
**REGIONAL SAFETY OVERSIGHT ORGANISATION:
SERVICE PROVIDER OR MORE?**

THE CASE OF THE PACIFIC AVIATION SAFETY OFFICE

by

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SYNOPSIS

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A B S T R A C T

This article analyses the current and potential future role of the Pacific Aviation Safety Office (PASO), including the organization's mandate, legal and regulatory background, operational issues, and current reform efforts. In assessing the potential future role of the organisation, this article explores the development of other regional formations and different operating models to consider. It concludes with a set of recommendations for the organisation to enable it to improve air safety standards in the Pacific Islands and maintain its relevance.

R É S U M É

Cet article analyse le rôle actuel et futur de l'Office de la sécurité aérienne du Pacifique. Il traite, notamment, de son mandat, son cadre juridique et réglementaire, de certaines questions opérationnelles ainsi que des efforts de réforme actuels. Afin d'évaluer le rôle éventuel de cette organisation, le texte suivant examine le développement de divers organismes régionaux et évalue les différents modèles d'exploitation pouvant être adoptés. Le texte se termine avec une série de recommandations pour l'Office afin de lui permettre d'améliorer les normes de sécurité aérienne dans les îles du Pacifique et de maintenir son rôle important à cet effet.

KEYWORDS:

safety, security, ICAO, regional safety oversight organization, Chicago Convention, regionalisation, PASO, The World Bank, the Pacific Islands,

I. INTRODUCTION

Contracting States to the Convention on International Civil Aviation (Chicago Convention) agreed to abide by certain principles in order to ensure the safe and orderly conduct of air transport and related services.¹ Subsequently, the International Civil Aviation Organization (ICAO), which is mandated by the Chicago Convention to implement and monitor measures to guarantee safety of air transport operations, has developed safety standards thorough the issuance of Standards and Recommended Practices (SARPs) contained in the annexes of the Chicago Convention. The currently 19 annexes cover a large field of air transport operations, and address many different aspects of aviation including safety and security. Compliance with these standards, including implementation and enforcement, remains the responsibility of Contracting States. While a Contracting State has the possibility of notifying ICAO that they find it impractical to comply with a specific new or amended standard,² ICAO audits the compliance of each Contracting State in terms of safety within the so called Universal Safety Oversight Audit Programme (USOAP) Continuous Monitoring Approach (CMA) which migrated from the Comprehensive Systems Approach (CSA), and in terms of security within the so called Universal Security Audit Programme (USAP).³

¹ *Convention on International Civil Aviation*, 7 December 1944, 15 UNTS 295, ICAO Doc 7300/9, art 3. [*Chicago Convention*].

² *Ibid*, art 38.

³ *Establishment of an ICAO Universal Safety Oversight Audit Programme, Assem.universal safety oversight audit programme*, ICAO Assembly Res A32-11, 32nd Sess, ICAO Doc 10022, I-90,

The overall results of both audits have revealed that many Contracting States have not established effective safety oversight regime and are not complying with a large number of safety and security related SARPs, which creates the risk for unsafe conditions in the aviation sector.⁴ One of the main causes for poor compliance, next to the absence of high-level government commitment, is the fact that many smaller States experience low levels of aviation activities with competing demands for resources from other sectors, which results in a lack of funding for adequate oversight.

To address the oversight challenges of small countries with low traffic, ICAO held several events on the establishment of Regional Safety Oversight Organizations (RSOO), which resulted in guidance on how to set-up such organisations. For example, a symposium held at ICAO in Montreal in October 2011 led to new guidance of financing RSOO in the Safety Oversight Manual.⁵ The trend of regionalisation in oversight of air transport, manifested through the formation of RSOOs, is designed to assist States in meeting these obligations through the pooling of resources, the delegation of oversight functions, and the harmonisation of regulations. Nevertheless, the concept of providing regional oversight is not entirely new, as certain predecessor organisations were established some decades ago.⁶

online: ICAO <http://www.icao.int/publications/Documents/10022_en.pdf>.

⁴ ICAO, *Safety Oversight Manual: Part B: The Establishment and Management of a Regional Safety Oversight Organization*, Second Edition ICAO Doc 9734-AN/959, 2nd ed (Montreal: ICAO, 2011) at 1-1, online: ICAO <http://www.icao.int/safety/Implementation/Library/9734_partb_cons_en.pdf> [*Safety Oversight Manual*].

⁵ Symposium on Regional Safety Oversight Organizations (RSOOs) held at the ICAO Headquarters in Montreal - Canada, from 26 to 28 October 2011.

⁶ COCESNA, the Central American Air Navigation Service Provider, which includes ACSA (*Agencia Centroamericana de Seguridad Aeronáutica*, or the Central American Agency for Aviation Safety), a safety agency supporting the civil aviation authorities in the region, was founded in 1960.

The Pacific Islands States consist of 15 sovereign States and two associated States of New Zealand.⁷ With the exception of Australia and New Zealand, most of the States are very small, less developed, and often scattered over numerous islands and large distances.⁸ Nevertheless, given the rising importance of tourism, air transportation has become the most important mode of transportation for access to and within these remote tourism markets.⁹ The development of any sustainable aviation system depends on an adequate regulatory oversight, which complies with the principles of the Chicago Convention and the standards and recommended practices in its annexes. However, according to ICAO USOAP results, in all Pacific Island States, except Australia and New Zealand, compliance with ICAO SARPs is significantly below the global average and comparable with an average only seen in sub-Saharan Africa.¹⁰

Given the abovementioned realities of small remote island States

⁷ Australia, Fiji, Kiribati, Marshall Islands, Federated States of Micronesia, Nauru, New Zealand, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, East Timor (Timor-Leste), Tuvalu, and Vanuatu. Niue and the Cook Islands are associated to New Zealand.

⁸ The Pacific Islands comprise 20,000 to 30,000 islands in the Pacific Ocean. Many of these islands, however, are not inhabited, and most countries have a very small population (e.g. the population of Nauru was 10,084 in 2011). Kiribati, for example, consists of 32 atolls and one island which are scattered over all four hemispheres in an area of ocean equivalent in size to the continental United States.

⁹ Tourism's direct and indirect contribution to Gross Domestic Product has reached 45% in Vanuatu, 30% in Fiji, and 17% in Tonga and Samoa.

UNWTO, *20th Session of UNWTO General Assembly, Tourism and Air Transport Policies – Background paper for the General Debate*, (Victoria Falls, Zambia/Zimbabwe UNWTO, August 2013), online: UNWTO <http://dtxqtq4w60xqpw.cloudfront.net/sites/all/files/pdf/background_paper_tourism_air_transport_policies_unwto_ga20_rev1.pdf>.

¹⁰ The World Bank, *Project Appraisal Document on Proposed IDA Grants in the Amount of SDR 14.5 million (US\$ 22.91 million equivalent) to the Republic of Kiribati; in the Amount of SDR 17.2 million (US\$ 27.21 million equivalent) to the Kingdom of Tonga; and in the Amount of SDR 7.5 million (US\$ 11.85 million equivalent) to Tuvalu*, Report No 65353-EAP (2011), Figure 1 at 4.

that struggle to comply with international aviation standards and lack the required resources and technical capacity, grouping the efforts into regional entities is the only feasible way. The Chicago Convention, however, provides in Article 1 that each Contracting State has complete and exclusive sovereignty over the airspace above its territory. With this right comes a set of obligations that aim at ensuring safe operations. These include the establishing and maintaining uniform regulations (Article 12, Rules of the Air), the issuance of airworthiness certificates (Article 31), licensing crew (Article 32), and the adoption of international standards and procedures (Article 37). Given these rights and obligations, a Contracting State to the Chicago Convention needs to decide how to comply in the best and most efficient way. Pooling resources in a regional organisation could definitely be a feasible way forward, but this implies that a State clearly determines if it assigns certain responsibilities to a regional entity (e.g. issuing airworthiness certification) or if it only uses the pooled resources merely as a service provider. As a service provider, the regional body executes some of the States' own regulatory oversight duties (e.g. calling a flight inspector for a crew check) and reports the outcome, but the responsibility for the task remains with the State. Alternatively, a RSOO could be assigned the authority for certain oversight functions and certifies the result (e.g. the issuance of an airworthiness certificate).

