



## Legal, Regulatory and Technical Responses to Terrorism in the Aviation Industry in Kenya

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### ABSTRACT

*The impact of terrorists' acts against the civil aviation industry cannot be gainsaid. It exerts immense pressure on the national and human security of many nations. Regrettably, there has been a barrage of terrorist attacks against aircraft and airport installations since the dawn of powered passenger flight. The study sought to examine the legal, regulatory and Technical responses to terrorism in the aviation industry in Kenya and employed the exploratory research design. Secondary data was collected from government publications, websites, internal records and reports, conference proceedings, research articles, and books, among others. The data collected were analysed thematically. From the study finding, it is evident that aviation security became a challenge, especially in the 1960s following an increase in the number of terrorist attacks in the industry. ICAO's legal, regulatory and technical responses through international conventions and protocols to address the challenge were reactionary especially in the period before the 9/11 US attacks. A review of their ineffectiveness called for responses that were more proactive and preventive, as a better solution in mitigating terrorism in the industry. This called for the need for cooperation among various security supporting agencies in many states' aviation industries. Presently, there are extensive counterterrorism responses employed in Kenya. These include legal, regulatory, and technical multiagency responses frameworks. Based on the study findings, the study makes the following recommendations. First and foremost, there is a need to undertake training for security personnel to better implement the legal, regulatory, and technical responses. There should also be an effort to strengthen the capacities of agencies to better respond to terrorism threats in the aviation industry through legislation, training, and funding interventions.*

**Keywords:** Legal and Regulatory Responses, Tactical Responses, Technical Responses, Aviation Terrorism, Multiagency Responses, Aviation Industry in Kenya

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### I. INTRODUCTION

Since the world's first inaugural passenger scheduled flight in 1914 at St. Petersburg, Florida, air transport has become one of the most important forms of transport. The early use of airplanes was indeed largely in warfare and the collection of intelligence. It is after World War I that commercial flights around the world increased rapidly in terms of speed and capacity of passengers. Governments in Europe nurtured the infant industry by establishing passenger Airlines. This model of transport became commercially relevant especially for airmail which facilitated the velocity of money supply and helped bring together dispersed enterprises.<sup>1</sup> By the time of World War II, the air industry had extensively expanded with numerous airports being established; more trained pilots, and improved aviation-related technologies.<sup>2</sup>

Post-1945 to the present, the world continues to witness significant and continuous growth in the air transport industry. Technical innovation has led to the creation of wide-bodied aircraft that necessitate high passenger capacity, advanced avionics, and high-speed aircraft.<sup>3</sup> Consequently, there has been an increased demand for air travel over time based on increases in real incomes among populations. The International Air Transport Association (IATA)'s 2019 annual review report indicates that in 2018 the world's airlines moved four billion passengers over a global network of 22,000 routes, an increase of 1300 from that of 2017.<sup>4</sup> In addition, a total of about 64 million tons of cargo was transported to markets around the world. The growth of airports has therefore become inevitable for the facilitation of air transport services in the effort to ensure faster movement of passengers and goods across borders. The flipside of it is that this growth and development has at the same time providing an avenue to globalize terrorism in the industry.<sup>5</sup>

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<sup>1</sup> John Bowen and Jean-Paul Rodrigue, "Air Transport: The Rise of Air Transport," *The Geography of Transport Systems*. Routledge (2016): 147.

<sup>2</sup> Nelson K. Mwikya and S. Angeline Mulwa, "Implementation of Aviation Safety Standards and Performance of Air Transport Industry: A Conceptual Perspective," *African Journal of Business and Management*, 1 no. 2 (2018): 23.

<sup>3</sup> Dawna Rhodes, *Evolution of International Aviation* (London: Routledge, 2016): 12.

<sup>4</sup> [www.iata.org/publications/annual-review.asp](http://www.iata.org/publications/annual-review.asp) p 8

<sup>5</sup> Kathleen Sweet, *Aviation And Airport Security: Terrorism And Safety Concerns* (CRC Press, 2008): 12.



According to the Global Terrorism Database (GTD), more than 1,363 attacks on aircraft and airports globally were executed by different terrorist organizations between 1970 and 2016.<sup>6</sup> The transition from aircraft hijackings growing into airport attacks meant that states needed to widen their scope in terms of measures employed to secure their aviation industries. It also meant that security officials had to consider measures beyond those that just safeguard the aircraft and persons in it, to include those that cover the security of airports, the installations in it, and the people within its environs whether they are passengers, staff, or businessmen. Ground attacks also posed a challenge that called for the necessity of screening passenger baggage and carry-on bags before entering airport premises or boarding an aircraft, so as to prevent the entry of dangerous weapons into the aircraft.

No part of the world has been spared from aviation terrorism. Africa, for example, has also had its share of terrorism incidents against its aviation industry. Most of these incidents were politically instigated. Salient also is the fact that the terror events transcended airspaces of different states and continents. This demonstrates the difficulty of locating a certain aviation-related terror event as African especially where the plane's origin is outside the continent but landed on African soil by the hijackers; or where a hijacked plane is originating from the region but forcefully landed on a country/continent outside the region.

This also posed a security challenge as the question of which state was to lay charges against the perpetrators of such terror events remained a subject of debate in the industry for a long time. To mitigate the challenge, measures on suspect extradition have been enhanced as spelt out in the current treaties on unlawful acts against civil aviation such as the 2010 Beijing protocol.<sup>7</sup>

The East African airspace has also not been spared from aviation terrorism. Among the earliest recorded incidents in this category is the 20<sup>th</sup> March 1974 hijacking in which the East African airways Douglas C-4 flight was seized after departing Nairobi en route to Mombasa. The plane was landed in Uganda and later on, the passengers were released after President Idi Amin negotiated with hijackers who had demanded to be flown to Libya via Khartoum.<sup>8</sup> Ever since numerous other forms of aviation terrorism have been carried out.

A successful terror attack in the aviation industry has the potential to cause massive deaths and loss of property which in turn instill psychological fear among the masses as states remain coerced to give into the terrorists' demands. Azani and others observe that one successful attack in the industry strengthens the terrorists' motivation to continue carrying out the same activities in the industry.<sup>9</sup>

The remarkable growth and development in inter-connectivity and technology in Kenya's aviation industry have not been spared of terror threats. This is partly attributed to Kenya's proximity to Somalia, the hideout of Al-Shabaab insurgents as well as the highly porous borders. One of the earliest recorded incidents of aviation terrorism in Kenya (besides the 1974 incident cited above) concerns the hijacking of an Air France plane, flight number 139 in 1976.<sup>10</sup> Numerous other terror-related threats in Kenya's aviation industry continue being reported. For this reason, security officials at Kenya's airports are often cautioned to be on high alert.<sup>11</sup>

Various factors predict aviation terrorism in Kenya. One important factor is the use of obsolete technology. This renders the aviation industry vulnerable to security threats that emanate as a result of the non-detection of risky objects and persons into airport-restricted areas and aircraft. Adopting better, productive, and updated approaches that encourage more use of sophisticated luggage screening devices, people scanners, and biometric systems, therefore, becomes a necessity in enhancing the industry's security system.<sup>12</sup>

The industry however faces the challenge of insufficient funds to enhance security efficiency by procuring up-to-date airport security technology.<sup>13</sup> This factor precipitates its overreliance on external funding, the strings attached notwithstanding. An example is the passenger screening systems donated and maintained by the U.S government. While the gesture is okay, the danger is that the government is not fully in control of this information database which is critical

<sup>6</sup> Katie E. Krull, *The Threat Among Us: Insiders Intensify Aviation Terrorism* (Pacific Northwest National Lab., 2016): 7.

<sup>7</sup> Ruwantissa Abeyrtnne, "The Beijing Convention of 2010 on The Suppression of Unlawful Acts Relating to International Civil Aviation: An Interpretative Study," *Journal of Transportation Security* 4, no. 2 (2011): 131-143.

<sup>8</sup> Mary Schiavo, "The Chronology of Attacks against Civil Aviation," *Aviation Security Management* (2008): 187.

<sup>9</sup> Eitan Azani, Lorena Atiyas, and Daniel Heberfeld, *Trends in aviation terrorism* (International Institute for Counter-Terrorism (ICT), August 10, 2016). <https://www.ict.org.il/Article/1757/trends-in-aviation-terrorism> (accessed December 18, 2019).

<sup>10</sup> Claus Kreß and Benjamin K. Nußberger, *Part I The Cold War Era (1945–89), 19 The Entebbe Raid—1976* (Oxford University Press, 2018).

<sup>11</sup> Kriel Robin., "Kenya's Major Airports on High Alert after Terror Threat Warning," *CNN* (2016). <https://edition.cnn.com/2016/02/29/africa/kenya-airports-terror-alert/index.html> (Retrieved June 12, 2020).

<sup>12</sup> *Ibid.* p.32

<sup>13</sup> Alfred Agoi, *Critical Success Factors and Risk Management Procedures at the Kenya Airports Authority* (Unpublished Masters Research Project, University of Nairobi, 2013): 54.



for state security. A lack of updated security technology also limits the state's capacity and ability to stay ahead of terrorists.

Air cargo is another challenge that presents a potential threat not only to the freight carriers and storage facilities within the industry but also to the passenger planes involved in carrying the cargo.<sup>14</sup> Many cargo-related companies working within the industry's facilities employ a number of people to provide cheap labour. It, therefore, becomes easy to employ an operative whose intentions may not be publicly displayed, some of whom can be compromised to sneak in explosives in the storage facilities and aircraft. This renders the cargo system vulnerable to terror threats.<sup>15</sup>

Inefficient border control measures compromise the security architecture of any aviation industry. Airports serve as part of the frontier pathways into a country. The inadequacy of these measures guarantees security at airports ineffective leaving the country vulnerable to illegal immigrants, smuggling and trafficking in of persons, drugs, and arms, and organized criminals including terrorists. Many countries are reconsidering the security architecture of their frontier pathways. Additional control measures over immigrants, asylum seekers, and other foreigners such as the use of tamper-proof passports and imposing stringent rules on visa issuance need to be introduced.<sup>16</sup>

It is also pertinent to strengthen stakeholder involvement in the joint delivery of security services to the industry through joint operation centers and border management committees.<sup>17</sup> Putting in place proper protocols on communication and information sharing provides a platform for the establishment of common objectives, early identification of security threats, designing of achievable corrective and mitigation measures as well as effective implementation of agreed objectives and strategies.<sup>18</sup>

From the foregoing discussion, it is evident that aviation terrorism remains an important challenge despite the numerous strategies aimed at reining in on it. As a result, it is pertinent to rethink the counterterrorism initiatives employed in the country. As such, this study sets out to examine the legal, regulatory, and technical responses to terrorism in the aviation industry in Kenya.

