to become an annual event starting from Cairo, which was another base, down through the Nile to Khartoum and then Maiduguri and Kano.[15]

The history of civil aviation in Nigeria cannot be meaningfully and completely discussed without commenting on the history of civil aviation in Africa as a whole. There was the British Overseas Airways Corporation (BOAC) which later replaced the services of the Royal Air Force (RAF), having been given the statutory rights to fly to Sudan, Kano, Lagos and Calabar.[16] With the end of World War II and based on the experience the Royal Air Force (RAF) and the British Overseas Airways Corporation (BOAC) had acquired within the West African sub-region, it became a task for the authorities of the British colonies in Nigeria, Gold Coast (Ghana), Sierra Leone and the Gambia to annex the countries together through a joint operation of a regional airline, named the West African Airways Corporation (WAAC).[17]

The West African Airways Corporation (WAAC) started operations with a wet-leased Dove aircraft under the supervisory control of another body set up simultaneously as the West African Air Transport Authority (WAATA). The initial services of the West African Airways Corporation (WAAC) included the link between the colonies and United Kingdom, passing through Sudan. Later, a number of domestic services particularly in Nigeria and

[14] Mahonwu, Steve O., *Evolution of Civil Aviation in Nigeria (1925-2010),* 1st Edition (New Era Aviation Development Agency, Nigeria, 2010) Page 1.
[15] Uwadiae, Deba, "From Polo Field to Airports" in Deba Uwadiae (ed.) *A flight Higher: 80 Years of Aviation in Nigeria (1925-2005),* Lagos, Business Travel Publishing Company, 2005, page 1. The contributions packaged in the book were written by aviation experts in Nigeria to commemorate eighty years of aviation in Nigeria.
[16] See Mahonwu, Steve O., *Evolution of Civil Aviation in Nigeria(1925-2010),* 1st Edition(New Era Aviation Development Agency, Nigeria, 2010) Pages 1-3.
[17] As permitted by Articles 77 and 79 of the Chicago Convention. Article 77 provides that "Nothing in this Convention shall prevent two or more contracting States from constituting joint air transport operating organizations or international operating agencies and from pooling their air services on any routes or in any regions, but such organizations or agencies and such pooled services shall be subject to all the provisions of this Convention, including those relating to the registration of agreements with the Council. The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies." Article 79 is to the effect that "A State may participate in joint operating organizations or in pooling arrangements, either through its government or through an airline company or companies designated by its government. The Companies may, at the sole discretion of the States concerned, be state-owned or partly state-owned or privately owned."

Ghana were introduced. During the period of the WAAC services, properties and equipment, land and buildings were acquired and located in the four countries, with Lagos and Accra sharing major administrative and technical responsibilities of the airline.[18]

At the independence of Ghana in 1957, Ghanaian authorities considered it politically expedient to establish a national airline as was then the vogue, resulting in the virtual disbandment of the WAAC. Sierra Leone and the Gambia also considered themselves nearer each other but far away from Nigeria and thus considered the regional airline no longer practicable and realistic for their continued participation. These developments later led to the eventual incorporation of the WAAC (Nigeria) Ltd., on August 23, 1958, which existed for only nine months before it was re-registered as Nigeria Airways Ltd., to herald Nigeria's independence.[19]

The new airline had three basic objectives which were to: (a) have a national flag carrier to promote the image of Nigeria; (b) provide air transportation on both domestic and international routes; and (c) provide a back-up for security during periods of emergency. The airline, the Nigeria Airways Ltd; grew its aircraft fleet over a 14-year period between 1970, the year the Nigerian civil war ended, and 1984 when the industry was partially de-regulated, to a total of 32 aircraft. Of these, 27 were fully owned whilst the rest were on operating leases.[20]

In a similar vein, taking a cue from developments within the West African sub-region with the establishment of the West African Airway Corporations (WAAC), about ten French-speaking states in 1961 signed what has now become known as the Yaounde Treaty culminating in the establishment of what was once Air Afrique. Similarly, this arrangement was rooted in the Chicago Convention.[21] More recently, precisely on 6 and 7 October, 1988, African Civil Aviation Ministers, assembled in Yamoussoukro in the Republic of Cote D' Voire and appended their signatures to the Yamoussoukro Declaration on a new African Air Transport Policy. This Declaration was the result of a collective consensus in Africa that nations within the African continent must, *inter alia*, prepare for the effects of the 1978 de-regulation in the United States on other countries and their potential adverse effect or impact

[18] Iyayi, Roland, "A Framework for Future Development" in *A Flight Higher: 80 Years of Aviation in Nigeria (1925-2005)*, supra at pages 91-92.
[19] Iyayi, Roland, *Ibid.*
[20] Iyayi, Roland, at page 92.
[21] See Articles 77 and 79 of the Convention.

on African airlines of the air transport liberalization policies of Western Europe, particularly the application by the European Economic Community (EEC) of the Treaty of Rome to air transport services and the creation of a single internal European market by 1993.[22]

In Nigeria, subsequent developments opened a lee-way for the emergence of private airlines. The first private airline made its debut a few decades ago. Over this period, the Nigerian aviation industry, particularly its airline aspect, was on the verge of collapse when an entrepreneur of no mean standing, Chief Gabriel Osawaru Igbinedion, decided to invest in the industry. This gave birth to Okada Air Limited. The Okada Airline initially operated as OGI Nigeria Limited with its incorporation on October 13, 1981. It operated non- scheduled passenger and cargo air charter services.[23] Today, it is believed that Chief Gabriel Osawaru Igbinedion's effort has set the pace for many private airlines to conduct air travel in the Nigerian airspace.

3.0 IMPERATIVES OF CIVIL AVIATION REFORMS IN NIGERIA

The word "imperative" suggests urgency. It means something that is urgently needed; it is something that is critical to a state of things. A thing that is imperative cannot be down-played. It requires immediate and prompt attention. It cannot be neglected. If it is neglected, the consequence will go beyond the causal factors. In the civil aviation industry, there are certain things that must pre-occupy the minds of the stakeholders, particularly in Nigeria.

