

**AN ANALYSIS OF ZAMBIA'S COMPLIANCE WITH INTERNATIONAL LEGAL  
AVIATION SAFETY STANDARDS**

**BY**

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A dissertation submitted to the University of Zambia in partial fulfilment of the requirements  
of the Bachelor of Laws degree.

**THE UNIVERSITY OF ZAMBIA**


**LUSAKA**

**2008/09**

## DECLARATION

I, **KAPELEMBI YILUNA**, do hereby declare that the contents of this dissertation represent my own work and have not previously been submitted for a degree at this or another University. Any work herein that is not my own, I have endeavoured to acknowledge the same.

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## **ABSTRACT**

Air travel has been growing steadily worldwide, more rapidly so in Africa. Zambia too has experienced a rise in air travel, both local and international, in recent times.

With the high dependency on air transport both for personal transportation and for trade, there is need, now more than ever, for uniformity, consistency and cooperation in the regulation of air transport to ensure safety and security for the travelling public.

Further, with the interdependence of states, especially in the area of commerce and trade, each state must ensure that it plays its part by maintaining the minimum acceptable standards of aviation safety.

These standards are laid down by the International Civil Aviation Organisation in the Convention on International Civil Aviation and its accompanying annexes.

Zambia as part of the international community and a signatory to this Convention has an obligation to strive to ensure that its aviation laws and regulations are in compliance with the internationally accepted minimum standards.

This requires constant updating, reviewing and amending of the national laws to accommodate the changes being made to these international requirements. This must be done to ensure compliance and therefore safety in aviation.

For various but often similar reasons, many African nations have failed to attain the required minimum safety standards.

Zambia's compliance with these internationally set aviation safety standards is what this paper seeks to investigate.

## **PREFACE AND ACKNOWLEDGEMENTS**

Transport law is not a course currently offered by the University Of Zambia School Of Law. Transport is however a critical part of any society and plays an important role in the development of any economy. Its regulation to ensure safe and orderly development should therefore not be neglected. This paper makes but a small attempt to bring to light some of the deficiencies in Zambia's transport regulation, particularly in Civil Aviation.

Grateful acknowledgement must be made firstly to Tom Kok, the Director of AviAssist foundation for birthing the idea of this paper, my uncle Mayiji Nyikosa for his always critical but invaluable opinion and direction, the staff at the Department of Civil Aviation of Zambia, particularly The Director Mr. Kabalika, Ken Silavwe and Mr. Mulonda for being so accommodating and helpful and taking the time to speak with me.

Special thanks must go to my parents Arnold Kapelembi and Musompa Nyikosa Kapelembi for their constant support and unwavering encouragement throughout my academic life, most especially my mother for being the woman that she is...my grandpa Francis Nyikosa for being a friend and always believing in me.

Further thanks to my friends Mwelwa Chanda, Susan Zimba, Mpande Chiswida, Schiphayer Mufalali and Martin Musona for their constant support and always believing in my abilities even when I did not...

To my supervisor and all others who I may not be able to mention by name but played a part, big or small, in the completion of this paper, I am forever indebted.

Last but not least, I thank God for his mercy, love and faithfulness...

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**LIST OF ABBREVIATIONS**

<b>AIC</b>	Aeronautical Information Circulars
<b>COSCAP</b>	Cooperative Development of Operational Safety and Continuing Airworthiness Programme
<b>EU</b>	European Union
<b>FAA</b>	Federal Aviation Administration
<b>IATA</b>	International Air Transport Association
<b>ICAO</b>	International Civil Aviation Organisation
<b>SADC</b>	Southern African Development Community
<b>SARPS</b>	Standards and Recommended Practices
<b>USOAP</b>	Universal Safety Oversight Audit Program

## **LIST OF STATUTES**

Air Passenger Service Charge Act, Cap 450 Laws of Zambia

Air Services Act, Cap 446 Laws of Zambia

Aviation Act, Cap 444 Laws of Zambia

Carriage by Air Act, Cap 447 Laws of Zambia

Limitation of Liability (Passenger in Government Aircraft) Act, Cap 448 Laws of Zambia

Safety of Civil Aviation Act, Cap 445 Laws of Zambia

South African Civil Aviation Authority Act, No.40 of 1998

Tokyo Convention Act, Cap 449 Laws of Zambia

## **LIST OF TREATIES**

The International Convention on Civil Aviation, 1944 (Chicago Convention)

The Vienna Convention on the Law of Treaties, 1969

# **CHAPTER ONE**

## **INTERNATIONAL SAFETY STANDARDS AND RECOMMENDED PRACTICES**

### **IN RELATION TO ZAMBIA**

#### **1.1 INTRODUCTION**

Suggestions that a code of International Air Navigation be created began as early as 1900, following a realisation that the advent of the airplane added a new dimension to transport which could no longer be contained within strictly national confines.<sup>1</sup> The first attempt at codification at an international scale was thus made in Paris in 1910<sup>2</sup>. This initial attempt did not succeed due to political disagreements<sup>3</sup> among the various stakeholders, countries. In 1919 however, following the first scheduled flight between Paris and London, after the First World War, it was seen relevant and necessary for existing regulations to be incorporated into a treaty and the Paris Convention was concluded.<sup>4</sup> Although the 1910 attempt had failed, the 18 states in attendance had laid down a number of basic principles governing aviation. These were incorporated into the Convention that was drawn up at the Paris Peace Conference in 1919.<sup>5</sup> This treaty became the first legal instrument to enter into force on air law and was eventually replaced by the Convention on International Civil Aviation in 1944.<sup>6</sup>

This Convention, also known as the Chicago Convention, established the International Civil Aviation Organisation hereinafter referred to as ICAO, a specialised agency of the

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<sup>1</sup> ICAO. History: The Beginning. Available at: [http://www.icao.int/cgi/goto\\_m.pl?icao/en/hist/history01.htm](http://www.icao.int/cgi/goto_m.pl?icao/en/hist/history01.htm) [Accessed on 17 September 2008]

<sup>2</sup> Diederiks-Verschoor, An Introduction to Air Law, 2 (5<sup>th</sup> ed.1993)

<sup>3</sup> ibid

<sup>4</sup> ibid

<sup>5</sup> ICAO, History: The Beginning. Available at: [http://www.icao.int/cgi/goto\\_m.pl?icao/en/hist/history01.htm](http://www.icao.int/cgi/goto_m.pl?icao/en/hist/history01.htm) [Accessed on 17 September 2008]

<sup>6</sup> Diederiks-Verschoor, An Introduction to Air Law, 2 (5<sup>th</sup> ed.1993)

United Nations.<sup>7</sup> Its mandate, among others in coordinating and regulating international air travel, included setting of international aviation safety standards.

Several African countries, including Zambia, have acceded to the Chicago Convention. In doing so, Zambia and all other contracting states have agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner.<sup>8</sup>

Whereas meeting international aviation safety standards has become indispensable, complying with the set safety standards still poses a greater challenge especially among most developing countries, Zambia included. It is still six times less safe to fly in Africa than the rest of the world.<sup>9</sup> This has been due to various reasons ranging from poorly structured legal and regulatory framework to simple lack of or mismanagement of financial resources.

Civil aviation safety is directly related to effective laws, regulations and standards to implement those regulations.<sup>10</sup> It is therefore critical for a country to have in place the necessary laws and regulatory framework in order to ensure compliance with international aviation safety standards.

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<sup>7</sup> Wikipedia, Convention on International Civil Aviation. Available at: [http://en.wikipedia.org/wiki/Convention\\_on\\_International\\_Civil\\_Aviation](http://en.wikipedia.org/wiki/Convention_on_International_Civil_Aviation). [Accessed on 3 June 2008]

<sup>8</sup> International Convention on Civil Aviation, Preamble.

<sup>9</sup> IATA, 44<sup>th</sup> Annual Safety Report (Updated 13 May 2008) Available at: <http://www.asiatraveltips.com/news08/135-AirTravel.shtml> [Accessed on 3 June 2008]

<sup>10</sup> ICAO. Model Aviation Regulatory Document, 2005. Available at: [http://www.icao.int/icao/en/ro/nacc/meetings/2005/NACC\\_DCA2/nacc02ip08.pdf](http://www.icao.int/icao/en/ro/nacc/meetings/2005/NACC_DCA2/nacc02ip08.pdf) [Accessed 16 September on 2008]

## 1.2 STATEMENT OF THE PROBLEM

Zambia has subscribed to and incorporated safety requirements of the Chicago Convention into its national aviation laws. However, complying with the standards set out in these laws still poses a greater challenge amongst most developing countries for various reasons among which are lack of stable legal and regulatory framework.

With the economic boom in Zambia, especially in relation to tourism, air transportation has in recent years increased. This is evidenced in new private airlines such as ProFlight, CopperAir and Zambian Skyways operating locally, numerous Charter Operators, the now defunct Zambian Airways which operated both locally and internationally and Zambezi Air currently operating locally but scheduled to begin international operations in March 2009. As such, aviation safety becomes a greater concern, more so with Zambia being in Africa where safety standards were dangerously low even before this boom in the aviation industry.

Whereas the ICAO regularly adds on to the annexes of the Chicago Convention, the process of updating national laws by developing countries to accommodate these changes or even make greater strides towards achieving the required aviation safety standards is very slow.

In Zambia, air transport has not achieved the highest degree of efficiency, partly due to shortcomings in the existing legal framework.<sup>11</sup>

With Africa recording the highest rate of accidents again in 2007<sup>12</sup>, it is evident that attention given to legislation and civil aviation regulations with regards to aviation safety standards is minimal. This poses a greater risk to aviation safety in terms of accidents and error.

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<sup>11</sup> Transport Policy, 2002, p.12.

<sup>12</sup> IATA, 44<sup>th</sup> Annual Safety Report (Updated 13 May 2008) Available at: <http://www.asiatraveltips.com/news08/135-AirTravel.shtml> [Accessed on 3 June 2008]

Like any other agreement, lack of adherence has its consequences, more so in light of the rapid rate of globalisation in the world today. Failure to ensure that the minimum aviation safety standards are attained and the laws are complied with may eventually lead to a total stagnation of this industry which would have a hard hitting negative impact on an already unstable economy.

### **1.3 PURPOSE OF THE STUDY**

This study aims to look into how far Zambia has gone in ensuring compliance with the safety standards required by the Chicago Convention through incorporation into its national aviation laws as well as putting in place the necessary institutional framework and regulatory oversight.

