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**“IMPLEMENTATION OF INTERNATIONAL LAW AND STANDARDS ON CIVIL  
AVIATION IN THE REPUBLIC OF AZERBAIJAN”**

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## Table of contents

<b>ABSTRACT.....</b>	<b>5</b>
<b>ABBREVIATIONS.....</b>	<b>6</b>
<b>INTRODUCTION .....</b>	<b>7</b>
<b>METHODOLOGY.....</b>	<b>8</b>
<b>LITERATURE REVIEW.....</b>	<b>9</b>
<b>RESEARCH SUBJECT.....</b>	<b>10</b>
<b>RESEARCH QUESTION.....</b>	<b>10</b>
<b>AIMS AND THE RELEVANCE OF THE STUDY.....</b>	<b>10</b>
<b>CHAPTER I. IMPLEMENTATION OF ICAO SARPs INTO NATIONAL LEGAL SYSTEM: LEGAL FACTORS. ....</b>	<b>11-26</b>
<b>1.1. Chapter overview .....</b>	<b>11</b>
<b>1.2. The legal status of ICAO SARPs and their role in civil aviation.....</b>	<b>11-16</b>
<b>1.3. The adoption of SARPs by the Contracting States and notification on SARPs implementation.....</b>	<b>16-18</b>
<b>1.4. The national legislation of the Republic of Azerbaijan providing the effective implementation of international law and SARPs.....</b>	<b>18-25</b>
<b>1.5. Conclusion remarks.....</b>	<b>25-26</b>
<b>CHAPTER II. THE ROLE OF INTERNATIONAL ORGANIZATIONS IN IMPLEMENTATION OF INTERNATIONAL LAW.....</b>	<b>27-38</b>
<b>2.1.Chapter overview.....</b>	<b>27</b>
<b>2.2. The role of international organizations in implementation.....</b>	<b>27-30</b>
<b>2.3.The International Civil Aviation Organization (ICAO): structure and role in the implementation of SARPs.....</b>	<b>30-33</b>
<b>2.4. Supervision on the effective implementation of SARPs by ICAO Monitoring and Audit Programs.....</b>	<b>33-37</b>
<b>2.5. Conclusion remarks.....</b>	<b>38</b>

<b>CHAPTER III. IMPLEMENTATION OF INTERNATIONAL LAW AND ICAO SARPs AS AN INTERNATIONAL OBLIGATION OF THE REPUBLIC OF AZERBAIJAN.....</b>	<b>39-47</b>
<b>3.1. Chapter overview.....</b>	<b>39</b>
<b>3.2. The principle of subsidiarity in international law.....</b>	<b>40-42</b>
<b>3.3. Reasons for failure of international civil aviation law provisions and SARPs of ICAO in the region of Nagorno-Karabakh of the Republic of Azerbaijan.....</b>	<b>42-44</b>
<b>3.4. Azerbaijan has not an international responsibility for the failure of effective implementation of ICAO SARPs in occupied territories of Azerbaijan.....</b>	<b>44-47</b>
<b>3.5. Conclusion remarks.....</b>	<b>47</b>
<b>4. CONCLUSION.....</b>	<b>48</b>
<b>5. SUGGESTIONS FOR FURTHER RESEARCH.....</b>	<b>49</b>
<b>6. BIBLIOGRAPHY.....</b>	<b>50-51</b>
<b>7. APPENDIX I. The Bar Graph describing the critical elements for the USOAP monitoring Program.....</b>	<b>55</b>
<b>8. APPENDIX II. The table on implementation Policy of international law and SARPs in the Republic of Azerbaijan.....</b>	<b>56</b>

## **ABSTRACT**

Ratifying the Convention on International Civil Aviation, the Republic of Azerbaijan has obliged to implement the provisions of this Convention and Standards and Recommended Practices (SARPs) of the International Civil Aviation Organization (ICAO) into the national legal system. After the ratification of Convention on International Civil Aviation, the legislative framework in the field of civil aviation has considerably improved and within the judicial reforms, have been adopted laws, regulations, state programs, and other normative legal acts in the field of civil aviation. But despite these reforms, the SARPs in the civil aviation field is continuously changing by the reason of development the civil aviation industry from time to time, which makes important the ongoing implementation of them into the national legal system of Contracting States.

The lack of appropriate legislation in the field of civil aviation leads to the ineffective fulfillment of the international obligations by the Republic of Azerbaijan under international law. Since the non-implementation of the Standards and Recommended Practices of ICAO to national legislation lead to the findings during the audits and monitoring conducted by the ICAO. If the national legislation is not in compliance with the international standards and recommended practices of ICAO, the provision of aviation security and flight safety cannot comply with international standards and consequently, the results of international audits and inspections, monitoring and internal audits cannot be successful. Generally speaking, the lack of effective implementation of SARPs into national legislation and its implementation in the civil aviation industry, may directly or indirectly cause accidents and serious incidents in civil aviation, the prevention which is the main responsibility of the Member States.

Analyzing the current legislation in civil aviation, I have reveal that the international standards and recommended practices of ICAO have not comprehensively implemented to our national legal system and the policy maker should make a decision on how to incorporate them effectively. This is a crucial issue because the international obligation of Azerbaijan in front of ICAO should be executed by the government. The decision which the policy maker decide on, has not only legal but also political and diplomatic importance for the Republic of Azerbaijan.

We can generalize that, the more effective implementation of international law and standards into national legislative acts, will lead to the full transportation of the Convention provisions and Standards in civil aviation into national legal system. In other words, the analyzed legislations, scientific articles, audit results and other available resources allow us to generalize that the implementation of international law and standards on civil aviation in the Republic of Azerbaijan is the significant way in holding high level of aviation security and flight safety.

**Key words:** *implementation, national and international legislation, standards and recommended practices, ICAO, effective transposition*

## **ABBREVIATIONS**

ICAO	International Civil Aviation Organization
SARP	Standards and Recommended Practices
PANS	Procedures for Air Navigation
USOAP	Universal Safety Oversight Audit Program
USAP	Universal Security Audit Program
PEL	Personal licensing
AIR	Airworthiness
OPS	Operational
SMS	Safety Management System
ASP	Aviation Security Program
SSP	State Safety Program
AGA	Airdrome
SAFA	Safety audit of Foreign Aircrafts
DG	Dangerous goods
ATM	Air Traffic Management
ANS	Air Navigation Services
AIP	Aviation Information Publication
CE	Critical Element
CAA	Civil Aviation Authority
ICVM	ICAO Coordinated Validation Missions

## ***INTRODUCTION***

Ratifying the International Convention on Civil Aviation, the Republic of Azerbaijan has obliged to comply national legislation which formulated the legal system of the state, with the international standards and laws for the effective implementation of SARPs and precise execution of its international obligations. After the ratification International Convention on Civil Aviation, the Republic of Azerbaijan has taken an international obligation in front of the International Civil Aviation Organization (ICAO) to implement the Convention and its Annexes into the national legal system. The implementation process encompasses policymakers, legislators, authoritative and regulatory administrations in the civil aviation, service providers in the civil aviation field and, even diplomats for the decision making on effective implementation of international law and standards to the national legal system.

As an international organization, the role of International Civil Aviation Organization (ICAO) which Azerbaijan is a member state is to provide legal standards and recommendations to the states for the effective functioning of civil aviation without accidents and serious incidents. This organization has the right to evaluate the current legislation on civil aviation, real situation in civil aviation by monitoring and auditing the service providers, aircrafts, aerodromes, air navigation systems, aviation personal certification, registration of the aircrafts and authority in civil aviation which regulates the civil aviation according with the appropriate Annexes to the Convention.

By auditing the aforementioned fields, ICAO estimates the compliance of real function with the national legislation and with the international standards. If during the audit, auditors reveal gaps, problems, differences related to an ineffective implementation in national legislation of international law and standards or if they find some non-compliance in the current function of service providers, this situation evaluated as a violation of international obligations of the Republic of Azerbaijan under international law.

**The relevance** of my research for the public policy analyses in the Republic of Azerbaijan is its considerable comprehensive analytical nature from the legal point of view. The decision making on effective implementation of ICAO standards into national legal system is the significant issue today. By the reason of aviation security and flight safety provisions should be guaranteed in the legislative level, the policy makers should make a decision on implementation for the following reasons:

First and foremost, defining the problem I can say that, aviation security and flight safety are the visible result of the ineffective implementation or non-implementation of international norms and standards in the Republic of Azerbaijan. The ineffective implementation and non-implementation of international standards to national legal system leads to the non-fulfillment of international obligation of the state in front of ICAO during the audits investigated by the international organizations on civil

aviation. Inasmuch as, Azerbaijan has taken an obligation for the implementation of international norms and complying the national legislation to these norms and standards. Therefore, an effective implementation of international law and standards in the field of civil aviation into the national legal system should be the agenda of decision makers.

Secondly, assembling the evidence from the current legislation, procedure of lawmaking, problems and gaps in the civil aviation field, as well as from the findings during the international and internal audit inspections and the published monitoring results, I can say that the main data for the consideration during decision making should be taken into account.

Moreover, the decision maker can construct the alternatives, inasmuch as, they can implement the international standards in the form of a law, regulation, state program, decree of the president, order of the Cabinet of Ministers or in a form of normative acts of central executive organ, which are the available and relevant tools for the giving them normative legal status in Azerbaijan.