3.1 Aviation Safety

The most important is aviation safety. This has received ample support from an expert. According to him:[24]

> Aviation safety is the condition precedent to all commercial airline activities; the huge numbers of people travelling on airlines in the global north know that flying is safer than driving, and it may even be safer than staying at home. Some of the world's major airlines have been operating for nearly two decades without a single passenger fatality. This simple reality inspires the confidence that allows millions to break the bonds of Earth as they make routine

[22] Iyayi, Roland, *Op. Cit*. at page 93.
[23] Mahonwu, Steve, "Emergence of the Private Airlines: A case Study of Okada Airlines" In *A flight Higher: 80 Years of Aviation in Nigeria (1925-2005),* supra at page 36.
[24] Fitzgerald, P. Paul, " Questioning the Regulation of Aviation Safety", (2012) Vol. xxxvii *Annals of Air and Space Law,* Page *1 at 3*

> trips for work or pleasure across a country or around the world…Complaints about security screening, baggage fees or airline food are common, but currently in the global north, there are remarkably few public concerns about airline safety.[25]

Consequently, all stakeholders in the civil aviation industry are concerned with aviation safety.[26] In order to ensure safety, some persons or institutions must act. At the global level, the International Civil Aviation Organisation regulates international civil aviation with a view to entrenching aviation safety. It does this principally through its Law[27] and the Annexes made pursuant to the Convention.[28] There are now precisely nineteen of such Annexes and it is apposite at this juncture to set forth, at least, the aeronautical issues covered by the Annexes, which are Personnel Licensing,[29]Rules of the Air,[30]Meteorological Services for International Air Navigation,[31] Aeronautical Charts,[32] Units of Measurement to be used in Air and Ground operations,[33] Operations of Aircraft,[34] Aircraft Nationality and Registrations

marks,[35]Airworthiness of Aircraft,[36]Facilitation,[37]Aeronautical Communications,[38]Air Traffic Services,[39] Search and Rescue,[40] Aircraft Accident and Incident Investigation,[41]Aerodromes,[42]Aeronautical Information Services,[43] Environment Protection,[44] Security(Safeguarding International Civil Aviation Against Acts of Unlawful Interference),[45]

[25] The expression " global north" used by the learned author refers to North America, the European Union, most of the former Soviet Union, Japan, Australia and New Zealand.
[26] These include aviation regulatory authorities, airlines, flight crew, cabin crew, passengers, etc.
[27] i.e. the Chicago Convention of 1944, otherwise known as the Convention on International Civil Aviation.
[28] The Annexes embody the Standards and Recommended Practices that represent ICAO's benchmarks for the regulation of civil aviation.
[29] Annex 1 to the Chicago Convention.
[30] Annex 2 to the Chicago Convention.
[31] Annex 3 to the Chicago Convention.
[32] Annex 4 to the Chicago Convention.
[33] Annex 5 to the Chicago Convention.
[34] Annex 6 to the Chicago Convention.
[35] Annex 7 to the Chicago Convention .
[36] Annex 8 to the Chicago Convention.
[37] Annex 9 to the Chicago Convention.
[38] Annex 10 to the Chicago Convention.
[39] Annex 11 to the Chicago Convention.
[40] Annex 12 to the Chicago Convention.
[41] Annex 13 to the Chicago Convention.
[42] Annex 14 to the Chicago Convention.
[43] Annex 15 to the Chicago Convention.
[44] Annex 16 to the Chicago Convention.
[45] Annex 17 to the Chicago Convention.

safe Transport of Dangerous Goods by Air[46] and the implementation of State Safety Programmes (SSP) and Safety Management System.[47]

All these Annexes are to complement and help ICAO to achieve its laudable objectives as contained in the Chicago Convention which provides that:

> The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to: (a) Insure the safe and orderly growth of international civil aviation throughout the world; (b) Encourage the arts of aircraft design and operation for peaceful purposes; (c) Encourage the development of airways, airports, and air navigation facilities for international civil aviation; (d) Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport; (e) Prevent economic waste caused by unreasonable competition; (f) Insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines; (g) Avoid discrimination between contracting States; (h) Promote safety of flight in international air navigation; (i) Promote generally the development of all aspects of international civil aeronautics.[48]

Beyond this international legal framework, ICAO still periodically audits its members' aviation systems under its Universal Safety Oversight Audit Programme.[49] The Convention on International Civil Aviation, which has now 190 signatories,[50] created the International Civil Aviation Organisation (ICAO), a specialized United Nations agency, which adopts Standards and Recommended Practices(SARPs) " to promote the orderly, safe and efficient development of international aviation", and the agency developed the Universal

[46] Annex 18 to the Chicago Convention. See also "Forms of Standards and Recommended Practice" in www. Icao int. ; Cheng, Bin op. cit pp. 152-153.
[47] Annex 19 to the Chicago Convention. See the ICAO's State of Global Aviation safety Report for the year 2013, available at: http://www.icao.int/Safety/State of Global Aviation Safety/ICAO_SGAS-book-EN=book-EN-SEPT2013_final_web.pdf, accessed on 26/8/2016.
[48] Article 44, Chicago Convention, 1944.
[49] See Blumenkron, Jumena, " Implications of Transparency in the International Civil Aviation Organization's Universal Oversight Safety Audit Programme"(2009)Volume xxxiv *Annals of Air and Space Law,* page 31.
[50] This was as at 2009. There are now about 191 signatories.

Safety Oversight Audit Programme(USOAP) to conduct regular, mandatory, systematic, and harmonized safety audits in all Contracting States in order to assess each State's capability for safety oversight; effective execution of a safety oversight system; and the level of implementation of safety-related Standards and Recommended Practices(SARPs).[51]

Initially, the results of the USOAP audits were strictly confidential, but the programme has now evolved to become transparent, with all audit reports posted on the ICAO public website; final reports are also distributed to all Contracting States and a secure process exists to inform all States about any significant safety concerns.[52] The foundations of this "safety testing measure" (USOAP) are described as follows:

> In the history of ICAO, the first acknowledgement that the notification of differences from SARPs was not satisfactory can be traced back to Resolution A7-9 adopted during the 7th Assembly in 1953. The Assembly recognized a "lack of positive evidence as to the degree of implementation on a worldwide basis of International Standards, Recommended Practices and Procedures". However, it was not until 7 June 1994 that the Council established the Safety Oversight Assessment Program (SOAP), sanctioned by the 31st Assembly, a voluntary and confidential programme that ensured the effective implementation of SARPs and associated procedures in areas of personnel licensing, operation of aircraft and airworthiness of aircraft by Contracting States. The results of the 45 audits conducted by ICAO under the SOAP showed an alarming gap between the notifications made by the States and the level of compliance with the SARPs. It was evident that there was a need for a mandatory audit program if improvement was to occur.[53]

[51] Blumenkron, at page 33.
[52] *Ibid*. at page 34.
[53] *Ibid*. at page 34. Clearly, SOAP was a precursor to USOAP. Both were designed by ICAO to ensure compliance with safety standards as epitomized by ICAO's Standards and Recommended Practices .