#### **1.3.1 Specific objectives:**

- a) To investigate the adequacy of Zambia's current aviation laws in relation to international safety standards.
- b) To investigate the implementation of and mechanisms for ensuring that Zambia's laws are kept up to date with international standards.
- c) To identify strategies for ensuring compliance and implementation of internationally acceptable standards of aviation safety.

### **1.4 SIGNIFICANCE OF THE STUDY**

With today's global economy and the many challenges that landlocked Zambia faces in terms of transportation such as road, railway, maritime as well as air transport, it is necessary for the government to be aware of the potential of air transport and how crucial it is in opening up the Zambian economy.

As part of the international community, Zambia too has obligations to meet in terms of standards that are set in the international instruments that it is party to. It is therefore

necessary to ensure that these obligations and requirements are met not only for the good of the government but also for the safety of the travelling public.

This study would thus be useful in that it would bring out the shortfalls in the national legislation and institutional framework of Zambia in relation to international legal aviation safety standards. The study would aid the relevant authorities in improving the safety standards of the Zambian aviation industry by suggesting how best implementation and compliance with the requirements of internationally acceptable safety standards could be achieved. In doing so, the aviation industry in Zambia would a far greater and much needed contribution to the economy than it does today.

## **1.5 DEFINITION OF TERMS**

Aviation Safety- The term aviation safety can be defined as designing, building and flying of aircraft in an environment that does not permit unacceptable risk with the goal of injury free operations.

Civil Aviation- One of two major characteristics of flying, representing all non-military aviation, both private and commercial.<sup>13</sup> It applies to the mode of travel provided by aircraft as carriers of passenger and cargo; the design, development and production of aircraft or the operation of an aircraft.<sup>14</sup>

International safety standards- in this case refer to those rules and standards set by ICAO in the Chicago Convention and its Annexes from the time of its formulation to date that relate to safety.

Safety- As stated by John Flannery<sup>15</sup>, a dictionary definition of safety would be too simplistic for a complex environment such as aviation. It has however been noted that a workable aviation definition of safety is based on the acceptability of risk and it safety

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<sup>13</sup> Wikipedia, Civil Aviation. Available at: [http://en.wikipedia.org/wiki/Civil\\_aviation](http://en.wikipedia.org/wiki/Civil_aviation) [Accessed on 30 June 2008]

<sup>14</sup> Answers.com, Aviation. Available at: <http://www.answers.com/topic/aviation> [Accessed on 30 June 2008]

<sup>15</sup> Safety Culture and Its Measurement In Aviation, November 2001. Available at: [http://www.asasi.org/papers/other/safety\\_culture\\_measurement\\_aviation.pdf](http://www.asasi.org/papers/other/safety_culture_measurement_aviation.pdf) [Accessed on 30 June 2008]

can thus be viewed as ‘characteristic of a system that does not permit unacceptable risks to be undertaken with the goal of injury free operations’.<sup>16</sup>

Safety oversight- this falls mainly under regulatory institutions such as the Civil Aviation Authority which bears responsibility for ensuring the correct aviation standards are met. It includes not only such things as safety and maintenance checks but also the drafting of the necessary legislation that a civil aviation administration is required to operate within. To have effective safety oversight, strong political leadership, commitment and support is necessary as without it an aviation administration would not be able to function at its best.

## **1.6 INTERNATIONAL REGULATION OF CIVIL AVIATION**

The Chicago Convention, supported by 18 annexes, is the primary international instrument on civil aviation. By the end of 1996, it had been ratified by 185 States, making it one of the world’s most widely accepted international legal instruments.<sup>17</sup>

The annexes to this Convention contain several international rules known as standards and recommended practices hereinafter referred to as SARPs which are set by ICAO. ICAO is recognised as the organisation responsible for ensuring contracting states apply harmonised civil aviation SARPs in order to facilitate the continued growth of aviation.<sup>18</sup>

SARPs cover all technical and legal aspects of international civil aviation including safety, personnel licensing and accident investigation<sup>19</sup>, to mention but a few. Whereas recommended practices are merely advisory, standards are mandatory and all contracting states are required and expected to conform to them.

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<sup>16</sup> *ibid*

<sup>17</sup> ICAO. Strategy, Guiding Civil Aviation into the 21<sup>st</sup> Century. Available at: <http://www.icao.int/icao/en/pub/strategy.pdf> [Accessed on 30 June 2008]

<sup>18</sup> ICAO. Comprehensive Regional Implementation Plan for Aviation Safety in Africa. Available at: [http://www.icao.int/AFIRAN08/docs/AFI\\_RAN\\_Plan\\_en.pdf](http://www.icao.int/AFIRAN08/docs/AFI_RAN_Plan_en.pdf) [Accessed on 30 June 2008]

<sup>19</sup> ICAO. Making An ICAO Standard. (Updated 8 Nov 2004) Available at: [www.icao.int/icao/en/anb/mais/index.html](http://www.icao.int/icao/en/anb/mais/index.html) [Accessed on 30 June 2008]



They must endeavour to meet these standards and are required to inform the Council of ICAO of impossibility or noncompliance. Without SARPs, it would be virtually impossible to ensure uniform, reliable, safe and orderly air transport.

To determine implementation of standards and recommended practices, ICAO in 1999, established a Universal Safety Audit Program hereinafter referred to as USOAP whose objective is to promote global aviation safety by auditing contracting states on a regular basis.<sup>20</sup> These audits are required to investigate the capability of states in relation to safety oversight by assessing critical elements of their safety oversight system such as appropriate legislative and regulatory framework.<sup>21</sup>

Based on the audit findings, recommendations are made on which areas need improvement and how this can be done. ICAO does not have an outright enforcement mechanism. However, these audit reports are public and available through ICAO's website. States with poor aviation safety records may find themselves cut off from civil aviation relations by other states. This can have an enormous impact on the economy of the country.<sup>22</sup>

## **1.7 APPLICABILITY OF CHICAGO CONVENTION IN ZAMBIA**

At the time the Chicago convention was concluded and adopted, Zambia was a colony of Britain and still known as Northern Rhodesia. Britain did however sign the treaty, binding Northern Rhodesia to it. Shortly after independence in 1964, the new African government chose to accede to the Chicago Convention, depositing its notification of adherence on the 30<sup>th</sup> October, 1964.<sup>23</sup>

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<sup>20</sup> ICAO. Universal Safety Oversight Audit Programme. Available at: [www.icao.int/icao/en/osg/ssa/soa/](http://www.icao.int/icao/en/osg/ssa/soa/) [Accessed on 30 June 2008]

<sup>21</sup> ICAO. Making An ICAO Standard. (Updated 8 Nov 2004) Available at: [www.icao.int/icao/en/anb/mais/index.html](http://www.icao.int/icao/en/anb/mais/index.html) [Accessed on 30 June 2008]

<sup>22</sup> Kok, T., AviAssist Foundation works to Improve Aviation Safety in Africa. March 2008.

<sup>23</sup> International Convention on Civil Aviation.

However, for the Convention to be applicable in Zambia, which is a monist state, it must not have only been ratified but must also be domesticated. This requires it to go through the parliamentary process of enactment to be incorporated into Zambia's own domestic laws.

The primary legislation on aviation in Zambia is the Aviation Act<sup>24</sup> and it is cited as 'an Act to enable effect to be given to the International Convention on Civil Aviation and to make provision for the control, regulation, and orderly development of aviation within Zambia.'<sup>25</sup>

The Convention is further given express effect in Zambia<sup>26</sup> making provisions of the Convention and its annexes, which includes ICAO's standards and recommended practices applicable in Zambia. However, any amendments to the Convention which may be ratified by Zambia must be laid down before the National Assembly before they can have effect.<sup>27</sup>

The Minister<sup>28</sup> is also empowered to make regulations which encompass basically all areas of civil aviation, including regulations for the carrying out of and giving effect to the provisions of the Chicago convention and its annexes.<sup>29</sup>

There is, under the Ministry of Transport and Communication, established, a Department of Civil Aviation. It is a specialised department with deals with all technical civil aviation matters, including safety oversight and also plays a major role in coming up with and ensuring that aviation regulations are complied with.

This department is key in ensuring that appropriate regulations are in place and actually being observed.

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<sup>24</sup> Cap 444 of the Laws of Zambia

<sup>25</sup> *ibid*

<sup>26</sup> *ibid*, s.3(1)

<sup>27</sup> S.3(2)

<sup>28</sup> In this case, the Minister of Transport and Communication

<sup>29</sup> s4(1)(a), Aviation Act

## 1.8 ZAMBIA'S DUTIES AND RESPONSIBILITIES

Having incorporated the Chicago Convention into its national laws, Zambia has a responsibility to honour its commitment and comply with the requirements of the convention.

It is internationally accepted that signatories to a treaty are bound by its provisions and must therefore perform its requirements in good faith.<sup>30</sup>

Responsibility for aviation safety in the Chicago Convention and its annexes is allocated to individual states and aviation safety may be endangered if there is no full observance of these international obligations by contracting states.<sup>31</sup>

As a signatory to the Chicago Convention, Zambia has agreed to principles and arrangements of the convention in order that international civil aviation is developed in a safe and orderly manner.<sup>32</sup> These principles and arrangement have been internationally standardised and in one way or another affect the rights and duties of other states, most especially where international travel is concerned or where passengers are foreign nationals. Zambia's aviation regulations and standards for instance would have an effect on foreign aircraft and pilots operating in Zambia or flying through Zambia's airspace. They would also have an effect on Zambian aircraft and personnel operating in foreign territory as these may not be able to operate if they do not meet the foreign safety standards which may be higher.

The field of aviation thus requires collaboration of efforts in regulation and enforcement as well as co-operation among states. A state cannot therefore afford to do away with these internationally accepted safety requirements as they are not only for the good of the nation itself but for the safety of the travelling public.

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<sup>30</sup> Vienna Convention on The Law of Treaties, Art.26

<sup>31</sup> ICAO. Safety Oversight Manual (1<sup>st</sup> ed.2006). Available at: [http://www.icao.int/AFIRAN08/docs/9734\\_partb\\_cons\\_en.pdf](http://www.icao.int/AFIRAN08/docs/9734_partb_cons_en.pdf) [Accessed on 30 June 2008]

<sup>32</sup> International Convention on Civil Aviation, Preamble

## **1.9 CONCLUSION**

This research thus seeks to investigate the extent to which the aviation laws of Zambia are in compliance with the safety standards stipulated in the Chicago Convention and how they are being implemented.

