# Regional aviation safety organisations: enhancing air transport safety through regional cooperation

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# Chapter 3

# Definition and Typology of Regional Aviation Safety Organisations

*'The establishment of regional civil aviation bodies with regulatory and/or executive tasks and responsibilities should not be seen as a threat to the global framework for civil aviation, but as an opportunity to reinforce it and to make it work better.'*

Daniel Calleja Crespo
Director for Air Transport at the European Commission (2004-2011)[1]

## 3.1 INTRODUCTION

Following a presentation and analysis of the international aviation safety framework as established by the Chicago Convention, as well as of the regional aviation safety policy of ICAO, this chapter will introduce the notion of a RASO (Section 3.2) and propose a definition of this kind of organisation (Section 3.3). It will also propose a typology of regional aviation safety bodies based on specific features of their legal and organisational set-ups, and illustrate this typology with examples of RASOs and pre-RASOs from different parts of the world (Section 3.4 and 3.5). Finally it will introduce the notion of a Regional Civil Aviation Authority (RCAA), and present and analyse the only existing example of such organisation, the Eastern Caribbean Civil Aviation Authority (ECCAA, Section 3.6).

## 3.2 THE RASO CONCEPT IN STATE AND ICAO PRACTICE

At present there is no internationally agreed definition of a RASO as understood in the ICAO context. As was explained in the previous chapters, in practice each of these organisations falls into one of the two basic categories, that is RSOO and RAIOs, depending on whether its function is safety regulation and oversight, or investigation of aviation accidents and incidents.

The present approach of ICAO and of the international aviation community is to treat RSOOs and RAIOs as broad concepts covering different forms of cooperation, even including technical cooperation projects. The common denominator which is used by ICAO and States to define an organisation or form of cooperation as a RSOO or a RAIO is its general objective of strengthening safety

[1] Former Director of the Air Transport Directorate of the European Commission speaking on the occasion of the EC-ICAO Symposium on Regional Organisations,*supra* note 43 in Ch.1.

oversight and investigation capabilities of States located in the same geographical region, rather than being defined by the particular institutional or legal setup.[2]

The above understanding is confirmed by ICAO manuals, which in the case of RSOOs explain that this term:

> [C]overs, in a general sense, a number of legal forms and institutional structures that range from highly formalized international intergovernmental organizations…to less institutionalized projects established under the ICAO Cooperative Development of Operational Safety and Continuing Airworthiness Programme.[3]

ICAO further explains in its RSOO manual that:

> Assembly resolutions essentially leave it up to each group of States that wishes to establish an RSOO to determine the legal form and institutional structure that best fits the needs and characteristics of their specific region.[4]

In the case of a RAIO, the ICAO manual on this subject simply describes the different functions that such organisations may undertake without offering any specific definition.[5]

There are at least two reasons for this current broad approach of ICAO. Firstly, from a policy point of view, ICAO does not want to exclude from its regional safety framework any initiative, even if institutionally not very formalised, which contributes to the improvement of aviation safety. Most importantly however, as will be demonstrated in Chapter 5, regional aviation safety bodies have a general tendency to evolve over time into more institutionalised forms. Therefore, an organisation which today is only a loose association of national aviation safety authorities could tomorrow be a fully-fledged regional aviation safety agency with legal personality and executive competences. ICAO wants to follow and support such evolutions.

The practical result of the current broad approach is that RASOs differ a lot in the tasks they undertake, their legal status and organisational set ups. At the same time the notion of a RASO, and especially of a RSOO, is being used increasingly in ICAO documentation, including Assembly resolutions and Annexes to the Chicago Convention. In recent years a tendency can be observed to include in ICAO documents provisions which address specific requests directly to RASOs, or even envisage a possibility of attributing to them functions which traditionally, under the Chicago Convention and its Annexes, have been the exclusive domain of States. Two examples can be given to illustrate this trend:

- Under the 2010 Assembly resolution on the USOAP-CMA, RSOOs are considered as States where applicable.[6] This is the first instance of an

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[2] See: ICAO, Symposium on regional safety oversight organizations (Montreal, Canada, 2011), <http://www.icao.int/Meetings/RSOOSYMPO/Pages/default.aspx> [accessed 18 March 2014].
[3] ICAO Doc. 9734 Part B, *supra* note 3 in Ch.1, at Forward.
[4] Ibid.
[5] ICAO Doc. 9946, *supra* note 3 in Ch.1, at Chapters 2-3.
[6] See: Assembly Resolution A37-5, *supra* note 71 in Ch.2, which provides that because RSOOs 'have an important role in the USOAP CMA', wherever applicable, the word 'States' as used in that Resolution 'should be read to include RSOOs.'

ICAO Assembly resolution which explicitly places RSOOs on equal footing with States.

- Under Amendment 13 to ICAO Annex 13 adopted in 2010, States now have a possibility to 'delegate the whole or any part of the conducting of ... investigation to … a regional accident investigation organization by mutual arrangement and consent.'[7]

In situations like the two examples cited above, lack of a definition makes it difficult to understand to whom exactly such documents are addressed. In the future, more references to RASOs are expected to find their way into ICAO documentation. It would thus be desirable to eliminate any ambiguity as to who is the addressee of the provisions contained in ICAO documents, especially where such documents grant to a RSOO or a RAIO a right to carry out functions so far normally exercised only by States.

### 3.3 PROPOSAL FOR THE DEFINITION OF A RASO

In view of the above, it would be advisable for ICAO to develop a definition, or at least basic criteria, to classify RASOs from the perspective of regulatory, oversight or investigative functions they can carry out.

A desire for a definition and classification criteria for RASOs was also expressed in 2011 by the ICAO RSOO symposium, which felt that such a definition would allow all stakeholders, including ICAO and technical cooperation partners, to 'better adapt their activities to the different types of RASOs.'[8] By mid-2014 such a definition has not been developed.

The purpose of a RASO definition should not only be to codify the current ICAO and State practice, but also to stimulate the most efficient forms of such organisations. In this respect, from a legal point of view, the most significant criteria that should be highlighted in such a definition would be a possession by a RASO of a competence to carry out, on behalf of States, safety related functions and duties set out by the Chicago Convention, in a legally binding manner. Such competence 'provides the best dividend in terms of efficiency and the effective use of resources',[9] which strengthens the RASO mandate and makes it more suitable to be an effective part of the GASON, as was proposed in the preceding chapter. From an international law point of view, and as will be demonstrated in Chapters 4 and 6, the granting of such powers means that a relationship of an international agency is established between a RASO and the States on behalf of which it carries out the subject matter functions and duties. The research done for the purpose of this study (see Section 4.3.2 of Chapter 4) shows that such a relationship presupposes the possession by the organisation in question of a separate international legal personality.

The building of a RASO definition is, however, not an easy task due to the much diversified nature of RASOs' legal basis and institutional set ups. Nevertheless, for the purpose of this study the following definition is proposed:

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[7] Annex 13 to the Chicago Convention, at Paragraph 5.1 and Paragraph 5.1.2.
[8] Outcomes of 2011 RSOO Symposium (C-WP/13810), *supra* note 4 in Ch.1, at Paragraph 2.1.1.
[9] ICAO Doc. 9734 Part B, *supra* note 3 in Ch.1, at paragraph 3.1.1.

A Regional Aviation Safety Organisation is: An organisation established by States from the same geographical region, which has legal personality under international law and whose principal purpose is the provision of support for the carrying out of safety-related functions and duties set out by the Chicago Convention and its Annexes, and preferably the actual carrying out of some or all of such functions and duties on behalf of its participating States.

The main elements of the proposed definition requiring additional comments are as follows:

- *Participants:* Although the majority of RASOs have *members,* some of them, such as the EASA which is a specialised agency of the EU, do not have State membership (see Chapter 4). The proposed definition covers the different types of relationships that may exist in this respect. The proposed definition also does not differentiate between RSOOs and RAIOs but it is understood that a RASO can have either regulatory and oversight functions or accident investigation competences.

- *International legal personality*: As Chapter 5 will demonstrate, there is a general trend for RASOs to evolve into organisations with legal personality under domestic or international law. This is because possession of a legal personality gives to a RASO the possibility to hire and fire staff and to contract services and facilities, which in turn makes the functioning of a RASO more efficient. In addition, where a RASO implements, on behalf of States, the provisions of the Chicago Convention and its Annexes this presupposes a possession by the RASO of international legal personality, as Chapters 4 and 6 will demonstrate. The inclusion of the requirement of international legal personality intends therefore to promote those forms of RASOs which are able to accept the most advanced forms of delegations. On the other hand this requirement excludes from the definition COSCAPs, which should not be treated as RASOs given the ICAO policy of transforming COSCAPs into RSOOs (See Section 3.4.1.1), as well as associations of aviation authorities (See Section 3.4.2), which are not capable of changing the rights and obligations of their member authorities under international law.

- *Delegation of safety functions and duties:* From the point of view of the Chicago Convention and as will be demonstrated in Chapter 6, States can delegate to RASOs the carrying out of safety *functions and duties* only, while the ultimate legal *responsibility* for these functions and duties remains with the States. This is also in line with the division between State sovereignty and the practical exercise of this sovereignty as was demonstrated in Section 2.2.1 of Chapter 2. The proposed definition remains consistent with these principles by underlining that, when delegation takes place, this concerns only the *functions and duties* and must be done at the *State* level.[10]

[10] This is without prejudice to the fact that in practical terms there are also numerous pre-RASOs (see Section 3.4), which are composed of the national authorities, and which perform technical

Having analysed the notion of a RASO and provided a definition of this kind of organisations, a typology and classification of regional aviation safety bodies will now be proposed.

## 3.4 TYPOLOGY OF REGIONAL AVIATION SAFETY BODIES

States do not follow a universal template when establishing regional aviation safety bodies. In practice such initiatives differ a lot in terms of their legal basis, functions, funding principles, scope of work and relationship with the Member States or member authorities.

In 2014 over twenty initiatives in almost all parts of the world could be considered as RASOs if looked at from the perspective of the broad approach followed at present by ICAO. This includes initiatives ranging from projects of a merely technical cooperation nature, to fully fledged regional aviation safety agencies with legal personality and competences to create legally binding effects for the aviation industry. In addition, a number of projects aiming at establishing additional RASOs were ongoing at the time of the finalisation of this study. In total, by mid-2014, over 100 ICAO Member States have been members of such organisations, and this not counting the COSCAP projects and RASO initiatives under consideration.

The typology proposed in the following sections distinguishes between two main categories of regional aviation safety bodies: (i) RASOs and (ii) pre-RASOs. While pre-RASOs do not strictly speaking fall within the scope of the RASO definition proposed in the preceding section because of their lack of international legal personality, they have however been included in this typology for the sake of completeness, and because such pre-RASOs have a tendency to evolve into RASOs proper, as Chapter 5 will demonstrate.

The below typology (Figure IX) is primarily focused on RSOOs, which are the dominant types of RASOs today, and uses the legal form and institutional status of the regional body as main distinguishing factors.

The typology of RAIOs is briefly addressed in Section 3.5. RAIOs are differentiated by ICAO into *basic* and *complex*, depending on whether they carry out accident investigation functions and duties on behalf of their Member States, or have only advisory and coordination functions. This ICAO distinction between basic and complex RAIOs broadly corresponds to the pre-RASO and RASO dichotomy proposed by this study. In 2014 RAIOs were still very rare.

The typology proposed in this chapter was developed for the purpose of this study and is by no means the only one possible. Although every type of a pre-RASO and RASO has its *pros* and *cons*, the purpose of the proposed classification is not to present *better* or *worse* types, but rather to systematise the knowledge about these organisations.

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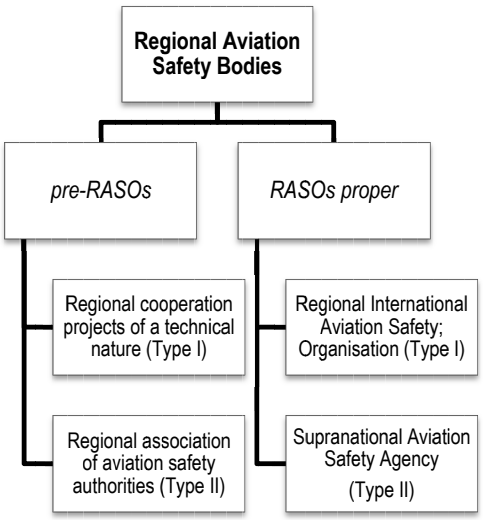
tasks, such as aircraft certification, centrally to the benefit of those *authorities*. International law treats such situations ‘as if the States were acting themselves’ and not the RASO. This has been confirmed by the ICJ in: 'Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections', in: [1992] ICJ Reports 240, (ICJ,1992), (p. 258). See also: Sarooshi, *supra* note 19 in Ch.2, at p. 34.

**Figure IX: Typology of regional aviation safety bodies**




### 3.4.1 PRE-RASO (TYPE I): REGIONAL COOPERATION PROJECTS OF A TECHNICAL NATURE

A regional aviation safety body can start as a simple technical cooperation initiative and evolve over time into a more formal structure with a legal personality. A regional technical cooperation project can also from the start be based on the premise that over time it will be transformed into an organisation with legal personality. The two most prominent examples that can be given in this respect are presented below.

#### 3.4.1.1 COSCAPs AND THEIR TRANSITION INTO RASOs

COSCAPs are cooperative regional projects established under ICAO auspices with the objective of enhancing the safety oversight capabilities of participating States. In 2014, seven such initiatives were still ongoing.[11]

From a legal point of view COSCAPs depend chiefly on ICAO for managerial and administrative services.[12] They do not have separate legal personality

[11] COSCAP-CIS (Azerbaijan; Armenia; Belarus; Georgia; Kazakhstan; Kyrgyzstan; Moldova; Russian Federation; Tajikistan; Turkmenistan; Uzbekistan; Ukraine), COSCAP-Gulf States (Bahrain; Kuwait; United Arab Emirates), COSCAP-North Asia (China; Democratic People's Republic of Korea; Mongolia; Republic of Korea), COSCAP-SADC (Angola; Botswana; Democratic Republic of the Congo; Lesotho; Madagascar; Malawi; Mauritius; Mozambique; Namibia; Seychelles; South Africa; Swaziland; Tanzania; Zambia; Zimbabwe), COSCAP-SEA (Cambodia; Hong Kong, China; Indonesia; Lao People's Democratic Republic; Macao, China; Malaysia; Myanmar; Philippines; Singapore; Thailand; Viet Nam), COSCAP-South Asia (Bangladesh; Bhutan; India; Maldives; Nepal; Pakistan; Sri Lanka), and COSCAP-UEMOA (Benin; Burkina Faso; Côte d'Ivoire; Guinea-Bissau; Mali; Mauritania; Niger; Senegal; Togo); Source: ICAO, 'RSOOs and COSCAPs') <http://www.icao.int/safety/Implementation/Lists/COSCAP_RSOO/AllItems.aspx> [accessed 14 March 2014].

[12] ICAO Doc. 9734 Part B, *supra* note 3 in Ch.1, at Paragraph 3.2.5.

and therefore cannot conclude, in their own name, agreements with other entities.[13] COSCAPs are usually set-up by a project document signed between ICAO and the participating States, and containing details of the objectives of the project, its governance, sources of funding, and duties and responsibilities of all the parties.[14]

From a practical point of view, COSCAPs support participating States in the harmonisation of legislation and procedures, training of inspectors, and can also provide safety oversight services for the benefit of the national aviation authorities. Given however that a COSCAP does not possess separate legal personality, the certification and surveillance services provided by the inspectors recruited through the project are considered as performed by the beneficiary national aviation authorities, that is, COSCAP inspectors are considered as members of the staff of the national authorities when performing their assistance functions.[15]

The above also means that COSCAPs do not have own enforcement competences, and COSCAP inspectors can only propose enforcement actions to participating authorities based on the technical work performed on behalf of these authorities.[16] Similarly the regulations developed under COSCAP projects only have the status of recommendations and need to be considered and adopted by States in accordance with their domestic procedures.[17]

Although not possessing legal personality, COSCAPs can play a role in establishing fully-fledged RSOOs, and it is the policy of ICAO to promote the transitioning of COSCAPs into RSOO type bodies, where appropriate.[18] By mid-2014 this process was most advanced in Africa, where two COSCAP projects had already transitioned into a RSOO,[19] and where two additional COSCAPs were in

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[13] Ibid.

[14] Ibid.at Paragraph 3.2.3.

