HARMONISATION OF REGULATIONS: CHALLENGES AND BENEFITS – A CASE STUDY OF HARMONISED REGULATIONS

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Introduction

- The results of ICAO safety oversight audits in the East African States (Kenya, Uganda and Tanzania) prompted the three Partner States to examine how best they can resolve the deficiencies identified by the audits.

- With the assistance of ICAO, the East African Civil Aviation Safety Project was initiated in 1999.

- The Project was in two parts with one part looking at the establishment:
  - of an East African Upper Flight Information Region (UFIR); and
  - of a regional safety oversight agency, harmonisation of legislative and regulatory requirements meeting the ICAO Standards and Recommended Practices.
The Project is an effort by the East African Partner States in implementing Article 92 of the Treaty for the Establishment of the East African Community:

- Harmonisation of civil aviation rules and regulations,
- establishment of Unified Upper Area Control system,
- establishment of joint services are among the issues required by Article 92 of the Treaty.
What is “Harmonisation”

- the process of creating common standards across the internal market. Adjustment of differences and inconsistencies among different measurements, methods, procedures, schedules, specifications, or systems to make them uniform or mutually compatible; or

- In a Region, like EAC, is the process of minimizing redundant or conflicting standards within the region by having a uniform way of doing things.
State need to ensure that, harmonisation results to the uniform application of specification for physical characteristics, configuration, material, performance, personnel or procedure, which is recognized as necessary for the safety or regularity of international air navigation and to which Contracting States will conform in accordance with the Convention;

in the event of impossibility of compliance, notification to the Council is compulsory under Article 38.
Approaches Towards Harmonisation

While this regional initiative was in progress:

- the three States individually continued with the efforts of implementing and resolving deficiencies identified by the audits.
- it was noted that individual efforts would be very difficult to sustain,
- that is why during the 35th ICAO Assembly regional initiatives were given a special cognisance and encouraged as a means to establish sustainable and effective safety oversight systems.
The three Partner States all participants in the United States of America (USA) Safe Skies Initiatives for Africa which

- Aimed to promote sustainable improvements in aviation safety and security in Africa and
- creating an environment necessary to foster the growth of air transport between Africa and the United States.

States signed an ‘Open Skies’ bilateral air services agreement with the intention of creating an environment to enable growth of direct air transport and business.
The USA under the Safe Skies Initiatives for Africa provided the technical assistance in the implementation of the regional civil aviation safety project.

The initial element in the safety part of the project, involves creating specific operating civil aviation safety regulations which are harmonised.
The process of harmonization officially started in September 2004 – National Teams (Working Group)

The main objective of the EAC team of experts was to identify differences in the civil aviation safety regulations each country has against the others and try to approximate the three States drafts Regulations and come with a harmonised draft.
Experts were able to review all the sets of Regulations and iron out what seemed to be differences.

In the beginning there were 500 plus differences but by the time the exercise was coming to an end there were zero difference except for a few areas which there was mutual agreements that each state will deal with the matter in their own style.
Some few area with differences

- The following items were area where most of the differences between the three States' draft Regulations were recorded from:
  - General Provisions applicable to all Regulations each state had their own style;
  - Penalties and offences - there is a difference between one state to other Partners States draft Regulations e.g TCAA had powers to compound offences as opposed to other States
Differences cont

- Certificate/Licence suspension and revocation: TANRs requires prior to revocation a certificate/licence to be suspended for a maximum period of 28 days to allow for investigation. Uganda and Kenya recommend unlimited period.

- Validity periods on licenses were different in all the states;

- Inspection of training organisations not certified – some states had provision requiring inspections of uncertified ATO while others were not in agreement with that, they did not see any necessity to include this regulation, as the policy is to have all ATOs certificated;
Differences

- There were also issues of certification and licensing qualifications; each wanted to maintain theirs;

- Regulations relating to functions of cabin crew on board the aircraft: Tanzania and Uganda though that the Pilot in Command (PIC) must be ultimately responsible on safety issues onboard the aircraft while Kenya wished the responsibility be placed upon both PIC and Senior Cabin Crewmember.
In the end of the exercise the Penalties and offences part was agreed to be lest for each state to customize in line with their primary regime. Still a challenge some operators finds it cheap to commit offence in a state were penalty is low: examples...

