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EVOLUTION OF THE KENYAN AVIATION TRANSPORT INDUSTRY FROM COLONISATION TO THE PRESENT; TOWARDS LEGAL COMPLIANCE WITH THE INTERNATIONAL STANDARDS OF AVIATION LAW

By Mercy Mutheu Muendo*¹, Lecturer at Mount Kenya School of Law

Abstract

The President of Kenya recently announced Kenya has signed an International Agreement with the United States of America for direct flights from Kenya to the United States to take place. In order for this agreement to be implemented Kenya has to demonstrate that it has complied with International standards of aviation law and the aviation environment is properly, efficiently regulated to satisfy the United States standards.²On February 2017 the Federal Aviation Authority of the United States of America granted Kenya a Category 1 status.

This paper seeks to trace and lay down the aviation legal framework regulations and steps Kenya has taken to comply with the International legal standards. To determine whether it has complied with the same and is capable of maintaining its Category one status. In order to do I shall look at the various International laws and compare them to the Kenyan legal framework. To determine whether it has complied with the same and is capable of maintaining its Category one status.

The study shall entail mostly deskwork research.

1.0 CATEGORY ONE STANDARD

A Category one rating means a country has met the International Civil Aviation Organization Standards hereinafter ICAO. This is the organization that is mandated with harmonization, and effective regulation of the aviation industry in the whole world. In order for a country that wishes to operate air carriers in the United States, conduct operations or enter into arrangement with

¹ Mercy Mutheu Muendo is a practicing Advocate and a Lecturer for a period of 6years at Mount Kenya University School of Law. mercymuendo@gmail.com

² Standard media, 'Kenya hopes for direct flights to the US by May'
<www.standardmedia.co.ke/business/article/2000187317> accessed 14th of April 2017

United States Partner airlines they must be audited and assessment done by the Federal Aviation Authority (hereinafter FAA) under its International Aviations Safety Assessment Program. The assessments are pegged on the ICAO standards.³ During the assessment the FAA looks at the ability of individual carriers to adhere to the International Aviation Standards and recommended practices contained in the International Convention on Civil Aviation⁴ hereinafter (Chicago Convention). To be visited upon later in this paper.

After the successful assessment conducted on Kenya the FAA announced that Kenya had passed the assessment and had complied with the International Standards set by ICAO and therefore had attained Category one status. On the 27th February 2017 it that announced that Kenya had received Category one status which means it is certified to operate air carriers within the United States territory.⁵

What does ICAO look at it looks at the Civil Aviation Legislations, Specific Operating Regulations; State Civil Aviation System and Safety Oversight functions; technical personnel qualification and training, technical guidance, tools and provision of safety critical information; licensing, certification, authorization, and approval obligations; surveillance obligations; and resolution of safety concerns among others. To understand whether Kenya has complied with the International standards set down in the International legal framework we have to look at the history of aviation law and the various International principles that arise there in. Thus we shall compare it with the Kenyan legal framework which was one of the requirements that were looked upon by the FAA.

Sources of International air law are International law both conventions and treaties, Customary International law, ICAO Standards and Recommended Practices and Bilateral Agreements, Last but not least Domestic Statutory law. The major principles of International Air law are:

- Sovereignty over airspace

³ International Aviation Safety Assessment program, <www.faa.gov/about/initiatives/iasa> accessed 14th April 2017

⁴ Convention of International Civil Aviation 1944 <www.icao.int/publications/Documents/7300_orig.pdf>

⁵ Press Release- FAA Announces Aviation Safety Rating for Kenya, <www.faa.gov/news/press_releases/news_story.cfm> accessed 12th April 2017

- Every state has absolute sovereignty and jurisdiction over the air space directly above its territory and territorial waters
- Every state has the unilateral and absolute right to permit or deny entry into the area recognized as its territory and a right to control all movements
- The Airspace over the High Seas is free to the aircraft of all states
- Nationality of Aircraft means Aircraft has a special relationship to a particular State and the State is responsible for the international good conduct of such aircraft. ⁶

In the Case of S.S. "Lotus" France v Turkey PCIJ 1927

It was stated that "International law governs relations between independent states. The rules of law binding upon states are expressed in Conventions or by usages generally accepted as expressing principles of law." From this background we delve into the history of aviation law.

