

**COMPARATIVE LEGAL ANALYSIS OF BILATERAL
AIR SERVICE AGREEMENTS BETWEEN
NIGERIA AND SOME SELECTED
COUNTRIES**

BY

**Vivian Kelechi UMEMBA
LLM/LAW/11936/2010-2011**

OCTOBER, 2015.

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**A Dissertation Submitted to the School of Postgraduate Studies, Ahmadu Bello
University, Zaria, in Partial Fulfillment of the Requirements for the
Award of the Degree of Master of Laws- LL.M**

October, 2015.

DECLARATION

I declare that the work in this dissertation titled **Comparative Legal Analysis of Bilateral Air Service Agreements between Nigeria and Some Selected Countries** has been carried out by me in the Department of Public Law. All sources have been acknowledged in the text and a list of references provided. No part of this dissertation was previously presented for another degree or diploma at this or any other institution.

Vivian UMEMBA

Date

CERTIFICATION

This dissertation, titled **Comparative Legal Analysis of Bilateral Air Service Agreements between Nigeria and Some Selected Countries** by Vivian Kelechi UMEMBA meets the regulations governing the award of the Degree of Master of Laws of the Ahmadu Bello University and is approved for its contribution to knowledge and literary presentation.

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Date

DEDICATION

This dissertation is dedicated to Almighty God for his love, mercy and kindness towards me.

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My profound gratitude goes to my first supervisor, Prof. Nuhu Mohammed Jamo, for his scholarly guidance in the course of this research. His fatherly advice will also never be forgotten. May the Almighty God richly reward him? I remain grateful.

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My dear father, Mr. Gilbert Umemba, dear mother, Mrs. Geraldine Umemba and all my beloved siblings deserve special acknowledgement for always standing by me. Their patience and prayers for me will never be forgotten. May God bless them with longevity in order to enjoy the fruits of their labour?

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October, 2015

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Abbreviation	Meaning	Page
AIB	- Accident Investigation Bureau -----	34, 51
ADC	- Aviation Development Company -----	27, 48
AFCAP	- African Civil Aviation Policy -----	30, 35
AOC	- Air Operators Certificate -----	36, 58
AOP	- Air Operators Permit -----	36
ASEAN	- Association of Southeast Asian Nations -----	71
ATRP	- Air Transport Regulation Panel -----	123
BASA	- Bilateral Air Service Agreement -----	58, 59
BOAC	- British Overseas Airways Corporation -----	21, 22
BSP	- Billing Settlement Plan -----	46, 190
CAB	- Civil Aeronautics Board -----	69
CARICOM	- Caribbean Community and Common Market -----	71
COMSEA	- Conselho Municipal de SegurancaAlimentar -----	71
CEANS	- Conference on the Economics of Airports and Air Navigation services -----	121, 122
CPD	- Consumer Protection Department -----	48, 169
DATM	- Department of Air Transport Management -----	32
DAMS	- Department of Aeromedical Services -----	46, 169
DAAS	- Directorate of Aerodrome and Airspace Standards -----	47, 169
DATR	- Directorate of Air Transport Regulation -----	48, 169
DAWS	- Directorate of Airworthiness Standards -----	46,47, 169
DOL	- Directorate of Licensing -----	46, 47, 118
DOT	- Directorate of Operations and Training -----	46, 47, 69
DSRAM	- Department of Safety Regulation and Monitoring ---	32
FAAN	- Federal Airports Authority of Nigeria -----	32, 33, 37
FCAA	- Federal Civil aviation Authority -----	32
FMA	- Federal Ministry of Aviation -----	44
FSG	- Flight Standard Group -----	46
HMA	- Honourable Minister of Aviation -----	36
IATA	- International Air Transport Agreement -----	60, 66, 76
IASTA	- International Air Service Transit Agreement -----	60, 95
ICAO	- International Civil Aviation Organization -----	42, 43
MOS	- Manual of Standards -----	41
NAL	- Nigerian Airways Limited -----	24
NAFTA	- North American Free Trade Agreement -----	71
NAMA	- Nigerian Airspace Management Agency -----	33, 37, 49

NCAA	-	Nigerian Civil Aviation Authority -----	8, 32, 33
NCAP	-	Nigerian Civil Aviation Policy -----	32, 35, 88
NCAR	-	Nigerian Civil Aviation Regulation -----	38
NCAT	-	Nigerian College of Aviation Technology -----	34, 37
NEMA	-	Nigerian Emergency Management Agency -----	33
NIMET	-	Nigerian Metrological Agency -----	37, 50
NWLR	-	Nigerian Weekly Law Report -----	81
OECD	-	Organization for Economic Co-Operation and Development -----	165
P	-	Page -----	
Pt.	-	Part -----	81
SARP	-	Standards and Recommended Practices (SARPs) -----	33, 36
SERVICOM-		Service Compact -----	48
TASA	-	Template Air Service Agreement -----	123
TGM	-	Technical Guidance Material -----	41
UK	-	United Kingdom -----	24, 89
US	-	United States -----	58, 75
V.	-	Versus -----	81
Vol.	-	Volume -----	162
WAAC	-	West African Airways Corporation -----	20, 21
WAATA	-	West Africa Air Transport Authority -----	20, 21
YD	-	Yamoussoukro Declaration/Decision -----	71, 86

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ABSTRACT

This dissertation is a Comparative Legal Analysis of Bilateral Air Service Agreements between Nigeria and Some Selected Countries. The countries considered here are Ghana, United Kingdom and Israel. The development of an international aviation industry has resulted in bilateral agreements playing an increasingly significant role as instruments of negotiation and cooperation between and among States parties. Before an airline can operate international air service to another country, the government must negotiate with the destination country's government. This is done under the terms of a bilateral air service agreement. To analyze the selected Air Service Agreements, this research adopts the doctrinal method and the empirical method. It starts with the writers attempt to give a foundation of bilateral air service agreements. There is also an attempt to trace the history of global bilateral air service arrangement. Then, the writer discussed the legal regulatory framework within which the air transport industry work in Nigeria. The ICAO standard format bilateral air service agreement covers such items as traffic rights, capacity, tariffs, designation, ownership and control etc. The research treats these terms in the context of Nigerian bilateral air service agreements with the above mentioned countries. Findings among others in the research revealed that Nigeria lacks a national air carrier or strong indigenous airline to operate the Nigerian side of the Agreement on designation. It is recommended among others that these terms should be defined by way of review of the said Agreements so as to avoid any dispute of interpretation. Nigerian should be more serious and more committed in its investment on the Nations aviation industry. A sound national air carrier should be established and the hitherto dilapidated aviation-related facilities should be fixed. This will enable the national air carriers to effectively operate the Nigerian side of its Bilateral Air Service Agreements on designation. The dissertation contains more revelations.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

The topic of this research is “Comparative Legal Analysis of Bilateral Air Service Agreements between Nigeria and Some Selected Countries.” The selected Countries under review are: Ghana, United Kingdom and Israel. This Chapter explains the background structure of the research. It gives the statement of the research problem, the objectives of the research, the scope of the research, the research methodology, literature review and the organizational structure of the research work amongst other things.

Aviation is basically a transnational and border-crossing phenomenon, without which globalization (the flow of people and goods and the mixing of cultures) would have been difficult and the awareness that we all live on one planet could not have been established. The difference between this awareness and the ancient organizational principle of humans, the principle of national sovereignty is not completely clear. A group of people (a nation) live on a particular part of the earth (the national territory) and claim that this area is for them, and exercise legal power (government) over this area. This principle is known as ‘Sovereignty of Nations’ or ‘Self-Determination of the Peoples’ and is based on the notion that human beings are organized into groups or

communities that have settled, but that such settlement is the reason why they claim exclusiveness of all powers for themselves on that part of the earth area which they occupied.

This ancient organizational principle results to the point that although there are so-called areas of international sovereignty in the world, that is, areas that are not claimed by anyone like the high seas, there are no areas in the air space that are considered ‘mutual property for all of mankind’. This notable principle in customary international law is known as ‘the principle of territorial sovereignty’ was confirmed in the Paris Convention of 1919¹ and reiterated in the Chicago Convention of 1944² and it gives each state to the exclusion of all others, a unilateral and absolute right to permit or deny entry into its territory and to control all movements therein.³ According to Milde, this principle is “a cornerstone of international air law and ... declaratory of general international law.”⁴ Specifically, this state authority (also referred to as ‘national interest’ principle) precludes the operation of scheduled international air services over or into the territory of a state without its permission or special

¹ Havel, B: *In Search of Open Skies: Law and Policy for a New Era in International Aviation.* (1997), Kluwer Law International, The Hague. p.31. See also Article 1 of the Convention on Regulation of Aerial Navigation of 1919 (herein after referred to as the ‘Paris Convention’), 11 L.N.T.S. 152.

² The Convention on International Civil Aviation of 1944 (hereinafter referred to as the ‘Chicago Convention’). Article 1 of the Chicago Convention states that “every state has complete and exclusive sovereignty over the airspace above its territory.” Traceable to the Roman axiom *cujus est solum, ejus est usquam ad coelom et ad inferos*- whoever owns the land, owns the space above up to infinity and the space below. See Havel, *Ibid*.

³ Cooper, J.C: *Background of International Public Air Law*. 1 *Yearbook of Air & Space Law* 3, (1967). See also Orwell, G. (2007) Multilateral Conventions, *Public International Air Law Journal*, 1 *Institute of Air and Space Law*, McGill University p. 19.

⁴ Milde, M: *The Chicago Convention- Are Major Amendments Necessary or Desirable 50 Years Later?* 19:1 *Ann. Air & Space Law* (1994) p. 401, 402-03.

authorization. Moreover, such authorization is required for state aircraft⁵, pilotless aircraft⁶, and aircraft carrying munitions⁷, with an exception carved out for a restricted freedom of civil, non-scheduled flights⁸.

Consequently, before an airline can operate international air service to another country, the government must first negotiate with the destination country's government. International air services between countries operate under the terms of a bilateral air service agreement (BASA) negotiated between the two countries. These agreements are generally of treaty status and are enforceable in international law (although some operate under, or are modified by, a less formal Memorandum of Understanding arrangement). They are instruments used by countries to establish international air link between them and ensure that countries collectively maximize their potential in International Air Transport or the Aviation Sector. The agreement would cover such items as: i.) Traffic Rights (also known as Freedoms of the Air) - which are a standard set of nine distinct air rights over which the two countries will negotiate. For example, the first freedom of the air is the right to overfly the territory of a country without landing there. ii.) Authorized Points- which are the allowable routes that could be operated. iii.) Capacity- which is the number of flights or seats

⁵ Article 3(c) of Chicago Convention.

⁶ Article 8, *Ibid.*

⁷ Article 35(a), *Ibid.*

⁸ Article 5, *Ibid.*

that could be operated between the two countries. iv.) Tariff (pricing) - which is the method for setting fares on the route. Some agreements require airlines to submit ticket prices to aeronautical authorities for approval while others allow the airlines to set prices without restriction. v.) Designation, Ownership and Control- which is the number of airlines the bilateral partners can nominate to operate the services and the ownership criteria airlines must meet to be designated under the bilateral agreement. This clause sometimes includes foreign ownership restrictions. vi.) Many other clauses which addresses competition policy, safety and security measures to be taken, operative arrangements (e.g., code-sharing) and various “doing business” issues such as repatriation of currencies, the ability to select handling agents at foreign airports, the use of computer reservations systems, etc.

The relationship between states is still hinging on the bilateral framework of exchanging air traffic rights. Nigeria today maintains bilateral air service agreement with over eighty countries spanning all continents with the view of ensuring and providing easy accessible means of transport to Nigerian travelling public and other nationals coming to Nigeria.⁹ In addition, bilateral agreements provide the leverage for Nigeria to enter into commercial agreement with foreign airlines operating into the

⁹ Omotoba, B: *The Aviation Sector.* At the Ministerial Press Briefing held in National Press Centre, Radio House, Abuja, 26 January, 2010.

country. Currently, Nigeria maintains such agreement with some countries and this enables their foreign airlines such as Emirates (UAE), Air France (France), KLM (Netherlands), Middle East Airlines (Lebanon), Lufthansa Airlines (Germany), etc. to fly into Nigeria.

1.2 Statement of the Research Problem

This research is in a nutshell a comparative legal analysis of bilateral air service agreements of Nigeria and Ghana, United Kingdom and Israel. It was spurred by the perceived imbalance (on frequency distribution and airport slot allocation) which the researcher observed in the operation of the Nigeria – United Kingdom route. In the bid to understand the issue, it was pertinent to study and analyze the terms and clauses in not only the Bilateral Air Service Agreement of Nigeria and the United Kingdom, but to compare it with other Bilateral Air Service Agreement Nigeria entered into with other countries (Ghana, a neighboring African country and Israel, a very recently concluded Agreement). In order to do a good analysis of the bilateral air service agreements of Nigeria with the three countries, the following research questions became necessary:

- i. Are there any lacunae in these Agreements?
- ii. If there are any lacunae, how can these Agreements be improved upon?

- iii. What is the problem associated with the implementation of Bilateral Air Service Agreements of Nigeria and how can it be resolved?

These questions and the answers the researcher sets to find form the fulcrum of this research.

1.3 Aim and Objectives of the Research

The aim of this research is to examine the Bilateral Air Service Agreements between Nigeria and Ghana, United Kingdom and Israel. The objectives of the research are as follows:

- i. to carry out a comparative analysis of the Bilateral Air Service Agreements Nigeria has with Ghana, the United Kingdom and Israel;
- ii. to discuss the making and implementation of bilateral air service agreements in Nigeria;
- iii. to discover and discuss certain lacunae in these Agreements with a view to proffer solutions on them;
- iv. to discuss the problems associated with the implementation of Bilateral Air Service Agreements of Nigeria.

1.4 Justification for the Research

This research is very important because it analyses the bilateral air service agreements between Nigeria and some selected countries namely: Ghana, UK and Israel. It envisages clear understanding of the terms of these Agreements and how they can be made better. Therefore, law teachers, law students, law scholars, the Contracting Parties, the general public etc., will benefit greatly from this research. This is because the discussions on the said bilateral air service agreements coupled with the findings and recommendations that make up this thesis will be a good reference material to the public.

1.5 Scope of the Research

The scope of this research is limited to the appraisal of UN Conventions on Air Service Agreements within the scope of the requirement of offences committed on board of aircraft and other unlawful activities involving aircraft, unification of certain rights in aircrafts and in particular, how these conventions impact the bilateral air service agreements between Nigeria and Ghana, UK and Israel. Domestic legislation relating to air transport regulation will form part of this appraisal.

1.6 Research Methodology

The researcher used doctrinal and empirical research method. Doctrinal method of research means the type of research that theorizes with the aid of books, statutes and cases and thereafter makes findings and recommendations.¹⁰ This is based on relevant statutes, case laws, textbooks, newspapers, internet sources etc. for good understanding of the subject matter under study. Empirical method of research on the other hand, involves the collection of facts and data through interviews, questionnaires etc.¹¹ The researcher also used interview for the purpose of extracting certain information about the bilateral air service agreements being studied. The interview questions were both structured and unstructured. This is because some questions which were not earlier prepared became necessary as a result of the answers obtained from the interviewees. The interviewees were experienced officials of the Nigerian Ministry of Aviation and the Nigerian Civil Aviation Authority (NCAA).

1.7 Literature Review

There are many research conducted generally on Aviation Law and Bilateral Air Service Agreement but there is no research so far on Bilateral Air Service Agreements between Nigeria and Ghana; Nigeria and UK; and Nigeria and Israel to the best

¹⁰ Aboki, Y: *Introduction to Legal Research Methodology*, (2009) Tamaza Publishing Co. Ltd, Zaria, p.3.

¹¹ *Ibid*

knowledge of the researcher. This research is principally on Bilateral Air Service Agreements between Nigeria and the aforementioned countries.

Ozoka I., in his book *Aviation Systems Planning and Operations: Blending Theory and Professional Practice*¹² discussed generally aviation planning and operations. The author devoted a very tiny portion of the book to the concept of bilateral air service agreement without discussing the Bilateral Air Service Agreements from the focus of this research.

Mild M. in his book *International Law and the ICAO*¹³ treated topics like Convention on International Civil Aviation (Chicago, 1944), International Civil Aviation Organization, International legal regime of aircraft and its operation, Legal management of aviation security, International Unification of Private Air law ICAO, Aircraft nationality marks and common marks, etc. The author did not treat any topic on aviation law in Nigeria or any bilateral air service agreement signed by Nigeria and any country.

¹² Ozoka, A.I: '*Aviation System Planning and Operations: Blending Theory with Professional Practice*,' (2009) Ahmadu Bello Press Ltd., Zaria, Nigeria, p. 1.

¹³ Mild, M: '*International Air Law and ICAO*,' (2008) Eleven International Publishing, Utrecht, the Netherlands.

Azzle R. in his article *Some Specific Problems Solved by the Negotiations of Bilateral Air Agreement*¹⁴ discussed some problems solved by negotiating bilateral air service agreements, but did not discuss the problems associated with implementation of the bilateral air service agreements Nigeria entered with any country.

Zylics M. in his book *International Air Transport Law*¹⁵ analyzed the main policy objectives and dilemmas of the air transport industry and examined the concepts, institutions and principles governing international air transport activities, including those drawn from the areas of civil and penal law. He also discussed the role of existing legal instruments in serving various air transport policy system, but he did not discuss the Nigerian aviation industry or any bilateral air service agreements of Nigeria.

Another author, Haanappel in his book *The Law and Policy of Air Space and Outer Space: A Comparative Approach*,¹⁶ only discussed the general principles of the law on Air Space and Outer Space; the origins of Air Space Law, National Sovereignty, Aerospace Law, Private Aerospace Law, the Law and Policy of Air Commerce, Commercial Activities

¹⁴ Azzle, R: 'Some Specific Problems Solved by the Negotiations of Bilateral Air Agreement,' (1967), *McGill Law Journal* 13.

¹⁵ Zylics M: *International Air Transport Law*, (1992) Martinus Nijhoff Publishers, the Netherlands.

¹⁶ Hannappel P.P.C: 'The Law and Policy of Air Space and Outer Space: A Comparative Approach.' (2003) Kluwer Law International, The Hague, The Netherlands).

in Outer Space, etc. The author however, did not discuss the Bilateral Air Service Agreements between Nigeria and Ghana; Nigeria and UK; Nigeria and Israel.

Diedericks-Verschoor, et al in their book *An Introduction to Air Law*,¹⁷ wrote on the general principles of Air Law. The authors also discussed the concept of Bilateral Air Service Agreement but did not discuss the bilateral air service agreements between Nigeria and the selected countries chosen by the researcher. This research therefore discusses the bilateral air service Agreements between Nigeria and Ghana, Nigeria and UK, Nigeria and Ghana which these authors did not discuss in their research.

Giemulla E. M. and Heiko V.S. in their article, *Liability in International Law (Private Air Law)*,¹⁸ explained inability in international law with emphasis on Private Air Law. The authors among other things discussed liability arising from air carriage agreement in accordance with international law. The author, however, did not discuss the bilateral air service agreements of Nigeria with Ghana, UK and Israel which is the main fulcrum of this research.

¹⁷ Diedericks-Verschoor I.H. P. et al: *'Introduction to Air Law'* (2012), Kluwer Law International, The Netherlands.

¹⁸ Giemulla E. M. and Heiko V.S: *'Liability in International Law (Private Air Law)'* In: Giemulla E. M. and Weber L. (Ed) *'EU Aviation Law'* (2011), Kluwer Law International, The Hague, The Netherlands.

Cheng, in his book *The Law of International Air Transport*,¹⁹ generally analyzed the law governing International Air Transport. The author dwelt mainly on the general principles without discussing any bilateral air service agreement Nigeria has with any country. This research brings to the international form the bilateral air service agreements between Nigeria and some selected countries- Ghana, UK, and Israel.

Hamilton²⁰ while discussing how the legal system works with respect to aviation activities, also gave entertaining examples of aviation law in action, all with respect to recent changes to date in statutory and regulatory international aviation law. The book also outlined resources available and procedure to follow an accident, current information on aviation labour laws, union interaction, aircraft insurance, aircraft sales as well as federal programs and aviation organizations. The author however, did not discuss the aviation industry in Nigeria or the bilateral air service Agreements between Nigeria and the selected countries discussed herein.

Hannappel in his article *Bilateral Air Transport Agreements: 1913-1980*²¹ discussed the events leading to the Bermuda 1 Agreement, the important developments in the field of bilateral air transport agreements following Bermuda 1 Agreement, tariffs, capacity

¹⁹ Cheng, B: *The Law of International Air Transport* (1962), Stevens, London.

²⁰ Hamilton, J. S: *Practical Aviation Law* (2011), Fifth Edition, Aviation Supplies and Academics Inc., Newcastle, England.

²¹ Haanappel, P.P.C: *Bilateral Air Transport Agreements: 1913-1980* 5 *International Trade Law Journal* (1978-1980).

and frequency under the Bermuda 1 Agreement, Bermuda 2 and Post-Bermuda 2 Agreements, etc. His Article did not venture into Nigerian Aviation industry or any of Nigeria's bilateral air service agreements.

Mendes de Leon²² discussed cabotage in Air Transport Regulation without delving into any bilateral air service agreement of Nigeria with any country. The focus of this research is on bilateral air service agreements of Nigeria with Ghana, UK, and Israel. The concept of cabotage which Mendes de Leon dwelt primarily on was only discussed in this thesis by way of general explanations.

Dempsey P.S. and Gessell L.E. in their book *Air Commerce and the Law*²³ discussed simply the law on air commerce but no bilateral air service agreement between Nigeria and any country was discussed or analyses. The strength of this research therefore is that it discusses bilateral air service agreements between Nigeria and Ghana, Nigeria and UK, and Nigeria and Israel.

²² Pablo Mendes de Leon: '*Cabotage in Air Transport Regulations*' (1992), Martinus Nijhoff Publisher, The Netherland.

²³ Dempsey, P. S. and Gosell L. E: '*Air Commerce and the Law*' (2004), Coast Aire Publications, Arizona, USA.

Also, Dempsey P. S. in his book *Aviation Liability Law*²⁴ dealt with aviation liability law. From accidents to personal property damages, he also discussed liability for death and personal injury and loss, damage and delay of freight. He assessed the liability of airlines, air traffic control providers, governments, manufacturers, lessors and other potential defendants, but he did not examine any bilateral air service agreement of Nigeria with any country.

To the best of the researcher's knowledge, no research work has been carried out on bilateral air service agreements between Nigeria and UK, Nigeria and Ghana, Nigeria and Israel. The entire literature reviewed did not address any lacunae in the bilateral air service agreement between Nigeria and any of the selected Countries. Also, the works reviewed did not address the problems associated in the implementation of the bilateral air service agreements of Nigeria with the selected Countries. These are the key gaps that this research intends to fill. Hence, there is the need for a comprehensive research on Bilateral Air Service Agreements of Nigeria and the selected Countries.

²⁴ Dempsey, P. S: '*Aviation Liability Law*' (2013), Second Edition, Lexis Nexis, Canada.

1.8 Organizational Structure

This research work is divided into five chapters. Chapter One introduces the work and is segmented into background of the study, statement of problem of the research, aims and objectives of the research, the scope of the research, literature review in the area of the research and justification of the research.

Chapter Two deals with the development of legal, policy and institutional framework for air transport industry in Nigeria. The sub-topics considered here are; the history of the aviation industry in Nigeria, the legal regulation of air transport industry in Nigeria, and aviation regulatory agencies in Nigeria.

Chapter Three deals with the evolution and nature of bilateral air service agreements in general. The sub-topics treated are: history of bilateral air service agreements, structure of bilateral air service agreements, types of bilateral air service agreements, and finally, the making and implementation of bilateral air service agreements in Nigeria.

Chapter Four analyses the major clauses in the Bilateral Air Service Agreements between Nigeria and Ghana, UK and Israel. Under this Chapter, the major clauses in these agreements are compared and differences are pointed out.

The Chapter Five is a summary of the work. It enumerated the findings and recommendations made in the research and ended with a conclusion to the work.

CHAPTER TWO

THE DEVELOPMENT OF LEGAL POLICY AND INSTITUTIONAL FRAMEWORK FOR AIR TRANSPORT INDUSTRY IN NIGERIA

2.1 Introduction

This Chapter deals with the air transport industry in Nigeria. The sub-topics considered here are: the history of the aviation industry in Nigeria; the legal regulation of air transport industry in Nigeria, and aviation regulatory agencies in Nigeria. In discussing the history of the aviation industry in Nigeria, the writer discussed some challenges of the industry from Nigerian independence to the present time. The aviation legal regulatory instruments and regulatory agencies in Nigeria were studied in the context of international regulatory instruments and bodies and national regulatory instruments and bodies.

2.2 History of the Aviation Industry in Nigeria

The development of aviation can be traced to man's early interest in flying. The first of such recorded interests were those of a father and his son named Daedalus and Icarus who fashioned out magic wings from feathers of bird, attached this to their arms with wax and flew out of prison in a high tower on the Aegean Sea (Mediterranean) where they were serving sentences on the Island of Crete²⁵. Before the flight, Daedalus instructed his son not to fly close to the sun.²⁶ Daedalus landed

²⁵ Ozoka, A.I. (2009) *op. cit.*, p. 1.

²⁶ *Ibid*

safely but Icarus did not because he flew close to the sun perhaps due to bad navigation.²⁷ His wings were melted and he crashed into the sea and died.²⁸

Available literature shows that interest in flying increased and progressed through Kites, Balloons and Airships.²⁹ These were all lighter-than-air aircraft as they were all buoyed up and sustained in the air without generating their own power.³⁰ Later, there were attempts to build heavier-than-air aircraft but the early attempts were unsuccessful.³¹ The first recorded attempt was that of Leonardo da Vinci, a 16th Century Mathematician and Scientist who had thought that man, through his own strength of legs and arms could propel himself through the air as birds do.³² In those times, flying was known as 'aviation' which simply means navigating like the birds, as man was imitating the bird (avis).³³ Ornithopters were next; these were machines of humans with wings flapping up and down through mechanical mechanisms, powered by human arm, leg and body movement, but this failed. This was followed by Hot-Air Balloons and Gliders³⁴.

²⁷ *Ibid*

²⁸ *Ibid.* p.2

²⁹ *Ibid.* p.2

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

However, several literatures have it that on 17th December, 1903, real aviation was born when two brothers, Orville and Wilbur Wright designed and flew the first powered aircraft.³⁵ It was a machine made from spruce (wood) and cloth in form of two wings, with one placed on top of the other, a horizontal elevator supported by struts and a vertical rudder behind the wings.³⁶ It was powered by a 12 horse-powered engine. Orville Wright was at the control and the aircraft was named the Wright Flyer 1 and was the first practical airplane.³⁷ The flight took off but landed immediately at the Windswept Sands 'Airport' of Kitty Hawk, North Carolina, USA covering only 120ft. (36m) horizontal distance at a height of about 10ft. (3m) in 12 seconds.³⁸ This signaled the beginning of real aviation which subsequently grew and developed through wars and air racing in Europe and America.³⁹

The landing of the Royal Air Force aircraft on a polo-field in Maiduguri in 1920 marked the beginning of aviation in Nigeria.⁴⁰ Thereafter, the Royal Air Force continued to operate in West Africa and by 1925, the British had stationed a squadron in the Sudan.⁴¹ The Colonial office in England approved the operation of frequent cross-country flights from Khartoum to Maiduguri.⁴² By 1930, civil and military

³⁵ *Ibid.* p.3

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Ogbeidi, M. M. (2006). The Aviation Industry in Nigeria: A historical Overview. *Lagos Historical Review*, vol. 6 pp. 133-147

⁴¹ *Ibid.*

⁴² *Ibid.*

aircraft were carrying passengers across boundaries and touching down in places like Kano, Sokoto, Bauchi, Minna, Oshogbo and Lagos while British imperial Airways carried regular passenger and mail services.⁴³ Later on, Lagos and Accra became the hubs for flight enroute to the Middle East and India.⁴⁴ Subsequently, the Royal Air Force extended its service to Takoradi, Portlami and Cairo.⁴⁵ The Darkota aircraft was used extensively; and air services were operated from Lagos to Port Harcourt, Enugu, Jos, Kaduna and Kano until May 1946.⁴⁶ After the Second World War, the economic recession in Europe forced a lot of Europeans to West Africa which was then the major source of obtaining raw materials for European industries. Consequently, there was a wide market, which later led to an economic boom in the era. By then, nationalist agitations for independence had intensified in the four British West African colonies- Nigeria, Gold Coast (Ghana), Gambia and Sierra Leone.⁴⁷ On 15th May, 1946, Nigeria and Gold Coast met to discuss the means to fight the recurrent problem of transport and communication between the British Isles and the colonies; and to form a joint company and an air transport authority to take over the services previously operated by the Royal Air Force.⁴⁸ The meeting resulted to the establishment of the West Africa Airways Corporation (WAAC). Earlier in 1945, extensive surveys were carried out by the British Ministry of Civil Aviation and

⁴³ *Ibid.*

⁴⁴ Nigerian Airways Manual, Nigeria Airways Training School, Lagos. (2002), p. 5-6.

⁴⁵ Ogbeidi, M., (2006). *op. cit.*

⁴⁶ Nigerian Airways Manual. (2002). *op. cit.* p. 6

⁴⁷ *Ibid.*

⁴⁸ Ogbeidi, M. (2006). *op. cit.*

Colonial office, and in 1946, the West African Air Transport Authority (WAATA), was established for the four colonial governments of Nigeria, Gold Coast (Ghana), Sierra Leone and Gambia to jointly finance a corporation to develop and operate air services between them through the West African Airways Corporation (WAAC).⁴⁹ An agreement was reached between the colonies and the British Overseas Airways Corporation (BOAC) and Elder Dempster Lines (then, both companies had monopoly of the air and sea transport respectively).⁵⁰ BOAC was to provide the technical and commercial staff. In effect, WAAC became a public corporation set up by the colonies to develop efficient air transport services in West Africa.⁵¹ The airline started operation with an initial capital outlay of £465,000 provided by the colonies in the ratio of: Nigeria 68%, Gold Coast 29%, Sierra Leone 2%, Gambia 1/2%; and a Wet Lease Dore aircraft. Its operation was supervised by the WAATA, which had powers to legislate and execute policies.⁵² WAAC took over the major air routes that had been established by the Royal Air Force in West Africa up till 1956; and in order to facilitate operations in the country, aerodrome sites were developed in several parts of the country including Kano, Maiduguri, Lagos, Enugu, Calabar, Port Harcourt, Jos, and Benin City.⁵³

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Obitayo, K.M. (1998). Aviation Development in Nigeria: What Role for the Financial Sector? Paper Presented At A Seminar Organized by the League of Airport and Aviation Correspondents (LAAC), held at the Murtala Mohammed Airport Conference Centre, Lagos, Nigeria, 4 June. p. 4

⁵² Ozoka, I. (2009). *op. cit.*

⁵³ *Ibid.*

In 1957, Ghana pulled out of the WAAC to set up its own National Airline, the Ghana Airways after gaining her independence from Britain.⁵⁴ The WAATA order-in-council seized to apply, resulting in the dissolution of the Authority. In Nigeria, the colonial authority collaborated with the BOAC and Elder Dempster Lines to establish the WAAC (Nig.) Ltd. in 1958, with Nigeria owning 51% of the shares.⁵⁵

In 1961, following Nigeria's independence, the Federal Government which had now bought all the shares of WAAC (Nig.) Ltd renamed it Nigeria Airways Limited (NAL) and it became Nigerian national/flag carrier and started operations using the national colours of green-white-green on all its aircraft. The trade mark and emblem was the flying elephant described as sky power, a logo that created the impression that the airline was powerful enough to carry any amount of cargo or passenger load. During its prime years, Nigeria Airways serviced local and international routes with destinations in New York, London, Amsterdam, Rome, Libreville, Monrovia and many other African cities.⁵⁶ It maintained offices in the world's most important destinations and serviced one of the most lucrative international routes in the world, that is, the Lagos-London route. It is necessary to examine the policy directions which determine civil aviation practice in Nigeria from 1960 onwards before considering their effects on Nigeria Airways.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

The first major policy decision by the Nigerian government in 1960 was to establish an indigenous airline to serve the needs of the few air passengers in Nigeria. Throughout the 1960s and late 1970s⁵⁷, government efforts were directed towards the need to regulate a new and fast growing industry. The second policy was that government would not interfere in the day-to-day running of the airline in spite of the fact that there would be a government nominated board of directors. This position notwithstanding, Chief S. L. Akintola, the then Minister of Communications and Aviation was of the opinion that government would retain the power to direct the airlines policy and insist, if necessary on government point of view. This ushered in an era of close monitoring, control and regulation of the aviation industry by government.⁵⁸ As it happened, government could not draw the line between interference and regulation. The belief in government circles was that the civil aviation industry in Nigeria was too fragile to allow industry technocrats unhindered freedom.⁵⁹ In addition, at that time government had a negative attitude towards private participation in the airline industry because of what it described as the financial in-capabilities of private investors; and was also of the view that the profit margin of airline business was too slim for any private investor to venture into it. Consequently,

⁵⁷ From the 1970s, there was an overwhelming demand by Nigerians for international travel. Also, the domestic routes were saturated hence; policy makers saw that the available infrastructure was grossly inadequate. Hence, the federal government included the Aerodrome Development Plan (1975-1980). About ₦800 million was allocated for installing new equipment and modernizing old ones. To ensure proper implementation of the project, the government removed airport development and management from the control of the defunct Ministry of Aviation. The Nigerian Airports Authority was created to implement the project. The authority took off in 1978 and inherited thirteen airports and facilities which were old and dilapidated. The number of airports kept increasing; by 2000, there were nineteen federal airports.