The greatest challenge concerning the establishment of regional oversight organisations, as several recent examples have shown, is assuring adequate and sustainable financing. On-demand payments for services needed and financial contributions through annual subscriptions have proven to be difficult models, as governments of Member States of such organisations change and new priorities emerge that may advocate other relationships and dependencies. Against this backdrop, Pacific Island States had to find a durable solution to comply with their oversight obligations.

II. THE ESTABLISHMENT OF REGIONAL SAFETY OVERSIGHT ORGANISATIONS (RSOOS)

Article 37 of the Chicago Convention provides that:

each contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, personnel, airports, airways, and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.¹¹

As mentioned above, regional collaboration mechanisms, including the establishment of regional aviation safety agencies, have existed for decades. However, given that many smaller and lesser developed States continued to severely lag behind the global average in compliance with safety oversight standards, ICAO held a series of conferences and fora in order to define and promote the establishment of Regional Safety Oversight Organizations (RSOOs).¹² Furthermore, ICAO had already defined and encouraged the establishment of a RSOO system in the first edition of its Safety Oversight Manual in 2006.¹³ In 2011, it enhanced the insight about RSOOs by listing various examples of RSOOs with a special focus on legal and financial issues in the second edition. The development of RSOOs aims to assist States in meeting their obligations

¹¹ *Chicago Convention*, *supra* note 11, art 37.

¹² These included the Directors General of Civil Aviation Conference on a Global Strategy for Safety Oversight (2006), the 36th Session of the ICAO Assembly (2007), the EC-ICAO Symposium on Regional Organizations (2008), the ICAO Council Group on Regional Bodies (2009), the High-Level Safety Conference (2010), and the 37th Session of the ICAO Assembly (2010).

¹³ ICAO, *Safety Oversight Manual: Part B: The Establishment and Management of a Regional Safety Oversight System*, ICAO Doc 9734, First Edition, AN/959, 1st ed (Montreal: ICAO, 2006), online: ICAO <http://www.icao.int/safety/fsix/Library/Doc9734_Part_B.pdf>.

under the Chicago Convention, and ICAO has actively supported RSOOs for several years. For example, ICAO Resolution 37-8, on regional cooperation and assistance to resolve safety-related deficiencies, which was passed at the 37th Assembly of ICAO, formally directs the Council of ICAO to:

continue to partner with Contracting States, industry and other stakeholders for coordinating and facilitating the provision of financial and technical assistance to States and subregional and regional safety and safety oversight bodies, including regional safety oversight organizations, in order to enhance safety and strengthen safety oversight capabilities.¹⁴

RSOOs can vary in terms of structure, level of integration, and delegated authority, however they fundamentally share a common *raison d'être*: to help ensure members operate in accordance with ICAO standards.¹⁵ This implies that RSOOs can assist members through the provision of expert advisory and consultative services on safety oversight, the provision of technical assistance, and the execution of oversight services.¹⁶ The conduct of oversight functions by an RSOO is provided only at the request and with the consent of the States, as it requires a formal delegation of functions and authority from the States to the organization. In such a situation, the RSOO acts as an “agent” of the Member States, which are the “principals”, however, the ultimate responsibility of meeting oversight obligations remains with the States.¹⁷

¹⁴ *Regional cooperation and assistance to resolve safety-related deficiencies*, ICAO Assembly Res A37-8, 37th Sess, ICAO Doc 9958, I-92 at I-93, online: ICAO <http://www.icao.int/publications/Documents/9958_en.pdf>.

¹⁵ Regional cooperation can take place through a number of forms, from intergovernmental organizations such as the Pacific Aviation Safety Office (PASO), to less formalized arrangements under ICAO's Cooperative Development of Operational Safety and Continuing Airworthiness Programme (COSCAP); *Safety Oversight Manual*, *supra* note 4.

¹⁶ *Ibid.*

¹⁷ Ruwantissa Abeyratne, “Ensuring Regional Safety in Air Transport,” (2010) 35 *Air & Space L* 249 at 252.

There is further an understanding that the creation of RSOOs cannot be achieved using a 'one-size-fits-all'¹⁸ approach, particularly given that aviation markets differ greatly in size and complexity.¹⁹ It requires careful planning and execution, including a consideration of a number of technical, financial, and legal factors—for example, the roles and functions of national oversight systems, sources of funding, and political will.²⁰

ICAO encourages the establishment of institutionalised regional structures based on formal legal agreements as it explicitly commits members and better enables the definition and delegation of authority and responsibilities.²¹ When effectively implemented, regional arrangements can help States overcome specific challenges, such as a lack of resources and qualified technical personnel, while helping to harmonise regulatory systems, reduce duplicative functions, create economies of scale, and ensure long-term sustainability and self-sufficiency.²²

However, ICAO recognises that it is important that States commit themselves from the beginning to a well-defined strategy, which

¹⁸ ICAO, *ACAC/ICAO Seminar/Workshop on Regional Safety Oversight Programmes (Rabat, Morocco, 10-12 December 2010/2012): Summary of Discussion*, at para 2.1.7, online: ICAO <http://www.icao.int/MID/Documents/acac_icao/ACAC_ICAO_Summary_of_Discussion.pdf> [Summary of Rabat Discussion].

¹⁹ Marion C Blakey, "Safety in Numbers" (Speech delivered at the Global Summit on Regional Aviation Safety Oversight, Washington, DC, 1 February 2005), online: Federal Aviation Administration

<http://www.faa.gov/news/speeches/news_story.cfm?newsId=6041>. [unpublished].

²⁰ *Summary of Rabat Discussion*, *supra* note 18 at para 2.1.17.

²¹ International organisations can have their own legal personality and can act on behalf of members, as well as provide for own funding through the fees, charges, and external donors. *Safety Oversight Manual*, *supra* note 4.

²² *Ibid.*

includes a comprehensive analysis of the needs of the States involved.²³ Adoption of an effective strategy must be based on understanding the most pressing needs and challenges that Member States face. ICAO recommends the conduct of a gap analysis based on the ICAO USOAP results.²⁴ The result of such a gap analysis, where the lack of safety oversight is analysed against the Contracting States' technical and human capacity, will be the basis for determining how much authority a State will delegate to an RSOO. Another fundamental element for the successful establishment of an RSOO is the need for a common regulatory structure among Member States of an RSOO.²⁵ Member States of an existing or future RSOO must determine and agree on the legislative and regulatory framework, which will govern aviation oversight at the regional level. This entails that aviation regulation be harmonised, which in some cases could involve a lengthy legislative process.

III. THE PACIFIC AVIATION SAFETY OFFICE (PASO)

A. ESTABLISHMENT AND MANDATE

As mentioned above, the Pacific Island region is a remote environment where the aviation sector is a major driver of the economies of its States. Air transportation plays a key role in ensuring connectivity, enabling the import and export of goods, facilitating the tourism industry, and providing support during emergencies such as natural disasters or droughts. Aviation also acts as an important economic driver, as evident in Tonga, where 80 percent of the country's gross domestic product (GDP) is derived from the tourism industry and 95

²³ *Ibid* at para 2.2.1.

²⁴ *Ibid* at para 2.2.4.

²⁵ *Ibid* at para 2.2.5.

percent of visitors arrive and depart by aircraft.²⁶

However, effective safety and security oversight of air transport in the region has been a challenge. Many of the Pacific Island States have historically struggled to implement a safety oversight system which complies with ICAO SARPs. This was repeatedly manifested in poor results in the Universal Safety Oversight Audit Program (USOAP) conducted by ICAO.²⁷ Key areas audited by the USOAP include primary aviation legislation and civil aviation regulations, civil aviation organisation, personnel licensing and training, aircraft operations, airworthiness of aircraft, aircraft accident and incident investigation, air navigation services, and aerodromes and ground aids. Contracting States, which are responsible for implementing the recommendations of the audits, must prepare an action plan for addressing the deficiencies noted in the audit and perform routine inspections after implementation. However, in many cases Pacific Island States did not follow-up after an audit and most of the findings remained pending.