1.1 HISTORY OF AVIATION LAW

Aviation law can be traced to the Roman empire which took the first bite in attempting to regulate airspace. They had coined a maxim which is as follows *Cuius est solum, eius est usque ad coelum et ad inferos* (whoever's is the soil, it is theirs all the way to Heaven and all the way to hell).⁷ This maxim has been incorporated in both civil (Justinian code) and common law (property law) legal systems, when dealing with property rights in land. In Kenya it is provided for under chapter 5 of the Constitution. Of importance to us it is the provision of the maxim that deals with ownership all the way to Heaven commonly interpreted to mean the airspace above the land also belongs to the owner of the rights. This meant that the Roman Empire claimed control and regulated the empire's airspace.

⁶ Cooper, Backgrounds of International Public Air Law (1967)

⁷ John Cobb Cooper, Roman Law and the Maxim "Cujus Est Solum" in International Law, in Explorations in Aerospace Law 55 (1968)

1.2 THE BEGINNING OF AIR LAW

Centuries later after attempts to invent aviation craft some which can be traced in Leonardo Da Vinci's sketches. The French Montgolfier's brothers invented the hot air balloon in June 1783 this marked the advent of the aviation industry.⁸ Immediately after showcasing the invention was demonstrated to the Prince at his palace the launch was successful however some animals which were the passengers were injured. This was an eye opener to the French who became majorly concerned with the legal repercussions of harm suffered to civilians. They passed a Police Ordinance law concerning harm on the civilians on the ground from falling objects or balloons. Thus the first official domestic aviation law was developed and it was in the realm of Civil Law. This is clearly provided for under the Kenya Civil Aviation Act which is the main Aviation law statute in Kenya. The provision can be found under section 12 which deals with damages and harm caused to civilians.⁹

The other was a Police Ordinance of 23 April 1784 in Paris prohibiting flying of balloons without special permits this was because balloons were falling on civilians and destroying farm produce too.¹⁰ This provision is mirrored in our Kenya Civil Aviation Act and its Civil Aviation (Air Navigation Regulations of 1979).

However, some German balloons had also veered past the boundaries of France while landing and caused harm to civilians and crop in the farms. This brought about likelihood that there was need to protect their borders from harmful interference from foreigners. Balloons as the first aircraft were used not only for air transport but also for military, spying and bombings.¹¹ In Kenya the Kenyan Civil Aviation Authority Act under section 10 gives the Minister and Civil Aviation Authority powers to regulate flying of crafts within the territory of Kenya and section 12 provides for a cause of action similar to the French Police Ordinance on nuisance and liability

⁸ Shawcross and Beaumont, 4th ed, Issue 70 , p1

⁹ Kenya Civil Aviation Act Cap 394, s 12

¹⁰ Ibid n 4

¹¹ Air and Space Law, Vol XX, Number 6, 1995, p 311

for damage. To this front the Kenyan legal framework has complied with the International standards on damage caused to civilians.

1.3 INVENTION OF HEAVIER THAN AIR CRAFTS

On one of the showings at France a hot air balloon was flown. It stuck in the air for 25 minutes over Paris.¹² This was a great breakthrough because most hot air balloons were falling because they had not yet mastered to invent crafts that were not heavier than air. Another important thing to note was that an American ambassador was present and he went to spread the idea to his fellow Americans who began researching on a better model. The research struck pay dirt when the Wright Brothers in December 1903 invented the first controlled and powered “heavier than air” air craft (the grandfather to the airplane).¹³

