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## **THE IMPERATIVE OF LEGISLATIVE AUTONOMY FOR AVIATION ACCIDENT INVESTIGATION IN NIGERIA**

**By**

**Ademola O. Ojekunle, Ph.D**

**Lecturer, Faculty of Law,**

**Bowen University, Iwo,**

**Osun State, Nigeria**

### **Abstract**

The Chicago Convention of 1944, otherwise known as the Convention on International Civil Aviation, vide its Article 26, is the starting point in a discourse bordering on the legal framework for aviation accident and incident investigation. The Convention is amply supplemented by Annex 13 made pursuant to it. The Convention, including its Annexes, has been ratified and domesticated in Nigeria. At the domestic level, Section 29 of the Civil Aviation Act, 2006, now contained in the 2010 edition of the Laws of the Federation of Nigeria, contains some provisions on aviation accident investigation. Some provisions in the 2015 Civil Aviation Regulations that address aviation accident investigation also supplement the lone section, which is section 29, in the Civil Aviation Act. The domestic provisions in the Act and the subsidiary Civil Aviation Regulations are characteristically autochthonous but they do not constitute a distinctly autonomous statutory framework for aviation accident and incident investigation in Nigeria. The paper argues that the Nigerian aviation industry deserves a well-entrenched legal framework, which is clearly autonomous, for aircraft accident investigation in view of the safety role that accident investigation plays. The paper further presses that if each of the Nigerian Airspace Management Agency, Federal Airports Authority of Nigeria and the Nigerian Meteorological Agency has a separate statutory framework, the Nigerian Accident Investigation Bureau does not deserve less. The paper draws some lessons from selected jurisdictions on an ideal legal mechanism for aviation accident investigation. The paper concludes that in addition to the institutional independence of the Nigerian Accident Investigation Bureau, the federal government of Nigeria urgently needs to sponsor a bill for an autonomous statutory legal framework for aviation accident and incident investigation in Nigeria.



## 1. Introduction

The Nigerian civil aviation industry has a plethora of agencies. It is in a bid to ensure that the country has a safe, efficient and regular air transport system.<sup>1</sup> The Nigerian Civil Aviation Authority is the nation's aviation regulator. It is a statutory creation with a clear mandate.<sup>2</sup> The Nigerian Airspace Management Agency is another aviation agency in Nigeria that is responsible for the celestial co-ordination of flights with terrestrial personnel. In other words, the agency deals with air traffic navigation and communication.<sup>3</sup> One other aviation agency is the Federal Airports Authority of Nigeria which oversees the available airports in Nigeria.<sup>4</sup> There is also the Nigerian Meteorological Agency which deals with the weather aspect of civil aviation in Nigeria.<sup>5</sup> The most pertinent one in this paper, the Nigerian Accident Investigation Bureau, is another critical aviation agency in Nigeria. It is primarily concerned with the investigation of aviation accidents and serious incidents.<sup>6</sup>

The Nigerian Airspace Management Agency (NAMA), the Federal Airports Authority of Nigeria (FAAN) and the Nigerian Meteorological Agency (NIMET) are auxiliary aviation institutions in Nigeria. They are service providers and as such are regulated by the Nigerian Civil Aviation Authority. This point was made clearer in an interview conducted with some selected personnel of the Legal Department of the Nigerian Civil Aviation Authority. The personnel-interviewees were the Legal Adviser and one of the Chief Legal Officers of the Nigerian Civil Aviation Authority.<sup>7</sup> The two selected personnel have not only spent not less

<sup>1</sup> Articles 1 and 44 of the Chicago Convention, otherwise known as the Convention on International Civil Aviation, 1944.

<sup>2</sup> Sections 1, 7 and 30 of the Nigerian Civil Aviation Authority (Establishment, etc.) Act, Cap. N94, Laws of the Federation of Nigeria, 2010.

<sup>3</sup> Sections 1, 7, 13, 16, 18, 22 and 23 of the Nigerian Airspace Management Agency (Establishment, etc.) Act, Cap. N90, Laws of the Federation of Nigeria, 2010.

<sup>4</sup> Sections 1, 3, 4, 17, 18 and 23 of the Federal Airports Authority of Nigeria Act, Cap. F5, Laws of the Federation of Nigeria, 2010.

<sup>5</sup> Sections 1, 7, 18, 19 and 23 of the Nigerian Meteorological Agency (Establishments, etc.) Act, Cap. N152, Laws of the Federation of Nigeria, 2010.

<sup>6</sup> Section 29 of the Civil Aviation Act, 2006, now in Cap. C13, Laws of the Federation of Nigeria, 2010.