⁵⁸ Ogbeidi, M. (2006). *op. cit.*

⁵⁹ *Ibid.*

government control of aviation industry was strict and total from the 1960 to the 1980s.⁶⁰ Moreover, the legal framework for the regulation of the aviation industry in Nigeria, the Civil Aviation Act of 1964, which was almost a carbon copy of the U.K. Civil Aviation Act, hardly gave any serious recognition to the participation of the private sector in the domestic and international airline business.⁶¹ Throughout the period, the airline was directly controlled through the administrative and technical policies that emanated from the Ministry of Communications and Aviation. Aircrafts were bought at the decision of the Ministry which was sometimes against the recommendations of the technical experts. The airline was also made to service all the then nineteen airports in the Country whether there were passengers or not; it could not choose the route it wished to fly in spite of economic losses incurred by flying unviable routes.⁶² Issues of salaries, wages and pensions were tailored to that of the civil service. Board members and chief executives were appointed based on political sentiments.

It acquired terminals in Europe and the United States. In 1979, the government contracted the KLM, the official Dutch Airline which managed the affairs of the NAL for two years. Before their arrival, the airline owed a debt of £5 million, but at their departure in 1981, the airlines debt profile stood at £22 million. Although heavily

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Ejuka, B. C. (1987). *The History of the Nigeria Airways and its Impact on the Travel Mobility of Nigerians: 196-1986*. Unpublished M.A. Dissertation. Department of History, University of Lagos, Nigeria. p. 22.

indebted, the airline was at its peak and it was only a question of time before it started experiencing further downturns.

From 1983 to 1995, there was twelve years of uninterrupted military rule and three out of the seven chief executives of the NAL were high-handed military officers whose tenure in the airline overshadowed the civilian character of the airline management.⁶³ Four out of the serving chiefs executives served a year each due to instability in the polity, thus they had little or no time to salvage the economic woes of the airline.⁶⁴ The period witnessed the deregulation of the industry and the emergence of the national carrier as one of the most corrupt government establishments. The effect of corruption, government interference and high-handedness of the various serving chief executives began to manifest on the operations of the company.⁶⁵ Soon, its fleet of twenty-five aircraft was reduced to three. The company also suffered its highest level of financial indebtedness.⁶⁶ The government was thus left with no choice but to open the doors to private sector participation in the airline business. Several factors were responsible for this development.⁶⁷ First, the airline was managed like any other government parastatal without the drive for profit.⁶⁸ Second, the airline had

⁶³ Ogbeidi. M. (2006). *op. cit.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Ejuka, B.C. (1987). *op. cit.*

⁶⁷ Ogbeidi M. (2006) *op. cit.*

⁶⁸ *Ibid.*

difficulties meeting with passengers' demand.⁶⁹ Passenger spill-over from flights coupled with gross mismanagement of the airline's compounded the prevailing situation. Third, flight delays became routine and appeared to have been adopted as the standard operating procedure rather than the exception.⁷⁰ Delays of five to six hours or more were a common occurrence and flight cancellations became a frequent occurrence and whenever flights were available, passengers virtually had to struggle to obtain a boarding pass.⁷¹ The use of numbers to guarantee a seat for passengers failed, and the difficulties encountered to get a seat on scheduled flights became a national issue.⁷² The increasing well-being of Nigerians coupled with the desire to travel by air and its associated advantages created great demand beyond the managerial and operational capability of the national carrier.⁷³ Again, and perhaps more important, was the need for government policy to fall in line with global trends in deregulation. These factors coupled with the pressures from influential Nigerians who were ready to venture into the air transport business paved the way for the deregulation of the industry.⁷⁴

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ Diepriye, C.D. and Ndi-Okereke O. (1997). Air Transport in Nigeria: Strategies for the Twenty First Century. In: The Nigerian Stock Exchange Bulletin (First Ed.) Lagos p.15.

The new deregulation policy led to unrestricted competition among operators leading to the proliferation of small airlines.⁷⁵ Pursuant to the deregulation policy, twenty-five airline operators were licensed in the industry and were authorized to operate non-scheduled passenger and cargo air services within and outside Nigeria. As time went on, Okada, Kabo and Gas Airlines were upgraded from the status of non-scheduled operators to scheduled operators; Kabo, Okada, Aviation Development Company (ADC) and Bellview Airlines were later granted permission to operate international routes. By 1995, the number of licensed air operators had increased to one hundred and forty-four.⁷⁶

As is well known, aviation business is highly capital intensive. When the private airline operators flooded the industry in the early years of deregulation, many of them were in partnership with foreigners for leasing of aircraft, which were flown into the country to operate scheduled and non-scheduled passenger service. The operators did not enjoy the total confidence of the local investment market as Nigeria Airways became a good reference point for the operators of the financial market to exercise caution because they argued that if government could not run a national carrier, a private investor would have more problems operating such business. Therefore, the operators entered the industry at their own risks and virtually all those that began operations at that time have been liquidated. Many of them had problems of

⁷⁵ Ogbeidi M. (2006). *op. cit.*

⁷⁶ Diepriye, C. and Ndi-Okereke O. (1997), *op. cit.* p.4

maintaining the very expensive engineering checks on their aircraft. Most of these operators have since left the market, and new operators like Aero Contractors, Virgin Nigeria, Arik Airlines, Dana Airlines, Airfirst, Mid-View Airlines, etc., have joined.

2.3 Legal Regulation of Air Transport Industry in Nigeria

2.3.1 International Regulation

At the international level, the following instruments regulate the conduct of international civil aviation in Nigeria:

1. The Convention on International Civil Aviation (The Chicago Convention, 1944) and its Annexes: form the primary international air law regulating the conduct of international civil aviation in Nigeria. The Chicago Convention laid down the general rules under which civil aviation could be undertaken globally; and the provision of technical annexes meant to bring about the highest possible degree of international standardization of practice for safe, secure, and economy of air navigation. Also, other instruments such as Conventions and Protocols have been concluded for specific areas including Aviation Security, Passenger and third party liabilities.⁷⁷ Some are:

- i.) Convention for the Unification of Certain Rules Relating to International Carriage by Air of 1999 (Montreal Convention) which seeks to consolidate the Warsaw Convention and other related

⁷⁷ See Appendix 1 for a list of International Air law Instruments signed by Nigeria.

instruments. Some new features of the Montreal Convention include, increase in Compensation in case of death or injury of passengers (Article 21), Advance payment in cases of death or injury in order to offset initial expenses (Article 28), Limit of Carriers' Liability in respect of delay, lost baggage and cargo (Article 22), Periodic Review of Limits (Article 25), Expansion of Jurisdiction (Article 33. 2), and Provision of adequate Insurance (Article 50) among others.

- ii.) Convention for the Suppression of Unlawful Seizure of Aircraft of 1970 (The Hague Convention) which mandates States, to impose severe penalties on any person who on board an international flight unlawfully, by force or threat or any other form of intimidation, seizes or exercises control of or attempts to perform any such act or is an accomplice of a person who performs or attempt to perform such act.
- iii.) Convention on International Recognition of Rights in Aircraft of 1948 (The Geneva Convention) which seeks to protect certain rights in aircraft, which have been duly constituted and recorded, according to the laws of the state of registration. The Rights as set out in Article 1(1) of the Convention, includes rights of property in aircraft; rights to acquire aircraft by purchase coupled with possession of the aircraft; rights of possession of aircraft under leases of six months or more and rights in mortgages, or similar rights in aircraft, which are contractually created as

security for payment of indebtedness. These rights are registrable and extend to all sums secured; however, the amount of interest shall not exceed that accrued during the 3 years prior to execution process, together with that accrued during the execution proceedings (Article 5).

- iv.) Convention on international Interest in Mobile Equipment and the Protocol to the Convention on Matters Specific to Aircraft Equipment of 2001. The Cape Town Convention and Protocol aims to facilitate asset based financing and leasing of aircraft, aircraft engines and objects. It seeks to ensure that interest in such equipment are recognized and protected universally. It also provides for the constitution of international interest in aircraft and aircraft equipment. The Convention presents the prospect of immense reduction in financing costs of aircraft and aircraft equipment, by making the aircraft or equipment the security for its acquisition. The Convention provides an easy and expedited means for a lessor or mortgagor of an aircraft or aircraft equipment to realize his security, in the event of default by the lessee or mortgagee. The domestication of this Convention saw a huge leap in fleet acquisition and renewal in Nigeria.

2. The African Civil Aviation Policy, 2011 (AFCAP): provides a framework and platform for the formulation, collaboration and integration of national and

multinational initiatives in various aspects of civil aviation in Africa. Article 5.2 of the Policy is on Air Service Agreements. Under this Article, the objective of member States is to be active participants in international air transport and allied services. In pursuance of this objective, the following shall be ensured: i.) air service agreements negotiated amongst member States shall be in accordance with the Yamoussoukro Decision and the AFCAP; ii.) air service agreement negotiated by member States with Third Countries shall be in accordance with the African Union Guidelines on External Negotiation; iii.) in order to ensure fair and equal opportunities for African airlines, all air service agreement signed with Third Countries should include Option 2 of the ICAO guidelines on Slot Allocation which provides that parties shall facilitate the operation of the agreed services by granting designated airlines the necessary landing and take-off slots, subject to applicable national and international rules and regulations and in accordance with the principle of fair and equal opportunity, reciprocity, non-discrimination and transparency; and parties shall attempt to resolve any dispute over slots through consultation and negotiation in accordance with the articles on Consultation Dispute Settlement.

2.3.2 National Regulation

At the national level, every International Civil Aviation Organization (ICAO) Member State is expected to enact its primary aviation legislation that empowers the conduct and oversight of civil aviation activities within its territory. This comprehensive and

effective aviation law should be consistent with the environment and complexity of the State's aviation activity and compliant with the requirements contained in the Chicago Convention. The Civil Aviation Policy of Nigeria, the Civil Aviation Act of 2006 together with regulations made by the NCAA constitutes the primary law regulating civil aviation in Nigeria.

1. The Nigerian Civil Aviation Policy (NCAP): The Minister of Aviation is responsible for drafting the national aviation policy for Nigeria with the assistance of the Civil Aviation Authority. The first indigenous Nigerian Civil Aviation Policy was formulated in 1989, following the adoption of Air Commodore Kola Falope Committee findings on aviation reforms.⁷⁸ The major highlight of the 1989 policy was the creation of Federal Civil Aviation Authority (FCAA), responsible for safety and economic oversight as well as the provision of air traffic services, aeronautical information services and aero telecommunication services.⁷⁹

In 1995, during military rule, a major reform saw the dissolution of FCAA and the creation of Department of Safety Regulation and Monitoring (DSRAM) which was responsible for the safety regulatory functions of FCAA.⁸⁰ The Federal Airport Authority of Nigeria (FAAN) was also established, while the economic regulatory

⁷⁸ Okoronkwo, P. (2014). Overview of Nigeria Civil Aviation Policy, Legal and Regulatory Framework. Paper presented at the Second Annual Seminar for Federal High Court Judges on Civil Aviation Law. 3rd September, p. 2.

⁷⁹ *Ibid*

⁸⁰ *Ibid*.

functions of FCAA were merged with those of the Aviation Coordination Department, to form Department of Air Transport Management (DATM) in the Ministry of Aviation.⁸¹ The reforms of the 1995 policy were immediately found to be at variance with the recommendations of ICAO; and the rapid development in civil aviation activities across the world, including the adoption of the Yamoussoukro Decision, emergence of Banjul Accord and Nigeria's increasing influence in international civil aviation, made a review very necessary, to bring Nigeria in line with international standards and practice.⁸²

In 2001, a well thought out and comprehensive policy was formulated for the aviation industry. The objectives of this policy were: "to ensure that all laws and regulation governing civil aviation in Nigeria are consistent with international laws and regulation; and that harmonious relationship exists between the Ministry of Aviation and its agencies."⁸³ In furtherance to these objectives, FAAN was to operate a privatized, competitive and commercialized airport system; Nigerian Airspace Management Agency (NAMA) was to provide air navigation services and coordinate aeronautical search and rescue with Nigeria Emergency Management Agency (NEMA); NCAA was to have safety and economic regulation and oversight in aircraft operations in accordance with International Civil Aviation Organization (ICAO)'s

⁸¹ *Ibid*

⁸² *Ibid*.

⁸³ *Ibid*.

Standards and Recommended Practices (SARPs).⁸⁴ The economic thrust of the policy favoured liberalization, the principle of reciprocity, fair and equal opportunity, privatization and competition.

A new Nigerian Civil Aviation Policy was unveiled in April, 2013. The objectives of the 2013 Policy encompasses institutionalizing world class safety and security standards, development of world class infrastructure, development of aero-metropolis', among others. The major thrust of the policy, is the promotion of harmonized approach to achieve international standards on safety, security and comfort of passengers, thereby ensuring the sustainability of the sector. The 2013 Policy is divided into ten parts. Part 1 deals with the historical background of the aviation sector in Nigeria. Part 2 presents an overview of the strategic goals, objectives, management and institutional framework, while highlighting the economic and social importance of the sector. Part 3 addresses the importance of Aviation Financing, with emphasis on the development of a sustainable aviation financing mechanism through Public Private Partnership. Part 4 deals with aviation training with special focus on improving the Nigerian College of Aviation Technology (NCAT), as a center of excellence in Africa. Part 5 emphasizes the continuous autonomy of Accident Investigation Bureau (AIB), to ensure timely and thorough investigation of all major incidents and accidents, while addressing the merits of

⁸⁴ *Ibid.*

Aviation safety and security as an integral part of the strategic objective of ICAO policy. Part 6 focuses on air transportation, removal of hindrances to the growth of airlines and creation of enabling environment for alliances among airlines. Part 7 reviews the deficiency in controlling and monitoring General Aviation; and advocates for a regulatory framework, adequate human resources and infrastructure to support the policy. Part 8 advocates that Bilateral Air Service Agreement and Multilateral Air Service Agreement negotiations shall not only be on the principle of reciprocity, but also on providing maximum opportunities for Nigerian airlines to grow and compete effectively. It is pertinent to note here that the provisions of Article 8.1 of the NCAP, 2013 is same with Article 5.2 of the AFCAP, 2011. Part 9 deals with aviation allied support services, intermodal transport system, and facilitation of passengers among others. Part 10 reaffirms the continual monitoring and review of the ministry and its agencies, to align with new strategic goals, policies and procedures, to an internationally acceptable level. In the writer's opinion, the 2013 policy provides a platform for the way forward and future prospects of the aviation industry in Nigeria.

2. The Nigerian Civil Aviation Act, 2006: The Nigerian Civil Aviation Act, 2006 repealed the Civil Aviation Act (CAA), 1964 and the Nigerian Civil Aviation Authority (Establishment) Act, 1999. It consolidated and substantially reenacted the provisions of both documents. The Act is a radical legislation that seeks to modernize

and internationalize aviation law in Nigeria. The major highlights of the Act are as follows:

Section 1 reinforces the constitutional provision that lists aviation in the exclusive list and supports the federal government policy on aviation, relating to controls and supervision of civil aviation in Nigeria. It provides that the Honorable Minister of Aviation shall be responsible for the formulation of policies and strategies for the development of the sector. It further distinguishes the powers of the Honorable Minister of Aviation (HMA) and the regulatory authority, thereby eliminating the conflicts in the previous legislation.

Section 2 re-established the NCAA as a corporate and autonomous body, with a governing board and a Director General, who shall be the account officer. The functions of the Authority as captured in several provisions of the Act especially Parts 9, 10 and 11 of the Act show that NCAA shall have the power to regulate and monitor the conduct of air navigation in Nigeria; issue the Air Operator Certificate (AOC) which is safety certificate; issuance of Economic licenses, permits or authorization e.g. Air Transport License, Air Operator Permit (AOP). The Functions and powers of NCAA in regulating the civil aviation industry are all in accordance with ICAO Annexes and SARPs. Also, some other aviation regulatory agencies establishment acts had some provisions therein that made them self-regulatory prior to the Act. However, realizing that these provisions were not repealed in the Act of

2006, the then President of the Federal Republic of Nigeria Alhaji Umar Yar'Adua issued "a letter of Comfort", assuring the international community, that Nigeria has one regulatory authority for civil aviation in Nigeria and the authority is the NCAA.⁸⁵ In addition, each of these agencies (i.e. NAMA, FAAN, NCAT, NIMET) entered into and signed a "Memorandum of Understanding" relinquishing such regulatory powers and functions to NCAA.⁸⁶

Section 29 of the Act established Accident Investigation Bureau, as a semi-autonomous body in charge of investigation of serious incidents and accidents in the aviation sector.

Major international conventions on aviation which hitherto were ratified by Nigeria were also domesticated in the Act, for example: i.) the Montreal Convention of 1999 which is domesticated by Section 48(1) of Nigerian Civil Aviation Act, 2006; ii.) the Hague Convention of 1970; iii.) the Geneva Convention of 1948 is domesticated by Section 73(1) of Nigerian Civil Aviation Act; iv.) the Cape Town Convention of 2001 is captured in Section 73(2) of the Nigerian Civil Aviation Act, 2006.

Furthermore, certain offences were created in Sections 42, 43, 45, 46(5) etc. of the Nigerian Civil Aviation Act. Consequently, Section 63(2) provides that NCAA shall

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

with the consent of the Attorney General of the Federation, in its name have power to initiate and undertake the prosecution, of any person, in respect of any offence created under the provisions of this Act or any regulation, rule or order made pursuant to this Act.

Currently, there is a proposal to consolidate all the different legislation in aviation. Specifically the various Establishment Acts, into one comprehensive Civil Aviation Act; and some new provisions are also being articulated like the Victim Assistance Programme, among others.⁸⁷ Also, more International Conventions are recommended to be domesticated in the proposed Consolidated Civil Aviation Act.⁸⁸ These include the Convention on Offences and Certain Other Crimes Committed on Board an Aircraft, (Tokyo Convention 1963); Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, (Montreal 1971); Beijing Convention; and Protocol on Aviation Security 2010 etc.⁸⁹

3. The Nigerian Civil Aviation Regulations (NCARs): Sections 30 of CAA empowers NCAA among other things to, “make regulations for carrying out the Convention on International Civil Aviation concluded in Chicago on the 7th day of December 1944; any annex to the Convention which relates to international standards

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

and recommended practices and is adopted in accordance with the Convention or of any such Annex which is made in accordance with the Convention.”

As stated earlier, the Chicago Convention objective is uniformity and standardization in air navigation. To achieve this, ICAO adopts International Standards and Recommended Practices (SARPs) on procedures dealing with several aspects of air navigation and designate such as Annexes. Standards according to ICAO, means “any specification for physical characteristics, configuration, material, performance, personnel or procedure, the uniform application is recognized as necessary for the safety or regularity of international air navigation and to which member states will conform in accordance with the Convention”. According to ICAO, Recommended Practices means “any specification for physical characteristics, configuration, material, performance, personnel or procedure, the uniform application is recognized as desirable in the interest of safety, regularity or efficiency of international air navigation and to which member states will endeavor to conform in accordance with the Convention”. The difference is that while Standards are mandatory and necessary, Recommended Practices are desirable. ICAO requires Contracting States that find compliance with a standard impracticable, to file a notice of differences with the ICAO Council. Based on the above premises, this sub-topic focuses on Regulations presently in force. These are Nigeria Civil Aviation Regulation, Volume I 2009 and Volume II 2012. These regulations are Nigeria’s fulfillment of its obligations under the Convention. All the Annexes of the Convention are captured, Standards are

reenacted and some Recommended Practices are standardized in the Nigeria Regulations. These provide the basic regulatory framework for all stakeholders in the industry. Of special interest are the Implementing Standards that accompany each Part of the Regulations. The Implementing Standards provide detailed requirements, that support the intent of a regulation presented in a Part and they have the legal force and effect of the referring regulation.

The Nigeria Civil Aviation Regulations, Volume I, 2009 are presented in Parts 1 to 11 covering General Policies, Procedures and Definitions, Personnel Licensing, Approved Training Organizations, Aircraft Registration and Marking, Airworthiness, Approved Maintenance Organization, Instruments and Equipment, Operations, Air Operator Certification and Administration, Commercial Air Transport by Foreign Air Operator within Nigeria and Aerial Works respectively.

The Nigeria Civil Aviation Regulations, 2012 Volume II, has Parts 12 to 20 covering Aerodrome, Air Navigation Services, Safe Transport of Dangerous Goods By Air, Environmental Protection, Aviation Security, Economic Regulations, Consumer Protection Regulations and Appeals, Citation, repeals and Offences respectively. Nigeria Civil Aviation Regulations, 2012 which is a second amendment to the 2006 Regulation incorporated new Parts dealing with Economic Regulation (Part 18) and

Consumer Protection Regulation (Part 19), making it one of the most complete, modern and proactive sub legislation in Africa.

Service Providers and Operators are obliged to comply strictly with the provisions of the Regulations, as it concerns their processes, procedures and operations or they would be in violation of NCAA Regulations. The sanction regimes are clearly captured in Implementing Standard to Part 1 and in Part 20. NCAA Compliance and Enforcement Handbook contain policies, procedures and guidelines, for the compliance and enforcement programmes to the Regulation.

The NCAA also uses Manual of Standards (MOS) and Technical Guidance Material (TGM), Advisory circulars or Orders made by the Director General of NCAA, in accordance with Section 30 of Nigerian Civil Aviation Act, 2006 to monitor and regulate the sector, especially to respond to any emerging trend or threat in the sector. The NCAA has also in response to the New Aviation Policy in respect of General Aviation, issued a notice of proposed rulemaking to the industry in order to regulate and adequately monitor general aviation operation.

2.4 Aviation Regulatory Agencies in Nigeria

2.4.1 International Regulating Bodies

The Air Transport Industry is very highly regulated through Rules, Laws and

Recommended Practices in the design and operation of both aircraft and airport.⁹⁰

The international key regulatory agencies which regulate civil aviation in Nigeria are:

1. The International Civil Aviation Authority (ICAO): was established in order “to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport”.⁹¹ Therefore, it is safe to say that at the international level, the ICAO is the body charged with the duty of regulating aviation. The International Civil Aviation Organization (ICAO) is a specialized branch of the United Nations Organization established in 1947 following the Chicago Convention of 1944. It is based in Montreal, with regional offices in Paris, Dakar, Cairo, Nairobi, Mexico City and Lima and has over 186 contracting states. Its main function is aviation safety through the establishment of International Standards, recommended Practices and procedures, covering licensing of personnel, rules of the air, meteorology, aerodromes, etc.

2. The African Civil Aviation Commission (AFCAC) is the specialized agency of the African Union responsible for civil aviation matters in Africa. The African Civil Aviation Commission (AFCAC) was created by the Constitutional Conference convened by the International Civil Aviation Organization (ICAO) and the OAU at

⁹⁰ Ozoka, I. (2009). *op cit.*, p. 9.

⁹¹ International Civil Aviation Organization. Retrieved 2nd April, 2012. From <http://www.icao.int/about-icao/pages/foundation-of-icao.aspx>.

Addis Ababa in 1964. AFCAC membership is open only to member States of African Union (AU). It comprises of 54 African States and is managed through a triennial Plenary (consisting of all member States). It is made up of a President, 5 Vice-Presidents (representing Northern, Western, Eastern, Central and Southern Africa Regions) and the Coordinator of the African Group at the ICAO Council. Its headquarters is in Dakar, Senegal.

The Commission's objectives are: to coordinate matters of civil aviation in Africa, to promote the development of the civil aviation industry, to foster compliance with ICAO standards and recommended practices (SARPs) for the safety security and regularity of the air transport and to examine any specific problems which may hinder the development and operation of the African civil industry.

2.4.2 National Regulating Bodies

Item 60 of the Exclusive legislative list gives powers to the National Assembly for “the establishment and regulation of authorities for the federation or any part thereof...” Therefore, it will be appropriate to state that the aviation regulatory agencies are the Federal Ministry of Aviation, Nigerian Civil Aviation Authority, Federal Airport Authority of Nigeria, Nigeria Airspace Management Agency, Nigerian Meteorological Agency, Nigerian College of Aviation Technology, and Accidents Investigation Bureau:

1. The Federal Ministry of Aviation (FMA): The Federal Ministry of Aviation has been given overall responsibility for the formulation and management of the federal government aviation policies in Nigeria. It is empowered under the Nigerian Civil Aviation Act of 1964 to make policies and regulate air navigation. The Ministry is also directly responsible for overseeing air transportation, air policy development and management, provision of aviation infrastructural services and other needs arising from the wide spectrum of the aviation industry both nationally and globally.

The Ministry, through its International Relations Division coordinates and promotes Bilateral and Multilateral Air Service Agreements between Nigeria and other friendly individual countries.⁹² The divisions functions are to: monitors the implementation of air service agreements in collaboration with other parastatals; negotiate and review subsisting air service agreements; negotiate Pool and Commercial Agreements to cover extra-bilateral frequencies and unilateral exploitation; and monitoring of Pool and Commercial Agreements between Nigeria's designated carriers and the designated carriers of other countries especially on regular payment of Royalties⁹³.

⁹² Oral interview granted to the researcher by Ngbuku, B. A. Assistant Director, International Relations, Federal Ministry of Aviation, Abuja on Thursday the 23rd of August, 2012 at the Federal Ministry of Aviation, Abuja.

⁹³ Ngbuku, B. (2012). *op. cit.* The defunct Nigeria Airways found it increasingly difficult to operate all designated routes that it intended to ply. It therefore entered into Commercial Agreements with other operating foreign airlines subject to payment of royalties into a dedicated BASA/Pool account with the Central Bank of Nigeria (CBN). With the liquidation of the Nigerian Airways limited, the negotiation and management of the Agreement was reverted to the Ministry of Aviation. Commercial Agreement exists between the Ministry of Aviation and KLM, Alitalia, Lufthansa, Middle East Airline, Afriqiya, Sudan Airways, Air France and Cameroon Airlines. The International Relations Division of the Ministry of Aviation has re-negotiated some of these Agreements and has received over Seventy Million United States Dollars as proceeds from them, and the money is lodged in the BASA/POOL/NCAA Account with the Central Bank of Nigeria (CBN).

2. The Nigerian Civil Aviation Authority (NCAA): The NCAA was first established in 1989 as Federal Civil Aviation Authority (FCAA) but was scrapped in 1995 and re-established by Decree 49 of May, 1999 as Nigerian Civil Aviation Authority⁹⁴ in compliance with the conditions of the ICAO, which requires all member States to establish an appropriate State organization to be known as “Civil Aviation Authority”.

The NCAA is charged with the primary responsibility of ensuring compliance with air navigation regulations and ICAO Standards and Recommended Practices (SARPs). This encompasses ensuring the safety, efficiency and regularity of air navigation and safety of aircraft and of persons and property carried in the aircraft; regulating the safety of aircraft operations, air navigation and aerodrome operations; making regulations to ensure the maintenance of an acceptable level of safety in areas like: licensing of aircraft personnel (maintenance engineers, air crew, air traffic controllers and airport/airdromes personnel), design, manufacture, maintenance, and overhaul of aircraft to be registered and/or operated in Nigeria, the maintenance and overhaul of engines and other equipment's to be used on aircraft registered and/or operated in Nigeria; to monitor aircraft operating environment for safety and security purposes; the NCAA is further charged with the responsibility of ensuring proper air transport economic (regulation) policy by endeavoring to allow all users of the Nigerian airspace

⁹⁴ Ozoka, (2009). *op. cit.*

to fly safely consistent with efficient and profitable airline operation, encourage growth of air traffic, and protect the interest of consumers of air transport service. Furthermore, the NCAA regulate the method of entry and conduct of air transport business in Nigeria; and acts as an adviser to the government on issues of air transport licenses and matters relating to international aviation organizations and airlines. It also set aviation training standards and approves training institution; and it facilitates takeoff and operation of e-ticketing and Billing Settlement Plan (BSP).

The NCAA is made up of the following directorates through which it undertakes the above functions:⁹⁵ i.) Flight Standards Group (FSG) which is a group of Directorates that perform the joint safety oversight responsibilities. Directorates under FSG are Directorate of Operations and Training (DOT), Directorate of Airworthiness Standards (DAWS), Directorate of Licensing⁹⁶ (DOL) and the Department of Aeromedical Services (DAMS). The main focus of the FSG is to ensure coordination and communication through the harmonization of processes and safety standards that will ensure effective and efficient certification, licensing and surveillance of aviation organizations and personnel. ii.) Directorate of Airworthiness Standards (DAWS): It is the responsibility of the Airworthiness Directorate to ensure that all aircraft in Nigeria

⁹⁵ Oral interview granted to the researcher by Egbukole N., Chief Air Transport Officer, Directorate of Air Transport, Nigerian Civil Aviation Authority (NCAA), Lagos on the 17th of August, 2012 at NCAA, Lagos.

⁹⁶ In order to accelerate enhanced conformity of airports with the ICAO standards, the NCAA embarked on recertification of airports in the Country starting with the International Airports in Lagos, Abuja, Kano and Port Harcourt. The Authority has used the exercise to address critical safety problems relating to rescue and firefighting, perimeter fence, bird strike/hazard control measures, and dismantling of Airport obstruction. See, Omotoba B. (2010). *op. cit.*

are airworthy, i.e. fit to fly. DAWS also inspects and certifies aircraft according to established procedures; proposes, reviews and approves designs, repairs and modifications; ensures that safety requirements are complied with and, where deficiencies are identified, corrective measures are taken (through letters, fines, suspension of certificates, etc.); supervises the whole aviation industry in order to align it with global aviation trends and propose corrective measures to ensure air safety. iii.) Directorate of Licensing (DOL): is responsible for licensing of all personnel in line with the Nigerian Civil Aviation Regulations that in turn, are aligned with ICAO Annex 1 Standards and Recommended Practices (SARPs). iv.) Directorate of Operations and Training (DOT): is responsible for the effective oversight activities and setting of standards in all areas of flight operations and training in the Nigeria air transport industry⁹⁷. v.) Directorate of Aerodrome and Airspace Standards (DAAS): The primary responsibility of the DAAS is to ensure safety and security at all Nigerian aerodromes in conformance with the relevant standards and recommended practices of ICAO Annexes. vi.) Directorate of Finance and Administration: is responsible for all financial⁹⁸, administrative, human resources, corporate affairs /planning functions

⁹⁷ The ICAO made it mandatory for every Civil Aviation Authority to have qualified personnel in sufficient numbers to meet its safety oversight responsibilities. The NCAA has started strategies to achieve this as the Authority has sponsored and is sponsoring some pilots and aircraft maintenance engineers in Nigerian College of Aviation Technology (NCAT). The Authority has also organized and sponsored various training seminars and workshops in Nigeria. For example, the Authority hosted the Safety Management System (SMS) workshop conducted by ICAO; organization of training workshop programmes on Search and Rescue, Emergency Management and Accident Investigation and AVSEC Security training by US experts in the first quarter of 2009; sponsoring of training workshop on Machine Readable Traveling Documents (MRTDS), Biometrics and Security Standards (which was in collaboration with the US Embassy in Nigeria and Nigeria Immigration Service). The Authority has also encouraged Airlines to embark on similar sponsorship programme.

⁹⁸ NCAA operates Aviation Insurance and Non-Aviation Insurance Policies. The Aviation Insurance policy is a cover on NCAA Aircraft, Calibration Equipment and Cabin Crew insurance; the Non-Aviation Insurance Policy covers Motor Vehicle, Fire and Peril Risk, Burglary, Plant all Risk, Cash in transit, Group Personnel, Accident and Workmen Compensation. NCAA prepared an update

while projecting the image of the organization and articulating policies for effective and efficient service delivery in the Authority based on SERVICOM; and the Consumer Protection Department⁹⁹ (CPD) was launched in March 2001, to ensure that all aviation consumers obtain the best services in air transportation. vii.) Directorate of Air Transport Regulation (DATR): The Nigerian Civil Aviation Authority (NCAA) is statutorily responsible for the safety and economic regulation of the civil aviation industry. In accordance with the provisions of Part IX Section 30(7) (a) of the Civil Aviation Act 2006, NCAA has six Directorates among which is the Directorate of Air Transport Regulation (DATR).The Directorate is responsible for the economic regulation of the aviation industry.