The International Civil Aviation Organisation was very discreet and pragmatic in its implementation of the Universal Safety Oversight Audit Programme (USOAP). The agency, according to Blumenkron, put the implementation of the Programme into phases. The ICAO Assembly asked the Contracting States of ICAO to sign a bilateral Memorandum of Understanding with ICAO regarding the implementation of Standards contained in Annex 1,[54] Annex 6[55] and Annex 8[56] , upon ICAO's initiative, with results to be used only for safety-related purposes.[57] This first phase of audits is known as the "initial audit cycle".[58] The ICAO Assembly later expanded the programme to include compliance with Annex 11,[59] Annex 13,[60]Annex 14,[61] and every safety-related Standard contained in the Annexes to the Chicago Convention in order to encompass an all-embracing audit system. The audits conducted under this phase are known as "comprehensive systems approach."[62] The last phase which is to be called the "continuous monitoring approach" audit cycle, was based on continuous data collection, States' updated data, ICAO regional inputs, on-site audit visits, and safety risk analysis.[63]

In auditing the safety compliance level of each contracting State with ICAO Standards and Recommended Practices, the International Civil Aviation Organisation usually has eight critical elements of safety in focus, which are (i) Primary aviation legislation; (ii) Specific operating regulations; (iii) State civil aviation system and safety oversight functions; (iv) Technical personnel qualification and training; (v) Technical guidance, tools and provision of safety-critical information; (vi) Licensing, certification, Authorization and approval obligations; (vii) Surveillance obligations; and (viii) Resolution of safety concerns.[64] These criteria have been more explicitly stated in an ICAO report. This is the 2011 State of Global Aviation Safety Report. This report contains a more explicit description of the eight critical

[54] Annex 1 to the Chicago Convention is on personnel licensing.
[55] Annex 6 is on operations of aircraft.
[56] This Annex is on airworthiness of aircraft.
[57] Blumenkron, at page 35.
[58] It has to do with the safety oversight audits conducted between 1999 and 2004.
[59] The Annex is on air traffic services.
[60] This Annex is on accident and incident investigation.
[61] The Annex is on aerodromes.
[62] This covers the safety oversight audits conducted between 2005 and 2010.
[63] The continuous monitoring approach audit cycle was to begin in 2011.
[64] Blumenkron, op. cit. at page 36. The International Civil Aviation Organisation carries out safety audits in order to forestall any occurrence of any significant safety concern. A "significant safety concern" occurs when a holder of an authorization or approval does not meet the minimum requirements established by the State and by the Standards set forth in the ICAO Annexes, resulting in an imminent safety risk to international civil aviation. See, again, Blumenkron at page 137.

elements that form the basis of the ICAO-run Universal Safety Oversight Audit Programme, which are: primary aviation legislation and civil aviation regulations; civil aviation organization; personnel licensing and training; aircraft operations; airworthiness of aircraft; air navigation services; aerodromes; and aircraft accident and incident investigation.[65] The purpose of any USOAP exercise carried out, including the report written thereon, is as follows:

> Its main objective is to inform the audited State of the status of implementation of SARPs, procedures, safety-related guidance material, and good safety practices. It also measures State's capability to provide safety oversight based on the level of effective implementation of the critical elements of safety oversight. It further serves as recommendation for the resolution and correction of identified deficiencies. It demonstrates the need to initiate corrective actions by the State. Finally, it provides ICAO with information on differences between the audited State's national regulations and the SARPs. It contains the information found in an interim safety oversight audit report, the CAP and its comments and the progress made towards the implementation of the CAP.[66]

The final step in the process of auditing a country's civil aviation system is the development and implementation of a CAP[67] which must address all of the findings and recommendations pointed out by the audit team, and the objective of the corrective action plan is to bring the State's regulatory framework in compliance with SARPs. It should also include detailed information of the actions to be taken and the respective time-frames within which those actions are to be taken.[68] Eight fundamental principles were developed by ICAO

[65] http://www.icao.int/safety/Documents/ICAO_State-of-Global-Safety_web_EN.pdf, accessed on 26/8/16. See page 7 thereof.
[66] Blumenkron at page 38.
[67] " CAP" means corrective action plan devised by a country whose civil aviation system has been audited and in which some deficiencies are unearthed to correct those deficiencies.
[68] Blumenkron, op. cit. at page 38.

to assure States of the validity of the audit process.[69] In addition to the eight fundamental principles, the International Civil Aviation Organisation relies on the *Safety Oversight Audit Manual* to determine the following actions expected by ICAO prior to, during and after the audit: (a) Signature and return of the revised MOU; (b) Acceptance of their respective Audit Schedules proposed by ICAO; (c) Submission of the State Aviation Activity Questionnaire and Compliance Checklists 90 days before the on-site audit, and specific documentation submitted six months in advance; (d) Co-operation and assistance with the audit team during the On-site Audit; (e) Attendance and co-operation during the closing meeting of the On-site Audit; (f) Proposal of the appropriate corrective measures, if a significant safety concern is identified; (g) Development of a CAP based on the interim safety oversight audit report; (h) Submission of the Corrective Action Plan within 60 calendar days after receiving the interim safety oversight audit report; (i) Implementation of the CAP as scheduled; (j) Submission of updated information until corrective actions are completed; (k) Submission of comments on the final Safety Oversight Audit Report; (l) Consent to publish the final audit results in the ICAO public website; and (m) Co-operation and assistance with the follow-up action.[70]