## 1.2 Research Problem

The aviation industry plays a pivotal role in the global economy through passengers and cargo transport. It should thus be protected from all forms of terrorist attacks. Regrettably, this is not the case. There has been a barrage of terrorist attacks against aircraft and airport installations since the dawn of powered passenger flight. The most fatal of all successful suicide mission attacks in the aviation industry is the 9/11 attack that happened in 2001 in the U.S. It involved a series of four coordinated terrorist attacks which resulted in 2,977 fatalities and over 25,000 injuries and destruction of about 10 billion U.S dollars worth of infrastructure and property damage. Besides hijacking the planes as a target, the terrorists proceeded to use them as weapons for executing their plan of mass destruction.<sup>19</sup>

Azani and others have demonstrated that terrorism in the aviation industry remains sustained even after the 9/11 attack.<sup>20</sup> Several other terror attacks in the industry are still being recorded. This clearly shows that aviation terrorism is still a security threat to many states and the pursuance of effective measures to prevent its occurrence and mitigate its negative effects remains every state's priority.

Regrettably, studies that critically examine the efficacy of the various responses to terrorism in the aviation industry are scanty and dispersed in the wider body of literature. For Kenya as well as most other African countries, there is a lack of systematic studies directly analyzing the relative importance of each strategy from a holistic standpoint. This means that making empirically informed recommendations on how to rein in aviation terrorism remains a tall order. This study, therefore, sets out to empirically examine the legal, regulatory, and technical responses to terrorism in the aviation industry in Kenya.

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<sup>14</sup> Ibid p. 185

<sup>15</sup> Joseph Szliowicz, "Aviation Security: Promise or Reality," *Journal of Studies in Conflict & Terrorism* 47-63 (2010): 56.

<sup>16</sup> Khalid Bichou, Joseph Szlyiowicz and Luca Zamparini. *Maritime Transport Security: Issues, Challenges and National Policies* (New York: Edward Elgar, 2014): 41.

<sup>17</sup> Agoi, Op. Cit. 43

<sup>18</sup> Kevin Mulama and Yusuf Muchelule, "Factors Affecting Contingency Preparedness at Kisumu International Airport, Kisumu County, Kenya," *Journal for Studies in Management and Planning* 2, no. 1 (2016): 376

<sup>19</sup> Schiavo, Op. Cit. 140.

<sup>20</sup> Azani et al., Op. Cit.



## II. LITERATURE REVIEW

### 2.1 Evolution and Development of Terrorism in the Aviation Industry

According to the Global Terrorism Database (GTD), more than 1,363 attacks on aircraft and airports globally were executed by different terrorist organizations between 1970 and 2016.<sup>21</sup> This section chronologically highlights and discusses some of the significant aviation terror attacks that have been documented over time on the basis of their modus operandi (MO) which is summarized into four waves.

The first wave of aviation terrorism was characterized by a series of aircraft hijackings. Literature indicates that the first-ever documented aircraft hijacking occurred in 1930 when Peruvian rebels seized control of an airplane to disperse propaganda leaflets airborne.<sup>22</sup> The subsequent three decades recorded more incidents of such hijackings which escalated in the 1960s. The terrorists targeted the aircraft and used the passengers on board as hostages and a factor to guarantee them safety as they landed in a friendly state. Between 1961 and 1967, a total of 12 aircraft seizures occurred in the US alone which escalated to 22 in 1968.<sup>23</sup>

The perilous activities were both criminally instigated and intended to bolster aviation terrorism as an instrument of pressurizing state governments to acknowledge the severity of the terrorists' political cause and spread propaganda.<sup>24</sup> An example is the July 1968 incidence in which insurgents from the Popular Front for the Liberation of Palestine (PFLP) hijacked an Israeli passenger airliner El Al flight 426 en route Tel Aviv from Rome. They made express demands for an exchange of hostages who were members of their group detained in the Israeli government. This was the first time in the history of terrorism when an airplane had been seized to pressure a state to submit to the demands of an insurgent group with a political cause.<sup>25</sup> The security implications of the first wave hijackings in the aviation industry led to states realizing that they cannot unilaterally fight against the phenomenon which was global in nature. It's during this period in time that states cooperated under the auspices of ICAO sought common and acceptable measures to deal with the perpetrators as demonstrated in the establishment of the Tokyo and The Hague conventions of 1963 and 1970 respectively.<sup>26</sup>

The beginning of the 1970s marked the era of the second wave of aviation industry terror attacks whereby ground attacks began to take root. These involved violent acts launched on or from the ground targeting either the airport and its installations or aircraft on the ground either in a gated state, taking off, landing, or flying.<sup>27</sup> The first-ever listed airport attack occurred on 10<sup>th</sup> February 1970 at Munich airport in Germany. The terrorists, (PFLP members) attacked a bus carrying passengers to the aircraft using guns and grenades.<sup>28</sup> Another airport attack happened in May 1972 involving the attack of Lord Airport outside Tel Aviv in Israel. The perpetrators were Japanese Red Army operatives who used assault rifles and hand grenades to attack passengers waiting at immigration desks. 26 people were killed and 80 others were injured.<sup>29</sup> The weapons used to commit this act were smuggled into the airport in the perpetrators' luggage.<sup>30</sup>

The transition from aircraft hijackings growing into airport attacks meant that states needed to widen their scope in terms of measures used to secure their aviation industries. It meant that security officials had to consider measures beyond those that just safeguard the aircraft and persons in it, to include those that cover the security of airports, the installations in it, and the people within its environs be they passengers, staff, or businessmen. Ground attacks also posed a challenge that called for the necessity of screening passenger baggage and carry-on bags before entering airport premises or boarding an aircraft, so as to prevent the entry of dangerous weapons into the aircraft.

<sup>21</sup>Krull, Op. Cit. 7.

<sup>22</sup>Jangir Arasly, "Terrorism and Civil Aviation Security: Problems and Trends," *Connections Journals* 4, no. 1 (2005): 75-90.

<sup>23</sup> Ibid., p. 81

<sup>24</sup> Moses Aleman, "The International Civil Aviation Security Program Established By ICAO," *Aviation Security Management* 1, no. 1 (2008): 65-75.

<sup>25</sup> Arasly, Op. Cit.76

<sup>26</sup> Abraham Abramovsky, "Multilateral Conventions for the Suppression of Unlawful Seizure and Interference with Aircraft Part I: The Hague Convention," *Journal Transnational* 13, no. 1 (1974):381.

<sup>27</sup> Jacques Duchesneau, *Aviation Terrorism: Thwarting High-Impact Low-Probability Attacks* (Unpublished PhD Thesis, Royal Military College of Canada, 2015): 41.

<sup>28</sup> Jacques Duchesneau and Maxime Langlois, "Airport attacks: The Critical Role Airports Can Play in Combating Terrorism," *Journal of Airport Management* 11, no. 4 (2017): 343.

<sup>29</sup> Joanne F. Horvitz, "Arab Terrorism and International Aviation: Deterrence v. The Political Act," *Chitty's Law Journals* 24, no. 5 (1976): 145.

<sup>30</sup> Erika Tominaga, "Japan's Middle East Policy, 1972–1974: Resources Diplomacy, Pro-American Policy, and New Left." *Diplomacy & Statecraft* 28, no. 4 (2017): 674.



The third wave was characterized by a series of sabotage events that began in the late 1970s escalating in the 1980s. During this period, the aviation industry experienced deadly mid-air sabotages by terrorists which involved the use of explosive devices triggered from within an aircraft while flying or when on the ground. One of the earliest cases in which an aircraft was sabotaged is the bombing of Air India Flight 182 en route to London from Montreal in June 1985, which resulted in 329 deaths, both passengers and crew.<sup>31</sup>

On the 27<sup>th</sup> December of the same year (1985), the first coordinated and simultaneous airport bombings happened at Rome and Vienna airports. The insurgent group Abu Nidal Organization (ANO) specifically targeted an identical group of passengers waiting at the check-in counters belonging to Trans World and El Al airlines at both airports.<sup>32</sup> The attacks resulted in 20 deaths and 120 injuries. The security implications here were that a need arose for aviation security systems to consider incorporating checks and control of devices and materials that had the potential of being used to sabotage aircraft and the industry grounds plus its installations.

The fourth and current wave which began in the 1990s is characterized by a metamorphosis of the attacks into suicide missions.<sup>33</sup> This nature of attacks involves an individual or a group of individuals intentionally committing suicide in order to destroy an aircraft or aviation installation while at the same time killing people within. The motive in such cases is for purposes of annihilation whereby the perpetrators use the aircraft as the weapon for hitting a previously selected target with the intention of causing political, psychological, and material damage.<sup>34</sup>

The most fatal of all successful suicide mission attacks in the aviation industry is the 9/11 attack that happened in 2001 in the U.S. It involved a series of four coordinated terrorist attacks which resulted in 2,977 fatalities and over 25,000 injuries and destruction of about 10 billion U.S dollars worth of infrastructure and property damage. Besides hijacking the planes as a target, the terrorists proceeded to use them as weapons for executing their plan of mass destruction. This particular attack had the greatest impact on the security structure of many states' aviation industry. It is in its aftermath that the international civil aviation community realized that its approach to responding to terrorism in the industry was not effective. The approach was responding to the last attack rather than preventing the next attack. The realization led to changes in the aviation security structure moving from reactive to proactive approaches.<sup>35</sup>

In their comprehensive study, Azani and others demonstrated that terrorism in the aviation industry remains sustained even after the 9/11 attack. Among the examples they give is the 2006 terror plotting that was unearthed as Al-Qaeda operatives plotted to carry out seventeen simultaneous terror attacks on American and Canadian planes using liquid explosives over the Atlantic Ocean.<sup>36</sup> This clearly shows that aviation terrorism is still a security threat to many states and the pursuance of effective measures to prevent its occurrence and mitigate its negative effects remains every state's priority.