<sup>7</sup> The interview was conducted by the author on 28/11/2016 at the NCAA office, Aviation House, Murtala Mohammed Airport, Ikeja, Lagos, Nigeria. There was a prior appointment that had been fixed on 23/11/2016 through a colleague, Adebayo David Fakunle.



than an un-interrupted period of fifteen years in the Nigerian civil aviation industry but have also acquired vast experience within and outside Nigeria in matters of air transport.<sup>8</sup>

The Accident Investigation Bureau, though an aviation agency like the others mentioned above, is a body with institutional independence.<sup>9</sup> It is, however, a mere statutory appendage with no statutory autonomy like the four of the Nigerian Civil Aviation Authority, the Nigerian Airspace Management Agency, the Federal Airports Authority of Nigeria and the Nigerian Meteorological Agency.<sup>10</sup> Yet the Nigerian Accident Investigation Bureau must be truly independent, unbiased, honest, and free of political or industry influence.<sup>11</sup> In capturing these investigatory hallmarks, an author has aptly referred to the relevant provisions of the International Civil Aviation Organisation's manual which provisions are to the following effect: "The accident investigation authority must be strictly objective and totally impartial and must also be perceived to be so. It should be established in such a way that it can withstand political or other interference or pressure."<sup>12</sup>

This paper argues that aviation accident investigation in Nigeria deserves a distinctly autonomous legislation. In achieving this objective, the paper is divided into ten parts. Part one is the introduction. Part two deals with the nature of aviation accident investigation. Part three examines the peculiar nature of aviation accident investigation in Nigeria. Part four traces the historical necessity for aviation accident investigation with a cursory reference to America. The focus of part five is the legal framework for aviation accident investigation in Nigeria. Part six centres on the aviation accident investigation body in Nigeria, the Accident Investigation Bureau. The discussion in part seven is on the objective of aviation accident investigation. Part eight draws some lessons from selected jurisdictions on an ideal aviation accident investigation mechanism. In part nine, some reasons are adduced for the need to

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<sup>8</sup> The two personnel are the NCAA Legal Adviser (Emmanuel Dubem Chukwuma) and a Chief Legal Officer (Ilitrus Ahmadu D.). The author initially had a joint meeting/interview with both personnel. Later, Mr. Ilitrus Ahmadu D. again took him through the interview questions. They were very open and helpful in their responses to the interview questions

<sup>9</sup> Section 29(2) of the Civil Aviation Act, *supra*, which provides that "The Bureau shall be an autonomous agency reporting to the President through the Minister."

<sup>10</sup> This is evident from the phraseology of section 29 (1) of the Civil Aviation Act, *supra*. All others have a statute each devoted to them. The Accident Investigation Bureau (A.I.B.) has only one section devoted to it.

<sup>11</sup> Dempsey, Paul Stephen, "Independence of Aviation Safety Investigation Authorities: Keeping the Foxes from the Henhouse" (2010) 75 *Journal of Air Law and Commerce*, Page 225.

<sup>12</sup> Dempsey, Paul Stephen, *supra*, at page 234.



have an autonomous legal framework for aviation accident investigation in Nigeria. The last part of the paper ends with a recommendation.

## **2. Nature of Aviation Accident Investigation**

No activity of the government with respect to air transport attracts more public attention and reaction than the investigation of aircraft disasters and the publication of the causes of such accidents.<sup>13</sup> Whenever the aviation accident investigation body releases the outcome of an accident investigation, tensions surge up. In fact, fear of injury or death resulting from aircraft accidents sometimes discourages air travelers, and air travellers are more concerned with commercial aircraft safety than they are in the regularity, frequency or comfort of air travel.<sup>14</sup> Accident-free operations are essentially the necessary outcome of carefully regulated practices in every stage of air transportation, and this spans aircraft construction, aircraft maintenance, ground services and pilot technique, licensing, and the like.<sup>15</sup> For aviation accident investigation to be properly carried out according to internationally acceptable best practices, there must be strict adherence to the relevant legal provisions regarding aviation accident investigation as primarily laid down by the Chicago Convention and the relevant Annex made pursuant thereto, supplemented secondarily by the relevant applicable domestic statute and regulations.

## **3. Peculiar Nature of Aviation Accident Investigation in Nigeria**

While the Nigerian Civil Aviation Authority investigates minor aviation incidents, the Accident Investigation Bureau investigates serious aviation incidents and accidents. Both bodies co-operatively work together as they sometimes share data. The Accident Investigation Bureau is an autonomous body and is, therefore, not under the regulatory umbrella of the Nigerian Civil Aviation Authority. Political interference has had nothing or little effect on aviation accident and incident investigation. In a recent aircraft accident in Nigeria, the National Assembly set up a parallel public hearing with the A.I.B., which the industry stoutly resisted. The Accident Investigation Bureau is seriously incapacitated by lack of fund and equipment. There are no laboratories for engine analysis; there is no machine for

<sup>13</sup> Sweeney, Edward C., "Safety Regulations and Accident Investigation: Jurisdictional Conflicts of C.A.B. and C.A.A.-Part 11" (1950) Volume 17, *Journal of Air Law and Commerce*, Page 278

<sup>14</sup> Sweeny, Edward C., *Ibid.*

<sup>15</sup> Sweeny, Edward C., *Ibid.*



the analysis of cockpit voice recorder; and on many occasions Nigeria relies on expertise from the United States National Transportation Safety Board. These factors have negatively affected aviation accident and incident investigation in Nigeria. Specifically, they have contributed to the delay in the release or publication of aviation accident and incident reports in Nigeria.<sup>16</sup>