Chapter one of this study lays down and discusses the international regulation of civil aviation as well as Zambia's obligations in relation to the same. This chapter also lays down the purpose, objectives and the significance of the study.

Chapter two will look at the current state of Aviation Laws of Zambia in relation to international standards. It further looks at the findings of the last ICAO's audit of Zambia.

The constraints, if any, to Zambia's compliance with internationally set safety standards will be discussed in Chapter three.

Chapter four will discuss what the effect of non compliance with international safety standards would be with a focus on international enforcement while Chapter five will consist of the general conclusions and recommendations.

## **CHAPTER TWO**

### **ZAMBIA'S CURRENT AVIATION LAWS IN RELATION TO INTERNATIONAL STANDARDS**

#### **2.1 INTRODUCTION**

As a party to the Chicago Convention, Zambia has a responsibility to allow for the development of international civil aviation in a safe and orderly manner in accordance with the conventions' laid down principles and arrangements. In order to achieve this, Zambia must strive to ensure that its aviation laws and regulations are in line with internationally accepted standards.

To guide contracting states in the development and implementation of their own laws and regulations, ICAO has established certain standards and recommended practices.<sup>33</sup>

As civil aviation safety is directly related to effective laws, regulations and standards to implement those regulations,<sup>34</sup> it is important that Zambia's aviation laws and regulations are in compliance with international requirements and also that these standards are actually being implemented.

As established in Chapter One, the Chicago Convention has already been incorporated into Zambia's Aviation Act<sup>35</sup>. Any subsequent amendment to the convention, once ratified, must be tabled before parliament in order for it to have effect in Zambia.<sup>36</sup>

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<sup>33</sup>ICAO. Model Aviation Regulatory Document,1 (2005) Available at:

[http://www.icao.int/icao/en/ro/nacc/meetings/2005/NACC\\_DCA2/nacc02ip08.pdf](http://www.icao.int/icao/en/ro/nacc/meetings/2005/NACC_DCA2/nacc02ip08.pdf) [Accessed on 16 September 2008]

<sup>34</sup> *ibid*

<sup>35</sup> Cap.444 of the Laws of Zambia

<sup>36</sup> *ibid* s.3(2)

## 2.2 LEGISLATIVE FRAMEWORK

Aviation law in Zambia is covered primarily by national law in form of Acts of Parliament and Statutory Instruments. Incorporated in this national law are international requirements as provided in the Chicago Convention and its annexes.

Acts of Parliament related to aviation include the Aviation Act<sup>37</sup>, the Safety of Civil Aviation Act<sup>38</sup>, the Air Services Act<sup>39</sup>, Carriage by Air Act<sup>40</sup>, Limitation of Liability (Passenger in Government Aircraft) Act<sup>41</sup>, the Tokyo Convention Act<sup>42</sup> and the Air Passenger Service Charge Act<sup>43</sup>. The Aviation Act is the primary national legislation on civil aviation.

Apart from incorporating provisions of the Chicago Convention, the Aviation Act has, as subsidiary legislation, included in its regulations several standards and recommended practices as set out in the annexes to the Chicago Convention. These are called Air Navigation Regulations and are issued by the Minister through Statutory Instruments. These regulations play a key role in the regulation of civil aviation and matters incidental to it in Zambia as they contain several of ICAOs standards and recommended practices.

Although not law per se, the Director of the Department of Civil Aviation also issues directives, through Aeronautical Information Circulars, hereinafter referred to as AICs, for the regulation of the civil aviation industry and to supplement the Air Navigation Regulations. These also have a vital role in the regulation of civil aviation in Zambia and most especially in ensuring that Zambia's regulations and requirements are up to standard.

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<sup>37</sup> Cap.444 of the Laws of Zambia

<sup>38</sup> Cap.445 of the Laws of Zambia

<sup>39</sup> Cap.446 of the laws of Zambia

<sup>40</sup> Cap.447 of the laws of Zambia

<sup>41</sup> Cap.448 of the laws of Zambia

<sup>42</sup> Cap.449 of the laws of Zambia

<sup>43</sup> Cap.450 of the laws of Zambia

## 2.3 DEVELOPMENT OF ZAMBIA'S AVIATION LEGISLATION FROM 1964 TO DATE

Since coming into effect in 1947, the Chicago Convention has been revised a total of eight times<sup>44</sup> and six times since Zambia's accession, the most recent being in 2006. As for the annexes, which contain standards and recommended practices, these are amended regularly by ICAO.<sup>45</sup>

As established, the Aviation Act has incorporated and given effect to the Chicago Convention. Originally Federal Act No.10 of 1954, the Aviation Act was passed on the 1<sup>st</sup> of July 1954.<sup>46</sup> At independence, the new Zambian Government, under the leadership of the first president Dr. Kenneth Kaunda, chose to continue with this Act.

Since 1964, the Act has been amended by four statutory instruments being Acts No.153 and No.162 of 1965, No.16 of 1989 and No.13 of 1994. The current version of aviation laws being used are all 1995 edition. There have however been numerous amendments made to the air navigation regulations which make up the subsidiary legislation of the Aviation Act, the last having been made by Act No.13 of 1994.

A number of AICs have also been issued by the Director of the Department of Civil Aviation as an attempt to supplement the air navigation regulations<sup>47</sup> found in the Aviation Act. Over sixty AICs were issued within the period of 1999 to 2004.<sup>48</sup>

AICs seem, at the moment, to be the quickest and only way in which the department of civil aviation can ensure conformity with the fast changing regulations and requirements of civil aviation on the international plane. This is due to the fact the Ministry of Justice

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<sup>44</sup>Wikipedia, Convention on International Civil Aviation. Available at: [http://en.wikipedia.org/wiki/Convention\\_on\\_International\\_Civil\\_Aviation](http://en.wikipedia.org/wiki/Convention_on_International_Civil_Aviation). [Accessed on 3 June 2008]

<sup>45</sup> ibid

<sup>46</sup> Aviation Act, Cap 444. Short title

<sup>47</sup> ICAO, Summary Report on the safety oversight audit follow-up of the Department of Civil Aviation of Zambia, 3 (2004)

<sup>48</sup> ibid, 4

takes a while to respond to the draft articles that the department presents to them while aviation regulations continue to change as they are constantly being worked on and improved. The department of civil aviation is then only left with the option of issuing circulars as directives in order to impose new requirements in addition to those contained in the air navigation regulations.

## **2.4 1999 USOAP AUDIT OF ZAMBIA'S DEPARTMENT OF CIVIL AVIATION**

In 1998, the 32<sup>nd</sup> Session of the Assembly of ICAO passed Resolution A32-11<sup>49</sup> anchored, *inter alia*, on Article 37 of the Chicago Convention which requires contracting states to collaborate in securing the highest practicable degree of uniformity in regulations and practices in all matters in which such uniformity will facilitate and improve air navigation. This resolution charged ICAO with conducting regular, mandatory, systematic and harmonised safety audits in contracting States to improve safety by promoting the application by States of standards and recommended practices. Pursuant to this, the department of civil aviation of Zambia in 1999 underwent a USOAP audit conducted by an ICAO safety oversight audit team in accordance with the Memorandum of Understanding agreed to on 12 February 1999 between Zambia and ICAO.<sup>50</sup>

The aim of the audit was to *inter alia* to ensure that Zambia, through the Department of Civil Aviation, was in conformity with ICAO standards and recommended practices as contained in Annexes 1, 6 and 8 of the Chicago Convention and related provisions in other Annexes, guidance material and relevant safety-related practices in general use in the aviation industry.<sup>51</sup> Annexes 1, 6 and 8 relate to Personnel Licensing, Operation of Aircraft and Airworthiness of Aircraft respectively.

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<sup>49</sup> ICAO, 32<sup>nd</sup> Session of Assembly. Available at :[http://icao2.icao.int/cgi/goto\\_m.pl?icao/en/assembl/a32/](http://icao2.icao.int/cgi/goto_m.pl?icao/en/assembl/a32/) [Accessed on 3 December 2008]

<sup>50</sup> ICAO, Summary Report on the safety oversight audit follow-up of the Department of Civil Aviation of Zambia, 1 (2004)

<sup>51</sup> *ibid*



To achieve this aim, the audit included an assessment of Zambia's primary aviation legislation and civil aviation regulations.

It was found that Zambia's aviation regulations did not contain all the provisions of Annexes 1, 6 and 8 and that not all members of the inspection staff of the department had copies of the Aviation Act and the air navigation regulations.<sup>52</sup> This was an area of concern as in order to conduct substantive inspections, the staff need to familiarise themselves with requirements of the law otherwise they would not understand fully what the work they are doing requires of them. It was further found that the department did not have a system of identifying and notifying ICAO of the differences between its civil aviation regulations and the SARPs as required by Article 38 of the Chicago Convention.<sup>53</sup> This article provides that, "Any state which finds it impracticable to comply in all respects with any such international standards or procedure , or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organisation of the differences between its own practise and that established by the international standards..."

The Council of ICAO is then obliged immediately to notify other States of such noncompliance.<sup>54</sup>

As required by ICAO, Zambia produced a corrective action plan<sup>55</sup> in response to the findings and recommendations of the 1999 audit. An audit follow-up mission was conducted in February 2004 in accordance with the Memorandum of association and the

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<sup>52</sup> Cap.444 of The Laws of Zambia

<sup>53</sup> Art.38

<sup>54</sup> *ibid*

<sup>55</sup> 26<sup>th</sup> April 1999

ICAO Safety Oversight Audit Manual (Doc 9735).<sup>56</sup> The aim of such a mission is to assess how much progress has been made from the time of the initial audit in accordance with the states own action plan as submitted to ICAO. Unfortunately, the follow up visit reviewed further safety issues requiring for additional corrective action.<sup>57</sup>

Table 1 below shows, in percentages, Zambia's lack of effective implementation of ICAO standards in relation to safety oversight at the time of the audit and at the time of the follow-up mission. This is measured against the lack of implementation globally also shown in the graph.

A finding of zero percent would indicate that the state is in full compliance in terms of implementation of international standards. However, many states are still not fully or effectively implementing these standards and as such the global average level of lack of effective implementation was, at the time of the audit, at about 25 percent. This was in the area of primary aviation legislation which is the concern of this paper.

In the same area, Zambia's none compliance was at 55 percent at the time of the initial audit. An improvement was however recorded by the time of the follow up visit, with the country's level of non compliance dropping to 30 percent.