After USOAP exercises, the reactions of audited States differ and can be categorised into three. Some States react positively regarding all aspects of the audit process, other States lack the political will to resolve safety deficiencies.[71] Therefore, there are the unreservedly proactive States,[72] reservedly proactive States[73] and the recalcitrant States.[74] The last group demonstrates severe and persistent safety deficiencies, exhibiting all or some of the following traits: (i) Failure to participate in USOAP audit process; (ii) Failure to complete the State Aviation Activity Questionnaire and Compliance Checklists;(iii) Failure to participate in the on-site audit; (iv) Failure to submit an acceptable Corrective Action Plan; (v) Failure to resolve the deficiencies identified in the USOAP audit; (vi) Level of activity inconsistent

[69] The fundamental principles are : Sovereignty; Universality; transparency and disclosure; Timeliness; All-inclusiveness; being Systematic, consistent and objective; Fairness; and Quality.
[70] Blumenkron, op. cit. at page 63.
[71] *Ibid*.
[72] These States fulfill all 13 actions (as contained in the Safety Oversight Audit Manual) expected by ICAO in a timely way and without hindrance. Such States have, as a result, substantially improved their SARPs implementation.
[73] This category comprises States with a solid commitment to comply with the required actions, but lack the means to fulfill them. It has been observed that with invaluable support, some of these States have improved their implementation of SARPs but have not taken all of the actions expected by ICAO.
[74] Such recalcitrant States lack the political commitment to improve their safety oversight functions or level of compliance with the SARPs, and fail to progress at the follow-up mission.

with safety oversight capability; and (vii) Nature of activity inconsistent with safety oversight capability.[75]

The International Civil Aviation Organisation (ICAO) first carries a duty before identifying the role expected of each member country of ICAO in ensuring safe skies by adhering strictly with ICAO's scheduled Universal Safety Oversight Audit Programme. A similar programme called SOAP was the precursor programme before USOAP.[76] Accordingly:

> In 1997, the International Civil Aviation Organization (ICAO) established safety oversight and the identification of safety shortcomings as key activities for the enhancement of civil aviation safety. One of the numerous measures taken in this respect was the development of a strategy for enhancing global capacity for safety oversight in civil aviation through a programme designed to conduct regular, mandatory, systematic and harmonized safety audits in all Member States: the Universal Safety Oversight Audit Programme(USOAP). Twelve years has passed since the adoption of the USOAP and ICAO has started to build the foundations of the next cycle of one of its most successful programmes. The predecessor of the USOAP, the Safety Oversight Assessment Programme(SOAP) was established in 1994 for the purpose of conducting voluntary assessments of the effective implementation by Member States of Standards and Recommended Practices(referred together as SARPs) and associated procedures in areas of personnel licensing, operation of aircraft and airworthiness of aircraft. The alarming gap between the notifications made by forty-five assessed States and their poor level of compliance with SARPs led to the adoption of USOAP in October 1998.[77]

[75] See Blumenkron at page 64.
[76] Blumenkron, Jimena, "A Prospective Analysis of the Evolution of ICAO'S Universal Safety Oversight Audit Programme Beyond 2010"(2010)Volume xxxv *Annals of Air and Space Law* ,page 297.
[77] *Ibid*. at pages 297-298.

The programme has proven to be effective in identifying the level of implementation of each State's safety oversight system and it has also increased awareness of the safety oversight responsibilities of States through the revelation of vital safety information to the aviation community and provided better ways of tackling deficiencies found during the audits.[78] Various options have been proposed by ICAO after the initial first three phases.[79]

Auditing activities are a common practice where there is a desire to improve performance and a thorough oversight includes auditing and monitoring activities. However, a combined Continuous Auditing and Continuous Monitoring system is recommended.[80]

The safety of air navigation is the fundamental concern and aim of international air law and as air navigation is a global activity, so is concern for its safety becoming a global concern.[81] Accordingly:

> ICAO did not show initial leadership in the enforcement of standards. For decades, ICAO silently tolerated the alarming fact that many States did not implement ICAO safety standards and failed in their legal duty to notify their departure or non-implementation pursuant to their explicit legal obligation under Article 38 of the Chicago Convention. While the ICAO Secretariat experts were for years aware of the shortcomings in implementation of standards and of the deplorable lack of transparency in the attitudes of States, the ICAO leadership was too "diplomatic" and timid to bring the problem out into the open and to address it. Eventually, the experiences of the US FAA and the European JAA prompted the implementation of the ICAO safety oversight audit program.[82]

[78] *Ibid*. at page 304.
[79] The author endorses the following options with sufficient justifications: Comprehensive System Approach Follow-Up Action; Comprehensive System Approach Second Cycle; Annexes 1, 6 and 8 Cycle; Annexes 11, 13 and 14 Cycle; Postponement of USOAP Audit Activities Cycle; and Continuous Monitoring Approach Cycle.
[80] *Ibid*. at page 317.
[81] Milde, Michael, " Aviation Safety Oversight: Audit and the Law"(2001) Volume xxvi *Annals of Air and Space Law*, page 165.
[82] Milde, Ibid. at page 173.

The sovereignty of States is fully respected by the ICAO's Universal Safety Oversight Audit Programme.[83] The audit missions are undertaken on the basis of a Memorandum of Understanding (MOU) between ICAO and the State to be audited, and so far there has been no recorded instance where a State has refused or deferred to undergo a safety oversight audit.[84] ICAO justifiably has a basis on which it can embark on a Universal Safety Oversight Audit Programme exercise. According to an author:

> It is submitted that the performance of safety audits is actually in full harmony with existing constitutional framework of ICAO and does not break new legal ground. It is a mandatory function of the Council "to request, collect, examine and publish information relating to the advancement of air navigation and the operation of international air services" and "to report to Contracting States any infraction of this Convention." A failure of a State to file a difference under Article 38 would be a flagrant infraction. The Council has a mandatory constitutional obligation"to report to the Assembly any infraction of this Convention where a Contracting State has failed to take appropriate action within a reasonable time after notice of infraction. The Council also has a discretionary power "to conduct research into all aspects of […] air navigation which are of international importance. The existing framework of the Chicago Convention thus gives all necessary powers to the Council to act assertively for the implementation of safety standards.[85]

The want or lack of an efficient enforcement mechanism capable of forcing each contracting State to compulsorily comply with ICAO Standards and Recommended Practices substantially detracts from the value of the said constitutional mandate.