3. The Federal Airports Authority of Nigeria (FAAN): The Federal Airports Authority of Nigeria Act, 2004 established the Federal Airport Authority of Nigeria, (FAAN) as a service provider, statutorily charged to manage all Commercial Airports in Nigeria and provide services to both passenger and airlines. It was initially established by decree No. 45 of 1976 as the Nigeria Airports Authority to maintain and manage airports on behalf of the Federal Government.¹⁰⁰ This was a fall out of

on the payment of compensation to families of victims of Bellview, Sosoliso and ADC Airlines for presentation to the Senate Committee on Aviation in a stakeholder meeting and the premium demand for the period has been settled by the Authority.

⁹⁹ The CPD has improved on the following passenger's protection area: Prompt lost baggage recovery/compensation, flight delay/cancellation, and crime/crowd control to prevent passengers discomfort and pilferage. Also, foreign airlines have improved their service performance, for example, flight schedules have been adjusted by British Airways so that they no longer arrived at odd hours of the night. Delta Airlines have also committed newer Boeing 777 Aircraft to their Lagos service replacing older Boeing 767s. Note that these actions were in response to passengers' complaints.

¹⁰⁰ Ozoka, I., (2009). *op. cit.*, p. 25

the massive airport development Programme of 1975-1980 in which Government decided to construct an airport in each state capital to complement other modes.¹⁰¹

There were only 12 states at the time, but today, there are so many airports.

FAAN is entrusted with the following functions:¹⁰² to develop and maintain at airports all necessary services and facilities for the safe operation of aircraft excluding navigation aids, telecommunication facilities and air traffic control services; to provide accommodation and other facilities for the effective handling of passengers and freight; to develop and provide facilities for surface transport within airports; to carry out and exchange economic activities at airports that is relevant to air transportation; to provide adequate security at airports; and the amended decree of 1993 empowers the FAAN to carry and use guns. The development of new airports is the joint responsibility of the Ministry, the NCAA and the FAAN.¹⁰³ While the Ministry gives approval, the NCAA coordinates the development for compliance with international requirements and the FAAN on its part supervises the actual construction and ensures proper planning and management of the airports.¹⁰⁴

¹⁰¹ *Ibid.*

¹⁰² Retrieved 4th September, 2012 from FAAN website- <http://www.faannigeria.org/about-faan/what-we-do.html>

¹⁰³ Ozoka, I. (2009). *op. cit.* p. 25

¹⁰⁴ *Ibid.*

4. The Nigerian Airspace Management Agency (NAMA): The Nigeria Airspace Management Agency was established by Decree No. 48 of 1999 and commenced operation in January, 2000.¹⁰⁵ Its main functions are to provide effective communication, navigation, surveillance and air traffic management for safe and orderly conduct of flight operations in the Nigerian airspace, and it coordinates aeronautical search and rescue.¹⁰⁶ Although NAMA is a provider of air Navigational Services, it is also a parastatal of the Ministry of Aviation.

5. The Nigerian Meteorological Agency (NIMET): The Nigerian Meteorological Agency was established in 2002 and is vested with the responsibility of providing adequate, accurate and timely terminal and en-route weather forecast to civil aviation operators as well as weather information for agriculture, marine, military, energy and water sectors, etc.¹⁰⁷ The agency has been performing its functions well, for example is the 2012 flood prediction in the country that actually came to pass.

6. The Nigerian College of Aviation Technology (NCAT): The Nigerian College of Aviation Technology Act, 2004 established NCAT. NCAT is a higher education institute in Zaria. It was formerly known as the Nigerian Civil Aviation Training

¹⁰⁵ *Ibid.*, p. 27.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

Centre and was established in 1964.¹⁰⁸ It is charged primarily with the responsibility of training Pilots, Air Traffic Controllers, Aircraft Maintenance Engineers, Aero-telecommunications Engineers, and several other aviation specialists for the Nigerian and African aviation industry.¹⁰⁹ Indeed in the 1970s and early 1980s, it was the African Aviation Center for Excellence and many Nigerians and African Aviation professionals were trained there. It is a foremost aviation training institution in the West African sub-region.¹¹⁰ However, today it lacks the modern infrastructure, training equipment, curriculum and up to date instructors who possess knowledge about modern aviation practices.

7. Accidents Investigation Bureau (AIB): The Nigerian Civil Aviation Act 2006 is the primary law that established the AIB. The agency is charged with the responsibility of investigating aircraft accidents and serious incidents with a view to determining the causes and proffer safety recommendations that can prevent similar occurrences in future.¹¹¹ The agency plays a vital role in furthering the latitude of air safety which explains why the International Civil Aviation Organization (ICAO)

¹⁰⁸ In November 2008, under the West and Central Africa Air Transport Safety and Security Project in Nigeria, the World Bank tendered for a study on equipment, infrastructure and training needs for the college a preliminary step before allocating funding. In January 2010, the president of Aviation Round table, Captain Dele Ore, called for increased funding for the college so as to meet its statutory obligation.

¹⁰⁹ Training activities in the College are carried out in five Training Schools: Flying School, Aircraft Maintenance Engineering (AME) School, Aeronautical Telecommunications Engineering (ATE) School, Air Traffic/Communications (ATS/Com.) School, and Aviation Management School.

¹¹⁰ NCAT students encompass students from other nations in the sub-region and private sponsored students. For example, Arik Air started a scholarship plan in October 2006 for training pilots and aircraft engineers, of which 15 students for the Standard Pilot Course were to graduate in November, 2008.

¹¹¹ Retrieved on 28th August, 2012 from AIB website- http://www.aib.gov.ng/about_aib.htm.

recommends contracting states to establish autonomous accident investigation bodies that are separate from other government organs. It is also responsible for assisting families of victims of air accidents and incidents.

CHAPTER THREE

THE EVOLUTION AND NATURE OF BILATERAL AIR SERVICE AGREEMENTS

3.1 Introduction

This chapter discusses bilateral air service agreements in general. The chapter begins by explaining what bilateral air service agreements are. It went further to give a historical evolution of bilateral air service agreements. From the historical analysis, the failures of the Chicago Convention to reach a compromise on the issue of traffic rights left the negotiation of economic matters on air serviced to purely bilateral basis and have led the bilateralism to be accepted worldwide as the mode for negotiating economic rights for air service. The structure of bilateral air service agreements is discussed by way of summarizing the major provisions in bilateral air service agreements. The fourth sub-topic discussed in this chapter is the types of bilateral air service agreements. Over the years, four basic types of air service agreements have been developed and have become prototypes of others, and therefore are used as standard blueprints. Finally, the last aspect of this topic is on the making and implementation of bilateral air service agreements. Here, the stages involved in making bilateral air service agreements are explained.

3.2 Overview of Bilateral Air Service Agreements

Bilateral air service agreements are international trade agreements which facilitate the exchange of reciprocal rights and privileges regarding air traffic between two states.¹¹² They are international trade agreements in which two nations mutually establish a regulatory mechanism for the performance of commercial air services between their respective territories and beyond; and typically agree on such economic regulatory matters as capacity, fares and routes.¹¹³ These agreements generally carry comprehensive and fully responsive clauses to the needs of both parties at the time of conclusion of such bilateral agreements¹¹⁴. Once states conclude international air transport agreements, the airlines take over the performance. These agreements could be concluded as treaties, executive agreements or exchange of notes¹¹⁵. They are instruments used by countries to establish international air link between them in order to ensure that countries collectively maximize their potential in International Air Transport or the Aviation Sector. The whole operation of international civil aviation regulation is therefore, anchored on formal consent of States. Bilateral air service agreement or bilateral air transport agreement are both the same thing and scheduled international air services are the principal concern of bilateral air service /transport agreements. They are generally of treaty status and are enforceable in international law

¹¹² Haanappel, P.P.C: 'Bilateral Air Transport Agreements - 1913 – 1980', 5 *International Trade Law Journal* (1978-1980), p.241.

¹¹³ Swinnen, B.M.J: 'An Opportunity for Trans-Atlantic Civil Aviation: From Open Skies to Open Market', (1997) 63 *Journal of Air Law & Commerce* 249 at 9.

¹¹⁴ Bernstein I: 'Liberal Bilateral Air Transport Services Agreements and Sixth Freedom Traffic Carriage and Pricing'. (1980) 14 *Int'l. L.* p. 281.

¹¹⁵ Cheng B: 'Law of International Air Transport' (1962) Stevens and Sons Limited, London. p. 465.

although some operate under, or are modified by less formal Memorandum of Understanding arrangement.

Three basic principles have been identified as fundamental to the development of any legal and political framework for the regulation and management of the international aviation industry: i.) each State enjoys exclusive sovereignty and jurisdiction over the airspace directly above their territory, including internal waters; ii.) each State has absolute discretion to permit or deny any aircraft of another State to fly in the airspace that it rightfully controls; and iii.) aircrafts from all States have an undeniable right to fly in airspace over the high seas, and over any earth's surface which is not the territory of any State.”¹¹⁶

These principles, and in particular the notion that a State unquestionably controls the airspace directly above its territory,¹¹⁷ were reiterated after the end of World War I at the Peace Conference of 1919, which produced the Convention Relating to the Regulation of Aerial Navigation, more commonly known as the Paris Convention, 1919. The Convention re-affirmed the principle that each State enjoys “complete and exclusive sovereignty over the airspace above its territory”. The language of Article 1

¹¹⁶ Lissitzyn, O: *International Air Transport and National Policy* (NY: Council on Foreign Relations (1942), cited in Dempsey, P. S. *Public International Air Law* (2008), Montreal: McGill University, Institute and Centre for Research in Air and Space Law, p.13.

¹¹⁷ Article 1, Paris Convention, *op. cit.* See *India v. Pakistan* (1952) which involves Pakistan's refusal to allow Indian commercial aircraft to fly over Pakistan; *United States v. Spain* (1969) which involves Spain's restriction of air space at Gibraltar; *Pakistani v. India* (1971) which involves India's refusal to allow Pakistani commercial aircraft to fly over India, later appealed to the ICJ; and *Cuba v. United States* (1998) which involves U.S. refusal to allow Cuba's commercial aircraft to fly over the United States.

of the Paris Convention, 1919 has been subsequently repeated in Article 1 of the Chicago Convention and the principle has been recognized through other provisions of the Chicago Convention, particularly Article 3(c) and Article 6 which were adopted by the Chicago Conference. Article 6 of the Chicago Convention makes it clear that no scheduled international air service could be operated in a territory of a contracting party without the prior permission of that state. This is the foundation of the bilateral air transport (services) agreements.

Scheduled international service is defined by the Council of ICAO as: “... series of flights that possess all the following characteristics; (a) it passes through the airspace over the territory of more than one state; (b) it is performed by aircraft for the transport of passengers, mail or cargo for remuneration, in such a manner that each flight is open to use by members of the public; (c) it is operated, so as to serve traffic between the same two or more points, either (i) according to a published timetable, or (ii) with flights so regular or frequent that they constitute a recognizably systematic series.”¹¹⁸

The restriction imposed by Article 6 enables the states to permit other states to enter into their territories for commercial aviation. The main purposes sought by bilateral agreements are to provide the general public with a speedier mode of transportation

¹¹⁸ ICAO Definition of a Scheduled International Air Service, ICAO Doc. 7278-C/841 of 10th May, 1952. See also Article 96 of Chicago Convention.

between states and to allow the national carrier to compete with the foreign airlines and achieve similar benefits¹¹⁹. But, Nigeria expects more than the above as the Federal Government's vision for the aviation sector is for a dynamic self-sustaining air transport system which can drive economic growth in Nigeria while remaining globally competitive. Therefore the aviation industry is more than a mode of public transportation for Nigeria. With the 'death' of any multilateral agreement on exchange of commercial or traffic rights, especially the failure of the International Air Transport Agreement, bilateral agreements have now become the driving force of the international air transport industry. Currently, Nigeria has entered into over eighty (80) bilateral air transport agreements (with some being operational and yet many others not operational and still yet, several others being negotiated) although Nigerian carriers are flying into few destinations as the frequencies that are being utilized by the Nigerian airlines are inadequate to complement with the operation of these agreement.¹²⁰

The nature of the bilateral air transport agreements has gradually changed with the course of time, keeping in line with the developments of the international aviation policies and strategies. Early bilateral agreements illustrate a stricter approach in exchange of rights, but during 1970s the exchange of traffic rights became liberal. However, Nigeria has entered into many liberal bilateral agreements with many

¹¹⁹ Gilliland, W: '*Bilateral Agreements: The Freedom of the Air*', edited by McWhinney, E. and Bradley, M. A. (1968) 140.

¹²⁰ Ngbuku, B. A. *op cit*.

African and some non-African countries and since the open skies concept was accepted as a policy, Nigeria has concluded an open skies agreements with the U.S.

In accordance with Article 83 of the Chicago Convention¹²¹, any contracting State may make arrangements not inconsistent with the provisions of this Convention. To maintain transparency, this article indicates that such arrangements shall be forthwith registered with the Council, which shall make them public as soon as possible. Both in terms of number and in terms of significance, the Bilateral Air Service Agreements (BASAs) on scheduled air transport are predominant.

In Nigeria, the negotiation of BASA is the responsibility of the Federal Ministry of Aviation.¹²² In performing this function, the composition of the Nigerian delegation include officials of the Ministry of Aviation, Nigerian Civil Aviation Authority (NCAA), Ministry of Justice, Ministry of Foreign Affairs, the designated carrier of Nigeria on the particular route concerned and airline(s) holding Air Operators Certificate (AOC) applicable to the routes.¹²³

¹²¹ 15 UNTS 295, ICAO

¹²² Ngbuku, B. A. *op. cit.*

¹²³ *Ibid.*

3.3 Historical Evolution of Bilateral Air Service Agreements

Bilateralism in international civil air navigation could be traced to 1913 when the first bilateral air transport agreement was concluded between France and Germany.¹²⁴

Aviation unlike other modes of transportation is inextricably interwoven with the fundamental issues of national sovereignty and always connected with international relationships.¹²⁵ However, the first attempt to achieve multilateralism in air transport was taken at the Paris Conference in 1919.¹²⁶ The drafters of the 1919 Paris Convention, while recognizing the customary international law principle of the sovereignty of the states,¹²⁷ envisaged that there should be no obstacles for the parties to the convention to exercise traffic rights on international air routes according to their will¹²⁸.

Therefore the exchange of traffic rights was subjected to Article 15 of the Paris Convention that required prior authorization to enter into the air space of another state.¹²⁹ It has been noted that this condition was intended to serve the security

¹²⁴ Haanappel, P.P.C. *op. cit.*, p. 241.

¹²⁵ Johnson: 'The International Aviation Policy of the United States', *Air Law and Commerce Journal* (1963) Vol. 29, page 366.

¹²⁶ Paris Convention

¹²⁷ Article 1 of the 1919 Convention provides, "The contracting parties recognize that every state has complete and exclusive sovereignty over the air space above its territory. For the purpose of this convention, the territory of a state shall be understood as including national territory, both that of the mother country and of the colonies and the territorial waters adjacent thereto."

¹²⁸ Cribbett, G: 'Some International Aspects of Air Transport', *Journal of the Royal Aero. Society* (1950) p. 669, in Vlastic L. A. and Bradley M.A. *The Public International Law of Air Transport; Materials and Documents*. McGill University, Vol. 1, (1974).

¹²⁹ Article 15(1) of the Paris Convention provides the general principle of air carriage. It states, "Every aircraft of a contracting state has the right to cross the airspace of another State without landing. In this case it shall follow the route fixed by the state over which the flight takes place. However, for reasons of general security, it will be obliged to land if ordered to do so by means of the signals provided in Annex D". The exception lies in the 15(2) of Article which provides that "Every aircraft which passes from one state into another shall, if the regulations of the other state require it, land in one of the aerodromes fixed by the latter. ..."15(3) states that the establishment of international airways shall be subject to the consent of the states flown over.

requirements than the commercial aspects of air navigation.¹³⁰ The states moved towards bilateral agreements during this time as multilateralism in commercial aviation was a dim prospect. Gradual increase of bilateral agreements between the contracting parties, namely, the Paris Convention of 1919, the Madrid Convention of 1926 and the Havana Convention of 1928 was highlighted during 1930s.¹³¹ Although most agreements were negotiated between governments, it is interesting to note that there had been agreements negotiated between airlines and the governments concerned.¹³² By 1939 bilateralism was established as the basic tool by which states exchanged commercial traffic rights on international routes.¹³³

Post World War II Bilateralism: The Second major attempt to achieve a multilateral approach to the exchange of traffic rights was tabled at the Chicago Conference in 1944.¹³⁴ But again the conference ended up without any success over convincing the world to agree on a multilateral framework for exchange of economic rights. Even though the Chicago Conference failed to achieve multilateral agreement to the exchange of traffic rights, two agreements namely, the International Air Service Transit Agreement (IASTA),¹³⁵ which carries the first two freedoms of air and the

¹³⁰ Bernstein, I., *op. cit.* 7.

¹³¹ Hannappel, P.P.C., *op. cit.* p. 242.

¹³² Cribett, G. *op. cit.* p. 672.

¹³³ *Ibid.* p. 673

¹³⁴ Convention on International Civil Aviation, 7 December, 1944. 15 L.N.T.S 295, ICAO Doc. 7300/8, 8th Edition 2000.

¹³⁵ International Air Services Transit Agreement, 7 December 1944, 84 D.N.T.S. 389, ICAO Doc. 7500.

International Air Transport Agreement (IATA),¹³⁶ which lays down the first five freedoms of the air, were opened for signature at the conference. The Five Freedoms of the air are:

- a. The privilege to fly across a state's territory without landing;
- b. The privilege to land for non-traffic purposes;
- c. The privilege to put down passengers, mail and cargo taken on in the territory of the State whose nationality the aircraft possess;
- d. The privilege to take on passengers, mail and cargo destined for the territory of the State whose nationality the aircraft possess;
- e. The privilege to take on passengers, mail and cargo destined for the territory of any other contracting State and the privilege to put down passengers, mail and cargo coming from any such territory.

Out of these five freedoms, the first two freedoms are regarded as technical rights and the third, fourth and fifth freedoms are considered as the important economic or commercial traffic rights.¹³⁷ Therefore in every bilateral air transport agreement, the first two freedoms are exchanged almost automatically and the exchange of the third, fourth and fifth freedoms lead to much discussion and concern.¹³⁸ The International Air Transit Agreement gained wide acceptance by the international community but

¹³⁶ International Air Transport Agreement, 7 December 1944, 171 D.N.T.S. 387.

¹³⁷ Haanappe1, P.P.C., *op. cit.* p. 244

¹³⁸ *Ibid.*

the Air Transport Agreement, which was tabled by the United States with the expectation to make good the losses of failure to achieve multilateralism in exchanging third, fourth and fifth traffic rights at the Chicago conference attracted only a few ratifications making the concept of multilateralism in air transport almost impossible to achieve.¹³⁹ The United States withdrew from the agreement in 1946.¹⁴⁰ Therefore, the world had to fall back on the bilateral agreements in exchanging traffic rights with the abandonment of multilateralism for the time being by the states.¹⁴¹

As Cheng had correctly perceived bilateral agreements would be the order of the day and for some time to come.¹⁴² Even though The Chicago Convention of 1944 failed altogether in laying down economics of the air transport industry, it did include provisions facilitating interstate negotiations for bilateral air transport agreements. Article 1 of the Chicago Convention reiterates the customary international law principle of sovereignty of states over its air space, “every state has complete and exclusive sovereignty over the air space above its territory¹⁴³”, repeating Article 1 of the Paris Convention 1919. Article 6 of the Chicago Convention provides: “No scheduled International air service may be operated over or into the territory of a contracting

¹³⁹ Only Bolivia, Burundi, Costa Rica, El Salvador, Ethiopia, Greece, Honduras, Liberia, Netherlands, Paraguay and Turkey have ratified the Air Transport Agreement so far.

¹⁴⁰ See Dept. of State Press Release, No. 510, July 25, 1946. The withdrawal became effective on 25 July, 1947.

¹⁴¹ *Ibid.*

¹⁴² Cheng, B., *op. cit.*, p. 25.

¹⁴³ Milde, M: *The Chicago Convention -After Forty Year's, 9 Annals of Air & Space Law*, (1984) p. 119.

state, except with the special permission or of the authorization of that state, and in accordance with the condition of such permission or authorization.”

Article 6 of the Chicago Convention places a restriction on international flights from flying into the territories¹⁴⁴ of the contracting states. That is to say that if an airline wishes to enter into the air space of a territory of another contracting party, the airline must obtain special permission to enter into the air space of that contracting state and be bound by the conditions specified in the permission. It should be noted that even the provision seems to limit its application to the contracting states; every state follows this basic air law principle.

Chapter VII of the Convention authorizes the states to negotiate over their own rights and privileges regarding air transport.¹⁴⁵ Article 81 of the convention provides for the registration of all existing agreements between contracting states themselves and between contracting states and airlines with ICAO. Article 82 makes all the arrangements, (obligations and understandings) between contracting states themselves and non-contracting parties which are inconsistent with terms, abrogated and the contracting parties agree not to enter into any obligation, which are inconsistent with

¹⁴⁴ “Territory” has been defined in the Chicago Convention as “the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State”. See Article 2.

¹⁴⁵ Gertler, J.Z: *Obsolescence of Bilateral Air Transport Agreements: A Problem and a Challenge*, XIII *Annals of Air & Space Law*, (1988), page 39; Chicago Convention, *op. cit.*

the terms of the convention.¹⁴⁶ And Article 83 provides for the registration of new arrangements entered into by contracting parties.

Chicago Form of Standard Agreement for Provisional Air Routes: At the Chicago Conference an agreement was reached on a Form of Standard Agreement for Provisional Air Routes as a model for the bilateral agreements between the states.¹⁴⁷

This agreement was intended to be non-binding model for bilateral agreements, which could be followed by the states.¹⁴⁸ The form of agreement is silent on which commercial rights to be exchanged and does not specify routes but indicates that these commercial rights to be included in annexes to the agreements.¹⁴⁹

It is clear by the time of this agreement there was a hope for a multilateral framework of exchanging commercial rights until the concerns were expressed by a Resolution at the Seventh Session of the ICAO Assembly in 1953, which stated that there is no present prospect of achieving a universal multilateral agreement.¹⁵⁰ It has been observed that the basic objective of the standard form of agreements was to update the bilateral agreements which existed during the pre-war period.¹⁵¹ The USA was fast

¹⁴⁶ Chicago Convention, *op. cit.*, Article 82.

¹⁴⁷ Dempsey, P.S: 'Evolution of Bilateral Air Transport Agreements', The McGill/Concordia Report on International Civil Aviation Policy for Canada, McGill University Center for Research on Air and Space Law, (2005) 87 at 89. 89.

¹⁴⁸ Haanappel, P.P.C. *Pricing and Capacity Determination in International Air Transport - A legal Analysis*. Kluwer Law and Taxation Publishers, Inc., Deventer, The Netherlands (1984) p. 16.

¹⁴⁹ *Ibid.*

¹⁵⁰ See ICAO Assembly, 7th Session, Minutes of the Plenary Meetings, ICAO Doc. 7409 A7-P/2, 1st September 1953, p. 67.

¹⁵¹ Gertler, J. Z: 'ICAO and Bilateralism: The Case of Standard Bilateral Clauses', *XVI Annals of Air and Space Law*, (1991), p. 61.

to adopt the form of standard agreement clauses to a number of bilateral agreements concluded in the immediate aftermath of the Chicago Conference. Even though the important clauses exchanging commercial rights were replaced by the clauses of Bermuda 1 type clauses later, most of the clauses in the standard form of agreement were to be found in such bilateral agreements;¹⁵² the reason being that the Bermuda 1 agreement had the effect of expanding the provisions of the Standard Form, adding to the provisions of the Standard Form and supplementing the Standard Form regarding the commercial rights of aviation rather than negating the effect of the Chicago Standard Form of Provisional Routes.

With the failure of the Chicago Conference to secure the support of the states to agree on a multilateral framework for exchange of economic rights including the exchange of third, fourth and fifth freedom traffic rights, capacity matters, frequencies and tariffs¹⁵³ the United States of America and the United Kingdom together, negotiated a fresh agreement on sharing rights and privileges. Prior to World War II, the United Kingdom was pressing on for free access to the market and the United States was pressing on the predetermination of capacity;¹⁵⁴ but World War II resulted in a complete twist in the positions of the two states and when the Chicago conference was initiated, the United Kingdom was catering on the pre determination

¹⁵² *Ibid.*

¹⁵³ Haanappel, P.P.C. *op. cit.*, p. 246.

¹⁵⁴ Haanappel, P.P.C., *op. cit.* p. 243.

of the capacity and the United States was bargaining on the free access to markets. However, the two aviation powers across the Atlantic were hard on getting access to each other's markets and beyond. After lengthy discussions between the two strong bargaining powers, a final agreement, the Bermuda Agreement was reached at Bermuda on 11th February 1946.¹⁵⁵

The Bermuda 1 agreement has a Final Act, an Agreement and several Annexes. Traffic rights, ratemaking and other technical matters are embodied in annexes while capacity and frequency issues are included in the Final Act. The reason why important matters are embodied in the annexes is that they are likely to change frequently and it is easier to amend those provisions in the annexes. The Bermuda 1 Agreement provided discretion to the air carriers to a certain degree in determining capacity, frequency and tariff matters.¹⁵⁶ Their decision was only subjected to an *est post facto* review by the governments.¹⁵⁷ Another important feature of Bermuda 1 agreement was the recognition of IATA ratemaking clause, which was treated as achieving some sort of multilateralism through bilateralism.¹⁵⁸

¹⁵⁵ Agreement between the United Kingdom and the United States, 11 February 1946, 3 U.N.T.S. 253 (hereinafter Bermuda 1 Agreement).

¹⁵⁶ Gillies, S: *Multilateral Air Transport Agreements Reconsidered: The possibility of a regional agreement among North Atlantic States* (1981-1982) 22 Va. J. International. Law, p. 164.

¹⁵⁷ *Ibid.*

¹⁵⁸ Abeyratne, R.I.R: *The Economic Relevance of Chicago Convention - A Retrospective Study*. XIX-II *Annals of Air & Space Law* (1994), page 17.

With the successful implementation and application of the Bermuda 1 type agreements between USA and UK; many states concluded bilateral agreements, which followed the Bermuda 1 type stated as having an accepted standard form of bilateral agreement, with of course deviations in frequency and capacity clauses.¹⁵⁹ As the bilateralism matured after the Bermuda 1 model, states embodied all important provisions in the agreement itself with providing space for route schedules in the annexes.¹⁶⁰

Bermuda 1 Agreement had a lifespan of 30 years before it was replaced by more restrictive Bermuda II Agreement. The United Kingdom withdrew from the Bermuda 1 Agreement. The main reason for such a step was the ‘dissatisfaction’ on the part of the United Kingdom over the capacity issue.¹⁶¹ UK felt that USA had more access to the UK, rather than the other way round. After The reconsideration of traffic rights between the states, Bermuda II agreement was signed on 23rd of July 1977.¹⁶²

The shortcomings that led to the demise of Bermuda 1 was observed by Ruwantissa Abeyratne as, “One of its (Bermuda type) main disadvantages however, was that it gave governments a basis to formulate their civil aviation policies and sometimes adopt an unduly restrictive stance on their sovereignty, leading to traffic rights that

¹⁵⁹ Haanappel, P. P. C. *op. cit.*, p. 251.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.* p. 260.

¹⁶² Air Services Agreement between United States of America and United Kingdom, 1977 D.K.T.S. 76 (hereinafter referred to as Bermuda II Agreement).

were being frequently withdrawn by states”.¹⁶³ Bermuda II agreement did not deviated much from the Bermuda 1 agreement despite the attempts made by UK to share the traffic on equal basis. In Haanappel assessments of the Bermuda II Agreements:¹⁶⁴ “... the key areas of capacity, frequency and tariffs, in Bermuda II reiterate Bermuda 1 with some elaborations and minor restrictions. As to capacity, attention is drawn to the obligation of the contracting parties to avoid over capacity and under capacity.”

One of the important features of the Bermuda II Agreement is the inclusion of a security clause. The Agreement was discussed at a time when the security concerns were high among states, especially after a series of hijackings of aircrafts had taken place and several multilateral international agreements concluded to combat unlawful interference with civil aircraft.¹⁶⁵ In conformity with the situation the two parties agreed to incorporate a security clause and pledged to each other to provide “maximum aid to each other” in preventing threats to the civil aviation and went on to the extent to agree to give “sympathetic consideration” to any request for special security measures by each other.¹⁶⁶

¹⁶³ *Ibid.*

¹⁶⁴ Haanappel, P.P.C. *op. cit.*, 260.

¹⁶⁵ Convention on Offences and Certain other Acts Committed on Board Aircraft, 14 December 1963, ICAO Doc. 8364, Convention for the Suppression of Unlawful Seizure of Aircraft, 16 December 1970, ICAO Doc. 8920; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 23 September 1971, ICAO Doc.8896.

¹⁶⁶ Gertler, J.Z: *Obsolescence of Bilateral Air Transport Agreements: A Problem and a Challenge*. XIII Annals of Air & Space Law, (1988), page 39, 46.

Even though it was expected that Bermuda II model would follow the same path of Bermuda 1 and set a standard model for the other states to follow, in the end, it was not so; because the aviation industry had come a long way since Bermuda 1 and states were addressing their own needs, the Bermuda II agreement was entirely suitable for the USA and UK markets and the so-called deregulation policy of the United States, which was closely scrutinized by the other states.¹⁶⁷

The United States has been pushing the concept of “Open Skies” on a multilateral basis since the Chicago Conference in 1944, but this pro-competitive philosophy was resisted strongly by many attending States, especially the United Kingdom. Accordingly, the “Open Skies” philosophy has been driven by the United States to the international level through bilateral basis instead. This came with the introduction of the deregulatory initiatives started during early 70s and the re-introduction of the free access pro- competitive approach adopted by the USA at the Chicago Conference in 1944.

The birth of the first era of liberalization of aviation market or the ‘open skies agreements’ was marked with the passing of the United States Deregulation Act in 1978. The deregulation in the aviation industry proved to be fruitful during the first few years as the new carriers entered the market providing low fares to passengers.

¹⁶⁷ Haanappel, P. P. C., *op. cit.*, p. 261.

The CAB (Civil Aeronautics Board, with a focus on strict economic regulation of carriers) was replaced by DOT (Department of Transportation), which facilitated the new entries to the market resulting in more competition. Under this favorable background USA wanted to export this liberal approach beyond its borders. As a result USA was able to amend the existing bilateral agreements and concluded a considerable number of bilateral agreements especially with European States¹⁶⁸. However, this liberal approach was not very successful as intended by the USA. It was proved as an attempt to attract the states under deregulated environment and as such did not impress most of the states.¹⁶⁹ This was purely because the states were very much concerned about their national carrier's interests under these open economic circumstances.

European Community has taken the leadership to liberalize the air transport industry regionally and is stepping towards full open sky agreements within the community and outside the community. This approach was given a boost by the decision of the Court of Justice of the European Communities on 5th November 2002, rendering the bilateral agreements entered into by eight States of the community with United States as not in conformity with the community laws and that the agreements had violated

¹⁶⁸ Haanappel, P.P.C. *op. cit.* USA concluded the first post Bermuda II agreement with Netherlands and after that entered into bilateral agreements with Australia, Belgium, Fiji, Finland, West Germany, Iceland, Israel, Jamaica, Papua New Guinea and Singapore.

¹⁶⁹ Bernstein, I. *op. cit.*, p. 281.

the ‘external exclusive competences of the community’.¹⁷⁰ The notion of Trans-Atlantic Aviation Area is being discussed with the USA and at the same time the community is interested in the Open Aviation Area within the community, which enables the community to enter into air transport agreements as a single state. When the major aviation powers move towards liberalization, the other states too started realizing the importance of opening up their respective markets. However, the significance in this process lies in the regional approach of securing the traffic rights.

The Andean Pact and Mercosur Pact of South America, Caribbean Community and Common Market (CARICOM) in the Caribbean, North America Free Trade Agreement (NAFTA) in the North America, Conselho Municipal de Segurança Alimentar (COMSEA) and Yamoussoukro Declaration (YD) followed by the Yamoussoukro Decision (YD) which liberalized the African Air Space in Africa, Association of Southeast Asian Nations (ASEAN) in the Southeast Asia and the recently concluded Pan-Pacific APEC multilateral agreement are examples of evolving regional arrangements.

Despite all efforts made since 1913 to establish multilateralism as a system for the exchange of traffic rights, bilateralism has out lived to be the ultimate system for the exchange of air traffic rights. This is so because a bilateral agreement is entered into

¹⁷⁰ Commission of the European Communities V. Eight European Union States (ECJ), 466/98, 467/98,469/98,470/98,471/98,472/98,475/98 and 476/98.

between two states parties and could easily be adjusted to suit changing circumstances. Also, the states are comfortable in bargaining traffic rights in order to safeguard their interest.