In addition to aforementioned steps, decision maker should select the criteria for the effective implementation of international law and standards into the national legal system, such as flight safety and aviation security. Moreover, the established legislation should be implementable. Furthermore, for the effectiveness of standards codifying in the legal form, the enforcement measures are the essential tools. Last but not least, the international audits results are the significant criteria for the evaluation of the current situation in civil aviation. Analyzing the implementation from the public policy point of view, decision-maker cannot eliminate the outcomes: *the negatives of implementation and the control the trade-offs: the positives of implementation.*

Failure to implement standards will challenge the civil aviation industry's normal function from the point of view of aviation security and flight safety and will not bring benefit to the international obligation of the Republic of Azerbaijan as a member state to ICAO. By contrast, a complete implementation of international standards will facilitate certification, effective oversight and enforcement measures over the industry.

**So, the main contribution of my research** is that, this research will improve and enhance decision-making process on implementation of international law and standards in civil aviation into the national legal system of the Republic of Azerbaijan. Furthermore, effective implementation of international law and standards in civil aviation into national legal system will reform the lawmaking system which is the problematic issue for the legislative system as a whole. Moreover, systematical investigation of SARPs and national legislative framework in this research will inform the policy makers on implementation about the importance of international standards in the civil aviation and its legal status and contribute for changing of attitude of the executive rule-making organs, especially executing the policymaking authority in the civil aviation field,



## ***METHODOLOGY***

In this thesis, I used the doctrinal methodology. Under this approach, I have conducted a critical, qualitative analysis of legal materials to support my hypothesis. I have identified specific legal rules, laws and, principles, then discussed the legal meaning of the legislation, its underlying principles, and decision-making under this legislation. I also have identify ambiguities and criticisms of the law and offer solutions. Using doctrinal research, I investigated the national and international legislation in the field of aviation law and its applicable features to current civil aviation practice, taking into account the international obligations of the member states under international law and emphasizing the commentaries and literature on the legislation. This approach enabled me a thorough definition and explanation of the national and international legislation in the civil aviation field.

Moreover, the comparative-legal research methodology encouraged me in critical analysis of national and international legislation which allow me to examine the appropriate means of effective implementation of SARPs into the national legal system. Comparisons were made between international and national jurisdictions, such as comparing analysis of a legal issue international civil aviation law and the laws of the Republic of Azerbaijan. Using this method supported me to better understand the jurisdiction of the Republic of Azerbaijan by analyzing how international jurisdictions handle the effective implementation of ICAO SARPs into the national legal system.

Furthermore, empirical research was used in this thesis. First of all, I had defined my hypothesis and research questions which were thoroughly investigated in the research. Secondly, I have collected the data by determining the accessible primary sources – the Conventions, Constitutions, Laws, Regulations, President Decrees, Charters and Resolutions of the international organizations, Decisions of legislative organ, resolutions of Cabinet of Ministries of the Republic of Azerbaijan and case law of European Court of Human Rights.

Furthermore, I have collected data from the secondary sources – the books, journals, articles, the non-binding Document, Manuals and Guiding materials of ICAO Qualitative, or non-numerical, empirical legal research guide me in thesis inasmuch as, extracting information from the text of international Conventions and Annexes to them, the international organization's documents, then interpreting them to support me to identify patterns.

## ***Literature Review***

Analyzing the current international law on civil aviation, the provisions of the Convention on International Civil Aviation, the ICAO Standards and Recommended Practices which are the amendments to the Convention in the form of Annexes, the ICAO Documents supporting the Member States for the effective implementation of SARPs into the national legal system, I have reveal that the implementation of international law on civil aviation and ICAO SARPs are the international responsibility of the Contracting States.

Moreover investigating the national legislation - the Constitution, The Constitutional Law on Normative Legal Acts of the Republic of Azerbaijan, the Charters of the regulatory organs in civil aviation of the Republic of Azerbaijan, the Decisions of the Cabinet of Ministries, the legislation on procedures for the preparation of the law drafts, I have reveal that there are several challenges – collisions, gaps, and unregulated provisions, which eliminate the opportunity of the legislator to efficiently implement the ICAO SARPs into the national legal system.

Taking into account the role of international organizations, especially ICAO in the implementation process, collaborating, supporting and guiding the Member States, I have reveal that, conducting monitoring programs and audits in the national civil aviation field, the ICAO has a considerable role in the guidance of states in the effective implementation of SARPs into the national legal system.

Taking into consideration that the Nagorno-Karabakh region of the Republic of Azerbaijan is under the occupation by Armenia, I have investigated the international documents, articles, books and conventions and court decisions on occupation and intervention to the territorial integrity of Azerbaijan and reveal the reasons for the failure of effective implementation of ICAO SARPs and international law in civil aviation in the occupied territories of the Republic of Azerbaijan. Analyzing this literature, I can conclude that the Republic of Azerbaijan is not responsible for the non-implementation of ICAO SARPs in its occupied territories by Armenia.

Analyzing the fundamental principle of international law – the principle of subsidiarity, and the international obligation of the Republic of Azerbaijan in front of ICAO, I have reveal that while the implementation of international law and SARPs into national legal system the Republic of Azerbaijan has the right of “margin of appreciation” in estimation the implementable SARPs and making decision on the implementation of the appropriate SARPs to national legal system.

## **RESEARCH SUBJECT**

This research discusses the ICAO SARPs legal status and its role in civil aviation, the international law in civil aviation and international treaty law, the legislative system and legislative provisions for the effective implementation of the Republic of Azerbaijan, its international obligation on effective implementation of international law and standards and recommended practices of ICAO, taking into consideration the principle of subsidiarity. Furthermore, the research paper analyses the role of international organizations in general, especially the role of ICAO in implementation, determining its resources and tools for the implementation of SARPs. Moreover, the thesis analyzes the process of implementation and notification by the Contracting States about the compliance or collisions of SARPs with national legislation. In addition to these explorations, the research paper investigates the reasons for the failure of implementation of ICAO SARPs and international law provisions in occupied territories - Nagorno-Karabakh region of the Republic of Azerbaijan.

## **RESEACH QUESTIONS:**

- 1) *What are the international and national legislative and organizational provisions for the implementation of International law and standards in the national legal system of the Republic of Azerbaijan?*
- 2) *How does the Republic of Azerbaijan can efficiently implement the international law, ICAO Standards, and Recommended practices into the national legal system and comply with them our civil aviation function?*

## **AIMS AND RELEVANCE OF THE STUDY:**

- *Interpretation of the international law on civil aviation and the legal status of the ICAO Standards and Recommended Practices amended to the Convention in the form of Annexes;*
- *Investigation of the national legal system, legislation providing the effective implementation of international law, national lawmaking and decision-making process on implementation and organizational structure in the civil aviation field;*
- *Exploration of the international obligation of the Member States to ICAO on the effective implementation of the provisions of the Convention on International Civil Aviation and its Annexes;*
- *Determination of the ICAO role in the implementation process and its resources and tools;*
- *Description of the causes for the failure of effective implementation of Convention provisions and SARPs in the Nagorno-Karabakh region of the Republic of Azerbaijan.*

# **CHAPTER I. IMPLEMENTATION OF ICAO SARPs INTO NATIONAL LEGAL SYSTEM: LEGAL FACTORS.**

## **1.1. Chapter overview**

The purpose of this chapter is to analyze the international law and national legislative framework of the Republic of Azerbaijan for the explanation of the ways providing by the national legal system for the effective implementation of ICAO SARPs. Furthermore, exploring the legal status of SARPs, this chapter seeks to analyze the Convention on International Civil Aviation and its Annexes which have not an equal legal force with the Convention and a binding effect for the Member States, until they are accepted by them under the national law. Moreover, this chapter gives a short explanation of the Annexes to the International Civil Aviation Convention and also to the fundamental principles of international law.

## **1.2. The legal status of ICAO SARPs and their role in civil aviation.**

Standards and Recommended Practices (SARPs) are the non-theoretical statements, adopted by the Council of the ICAO under Article 37 of the Convention on International Civil Aviation. The purpose of their adoption is to maintain “the highest useful level of uniformity in regulations, standards, procedures, and organization concerning aircraft, personnel, airways, and auxiliary services in all matters in which such uniformity will contribute and improve air navigation” (Chicago Convention, 2006). By the reason of Annexes are not international treaties, they are published by ICAO in the form of additional Annexes to the Convention, which has not the same imperative force as a Convention itself.

The institution and sustenance of international Standards and Recommended Practices (SARPs), as well as Procedures for Air Navigation (PANS), are the fundamental doctrine of the Convention on International Civil Aviation (Chicago Convention) and a nucleus aspect of ICAO’s task and function. SARPs and PANS are decisive to the ICAO Member States and other agents have given that they ensure the primary basis for coordinated worldwide aviation safety and productivity in the air and on the ground, the worldwide normalization of functional and execution requirements of air navigation facilities and handling and the regular development of air transport. The improvement of SARPs and PANS follows an organized, obvious, and multi-staged process – prominent as the ICAO “*amendment process*” or “*standards-making process*” – embracing several technical and non-technical bodies which are either within the Organization or tightly connected with ICAO. Characteristically, it takes about two years for an original suggestion for a new or elaborated Standard, Recommended Practice, or procedure to be officially accepted or approved for attachment in an Annex or a PANS. From time to time, this

timescale can be broadened or shortened relying on the nature and seniority of the offer under consideration (ICAO, RegionalOffice/Pages).<sup>1</sup>

For comprehensively understanding the legal status of the Annexes to the Convention, definitions of them given by ICAO in its documents should be investigated. ICAO defines the following definitions in its “Manual on notification and Publication of Differences” (ICAO, 2018):

“A **Standard-** is determined by ICAO as “any description for physical characteristics, configuration, material, performance, personnel or procedure, the uniform application of which is recognized *as necessary* for the safety or regularity of international air navigation and to which the Contracting States *will confirm* under the Convention” (Doc 10055, AN 518).<sup>2</sup>