Todate the region has a total of 26 sets of harmonized Regulations.
ESTABLISHMENT OF REGIONAL SAFETY OVERSIGHT ORGANISATION

Result of:

- EAC Treaty Art. 92,
- ICAO was also advocating for the formulation of RSOOs to assist States in meeting their Safety and Security obligations
- The overall results of both audits – most CS have not established effective safety oversight regime and not complying with a large number of safety and security related SARPs
Since Partner States who are also contracting states to the Chicago Convention all aims in safe and orderly development of international standards and recommended practices relating to the safety and security of civil aviation agreed to establish an RSOO which will assist in meeting the obligation.
The Civil Aviation safety and Security Oversight Agency (CASSOA) was established and came into operation in June 2007.

The Protocol for establishment of the Agency was approved and signed on 18th April 2007.

The Agency established as an autonomous and self-accounting institution of the Community.

In line with the current mandate, the Agency has two main roles – standardisation and enhancing oversight capability in the region.
The objectives and functions of CASSOA are spelt out in Articles 4 and 5 of the Protocol. The primary objectives of the Agency as stated in the Protocol are to:

- Promote the safe, secure and efficient use and development of civil aviation within and outside the Partner States;
- Assist the Partner States in meeting their safety and security oversight obligations and responsibilities under the Chicago Convention and its Annexes; and
- Provide the Partner States with an appropriate forum and structure to discuss plan and implement common measures required for achieving the safe and orderly development of international civil aviation through the implementation of international standards and recommended practices relating to the safety and security of civil aviation.
Currently the mandate the Agency as listed under Art. 5 can be summarized as follows:

- Harmonizing operating Regulations to ensure that they meet the ICAO Convention obligations and international standards and recommended practices –ICAO SARPS;
- Developing standardized procedures for licensing, approving, certificating and supervising civil aviation activities; and
- Providing guidance and assistance to States in meeting their safety and security oversight obligations under the Chicago Convention and its Annexes.
Achievements of CASSOA as an RSOO

- The harmonization of regulations, requirements and procedures (Technical Guidance Material) in areas of Flight Safety Standards, Aerodromes, ANS and Security;
- Strengthened the support to oversight activities of the partner states to meet ICAO SARPS;
- Created a platform for discussion of safety and security related matters in form of working groups and Technical committees.
Current major challenges of CASSOA

- Lack of adequate technical personnel at CASSOA CAA to oversee effectively the technical development of harmonised regulation in all aspects of the aviation safety/security and implement professional sharing scheme;
- The lack of enforcement powers;
- Total commitment of Partner state governments to support CASSOA programmes and activities;
- Inadequate funding to cover the mandate as stipulated in the protocol;
Inability to attract and retain technical personnel especially pilots coupled with unattractive remuneration;

Lack of public awareness of the activities of the Agency and the role and responsibilities thereof.
BENEFITS OF HARMONISATION (PROS)

- Reduce the time to develop and amend regulations by:
  - Eliminating undue or perhaps unjustified country-specific requirements;
  - Providing transparent Level Playing field – advantage to operators as they are operating within the same requirement when in the region;

- Reduce duplication of resources cost:
  - CASSOA is providing a forum; all Experts meet and develop/amend regulations at the same forum.
  - Establishing uniform international regulatory system and requirements.
  - Reducing unwarranted, often contradictory regulatory requirements and redundant applications of similar requirements that can lead to different requirements within the region.

- Improve efficiency by:
  - Facilitating cooperation among CAAs and Operators in conducting regulatory activities.
  - Vigilance: having a person who is tracking changes whenever they come and assist in compliance.

- Facilitate operations and expand economy.
Differences in Legal frameworks, drafting principles and regulatory promulgation procedures among partner/member states which lead to
- delays in promulgation of regulations and in the end each State implements different requirements from the model;
- change of regulatory requirements at the customization stage;

States not complying to the developed model Regulations.
Lack of expert at CASSOA to provide guidance to the technical experts during development of regulations and implementations
Effective and total commitment from Partner states Governments.
Ensuring the safety and security of air transport remains a shared responsibility RSOOs and States. RSOOs supposed to provide critical support to States in meeting their obligations.

Does CASSOA plays that role?

Is CASSOA strong enough?

What should CASSOA do to ensure harmonization is given that the majority of States operate across different national legislative systems;

CASSOA needs to have a new look which will enable it to be effective and assist the region. It needs to be empowered legally and also be staffed and equipped to enable it support the common market.

If we have the idea of implementing common market in the region (domesticating our air transport market) then CASSOA is very relevant but not in the form it is currently!