Generally, implementation of SARPs in the Pacific region varies greatly depending on resources, governance structures, and a given country's overall ability to administer and operate a civil aviation system.²⁸ Identified deficiencies in Pacific Island States include, for

²⁶ The Honourable Samiu Vaipulu, Address (Opening Statementstatement delivered at the Council Meeting of the Pacific Aviation Safety Office (PASO), Nuku'alofa, 31 October 2012), online: Ministry of Information and Communications, Tonga <<http://www.mic.gov.to/news-today/press-releases/4123-tonga-hosts-council-meetings-for-pacific-aviation-safety-paso>>. [unpublished].

²⁷ The World Bank, *Pacific Islands - Pacific Aviation Safety Office Reform Project*, Report No PAD532, 3 September 2013, online: The World Bank

<<http://documents.worldbank.org/curated/en/2013/09/18246423/pacific-islands-pacific-aviation-safety-office-reform-project>> [PAD].

²⁸ Pacific Aviation Safety Office, "Pacific Aviation Safety Office (Paso) Regional Approach to Aviation through Harmonised Regulatory Application in the South West Pacific", First Meeting of the Regional Aviation Safety Group - Asia and Pacific Regions (RASG-APAC/1), Agenda Item 3, Working Paper No 23, ICAO Doc RASG-APAC/1 - WP/23 (10-11 October 2011.), online: ICAO

example, noncompliant and outdated legislation and regulation, understaffed civil aviation authorities (CAAs), a lack of qualified technical personnel, and limited capacity to license personnel and certify airlines.²⁹ Given that many of the CAAs in the region have been ineffective in fulfilling their regulatory capacity, the aviation industry has in effect often had to self-regulate.³⁰

Regional cooperation and the potential efficiencies to be gained from pooling together resources created the impetus to collaborate on aviation safety and oversight. The Pacific Aviation Safety Office (PASO) was established in 2004 under the Pacific Islands Civil Aviation Safety and Security Treaty (PICASST)³¹ following a decision made at the Pacific Forum Minister's Meeting in 1998. The organisation was formed with the objective to provide regional aviation safety and security oversight to the Pacific Islands. The signatories to PICASST recognised the challenges Pacific Island States had in meeting their safety oversight obligations under the Chicago Convention, and they wanted to build on the advantages of adopting a harmonised approach across the region. The creation of PASO was supported by the Asian Development Bank (ADB), which provided initial financing to establish the organisation and for training and technical assistance.³²

<http://www.icao.int/APAC/Documents/rasg_apac/rasg_apac/WP23%20PASO%20paper.pdf> [RASG-APAC/1].

²⁹ Asian Development Bank, Independent Evaluation Department, *Pacific Region: Establishment of the Pacific Aviation Safety Office Project: Validation Report*, Reference Number, No PVR-273 (December 2013) at 2, online: Asian Development Bank <<http://www.adb.org/sites/default/files/PVR-273.pdf>>.

³⁰ US/Europe International Aviation Safety Conference, *Summaries, Conclusions & Action Items*, Philadelphia, Pennsylvania, 7-11 June 2004, online: European Aviation Safety Agency <http://www.easa.europa.eu/system/files/dfu/ws_prod-g-doc-Events-Event_Summaries_Conclusions_Actions-_250804.pdf> [US/Europe International Conference].

³¹ *The Pacific Islands Civil Aviation Safety and Security Treaty*, 7 August 2004, 2428 UNTS 377 (entered into force 11 June 2005) [PICASST].

³² In 2005, the Asian Development Bank (ADB) provided a loan in various currencies equivalent to SDR 1,033,000 to the initial Member States of PASO, which were Fiji, Kiribati, Papua New Guinea, Samoa, Solomon Islands, and Vanuatu. Kiribati, Papua New Guinea,

PASO currently consists of 13 Member States, which include the Cook Islands, Kiribati, Nauru, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu, and, as non-voting members, Australia, Fiji, and New Zealand. The organisation's main purpose is to provide technical assistance, and to conduct aviation safety and security regulatory tasks as requested by, and agreed with, any participating Member State.³³ As laid out in Article 3 of PICASST, Member States have agreed to cooperate on the main obligations for regulatory oversight: Airworthiness, Flight Operations, Airports, Security, and Personnel Licensing.³⁴ The main functions currently undertaken by PASO include routine inspection, audit, and advisory services to Member States.³⁵ In additional output, the organisation prepares recommendations and guidance material to help members meet compliance.

One main advantage is that through PASO, oversight services that require third party contributions can now be procured centrally.³⁶ The key challenge in the Pacific Island region is that many Members States do not have qualified inspectors for aviation safety oversight.³⁷ In the past, they had to rely on external assistance from stakeholders with more

Samoa, and Vanuatu were the guarantors of the ADB loan. *Loan Agreement between Pacific Aviation Safety Office and Asian Development Bank*, 27 October 2005, Loan No 2183-Reg,REG(SF), online: Asian Development Bank

<<http://www.adb.org/sites/default/files/projdocs/2005/37449-01-REG-SFJ.pdf>>.

³³ PICASST, *supra* note 31, art 7.

³⁴ *Ibid*, art 3.

³⁵ RASG-APAC/1, *supra* note 28.

³⁶ As specified in Article 8 of PICASST, inspectors are authorised to conduct surveillance, data gathering, and other activities to facilitate appropriate regulatory oversight. PICASST, *supra* note 31, art 8.

³⁷ Under Article 1(e) of PICASST, "Inspector" is defined as a person appointed or recruited by the Pacific Aviation Safety Office to undertake inspection duties. *Ibid* at , art 1(e).

advanced capabilities as a result.³⁸ PASO's current oversight work is carried out on behalf of the respective CAAs. One report estimated that 80 percent of these services are for industry organisations (e.g., operators wishing to be certified) with demand varying from country to country (most are from Papua New Guinea).³⁹ In some cases, operators who use PASO for services pay the organisation directly.⁴⁰ The intention behind setting up PASO was that it would perform certain critical oversight functions that individual States were not able to satisfactorily perform on their own.⁴¹

B. LEGAL AND REGULATORY BACKGROUND

The Pacific Islands Civil Aviation Safety and Security Treaty provides the legal framework for PASO, outlining the organisation's mandate, scope, and functions. The organisation was created in line with ICAO's framework and guidance on the Establishment and Management of a Regional Safety Oversight Organization (RSOO).⁴² Pursuant to Article 1 and 2 of the Chicago Convention and Article 2 of PICASST, each party maintains complete and exclusive sovereignty of its own airspace and territory and maritime territory. Although certain oversight functions can be delegated to PASO, members still remain accountable for meeting their safety and security obligations under the Convention and continue to operate their civil aviation agencies (CAA)

³⁸ For example, ADB identified New Zealand as the lowest-cost alternative provider of services. KI Murray, RIC Bartsch & MM Foon, *Legal and Technical Review Report for the Pacific Aviation Safety Office*, August 2007, online: AVLAW Consulting <<http://avlaw.com.au/Legal%20and%20Technical%20Review%20PASO.pdf>>.

³⁹ Kim Murray & Michael Murray, *Technical Assistance Consultant's Report: Regional: Institutional Strengthening for Aviation Regulation*, Asian Development Bank, Project No 43429, February 2014, online: Asian Development Bank

<<http://www.adb.org/sites/default/files/projdocs/2014/43429-012-tacr-01.pdf>>.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Safety Oversight Manual*, *supra* note 4.

independently.⁴³

The organisation provides a platform for the harmonisation of regulations and standards. Regional harmonization of aviation safety and oversight can be achieved by adopting or adapting a common and consistent legislative approach, thereby better positioning members to comply with SARPs.⁴⁴ In the case of PASO, Members States use the New Zealand Civil Aviation Rules⁴⁵ as the regulatory model, either modifying their domestic civil aviation law from it or adopting it wholly.⁴⁶ Some PASO Members States have had a long experience using the New Zealand rules and modelled their primary legislation accordingly. However, many lack the financial or technical resources to address the required legislative mechanisms.⁴⁷ PASO countries therefore remain at various stages of implementation and compliance with international standards and practices, but most still have many issues to address.⁴⁸

⁴³ PICASST, *supra* note 31, art 5(a).