3.4 Structure of Bilateral Air Service Agreements

In general, regardless of the specific type of bilateral agreement negotiated, most agreements have a general structure, as follows:

- an initial Preamble, which identifies the contracting parties, and declares that they have agreed to the different clauses that integrate the document;
- definition of terms, with reference to terms used in the Chicago Convention;
- designation of airlines, that is, which airlines and how many airlines may operate the agreed services;
- nationality requirements of designated airlines (for economic and security reasons);
- the routes which designated airlines are entitled to fly, that is grant of rights for market access;
- revocation and suspension of the operating permit granted to the designated airlines(s) in case of non-compliance with defined provisions of the agreement;
- the applicability of local air navigation rules (articles 11 of the Chicago Convention);

- the capacity designation airlines may offer, that is, the size and the configuration of the aircraft;
- the prices the designated airlines may quote;
- the maintenance of minimum safety and security standards pursuant to Article 33 of the Chicago Convention and in accordance with minimum Standards and Recommended Practices drawn up and updated from time to time by ICAO as laid down in the Annexes to the Chicago Convention;
- operational opportunities and restrictions, for instance, change of gauge (equipment or aircraft);
- recognition of the 'fair competition' principle designed to ensure the establishment of a level playing field between the designated carriers;
- commercial activities including code sharing and the establishment of sales offices in the territory of the other State; access to infrastructure, that is, airports and airport related facilities;
- dispute settlement;
- registration of the agreement with ICAO and entry into force.

See Appendix 2 and 3 for templates of Bilateral Air Service Agreements.

3.5 Types of Bilateral Air Service Agreements

Various basic types of air service agreements have been developed over the years and have become prototypes of others, and they are, therefore used as standard blueprints.

The following four types of bilateral air service agreements are discussed here: Chicago Type, Bermuda Type Agreement, Predetermined Type Agreement and Liberal Type Agreements.¹⁷¹

The second and third types were commonly used for scheduled international air transport between 1946 and 1978, and are still applied today in many countries of the world.¹⁷² They differ mostly on the matter of capacity (frequency of flights).¹⁷³ Liberal agreements tend to remove government restrictions on capacity and pricing but still defines which markets can be served. All bilateral air service agreements of Nigeria fall into one or two of these categories of bilateral air service agreements.

3.4.1. Chicago Type Agreement: This is founded on the model BASA authorized in accordance with Article 83 of the Chicago Convention and basically, it included the following regulations: designation of air carriers of the contracting parties and issuance and revocation of operating authorizations (Article 2); equal treatment to national air carriers with regard to charging airport usage fees (Article 4a); mutual recognition of certificates of airworthiness and flight license (Article 5); obligation to comply with national laws on entry and departure from the territory of the other contracting State and on air traffic within its territory as well as entry and departure of passengers, flight crew, and cargo (Article 6a and b); settlement of dispute (Article 9);

¹⁷¹ Gjemulla, E. and Weber, L: *‘International and EU Aviation Law: Selected Issues’*. *Op.cit.*

¹⁷² Haanappel, P.P.C: *‘The Law and Policy of Air Space and Outer Space: A Comparative Approach’*, *Op. cit.* p. 114.

¹⁷³ *Ibid.* p. 114

termination of the agreement (Article 10); route schedule as annex defining points of departure, intermediate points, and destinations of the planned route.

This model agreement was initially the basis for a great number of BASAs (until October 1947 as declared by the ICAO legal committee pursuant to Article 64 of the Convention).¹⁷⁴ However, it did not include any regulations on the extent of traffic rights, especially of the fifth freedom, questions of capacity and tariffs, which had to be regulated separately.

3.4.2 Bermuda Type Agreements: The Bermuda type agreement is termed after the first U.S. bilateral air service agreement that was signed in Bermuda in 1946 with the United Kingdom,¹⁷⁵ and basically it included the following regulations:¹⁷⁶ general principles to be followed by air carrier of both nations in scheduled air traffic (Final Act); air traffic at the lowest economically acceptable prices;¹⁷⁷ provision of air services adapted to the traffic volume between the two States as well as the demand;¹⁷⁸ equal opportunities;¹⁷⁹ mutual considerateness, and no disadvantage and discriminating treatment;¹⁸⁰ granting of traffic rights on the designated routes defined in a route schedule with individual flight sections and points of arrival and deportation

¹⁷⁴ Giemulla E. and Weber L: *International and EU Aviation Law: Selected Issues*. *Op.cit.*, p.21

¹⁷⁵ *Ibid.* p. 22.

¹⁷⁶ *Ibid.* p.22

¹⁷⁷ Paragraph 1.

¹⁷⁸ Paragraph 3 and 6.

¹⁷⁹ Paragraph 4.

¹⁸⁰ Paragraph 5.

to proceedings in the case of route changes¹⁸¹ and changes of gauge;¹⁸² multiple designation and operating authorization of the air carriers authorized to exercise the traffic rights¹⁸³ plus ownership clause;¹⁸⁴ price setting processes through the IATA to prevent mutual price cutting¹⁸⁵. The Bermuda Agreement is based on a rather liberal understanding by granting the air carriers mostly free room for organization; however it requires a balance of technical and economic achievement potential of the air carriers of both contracting states.

The regulation in Bermuda agreement also met the interests of other States that were in the process of establishing their own air carriers with which they were seeking access to global air traffic while protecting such national air carriers from the risks of absolute competition. But the regulation does not work where granted opposing rights cannot be exercised because of the absence of a national carrier or when over capacity, declining traffic development and so on lead to an extensive use of formally authorized options that end up damaging both parties and can later be brought back into balance with considerable difficulty.

¹⁸¹ Appendix 4.

¹⁸² Appendix 5.

¹⁸³ Annex 1, Article 2.

¹⁸⁴ Annex 1, Article 6.

¹⁸⁵ Appendix 2.

3.4.3 Predetermined Agreements (Restricted): Also known as, Protectionist or British type agreements, it provided for more regulation. In cases where the Bermuda Agreement could not work, attempts were and are often made to restrict the agreement through additional agreements or through one-sided provisions in the operating authorization of the air carrier of the other contracting State.¹⁸⁶ This usually happens through the following provisions:¹⁸⁷ single designation; requirement to conclude a prior agreement between the air carriers of both nations on profit share (pool convention) as a precondition for granting traffic rights in bilateral scheduled air service; definition of the number of frequencies and capacity (predetermination); refusal or restriction or quotation of the fifth freedom; and price setting by the aviation authorities of both States. The bilateral air service agreements Nigeria has with United Kingdom, South Africa, China, etc., are restricted and now include provisions on code sharing.

3.4.4. Liberal Agreements: Liberal agreements first emerged in 1978, and differ in many commercial respects from both Bermuda type and Predetermination type agreements. They are characterized with multiple designation of private air carriers of both contracting states; loosening of the ownership clause; access to all international airports in the respective contracting States; unlimited traffic rights of the third, fourth, and fifth freedoms and of cabotage; free use of foreign equipment's;

¹⁸⁶ *Ibid.* p. 23.

¹⁸⁷ *Ibid.* p. 23.

cooperative operation of scheduled air services in all cooperation forms and combinations; free decision on frequencies and applied capacity; free price organization, possibly with right of rejection for departing traffic; consultation process concerning joint definitions of limitations in emergency situations. However, there are no fully blown open skies anywhere in the world.

An open skies agreement is a form of liberal agreement and is promoted by the United States. It is a country-to-country agreement involving the removal of all restrictions on airlines of participating countries on either bilateral or multilateral basis.¹⁸⁸ With the policy, airlines of participating countries are free to operate into each other's territories without limitations on capacity, frequency, points of entry, and time of entry. Nigeria signed an open skies agreement with the U.S in 2000. This agreement however appears to favour the U.S which has the advantage of superior technology, infrastructural development, equipment, capital and commerce.¹⁸⁹ To redress this imbalance, the Nigeria/US Agreement includes a technical assistance and investment programme by the U.S to assist in upgrading Nigerian airports and airspace systems as well as provide training for personnel so as to enhance safety, security and performance of Nigeria's air industry.¹⁹⁰ Yamoussoukro Decision liberalized air

¹⁸⁸ Ozoka, I., *op. cit.*

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

service in Africa, and hence, the bilateral air service agreements Nigeria entered with other African Countries are liberalized.

3.6 The Making and Implementation of Bilateral Air Service Agreements in Nigeria

3.6.1 Constitutional Background

It has already been mentioned earlier that BASA's are of treaty status¹⁹¹. Before examining the procedure for making and executing treaties in Nigeria, it would be appropriate if a treaty is defined and explained. According to M. T. Ladan, a treaty is "an international agreement concluded between States in written form and governed by international law, whether embodied in a single document or in two or more related instruments and whatever its particular designation."¹⁹² The Black's Law Dictionary defines a treaty as "an agreement formally signed, ratified, or adhered to between two nations or sovereigns, an international agreement concluded between two or more states in written form and governed by international law."¹⁹³ It may be bilateral or multilateral treaty. A treaty is also known as an 'Agreement' or 'Covenant' or 'Charter' or 'Protocol'. The particular designation is only of relative interest. What

¹⁹¹ See page 23

¹⁹² Ladan, M. T: *Materials and Cases on Public International Law*. The Ahmadu Bello University Press ltd, Zaria; p. 11

¹⁹³ Black Law Dictionary, Ninth Edition; Bryan A. Garner (Editor-in-Chief), p. 1640

is important, however, is that a treaty, whether bilateral or multilateral, creates legally binding obligations for the States that are party to the treaty.

Furthermore, as Nigeria has a federal Constitution, its internal organizational arrangement and the division of powers between the constituent States and the federal government are clearly defined. Based on this, Section 4(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides: “The National Assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule of the Constitution”. Section 4(3) further provides: “The power of the National Assembly to make laws for the peace, order and good government of the federation with respect to any matter included in the Exclusive Legislative List shall save as otherwise provided in this Constitution, be to the exclusion of the House of Assembly of States.

The Exclusive Legislative List contains sixty-eight items over which only the federal government can legislate to the exclusion of any other authority in the federation. The relevant items in the Exclusive Legislative list relevant to this study are: 1.) Item 3- Aviation, including airports, safety of aircraft and carriage of passengers and goods by air; 2.) Item 60 which provides for the establishment and regulation of authorities for the federation or any part thereof- a.) to promote and enforce the observance of

Fundamental Objectives and Directive Principles contained in this Constitution; and
c.) to regulate tourist traffic.

Item 60 in the Exclusive Legislative List provides the legal basis for the federal government establishment and regulation of authorities like the Nigerian Civil Aviation Authority (NCCA), Federal Airports Authority of Nigeria (FAAN), etc., earlier discussed in Chapter 2. Also, whereas Section 4 of the 1999 Constitution¹⁹⁴ gives the Federal Government the power to legislate on matters in the Exclusive Legislative List, Section 12 of the 1999 Constitution stipulates that for a treaty to have the force of law, it must be enacted or incorporated into Nigerian domestic law before such treaties can apply domestically. This was also the position in *RTNACPN V. MHWUN*¹⁹⁵. Section 12 provides:

- (1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.
- (2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative list for the purpose of implementing a treaty.
- (3) A bill for an Act of the National Assembly passed pursuant to the provision of subsection (2) of this section shall not be presented to the

¹⁹⁴ The 1999 Constitution of the Federal Republic of Nigeria (as amended) herein after referred to as 'the 1999 Constitution'

¹⁹⁵ (2008) 2 NWLR Pt. (1072) p. 573.

President for assent, and shall not be enacted unless it is ratified by a majority of all the House of Assembly in the federation.

It is this Section that provides the legal basis for the Government in assenting or consenting to the Chicago Convention, and all other Conventions or international agreements to which Nigeria is a party to.

As we earlier noted, powers to legislate over aviation is granted to the Federal Government by virtue of Item 3 of the Exclusive Legislative List set out in the Second Schedule to the Constitution. Under this item, the Federal Government can legislate in respect of “Aviation, including airports, safety of aircraft and carriage of passengers and goods by air.” In exercise of this power the Civil Aviation Act of 2006 was enacted. Section 1 of this Act provides that, “the Minister shall be responsible for the formulation of policies and strategies for the promotion and encouragement of civil aviation in Nigeria and the fostering of sound economic policies that assure the provision of efficient and safe services by air carriers and other aviation and allied service providers as well as greater access to air transport in a sustainable manner and to assist with ensuring that Nigeria’s obligations under international agreements are implemented and adhered to.”

Section 2 of the Civil Aviation Act, 2006 establishes the Nigerian Civil Aviation Authority as the regulatory authority for civil aviation in Nigeria. The regulation of air transport covers a wide field of governmental functions, particularly where

international air commerce is concerned. These functions involve licensing of aircraft to engage in carriage of passengers, mail and cargo, regulation of customs, personnel licensing, airworthiness certificate, radio and meteorology. Section 30 of the Civil Aviation Act provides that the Civil Aviation authority may by regulation make such provisions as expedient for carrying out: the Convention on International Civil Aviation and its annexes and amendment; any other treaty or agreement in the field of civil aviation to which Nigeria is a party; and for regulating air navigation. Section 30 (2) further provides that the Civil Aviation Authority shall also have the powers to make other regulations which include: the registration of aircraft in Nigeria; the prohibition of aircraft from flying unless certificates of airworthiness issued or validated under the regulation; the licensing, inspection and regulation of aerodromes and for prohibiting or regulating the use of aerodromes; prohibiting persons from engaging in, or being employed in air navigation unless they satisfy the prescribed requirements; securing the safety, efficiency and regularity of air navigation; prohibiting aircraft from flying over such areas in Nigeria as may be prescribed; applying the enactments relating to customs in aviation; regulating the charging of air traffic control and meteorological services and the use of aerodromes licensed under the regulations.

3.6.2 The Process of Making Bilateral Air Service Agreements

The primary responsibility for the initiation of negotiation of bilateral Air Service Agreements is that of the Ministry of Aviation.¹⁹⁶ Nevertheless, the Ministry of Foreign Affairs, acting within its general responsibility for maintaining friendly relations between Nigeria and foreign countries may put pressure on the Ministry of Aviation to open negotiations with any country.¹⁹⁷ However, a foreign Government or airline desirous of operating scheduled international services to Nigeria can approach the Ministry of Aviation through diplomatic channels for formal talks leading to the conclusion of an agreement.¹⁹⁸

Prior to negotiations, the Ministry of Aviation holds consultations with Nigerian aviation regulatory authorities, and other concerned institutions such as Immigration, Customs, Ministry of Foreign Affairs and Ministry of Justice.¹⁹⁹ The views of these institutions are taken into consideration in drawing up a brief for submission to the Federal Executive Council for approval, and which will form the basis of the negotiations.²⁰⁰ A brief is a confidential document and it is prepared with an eye on the relative strengths of the airlines of the two countries, and the degree of friendly understanding or co-operation existing between the two governments negotiating the bilateral air agreement, particularly, in other area apart from aviation field.²⁰¹ Usually a

¹⁹⁶ Ngbuku, B. A. *op cit.*

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

brief may specify or re-state: the civil aviation policy of a country; the type of agreement that is envisaged; the Draft Agreement that will form the basis of the negotiations; routes desired or alternative routes if desired routes are not secured; routes which the other Party might probably desire judging from its aviation policy, the previous practices of its flag carriers and a reasonable prognosis of its future operations in the light of the air travel market in that area generally; quid pro quo or the agreement.²⁰² When a date and venue for negotiations have been fixed, a negotiating team is assembled under the leadership of an officer not below the rank of Director Cadre,²⁰³ and an agreement is entered into.

Air Service Agreements generally appear in three forms:²⁰⁴ i.) Intergovernmental Agreement which is the most common form. This is in contra-distinction to an agreement in “Head of State” form. The regularity with which Air Services Agreements are concluded by many countries, particularly countries such as Nigeria, where a distinction is made between treaties which call for certain procedural requirements such as approval by a majority of the House of Assembly in the Federation²⁰⁵ and executive agreements which, do not require such parliamentary approval, makes an executive agreement in intergovernmental form preferable. ii.)

Exchange of Notes between two Foreign Ministries or aeronautical authorities which

²⁰² *Ibid.*

²⁰³ Ngbuku, B. A. (2012). *op cit.*

²⁰⁴ Odubayo W: ‘*Air Transport Bilaterals of Nigeria: A Study In Treaty Law*’, (1969). Unpublished LL.M. Thesis. McGill University, Montreal, Canada. p. 27.

²⁰⁵ Section 12(3), 1999 Constitution.

is usually useful in amending, modifying, or clarifying an earlier agreement. iii.). Ad-hoc arrangement whereby a foreign government or its designated airline is granted provisional permit or license to engage in international air transportation to or from a territory. No practical legal effect is attached to the form in which an agreement is drafted. In theory, an executive agreement requires no ratification by the legislature except ratification by the executive if so required by the particular agreement. An agreement in a “Head of State” form however requires no ratification at all.

The template brief for the negotiation of air service agreement with an African country is different from that of negotiation with a non-African country. As stated earlier, the brief would re-stated in the civil policy for negotiating an agreement with the country and the policy depends on whether the country is an African or non-African country. By Article 8.1 of the NCAP, 2013 the negotiation of air service agreements with third countries in air transport will be guided largely by economic consideration and the principles of reciprocity that will ensure fair and equal opportunities. In order to achieve this major policy, the Article goes further to provide the following strategies to wit: air services agreement negotiation amongst member States shall be in accordance with Yamoussoukro Decision (YD, which liberalized the African air space) and this AFCAP; air services agreement negotiation by member States with third countries shall be in accordance with the African Union Guidelines on External Negotiation; and, in order to ensure fair and equal

opportunities for African airlines, all Air Services Agreement signed with third countries should include Option 2 of the ICAO guidelines on Slot Allocation. Article 8.1 of Nigeria's National Civil Aviation Policy, 2013 is a replication of Article 5.2 AFCAP, 2012. Consequently, the brief for negotiation of an air service agreement with an African country is liberalized to accommodate the YD.

3.6.3 Conclusion of Bilateral Air Service Agreements

State practice in Nigeria distinguishes between initialing and signature of international agreements. In Nigeria the delegates to a Conference on negotiation of an Air Service Agreement do not have full powers or credentials to sign an agreement at the conclusion of a Conference. The only authorization which the Chairman of a delegation has is to initial the agreed text of an agreement. However he also has authority to sign any agreed minutes or Communiqué if any were issued at the close of a Conference. To this extent the authority of a negotiating team to bind the government is only as to the text of an agreement. The reason for this limitation on the authority of delegates is because the text of every agreement must be submitted as soon as possible to the Federal Executive Council²⁰⁶ for approval, together with a full report of the proceedings of the Conference at which such agreement was negotiated. At this stage the Federal Executive Council has the final responsibility to consider the whole agreement, and may even propose amendments for clearance through

²⁰⁶ This is done through a Council memo prepared by the Minister of Aviation. Note also that after the negotiation, the Federal Ministry of Justice vets the agreement.

diplomatic channels.²⁰⁷ If after such consideration the Federal Executive Council is satisfied that the negotiation has been fair and reasonable, and the Attorney-General and Minister of Justice have no objections, it will then authorize the Minister of Aviation to sign the agreement on behalf of the Nigerian Government.²⁰⁸

3.6.4 Enforcement of Bilateral Air Service Agreements

Bilateral Air Service Agreements are supplementary to the Chicago Convention 1944. It is also reasonable to infer that as far as registration and publication of aeronautical agreements are concerned Article 83 of the Chicago Convention and Article 102 of the Charter of the United Nations is complimentary to each other. Article 102 of the Charter provides that:

- 1.) Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it;
- 2.) No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organization of the United Nations”.

²⁰⁷ Ngbuku, B. A. (2012). *op cit*.

²⁰⁸ *Ibid*.

Article 83 of the Chicago Convention also has similar provision as thus: “any Contracting State may make arrangements not inconsistent with the provisions of this Convention. Any such arrangement shall be forthwith registered with the Council, which shall make it public as soon as possible”.

On completion of the necessary formalities about signature, either Contracting Party can take steps to forward certified true copies of an agreement to the Secretariat of ICAO for registration. There is, however, no standard practice as to the number of certified true copies a state is expected to forward to ICAO.²⁰⁹ Usually, one or two copies are regarded as sufficient.²¹⁰ In the United Kingdom, certification is done under the Statutory Instruments Act.²¹¹ Under this Act a copy of the U.K. Treaty series in which an agreement is published is forwarded to ICAO. Nigeria follows the U.K. practice.²¹²

Publication of agreements is the responsibility of the Secretary-General of the United Nations.²¹³ The publications appear from time to time in the Treaty Series published by the organization.

²⁰⁹ *Ibid*

²¹⁰ *Ibid.*

²¹¹ *Ibid.*

²¹² *Ibid.*

²¹³ *Ibid.*

The enforcement of bilateral air service agreements is a function which is normally carried out by the Nigerian Aviation regulatory agencies (discussed in Chapter 2) with the directive of the Ministry of Aviation and in conformity with ICAO, IATA and international best practices.²¹⁴ For example, by way of enforcement, the NCAA is responsible for safety surveillance, adoption and training of work tracking system for effective monitoring of activities and maintenance status of Nigerian registered aircraft as well surveillance of foreign air carriers. The NCAA also strengthens consumer protection to improve services rendered by foreign and local airlines, protect passengers in the areas of prompt lost baggage recovery/compensation, flight delays/cancellation, airport facilitation, crime/crowd control to prevent passenger discomfort and pilferage. NCAA also monitors aviation insurance and non-aviation insurance policies of the aviation sector in line with ICAO requirements and standard industry practice and USD 100, 000 remains the minimum compensation to be paid on aircraft accident resulting to death injury. In addition, NCAA recertifies airlines, prepares monthly safety audit report on all airlines operating in the country, ensures the aircraft airworthiness status, performs regular safety oversight, etc.

²¹⁴ Ngbuku, (2012), *op. cit.*

CHAPTER FOUR
BILATERAL AIR SERVICE AGREEMENTS BETWEEN NIGERIA AND
SOME SELECTED COUNTRIES: GHANA, UNITED KINGDOM AND
ISRAEL

4.1 Introduction

This Chapter analyses the clauses in the Bilateral Air Service Agreements between Nigeria and Ghana,²¹⁵ Nigeria and United Kingdom (UK)²¹⁶ and Nigeria and Israel.²¹⁷

These three Agreements have similar provisions and are also similar to other air service agreements Nigeria has with other Countries. The major clauses discussed in this chapter are: Preamble clause; Exchange of Basic Rights clause; Designation and Operating Authorization of Air Carriers clause; Substantial Ownership and Effective Control clause; Certificate of Airworthiness and License of Personnel clause; Security clause; Safety clause; Commercial Opportunity clause; Operating Principles clause;

²¹⁵ Bilateral Air Service Agreement between the Federal Republic of Ghana and the Federal Republic of Nigeria, 2011 (hereinafter referred to as 'the Agreement with Ghana').

²¹⁶ Air Service Agreement between the Federal Military Government of the Federal Republic of Nigeria and the Government of the United Kingdom of Great Britain and Northern Ireland, 1988 (hereinafter referred to as 'the Agreement with UK').

²¹⁷ Air Service Agreement between the Government of the Federal Republic of Nigeria and the Government of the State of Israel, signed on 28 October, 2013 (hereinafter referred to as 'the Agreement with Israel').

Customs clause; User Charges clause; Non-discrimination clause; Capacity clause; Tariffs clause; Dispute Resolution clause; Code Sharing clause; Consultation clause; Amendment clause; Entry into Force clause; and Termination clause. Recourse will also be made to the International Civil Aviation Convention (ICAO) and the African Civil Aviation Policy (AFCAP).

4.2 Analysis of Major Clauses in the Bilateral Air Service Agreements between Nigeria and Ghana, United Kingdom, and Israel.

4.2.1 Preamble clause²¹⁸

The Preamble clause states the parties to the agreement as it is a trite principle of law that only parties to an agreement are bound by the provisions therein. The clause also introduces the Agreement and also reiterates the fact that the contracting parties are signatories to the Chicago Convention. The Preamble clause in the Agreement with Ghana further acknowledges that the Parties are signatory to the Yamoussoukro Declaration [(YD) which African Union countries are parties], the resolution adopted by African Ministers in Mauritius, and the Ministerial Decision relating to the implementation of the YD.

²¹⁸ Preamble to the Agreement with Ghana; Preamble to the Agreement with Israel, 28 October, 2013 (hereinafter referred to as the Agreement with Israel).

4.2.2 Definition/ Interpretation clause²¹⁹

The Interpretation clause in the three Agreements defines some of the terms used in these Agreements. The terms defined are: “the Convention”²²⁰, “Aeronautical authorities”, “designated airline”²²¹, “territory”²²², “air service, international air service, airline, and stop for non-traffic purposes”²²³, “aircraft equipment, stores, and spare parts,”²²⁴ “tariff”²²⁵, and “this Agreement”²²⁶.

The writer in the course of the research has noticed however, that some key terms like “substantial ownership”, “effective control”, “fair and equal opportunity”, etc. used in these Agreements are not defined. It is important that words or terms used in any legal contract should be clearly defined in the said contract so as to prevent conflict between the parties as to interpretation of the term. Parties to a contract may in times of conflicts attach meanings that are subjective and favourable to them even if the meaning so attached may defeat the course of justice. Therefore, terms that may be

²¹⁹ Article 1 of Agreement with Ghana; Article 1 of Agreement with the UK, Article 1 of Agreement with Israel.

²²⁰ “Convention” in the three Agreements means the Chicago Convention.

²²¹ “Designated Airline means an airline which has been designated and authorized in accordance with the Article on designation of airlines in the Agreement.” *Ibid.* In the Agreements, it means the airline or airlines stated or specified by the Contracting Parties for the purpose of operating the agreed services on the specified routes.

²²² “Territory in relation to a State has the meaning assigned to it in Article 2 of the Convention.” *Ibid.* The Convention defines territory of a State as the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State.

²²³ Article 96 Chicago Convention, op. cit. defines these words to have the following meaning: “Air Service means any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo”; “International Air Service means an air service which passes through the air space over the territory of more than one State”; “airline means any air transport enterprise offering or operating an international air service”; and “stop for non-traffic purposes means a landing for any purpose other than taking on or discharging passengers, cargo or mail”.

²²⁴ “Aircraft equipment” has the meaning assigned to it in Annex 9 of the Convention.

²²⁵ “Tariff means the price to be paid for the carriage of passengers, baggage or cargo and the conditions under which each price applies including prices and conditions for agency and other auxiliary services but excluding remuneration and conditions for the carriage of mail”. *Ibid.*

²²⁶ “This Agreement includes the Annex hereto and any amendments to it or to the Agreement.” *Ibid.*

open to many interpretations should be properly delineated in the Agreement so as to avoid conflict of interpretation.

4.2.3 Grant of Rights Clause²²⁷

This clause regulates the mutual granting of transit (over flight) right, technical landing right, and traffic rights on the routes defined in the routes schedules. Exchange of rights is the first step in the negotiation of bilateral air agreement between two contracting states. In the three Agreements, the rights are only provided for in the body of the agreement and all other crucial details concerning the exchange of these rights are banished to the Annexes in the said Agreements.²²⁸

The rights exchanged in the Agreements are the first five air freedom rights. The remaining four freedoms are made possible by some air services agreements but are not ‘officially’ recognized because they are not mentioned by the Chicago Convention.

²²⁷ Article 2 of Agreement with Ghana; Article 3 of Agreement with UK; and Article 2 of Agreement with Israel.

²²⁸ Briefly, the nine freedoms of air rights are: First freedom: the right to fly across another territory without landing; Second freedom: the right to land in another territory for non-traffic purposes; Third freedom: the right of an airline to carry traffic from its own country of registration into another country; Fourth freedom: the right of an airline to carry traffic from another country into its own country of registration; Fifth freedom: the right of an airline to carry traffic between two countries outside its own country of registry so long as the flight originates or terminates in its own country of registration; [See United States v. France (1963) Reports of International Arbitral Awards (R.I.A.A.) Vol. XVI pp. 5-74 -involving fifth freedom rights beyond Paris and Australia v. United States (1993)—involving fifth freedom operations between Osaka and Sydney]; Sixth freedom: the right of an airline to carry traffic from another country, into a point in its own country of registration via the country the airline was registered; Seventh freedom: the right of an airline to carry traffic from one point in another territory into a point in another foreign territory and vice versa, which carriage is not linked with the third and fourth freedom traffic right respectively; Eighth freedom: the right to carry traffic between two points in a foreign territory, which carriage is linked with third or fourth freedom carriage; Ninth freedom: the right to carry traffic between two points in a foreign territory, which carriage is not linked with third or fourth freedom carriage.

Transit rights provide the contracting parties with the right to over-fly over ones territory without landing,²²⁹ while non-traffic landing right refers to the right of landing for non-traffic purposes like refueling, and landing due to technical problems.²³⁰ These rights are considered as the basic rights which a state should enjoy while running international air transport services. Prior to 1944, States were free to forbid or refuse the use of their air space for transit flights.²³¹ In 1939, Turkey announced a total prohibition of all transit flights over its territory and Spain refused to grant transit rights to British Airways, Air France and KLM over its air.²³² In order to solve this problem, two agreements were opened for signature at the Chicago Conference namely: the International Air Service Transit Agreement (IASTA) and the International Air Transport Agreement (IATA).²³³ As stated earlier, IATA which consists of the commercial traffic rights failed to meet the required number of ratifications.²³⁴ About a hundred states have ratified the IASTA. Therefore, in bilateral agreements between such States, it is not compulsory to incorporate a clause to grant transit rights to the other contracting party. But they are expressly stated in the three Agreements. The theory “whatever not exchanged multilaterally could be exchanged bilaterally” applies for agreements between states, which are not parties to the IASTA and also where only one contracting party has ratified the agreement granting the two

²²⁹ First freedom right.

²³⁰ Second freedom right.

²³¹ Giumulla E. and Weber L. *op. cit.*

²³² Goedhius, *Air Law Making*, Martinus Nijoff. The Hague (1938), p. 9.

²³³ Hannappel, P.P.C., (2012). *op. cit.*

²³⁴ See page 69.

transit rights. It is the researcher's opinion that even in such instance, absence of an express clause on the grant of transit rights and non-traffic landing rights would not hinder the application of the rights since they are now customary international air law.

The exchange of traffic right is the third right exchanged in these Agreements and it is a fundamental element in any bilateral air transport agreement. They are the third, fourth and fifth freedom right. In contrast to transit rights, 'traffic rights' allow commercial international services between, through and in some cases within the countries that are parties to air services agreements or other treaties. While it was agreed that the third to fifth freedoms shall be negotiated between states, the International Air Transport Agreement was also opened for signatures, encompassing the first five freedoms. Generally, third, fourth and fifth freedoms are exchanged by the contracting Parties. In the three Agreements, the third freedom is provided along with the transit and technical landing rights (first and second freedoms). The successful negotiation of the fifth freedom right (i.e., the right which allows an airline to carry traffic between foreign countries as a part of services connecting the airline's own country) is the most important factor the airlines are concerned with. This is because an airline cannot operate efficiently and economically unless the fifth freedom traffic rights are granted to each other. Therefore, the states depend heavily on fifth freedom traffic rights between third countries for a successful air transport industry.

Cabotage right per se is not granted in these Agreements.²³⁵ Cabotage is the carriage of traffic between two points in the same country.²³⁶ In other words, cabotage is the carriage of domestic traffic by foreign carriers. The word ‘cabotage’ was borrowed from the law of the sea, where it means the travelling from one port to another in the same state. It is ‘Grand Cabotage’ if the carriage extends to points in two states under the same flag. Article 7 of the Chicago Convention grants every state the right to refuse permission to a foreign air carrier to exercise cabotage rights within its own territory. The researcher supports the opinion of Michael Milde²³⁷ that Article 7 does not prohibit cabotage but merely confers the state the discretion to grant or refuse foreign carriers the right to operate domestic flights, and with the introduction of this provision to air law the complete and exclusive sovereignty of states over their airspace has been safeguarded. The restriction on cabotage is aimed at encouraging and enabling domestic carriers to capitalize on their markets. For a country like Nigeria which have no national carrier and whose domestic airlines are trying to come up in the industry, the clause on cabotage is advantageous. Therefore, Nigerian bilateral agreements expressly prohibit cabotage.

4.2.4 Designation and Operating Authorization of Air Carriers Clause²³⁸

²³⁵ Article 3(2) of Agreement with UK; Article 2(4) of the Agreement with Israel.

²³⁶ Cheng, B. (1962). *op. cit.*; p. 8, at 314.

²³⁷ Milde, M: *The Chicago Convention-Are Major Amendments Necessary or Desirable 50 years later?* *Annals of Air and Space Law.* (1944) xix, p.401

²³⁸ Article 3 of Agreement with Ghana; Article 4 of Agreement with UK; and Article 3 of Agreement with Israel.

Nigeria and the other Contracting States designate the air carrier(s) that is/are to operate air service on the agreed routes and grant the designated air carrier(s) operating authorizations. The right to designate airline/airlines to conduct agreed air services is granted to each of the parties by the agreement. The three Agreements stipulate that when a contracting party designates an airline or airlines, such designation should be communicated to the aeronautical authorities of the other party for authorization.²³⁹ Rarely do bilateral agreements name carrier(s)/airline(s) to perform air services/air transportation in accordance with/pursuant to the agreement.²⁴⁰ Actual designation of an air carrier or changes in designation (from one carrier to another or the designation of an additional air carrier) takes place, subsequent to the conclusion of the bilateral agreement.²⁴¹ Generally, air carrier designation takes place by diplomatic note.²⁴² A designation by diplomatic note from one contracting Party is usually accepted by the other contracting Party, unless, amongst other things, the designated airline is not substantially owned and effectively controlled by the designating State, its national or both.²⁴³ A designated air carrier can be replaced by another air carrier at any time in which case such new air carrier has the same obligations as the air carrier it replaces.