## 2.2 Chronology of Terrorism Events in Africa's Aviation Industry

Historically, Africa has also had its share of terrorism incidents against its aviation industry. Most of these incidents are politically instigated and when they happen, the effects transcended airspaces of different states and continents. This section presents some of the documented aviation-related terror events that have threatened African airspace security.

In October 1976, a Lufthansa airlines flight 181 was hijacked en route to Frankfurt by terrorists who landed it on a runway in Mogadishu, Somalia. At the end of a five-day stand-off, the hijackers had killed the plane's pilot and released eighty-six other unharmed hostages.<sup>37</sup> Despite the one case fatality, the hijackers' main motive was to retain the hostages as means to achieve their political agenda but not to kill the hostages.

The 1980s recorded an upsurge in the use of explosives due to advancements in technology. For instance, the baggage compartment of Air Malta B-737 exploded on the ground in Cairo Egypt while offloading luggage in October 1981. A porter and three security guards were injured when two parcels exploded about fifteen minutes apart. A third bomb that was yet to explode was discovered later.<sup>38</sup> In another incident in November 1985, terrorists heavily armed with guns and grenades seized an Egypt Air aircraft flight 648 flying from Athens to Cairo and diverted it to Malta,

<sup>31</sup> Maya Seshia, "From Foreign to Canadian: The Case of Air India and the Denial of Racism," *Canadian Journal of Cultural Studies* 27, no. 1 (2012): 215.

<sup>32</sup> Schiavo, Op. Cit. 213.

<sup>33</sup> Paul Wilkinson and Brian Jenkins, *Aviation Terrorism and Security* (Routledge, 2013).

<sup>34</sup> Arasly, Op. Cit. 81

<sup>35</sup> Schiavo, Op. Cit. 140.

<sup>36</sup> Azani et al., Op. Cit.

<sup>37</sup> Kent C. Krause, "Putting the Transportation Security Administration in Historical Context," *Journal of Air Law & Commerce* 68, no. 1 (2003): 237

<sup>38</sup> Selth Andrew, "International Terrorism: A New Kind of Warfare," *The Russian Journal* 132, no. 1 (1987): 65.



where they began executing American and Israeli passengers. The subsequent raid on the aircraft by Egyptian troops led to an exchange with the terrorists using explosives which led to fifty-seven deaths out of the 90 passengers on board. This was one of the most lethal terror incidents in the region's aviation history. Important to note in this incident was the fact that the terrorists aimed to cause deaths of particular pre-identified people, with the divides centered on race and religion.

Later during this period, the region also began to record an upsurge in ground attacks in form of airline or airport attacks. In August 1986 for instance, a Sudan Airways flight from Malakal to Khartoum was shot down by the SPLA militants using missiles. All the 160 people on board the aircraft were killed. This trend continued into the following decade, an example being the August 1992 incident in which a powerful bomb planted by Muslim extremists exploded in Algiers International Airport, indiscriminately killing nine persons and injuring over one hundred others.<sup>39</sup> November 1996 also recorded one of the most lethal aircraft hijackings in the African region involving an Ethiopian airline B-767 en route Nairobi from Addis Ababa by three Ethiopians. The assailants demanded that the aircraft which carried 163 passengers and 12 crew members be diverted to Australia where they intended to seek political asylum. One hundred and twenty-three people died when the plane ran out of fuel and crashed into the Indian Ocean.<sup>40</sup>

The late 1990s also recorded an upsurge in aircraft shootings. In December 1998 for instance, an Antonov-12 cargo/passenger aircraft flying at a low altitude was shot down by rebel forces in Angola in a fight between government forces and the National Union for the Total Independence of Angola (UNITA) rebels. In the same month, a C-130 aircraft chartered by the U.N was also shot down by the same rebels in the Huambo area using a surface to the air missile launcher. In the following year 1999, the Ethiopian military shot down a Learjet N350JF en route from Naples to Johannesburg thinking it was Eritrean having sidetracked deep into the Ethiopian airspace.<sup>41</sup>

Airport bombings in the region also recorded an upsurge in the first decade of the 2000s. In July 2000 for instance, a bomb planted in a dustbin exploded between the international and domestic terminals at Cape Town International Airport in South Africa. On 28<sup>th</sup> December of the same year, the heavily guarded civilian airport in Benguela was attacked resulting in the damage of the control tower, three airplanes, and the runway by the UNITA rebels in Angola.

The above events demonstrate that attacks of the nature of aircraft hijackings, sabotage, and ground attacks remained persistent and consistent especially in the second decade of the twenty-first century in the region's history. Kishan & Prashanth for instance narrates a February 2014 incident in which the Ethiopian Airlines Flight 702 destined for Rome from Addis Ababa was forced to divert to Geneva airport in Switzerland. The hijacker was a co-pilot who claimed to have wanted to seek political asylum.<sup>42</sup> In October the following year, the African airspace also experienced a sabotage attack involving an Airbus A321-231. The airline was bombed above the northern Sinai following its departure from Sharm El Sheikh International Airport in Egypt, en route to Pulkovo Airport Saint Petersburg, Russia.<sup>43</sup> The terrorists used explosive devices killing all the people on board.

In February 2016, Al-Shabaab also planted a bomb in the passenger plane in Somalia causing it to develop a hole after take-off.<sup>44</sup> In January 2018, terrorists also staged a ground attack of an international airport in Tripoli Libya killing twenty people and injuring sixty-nine. The armed group of terrorists attacked the airport with heavy weapons, claiming to be seeking to free the Islamic State (IS), al-Qaida, and other terrorists from detention.<sup>45</sup> Generally, the history of terror attacks in Africa's airspace took a similar trend to that of the global attacks which saw technical development rose from plain hijackings, advancing to ground attacks and eventually sabotages. The transnational nature of terrorism in the aviation industry is the best reason to explain the similarity in the trend.

The persistent nature of the terror attacks both in the African and global airspace called for a need to interrogate the general security system of the industry. The varied tactics employed by terrorists implied that the measures taken to address the terror phenomenon were not sufficient to extensively address the challenge. The varied tactics also implied that there were many cracks within the aviation security system that made it easier for the enemy to penetrate the industry

<sup>39</sup> Salima Mellah, "The Massacres in Algeria, 1992-2004," *Extracts from a Report Presented by the Justice Commission for Algeria*. Berlin: *Algeria Watch* (2004): 8.

<sup>40</sup> Office of the Civil Aviation Security, *Criminal Acts against Civil Aviation* (Springfield, U.S. Department of Transportation, USA, 1996): 42.

<sup>41</sup> Schiavo, Op. Cit. 250.

<sup>42</sup> K.K. Kishan, and KV Mahendra Prashanth, "Techniques for Detecting and Tracking of Baggage in Airports," In *2017 International Conference on Recent Advances in Electronics and Communication Technology (ICRAECT)*, IEEE (2017): 333-338.

<sup>43</sup> Abeyratne, Op. Cit. 97

<sup>44</sup> Viktor V. Barabash, Aleksandra S. Bobryshova, Olga I. Lepilkina, Irina S. Karabulatova, "The Specifics of the Interpretation of Tragedy Over Sinai," *Astra Salvensis* 6, no.11 (2018): 289-310.

<sup>45</sup> Tamer Z.F. Mohamed and Tamer S. Elseyoufi, "Terrorism in the Middle East: Implications on Egyptian Travel and Tourism," *International Journal of Religious Tourism and Pilgrimage* 6, no. 3 (2018): 7.



by taking advantage of the vulnerabilities portrayed. Further, they indicated a terror group that was way ahead of government security systems in terms of creativity having considered the vulnerabilities in place.

The effects of these persistent attacks are not only felt by the affected airlines but also by the affected individuals and the targeted states. These effects that are social, political, and economic transcend societies given the fact that air transport is an interconnected system. The terror activities therefore not only pose security challenges to the security of the airline industry but also to human, state, and global security.

### 2.3 The Evolution and Development of the Kenyan Aviation Industry

The history of domestic air transport services in Kenya started immediately after the First World War. Wilson Airways provided the very first domestic air transport services from 1929. Four years later, the airline introduced regular passenger services that plied the Nairobi-Dar es Salaam route through Mombasa on a day-by-day basis.<sup>46</sup> This led to the development of regional communication that linked the towns in East Africa with key routes like Cairo in Egypt and Cape Town in South Africa. Wilson Airways also introduced flights to Entebbe in Uganda, as well as Jinja, Kisumu, and Nakuru.<sup>47</sup> The development by Wilson airways laid a foundation for the aviation industry in Kenya and East Africa. The government, realizing the importance of air transport put into place measures to control and facilitate the landing spaces. They classified the landing into three categories which include government-owned and managed civil aerodromes, private civil aerodromes, and private unlicensed aerodromes that are not accessed by the public.<sup>48</sup>

The earliest scheduled international air transport was during the 1930s with services provided by Imperial Airways, the forerunner of the British Overseas Airways Cooperation (BOAC) which would pass through Nairobi to Cape-Town.<sup>49</sup> However, when World War II broke out in 1939, Wilson Airline was liquidated, but later in 1946, East African Airways Corporation (EAAC) was created to replace it and form a regional airline. EAAC came about when three African countries, Kenya, Tanzania, and Uganda, came together to start a joint operation of the then African Airways which operated and only disintegrated with the East African Community (EAC) in 1977.<sup>50</sup> It is after this that each started operating its aviation industry by establishing its national carrier as well as constructing modern international airports. Accordingly, Kenya started its airline known as Kenya Airways (KQ) in 1977 to offer domestic and international scheduled passenger flight services.