⁴⁴ RASG-APAC/1, *supra* note 28.

⁴⁵ New Zealand has been a major supporter of PASO since its establishment, contributing to technical assistance, capacity building, and training efforts. A Memorandum of Cooperation (MOC) was signed between the New Zealand CAA (CAANZCAA NZ) and PASO in 2005, with agreement to cooperate in the exchange of information, systems, and procedures to allow PASO members to develop aviation safety and security regulatory structures with minimal variations: see. See *Memorandum of Cooperation between the Pacific Aviation Safety Office (PASO) and The Civil Aviation Authority of New Zealand (CAANZCAA NZ)*, 3 February 2005, online: CAANZCAA NZ

<http://www.caa.govt.nz/international/MOU_between_PASO_CAA.pdf>. Another working arrangement with CAANZCAA NZ was signed on 14 June 2011 to supplement the MOC, which includes procedures for CAANZCAA NZ to provide PASO with inspectors at a charge. Similar working arrangements have been signed with the Civil Aviation Authority of Australia (CASA); see also Murray & Murray, *Technical Assistance Consultant's Report*, *supra* note 39.

⁴⁶ Murray, Bartsch & Foon, *supra* note 38 at 28.

⁴⁷ RASG-APAC/1, *supra* note 28.

⁴⁸ PAD, *supra* note 27.

C. OPERATIONAL ISSUES AND REFORM EFFORTS

PASO has faced a number of financial, organisational, and operational challenges since its inception. The main challenge has been the low and inconsistent utilisation of services by Member States. PASO's main instruments of engagement are Service Level Agreements (SLAs), which are signed between Member States and PASO, and define the services to be provided by PASO. However, not all Member States have signed SLAs, which means that for some Member States there are no contractual agreements in place to use the organisation for oversight services.⁴⁹ PASO also faced the challenge of competition from alternative service providers, including from the CAAs of Australia and New Zealand that provided technical assistance to some PASO Member States. As a result, some Pacific Island States have not been incentivised to use services from PASO.⁵⁰ Moreover, in some cases even PASO had to contract personnel from New Zealand's CAA to answer service requests from Member States for which they did not have the necessary skills to carry out.

Given the limited usage of PASO's services in the past, the office has operated at a loss since it was established in 2004.⁵¹ Over time, it became apparent that PASO was financially unsustainable, and the current subscription-based and fee-for-service business model had to be questioned. The situation was aggravated by the inability of members to pay subscription fees on time, and by the high cost structure of PASO as a result of its remote and costly location.⁵² These realities have impacted the ability of Pacific Island States to complete their annual aviation oversight work plans and obligations. Furthermore, several States were

⁴⁹ Murray & Murray, *Technical Assistance Consultant's Report*, *supra* note 3939.

⁵⁰ *Ibid.*

⁵¹ PAD, *supra* note 27.

⁵² PASO is based in Port Vila, Vanuatu. The cost of living there is comparatively high, and access by air is relatively expensive.

unable to complete a larger set of recommended oversight activities following an ICAO audit, as well as regulatory training and education programs.⁵³

Another problem of PASO is the fact that the organisation has struggled with governance and oversight issues due to a lack of qualified technical personnel.⁵⁴ PASO's Council, which is made up of representatives from several CAAs, was often staffed with personnel who lacked the necessary qualifications and experience in the field to provide effective leadership.⁵⁵ Furthermore, some representatives to PASO did not necessarily hold the financing authority in their respective countries to ensure that commitments to the organisation were honoured.⁵⁶ This was aggravated by the fact that many States were facing severe budgetary constraints which, when combined with a general lack of political will, made prioritising aviation oversight—by engaging with PASO—very difficult.⁵⁷

A number of operational issues at PASO have also been identified. These included inadequate financial and administrative management, document filing issues, and problems with the ICT systems, all of which have resulted in poor communications and substandard data collection and analysis.⁵⁸ It was subsequently recognised that resolving these managerial, administrative, and operational issues will depend on the organisation's ability to establish and maintain adequate and sustainable

⁵³ RASG-APAC/1, *supra* note 28.

⁵⁴ *Ibid.*

⁵⁵ Karina Guthrie, "South Pacific Civil Aviation Safety and Security Through Regionalism: New Initiatives for the Pacific Aviation Safety Office" (2010) 5 *Journal of Policing, Intelligence and Counter Terrorism* 58 at 59.

⁵⁶ Murray & Murray, *Technical*, *supra* note 39.

⁵⁷ RASG-APAC/1, *supra* note 28.

⁵⁸ PAD, *supra* note 27.

funding.⁵⁹

To address some of these highlighted challenges, in 2013 the World Bank prepared a project to support the organisation in the implementation of a newly adopted business plan. The project's overall goal is to "ensure effective regional delivery of aviation safety and security oversight in Pacific Island Countries by strengthening the Pacific Aviation Safety Office's technical and coordination capacity".⁶⁰ An International Development Association (IDA) grant of US\$ 2.15 million for PASO was approved by the World Bank's Board in September 2013. In addition, complementary funding in support of this project was received from other donors, particularly from Australian Aid, the Australia's Department of Foreign Affairs and Trade aid programme, and through the Pacific Region Infrastructure Facility (PRIF).⁶¹

The World Bank's grant finances reform efforts at PASO that are focusing on three main components: (i) provision of transitional management and support, which includes restructuring, organizational change, governance, management, and financing issues, (ii) the establishment of a pool of regional aviation inspectors in order to oversee aviation safety and security and provide necessary training, and (iii) introducing quality management to ensure quality assurance by improved information technology and document management systems.⁶²

⁵⁹ Murray & Murray, *Technical Assistance Consultant's Report*, *supra* note 39.

⁶⁰ Note, the World Bank is also investing heavily in the Pacific region through the Pacific Aviation Investment Program (PAIP);). See *PAD*, *supra* note 27.

⁶¹ The Pacific Region Infrastructure Facility (PRIF) is multi-partner investment coordination and technical facility initiated in 2008. It is designed to foster a coordinated approach to infrastructure planning and development in the Pacific. Major donors include AusAid, NZAID, the Asian Development Bank, and the World Bank Group.

Pacific Region Infrastructure Facility, online: About PRIF <
<http://www.theprif.org/index.php/about-prif-full>>.

⁶² *PAD*, *supra* note 27.

Beyond these operational issues, there were a number of other critical factors identified that are affecting the viability of PASO. The most complex one is national pride and regional politics, however, as such challenges exist in most regional structures, they are not explored further in this article.

Overall, the sustainability and relevance of PASO will depend greatly on the commitment and engagement of its members and their utilisation of its services. Failure to meet required safety standards could have wider implications for the region in the future.⁶³ In order to generate funds to finance PASO services, some, but not all, Member States have agreed to implement a minimum AU\$ 5 safety and security levy on every departing international passenger. A portion of the revenues gained from the levy is earmarked for safety oversight activities. Currently, this levy is being imposed by Tonga, while Kiribati and Tuvalu are in the process of making the necessary arrangements.⁶⁴

IV. OTHER REGIONAL SAFETY OVERSIGHT ORGANIZATIONS (RSOOs)

In considering PASO's role and relevance within the aviation system, it is necessary to examine the development, mandate, and functions of other RSOOs.⁶⁵

⁶³ Guthrie, *supra* note 55.

⁶⁴ PAD, *supra* note 27 at 9.

⁶⁵ Only a select few RSOOs are analysed here. A comprehensive list of RSOOs can be found: "RSOOs and COSCAPs", online: ICAO

<<http://cfapp.icao.int/fsix/coscaps.cfm>>.