[83] This recognition is in sync with Article 1 of the Chicago Convention which provides that " The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory".
[84] A State may defer if it is not ready, probably because it lacks some of the major eight critical elements of aviation safety. For example, until 2006, Nigeria did not have a solid and standard aviation legislation like the Civil Aviation Act, 2006. The ever-ready and safety conscious US has been audited by ICAO and several corrective actions were accordingly carried out. See Milde, op. cit. at page 175.
[85] Milde, at pages 176-177.

At the international level again, the United States of America also regulates aviation safety. How does it do this? One of the means is through its own audit programme called " the Foreign Aviation Safety Assessment Programme (FASAP), the implementation of which the US Federal Aviation Administration initiated following an air crash in 1990 by a Colombia-registered Avianca Airlines Boeing 707 en route from Bogota to New York. The crash resulted to 73 fatalities.[86]

The FASAP subjects foreign aircrafts flying into or through the US airspace, and particularly landing at the US airports, to scrutinous tests. The FASAP standards are based on ICAO standards but the enforcement mechanisms are stricter than the ICAO ones. The US FASAP is based on five (5) factors, which are: 1. whether the foreign civil aviation authority has developed or implemented laws or regulations in accordance with ICAO standards; 2. whether the said civil aviation authority lacks the technical expertise or resources to license or oversee civil aviation; 3. Whether it lacks the flight operation capability to certify, oversee and enforce air carrier operation requirements; 4. Whether it lacks the aircraft maintenance requirements and; 5. Whether it lacks appropriately trained inspector personnel required by ICAO standards.[87]

At the industry level, the International Air Transport Association (IATA) places high premium on aviation safety. It also has its safety audit programme called " the Internationa Air Transport Associatioon Operational Safety Audit (IOSA). This audit is to ensure that international airlines that are members of IATA conduct safe flights.

3.2 Aviation Security

Aviation security goes hand-in-hand with aviation safety. "Security" and "safety" are interrelated and are sometimes used interchangeably. In the civil aviation industry, it is believed that aviation safety covers and embraces aviation security. The two concepts are, however, different.[88] Aviation safety relates to the actual operational aspects of civil aviation and it deals with issues like licensing, certification and airworthiness of aircrafts, aerodrome

[86] Mark Lee Morrison, "Navigating the Tumultuous Skies of International Aviation: The Federal Aviation Administration's Response to Non-Compliance with International Safety Standards" (1995) 2 *South Western Journal of Law & Trade*, Pp. 621-655, at 621-622.
[87] *Ibid.* at Page 637. It is important to note that in Nigeria, airlines usually rely heavily on expartriate pilots and safety inspectors are really in short supply in the Nigerian civil aviation industry.
[88] Callistus E. Uwakwe, *Introduction to Civil Aviation Law*, 1st Edn. (Aviation Publishing and Consultancy Ltd., Lagos, 2006) Page 171.

design and engineering, communication and navigational aids, among others.[89] It appears that aviation safety deals generally with all measures taken before the actual commencement of aircraft flights. This does not mean that safety measures are not taken during flight operations. But safety measures appear to be "internal" or precautionary measures taken to guarantee aviation safety.

On the other hand, aviation security deals with all measures taken to guard against external, usually third party, interferences with the safe and secure operations of aircrafts. Aviation security involves curbing criminal activities taking place on board and in the airports. [90]Aviation security measures are taken against all activities that endanger the lives of passengers, crew, other persons and property including air navigation facilities either on board the aircraft in flight or on ground.[91] Such measures include, but are not limited to, deployment of law enforcement agencies at the airports, screening passengers, erection of perimeter fences at the airports and the use of CCTV at the airports. Airports in Nigeria are not comparable with standard airports outside the country. A serious aviation regulatory system must address such gaps.

The International Civil Aviation Organisation, appreciating the importance of aviation security, developed in 2002 the Universal Security Audit Programme (USAP). The objective is to provide high standards of security, quality control, training and certification of relevant stakeholders. The expected effect is that each member country of ICAO must have a secure civil aviation system.[92]

3.3 Procurement of Maintenance, Repair and Overhaul (MRO) Facilities

The role of MRO in the civil aviation industry cannot be over-emphasised in civil aviation reform. Maintenance, Repair and Overhaul facilities are critical to aviation safety. For flight operations to be safe, aircraft must be airworthy, and for aircraft to be airworthy, they must be properly serviced and undergo mandatory checks. These facilities are lacking in Nigeria. These facilities, if available in Nigeria, will guarantee a steady flow of revenue for

[89] *Ibid.*
[90] Shreya Rastogi & Swarnali Chanda, "Need of Reforming the Aviation Security and Airport Security Measures in India- A comparative Analysis" in Ranbir Singh, Sanat Kaul & Srikrishna Deva Rao (eds) *Current Developments in Air and Space Law* (National Law University Press, Delhi, 2012) Page 89.
[91] *Ibid.*
[92] Sanat Kaul, "Chicago Convention Revisited: Review of Chicago Convention and Bilateralism in Air Services" in Ranbir Singh, et al (eds), *Op. Cit*. at Page 9.

the government. They will also save the Nigerian airlines from avoidable foreign exchange being expended on maintenance of aircraft abroad.

3.4 Resuscitation of a National Carrier in Nigeria

In an ideal state, many factors gender or even contribute to economic development. In the case of Nigeria, oil has regrettably been the mainstay. Other critical areas that have been neglected include agriculture, tourism and non-oil natural resources. In the aspect of transport, Nigeria has, for long, underestimated the huge spin-offs that accrue from a legally and effectively managed national airline. This, no doubt, has been to her economic detriment. This aeronautical neglect has, in particular, robbed her of the prodigious gains afforded by the Yamoussokrou Declaration, an African air transport initiative aimed at the liberalization of the civil aviation market among African nations. The reason for the neglect is ostensibly impregnable- the Nigeria Airways Limited, the nation's predecessor-national carrier, suffered an ineluctable liquidation due partly to bad management. Even though there have been serious debates on the desirability or otherwise of a national carrier in the Nigerian civil aviation industry, its establishment, it is believed, will fill a gap in the industry.