Following this research breakthrough other states started developing their own planes. With the emergence of World War 1 the catalyst was served and states developed better sophisticated planes and crafts as machines of war e.g. Unmanned crafts like rockets and missiles. On the European front states governed and regulated the aviation internally and entered into contractual agreements among themselves in order to regulate the skies. However, on the American sides the states had adopted the Open Skies multilateral agreements. Meaning they didn’t have to enter into agreements on how they were to use and regulate their skies internally, it was done uniformly. Because of this they were able to launch the first passenger carrying flight from Florida to Tampa. (Mostly flights were private and pilots were trying to break world records)¹⁴

During 1908-1909 the advent of commercial airlines took place in Europe and Germany invented the first Ottoman plane. Of course, prompting notoriety from Germany to cross over the borders of France amid warnings. This prompted France to call for an International Conference to address the violation of airspace. The Conference held at Paris 8th May to 29th June 1910 is commonly known as the 1910 Paris Conference on International Air Navigation. It dealt with the

¹² Ibid, 21st November 1783 Jean-Francois, Pilatre de Rozier flew 9 km in 25 minutes of over Paris

¹³ Shawcross and Beaumont, 4th ed, Issue 70, p 2

¹⁴ World’s first scheduled airline using winged aircraft www.historynet.com/st-petersburgtampa-airboat-line-worlds-first-scheduled-airline-using-winged-aircraft.htm/4 accessed 16th April 2017

thorny issues of who owned the skies/airspace, whether a state had the right to claim sovereignty over the airspace overlying its territory, or all states in the world had the right to do so and lastly on the principle of innocent passage which had been developed under the law of the sea.

It also dealt with the technical issue that needed regulations for example matters on airworthiness, certification of aircraft, freight and cargo of aircrafts. This last part was because the states had already started transporting mail through aircrafts and domestic law already passed. For example the United States Senator Sheppard had already passed a bill on transportation of mail by air. The technical issues were agreed upon but the issues on sovereignty, territorial jurisdiction, sharing of airspace and innocent passage were not agreed upon, and states refused to agree on the same and come up with binding agreements on the same.

Therefore, the Conference produced a draft convention that touched on aircraft nationality and registration, certification of aircraft (airworthiness) crew licenses, radio equipment, prohibited zones and cabotage.¹⁵ Following the Conference in 1911 the United Kingdom enacted the Aerial Navigation Act allowing the UK to prohibit air navigation of any area, including the coast line, territorial water, for the sake of the defense and safety of the realm.

On the eve of 28th July 1914 World War 1 begun and ended 11th November 1918, during this period states developed better aircrafts that were used for bombing, espionage, reconnaissance, mostly destructive in nature. This clearly demonstrated to the states that aviation was not only valuable both for commercial purposes but also for security purposes. It also demonstrated to the world that aviation and air space control were closely linked to national security and defense.

1.4 PARIS CONVENTION OF 1919 ON AERIAL NAVIGATION

The lessons of the War still fresh on the minds of states forced them to revisit the pending issues on how the skies were to be regulated. These were the issues that were left at the Paris Conference of 1910. They divided the issues into two:

- Whether airspace should be open to all or whether States have sovereignty over airspace

¹⁵Cheng, *Studies in International Space law* (Oxford University Press 2004) p20

- Whether there should be right of innocent passage or need for prior authorization

Thus states came up with Paris Convention Relating to the Regulation of Aerial Navigation 1919. The Convention in its principles provides that each nation has absolute sovereignty over airspace overlying its territories and waters. This analogy was drawn heavily from the Law of the Sea. Which looked at the High Seas as belonging to the whole world or all states and the Territorial seas (10 nautical miles) from the coastal strip belonging to the State and therefore it can control who enters its skies or not. The concept for the exclusive economic zone had not yet been borne but this is also included as part of the territorial seas and skies. How it works was that the high seas were to be shared by whole mankind. This analogy was coupled with the Cujus maxim that provided that whoever that owned the land owned the Soil to its depths and the skies to the end. From this premise states felt that the skies were not open and belonged under their territory. These fears arose from the World War 1 whereby enemy states were able to fly over their cities and bomb them to smithereens.

The other issue of innocent passage article 2 provided that “in time of peace” States must” accord freedom of innocent passage above its territory to aircraft of other States under” the conditions laid down in the present Convention.