A. EUROPEAN AVIATION SAFETY AGENCY (EASA)

The European Aviation Safety Agency (EASA) is considered to be the most advanced RSOO in terms of oversight functions and delegated authority. An agency of the European Union (EU), it was formed in 2004 when it absorbed the functions of the former Joint Aviation Authorities (JAA). EASA members include all Member States of the European Union (EU), as well as some non-EU countries.⁶⁶ The mission of EASA is to promote the highest common standards of safety and environmental protection in civil aviation in Europe.⁶⁷ As the safety regulator and advisory body for civil aviation in Europe, it is an independent authority on technical matters and has legal, administrative, and financial autonomy in the EU structure.⁶⁸ The organisation is funded through the European Union (23 percent of its budget comes from the EU budget), and fees charged for services and training provide the main part of its funding (71 percent of the budget is paid by EU industry and 6 percent comes from others/third country contributions).⁶⁹

EASA maintains oversight standards by conducting inspections of Member States and by adopting a continuous and risk based monitoring

⁶⁶ Current EASA Member States include Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, The Netherlands, and the United Kingdom.

European Aviation Safety Agency, online: Member States < <http://easa.europa.eu/the-agency/member-states>>.

⁶⁷ EC, *Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC*, [2008] OJ, L 79/1 [Regulation 216/2008]. See also EASA, "The Agency", online: European Aviation Safety Agency <<http://easa.europa.eu/the-agency>>.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

approach.⁷⁰ The agency's responsibilities include providing technical advice to the EU for drafting new legislation, implementing and monitoring safety rules including inspections and training in Member States, issuing airworthiness and environmental type-certification of aeronautical parts, products, and appliances, providing approval of aircraft design and maintenance organisations, and conducting safety analysis and research.⁷¹ In line with a so called 'total system approach', EASA's remit has expanded progressively over time.⁷² The organisation's initial competencies were limited only to airworthiness and matters of environmental compatibility.⁷³ This was further expanded to include flight crew licensing, operation of aircraft, and safety of third country aircraft.⁷⁴ Finally, EASA was also mandated to issue regulations on safety of aerodromes and air traffic management and air navigation services.⁷⁵ Only state, military and aircraft for policing missions remain outside the organisation's scope.

⁷⁰ Norbert Lohl, "General Update on the European Aviation Safety Agency" (Presentation delivered at the Cooperative Development of Operational Safety & Continuing Airworthiness Programme COSCAP-Gulf States (COSCAP-GS) Conference, Dubai, United Arab Emirates, 9-10 March 2014), online: Cooperative Development of Operational Safety & Continuing Airworthiness Program COSCAP-Gulf States <http://www.coscap-gs.org/4_EASA_Conference_2014_Update.pdf> [Update on EASA]unpublished].

⁷¹ *Ibid.*

⁷² A "total system" approach, based on the fact that different aviation system components (e.g., products, operators, personnel) are part of a single network, is designed to eliminate any risks or safety gaps and streamline regulation. Patrick Goudou, "Single European Sky: The Role of EASA", *Skyway Magazine* 52 (Summer & Autumn 2009) 34, online: Eurocontrol

<<<http://www.eurocontrol.int/sites/default/files/publication/files/2009-Summer%26Autumn-Skyway52.pdf>>.

⁷³ Defined by EC, *Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency*, [2002] OJ, L 240/1.

⁷⁴ Defined by *Regulation 216/2008*, *supra* note 67; amended by EC, *Regulation (EEC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services and repealing Directive 2006/23/EC*, [2009] OJ, L 309/51. [Regulation 1108/2009].

⁷⁵ Defined by *Regulation 1108/2009*, *supra* note 74.

EASA has jurisdiction for the issuance of type certificates, which are valid across the EU without the need for individual national approvals, which greatly facilitates the launch of new aviation products by the industry.⁷⁶ EASA also undertakes certification and approval tasks in cases where centralising it is deemed more beneficial, for example the certification of third-country foreign organisations providing aviation related services within the EU.⁷⁷ The agency's authority further extends to the approval of changes and repairs of aeronautical products and their components.⁷⁸ The agency is finally mandated to help foster international cooperation through working agreements with other countries and RSOOs.⁷⁹

EASA operates in a two-layer system where responsibilities are shared between the agency and Member States. National CAAs retain responsibility for the execution and implementation of EU rules at the national level, including the approval of production, maintenance, and training organisations within their country, as well as for the issuance of airworthiness certificates for individual aircraft registered in their country.⁸⁰ However, EASA plays an important role at the regional level by helping implement ICAO SARPs by harmonising regulations, which are often called "soft law" (for example, Acceptable Means of

⁷⁶ Approximately 3,741 type certificates (TCs) were issued by EASA in 2013, with almost one third being for TCs for new derivatives, major changes, and major repairs. 382 Airworthiness Directives (ADs) were issued in 2013; see also *EASA*, *supra* note 67.

⁷⁷ *Ibid.*

⁷⁸ Ruwantissa Abeyratne, *Convention on International Civil Aviation: A Commentary* (London, UK: Springer International, 2014) [Abeyratne, *Commentary*].

⁷⁹ *EASA*, *supra* note 67.

⁸⁰ Jean-Bruno Marciacq, "Accommodating Sub-orbital and Orbital (SOA) Flights in the EU" (Presentation delivered at the 6th IAASS Conference, McGill University, Montreal, Canada, 22 May 2013); online: Sixth IAASS Conference <http://iaassconference2013.space-safety.org/wp-content/uploads/sites/19/2013/06/1400_Marciacq_28191761.pdf>. [unpublished].

Compliance, Guidance Material, Certification Specifications). It is further contributing to the development of common Implementing Rules (IRs) for adoption by the European Commission.⁸¹ The main rationale behind maintaining a pan-European RSOO is to simplify regulations and streamline procedures to increase effectiveness, standardisation, and overall safety in the region.

B. EAST AFRICAN COMMUNITY AND THE CIVIL AVIATION SAFETY AND SECURITY OVERSIGHT AGENCY (CASSOA)

The East African Community (EAC) consists of Burundi, Kenya, Rwanda, Uganda, and Tanzania. Its aviation safety agency, the East African Community Civil Aviation Safety and Security Oversight Agency (CASSOA) was established by Kenya, Tanzania, and Uganda in 2007 with a mandate to promote aviation safety and security, and to assist member States in meeting their aviation safety and security obligations.⁸² Through the formation of CASSOA, the EAC also made a commitment to implementing the Yamoussoukro Decision for the liberalisation of air services in the region, particularly with regard to the harmonisation of aviation legislation.⁸³

While CASSOA is not an enforcement agency, it aims to harmonise aviation regulations across EAC States in order to improve compliance

⁸¹ *Ibid.*

⁸² East African Community, Civil Aviation Safety and Security Oversight Agency (CASSOA), *First 5-Year Strategic Plan 2010/11- - 2014/15* (201013 November 2009), online: CASSOA <<<http://www.cassoa.org/index.php/key-documents/strategic-plan/file>>> [CASSOA Strategic Plan].

⁸³ *Ibid.* See *Decision Relating to the Implementation of the Yamoussoukro Declaration Concerning The Liberalisation of Access to Air Transport Markets in Africa*, Economic Commission for Africa, UN ESC, UN Doc ECA/RCID/CM.CIVAC/99/RPT, Annex I, (1999), online: African Civil Aviation Commission

<<http://www.afcac.org/en/documents/conferences/July2012/yde.pdf>>.

with aviation safety standards. CASSOA shares a tripartite relationship with the CAAs of the Member States and with the EAC. As such, it is able to provide CASSOA a forum for planning and implementation of common measures for developing safe civil aviation. It further assists States in meeting their regulatory oversight obligations, while the EAC develops policies, legislations, and programs targeted at widening and deepening cooperation among Member States. However, EAC Member States generally remain responsible for oversight functions including certification, licensing approval, and enforcement.⁸⁴

Article 92 of the East African Community (EAC) Treaty⁸⁵ outlines the agency's functions and mandate, which include harmonisation of regulations, development of standardized procedures for licensing, approving, certifying, and supervising civil aviation activities, and the provision of technical guidance and assistance to States.⁸⁶ To date, CASSOA has developed several harmonised regulations in the areas of personnel licensing, flight operations, airworthiness, aerodromes, air navigation services, aviation security, and accident investigations.⁸⁷ It also provides continued guidance and recommendations to facilitate compliance in these areas. The organisation plays an important role in developing consensus among members, coordinating activities, and sharing technical expertise and facilities to achieve effective oversight of

⁸⁴ Aviation and Allied Business Leadership Conference, "Improving Oversight in Africa from Regional Perspective: Lessons from CASSOA" (Presentation delivered at the 17th Leadership Conference, 28-30 August 2011, Dar es Salaam, Tanzania) at 9, online: Aviation and Allied Business Journal

<<http://www.aviationbusinessjournal.aero/media/16748/mtesigwa%20maugo.pdf>> [unpublished].