[15] See for example: COSCAP-SA, 'Model bilateral agreement between COSCAP South Asia and States for obtaining Services of Technical Experts from COSCAP South Asia to perform Safety Oversight functions' 2009) <http://www.coscapsa.org/Manuals/ifapmanual.pdf> [accessed 6 August 2014]. Under Paragraph 2(i) of the this model agreement COSCAP-SA Member States take full responsibility for the work, tasks or activities performed by the COSCAP-SA technical experts at their behest or on their behalf and undertake to hold the COSCAP-SA and any of its staff or ICAO harmless, not-liable and/or not responsible against potential third party action arising out of such work, tasks or activities. COSCAP-SA Member States also undertake, under Paragraph 2(c) of the model agreement, to treat the COSCAP-SA technical experts as part of their technical staff when performing safety oversight activities and accord to such technical experts due respect, status and protection as provided to its own staff.

[16] Ibid.

[17] See for example: ICAO, 'Cooperative Development of Operational Safety and Continuing Airworthiness Programme – South Asia (COSCAP-SA) Phase III' <http://www.coscapsa.org/maindocuments.php> [accessed 6 August 2014]. This programme document (Paragraph 4.3(e)) envisages 'Assisting Member States in the development of rules, regulations and procedures for harmonization of civil aviation regulatory affairs in the region.'

[18] ICAO Doc. 9734 Part B, *supra* note 3 in Ch.1, at Forward.

[19] This is the case for the COSCAP-BAG, which transitioned into 'Banjul Accord Group Safety Oversight Organisation (BAGASOO)', which is presented in Section 3.4.3.4 of this Chapter, and the COSCAP–CEMAC, which evolved into 'Agence De Supervision De La Sécurité Aérienne En Afrique Centrale (ASSA-AC)' (see: CEMAC, 'Reunion des ministres des transports des etats membres de la cemac et sao tome et principe - communique final' <http://www.cemac.int/press-release/reunion-des-ministres-des-transports-des-etats-membres-de-la-cemac-et-sao-tome-et> [accessed 7 August 2014].

the process of doing so.[20] In respect to other regions, this *launching pad* function of COSCAPs has so far been very limited, as Table IV demonstrates.

**Table IV: Transition of ICAO COSCAPs into RSOOs (2014)**

| COSCAP (start of operations)[21] | RSOO transition arrangements |
|---|---|
| COSCAP – BAG (2005) | Transition completed into: Banjul Accord Group Safety Oversight Organisation (BAGASOO) |
| COSCAP – CIS (2001) | No transition planned |
| COSCAP Latin America (2001) | Today known as 'SRVSOP', but operating still as an ICAO programme |
| COSCAP – North Asia (2003) | No transition planned |
| COSCAP – SADC (2008) | Transition on-going into: Southern African Development Community Aviation Safety Organisation (SASO) |
| COSCAP – SEA (2001) | No transition planned |
| COSCAP – UEMOA (2005) | In the course of transition into a RSOO |
| COSCAP – Gulf States (2006) | Transition into a RSOO considered |
| COSCAP – South Asia (1998) | No transition planned |
| COSCAP – CEMAC (2008) | Transition completed into: Agence De Supervision De La Sécurité Aérienne En Afrique Centrale (ASSA-AC) |

Although the transitioning of COSCAPs into RSOOs is most advanced in Africa, the situation there is also most complex, as some of the States are members of multiple organisations, as Figure X demonstrates.

For example, the Republic of Tanzania is a member of COSCAP-SADC, which in 2014 was being transitioned into SASO - a RSOO of the Southern African Development Community.[22] At the same time it is a member of the East African Community Civil Aviation Safety and Security Oversight Agency (CASSOA), by virtue of Tanzania's membership of the East African Community (EAC).

Similarly Benin, Burkina Faso, Ivory Coast, Guinea-Bissau, Mali, Niger, Senegal and Togo are members of the West African Economic and Monetary Union (UEMOA), which is currently in the process of setting up a RSOO,[23] and in parallel members of the Autorités Africaines et Malgache de l'Aviation Civile (AAMAC), which is a RSOO set up in 2012 (see Section 3.4.3.1). Madagascar is a member of AAMAC and at the same time one of the future members of SASO. Finally there is an overlap in membership between AAMAC and Agence De Supervision De La Sécurité Aérienne En Afrique Centrale (ASSA-AC), although these two RSOOs have different areas of competence.[24]

[20] AFI Plan Steering Committee Report, AFI SC/2013/12, *supra* note 3 in Ch.2, at Paragraph 1.4.
[21] Len Cormier, 'Cooperative Arrangements Under ICAO Modalities - Safety', ICAO Symposium on Regional Safety Oversight Organizations (Montréal, Canada, 2011), <http://www.icao.int/Meetings/RSOOSYMPO/Pages/default.aspx> [accessed 18 March 2014].
[22] AFI Plan Steering Committee Report, AFI SC/2013/12, *supra* note 3 in Ch.2, at Paragraph 1.4.
[23] Ibid.
[24] This concerns Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea and Gabon. While AAMAC is responsible for ATM/ANS matters, ASSA-AC covers the matters dealt with by the former COSCAP-CEMAC project, namely airworthiness, licensing and flight operations.

**Figure X: Existing and planned RASOs in Africa (2014)**


In addition some of the African States have also delegated regulatory competences to Regional Economic Communities (RECs), which may regulate aviation safety matters at supranational level. This is the case for example with UEMOA, which adopted a number of aviation safety regulations.[25]

The multiple membership of some of the African States in regional organisations and projects dealing with aviation safety makes it more difficult to achieve – or even goes against - the objectives of regional cooperation which is intended to streamline the use of resources and achieve economies of scale. ICAO and AFCAC have been repeatedly urging African States to avoid membership in multiple organisations, but the problem persists.[26] It is not easy to find an optimal solution to this issue, as some of the African RASO projects are linked to supranational RECs, and thus have to be seen in the context of the general political aim of regional integration in Africa.

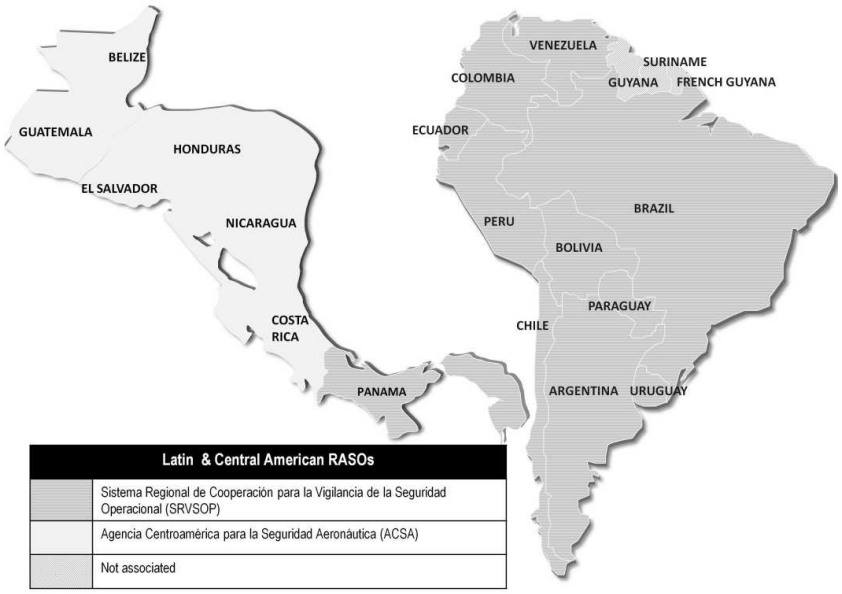
In addition to the issue of the transition of COSCAPs into RASO type bodies in Africa, consideration should also be given in the longer term to consolidation of RASO type bodies on the African continent. According to the ICAO AFI

[25] Schlumberger, *supra* note 37 in Ch.1, at Appendix D.

[26] ICAO, 'Progress in Africa – report on the Comprehensive Regional Implementation Plan for Aviation Safety in Africa (AFI PLAN)', A38-WP/67, (38th ICAO Assembly, 2013), at Paragraph 2.7.

Plan, it is ultimately envisaged to have between eleven and thirteen RASO type bodies (half of them RSOOs and half RAIO),[27] in addition to the AFCAC regional cooperative inspector scheme (see Section 3.4.1.2). Most of these RASOs will have no more than ten Member States,[28] and none of them is designed to replace the national authorities, which means that they will be functioning in parallel with national aviation administrations. Whether this will be sustainable in the long term remains to be seen, but experience so far demonstrates that achieving sustainability in safety oversight cannot be guaranteed by simply setting up a regional safety body (see Chapter 5, Section 5.4.3).

**Figure XI: RASOs in Latin and Central America**




Duplication of membership in regional aviation organisations is not only characteristic of Africa. In Europe, for historic reasons, a number of organisations with overlapping mandates and membership exist which creates inefficiencies. The closure of the JAA in 2009 and the taking over of its functions by EASA has eliminated some of such inefficiencies, but in 2014 overlaps still existed between EASA, EUROCONTROL and ECAC. The recent independent evaluation of EASA conducted on the tenth anniversary of its functioning suggests that such a situation may not be sustainable in the long term, and recommends the establishment of a single European body responsible for all aspects of aviation safety, similar to the FAA.[29] The feasibility of such a proposal will be analysed in more detail in Chapter 4.

The least duplication exists today in Latin and Central America, where only two organisations encompass the vast majority of the States without any overlaps, as Figure XI demonstrates.

[27] AFI Plan Steering Committee Report, AFI SC/2013/12, *supra* note 3 in Ch.2, at Appendix B.
[28] Ibid.
[29] EASA, 'Article 62 Panel Evalutation: final report', (2013), p. 29.

### 3.4.1.2 REGIONAL COOPERATIVE SAFETY INSPECTOR SCHEMES

The availability of technically competent aviation inspectors is currently one of the biggest challenges for aviation authorities in ensuring effective safety oversight. The USOAP results indicate that out of the eight CEs of safety oversight, CE number four, that is 'Technical Personnel Qualification and Training', has the lowest level of effective implementation and in mid-2014 stood at only 45%.[30]

This problem is true not only for regions like Africa - where aviation still does not yet generate revenues large enough to ensure appropriate staffing of the aviation authorities, and where aviation has to compete for resources with other sectors with equally pressing or even greater needs, such as health or education[31] - but also in Europe, where the public administrations also find it increasingly difficult to finance aviation safety oversight.[32]

One of the most difficult problems to resolve in this respect is the fact that, as pointed out by ICAO, 'although many donor States provide valuable financial support for training, recipient States had difficulty keeping staff once they had been trained'.[33] With the overall economic situation bleak in many regions of the world, the problem of availability of resources starts to affect even the strongest aviation authorities.[34]

Although the establishment of RASOs is often put forward as a possible solution for the problem of the shortage of technical resources,[35] experience shows that establishing regional bodies does not always help in this respect, because a RASO can also compete for resources with national aviation authorities (see Section 5.4.3 of Chapter 5). This is especially the case if safety tasks are carried out in parallel at national and regional levels. Another way of addressing the problem of availability of qualified staff is by creating regional pools of aviation safety inspectors.

In 2014 one of the most prominent examples of such initiatives was the Cooperative Inspectorate Scheme (AFI-CIS) developed jointly by ICAO and AFCAC within the framework of the Comprehensive Regional Implementation Plan for Aviation Safety in Africa (AFI Plan).[36] The objective of this AFI-CIS

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[30] Regional Performance Dashboards, *supra* note 15 in Ch.1.

[31] Schlumberger, *supra* note 37 in Ch.1, at p. 165; Belai, *supra* note 36 in Ch.1.

[32] LePoint.fr, 'Derrière le zéro accident mortel, la sécurité aérienne peut encore mieux faire en Europe' <http://www.lepoint.fr/societe/derriere-le-zero-accident-mortel-la-securite-aerienne-peut-encore-mieux-faire-en-europe-27-02-2014-1796120_23.php> [accessed 1 June 2014].

[33] C-DEC 191/2, *supra* note 35 in Ch.1.

[34] In mid-2013 the US FAA initiated furlough of its 47,000 employees, including nearly 13,000 air traffic controllers, as part of a plan to meet $637 million in spending cuts required by the federal budget legislation. Even though the furloughs of air traffic control personnel were subsequently stopped by Congress at the end of April 2013, the FAA continued with spending cuts, including in parts of the organisation responsible for safety oversight and certification activities (Source: CNN, 'FAA furloughs over, air traffic controllers back on the job' <http://edition.cnn.com/2013/05/02/travel/faa-furlough/> [accessed 5 August 2014].

[35] 'Main conclusions and follow-up to the Symposium', Symposium on Regional Aviation Safety Agencies (Livingstone, Zambia, 2009), <http://easa.europa.eu/newsroom-and-events/events/symposium-regional-aviation-safety-agencies-rasa> [accessed 10 August 2014]; Outcomes of 2011 RSOO Symposium (C-WP/13810), *supra* note 4 in Ch.1, at Paragraph 2.1.1; ICAO Doc. 9734 Part B, *supra* note 3 in Ch.1, at Paragraph 2.1.4.

[36] AFI Plan was adopted in September 2007 by the ICAO Assembly; see: ICAO, 'Assemby Resolution A36-1: Comprehensive Regional Implementation Plan for Aviation Safety in Africa',

programme, which was launched in 2010,[37] is to 'assist and complement the efforts of States to resolve their safety oversight deficiencies in certification and surveillance.'[38] This is achieved by creating a pool of certified inspectors from a number of African States. The programme is managed by AFCAC with technical support from ICAO.

From a legal point of view, the AFI-CIS programme is established on the basis of a bilateral Memorandum of Understanding (hereinafter 'AFI-CIS MoU') signed between AFCAC and the civil aviation authorities of each participating State.[39] The AFI-CIS MoU is essentially a service and secondment agreement, whereby the national authority agrees to designate and to make available for the scheme its appropriately qualified national inspectors. The AFI-CIS MoU clarifies that:

> [A]t all time material during the performance of his duties under [the] cooperative inspectorate programme, the National Inspector shall be deemed an official of AFCAC working under the authority of the Director General of the Civil Aviation Authority of the host State.[40]

This is a solution similar to the one used by COSCAP projects as was demonstrated under Section 3.4.1.1 above.

In addition, one RSOO, namely the Banjul Accord Group Aviation Safety Oversight Organisation (BAGASOO), cooperates with the AFI-CIS and has signed the AFI-CIS MoU. As a result of this cooperation, BAGASOO makes available and receives inspectors, augmenting its own inspection potential and helping its member authorities to benefit from a broader pool of resources available in the region.[41]

From a legal point of view, the AFI-CIS inspectors enjoy delegated authority from host States, that is, States in which they perform inspection activities. The national authority - signatory of the AFI-CIS MoU - agrees to grant such authority to the programme inspectors when acting as a *host* receiving their services.[42] Formally speaking the delegated authority is granted not on the basis of the AFI-CIS MoU but on the basis of the national aviation legislation of the hosting au-

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(36th ICAO Assembly, 2007). To give effect to the AFI Plan, ICAO created a special programme - the AFI Comprehensive Implementation Programme (ACIP).

[37] The AFI-CIS was approved by the 22nd AFCAC Extraordinary Plenary Session held in Dakar (Senegal) on 8-10 December 2010. The first pilot projects were launched in August 2011. For a detailed overview of AFI-CIS see: AFCAC, 'Report on progress made in the areas of Safety, Security, Implementation of Yamoussoukro Decision and Environment: Progress Report on the Implementation of AFI-CIS', WP/3, (22nd AFCAC Plenary Session, 2013).

[38] AFCAC, 'Circular Letter No 14/10', (2010).

[39] AFCAC, 'Memorandum of Understanding (MoU) between the African Civil Aviation Commission (AFCAC) and African States for the use of national inspectors under the AFI Cooperative Inspector Scheme', (2013), <http://www.afcac.org/en/documents/conferences/october2012/15afi.pdf> [accessed 5 August 2014].

[40] Ibid. Paragraph 4.

[41] AFI-CIS progress report (2013), *supra* note 37, at Paragraph 5.1.