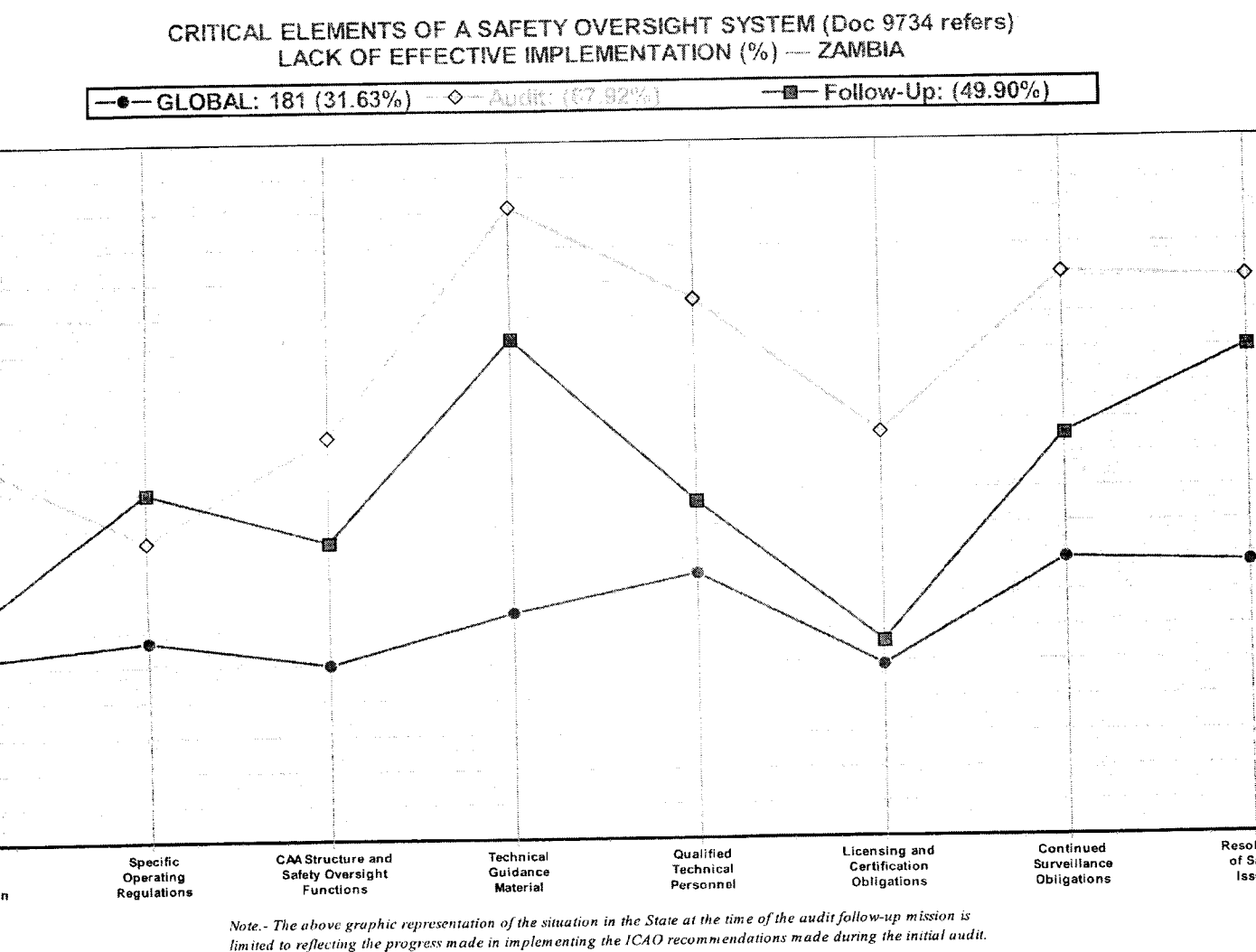
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<sup>56</sup> ICAO, Summary Report on the safety oversight audit follow-up of the Department of Civil Aviation of Zambia, 1 (2004)

<sup>57</sup> *ibid*

Table 1

Source: ICAO, Summary Report on the safety oversight audit follow-up of the Department of Civil Aviation of Zambia (2004)<sup>58</sup>



In the area of specific operating regulations however, effective implementation was poor and had worsened by the time of the follow-up audit. Although these regulations are included in the air navigation regulations found in the Aviation Act, they had, at the time of the audit and follow up, not been amended to keep pace with the last amendments

<sup>58</sup> Appendix

made to Annexes 1, 6 and 8 by ICAO. As such, they were not up to international standards.

Several changes were required to be made to the air navigation regulations in order to implement provisions of these Annexes. Although contained in the numerous AICs issued by the department of civil aviation, the necessary amendments to the regulations in the Aviation Act had not been made as they were contained in the department's *Draft Instructions to the Ministry of Legal Affairs* and had not been promulgated on.<sup>59</sup>

The use of AICs to impose international requirements was one area of concern to ICAO due to lack of enforcement action if the AICs are not complied with. This would pose a significant threat to safety. Further, the department of civil aviation had not developed a system for identifying and notifying ICAO of the differences between its civil aviation regulations and the SARPs as required by the Chicago Convention.<sup>60</sup>

In 2008, the department of civil aviation submitted a draft statutory instrument on Air Operator Certification to the Ministry of Justice. This is currently being processed and covers areas of General Policies and procedures, Personnel Licensing, Aviation Training Organisations, Aircraft Instruments and Equipment, Aircraft Operations and Air Operator Certification and Administration.

All the areas covered by this draft are requirements contained in Annexes 1, 6 and 8 of the Chicago Convention as well as the Aviation Act. They are however, in the Aviation Act, in need of amendment in order to bring them in line with the current internationally acceptable standards.

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<sup>59</sup> ICAO, Summary Report on the safety oversight audit follow-up of the Department of Civil Aviation of Zambia, 3 (2004)

<sup>60</sup> Art. 38

## **2.5 CONCLUSION**

Zambia's current aviation laws and regulations, though in place, are clearly out dated. Seeing as there has been no statutory instrument passed on aviation since Act No.13 of 1994 and no amendments made to the Aviation Act since then either, the requirements of not only Annexes 1, 6 and 8 but also all the other amendments that have been to the other annexes to the Chicago Convention from 1994 to date have not been included in Zambia's laws and regulations. They are instead contained in the AICs issued by the Director of Civil Aviation. Although the issuing of AICs can be seen as a stop-gap measure and currently, the only way in which the country can keep pace with the rapidly changing international requirements, this state of affairs is far from satisfactory as aviation safety is compromised.

The department of civil aviation's recent progress with the draft statutory instrument produced is a manifestation of the department's efforts at playing its role and ensuring compliance with international regulations.

At present, it remains to be seen, how long the Ministry of Justice will take before the statutory instrument can be passed into law.

## CHAPTER THREE

### CONSTRAINTS TO COMPLIANCE

#### 3.1 INTRODUCTION

In order to ensure compliance with international aviation safety standards, a country must have in place the necessary laws and regulatory framework. This is because civil aviation safety is directly related to effective laws, regulations and standards to implement those regulations.<sup>61</sup> The link between a country's aviation laws and regulations and its compliance with international standards therefore cannot be ignored. The law is the foundation upon which eventual compliance must be built. It is the vehicle through which compliance can be achieved.

Zambia, as a party to the Chicago Convention, is responsible for aviation safety oversight within its territory. Among the critical elements of a state's safety oversight system are the primary aviation legislation, specific operating regulations and civil aviation structure.<sup>62</sup> Safety oversight is a function by which states ensure the effective implementation of the safety related standards and recommended practices and associated procedures and practices contained in the Annexes to the Chicago Convention and related documents.<sup>63</sup>

To have the necessary laws, there must be in place an effective regulatory framework which would in turn aid the structuring of an effective regulatory framework.

Institutional problems, lack of communication, difficulty in understanding the international regulatory regime and the economic consequences of not meeting its

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<sup>61</sup> ICAO. Model Aviation Regulatory Document, 1.1 (2005) Available at: [http://www.icao.int/icao/en/ro/nacc/meetings/2005/NACC\\_DCA2/nacc02ip08.pdf](http://www.icao.int/icao/en/ro/nacc/meetings/2005/NACC_DCA2/nacc02ip08.pdf) [Accessed on 16 September 2008]

<sup>62</sup> ICAO, Universal Safety Oversight Programme. Safety oversight report analysis. (Montreal, 8 February 2001) [www.icao.int/icao/en/ro/allpirg/allpirg4/wp21.pdf](http://www.icao.int/icao/en/ro/allpirg/allpirg4/wp21.pdf)

<sup>63</sup> *ibid*

standards and outdated regulatory framework are all among the issues that cause difficulty in compliance in many sub-Saharan African countries<sup>64</sup>. Zambia too shares similar problems most especially in relation to the department of civil aviation, which oversees all aviation matters in the country and the relevant authorities in government generally, and the Ministry of Communication and Transport particularly.

### **3.2 RESPONSIBILITY OF COMPLIANCE**

As has been acknowledged by the Zambian government<sup>65</sup> air transport in the country has not achieved the highest degree of efficiency, partly due to shortcomings in the existing legal framework. A question can thus be raised as to who bears the responsibility for compliance within the state?

Compliance is dependent on coordination and cooperation between the government and the responsible aviation authority, in this case, the department of civil aviation.

Although control and regulation of aviation in Zambia, and consequently ensuring compliance, is borne by the aviation authority, it is the responsibility of the government to arm the department with all that it needs, including adequate laws, in order to perform its role to the best of its abilities.

### **3.3 POOR LEGAL FRAMEWORK**

Zambia, like several other African countries<sup>66</sup>, has established a safety oversight system based on an outdated legal framework. As established in Chapter Three, Zambia's aviation laws and regulations, as provided for under in the Aviation Act<sup>67</sup>, were first enacted in 1954 with the last amendment having been fourteen years ago in 1994. These

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<sup>64</sup> Kok, Putting Safety First in Africa, in *AeroSafety World*, 18 (July 2008)

<sup>65</sup> Ministry of Transport and Communications, *Transport Policy*, 12 (May 2002)

<sup>66</sup> *ibid.*, 19

<sup>67</sup> CAP 444 of The Laws of Zambia

laws were developed for a completely different era of the aviation industry.<sup>68</sup> The aviation industry however is dynamic with rules, regulations and requirements changing very quickly and frequently. It is in a constant state of flux.