3.5 Airport Concessioning or Privatisation

This is an arrangement that necessitates a change in the ownership or management of an airport. The arrangement may accommodate both ownership and management of the airport in question.[93] Privatisation of airports seems to now be the order of the day in the civil aviation industry. This has been attributable to many factors, which include the facts that: 1. the private sector has much stronger management capability due to its ability to recruit and compensate qualified managers and technicians; 2. the private sector has freedom to operate outside of political and bureaucratic constraints; and 3. the private sector has potentially greater experience in developing facilities and providing services adapted to competitive world of global trade.[94]

Airport privatization yields many benefits. In this regard, it has been submitted thus:

> Benefits of airport privatization can more efficiently deliver many goods or service than government due to free market competition. In general, it is argued that overtime this will lead to lower prices,

[93] Ghanshyam Singh, "Aviation Industry: Emerging Legal Challenges" in Ranbir Singh, et al (eds), Op. Cit. at Page 16.
[94] *Ibid*. at Page 14.

improved quality, more choices, less corruption, less red tape, and quicker delivery.[95]

Many are skeptical about whether the Chicago Convention even supports the privatization of airports as the Convention refers to States, rather than individuals, investors or company, as the manager or owner of an airport in some of its Articles. Again, even where privatisation occurs, the private entity may become bankrupt; the private entity may prioritise profits above aviation safety and; the private entity may increase airport charges, which may not
be in the best national interest.[96]

4.0 CHALLENGES OF CIVIL AVIATION REFORMS IN NIGERIA

There are many challenges facing civil aviation reforms in Nigeria. These have accumulated from the policies and activities of successive governments as well as past mismanagements and bad attitudes. Some of the challenges pertinent to this paper are briefly discussed below.

4.1 Non-Compliance with the ICAO Regulatory ideals

This is a serious challenge which inhibits any meaningful civil aviation reforms that may be conceived. It is conceded that there is no utopian aviation safety status anywhere in the world. But ICAO member countries must comply with the minimum regulatory standards of ICAO. In fact, countries with superb aviation safety records have exceeded ICAO's ideals in matters of regulatory compliance.

How can Nigeria exceed ICAO's ideals when it is yet to comply with the ICAO minimum standards? Non-compliance has impacted negatively on the Nigerian civil aviation industry. There have been many avoidable aviation accidents and incidents in the Nigerian civil aviation industry.[97] This is in spite of many aviation policies that have at one time or the

[95] *Ibid.* at Page 15.
[96] *Ibid.* at Page 16.
[97] On September 26, 1992, a Nigerian Air Force C-130 aircraft crashed few minutes after taking off from Lagos airport, resulting in the death of about 200 people; on June 25, 1995, a Harka Airlines Soviet-era Tupolev Tu-134 aircraft crashed at Lagos airport, killing 15 people; on November 13, 1995, a Nigeria Airways Boeing 737 crashed on landing in Kaduna, killing 9 people; on November 1996, a Boeing 727 operated by Nigeria's ADC

other been churned out by successive ministers who have been at the helms of the industry.[98] The view that the Nigerian aviation industry is not the only country that has witnessed a concatenation of aviation accidents is a lame point because Nigeria, as a member of the International Civil Aviation Organisation, must ensure compliance with ICAO's ideals for aviation safety.[99] The Nigerian Civil Aviation Authority (NCAA) has failed to comply with the regulatory ideals of the International Civil Aviation Organisation (ICAO). This is evident in the NCAA's failure to carry out timely safety and economic audits on domestic airlines, airports and the entire aviation industry in Nigeria.[100]

One of the most recent air crashes in the Nigerian aviation industry that attracted a wide public attention was the Dana commercial aircraft crash at Iju-Ishaga, a Lagos State suburb, on June 3, 2012.[101] The Dana Airline Boeing-made MD83 aircraft, with registration Number 5N-RAM, which crashed into the residential area, killed all 153 passengers and crew on board.[102] Ten residents of a two-storey building into which the aircraft plunged also lost their lives.[103]

4.2 ICAO's Regulatory Permissiveness

The International Civil Aviation Organisation, in spite of its robust legal framework, appears to have a permissive enforcement mechanisms.[104] The global regulatory body does not seem to possess coercive enforcement mechanism. In this regard, it has been observed that, though the ICAO was created to ensure the safe and orderly growth of international civil

crashed on its way from Port Harcourt to Lagos, killing all 42 passengers and crew members; in the month of May, 2002, an EAS Airlines BAC 1-11 had a crash in Kano State as a result of which 148 people comprising 75 on board and at least 73 on the ground died; on December 10, 2005, Nigerian Sosoliso aircraft DC from Abuja crashed on landing at Port Harcourt, killing 106 people, half of them school children on their way home for Christmas; on September 17, 2006, 12 Nigerian military personnel, mostly high-ranking officers, were killed in a plane crash in Benue State; on October 29, 2006, an ADC aircraft carrying 14 passengers crashed and got burnt after take-off from Abuja, leading to many fatalities. See Onanuga, Adebisi, et al, "How to Make the Sky Safer" , *The Nation*, Tuesday, June 12, 2012, Pages 36-37; Lucas, Muyiwa, "Plane Crash: Why Dana Is Culpable", *Tell* Magazine, June 18, 2012, Page 32.

[98] Some of the ministers include Olusegun Agagu, Kema Chikwe, Isa Yuguda, Babalola Borishade, Femi Fani-Kayode, Felix Hyat, Babatunde Omotoba, Fidelia Njeze and Stella Oduah, among others. See Lukas, Muyiwa, Op. Cit. at Page 33.

[99] Shadare, Wole, "Can Nigerian Airlines Rekindle Passengers' Trust?", *The Guardian*, Friday, June 14, 2012, Page 46.

[100] Okeke, Ifeoma, "Aviation Sector Totters on Weak NCAA Regulation", *Business Day*, Tuesday 02 May, 2017, Pages 1 & 34.

[101] Kolade-Otitoju, Babajide & Balogun, Funsho, "Murder in the Air", *The News* Magazine, Volume 38, No 24, June 18, 2012, Page 12.

[102] *Ibid*.

[103] *Ibid*.