- That is to prohibit aircraft for military reasons or in the interest of public safety (Article 3).¹⁶
- the right of flyover without landing; fixed route; designated aerodromes; establishment of international airways (Article 15)¹⁷

Summary of the Paris Convention principles are as follows:

- Each nation has absolute sovereignty over the airspace overlying its territories and waters. A nation, therefore, has the right to deny entry and regulate flights (both foreign and domestic) into and through its airspace.¹⁸

¹⁶ Ibid, Cheng

¹⁷ Ibid, Cheng

¹⁸ Ibid, Cheng

- Each nation should apply its airspace rules equally to its own and foreign aircraft operating within that airspace, and make rules such that its sovereignty and security are respected while affording as much freedom of passage as possible to its own and other signatories' aircraft.¹⁹
- Aircraft of contracting states are to be treated equally in the eyes of each nation's law.
- Aircraft must be registered to a state, and they possess the nationality of the state in which they are registered.
- Nationality of aircraft
- Admission to air navigation above foreign territory; Rules to be observed on departure when under way and on landing²⁰; Certificates of airworthiness and competency; Prohibited transport²¹

These provisions are all provided for currently in the Kenya Civil Aviation Act and the annexed Regulations. The Act and Regulations which were enacted in Kenya 1979 had the following provisions of particular interest to the above are the KCAA Civil Aviation;²² Licensing of Air Services Regulations,²³ 1979, Regulation of Rocket Firing, 1979,²⁴ Civil Aviation (Charges for Air Navigation Regulations, Civil Aviation (Air Navigation) Regulations 1979²⁵. Thus the journey for Kenya to comply with the International aviation standards begun in 1979 and the above mentioned regulations which are bulky amounting 1000 pages make sure that the Aviation Authority and the Minister in charge of transport have the necessary powers and authority to monitor the aviation sector pertaining to the Paris Conference fears.

¹⁹ Ibid, Paris Convention

²⁰ Convention Relating to the Regulation of Aerial Navigation 1919

²¹ Ibid, Paris Convention

²² <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CivilAviation_Cap394.pdf>

²³ <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CivilAviation_Cap394.pdf>

²⁴ <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CivilAviation_Cap394.pdf>

²⁵ <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CivilAviation_Cap394.pdf>

World War 2 Commenced on 1st September 1939 to 2nd September 1945, during this time technology advanced especially in the United States. States controlled and closed their airspace only air mail transportation was taking place and in limited situations. Airports (aerodromes) and aerial navigation service were seen as key resources which were needed to grow air transport industry. Lastly the commercial importance of air transport, especially with states having fleets of aircrafts that were developed during the war and many pilots available in the industry.

1.5 CHICAGO CONVENTION ON INTERNATIONAL CIVIL AVIATION 1944²⁶

After the Paris Convention a few years following World War 2 commenced and civilian aviation trickled down to a halt. The only aviation that was taking place was hostile in nature. Thus because of this the issue of sharing the skies was revisited in 1944 towards the end of the war. The meeting called by the American President Franklin Roosevelt invited states to discuss the issue of sharing of airspace for the future use in an efficient manner. The Conference was held in Chicago most delegates were state leaders and former military airmen who had served in the war and had first hand information about the Aviation world.

Deliberations centered on who owned the skies/ airspace, who owns skies covered in the High Seas, how states can share the airspace and Skies over the states. They also revisited the issue of innocent passage and came up with another agreement on the same.²⁷ Thus they came up with the Six Freedoms of the Air enshrined in the Chicago Convention, and the Outer Space Treaty of 1967 to deal with Outer Space which commences where a propelled aircraft cannot penetrate which belongs to date to all common mankind for friendly purposes. Kenya adhered to the Chicago Convention on 1st May 1964.²⁸

The six freedoms of the air are summarized as follows:

²⁶ Convention on International Civil Aviation <<http://www.icao.int/publications/pages/doc7300.aspx>>

²⁷ See J.C. Cooper, *Air Law: Subject Matter, Terminology, Definition*(1951), p 13