As a country, Kenya aspires to be a regional hub by the year 2030, and according to its Medium-Term Development Plans (MTPs), it has prioritized this vision and started by establishing and upgrading the existing airports and airstrips into modernized international/domestic airports. The major reason for this upgrade is to increase the number of commercial flights into the country and connect Kenya to the rest of the world. With such developments taking place, the country anticipates increased commercial activities especially in all enterprises that serve airports, increased job opportunities, a thriving aviation industry, and significant growth in the Kenyan economy.<sup>51</sup>

### 2.4 The Terror Threat in Kenya's Aviation Industry

The remarkable growth and development in inter-connectivity and technology in Kenya's aviation industry have not been spared of terror threats. This is partly attributed to Kenya's proximity to Somalia, the hideout of Al Shabaab insurgents as well as the highly porous borders. Among the earliest recorded incidents concerning the first encounter, Kenya had related to aviation terrorism concerns the hijacking of Air France plane, flight number 139 in 1976 as discussed in the foregoing thematic areas. The plane was seized en route to Israel from France and flown into Entebbe, Uganda. Kenya's role in hosting the Israeli rescue team pre and after their rescue mission in Uganda led to it being ostracized by almost all African counties claiming that Kenya sided with Israeli in its aggression against Uganda. The accusations were tabled before the United Nations Security Council (UNSC).<sup>52</sup>

The other documented terror-related incident in Kenya's aviation industry is the attempt to down an Israel-bound airliner which happened in November 2002. The Al-Qaeda affiliated operatives executed a twin terror attack in Kikambala Mombasa. In one of the attacks, two shoulder-launched Strela 2 (SA-7) surface-to-air missiles were fired at an Israeli chartered airliner as it was taking off from Moi International Airport en route to Tel Aviv with over 261

<sup>46</sup> Evaristus M. Irandu, "The Development of Jomo Kenyatta International Airport as A Regional Aviation Hub," *Journal of Air Transportation* 11, no.1 (2006): 54.

<sup>47</sup> *Ibid.*, 34.

<sup>48</sup> Makunyi, *Op. Cit.* 61.

<sup>49</sup> Irandu, *Op. Cit.* 56

<sup>50</sup> Felix Kiminyei and Brian Obiero, "Making Kenya the Aviation Hub in Africa," *KIPPRA* (2018): 1.

<sup>51</sup> *Ibid.*

<sup>52</sup> Kreß, *Op. Cit.*



passengers on board.<sup>53</sup> The ground attack is believed to have been orchestrated by Al-Qaeda operatives in an attempt to disrupt the Israeli tourist industry on the African continent. The missiles narrowly missed the plane; otherwise, the effects would have been devastating.

This attack occurred two and half months after the first anniversary of the September 11 attacks which occurred in New York and Washington, DC. The incident was followed by a foiled terror plot to attack the US embassy along Mombasa road in June 2003. This attack was to be executed jointly using a truck bomb and a hijacked airplane from Nairobi's Wilson Airport loaded with explosives.<sup>54</sup> The discovery of the plot led to the closure of the targeted embassy for four days. The incident also led to Kenyan authorities banning flights to and from Somalia, a country deemed to be a haven for terrorists. It is also believed that in the early 1990s, Wilson airport acted as the staging base for Al-Qaeda operatives' entry flights to Somalia.<sup>55</sup> This means that the airport plays a key role in facilitating the movement of terror perpetrators to and from Somalia. It also implies that its safety guarantees may also extend to security in Kenya's air aviation industry.

In October 2004, an explosion struck a customs warehouse at Nairobi's Wilson Airport and injured two customs workers. The blast was so powerful that it tore roof tiles off and shattered wooden beams. Although the Kenyan government denied that it was a terror attack, the United States Department of State indicates in its 2004 counterterrorism country reports that the uncoordinated response to the explosion calls for the need for better coordination mechanisms and continued improvement of security measures.<sup>56</sup> It is quite telling that the blast was not an ordinary one for it to be recorded in the U.S. counterterrorism reports.

Terrorists have constantly posed threats to the country's aviation industry. It is for this reason that security officials at Kenya's airports are often cautioned to be on high alert. For instance, on the 26<sup>th</sup> of February 2016, the contents of an internal memo authored by Kenya's Airports Authority addressed to all its airport managers were brought to the public. The memo warned airport employees that the al Qaeda-linked terror group Al Shabaab would deploy suicide bombers trained in Somalia "on airborne suicide missions to attack any of the industry's facilities."<sup>57</sup>

The constant travel advisories by the international community's intelligence to its citizens regarding exercising caution in their travel plans to Kenya are equally indicative of an imminent terror attack in the country's aviation industry. On the 31<sup>st</sup> of December 2019 for instance, a US government agency warned of a terror threat in Kenya's airspace. The advisory by United States Federal Aviation was directed to its civilian airlines and all operators of US-registered aircraft warning the air carriers to exercise caution when flying over Kenya air space, citing possible attacks by extremists.<sup>58</sup>

Barely a week after, on the 5<sup>th</sup> of January 2020 the Al Shabaab attacked a military airstrip used by both US and Kenyan forces in Manda Bay in Lamu County. Besides attacking and destroying vital military installations, aircraft, and other properties, three US personnel were killed while others were left wounded.<sup>59</sup> The fact that the airstrip is located adjacent to a military camp base that hosts military personnel from both Kenya and U.S forces did not deter the insurgents from executing the attack. This indicates that the terror group is determined to launch successful attacks against the state's aviation facilities. Another warning that followed this on the heel was issued on the 26<sup>th</sup> of February 2020. In the advisory, the United States Federal Aviation Administration (FAA) cautioned all U.S registered airlines to be cautious while flying into, out of, within, or over the territory and airspace of Kenya due to the possibility of militant activities by extremists.<sup>60</sup> Indeed, Kenya has become a stage for various and numerous terrorist attacks. The continued upsurge of the unpredictable attacks calls for the need to exercise extreme caution in structuring the aviation industry's security system.

<sup>53</sup> Peter Eichstaedt, "Pirate State: Inside Somalia's Terrorism at Sea," *Chicago Review Press* (2010): 124.

<sup>54</sup> Norman Cigar and Stephanie E. Kramer (Eds), *Al-Qaida after Ten Years of War: A Global Perspective of Successes, Failures, and Prospects* (Government Printing Office, 2011).

<sup>55</sup> Wayne A. Downing, *Al-Qa-ida-s (Mis) Adventures in the Horn of Africa* (DIANE Publishing, 2007): 49.

<sup>56</sup> Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2004* (United States, Department of State, 2005).

<sup>57</sup> Robin, Op. Cit.

<sup>58</sup> Brian Ngugi, "US Agency Warns of Threat to Kenyan Airspace," *The East African* (December 31, 2019). <https://www.theeastafrican.co.ke/> (Accessed on April 3, 2020).

<sup>59</sup> Thomas Gibbons-Neff, Eric Schmitt, Charlie Savage and Helene Cooper, "Chaos as Militants Overran Airfield Killing Three Americans in Kenya," *The New York Times* (January 22, 2020). <https://www.nytimes.com/accessed April 3, 2020>.

<sup>60</sup> Hilary Kimuyu and Nyambega Gisesa, "Fears as US Warns of Possible Terror Threat in Kenyan Airspace," *Nation* (2020, March 18). <https://nation.africa/kenya/news/fears-as-us-warns-of-possible-terror-threat-in-kenyan-airspace-255380?view=htmlamp> (Accessed April 3, 2020).





### III. METHODOLOGY

The study employed the exploratory research design. This design is appropriate for a research problem in cases where there are few documented studies for reference.<sup>61</sup> Secondary data was collected from government publications, websites, internal records and reports, conference proceedings, research articles, and books, among others. The data collected were analysed thematically, based on the approach laid out by Miles and Huberman's framework for data analysis.<sup>62</sup>

### IV. FINDINGS & DISCUSSIONS

#### 4.1 Vulnerabilities of the Kenyan Aviation Industry to Terrorism

Various scholars and practitioners have identified the poor location of the state's international airports, encroachment of airport land, ineffective security screening equipment and procedures, irregular update of technology, and inadequate training of security personnel as some of the factors that render the industry vulnerable to terror activities. Most of Kenya's aviation industry is vulnerable to missile attacks due to the poor location of its facilities including the international airports. The majority are closely located to bushy or residential and business areas that are characterized by a high population. This not only makes it difficult to police the facilities but also renders them susceptible to acts of unlawful interference.<sup>63</sup> Such environments easily attract terrorists who camouflage themselves within the environment and can easily use shoulder-launched missiles from these areas aimed at a flight while landing, taking off, flying low, or at low speed. This is what happened in the 2002 attempt to down the Israeli airliner in Kikambala. Missiles were aimed at the aircraft that was carrying a number of tourists flying back to Israel from Moi International Airport as it was taking off.

The poor location of the industry's facilities is largely a factor of inadequate land for expansion. This has made it difficult for the industry management to effectively implement risk management procedures.<sup>64</sup> A study by Agoi on success factors and risk management at Kenya Airports Authority (KAA) indicates an increasing demand for aviation facilities which the management cannot offer. Kenyan airports which were initially constructed to handle 1.5 million passengers per year are now handling more than 6.5 million passengers.<sup>65</sup> Challenges of grabbing airport land, squatter encroachment, and high prices of land around the airports have aggravated the problem making it difficult to acquire more land to put up facilities that will accommodate the ever-growing numbers of passengers.

Ineffective security screening equipment and procedures are also factors that render the industry susceptible to terror-related activities. Occasionally, the airport equipment fails to operate and this compromises its security system. Airports need to have high technology security equipment to enable activities such as effective explosive detection and computer-assisted passenger screening. Screening procedures need to include standard measures at the various layers of the aviation industry such as departure areas, security restricted areas, and waiting lounges. This serves to ensure that both passengers and cargo meet the required standards before they are allowed entry. Concerns of VIP treatment procedures have been questioned whereby senior government officials and resident diplomats decline to go through the screening procedures claiming immunity rights.<sup>66</sup> This equally renders the industry susceptible to terror threats in that it is possible for a terrorist who fraudulently obtained a diplomatic passport to escape the stringent passenger screening measures.