“A **Recommended Practices-** is defined by ICAO as “any specification for physical characteristics, configuration, material, performance, personnel or procedure, the uniform application of which is recognized *as desirable* in the interest of safety, regularity or efficiency of international air navigation and to which the Contracting States *will endeavor* to confirm under the Convention” (Doc 10055, AN 518).<sup>3</sup>

Chapter VI of the “Convention on International Civil Aviation” so-called “International Standards and Recommended Practices” begins with Article 37, constituting the essential requirements for the adoption of international standards and procedures. According to this Article, “each Contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulation, standards, procedures and organization concerning aircraft, personnel, airways, and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation” (Convention on International Civil Aviation, 2006, p 16).<sup>4</sup> Moreover, Chapter XX of the “Convention on International Civil Aviation” so-called “Annexes”, determines the provisions “for the adoption and amendment of the Annexes”. Since, Article 90 of the Convention states that “the adoption by the Council of the Annexes describing in Article 54 (l) as mandatory functions of the Council, shall require the vote of two-thirds of the Council at a meeting called for that purpose and shall then be submitted by the Council to each Contracting State” (Convention on International Civil Aviation, 2006, p 26).<sup>5</sup> Furthermore, according to Article 54 (l) of

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<sup>1</sup> <https://www.icao.int/secretariat/RegionalOffice/Pages/default.aspx>

<sup>2</sup> “Manual on notification and Publication of Differences”, First Edition (advance unedited) — ICAO. 2018. [www.icscc.org.cn](http://www.icscc.org.cn)

<sup>3</sup> Ibid, Chapter 2.1.1.

<sup>4</sup> “Convention on International Civil Aviation”, 1944. Ninth Edition-2006. Doc 7300\9.

<sup>5</sup> Ibid, p 26

the aforementioned Convention “the Council adopts under the provision of Chapter VI of the Convention, International Standards and Recommended Practices; for convenience designate them as Annexes to this Convention, and notify all Contracting States of the action taken. Any such Annex or any amendment of an Annex shall become effective within three months after its submission to the Contracting States or at the end of such a long period of time as the Council may prescribe unless in the meantime a majority of the Contracting States register their disapproval with the Council. The Council shall immediately notify all Contracting States of the coming into force of any Annex or amendment thereto” (Convention on International Civil Aviation, 2006, p 27).<sup>6</sup> As is presented from the abovementioned provisions of the Convention, the Council determines special procedures for the adoption of Annexes, taking into account the Contracting States’ opinions.

Determining the legal status, the role, and the procedure of adoption of the Annexes, I can define the necessity of identification of their importance in the civil aviation field. For clarification of this significance, the following list of Annexes which defines their main framework will be beneficial for the understanding of their legal importance in civil aviation and interpretation of them, which will support us in finding the effective implementation tools through the thesis.

Annex 1 to the Convention called “Personnel Licensing”, contains “Standards and Recommended Practices adopted by the ICAO as the minimum standards for personnel licensing” (Annex 1, ICAO - 2018).<sup>7</sup> The Contracting States implement this Annex to the personnel, who apply for the license, by conducting exams in civil Aviation authority, examining the applicant’s knowledge, experience, and proficiency. After the determination, the rules for the personnel licensing, Annex 2 to the Convention called “Rules of Air”, contains “the rules of the air which shall apply to aircraft bearing the nationality and registration marks of a Contracting State, wherever they may be, to the extent that they do not conflict with the rules published by the State having jurisdiction over the territory overflown” (Annex 2, ICAO - 2005).<sup>8</sup> Moreover, this Annex constitutes rules relating to the flight and maneuver of aircraft. “The standards for meteorological service for international air navigation which contribute toward the safety, regularity, and efficiency of international air navigation” are the object of Annex 3 to the Convention called “Meteorological Service for International Air Navigation” (Annex 3, ICAO-2016).<sup>9</sup> This document contains requirements, for the provision of safety, efficiency, and regularity of air navigation.

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<sup>6</sup> Ibid, p 26

<sup>7</sup> Annex 1 to the Convention on International Civil Aviation “Personnel Licensing”. Twelfth Edition-July 2018. <https://store.icao.int/products>

<sup>8</sup> Annex 2 to the Convention on International Civil Aviation “Rules of Air”. Tenth Edition- July 2005. <https://store.icao.int/products>

<sup>9</sup> Annex 3 to the Convention on International Civil Aviation “Meteorological Service for International Air Navigation”. Nineteenth Edition, July-2016. <https://store.icao.int/products>

Among the Annexes, the Annex 4 to the Convention called “Aeronautical Charts” also has an indispensable role in civil aviation, identifying “the obligations of Contracting States to make available certain ICAO aeronautical chart types, and specify chart coverage, format, identification, and content including standardized symbology and color use, the goal which is to satisfy the need for uniformity and consistency in the provision of aeronautical charts that contain appropriate information of a defined quality”(Annex 4, ICAO-2019).<sup>10</sup> The provision of safety of flights is impossible without regulation of the aircraft operations. Since Annex 6 to the Convention called “Operation of Aircraft” contribute to the “safety of international air navigation by providing criteria for safe operating practices, and to contribute to the efficiency and regularity of international air navigation by encouraging ICAO's Contracting States to facilitate the passage over their territories of commercial aircraft belonging to other countries that operate in conformity with these criteria” (Annex 6, ICAO-2018).<sup>11</sup>

Nationality and registration marks are the main duty of all Contracting States according to the Convention, that is regulated by the Annex 7 to the Convention, called “Aircraft Nationality and Registration Marks”, that provides “definitions, location and measurement of nationality and registration marks as well as the standard form for the certificate of registration. This Annex also calls for the registration of the aircraft and provides a sample of this certificate for use by the ICAO Contracting States” (Annex 7, ICAO-2012).<sup>12</sup> For the facilitation of the import and export of aircraft as well as the exchange of aircraft for lease, charter or interchange or on basis another legal contract, the Article 33 of the Convention on International Civil Aviation places the responsibility on the State of Registry “to recognize and render valid an airworthiness certificate issued by another Contracting State” (Annex 8, ICAO- 2018).<sup>13</sup> In this regard, Annex 8 to the Convention called “Airworthiness of Aircraft”, establishes the basic requirements for the airworthiness of the aircraft which is an essential part of the safety provision. Annex 9 to the Convention called “Facilitation” provides a frame of reference “for planners and managers of international airport operations, describing “maximum limits on obligations of industry and minimum facilities to be provided by governments” (Annex 9, ICAO-2017).<sup>14</sup>

Annex 12 to the Convention called “Search and Rescue” establishes the requirements for the “establishment, maintenance and operation of search and rescue services by the Contracting States in

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<sup>10</sup> Annex 4 to the Convention on international Civil Aviation “Aeronautical Charts”. Eleventh Edition, July- 2009.

<https://store.icao.int/products>

<sup>11</sup> Annex 6 to the Convention on international Civil Aviation “Operation of Aircraft-Part I- International Commercial aircraft Transport- Aeroplanes”. Eleventh Edition. July 2018. <https://store.icao.int/products>

<sup>12</sup> Annex 7 to the Convention on international Civil Aviation “Aircraft Nationality and Registration Marks”. Sixth Edition, July 2012.

<https://store.icao.int/products>

<sup>13</sup> Annex 8 to the Convention on international Civil Aviation “Airworthiness of Aircraft”. Twelfth edition. July 2018.

<https://store.icao.int/products>

<sup>14</sup> Annex 9 to the Convention on international Civil Aviation “Facilitation”. Fifteenth Edition. October 2017. <https://store.icao.int/products>

their territories and over the high seas” (Annex 12, ICAO-2004).<sup>15</sup> The main requirements and procedures for the investigation of aircraft accidents and incidents take place in Annex 13, named “Aircraft Accident and Incident Investigation”, which sets out the main requirements for the investigation of an accident or incident and which is the main goal to prevent future accidents and incidents in civil aviation” (Annex 13, ICAO-2016).<sup>16</sup> Annex 14 to the Convention named “Volume-I Aerodromes and Volume- II Heliports”, contains Standards and Recommended Practices (specifications) that prescribe “the physical characteristics and obstacle limitation surfaces to be provided for at heliports, and certain facilities and technical services normally provided at a heliport” (Annex 14, ICAO-2013).<sup>17</sup>

Annex 15 to the Convention named “Aeronautical Information Services” defines “how an aeronautical information service shall receive and/or originate, collate or assemble, edit, format, publish/store and distribute specified aeronautical information/data” (Annex 15, ICAO-2018).<sup>18</sup> The goal of this document is to fulfill the need for uniformity and consistency in the provision of aeronautical information/data. The environmental protection is not underestimated by ICAO and Annex 16 (Volumes I and II) to the Convention called “Environmental Protection”, which deals with “the protection of the environment from the effect of aircraft noise and aircraft engine” (Annex 16, ICAO-2018).<sup>19</sup> The requirements for the security of international air transport contains in Annex 17 to the Convention called “Security”, the primary goal of which the guidance in “administrative and co-ordination aspects, concerned with the security of international air transport” (Annex 17, ICAO-2020).<sup>20</sup>

To assist in achieving compatibility with the regulations covering the transport of dangerous goods by other modes of transport, the provisions of Annex 18 to the Convention called “The Safe Transport of Dangerous Goods by Air” are based on the Recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods and the Regulations for the Safe Transport of Radioactive Materials of the International Atomic Energy Agency” (Annex 18, ICAO-2011).<sup>21</sup>

Last but not least, Annex 19 to the Convention called “Safety Management”, contains “overarching provisions applicable to safety management functions related to, or indirect support of, the safe operation

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<sup>15</sup> Annex 12 to the Convention on international Civil Aviation “Search and Rescue”. Eighteenth Edition. July 2004.