The 1994 amendment however was of very little, if any significance in relation to bringing Zambia's Aviation Act up to standard with international requirements at that time. The few amendments made were in relation to penalties for failure to comply with specific instructions or regulations<sup>69</sup>, requirements for renewal of instructors' ratings<sup>70</sup> as well as an amendment on prescribed charges for renewal of pilots' licences<sup>71</sup> and meeting of expenses incurred by the department of civil aviation in carrying out inspections required before air service permits are issued.<sup>72</sup> Since then, the Chicago Convention has been through three amendments while those of its annexes are innumerable.

It has been observed that many sub-Saharan African countries, civil aviation departments may face political reluctance when they try to realise fundamental changes toward the modern legal codes needed for adequate safety oversight.<sup>73</sup>

In Zambia, as established in chapter two, the department of civil aviation must present the changes required to be made to the law and regulations to the Ministry of Justice. It must then wait for response from the ministry, which has been observed to take months if not years.

As such, the department of civil aviation has attempted to "remedy" this through the issuing of AICs, all in an attempt to keep pace with changes to international standards.

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<sup>68</sup> Kok, Putting Safety First in Africa, in AeroSafety World, 18 (July 2008)

<sup>69</sup> s5(3) and s19(3), Regulation 5(4) Air Navigation Regulations, Regulation 8 Aviation(Government Aerodromes) Regulations, Regulation 4 Aviation(Parking of Motor Vehicles at designated airports) Regulations

<sup>70</sup> Regulation 112(22) Air Navigation Regulations

<sup>71</sup> Regulation 9, Third Schedule, Air Navigation Regulations

<sup>72</sup> Regulation 15, Third Schedule, Air Navigation Regulations

<sup>73</sup> Kok, Putting Safety First in Africa, in AeroSafety World, 19 (July 2008)



Although the Government, in its 2002 Transport Policy<sup>74</sup>, committed itself *inter alia* to review all civil aviation legislation, to date, these pieces of legislation remain as they were then.

Having in place up to date primary legislation would go a long way in aiding the country achieve international acceptable safety standards as this would provide the necessary legal foundation for the civil aviation industry to function in an acceptable manner. It would also aid enforcement as the law would provide sanction for breach and give enforcement power to the mandated body unlike is the case with AICs which do not have as strong an effect. This was one of the concerns raised in the USOAP audit follow up visit which doubted the legality of using these AICs to impose international requirements as well as the ability of the department of civil aviation to pursue enforcement action if they were not complied with.

Thus far, there has been no reported case of requirements as contained in an AIC being challenged by anyone in the industry. The requirements contained in these AICs are actually observed, most likely due to the fact in order to obtain or renew licences, permits or even begin operations in the air services industry; one must go through the department of civil aviation. Operators thus have no choice but to observe these requirements otherwise risk losing their licence or being declined renewal or being deregistered and consequently being unable to operate legally within the country.

However, a concern raised by the department is that as these requirements are not contained in binding legislation, some operators in the industry tend to ask for extensions, for instance, where a new requirement is issued in an AIC. As the AICs are not law, the department finds itself with no choice or no legal authority to insist or deny such an extension requested. If these requirements were contained in legislation, they would be

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<sup>74</sup> Ministry of Transport and Communications, Transport Policy, 47 (May 2002)

mandatory and not leave any room to manoeuvre. The department would further have a basis to take legal action against a defaulting or erring party.

### 3.4 POLITICAL FACTORS

It has been common practise in Zambia, as well as many other countries, for regular changes to be made to officials in the ruling government. This can however also have negative impacts on compliance with aviation safety requirements. This is because regular changes in the ministry of transport will often mean new aviation policies and new managers of the civil aviation department. This may in turn result in having to start over in familiarising the new officials with aviation safety issues and the need to push for changes in laws and regulations or for regulatory independence from politics.<sup>75</sup>

In addition, in a political system like Zambia's where members of parliament represent a particular constituency and are elected on that ticket, some of these members of parliament are influenced by whether or not there is personal political gain in supporting a particular legislative or administrative change to aviation safety oversight legislation.<sup>76</sup> Members of parliament may further, if from the opposition, be reluctant to support changes favoured by the ruling party.<sup>77</sup> This is another factor that may affect the passing of necessary aviation legislation.

### 3.5 POOR INSTITUTIONAL FRAMEWORK

Regulation is a key instrument in managing safety and thus complying with international requirements within the aviation industry. This is connected to the legal framework discussed above as the laws are what will contain these regulations. Regulations without effective implementation are however of no use.

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Kok, Putting Safety First in Africa, in AeroSafety World, 19 (July 2008)  
ibid  
ibid

Regulation and implementation of the aviation industry in Zambia is charged to the department of civil aviation. This is under the Ministry of Communications and Transport which is responsible for overall policy formulation and monitoring of the transport sector<sup>78</sup> in the country.

It is recommended by ICAO that states must move to establish independent aviation authorities. This however, cannot be done without the relevant enabling legislation for the establishment of such a body.

### **3.5.1 AUTONOMY AND FINANCING**

The institutional framework is basically in place at the department of civil aviation. However, being a government department, the Department of civil aviation lacks independence most especially in the way it functions. Besides the challenge of having required regulations passed into law, this lack of autonomy also leaves the department prone to political interference. It is also unable to administer and manage its own budget<sup>79</sup>, making it difficult for it to function effectively.

As a result of the government's restructuring project, there has been some improvement in the resources available to the aviation authority. When these resources are available, they are released in trickles, making it difficult for the authority to function at its best. As noted by the audit follow up team, the department still does not have enough resources at its disposal to fulfil its safety oversight responsibilities.<sup>80</sup>

Civil Aviation Authorities anywhere need sufficient revenue to carry out their regulatory role. Looking at other African countries like Kenya and South Africa, it would not be in doubt that autonomous aviation authorities are more successful and effective.

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<sup>78</sup> Ministry of Transport and Communications, Transport Policy, 40 (May 2002)

<sup>79</sup> ICAO. Model Aviation Regulatory Document, 2.2 (2005) Available at:

[http://www.icao.int/icao/en/ro/nacc/meetings/2005/NACC\\_DCA2/nacc02ip08.pdf](http://www.icao.int/icao/en/ro/nacc/meetings/2005/NACC_DCA2/nacc02ip08.pdf) [Accessed on 16 September 2008]

<sup>80</sup> ICAO, Summary Report on the safety oversight audit follow-up of the Department of Civil Aviation of Zambia, 5 (2004)

A comparison can be made with the aviation authority of South Africa which is an autonomous body, created by statute. Pre-1998, the South African Civil Aviation Authority was part of the department of transport, as is the case in Zambia, and fell within the government bureaucracy.<sup>81</sup> In 1998 however, it was established as a “stand alone” authority<sup>82</sup> which has resulted in the widening of its oversight functions, improved professionalism, accountability and integrity among other benefits.<sup>83</sup>

Owing to this autonomy, the enabling Act, which also sets out the structure of the authority, provides for a legal services department within the authority. This department provides the aviation authority with legal advice in all areas of its operation and daily functions,<sup>84</sup> which would include the drafting of new laws and regulations. Consequently, this has improved South Africa’s safety and compliance standards.

In the area of financing, the authority depends to a less extent on the government and raises some of its own funds through direct and indirect fees such as those imposed on departing passengers and general fuel levies. In this way, as well as by partnering with other bodies that provide support, the aviation authority is able to conduct programs necessary to keep in line with international standards as well as improve on other safety related areas in their system without too much dependence on central government.

The levels of safety and international compliance of South Africa even received international recognition and in 2003, the country was elected to sit on the ICAO Council<sup>85</sup>, a milestone for an African nation.

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<sup>81</sup> South African Civil Aviation Authority, Overview. Available at: <http://www.caa.co.za/About%20Us.htm> [Accessed on 10 January 2009]

<sup>82</sup> South African Civil Aviation Authority Act, No.40 of 1998

<sup>83</sup> South African Civil Aviation Authority, Overview. Available at: <http://www.caa.co.za/About%20Us.htm> [Accessed 10 on January 2009]

<sup>84</sup> South African Civil Aviation Authority. Annual report, 2002, 31. Available at: [http://www.caa.co.za/publications\\_files/Corporate%20Publications/Annual%20Report%202002/Index%20Page.htm](http://www.caa.co.za/publications_files/Corporate%20Publications/Annual%20Report%202002/Index%20Page.htm) [Accessed on 10 January 2009]

<sup>85</sup> South Africa Civil Aviation Authority, Overview. Available at: <http://www.caa.co.za/About%20Us.htm> [Accessed on 10 January 2009]

In an ICAO audit in 2007, South Africa's level of implementation of critical elements of a safety oversight system, including in the area of primary aviation legislation, was found to have been almost fully implemented and well above the global average.<sup>86</sup>

### **3.5.2 ADEQUATE QUALIFIED PERSONNEL**

Another critical factor in ensuring compliance is qualified personnel. In relation to this paper, qualified personnel would be better able to understand the laws and regulations, their importance as well as the best mode of enforcement.

Although the Zambian department of civil aviation does have some qualified personnel, their numbers are inadequate and so a lot of positions are vacant<sup>87</sup>. This is largely attributable to lack of adequate financing discussed above.

Inadequate financing affects retention of staff such as older pilots and others trained in specific critical areas, for instance, flight inspection whose experience and expertise are required to ensure or help in the implementation of international standards. These individuals are paid at government rates as the department of civil aviation has very little, if any, say in how much they are paid. The skills of these individuals are however on high demand around the world and as such they leave the department for greener pastures in other countries.

This situation has also resulted in the department being unable to properly train staff in their new oversight duties.<sup>88</sup> There is also the constant need for recurrent training and enrichment training of staff in order to keep them up to date with changes and

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<sup>86</sup> South Africa Civil Aviation Authority Annual Report 2007/08. Available at: [http://www.caa.co.za/publications\\_files/Corporate%20Publications/CAA%20Annual%20Report%2007%20-%20%2008.pdf](http://www.caa.co.za/publications_files/Corporate%20Publications/CAA%20Annual%20Report%2007%20-%20%2008.pdf) [Accessed on 9 January 2009]

<sup>87</sup> ICAO, Summary Report on the safety oversight audit follow-up of the Department of Civil Aviation of Zambia, 5 (2004)

<sup>88</sup> *ibid*

development in aviation. This is not done. The above reasons in turn impede operations of the department and reduce efficiency and consequently, undermine safety.

### **3.6 GOVERNMENT COMMITMENT**

All the above mentioned factors have to do, in one way or another, with the government and its level of commitment to improvement of aviation in Zambia and attainment of the minimum acceptable international aviation safety standards. The government must provide an enabling environment.