Coupled with this factor is the use of obsolete technology. This renders the aviation industry vulnerable to security threats that emanate as a result of the non-detection of risky objects and persons into airport-restricted areas and aircraft. Adopting better, productive, and updated approaches that encourage more use of sophisticated luggage screening devices, people scanners, and biometric systems, therefore, becomes a necessity in enhancing the industry's security system.<sup>67</sup> The industry faces the challenge of insufficient funds to enhance security efficiency by procuring up-to-date airport security technology.<sup>68</sup> This factor precipitates its overreliance on external funding, the strings attached notwithstanding. An example is the passenger screening systems donated and maintained by the U.S government. While the gesture is okay, the danger is that the government is not fully in control of this information database which is critical

<sup>61</sup> Earl Babbie, *The practice of social research*. 11th Edition (Thompson, Wadsworth, Belmont, 2007).

<sup>62</sup> Matthew Miles and Michael Huberman, *Qualitative Data Analysis: An Expanded Sourcebook* (Sage: Newbury Park, 1994): 10.

<sup>63</sup> Bichou, Op. Cit. 52.

<sup>64</sup> Agoi, Op. Cit. 1-72

<sup>65</sup> Ibid., 44.

<sup>66</sup> Bichou, Op. Cit. 55.

<sup>67</sup> Ibid., 32.

<sup>68</sup> Agoi, Op. Cit. 54.



for state security. A lack of updated security technology also limits the state's capacity and ability to stay ahead of terrorists.

Air cargo is another challenge that presents a potential threat not only to the freight carriers and storage facilities within the industry but also to the passenger planes involved in carrying the cargo.<sup>69</sup> Many cargo-related companies working within the industry's facilities are likely to employ a number of people whose background is not well checked to provide cheap labour. It, therefore, becomes easy to employ an operative whose intentions may not be publicly displayed some of whom can be compromised to sneak in explosives in the storage facilities and aircraft. This renders the cargo system vulnerable to terror threats.<sup>70</sup> Such vulnerability renders the air transport industry at risk and with detrimental effects to the global economy due to massive losses of life, property, and interruption of trade in case of a successful terror attack.

Inefficient border control measures compromise the security architecture of any aviation industry. Airports serve as part of the frontier pathways into a country. The inadequacy of these measures guarantees ineffective security at airports leaving the country vulnerable to illegal immigrants, smuggling and trafficking in of persons, drugs, and arms, and organized criminals including terrorists. Many countries are reconsidering the security architecture of their frontier pathways. Additional control measures over immigrants, asylum seekers, and other foreigners such as the use of tamper-proof passports and imposing stringent rules on visa issuance need to be introduced.

Bichou et al., propose consideration of integration of all border security support services such as immigration, intelligence, and customs as a measure to enhance security. They argue that this will enhance detection of unlawful activities at ports of entry and the interlinking of frontier posts for easy sharing of information on matters of aviation security and monitoring of immigrants.<sup>71</sup>

Although these stakeholders have not integrated their services, mechanisms have been put in place to enhance their cooperation in the joint delivery of security services to the industry through joint operation centers and border management committees. Agoi however points out that coordination challenges make these efforts ineffective. He further points out that the coordination challenges are occasioned by unclear protocol concerns.<sup>72</sup> Putting in place proper protocols on communication and information sharing provides a platform for the establishment of common objectives, early identification of security threats, designing of achievable corrective and mitigation measures as well as effective implementation of agreed objectives and strategies.<sup>73</sup>

The above-discussed challenges demonstrate the vulnerable areas that can easily be penetrated by terrorists who may be aiming to attack the state's aviation industry. This can be aggravated in the form of aircraft arriving from airports where prior passenger and cargo screening is not keenly observed at take-off. This means that a terrorist or explosive device can easily be sneaked into the country; more so because the arrival clearance procedures do not require arriving passengers and their luggage which passes through many transfer points to be screened through x-ray machines upon arrival.

#### 4.2 Legal, Regulatory, and Technical Responses

Global responses to aviation terrorism have been mainly through the development and enactment of international law and legal and regulatory frameworks which are established bilaterally and multilaterally. The legal and regulatory process entails the establishment of rules and principles that guide and help to bring or maintain order within the aviation industry. The process is mainly negotiated either bilaterally or multilaterally between and among willing states. Such meetings examine issues related to terrorism in the aviation industry, adopt recommendations or resolutions, or conclude or amend intergovernmental agreements.<sup>74</sup>

The first-ever multilateral diplomatic conference convened to consider air transport regulation was the 1910 Paris International Conference of Air Navigation. The government of France invited twenty-one European States to Paris to regulate air navigation.<sup>75</sup> Despite ending up being a diplomatic failure, the conference set the basis for the 1919 diplomatic conference in which the Paris Convention accord that confirmed the notion of states' sovereignty over their

<sup>69</sup> Ibid., 185.

<sup>70</sup> Szliowicz, Op. Cit. 56.

<sup>71</sup> Bichou, Op. Cit. 41.

<sup>72</sup> Agoi, Op. Cit. 43.

<sup>73</sup> Mulama and Muchelule, Op. Cit. 376.

<sup>74</sup> International Civil Aviation Organization, *Manual on the Regulation of International Air Transport* 9626 (International Civil Aviation Organization, 2004): 53.

<sup>75</sup> John Cobb Cooper, "The International Air Navigation Conference, Paris 1910," *J. Air L. & Com.* 19 (1952): 127.



airspace was drafted and signed.<sup>76</sup> Conducted under the auspices of the International Commission for Air Navigation, the objective of the conference was to address the political wars involved in international aerial navigation. The accord drawn by the Aeronautical Commission of the Peace Conference of Paris gave rise to some guiding principles and provisions.<sup>77</sup> Subsequently, a number of other aviation regulation conferences were conducted but the most significant of them was the Chicago Convention on Civil Aviation which exclusively became the legal reference for civil aviation.<sup>78</sup>

The Chicago conference was called by the United States in 1944 during the World War II period to promote cooperation among nations on civil aviation-related matters. Amongst the milestones achievement of the conference was the Chicago Convention on International Civil Aviation which established the basic rules of international air law and also gave provisions for the basis of the regulation of international civil aviation worldwide.<sup>79</sup> It is this Convention that established the International Civil Aviation Organization (ICAO) which eventually became a UN specialized agency in October 1947. ICAO has henceforth become quite instrumental in spearheading multilateral regulation of international air transport which includes aviation counterterrorism measures. Although envisioned to have a futile future because of its overemphasis on civil aviation,<sup>80</sup> the great strides made cannot be underrated.

#### 4.2.1 Legal and Regulatory Responses to Aviation Security

Terrorism in the aviation industry evolved and became sophisticated as the aviation industry developed and its interconnectivity widened. Various actors in the industry have made great progress towards developing a series of legal instruments and standards to regularize and harmonize its operations. Among them are; International Air Transport Association (IATA), United Nations (UN), Government Leaders (G7/G8), and the International Civil Aviation Organization (ICAO). Of them all, ICAO is the most important one and its technical standards, legal regulation, and operating procedures have made a significant contribution to the development of the international civil aviation security program.<sup>81</sup>

The international legal and regulatory framework that emerged has over time played a crucial role in instilling a culture of cooperation among states on matters of aviation security.<sup>82</sup> From a legal perspective, the 1944 Chicago Convention on International Civil Aviation is one of the key instruments, as well as other related Conventions and Protocols that have been developed and adopted over time. The laws describe the acceptable aviation security conduct and through them, the order has been brought into the industry. The regulatory arm is the technical component that relates to rules and regulations that support the application of already set laws.<sup>83</sup> The rules and regulations form the Standards and Recommended Practices for Security (SARPS) in international civil aviation which are incorporated in Annex 17 of the 1944 Chicago Convention.<sup>84</sup>

The contemporary global environment which is highly interconnected and dynamic has provided fertile ground for terrorism to thrive both intensively and extensively in the industry. Following this, supplemental changes have been made to international law and regulations to address and prevent terrorist attacks against civil aviation. Consequently, the aviation security structure of many nations has changed to embrace new strategies such as the multi-agency cooperation approach which involves the working together of different security supporting agencies deployed in the industry in pursuance of one common goal, which is to combat terrorism. The approach is used in implementing established security standards and procedures that have been adopted at both national and international levels to respond to the increasingly changing and multi-faced terrorism phenomenon in the aviation industry.<sup>85</sup>

The approach is considered to yield better results in mitigating terror attacks because it tackles the problem using a multi-layered approach that involves positioning the involved security agencies at different levels of the aviation security structure, each tackling the problem from a different angle according to their area of specialties. Put together, the efforts ensure that all the risks and vulnerabilities within the industry are sealed to thwart the terrorists' efforts before maturity. In this case, a successful terror event must have passed through several security checks and screenings that are mandatory for any person or cargo that goes through the aviation industry for whatever reason. A successful terror event

<sup>76</sup> International Civil Aviation Organization, Op. Cit. 53

<sup>77</sup> Clement L. Bouve, "The Development of International Rules of Conduct in Air Navigation," *Air Law*. Rev 1 (1930): 1.

<sup>78</sup> David Mackenzie, *ICAO: A History of The International Civil Aviation Organization* (University of Toronto Press, 2010): 1.

<sup>79</sup> Van Dam Roderick, *Regulating International Civil Aviation: An ICAO Perspective* (Norwell, MA: Martinus Nijhoff, 1992): 11.

<sup>80</sup> Cooper, Op. Cit. 300.

<sup>81</sup> Mackenzie, Op. Cit.

<sup>82</sup> Abeyratne, Op. Cit. 6.

<sup>83</sup> Aleman, Op. Cit. 68.

<sup>84</sup> Ibid., 68

<sup>85</sup> Matthew F. Bogdanos, "Joint Interagency Cooperation: The First Step," *Institute for National Strategic Studies* 1, no. 37(2005): 10-18 p.11



within a multi-layered security system would therefore imply that the system had cracks within it to allow the enemy to penetrate. The approach, therefore, provides a proactive way of responding to terrorism in the industry, unlike the previous reactive approach which only addressed a terror event after its successful occurrence.