[104] See Article 38 of the Chicago Convention.

aviation throughout the world and to promote the safety of flight in international air navigation, the ICAO, possibly due to its structure, is limited to recommending the lowest common denominator among safety regulations, resulting in generalized, diluted standards. More importantly, the ICAO does not have an enforcement mechanism capable of imposing even these generalized standards on countries lacking aviation experience and effective oversight.[105]

4.3 Weak Airline Economic Bases Due to Aviation Costs

The Nigerian airlines are economically weak. Indeed, the airline industry in Nigeria is facing economic upheavals forced upon it by multifarious factors like increased fuel prices, sagging domestic economy and international competition.[106] Summing up this daunting challenge, an expert said:

> In some industries, though, costs may have remained flat or even increased, despite in some cases quite significant advances in technology. Aviation is an example. Labour costs, fuel costs, aircraft costs, system complexity (network breadth), among others, have risen dramatically over the decades.[107]

Nigerian airlines incur huge costs on aircraft maintenance, which makes the airlines to spend little or no money on the preservation of aviation safety in order to save more profits. The price of aviation fuel, otherwise known as Jet A1, also constitutes further burden on the Nigerian airlines.

4.4 Poor Aviation Infrastructures

One major problem facing the Nigerian civil aviation industry is lack of the required infrastructure for safe flights. The Nigerian airports lack airfield lighting, perimeter fences, etc. It has been submitted that poor aviation infrastructures, weak economies and differing political processes, coupled with inconsistent aviation policies are anathema to international airline safety.[108]

[105] Mark Lee Morrison, Op. Cit. at Page 623.
[106] N.J. Strantz, "From Technology to Teamwork: Aviation Security Reform since PAN AM Flight 103" (1993) 3 *Alb. L.J. Sci. & Technology*, Pages 235-265, at 241.
[107] Matt Anderson, "Getting at the Core of Airline Economics" (2009-2010) 9 *Issues in Aviation Law and Policy*, Pages 263-306, at 270.
[108] Mark Lee Morrison, Op. Cit. Page 622.

4.5 Multiple Aviation Charges Payable by the Ailing Airlines

The Nigerian airlines like Bellview, Aero Contractor, Arik, Air Peace, etc, pay multiple aviation charges. They pay 5% ticket sales charge to the Nigerian Civil Aviation Authority. They also pay some navigation charges to the Nigerian Airspace Management Agency.[109] The charges payable to the Federal Airports Authority of Nigeria have many sub-heads. Airlines are considered as tenants of airport authorities. To this extent, they are under financial obligations to the airport authorities.[110] Accordingly, it has been observed as follows:

> Around the world, airlines must pay airports for the use of their facilities and services. These so-called "airport charges" mean higher costs for the airlines, and in order to recover these costs, airlines pass them on to the passengers in the form of higher fares; it is therefore in the interest of both airlines and passengers that airport charges are as low as possible.[111]

Characteristically, aviation charges and fees are payable by airlines for services and facilities provided by the airports and air navigation service providers. Such charges are for the use of runway,[112] airport infrastructure,[113] terminal buildings,[114] airport security,[115] protection of the environment,[116] air traffic control[117] and other air navigation services.[118] This state of affairs, coupled with other aviation costs discussed above, has made the Nigerian airlines to be heavily indebted to the Nigerian chief civil aviation regulatory agency[119] and some other auxiliary civil aviation institutions.[120]

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[109] Chinedu Eze, "Nigerian Airlines Spend Over #10bn Annually on Taxes" *THISDAY*, Friday, February 17, 2017, Pages 19-20.
[110] Article 15 of the Chicago Convention, 1944.
[111] Wouler Oude Alink, "The Establishment of Airport Charges: Recent Development in the EU" (2012) 11 *Issues in Aviation Law and Policy*, Pages 457-478, at 457.
[112] Otherwise called landing charges.
[113] i.e. parking and boarding bridge charges.
[114] i.e. passenger charges.
[115] i.e. security charges.
[116] i.e. noise charges.
[117] i.e. en route navigation and terminal charges.
[118] i.e. meteorological and aeronautical information services. See Article 15 of the Chicago Convention, 1944. See also Wouler Oude Slink, Op. Cit. at Page 460.
[119] i.e. the Nigerian Civil Aviation Authority.
[120] They include the Federal Airports Authority of Nigeria and the Nigerian Airspace Management Agency.

4.6 Porous Airport Security

This deserves a separate treatment. Airports in Nigeria are not up to the international standards. Recent security breaches resulting in aviation incidents attest to this fact. The most recent, but seemingly innocuous, of these threats is aerial stow-away, a phenomenon that general consensus associates with maritime affairs. It has now gained notoriety in civil aviation, particularly in the continent of Africa.

4.7 Flight Delays and Flight Cancellations

These are common occurrences in the Nigerian civil aviation industry. These constitute cases of breach of contract between the airline and the passenger concerned. According to an aviation writer:

> If the departure time of the flight is inordinately delayed, it is hard to maintain that the flight is still the flight which was previously planned. It is precisely in scenarios like this that statutory exceptions should apply. The current piecemeal measures applied by the NCAA, in summoning the management of the defaulting airlines "to explain" the circumstances for long delays; or seeking to prevail on the airline's officials to provide refreshments at times of delay, are rather supine and can only encourage the current practice of outright disregard for contractual obligations.[121]

The effect of this trend, as captured by the author, is as follows:

> The frequent inordinate delays in the domestic airline industry in Nigeria are incongruent with the reform agenda that has been implemented by the government since 2006 to wide international acclaim. The delays also have dire economic implications, as is evident from the meager contribution of the aviation sector to the newly rebased GDP.[122]

[121] Enyinnaya Uchenna-Emezue, "Addressing the Contractual Quagmire in the Nigerian Aviation Industry"(2014-2015) 14 *Issues in Aviation Law & Policy*, Pages 9-18, at 11.
[122] *Ibid*. at Page 17.

4.8 Problem of Aircraft Acquisition by Nigerian Airlines

Aircraft are expensive equipment. And they are not being produced in Nigeria. Leasing one is also costly. One of the factors that launched China into the aviation limelight is the domestication of aircraft production. The US and the UK are also good examples in this regard.[123]

5.0 PROSPECTS OF CIVIL AVIATION REFORMS IN NIGERIA

In spite of the above challenges, the future of the Nigerian civil aviation is bright. If certain developmental projects are put in place or the ones already embarked upon are continued, the Nigerian civil aviation industry will rank comparably with its counterparts abroad. What are the existing indices that indicate the prospects?