²³⁹ Article 3(1) of Agreement with Ghana; Article 4(1) Agreement with UK; and Article 3(1) of Agreement with Israel.

²⁴⁰ Haanappel, P.P.C. (2012). *op. cit.* p.117.

²⁴¹ *Ibid.*

²⁴² *Ibid.* p. 118.

²⁴³ *Ibid.*

Broadly speaking, there are three systems of air carrier designation: Single designation, Multiple designations, and Multiple and Unlimited designations.²⁴⁴ Under the system of single designation, each contracting party to the bilateral agreement can designate one airline for the performance of the air service under the agreement. Under the system of multiple designations, each contracting party can designate one or more carriers for the performance of air service under the agreement.²⁴⁵ Multiple and unlimited designation²⁴⁶ allows each contracting party to designate as many airlines as it wishes.

The problem with this clause is that, it requires that an airline even after the conclusion of a bilateral air service agreement, and its designation in writing, still has to satisfy the Aeronautical Authorities that “it is qualified to fulfill the conditions prescribed under the law and regulations normally and reasonably applied to the operation of international air services.”²⁴⁷ The permission is granted once the aeronautical authorities of the other contracting party are satisfied that the designated airline or airlines comply with all the necessary rules and regulations relating to the international navigation by air. To obtain the operating permission, the aeronautical authorities of one state have to request the permission in writing from the other

²⁴⁴ Gjemulla, E. and Weber, L. *op. cit.*

²⁴⁵ This system is the preferred option for countries having more than one scheduled international airline.

²⁴⁶ The US after its deregulation policy decided to designate as many appropriate UAS carriers as possible on international routes, found that a member of bilateral partners interpreted the words “one or more” carriers to mean a maximum of two. It therefore initiated a system of multiple and unlimited airline designation under liberal and open skies agreements.

²⁴⁷ Article 3(3) of Agreement with Ghana, Article 4(3) of Agreement with UK and Article 3(3) of Agreement with Israel.

contracting party and vice versa.²⁴⁸ This is generally done through diplomatic channels and the authorization will be granted once both contracting parties are satisfied with each other's compliance with the necessary requirements.²⁴⁹ The provision for the operating permission too is expressly provided for in the bilateral agreements. Even if the clause is not there, the two parties are bound to grant operating permission to the other party upon the designation of airlines and on the satisfaction of the requirements specified by the Convention. There is no specific time period within which the aeronautical authorities should grant operating permission since the operating permission is the most important step towards the establishment of international air service between the two states. Such permission is generally subjected to certain conditions such as the requirement of substantial ownership and effective control to be vested in the party designating the airline, the nationals of that party or both, that the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transport by the party considering the application, the designated airline hold a current Air Operators Certificate or a similar license issued by the aeronautical authority of the party designating the airline and the party designating the airline is maintaining and administering the standards set forth in the Agreement regarding aviation safety and security.

²⁴⁸ *Ibid.*

²⁴⁹ Ngbuku, B. (2012). *op. cit.*

4.2.5 Revocation and Suspension of Rights Clause

Article 6 of the Agreement with the UK and Article 4 of the Agreement with Israel give each contracting Party the right (after consultation with the other Contracting Party) to revoke or suspend an operating authorization on reasons of: substantial ownership and effective control; failure to comply with the laws or regulations of the Contracting Party; and failure to operate the agreed services in accordance with the conditions prescribed in the Agreement. The terms ‘Substantial Ownership’ and ‘Effective Control’ are not defined in the Agreement. The absence of an accepted definition of the two terms in the Agreements paves the way to use different tools to understand what it means. However the accepted procedure among states to find out ownership is by scrutinizing the voting shares of the company.²⁵⁰ That is to say, that the party holding fifty percent (50%) or more is considered to possess the substantial ownership.²⁵¹ E. M. Giumulla, et al defined ‘Substantial Ownership’ to mean a situation where the amount of ownership of the air carrier held by a party is more than 50%.²⁵² With the privatization, liberalization and regionalization of the air transport industry, it is imperative to note the fate of the requirement of substantial ownership and effective control for the reason that even if a private company which

²⁵⁰ Abeyratne, A: ‘*Economic Benefits of Civil Aviation Justify Substantial Investment in Industry*’, 4 *ICAO Journal*, (2005) p.11

²⁵¹ *Ibid.*

²⁵² Giumulla, E. and Weber, W. (2011), *op.cit.* p.181.

owns 45% of the national airline could be considered as holding ‘substantial ownership’.²⁵³

Whereas substantive ownership is, as it were, a *de jure* condition, and as such easy to ascertain; effective control is a *de facto* condition that must be judged according to precise facts of every case.²⁵⁴ Amongst the factors that may play a role in determining whether effective control of an airline is in foreign hands are the following: significant foreign minority shareholdings; one large foreign shareholding with the rest of the capital being divided into small shares; foreign citizenship of members of the Board of Directors,²⁵⁵ and especially its President; and as Abeyratne suggests, effective control is reflected by the issue of ‘who directs corporate policy and oversees employment’.²⁵⁶

The history of ownership and control could be traced back to the Paris Convention of 1919. Article 6 of the Convention provides that ‘Aircraft possess the nationality of the state on the register of which they are entered’. That is to say that when an aircraft is registered in a state, that aircraft bears the nationality of that particular state. Moreover Article 7 of the Paris Convention provides that ‘No aircraft shall be entered on the register of one of the contracting states unless it belongs wholly to nationals of such state’. This provision has been strengthened by the second paragraph of Article

²⁵³ *Ibid.*

²⁵⁴ P.P.C. Haanappel, (2012). *Op. cit.* p.147

²⁵⁵ *Ibid.*

²⁵⁶ Abeyratne, (2005). *op. cit.*

7, which states that ‘No incorporated company can be registered as the owner of an aircraft unless it possess the nationality of the state in which the aircraft is registered, unless the president or chairman of the company and at least two-thirds of the directors belong to such nationality, and unless the company fulfills all other conditions which may be prescribed by the laws of the said state’. This provision shows the extent of the attention paid by the states at that time to the ownership and control of aircraft. The reason is the doubts born in the minds of states that civil aircraft may be used for military purposes because the Paris Convention was deliberated just after the World War 1. Article 8 restricts the registration of aircraft to one state.²⁵⁷ Though the Chicago Convention of 1944 repeated most of the principles contained in the Paris Convention, the ownership restrictions have found a thin existence in the Chicago Convention. Article 18 of the Convention provides that ‘An aircraft cannot be validly registered in more than one state, but its registration may be changed from one state to another’ and the laws and regulations of that state should govern such registration or transfer of registration.²⁵⁸ The Chicago Convention does not expressly provide for the ownership and control restrictions. But in the Article 21 of the Chicago Convention, the states have agreed to supply to another contracting state or to the ICAO, information concerning the registration and ownership of any particular aircraft registered in that state.²⁵⁹ Consequently, it is evident that the drafters

²⁵⁷ Chicago Convention 11, Article 8.

²⁵⁸ *Ibid.* 19, Article 9.

²⁵⁹ *Ibid.* 19, Article 21 of the Chicago Convention. The Article further provides for 'furnishing reports to the International Civil

of the 1944 Chicago Convention have impliedly accepted the requirement of substantial ownership and effective control.

In bilateral relationships relating to air navigation between states, substantial ownership and effective control is a primary requirement for granting operating permission. Every state reserves the right to withhold or revoke an operating permission to the designated airlines of the other contracting party if the other party fails to prove adherence to the requirements specified by the Chicago Convention. The prevention of military influence on civil aircraft and the elimination of the flag of convenience practice are the reasons for the strict adherence of this provision by states. However, it can as well be argued that in the absence of an express provision on substantial ownership and effective control, states would register their aircraft on the basis of flag of convenience. To overcome this stricter approach in ownership restrictions in an ever-liberalizing environment, ICAO has stepped forward to scale down the requirement of substantial ownership and the principle place of business to be agreed between the parties in place of effective control.

The terms “Substantial Ownership” and “Effective Control” are not defined in all the three bilateral air service agreements under study, neither is it defined in any bilateral

Aviation Organization, under such regulations the latter may prescribe, giving such pertinent data as can be made available concerning the ownership and control of aircraft registered in that state and habitually engaged in international air navigation. The data thus obtained by the International Civil Aviation Organization shall be made available by it on request to the other contracting states.'

air service agreement between Nigeria and any country. It is the writer's opinion that these terms should be defined in the Agreement to avoid any dispute between the contracting parties. Article 3(6) of the Agreement with Ghana states that each party shall have the right to refuse to grant operating authorizations or impose such conditions as it may deem necessary on the exercise by a designated airline of the rights regarding first, second and third freedoms of air in any case where the said part is not satisfied that the designated airline conforms with the eligibility criteria as defined in Article 6.9 of the Yamoussoukro Decision.²⁶⁰ Also, Article 3(8) of Agreement with Ghana states that each party has to withdraw the designation of an eligible airline and to designate another airline or airlines in writing through diplomatic channels within thirty days except when prevented from security reasons.

4.2.6 Certificate of Airworthiness and Licenses Clause²⁶¹

Article 31 of the ICAO Convention makes it mandatory for the State where an aircraft is registered, to issue or render valid a certificate of airworthiness to such aircraft engaged in international air navigation; and Article 32 of the Convention stipulates that the pilot of every aircraft and other members of the operating crew of every aircraft engaged in international navigation shall be provided with certificates of

²⁶⁰ Article 6(9) of the Yamoussoukro Decision provides that to be eligible, an airline should: (a) be legally established in accordance with the regulations applicable in a State Party to this Decision; (b) have its headquarters, central administration and principal place of business physically located in the State concerned; (c) be duly licensed by a State Party as defined in Annex 6 of the Chicago Convention; (d) fully own or have a long-term lease exceeding six months on an aircraft and have its technical supervision; (e) be adequately insured with regard to passengers, cargo, mail, baggage and third parties in an amount at least equal to the provisions of the International Conventions in force; (f) be capable of demonstrating its ability to maintain standards at least equal to those set by ICAO and to respond to any query from any State to which it provides air services; (g) be effectively controlled by a State Party.

²⁶¹ Article 4 of Agreement with Ghana; Article 5 of Agreement with UK; and Article 7 of Agreement with Israel.

competency and licenses issued or rendered valid by the state in which the aircraft is registered.

Articles 4, 5, and 7 of the Agreements with Ghana, UK, and Israel respectively have similar provisions on Certificates of airworthiness and licenses. Certificate of airworthiness, certificates of competency and licenses issued and valid (not expired) by either contracting party shall be recognized as valid by the other contracting party for the purpose of operating the specified route except where the requirement for the issuance of the certificate fall below minimum standard established by the Chicago convention or where for the purpose of operating the specified routes, the certificate was issued by the aeronautical authority of a contracting party to the nationals of the other contracting part. This clause is a good one because it recognizes sovereignty and independence of contracting parties when it comes to issuance of certificates of air worthiness and licenses provided the minimum standards stipulated in the Chicago Convention are met. Also, this provision has the capacity to check sharp practices in the aviation industry where some airlines whose licenses may have been revoked by their own aeronautical authorities will shrewdly obtain such licenses from foreign countries.

4.2.7 Security Clause²⁶²

Aviation security is the protection of passengers and cargo from intentional harm.²⁶³

Aviation security is one of the most important areas in the field of aviation today. The aviation world started thinking seriously about aviation security with the increasing number of hijacking incidents. ICAO tabled several international documents regarding the prevention of unlawful acts on board aircraft and unruly passengers. The states started to include an express clause regarding aviation security in 1970s. However, the 11th September, 2001 incidents marked an unprecedented disaster in the aviation history where four commercial aircrafts were used as guided missiles into the security base and the twin towers of USA. This incident has heightened the awareness of security in the aviation industry. Due to its sensitive nature, no topic on civil aviation could be discussed without touching on security. The ICAO has strengthened its programmes on security audits throughout the world.²⁶⁴ Moreover, states themselves have started security audit programmes to ensure that the airports in foreign states are safe enough for their own aircraft to operate.²⁶⁵ Consequently, every bilateral air services agreement concluded between any two states in the world incorporate a specific clause for aviation security. Today, every agreement carries an

²⁶² Article 8 of Agreement with Ghana; Article 22 of Agreement with UK; and Article 9 of Agreement with Israel.

²⁶³ Dempsey, P.S. (2004). Compliance and Enforcement in International Law: Achieving Global Uniformity in Aviation Safety. 30 *N.C.J. Int'l L. & COM. REG.* 104.

²⁶⁴ The Universal Safety Oversight Programme (USOP) was initiated by ICAO to inspect the compliance with the Standards and Recommended Practices in 1986. After the 9/11 disaster, replacing USOP with Universal Security Oversight Assessment Programme (USOAP) in 2001 accelerated the programme. The motives of these audit programmes were to assess the foreign airports of compliance with Annex 17 of the Convention.

²⁶⁵ Actually, USA started auditing the foreign airports and airlines operating into US airports under the Foreign Airport Security Act of 1985, to make sure that foreign carriers take necessary steps to comply with the Standards and Recommended Practices set out in Annex 17 of the Chicago Convention.

extensive provision on security to ensure that an aircraft is not endangered in another state.

The three agreements under study recognize and reaffirm the international Conventions and Protocol on civil aviation security. For example, the Convention on Offences and Certain Other Acts Committed on Board Aircraft signed at Tokyo on 14 September, 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16th December, 1970; the Convention for the Suppression of Unlawful Act Against the Safety of Civil Aviation signed at Montreal on 23rd September, 1971, its supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation signed at Montreal on 24th February, 1988, and any other Convention and Protocol relating to the Security of Civil Aviation which parties adhere to. Also, parties shall upon request provide all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircrafts, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.²⁶⁶ The parties shall also in their mutual relations act in conformity with the aviation security provisions established by ICAO.²⁶⁷

²⁶⁶ Article 8(a) of the Agreement with Ghana; Article 22(2) of Agreement with UK; and Article 9(2) of the Agreement with Israel.

²⁶⁷ Article 8(b) of the Agreement with Ghana; Article 22(3) of Agreement with UK; and Article 9(3) of Agreement with Israel.

4.2.8 Safety Clause²⁶⁸

Aviation safety is the protection from unintentional harm or accidental harm.²⁶⁹ Due to technical advancement, accidents that occur due to technical problems have lessened, but still yet, states pay thorough attention on safety issues on aircraft. The Standards and Recommended Practices (SARPs) on aviation safety are included in the Annexes to the Conventions and the re-affirmation of these SARPs in the bilateral agreements is a second adherence to the relevant safety modes. Compliance with the safety and security standards is the foundation of bilateral relationships between the states, and the failure to maintain the required standards could result in adverse consequences that may in turn hamper the air relationships between the states.

The three agreements provide that any of the contracting parties may at any time request for consultations concerning safety standards in any area relating to aircrew, aircraft or their operation adopted by the other contracting party, and such consultation shall take place within (30) days of that request. The Article further provides that if following such consultations, one Contracting party finds that the other Contracting Party does not effectively maintain and administer safety standards in any such area that are at least equal to the minimum standards established at that time pursuant to the Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform

²⁶⁸ Article 7 of the Agreement with Ghana; Article 8 of the Agreement with Israel; and Paragraph 3(ii) of 2005 Memorandum of Understanding between the Aeronautical Authorities of UK and Nigeria.

²⁶⁹ P. S. Dempsey, (2004). *op. cit.*

with those minimum standards, and that other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within fifteen (15) days or such longer period as may be agreed shall be grounds for the revocation and suspension of operating authorization.

The above provision also provides for a ‘ramp inspection’. That is to say the authorized representatives of aeronautical authorities of any contracting party can examine ‘on board and around the aircraft to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment’. This inspection should not lead to an unreasonable delay. If the findings of the inspection reveals unsatisfactory compliance with the minimum standards established in the Annexes of the Convention, the contracting party which carried the inspection or series of inspections is in a position to conclude that the requirements of Article 33 of the ICAO Convention has not been complied with and that party is free to suspend or revoke the operating permission.

4.2.9 Commercial Opportunities Clause²⁷⁰

The increasing demand by passengers to move across the globe faster has created competition between air carriers to attract customers. Commercial opportunities

²⁷⁰ This clause is contained in Article 9 of the Agreement with Ghana; Article 10 of the Agreement with the UK; and Article 16 of the Agreement with Israel.

means that airlines, in addition to traffic (landing) rights, need opportunities to do business in the foreign countries that they serve or they are doing business with.

The three Agreements just like most bilateral agreements allow a designated airline to have at least its own staff in the foreign country, to have sales office there, and to have airline agents there. The Agreements specifically provide that the other contracting party shall be allowed to establish and maintain a ticket sales office in the territory of the other contracting party and shall be allowed to maintain in accordance with the laws and regulation of that other party on entry, residence, employment, managerial, sales, technical, operational and other specialist staff requirement for the provision of air transportation.

4.2.10 Operating Principles Clause

One of the objectives of the ICAO is to 'Insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines'. Dr. Abeyratne believes that Article 44(f) of the Chicago Convention along with Article 44(a), which states that ensuring the safe and orderly growth of international civil aviation throughout the world, and Article 44(f) which states that promoting generally the development of all aspects of international civil

aeronautics, provides the underlined principle of the fair and equal opportunity clause in bilateral air services agreements.

The Clause on fair and equal opportunity is contained in Article 10 of the Agreement with Ghana and Article 11 of the Agreement with UK. The clause provides the principle that ‘air carriers of any Contracting State must have a fair and equal opportunity on any of the routes defined in the route schedule.’²⁷¹ It further provides that ‘when operating international air services on the routes defined in the route schedule, each designated air carrier of a contracting party is to take the interest of the other contracting party into consideration so that air services operated by such air carriers on the same routes or on the same parts of a route is not unduly affected’²⁷². This rule has now become a very important clause in bilateral aviation agreements, particularly among unequal parties. For example, it is of primary concern for a country with a small national carrier to insist that the type of aircraft which the other country will operate on a given route shall be of similar versatility and capacity. To the writer, the Agreements should have attempted to give a clue as to the meaning of the term ‘fair and equal opportunity’. This is so because the definition of this term is capable of different interpretations. It may be pointed out that to a lawyer, the term “fair and equal” opportunity is subjective depending on the strength (of the aviation industry)

²⁷¹ This principle is clearly stated in the Agreement with Ghana and Agreement with the UK. However, it is not so specifically stated in the Agreement with Israel, but no clause in the said agreement confers more privileges on one Contracting Party over the other. The implication therefore is that the said agreement also provides fair and equal opportunities for the contracting Parties

²⁷² Article 44 of the Chicago Convention provides the aims and objectives of the ICAO. By 44(i) the ICAO ... “insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines.”

of the Contracting Parties and the circumstances of each case;²⁷³ whereas, to a lay person, it would appear that a precise mathematical expression such as ‘fifty-fifty’ is preferable.²⁷⁴

4.2.11 Customs Duties Clause

Once an aircraft of one state arrives at another state, such aircraft is representing its state of registration. Thus, the aircraft should be accorded some rights and respect. Contracting parties to the Chicago Convention have agreed to grant certain exemptions from custom duties and other charges to aircraft of other contracting states while the aircraft are within the territory of such states. Article 24 of the Chicago Convention provides for granting exemptions for fuel, lubricating oils, spare parts, regular equipment and aircraft, stores retained on board aircraft. These should be exempted from customs duty, inspection fees and other similar national or local duties and charges. The relevant provisions on exemption from custom duties are provided in Articles 5 of the Agreement with Ghana, Article 7 of the Agreement with the UK, and Article 11 of the Agreement with Israel; and the three provisions are similar.

²⁷³ The drafters of AFCAP must have had this in mind when they drafted in Article 5.2 that negotiation of air service agreements with third countries will be guided largely by economic consideration and the principles of reciprocity that will ensure fair and equal opportunity.

²⁷⁴ Azzle, R: ‘Some Specific Problems Solved by the Negotiations of Bilateral Air Agreement’. *McGill Law Journal* 13(1967) p. 306 where this term is also employed.

It is the opinion of the writer that since the preamble to bilateral air services agreements specifically states that the agreement is supplementary to the Chicago Convention, and since all the exemption privileges granted to air transport have been multilaterally recognized in Article 24 of the Convention, it therefore means that provisions on Customs Duties in separate bilateral agreements are rather superfluous.

4.2.12 User Charges Clause²⁷⁵

Article 15 of the Chicago Convention, while ensuring the equal treatment to aircraft of other states in using airports and navigational facilities including radio and meteorological services, allows the states to charge for using airports and air navigation facilities by the aircraft of another contracting state subject to certain conditions. The three Agreements under discourse provides that any charge that may be imposed or permitted to be imposed by a Contracting Party for the use of airports and air navigation facilities by the aircraft of the other Contracting Party shall not be higher than those that would be paid by its national aircraft engaged in scheduled international air service. All charges are subjected to the jurisdiction of the ICAO to review and recommend the charges from time to time upon the request by a contracting party.

²⁷⁵ Article 16 of the Agreement with UK, and Article 10 of the Agreement with Israel. The Agreement with Ghana does not have any provision on User Charges. However, since Article 15 of Chicago Convention provides for User Charges, the implication is that this provision is part and parcel of bilateral air service agreement between Nigeria and Ghana. The reason is that, both Nigeria and Ghana are signatories to the Chicago Convention and this fact is reaffirmed even in the bilateral air service agreement between Nigeria.

4.2.13 Non- Discrimination Clause²⁷⁶

Article 11 of the Chicago Convention specifies that ‘subject to the provisions of this Convention, the laws and regulations of a Contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of a Contracting States without distinction as to nationality, and shall be complied with by such aircraft upon entering or departing from or while within the territory of that state.’²⁷⁷

The three Agreements under study provides that the law and regulations of each Party regulating the entry into, remaining in, customs and sanitary control, and departure from its territory of passenger, crew, mail and cargo shall be applicable to the aircraft of the designated Airline of the other contracting Party. Article 5(3) of the Agreement with Israel further provides that neither Party shall give preference to its own over an airline of the other Party engaged in similar international air transportation in the application of its immigration, customs, quarantine etc.

The Article on non- discrimination is important because it enunciates the customary international law principle of sovereign equality of states. That is to say that every

²⁷⁶ This clause is contained in Article 6 of the Agreement with Ghana; Article 9 of the Agreement with UK; and Article 5 of the Agreement with Israel.

²⁷⁷ See *United States v. United Kingdom* (1992) –which involves airline user charges at London Heathrow Airport.

state is equal before the law irrespective of geographical or any other difference; and in air law, states are urged to treat all the states alike without discrimination as to the nationality of the aircraft and this provision prevents States treating its own airlines with favouritism.

4.2.14 Frequency/Capacity Clause²⁷⁸

Capacity in air transport is essentially the supply of passenger seats and cargo airlines.²⁷⁹ Capacity can be expressed in various ways; it can be expressed in the number of seat or volume of cargo space; it can be expressed in available seat or cargo miles/kilometers; it is very often expressed in the frequencies at which an airline can fly (a) given route(s), i.e. frequencies per day (for heavily traveled, usually short haul routes) or per week (for less heavily travel, usually long haul routes). Flight frequencies can even be defined more precisely by determining the type of aircraft (sometimes including the number of seats on such aircraft) to be used on flights. Most bilateral agreements consist of general provisions regarding capacity. This clause unlike most of the other clauses in a bilateral agreement does not remain static. It gets amended from time to time according to the demand. This amendment is normally done through the instrumentality of a Memorandum of Understanding.

²⁷⁸ Provision on 'Capacity' is contained in the Annex to the Agreement with the UK (and in the amendments to the Agreement), and in Article 13 of the Agreement with Israel. See *Belgium v. Ireland* (1981)

²⁷⁹ Article 1(b) of the Agreement with Israel defines "Capacity" to mean the amount(s) of services provided under the Agreement, usually measured in the number of flights (frequencies) or seats or tons of cargo offered in a market (city pair, or country-to-country) or on a route during a specific period, such as daily, weekly, seasonally or annually.

The control of capacity plays an essential role in maintaining the profitability of routes. There are many possible regulation formulae, but to simplify matters, ICAO has identified three basic types of capacity clauses:²⁸⁰ i.) Pre-determination clause is a prior agreement on capacity which must be reached before operations begin. It can take the form of specified shares or of a procedure for coordination, approval and filing. The Frequency clause in the Agreement with UK and the Agreement with Israel is of this type. The 2008 Memorandum of Understanding between the Aeronautical Authorities of Nigeria and UK clearly stated the number of frequencies the designated airlines of the Contracting Parties may operate. Article 13(1) of the Agreement with Israel provides that “the total capacity to be provided on the agreed services by the designated airlines of the parties shall be agreed between or approved by the aeronautical authorities of the parties before the commencement of the operations and thereafter according to anticipated traffic requirement”. ii.) Bermuda 1 clause: this contains principles which airline companies must respect in relation to capacity, “an *ab initio* determination of capacity by each airline acting separately”. The parties to the bilateral agreement or their aviation authorities intervene only posterior through consultation procedures. iii.) Free determination consists of agreement by both of the parties not to impose unilateral restrictions on the volume of traffic, the frequency or regularity of service, or on the types of aircraft which may be used by the

²⁸⁰ Organization for Economic Co-operation and Development (OECD), (1999 Workshop on Regulatory Reform in International Air Cargo Transportation. Background Document. Held in Paris on 5-6 July.

airline companies designated by the other country. There is no provision on capacity in the Agreement with Ghana. The implication is that parties to the said Agreement have no limitation as regards capacity as they are free to fly uninhibited. Probably, the provision on capacity was intentionally omitted in the said Agreement due to the liberalization of the African Air Space as provided in Yamoussoukro Declaration to which Nigeria and Ghana are parties.

The importance of aviation to the socio-economic development of any nation cannot be over-emphasized. Indeed, the open skies agreement which many nations are currently signing all over the world is a testimony to the fact that nations have come to realize that billions of dollars in revenue can be generated from aviation services. Already, the European single sky option is holding out good promises for all the members of the European Union. The United States is also currently reaping huge revenue from the open skies agreement it has signed with many countries. In Nigeria, the Bilateral Air Service Agreements which the defunct Nigeria Airways signed with some international airline operators who flew into and out of Nigeria should reap in billions of Naira in revenue for the Country. However, this has not been the case because of the ailing status of the Nigeria Airways (the former national carrier) which has since been scrapped by the federal government and replaced with a new national carrier, Air Nigeria (formerly called Virgin Nigeria). The major problem with the implementation of Nigeria's bilateral air service agreements with other countries is

this lack of a national carrier to implement Nigeria's own side of the capacity provision in these Agreements. Even with the emergence of the new carrier, Nigeria has not been able to utilize the financial benefit of its air service agreements with other Countries. This is so because; the new national carrier is presently incapable of servicing such routes. Also, the dual designation arrangement between the United Kingdom and Nigeria has not been put to good use by Nigerian operators. The agreement with the UK is for four carriers, (two from the United Kingdom and two from Nigeria), to operate the route for profit maximization and passenger satisfaction. Already, the two British air operators, British Airways and Virgin Atlantic, are reaping enormous economic benefits from the operation. In fact, they dominate the route. On the other hand, Nigerian Carriers, Arik Air and Air Nigeria has been unable to utilize theirs.²⁸¹ The Nigerian Carriers have attributed their inability and inefficiency to financial burden and problems of operation which stems from the lack of airport slot in UK Airports (Heathrow), which resulted in Arik Air to enter into a slot-lease agreement with a UK carrier.

²⁸¹ In the Agreement, the frequency entitlement for the Nigerian Carriers is up to twenty-one (21) services per week from Nigeria to London Airport in each direction on the specified routes set out in the second Schedule in the Annex of the Agreement. While, the frequency for the U.K. Carriers is up to twenty-one (21) services per week from U.K. to named points in Nigeria in each direction on the specified routes set out in the first Schedule in the Annex of the Agreement, and using any aircraft type. The U.K. Carriers utilize their twenty-one frequency entitlement. The current twenty-one frequencies entitlement allowed by the Agreement should be shared and utilized by the three (Arik Air, Air Nigeria), but Nigerian Carriers do not utilize theirs.

An airport slot is one take-off or landing at an airport or runway.²⁸² Initially, slot was not an issue for Nigerian carriers in the UK Agreement, but as growth in air traffic continues to outstrip available runway, parking, and passenger processing capacity, shortages of airport take-off and landing slots occur at a growing number of airports including the Heathrow Airport. The situation varies across regions. In the 1990's, the availability, allocation and distribution of slots became a crucial subject in the aviation industry; as major European airports (like Heathrow Airport) that serve big cities were faced with environmental and urban planning restrictions on their use and growth. Where no further growth of airport facilities was allowed by public authorities, only technical enhancements of existing facilities could bring solutions to airport congestion. Airport slot allocation procedures became one of such enhancement. For many years the major resident air carriers at the larger European Union airports had enjoyed grandfather rights²⁸³ in respect of slots at those airports. Frequently, the major carrier headed up the slot committee at an airport that allotted slots to the various airlines. Consequently, such major carriers exercised control over who could obtain slots. Hence, slots became a scarce commodity, which had to be allocated either by imposition on the basis of government regulation or by free trading.

²⁸² Council Regulation (EEC) No 95/93 of 18 January 1993 on Common Rules for the Allocation of Slots at Community Airports, OJEC No. L 14/1. See also the EU competition law exemption for slot allocation procedures, mentioned supra at footnotes 168-169 and text thereto.

²⁸³ At coordinated airports, grandfather rights allow an airline which has held and used a take-off or arrival slot in a particular season (summer/winter) to use it again in the next corresponding season.

It is believe that the issue of slot allocation by definition is a global issue requiring compatible, if not aligned rules is expected to become more prevalent and will increasingly place constraints on the development of the air transport industry.²⁸⁴ The insufficiency of slots affects in a fundamental way the ability of air carriers to exercise market access rights granted to States under air services agreement (ASAs). For example, at the 2008 Conference on the Economics of Airports and Air Navigation Services (CEANS), African States advised of increasing difficulties in securing slots at some airports outside Africa, that African air carriers wish to serve. The African States expressed the view that such difficulties have negatively affected African air carriers' access and operation on international routes outside Africa and that States having airlines concerned should apply the principles of reciprocity and equity embodied in ASAs in resolving the slot issues.²⁸⁵

The ICAO has addressed the issue of slot allocation extensively, both in the context of market access and infrastructure development. Policy guidance developed by ICAO includes: a study on Regulatory Implications of the Allocation of Flight Departure and Arrival Slots at International Airports (Circular 283, published in 2001), conclusions of the 5th Meeting of Worldwide Air Transport Conference (ATConf/5) on the issue (Doc 9819, Report of ATConf/5), and model clauses for

²⁸⁴ ICAO 6th World Air Transport Conference, (AFCONF, 2013). Slot allocation. Held in Montreal, 18th-22nd March. Retrieved www.icao.int/meetings/atconf6.

²⁸⁵ (ATCONF) 5th Meeting, *op. cit.*

bilateral ASAs.²⁸⁶ The main thrust of ICAO guidance is that “in liberalizing market access, due consideration should be given to airport capacity constraints and long term infrastructure needs”. In addition, it states that “any slot allocation system should be fair, non-discriminatory and transparent, and should take into account the interests of all stakeholders while it should also be globally compatible, aimed at maximizing effective use of airport capacity, simple, practicable and economically sustainable”. In addressing the slot allocation issue, States should take into account the legal framework provided by the Chicago Convention, obligations under ASAs, applicable national and regional rules, and existing voluntary mechanisms for managing insufficient airport capacity.²⁸⁷

Since ATConf/5, although many airports have built new runways and expanded airport utilization, the number of airports that have slot constraints and the extent of those constraints have increased.²⁸⁸ Many carriers are unable to obtain the slots they need, and State efforts to assist carriers have not been successful. Such situation has created a certain degree of frustration among concerned parties.²⁸⁹ In response to African States who urged ICAO to take further action to address the issue of slot

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.*

²⁸⁸ *Ibid.*

²⁸⁹ *Ibid.*

allocation at CEANS -2008, the ICAO Council directed the Secretariat to explore the development of model bilateral clauses on slot allocation.²⁹⁰

Accordingly, the Secretariat, in consultation with the Air Transport Regulation Panel (ATRP) and based on States' practices and ICAO guidance, developed three options of bilateral model clauses which are presented in Appendix A of the document. (See Appendix 6 for the Model Bilateral Clause on Slot Allocation). These options were reviewed by the Air Transport Committee in January 2011, which endorsed the first option as a model clause to be included in the ICAO bilateral Template Air Service Agreement (TASA) and for dissemination to States for optional use. The Committee also agreed that States be advised of the availability of the other two options, as well as the prerogative of States to determine whether to use any of the proposed clauses. The Secretariat was also requested to continue to monitor developments and to undertake further work with a view to providing other options that would achieve wider acceptance. It is worth noting that in January 2012, the African Union Summit of Heads of State and Government held in Addis Ababa, Ethiopia, endorsed an African Civil Aviation Policy (AFCAP). The AFCAP, inter alia, in its Article 5.2 requests African States to use Option 2 of the ICAO model clause on slot allocation in air service agreements. Article 5.2 of AFCAP was lifted into Article 8.1 of the National Civil Aviation Policy of Nigeria (NCAP) of 2013. Lastly, in the context of

²⁹⁰ *Ibid.*

airport charges, ICAO has developed detailed guidance on economic pricing for congested airports, which is contained in Doc 9562, Airport Economics Manual.