[42] This authority is confirmed by credentials issued to an inspector by the Director General of the hosting Civil Aviation Authority. The credentials indicate that the individual was endorsed by the Secretary General of AFCAC as a member of CIS. See: AFI-CIS MoU, *supra* note 39, at Appendix 5.

thority. The scope of the authority is limited to inspection functions, and the AFI-CIS MoU makes it clear that the 'host State remains responsible for the issuance of any document, certificate or license issued as a result of the activities and recommendations of the AFI-CIS Inspectors.'[43]

The AFI-CIS MoU is a simple and practical tool to organise inspector exchange from a formal point of view. As of May 2014, thirty-four African States have signed the AFI-CIS MoU with AFCAC, and eighteen assistance missions have been conducted to nine States.[44] At the same time, the programme has not completely removed the problem of shortage of qualified resources for the AFCAC States. Although the AFI-CIS MoU allocates the responsibility of funding the AFI-CIS missions to the hosting States,[45] in practice very few of the recipient States have been able to fund missions, and AFCAC has had to fund all but two of the missions that were conducted up to May-2014.[46] In addition, the shortage of qualified flight operations inspectors in general and non-English speaking in particular has also held up the conduct of some of the planned missions.[47] The shortage of resources at national levels also hampers the ability of States to ensure follow-up of the AFI-CIS missions.[48]

Finally, national authorities need to allocate internal resources to coordinate the work with the AFI-CIS, and ultimately to be able to release their own inspectors for the programme missions when they are needed in other States, which is not always easy.[49] Indeed, up to September 2013, out of the 32 States which were signatories of the AFI-CIS MoU at the time, only seven States actually contributed inspectors to the scheme.[50]

### 3.4.2 PRE-RASO (TYPE II): A REGIONAL 'ASSOCIATION' OF AVIATION SAFETY AUTHORITIES

A simple but practical way of organising regional cooperation on aviation safety regulation and oversight can also be through a network of aviation safety authorities. One of the most prominent examples of this type of cooperation, although no longer existing today, was the JAA in Europe.[51]

From a legal point of view, JAA was not an international organisation, and its constituent document, the 'Cyprus Arrangements' did not have the status of an

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[43] Ibid.at Paragraph 4.

[44] AFCAC, 'AFI Cooperative Inspectorate Scheme (AFI-CIS)', Africa-Indian Ocean (AFI) Aviation Safety Symposium (Dakar, 2014), <http://www.icao.int/meetings/afisymposium2014/Pages/default.aspx> [accessed 5 August 2014].

[45] AFI-CIS MoU, *supra* note 39, at Paragraph 6.

[46] AFCAC, AFI Cooperative Inspectorate Scheme (AFI-CIS), *supra* note 44.

[47] AFCAC, 'Progress report on the implementation of AFI Cooperative Inspectorate Scheme (AFI-CIS)', A38-WP/214, (38th ICAO Assembly, 2013), at Paragraph 6.

[48] AFI-CIS progress report (2013), *supra* note 37, at Paragraph 7.1.

[49] Ibid.at Paragraph 7.3.

[50] Mam Sait Jallow, 'Progress on key activities of the comprehensive regional implementation plan for aviation safety in africa (AFI PLAN)', AFI Ministerial briefing (Montréal, 2013), <http://www.icao.int/safety/afiplan/Documents/AFI%20Ministerial/AFI%20Ministerial-RDWACAF%20En.pdf> [accessed 14 August 2014].

[51] The JAA system was disbanded on 30 June 2009 following the extension of the competences of European Aviation Safety Agency (EASA) to flight operations and crew licensing; see: ECAC, 'Press Release No 192E', (2007).

international treaty.[52] This was a pragmatic approach which allowed JAA to be set up and developed without affecting the rights and obligations of participating States under international law. This however meant that the JAA could not mandate any legislation, or issue regulatory documents, such as certificates or licences, on behalf of its participating States. Similarly, the Joint Aviation Requirements (JARs) developed by the JAA had to be transposed into national legal orders of the participating States, which also had a right to adopt national variants of the JARs.[53] Similarly the JAA could only make recommendations for *mutual recognition* of certificates issued by the national authorities. Such recommendations referred to different levels of JAR amendments, and were not recognised in a uniform manner by all the participating authorities. This in practice led to a patchwork of mutual recognition arrangements.[54] Finally the JAA did not have enforcement competences which remained at the national level.

Despite the weaknesses identified above, JAA managed to build quite a successful system for aircraft certification, which allowed making use of only one set of technical findings to the benefit of all the participating authorities.[55] It also developed a system of standardisation inspections, or audits, to verify the level of implementation of JARs in JAA States.[56]

Whilst not being an international organisation, JAA still needed a budget and a more solid legal standing for the purposes of day to day administrative management. Thus, in parallel to the 'Cyprus Arrangements', a JAA foundation under Dutch law - 'Stichting Beheer JAA' - was set up to enable this organisation to have a legal personality and on this basis to contract the necessary staff, services, facilities and receive seconded personnel.[57] This was a pragmatic solution which enabled the practical problems stemming from a lack of legal personality under the 'Cyprus Arrangements' to be overcome.

A solution similar to JAA was used in Western Africa for the establishment of the initial version of AAMAC. This organisation was set up on the basis of a Memorandum of Understanding signed in December 2001 in Dakar by the participating aviation authorities. Subsequently AAMAC was transformed into an association under the law of the Republic of Chad, which gave it a legal personality under private law.[58] In 2012 the AAMAC association was further upgraded into a

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[52] 'Arrangements concerning the development, the acceptance and the implementation of Joint Aviation Requirements', (Cyprus, 1990), <http://easa.europa.eu/document-library/working-arrangements/working-arrangement-archive-jaa> [accessed 8 August 2014].

[53] Ibid.at Paragraph 3(c).

[54] See for example the last version of JAA mutual recognition recommendations for aircrew licensing at: EASA, 'Mutual recognition of certificates' <http://easa.europa.eu/mutual-recognition> [accessed 8 August 2014].

[55] Because of the non-binding nature of the 'Cyprus Arrangements', the Type Certificates (TC) for products had still to be issued individually by national authorities, which could also introduce national variants; see: Filippo De Florio, Airworthiness, An Introduction to Aircraft Certification: A guide to understanding JAA, EASA and FAA standards, (2006), pp. 108-109.

[56] Manuhutu, 'Aviation Safety Regulation in Europe', *supra* note 53 in Ch.1, at p. 267.

[57] ECAC, 'Report on JAA activities, presented by the Chairman of JAA Committee', (ECAC DGCA/16, ECAC archives in Paris, 1994). See also: ECAC, 'Roadmap for JAA', (2005), at Attachement 4.

[58] Guelpina Ceubah, 'Autorités Africaines et Malgaches de l'Aviation Civile', Symposium on Regional Aviation Safety Agencies (Livingstone, Zambia, 2009), <http://easa.europa.eu/newsroom-and-events/events/symposium-regional-aviation-safety-agencies-rasa> [accessed 6 August 2014].

RSOO with international legal personality. This will be presented under Section 3.4.3.1.

Finally, EUROCONTROL, which is currently an international organisation, in the period between the signature and entry into force of its constituting agreement,[59] was implemented through an association set up under the French law.[60]

To conclude, experience shows that establishing an association of aviation safety authorities can be a practical first step to launch a RASO. The advantage of this form of cooperation is that it can be set up relatively quickly as no international agreement is necessary. It may also be easier to accept for decision makers from a political point of view, as it does not affect the rights and obligations of States under international law.

At the same time the legal form of an association gives a basic structure and legal personality under private law which in turn allows the organisation to have its own budget, conclude contracts and hire personnel. On the other hand, lack of a binding legal status does not permit an association to mandate common requirements or to deliver certificates on behalf of the Member States. This, over time, can result in a heterogeneous regulatory environment.

### 3.4.3 RASO (TYPE I): REGIONAL INTERNATIONAL AVIATION SAFETY ORGANISATION

Having reviewed the pre-RASOs, this chapter will now present the two types of RASO forms. The first one is the Regional International Aviation Safety Organisation. This type of RASO is established on the basis of an international agreement and may exercise, in a legally binding manner, safety functions and duties on behalf of its Member States. For the purpose of this study, and as opposed to the next category described in this chapter, a Regional International Aviation Safety Organisation will also be normally established outside the institutional framework of a REIO.[61] Four examples of this type of a RASO can be given.

#### 3.4.3.1 AUTORITÉS AFRICAINES ET MALGACHE DE L'AVIATION CIVILE

##### i. Legal basis and organisational set-up

AAMAC was formally established in 2012, as a successor of an association of aviation safety regulators of the same name (see Section 3.4.2 above). It was established on the basis of an international agreement, signed on 20 January 2012 by

[59] 'Convention relating to Co-operation for the Safety of Air Navigation (EUROCONTROL) with Annexes and Protocols', 13 December 1960, UK Treaty Series No. 39 (1963).

[60] L'Association pour le perfectionnement des méthodes de contrôle aérien, established on 10 December 1960. For more details see: John McInally, 'EUROCONTROL: History Book', (2010), <http://www.eurocontrol.int/news/eurocontrol-history-book> [accessed 12 August 2014], pp. 51-56.

[61] Examples of REIOs include European Union (EU), the Organisation of Eastern Caribbean States (OECS) and some Regional Economic Commissions (RECs) in Africa. REIOs have their own supranational institutions such as legislative or judiciary bodies and are authorised in certain domains to adopt legislation which is binding for its Member States and directly applicable in their domestic legal orders.

seventeen States, mostly from central and western Africa but including also Madagascar.[62] Its headquarters is located in N'Djamena - the capital city of the Republic of Chad. At the beginning of 2014, the AAMAC Treaty was not yet in force, due to the lack of ratification by the signatory States.[63]

The two main purposes of the establishment of AAMAC were to strengthen the regulatory capabilities of AAMAC Member States following negative results of ICAO USOAP audits,[64] and secondly to have an independent authority for the surveillance of the ASECNA[65] - a regional air navigation service provider (ANSP) originally established by seventeen AAMAC States and France in 1954[66] - in line with the ICAO recommendations for the separation of service provision and regulatory functions,[67] and following negative results of the ICAO audits in this respect.[68]

The AAMAC Treaty was inspired by the provisions of an EU regulation establishing EASA, however due to the fact that AAMAC is currently not linked to a REIO similar to the EU, AAMAC retained a number of features typical for an intergovernmental body, such as lack of competence to adopt legally binding aviation safety legislation on behalf of its Member States (see below), as well as the inability to issue certificates with a legally binding force.

AAMAC has both domestic and international legal personality, both explicitly envisaged under its founding agreement.[69]

### ii. Main safety functions

From a legal point of view the scope of the AAMAC mandate is very broad and covers all main domains of civil aviation safety covered by ICAO Annexes, that is: airworthiness of aircraft, flight operations and crew licensing, ATM, and aerodrome safety.[70]

As far as its rulemaking competences are concerned, although AAMAC has both domestic and international legal personality, it is not entitled to issue regulatory documents with binding effect, but only prepares proposals of such regulations which need to be subsequently transposed by the AAMAC Member

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[62] 'Traité relative aux Autorités Africaines et Malgache de l'Aviation Civile (AAMAC Treaty)', N'Djaména, 20 January 2012, LOI n°2012 -012 of 29 July 2012, Le Congrès de la Transition et le Conseil Supérieur de la Transition, République de Madagascar.

[63] Former Rulemaking Director of EASA, 'Interview No 11', (2014).

[64] Ibid.

[65] République de Madagascar Le Congrès de la Transition et le Conseil Supérieur de la Transition, 'LOI n°2012-012: Autorisant la ratification du Traité relatif aux Autorités Africaines et Malgache de l'Aviation Civile signé à N'Djaména le 20 janvier 2012, Exposé des motifs'.

[66] 'Agence pour la sécurité de la navigation aérienne en Afrique et à Madagascar (ASECNA)', originally established in 1954. Today ASECNA's legal basis is: 'Convention relative a l'Agence pour la Securite de la Navigation Aerienne en Afrique et Madagascar (ASECNA)', Ouagadougou, 28 avril 2010, Official Journal of the Republic of Senegal N° 6641, 28 January 2012.

[67] In those States where the State is both the regulatory authority and an air traffic service provider, the requirements of the Chicago Convention will be met, and the public interest be best served, by a clear separation of authority and responsibility between the State operating agency and the State regulatory authority, Source: ICAO, 'Safety Oversight Manual, Part A: The Establishment and Management of a State's Safety Oversight System', Doc. 9734, Part A, (2006), at paragraph 2.4.9.

[68] Supra note 65.

[69] 'AAMAC Treaty', *supra* note 62, Article 7.

[70] Ibid. Article 5.

States into their national legal orders, either directly or through a REIO to which they may belong.[71]

Similarly, concerning implementation of regulations and oversight of regulated entities, AAMAC cannot issue certificates or licences on behalf of its Member States, but can only make recommendations for their issuance on the basis of the technical work done on behalf of its Member States.[72]

At the same time the AAMAC Treaty imposes stricter obligations on its Member States than for example documents constituting associations of aviation safety authorities, such as the JAA. This is because the AAMAC Member States undertook to issue certificates on the basis of recommendations made by AAMAC, where it is the competent authority in a given domain,[73] and to incorporate into their national legal systems regulations developed by this organisation without the possibility of filing regulatory differences.[74]

Similar to the JAA Cyprus Arrangements, and the regulation establishing EASA in the EU, the AAMAC Treaty provides for a system of standardisation inspections. These inspections are to be performed by AAMAC, and their main objective is to verify the level of implementation of the common AAMAC requirements in its Member States.[75] Where inspections show that the requirements are implemented correctly, Member States are under an obligation to recognise certificates issued by the compliant State without any further verification.[76]

### iii. Practical aspects of implementation

From a legal point of view, AAMAC should be seen as an enhanced version of a regional association of aviation safety authorities, however falling short of a RSOO which could create direct and binding legal effects in the legal systems of its Member States.

At the beginning of 2014 AAMAC, was not yet operational. The funding, as well as staffing issues were not resolved. Once these points are addressed, AAMAC should focus, as a first step, on ATM/ANS issues, while regional cooperation in other domains, such as airworthiness, flight operations and pilot licensing, were expected to be dealt with by ASSA-AC, which is a successor to the COSCAP-CEMAC project.[77] There is also some overlap in the membership of AAMAC and, SADC and UEMOA,[78] which are also considering establishment of

[71] 'Interview No 11', (2014), *supra* note 63.
[72] 'AAMAC Treaty', *supra* note 62, Article 6(d).
[73] This is the case for organisations providing ANS, including in particular ASECNA, as well as in other domains where a Member State has decided to delegate to AAMAC the making of technical findings for the purpose of initial approval and surveillance of an organization. The possibility of such delegation is envisaged under Article 6 (e) of the AAMAC Treaty.
[74] 'AAMAC Treaty', *supra* note 62, Article 10(b)-(c).
[75] Ibid. Article 6(f).
[76] Ibid. Article 10(d).
[77] ICAO, 'Second meeting of the Regional Aviation Safety Group for Africa and the Indian Ocean region (RASG-AFI/2):Update on the AFI Plan and Other Safety Initiatives', RASG-AFI/2 – WP/13, (2013).
[78] This concerns Benin, Burkina Faso, Ivory Coast, Guinea-Bissau, Mali, Niger, Senegal and Togo.

RASO type bodies, as was demonstrated under Section 3.4.1.1. Clearly some rationalisation of RASOs in this part of Africa should be considered.[79]

### 3.4.3.2 THE PACIFIC AVIATION SAFETY OFFICE

#### i. Legal basis and organisational set-up

PASO was established[80] on the basis of a Pacific Islands Civil Aviation Safety and Security Treaty (hereinafter 'PICASST'), an international treaty which was opened for signature on 7 August 2004 and entered into force on 11 June 2005.[81] It is a 'centralized technical advisory organization'[82] serving a number of small island countries of the Pacific,[83] and its main objective is to provide harmonisation of aviation regulation, training, technical advice, planning and the delivery of a wide range of surveillance oversight services to its Member States.[84] PASO has both international and domestic legal personality.[85] Its headquarters is in Vanuatu.[86]

#### ii. Main safety functions

The scope of the PASO mandate covers airworthiness, flight operations, airports, personnel licensing, as well as aviation security.[87] PASO is essentially a service provision organisation and its primary activities include routine inspection, audit and certification activity of industry within Member States and can extend to larger projects such as the technical management and certification processes associated with the introduction of new types of aircraft.[88]

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[79] A Memorandum of Understanding was signed in June 2014 between the three parties concerned to clarify their respective roles in the region.

[80] PASO was established with the help of the Asian Development Bank regional loan. See: Asian Development Bank, 'Institutional Strengthening for Aviation Regulation' <http://www.adb.org/projects/43429-012/details> [accessed 10 August 2014].