<https://store.icao.int/products>

<sup>16</sup> Annex 13 to the Convention on international Civil Aviation “Aircraft Accident and Incident Investigation”. Eleventh Edition. July 2016.

<https://store.icao.int/products>

<sup>17</sup> Annex 14 to the Convention on international Civil Aviation “Volume-I Aerodromes and Volume- II Heliports”. Fourth Edition. July 2013. <https://store.icao.int/products>

<sup>18</sup> Annex 15 to the Convention on international Civil Aviation “Aeronautical Information Services”. Sixteenth Edition. 2018.

<https://store.icao.int/products>

<sup>19</sup> Annex 16 to the Convention on international Civil Aviation “Environmental Protection”. Volumes I, II, III, IV. 2018.

<https://store.icao.int/products>

<sup>20</sup> Annex 17 to the Convention on international Civil Aviation “Security”. Eleventh Edition. March 2020.

<https://store.icao.int/products>

<sup>21</sup> Annex 18 to the Convention on international Civil Aviation “The Safe Transport of Dangerous Goods by Air”. Fourth Edition. July 2011. <https://store.icao.int/products>



of aircraft and highlights the importance of safety management at the State level across multiple aviation domains” (Annex 19, ICAO-2016).<sup>22</sup>

Giving the short description to all Annexes to the Convention, containing in itself the SARPs, I can precisely define their significant role and guiding function to the Member States in the civil aviation field. It is pertinent to mention that, Annexes are changed from time to time and new editions of these Annexes are provided by ICAO to the Member States for further review and opinion.

### **1.3. The adoption of SARPs by the Contracting States and notification on SARPs implementation.**

Convention gives to the Member States great opportunities for decision-making on implementation, and to notify the Council about the adoption of the amendment to the SARP or indicate the action which it proposes to take. The Council had obliged according to this article, to immediately notify all other Contracting States about the distinctions, existing between the international standard and the relevant national legislation or practice. The main goal of the notification by the Member States about the differences between international standard’s provisions and the national legislation is to contribute to safety, efficiency, and regularity in air navigation. Since for the effective and precise implementation of safety provisions, all stakeholders, concerned with international civil aviation should be cognizant of national rules and practices, that differ from those prescribed in SARPs.

The Contracting States are responsible for providing comprehensive and detailed information on differences between international standards and national legislation, by the reason incomprehensive or undetailed information can lead to misunderstandings and result in undesirable operational situations, or in other potential negative consequences, which will create a hazard to flight safety. Moreover, it is pertinent to mention that, dissemination of the information about the differences (especially, contradictions and gaps between international standard and national law), enhances the transparency of safety information, which consequently, facilitates the States’ obligation on the management of safety. The notification of differences is, therefore, a significant and useful action (ICA0-Doc 10055 AN/518).<sup>23</sup>

Taking into account the significance of comprehensive notification by the Contracting States, they are obliged with this task, especially related to the Standards in the Annexes. Even though Article 38 of the Convention does not put any responsibility on the Member States on notification about the differences of

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<sup>22</sup> Annex 19 to the Convention on international Civil Aviation “Safety Management”. Second Edition. July 2016.

<https://store.icao.int/products>

<sup>23</sup> Manual on Notification and Publication of Differences Doc 10055 AN/518. ICA0- First edition - 2018 ISBN {TBD}.

the national legislation with the Recommended Practices of ICAO, the Assembly has urged the Contracting States to extend the above considerations to Recommended Practices contained in Annexes to the Convention, as well.

The determination of differences between SARPs and national legislation is the obligation of Member States' regulatory authorities in the civil aviation field. Since "any deviation from provisions that need to be taken into account in aircraft operations should constitute a "significant difference" and published in the AIP", which is a publication of a State containing aeronautical information about the lasting character of air navigation (ICAO - Doc 8126/AN872).<sup>24</sup>

It is important to take into account that, the States are free from the duty to notify about the national legislation differences since it "complies in all respects" with the ICAO requirements. Furthermore, if these requirements implemented to "regulations and practices", in the form of sufficiently robust administrative arrangements (such as regulations, or other documents carrying sufficient administrative force) the States should not notify about any differences. Under Article 90 of the Chicago Convention, "the amendment will become effective three months after the issuance of the State Letter, except for any part thereof for which a majority of the Contracting States have registered their disapproval with the Council" (Convention on International Civil Aviation, 2006, p 40).<sup>25</sup>

Moreover, Article 38 of the Convention on International Civil Aviation, requires from the Contracting States instantly sent the notification to ICAO, in the case of determination an unrealizable to comply its national legislation with international standard, or to bring them into complete accordance with any SARPs (Convention on International Civil Aviation, 2006, p 17).<sup>26</sup>

Evaluating the differences between SARPs and national legislation, the national authority in civil aviation should take into account several important features of differences, which guide the States in determining whether a notifiable difference exists. First of all, if the national legislation's requirement is more exacting or exceeds a SARP (when the national law or regulation is more demanding than the corresponding SARP or impose an obligation within the scope of the Annex which is not covered by SARP), this is of particular importance where a Contracting State requires to notify the ICAO. Furthermore, if the national legislation's requirement is different from the corresponding SARP (when the national regulation and practices differ in principle, type, or system from the corresponding SARP), the States shall notify the ICAO. Moreover, if the national legislation's requirement is less protective than

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<sup>24</sup> Doc 8216/AN872. Aeronautical Information Services Manual. Approved by the Secretary General. ICAO- 6<sup>th</sup> Edition 2003.

<sup>25</sup> "Convention on International Civil Aviation", 1944. Ninth Edition-2006. Doc 7300/9.

<sup>26</sup> "Convention on International Civil Aviation", 1944. Ninth Edition-2006. Doc 7300/9.

the corresponding SARP (no national normative legal act has been adopted under the corresponding SARP), or when the Contracting State has not brought its practices into full accord with the corresponding SARP. The abovementioned situations are the significant features that obliged the Member States with the duty of notification. The Member States are free from the duty of notification about the differences between SARPs and national legislation. If the new SARP does not apply to the existing aviation activities of the State.

It is pertinent to mention that, the Appendices, tables, and figures connected with the SARPs are the integral parts of the Annexes, therefore, the States have the responsibility of notification about the differences from Appendices, tables, and figures under Article 38 of the Convention. Differences from definitions are also should not be underestimated in notification processes since the definition of a term used in a SARP, which creates the uniformity in terminology, does not have an independent status (ICAO Assembly Session 39<sup>th</sup>).<sup>27</sup>

Last but not least, it essential to emphasize that the notification about the differences between the SARP and national legislation, should encompass in itself not only the latest amendment to the Annexes but also the whole Annex, including the amendment. In other words, “the Contracting States that have already notified differences are requested to provide regular updates of the differences previously notified until the difference no longer exists (Manual on Notification and Publication of Differences Doc 10055 AN/518).<sup>28</sup>

Exploring the main features of the adoption of SARPs and notification about the differences, I hold an opinion that, during the evaluation of whether a difference in national legislation with a SARP exists, the State should assess the above-mentioned features of differences for the decision-making on a notification.

#### **1.4. The national legislation of the Republic of Azerbaijan providing the effective implementation of international law and SARPs.**

For the determination of ICAO SARPs’ legal status in the legislative system of the Republic of Azerbaijan, and for the effective implementation of them into the national legal system, there is a need

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<sup>27</sup> Resolutions adopted by the ICAO Assembly 39<sup>th</sup> session. 27 September- 6 October. 2016.

<sup>28</sup> International Civil Aviation Organization. Manual on Notification and Publication of Differences Doc 10055 AN/518. First edition - 2018 ISBN {TBD}.

for the determination of the legislative system of the country. For this purpose, I should give several definitions which will make clear of the explorations of this Chapter:

Normative legal act- is the formal document adopted by the state organ authorized by the Constitution, Law or Decree of President, or by referendum, describing the mandatory behavioral rules, which is implementable for several times for the unlimited subjects.

The Legislative acts – are the normative legal acts which are organized the legislative system of the Republic of Azerbaijan.

Act with normative character – is the official document which is implementable for several times for the limited subjects.

Legal act- is a normative legal act, act with normative character and non-normative legal act. The collision of the normative legal acts – are contradiction (non-compliance) of the normative legal acts which regulate the same public relations.

The function of norm-making- is the activity on preparation, expertise, adoption, amendments, interpretation, stopping, and the abolishment of the legal force of the normative legal acts. Subjects of the norm-making activity- are the organs (persons) participating in the norm-making activity.

The initiation of legislation- is the official presentation of the draft of the law by the subject determining by Article 96.1 of the Constitution to the discussion of Milli Majlis (Legislative organ of the Republic of Azerbaijan).

Norm-making organ – is the governmental organ that has the authority on the adoption of the normative legal acts. These definitions determined by the Constitutional Law of the Republic of Azerbaijan “About Normative Legal Acts” that regulate the preparation, admission, edition, the legal force, interpretation and systematization of the normative legal acts of the Republic of Azerbaijan (The Constitutional Law of the Republic of Azerbaijan “About Normative Legal Acts”.2010).<sup>29</sup>

What is the hierarchy of the normative legal acts? How can I define the legal status of SARP within the national legal system? For answers these crucial questions, which will guide us for the effective implementation first of all I have investigate the Constitution of the Republic of Azerbaijan. Since Article 147 of the Constitution of the Republic of Azerbaijan, named “Legal effect of the Constitution” establishes that, “the Constitution of the Republic of Azerbaijan has the highest and direct legal force and is the foundation of the legislative system of the Republic of Azerbaijan” (The Constitution of the Republic of Azerbaijan,1995).<sup>30</sup> As this article clearly presents, the Constitution is the base of all legislation in the Republic of Azerbaijan.