A major global issue associated with slot allocation in Europe is the difficulties airlines of other regions face with regards to night curfews imposed within Europe. Night curfews have created operational problems and financial burden for their operators, airports and communities around airports. For example, due to night curfews imposed at some airports in Europe, many African airports have to be kept open for operations during the night, since north-bound aircraft must depart late in the night in order to arrive in Europe after the curfew is over (usually after 6.00am). It has been argued that night curfews also contribute negatively to airport congestion. African states have argued that removal of night curfews at some international airports in Europe would increase airport capacity, thus benefiting the airlines wishing to operate to them, while significantly reducing the night congestion at many African Airports.

The UK belongs to the European Union (EU) which is a monetary union and not a political union for now. It is founded on the basic premise that there is no discrimination based on nationality. The application of this premise to air transport can be translated to the fact that only nationally owned carriers of the EU member states could be subject of bilateral air service agreements negotiated by the Union with third countries. As such, individual state members of the EU cannot separately

negotiate bilateral air service agreements with third countries on issues of nationality, as member states have the obligation to honour European Community law when they negotiate air service with third countries. However, as per a decision of the European Court of Justice,²⁹¹ handed down in November, 2002 sovereign member States of EU could not be deprived of their power and right to conclude agreements with third countries, due to the fact that EU common markets only applied to intra-community air transport;²⁹² but these Agreements are to conform to EU law. Consequently, in the 2006 and 2008 review meeting of the BASA with the UK, the UK delegates reiterated that they are obliged by European Community law to include certain standard provisions in their Bilateral Air Service Agreements and proposed the inclusion of the provisions in the air service agreement between Nigeria and UK. The UK delegates also suggested the modernization of the Agreement. On the other hand, the Nigerian delegates declined the proposal pending the finalization of the African Union (AU) position on equivalent standard clauses. It is the writer's opinion that the Agreement should be modernized and the issue of slot should be properly addressed in the new Agreement.

²⁹¹ Commission v. United Kingdom, Denmark, Sweden, Finland, Belgium, Luxembourg, Australia, Germany. Cases C-466/98, C-467/98, C-468/98, C-469/98, C470/98, C-472/98, C-476/98. In this case, the EU in December 1998, applied to the EU court of Justice for it to adjudicate on an issue where seven EU member States had concluded bilateral "open skies" agreements with the United States in the field of air transport. The Court held oral proceedings in May 2001 and subsequently considered conclusions of the Advocate-Genera issued on 31 January, 2002. The EU Court of Justice issued its judgement on 5 November, 2002.

²⁹² H. Wassenbergh: 'Open Skies and a Global Common Air Traffic Market', *Journal LanchRecht*, (2006), *Special Edition In Honour of I. H. Diedericks-Verschoor*, Nr 9/10, 51 at p. 53.

4.2.15 Tariffs/Pricing Clause²⁹³

The term ‘pricing’ is a modern term, a very easily understandable one, not only used in airline industry.²⁹⁴ Other common terms that are more particular to airline industry and other modes of transport are tariff, fares, rates and ratemaking.²⁹⁵ Fares are prices for the transportation of passengers (and their accompanying baggage/luggage); rates are prices for the carriage of cargo/freight (including mail); (air) tariffs include both (air) fares and rates, and the conditions pertaining thereto (such as periods and days of validity, advance booking and payment requirements, types of cargo or freight, and often agency commission rates); ratemaking is a term that comes from the practice of airlines to agree or to consult on air tariffs in the framework of International Air Transport Association (IATA), it’s a bit outdated.²⁹⁶

Tariff provisions in bilateral air service agreements do not generally create any special difficulties,²⁹⁷ if the Contracting Parties adhere to its provisions. Governments and Airlines have come to rely on IATA and its rate fixing machinery in the negotiations and enforcement of the complex problems involved in fares, rates and taxes connected with the carriage of passengers, mail and cargo.²⁹⁸ The tariff provisions in bilateral air service agreements generally do not provide for government of the

²⁹³ Article 12 of the Agreement with Ghana; Article 13 of the Agreement with UK; and Article 14 of the Agreement with Israel.

²⁹⁴ P.P.C. Haanappel, *op. cit.* p. 118

²⁹⁵ *Ibid.*

²⁹⁶ *Ibid.*

²⁹⁷ P.P.C. Haanappel, (2012). *op. cit.* p. 118

²⁹⁸ *Ibid.*

involved states to determine the tariffs, but leave the structure of tariffs up to the air carriers, which then have to present them to the aviation authority for authorization.²⁹⁹ Air transport has historically been a sector in which prices are fixed and managed administratively, and four types of tariff clauses can be distinguished: dual approval- of which Bermuda 1 is the classical type, single disapproval, dual disapproval, and the country of origin method.³⁰⁰ i.) Dual approval refers to the approval of tariffs by the aviation authorities of the two countries and is still the most common type of tariff clause in bilateral agreements. It can be either explicit or tacit. ii.) Single disapproval means that tariffs enter into force unless disapproved by one of the countries. Dual disapproval means that tariffs enter into force unless disapproved by both countries. iii.) Under the country of origin method the right of disapproval can only be exercised by one of the parties when the flights in question originate in its territory.

Article 12 of the Agreement with Ghana provides that Parties shall allow tariffs for air transportation to be established by each designated airline based upon commercial consideration in the market place.³⁰¹ However, Parties are by the said Article prohibited from imposing tariffs that are artificially low, discriminatory, and

²⁹⁹ Gjemulla and Weber, *op. cit.* p. 33

³⁰⁰ Organization for Economic Co-operation and Development. (1999). Workshop on Regulatory Reform in International Air Cargo Transportation . Background Document. Held in Paris, 5-6 July.

³⁰¹ *Ibid.*

unreasonably high or restrictive due to the abuse of a dominant position.³⁰² Furthermore, each Party may require notification to or filing with its aeronautical authorities of tariffs to be charged to or from its territory by airlines of the other party and such notification or filing by the airline of the other party may be required no more than thirty days before the proposed date of effectiveness³⁰³. Notification for filing may be permitted on shorter notice than as required.³⁰⁴ If a party permits an airline to file a tariff on short notice, the tariff shall become effective on the proposed date for the traffic originating in the territory of that party.³⁰⁵

The Agreement with Israel has similar provisions on tariff with the Agreement with Ghana, save that, the Agreement with Israel does not provide for any time frame for notification and filing in respect of tariffs.³⁰⁶ On the other hand, the 2005 Memorandum of Understanding between the Aeronautical Authorities of Nigeria and the UK amended the tariff provision contained in Article 13 of the Agreement with UK. This amendment is similar with the Tariff provision in the Agreement with Ghana.³⁰⁷ Consequently, since the 2005 Memorandum of Understanding provides for notification and consultation between the aeronautical authorities of Nigeria and UK,

³⁰² *Ibid.*

³⁰³ *Ibid.*

³⁰⁴ *Ibid.*

³⁰⁵ *Ibid.*

³⁰⁶ See Article 14 of Agreement with Israel.

³⁰⁷ The 2005 MOU reduced the period of filing and notification in respect of tariffs from 90 days (as contained in the Agreement) to 30 days.

one wonders why fare hike by the UK airlines have been an issue in Nigeria and the media.³⁰⁸

4.2.16 Dispute Resolution

The Agreements being analyzed provide the procedures for settlement of disputes between the contracting parties. Common with all the Agreements is that, disputes must first be settled by way of negotiation. Article 16 of the Agreement with Ghana states that if parties fail to reach settlement by negotiation, they may agree to refer the dispute to some person or body; if they do not agree, the dispute shall at the request of any of them be referred for decision to an arbitrary tribunal composed in accordance with the provision of Article 17 of the Agreement; or in the alternative, to any arbitration mechanism composed under the African Union. Where one explores the option of an arbitral tribunal under the Agreement, such arbitration shall be by a tribunal of three arbitrators. Article 17 of the said Agreement states that within 30 days of the receipt of a request for arbitration each party shall appoint one arbitrator and within 60 days of the appointment of the second arbitrator, the two arbitrators shall by Agreement appoint a neutral state as the third arbitrator who shall act as president of the tribunal. If either party fails to name an arbitrator, or if the third

³⁰⁸ Investigation by Vanguard revealed that as at April 19th, 2013, passengers travelling on First Class of British Airways from Abuja, Nigeria, to London, Heathrow Airport pay 9,548.25 US Dollars, while another passenger travelling from Ghana on the same First Class, same plane to London Heathrow Airport will pay 4,970.55 US Dollars. Similarly, passenger on Business Class on the same British Airways from Abuja, Nigeria, to London Heathrow pays 4,708.80, US Dollars while another passenger from Ghana on the same Business Class, will pay 2,920.55 US Dollars. See Lawani Mikairu, "Fare disparity by foreign airlines: Why it persists", *Vanguard*, Friday, May 03, 2013. Retrieved on 7th June, 2013, from: <http://www.vanguardngr.com/2013/05/fare-disparity-by-foreign-airlines-why-it-persists/#sthash.v65CkhQN.dpuf>.

arbitrator is not appointed, either party may request the Secretary-General of the AU to appoint the necessary arbitrator(s) within 30 days. This tribunal shall determine the limit of its jurisdiction and its procedural rules. Except as otherwise directed by the tribunal, each party shall submit a memorandum of understanding within 45 days of the time the tribunal is duly constituted and each party may submit reply within 60 days of the submission of the memorandum of understanding of the other party and the tribunal shall hold hearing at the request of either party on its own initiative within 15 days after replies are due. The tribunal shall attempt to render a written decision within 30 days of completion of hearing, or if no hearing is heard, after the date both replies are submitted and such decision shall be taken by a majority vote. The Agreement provides that the decision of the tribunal shall not be opened to appeal.

Article 18 of BASA between Nigeria and the UK stipulates similar procedures but with little variations for settlement of dispute arising in the Agreement. If the parties fail to reach a settlement by negotiation they may agree to refer the dispute for decision to some person or body; if they are unable to do so, the dispute shall at the request of either contracting party be submitted to a tribunal of three arbitrators one to be nominated by each contracting party and the third to be appointed by the two so nominated. Each of the contracting parties shall nominate an arbitrator within a period of 60 days from the date of receipt of notice by either contracting party from the other through diplomatic channels requesting arbitration of the dispute by such a tribunal and a third arbitrator shall be appointed within a further period of sixty days.

If either of the contracting parties fails to nominate an arbitrator within the period specified or if the third arbitrator is not appointed within sixty days, the President of the Council of the ICAO may be requested by either contracting parties to appoint an arbitrator(s) as the case may be. In such a case the third arbitrator shall be a national of a third state and shall act as president of the arbitral tribunal. The contracting parties are mandated to comply with any decision given here within sixty days of the said decision. Where any Party fails to comply with any decision given, the other contracting party may limit, withhold, or revoke any rights or privileges granted to the said party by virtue of the Agreement between them. The Article also makes categorical provision regarding the financial responsibilities of the parties where arbitrators and subsidiary staff are engaged; the contracting parties shall share equally all such financial expenses.

Like the Agreement with UK, Article 20 of the Agreement with Israel provides that if negotiation fails, dispute between contracting parties shall be settled through diplomatic channels. If parties are unable to arrive at amicable settlement, either party may refer the dispute to an arbitral tribunal of three arbitrators one to be nominated by each party (within sixty days from the date of receipt of through diplomatic channels of a notice of arbitration); and the third arbitrator (who shall be the Chairman and a national of a state that have diplomatic relations with each of the parties at the time of appointment) of the tribunal shall be agreed upon by the two

parties. Where within sixty days a Party fails to nominate an arbitrator or the parties fail to agree on the Chairman each party may request the President of the Council of ICAO to appoint the Chairman or the arbitrator representing the Party in default. This Agreement further provides that in a situation where the President of the ICAO is absent or incompetent, the Vice-President or a senior member of the ICAO Council not being a national of either of the Parties shall replace the President of the ICAO in the arbitral duties. The person to be appointed shall be a national of a state having diplomatic relations with each of the Contracting Parties at the time of the appointment. There is no such provision on incompetence and absence of the President of ICAO in the Agreement with the UK, which should have made such provision. On the other hand, the Agreement fails to define what incompetence means in the circumstance. Is it incompetence by virtue of ill health or professional incompetence? One hardly thinks that professional incompetence is contemplated here; because, the President of ICAO ordinarily should be knowledgeable in aviation matters and any dispute arising therein should not be beyond his power to arbitrate. In any case, the Agreement should clearly define what incompetence means in the circumstance. The decisions of the tribunal shall be reached by a majority of the arbitrators and they shall state the reason(s) or ratio(s) for their decision and such decision shall be final and binding upon the Parties. Where either Party fails to comply with the decision of the tribunal, the other Party may limit, suspend or revoke any right or privileges which have been granted by virtue of the Agreement. Each

Party shall bear the expenses of its arbitrator; but the expenses of the Chairman and any expenses incurred by ICAO in connection with the appointment of the Chairman and the arbitrator of the Party in default shall be shared equally by the Parties. The arbitral tribunal is expected to publish its award after arbitration.

4.2.17 Consultation Clause

In addition to the Dispute Settlement provision, air service agreements make provision on consultation. The writer believes that the importance of incorporating such a clause is to provide a chance to tackle differences before they mature into disputes. In most agreements ‘regular and frequent consultations’ between aeronautical authorities are recommended from time to time.

Article 15 of the Agreement with Ghana provides that parties shall consult each other from time to time with a view to ensuring the effective implementation of the said Agreement when necessary to provide for modification of the Agreement. Parties shall request consultation which may be through discussion or by correspondence and the consultation shall begin within a period of thirty days of the date of the request unless the parties agree to an extension.

The clause on Consultation in the Agreement with UK has similar provision with that of Ghana.³⁰⁹ The difference however is in the period of time within which Consultation shall begin upon receipt of the request for same.³¹⁰ The Agreement with UK provides that consultation shall begin within a period of sixty days of the date of the request for consultation unless both contracting parties agree to an extension. The Agreement with Israel has similar provision with the Agreement with the UK as there is no area of divergence.

4.2.18 Amendments Clause

One good thing with the Agreements under review is that they all provide for amendments. The Agreements are not sacrosanct and could be amended if at any time such need arises. Article 23 of the Agreement with Ghana provides that each party to the said Agreement shall have the right to request the amendment of the said Agreement.

Article 20 of the Agreement with UK provides that if either of the contracting Parties considers it desirable to amend any provision of the Agreement, such modification if agreed by the contracting Parties and if necessary after consultation in accordance with Article 17 shall come into effect when confirmed by Exchange of Notes through diplomatic channels.

³⁰⁹ See generally Article 15 of Agreement with Ghana and Article 17 of Agreement with UK

³¹⁰ See Article 17(2) of Agreement with UK.

The Agreement with Israel states that the Agreement can be amended by mutual consent of the Parties.³¹¹ The said Agreement also provides that any amendment of the annex may be made by written Agreement between the aeronautical authorities of the contracting Parties.

Amendments to bilateral air service agreements are normally done through the instrumentality of memorandum of understanding. In treaty law, a Memorandum of Understanding denotes “an informal but nevertheless legal agreement between the two contracting parties, particularly when that agreement forms a step in the process of tidying up a complicated situation”.³¹² A Memorandum of Understanding is invariably a secret or confidential document and in practice never registered with the Council of ICAO as required under Article 83 of the Chicago Convention 1944, or with the Secretary General of the UN under Article 102 of the Charter. The reason for this is twofold. Firstly, a Memorandum of Understanding may deal with purely commercial arrangements between the two designated airlines of the contracting Parties. In such instance the Memorandum of Understanding becomes an informal commercial arrangement between airlines, and is signed as such by their respective competent authorities. Secondly, where the contracting Parties or their Aeronautical Authorities sign a Memorandum of Understanding subsequent to an Air Services Agreement, or some other arrangements mutually beneficial to both Parties but tied

³¹¹ Article 21(1) of Agreement with Israel

³¹² Lord McNair: *The Law of Treaties*, Oxford University Press, (1961) p. 17

up with the air services agreement, it is customary to respect the confidential nature of such arrangements by refraining from publication or divulging the contents of such memorandum to third Parties. In the light of the above analysis, it is the writer's humble opinion that a Memorandum of Understanding may be turned into a respectable legal cloak for perpetuating objectionable conduct.

4.2.19 Entry into Force Clause

Every international agreement has its own way of coming into force.³¹³ In the domestic plane, each party has its own procedure of giving effect to international agreements. Since bilateral air transport agreements are the results of consensus between states on derogating the sovereignty of its air space, the parties are free to decide what they want and when they want them to start.

The Agreements under review provide for the time these Agreements would come into force. Article 21 of the Agreement with Ghana provides that the Agreement comes into force provisionally between the parties immediately upon signature (immediately the Agreement is signed by both Parties). The said Article however adds that notwithstanding the provisional entering into force, the Agreement shall enter into full force on the date on which each party has notified the other in writing through diplomatic channels of its completion of the constitutional requirement for

³¹³ See Article 24(10) of the Vienna Convention on the Law of Treaties. See also, Browlee, I: '*Basic Documents in International Law*', (1995) Oxford Press, London, 4th Edition.

the implementation of the said Agreement.³¹⁴ The date of entry into force shall be the date of the last notification.³¹⁵

As regards entry into force of the Agreement, Article 23 of the Agreement with UK has similar provision with Article 21 of the Agreement with Ghana. On the other hand, Article 25 of the Agreement with Israel is similar with that of Ghana and UK, but does not have any clause for provisional entry into force.

4.2.20 Termination Clause³¹⁶

Similar to all other agreements, air service agreements are subject to termination; but there are no time limits agreed for the operation of the agreements. Article 22 of the Agreement with Ghana provides that at any time after the expiration of two years from the date of the entry into force of the said Agreement³¹⁷, any of the contracting Party may give notice of termination of the said Agreement to the depository Organization and such termination takes effect one year after the date of receipt of the notification of by the depository organization. The depository organization shall inform each Party of the date of the receipt of any notice of termination. The aim of this provision is to enable Parties know when any termination sought takes effect.

³¹⁴ Article 21(2) of the Agreement with Ghana.

³¹⁵ *Ibid.*

³¹⁶ Article 22 in the Agreement with Ghana; Article 24 in the Agreement with UK and Article 23 in the Agreement with Israel.

³¹⁷ Since the Agreement came into force in 2011, any party to the said Agreement may give notice of termination if the need arises.

Article 24 of the Agreement with UK states that either contracting party may at any time give notice to the other contracting party of its decision to terminate the said Agreement; or such notice shall be simultaneously communicated to the ICAO. The Agreement shall then terminate twelve months after the date of the receipt of the notice by the other contracting Party unless the notice to terminate is withdrawn by Agreement before the expiration of this period. It is expected that the other contracting Party should acknowledge the receipt of the notice of termination, but where there is failure to acknowledge receipt by the other contracting Party; notice shall be deemed to have been received fourteen days after the receipt of the notice by the ICAO.

The differences that exist between the termination clauses contained in the Agreement with Ghana in relation to that of UK are that: (i.) while the Agreement with Ghana provides that notice of termination by either contracting Party is to be given to the depository Organization, the Agreement with UK states that such notice of termination shall be to the other contracting Party and simultaneously to the ICAO. (ii.) The Agreement with Ghana provides that termination takes effect one year after the date of the receipt of the notification by the depository Organization, whereas the Agreement with UK provides that such notice of termination takes effect twelve months after the date of the receipt of such notice by the other contracting

Party. The termination clause in the Agreement with Israel is similar to the Agreement with UK.

4.2.21 Code Sharing Clause

Code sharing is an aviation business arrangement where two or more airlines share the same flight. A seat can be purchased on one airline but is actually operated by a cooperating airline under a different flight number or code. The term “code” refers to the identifier used in flight schedule, generally the two-character IATA airline designator code and flight number. For example, XX123, operated by the airline XX, might also be sold by airline YY as YY456 and by airline ZZ as ZZ789. It allows greater access to cities through a given airline’s network without having to offer extra flights, and makes connections simpler by allowing bookings across multiple planes. The airline that actually operates the flight is called the operating carrier, while the company(ies) that sell the tickets for the flight but do not actually operate it are called marketing carrier.

Code sharing manifests itself in the form of airline alliance which is an agreement between two or more airlines to cooperate on a substantial level. The three largest airline alliances are Star Alliance, SkyTeam and Oneworld. Alliances are also formed between cargo airlines, such as WOW Alliances, SkyTeam Cargo and ANA/UPS Alliance. Alliances provide a network of connectivity and convenience for

international passengers and international packages. Alliances also provide convenient marketing branding to facilitate travelers making inter airline codeshare connections within countries. This branding includes unified aircraft liveries among member airlines.

Provisions for code sharing in Nigerian air service agreements could be seen in bilateral air service agreements recently entered into or reviewed by the contracting Parties. In the Agreement with Ghana, Article 11 provides that in operating the authorized services on the agreed routes, a designated airline of either party may enter into cooperative marketing arrangements. Such as blocked-space, code sharing, franchising or leasing arrangement, with an airline or airlines of the other Party.

The provision on code sharing is contained in the 2008 Memorandum of Understanding which amended the Agreement with the UK. The memorandum of understanding provides that any Airline holding an Air Operators Certificate from one state may subject to applicable laws and regulations governing competition enter into code sharing arrangements with any other airline or airlines, but this is dependent on the following conditions: (a.) each flight forming part of a service to which the arrangements apply is operated by an airline entitled to operate that flight; (b.) no service is held out by an airline of one state for the carriage of local passengers between a point in the territory of the other state and a point in a third state or

between two points in the territory of the other state unless that airline is entitled to operate and carry local traffic between those two points in its own right; (c) the purchaser of each ticket sold must be informed at the point of sale the airlines that will operate each sector of the service.

The provision on code sharing is contained in the Annex to the Agreement with Israel and this provision is similar to that of Nigeria with UK. The provision on code sharing in the Agreement with Ghana is more liberal as it does not contain those conditions in the Agreements with UK and Agreement with Israel. This perhaps is as a result of the liberalization of the African air space by the Yamoussoukro Decision to which Nigeria is a signatory.

In spite of the good provision on code sharing, Nigerian designated airlines do not code share, because they are not strong enough in terms of fleet of aircraft and operational stability to operate international air services; in addition, Nigeria has no national carrier.

4.2.22 Other Clauses

Apart from the clauses studied above, there are a few other clauses contained in these Agreements. One of such clauses is the clause on multilateral.³¹⁸ The clause provides that the Agreement and any amendment to it shall conform with multilateral air transport Agreements which is binding on the Parties to the Agreement.

Article 21 in the Agreement with the UK provides for registration of the Agreement (or any amendment to it) with ICAO.³¹⁹ Article 19 of the Agreement with Ghana provides that the Agreement (or any amendment made to it) should be registered not only with the ICAO, but also with the Banjul Accord Secretariat, ECOWAS, and the AU.

Unlike the Agreement with Ghana and UK, the Agreement with Israel dedicated Article 12 to taxation. Under this Article, the following are the exemptions on tax: profits or income from aircrafts of a Contracting Party operating international traffic; capital and assets of an airline of a Contracting Party that operate international traffic; gains from the alienation of aircraft operating in international traffic and movable property of such airline; and double taxation (where there is an existing agreement between the parties an agreement).

³¹⁸ Article 23 in the Agreement with Ghana; Article 19 in the Agreement with Israel; and Article 22 in the Agreement with Israel.

³¹⁹ This provision is similar with Article 24 of the Agreement with Israel.

Furthermore, Article 17 of the Agreement with Israel is on ban on smoking. By this Article, each Party shall prohibit smoking within the aircraft, beginning from the time of enplanement to deplanement of passengers on flight between the two countries. Each Party shall take reasonable measures (including imposition of appropriate penalties for non-compliance) to secure compliance by the passengers and crew members. The Agreement with Ghana and UK has no provision on ban on smoking.

4.3 Problems/Challenges Faced and Future Prospects

The interviews granted the researcher by Mr. Egbukole on the 17th of August, 2012 reveals that Nigeria has no efficient or competent national air carrier to operate the frequency distribution in the bilateral air service agreement Nigeria has with other countries. This position was also collaborated with the interview granted the researcher by Mr. Ngbuku on the 23rd of August, 2012 which further revealed that at present, Nigeria has no national carrier to maximize the economic advantage in plying some of these routes.³²⁰ While America and other European Countries are currently reaping huge revenue from their agreements with other countries, the case is not the same with Nigeria which is due to the ailing status of its national carrier and other challenges associated with the aviation industry. A study on the Nigerian aviation industry pointed out a number of challenges to the industry. Firstly, the operation, maintenance and sustenance of the aviation industry is highly capital intensive as the

³²⁰ See Appendix 1 and 2 for a full text of the interviews.

cost of maintenance of the airports and their planes is usually a challenge for government and private airlines who venture into the industry. For example, the agencies responsible for traffic control and navigation, the FAAN and NAMA complain that the airport navigation aids and air traffic control facilities are inadequate and obsolete. One can clearly see that Nigerian airports (even the international airports) cannot be compared to that of European Countries and even, some African Countries like Ethiopia and South Africa. Secondly, a large part of the deterioration experienced in the Nigerian aviation sector is due to inadequate funding and huge operating losses. A large part of the deterioration witnessed in the industry is due to insufficient budgetary provision by the Federal Government coupled with poor management. This has been obvious in the enormous contracts given out for the construction, rehabilitation and maintenance of roads. Thirdly, widespread corruption and misappropriation of budgetary allocation is a problem to the aviation sector. The government has at various times allocated funds for the resuscitation of the sector, but no significant progress and revitalization has been seen. For example, a couple of years ago, critics were of the view that the contract for the construction and rehabilitation of the runway in the Nnamdi Azikiwe International Airport, Abuja was so high that such amount can be used to construct an airport. Moreover, the management and institutional framework in the sector have weak structural base and less qualified management staff thereby adding to the already existing challenge in the sector. Fourthly, even though the air transport sector has witnessed significant

growth, there has been poor response to changing and advancing technologies in the industry. Old and near outdated aircraft still ply the Nigerian airways which has resulted in a number of air crash in the industry. Lastly, a significant challenge in the aviation industry has been the problem of poor patronage. This problem persists in the air transport industry due to the high cost of air tickets given the fact that a large percentage of the Nigerian population cannot afford the luxury of flight. Often, domestic airlines fly local routes with a lot of empty seats, which results to financial loss.

Having considered the problem associated with the implementation of bilateral air service agreements in Nigeria, and the challenges in the aviation industry in Nigeria, the writer suggests that better and adequate funding is a catalyst that can catapult the Nigerian aviation industry to where it rightly belongs in the development process of Nigeria. It is not in doubt that the government in recent times has improved funding of the aviation sector. However, much is still desired. Improved and adequate funding for the purchase of modern aircrafts, infrastructure and equipment, and training and remuneration of workers would go a long way. Secondly, improved public-private sector partnership (PPP) can contribute to a success story in the sector. As we well know, aviation business is highly capital intensive. Over the years, expensive engineering checks, high cost of aviation fuel, etc., have been attributed as challenges to private operators. In recent times, public-private partnership has yielded positive

results in Nigeria especially in the telecommunication sector. Even though the PPP has since been working in the aviation sector after the grounding of the Nigerian Airways, there is still room for improvement. Increased private participation in the aviation sector would increase efficiency of the sub-sector and would bring about healthy competition as well as a reduction in the cost of air tickets and freights. Thirdly, tackling corruption and efficient management of the industry is very imperative. Corruption and embezzlement of public funds has been a bane of the industry and the country at large. The government in recent times has made effort at reviving the aviation industry through doling and allocating fund on its projects; however, no significant progress has so far been witnessed. Siphoning public fund meant for development has seriously reduced the final fund available for the management of the sector and executing its projects. Stringent procedures and guides for tackling corruption should be put in place and stiff penalties or punishment should be given to offenders to deter others from doing same. This will go a long way in curbing corruption in the sector and in Nigeria at large. Finally, an improvement in manpower and training of workers is necessary to revive the sector in order to generate the huge financial revenue for Nigeria from the implementation of the air service agreements with other countries. The aviation sector is a specialized sector that requires highly skilled manpower for the purpose of management. The industry has suffered some deterioration in this regard as over the years, skilled contractors (usually expatriates) are given contracts, who in turn hand over the project to the

government after completion. But due to the lack of experts in the country, the facilities face progressive deterioration. Another contributing factor to the deterioration of airport facilities is the poor maintenance culture of these facilities. Hence, investing in training and better manpower of the aviation industry would help to ensure long-span of infrastructure and equipment in the industry at a lower cost.

In conclusion, for Nigeria to maximize and efficiently reap huge revenue from its air service agreements with other countries, Nigeria has to revive its air transport industry and establishment a sound national carrier by investing heavily on the industry. Developing the Country's aviation industry is a step towards reducing the high level of unemployment in the country. Generally, the industry is still underdeveloped when compared to that of countries in Europe, America, Asia and some African countries. There is need to develop the industry in line with international standard. More determinant steps and stronger political will is needed to achieve this. The rising cost of aviation fuel, high cost of maintenance of aircraft, etc. continue to pose a challenge to private operators in the sector. The aviation regulatory bodies must wake up to their responsibilities if Nigeria must benefit from these agreements.

CHAPTER FIVE

SUMMARY, FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Introduction

Before an airline can operate international air service to another country, the government must first negotiate with the destination country's government. In most parts of the world, international air services between countries operate under the terms of a Bilateral Air Service Agreement (BASA) negotiated between the two countries. Bilateral Air Service agreements are international trade agreements in which two nations mutually establish a regulatory mechanism for the performance of commercial air service between their respective territories and beyond and typically agree on such economic regulatory matters as capacity, fare and route. They are instruments used by countries to establish international air link between them and ensure that countries collectively maximize their potential in International Air Transport or the Aviation Sector. These agreements are generally of treaty status and are enforceable in international law (although some operate under, or are modified by, a less formal Memorandum of Understanding arrangement).

The framework for these bilateral air service agreements was established towards the end of World War II in 1944, when 52 Countries came together at the International Civil Aviation Conference held in Chicago, USA. The Chicago Convention stipulated that two nations seeking to be linked by commercial air services would negotiate the

terms through concluding a bilateral air service agreement also known as bilateral air transport agreement. This would specify the conditions under which the proposed services would operate in terms of the privileges granted by either signatory country to the airlines of the other country.

A Bilateral Air Service Agreement would cover such items as: i.) Traffic Rights (also known as Freedoms of the Air)- which are a standard set of nine distinct air rights over which the two countries will negotiate, for example, the first freedom is the right to overfly the territory of a country without landing there; ii.) Authorized Points- which are the allowable routes that could be operated; iii.) Capacity- which is the number of flights or seats that could be operated between the two countries; iv.) Tariff (pricing) - which is the method for setting fares on the route; v.) Designation- which is the number of airlines the bilateral partners can nominate to operate the services and the ownership criteria airlines must meet to be designated under the bilateral agreement; vi.) Other clauses relating to operative agreements (for example, code sharing) and various “doing business” issues such as repatriation of currencies, the ability to select handling agents at foreign airports, safety and security measures to be taken, the use of computer reservation systems, etc. Amendments to bilateral air service agreements are normally done through the instrumentality of memorandum of understanding, which are informal but legal agreement between the contracting parties.

The primary responsibility for the initiation of negotiation of bilateral Air Service Agreements is that of the Ministry of Aviation. Prior to negotiations, the Ministry of Aviation holds consultations with Nigerian aviation regulatory authorities, and other concerned institutions. The views of these institutions are taken into consideration in drawing up a brief for submission to the Federal Executive Council for approval and which will form the basis of the negotiation. When a date and venue for negotiations have been fixed, a negotiating team from the two contracting parties assembles and an agreement or amendment is made. On completion of the necessary formalities about signature, either Contracting Party can take steps to forward certified true copies of the agreement to the Secretariat of ICAO for registration. Publication of the agreement is the responsibility of the Secretary-General of the United Nations.

This research treats these terms in the context of Nigeria's Air Service Agreements with Ghana, UK and Israel. The following are findings emanating from the research and recommendations proffered on the findings.

5.2 Summary

This research work is a Comparative Legal Analysis of Bilateral Air Service Agreements of Nigeria with Some Selected Countries. The selected Countries reviewed are: Ghana, United Kingdom and Israel.