[81] 'Pacific Islands Civil Aviation Safety and Security Treaty', Apia, 7 August 2004, ICAO Registration No. 5381. PICASST was subsequently amended by a Protocol of 20 June 2006 which came into force on 20 July 2006 (ICAO Registration No. 5382)

[82] Ibid. Article 4.

[83] In 2014 PASO Member States were as follows: the Cook Islands, Kiribati, Nauru, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Fiji and Vanuatu.

[84] PASO, 'Regional approach to aviation through harmonised regulatory application in the south west pacific', Working Paper WP/23, (First Meeting of the Regional Aviation Safety Group - Asia and Pacific Regions - RASG-APAC/1, 2011), at Paragraph 1.1.

[85] 'PICASST', *supra* note 81, at Paragraph 4.3.

[86] On 3 August 2007 the government of Vanuatu and PASO entered into a formal 'Host State Agreement'. PASO and its staff were accorded diplomatic privileges and immunities by order made under the 'Vanuatu Diplomatic Privileges and Immunities Act' on 24 October 2005. Vanuatu confirmed ratification of PICASST by enacting the 'Pacific Islands Civil Aviation Treaty (Ratification) Act (2005)'. See: Kimball Murray, Ron Bartsch, and Max Foon, 'Legal and Technical Review Report for the Pacific Aviation Safety Office', (AvLaw Aviation Consultants, 2007), <http://www.avlaw.com.au/Legal%20and%20Technical%20Review%20_PASO.pdf> [accessed 14 August 2014], p. 6.

[87] 'PICASST', *supra* note 81, Article 3.

[88] PASO, Regional approach to aviation (WP/23), *supra* note 84, at Paragraph 2.2.

The services provided by PASO are similar to those available on the market from commercial companies such as Bureau Veritas, which specialise, amongst other things, in assisting civil aviation authorities around the world in running aircraft registries, performing oversight of aviation industry, training of inspectors and even drafting of regulations and procedures.[89]

Given the fact that PASO possesses international legal personality explicitly envisaged under its founding agreement, it would be possible for its Member States to delegate to PASO the exercise, in a legally binding manner, of safety oversight or regulatory tasks on their behalf. This is however not the case and PASO remains for the time being de facto and de lege their technical adviser only.[90] In this capacity PASO provides technical advice, carries out inspections and submits reports to the requesting member authorities on a cost recovery basis. Once recommendations proposed by PASO are agreed with a national authority, their implementation may also be monitored by PASO.[91] The legal basis for the services provided, in addition to the PASO founding treaty, are service level agreements concluded with Member States.[92]

PASO Member States 'retain at all times full responsibility for all matters related to aviation safety and security in their respective territories.'[93] The consequence of that approach is that PASO inspectors, when carrying out their tasks on behalf of Member States, are deemed to be officers of the national civil aviation administration and have rights, privileges and responsibilities no less favourable than those granted to civil aviation officers of the State concerned.[94]

Although the technical advice and oversight services are provided by PASO using the legal environment of the requesting State,[95] the PASO Member States strive to harmonise their legislation using as a basis the law of New Zealand.[96]

### iii. Practical aspects of implementation

Since its establishment, PASO has been experiencing serious difficulties in stabilising its budget, and at one point was almost bankrupt.[97] At the end of 2011 PASO reported to ICAO that it was experiencing financial restrictions which:

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[89] Bureau Veritas, 'Civil Aviation Authority ' <http://www.bureauveritas.com/wps/wcm/connect/bv_com/group/home/your-industry/aerospace/civil-aviation-authority> [accessed 13 August 2014].
[90] 'PICASST', *supra* note 81, Article 4(2).
[91] Seiuli A.W. Tuala, 'Regional cooperation for the enhancement of safety oversight', ICAO Symposium on Regional Safety Oversight Organizations (Montréal, Canada, 2011), <http://www.icao.int/Meetings/RSOOSYMPO/Pages/default.aspx> [accessed 12 August 2014].
[92] 'PICASST', *supra* note 81, Article 1(i). See also: PASO Legal and Technical Review Report, *supra* note 86, at pp. 27-28.
[93] 'PICASST', *supra* note 81, Article 5(a).
[94] Ibid. Article 8(2).
[95] Ibid. Article 7(b).
[96] PASO, Regional approach to aviation (WP/23), *supra* note 84, at Paragraph 2.6.
[97] Radio New Zealand International, 'Pacific Aviation Safety Office in financial strife' <http://www.radionz.co.nz/international/pacific-news/205665/pacific-aviation-safety-office-in-financial-strife> [accessed 22 March 2014].

> [I]mpact on the ability of some Member States to complete annual pre-planned activity and often results in States not completing the wider range of recommended oversight activity within their pre-planned work such as regulatory training and education programmes.[98]

In addition to inefficient funding mechanisms,[99] one of the reasons for these difficulties has been, as the Asian Development Bank has identified, lack of a standardised regulatory framework in the PASO Member States, which in turn increases the costs of the inspections and technical advices provided by PASO.[100] As a result, at the end of 2013 a reform of the organisation was launched with the support of the international financial institutions.[101]

A report prepared by the World Bank in the second half of 2013 states that:

> PASO has operated at an annual financial loss since its inception. Should PASO disappear, or its operations further weaken, several Member States would confront significant challenges in meeting national and international regulatory obligations with practical and affordable service alternatives in the short to medium term.[102]

The aforementioned World Bank report further observes that PASO's business model:

> [H]as not proven to be sustainable since: (i) countries have not purchased the necessary safety oversight services; (ii) there is a real, or perceived, lack of qualified technical specialists in PASO to perform the technical services, affecting demand; (iii) some countries are in arrears on member subscription fees; and, (iv) salaries and cost structures for PASO exceeded income.[103]

Based on the above information concerning PASO, it can be concluded that the key problem which has created such challenges is the fact that this organisation has not in fact been set up as a RASO type body, but rather as a provider of safety oversight services. These can also be affordably contracted from the market or from some of the mature civil aviation authorities in the region which may have spare technical capacity, such as the New Zealand or Australian CAAs.[104] PASO

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[98] PASO, Regional approach to aviation (WP/23), *supra* note 84, at Paragraph 2.3.

[99] Seiuli A.W. Tuala, 'Establishment of a funding mechanism to ensure the sustainability of an RSOO', ICAO Symposium on Regional Safety Oversight Organizations (Montréal, Canada, 2011), <http://www.icao.int/Meetings/RSOOSYMPO/Pages/default.aspx> [accessed 14 August 2014].

[100] Asian Development Bank PASO project, *supra* note 80.

[101] World Bank, 'Pacific Aviation Safety Office Reform, project No. P145057' <http://www.worldbank.org/projects/P145057/pacific-aviation-investment-program?lang=en> [accessed 14 August 2014].

[102] World Bank, 'Pacific Aviation Safety Office Reform Project', Report No: PAD532, (2013), <http://documents.worldbank.org/curated/en/2013/09/18246423/pacific-islands-pacific-aviation-safety-office-reform-project> [accessed 14 August 2014], p.2.

[103] Ibid.

[104] In 2010 the government of the Cook Islands reported that, although it recognises that the objective of PASO was to 'provide in the long-term an improvement in quality and extension of services, at a lower total cost than is currently faced by the…industry and member governments', it believed that in practice 'the contrary has occurred'. The Cook Islands government has further underlined that it intends to rely on the services provided by the Civil Aviation Authority of New Zealand. (Source: Pacific Islands Forum Secretariat, 'Pacific Plan Annual Progress Report Annex',

will most probably have to reinvent itself in the future into another type of a RASO.

#### 3.4.3.3 THE INTERSTATE AVIATION COMMITTEE

##### i. Legal basis and organisational set-up

IAC was established following the dissolution of the Union of Soviet Socialist Republics (USSR) on the basis of the Agreement on Civil Aviation and Airspace Utilization which was signed at Minsk on 30 December 1991 (hereinafter the 'Minsk Agreement') and has been in force since that date.[105] IAC has a *sui generis* legal and institutional set up which deserves a more detailed presentation, not least because in 2014 it was one of only three RASOs in the world empowered to take legally binding decisions on behalf of its Member States.[106]

The Minsk Treaty describes IAC as an executive body of the Council for Aviation and Airspace Utilization,[107] which in turn is an organ of the Commonwealth of Independent States (CIS).[108] IAC considers itself as an international organisation.[109]

The IAC has legal personality within the domestic legal orders of the Member States, which extends to all issues which are necessary for the performance of its functions.[110] The organisational structure of the IAC comprises eight permanent commissions (Figure XII) which also 'possess the rights of a juridical person and independent budgets.'[111]

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(2010), <http://www.forumsec.org/pages.cfm/newsroom/documents-publications/programme-project-reports/pacific-plan-progress-reports.html> [accessed 14 August 2014], p. 55.

[105] 'Agreement on Civil Aviation and Airspace Utilization ', Minsk, 30 December 1991, ICAO Registration No. 3720. The original signatories of the Minsk Agreement were the Russian Federation, the Republic of Armenia, Republic of Azerbaijan, Republic of Belarus, Republic of Georgia, Republic of Kazakhstan, Republic of Kyrgyzstan, Republic of Moldova, Republic of Tajikistan, Republic of Uzbekistan, Turkmenistan and Ukraine.

[106] The other two are EASA which is presented in Chapter 4, and ECCAA which is addressed under Section 3.6 of this Chapter.

[107] 'Statute of the Council for Aviation and Airspace Utilization and the Statute of the Interstate Aviation Committee', 19 February 1992, ICAO Registration No. 3720, p. Article I.3.

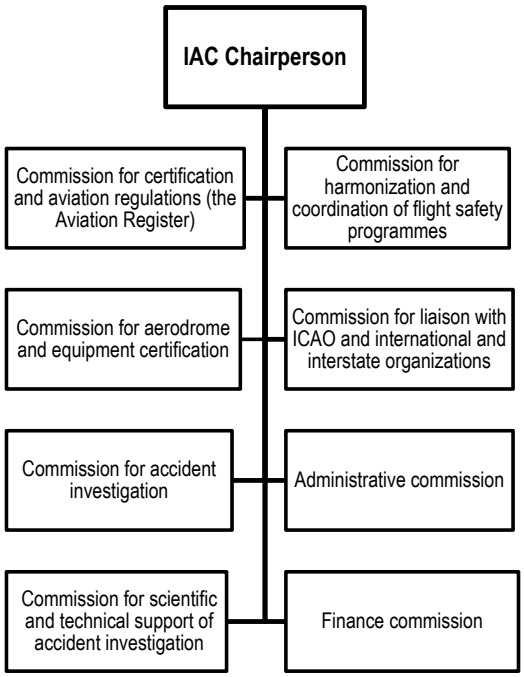
[108] The Commonwealth of Independent States (CIS) is an international organization formed in 1991 by the Russian Federation and some other republics that were formerly part of the USSR. Following the withdrawal of Georgia from the CIS in August 2009, it is now comprised of nine Member States which are the Russian Federation, the Republics of Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan and Uzbekistan. Ukraine and Turkmenistan do not consider themselves as Member States of CIS.

[109] IAC, 'The Role of a Regional International Civil Aviation Organization in Ensuring Flight Safety', DGCA/06-IP/16, Directors General of Civil Aviation Conference on Global Strategy for Aviation Safety (Montréal, Canada, 2006), at paragraph 1.1.

[110] 'IAC Statute', *supra* note 107, at Article II.6.

[111] Ibid. at Article III.13.

**Figure XII: Organisational structure of the Interstate Aviation Committee**




**Source: Interstate Aviation Committee**[112]

### ii. Main safety functions

The Minsk Agreement sets out the general mandate of the IAC and its possible functions and responsibilities, however the precise competences of the IAC in the territories of the contracting parties, including the delegation of the exercise of safety functions and duties, are defined in specific agreements, or protocols, concluded between the IAC and the States concerned.

For example in the case of the Russian Federation this relationship is defined in a protocol signed between the IAC and the Ministry of Transport in 2006.[113] Under this protocol, IAC is responsible for developing rules for the Russian Federation in the areas of airworthiness of civil aircraft, certification of international aerodromes and their equipment, impact of aircraft on the environment and investigation of aircraft accidents. Moreover, under the protocol, the IAC is responsible for performing, on behalf of the Russian Federation, certification of aircraft and their components, approval of production organisations, certification of international aerodromes and their equipment, and organisation and realisation of the investigation of aircraft accidents occurring within the territory of the Russian Federation or involving Russia as the 'State of Design', the 'State of the Operator' or the 'State of Registry' outside the Russian territory.

[112] IAC, 'Interstate Aviation Committee: presentation', (personal archives of the author, 2004).
[113] Protocol No. 4/01-92 signed on 20 February 2006.

- *The role of IAC in aviation safety rulemaking*

In accordance with its statute, IAC 'shall issue inter-State regulatory instruments which shall be subject to mandatory compliance on the territory of all the founding States….'[114]

In practice the rule-making process within the IAC is based on the work of Commissions established in each relevant subject domain, that is the Commission for certification and aviation regulations - the Aviation Register, the Commission for aerodrome and equipment certification, and the Commission for accident investigation. Draft regulations are submitted by the Commissions to the Council for Aviation and Airspace Utilization for approval by consensus.

The regulations adopted by the Council for Aviation and Airspace Utilization, although legally binding under the Minsk Agreement, are not directly applicable in the domestic legal orders of the IAC Member States and need to be given such effect through enabling national legislation. For example, the Russian Federation has divided the responsibility for developing its aviation safety rules between the Ministry of Transport and the IAC,[115] with the latter authorised by the government[116] to develop and amend aviation rules on behalf of the Russian Federation, within the scope of the delegation protocol.

In addition to regulations, the IAC also issues detailed technical requirements for the design and certification of aircraft and their components, as well as aerodrome and navigation equipment and facilities used in the CIS.[117]

- *The role of IAC in aviation safety certification and oversight*

Under the Minsk Agreement the IAC has competence to issue certificates and other documents on behalf of its Member States. There is a two stage process to enable this. Firstly there needs to be an additional protocol concluded between the IAC and any of its Member State wishing to delegate certification competences. Secondly enabling State legislation must be adopted to implement the delegation into a national legal system. For example, in the Russian Federation the IAC was given legal status as an authorised organ through the protocol concluded with IAC in 2006[118] and corresponding Presidential Decrees and Governmental Resolutions.[119] Accordingly, IAC acts on behalf of the Russian Federation for issues related to airworthiness, aerodromes, and environmental certification, including:

- certification of aircraft and their components (including aircraft noise type certification);
- approval of design and production organisations for aeronautical products;
- certification of international aerodromes and their equipment;

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[114] 'IAC Statute', *supra* note 107, Article III.14.

[115] Governmental Resolution No. 360 of 27 May 1998 provides that the rules of the Russian Federation that have been approved by the Council for Aviation and Airspace Utilization are enacted by the corresponding federal bodies.

[116] Governmental Resolution No. 367 of 23 April 1994.

[117] IAC, 'Авиационные Правила (Aviation Regulations)' <http://www.mak.ru/russian/russian.html> [accessed 10 August 2014].

[118] Protocol No. 4/01-92, *supra* note 113.

[119] Presidential Decrees No. 439 of 5 May 1992 and No. 904 of 13 June 1996, as well Governmental Resolutions No. 367 of 23 April 1994, No. 316 of 7 April 1995 and No. 1147 of 8 September 1997.

- accreditation of ‘certification centres’.

For those States which have delegated to IAC aircraft certification competences, IAC will also be acting as a technical agent under BASAs or working arrangements concluded with third countries or foreign aviation authorities.[120]

- *The role of IAC in air accident investigation*

Under the Minsk Agreement, and the IAC Statute, the IAC can accept delegation of State functions and duties related to aviation accident investigations.[121] A number of Contracting Parties to the Minsk Agreement, including the Russian Federation and Belarus have taken advantage of this possibility.[122] The legal modalities for the exercise of such delegations are presented in detail in Section 3.5 dealing with RAIOs.