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<sup>29</sup> The Constitutional Law of the Republic of Azerbaijan “About Normative Legal Acts”. 21 December 2010. № 21-IVKQ

<sup>30</sup> The constitution of the Republic of Azerbaijan.12 November 1995. E-qanun.az

But what are the other primary sources of the legislative system in the Republic of Azerbaijan? Article 148 named “Acts constituting the legislative system of the Republic of Azerbaijan” determines that, “the legislative system shall be comprised of the following normative-legal acts:

- 1) the Constitution;
- 2) acts adopted by referendum;
- 3) laws;
- 4) decrees of the President;
- 5) decisions of the Cabinet of Ministers of the Republic of Azerbaijan;
- 6) normative-legal acts of central executive bodies” (The Constitution of the Republic of Azerbaijan, 1995).<sup>31</sup>

The afro-mentioned hierarchy determines the legal status of the normative legal acts of the Republic of Azerbaijan. It is pertinent to notice that, Article 149 of the Constitution of the Republic of Azerbaijan, named “Normative legal acts”, establishes that, “normative legal acts shall be based on law and equity (equal approach to equal interests). Furthermore, the Basic Law of the Republic establishes that the application and execution of laws shall be obligatory for all citizens, the legislator, the executive, and the judiciary branches of the government, for the legal entities and municipalities, only if they published. Moreover, this high-level Law adopted in a referendum determines the legal status of the decrees of the President of the Republic of Azerbaijan, the resolutions of the Cabinet of Ministers of the Republic of Azerbaijan, the acts of central executive bodies and other normative legal acts of the Republic of Azerbaijan. Taking into consideration the constitutional requirements for publication of the normative legal acts, the procedure for publication of normative legal acts are prescribed by a Constitutional law of the Republic of Azerbaijan about “Normative Legal Acts” (Constitutional Law, 2005).<sup>32</sup>

Discussing the legal structural hierarchy in the legislative system and classifying the normative legal acts of the Republic of Azerbaijan, it is necessary to define the legal status of international treaties in this system, ratified by the Republic of Azerbaijan. In this connection, it essential to analyze Article 148 (II) of the Constitution, which establishes that “International treaties to which the Republic of Azerbaijan is a party, are integral part of the legislative system of the Republic of Azerbaijan”. This determination elaborates by the Article 151 of the Constitution, named “Legal effect of international acts” establishing that, “in the case of conflict arises between normative legal acts of the legislative system of the Republic of Azerbaijan (with the exception of the Constitution of the Republic of Azerbaijan and acts adopted by referendum) and inter-state treaties to which the Republic of Azerbaijan is a party, the

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<sup>31</sup> Ibid p, 148

<sup>32</sup> Ibid p, 149

international treaties have the higher legal status and shall apply” (Constitutional Law, 2005).<sup>33</sup> From these articles, I can define the legal status of the SARPs to the Convention on International Civil Aviation in the national legislative system.

The Constitutional Law of the Republic of Azerbaijan “About Normative Legal Acts”, establishes that “the Republic of Azerbaijan verify the priority of international principles and norms, and provides the compliance of the State’s legislation with them. The treaties that the Republic of Azerbaijan is ratified have higher legal status than the normative legal acts in which such agreement is presented. The treaties which the Republic of Azerbaijan is ratified should be implemented directly, except in conditions which required the adoption of the national normative legal acts”. Article 24 of the Constitutional Law determines the possible situations when the international law should be incorporated into the national legal system: “through the adoption of normative legal acts, especially, if there are other provisions in international treaties rather than national legislation, or if it is impossible to execute the international obligations without adopting appropriate national act, or if the parties of the treaties come to the agreement on adoption an appropriate normative legal act” (Constitutional Law of the Republic of Azerbaijan “About Normative Legal Acts”).<sup>34</sup> The provisions of Constitutional Law gives great opportunities to the lawmakers for the effective implementation of SARPs to the national legal system.

Coming to the process and procedures for the implementation of SARPs, it is important to analyze the Regulation on “Preparation and adoption of the Normative Legal Acts of the Republic Azerbaijan”, confirmed by the President Decree, which determines the procedural provisions for the preparation and adoption of the normative legal acts by the President, Cabinet of Ministries, Ministries, State Comities and other central executive organs. According to this Regulation, “the draft of the normative legal act preparing on different fields, should be agreed with the central executive organs, other appropriate organs and public legal entities established by the President or Cabinet of Ministries of the Republic of Azerbaijan, which executes the state policy and regulation in this field. The normative legal act adopted by the central executive organ shall be confirmed by the head or collegial organ of the Ministry” (President Decree № 483, 27 July 2011).<sup>35</sup>

The following question arises for the determination of the responsible administrative organ for the effective implementation of SARPs to the Convention. Which organ is directly responsible for this task in the Republic of Azerbaijan? For answer this crucial question, several documents should be investigated. First of all, the Charter of the Ministry of Transport, Communication, and High

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<sup>33</sup> Ibid p,151

<sup>34</sup> The Constitutional Law of the Republic of Azerbaijan “About Normative Legal Acts”. 21 December 2010. № 21-IVKQ

<sup>35</sup> The Regulation on “Preparation and adoption of the Normative Legal Acts of the Republic Azerbaijan”. Confirmed by the President Decree № 483, 27 July 2011.

Technologies determine the authority and competencies of the Ministry in the implementation of international norms and SARPs in civil aviation. According to this Charter, “the Ministry is the central executive organ which among other functions executes the state policy and regulatory functions in civil aviation. A corporation with the ICAO and other international organizations, to participate in its work, mutually functioning with other appropriate international organs, control on the implementation of the international standards and recommended practices, to notification about differences between ICAO SARPs and national normative legal acts in the field of civil aviation are the main functions of the Ministry” (the President Decree № 1785, 12 January 2018).<sup>36</sup>

Moreover, in the field of norm-making, the Ministry determines the requirements on recognition of the certificates, and other analogic documents related to subjects of civil aviation, airports (airdromes), and aircrafts given by the foreign states. Furthermore, the Ministry confirms the technical requirements, regulations, and Manuals on the security of the transport. The ministry also provides the implementation of the international treaties, ratified by the Republic of Azerbaijan.

Civil Aviation Agency under the Ministry of Transport, Communication and High Technologies is the executive organ which regulates and controls of the civil aviation field. Charter of the Civil Aviation Agency establishes that “the Agency functions based on the national legislation and ICAO’s requirements in civil aviation. The main functional directions of the Agency are the propose to Ministry related to the preparation of state policy and participation of implementation of this policy, and provision the development of the civil aviation field”(President Decree № 90. 22 May 2018).<sup>37</sup>

The Agency controls the implementation of international standards and recommended practices, and notifies the Ministry about the differences between ICAO SARPs and national normative legal acts in the civil aviation field. Furthermore, within the framework of this function, the Agency applies to the Ministry for giving proposals to ICAO about the changes and amendments to SARPs. In the field of lawmaking, the Agency participates in the preparation of normative legal acts and give proposals to the Ministry on the ratification of international treaties. In the field of aviation security and flight safety, the Agency executes state control over the civil aviation functioning.

As Chapter 1.2 of this Research presents, the main purpose of Annex 19 is to provide safety in civil aviation. For achieving this goal, there is another indispensable authoritative organ - Public Legal Person “State Inspectorate on Civil Aviation Flight Safety” under the Civil Aviation Agency of the Republic of Azerbaijan, which is specialized in the oversight of safety in the civil aviation. Charter of the State

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<sup>36</sup> Charter of the Ministry of Transport, Communication and High Technologies confirmed by the President Decree № 1785, 12 January 2018.

<sup>37</sup> Charter of the Civil Aviation Agency under the Ministry of Transport, Communication and High Technologies confirmed by the President Decree № 90. 22 May 2018.

Inspection establishes that “the main purpose of the functioning of State Inspectorate is to provide a more effective organization of flight safety without any accidents and incidents in civil aviation. The main functional directions of the Inspectorate are the provision of :

- flight safety within the jurisdiction of the Republic of Azerbaijan;
- effective exploitation of the civil aviation technic;
- compliance to ICAO SARPS of the services by the aviation subjects to the legal and physical persons” (Decision of the Cabinet of Ministries’ № 313. 2 August 2017).<sup>38</sup>

It is essential to mention that, In the field of lawmaking the Inspectorate has the right to give proposals to the Civil aviation Agency on the improvement of legislation on flight safety according to the ICAO SARPs.

How do these administrative organs provide the effective implementation of SARPs in the civil aviation field? What are the means of regulation in this field? Several important functions that should be conducted by the Contracting States regulatory administrative organs – namely, “oversight”, “certification” and “enforcement”.

Oversight is the “verification by or on behalf of the competent authority in the civil aviation field, continuously supervising the implementation of the requirements of the Convention on International Civil Aviation and its Annexes containing in itself SARPs and national legislation provisions and other documents adopted on the basis thereof” (Regulation (EU) (1), 2018/1139).<sup>39</sup>

The oversight authority of the Civil Aviation Agency takes its start from the certification of civil aviation subjects. Certifying civil aviation subjects, the Civil Aviation Agency of the Republic of Azerbaijan controls the compliance of their functions with the provisions of Convention, and the requirements of national legislation, through its specialized structural organs. The definition of certification determines as follows: “any form of recognition under the legislation, based on an appropriate evaluation, that any civil aviation subject or its function complies with the relevant requirements of the normative and technical legal acts” (Regulation (EU) (9), 2018/1139).<sup>40</sup>

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<sup>38</sup> Charter of the Public Legal Person “State Inspectorate on Civil Aviation Flight Safety” under the Civil Aviation Agency of the Republic of Azerbaijan confirmed by the Cabinet of Ministries’ Decision № 313. 2 August 2017.