#### **4. Aviation Accident Investigation: Perspectives from America's Beginning**

A meaningful voyage-a historical one-into the history of accident investigation in another jurisdiction will be immensely helpful to the present discourse. What is now contained in section 29 of the Nigerian Civil Aviation Act, 2010, was first contained in the American Air Commerce Act of 1926. It was the first federal law in the United States to govern civil aviation, particularly accident investigation. The Act granted broad authority to the Secretary of Air Commerce to ensure a high level of safety and to investigate, record and make public the causes of accidents in civil air navigation. By 1927, when record-keeping began, United States civil aviation involved 1, 572 certified airmen, 2,740 certified aircraft and 1, 036 civil airports. Twenty-five air carrier accidents occurred in that year; four were fatal, killing five persons. General aviation experienced 253 reported accidents; 95 were fatal, killing 146 persons.<sup>17</sup>

In the early 1930's, a transition in the industry from the use of war surplus aircraft to sleek twin-engine low-wing transports was made.<sup>18</sup> Transcontinental air travel became something other than fortuitous arrival at the intended destination some-where near the scheduled time. By 1937, the number of certificated airmen had risen to 17,681, the number of civil aircraft to 10, 836, and the number of airports to 2,229.<sup>19</sup> The number of air carrier accidents totalled 42, five of which were fatal, and general aviation experienced 1,900 accidents, 184 of which involved fatalities. The total number of deaths was only 237 (52 in air carrier accidents and

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<sup>16</sup> This aspect of the paper is the outcome of the interview the author recently conducted with some personnel of the Nigeria Civil Aviation Authority. See notes 7 and 8 above.

<sup>17</sup> Miller, C.O. "Aviation Accident Investigation: Functional and Legal Perspectives", *Journal of Air Law and Commerce*, 1981, volume 46, Page 238.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*



184 in general aviation), not a bad record considering the primitive equipment and facilities utilized and the general lack of understanding of the hazards of flight.<sup>20</sup>

Public interest in aviation accidents was heightened by losses of prominent persons, including Knute Rockne's death in 1931 and that of Will Rogers and Willey Post in 1935. Events such as the Hindenburg crash in 1937 also captured the public's attention.<sup>21</sup> The Air Commerce Act of 1926 was modified in 1934 and 1937 to strengthen the accident investigation process. The Secretary of Commerce was specifically authorized to hold public hearings to inquire into the facts and circumstances surrounding aircraft accidents, to subpoena and examine witnesses and documents, and to make public statements regarding the causes of the accident. The amendments to the Act also prohibited the use of Secretary's reports in any suit or action arising from any accident.<sup>22</sup>

The most significant of these for the aviation industry was the May 6, 1935 crash which took the life of Senator Bronson M. Cutting of New Mexico. Senator Cutting was a passenger in a TWA DC-2 travelling from Albuquerque, New Mexico to Kansas. The plane, which was a victim of unco-ordinated weather reporting and unreliable navigation equipment, crashed in a small Missouri town. The political furore generated by this accident was unparalleled in any prior air transportation mishap. The Cutting crash resulted in the recognition of the importance of the airways system within the United States and of the organized use of qualified personnel protected from political influence in investigation. The Department of Commerce attempted to refine its regulatory and investigative processes, but Congress began to look for a more effective aviation statute after losing one of its colleagues.<sup>23</sup> The hoped for solution was the Civil Aeronautics Act of 1938 which repealed large portions of the Air Commerce Act and consolidated all aviation functions into an agency called the Civil Aeronautical Authority.<sup>24</sup>

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<sup>20</sup> Ibid at page 239.

<sup>21</sup> Ibid.

<sup>22</sup> Those amendments to the American Air Commerce Act 1926, seem to be in *tandem* with section 29 (14) of the Nigerian Civil Aviation Act, 2010.

<sup>23</sup> The general reaction that greets air accidents resulting in fatalities is usually louder and more reverberating when such accidents involve so-called big people in the society. The states involved in air navigation should not wait for fatalities of influential people before necessary steps are taken to ensure air safety.

<sup>24</sup> Miller, C.O. *op.cit*, page 240



During the years between the beginning of World War II and the beginning of the Korean conflict, aviation in the United States grew at a tremendous rate. The number of civil aircraft rose four-fold, and the increase in certificated airmen was even greater. Technological developments produced remarkable improvements in the capacity of the air transportation system. However, the system became more difficult to operate because of increased complexity. Accidents began to occur, again, becoming the catalyst for changes in the administration of aviation and in the accident investigation laws. There was in 1952 the crash of two transports within three weeks at new Newark, New Jersey, followed by two other crashes in the greater New York area. Fourteen of the sixty-eight deaths occurred on the ground.<sup>25</sup> On June 30, 1956, the accident labelled the “no greater civil” accident occurred when a TWA Constellation collided with a United Airlines DC-7 over the Grand Canyon, resulting in a loss of 128 lives. That accident followed a prophetic warning about the potential of losing “120 people in a single accident” which had been made by Carl Christianson, Director of Safety of United Airlines, at a Flight Safety Foundation seminar in Taxco, Mexico in November, 1955. Other prominent aviation officials also had voiced similar concerns early in 1956; hence, when the accident occurred the cries from the media were loud and inevitable, for example: “How many more people will have to be killed in mid-air collisions before the government and the airline industry will take effective action?”<sup>26</sup>