²⁸ Waithaka, *An introduction to Aviation Law* LSK Presentation, 2014

- First freedom- the civil aircraft of one country has the right to fly over the territory of another country without landing so long as the overflown country is notified in advance²⁹
- Second freedom- a civil aircraft of a country can fly into the territory of another for non-traffic or technical purposes³⁰
- Third to ninth freedoms - a civil aircraft in this case represent by an airline has the rights to carry traffic from its country of registry to another country, third country or within another country and discharge, and lastly to operate within the other country.³¹

After deliberations they were able to agree on the first and second freedoms which dealt with the issue of right of passage.³² But on the last freedoms from the third to the ninth they were unable to agree on the same. Reason being America which had better technology aviation wise propagated for open skies and Britain and other states did not want to relinquish their skies. So they only agreed on the 1st and 2nd because it dealt with the issue of innocent passage. However unlike Paris they limited the right to prior notice and still upheld the Paris convention requirements for demarcating agreed upon flight routes and aerodromes.

Members also upheld and adopted the provisions of the Paris Convention that dealt with the Exclusive Sovereignty of the State over its airspace, Exercise of jurisdiction on its aircraft and also all the Technical provisions.

Summary of the Chicago Convention: The Convention is divided into five parts as follows:

- PART 1 which deals with the Rights of Air they flow as follows; Article 1: Every state has complete and exclusive sovereignty over airspace above its territory.³³ Article 2: For the purposes of this Convention the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, protection or mandate of such state³⁴ Article 3: Every other State must

²⁹ Ibid, n14 Cheng

³⁰ Cheng

³¹ Dempsey, *Journal of the Institute of Air and Space law*, Mc Gill Vol 2

³² Ibid, Dempsey

³³ Convention on International Civil Aviation, Art 1

³⁴ Ibid, Art 2

refrain from resorting to the use of weapons against civil aircraft in flight.³⁵Article 5: The aircraft of states, other than scheduled international air services, have the right to make flights across state's territories and to make stops without obtaining prior permission. However, the state may require the aircraft to make a landing.³⁶

- PART 2 that deals with the Technical Aviation Requirements; Article 6: (Scheduled air services) No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State.³⁷Article 10: (Landing at customs airports): The state can require that landing to be at a designated customs airport and similarly departure from the territory can be required to be from a designated customs airport.³⁸Article 12: Each state shall keep its own rules of the air as uniform as possible with those established under the convention, the duty to ensure compliance with these rules rests with the contracting state.³⁹Article 13: (Entry and Clearance Regulations) A state's laws and regulations regarding the admission and departure of passengers, crew or cargo from aircraft shall be complied with on arrival, upon departure and whilst within the territory of that state.⁴⁰
- PART 3 Matters of exercising Jurisdiction; Article 16: The authorities of each state shall have the right to search the aircraft of other states on landing or departure, without unreasonable delay.⁴¹Article 24: Aircraft flying to, from or across, the territory of a state shall be admitted temporarily free of duty. Fuels, Oil, spare parts, regular equipment and aircraft stores retained on board are also exempt custom duty,

³⁵ *ibid*, Art 3

³⁶ *Ibid*, Art 4

³⁷ *Ibid*, Art 6

³⁸ *Ibid*, Art 10

³⁹ *Ibid*, Art 12

⁴⁰ *Ibid*, Art 13

⁴¹ *Ibid*, Art 16

inspection fees or similar charges.⁴² Article 29: Before an international flight, the pilot in command must ensure that the aircraft is airworthy, duly registered and that the relevant certificates are on board the aircraft. The required documents are:

- Certificate of Registration
 - Certificate of Airworthiness
 - Passenger names, place of boarding and destination
 - Crew licenses
 - Journey Logbook
 - Radio License
 - Cargo manifest
- Article 30: The aircraft of a state flying in or over the territory of another state shall only carry radios licensed and used in accordance with the regulations of the state in which the aircraft is registered. The radios may only be used by members of the flight crew suitably licensed by the state in which the aircraft is registered.
 - Article 32: the pilot and crew of every aircraft engaged in international aviation must have certificates of competency and licenses issued or validated by the state in which the aircraft is registered.
 - Article 33: (Recognition of Certificates and Licenses) Certificates of Airworthiness, certificates of competency and licenses issued or validated by the state in which the aircraft is registered, shall be recognized as valid by other states. The requirements for issue of those Certificates or Airworthiness, certificates of competency or licenses must be equal to or above the minimum standards established by the Convention.
 - Article 40: No aircraft or personnel with endorsed licenses or certificate will engage in international navigation except with the permission of the state or states whose territory is entered. Any license holder who does not satisfy international standard relating to that license or certificate shall have attached to or endorsed on that license information regarding the particulars in which he does not satisfy those standards".⁴³

⁴² Ibid, Art 24

⁴³ Ibid, Art 40

The other issue member states agreed upon were on coming up with an International body to regulate use of the airspace. The body was to implement Standards and Recommended practices hereinafter known as SARPS which were agreed upon in the conference. This institution is known as the International Civil Aviation Organization, commonly known as ICAO. The institution is given the power to adopt measures to achieve the objectives of guaranteeing safe, regular, efficient and economic air transport. Article 37 of the Convention particularly provides for SARPS which deal with all the technical issues that were dealt with in the Paris Convention. Such as communications, airports, rules of air, registration, identification among others. The SARPS describe the minimum standard for International Aviation states should comply with. Article 12 in particular provides that states must ensure all their national laws are uniform to the greatest extent possible and that they are binding on all flights over the high seas. In this regard upon looking at the Kenyan Civil Aviation Regulations amended 2013 Kenya as a country has complied with the same provision.

The Standards and Recommended practices are to be found in the 19 annexes of the Convention. They are standard for purpose of harmonization, security and safety within the aviation industry. They are as follows:

- Annex 1 – Personnel Licensing; Licensing of flight crews, air traffic controllers & aircraft maintenance personnel. Including Chapter 6 containing medical standards.
- Annex 2 – Rules of the Air
- Annex 3 – Meteorological Service for International Air Navigation; Vol I – Core SARPs
Vol II – Appendices and Attachments
- Annex 4 – Aeronautical Charts, Annex 5 – Units of Measurement to be used in Air and Ground Operations
- Annex 6 – Operation of Aircraft
 - Part I – International Commercial Air Transport – Aeroplanes
 - Part II – International General Aviation – Aeroplanes
 - Part III – International Operations – Helicopters
- Annex 7 – Aircraft Nationality and Registration Marks
- Annex 8 – Airworthiness of Aircraft

- Annex 10 – Aeronautical Telecommunications; Vol I – Radio Navigation Aids, Vol II – Communication Procedures including those with PANS status, Vol III – Communication Systems, Part I – Digital Data Communication Systems, Part II – Voice Communication Systems, Vol IV – Surveillance Radar and Collision Avoidance Systems, Vol V – Aeronautical Radio Frequency Spectrum Utilization; Annex 11 – Air Traffic Services – Air Traffic Control Service, Flight Information Service and Alerting Service
- Annex 12 – Search and Rescue; Annex 13 – Aircraft Accident and Incident Investigation; Annex 14 – Aerodromes, Vol I – Aerodrome Design and Operations, Vol II – Heliports
- Annex 15 – Aeronautical Information Services; Annex 16 – Environmental Protection, Vol I – Aircraft Noise, Vol II – Aircraft Engine Emissions
- Annex 17 – Security: Safeguarding International Civil Aviation Against Acts of Unlawful Interference, Annex 18 – The Safe Transport of Dangerous Goods by Air, Annex 19 – Safety Management (Since 14 November 2013)⁴⁴

The above are the famous ICAO standards that Kenya has complied with. The answer lies in their actions. Kenya amended the 1979 KCAA Act and its regulations to comply with the annexes. In addition to the earlier mentioned regulations it implemented the following regulations between 2001 -2007 to comply with ICAO. They are as follows:

- Civil Aviation Charges for Air Navigation Services Regulations⁴⁵
- Civil Aviation Investigation of Accidents Regulations⁴⁶
- Civil Aviation Licensing of Air Services Regulations⁴⁷
- Civil Aviation Jomo Kenyatta International Airport Regulations⁴⁸
- The Use of Government Aerodromes Notice⁴⁹

⁴⁴ Ibid, annexes

⁴⁵ <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CivilAviation_Cap394.pdf>

⁴⁶ <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CivilAviation_Cap394.pdf>

⁴⁷ Ibid, n46

⁴⁸ Ibid

- Prohibited Area under Regulation 73 of the Air Navigation Regulations⁵⁰
- Civil Aviation Instruments and Equipment's Regulations⁵¹
- Prevention of Terrorism Act

This was the legal framework that was able to satisfy ICAO and the FAA so that Kenya could be granted the category one status.

1.6 AFRICA'S AVIATION LAW DEVELOPMENT

Air transport was introduced in Africa during the Colonial period. The virgin continent had no or poor roads, railway and ports infrastructure. Thus there was need for air transport for purposes of moving passengers who mostly comprised of the Colonial Government officers and adventure seekers and high value goods earmarked for export. Planes then were not so highly developed and could run out of fuel quickly and therefore only short day trips could take place.⁵²

Air transport was also used for colonization, exploration and development of the Continent. This took place in the early 20th Century. In 1919 the British Royal Air Force (RAF) pioneered their first flights across Africa from Cairo to Cape town their aim was to fly and land in British Colonies and territories. This was in line with the requirements of the Paris Conference resolutions. These flights carved a route from Egypt, Sudan, Kenya, Uganda and Southern Rhodesia all the way to the Cape.

Mostly these flights were exploratory in nature and did not transport any commercial passenger or pay loads (cargo and mail). However, the Colonial Governments had already passed ordinances which dealt with this territories and operations of airstrips and landing sites for this routes. For example, in Kenya we had the 1920 Ordinance that dealt with the regulation of

⁴⁹ *ibid*

⁵⁰ *ibid*

⁵¹ *ibid*

⁵² Lornsedale and Berman, 'Coping with the contradictions: The development of the Colonial State in Kenya. 1895-1914 p 488, (1979) <www.cambridge.org/core> accessed 1st March 2017

Nairobi airstrips and aerodromes e.g. Wilson Airport earlier known as Nairobi Aerodrome.⁵³ This law was later amended in 1930 Ordinances Grey book and later on in the 1950s⁵⁴ when aviation industry had improved and Embakasi Air port was set up. In 1958 we had the flagging off of the Embakasi Airport which later on was christened on 1978 the Jomo Kenyatta Airport.

Other colonial governments also had their own routes e.g. The French went across Morocco and Mauritania to reach Senegal and the Belgian went through its territories to Belgium Congo.

1.7 COMMERCIAL PASSENGERS IN AFRICA

Commercial Air transport begun in 1930 particularly in former British territories it begun in 1930 after British Imperial Airways entered into an agreement with the British Colonial Government to operate from London to Capetown. The passengers included not only Government officials returning or going for leave, but leisure seekers, adventurers, hunters, explorers, actors and business men. Thus the aviation transport industry grew by leaps and bounds. This was the only opportunity available for people to see the historic places they had learnt in books. For example, the scenic route for the British Imperial Airways included seeing the biblical places, pyramids, Nile river, Nile delta, desert, the big five in Kenya, the luscious landscapes of Uganda, the Victoria falls and the Cape. Stop over's included night or day excursions which meant exploring and interacting with different cultures and landscapes.⁵⁵ Therefore, aviation grew in leaps and bounds in Africa. Then the Second World War commenced in 1939 putting a halt to civil aviation.