In Chapter One, the writer gave a background to the research. The Chapter presented the research problem, the aim and objectives of the research, the scope of the research, the research methodology, literature review and the organizational structure of the research work amongst other things.

Chapter Two dealt with the air transport industry in Nigeria. Under this topic, the writer: traced the history of the aviation industry in Nigeria; discussed the legal regulation of air transport industry in Nigeria, and aviation regulatory agencies in Nigeria. In discussing the history of the aviation industry in Nigeria, the writer discussed some challenges experienced by the industry from Nigerian independence to the present time.

The writer in Chapter Three discussed bilateral air service agreements in general. The chapters started by explaining what bilateral air service agreements are. It went further to give a historical evolution of bilateral air service agreements. From the historical analysis, the failure of the Chicago Convention was traced and bilateralism as mode for negotiating air service arrangement between two contracting States was established. The structure and types of bilateral air service agreements was also

discussed here. The Chapter ended with a discussion on the making and implementation of bilateral air service agreements.

Chapter Four analyses the clauses in the Bilateral Air Service Agreements between Nigeria and Ghana,³²¹ Nigeria and United Kingdom (UK)³²² and Nigeria and Israel.³²³ In analyzing these clauses, recourse was made to the provisions of the Chicago Convention and the ACAP. The topic noted that the conclusion of bilateral air service agreements does not give parties the right to start operating but that other terms in the annexes must be concluded by means of a memorandum of understanding or agreed minutes before the agreement can take effect.

5.3 Findings

Findings in this research have revealed the following:

1. Some terms used in some Articles in these Agreements were not defined. For example, the term “Substantial Ownership” and “Effective Control” which are key terms used in Article 6, 4 and 4 of the Agreement with Ghana, UK and Israel, to confer certain rights on the contracting Parties, that is, the right to

³²¹ Bilateral Air Service Agreement between the Federal Republic of Ghana and the Federal Republic of Nigeria, 2011 (hereinafter referred to as ‘the Agreement with Ghana’).

³²² Air Service Agreement between the Federal Military Government of the Federal Republic of Nigeria and the Government of the United Kingdom of Great Britain and Northern Ireland, 1988 (hereinafter referred to as ‘the Agreement with UK’).

³²³ Air Service Agreement between the Government of the Federal Republic of Nigeria and the Government of the State of Israel, signed on 28 October, 2013 (hereinafter referred to as ‘the Agreement with Israel’).

revoke an operating authorization or to suspend the exercise of the right conferred on the designated airlines, or to impose such conditions as it may deem necessary if it is not satisfied that substantial ownership and effective control of that airline is vested in the contracting Party designating the airline or nationals of such contracting Parties. The Agreements however fails to define the terms “Substantial Ownership” and “Effective Control”. Although, the accepted procedure among states to find out ownership is by scrutinizing the voting shares of the company; that is to say, that the party holding fifty percent (50%) or more is considered to possess the substantial ownership. With the privatization, liberalization and regionalization of the air transport industry, it is imperative to note the fate of the requirement of substantial ownership and effective control for the reason that even a private company which owns 45% of the national airline could be considered as holding ‘substantial ownership’. Whereas substantial ownership is, as it were, a *de jure* condition, and as such easy to ascertain; effective control on the other hand is a *de facto* condition that must be judged according to the precise facts of every case. Amongst the factors considered in determining whether effective control of an airline is in foreign hands (i.e. significant foreign majority shareholdings, one large foreign shareholding with the rest of the capital being divided into small shares, foreign citizenship of members of the Board of Directors, especially its President, and who directs corporate policy and oversees employment’), it is clear that this

term may be given different interpretations. Consequently, these terms are potential areas of conflict and dispute.

Also, the phrase “Fair and Equal Opportunity” used in Article 10, 11 and 13 of the Agreement with Ghana, UK and Israel only provides that Parties shall have fair and equal opportunity to operate agreed services on the specified route, but failed to give any clue as to the meaning of the term “fair and equal opportunity”. The writer is of the opinion that this term may be given different interpretations and the Agreements should have attempted to give a clue as to the meaning of the term ‘fair and equal opportunity’. This is so because the meaning of this term is capable of different interpretations. To a lawyer, the term “fair and equal opportunity” is subjective, that is, depending on the strength (of the aviation industry) of the Contracting Parties or the circumstances of each case. To a lay person, it would appear that a precise mathematical expression such as fifty-fifty (50:50) is preferable.

Furthermore, Article 20 of the Agreement with Israel provides that if parties are unable to arrive at amicable settlement, either party may refer the dispute to an arbitral tribunal of three arbitrators one to be nominated by each party; and the third arbitrator (who shall be the Chairman) of the tribunal shall be agreed upon by the two parties; and where a Party fails to nominate an arbitrator or

the parties fail to agree on the Chairman each party may request the President of the Council of ICAO to appoint the Chairman or the arbitrator representing the Party in default; but in a situation where the President of the ICAO is absent or 'incompetent', the Vice-President or a senior member of the ICAO Council not being a national of either of the Parties shall replace the President of the ICAO in the arbitral duties. The Agreement fails to define what 'incompetence' means in the circumstance. Is it incompetence by virtue of ill health or professional incompetence? One hardly thinks that professional incompetence is contemplated here; because, the President of ICAO ordinarily should be knowledgeable in aviation matters and any dispute arising therein should not be beyond his power to arbitrate. In any case, the Agreement should have clearly defined what incompetence means in the circumstance.

2. The Agreement between Nigeria and the UK has no provision on Airport Slot Allocation. This is so because when the Agreement was made in 1988, Airport Slot was not limited and so was not an issue then; hence, the Agreement did not make a separate provision on Airport Slot. In the writers opinion, the BASA Nigeria has with the UK is of old regime or old fashioned, as the Agreement made no provision on slot allocation. The old regime bilateral air service agreements did not separate slot from frequency; frequency and slot were the same or slot were considered to go with frequency. The slot allocation

issue was extensively addressed by the ICAO in 1999, when a detailed study on it was conducted by the Secretariat and submitted for review by the Conference on the Economics of Airports and Air Navigation Services (ANSCConf2000) held in 2000. The study analyzed the trend for airports where the demand exceeds capacity supply; the regulatory framework involved; and the means by which governments, airports and airlines have sought to alleviate this problem. The fifth ICAO Worldwide Air Transport Conference (ATConf/5) held in 2003, addressed the issue of airport slot and concluded that problems involving air carriers which are unable to exercise their entitled traffic rights at a capacity-constrained airport may, if necessary, be addressed in the context of discussions on the relevant air service agreements. In this regard, the conference submitted that sympathetic consideration should be given to request for preferential treatment from those states whose airports are not slot-constrained airports, consistent with relevant national legislation and international obligations. The Conference further concluded that any slot allocation system should be fair, non-discriminatory and transparent, and should take into account the interests of all stakeholders. The Sixth ICAO World Air Conference of 2013 has also developed modeled clauses on slot allocation in bilateral air service agreements. There is no provision in the Agreement with the UK which addresses the slot issue vis-à-vis the recommendations of the 2003 and more recently, the Sixth ICAO Worldwide Air Transport Conference of 2013.

3. Nigeria has no established national carrier to operate Nigeria's own part of these Agreements and this is to Nigeria's disadvantage. For example, in as much as reviews on the Agreement with the UK have increased frequency entitlement of the designated Carriers of the contracting Parties; Nigerian Carriers have never been able to utilize their frequency. The 2008 review provided for multiple designations of airlines, multiple entry points and twenty-one frequencies each week for either contracting Party. Yet, Nigerian Carriers are unable to utilize their frequency, whereas UK Carriers utilize theirs and at times, under commercial arrangement assist Nigerian Carriers to operate theirs. The absence of a national carrier has resulted in the designation of one or two privately owned Nigerian airlines as national carrier for the purpose of taking advantage of bilateral air service agreements and other international aviation agreements or policies. For now, there is no Nigerian Airline to fly the Nigerian-Israel route, whereas, Arik Air flies Nigeria-Ghana. The rationale for a national carrier is compelling in itself. Bilateral air service agreements favour national carriers. It offers countries with a well-developed and efficiently managed international airline, including a national carrier- a lucrative source of revenue. Consequently, Nigeria needs a well-developed and efficiently managed national carrier to utilize these frequencies.

5.4 Recommendations

In view of the findings above, the following recommendations are made:

1. The terms “Substantial Ownership and Effective Control” used in Article 6, 4 and 4 of the Agreement with the Ghana, UK and Israel respectively should be defined by way of a review of the said Agreement. “Substantial Ownership” in this context should be defined as a situation where the amount of ownership of the air carrier held by a party is up to 45%. As to the term “Effective Control”, it is the writer’s opinion that the Agreement should adopt the meaning suggested by Abeyratne, that is, ‘whoever directs corporate policy and oversees employment’. Also, “Fair and Equal Opportunity” conferred on Contracting Parties by Article 10, 11 and 13 of the Agreement with Ghana, UK and Israel respectively; should be defined to at least give a clue on the meaning ascribed to the terms in these Agreements. It is the writer’s opinion that such decision should take note of the strength of the Contracting Parties and the circumstance of each case. This is because; a layman’s definition of equality as meaning fifty-fifty may not be equitable in all cases. In addition, ‘incompetence’ as used in Article 20 of the Agreement with Israel should be defined to mean incompetence by virtue of ill health.
2. Concerning airport slot, it is the writers’ opinion that the Agreement with the UK should be reviewed to include a clause on airport slot. Nigerian

Aeronautical authorities should initiate consultation with the UK aeronautical authorities in order to amend and incorporate a provision on airport slot in the Agreement. The new provision on airport slot should be in line with the submissions of the conference, that is, it should sympathetically consider and give a preferential treatment to a state like Nigeria whose airports are not slot-constrained, it should be consistent with relevant national legislation and international obligations; it should be fair, non-discriminatory and transparent, and should take into account the interests of all stakeholders.

3. Nigerian government should strive to have an efficient air transport by ensuring the presence of a coherent aviation transport policy that is not only in theory but also being practiced. The policy should be well tailored to ensure coordination and rationality in the transport sector; improve the management and security situation at airports; employ aviation and security experts; expend action on repair at airports when they are closed down for repairs; and should ensure that all airlines operating in the Country adhere strictly to safety standards. Nigeria should be more serious and more committed in its investment on the Nation's aviation industry. Sound national air carrier should be established and the hitherto dilapidated aviation-related facilities should be fixed so as to boost the strength of our national air carriers and to effectively

operate the Nigerian Agreements in relation to frequency. This if done, will positively affect the economy of the Country. What is worth doing is worth doing very well.

In conclusion, air transportation is an essential part of economic development as it is one of the indices for measuring the development of a country. Nigeria's aviation industry is still underdeveloped. Air transport infrastructure development remains a major tool for achieving meaningful development that would yield revenue for the country. The lack of a national air carrier puts Nigeria to a disadvantage in the operation of its air service agreements with other countries that have one. A well-functioning air transport sector which is equipped and well managed is necessary to utilize the benefits accruing from these bilateral air service agreements. More determined steps and stronger political will is needed to be exhibited in building a good air transport industry and thereby establish an efficient and effective national carrier to operate the frequency distribution in bilateral air service agreements of Nigeria with other countries.

5.5 Conclusion

The air transport industry has become a very competitive industry. Major air powers are battling to ensure profitable markets with all the legal and regulatory changes in the rapidly changing industry's market. Nigeria should not be left out in this.

Therefore, a developing Country like Nigeria needs and should endeavor to carry on the air transport business within a well-organized framework with a firm legal structure and on a sound infrastructural footing. It is when this is done, that the existing routes and frequencies emanating from her bilateral air service agreements with other countries will be maximized.

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F. Interview

- Interview granted the researcher by Mr. B. A. Ngbuku, Assistant Director, Federal Ministry of Aviation (MOA), Abuja at the Head Quarters of the MOA on Thursday, 23rd August, 2012.
- Interview granted the researcher by Mr. N. Egbukole, Chief Air Transport Officer, Directorate of Air Transport, Nigerian Civil Aviation Authority, Lagos at the Head Quarters of NCAA on Friday, 17th August, 2012.

APPENDIX 1

AN INTERVIEW GRANTED THE RESEARCHER BY MR. B. A. NGBUKU, ASSISTANT DIRECTOR, FEDERAL MINISTRY OF AVIATION, ABUJA AT THE HEADQUARTERS OF THE SAID MINISTRY ON MONDAY, 23RD JULY, 2012.

1. Question: Sir, what is your name?
Answer: My name is Mr. B. A. Ngbuku.
2. Question: What position do you hold here in this Ministry?
Answer: I am the Assistant Director, International Relations, Federal Ministry of Aviation, Abuja.
3. Question: What are the institutions or persons responsible for the negotiation or review of bilateral air service agreements?
Answer: In Nigeria, the negotiation or review of bilateral air service agreements is the responsibility of the Federal Ministry of Aviation. The Ministry performs this function in conjunction with other institutions like Nigerian civil Aviation Authority, Ministry of Foreign Affairs, Ministry of Justice, Nigerian Immigration Service, Nigerian Customs Service, the designated carrier of the two contracting parties on the route, performing this function, and other airlines that ply the route.
4. Question: What is the role of the Department of International Relations in the Federal Ministry of Aviation?
Answer: The Ministry of Aviation through the Department of International Relations coordinates and promotes bilateral and multilateral air service agreements between Nigeria and other friendly individual countries. Generally, the International Relations Department performs the following functions: negotiate new or review subsisting air service agreements, monitor the implementation of air service agreements, negotiate pool and commercial agreements to cover extra-bilateral frequencies and unilateral exploitation, and monitor pool and commercial agreements between Nigeria's designated carriers and the designated carriers of other countries especially on regular payment of royalties.
5. Question: What is the procedure for entering into bilateral air service agreements of Nigeria?
Answer: Prior to negotiation, the Ministry of Aviation holds consultations with Nigerian aviation regulatory authorities and other concerned institutions. The views of these institutions are taken into consideration in drawing a brief for submission to the Federal Executive Council for approval and which forms the basis of negotiation. When a date and venue for negotiation have been fixed, a negotiating team is assembled under the leadership of an officer not below the rank of a director. The Chairmen of the delegations initial the agreed text or agreed minutes. The text is submitted to the Federal Executive Council for approval together with a full report on the proceedings. The Federal Executive Council has the final responsibility to consider the whole agreement and may propose amendment through diplomatic channels. If after such consideration, the Council is satisfied that the negotiation is fair and the Minister of Justice has no objection, it will authorize the Minister of Aviation to sign the agreement on behalf of the Nigerian Government.
6. Question: How is bilateral air service agreements enforced?
Answer: The enforcement of bilateral air service agreements is a function which is carried out by the Nigerian aviation regulatory agencies with the directive of the Ministry of Aviation and in conformity with ICAO, IATA and with international best practices.
7. Question: What are the problems associated with the implementation of bilateral air service agreements Nigeria has negotiated with other countries?

Answer: The major problem associated with the implementation of bilateral air service agreements in Nigeria is the lack of a national carrier to operate Nigeria's on side of these agreements on capacity or frequency.

8. Question: In your opinion sir, why is Nigeria without a national air carrier?

Answer: In my opinion, Nigeria is without a national carrier because the government has not decided to invest on getting one.

9. Question: Are there any challenges facing the aviation industry in Nigeria, and if there are, what are they?

Answer: Yes, the Nigerian aviation industry is challenged. This challenge includes:

- i.) Inadequate funding: there is insufficient budgetary provision by the federal government. Aviation is a capital intensive sector which demands a lot of huge capital projects. The operation and management of some aspects of the sector is done by the federal government through the Federal Airports Authority of Nigeria (FAAN) and the National Airspace Management Agency (NAMA) which is responsible for the traffic control and navigational aids for aircrafts. The airport navigational aids and air traffic control facilities are inadequate and in some case obsolete.
- ii.) Corruption and bad management: Nigeria in general is known as a corrupt country. The challenges of this industry are further complicated by endemic corruption and misappropriation of budgetary allocation to the sector. The government has in recent times doled out funds for the maintenance and management of the sector but the best has not been achieved. The management of the sector is not also of the best as ministers are often changed and there is a lot of unskilled and less qualified staff.
- iii.) Lack of patronage: which persist in the aviation industry due to the high cost of air tickets as a result of inability of many Nigerian to afford flight tickets. Many aircraft have a lot of vacant seat in flight.
- iv.) High cost of operation: Many airline companies over the years folded up due to high the high cost of maintaining their aircraft and operational cost. Local operators are often confronted with high aviation fuel cost, excessive taxes and aircraft maintenance.

10. Thank you, Sir for granting me your time. I shall call you from time to time.

APPENDIX 2

AN INTERVIEW GRANTED THE RESEARCHER BY MR. N. EGBUKOLE, CHIEF AIR TRANSPORT OFFICER, DIRECTORATE OF AIR TRANSPORT, NIGERIAN CIVIL AVIATION AUTHORITY, LAGOS AT THE HEADQUARTERS OF THE SAID PARASTATAL ON FRIDAY, 17TH AUGUST, 2012.

1. Question: What is your name, Sir?
Answer: My name is Mr. N. Egbukole.
2. Question: What position do you hold here in this Parastatal?
Answer: I am the Chief Air Transport Officer, Directorate of Air Transport, Nigerian Civil Aviation Authority, Lagos.
3. Question: What are the different directorates in NCAA and their functions?
Answer: The NCAA is made up of the following directorates through which it accomplishes its functions: i.) Flight Standards Group (FSG) which is a group of Directorates that perform the joint safety oversight responsibilities. Directorates under FSG are Directorate of Operations and Training (DOT), Directorate of Airworthiness Standards (DAWS), Directorate of Licensing (DOL) and the Department of Aeromedical Services (DAMS). The main focus of the FSG is to ensure coordination and communication through the harmonization of processes and safety standards that will ensure effective and efficient certification, licensing and surveillance of aviation organizations and personnel. ii.) Directorate of Airworthiness Standards (DAWS): It is the responsibility of the Airworthiness Directorate to ensure that all aircraft in Nigeria are airworthy, i.e. fit to fly. DAWS also inspects and certifies aircraft according to established procedures; proposes, reviews and approves designs, repairs and modifications; ensures that safety requirements are complied with and, where deficiencies are identified, corrective measures are taken (through letters, fines, suspension of certificates, etc.); supervises the whole aviation industry in order to align it with global aviation trends and propose corrective measures to ensure air safety. iii.) Directorate of Licensing (DOL): is responsible for licensing of all personnel in line with the Nigerian Civil Aviation Regulations that in turn, are aligned with ICAO Annex 1 Standards and Recommended Practices (SARPs). iv.) Directorate of Operations and Training (DOT): is responsible for the effective oversight activities and setting of standards in all areas of flight operations and training in the Nigeria air transport industry. v.) Directorate of Aerodrome and Airspace Standards (DAAS): The primary responsibility of the DAAS is to ensure safety and security at all Nigerian aerodromes in conformance with the relevant standards and recommended practices of ICAO Annexes. vi.) Directorate of Finance and Administration: is responsible for all financial, administrative, human resources, corporate affairs/planning functions while projecting the image of the organization and articulating policies for effective and efficient service delivery in the Authority based on SERVICOM; and the Consumer Protection Department (CPD) was launched in March 2001, to ensure that all aviation consumers obtain the best services in air transportation. vii.) Directorate of Air Transport Regulation (DATR).
4. Question: What are the problems associated with the implementation of bilateral air service agreements Nigeria has negotiated with other countries?
Answer: The major problem associated with the implementation of bilateral air service agreements in Nigeria is the lack of a national carrier to operate Nigeria's on side of these agreements on capacity or frequency.
5. Question: In your opinion sir, why is Nigeria without a national air carrier?

Answer: Nigeria's lack of a national air carrier is connected to the problems the aviation industry has faced in the past and is currently facing now.

6. Question: sir, you have just mentioned that the industry is ceased with problems, can you state the problems?

Answer: The problems are connected to another and they include corruption, poor or weak management, high cost of operation and maintenance, inadequate funding, poor response to emerging air transport needs, lack of patronage of air transport.

7. Thank you, Sir. I appreciate the time and your patience.

APPENDIX 3

LIST OF INTERNATIONAL AIR LAW INSTRUMENTS SIGNED BY NIGERIA

- Warsaw Convention (1999) - Rules for International Carriage by Air.
- Convention on International Civil Aviation (1944).
- International Air Transport Agreement.
- International Air Service Transit Agreement.
- Geneva Convention (1948) - Recognition of Rights in Aircraft.
- Rome Convention (1952) - Damage to Third Parties on Surface.
- The Hague Protocol (1955) - Amending Warsaw Convention.
- Guadalajara Convention (1961) - Supplementing Warsaw Convention of 1929.
- Tokyo Convention (1963) - Offences and other acts committed on Board Aircraft.
- Hague Convention (1970) - Unlawful Seizure of Aircraft.
- Guatemala City Protocol (1971) - Amending Warsaw Convention of 1929 as amended by the Hague Protocol of 1955.
- Montreal Convention (1971) Unlawful Acts against the Safety of Civil Aviation.
- Additional Protocol No. 1 (1975) Amending Warsaw Convention of 1929.
- Additional Protocol No. 2 (1975) Amending Warsaw Convention of 1929 as amended by the Hague Protocol of 1955.
- Additional Protocol No. 3 (1975) Amending Warsaw Convention of 1929 as amended by the Hague Protocol of 1955 and Guatemala City Protocol of 1971.
- Montreal Protocol No. 4 (1975) Amending Warsaw Convention of 1929 as Amended by the Hague Protocol of 1955.
- Montreal Protocol (1978) Amending Rome Convention of 1952.
- Protocol relating to an Amendment to the Convention on International Civil Aviation [Article 83] Lease, Charter or Interchange.
- Montreal Supplementary Protocol (1988) Acts of Violence at airports COPASCARSAT Agreement (1988) International Satellite System for search and rescue.
- Convention on the Marking of Plastic Explosive (1991).
- Montreal Convention (1999) Rules for International Carriage by Air.
- Convention on International Interests in Mobile Equipment (Cape Town Convention 2001).
- Protocol to the Convention on International Interest in Mobile Equipment on Matters Specific to Aircraft Equipment (Cape Town Protocol on Aircraft equipment 2001)
- Convention on Compensation for Damage to Third Parties, Resulting from Acts Unlawful Interference Involving Aircraft, 2009.
- Convention on Compensation for Damage Caused by Aircraft to Third Parties [General Risks Convention (2009)].
- Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing Convention 2010).
- Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (Beijing Protocol 2010).
- The United Nations Framework Convention on Climate Change (UNFCCC).

APPENDIX 4
TEMPLATE BASA FOR AFRICAN COUNTRIES

BILATERAL AIR SERVICES AGREEMENT

BETWEEN

THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA

AND

THE GOVERNMENT OF -----

PREAMBLE

The Government of the Federal Republic of Nigeria and the Government of Republic (hereinafter referred to as the Contracting Parties:

Desiring to co-operate and facilitate the expansion of international air transport opportunities between the two countries;

Desiring to make it possible for their Airlines to co-operate and offer the travelling public a variety of service options;

Desiring to ensure the highest degrees of safety and security in international air transport; and

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on 7th Day of December, 1944;

The Yamoussoukro Declaration on a New African Air Transport policy adopted on 7th October, 1988;

The Resolution adopted by the African Ministers responsible for Civil Aviation in Mauritius on the 9th of August, 1994;

The Ministerial Decision relating to the implementation of the Yamoussoukro Declaration concerning the Liberalization of access to air transport markets in Africa on 14th November, 1999 as endorsed by the OAU Heads of State in July, 2000; and

Desiring to conclude an Agreement supplementary to the above, for the purpose of establishing air services between and beyond their respective territories.

ARTICLE 1 **DEFINITIONS**

1. For the purpose of the present Agreement and any annex attached thereto, unless the context otherwise requires, the term:-
 - (a) **“Aeronautical Authorities”** means, in the case of the Federal Republic of Nigeria, the Minister of Aviation and any person or body authorized to perform any functions at present performed by the said Minister or similar functions, and, in the case of Republic of, the Minister of Transport and any person or body authorized to perform any functions at present performed by the said Minister or any functions similar to that being performed by the said Minister;
 - (b) **“Agreed Services”** means scheduled International Air Services between and beyond the respective territories of Nigeria and for the transport of passengers, baggage and cargo, separately or in any combination;
 - (c) **“Agreement”** means this Agreement, its Annex drawn up in application thereof, and any amendment to the Agreement or to the annex;
 - (d) **“Air services”, “international air services”, “airline” and “stop for non-traffic purposes”** have the meanings respectively assigned to them in Article 96 of the Convention;
 - (e) **“Capacity”** is the amount(s) of services provided under this Agreement, usually measured in the number of flights (frequencies) or seats or tons of cargo offered in a market (city pair, or country to country) or on a route during a specific period, such as daily, weekly, seasonally or annually;
 - (f) **“Cargo”** includes mail;
 - (g) **“Convention”** means the convention on international civil aviation opened for signature at Chicago on the seventh day of December, 1944 and includes any Annexes adopted under the Article 90 and 94 thereof so far as those annexes and amendments have been adopted by both contracting parties;

- (h) **“Decision”** means the text of the Yamoussoukro Ministerial Decision of 14th November, 1999 as endorsed by the OAU (AU) Heads of States including the Appendices and Amendments;
- (i) **“Designated Airline”** means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;
- (j) **“Regular Equipment”, “aircraft stores” and “Spare Parts”** have the meanings respectively assigned to them in Annex 9 of the convention;
- (k) **“User Charges”** means charges made to airlines by the competent authorities or permitted by them to be made for the provision of airport facilities, property and/or of air navigation facilities, including related services and facilities for aircraft, their crews, passengers, baggage and cargo;
- (l) **“specified Routes”** means routes specified in the annex of this agreement;
- (m) **“Tariff”** means the prices to be paid for the carriage of passengers, baggage, and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services but excluding remuneration and conditions for the carriage of mail; and
- (n) **“Territory”** in relation to a state means the land areas and territorial waters adjacent thereto under the sovereignty or protection of that state;

ARTICLE 2

RIGHTS AND PRIVILEGES OF DESIGNATED AIRLINES

1. Each contracting party shall grant to the other contracting party in respect of scheduled international air services, the following:
 - (a) The right to fly across its territory without landing;
 - (b) The right to make stops in its territory for non-traffic purposes; and
 - (c) The right to make stops in its territory for the purpose of taking on board and discharging passengers and cargo including mail.

ARTICLE 3

DESIGNATION AND AUTHORIZATION OF AIRLINES

1. Each contracting party shall have the right to designate in writing to the other contracting party, one or more airlines for the purpose of operating the agreed services on the specified routes.
2. On receipt of the notice of such designation, the other contract party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay but not later than thirty (30) days grant to the airline designated, the appropriate operating authorization.
3. The aeronautical authorities of one contracting party may require an airline designated by the other contracting party to satisfy them that it is qualified to fulfill the conditions prescribed under the laws and regulations which are applicable to the operation of international air services by such authorities in conformity with the provisions of the convention.
4. Each contracting party shall have the right to refuse to grant the operating authorizations referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 2 of this Agreement, in any case where the said contracting party is not satisfied that substantial ownership and effective control of that airline are vested in the contracting party designating the airline or in its nationals.

5. When an airline has been so designated and authorized, it may begin at any time to operate the agreed services provided that the conditions of operation of those services and the tariffs to be applied thereon have been filed under Article 13 and 14 of this Agreement.

ARTICLE 4
VALIDITY OF CERTIFICATES

1. Certificates of airworthiness, certificates of competency and licenses issued or validated by either contracting party which have not expired, shall be recognized as valid by the other contracting party for the purpose of operating the routes specified in the annex.
2. Each contracting party reserves the right to refuse to recognize as valid for the purpose of operating the said specified routes over its own territory;
 - i. Certificates of competency and licenses issued to its own nationals by the other contracting party.
 - ii. If the privileges or conditions of the licensees or certificates issued or rendered valid by one contracting party permit a difference from the standards established under the convention, whether or not such difference has been filed with the International Civil Aviation Organization.

ARTICLE 5
REVOCATION AND SUSPENSION OF RIGHTS

1. Each contracting party shall have the right to revoke an operating authorization, or to suspend the exercise of the rights specified in Article 2 of this Agreement by the airline designated by the other contracting party or to impose such conditions as it may deem necessary on the exercise of this rights in any of the following cases:-
 - a) Where it is not satisfied that substantial ownership and effective control of that airline are vested in the contracting party designating the airline or its national;
 - b) Failure by the airline to comply with the laws or regulations of the contracting party granting these rights: or
 - c) If the airline otherwise fails to operate the agreed services in accordance with the conditions prescribed under this agreement and the annex attached hereto.
2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this Article is essential to prevent further infringement of laws or regulations, such right shall be exercised only after consultation with the other contracting party.

ARTICLE 6
EXEMPTION FROM CUSTOMS DUTIES

1. Aircraft operated on international services by the designated airline of either contracting party, as well as their regular equipment, supplies of fuel and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempted from all custom duties, inspection fees and other similar charges on arriving in the territory of the other contracting party, provided such equipment, supplies and aircraft stores remain on board the aircraft up to such time as they are re-exported or are used on the part of the journey performed over the territory.
2. There shall be exemption from the same duties, fees and charges with the exception of charges corresponding to the services performed for:-
 - (a) Aircraft stores taken on board in the territory of a contracting party, within limits fixed by the authorities of the said contracting party, and for use on board outbound

- aircraft engaged in an international service by the designated airline of the other contracting party;
- (b) Spare parts and regular equipment imported into the territory of either contracting party for the maintenance or repair of aircraft used on international services by the designated airline of the other contracting party;
 - (c) Fuel and lubricants for the supply of outbound aircraft operated on international services by the designated airline of the other contracting party even when these supplies are to be used on the part of the journey performed over the territory of the contracting party in which they are taken on board.
3. Materials referred to in sub-paragraphs (a), (b) and (c) above may be required to be kept under customs supervision or control.

ARTICLE 7

TREATMENT OF REGULAR AIRBORNE EQUIPMENT RETAINED ON BOARD

The regular airborne equipment as well as the materials and supplies retained on board the aircraft operated by the designated airline of either contracting party may be unloaded in the territory of the other contracting party only with the approval of the customs authorities of the contracting party. In such cases, they may be placed under the supervision of the said customs authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

ARTICLE 8

APPLICATION OF NATIONAL LAWS AND REGULATIONS

1. The laws and regulations of each contracting party governing the entry into, remaining in and departure from its territory of aircraft engaged in international air services and the operation and navigation of aircraft while within the limits of its territory, shall also be applicable to the aircraft of the designated airline of the other contracting party.
2. The laws and regulations of each contracting party governing the entry into, remaining in and departure from its territory of passengers, crew, mail and cargo transported on board the aircraft and in particular those regarding passports, customs and sanitary control shall be applied to passengers, crew, mail and cargo taken on board the aircraft of the designated airline of the other contracting party.
3. Subject to the National Laws and regulations of the contracting parties, passengers, baggage and cargo in direct transit across the territory of each contracting party and not leaving areas of the airport reserved for such purpose shall, except in respect of security measures against violence, air piracy, narcotics control be subject to no more than a simplified control. Such baggage and cargo in direct transit shall be exempt from customs duties, excise taxes and other similar national and/or local fees and charges.

ARTICLE 9

AVIATION SAFETY

1. The contracting parties may request consultation concerning the safety standards maintained by the other contracting party relating to aeronautical facilities and services, air crew, aircraft and operation of its designated airlines. If, following such consultations, the contracting party finds that the other party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards that may be established pursuant to the convention, the other party shall be notified of such findings and

the steps considered necessary to conform with these minimum standards, and the other party shall take appropriate corrective action.

2. Each party reserves the right to withhold, revoke, or limit the operating authorization of the airline designated by the other party in the event the other party does not take such appropriate corrective action within a reasonable time.

ARTICLE 10 **AVIATION SECURITY**

1. Consistent with their rights and obligations under international law, the contracting parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference form an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the contracting parties shall in particular act in conformity with the provisions of the convention on offences and certain other Acts committed on Board aircraft, signed at Tokyo on 14th September 1963, the convention for the suppression of unlawful seizure of Aircraft, signed at the Hague on 16th December 1970 and the convention for the suppression of Unlawful Acts against the safety of Civil Aviation, signed at Montreal on 23rd September 1971, its supplementary protocol for the suppression of unlawful acts of violence at airports serving international civil aviation, signed at Montreal on 24th February, 1988 as well as with any other convention and protocol relating to the security of civil aviation which both contracting parties adhere to.
2. The contracting parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful act against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.
3. The contracting parties shall, also in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the parties, they shall require that operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions;
4. Each contracting party agrees that such operators of aircraft may be required to observe the aviation security by the other contracting party while entering into, departing from, or while within the territory of that other contracting party. Consequently, each contracting party shall ensure that adequate measures are effectively applied with its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each contracting party further agrees to give sympathetic consideration to any request from the other contracting party for reasonable special security measures to meet a particular threat;
5. In the event that an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful act against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the contracting parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof; and
6. When a contracting party has reasonable ground to believe that there is a departure from the provision of this article, the party may request immediate consultations with the other party. Failure to reach a satisfactory agreement within 30 days from the date of such request shall constitute grounds to withhold, revoke, limit or impose conditions on the operating

authorizations and technical permissions of an airline or airlines of that contracting party. When required by an emergency, a contracting party may take interim action prior to the expiry of 30 days.