Pressure had been building on the federal government throughout the 1950’s as the airways system and the entire bureaucracy were failing to keep pace with the burgeoning scope and technology of aviation. By 1957, there were over 700, 000 certificated pilots, over 90,000 aircraft and 6,400 airports. Four to eight fatal air carrier accidents had been occurring annually since the beginning of the 1950’s. While the maximum loss of life in any year was only 177 (1955), the potential for massive aviation accidents was frightening. In addition, general aviation was suffering 3,500-4,000 accidents in this period, killing six to seven hundred people per year.<sup>27</sup>

The jet era, which heralded the beginning of supersonic flight, also arrived in the 1950’s. This era signalled a greater challenge to the beleaguered civil aviation community which was

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<sup>25</sup> The 1952 crash of two transports was, in American phraseology, called or referred to as “the Pearl Harbor of Commercial aviation”.

<sup>26</sup> Miller, C.O., op cit page 242

<sup>27</sup> Miller, C.O., Ibid.



already failing to cope adequately with safety matters, at least in the eyes of the public. Thus, when the aforementioned accidents drew public attention and spawned Congressional furore, comprehensive legislation became inevitable. In the United States, the Federal Aviation Act of 1958 was the result.<sup>28</sup>

## **5. Legal Framework for Aviation Accident Investigation in Nigeria**

Almost every single activity in international air transport is regulated by law. The regulation is both legal and institutional in that there are applicable legal provisions as well as some form of institutional framework for carrying out aviation activities. Aviation accident investigation is not an exception in this regard. It is regulated both at the international and domestic levels. The International Civil Aviation Organisation, in its quasi-legislative capacity under certain provisions of the Convention on International Civil Aviation, has adopted Annex 13, containing international standards, recommended practices and procedures dealing with the investigation of accidents.<sup>29</sup> The standards and recommended practices for aircraft accident inquiries or investigations were first adopted by the International Civil Aviation organization in April, 1951 pursuant to Article 37 of the Chicago Convention of 1944, and these standards and recommended practices were designated as Annex 13 to the Chicago Convention.<sup>30</sup> The International Civil Aviation Organisation has also made a manual, Manual of Aircraft Investigation, for the purpose of ensuring an acceptable investigation exercise. The manual has been referred to as a magnificent effort at the time of its original publication and still as an excellent reference document for aircraft accident investigation.<sup>31</sup> This input by the International Civil Aviation Organisation serves as

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<sup>28</sup> Going by the American experience depicted above, it would be correct to say that the Civil Aviation Act, 2010, may not be the best or most comprehensive aviation legislation Nigeria will ever make. Aviation expansion will necessitate new legislative measures. The Carriage by Air (Colonies, Territories) colonial and Other Trust Territories colonial order, 1953; the Civil Aviation Act, cap 51, LFN, 1990; the Civil Aviation (Amendment) Act 1999; and the Nigerian Civil Aviation Authority (Establishment) Act No. 49, 1999, all of which have been repealed vide section 77(1) of the Aviation Act, 2010, were considered best suitable for their respective dispensations. New advances in Civil Aviation have rendered them obsolete or out of tune with modern realities.

<sup>29</sup> See Articles 37, 38, 54(1), 57(a) and 90 of the Chicago Convention, 1944

<sup>30</sup> Miller, C.O., "Aviation Accident Investigation: Functional and Legal Perspectives" (1981) Volume 46, Journal of Air Law and Commerce, Page 265

<sup>31</sup> Ibid.





an essential guide for the contracting members of ICAO, including all relevant stakeholders, in their investigative efforts whenever aviation accidents occur.<sup>32</sup>

Even though Nigeria as a member country of the International Civil Aviation Organisation has made the Chicago Convention of 1944 part of her civil aviation legal regime, there are distinct legal provisions on aviation accident investigation in the relevant Nigerian statute and subsidiary legislation. The Civil Aviation Act, 2010, is the primary aviation legislation in this regard. This piece of legislation contains some provisions on aviation accident investigation in the Nigerian civil aviation industry.<sup>33</sup> This legislation has been recently supplemented by the Aviation Accident Investigation Regulations/Rules, 2015. These legal materials, international and domestic, constitute the basic legal framework for aviation accident investigation in Nigeria.<sup>34</sup>

## **6. Objective of Aviation Accident Investigation**

The International Civil Aviation Organisation was itself set up to achieve certain objectives. Some of such objectives are to: insure the safe and orderly growth of international civil aviation throughout the world;<sup>35</sup> meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;<sup>36</sup> and promote safety of flight in international air navigation.<sup>37</sup> Aviation safety is the recurring decimal or word that punctuates the objectives of ICAO in international air navigation as borne out by the words “safe” and “safety of flight” in the paragraphs of the Article of the Convention referred to.<sup>38</sup> Every aviation accident investigation body of ICAO member countries can, therefore, hardly have a different objective other than aviation safety in the task of aviation accident investigation.