1.8 POST COLONIAL PERIOD

In the early 1960's when former colonies became independent countries African states began negotiating and concluding their own agreements on air transport services. This time most of the newly Independent states created, governed and transacted their own national carriers.⁵⁶ Many

⁵³ History of Kenya Airports Authority < www.kaa.go.ke/corporate/about-us/our-history > accessed 14th April 2017

⁵⁴ The 1920, 1930 and 1950 British Colonial Protectorate Ordinances Hansards Google Scholar

⁵⁵ Pirie, 'Incidental tourism: British Imperial Air travel in the 1930's', 2009 Vol 1 Journal of Tourism History p 54 <www.tandfonline.com/loi/rjth20> accessed 16th April 2017

⁵⁶ Guttery, Encyclopedia of African Airlines, National Archives

flag carriers failed but Kenya survived. Reason being that Kenya was a strategic geographic location and had better aerodromes than other states. It also had a scenic terrain and game. Others that survived include Ethiopian, Egypt and South African.

1.9 PRE WORLD WAR 2 ERA EAST AFRICAN COMMUNITY REGULATION

The East African Airways was formed by the East African Community in 1946. However, it ceased operations in 1971 when the East African Community disintegrated prompting Kenya to start its own known as Kenya Airway.

In 1999 The East African Community was reborn and the Treaty for the Establishment of the East African Community which entered into force on 7th July 2000. It initially comprises of the three partners. In 2007 Rwanda and Burundi joined the partnership too. Under the EAC a Customs Union, Common Market was established providing for a Common trade market.

Chapter 15 of the EAC treaty provides and outlines policy structure for various programs one of the programs is Civil Aviation. This is clearly highlighted under Article 92 which provides for harmonization of civil aviation policies and facilitates establishment of joint air services. Look at article 92

The main areas engaging member states are

- Adoption of common policies on civil air transport in collaboration with relevant organizations⁵⁷Granting of air traffic rights for traffic; Establishment of the upper area control system; Coordination of flight schedules of designated carriers; Application of ICAO guidelines for the determination of user charges for scheduled air services; Adoption of common aircraft standards and technical standards within the Community

These provisions Kenya has complied with on the policy issues the consultations are still ongoing. On the capacity building the East Africa School of Aviation was set up and it is situated in Embakasi, Nairobi, Kenya.

⁵⁷ *The Treaty for the Establishment of the East African Community,*

<www.eac.int/sites/default/files/docs/treaty_eac_amended-2006_1999.pdf> accessed 17th April 2017

2.0 THE KENYA CIVIL AVIATION AUTHORITY

The Kenya Civil Aviation Authority was formed in October 24th 2002, 14years ago by the Civil Aviation (Amendment) Act of 2002. Taking over duties from the Kenya Directorate of Civil Aviation, the KCAA as a state corporation is charged with the duty of regulation the aviation industry in Kenya providing air navigation services in the Kenya flight region. It also does training in East Africa as per ICAO standards. Formally these functions were done by two departments of the Ministry of Transport the Civil Aviation Board and the Directorate of Civil Aviation.

Its primary functions:

- Regulation and oversight of Aviation safety & Security
- Economic regulation of Air services and development of Civil Aviation
- Provision of Air Navigation Services
- Training of Aviation personnel⁵⁸

Through the amendments that have been done to the Kenya Civil Aviation Act from the 1970's to present is to make sure that Kenya complies with the International standards. It is also because the aviation industry is harmonized and global in nature therefore a weak legal framework would cause various problems to arise, such as hijackings, aircraft accidents and losses to civilians. In order for Kenya to maintain its category one status as per ICAO it has to demonstrate that KCAA has laws or regulations necessary to support certification and oversight of air carriers in accordance with the International standards. The authority has technical expertise, resources and organizations capable of licensing or overseeing carriers. It has adequate trained and qualified technical personnel⁵⁹, has sufficient documentation and records and conducts annual audits. Personnel who can provide qualified aviation navigation services. In this regard I am of the view the Kenya Civil Aviation Authority has complied the question is can it continue to maintain it.

⁵⁸ Treaty on the Establishment of the East African Community, A 92 <www.eac.int> accessed 1st February 2017

⁵⁹ Federal Aviation Administration (FAA)