A number of conventions, protocols and subsequent security measures have been adopted to address civil aviation terror threats manifested in form of hijackings, ground attacks, bombings, and suicide missions. A review of the philosophical basis of these instruments will provide an understanding of the genesis of national civil aviation anti-terrorism legislation, regulations, and working procedures.

#### 4.2.2 International Legislation on Combating Aviation Terrorism

In the initial responses to terrorism in the aviation industry, the majority of nations primarily relied on unilaterally establishing national legislation and bilateral agreements to combat the acts of unlawful seizure and interference with aircraft.<sup>86</sup> The inadequacy of these responses in curbing aircraft hijackings led states into seeking an international law as the best solution to the problem whose effect transcends many states.<sup>87</sup> In this case, certain international regulatory responses have been adopted by the international community to counter aviation terrorism over the years since 1963. This section analyzes the establishment of these instruments in relation to the four waves of terror attacks in the aviation industry.

As established in chapter two, the 1960s were characterized by an escalating series of aircraft hijackings. The first three conventions namely, the Tokyo, The Hague, and the Montreal conventions were specifically established to address the rampant aircraft hijackings which were common during this era.<sup>88</sup> The 1963 Convention on Offenses and Certain Other Acts Committed on Board Aircraft was the first multilateral convention on aviation terrorism. The Convention normally referred to as the Tokyo Convention was adopted under the auspices of ICAO in September 1963.<sup>89</sup> It was intended to achieve two main objectives: First, to ensure that there will always be a jurisdiction for offences against penal law in form of the state in which the aircraft is registered and secondly gave powers to the aircraft commander or any other specified persons to take measures against persons who commit or are about to commit an offence on board an aircraft which jeopardizes the safety of the aircraft or that of persons or property therein.<sup>90</sup>

Scholars like Gutierrez however saw the convention as ineffective right from its inception arguing that conflicts of jurisdiction may arise when a crime is committed on board an international flight. In addition, the issue of powers and responsibilities of the aircraft commander was legally disputed.<sup>91</sup> Despite these misgivings, the convention entered into force in December 1969 following the July 1968 hijacking of El Al flight 426. This particular hijacking also fueled the second international legal response to aviation terrorism, the 1970 Convention for the Suppression on Unlawful Seizure of Aircraft adopted in December 1970. Also known as the Hague Convention, its primary objective was to arrive at an acceptable method of adequately dealing with alleged perpetrators of acts of unlawful seizure of aircraft.<sup>92</sup> Despite the two legal instruments being in place, cases of aircraft hijackings remained persistent.

The series of five hijackings by the Palestinian insurgents in September 1970 provided a basis for the third international legal response to terrorism in the aviation industry, “the 1971 Montreal Convention on the Suppression of Unlawful Acts Against the Safety of Civil Aviation. The convention made it an offence for any person who unlawfully and intentionally performs an act of violence against a person on board an aircraft and a person who acts in a way that is likely to endanger the safety of the aircraft. The convention also not only made it an offense for any person who attempts such acts but also any person who is an accomplice of a person who performs or attempts to perform such acts.<sup>93</sup> The stringent measures were majorly directed against hijackers and the nations tolerating them.<sup>94</sup>

The three conventions, however, had limitations in that they only dealt with “unlawful seizure” committed on board aircraft ignoring attacks committed on the ground as well as unlawful interferences with air navigation, facilities,

<sup>86</sup> Abramovsky, Op. Cit. 381.

<sup>87</sup> Ibid.

<sup>88</sup> Aleman, Op. Cit. 72

<sup>89</sup> Gerald F. Fitzgerald, “Offences and Certain Other Acts Committed on Board Aircraft: The Tokyo Convention of 1963,” *Canadian Yearbook of International Law* 2 (1964): 191–204.

<sup>90</sup> Ibid., 192

<sup>91</sup> Juan J. Lopez Gutierrez, “Should the Tokyo Convention of 1963 Be Ratified?” *Journal of Air Law & Commerce* 31 (1965): 1.

<sup>92</sup> Abramovsky, Op. Cit. 392.

<sup>93</sup> International Civil Aviation Organization, “Convention to Discourage Acts of Violence Against Civil Aviation,” *International Legal Materials* 10, no. 6 (1971): 1151–56.

<sup>94</sup> Thomas M. Franck and Bert B. Lockwood, “Preliminary Thoughts towards an International Convention on Terrorism,” *American Journal of International Law* 68, no. 1 (1974): 69–90.



and services such as airports, air control towers, or radio communications.<sup>95</sup> It is evident that all these were established to mitigate aircraft hijackings which were already a menace in the industry. Despite their weaknesses, it is The Hague and Montreal Conventions that established a basis for multilateral instruments on terrorism in the aviation industry.<sup>96</sup>

As established in chapter two, the second wave of terrorism in the aviation industry was characterized by an escalation of ground attacks in the 1970s. The highlights of these events were the simultaneous terrorist attacks at the termini of the Rome and Vienna International airports and this led to the establishment of the fourth international legal instrument, the 1988 Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation. The protocol amended the weaknesses of the 1971 Montreal Convention which only criminalized unlawful acts committed against the aircraft.<sup>97</sup> The protocol's establishment, therefore, enhanced the international regulations on aviation terrorism and provided an extension of coverage beyond the aircraft, thus covering airports which host passengers before they depart or after they arrive. Salient also is the fact that this protocol was established in the third wave period to address the second wave attacks of the 1970s after their long history of existence.

These legal instruments already in place were also found to be insufficient to address mid-air sabotage attacks that had escalated during the third wave period of the 1980s. Specific examples are the two incidents in 1985 and 1988 respectively which involved Air India which claimed 331 lives and the second Pan Am Flight 103 where 270 people perished. This realization led to the establishment of the 1991 Montreal Convention. The convention was passed seven years later aiming to prohibit and prevent the manufacturing and storage of unmarked plastic explosives, which were commonly used for mid-air attacks.<sup>98</sup> It is also obvious that this convention equally came long after mid-air sabotage attacks had become a security threat to the industry. The international legal and regulatory instruments to address the fourth and current wave of the aviation industry attacks of suicide-mission in nature were established nine years after the 9/11 attacks which exemplify suicide mission attacks. This was through the 2010 Beijing convention and its supplementary protocol.

Generally, the above trend illustrates that responses meant to address the first wave of terror attacks were developed in the second wave period. Those addressing the second wave challenges were developed in the third wave era. Further, the responses addressing the third wave attacks were also developed during the fourth wave era and those addressing the fourth wave attacks were developed long after their escalation.

In other words, each instrument was established to address a specific terror event as it was manifested and long after its escalation. The responses, therefore, took a reactional approach rather than a proactive approach and were found to be insufficient to combating terrorism and related events in the industry, as demonstrated by the sustained terror attacks even after their establishment.<sup>99</sup> This implied that the security system of the aviation industry needed to be reexamined.

#### 4.2.3 Proactive Responses

A new forward-thinking approach to aviation security was hatched in 2010 which marked ICAO's transition era from focusing on reactive measures to laying emphasis on adopting proactive measures that emphasized prevention of terrorism and related activities in the aviation industry.<sup>100</sup> The 2010 Beijing Convention on the Suppression of Unlawful Acts relating to international civil aviation was informed by this new proactive thinking. The convention which was established after long deliberations following the 9/11 attacks constituted the sixth international legal response to terrorism in the aviation industry. In addition to the earlier offenses, the convention which is an improvement of the 1971 Montreal Convention criminalized cyber-attacks on air navigation facilities for the first time.<sup>101</sup> It also considered criminalizing the threat to commit an aviation-related terror attack, hence the criminalization of the act of conspiring to commit an offence.<sup>102</sup> The convention, therefore, provided not only a pre-emptive approach in countering terrorism in the aviation industry by tackling the phenomenon from the level of intention to carry out a terror attack, but also the act

<sup>95</sup> René H. Mankiewicz, "The 1970 Hague Convention," *Journal of Air Law & Commerce* 37 (1971): 195-209.

<sup>96</sup> Samuel Witten, "Introductory Note to The Convention on The Suppression of Unlawful Acts Relating to International Civil Aviation and The Protocol Supplementary To The Convention For The Suppression of Unlawful Seizure of Aircraft," *International Legal Materials* 50, no. 2 (2011): 141-59. p 141

<sup>97</sup>Ibid.

<sup>98</sup> Aleman, Op. Cit. 69.

<sup>99</sup> Azani et al., Op. Cit.

<sup>100</sup> Clinton V. Oster Jr, John S. Strong, and C. Kurt Zorn, "Analyzing Aviation Safety: Problems, Challenges, Opportunities," *Research in Transportation Economics* 43, no. 1 (2013): 148-164.

<sup>101</sup> Damien Van der Toorn, "September 11 Inspired Aviation Counter-Terrorism Convention and Protocol Adopted," *Insights* (2010): 1-5.

<sup>102</sup> Abeyratne, Op. Cit. 243-255.



itself. This strategy offered a more comprehensive response because of its ability to dispel a terror attack long before it causes any physical, social, political, economic, or psychological harm.

The 2010 convention also provided a Supplementary Protocol to the Convention for the Suppression of Unlawful Seizure of Aircraft as an improvement of the Hague Convention which focuses on a specific offence, “the unlawful seizure of an aircraft in international civil aviation.”<sup>103</sup> In this sense, the protocol elaborated on the hijacking offense and strengthened its provisions in specific ways. For example, it recognized that not all persons involved in airplane hijackings will physically board the aircraft and for this reason, it extended the cover of hijackings to occur pre or post-flight. The protocol also provided for the criminalization of attempts to commit a terror offense, accomplice liability, conspiracy, and assistance after the act. It also included more detailed extradition and legal assistance provisions than the Hague Convention.<sup>104</sup> It, therefore, put every actor in their various forms, passengers, insider employees, or any other person on high alert lest one falls victim to being an accomplice or being used to support terror activities.