⁸⁵ *Treaty for the Establishment of the East African Community*, 30 November 1991/1999, 2144 UNTS 255 (entered into force 7 July 2000).

⁸⁶ The East African Community & the Civil Aviation Safety and Security Oversight Agency (CASSOA), "Aviation Safety and Management of Aviation Security in the East African Community (EAC) Region" (Presentation delivered at the EU-Africa Aviation Conference, Windhoek, Namibia, 2-3 April 2009), online: European Commission <http://ec.europa.eu/transport/modes/air/events/doc/eu_africa/session_3_cassoa.pdf> [unpublished] [*EU-Africa Aviation Conference*].

⁸⁷ Annexes 1-19 excluding Facilitation (Annex 9) has been harmonised under CASSOA.

civil aviation.⁸⁸

It is envisioned that the institution will evolve to take on a more authoritative role whereby CAAs would start delegating part of their functions and responsibilities such as the licensing, approval, and certification of personnel and aeronautical products based on a common regional framework.⁸⁹ However, the organization has not yet reached its full potential as a regional oversight organization.⁹⁰ CASSOA continues to struggle with inadequate technical capacity, notably a shortage of inspectors. While the region has to cope with poor aviation infrastructure and many safety concerns, the agency continues to deal with a number of challenges of its own including financial constraints, retention of technical staff, and a lack of political will to strengthen its authority.⁹¹

C. CENTRAL AMERICAN AGENCY FOR AVIATION SAFETY (ACSA)

The Central American Agency for Aeronautical Safety (ACSA) was created as an RSOO in 2000 by leveraging the existing regional structure of the Central American Corporation for Air Navigation Services (COCESNA), the regional air navigation services provider. Member States of COCESNA include Belize, Guatemala, El Salvador, Honduras, Nicaragua, and Costa Rica. As a subsidiary body of COCESNA, the agency was created to strengthen regional capability of safety oversight and support standardised compliance with international civil aviation standards through recommending, advising, guiding and facilitating its

⁸⁸East African Community, Civil Aviation Safety and Security Oversight Organization (CASSOA), http://www.eac.int/index.php?option=com_content&view=article&id=81:cassoa&catid=48:cassoa, online: EAC

⁸⁹ *Ibid.*

⁹⁰ CASSOA *Strategic Plan*, *supra* note 82.

⁹¹ EU-Africa Aviation Conference, *supra* note 86.

Member States.⁹²

ACSA is regarded as one of the more robust RSOOs in terms of financial sustainability. However, it is heavily dependent on its parent organisation COCESNA.⁹³ It is financed primarily through COCESNA's operational income, which generates revenue from overflight charges levied on users of its airspace. ACSA focuses on providing adequate regulation, guidelines, training and resources related to safety, surveillance, licensing, and personnel.⁹⁴ During the organisation's initial years, ACSA's mandate was limited to personnel licensing (ICAO Annex 1), operations of an aircraft (ICAO Annex 6), and type design or manufacture of aircraft (ICAO Annex 8). It has since expanded its activities to cover all SARPs.⁹⁵

The agency assists Member States by making recommendations concerning the issuance of certificates of operators, maintenance and training organisations, preparing manuals, guides, and training programs. However, ACSA does not issue such certificates on behalf of its members, as it lacks formal delegation and authority. ACSA further develops action plans and provides required training and assistance for Member States.⁹⁶ To provide technical support, ACSA maintains a roster of experienced experts as it is also responsible for recruitment, training,

⁹² Corporación Centroamericana de Servicios de Navegación Aérea, (COCESNA, Central American Corporation for Air Navigation Services), "About the Organization", online: COCESNA < <http://www.cocesna.org/pagina.php?id=47&lng=0> > [COCESNA].

⁹³ *AFI Safety Summit Action Plan 2012 to 2015*, 16 May 2012, at 1 online: Airports Council International

<<http://www.aci-africa.aero/Media/ACI%20AFR/Events/AFI%20Safety%20Summit%20Action%20Plan%202012%20to%202015.pdf>>.

⁹⁴ Abeyratne, *Commentary*, *supra* note 78.

⁹⁵ COCESNA, *supra* note 92.

⁹⁶ *Ibid.*

and equipping experts to assist Member States in meeting compliance obligations.⁹⁷ Each member country is seconding inspectors to the organisation to perform inspections and to oversee operations of airlines and maintenance facilities in the region.⁹⁸ A technical working group, composed of each member's civil aviation minister, further contributes to policy guidelines. However, all the above mentioned oversight and inspection activities by ACSA experts and seconded CAA personnel is ultimately executed on behalf of national CAAs, which in turn issue the appropriate certification (for example, renewal of an air operator certificate). As such, the services provided by ACSA are for the benefit of the CAAs of its Member States while the cost of these tasks are financed, to a large extent, by air traffic control services.

Like other RSOOs, ACSA has encountered a number of challenges as it has sought to expand its reach and functions. One of the major challenges has been developing trust among stakeholders, which in some cases has manifested through inadequate sharing of information and data.⁹⁹ Going forward, ACSA is evaluating the possibility of becoming an autonomous civil aviation oversight authority, which would require formal empowerment with delegation of authority by Members States.¹⁰⁰

⁹⁷ COCESNA on behalf of its Member States, "Achieving Safety Oversight Compliance through Economies of Scale in Central American Countries", Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety, Theme 1, Topic 1.3, ICAO Doc DGCA/06-IP/11, (6 March 2006), online: ICAO <[http://www.icao.int/Meetings/AMC/MA/Directors%20General%20of%20Civil%20Aviation%20Conference%20on%20a%20Global%20Strategy%20for%20Aviation%20Safety%20\(DGCA-06\)/dgca_06_ip_11_e.pdf](http://www.icao.int/Meetings/AMC/MA/Directors%20General%20of%20Civil%20Aviation%20Conference%20on%20a%20Global%20Strategy%20for%20Aviation%20Safety%20(DGCA-06)/dgca_06_ip_11_e.pdf)>.

⁹⁸ Inter-American Development Bank, *Support for the Strengthening of the Regulatory and Institutional Framework of Air Transport Safety in Central America, Belize, Dominican Republic, Haiti and Panama*, Donors Memorandum, Project No TC0007032-RG (28 November 2000), online: Inter-American Development Bank

<<http://www.iadb.org/en/projects/project-description-title,1303.html?id=TC0007032>>.

⁹⁹ *US/Europe International Conference*, *supra* note 30.

¹⁰⁰ *Ibid.*

D. CARIBBEAN AVIATION SAFETY AND SECURITY OVERSIGHT SYSTEM (CASSOS)

The Caribbean Aviation Safety and Security Oversight System (CASSOS) is a regional aviation organisation encompassing the Caribbean Community (CARICOM), Barbados, Guyana, Saint Lucia, Suriname, and Trinidad and Tobago.¹⁰¹ In total, CASSOS consists of thirteen Member States, with about 300 registered aircraft, 2500 licensed personnel, and 20 international and 120 domestic airports.¹⁰² It was created in 2008 by the Agreement for Establishing the Caribbean Aviation Safety and Security Oversight System,¹⁰³ which was based on CARICOM's authority under Article 21 of the Revised Treaty of Chaguaramas to designate it as an institution of the Community.¹⁰⁴

CASSOS is fully funded by member contributions.¹⁰⁵ As the aviation safety and security agency, it formalises the coordination and sharing of technical expertise and support, and the harmonisation of

¹⁰¹ In 2008, CASSOS succeeded the Regional Aviation Safety Oversight System (RASOS) which was formed in 2001. The mandate was also expanded during this transition from Annex 1, 6, and 8, to include all Annexes of the Chicago Convention. Abeyratne, *Commentary, supra* note 78.

¹⁰² The States are Barbados, Guyana, Haiti, Jamaica, the Organization of Eastern Caribbean States (Antigua and Barbuda, Dominica, Grenada, St. Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines), Suriname and Trinidad and Tobago.