### iii. Practical aspects of implementation

Originally twelve States signed the Minsk Agreement, but today the level of participation of the original signatories in IAC varies. For example since the establishment of IAC in 1991, countries such as Georgia,[123] Moldova[124] and Ukraine[125] have concluded, or are in the course of negotiations, of aviation agreements with the EU. These agreements provide or will provide for the participation of the civil aviation authorities of these countries, to various degrees, in the work of EASA. In practice today the Russian Federation, in whose territory IAC has its headquarters, is the most closely associated Member State of this RASO from a regulatory point of view.[126]

[120] See Section 5.5 of Chapter 5 for discussion about international activities of IAC and other RASOs.
[121] 'Minsk Agreement', *supra* note 105, Article 7(e); 'IAC Statute', *supra* note 107, Article II.5(e); IAC presentation (2004), *supra* note 112.
[122] For Belarus see for example report issued by IAC, as the competent investigating authority, concerning the accident of BAe-125-800B, registration number RA-02807, which occurred on 26 October 2009 in the proximity of the Minsk airport.
[123] 'Common Aviation Area Agreement between the European Union and its Member States and Georgia', 2 December 2010, (OJ L 321, 20.11.2012).
[124] 'Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova', 26 June 2012, (OJ L 292, 20.10.2012).
[125] EC, 'EU and Ukraine skies to join forces', Press release IP/13/1181, (2013).
[126] Conclusion reached based on the review of the ICAO USOAP reports for the signatories of the Minsk Agreement, as well as experiences of the author who was responsible in EASA for international cooperation with a number of IAC Member States, including Ukraine, Moldova and Georgia.

### 3.4.3.4 THE BANJUL ACCORD GROUP AVIATION SAFETY OVERSIGHT ORGANISATION

#### i. Legal basis and organisational set-up

BAGASOO was established by seven West African States[127] on the basis of an international agreement signed on 30 June 2009,[128] within the broader framework of the Banjul Accord Group (BAG) Agreement.[129] Its predecessor was the COSCAP-BAG – a technical cooperation project established by ICAO to enhance the safety oversight capabilities of the BAG States.[130] BAGASOO is one of the RSOOs which evolved from a COSCAP project (see Table IV).

Its founding agreement establishes BAGASOO as a self-accounting institution of the BAG. This in practice means that the BAG Council of Ministers and BAG Secretariat are involved in the review of the annual financial accounts of BAGASOO[131] through an audit, and facilitate dispute settlement procedures between the BAGASOO Member States.[132] At the same time, the Director Generals of the seven BAGASOO Member States, together with the Executive Director of BAGASOO constitute the governing Board of Directors which reviews and approves the budget of this RSOO.[133]

BAGASOO has legal personality under its founding agreement.[134] Its headquarters is located in Abuja, Nigeria.

#### ii. Main safety functions

BAGASOO became operational in July 2010.[135] Under its founding agreement, the key objective of this RASO is the:

> Promotion of the safe and efficient use and development of civil aviation, and the provision of assistance to States for meeting their safety oversight obligations and responsibilities under the Chicago Convention and its related safety Annexes.[136]

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[127] Republic of Cape Verde, the Republic of Gambia, the Republic of Ghana, the Republic of Guinea, the Republic of Liberia, the Federal Republic of Nigeria, and the Republic of Sierra Leone.
[128] 'Banjul Accord Group Aviation Safety Oversight Organisation Agreement', Montreal, 30 June 2009 ICAO Registration No. 5462. The BAGASOO agreement entered into force upon signature.
[129] 'Agreement for the establishment of the Banjul Accord Group', Banjul, 29 January 2004, ICAO Registration No. 5455. The main objective of the BAG Agreement is to accelerate the implementation of the Yamoussoukro Declaration and the Yamoussoukro Decision which aim at the liberalization of air transport in Africa. For further details on the BAG Agreement see: Schlumberger, *supra* note 37 in Ch.1, at pp. 82-86.
[130] Emmanuel Akatue, 'Institutionalization of the Banjul Accord Group Safety Oversight Organization', RASG-AFI/1 - IP/7, (First meeting of the Africa - Indian Ocean Regional Aviation Safety Group, RASG-AFI/1, 2012).
[131] 'BAGASOO Agreement', *supra* note 128, Article 15(6).
[132] Ibid. Article 18.
[133] BAGASOO official, 'Interview No 6', (2014).
[134] 'BAGASOO Agreement', *supra* note 128, Article 2.2.
[135] Institutionalization of BAGASOO (RASG-AFI/1 - IP/7), *supra* note 130, at Paragraph 5.
[136] 'BAGASOO Agreement', *supra* note 128, Article 4(1).

BAGASOO's founding agreement does not specify the domains of aviation safety for which it is competent which means that in practice it can develop cooperation in any of the areas covered by ICAO Annexes. In 2013 its activities covered the areas of personnel licensing, airworthiness, flight operations and aerodromes, with the intention to extend its scope in the future to security and ATM.[137]

BAGASOO's functions are relatively broad and include development of harmonised safety requirements, procedures and manuals for adoption and use by the Member States, providing support to certification and surveillance, development and implementation of training programs and other. BAGASOO can also evaluate the safety oversight capabilities of its Member States and help with the implementation of USOAP corrective action plans, as well as accept delegation of certification and surveillance tasks.[138]

In the area of rulemaking, BAGASOO prepares regulations, guidance material, policies and procedures and submits them for adoption and use by the Member States. The regulations are not directly applicable and need to be transposed into the national legal systems.[139] The objective of BAGASOO is to ensure a harmonised regulatory environment in line with the ICAO SARPs.[140]

As far as implementation of legislation is concerned, BAGASOO does not enjoy delegated executive powers directly under its founding agreement. However, in accordance with its Article 5, BAGASOO can accept delegation of certification and surveillance functions when so requested by a Member State. At the time of writing this study in 2014 BAGASOO had not concluded any such delegation agreements.[141] In addition the BAGASOO is mandated to partake, with respect to all its Member States, and irrespective of the status of their safety oversight capability, in all initial certification exercises 'for the purpose of monitoring and ensuring the uniform application of common standards within the BAG Sub-Region.'[142]

So far BAGASOO focused primarily on human capacity building, including in particular the development of qualifications and training of aviation safety inspectors in the region. It has also been developing aviation safety oversight databases, participating in the AFI-CIS, and conducting visits to its Member States in order to carry out gap analysis and subsequently assist Member States in addressing identified deficiencies.[143]

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[137] BAGASOO, 'Revised Brochure' <http://www.bagasoo.org/en/images/docs/downloads/bagasoo_brochure_revised.pdf> [accessed 10 August 2014].

[138] 'BAGASOO Agreement', *supra* note 128, Article 5. For a more detailed overview of BAGASOO's work see: Institutionalization of BAGASOO (RASG-AFI/1 - IP/7), *supra* note 130.

[139] 'BAGASOO Agreement', *supra* note 128, Article 8(f)-(g).

[140] Ibid. Article 14(b).

[141] 'Interview No 6', (2014), *supra* note 133.

[142] 'BAGASOO Agreement', *supra* note 128, Article 5(f).

[143] Institutionalization of BAGASOO (RASG-AFI/1 - IP/7), *supra* note 130, at Paragraph 7.2. See also: The Aviation & Allied Business Journal (12.10.2012), 'BAGASOO: Future Regional Safety Pivot', Interview with Mr Emmanuel Akatue, Executive Director of the BAGASOO' <http://www.aviationbusinessjournal.aero/2012/10/12/bagasoo-future-regional-safety-pivot.aspx> [accessed 23 July 2014].

### iii. Practical aspects of implementation

BAGASOO has limited personnel and, at the moment of writing this study, did not expect to develop the capacity to act as a fully-fledged civil aviation authority.[144] Instead it intended to rely on inspectors from the region through a co-operative inspectorate scheme, similar to the one established by AFCAC and presented under Section 3.4.1.2. BAGASOO expects that the co-operative inspectorate scheme will enable it to maintain staffing levels that will ensure the effectiveness of its work programmes whilst, at the same time, significantly reduce operational cost.[145]

Since its establishment in 2010 BAGASOO has experienced financial challenges. This is because although the BAGASOO founding agreement envisages that BAGASOO is to be principally financed through a Passenger Service Charge to be collected from its Member States, as well as revenues deriving from BAGASOO's operational activities, in practice this scheme has not worked as planned, primarily because of Member States' different charging policies which proved difficult to harmonise.[146] BAGASOO had therefore to resort to sharing the budget amongst its Member States on a pro rata basis, but in practice only some States have actually been contributing fully to the budget.[147] At the beginning of 2014 BAGASOO was considering reverting back to the implementation of a Passenger Service Charge instead of relying on State contributions.[148]

Overall BAGASOO can be characterised as a RSOO with mainly expert advisory, consultancy and technical support functions, but which from a legal point of view also has the necessary mandate to exercise safety oversight functions on behalf of its Member States. It remains to be seen to what extent this mandate will actually be used in practice in the future.

## 3.4.4 RASO (TYPE II): A SUPRANATIONAL AVIATION SAFETY AGENCY

The second type of RASOs is a supranational aviation safety agency. In comparison with the previous category, the main feature of this type is that it evolves within the broader institutional and legal framework of a REIO.[149] From a policy point of view this means that a RASO is used by the REIO as its technical arm for the implementation of a single regional air transport market.

The extent to which a RASO can rely on the REIO's institutional framework and legislation is directly proportional to the level of integration of the latter. If a REIO has truly supranational character and can adopt through its institutions legally binding legislation, this legislation will also bind the RASO and will form

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[144] BAGASOO Brochure, *supra* note 137. Also confirmed through: 'Interview No 6', (2014), *supra* note 133.

[145] BAGASOO, 'Framework of the Banjul Accord Group Aviation Safety Oversight Organization (BAGASOO) and The Banjul Accord Group Accident Investigation Agency (BAGAIA)', C-WP/13396, (187th session of the ICAO Council, 2009), at Paragraph 1.4.

[146] BAGASOO: Future Regional Safety Pivot', Interview with Mr Emmanuel Akatue, Executive Director of the BAGASOO, *supra* note 140. Also confirmed through: 'Interview No 6', (2014), *supra* note 133.

[147] Institutionalization of BAGASOO (RASG-AFI/1 - IP/7), *supra* note 130, at Paragraph 6.1.

[148] 'Interview No 6', (2014), *supra* note 133.

[149] For examples of REIOs *supra* note 61.

the foundation of a single regional safety system. This is for example the case with the EU and EASA, which is currently the most prominent example of a supranational aviation safety agency and will be subject to a detailed presentation and analysis in the following chapter. A similar relationship is being developed between the Organisation of the Eastern Caribbean States (OECS) and the EC-CAA, which is addressed in Section 3.6 of this chapter.

If the level of the integration of a REIO is less deep, a RASO may be relying on the former to a lesser extent, as is the case with the CASSOA presented below. By mid-2014 there have still been very few truly supranational aviation safety agencies, but it can be expected that additional ones will be established, in particular in Africa, where some of the RECs have legislative competences and envisage establishing RASOs. This is the case for example with UEMOA which, as discussed under Section 3.4.1.1, is planning to establish its own RASO type body.

#### 3.4.4.1 EAST AFRICAN COMMUNITY CIVIL AVIATION SAFETY AND SECURITY OVERSIGHT AGENCY

##### i. Legal basis and organisational set-up

CASSOA was established in 2007 as a self-accounting institution of the EAC. Its legal basis is a protocol signed by the three founding States, namely Kenya, Tanzania and Uganda on 18th April 2007, [150] and adopted under Article 92 of the EAC Treaty on 18th June 2007 (hereinafter the 'CASSOA protocol').[151] Subsequently two more States, Rwanda and Burundi, have joined the EAC and became parties to the CASSOA protocol.[152] CASSOA is therefore a specialised institution of the EAC responsible for aviation safety and security.

Although CASSOA is an institution of the EAC, in practice it relies to a small extent on the EAC institutional framework. With the exception of the privileges and immunities which CASSOA derives from the EAC Treaty, and the EAC Court of Justice, which is the designated forum for dispute resolution under the CASSOA protocol, CASSOA works largely independently. For example, the rules, procedures and manuals are developed by CASSOA Technical Committee(s) and following their endorsement by CASSOA's Board of Directors, presented to the Member States for enactment in their national legal systems.[153]

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[150] 'Protocol on the establishment of the East African Community Civil Aviation Safety and Security Oversight Agency', signed on 18 April 2007 and approved during the 5th Extraordinary Summit of EAC Heads of State held in Kampala, Uganda on 18th June 2007', <http://www.cassoa.org/docs/Documents/protocol.pdf> [accessed 10 August 2014].

[151] Article 92 of the EAC Treaty requires, among others, that the EAC partner States harmonise their policies, rules and regulations on civil aviation in order to promote the development of a safe, reliable, efficient and economically viable air transport system in the region in compliance with the international standards.

[152] Treaties of Accession of the Republic of Rwanda and Burundi to the East African Community, both signed on 18 June 2007 are available at <http://www.eac.int/legal/index.php?option=com_docman&Itemid=28> [accessed 10 August 2014].

[153] CASSOA Protocol, *supra* note 150, Article 7(d)-(e).

CASSOA has legal personality.[154] Its headquarters is based in Entebbe, Uganda.[155]

### ii. Main safety functions

Under its founding protocol, the mandate of CASSOA covers both aviation safety and security oversight, without however distinguishing further the specific domains of aviation safety for which it is competent.[156] In practice it has been supporting its Member States in the areas of flight safety standards, including air operations, airworthiness and crew licensing, as well as aerodromes and ANS.[157]

The primary role of CASSOA is to assist the EAC Member States in meeting their safety and security oversight obligations under the Chicago Convention and its Annexes, as well as to provide a forum and structure to discuss, plan and implement common measures for the enhancement of safety and security of civil aviation.[158] From a legal point of view the structure and contents of the CASSOA protocol is similar to the BAGASOO founding agreement, with a major difference that CASSOA's mandate also covers security issues.

In contrast to BAGASOO, the CASSOA currently does not have a mandate to accept delegation of safety oversight functions from its Member States. For the time being CASSOA performs mainly advisory and support functions. Since its establishment it has been focusing primarily on harmonisation of regulations and procedures, providing assistance to States in reaching compliance with ICAO SARPs,[159] provision of training to national inspectors, exchange of safety information and implementation of operational projects, such as a common examination scheme for aviation personnel or EAC centre for aviation medicine.[160] It has also established – with mixed results - a system for the sharing of aviation safety inspectors.[161]

### iii. Practical aspects of implementation

Similar to BAGASOO, CASSOA has been facing challenges in respect to its funding. The CASSOA protocol envisages various sources of funding, including a

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[154] Ibid. Article 3.
[155] CASSOA, 'Regional cooperation for the enhancement of safety oversight: obstacles and lessons learnt', ACAC/ICAO Seminar/Workshop on Regional Safety Oversight Programmes, (Rabat, Morocco, 2012).
[156] CASSOA Protocol, *supra* note 150, Article 2.
[157] Regional cooperation for the enhancement of safety oversight: obstacles and lessons learnt, *supra* note 155.
[158] CASSOA Protocol, *supra* note 150, Article 4(c). For a more detailed overview of CASSOA's activities see: Regional cooperation for the enhancement of safety oversight: obstacles and lessons learnt, *supra* note 155; and: CASSOA, 'Safety Initiatives and Regional Organizations in the AFI Region', RASG-AFI/1 – IP/8, (First meeting of the Africa Indian Ocean Regional Aviation Safety Group, 2012).
[159] With some success, as for example Rwanda was removed in 2012 from the ICAO list of States with 'Significant Safety Concerns'. See: Regional cooperation for the enhancement of safety oversight: obstacles and lessons learnt, *supra* note 155.
[160] Safety Initiatives and Regional Organizations in the AFI Region, *supra* note 158, at Paragraph 3.
[161] Ibid.

fees and charges scheme and sources provided by EAC.[162] In practice the organisation is largely dependent on the funding from its Member States, which have their own priorities and whose contributions proved to be uneven.[163] This has resulted in difficulties in attracting and retaining sufficient number of qualified technical personnel, in particular pilots.[164]

Another challenge has been the difficulty in implementing an effective scheme for the sharing of inspector resources amongst the Member States due to 'relatively few qualified and skilled inspectors within the region.'[165] CASSOA has also highlighted resistance from civil aviation authorities based on perceptions of competition for safety oversight responsibilities, differences in legal frameworks, drafting principles and regulatory promulgation procedures of Member States, as some of the problems in discharging its mandate.[166]

It is the objective of CASSOA to evolve in the future into a RASO with some of the safety and security oversight competences formally delegated to it by the Member States. To this end an organisational development plan has been prepared,[167] and expert assistance sought from ICAO as to how such a future mandate might best be structured.[168] However, as CASSOA is an institution of the EAC, such evolution would ultimately depend on the decision taken at the EAC level and would require a change to the CASSOA protocol. This in turn may depend on the future integration path of the EAC.[169]

## 3.5 REGIONAL ACCIDENT INVESTIGATION ORGANISATIONS

### 3.5.1 INTRODUCTION

Beyond regulation and oversight of civil aviation, which is the domain of RSOOs dealt with in the previous section, civil aviation accident investigation[170] is also an area where regional cooperation can bring regulatory efficiencies and economies of scale. This study would therefore not be complete without also referring to RAIOs, which, although not yet as numerous as RSOOs, have also been gaining increasing attention in recent years.