It is pertinent to note that the sole objective of the investigation of an accident or serious incident under the Nigerian Civil Aviation Act shall be the prevention of accidents and

<sup>32</sup> Heller, Paul P., “Air Accident Investigation--- International and New Zealand Regulation” (1978) Volume 4, *New Zealand Recent Law*, Page 319

<sup>33</sup> Particularly, section 29 of the Civil Aviation Act, 2010

<sup>34</sup> Some other agencies like the Nigeria police, armed forces, etc, may also be involved in aviation accident investigation, and they too have their statutory bases

<sup>35</sup> Article 44(a), Chicago Convention.

<sup>36</sup> Article 44(d), Chicago Convention .

<sup>37</sup> Article 44(h), Chicago Convention.

<sup>38</sup> See Article 44 of the Convention on International Civil Aviation Organisation, otherwise known as the Chicago Convention, 1944.



incidents.<sup>39</sup> It shall not be the purpose of such an investigation to apportion blame or liability. On the basis of the findings of accident investigations, the Nigerian Civil Aviation Authority shall be informed and the Director-general shall take corrective actions that, in the judgment of the Authority, will prevent similar accidents in the future.<sup>40</sup> In spite of the provisions of the Evidence Act, the contents of an air accident investigation report made pursuant to the provisions of the Act and regulations made thereunder, shall not be admissible in evidence as to form the basis of liability in any criminal or civil proceeding.<sup>41</sup> This is so probably because the essence of accident investigation is not to apportion blame but to prevent future accidents. A learned aviation law writer has captured the situation in following way:

Investigations conducted by the Bureau follow much the same management pattern whether the investigation involves a small general aviation accident and is conducted by a field office investigator or whether a catastrophic air carrier accident investigation is being conducted by a Washington headquarters team. The principal difference lies only in the complexity of the investigation and the number of the participating parties involved. It should be noted here that the purpose of the Board's investigation is to determine probable cause of the accident, not to assess liability. To coin a phrase, we investigate airworthiness, not blameworthiness. Further, we do not investigate accidents simply in order to remove the mystery surrounding the crash or to satisfy public curiosity...The purpose of our investigation is to obtain all relevant knowledge so that appropriate corrective measures may be taken to prevent similar accidents in the future. Accurate cause determination is the major contribution in this endeavor.<sup>42</sup>

Accident investigation is not an issue that can be nationally straight-jacketed. It is even beyond a regional issue. It is indeed an issue of international concern. Both Annex 13 and the Manual are explicit in citing the objective of investigation-the prevention of accidents and incidents, not the determination of blame.<sup>43</sup> Specifically, Annex 13 states: "The fundamental objective of the investigation of an accident or incident shall be the prevention of accidents and incidents. It is not the purpose of this activity to apportion blame or liability". The Manual States:

<sup>39</sup> Section 29(12) of the Civil Aviation Act.

<sup>40</sup> Sections 29(13) of the Act.

<sup>41</sup> Section 29 (14).

<sup>42</sup> Allen, B.R., "National Transportation Safety Board Bureau of Aviation Safety" (1968) Volume 34, *Journal of Air Law and Commerce*, Page 400.

<sup>43</sup> This objective is entrenched in section 29 (12) of the Civil Aviation Act, 2006.



The nature of the inquiry into an aircraft accident should not be accusatory as the object is to take remedial rather than punitive action; similarly the assessment of blame or responsibility should not be included in the duties of the accident investigation authority since this function is normally the prerogative of the judicial authority of the state concerned.<sup>44</sup>

The above-stated objective of accident investigation in civil aviation looks straight-forward and achievable. Unfortunately, international accident investigation efforts have only recently begun to face the procedural problem inherent when civil litigation and air safety objective clash. In order to avoid such clashes then and in future, several key law-safety subjects were discussed at the September 1979 meeting of the ICAO Accident Prevention and Investigation Division in Montreal, Canada. Such subjects included: balancing the emphasis on accident prevention vis-à-vis investigative fact finding; strengthening the role of the investigator-in-charge when he is “exposed to any influence which may jeopardize the objectivity and completeness of the investigation”; resolving conflicts between state’s freedom of Information laws and the ICAO’s desire to communicate all accident investigation information freely; and defining the role of the operator’s state of citizenship, not always the state of registry or manufacture of the aircraft.<sup>45</sup>

It is pertinent to add that part of the problem of procedural clash between the objective of accident investigation and the desire on the part of a victim or victim’s dependant or relation to rely on the report of the investigation in law suits is the hoarding-the keeping away-of the report or contents of same from such a victim or their relations. The provision of section 29 (12) of the Civil Aviation Act, 2010, appears to dampen or weaken the litigation success of a victim of air crash. Such an investigative report where properly and discreetly carried out and is in favour of the passenger (the victim) may reinforce the latter’s case. It is submitted that the section should be amended to meet the compensatory yearnings of air crash victims or their relations.

One other stricture that may be passed on the objective of accident investigation in air accidents and incidents is that the relevant provisions or legislative measures – national legislation and conventions-seem to reduce the investigators to mere robots. The situation has

<sup>44</sup> ICAO, International Standards and Recommended Practices, Accident Investigation, Annex 13 (4<sup>th</sup> ed 1976).