¹⁰³ *Agreement for Establishing the Caribbean Aviation Safety and Security Oversight System (CASSOS)*, 9 May 2008, online: Caribbean Community Secretariat

<http://www.caricom.org/jsp/secretariat/legal_instruments/agreement_cassos.pdf> [CASSOS Agreement].

¹⁰⁴ *Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy*, 5 July 2001, 2259 UNTS 293 (entered into force 4 February 2002).

¹⁰⁵ Article XV provides that revenues of CASSOS shall consist of contributions of State Parties, donations or grants, fees from investigations or training, and royalties from the sale of documents and aviation memorabilia. *CASSOS Agreement, supra* note 103t, art 15.

training, licensing, certification, and inspection procedures, to meet international safety and security standards.¹⁰⁶ The organisation conducts reviews of its members through its pool of experienced inspectors. Results are then used to determine and prioritise regional needs, and to take necessary steps to harmonise regulations.¹⁰⁷ In 2013, for example, the organisation assisted the Guyana Civil Aviation Authority, which lacked an in-house flight operation inspector, in carrying out flight operation inspections. This included monitoring Approved Check Airman (ACA), base inspections of aircraft operators, and the review of documentation for issue or amendment to Foreign Operations Specifications (FOS). Finally, the organisation supports the investigation of aircraft accidents and incidents.

CASSOS theoretically provides the ability of Member States to formally delegate their oversight responsibilities. However, formal delegation of authority CASSOS has not happened so far, and is currently not expected.¹⁰⁸ While the treaty that supports CASSOS and the CASSOS Agreement both mention harmonisation of licensing and certification, each sovereign State remains responsible for its own licensing and certification. CASSOS' assistance through harmonisation and facilitating the sharing of technical inspectorate resources is therefore purely a service provision, as the final authority to enact regulation or issue licenses and certificates remains with the CAAs of the region.

¹⁰⁶ Online: Caribbean Aviation Safety and Security Oversight System (CASSOS), Caribbean Community Secretariat <<http://www.caricom.org/jsp/community/cassos.jsp>>.

¹⁰⁷ *Ibid.*

¹⁰⁸ CASSOS member States, "Caribbean Aviation Safety and Security Oversight System (CASSOS) report): Report of activitiesActivities and progress sinceProgress Since the 37th General Assembly", ICAO Ass, 38th Sess, Agenda Items 14, 17, 30, Working Paper No 328, Doc A38-WP/328/EX/114/TE/145 (17 September 2013) at 3, online: ICAO

http://www.icao.int/Meetings/a38/Documents/WP/wp328_en.pdf [CASSOS, "Caribbean"].

V. MODELS OF REGIONAL SAFETY OVERSIGHT ORGANISATIONS (RSOOS)

RSOOS can be classified into three main archetypes according to their operations, designated functions and authority: service provider; service provider with some delegated authority; and full civil aviation authority.

A. SERVICE PROVIDER

The majority of existing RSOOS function primarily as service providers. Members have the option of delegating oversight tasks to the organization, but the sanctioning of the outcome remains the exclusive responsibility of the member's CAA. PASO, for example, currently carries out audits and inspections on behalf of Members States. National CAAs are then provided with identified deficiencies and necessary measures to be taken to meet compliance, or they endorse certification drafted by PASO (for example, an airworthiness certificate). Nevertheless, the implementation and enforcement of regulations remains under the purview of national CAAs.

Given the lack of capacity and limited resources of many members, CAAs benefit from the technical expertise, training, and services provided through the RSOO which in turn can build on economies of scale by pooling resources. This plays an even more important role, when RSOOS are technically supported by important development partners. CASSOS, for example, has enjoyed intense technical assistance from the Federal Aviation Administration (FAA) of the United States, which included the development of a set of computerised written knowledge examinations that have been

implemented throughout all Member States.¹⁰⁹

B. SERVICE PROVIDER WITH DELEGATED AUTHORITY

When member States of a RSOO operate under common regulations for civil aviation, oversight authority of a CAA can be formally delegated to an RSOO, such as licensing, certification, and approval activities. Currently EASA is the only RSOO to which some authority has been delegated. However, the delegated responsibilities are limited to the relatively narrow field of type-certification of aircraft, components, and design organisations. EASA is further enabled to implement general air safety regulations by harmonising these regulations and enacting them through the legislative powers of the European Commission.

Regulatory supervision and enforcement of EU aviation regulation, however, remains the responsibility of national CAAs as national CAAs continue to play a vital role in meeting oversight requirements. National CAAs also retain responsibilities of oversight areas not covered under the RSOO. In Europe, for example, national CAAs retain the responsibility of Annex II aircraft, aircraft subject to national rather than EASA regulations. This includes, for example, historic aircraft, aircraft design for research or experimental purposes, amateur-built aircraft, and military aircraft, amongst others.¹¹⁰ Although

¹⁰⁹ Ruwantissa Abeyratne, *Strategic Issues in Air Transport: Legal, Economic and Technical Aspects* (Berlin: Springer-Verlag, 2012) at 148. These are a common set of pilot knowledge examinations, and exams for flight operations officers and aircraft maintenance engineers will most likely be developed as well: see CASSOS, "Caribbean", *supra* note 108 at para 1.6.1.

¹¹⁰ Irish Aviation Authority, *Flight Permits and Maintenance of Annex II Aircraft*, Ref (Homebuilt, Classic, Vintage and some Microlights), Reference No 05/11, (27 May 2011), online: Irish Aviation Authority

<[http://www.iaa.ie/media/FlightPermitsandMaintenanceofAnnexIIAircraft\(Homebuilt,Classic,VintageandsomeMicrolights\)1.pdf](http://www.iaa.ie/media/FlightPermitsandMaintenanceofAnnexIIAircraft(Homebuilt,Classic,VintageandsomeMicrolights)1.pdf)>.

certain oversight tasks can be delegated to an RSOO, States must also be able to monitor the functions being delegated to the RSOO as they are held responsible for meeting safety oversight obligations, including harmonising and developing national regulations to meet compliance.¹¹¹

An RSOO's oversight functions may expand over time to include a broader scope of responsibilities. For example, EASA's origins lie in the Joint Aviation Authorities (JAA), essentially a grouping of national CAAs with no rulemaking power. With the formation of EASA, it gained its own legal identity and an expanded mandate with regulatory power, which now also covers airworthiness and environmental type-certification as well as flight operations, personnel licensing, aerodromes, and the safety regulation of air navigation services. Many RSOOs have followed a similar trajectory, with origins in an informal agreement or covering only a limited set of SARPs, before evolving to a broader mandate and/or membership and activities.¹¹²

C. FULL CIVIL AVIATION AUTHORITY

An RSOO with full civil aviation authority does not yet exist, but remains a potential model for the future. This would require an extended formal delegation of authority to empower an RSOO to be a full technical regulator, which could ultimately result in the liquidation of national CAAs which are replaced by a RSOO. Under this model, an RSOO with full civil aviation agency responsibilities would cover all regulatory and supervision functions of a CAA, which includes licensing, certification, and approval activities, monitor performance, as well as enforce compliance with all aviation regulations.

¹¹¹ *Ibid.*

¹¹² Guillermo Iovino, "The Legal Framework of an RSOO" (Presentation delivered at the ACAC/ICAO Seminar/Workshop on Regional Safety Oversight Programmes, Rabat, Morocco, 10-12 December 2012), online: Arab Civil Aviation Commission <<http://www.acac.org.ma/ar/Seminar%20Presentation/PPTRegional%20Safety%20Oversight09.pdf>> [unpublished].

Currently, enforcement rights remain solely with the Director of each national CAA.¹¹³ Such an approach would need to strike a balance with the delegation of oversight authority and a respect for the sovereignty of Member States. Realistically, the extent of activities delegated to an RSOO will be highly dependent on the capabilities and capacity of the organisation as well as the political and legal context in the region.¹¹⁴ Finally, despite the fact that many small and/or lesser developed countries lack of necessary technical skills and do not have the appropriate funding to maintain an effective CAA, dismantling an existing government entity remains politically challenging, especially if enforcement action is delegated to a regional body.