### 4.3 Technical Responses

In this study, technical responses refer to the practical measures that have been put in place to enact the international legal instruments that address terrorism in the aviation industry. They consist of the state’s use of the international standards and recommended practices, the aviation security program, and the universal security audit program.<sup>105</sup>

#### 4.3.1 The International Standards and Recommended Practices (SARPS)

The ICAO’s Annex 17 focuses on the international standards and recommended practices (SARPS) meant to safeguard the aviation industry against acts of unlawful interference.<sup>106</sup> The rules and guidelines spelt out in the annex are created by a specialist body that was inaugurated in 1985 following the bombing of an Air India Boeing 747 over the Atlantic where more than 300 persons died.<sup>107</sup> This further explains the fact that responses to combating terrorism in the aviation industry then were more reactive than proactive not only at the strategic levels but also at the operational and consequently at the technical levels of aviation security. The specialist body’s mandate extends to regular reviewing of the international security standards and re-writing them.

Annex 17 is therefore seen as secondary legislation that plays a critical role in the field of aviation security and ICAO member states are expected to implement it. It provides the standard operating procedures of aviation security and is also the basis for the existing international civil aviation security regulations. Annex 17, therefore, provides civil aviation authorities with a comprehensive document that contains all SARPs that directly deal with matters related to aviation security.<sup>108</sup> The manual also seeks to coordinate activities of all agencies involved in aviation security programs and stresses the importance of cooperation and coordination among them.<sup>109</sup> Strict adherence to this is expected to improve the security situation of the air transport industry and thereby reduce cases of terror attacks within it.

#### 4.3.2 The Aviation Security Program

The happenings of the 9/11 attacks brought to light the fact that despite the stringent measures put legally and in practice, there existed some lapses which needed to be revisited. On this basis, ICAO called for a review of all its security policies and consequently established and adopted an Aviation Security Program (AVSEC) meant to facilitate the development of long-term strategies meant to improve and intensify the implementation of SARPs as spelt out in annex 17 and the security manual that guides their implementation. The program is meant to be mandatory for all ICAO member states.<sup>110</sup> Proper implementation of the program will enhance the level of security in the industry, and consequently help to thwart terrorism and its related activities.

<sup>103</sup> Ibid., 131-143.

<sup>104</sup> Witten, Op. Cit. 142.

<sup>105</sup> Aleman, Op. Cit. 72

<sup>106</sup> Rodney Wallis, “The Role of the International Aviation Organisations in Enhancing Security,” *Terrorism and Political Violence* 10, no. 3 (1998): 83–100.

<sup>107</sup> Ibid., 84

<sup>108</sup> Aleman, Op. Cit. 72

<sup>109</sup> Duchesneau, Op. Cit. 172

<sup>110</sup> Cherif M. Bassiouni, Ed. *International Criminal Law: Sources, Subjects and Contents* (Neitherlands: Leiden Martinus Nijhoff Pub., 2008).



### 4.3.3 Universal Security Audit Program

The review of the security policies after the September 9/11 attack also called for the implementation of a Universal Security Audit Program (USAP). This was after establishing that some member states were slow in implementing the legal and regulatory measures agreed upon, even after assenting to them. This situation of events put the global airspace at risk of increased terror attacks by virtue of the increased air transport interconnectivity. The program calls for regular and mandatory audits that are aimed at evaluating national aviation security programs of ICAO member states.<sup>111</sup> The rationale behind this course of action is to strengthen global aviation security by ensuring that member states remain committed to the course. Through the audits, every security measure set out in the security manual is assessed as it is being implemented. Recommendations from the audit findings help to improve counter-terrorism measures and consequently the general security of the aviation industry.

### 4.4 Regional Responses to Aviation Terrorism

In their respective regions, different countries in the world have come together to wage a coordinated and collaborated effort against terrorism in their aviation industries. Examples of the regional bodies are the European Civil Aviation Conference (ECAC), Organization of American States (OAS), and League of Arab States (LAS). Most of the regional institutions have adopted actions that are similar to ICAO conventions and therefore provide an avenue through which to implement the technical aspects of ICAO.<sup>112</sup> In the same light, many African Union (AU) member states have also reaffirmed the urgent need to implement strategies on regional, sub-regional, and bilateral cooperation on aviation security in their adoption of the Windhoek Declaration on Aviation Security on the 7<sup>th</sup> of April 2016. Among matters agreed on is to cooperate in information sharing, training, and technical assistance. Member states also agreed to ratify and adopt ICAO standards of aviation security.<sup>113</sup>

Kenya is a member of the East Africa Community Civil Aviation Safety and Security Oversight Agency (EAC CASSOA). The agency was established in June 2007 as a self-accounting body of the EAC following the signing of the protocol for the establishment of EAC CASSOA by the three partner states of Kenya, Uganda, and Tanzania. The body provides a common framework and mechanism for the partner states to fulfill their international safety and security oversight obligations as provided for by the convention, in an effective and efficient way. The purpose of EAC CASSOA is also to help partner states meet the requirements of the ICAO which includes countering terrorism activities in the East Africa Community airspace.<sup>114</sup>

The initiative involves developing consensus among partner states, coordinating activities, sharing technical expertise and facilities, and achieving effective oversight of civil aviation safety and security.<sup>115</sup> Given that the member states share a common problem of terrorism insurgency in the sub-region, the concerted efforts to share in countering the phenomenon which also manifests itself in the form of air transport attacks is a positive approach to protect the social, economic, and political pillars of the individual countries and collectively. The measure works well as a proactive approach to deter terror activities from happening in the sub-region's airspace.

### 4.5 The Legal Strategies Adopted by Kenya's Aviation Industry to Combat Terrorism

Generally, there have been several devastating terrorist attacks in Kenya. Being at the heart of domestic and international transportation, and a key pillar in the country's economic growth, concerns on the level of security in the aviation industry have been on the increase. Coupled with the happenings of 9/11, Kenya's aviation industry authorities - Kenya Airports Authority (KAA), Kenya Civil Aviation Authority (KCAA), and the government have been prompted to invest in stringent security measures to safeguard the industry against terrorism. A number of legal measures have been progressively initiated to strengthen the security of all aspects of Kenya's commercial civil aviation against terror attacks.

#### 4.5.1 Protection of Aircraft Act, 1970

Revised in 2012, the act is one of the earliest legislations that Kenya assented to in the fight against terrorism in its aviation industry. It effected the following conventions to which Kenya is a signatory; The Tokyo Convention on

<sup>111</sup> Aleman, Op. Cit. 73

<sup>112</sup> Ibid.

<sup>113</sup> ICAO, "Windhoek Declaration on Aviation Security and Facilitation in Africa," *Ministerial Conference* (Namibia, 4<sup>th</sup> -7<sup>th</sup> April, 2016): 6. [https://www.icao.int/Meetings/a40/Documents/WP/wp\\_063\\_en.pdf](https://www.icao.int/Meetings/a40/Documents/WP/wp_063_en.pdf)

<sup>114</sup> Mtesigwa Mugo, "Dynamics, Emerging Legal and Regulatory Issues in Aviation Industry–African Perspective." (2016). Retrieved from <http://repository.eac.int/123456789/1462>

<sup>115</sup> Irandu, Op. Cit. 194.



offences and certain other acts committed on board aircraft, the Hague Convention for the suppression of unlawful seizure of aircraft, and the Montreal Convention for the suppression of unlawful acts against the safety of civil aviation. The act provides for aircraft hijacking offenses and other offences relating to aircraft. It also provides for the jurisdiction of the Kenyan courts in certain cases and provisions for extradition.<sup>116</sup> This is a clear indication that Kenya's first approach to combating terrorism in its air industry was also reactionary, taking the same trend and pattern as that of the international responses. It also indicates Kenya's commitment to implementing aviation security measures adopted by ICAO member states.

#### 4.5.2 The Constitution of Kenya, 2010

Article 2(6) of the Constitution of Kenya provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya.<sup>117</sup> By virtue of being a signatory of ICAO, Kenya has domesticated all treaties and conventions relating to countering unlawful acts against its aviation industry which include terrorism.<sup>118</sup> The ICAO conventions and treaties, therefore, form the philosophical foundations of all its civil aviation legislation and regulations in Kenya.<sup>119</sup> Furthermore, the provision allows any revisions or reviews to the conventions to automatically become part of Kenya's law without any delay. This enhances timely adoption of reviewed responses to terrorism phenomenon which are likely to happen given the phenomenon's multi-faced nature, hence dictating the need for regular reviews.

#### 4.5.3 The Civil Aviation Act, 2013

The Act supersedes the Civil Aviation Act of 2002 which established KCAA to regulate and oversight aviation safety and security as guided by the provisions of the Convention on the International Civil Aviation. It prohibits acts of unlawful interference which include; seizure of aircraft in flight or on the ground, hostage-taking on board aircraft or at airports, possession of a weapon or hazardous device intended for criminal purpose onboard aircraft or at an airport, use of aircraft in service for purposes of causing death, serious bodily injury or threats to cause bodily harm to passengers, crew, and others whose safety is of interest to passengers or crew on the craft, and destroying or damaging air navigation facilities or interfering with their operations.<sup>120</sup>

The Act not only addresses how to respond to modern aviation terrorism acts but also the varied tactics employed by perpetrators to attack the industry namely, hijackings, ground attacks, sabotage, suicide missions, and cyber-terrorism. It also addresses the question of the use of threats, conspiracy, and attempted acts intended to jeopardize the safety of civil aviation and air transport. These provisions demonstrate the government's commitment to legally address terrorism in its aviation industry using a proactive approach as opposed to the previous reactive approach.<sup>121</sup> The measures guarantee a better and forward-thinking security structure that has a high potential of mitigating terror attacks in the industry if applied appropriately.

#### 4.5.4 Kenya Security Laws Amendment Act, 2014 (Section 75)

To deal with the multi-faced terror problem in the country, the government crafted the Kenya Security Laws (Amendments) Bill 2014 which sought to amend among others the National Transport and Safety Act and the Kenya Citizenship and Immigration Act.<sup>122</sup> The Act provided for the establishment of a mechanism for coordinating counter-terrorism measures in all entry and exit ports in the country. By virtue of being the host of all the -international airports which serve as entry and exit points in Kenya, the aviation industry is directly affected by the security laws Amendment Act, 2014.<sup>123</sup> Consequently, the multi-agency body, "Border Control and Operations Co-ordination Committee (BCOCC)" was formed and enforced with a mandate to coordinate activities of security supporting agencies deployed at the aviation industry among other entry and exit points. The multi-agency body also exercises oversight authority over operations of the respective agencies in the aviation industry.