<sup>39</sup> Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018. <https://eur-lex.europa.eu/legal-content>

<sup>40</sup> Ibid (9)



According to Article 62 (d) of the Regulation (EU)/1139, named “Certification, oversight, and enforcement”, to ensure compliance of functionality of civil aviation subjects with SARPs and national normative legal acts, the Agency, and the national competent authorities shall: take all necessary enforcement measures, including amending, limiting, suspending or revoking certificates issued by them, grounding of aircraft and imposing penalties, for the termination of identified infringements” (Regulation (EU) 62(d), 2018/1139 ).<sup>41</sup>

Taking into account the above mentioned, I can say that there are essential means for the effective implementation of SARPs into the national legal system conducted by the administrative authority – Civil Aviation Agency which is responsible for these functions. However, investigating the national legislation of the Republic of Azerbaijan I can reveal that, there are significant gaps in the legislation in the civil aviation field, especially in the “Law on Aviation” of the Republic of Azerbaijan. It is pertinent to mention that, analyzing the provisions of this law, I can define that there are not enough normative opportunities for effective oversight, appropriate certification, and binding enforcement of ICAO SARPs. For the improvement of the legislative provisions in the above-mentioned directions, at the end of this research paper (see, part 5 of research: Suggestions for further research), I will suggest several proposals to the legislation of the Republic of Azerbaijan.

Investigating the current national legislation of the Republic of Azerbaijan on effective implementation of SARPs, it is essential to notice the State Program on “Aviation Security” of the Republic of Azerbaijan, which has been prepared taking into consideration the Annex 17. According to this document, “aviation security - is safeguarding civil aviation against acts of unlawful intervention, which obtained by a combination of measures and human and material resources.

“Security audit - is an in-depth, compliance examination of all aspects of the implementation of the national civil aviation Security Program. The purposes of the Aviation Security Program are:

- provision of the regularity and effectiveness of flight safety;
- ensure the security of aviation personals, crew members, flight crew, passengers and population;
- ensure the adoption of operative decisions while the danger increases to civil aviation;
- coordination functioning of appropriate organs, entities, and organizations engaged in the implementation of State Program on Aviation Security” (President Decree № 613, 24 April 2012).<sup>42</sup>

Furthermore, the State Program on “Flight Safety” of the Republic of Azerbaijan is the crucial document, that has been prepared taking into consideration Annex 19 to the Convention. According to this document, “flight safety – is the complex of measures by which risks connected with aviation

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<sup>41</sup> Ibid 62 (d)

<sup>42</sup> The State Program on “Aviation Security” confirmed by the President Decree № 613, 24 April 2012.

activities, related to, or with the direct support of the operation of aircraft, are reduced and controlled to an acceptable level.

The purposes of the Flight Safety Program are:

- determination of the strategy on management of flight safety in civil aviation and coordination of function of the organizations responsible for the provision of safety with the purpose of the implementation of this strategy;
- implement ICAO SARPs on safety management system;
- ensure the high level of flight safety via the controlling risks and determining the sources of the danger;
- encourage the planned, safe, and effective improvement of the flight safety field in the future” (the President Decree № 756, 27 June 2019).<sup>43</sup>

For the effective provision of flight safety in civil aviation and implementation of State Safety Program requirements, the Civil Aviation Agency establishes the Safety Management Group (SMG), the main function which is to analyze the State letters by ICAO to the Republic of Azerbaijan on amendments to the Convention on International Civil Aviation in the form of Annexes and any changes and amendments to these Annexes. Investigation of these proposals, SMG Group taking into consideration the service providers, civil aviation industry, and other subjects’ opinions in the civil aviation field, discuss the appropriateness of these amendments. Legal advisor’s opinion, in this case, has a significant role, by the reason of, lawyers within the SMG Group comparing and investigating the proposing amendments and changes to the Annexes with the national legislation of the Republic of Azerbaijan, give a legal opinion on appropriateness or inappropriateness of the implementation of SARPs into the national legal system. However, the function of this group which has an essential role in decision-making on the implementation of ICAO SARPs into the national legal system should be elaborated and legalized at the legislative level (see, part 5 of research: Suggestions for further research).

## **1.5. Conclusion remarks**

In the conclusion of this chapter, taking into consideration the aforementioned international and national law, I can say that, the international law provides for the member states important independence according to the principle of subsidiarity, “the margin of appreciation”, according which the Republic of Azerbaijan has a great opportunity in the evaluation of importance and relevance of the ICAO SARPs for the implementation into the national legal system. Moreover, investigating the national legal system

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<sup>43</sup> The State Program on “Flight Safety” confirmed by the President Decree № 756, 27 June 2019.

and organizational structure in the law-making process, especially the authorities regulating and controlling the civil aviation field, I can conclude that the norm making authority for the specialized organs in civil aviation is limited which restrict the opportunities for the effective implementation of SARPs into the national legal system.

## **CHAPTER II. THE ROLE OF THE INTERNATIONAL ORGANIZATIONS IN IMPLEMENTATION OF ICAO SARPs.**

### **2.1. Chapter overview.**

This chapter analyses the resources, by which international organizations guide and support the Contracting States to the Convention on their responsibility of implementation international documents into their national legal system. Moreover, this chapter explores the International Civil Aviation Organization (ICAO) as a regulatory international organization in the civil aviation field and investigates the role of this organization in the effective implementation of international law and SARPs of ICAO. Taking into account the role of ICAO as a supervisor on implementation, that uses the tools like monitoring and audit, this chapter analyses thoroughly the features of these means and their effectiveness in guiding the Member States.

### **2.2. The role of international organizations in the implementation.**

International organizations are the main actors involved in some way the policy-making at the international level. International organizations have an important role in the decision-making process for implementation. Since the states are increasingly delegating the implementation of international agreements and policies to international organizations (Hawkins, D., Lake, D.A, Nielson, D. and Tierney, M.J (eds) (2006).<sup>44</sup> Partly owing to the paucity of empirical research, there is an ongoing debate among scholars as to how to ensure compliance with international agreements. While some suggest that “enforcement” is the only way to prevent states from renegeing on internationally agreed commitments” (Downs, G., W., Roche, D., M., and Barsoom, P, N (1996),<sup>45</sup> others, by contrast, argue that “a managerial” approach consisting of knowledge transfer and financial assistance will yield more satisfactory results (Chayes, A., and Chayes, A. H.(1993).<sup>46</sup> These two approaches have hitherto been viewed as mutually exclusive so that it was the iron first- “*enforcement*”- or the velvet glove – “*management*”- that were assumed to prompt states to take certain actions. In addition to these approaches, a third perspective has

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<sup>44</sup> Hawkins, D., Lake, D.A, Nielson, D. and Tierney, M.J (eds) (2006). *Delegation and Agency in International Organizations*, Cambridge; Cambridge University Press.

<sup>45</sup> Downs, G.,W., Roche, D.,M., and Barsoom,P,N (1996) “Is the News about Compliance Good News about Cooperation?” *international organization*, 50 (3): 379-406.

<sup>46</sup> Chayes, A. and Chayes,A.H.(1993) “On Compliance”, *International Organization* 47(2): 175-205.

been developed which stresses international organization's less tangible resources such as their "*authority and legitimacy*" (Barnet, M. and Finnemore, M (1999)).<sup>47</sup>

The International organizations should be afforded with several crucial institutional capacities, such as an enforcement authority and managerial functions (Raustiala, K., and Slaughter, A.M(2001)).<sup>48</sup> First of all, the enforcement power and managerial skills of international organizations depend on the opportunities for governance with international law and the coercive policy tools that are available to them. Secondly, the enforcement authority encompasses the "implementation of", and "compliance with" the international agreements, which is the best ensured via mandatory means by the international organizations in the implementation process (Downs, G. W., Roche, D.M. and Barsoom, P.N (1996)).<sup>49</sup>

Investigating the Charters of international organizations, I have reveal that, they have several effective tools and opportunities in the policy of implementation. These tools encompass in itself, first of all, the acts of enforcement, directly putting pressure on the Member States in the implementation of international agreements. Secondly, they have the authority to manage the implementation process in the Member States. Last but not least, they have normative power – the legislative authority, which also the main resource for the Member States in the implementation process. It is pertinent to mention that, the enforcement power of international organizations requires monitoring and institution building in the Contracting States. The managerial authority allows the international organizations to offer expert help, guidance, and assistance to States. The normative power gives to the international organizations an authority as a legislator, which should be implemented taking into account the differences and contradictions between internationally agreed requirements and domestic policy regimes.

"Implementation is the translation of ratified international agreements into national policies and encompasses in itself the adoption of rules, regulations and the creation of domestic and international institutions" (Victor, D.G. (1998)).<sup>50</sup> According to Simmons, the "implementation differs from "*compliance*" and "*effectiveness*". Since unlike "compliance", is "the actual behavior of a given subject conforms to prescribed behavior" (Simmons, B. (1998)).<sup>51</sup> However, the "implementation" is the

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<sup>47</sup> Barnet, M. and Finnemore, M (1999) "The Politics, Power and Pathologies of international organizations", *International Organization* 53(4): 699-732.

<sup>48</sup> Raustiala, K. and Slaughter, A.M(2001) "International law, International relations and Compliance", *Handbook of International Relations*, London: Sage: 538-558.

<sup>49</sup> Downs, G.W., Roche, D.M. and Barsoom, P.N (1996) "In the news about compliance Good news about Cooperation?" *international Organization* 50(3):379-406.

<sup>50</sup> Victor, D.G.(1998). "The operation and effectiveness of the Montreal Protokol's noncompliance procedure".