<sup>45</sup> Miller,C.O., Op. Cit. at Page 266.



been aptly captured by E.J. Noble in a Commerce Department Memorandum.<sup>46</sup> The Memorandum stated thus:

The chief weakness of our present accident investigation lies in the fact that the investigatory body has no power to change any safety rules. All it can do is to report the probable cause of the accident to the rule-making body and make recommendations for changes in the safety rules designed to prevent similar accidents in the future. The rule-making body, the Authority, may accept or reject such recommendations.

The above captures the toothless and helpless situation of the Accident Investigation Bureau established by section 29 of the Civil Aviation Act, 2010. However, that the Act has clothed the Bureau with a legal personality is a forward-leap in the Nigerian civil aviation industry. There is hope now that air accidents or incidents will now be investigated, unlike the past accidents and incidents that were not unearthed to any satisfactory extent. Such investigations will definitely identify and elucidate the causes of a safety incident or accident, and thereby can reduce the probability of a recurrence.<sup>47</sup> Again, such investigations can equally: enable a better understanding of the events leading up to the occurrence; identify hazards and conduct risk assessments; provide the basis for recommendations to reduce or eliminate unacceptable risks; and enable the communication of the safety messages to the appropriate stakeholders.<sup>48</sup>

### **7. The Nigerian Aviation Accident Investigation Bureau (A.I.B.)**

The Civil Aviation Act, 2010 makes provisions for the establishment of an Accident Investigation Bureau. It shall be a body corporate with power to sue and be sued in its corporate name except for matters associated with accident reports and to acquire, hold and dispose of property whether movable or immovable.<sup>49</sup> The Bureau shall be an autonomous agency reporting to the President through the Minister.<sup>50</sup> The Bureau shall be headed by a Commissioner of Accident Investigation who shall be appointed by the President on the recommendation of the Minister.<sup>51</sup> The Commissioner of Accident Investigation, who shall

<sup>46</sup> Memorandum from Undersecretary of Commerce, E.J. Noble, to Secretary Hopkins, Memo in support of the Aviation provisions of Re-organization Plans III and IV (April 23, 1940).

<sup>47</sup> Dempsey, P.S., "Independence of Aviation Safety Investigation Authorities: Keeping the Foxes from the Henhouse" (2010) Volume 75, Journal of Air Law and Commerce, Page 228.

<sup>48</sup> Ibid.

<sup>49</sup> Section 29(1) of the Civil Aviation Act, 2010.

<sup>50</sup> Section 29(2).

<sup>51</sup> Section 29(3)(a).



be the Chief Executive Officer of the Bureau, shall be appointed for a period of four (4) years renewable once for another period of four (4) years.<sup>52</sup> The Commissioner of Accident Investigation shall possess cognate experience and qualifications in air accident Investigation of not less than 12 years.<sup>53</sup>

There shall be established for the Bureau of Accident Investigation a fund into which shall be paid and credited: all subventions and budgetary allocation from the government of the federation;<sup>54</sup> three per cent of the air ticket contract charter and cargo sales charge imposed in section 12 of the Civil Aviation Act;<sup>55</sup> all sums accruing to the Bureau by way of gifts, endowments, bequests, grants or other contributions by person and organization;<sup>56</sup> returns on investments;<sup>57</sup> foreign aid and assistance;<sup>58</sup> and all other sums which may, from time to time, accrue to the Bureau.<sup>59</sup>

It is important to note that the services of all persons in the Accident Investigation and Prevention Bureau of the Ministry of Aviation have now been transferred to the Bureau of Investigation of Accidents.<sup>60</sup> The Commissioner of Accident Investigation may, with the approval of the Minister, recruit such staff as is necessary for the execution of its functions under the Civil Aviation Act.<sup>61</sup> There is also a provision for the appointment of a Legal Adviser for the Bureau, who shall be a legal practitioner of not less than 10 years post call experience.<sup>62</sup>

The Accident Investigation Bureau, in the execution of its functions under the Civil Aviation Act, shall follow and adhere to the regulations for accident investigation made by the Minister.<sup>63</sup> The Minister may make regulations providing for the investigation of any accident or incident arising out of or in the course of air navigation and either occurring in or

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<sup>52</sup> Section 29(3)(b).

<sup>53</sup> Section 29 (4).

<sup>54</sup> Section 29(5)(a).

<sup>55</sup> Section 12 (1) (e) of the Civil Aviation Act, 2010; see also Section 29(5)(b).

<sup>56</sup> Section 29(5)(c).

<sup>57</sup> Section 29(5)(d).

<sup>58</sup> Section 29(5)(e).

<sup>59</sup> Section 29 (5)(f) of the Civil Aviation Act, 2010.

<sup>60</sup> Section 29 (6) of the Act.

<sup>61</sup> Section 29 (7) of the Act.

<sup>62</sup> Section 29 (8) of the Act.