Today commercial aviation is overall a very safe sector of transport with fatal accidents occurring rarely as Chapter 1 demonstrated. This means that main-

[162] CASSOA Protocol, *supra* note 150, Article 15.
[163] Regional cooperation for the enhancement of safety oversight: obstacles and lessons learnt, *supra* note 155.
[164] Ibid.
[165] Safety Initiatives and Regional Organizations in the AFI Region, *supra* note 158, at Paragraph 3.2.
[166] Regional cooperation for the enhancement of safety oversight: obstacles and lessons learnt, *supra* note 155.
[167] CASSOA, 'Organisational Development Plan 2010/11–2014/15' <http://www.cassoa.org/docs/Approved%20CASSOA%20Organisation%20Evolution%20Plan%20R2.pdf> [accessed 10 August 2014].
[168] ICAO, 'Cooperation with Regional Organizations and Regional Civil Aviation Bodies', C-WP/13885, (197th session of the ICAO Council, 2012), at Paragraph 8.1.
[169] Safety Initiatives and Regional Organizations in the AFI Region, *supra* note 158, at Paragraphs 2.1.4 and 5.1.
[170] According to Annex 13 to the Chicago Convention, States have an obligation to ensure the investigation of both accidents and serious accidents. This section, for the sake of brevity, will refer only to accident investigation and accident investigation bodies or authorities.

taining a permanent accident investigation authority with qualified staff and adequate facilities can be costly even for wealthy regions. When in 2009, the European Commission presented its proposal for a new EU regulation on air accident investigations, it highlighted, as one of the drivers for its initiative 'lack of a uniform investigating capacity in the EU',[171] and underlined that 'especially for smaller Member States it is difficult to mobilise the necessary expertise for more complex investigations and to be on par with large manufacturers or operators.'[172] and that 'in practice, only Member States with big manufacturing industry can justify budgets necessary to maintain a properly staffed and equipped [authorities].'[173]

The difficulties that States in general experience in meeting their legal obligations related to aviation accident investigations are best illustrated with the ICAO USOAP results. According to 2014 ICAO data concerning the level of effectiveness of safety oversight systems, accident investigation is an area where overall the States' capabilities *are the weakest*, with the level of effective implementation at only 50%.[174]

States can try to mitigate these difficulties through various means. This can include technical activities such as joint planning and conduct of training for investigators, or provision of assistance within the framework of a particular investigation. It may also entail formalisation of cooperation by means of memoranda of understanding, letters of intent or international agreements. The 2006 ECAC Code of Conduct on Co-operation can be given as an example of a non-legally binding arrangement providing a convenient framework for co-operation outside the context of a specific investigation.[175] The ECAC Code of Conduct addresses issues such as: collaboration during an investigation, management of resources, exchange of information and training activities.

States can also establish multimodal investigating agencies[176] or joint civil-military[177] aviation accident investigation bodies, in order to reduce the costs, and provide for efficiencies deriving from aggregation of knowledge and experience related to investigation of transport accidents.

In order to help States in meeting their accident investigation obligations ICAO started to promote the RAIO concept. This idea was formally introduced into the ICAO regulatory framework in 2010 with the adoption of an amendment to Annex 13 envisaging the possibility of delegation of investigations to RAIOs:

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[171] EC, 'Impact Assessment accompanying the proposal of the European Commission for a Regulation of the European Parliament and of the Council on investigation and prevention of accidents and incidents in civil aviation', COM(2009) 611 final, (Brussels, 2009), p. 14.
[172] Ibid. at p. 15.
[173] Ibid.
[174] Regional Performance Dashboards, *supra* note 15 in Ch.1.
[175] ECAC, 'Code of Conduct on co-operation in the field of civil aviation accident/incident investigation' <https://www.ecac-ceac.org//publications_events_news/ecac_documents/codes_of_conduct> [accessed 7 August 2014].
[176] Multimodal boards operate for example in the Netherlands, Bulgaria, Latvia and Sweden
[177] In Sweden for example, the Swedish Accident Investigation Board, which is a multimodal safety board reporting to the Ministry of Defence, is responsible for investigating accidents involving not only civil but also military aircraft, including Swedish military aircraft subject to an accident abroad unless stipulated otherwise in international agreements. See: Piotr Kasprzyk, 'Legal Ramifications of the Investigations of the 2010 Polish President's Aircraft Accident', ASL, 36 (2011), p. 214.

> The State of Occurrence shall institute an investigation into the circumstances of the accident and be responsible for the conduct of the investigation, but it may delegate the whole or any part of the conducting of such investigation to another State or a regional accident investigation organization by mutual arrangement and consent.[178]

The concept of a RAIO is not a new one. In Commonwealth of the Independent States, the IAC, in addition to being a RSOO as was presented in the previous section, also acts as a RAIO. Overall however, and in contrast to the RSOOs, the practical application of the RAIO concept has so far been rather limited. Until 2014, in addition to the IAC, only one other such organisation had been established – the Banjul Accord Group Accident Investigation Agency (BAGAIA).[179] In 2010, the EU established the European Network of Civil Aviation Safety Investigation Authorities (ENCASIA), but this organisation has only a supporting and coordinating role, and does not conduct investigations on behalf of EU Member States.[180] ENCASIA can be at best qualified as a pre-RAIO.

According to ICAO the key benefits of a RAIO are to:

- Eliminate duplication of efforts by pooling human, technical and financial resources;
- Achieve economies of scale leading to effectiveness and efficiency,
- Demonstrate, as a responsible regional organisation, improved regional solidarity;
- Enable investigators in the region to gain experience more quickly,
- Facilitate the recruitment and retainment of investigators by States;
- Help achieve the independence of investigations.[181]

The ICAO RSOO Symposium of 2011 similarly concluded that 'there are benefits to be derived from the establishment of Regional Accident and Incident Investigation Organizations (RAIOs) and from close collaboration and coordination between RSOOs and RAIOs.'[182]

In the context of aviation accident investigations, the issue that must be particularly underlined, and which is fully applicable to a RAIO, is the requirement of independence and separation of the accident investigation process. Under Annex 13, the sole objective of the investigation of an accident or incident is the prevention of accidents and incidents. It is not the purpose of this activity to apportion blame or liability.[183] There are a number of consequences of this basic

[178] Annex 13 to the Chicago Convention, at Paragraphs 5.1 and 5.1.2.
[179] 'Banjul Accord Group Accident Investigation Agency Agreement', Montreal, 30 June 2009, ICAO Registration No. 5463. The Member States of BAGAIA are: Republic of Cape Verde, the Republic of Gambia, the Republic of Ghana, the Republic of Guinea, the Republic of Liberia, the Federal Republic of Nigeria, and the Republic of Sierra Leone
[180] EU, 'Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC', (OJ L 295, 12.11.2010), Article 7.
[181] ICAO Doc. 9946, *supra* note 3 in Ch.1, at Paragraph 2.2.
[182] Outcomes of the Symposium on Regional Safety Oversight Organisations (oral report to ICAO Council), *supra* note 4 in Ch.1.
[183] Annex 13 to the Chicago Convention, at Paragraph 3.1.

requirement at the legal, as well as operational and organisational levels, including that:

- The accident investigation authority shall have independence in the conduct of the investigation and have unrestricted authority over its conduct;
- Air accident investigations shall be separate from any judicial or administrative proceedings to apportion blame or liability;
- Air accident investigations should have unrestricted access to all evidential material without delay and are not impeded by administrative or judicial investigations or proceedings.[184]

Similar to accident investigation authorities at national level, a RAIO must be independent in its actions, impartial and be perceived as such. According to ICAO guidelines on RAIOs, 'it should be established in such a way that it can withstand political or other interference or pressure.'[185]

Today an aviation accident, especially in commercial air transport, is rarely a mono-national event, and almost routinely multiple States will be involved in the investigation either as a result of their technical interest, that is as a 'State of Registry', 'State of the Operator', 'State of Manufacture', 'State of Design', or by being a State whose citizens were injured or killed in the accident.[186] Press and politicians from the victims' countries, as well as the families and relatives, will also routinely follow the investigation and may try to exert pressure on the investigators or prematurely speculate about the probable cause(s).[187]

In this complex environment, establishing a RAIO can be beneficial from the perspective of strengthening independence of safety investigations, especially in States which do not have resources necessary to organise accident investigation individually at national level. In such cases, a technically competent RAIO would represent a strong counterpart to regulators and would be more likely to have resources adequate to be on a par with manufacturers and airlines.

In addition, in the case of States which already have independent accident investigation authorities, regional cooperation can offer benefits. In the EU, one of the reasons behind the 2010 establishment of ENCASIA (see Section 3.5.2.3 be-

[184] For an overview of legal aspects of the independence of air accident investigations see: Paul S. Dempsey, 'Independence of Aviation Safety Investigation Authorities: Keeping the Foxes from the Henhouse', JALC, 75 (2010).

[185] ICAO Doc. 9946, *supra* note 3 in Ch.1, at Forward.

[186] Under ICAO Annex 13, Standard 5.27, the rights of the State which has a special interest in an accident by virtue of fatalities or serious injuries to its citizens are formally more limited compared to the rights of States which have a technical interest in the investigation, and which are entitled to appoint an accredited representative. However there are cases where the interest of the State representing the fatally injured passengers will be so strong that this State may even take over the responsibility for the conduct of the investigation, upon delegation by the State of occurrence. This has been the case with the shooting down of the Malaysian flight MH17 over Ukraine on 17 July 2014, and where Ukraine, as the 'State of Occurrence', delegated the conduct of the investigation to the Netherlands, as the State which represented the majority of the fatally injured passengers on that flight. For further details on this case see: Dutch Safety Board, 'Dutch Safety Board heads investigation: investigation effort in full swing, black boxes currently being read out', Press Release, (2014).

[187] For a very good analysis of the general public, media and policy makers' reactions to aviation accidents (case studies from the US), see: Roger W. Cobb and David M. Primo, The plane truth: Airline crashes, the media and transportation policy, (2003).

low) was to 'improve the quality of investigations conducted by safety investigation authorities and to strengthen their independence.'[188]

According to IAC, it is also 'much easier to prevent conflicts of interests within the framework of regional organizations, as such an organization will, in a significant number of cases, present [sic] several States, which will make interaction as well as information exchange and publicity easier'.[189]

### 3.5.2 ESTABLISHING A RAIO LEGAL FRAMEWORK: CURRENT EXAMPLES AND PRACTICE

According to ICAO, the most important consideration in setting up a RAIO is that it be established 'on a legal basis that clearly indicates its legal standing and the level of its responsibility within Member States'.[190] In 2014 there were two main types of RAIO in operation:

- With the competence to conduct the safety investigations on behalf of its Member States; and
- Having a mainly coordinating and supporting role.

These are also the two types distinguished by ICAO in its RAIO manual as 'basic' and 'complex':[191]

- In a *basic set-up*, the national accident and incident investigation authority retains full responsibility for investigation activities within a Member State, while RAIO develops and provides common regulations, policies and procedures for accident and incident investigation, provides oversight of the implementation of such requirements, as well as advice, guidance and assistance to Member States;
- In a more *complex set-up*, the national accident investigation authorities may delegate the whole or part of their functions and responsibilities concerning accident and incident investigation to a RAIO, which conducts investigations on behalf of Member States.

The ICAO classification of RAIOs into basic and complex, broadly corresponds to the classification into pre-RASOs and RASOs which was proposed in Section 3.4.

The first type of RAIO is currently represented by ENCASIA in the EU. The second type is represented by IAC and BAGAIA. Some other projects to establish RAIOs are under consideration in different parts of the world, including in the Gulf Region[192] and Central America,[193] but by mid-2014 had not yet materialised.

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[188] Regulation (EU) No 996/2010, *supra* note 180, Article 7.
[189] IAC, 'Regional Organizations in Accident and Incident Investigations', AIG/08-WP/22, (ICAO Accident Investigation and Prevention (AIG) Divisional Meeting, 2008), at Paragraph 2.3.5.
[190] ICAO Doc. 9946, *supra* note 3 in Ch.1, at Paragraph 3.4.2.
[191] Ibid. at Paragraph 3.10.1.3.
[192] In addition to RAIOs which are envisaged in Africa, as presented under Section 3.3.1.1 of Chapter 3, a RAIO is also being considered by the Gulf Region. For more details see: UAE

The key implication of the above distinction is that, if the delegation of the conduct of investigations is envisaged, it implies the granting of a legal personality to a RAIO. This is because, as will be demonstrated in Chapters 4 and 6, the carrying out by a RASO on behalf of its Member States of the functions and duties envisaged under the Chicago Convention presupposes the establishment of a relationship of an international agency between the RASO and its Member States. In such cases, the founding document of a RAIO will have to be an international agreement or a binding supranational legal framework.

Even if States do not delegate the conduct of investigations to a RAIO, they may decide to adopt common accident investigation regulations, with a view to ensuring uniform implementation of relevant Annex 13 SARPs. The EU regulation on air accident investigations can be given as an example here. Such regionally adopted legislation also offers an opportunity to organise some of the Annex 13 obligations in a collective manner. A good example in that respect is the European Database of Safety Recommendations.[194] Managed by the European Commission with the support of ENCASIA, the database constitutes a single repository of all the safety recommendations issued or received by the EU accident investigation authorities according to Annex 13. It allows information to be aggregated at the regional level with a view to identifying recommendations of EU-wide concern, or specific safety patterns emerging from the data which may not otherwise be visible.[195]

It is advisable that where States delegate the conduct of investigations to a RAIO, the investigations are based on common regional regulations, policies and procedures. Uniform regulatory framework is easier to apply from the perspective of a RAIO than a patchwork of national regulations. This may however not always be possible. For example in the case of interactions between the RAIO and local police and judiciary officers, the RAIO will have to abide by some, if not all, local regulations.

In addition, the 'State of Occurrence' may not always be able to delegate all of its responsibilities to a RAIO. For example the initial response responsibilities, such as ensuring the security of the accident site and protection of evidence, will have to be undertaken by the 'State of Occurrence', pending arrival of the RAIO investigation team and assumption of responsibility for the investigation by the RAIO.[196]

The founding document of a RAIO should ensure its independence from any other organisation whose interests or tasks may be in conflict with the objective of air accident investigations, and in particular the national civil aviation authorities or a RSOO if it has also been established. According to ICAO such separation should be achieved as a minimum at a functional level.[197] In the EU, the

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General Civil Aviation Authority, 'Regional Accident Investigation Organization', ACAC/ICAO Seminar/Workshop on Regional Safety Oversight Programmes (Rabat, Morocco, 2012),

[193] El Salvador, 'Establishment of a central american accident and incident investigation organization', A38-WP/232, (38th ICAO Assembly, 2013).

[194] Regulation (EU) No 996/2010, *supra* note 180, Article 18.

[195] European Network of Civil Aviation Safety Investigation Authorities (ENCASIA), 'Annual Report', (2013),
<http://ec.europa.eu/transport/modes/air/safety/accident_investigation/authorities_en.htm> [accessed 30 March 2014].

[196] ICAO Doc. 9946, *supra* note 3 in Ch.1, at Paragraph 3.10.1.5.

[197] Ibid.at Paragraph 2.4.9.

members of ENCASIA - even though this organisation does not conduct investigations - are legally prohibited to 'accept instructions from anybody which could affect the independent status of safety investigations.'[198]

The fact that a RAIO needs to meet the requirements of independence, does not mean that it should not be administratively supervised and accountable to governments of its Member States, or their supranational representatives, in relation to sound financial management, good administrative practices, and proper implementation of policies, working methods, and regulations. In fact, in the case of RAIOs which conduct safety investigations on behalf of their Member States, such supervision and accountability is necessary, given the fact that its Member States will continue to be ultimately responsible for ensuring compliance with their obligations under the Chicago Convention. The question of RASO oversight by its Member States will be further discussed in Chapter 6.