<sup>51</sup> Simmons, B.(1998) "Compliance with international Agreements" *Annual Review of Political Science*, 1:75-93

“concrete actions which state officials take (or fail to take) to meet international agreements”. “*Effectiveness*” by contrast is the “acts, concerned with the impact of internationally agreed-upon policies and varyingly defined as the degree to which a rule induces changes in behavior that promote the underlying objectives of the rule, the degree to which it improves the state of the underlying problem or the degree to which it achieves its policy objectives” (Keohane, R, O., Haas, P, M. and Levy, M, A.(1993)).<sup>52</sup>

Even though the afro-mentioned definitions differ from one another, it is essential to notice that, the “compliance”, “effectiveness” and “implementation” have common and related features (Raustiala, K., Slaughter, A, M.(2201)).<sup>53</sup> Moreover, the role of national governments is also should be regarded as an indispensable with the international organizations for the effective implementation, by the reason of implementation “on the ground depends on facilities and opportunities, that only national authorities can provide” (Caplan, R. 2005).<sup>54</sup>

Taking into account the aforementioned functions of international organizations, I can say that, the authority of international organizations flows from two sources:

The first source is the control over information and expertise, since “the specialized technical knowledge, training, and experience can enable the organization, its bureaucracies and agencies to carry out directives or agreements more efficiently and also give them a power advantage over other less well-informed actors” (Barnett, M, and Finnemore, M (1999)).<sup>55</sup>

The second source is the authority to function as a legislator, that “is a product of the fact that international organizations are perceived as rational and impartial, which can in part be attributed to the rules and procedures that form the basis of their existence” (Boli, J. (1999)).<sup>56</sup> According to normative power, rather than coercing states or managing implementation, international organizations use reasoned

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<sup>52</sup> Keohane, R,O., Haas, P,M. and Levy, M,A.(1993) “The Effectiveness of International Environmental Institutions”. Cambridge, MA:MIT Press:3-24.

<sup>53</sup> Raustiala, K. and Slaughter, A,M.(2201) “International law, International Relations and Compliance”. Handbook of International Relations, London:Sage-538-558.

<sup>54</sup> Caplan, R. 2005. International Governance and War-Torn Territories. Rule and Reconstruction, Oxford: Oxford University Press.

<sup>55</sup> Barnett, M and Finnemore, M (1999) “The Politics, Power and Pathologies of International Organizations”, International Organization, 53 (4):699-672

<sup>56</sup> Boli, J. (1999) “Conclusion: World Authority Structures and Legitimations”, in J. Boli, and J. M. Thomas Constructing World Culture: International Nongovernmental organizations since 1875, Stanford, CA: Stanford University Press: 267-300.

argument to persuade states that meeting their international commitments is the appropriate and right thing to do (Rise, T.(2000)).<sup>57</sup>

“Monitoring, inspections, audits conducted by the international organizations and the evaluation of the situation on implementation based on reports of non-governmental organizations are one of the enforcement measures for the states. Furthermore, through expert advice, rule interpretation, financial or technical assistance the international organizations manage the process of implementation. Last, but not least, authority and legitimacy are the normative approach to the implementation resources of the international organizations” (J.Joachim, B., Reinalda, and B. Verbeek. 2008).<sup>58</sup>

The supervisory functions of international organizations such as monitoring, audit, and other inspections on the effective implementation by the Member States, result in publishing information about the findings and contradictions revealing during the audits. This is the way to enforce to the States, inasmuch as, by the reason of the Contracting States have the international responsibility on effective implementation, the non-implementation by them their international obligations lead to the damage to their international reputation in international level (See, Chapter 3 of Thesis).

### **2.3. The International Civil Aviation Organization (ICAO): structure and role in the implementation of SARPs.**

ICAO has instruments and resources at its disposal to ensure the transposition and further implementation of international agreements at the domestic level of Member States. Since as, Convention on International Civil Aviation and other significant documents allow us to reveal two sets of variables, which can affect the ability of ICAO to assert its power during the implementation phase. These are the institutional resources and domestic politics.

International Civil Aviation Organization (ICAO) was formed as a specialized agency, by the Convention on International Civil Aviation.(ICAO/History/Pages).<sup>59</sup> The Organization, according to Article 64 of the Convention, may, concerning to air matters within its authority, by vote of the Assembly, enter into appropriate arrangements with any general organization set up by the nations of the world to preserve peace (International Convention on Civil Aviation.1944).<sup>60</sup>

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<sup>57</sup> Rise, T.(2000) “Let’s argue!” Communicative Action in World Politics”, International Organization 54 (1): 1-35.

<sup>58</sup> J.Joachim, B. Reinalda and B. Verbeek “International Organizations and implementation: enforces, managers, authorities?” Routledge.2008: 8-11

<sup>59</sup> <https://www.icao.int/about-icao/History/Pages/icao-and-the-united-nations.aspx>

<sup>60</sup> The International Convention on Civil Aviation 1944 ratified by Azerbaijan in 1992. e-qanun.az.

According to Article 44 of the Convention, “the purpose of ICAO is to improve the principles and techniques of international air navigation and to contribute the planning and development of international air transport for the following:

guarantee the safe and regularized rise of international civil aviation, across the world;

maintain the arts of aircraft design and operation for peaceful process;

support the development of airways, airports, and air navigation equipment for international civil aviation;

meet the necessity of the peoples of the world for safe, orderly, effective and economical air transport;

anticipate economic waste caused by unreasonable rivalry;

insure that the rights of Contracting States has a fair possibility to operate international airlines;

escape discrimination between Contracting States; contribute safety of flight in international air navigation;

promote generally the development of all aspects of international civil aeronautics” (Convention on International Civil Aviation.1944).<sup>61</sup>

“The Assembly, a Council and a Secretariat are the main bodies of Organization” (International Convention on Civil Aviation.1944).<sup>62</sup> Article 47 of the Convention, called Legal capacity, establishes that, “the organization shall enjoy in the territory of each Contracting State such legal capacity as may be necessary for the performance of its functions. Full judicial personality shall be granted wherever compatible with the constitution and laws of the state concerned” (Convention on International Civil Aviation.1944).<sup>63</sup>

Article 48 establishes that, “all Contracting States shall have an equal right to be represented at the meetings of the Assembly and each Contracting State shall be entitled to one vote. One of the major powers and duties of the Assembly is to consider proposals for the modification or amendment of the provisions of the Convention and if it approves of the proposals, recommend them to the Contracting States under the provisions of chapter XXI of the Convention” (International Convention on Civil Aviation.1944).<sup>64</sup>

Another important body of ICAO is the Council, the governing body, which is elected by the Assembly for a three-year term, is composed of 36 States. As the governing body, the Council gives continuing direction to the work of ICAO. The Council among other mandatory functions, according to Article 54, “shall adopt following the provisions of Chapter VI of the Convention, international Standards

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<sup>61</sup> Ibid Article 44

<sup>62</sup> Ibid, Article 43

<sup>63</sup> Ibid, Article 47

<sup>64</sup> Ibid Article 48



and Recommended Practices; the convenience designates them as Annexes to the Convention; and notify all contracting states of the action taken” (Convention on International Civil Aviation.1944).<sup>65</sup>

According to Article 90 of the Convention, “the adoption by the Council of the Annexes described in article 54, subparagraph 1), shall require the vote of two-thirds of the Council at a meeting called for that purpose and shall be submitted by the Council to each Contracting State. Any such Annex or any amendment of an Annex shall become effective within three month after its submission to the Contracting States or at the end of such longer period time as the Council may prescribe, unless in the meantime a majority of the Contracting States register their disapproval with the Council. The Council shall immediately notify all Contracting States of the coming into force of any Annex or amendment thereto” (Convention on International Civil Aviation. 1944).<sup>66</sup>

Air Navigation Commission, Air Transport Committee, as well as Committee on Joint Support of Air Navigation Services and Finance Committee guides and supports the Council in technical, economic and other essential matters. Another significant body of ICAO - the Secretariat, headed by a Secretary General, is divided into five main divisions: Air Navigation Bureau, Air Transport Bureau, Technical Co-operation Bureau, Legal Bureau and the Bureau of Administration and Services. Moreover, ICAO has regional offices, which have obligation on serving to the Contracting States and maintaining relations with non-Contracting States and other territories in the areas of overall responsibility, for the performance of the air navigation functions, including, assisting, expediting and following up of action by States to implement regional plans and regional supplementary procedures and implementation of ICAO Standards, Recommended Practices and procedures (ICAO. Regional Office Pages).<sup>67</sup>

It is pertinent to mention that, as well as to its core functions of, such as normative, managerial and enforcement authorities, ICAO also coordinates assistance to the Member States, especially in producing global plans to coordinate multilateral strategic progress for safety and air navigation; monitoring and reporting on numerous air transport sector performance metrics; and auditing States’ civil aviation oversight capabilities in the areas of flight safety and aviation security. Furthermore, the Annual Report published by the Council of ICAO, provides the world aviation community with comprehensive information about activities and achievements of the Organization. The above mentioned functions support me in my opinion that, the ICAO has a significant influence on states in ensuring aviation and flight safety (ICAO/Council/Pages/Strategic-Objectives.aspx).<sup>68</sup>

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<sup>65</sup> Ibid Article 54

<sup>66</sup> Ibid Article 90

<sup>67</sup> <https://www.icao.int/secretariat/RegionalOffice/Pages/default.aspx>

<sup>68</sup> <https://www.icao.int/about-icao/Council/Pages/Strategic-Objectives.aspx>

Analyzing the key functions of ICAO in effective implementation of SARPs, I have revealed that, there are differences, as well as related features among the concepts of “implementation” and “compliance”. Since “implementation” refers to the activities of the Member States of an ICAO or regime and the measures by which international agreement are brought into effect in their domestic law. “Compliance” refers to the issue of whether countries-by means of these implementation activities – do adhere to international agreements.