<sup>63</sup> Section 29(9).



over Nigeria or occurring to Nigerian aircraft elsewhere.<sup>64</sup> The provisions of such regulations made or to be made by the Minister may contain provisions: requiring notice to be given of any such accident or incident as aforesaid in such manner and by such persons as may be prescribed;<sup>65</sup> applying for the purpose of investigation held with respect to any such accident or incident any of the provisions of any law in force in Nigeria relating to the investigation of deaths or accidents;<sup>66</sup> prohibiting, pending investigation, access to or interference with aircraft to which an accident or incident has occurred and authorizing any person, so far as may be necessary for the purposes of an investigation, to have access to, examine, remove, take measures for the preservation of, or otherwise deal with, any such aircraft;<sup>67</sup> authorizing or requiring the cancellation, suspension, endorsement or surrender of any license or certificate granted in Nigeria in pursuance of this Act or any regulation, or the withdrawal or suspension of any validation conferred in Nigeria of a license granted by a competent authority elsewhere, where it appears on investigation that the license, certificate or validation ought to be so dealt with, and requiring the production accordingly of any such license or certificate;<sup>68</sup> and incorporating the provisions of Annex 13 to the Convention on International Civil Aviation Organization.<sup>69</sup>

The importance of the Accident Investigation Bureau established by section 29 of the Civil Aviation Act, 2010, cannot be over-emphasized. The recent air fatalities<sup>70</sup> that launched some families into a lachrymose state in Nigeria within the last eleven or twelve years, coupled with the need for aviation safety and security, serve as a solid justification for the establishment of the Accident Investigation Bureau under the 2006 Act.<sup>71</sup>

## **8. Lessons from Selected Jurisdictions**

That Nigeria deserves a distinctly autonomous legislation for aviation accident investigation is internationally in sync with acceptable practices. The Chicago Convention advocates

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<sup>64</sup> Section 29(10).

<sup>65</sup> Section 29(11)(a).

<sup>66</sup> Section 29(11)(b).

<sup>67</sup> Section 29(11)(c).

<sup>68</sup> Section 29(11)(d).

<sup>69</sup> Section 29 (11)(e) of the Civil Aviation Act, 2010.

<sup>70</sup> *Sosoliso* and *Bellview* air crashes.

<sup>71</sup> Now in the 2010 compilation of the Laws of the Federation of Nigeria.



uniformity in aeronautical standards among its subscriber-nations.<sup>72</sup> Many developed countries have distinctly established statutory frameworks for aviation accident and incident investigation. In Australia, there is the Australian Transport Safety Investigation Act of 2003, which set up the Australian Transport Safety Bureau,<sup>73</sup> a multi-modal accident investigation agency.<sup>74</sup> In Canada, there is the Canadian Transportation Safety Board, which was established by the Canadian Transportation Accident Investigation and Safety Board Act of 1989.<sup>75</sup> As regards New Zealand, the New Zealand Transportation Accident Investigation Commission is the body responsible for aviation accident investigation in the country. It was established by the New Zealand Transport Accident Investigation Commission Act of 1990.<sup>76</sup>

One of the most leading aviation accident investigation bodies, if not the only leading investigation agency, in the world is the United States National Transportation Safety Board, a multi-modal agency that investigates not only aviation accidents but also other safety-related accidents arising from the other modes of transport. This body was also established by a statute.<sup>77</sup> In the United Kingdom, some of the recommendations of a group of experts established by the European Commission in 2003 recognised the need for legal independence for aviation accident investigation bodies. According to the report containing the recommendations:

A Safety Investigation Authority shall have unrestricted authority over its conduct and shall be granted the power and resources to fulfill its tasks independently, effectively and in a competent manner. The Safety Investigation Authority shall be set up permanently and shall carry out its tasks impartially. Its functional, financial and *legal independence* from any other public bodies or third parties shall be guaranteed. The Safety Investigation Authority shall especially be independent from those authorities responsible for the establishment or enforcement of safety requirements that are imposed on the transport sector.<sup>78</sup>

<sup>72</sup> Articles 37 and 38 of the Chicago convention

<sup>73</sup> Dempsey, P.S., *Op. Cit.*, at page 233.

<sup>74</sup> The Bureau investigates aviation, marine and inter-state rail accidents.

<sup>75</sup> Dempsey, P.S., *Op. Cit.*, at pages 250-251.

<sup>76</sup> Dempsey, P.S., *Ibid.*

<sup>77</sup> Dempsey, P.S., *Ibid.*, at pages 266-267.

<sup>78</sup> Dempsey, P.S., *Ibid.*, at page 277.



As clearly discernible from the foregoing, an aviation investigation body should be a legally autonomous body. This is due to the critical safety role played by such a body in unearthing the cause(s) of an air craft accident. And aviation accident cause or causes have been defined as follows:

Causes are those findings which, singly or in combination with other causes, resulted in the damage or injury that occurred. A cause is an act, omission, condition, or circumstance which if corrected, eliminated, or avoided would have prevented the mishap. A cause may be an element of human or mechanical performance which started or sustained the mishap sequence. An environmental condition may be a cause if it was not avoidable. Findings which sustained the mishap sequence, but which were normal to the situation as it developed, are not causes.... These are often the unavoidable effects of a preceding cause.<sup>79</sup>

Comparatively, and this is at a West African level, the situation in Nigeria is better than that of Ghana. Ghana does not have an existing aviation investigation body, going by the nation's civil aviation legislation.<sup>80</sup> The relevant provisions of the legislation provide as follows:

The Minister may, in accordance with recommendations of the Authority, by legislative instrument, make Regulations providing for the investigation of an accident arising out or in the course of air navigation that occurs in or over the Republic or elsewhere to aircraft registered in the Republic. Regulations made under subsection (1) may contain provisions for *setting up an independent body of persons to conduct investigations into aircraft accidents*.<sup>81</sup>

The two West African countries, therefore, need distinctly autonomous legal frameworks for aviation accident investigation in their respective jurisdictions. In addition, Ghana must establish an existing and independent aviation accident investigation body like the Nigerian Accident Investigation Bureau established under Section 29 of the Nigerian Civil Aviation Act, 2006.<sup>82</sup>

<sup>79</sup> Quoted by Professor Paul Stephen Dempsey in Dempsey, P.S., *Ibid.*, at page 271.

<sup>80</sup> See the Ghana Civil Aviation Act, 2004 (Act 678).

<sup>81</sup> Section 25 (1) and (2) (a), Ghana Civil Aviation Act, 2004.

<sup>82</sup> Ghana's situation is not peculiar. Some years ago, it was found that all 12 member States of the European Union did not have independent bodies for investigation of aviation accidents, but it was the respective aviation authorities of the States that were responsible for aviation accident investigation. See Mannin, Colm, "European Aircraft Accident and incident Investigation" (1996) 24 *International Business Law*, page 83.





## Necessity for an Autonomous Legal Framework for Aviation Accident Investigation in Nigeria

The task of an aviation accident investigation body is technical in nature, and as such, it is distinct from judicial and administrative enquiries.<sup>83</sup> A technical investigation of an aircraft accident focuses on causation and prevention. This technical role must be entrenched in the investigation body's law. Matters like the establishment, legal status, powers, board establishment for the investigation body and the like must be contained in a separate Act establishing the aviation investigation body. The proposed Act must also state whether the aviation investigation body is a mono-modal or multi-modal agency.

Again, an aviation accident investigation body ideally has a headquarters and field offices. In America, for example, the aviation accident investigation body maintains a Washington headquarters and not less than eleven field offices strategically located throughout the United States.<sup>84</sup> All these details must be statutorily spelt out in the Act establishing the Accident Investigation Bureau in Nigeria. In addition, the areas to be covered in the course of investigation must be contained in the proposed Act. While this may not be an exhaustive list, it will sound *in tandem* with acceptable international best practices. The specialised areas in aviation accident investigation include aircraft structures, powerplants (and propellers as appropriate), systems, maintaining records, aircraft and company operations procedures, air traffic control, weather, witnesses, human factors, and flight data recorder.<sup>85</sup> Moreover, the proposed legislation must contain the specific jurisdictional powers of the Accident Investigation Bureau such as the powers to: have access to the accident aircraft or wreckage, flight recorders, and air traffic control records; require persons to answer questions or furnish information; require the aircraft or wreckage to be preserved pending examination; examine and test an aircraft or any part thereof; and require autopsy, medical, or toxicological examinations on crew members, passengers, and others involved.<sup>86</sup>

<sup>83</sup> Dempsey, P.S., *Op. Cit.*, page 232.

<sup>84</sup> Allen, B.R., "National Transportation Safety Board Bureau of Aviation Safety" (1968) 34 *Journal of Air Law Commerce*, page 400.

<sup>85</sup> Allen, B.R., *Ibid.* at page 402.

<sup>86</sup> Dempsey, P.S., *Op. Cit.*, pages 240-241.



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## **10. Conclusion and Recommendation**

International civil aviation thrives on the confidence and assurance of flight safety. All stakeholders, human or institutional, work collectively to achieve aviation safety. One of the institutions that work towards aviation safety is a nation's aviation accident investigation body. It investigates the cause(s) of an accident or serious incident with a view to forestalling any future recurrence. Such a body, therefore, requires both institutional and legal autonomy.

Crafting an autonomous legal framework for aviation accident investigation in Nigeria will make Nigeria a compliant nation in terms of the relevant provisions of the Chicago Convention of 1944 and the Annexes made pursuant thereto. The provisions of these international legal instruments require that all Member States of the International Civil Aviation Organisation have an independent aviation accident investigation body each in order to ensure aviation safety.<sup>87</sup> A lone-section style of compliance as contained in Section 29 of the Nigerian Civil Aviation Act of 2006 is not within the contemplation of the International Civil Aviation Organisation or its Convention or Annexes. The Nigerian civil aviation industry, therefore, deserves an autonomous statutory framework.

Although Nigeria appears to have an edge over Ghana, a co-West African country, the former still falls short of international requirements in terms of an ideal aviation investigation body. Both countries can, however, improve on their respective situations.

One of the ways to show that Nigeria places prodigious premium on aviation safety is total compliance with all applicable international legal instruments and domestic laws. All aviation-related laws and institutions have one objective. It is aviation safety. It is, therefore, recommended that the federal government, through the National Assembly, should sponsor a bill for the autonomous establishment and functioning of the nation's Accident Investigation Bureau.

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<sup>87</sup> Articles 1, 37 and 38 of the Chicago Convention, 1944.