Where a RAIO may offer particular advantages is in the area of the protection of safety information coming from the accident investigation process or acquired under safety data collection and processing systems. If a RAIO is established in the form of an international organisation or supranational agency, its status – through the immunities and privileges granted by the Member States – may offer enhanced protection to the safety information it collects. For example in the EU, the protocol on privileges and immunities attached to the EU founding treaties and which ensures the inviolability of EU's archives, applies to EU agencies.[199] Such protection should be balanced by 'access to information' rules allowing the release of information to the public if it does not jeopardise the ability of the RAIO to gather such information in the future.[200]

In assessing the feasibility of a RAIO, practical aspects of multinational cooperation such as language issues and knowledge of local circumstances should also be taken into account. RAIO inspectors will need to be *on the ground* to interview the witnesses, or to interact with the local police. They will also need rights, recognised and enforced by all the RAIO Member States, to take the necessary measures to ensure the effective conduct of the investigation. This may include the right to have access to the site of the accident, aircraft wreckage and flight recorders, to call and examine/interview witnesses, request the medical examination of the pilots, or to require the conduct of autopsy examination of the bodies of the fatally injured persons.

At the national level, experience shows that in some countries,[201] the rights of the air safety investigators can be in conflict with corresponding privileges of the justice authorities and police conducting a parallel investigation. This is a legally complex issue, and ICAO advises States to use a combination of legislation,

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[198] Regulation (EU) No 996/2010, *supra* note 180, Article 7(5).

[199] For example Article 30 of Regulation (EU) No 216/2008, *supra* note 81 in Ch.2, confirms that the 'Protocol on the Privileges and Immunities of the European Union' applies to EASA.

[200] In the EU the information held by ENCASIA or EASA is without prejudice to: EU, 'Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents', (OJ L 145, 31.5.2001).

[201] France and Italy are often given as examples in this respect; See: EC Impact Assessment COM(2009) 611 final, *supra* note 171, at pp. 18-19. For an overview of the subject of criminalization of aviation accidents see also: Sofia Michaelides-Mateou and Andreas Mateou, Flying in the Face of Criminalization: The Safety Implications of Prosecuting Aviation Professionals for Accidents, (2010).

protocols or agreements between the accident investigation and judicial authorities to ensure that the former are not 'impeded by administrative or judicial investigations or proceedings.'[202] A RAIO may similarly want to develop a template of advance arrangements to be used for the purpose of coordinating its investigations with judicial and police authorities of Member States. In the EU for example the use of such advance arrangements has been made mandatory for all the EU Member States.[203]

#### 3.5.2.1 THE INTERSTATE AVIATION COMMITTEE

In 2014, the only example of a RAIO actually entitled to conduct accident investigations on behalf of its Member States was the IAC. This organisation, which is also a RSOO, has already been addressed under Section 3.4.3.3, so here only its RAIO functions will be further presented.

IAC should be seen as part of a regional system for air accident investigations for the CIS States. This is because, in addition to the possibility to conduct the actual investigations on behalf of some of its Member States, it is also responsible for developing regional rules, procedures, manuals, training of investigators, checking compliance with such rules and procedures, as well as assisting the Member States in the conduct of investigations in case the delegation has not taken place.[204] Its objective is to ensure the greatest possible harmonisation of accident investigation procedures and requirements, and efficient application of Annex 13 at the regional level.[205]

The delegation mechanism used by IAC is based on a combination of its founding agreement, which is the Minsk Treaty presented under Section 3.4.3.3, and a bilateral delegation agreement concluded with a specific Member State.

For example the Russian Federation delegated to IAC investigation functions in the event of any aircraft accident occurring in the territory of the Russian Federation and involving a foreign operated or registered aircraft, or an accident occurring in the Russian Federation and involving an aircraft or aircraft engine of foreign design or manufacture.[206] The IAC also has responsibility for providing the Russian Accredited Representatives to investigations of accidents occurring on foreign territory and involving a Russian operated or registered aircraft or an accident/incident occurring in the foreign territory and involving an aircraft or aircraft engine of Russian design or manufacture.[207]

As far as the issue of independence of investigations is concerned, the situation of IAC is quite specific because, as mentioned above, it also acts as a RSOO with competences such as aircraft and aerodrome certification. Ideally both regulatory and investigative functions should be performed by separate organisa-

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[202] Annex 13 to the Chicago Convention, at Paragraph 5.4.3.
[203] Regulation (EU) No 996/2010, *supra* note 180, Article 12(3). At the time of writing this study the implementation of this provision was still ongoing. For further details see: ENCASIA 2013 Annual Report, *supra* note 195, at p. 23.
[204] 'Minsk Agreement', *supra* note 105, Article 7(b).
[205] For a further overview of IAC accident investigation functions see: Sergey V. Zayko, 'Russia's Interstate Aviation Committee', ISASI Forum, 46 (2013), p. 16.
[206] See for example: 'Memorandum of Understanding between the government of the United States of America and the government of the Russian Federation on cooperation in the field of civil aircraft accident/incident investigation and prevention', 2nd September 1998, 1998 TIAS 12983.
[207] Ibid.

tions, and this is what this study recommends. However, according to ICAO, the separation should be ensured at least at the functional level.[208] In the case of IAC, the certification/regulatory functions, that is the Aviation Register, and accident investigations are performed by separate *commissions*, which are organisational units within the IAC with separate legal personalities, as was explained under Section 3.4.3.3.

#### 3.5.2.2 THE BANJUL ACCORD GROUP ACCIDENT INVESTIGATION AGENCY

BAGAIA was formally established in 2009 on the basis of an international agreement. It has a status of an 'independent body under the Banjul Accord Group'. Contrary to IAC, BAGAIA's mandate is limited exclusively to air accident investigation matters.

At the time of writing this study in 2014, BAGAIA was not yet fully operational. It was therefore not possible to analyse practical aspects related to its functioning.

From a legal point of view, BAGAIA's founding agreement gives to this RAIO, at least formally speaking, the possibility to accept from its Member States the delegation of accident investigation functions and duties. Article 5(k) of the founding agreement states that BAGAIA can:

> [C]onduct, either in whole or any part of, an investigation into an aircraft accident or serious incident upon delegation be a State of Occurrence ... by mutual agreement and consent between the State of Occurrence and the BAGAIA.[209]

So far no such delegation agreements have been concluded, or are envisaged.[210] State sovereignty has been mentioned as one of the main principles to be taken into account when discussing possible future delegation agreements between BAGAIA and its Member States. It is also possible that such delegation agreements could be concluded between BAGAIA and its Member States on an ad hoc basis for the purpose of investigating specific accidents.[211] The fact that the conclusion of such delegation agreements, of either general or ad hoc nature, is foreseen in the BAGAIA founding agreement, presupposes that the BAGAIA's Member States envisaged, or at least did not exclude, this organisation having a certain degree of international legal personality, which is not explicitly envisaged under BAGAIA's founding agreement.

Similar to IAC, BAGAIA should be seen as part of a regional system for air accident investigations. This is because, beyond the possibility to conduct the actual investigations on behalf of its Member States, BAGAIA's founding agreement envisages this organisation also being responsible for a wide array of functions related to the strengthening of accident investigation capabilities of its Member States.[212]

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[208] ICAO Doc. 9946, *supra* note 3 in Ch.1, at Paragraph 3.10.1.5.
[209] 'BAGAIA Agreement', *supra* note 179, Article 5(k).
[210] Official of the BAGAIA, 'Interview No 10', (2014).
[211] Ibid.
[212] 'BAGAIA Agreement', *supra* note 179, Article 5.

Finally, concerning independence of investigations, the situation of BAGAIA is different from that of IAC, as it does not regulate civil aviation activities.

#### 3.5.2.3 THE EUROPEAN NETWORK OF CIVIL AVIATION SAFETY INVESTIGATION AUTHORITIES

ENCASIA has a different legal and organisational setup from that of the IAC or BAGAIA. It is essentially a *coordination* platform for national accident investigation authorities of the EU Member States. It does not have any supranational competences, and its main function is to 'encourage high standards in investigation methods and investigator training.'[213] To this end activities of ENCASIA include: coordinating and organising 'peer reviews'; training activities and skills development programmes for investigators; promoting best safety investigation practices; developing and managing a framework for sharing resources; and advising EU institutions on policy and regulation for safety investigations and the prevention of accidents and incidents.[214]

ENCASIA's Annual Report for 2013[215] and the ENCASIA work programme for 2014,[216] provide examples of a wide range of activities which this organisation coordinates, such as:

- Developing procedures for asking and providing assistance between the member authorities;
- Establishing an inventory of best practices of investigation in Europe;
- Developing a guidance manual on investigator training, and providing training courses on issues such as management of on-site hazards for investigators or responding to a major aviation accident;
- Analysing information in a central EU database of safety recommendations;
- Developing a programme of 'peer reviews' to help national authorities to increase their investigative capabilities and raise awareness of best practice.

From a legal point of view, the establishment of ENCASIA has been mandated by EU law, but the actual responsibility for the act of establishment has been given to the EU Member States.[217] This means that in legal terms the ENCASIA is not an EU agency or other body of the EU, and does not have legal personality under the EU legal system. This was a deliberate policy choice, because EU

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[213] Regulation (EU) No 996/2010, *supra* note 180, Article 7.
[214] Ibid.
[215] ENCASIA 2013 Annual Report, *supra* note 195.
[216] European Network of Civil Aviation Safety Investigation Authorities (ENCASIA), '2014 Work Programme', (2014),
<http://ec.europa.eu/transport/modes/air/safety/accident_investigation/authorities_en.htm>
[accessed 30 March 2014].
[217] See: Regulation (EU) No 996/2010, *supra* note 180, Article 7(1), which provide that: 'Member States shall ensure that their safety investigation authorities establish between them a European Network of Civil Aviation Safety Investigation Authorities (the Network), composed of the heads of the safety investigation authorities in each of the Member States and/or, in the case of a multimodal authority, the head of its aviation branch, or their representatives …'.

Member States were concerned that establishing ENACSIA through an act of EU law could make the organisation more subordinate to EU institutions and this in turn could weaken the independence of the national accident investigation bodies.[218]

The EU Member States quickly realised however that lack of legal personality can be a serious impediment to the effectiveness of ENCASIA, especially as they were intending to rely on the European Commission for its financial support. In order to overcome these difficulties, the concept of an association has been used, and in 2012 ENCASIA was registered in Belgium as an *association sans but lucratif*.[219] This was a solution similar to the one used in the past by JAA and some other pre-RASOs which were presented under Section 3.4.2, and allowed ENCASIA to set up a bank account and receive grants from the EU.[220]

It remains to be seen if in the future ENCASIA will evolve into an EU Air Accident Investigation Board, replacing the national investigation authorities. Such an evolution would in the first place depend on the political will of the EU Member States, and a clear demonstration by the European Commission that such an EU body would be a more efficient way of conducting air accident investigations than through the national authorities. In the Impact Assessment accompanying the proposal for the regulation mandating the establishment of ENCASIA, the European Commission considered, as one of the possible options, the establishment of such a Board, but finally decided that it would not be the best solution given the high implementation risks and associated costs for the EU budget.[221]

## 3.6 TOWARDS A REGIONAL CIVIL AVIATION AUTHORITY

### 3.6.1 INTRODUCTION

So far this chapter has been presenting examples of regional aviation safety bodies functioning in parallel with the national authorities of their Member States. To a certain extent, and especially in cases where regulatory competences are exercised in parallel by national authorities and a RASO, this is a model in which there is a risk of duplication of activities. This risk concerns not only the exercise of regulatory and oversight functions, but equally importantly the potential competition between a regional body and national authorities for resources and qualified personnel. Some of the experiences of CASSOA referred to in the preceding section illustrate well such difficulties.

Yet, there is another model of a RASO which eliminates the risk of such duplication. This is the concept of a RCAA, which acts as an aviation authority for multiple States. From a legal point of view a RCAA is a single entity, although organisationally it may operate on the basis of a headquarters office and local offices in the participating States. In the RCAA model there is a *complete* delegation of safety oversight functions from a national to regional level.

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[218] Source: Personal files of the author, who was responsible in the European Commission for coordinating the legislative process for the development of Regulation (EU) No 996/2010 of 20 October 2010.

[219] Association Sans But Lucratif 'ENCASIA', 'Statuts et Acte de désignation des premiers administrateurs', Monitor Belge, 1 October 2012.

[220] ENCASIA 2013 Annual Report, *supra* note 195, at p. 7.

[221] EC Impact Assessment COM(2009) 611 final, *supra* note 171, at p. 59.

The potential benefits of RCAA are economies of scale and associated savings for the governments on the one hand, and a single regulatory framework for the aviation industry on the other. This approach would best serve large groupings of small States with limited resources and/or States with low level of aviation activities which are unable to generate revenues big enough to support fully fledged national civil aviation authorities.

Putting in place a RCAA requires in the first place the political will of the States, which may be reluctant to transfer, to that extent, the exercise of their sovereign competences to an international organisation. It also requires a single legal framework and operating procedures to ensure that a RCAA operates as a truly unique aviation authority. How such a legal framework is to be achieved is a matter of choice. It is proposed here that a supranational REIO with binding legislative powers, such as the EU, would be the best solution for delivering a legal framework for a RCAA. Alternatively, instruments of traditional public international law could also be used.

In any case, the establishment of a RCAA requires an organisation established in a form which allows for large scale delegation of safety functions and duties by multiple States, and where such functions and duties can be exercised by a RCAA in a legally binding manner. In this respect RCAA cannot be established in a pre-RASO form, but must have a legal status of either RASO Type I or RASO Type II in the typology proposed in Section 3.4.

Finally, the feasibility of a RCAA would also depend on local circumstances such as the language(s) used, geographical considerations - which are important for the industry which needs to interact with the authority on a daily basis - and the presence, or lack, of a common administrative and legal culture/heritage.

In 2014 there was only one example of an operational RCAA – the EC-CAA, established in October 2003 by Member States of the OECS as an international intergovernmental organisation with legal personality. The subsequent sections will present and analyse this organisation in more detail.[222]

### 3.6.2 THE EASTERN CARIBBEAN CIVIL AVIATION AUTHORITY

#### 3.6.2.1 ORIGINS AND EVOLUTION

The ECCAA is a unique organisation shaped by the history and geo-political status of the eastern Caribbean region in the second half of the twentieth century, when the Caribbean States gradually moved away from being British colonies towards full independence.

The origins of the ECCAA come from the ‘Directorate of Civil Aviation - Eastern Caribbean States’ which was established in 1957 by the United Kingdom:

[222] The concept of a RCAA has also been briefly presented at the: ICAO, 'Symposium on Regional Safety Oversight Organisations' 2011) <http://www.icao.int/Meetings/RSOOSYMPO/Pages/default.aspx> [accessed 6 August 2014]. See in particular: Michael Jennison, 'Is the RSOO a success story?', ICAO Symposium on Regional Safety Oversight Organisations (Montréal, Canada, 2011),

> To advise the Governments of the Windward and Leeward Islands on all matters relating to Civil Aviation including airfields and airport developments, the implementation of ICAO conventions and the adequacy of air services.[223]

In 1982, the Directorate of Civil Aviation became an institution of the OECS through the Treaty of Basseterre.[224] Subsequently a decision was taken to transform it into 'a fully autonomous body ... with the responsibility to regulate civil aviation activities within OECS Member States.'[225] This decision gave the necessary political momentum for the conclusion of the ECCAA founding agreement which was signed at 21 October 2003.[226]

Although the OECS comprises nine States, including seven full members and two associated members,[227] these are very small entities with small economies and populations. According to the UN data, in 2013 the combined population of the nine OECS States was 640.000 people,[228] which is comparable with the population of Washington D.C. in the US. It therefore made little economic or operational sense for these States to establish separate national civil aviation authorities, particularly in a context where civil aviation is indispensable for these island nations to maintain links with each other and the outside world.

In 2010 the legal status of ECCAA was further strengthened, as it has been formally listed as one of the institutions of the OECS, next to the Eastern Caribbean Supreme Court and the Eastern Caribbean Central Bank, under the Revised Treaty of Basseterre.[229] This in itself demonstrates the importance that the OECS, as an organisation of island nations, attaches to civil aviation.