5.1 Regulatory Specialisation

This is between the Ministry of Aviation and the Nigerian Civil Aviation Authority. The Civil Aviation Act of 2006 has forged a clear dichotomy, at least in principle, between policy making powers[124] and regulatory powers.[125] This was not the situation before 2006. However, this legislative division of powers must be strictly adhered to. This will lead to the desired aviation reform. In the UK terminology, a strict adherence to the legislative division of the powers will lead to "Regulatory Specialisation".[126]

5.2 Completion of Airport Remodelling

The Minister responsible for civil aviation under the administration of President Goodluck Jonathan initiated and embarked on the remodeling of the nation's airports. If these laudable projects can be completed, there will be reform in the area of aerodromes in the Nigerian civil aviation industry.

5.3 Proposal to Have Maintenance, Repair and Overhaul Facilities

This will translate to developments in the civil aviation industry. If the federal government can build one or complete the one recently begun by the Akwa Ibom state government, then

[123] Barry Kellman, "China's Reform of Aviation: A Signal of the Significance of Competition under Law" (1987) 8 *Northwestern Journal of International Law and Business*, Pages 1-28, at 16.
[124] Which are vested in the Minister responsible for civil aviation in Nigeria.
[125] Which are vested in the Nigerian Civil Aviation Authority.
[126] Which means a consolidation and transfer of both the economic and safety regulatory powers affecting the civil aviation industry to the NCAA, due to the latter's technical expertise in aviation matters. See Brian F. Havel & Jeremias Prassl, "Reforming Civil Aviation Regulation in the United Kingdom: The Civil Aviation Bill 2012 (2011-2012) 11 *Issues in Aviation Law & Policy*, Pages 321-326, at 321.

there will be reform. It will even translate to aviation safety because aircraft maintenance will cost less, and more revenue will be generated for the government.

5.4 Establishment of a National Carrier after the Ethiopian Model

This will lead to reform in the Nigerian civil aviation industry. Nigerians must learn from the past failures; Nigerians must not surrender to the ensuing fear of past failures. Airline management must be separated from governance.

5.5 Airport Concessioning

This is a noble ideal that can lead to civil aviation reform if properly harnessed. Lessons can be learnt from India. Privatisation or private participation must not assume private monopoly in favour of the private company concessionaire.[127]

5.6 Airline Alliances

There are recent developments and practices in the air transport industry that are capable of opening up the global marketplace for the Nigerian airlines, particularly in international airline operations, such as code-sharing agreement, mergers between airlines , including regional initiatives among like- minded states.[128]

5.7 AMCON on the Rescue

Nigerian airlines are heavily indebted to aircraft companies, insurance companies, aircraft maintenance companies and aviation agencies. In fact, the Nigerian airline believed to be the largest and strongest, Arik Airline Ltd., is dying. But the Asset Management Corporation of Nigeria is taking it over.[129] Heavy indebtedness has been the common terminating agent of an average Nigerian airline, shortening the lifespan of an average commercial airline to ten years.[130]

5.8 Industry Watchdogs

The Nigerian Civil aviation industry is blessed with many independent watchdog associations and individuals. Some of them are trade unions but they sometimes alert members of the public to the danger of flying in particular parts of the world or country. They

[127] Moses George, "Public Monopoly to Private Monopoly- A Case Study of Greenfield Airport Privatization in India Part 1" (2009-2010) 9 *Issues in Aviation Law and Policy*, Pages 174-202, at 187-192.
[128] Francesco Fiorilli, "Ensuring Global Competitiveness in the Airline Industry" (2011-2012) 11 *Issues in Aviation Law & Policy*, Pages 101-148, at 102.
[129] Clara Nwachukwu, Femi Adekoya & Wole Oyebade, "Why our managers took control of Arik, by AMCON" *The Guardian*, Friday, February 10, 2017, Pages 1 & 6.
[130] Chinedu Eze, "Why Nigerian Airlines Fail" *THISDAY*, Friday, February 17, 2017, Page 24.

include the Air Operators of Nigeria, National Association of Aircraft Pilots and Engineers, Association of Nigerian Aviation Professionals, Aeronautical Information Services Association of Nigeria, etc.

6.0 CONCLUSION AND RECOMMENDATIONS

The civil aviation industry rides and thrives on aviation safety and security. These two elements are critical to safe skies. Many other factors like compliance with the applicable aviation legal regime, a robust airline system, good airports and a safety- conscious regulatory agency are equally important. In Nigeria, many of these aviation factors are not yet entrenched, whereas they are key to a new dawn in the Nigerian civil aviation industry. There exists a robust legal regime for the regulation of civil aviation in Nigeria. Aviation players and stakeholders only need to comply with the law.

For Nigeria to record a commendable degree of compliance in its aviation industry, it must first put its house in order by exceeding the ICAO regulatory ideals and harnessing its activities towards aviation safety. According to an expert:

> Several of the restrictions in the bilateral regimes were imposed to protect national safety and security, and the DOT, in particular, was concerned that a more liberalized structure could threaten these measures. Under the current regulatory system, the ICAO develops and disseminates detailed international standards, and signatory states, through national civil aviation authorities (CAAs), apply and enforce the ICAO standards. The United States and the European Union have superb safety records because they not only comply but often exceed the standards imposed by the ICAO.[131]

Besides, the federal government must provide "public subsidies"[132] to the fledgling airlines in the industry. This should be closely monitored. Such public subsidies tend to provide confidence as airlines recognize that they will have the support of their government if they fail.[133] Also, the government must inject professionals to all critical areas of aviation

[131] Jessica Finan, "A New Flight in the International Aviation Industry: The Implications of the United States-European Union Open Skies Agreement" (2008) 17 *Tulane Journal of International & Comparative Law*, Pages 225-242, at 235.
[132] These are the equivalent of bail-out funds in the Nigerian phraseology.
[133] Jessica Finan, *Op. Cit*. at Page 234. In Nigeria, such public subsidies were not properly made use of in the past.

operations. These must be trained and re-trained. Nigeria must also draw lessons from other countries whose aviation systems are safe and secure.

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