ARTICLE 11
REPRESENTATION

The designated airlines of either contracting party shall be allowed to establish in the territory of the other contracting party offices for the promotion of air transportation and sale of air tickets as well as other facilities required for the provision of air transportation. The airline shall also be allowed to bring in and maintain in the territory of the other contracting party, in accordance with the laws and regulations of that other contracting party relating on entry, residence and employment, managerial, sales, technical operational and other specialist staff required for the provision of air transportation.

ARTICLE 12
MODE OF OPERATION

1. There shall be fair and equal opportunity for the designated airline of each contracting party to operate the agreed services on the specified routes.
2. In operating the agreed services on the specified routes, a designated airline of one of the parties may enter into cooperative marketing arrangements such as blocked space, code sharing, franchising or leasing arrangements, with an airline or airlines of the other party.

ARTICLE 13
APPROVAL OF CONDITIONS OF OPERATION

1. The time-table of the agreed services and in general the conditions of operation, shall be submitted by the designated airline of one contracting party for the approval of the aeronautical authorities of the other contracting party at least thirty (30) days before the intended date of their introduction.
In special cases this time limit may be reduced, subject to the agreement of the said authorities.
2. Any modifications to such time-table and conditions shall also be submitted to the aeronautical authorities for approval.

ARTICLE 14
TARIFF

1. The contracting parties shall allow tariffs for air transportation to be established by each designated airline based upon commercial considerations in the market place. Intervention by the parties shall be limited to:
 - (a) Prevention of discriminatory tariffs or practice;
 - (b) Protection of consumers from tariffs that are unreasonably high or restrictive due to the abuse of a dominant position; and
 - (c) Protection of airlines from tariffs that are artificially low.
2. Each contracting party may require notification to, or filing with, its aeronautical authorities of tariffs to be charged to or from its territory by airlines of the other contracting party. Notification or filing by the airlines of the other contracting party may be required no more than 30 days before the proposed date of effectiveness. Notification for filing may be permitted on shorter notice than normally required. If a contracting party permits an airline

to file a tariff on short notice; the tariff shall become effective on the proposed date for traffic originating in the territory of that contracting party.

3. If a contracting party believes that a tariff proposed to be charged by an airline of the other contracting party for international air transportation between the territories of the contracting parties is inconsistent with considerations set forth in paragraph 1 of this, Article, it shall notify the other contracting party of the reasons for its dissatisfaction as soon as possible and request consultations. These consultations shall be held not later than 30 days after receipt of the request, and the contracting parties shall co-operate in securing information necessary for reasonable resolution of the issue. If the contracting parties reach agreement with respect to a tariff for which a notice of dissatisfaction has been given, each contracting party shall use its best efforts to put that Agreement into effect. Without such mutual agreement, the previously existing tariff shall continue in effect.

ARTICLE 15 **USER CHARGES**

1. Any charge that may be imposed or permitted to be imposed by a contracting party for the use of airports and air navigation facilities by the aircraft of the other contracting party shall not be higher than those that would be paid by its national air craft engaged in schedule international air services.

ARTICLE 16 **STATEMENT OF STATISTICS**

1. The Aeronautical authorities of either contracting party shall supply to the aeronautical authorities of the other contracting party at the latter's request: such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airline of either contracting party.
2. Such statement shall include the information required to determine the amount of traffic carried by the designated airline on the agreed services and the origins and destinations of such traffic.

ARTICLE 17 **TRANSFER OF EXCESS RECEIPTS**

1. Each contracting party shall grant to the designated airline of the other contracting party the right to transfer in convertible currencies at the official rate of exchange the excess of receipt over expenditure earned by the airline in its territory in connection with the carriage of passengers, baggage, mail and cargo, subject to the prevailing foreign exchange regulations in the territory of each contracting party.
2. Whenever the payment system between the contracting parties is governed by a special agreement that agreement shall apply in place of the provisions of this Article.

ARTICLE 18 **CONSULTATIONS**

1. Each contracting party can at any time, ask for consultation between the competent authorities of the two contracting parties for the interpretation, application or the modification of the present agreement and its appendices.
2. This consultation should begin no later than sixty (60) days from the date of receipt of the request.

3. The possible changes that may be made in this agreement will come into effect after confirmation by exchange of notes, through diplomatic representations.

ARTICLE 19

SETTLEMENT OF DISPUTES

1. If any dispute arises between the contracting parties relating to the interpretation or application of this agreement the contracting parties shall in the first place endeavour to settle it by negotiation.
2. If the contracting parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, as they may agree on, for mediation.
3. If the contracting parties do not agree to mediation, or if a settlement is not reached by negotiation, the dispute shall, at the request of either contracting party, be submitted for decision to a tribunal of three (3) arbitrators which shall be constituted in the following manner:
 - (a) Within sixty (60) days of receipt of a written request for arbitration, each contracting party shall appoint one arbitrator. A national of a third state, who shall act as the president of the tribunal, shall be nominated as the third arbitrator by the two appointed arbitrators within sixty (60) days of the appointment of the second arbitrator;
 - (b) If within the time limits specified in paragraph (3) subparagraph (a) of this Article, any appointment has not been made, either contracting party may, in writing, request the president of the council of the International Civil Aviation Organization to make the necessary appointment within thirty (30) days. If the president is of the same nationality as one of the contracting parties, the most senior Vice President who is not disqualified on that same ground shall make the appointment. In such case the arbitrator or arbitrators appointed by the said president or the vice president as the case may be, shall not be nationals or permanent residents of the state parties to this agreement.
4. Except as hereinafter provided in this Article or otherwise agreed by the contracting parties, the tribunal shall determine the place where the proceeding will be held and the limits of its jurisdiction in accordance with this Agreement. The tribunal shall establish its own procedure. At the direction of the tribunal, or at the written request of either of the contracting parties, a conference to determine the precise issues to be arbitrated shall be held not later than thirty (30) days after the tribunal is fully constituted.
5. Except as otherwise agreed by the contracting parties or prescribed by the tribunal, each contracting party shall submit a memorandum within forty-five (45) days after the tribunal is fully constituted. Replies shall be due sixty (6) days later. The tribunal shall hold a hearing at the request of either contracting party, or at its discretion, within thirty (30) days after replies are due.
6. The tribunal shall attempt to give a written decision within thirty (30) days after completion of the hearing or, if no hearing is held, thirty (30) days after both replies are submitted. The decision shall be taken by a majority vote.
7. The contracting parties may submit written requests for clarification of the decision within fifteen (15) days after it receives the decision of the tribunal, and such clarification shall be issued within fifteen (15) days of such request.
8. The contracting parties shall comply with any stipulation provisional ruling or final decision of the tribunal.

9. Subject to the final decision of the tribunal, the contracting parties shall bear the costs of its arbitrator and an equal share of the other costs of the tribunal, including any expenses incurred by the president or vice president of the council of the International Civil Aviation Organization in implementing the procedures in paragraph 3(b) of this Article.
10. If, and as long as, either contracting party fails to comply with a decision contemplated in paragraph (8) of this Article, the other contracting party may withhold, limit, suspend or revoke any rights or privileges which it has granted under this Agreement to the contracting party in default.

ARTICLE 20
EFFECT OF MULTILATERAL AGREEMENT

This Agreement and its annex shall be deemed amended so as to conform to any multilateral air transport agreement which may become binding on both contracting parties.

ARTICLE 21
AMENDMENTS

If either of the contracting parties considers it desirable to modify any provision of this Agreement, including the annex hereto, such modification, if agreed upon by the contracting parties and if necessary after consultation in accordance with Article 17 of this Agreement, shall come into effect when confirmed by Exchange of Notes through diplomatic channels.

ARTICLE 22
DURATION AND TERMINATION

1. This agreement shall remain in force for an indefinite period of time, subject to the provisions of paragraph (2) below.
2. Either contracting parties may at any time give notice to the other contracting party of its decision to terminate the Agreement. Such notice shall be simultaneously communicated to the African Union (AU) and the International Civil Aviation Organization (ICAO). In such a case, the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other contracting party unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other contracting party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by African Union (AU) and the International Civil Aviation Organization (ICAO).

ARTICLE 23
REGISTRATION WITH THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)

This agreement and any subsequent amendments hereto shall be registered with the International Civil Aviation Organization by the state where the signature of the Agreement will take place.

ARTICLE 24
ENTRY INTO FORCE

1. The Agreement and its annex shall enter into force provisionally on the date of its signature and definitively on the date of exchange of instruments of ratification thereof or when there has been an exchange of notes between the contracting parties through diplomatic channels, confirming that the constitutional requirements in their respective countries have been complied with.

2. This Agreement and its annex shall be subject to ratification by the contracting parties and shall be notified through diplomatic channels.

In witness whereof the undersigned, being duly authorized by their respective governments, have signed this agreement on the date herein specified.

Done at this in two (2) originals in the English Language.

.....
**For the Government of the
Republic of Nigeria.**

.....
**For the Government Republic
of ...**

**ROUTE SCHEDULE TO THE BILATERAL AIR SERVICES AGREEMENT
BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT
OF THE REPUBLIC OF -----**

**1. ROUTES TO BE OPERATED BY THE DESIGNATED AIRLINES OF
FEDERAL OF NIGERIA**

Point of Departure	Intermediate Points	Point (s) in.....	Points Beyond

Aircraft Type :
 Frequencies :
 Traffic Rights :

**B. ROUTES TO BE OPERATED BY THE DESIGNATED AIRLINE(S) OF
REPUBLIC OF**

Point of Departure	Intermediate Points	Point (s) in.....	Points Beyond

Aircraft Type :
 Frequencies :
 Traffic Rights :

APPENDIX 5
TEMPLATE BASA FOR NON-AFRICAN COUNTRIES

BILATERAL AIR SERVICES AGREEMENT

BETWEEN

THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA

AND

THE GOVERNMENT OF REPUBLIC OF.....

The Government of the Federal Republic of Nigeria and the Government of (hereinafter referred to as the “Contracting Parties”); Considering that the Federal Republic of Nigeria and the Government of are parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944; and ----- Desiring to conclude an Agreement, supplementary to the convention, for the purpose of establishing air services between and beyond their respective territories;

HAVE AGREED AS FOLLOWS:

ARTICLE 1
DEFINITION:

For the purpose of this Agreement (and the Annex attached hereto) unless the context otherwise requires:

- (a) **“Agreement”** means this Agreement, the Annex attached thereto and any or similar documents amending the present Agreement or the Annex;
- (b) **“The Convention”** means the convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944 and includes any annexes adopted under Article 90 of that convention made pursuant to Articles 90 and 94 thereof so far as those annexes and amendments have been adopted by both contracting parties;
- (c) **“Aeronautical authorities”** means, in the case of the Federal Republic of Nigeria, the Minister of Aviation and any person or body authorized to perform any functions at present performed by the said Minister or similar functions, and, in the case of the Government of, the Chairman of Civil Aviation Authority or any person or body authorized to perform any function at present exercisable by the said chairman;
- (d) **“Designated airline”** means an airline which has been designated and authorized in accordance with Article 4 of this Agreement;
- (e) **“Territory”** in relation to a state has the meaning assigned to it in Article 2 of the Chicago Convention;
- (f) **“Air services”, international air services” “airline” and “stop for non-traffic purposes”** have the meanings respectively assigned to them in Article 96 of the Convention;
- (g) **“Regular equipment” “aircraft stores” and “spare parts”** have the meanings respectively assigned to them in Annex 9 of the Convention; and
- (h) **“Tariff”** means the prices to be paid for the carriage of passengers, baggage, and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services but excluding remuneration and conditions for the carriage of mail.
- (i) **“Capacity”** in relation to an aircraft means the payload of the aircraft available on the route or section of a route; and in relation to a specified air service means the capacity of aircraft, used on such service, multiplied by the frequency of the flights, operated by such an aircraft over a given period and route or section of route.
- (j) **“User charges”** means any charge that may be imposed or permitted to be imposed by a contracting party for the use of airports and air navigation facilities.

ARTICLE 2
APPLICABILITY OF CHICAGO CONVENTION

The provisions of this Agreement shall be subject to the provisions of the convention in so far as those provisions are applicable to international air services.

ARTICLE 3
GRANT OF RIGHTS

1. Each contracting party grants to the other contracting party the following rights in respect of its scheduled international air services:
 - (a) The right of fly across its territory without landing;
 - (b) The right to make stops in its territory for non-traffic purposes.
2. Each contracting party grants to the other contracting party the rights specified in this agreement for the purpose of establishing scheduled international air services on the routes specified in the appropriate section of the schedules annexed to this Agreement. Such services and routes are hereinafter called “the agreed services, and “the specified routes” respectively. While operating an agreed service on a specified route, the airlines designated by each contracting party shall enjoy in addition to the rights specified in paragraph (1) of this article the right to make stops in the territory of the other contracting party at the points specified for that route in the schedules annexed to this agreement for the purpose of taking on board and discharging passenger and cargo including mail, in combination or separately.
3. Nothing in paragraph (2) of this Article shall be deemed to confer on the airlines of one contracting party, the privilege of taking on board, in the territory of the other contracting party, passengers and cargo including mail carried for hire or reward and destined for another point in the territory of the other contracting party.

ARTICLE 4
DESIGNATION AND AUTHORIZATION

1. Each contracting party shall have the right to designate in writing to the other contracting party one airline for the purpose of operating the agreed services on the specified routes.
2. On the receipt of the notice of such designation, the other contracting party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to the airline designated the appropriate operating authorization.
3. The aeronautical authorities of one contracting party may require an airline designated by the other contracting party to satisfy them that it is qualified to fulfill the conditions prescribed under the laws and regulations which are applicable to the operation of international air services by such authorities in conformity with the provisions of the convention.
4. Each contracting party shall have the right to refuse to grant the operating authorizations referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 3 of this Agreement, in any case where the said contracting party is not satisfied that substantial ownership and effective control of that airline are vested in the contracting party designating the airline or in its nationals.
5. When an airline has been so designated and authorized, it may begin at any time to operate the agreed services, provided that the conditions of operation of those services and the tariffs to be applied thereon have been approved under Article 14 of this agreement.

ARTICLE 5
VALIDITY OF CERTIFICATES

1. Certificates of airworthiness, certificates of competency and licenses issued or validated by either contracting party which have not expired, shall be recognized as valid by the other contracting party for the purpose of operating the routes specified in the annex.
2. Each contracting party reserves the right to refuse to recognize as valid for the purpose of operating the said specified routes over its own territory, certificates of competency and licenses issued to its own nationals by the other contracting party.

ARTICLE 6
REVOCATION AND SUSPENSION OF OPERATING AUTHORIZATION

1. Each contracting party shall have the right to revoke an operating authorization, or to suspend the exercise of the rights specified in Article 3 of this Agreement by the airline designated by the contracting party or to impose such conditions as it may deem necessary on the exercise of this rights in any of the following cases:
 - (a) If it is not satisfied that substantial ownership and effective control of that airline are vested in the contracting party designating the airline or in nationals of such contracting party;
 - (b) Failure by the airline to comply with the laws or regulations of the contracting party granting these rights; or
 - (c) If the airline otherwise fails to operate the agreed services in accordance with the conditions prescribed under this Agreement and the annex attached hereto.
2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this Article is essential to prevent further infringement of laws, or regulations, such right shall be exercised only after consultation with the other contracting party.

ARTICLE 7
EXEMPTION FROM CUSTOMS DUTIES

1. Aircraft operated on international services by the designated airline of either contracting party, as well as their regular equipment, supplies of fuel and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempted from all customs duties, inspection fees and other similar charges on arriving in the territory of the other contracting party, provided such equipment, supplies and aircraft stores remain on board the aircraft up to such time as they are re-exported or are used on the part of the journey performed over the territory.
2. There shall also be exemption from the same date, fees and charges with the exception of charges corresponding o the services performed for”
 - (a) Aircraft stores taken on board in the territory of a contracting party, within limits fixed by the authorities of the said contracting party, and for use on board outbound aircraft engaged in an international service by the designated airline of the other contracting party;
 - (b) Spare parts and regular equipment imported into the territory of either contracting party for the maintenance or repair of aircraft used on international services by the designated airline of the other contracting party;
 - (c) Fuel and lubricants for the supply of outbound aircraft operated on international services by the designated airline of the other contracting party even when these

suppliers are to be used on the part of the journey performed over the territory of the contracting party in which they are taken on board;

- (d) Advertising materials and airline documentation having no commercial value used by the designated airlines of one contracting party in the territory of the other contracting party;
- (e) The office equipment introduced in the territory of either contracting party in order to be used in the offices of the designated airline of the other contracting party provided that such equipment is in the disposal of those offices during three (3) years from the date of their introduction into that territory and the principle of reciprocity applies, in accordance with the rules of the land.

Materials referred to in sub-paragraphs (a), (b) and (c) above may be required to be kept under customs supervision of control.

- 3. Passengers, baggage and cargo in direct transit across the territory of one contracting party and not leaving the area of the airport reserved for such purpose shall be subject to a very simplified control. Baggage and cargo in direct transit only shall be exempt from customs duties and other similar taxes.
- 4. The regular airborne equipment, as well as the materials and supplies retained on board the aircraft of either contracting party, may be unloaded in the territory of the other contracting party only with the approval of the customs authorities of that territory. In such a case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

ARTICLE 8

APPLICATION OF NATIONAL LEGISLATION

- 1. The laws and regulations of a contracting party to the admission to or departure from its territory of passengers, crew or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, currency, health and quarantine shall be complied with by or on behalf of such passengers, crew or cargo upon entrance into or departure from, or while within the territory of that contracting party.
- 2. The laws and regulations of a contracting party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft of the other contracting party while within its territory shall be applied.

ARTICLE 9

AVIATION SAFETY

- 1. Each contracting party may request consultations at any time concerning safety standards in any area relating to aircrew, aircraft or their operation adopted by the other contracting party. Such consultations shall take place within (30) days of that request.
- 2. If, following such consultations, one contracting party finds that the other contracting party does not effectively maintain and administer safety standards in any such area that are at least equal to the minimum standards established at that time pursuant to the convention, the first contracting party of those findings and the steps considered necessary to conform with those minimum standards, and that other contracting party shall take appropriate corrective action. Failure by the other contracting party to take appropriate action within fifteen (15) days or such longer period as may be agreed, shall be grounds for the application of Article 5 of the Agreement.

3. Notwithstanding the obligations mentioned in Articles 33 of the convention, it is agreed that any aircraft operated by the airline of one contracting party on services to or from the territory of the other contracting party may, while within the territory of the other contracting party, be made the subject of an examination by the authorized representatives of the other contracting party, on board and around the aircraft to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (in this Article called “ramp inspection”), provided this does not lead to unreasonable delay.
4. If any such ramp inspection or series of ramp inspections gives rise to:
 - (a) Serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards at that time pursuant to the convention, or
 - (b) Serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the convention, the contracting party carrying out the inspection shall, for the purposes of Article 33 of the convention, be free to conclude that the requirements under which the certificate or licenses in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the convention.
5. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the airlines of one contracting party in accordance with paragraph 3 above is denied by the representative of that airline or airlines, the other contracting party shall be free to infer that serious concerns of the type referred to in paragraph 4 above arise and draw the conclusions referred in that paragraph.
6. Each contracting party reserves the right to suspend or vary the operating authorization of the airline of the other contracting party immediately in the event the first contracting party concludes, whether as a result of a ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.
7. Any action by one contracting party in accordance with paragraphs 2 or 6 above shall be discontinued once the basis for the taking of that ceases to exist.

ARTICLE 10 **AVIATION SECURITY**

Consistent with their rights and obligations under international law, the contracting parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference form an integral part of this agreement. Without limiting the generality of their rights and obligations under international law, the contracting parties shall in particular act in conformity with the provisions of the convention on offences and certain other Acts committed on Board Aircraft, signed at Tokyo on 14 September, 1963, the convention for the suppression of unlawful seizure of aircraft, signed at the Hague on 16th December, 1970 and the convention for the suppression of unlawful act against the safety of civil aviation, signed at Montreal on 23rd September, 1971. Additionally:

- (a) The contracting parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful act against the safety of such aircraft, their passenger and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.
- (b) The contracting parties shall, also in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation

Organization and designated as annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the contracting parties, they shall require that operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions;

- (c) Each contracting party agrees that such operators of aircraft may be required to observe the aviation security by the other contracting party while entering into, departing from, or while within the territory of that other contracting party. Consequently, each contracting party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each contracting party further agrees to give sympathetic consideration to any request from the other contracting party for reasonable special security measures to meet a particular threat; and
- (d) In the event that an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful act against the safety of each aircraft, their passengers and crew, airports or air navigation facilities occurs, the contracting parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident of threat thereof.

ARTICLE 11 **COMMERCIAL ACTIVITIES**

The designated airline/s of the other contracting party shall be allowed to establish in Nigeria a Ticket sales office in the airport only in accordance with the Nigeria/IATA BSP clearing House Agreement. The airline shall also be allowed to bring in and maintain in the territory of the other contracting party, in accordance with the laws and regulations of that other contracting party relating on entry, residence and employment, managerial, sales, technical, operational and other specialist staff required for the provision of air transportation.

ARTICLE 12 **PRINCIPLES GOVERNING OPERATIONS OF AGREED SERVICES**

1. There shall be fair and equal opportunity for the designated airline of each contracting party to operate the agreed services on the specified routes.
2. In operating the agreed services, the designated airline of one contracting party shall take into account the interest of the designated airline of the other contracting party so as not to affect unduly the services which the later provides on the whole or part of the same routes.
3. The total capacity to be provided on each of the specified routes shall be in accordance with reasonably anticipated traffic demands.
4. In order to meet the requirements of unexpected traffic demands of a temporary character, seasonal or future traffic growth on the specified routes in the annex to this agreement, the airline designated by both contracting parties shall make arrangements relating to the conditions under which the air services shall be operated. The arrangements so made by the designated airlines shall determine the frequency of services and the schedules. The arrangements together with any modifications thereto shall be submitted to the aeronautical authorities of the two contracting parties for approval.
5. If and so long as the designated airline of one contracting party does not desire to utilize the whole or part of its own share of the capacity on one or more routes, it may allow the airline of the other contracting party to utilize its said share of the capacity during a specified

period, subject to a commercial agreement between the designate airlines until such a time that the particular airline is ready to operate the whole or part of the capacity to which it is entitled.

ARTICLE 13

APPROVAL OF CONDITIONS OF OPERATION

1. The time-table of the agreed services and in general the conditions of operation, shall be submitted by the designated airline of one contracting party for the approval of the aeronautical authorities of the other contracting party at least thirty (30) days before the intended date of their introduction. In special cases this time-limit may be reduced, subject to the agreement of the said authorities.
2. Any modifications to such time-tables and conditions shall also be submitted to the aeronautical authorities for approval.

ARTICLE 14

TARIFFS

1. The tariffs to be charged by the designated airline of one contracting party for carriage to or from the territory of the other contracting party shall be established at reasonable rates due regard being paid to all relevant factors, including cost of operation, reasonable profit and tariffs of other airlines.
2. The tariffs referred to in paragraph (1) of this Article, together with the rates of agency commission applicably, shall, if possible, be agreed upon by the designated airlines of both contracting parties, in consultation if necessary with other airlines operating over the whole or part of the route, and such agreement, where possible, be reached through the rate-fixing machinery of the International Air Transport Association.
3. The tariffs agreed upon shall be submitted for the approval of the aeronautical authorities of both contracting parties at least thirty (30) days before the proposed date of their introduction. In special cases this time-limit may be reduced subject to the agreement of the said authorities.
4. If the designated airlines cannot agree on any of these tariffs, or if for some other reasons a tariff cannot be fixed in accordance with the provisions of paragraph (2) of this Article, or if during the first thirty (30) days of the thirty (30) days period referred to in paragraph (3) of this Article one contracting party gives the other contracting party notice of its dissatisfaction with any tariff agreed upon in accordance with the provisions of paragraph (2) of this Article, the aeronautical authorities of the contracting parties shall try to determine the tariff by agreement between themselves.
5. If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph (3) of this Article or on the determination of any tariff under paragraph (4), the dispute shall be settled in accordance with the provisions of Article 18 of this Agreement.
6. Subject to the provisions of paragraph (5) of this Article, no tariff shall come into force if the aeronautical authorities of each contracting party have not approved it.
7. The tariffs established in accordance with the provisions of this Article shall remain in force until new tariffs have been established in accordance with the provisions of this Article. Unless otherwise agreed by both contracting parties, tariffs however shall not have their validity extended by virtue of this paragraph for more than twelve (12) months after the date on which they otherwise would have expired.

ARTICLE 15
USER CHARGE

Any charge that may be imposed or permitted to be imposed by a contracting party for the use of airports and air navigation facilities by the aircraft of the other contracting party shall not be higher than those that would be paid by its national aircraft engaged in scheduled international air services.

ARTICLE 16
STATEMENTS OF STATISTICS

1. The aeronautical authorities of either contracting party shall supply of the aeronautical authorities of the other contracting party at the latter's request: such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airline of either contracting party.
2. Such statement shall include the information required to determine the amount of traffic carried by the designated airline on the agreed services and the origins and destinations of such traffic.

ARTICLE 17
TRANSFER OF EXCESS OF RECEIPTS

1. Each contracting party shall grant to the designated airline of the other contracting party the right to transfer inconvertible currencies at the official rate of exchange, the excess of receipt over expenditure earned by the airline in its territory in connection with the carriage of passengers, baggage, mail and cargo, subject to the prevailing foreign exchange regulations in the territory of each contracting party.
2. Whenever the payment system between the contracting parties is governed by a special agreement, that agreement shall apply in place of the provisions of this Article.

ARTICLE 18
CONSULTATIONS

1. Each contracting party can at any time, ask for consultation between the competent authorities of the two contracting parties for the interpretation, application or the modification of the present agreement and its appendices.
2. This consultation should begin at the latest sixty (60) days from the day of receipt of the request.
3. The possible changes that may be made in this agreement will come into effect after confirmation by exchange of letters, through diplomatic representations.

ARTICLE 19
SETTLEMENT OF DISPUTES

1. If any dispute arises between the contracting parties relating to the interpretation or implementation of this Agreement and its annex, the contracting parties shall in the first place endeavour to settle it by negotiation.
2. If the contracting parties fail to reach a settlement by negotiation, they may refer the dispute for discussion to some person or body; if they are unable to do so, the dispute shall at the request of either contracting party be submitted for decision of a tribunal of three arbitrators, one to be nominated by each contracting party and the third to be appointed by the two so nominated. Each of the contracting parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt of a notice by either contracting party from the other through diplomatic channels requesting arbitration of the dispute by such a

tribunal and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the contracting parties fails to nominate an arbitrator within the period specified or if the third arbitrator is not appointed within the period specified, the president of the council of the International Civil Aviation Organization may be requested by either contracting party to appoint an arbitrator or arbitrators as the case requires. In such a case, the third arbitrator shall be a national of a third state and shall act as president of the arbitral tribunal.

3. The arbitral tribunal shall first endeavour to reconcile the two contracting parties, failing which it shall consider the dispute and give its decision by majority vote. Unless otherwise agreed between the contracting parties, the said tribunal shall itself draw up its rules of procedures, choose its own venue and give its decision within ninety (90) days following its constitution.
4. The contracting parties shall comply with any decision given under paragraph (3) of this Article.
5. Each contracting party shall be responsible for the cost of its designated arbitrator and subsidiary staff provided, and both contracting parties shall share equally all such further expenses involved in the activities of the tribunal including those of the president.
6. If, and so long as either contracting party fails to comply with a decision given under this Article, the other contracting party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this Agreement to the contracting party in default or to its designated airlines.

ARTICLE 20

EFFECT OF MULTILATERAL AGREEMENT

This agreement and its annex shall be deemed amended so as to conform with any multilateral air transport agreement which may become binding on both contracting parties.

ARTICLE 21

AMENDMENTS

1. If either of the contracting parties considers it desirable to modify any provision of this agreement, such modifications, if agreed between the contracting parties and if necessary after consultation in accordance with Article (18) of this Agreement, shall come into effect when confirmed by an exchange of notes, through the diplomatic channels.
2. If the amendment relates to the provisions of the agreement other than those of the annexed schedules, the amendment shall be approved by each contracting party in accordance with its constitutional procedure.
3. If the amendment relates only to the provisions of the annexed schedules, it shall be agreed upon between the aeronautical authorities of both contracting parties.

ARTICLE 22

REGISTRATION WITH THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

This agreement and any subsequent amendments hereto shall be registered with the International Civil aviation Organization by the state where the signature of the agreement will take place.

ARTICLE 23
TERMINATION

1. A contracting party may at any time give notice to the other contracting party of its decision to terminate this agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other contracting party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgment of the receipt by the other contracting party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.
2. This agreement and its annex shall be subject to ratification by the contracting parties and instruments of ratification shall be exchanged through diplomatic channels.

ARTICLE 24
ENTRY INTO FORCE

This agreement shall be approved according to the constitutional requirements in the country of each contracting party and shall come into force on the day of an exchange of diplomatic notes by the contracting parties.

In witness whereof, the undersigned, being duly authorized thereto by their respective governments, have signed the present agreement.

Done at Abuja the day of.....in two (2) originals in the English andLanguages both texts being equally authentic. In case of divergent interpretation, the English text shall prevail.

.....
For the Government of Nigeria

.....
For the Government of

ANNEX

A. ROUTES SCHEDULE OF THE DESIGNATED AIRLINE OF NIGERIA

Point of Departure	Intermediate Points	Point (s) in.....	Points Beyond
Any point(s) in Nigeria	Any Point(s)		Any Point(s)

B. ROUTES SCHEDULE OF THE DESIGNATED AIRLINE OF

Point of Departure	Intermediate Points	Point (s) in.....	Points Beyond
Any point(s) in	Any Point(s)		Any Point(s)

ANNEX 6
MODEL BILATERAL CLAUSES ON SLOT ALLOCATION

Model clause (**Option 1**) is endorsed by the Air Transport Committee for inclusion in the ICAO Template Air Services Agreement (TASA) and for optional use by States.

Text of the clause	Explanatory notes
Option 1	
[Article X Slot allocation]	<i>Provisions on slot allocation may be included in the Agreement either as a stand-alone article or be placed under an appropriate article (for example, under a Commercial Opportunity article).</i>
1. Each Party shall ensure that its procedures, guidelines and regulations to manage slots applicable to airports in its territory are applied in a fair, transparent, effective and non-discriminatory manner.	<i>This clause sets out the general principles that the parties should apply in handling slot-related issues.</i>

Below are two additional options of bilateral clauses (**Options 2 and 3**) developed by the ICAO Secretariat, available for possible use by States if they so wish.

Text of the clauses	Explanatory notes
Option 2	
1. Each Party shall facilitate the operation of the agreed services by the designated airlines of the other Party, including granting the necessary landing and take-off slots, subject to the applicable national and international rules and regulations, and in accordance with the principle of fair and equal opportunity, reciprocity, non-discrimination and transparency.	<i>Paragraph 1 recognizes that Parties have the obligation to facilitate the exercise of the rights granted under the Agreement, and the general principles to be followed. At the same time it clearly specifies that allocation and granting of slots are subject to applicable national laws and regulations. The word “international” is used to cover situations where regional or international rules or guidelines may apply, such as the EU rules and LATA guidelines.</i>
2. Both Parties shall make every effort to resolve any dispute over the issue of slots affecting the operation of the agreed services, through consultation and negotiation in accordance with the provisions of Article X (Consultation) or	<i>Paragraph 2 directs the Parties to use the consultation and dispute settlement mechanisms to address any disputes.</i>

<p>through the dispute resolution provisions of Article Y (Dispute settlement).</p>	
<p>Option 3</p>	
<p>1. In respect of the allocation and grant of slots at airports in its territory, each Party will, in accordance with local slot allocation rules, procedures or practices which are in effect or otherwise permitted, ensure that the airlines of the other Party:</p> <ul style="list-style-type: none"> (i) are accorded fair and equal opportunity to secure slots for the operation of the agreed services; and (ii) are afforded no less favourable treatment than any other national or international airlines operating similar services to/from the same airport. <p>The terms of this paragraph are subject to national and international laws and regulations applicable to the allocation and grant of slots at their airports.</p> <p>2. In case of any dispute over the issue of slot allocation affecting the exercise of the rights granted under the present Agreement, both Parties shall endeavour to resolve the dispute through consultation and negotiation in accordance with the provisions of Article X (Consultation), or through the dispute resolution provisions of Article Y (Dispute settlement).</p>	<p><i>Paragraph 1 stresses the principles of fair and equal opportunity, and non-discriminatory treatment that should be applied in managing slots, while giving recognition that domestic, regional or international rules and procedures also apply.</i></p> <p><i>Paragraph 2 directs the Parties to use the consultation and dispute settlement mechanisms to address any disputes.</i></p>