It is the government that is responsible, at the end of the day, for ensuring that proposed legislation promptly finds its way to parliament to be legislated upon. It is also government's responsibility to provide the aviation authority with adequate funding and other requirements needed for it to perform its regulation and implementation role effectively.

It seems however that air transport has not been given as much attention as other areas in the transport sector like road and recently railway transport. In the 2002 Transport Policy, the government made several commitments as to what would be done for the air transport sector in order to ensure effective regulation, safety and efficiency in accordance with international civil aviation standards.<sup>89</sup> These included pursuing legal and institutional reforms aimed at revamping the industry, promoting civil aviation in accordance with the Chicago Convention and ensuring compliance with regional and international agreements.<sup>90</sup>

Although the government did make an attempt at fulfilling some of these commitments by for instance, providing the department of civil aviation with some extra funding as

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<sup>89</sup> Ministry of Transport and Communications, Transport Policy, 31 (May 2002)

<sup>90</sup> *ibid*

well as recruitment of some much needed personnel,<sup>91</sup> the primary concern of this paper, the legal framework, remains unchanged. The draft revision to the Air navigation regulations, which addresses amendments to Annexes 1, 6, and 8 as recommended at the 2004 audit follow up visit has to date not been approved.<sup>92</sup> These regulations, and others, are currently contained in AICs issued by the Director of the department of civil aviation.

Several government branches play a critical role in enabling much needed legislative changes and empowering the civil aviation department,<sup>93</sup> the Department of Civil Aviation itself, the Ministry of Transport and Communication as well as the Ministry of Justice. One cannot ignore the role played by Members of Parliament.

There is, currently, no proper and efficient system for the development, issuance, amendment or enforcement of aviation regulations in order to keep pace with international requirements as well as enable the aviation authority to fulfil its safety oversight obligations.

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<sup>91</sup> ICAO, Summary Report on the safety oversight audit follow-up of the Department of Civil Aviation of Zambia, (2004)

<sup>92</sup> *ibid*, 4

<sup>93</sup> Kok, Putting Safety First in Africa, in *AeroSafety World*, 18 (July 2008)

### 3.7 CONCLUSION

Clearly, efficient and effective regulation and implementation of aviation regulations are vital to any country's compliance with international standards and recommended practices. Compliance cannot be achieved however, where these regulations are not incorporated into existing legislation in order to be given the necessary force of law and bring the law up to international standard.

ICAO safety surveys have shown that the poor structure of a state's civil aviation law and regulations is one of the more crucial factors leading to unfavourable assessment<sup>94</sup> in comparison with international requirements.

A good legislative framework is thus the foundation needed before one can even begin to speak of implementation, personnel, financing or even independence of the department of civil aviation. This is because a good legal framework could actually provide for some of these matters such as the establishment of an autonomous and well structured aviation authority.

Everything else is anchored on the legal framework as what will be followed is what is provided in the law. However, none of these things can be done without the will and commitment of the government of the day.

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<sup>94</sup> ICAO. Model Aviation Regulatory Document, 1.2 (2005) Available at:  
[http://www.icao.int/icao/en/ro/nacc/meetings/2005/NACC\\_DCA2/nacc02ip08.pdf](http://www.icao.int/icao/en/ro/nacc/meetings/2005/NACC_DCA2/nacc02ip08.pdf) [Accessed on 16 September 2008]



## **CHAPTER FOUR**

### **EFFECT OF NON COMPLIANCE WITH INTERNATIONAL SAFETY STANDARDS**

#### **4.1 INTRODUCTION**

As a party to the Chicago Convention, Zambia is a member of ICAO. This comes with numerous benefits, most especially when the required standards are complied with. With many of these benefits being reciprocal, airlines of a compliant and therefore “safe” state would be allowed to fly to and operate within larger markets such as the United States, and the United Kingdom. Further benefits would be increased air traffic to its territory, for instance servicing the tourism industry as well as increase in exports, imports and other commercial activity more so with today’s interdependent global economy. For a country like Zambia, these benefits are much needed especially in relation to trade due to the fact that the country is landlocked.

Membership also gives rise to costs in the event of failure to comply with the set standards. Besides a bad international reputation, a defaulting state may find itself economically cut off from the rest of the world. This is because very few, if any, airlines would fly to its territory and other states would not allow the defaulting states’ airlines to fly to or operate within their airspace. The implications of this would be a negative impact on imports, exports and tourism, among others. These costs can have dire effects on the economy of the country as well as its economic relationship with the international community.

As a contracting state, Zambia has an obligation to conform its domestic laws, rules and regulations, to the greatest extent possible, to the standards set by ICAO and contained in the Chicago convention and its annexes.

However, as is common to many international agreements, the Chicago Convention poses

a problem of enforcement of legal obligations created under it. This is because it has no enforcement mechanism and like many specialized United Nations agencies, ICAO, although a quasi-legislative body has no enforcement power to sanction violators.<sup>95</sup> As such, generally, compliance with requirements of the convention's SARPs among member states has been poor.

Another problem which arises is that of the sovereignty of individual states as effectively, ICAO effectively promulgates standards to govern national behavior.

While some states comply with international legal obligations out of self interest, others are compelled to do so to avoid the economic cost of non compliance and others still are coerced to do so by fear of retaliation or sanction by other states.<sup>96</sup>

## **4.2 ENFORCEMENT OF ICAO STANDARDS**

The only enforcement power ICAO has is in relation to the dispute settlement authority of the Council under Chapter XVIII of the Chicago Convention.<sup>97</sup> If an airline fails to comply with a Council decision, its operations shall be suspended by all contracting States, and its government shall lose its vote in the ICAO General Assembly.<sup>98</sup> However, because the Council has never rendered a decision on the merits, these provisions have never been invoked.<sup>99</sup>

Despite this seeming weakness of the Chicago Convention, its provisions and SARPs are however enforced, by the member states themselves.

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<sup>5</sup> Dempsey, Blacklisting: The Conflict between National and International aviation safety standards. Available at: [www.csoca.org/index.php?option=com\\_docman&task=doc\\_details&gid=110&itemid=58-14k](http://www.csoca.org/index.php?option=com_docman&task=doc_details&gid=110&itemid=58-14k) [Accessed on 3 January 2009]

<sup>6</sup> ibid

<sup>7</sup> Dempsey, Blacklisting: The Conflict between National and International aviation safety standards. Available at: [www.csoca.org/index.php?option=com\\_docman&task=doc\\_details&gid=110&itemid=58-14k](http://www.csoca.org/index.php?option=com_docman&task=doc_details&gid=110&itemid=58-14k) [Accessed on 3 January 2009]

<sup>8</sup> Art 87 and 88

<sup>9</sup> Dempsey, Blacklisting: The Conflict between National and International aviation safety standards. Available at: [www.csoca.org/index.php?option=com\\_docman&task=doc\\_details&gid=110&itemid=58-14k](http://www.csoca.org/index.php?option=com_docman&task=doc_details&gid=110&itemid=58-14k) [Accessed on 3 January 2009]

The Convention recognizes that every state has complete and exclusive sovereignty over the airspace above its territory.<sup>100</sup> Accordingly, another state cannot conduct commercial operations in the airspace of another without express permission or authorization.<sup>101</sup>

A state can therefore refuse to grant another state access to its airspace for commercial purposes. It is each states exclusive right to do so.

Further, the Convention requires that certificates of airworthiness issued or rendered valid by the contracting state in which an aircraft is registered be recognized as valid by other contracting States, as long as the standards imposed by the registering state are in accordance with or above the minimum standards established by the convention.<sup>102</sup> Other states are thus entitled not to recognize validity of certificates issued by a state whose aviation safety standards are not in line with those of the convention and its annexes.

The overall effect of these provisions is that an individual state can ban or prohibit another state or specific airlines of other states from operating commercially within its airspace if they are considered unsafe or if the state's aviation safety standards are not in consonance with international requirements. This acts as an incentive for compliance.

Such a ban will not usually end with just one state. Due to the communication between states and the publicity that follows such an action, other states would subsequently follow suit. The cumulative effect of such action on the banned state would have dire commercial or economic consequences.

This banning is commonly referred to as 'blacklisting'. In this way, compliance and uniformity of standards required by ICAO is to an extent achieved.

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<sup>100</sup> Art 1

<sup>101</sup> Art 6

<sup>102</sup> Art 33

#### 4.2.1 UNITED STATES BLACKLISTING

Due to concern with the absence of universal norms in international aviation, the United States of America, in 1991, established its own assessment and blacklisting program through unilateral oversight of other states' compliance with international obligations.

This was done through the International Aviation Safety Assessment Program<sup>103</sup> under the Federal Aviation Administration, hereinafter referred to as the FAA.

Under this program, the FAA sends out teams to meet with officials of foreign civil aviation authorities and airlines and review relevant records. The evidence collected is then used to determine whether the foreign civil aviation authority civil aviation authority and airlines are in compliance with international standards and recommended practices. Among the areas of focus is the development or implementation of laws or regulations in accordance with ICAO standards.<sup>104</sup>

The FAA publicly discloses the results of these audits and restricts the operations of non compliant states in the United States. A state or an airline from a state found wanting will not be allowed to fly to or from the United States.

Given the economic clout of the United States and the size of its market, this program increases the compliance of states, with airlines operating within its territory, with their legal obligations under the standards and recommended practices.

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<sup>103</sup> Dempsey, Blacklisting: The Conflict between National and International aviation safety standards. Available at: [www.csoca.org/index.php?option=com\\_docman&task=doc\\_details&gid=110&itemid=58-14k-](http://www.csoca.org/index.php?option=com_docman&task=doc_details&gid=110&itemid=58-14k-) [Accessed on 3 January 2009]

<sup>104</sup> *ibid*

## 4.2.2 EUROPEAN UNION BLACKLISTING

Prior to 2005, European nations individually banned airlines they considered unsafe from operating within their airspace. In 2005 however, following a series of crashes in 2004-2005, European nations came together to coordinate their independent lists of banned airlines.<sup>105</sup>

In December 2005, the European Union hereinafter referred to as the EU came up with regulations governing the banning of foreign carriers operating within the community.<sup>106</sup> Under this regulation, bans are imposed on airlines it considers unsafe according to ICAO safety standards as well as those in the relevant European community law.<sup>107</sup>

Updated every three months<sup>108</sup>, the EU blacklist is dominated by African airlines. The last published list<sup>109</sup> includes 51 carriers from the Democratic Republic of Congo, 17 from Angola, 7 from Sierra Leone, 7 from Gabon, 8 from equatorial Guinea, 6 from Swaziland, 1 from Sudan, 1 from Rwanda and a general ban on all air carriers certified by the authorities with responsibility for regulatory oversight of Liberia.<sup>110</sup>

Among the criterion used by the EU for blacklisting include, inadequate oversight in accordance with obligations under the Chicago convention and inability to provide adequate oversight to airlines and ensure that they operate in accordance with ICAO standards.<sup>111</sup>

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<sup>105</sup> Ron Pradinuk, "Why So Mum on Air Safety?" *Winnipeg Sun* (April 2, 2006) C11 in Dempsey, Blacklisting: The Conflict between National and International aviation safety standards. Available at: [www.csoca.org/index.php?option=com\\_docman&task=doc\\_details&gid=110&itemid=58-14k-](http://www.csoca.org/index.php?option=com_docman&task=doc_details&gid=110&itemid=58-14k-) [Accessed on 3 January 2009]

<sup>106</sup> Regulation(EC)No.2111/2005(Dec.14,2005)Availableat:<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:344:0015:0022:EN:PDF> [Accessed on 3 January 2009]

<sup>107</sup> Art. 2(j).