VI. RECOMMENDATIONS FOR THE PACIFIC AVIATION SAFETY OFFICE (PASO)

A. DELEGATION OF OVERSIGHT RESPONSIBILITIES

Given the ongoing operational, governance, and funding challenges facing PASO and the potential benefits for Member States, there is a clear opportunity and demand for progress to be made. As the system stands, the use of PASO for oversight services is provided on-demand and remains underutilised. Members need to be better incentivised to contract PASO for oversight functions. Moreover, the organisation's authority is limited, as annual work plans cannot be carried out and PASO inspectors currently do not have the mandate to undertake compliance or enforcement duties unless specifically

¹¹³ *Safety Oversight Manual*, *supra* note 44 at para 8.30.

¹¹⁴ *Ibid.*

delegated by the Director of Civil Aviation.¹¹⁵

In order to assure that PASO disposes of sufficient qualified technical personnel, the concept of a regional pool of inspectors needs to be further developed and implemented. ACSA in Central America provides a good example where regional inspectors consist of staff of the national CAAs, who are delegated for a specific duration to serve at the RSOO. PASO could in fact establish such a system, which could function “on demand”, where inspectors are called by PASO for specific missions or more “permanent” functions, where they are stationed and work at PASO for a specific duration.

B. SCOPE OF OVERSIGHT RESPONSIBILITIES

Beyond the ongoing reform efforts, PASO’s responsibilities cover only five of the 19 Annexes to the Chicago Convention under its current mandate (airworthiness, flight operations, aerodromes, aviation security, personnel licensing). The 2009 amendment to PICASST would lead to a broader range of services, to include 13 of the 19 ICAO Annexes.¹¹⁶ For the amendment to come into force, support is required from two thirds of PASO members. However, at present, only three States have lodged the amendment (the Cook Islands, Kiribati, and Samoa), but several States are currently in the process of ratifying the amendment.¹¹⁷

¹¹⁵ Murray & Murray, *Technical Assistance Consultant’s Report*, *supra* note 39.

¹¹⁶ *Ibid* at 20.

¹¹⁷ PAD, *supra* note 27.

C. FINANCIAL SUSTAINABILITY

The primary concern for PASO, however, remains financing. Ensuring that the organisation can be self-sustaining will be essential for the organisation's current reform efforts and its ability to deliver on its mandate.

There are a number of funding options available for RSOOs. As reviewed earlier, PASO's current funding model relies on user fees and operational charges to generate the majority of its revenue. Subscription or membership fees cover fixed costs and variable fees cover any costs associated with contracted services such as inspections. However this has proven to be inadequate in ensuring the organisation's financial sustainability. Moreover, the current approach does not incentivise Member States to use PASO as the financial burden is placed on state budgets. One possible approach to address this would be to secure an income stream from air traffic control fees, which "pre-pays" services PASO could provide. National CAA could then, for example, call on airworthiness inspectors knowing that the costs have been covered from assigned overflight income in their region.

As a precondition for receiving a World Bank grant Tonga, Tuvalu, Kiribati, and Samoa agreed to introduce a minimum AU\$ 5 safety and security levy for every departing international passenger that is designed to cover the costs of their regulatory oversight activities.¹¹⁸ This scheme will also help reduce the financial burden imposed on member states, and further facilitate the engagement of PASO for oversight activities. However there are some concerns with the sustainability of a levy, particularly in countries with low passenger volumes as the levy may not generate sufficient revenue to cover the costs of safety oversight. Nevertheless, the biggest challenge is the fact that no regional safety levy has been introduced yet which could directly finance PASO.

¹¹⁸ *Ibid* at 9.

Donor funding, for example through the Asian Development Bank or by bilateral partners, is another source for funding for the organisation. However, development partners, such as multilateral development banks, generally only provide financing for setting up a system that ultimately will become self-sustainable. Donor funding must therefore be considered a temporary solution.¹¹⁹ For the restructuring of PASO by the World Bank grant, initial funding was provided through the Pacific Region Infrastructure Facility (PRIF) to Tonga, Tuvalu, and Kiribati. These funds were earmarked to pay for oversight services and annual membership fees of PASO.¹²⁰

As mentioned above, another potential source of funding is to have a unified upper airspace that would generate revenue for safety oversight activities, similar to the ACSA/COCESNA model described earlier. To examine this option for PASO, the World Bank initiated a study, entitled “Developing Options for Upper Air Space Management towards a Regional Air Traffic Management Facility for the Pacific Island Countries”, which was funded by a Public Private Infrastructure Advisory Facility (PPIAF) grant. The study includes a feasibility analysis on the potential consolidation of upper airspace in the South Pacific and explores how potential revenue could be directed to oversight activities. Although such an approach could provide significant financial and operational benefits, it would require strong political support and entail significant changes to service provision and the way that airspace is currently administered in the region. For these reasons, it is likely that such a scheme would entail a lengthy implementation process.

¹¹⁹ Simon Clegg, “Funding of Regional Safety Oversight Organizations” (Presentation delivered at the Symposium on Regional Safety Oversight Organizations (RSOOs), ICAO Headquarters, Montreal, Canada, 2726-28 October 2011.), online: ICAO <<http://www.icao.int/Meetings/RSOOSYMPO/Shared%20Documents/Forms/AllItems.aspx>> [unpublished].

¹²⁰ See *supra* note 61.

VII. CONCLUSION

Based on the premise that ensuring the safety and security of air transport remains a shared responsibility, RSOOs clearly have a significant role in today's air transport system. RSOOs provide critical support to States in meeting their obligations under the Chicago Convention by fostering cooperation, offering technical expertise, and carrying out oversight functions on behalf of members. A robust RSOO can assist national CAAs by pooling together resources in the region to help create economies of scale and reduces overall compliance costs. Given that the majority of RSOOs operate across different national legislative systems, they play an important role in harmonising regulations and standards. However, experience has shown that multilateralism can often take a long time given the diversity of stakeholder interests, varying capabilities, levels of involvement and investment, and the challenges of reaching consensus.¹²¹

PASO is facing a number of challenges as it seeks to be the overarching regulatory oversight body for security and safety for the Pacific Island countries. For many current PASO members, little to no alternatives exists beyond PASO, particularly given the highly technical nature of oversight functions and existing capability gaps of national CAAs. Currently, seven members rely to a certain extent each on the organisation to provide aviation safety and security oversight services: the Cook Islands, Kiribati, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.¹²² Recognising that continued non-compliance with international civil aviation standards risks further isolation suggests that 'business as usual' is no longer an option.

¹²¹ For example, it took seven years from the decision to establish PASO to when PICASST entered into force.

¹²² PAD, *supra* note 27 at 1.

Current reform efforts are attempting to address many of the financing, operational, and governance challenges affecting the organization. PASO is not unique in the challenges it is currently facing.¹²³ Other RSOOs, particularly in the developing world, face similar challenges related to sustainable financing, a lack of utilisation, technical gaps, and capacity constraints. For this, setting up a sustainable mechanism that generates a regular income stream, for example, from air traffic control fees as described above in the case of ACSA and COSCESNA, would be necessary. Beyond addressing these issues, the organisation must also consider a more sustainable and effective operating model. In order to have a greater impact, PASO would need to position itself as not just a service organisation, but with delegated authority and rulemaking responsibilities. The European model of EASA provides a good example of delegation of authority in selected areas of regulatory oversight.

Looking at the potential efficiencies gained through regional integration, as seen with EASA in Europe, the Pacific Island countries could benefit greatly from a more robust and empowered RSOO. Apart from the national CAAs, other beneficiaries would include users as well as operators of air transport services. The airlines, for example, are able to function in a more harmonised operating environment with less variation and compliance costs, while passengers are able to travel in safer conditions. Other indirect beneficiaries include stakeholders in the tourism and services industries. Future growth for the organisation will be predicated on potential expansion of membership and reach of its services, the success of current reform efforts, and an expanded mandate and scope of responsibilities. The latter, however, depends primarily on the political will of PASO Member States to delegate authority to a regional body.

¹²³ RASG-APAC/1, *supra* note 28.