<sup>116</sup> The Protection of Aircraft Act, 1970 (Rev. 2012). 8

<sup>117</sup> Samuel A. Nyanhoga, "The Constitution, National Security Council and the War on Terror in Kenya." *Africa Amani* (2017): 7-11.

<sup>118</sup> Mwikya and Mulwa, Op. Cit. 23.

<sup>119</sup> The Constitution of Kenya, 2010.

<sup>120</sup> The Kenya Civil Aviation Act, 2013

<sup>121</sup> Mercy Muendo, "Evolution of the Kenyan Aviation Transport Industry from Colonisation to the Present: Towards Legal Compliance with the International Standards of Aviation Law," *SSRN Journals* (2018): 1-18.

<sup>122</sup> Mwikya and Mulwa, Op. Cit. 12.

<sup>123</sup> The Kenya Security Laws (Amendment) Act, 2014.





#### 4.6 Regulatory Strategies Adopted to Combat Terrorism in Kenya's Aviation Industry

These refer to the prescribed rules and guidelines relating to the actions to be taken by those working within Kenya's aviation industry so as to carry out the intent of the industry's legal instruments on the mitigation of terrorism and other related activities.

##### 4.6.1 The Civil Aviation (Security) Regulations, 2019

According to article 37 of the Chicago Convention, Kenya as a member state is obligated to comply with ICAO SARPs.<sup>124</sup> KCAA develops regulations and guidance materials on various operational matters concerning how security will be handled on a day-to-day basis in the industry. Key among these are the security regulations. To operationalize the Civil Aviation Act, 2013, the authority established the Civil Aviation (Security) Regulations, 2019 which seek to incorporate new and emerging security needs and ICAO requirements on International Civil Aviation Security. The regulations are addressed to, all aerodromes in Kenya, passengers, persons working in the aviation industry, occupants of airport buildings, and persons on land adjoining or adjacent to or within the vicinity of airports or air navigation installations that do not form part of the airport.<sup>125</sup> The strength in these regulations is demonstrated in its appreciation of the fact that optimal aviation security entails the concerted efforts of all the actors who are directly or indirectly involved in performing the outlined security measures that are meant to improve the security system of the industry and as a result thwart terrorism and its related activities.

##### 4.6.2 Preventive Security Measures

Among the security aspects considered in the regulations that directly address terrorism in the industry are the regulations on Preventive Security Measures contained in Part IV of the Civil Aviation (Security) Regulations, 2019. These are aimed at protecting passengers, crew, aircraft, airports, and aviation facilities and preventing acts of unlawful interference within the industry. Among others, they entail access restrictions and screening measures. The measures are also meant to ensure that the persons and goods allowed to access the airport areas are only those that have been thoroughly screened and whose intentions are known beforehand.<sup>126</sup> The screening regulations not only affect the air transport passengers, but also the air crew, industry staff, businessmen who operate business establishments within the industry's premises, and the air cargo.<sup>127</sup> All these have the potential of being used to execute terror and related activities in the industry. When well applied, the measures play an important role in mitigating terror activities thereby improving the industry's security.

##### 4.6.3 National Civil Aviation Security Training Program

The training program aims to ensure that personnel of all entities involved with or responsible for the implementation of various aspects of aviation security are properly trained on the appropriate standards for tasks in accordance with the national civil aviation security program. Such trainings help in increasing the personnel's understanding of specific security areas as a means of mitigating risks and vulnerabilities that terrorists can take advantage of.<sup>128</sup> Among the subjects covered are; enhanced screening procedures, passenger profiling, and strict access control. The training also takes the form of on-job training and familiarization tours to foreign airports for bench marking.<sup>129</sup>

##### 4.6.4 Aviation Security Audits and Reviews

Through the Aviation Security Department, KCAA also conducts aviation security audits, inspections, system tests, investigations, and surveys on airports, airlines, cargo agents, inflight catering operators among others.<sup>130</sup> The audits include a regular and mandatory Universal Security Audit Program (USAP) meant to identify and correct deficiencies experienced in the implementation of SARPs.<sup>131</sup> Kenya participated in the audits in the years 2004 and 2008. A follow-up audit was also conducted in 2013 by the ICAO Universal Safety Oversight Audit Program (USOAP). Corrective Action Plans are currently ongoing by KCAA. Proper implementation of this measure in combating terrorism activities in the aviation industry ensures that flaws in the system are detected and fixed in time before the enemy takes advantage

<sup>124</sup> Mwikya and Mulwa, Op. Cit. 23.

<sup>125</sup> The Kenya Civil Aviation (Security) Regulations, 2019.

<sup>126</sup> David Poggiolini, "Intensifying Security at Kenya's Airports: Aviation," *Transport World Africa* 5, no. 1 (2004):46.

<sup>127</sup> Agoi, Op. Cit. 36.

<sup>128</sup> Ibid., 42.

<sup>129</sup> Poggiolini, Op. Cit.46.

<sup>130</sup> Mwikya and Mulwa, Op. Cit. 30.

<sup>131</sup> The Kenya Civil Aviation (Security) Regulations, 2019.



of the vulnerabilities and risks therein to advance his schemes. The measure clearly supports the proactive approach towards thwarting terrorism activities in the aviation industry.

The security measures discussed above, and as embraced by Kenya's aviation industry mirror a multilayered security architecture that relies on more than one security agency to detect and deter terrorism threats in the industry. Each layer that presents a different measure of security checks is positioned in such a way that it forms a defensive anti-terror structure meant to detect, deter and respond in time to any threat. The structure improves the chances of intercepting a threat at any of the different stages before it is advanced to final execution. The different layers in this security architecture symbolize the different activities that aviation security agencies engage in on a daily basis namely, passenger profiling, baggage screening, document examination, screening of airport grounds, and gathering intelligence among myriad others.

All these activities are aimed at achieving one common goal of safeguarding the entire industry's ecosystem from any unlawful acts that include terrorism. This requires that all the supporting agencies' personnel in their different professions work jointly in agreed models of cooperation having common objectives and sharing information. This approach to aviation security is said to guarantee better outcomes in relation to preventing terrorism and its related activities in the industry.<sup>132</sup>

#### 4.7 Multi-Agency Cooperation Approach to Terrorism

Following the aftermaths of the US 9/11 terror attacks, many countries including Kenya strengthened their aviation security systems by establishing new security organizations and changing some aspects of their existing security organization structures.<sup>133</sup> The multi-faced nature of terrorism and related activities in the aviation industry have demonstrated that it is not easy for one organization to oversee all security functions at an airport due to the complexity of its ecosystem.<sup>134</sup> The need and urgency for building effective cooperation and coordination among security personnel working in the industry, therefore, becomes inevitable.<sup>135</sup> The security structure of Kenya's aviation industry is composed of several agencies, each having a specific mandate and working at different levels but all having one common goal of combating terrorism in the industry.

In appreciation to this, Section 10 (1) (a) of the Civil Aviation (Security) Regulations, 2019 provides for coordination of security activities between ministries, departments, agencies, and other organizations concerned with or responsible for the implementation of various aspects of the national civil aviation security program at Kenya's aviation industry.<sup>136</sup> Cooperation efforts to combat terrorism in the aviation industry have been established by the government of Kenya anchored on the 2014 Security Laws Amendment Act, which provides for the establishment of a mechanism for coordinating counter-terrorism measures in Kenya's entry and exit ports of which the aviation industry is a key player by virtue of being the host center for all of Kenya's international airports. The inter-agency body, "Border Control and Operations Co-ordination Committee (BCOCC)" was formed and enforced to coordinate counterterrorism measures among the multi-agency players and also to exercise oversight authority over operations of the respective partner agencies at Kenya's aviation industry.<sup>137</sup>

The BCOCC has listed members whose functions include the coordination of exchange of information among respective security supporting agencies responsible for the industry's security. The members are the National Police Service, Kenya Revenue Authority (Customs and Border Control), Department of Immigration Services, National Intelligence Service, Port Health Services, Kenya Plant Health Inspectorate Services, Kenya Bureau of Standards, and Kenya Airports Authority. Kenya Airports Authority is the lead and coordinating agency of the aviation security activities of this body.<sup>138</sup>

<sup>132</sup> Douglas H. Harris, "How to Really Improve Airport Security," *Ergonomics in Design* 10, no. 1 (2002): 17-22.

<sup>133</sup> Rosemary Chebet Koros, *Effect of Strategic Management Drivers on Performance of Airports in Kenya* (Unpublished PhD Dissertation, JKUAT-COHRED, 2018): 52.

<sup>134</sup> *Ibid.*

<sup>135</sup> Bogdanos, Op. Cit. 18.

<sup>136</sup> The Kenya Civil Aviation (Security) Regulations, 2019.

<sup>137</sup> The Kenya Security Laws (Amendment) Act, 2014.

<sup>138</sup> Department of Immigration Services, *Immigration Border Procedures and Operations Manual: Guidelines on Policies and Procedures for Immigration Officers*. Second Revised Edition (Department of Immigration Services, 2017): 67.



## V. CONCLUSIONS AND RECOMMENDATIONS

### 5.1 Conclusion

From the study findings. It is evident that aviation security became a challenge, especially in the 1960s following an increase in the number of terrorist attacks in the industry. ICAO's legal, regulatory and technical responses through international conventions and protocols to address the challenge were reactionary in nature especially in the period before the 9/11 US attacks. A review of their ineffectiveness called for responses that were more proactive and preventive in nature, as a better solution in mitigating terrorism in the industry. This called for the need for cooperation among various security supporting agencies in many states' aviation industry. Presently, there are extensive counterterrorism responses employed in Kenya's aviation industry. These include legal, regulatory, technical, and multiagency responses frameworks.

### 5.2 Recommendations of the Study

Based on the study findings, the study makes the following recommendations. First and foremost, there is a need to undertake training for security personnel to better implement the legal, regulatory, and technical responses. There should also be an effort to strengthen the capacities of agencies to better respond to terrorism threats in the aviation industry through legislation, training, and funding interventions.

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