<sup>108</sup> Art. 4(2)

<sup>109</sup> Available at: <http://ec.europa.eu/transport/air-ban/> [Accessed 10 January 2009]

<sup>110</sup> *ibid*

<sup>111</sup> Commission Regulation (EC) of 474/2006 Available at: [http://ec.europa.eu/transport/air-ban/furtherinfo\\_en.htm#3](http://ec.europa.eu/transport/air-ban/furtherinfo_en.htm#3) [Accessed on 10 January 2009]

### 4.2.3 ICAO BLACKLISTING

ICAO has also developed a system of assessment and blacklisting. This began in 1994 with the passing of Resolution A32-11 by the General Assembly. This resolution established the Safety Oversight Program to assess member states' compliance with SARPs and assist states whose compliance was deficient.<sup>112</sup>

Having been criticized because of its voluntary and confidential nature, the Safety Oversight Program was replaced by the Universal Safety Oversight Audit Program (USOAP), discussed in Chapter 2. It is under this program that the Civil Aviation Department of Zambia was audited in 1999. These audits are mandatory for all member states.

In 2004, the ICAO General Assembly passed a resolution to make results of USOAP audits available to all member states and post them on secure portions of the ICAO website.<sup>113</sup>

This was soon followed by agreement by the majority of member states to post the names of states that failed to agree to full transparency of their USOAP audits on the ICAO website. Zambia has authorized ICAO's release of only its safety oversight audit executive summary and not the full report.<sup>114</sup>

“The principal deficiencies discovered by the initial FAA and ICAO safety audit programs involved the absence of basic aviation laws, the failure of civil aviation authorities to enforce safety laws and regulations and the failure of national laws to conform to the standards set forth in the Chicago Convention Annexes.”<sup>115</sup>

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<sup>112</sup> J. Ducrest, *Legislative and Quasi-Legislative Functions of ICAO: Towards Improved Efficiency*, (1995) XX Ann. Air & Space Law 343 at 357-58 in Dempsey, Blacklisting: The Conflict between National and International aviation safety standards. Available at: [www.csoca.org/index.php?option=com\\_docman&task=doc\\_details&gid=110&itemid=58-14k](http://www.csoca.org/index.php?option=com_docman&task=doc_details&gid=110&itemid=58-14k) [Accessed on 3 January 2009]

<sup>113</sup> Ibid, ICAO, Res. 16.2/1, 2004 (superseding Assembly Res. 33-8)

<sup>114</sup> This was on the 21<sup>st</sup> of March 2006. A full list is available at <http://www.icao.int/fsix/>

<sup>115</sup> Cameron, at 62 in Dempsey, Blacklisting: The Conflict between National and International aviation safety standards. Available at: [www.csoca.org/index.php?option=com\\_docman&task=doc\\_details&gid=110&itemid=58-14k](http://www.csoca.org/index.php?option=com_docman&task=doc_details&gid=110&itemid=58-14k) [Accessed on 3 January 2009]

#### **4.2.4 ADDITIONAL PRESSURE**

Incentive to comply with international safety standards does not end at the threat of being blacklisted by individual states or regional groupings. To compete on the global aviation market, airlines need to be member of the International Air Transport Association hereinafter referred to as IATA.

Internationally recognised, IATA works to coordinate inter-airline cooperation in promoting safe, reliable, secure and economical air services for the benefit of the world's consumers.<sup>116</sup> IATA membership thus opens up numerous opportunities and benefits such as international recognition of the airline, reciprocal acceptance of each other's tickets, fast and efficient settlement of financial issues as well as other financial services among others.<sup>117</sup> Prospective members are however required to pass the IATA Operational Safety Audit<sup>118</sup> which is an internationally recognised and accepted system of evaluation to assess operational management and control systems of an airline. This audit is mandatory. IATA also works in conjunction with ICAO.

#### **4.3 ATTAINABILITY OF INTERNATIONAL STANDARDS FOR A COUNTRY LIKE ZAMBIA**

Despite the possible sanctions that follow non compliance, many states are still not in conformity with international standards and recommended practices. As can be seen in Table 1<sup>119</sup>, the global average lack of effective implementation of ICAO standards is relatively high in all areas and was at 25 percent in the area of primary aviation legislation. This is because, although most states have the basic aviation law in place,

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<sup>116</sup> IATA, Available at : <http://www.iata.org> [Accessed on 10 January 2009]

<sup>117</sup> IATA, Cost/Benefit of becoming an IATA member. Available at: [http://www.iata.org/NR/rdonlyres/6CD76D3C-CC7B-449A-BCE3-660E250D5055/0/iata\\_membership\\_benefit\\_jan08.pdf](http://www.iata.org/NR/rdonlyres/6CD76D3C-CC7B-449A-BCE3-660E250D5055/0/iata_membership_benefit_jan08.pdf) [Accessed on 10 January 2009]

<sup>118</sup> IATA, Membership. Available at: <http://www.iata.org/membership/airlines> [Accessed on 10 January 2009]

<sup>119</sup> Available at p 17, Chapter 2

they have not kept their domestic laws, rules and regulations in harmony with the required international standards as ICAO develops and amends them.

While some genuinely lack the economic ability, others simply lack the will as they may regard aviation as less important than other areas. Zambia is still a developing country. Consequently, it may not have the economic ability to meet these standards. Either that or it simply does not have the required political will. Economic inability poses a significant problem not only in acquiring much required equipment and upgrading facilities such as airports but also when it comes to the training or hiring of people with the relevant expertise to understand appropriately draft and adapt ICAOs laws regulations and other guidance materials to suit the particular state.

There are however several regional and international initiatives, programs and bodies that are willing to help less able nations.

To begin with, the United States FAA has recognised that ICAO standards and supporting guidance material lack the degree of detail and comprehensiveness that a country needs to use in its own civil aviation regulations<sup>120</sup>. As such, it has developed a model aviation regulatory document which consists of model civil aviation laws, regulations and implementing standards. This “model law” was developed using *inter alia* ICAO material<sup>121</sup> and is much easier for individual states to adopt and include in their own laws than the original ICAO model law.

Further, there has been established within Africa, bodies such as African and Malagasy Civil Aviation Authorities and the African Civil Aviation Commission which work to collaborate development of the air transport industry in Africa in a safe and orderly manner.

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<sup>120</sup>ICAO Model Aviation Regulatory Document, (2005) Available at:  
[http://www.icao.int/icao/en/ro/nacc/meetings/2005/NACC\\_DCA2/nacc02ip08.pdf](http://www.icao.int/icao/en/ro/nacc/meetings/2005/NACC_DCA2/nacc02ip08.pdf) [Accessed on 16 September 2008]

<sup>121</sup> *ibid*



ICAO too, having recognised the inability of certain states in complying with international standards, has set up the International Financial Facility for Aviation Safety which seeks to provide developing nations with financial assistance in meeting their international obligations in aviation safety generally and particularly with deficiencies identified in USOAP audits.<sup>122</sup>

ICAO has also come up with an initiative known as the Cooperative Development of Operational Safety and Continuing Airworthiness Programme (COSCAP), the objective of which is to enhance the safety and efficiency of air transport through the establishment of a self sustaining sub-regional cooperative entity providing technical services in safety oversight to ICAO member states.<sup>123</sup> With programmes set up in various regions, Zambia falls under COSCAP-SADC. The programme, *inter alia*, may supplement member states' safety oversight capabilities in areas where states have specific needs, provide training to civil aviation authorities and help to harmonise or establish basic aviation laws, regulations, standards and procedures.<sup>124</sup>

The World Bank too has begun to support developing states in improving aviation safety and navigation<sup>125</sup> and is also working, in conjunction with ICAO, on a program for sustainable air transport in Africa.

With the recognition of the similarity of problems facing many African states in relation to compliance with and implementation of international aviation standards and recommended practices, in 2007, ICAO developed a Comprehensive Regional Implementation Plan for Aviation Safety in Africa.<sup>126</sup>

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ICAO, Resolution A33-10, ICAO, 33<sup>rd</sup> Session at 35-37

ICAO COSCAP Initiatives, Available at: <http://www.icao.int/ec-icao/Docs/Nimalsiri.pdf> [Accessed on 9 January 2009]

ibid

Dempsey, Blacklisting: The Conflict between National and International aviation safety standards. Available at: [www.csoca.org/index.php?option=com\\_docman&task=doc\\_details&gid=110&itemid=58-14k-](http://www.csoca.org/index.php?option=com_docman&task=doc_details&gid=110&itemid=58-14k-) [Accessed on 3 January 2009]

35<sup>th</sup> session of the ICAO assembly

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<sup>122</sup> ICAO, Resolution A33-10, ICAO, 33<sup>rd</sup> Session at 35-37

<sup>123</sup> ICAO COSCAP Initiatives, Available at: <http://www.icao.int/ec-icao/Docs/Nimalsiri.pdf> [Accessed on 9 January 2009]

<sup>124</sup> *ibid*

<sup>125</sup> Dempsey, Blacklisting: The Conflict between National and International aviation safety standards. Available at: [www.csoca.org/index.php?option=com\\_docman&task=doc\\_details&gid=110&itemid=58-14k-](http://www.csoca.org/index.php?option=com_docman&task=doc_details&gid=110&itemid=58-14k-) [Accessed on 3 January 2009]

<sup>126</sup> 35<sup>th</sup> session of the ICAO assembly

Working with several partners, including the World Bank, the plan’s mid-term objectives include to strengthen civil aviation authorities with respect to their safety oversight capabilities as well as to increase compliance with ICAO SARPs and the industry’s best practice.<sup>127</sup>

From the above discussion, one can see and appreciate that there is an abundance of help available to states that are open and willing to receive it and put in motion the machinery to benefit from such help. Money should therefore not be a reason for inability to provide safe air transport.