Under the Revised Treaty of Basseterre, the OECS enhanced its supranational character and decided that in a number of areas, one of them being civil aviation, the Member States will exercise their legislative competences at the regional level. As far as civil aviation is concerned, this competence will be 'exercised on the recommendation of the Board of Directors of the Eastern Caribbean Civil Aviation Authority.'[230] In accordance with Article 5.3 of the Revised Treaty of Basseterre, such legislation should take precedence over the national laws of

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[223] OECS, 'Eastern Caribbean Civil Aviation Authority' <http://www.oecs.org/about-the-oecs/institutions/eastern-caribbean-civil-aviation-authority-eccaa> [accessed 8 August 2014].
[224] 'Treaty establishing the Organisation of Eastern Caribbean States', Basseterre, 18 June 1981, 1338 UNTS 97.
[225] ECCAA website, *supra* note 223.
[226] 'Agreement Establishing the Eastern Caribbean Civil Aviation Authority', Grenada, 21 October 2003, text can be found in: The Eastern Caribbean Civil Aviation Agreement Act, enacted by Parliament of Antigua and Barbuda, No. 24 of 2003. The ECCAA Member States are: Antigua and Barbuda, the Commonwealth of Dominica, Grenada, Saint Christopher (Kitts) and Nevis, Saint Lucia, Saint Vincent and the Grenadines. All ECCAA Member States with the exception of Dominica are signatories of the Chicago Convention. The OECS States which have the status of British Overseas Territories, namely Anguilla, British Virgin Islands and Montserrat are not parties to the ECCAA Agreement.
[227] Antigua and Barbuda; Commonwealth of Dominica; Grenada; Montserrat (a British Overseas Territory); St Kitts and Nevis; St Lucia; St Vincent and the Grenadines. Anguilla and the British Virgin Islands are associate members of the OECS.
[228] UN, United Nations Demographic Yearbook, Estimates of mid-year population: 2002-2011.
[229] See Article 6 of 'Revised Treaty of Basseterre establishing the Organisation of Eastern Caribbean States Economic Union', Gros Islet, 18 June 2010.
[230] Ibid. Article 14(1).

OECS Member States, and be directly applicable.[231] Yet in practice, at least for the time being, the regulations still have to be transposed into the national legal systems of the ECCAA Member States.[232]

In addition, being an institution of the OECS, means for the ECCAA that:

- The Heads of Governments of the OECS can override the Board of Directors of ECCAA;[233]
- The Director General of the ECCAA is appointed by the Heads of Governments of the OECS;[234]
- The amendments to the ECCAA Agreement have to be agreed by the Heads of Governments of the OECS;[235]
- The OECS institutions shall be exercising their legislative competence in matters of civil aviation on 'the recommendation of the Board of Directors of the Eastern Caribbean Civil Aviation Authority'.[236]

#### 3.6.2.2 ECCAA LEGAL AND ORGANISATIONAL STATUS

The ECCAA, whose mandate covers both aviation safety and security,[237] is set up as 'an autonomous regional regulatory organization' and is responsible for 'regulating civil aviation and fostering competitiveness in the aviation industry in the Eastern Caribbean and for harmonising the application of the standards and recommended practices adopted by the International Civil Aviation Organisation'.[238] It is a 'body corporate, having a perpetual succession'.[239]

Under its founding agreement the ECCAA has legal personality,[240] and financial autonomy guaranteed by revenue from the fees and charges levied for the provision of its services, including issuance of certificates, as well as air navigation fees collected for the use of airspace of the OECS States.[241]

The ECCAA is located in St. John's at Antigua and has 'outstations' in Member States. It is the only authority responsible for safety oversight of civil aviation activities in its Member States, meaning that there are no separate national civil aviation authorities. To this end the ECCAA has the competence, *inter alia*, to:

- Regulate civil aviation in the participating States on behalf of and in collaboration with them;

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[231] Alfred Schipke, Aliona Cebotari, and Nita Thacker, The Eastern Caribbean Economic and Currency Union: Macroeconomics and Financial Systems, (2013), p. 60.
[232] The first working session of the OECS Assembly took place in March 2013 and the Civil Aviation Regulations were the first laws enacted by that body. At the end of 2013 these regulations have not been promulgated by the individual Member States, and thus were not considered as being in force; Source: Official of the ECCAA, 'Interview No 7', (2014).
[233] 'ECCAA Agreement', *supra* note 226, Article 10(1).
[234] Ibid. Article 10(2).
[235] Ibid. Article 23.
[236] 'Revised Treaty of Basseterre', *supra* note 229, Article 14(1).
[237] 'ECCAA Agreement', *supra* note 226, Article 4(a).
[238] Ibid. Preamble.
[239] Ibid. Article 3.
[240] Ibid. Article 5.
[241] Ibid. Article 17.

- Issue civil aviation documents under the national aviation legislation of the participating States;
- Recommend to the participating States, rules, regulations and aviation standards;
- Enforce existing rules, regulations and aviation standards and impose administrative fines and penalties for violations of the rules, regulations and aviation standards;
- Require the payment of fees.[242]

From a legal point of view, the technique that was used to set up this RASO and empower it to act on behalf of its Member States was a combination of an international agreement and national laws. At the public international law level, the ECCAA founding agreement created the organisation, defined its mandate and functions, determined the organisational structure and funding principles, as well as granted to it the necessary privileges and immunities. The founding agreement was subsequently incorporated into the national laws of the ECCAA Member States through enabling legislation.[243]

In addition there was a need to *internalise* the general competences of the ECCAA created under international law into the specific aviation laws and regulations of its Member States. This was achieved through the adoption by each of the Member States of similar primary aviation legislation - *the Civil Aviation Act* - defining how the ECCAA would act on behalf of each of them. This includes the competence to issue certificates to personnel and organisations, as well to conduct the necessary oversight and enforcement activities.[244] For example, through such legislation the ECCAA Member States granted to ECCAA employees authorisations to act as their national aviation safety inspectors, including the rights to access buildings and facilities of the inspected entities, or to prevent an aircraft from flying if it were to be found in an unsafe condition.[245] The ECCAA has been so deeply integrated into the legal systems of its Member States that it has de facto and de lege become their organ.

Although ECCAA is an authorised agency for the conduct of safety oversight activities, issuance of certificates and enforcement of rules, including through imposition of administrative penalties, its competences in respect to rulemaking are more limited. This is because the mandate of the ECCAA is only to 'develop and seek approval for harmonized civi1 aviation regulations, policies and practices to be adopted by Participating States …,'[246] while the responsibility for the adoption of such recommended regulations lies with the Member States, and since the entry into force of the Revised Treaty of Basseterre, with supranational institutions of the OECS.[247]

From the perspective of the Chicago Convention, the fact that ECCAA performs all safety oversight and certification functions on behalf of its Member States has a number of consequences. First of all, ICAO needs to audit ECCAA

[242] Ibid. Article 5.
[243] See for example: 'Chapter 85A, Eastern Caribbean Civil Aviation Authority Agreement Act', Laws of Grenada, Act No. 11 of 2004.
[244] See for example: 'Chapter 54A, Civil Aviation Act', Laws of Grenada, Act No. 12 of 2004, amended by Act No. 18 of 2006; 'Civil Aviation Regulations', Laws of Grenada, SRO 12 of 2005.
[245] 'Civil Aviation Regulations of Grenada', *supra* note 244, at Part XIII.
[246] 'ECCAA Agreement', *supra* note 226, Article 4(b).
[247] Schipke, Cebotari, and Thacker, *supra* note 231, at p. 60.

which is the only competent aviation authority of OECS States. By mid-2014 two such audits have been performed, in 2007,[248] and in 2013.[249]

Secondly, where safety related non-compliances have been identified by ICAO with respect to the ECCAA, it is also this RSOO which will need to follow-up these findings. This in turn requires close coordination between the ECCAA and all its Member States. Indeed, it is the ECCAA that prepares and submits responses to ICAO on behalf of the OECS Member States in a single corrective action plan.[250]

The ECCAA, as a single aviation authority, is the beneficiary of all the revenues generated from the provision of safety oversight services, and does not have to *share* them with national authorities. It can also finance its activities from navigation service fees which are usually an adequate and stable source of revenue. This would imply that overall it should have sufficient financial resources to perform the required regulatory activities. The interview performed for the purpose of this study suggests however that ECCAA has experienced 'challenges in recruiting staff due to the small size of the aviation industry in the region.'[251] These challenges have also been confirmed by ICAO.[252]

ECCAA provides an example in which, even if sufficient financial resources are available to a RASO, it may be difficult for it to recruit, even on a regional basis, suitably qualified personnel, if they are simply not available in the region in sufficient numbers. Still, the ECCAA confirms that it has 'permitted OECS States to achieve effective civil aviation safety oversight at a fraction of the cost of establishing their own civil aviation authorities.'[253]

To conclude, the ECCAA is both de lege and de facto, part of a regional civil aviation safety system based on the sharing of tasks and responsibilities between the national and supranational levels. It is currently the only example of an organisation functioning as a single aviation authority for more than one State.

In the future, it will be interesting to see how the OECS institutions will exercise their newly acquired competences to regulate civil aviation at the supranational level, and how ECCAA will be involved in this process. Potentially the OECS has an opportunity to become the first region in the world to both regulate aviation safety and to implement the regulations exclusively through supranational institutions.

Another question that needs to be asked is whether any of the other RASOs, and in particular EASA which is currently the only RASO which has been operating for over ten years in a supranational legal environment, could potentially evolve into a RCAA type organisations in the future. This question will be addressed in Chapter 4 which deals with the EU and EASA.

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[248] ICAO, 'Final report on the safety oversight audit of the civil aviation system of the Organization of Eastern Caribbean States (Antigua and Barbuda; Grenada; St. Kitts and Nevis; Saint Lucia; and Saint Vincent and the Grenadines)', (2007).

[249] ICAO, 'Final Report on the ICAO Coordinated Validation Mission in the Organization of Eastern Caribbean States', (2013).

[250] 'Interview No 7', (2014), *supra* note 232.

[251] Ibid.

[252] ICAO ICVM report on the OECS (2013), *supra* note 249, at Appendix 2.1 (used with the permission of the ECCAA).

[253] 'Interview No 7', (2014), *supra* note 232.

## 3.7 GENERAL CONCLUSIONS

So far ICAO has not developed a definition of a RASO and the current approach of ICAO and of the international aviation community is to treat this type of organisation as a broad concept covering a wide range of very different forms of cooperation. In practice RASOs fall into two general categories - RSOO and RAIO - depending on whether their function is safety regulation and oversight, or investigation of aviation accidents and incidents.

In 2014 there were over twenty initiatives in almost all parts of the world, which could be considered as RASOs, if looked at from the perspective of the broad approach currently followed by ICAO. In addition, a number of projects aimed at establishing additional RASOs were also ongoing at the time of the finalisation of this study, in particular in Africa, South America and Middle East.

This study has found that the recent boom in the establishment of RASOs has resulted, in particular in Africa, in establishment of significant number of such organisations, sometimes with overlapping membership, and functioning in parallel with national authorities. Similar duplications exist, to a certain extent, in Europe where a number of regional aviation organisations, for historical reasons, continue to function in parallel, as the next chapter will show in more detail.

In line with the recommendations for greater clarity of the RASO concept expressed by the international civil aviation community at the 2011 ICAO Symposium on regional aviation safety oversight organisations, this chapter proposes the following definition of a RASO:

> An organisation established by States from the same geographical region, which has legal personality under international law and whose principal purpose is the provision of support for the carrying out of safety-related functions and duties set out by the Chicago Convention and its Annexes, and preferably the actual carrying out of some or all of such functions and duties on behalf of its participating States.

The development of such a definition is considered necessary for two main reasons.

Firstly it is necessary because the notions of RSOO and RAIO are being used increasingly often in ICAO documentation, including Assembly resolutions and Annexes to the Chicago Convention. Such definition would help in ensuring clarity as to who exactly is an addressee of these documents, especially where they give to a RSOO or a RAIO a right to carry out functions or duties so far normally exercised only by States.

Secondly, the proposed definition was constructed in a way to promote the most efficient forms of RASOs, and notably those which have the competence to carry out, on behalf of States, safety related functions and duties set out by the Chicago Convention, in a legally binding manner. As will be demonstrated in Chapters 4 and 6, the granting of such powers results in a relationship of an international agency between the organisation and the States concerned, and presupposes the possession by the organisation in question of international legal personality.

The objective of the proposed definition is therefore, in addition to clarifying the roles of States and RASOs, to promote those forms of RASOs which are able to accept the most advanced forms of delegations. This capability will make

RASOs more suitable to constitute strong building blocks of the GASON, which was proposed in the preceding chapter.

In addition to proposing a RASO definition, this chapter has also introduced a RASO typology. For the sake of completeness, and because regional aviation safety bodies have tendency to evolve over time (see Section 5.4.2 of Chapter 5), this typology distinguishes between pre-RASOs, which do not fall, strictly speaking, within the scope of the definition as proposed above, and RASOs proper.

Although every type of a pre-RASO and RASO has its *pros* and *cons*, the purpose of the proposed classification is not to present better or worse types, but rather to systematise knowledge about these organisations and to study their achievements and problems that they have encountered, so that lessons may be learned for the future.

***Pre-RASO typology:***

The *first type* of pre-RASO forms are *regional cooperation projects of a technical nature*. They are considered as a pre-RASO form, due to the fact that some of such projects have a tendency to evolve into a RASO with legal personality under international law. Two main categories of this type have been distinguished, that is COSCAPs and cooperative inspector schemes:

- *COSCAPs* can play a role in establishing RASOs by upgrading the safety oversight capabilities of its member authorities and building confidence between them in working together. So far the process of transitioning COSCAPs into RASOs is still ongoing, and in the first half of 2014, out of the nine ICAO COSCAP projects only three had transitioned into RASOs, with one of them still being dependent on ICAO for management. ICAO and States need to accelerate the transition of COSCAPs into RASOs, where it is possible;

- *Cooperative inspector schemes*, with the most prominent example of them being currently the AFI-CIS, are a simple and practical tool to organise pooling and sharing of aviation safety inspectors. Experience of AFI-CIS showed however that cooperative inspector schemes do not seem to be a total remedy for the problem of shortage of qualified resources for the AFCAC States. This is mainly due to the inability of the participating authorities to finance the costs of the assistance missions, and the overall shortage of qualified inspectors in the region.

The *second type* of pre-RASO forms are *regional associations of aviation safety authorities*. Whilst not having the status of an international organisation, such associations can have legal personality under the domestic law of some of their member authorities, and experience shows that this form can be a practical way to launch cooperation, which over time can evolve into a legally more solid structure with international legal personality. The main shortcoming of this type is the fact that lack of a binding legal status under international law does not permit an association to mandate common requirements or to deliver certificates on behalf of the Member States. This, over time, can result in a heterogeneous regulatory environment.

***RASO proper typology*:**

The *first type* of RASOs proper can be referred to as *international regional aviation safety organisations*. In 2014 this was the most common RASO category. This type is established on the basis of an international agreement and may exercise, in a legally binding manner, certain safety functions on behalf of its Member States. This type of RASO, as opposed to the next category, will also normally be established outside the institutional framework of a REIO.

The *second type* of RASOs proper is the s*upranational aviation safety agency*. The main difference between this and previous category is that a supranational aviation safety agency evolves within the broader legal and institutional framework of a REIO. The extent to which a RASO can rely on the REIO institutional framework and legislation is directly proportional to the level of integration of the latter. If a REIO has supranational character and can adopt, through its institutions, legally binding legislation, this legislation will also bind the RASO and will form the foundation of a single regional safety system. So far there are very few RASO in operation which could be truly considered as falling within this category.

***The RAIO typology:***

This chapter also presented the concept of a RAIO, which in theory can be established in a pre-RASO form as an association of accident investigation authorities (Pre-RASO Type II), or a RASO proper. In practice, in 2014, only two RAIOs were actually in operation (IAC: RASO Type I; and ENCASIA: Pre-RASO Type II), with only one of them, that is IAC, being able to conduct accident investigations on behalf of its Member States. In addition one more RAIO has been formally established, but in 2014 was not yet fully operational (BAGAIA: RASO Type I), and a number of other RAIO projects were under consideration in Africa, South America and Middle East.

***The RCAA model:***

Finally, this chapter distinguished a very specific sub-group of RASOs, namely the RCAA. In 2014 there was only one example of such an authority – the ECCAA. The main feature of the RCAA is that, whilst the RASOs normally do not replace the national authorities and function in parallel with them, under a RCAA model there is almost a *complete* delegation of safety oversight functions and duties from a national to regional level. RCAA eliminates therefore the risk of duplication of functions and resources. This approach would best serve large groupings of small States with limited resources and/or States with low levels of aviation activities, and which are unable to generate revenues large enough to support fully fledged national civil aviation authorities. RCAA can be established either as a RASO Type I or a RASO Type II.

Having proposed a RASO definition and typology of RASO and pre-RASO forms, the following chapter will present a detailed case study of the EU civil aviation safety system, and of EASA – a Type II RASO, which is currently a point of reference for many such organisations around the world, and has a number of features which make it very well placed to form one of the building blocks of a future GASON.