**4.4 CONCLUSION**

Currently, Zambia does not have any of its airlines as members of IATA and neither does it have any airlines flying or operating overseas. Although it has been through an ICAO audit, it is therefore yet to be subjected to any of the other assessment programs. With the growth of travel and tourism in the country however, it is inevitable that the aviation industry in Zambia will continue to grow and will at one time or another be put to the test through these other audit programs. If and when this happens, such airlines will need to adhere strictly to the minimum standards set by ICAO<sup>128</sup> to avoid the fate of being blacklisted as well as protect and promote the image of the Department of Civil Aviation as well as the country as whole on the commercial aviation scene.

At the 1999 audit, as established in Chapter two, Zambia was found to be deficient in several areas, including its legal and regulatory framework but not to the extent of being blacklisted. With the now defunct Zambian Airways which was flying to Tanzania and South Africa, there had been no accident reports or major safety concerns raised by the authorities of these countries leading to the assumption that minimum safety standards, as

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<sup>127</sup>ICAO. Comprehensive Regional Implementation Plan for Aviation Safety in Africa. Available at: [http://www.icao.int/AFIRAN08/docs/AFI\\_RAN\\_Plan\\_en.pdf](http://www.icao.int/AFIRAN08/docs/AFI_RAN_Plan_en.pdf) [Accessed on 30 June 2008]

<sup>128</sup> ICAO standards are used as reference points for the FAA, EU and IATA audits in one way or another although some of these have additional requirements to be fulfilled too.

required by our current law, are being observed, or perhaps fate has been on the country's side.

Another ICAO audit is slated for the 26<sup>th</sup> of January 2009 and the country is yet to see what the findings of that audit will be and what Zambia's level of compliance or not will be seeing as most of the recommendations of the first audit as well as the follow up mission in 2002, most especially the revision of laws and regulations, have still not been implemented.

As can be appreciated from the above discussion, non compliance with international SARPs has severe implicit sanctions and is thus at a states own peril. One cannot emphasise enough what impact being blacklisted can have either on a particular airline, a state, or both.

With the abundance of help available to states in need, one would hold that international safety standards are in actual fact attainable provided a state is open and willing to work with the numerous initiatives and organisations available. It is in a state's best interest to comply with international safety standards.

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## CHAPTER FIVE

### 5.1 SYNOPTIC REVIEW OF THE STUDY

This paper, divided into five chapters, each which puts forward distinctive and relevant data necessary in analysing and determining Zambia's compliance with international legal aviation standards, *vis-à-vis* the Chicago Convention and its annexes.

Chapter one formed the foundation of this study and established that there are international rules and regulations governing civil aviation which are contained in the Chicago Convention, a multi lateral treaty. It further established that Zambia is not only a party to the Chicago Convention but has given express effect to this treaty within Zambia by domesticating it through incorporation into the Aviation Act.<sup>129</sup> Consequently, Zambia has committed itself to comply with the requirements of the Convention and its annexes by ensuring that the required standards are implemented through its domestic law. As such, it must amend or update its laws as those of the convention are amended to ensure uniformity, compliance and most importantly, safety.

Chapter two, which forms the substance of this study, aimed at determining the current state of Zambia's aviation laws in relation to the current international requirements and standards. It was found that, strictly speaking, Zambia's aviation laws have not been amended and updated as required since the last "review" in 1994. Instead, in an attempt to achieve compliance, circulars have been issued by the Director of Civil Aviation and these contain the current international laws and regulations. This chapter also looked at the summary report of the USOAP audit which was conducted by ICAO on the Civil Aviation Department of Zambia to *inter alia* ensure that it was in conformity with ICAO standards and recommended practices. It was found and established from the said report

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<sup>129</sup> CAP 444 of the Laws of Zambia

that Zambia was not in compliance in the area of primary aviation legislation and was in fact above the global average level of non compliance in this area. The report further expressed concern due to the seeming lack of enforcement action if the circulars, currently containing ICAOs requirements, are not complied with which would in turn affect safety.

Chapter three involved a look at the factors that affect Zambia's compliance with its international obligations under the Chicago convention. It was established that the foundation of any form of compliance is the law upon which the necessary institutions and regulatory bodies are established. This chapter further looked at the importance of an independent aviation authority in the attainment of minimum aviation safety standards, citing the South African Aviation Authority as an example. Such an independent body is also dependent on and has to be established by law in order to ensure effectiveness.

Chapter four involved an assessment of sanctions or enforcement mechanisms in case of non compliance with international standards. It was established that although the Chicago Convention does not itself have any enforcement mechanism, ICAO has established an audit program results of which are made public and result in the blacklisting of defaulting states. The same is done by the European Union and the United States. Further still, under the Chicago Convention, each member state has complete and exclusive sovereignty over the airspace above its territory and can thus chose to prevent access to a state or airline that it considers "unsafe". These international standards are thus self enforcing and involve reciprocal treatment among the states. Non compliance can thus have dire effects on the economy of the defaulting state. It was further established that there are numerous initiatives, programs and bodies that work to aid needy states in attainment of uniformity and thus compliance with international aviation safety standards.



## **5.2 EVALUATION OF RESEARCH OBJECTIVES**

The main objective of this paper was to look into how far Zambia has gone in ensuring compliance with international aviation safety standards as required by the Chicago convention and its annexes through incorporation into its national legislation as well as ensuring implementation of these standards. It was against this background that the paper investigated:

The adequacy of Zambia's current aviation laws in relation to international safety standards.

This paper clearly discussed Zambia's current aviation laws in relation to the Chicago convention and its annexes. It was found that Zambia's primary aviation legislation has not been amended to incorporate changes made to international aviation laws since 1994. Instead, in an attempt to ensure some form/level of compliance, the Director of the Department of Civil Aviation has issued numerous circulars which contain many of the internationally required standards and recommended practices.

As far as aviation legislation is concerned therefore, Zambia's laws are currently not up to date with international law and the country is therefore not in compliance. The country has not kept pace with the amendments to ICAOs standards and recommended practices.

The implementation of safety standards and ways of ensuring that Zambia's laws are kept up to date with international standards.

It was established in Chapter two that Zambia's lack of implementation of international safety standards is higher than the global average. Although much improvement was registered by the time of the follow up audit in 2004, a significant improvement having been in the area of primary aviation legislation, the country's general level of effective implementation was still worse than the global average.

The improvements recorded owed to *inter alia* the issuing of circulars by the department of civil aviation which are being used for the regulation of many areas in the industry due to the outdated laws and regulations on the statute books.

In chapter three, it was established that although these circulars do not constitute law per se, they are being followed or complied with, possibly because they do not have much choice in the matter. Therefore, although not contained within the law, the requirements of these regulations, to a certain extent, are being observed in the industry, to the best of the aviation authority's abilities. There is yet to be a case where the validity of these regulations is challenged.

Strategies for ensuring compliance and implementation of internationally acceptable standards.

In chapter four, a brief analysis of the Civil Aviation Authority of South Africa showed the extent to which having an independent aviation authority has aided that country in achieving international compliance.

Also being an ICAO recommendation, establishing an autonomous aviation authority would be a step towards complying with other ICAO standards and recommendations and could be the beginning of further compliance.

This is because autonomy, especially if legislated upon, would not only free the authority from government bureaucracy, but also enable the authority have, in addition to government funding, its own income through the numerous fees charged in the air transport business, giving it more working capital. This would in turn result in better retention levels in terms of qualified personnel due to better pay as well as attract others to join the authority. With the aid available both within the region and internationally, the industry could more or less fund itself with minimal assistance from the government.

An autonomous body, established by statute could further allow for the creation of a legal department specifically for the authority. This would aid the authority in adapting ICAO

recommendations into draft law on its own unlike its current dependence on the Ministry of Justice. The authority could then pass this draft law to the Ministry of Justice for review, reducing the work and therefore the time it would take for the Ministry to finally present this law to the legislature. The cumulative effect of this would be better efficiency, coordination, collaboration and consequently, better compliance levels. Although the country may never be able to keep at pace with ICAOs frequent amendments, more regular reviews of Zambia's laws would be less costly, more effective and easier to implement than if this was all left to be done after many years of neglect as is the case now.

Before all this can be done however, there is need for the government recognise the role that the civil aviation sector could play in the improvement of Zambia's economy and pay more attention to its development.

### **5.3 RECOMMENDATIONS**

Against this background, it would be recommended that the country's primary aviation legislation be reviewed as soon as practically possible to incorporate ICAO standards and recommendations.

Whilst this is being done, it would also be recommended that legislation is enacted for the establishment of an autonomous civil aviation authority which, based on the findings of this paper, would aid the country in its quest to attain internationally acceptable safety standards in a number of ways. Such legislation, it is recommended, should provide for an in-house legal department as well as allow for the authority to retain fees collected from the numerous charges such as licensing fees, airport charges and the like in order to increase the authority's funding.

It would be further recommended that the government and the aviation authority tap into the numerous programs and initiatives available to states in need of help in relation to attainment of international safety standards.

## **5.4 CONCLUSION**

The aviation industry is growing in Zambia and aviation safety must be achieved and maintained as a matter of public policy if not for any other reason.

Clearly, uniformity is key to safety in aviation and with the interdependence of today's global economy, Zambia, like other states, does not have much choice but to strive towards international compliance which would also work to its own benefit.

Zambia's current aviation laws leave much to be desired and supplementing these archaic laws with circulars that have no binding force puts the lives of the travelling public at risk and also leaves the country in a position of uncertainty on the international plane.

Credit must be given to the Zambia Department of Civil Aviation which has exhibited the will to keep the Zambian aviation industry afloat despite the numerous problems and impediments it currently faces.

The government must take a keen interest in the development of civil aviation in the country, beginning with the laws required for its orderly development in order to have a more efficient aviation authority. In most cases, it must take a tragic event for quick action to be taken to make a change that should have been made long ago. The government must not wait until a tragic accident occurs or a Zambian airline or even the aviation department is blacklisted by other states or ICAO before it acts to implement the much needed changes to the existing laws. An enabling environment is much need and this can only be provided by the government.

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