Member States have an opportunity for the implementation as well as non-implementation of SARPs into national legal system. Since as the Article 38 of the Convention establishes, “if the State finds it impracticable to comply in all respects with any SARPs, or to bring its national legislation or practice into full accord with any international standard or procedure shall give immediate notification to the ICAO of the distinctions between its practice and that established by the international standard” (Convention on International Civil Aviation, 1944).<sup>69</sup>

#### **2.4. Supervision on the effective implementation of SARPs by ICAO Monitoring and Audit Programs.**

As the previous Chapter definitely presents, ICAO has an indispensable and significant role in the effective implementation of SARPs into the national legal system of the Member States. One of the main tools, contributing to this role, are the audits. “Audit – is a planned, regular and objective overlook of a State’s safety oversight system to reaffirm compliance with the provisions of the Chicago Convention or national regulations, conformance with the cohesion to ICAO Standards and Recommended Practices, procedures and good aviation safety practices” (ICAO-USOAP/Manual.2011).<sup>70</sup> Taking into account the international obligation of the Republic of Azerbaijan for the implementation of SARPs, our national legislation shall comply with the standards and norms in civil aviation. This obligation of the Contracting States is monitoring periodically by the ICAO which verifies compliance with SARPs through audits of the State oversight system. Currently, there are two audit programs:

1. Universal Safety Audit Program (USAP-CMA);
2. Universal Safety Oversight Audit Program (USOAP).

“Aviation security oversight is a function which authorize the Member States to guarantee the effective implementation of security-related Standards and Recommended Practices (SARPs) contained

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<sup>69</sup> The International Civil Aviation Convention, 1944. e-qanun.az

<sup>70</sup> Universal Safety Oversight Audit Program Continuous Monitoring Manual. Third Edition-2011.

in the Annexes to the Chicago Convention and related ICAO documents “(Annex 17 to the Convention 2020).<sup>71</sup>

The responsibility of Contracting States for aviation security oversight and control are the basis of the global aviation security. Since a lack of relevant aviation security oversight and regulation in one Member State can have a detrimental impact on international civil aviation operations in the world. Aviation security oversight safeguard as well as the national aviation industry’s security level. For the provision of aviation security in every Member State, it is particularly crucial to maintain uniform standards in the world (Security/USAP/Pages/The-Critical-Elements.aspx).<sup>72</sup>

***The role of ICAO in the field of control of security is realized under the Universal Security Audit Program (USAP- CMA).*** The objective of the USAP-CMA is to support global aviation security through constant auditing and monitoring of Member States’ aviation security performance, to strengthen their aviation security appropriateness and oversight capabilities, by:

- correctly and unceasingly purchasing and investigating data on Member States’ aviation security performance, including the degree of implementation of the Critical Elements of an aviation security oversight system and the degree of compliance of with Standards of Annex 17 — Security and the connected security related Standards of Annex 9 — Facilitation, as well as associated procedures, guidance material and security-related practices;

- identifying deficiencies in the overall aviation security performance of Member States and assessing the risks associated with such deficiencies;

- providing prioritized recommendations to assist Member States in addressing identified deficiencies;

- evaluating and validating corrective actions taken by Member States;

- re-assessing the overall levels of Member States’ aviation security performance achieved, aimed at continuously enhancing Member States’ aviation security compliance and oversight capabilities (Security/USAP/Pages/default.aspx).<sup>73</sup>

Analyzing the Universal Security Audit Program (USAP- CMA) eight Critical Elements (CE) to an effective State aviation security oversight system should not be underestimated, by the reason of they are the main requirements for the provision of aviation security and effective implementation of SARPs. The Critical Elements (CE) and their associated components are the following:

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<sup>71</sup> Annex 17 to the Convention on international Civil Aviation “Security”. Eleventh Edition. March 2020.  
<https://store.icao.int/products>

<sup>72</sup> <https://www.icao.int/Security/USAP/Pages/The-Critical-Elements.aspx>

<sup>73</sup> <https://www.icao.int/Security/USAP/Pages/default.aspx>

First of all, the *Critical Element (CE)-1* contains the provisions of a comprehensive and effective legislative framework, consistent with the environment and complexity of the State's civil aviation operations, as well as, establishment and implementation of Annex 17 Standards and relevant security-related Standards contained in other Annexes. Secondly, the *Critical Element (CE)-2* is the provision of adequate national-level programs and regulations to address national requirements emanating from aviation security legislation. Moreover, these CE provisions require standardized implementation procedures, equipment, and infrastructures in conformance with Annex 17 Standards. Third, the *Critical Element (CE)-3* is the requirement for the designation of appropriate national authority for aviation security matters, supported by appropriate technical and non-technical personnel and the provision of adequate financial resources. It is pertinent to mention that, the State appropriate authority must have aviation security regulatory functions, objectives, and policies, and must develop and maintain an effective National Civil Aviation Security Programme, National Civil Aviation Security Training Programme and National Civil Aviation Security Quality Control Programme (ICAO Document 10047 – *Aviation Security Oversight Manual. First edition 2015* ).<sup>74</sup>

Moreover, the *Critical Element (CE)-4* contains the provisions on personnel qualifications and training, the establishment of minimum knowledge and experience requirements for technical personnel performing State aviation security oversight and regulatory functions and requirements for and provision of training to the aviation industry on the implementation of applicable aviation security requirements. Furthermore, the *Critical Element (CE)-5* requires the technical guidance, tools, and security-critical information, as applicable, to technical personnel to enable them to perform security oversight functions in accordance with established requirements and in a standardized manner and technical guidance on the implementation of applicable regulations by the appropriate authority. The next is the *Critical Element (CE)-6* requires the implementation of processes and procedures to ensure that personnel and organizations performing an aviation security activity meet the established requirements before they are allowed to conduct the relevant activity, such as the certification of screeners, the approval of security programs and the requirements for recurrent certification and approvals. Following, the *Critical Element (CE)-7* demands implementation of processes, such as audits, inspections, surveys, and tests, to proactively ensure that aviation security entities continue to meet the established requirements and operate at the level of competency and security required by the State. This includes the monitoring of designated personnel who perform security oversight functions on behalf of the appropriate authority. Last but no means least, the *Critical Element (CE)-8* contains the requirements on implementation of processes and procedures to resolve identified deficiencies, including the ability to

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<sup>74</sup> Additional information on the critical elements can be found in ICAO USAP-CMA Activities Document 10047 – *Aviation Security Oversight Manual. The establishment and Management of a state's Aviation Security Oversight System. First edition- 2015.*

analyze security deficiencies; provide recommendations to prevent reoccurrence; track rectification; respond to acts of unlawful interference and ensure the effective implementation of corrective actions, and take enforcement action when appropriate (ICAO Document 10047 – *Aviation Security Oversight Manual. First edition 2015* ).<sup>75</sup>

Universal Security Audit Program Continuous Monitoring Manual is the main guiding document in the realization of the USAP-CMA Program. The primary purpose of this Manual is to describe the Universal Security Audit Program Continuous Monitoring Approach (USAP-CMA) and to provide guidance to the ICAO Member States, recognized organizations, USAP-CMA audit team leaders, and audit team members and support staff involved in the planning, preparation, conduct, and reporting of USAP-CMA activities. It also provides information on the background and evolution of the USAP, along with an explanation of its management and various components and standardized processes and procedures to ensuring that, USAP-CMA activities are conducted in a systematically and consistently (ICAO-Doc 9807. Second Edition 2016).<sup>76</sup>

***Another significant program as the audit tool of ICAO is the Universal Safety Oversight Audit Program (USOAP).*** USOAP audits focus on a State's capability in providing safety oversight by assessing whether the State has effectively and consistently implemented the Critical Elements (CEs) of a safety oversight system, which enable the State to ensure the implementation of ICAO's safety-related Standards and Recommended Practices (SARPs) and associated procedures and guidance material. Critical elements (CEs) are the defence tools of a State's safety oversight system, required for the effective implementation of international and national safety-related standards, policies and associated procedures. The rate of Effective Implementation (EI) of the CEs is an indicator of a State's safety oversight capabilities (safety/CMAForum/Pages/default.aspx).<sup>77</sup>

To determine the safety oversight capabilities of its member States, ICAO carries out continuous monitoring activities to assess the effective implementation by the States of the eight CE in eight audit areas, namely legislation, organization, personnel licensing, flight operations, airworthiness, aviation investigation, aeronautical information services and aerodrome services, using a set of Protocol Questions (PQs) for each audit area and verify the status of the States' implementation of safety-related ICAO Standards and Recommended Practices (SARPs), associated procedures, guidance material and best safety practices.

The Chart (See, the Appendix I to this Thesis), classifies the steps for the flight safety provision in civil aviation, describing the measures, which the policymaker of the state should take into

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<sup>75</sup> Additional information on the critical elements can be found in ICAO USAP-CMA Activities Document 10047 – *Aviation Security Oversight Manual. The establishment and Management of a state's Aviation Security Oversight System. First edition- 2015.*

<sup>76</sup> Doc 9807. Universal Security Audit Program Continuous Monitoring Manual. Second Edition/2016.

<sup>77</sup> <https://www.icao.int/safety/CMAForum/Pages/default.aspx>

consideration during the implementation of international standards. Critical Elements (CE)- are essentially the safety defense tools of a State Safety Oversight needed for effective and sustainable safety oversight system. The states are required to implement eight Critical Elements (CE). The effective implementation of the CEs is an indication of state's capability for safety oversight (ICAO-Manual/Doc 9859.Fourth Edition-2018)<sup>78</sup>. The eight CEs of state safety oversight system are interconnected and complement to each other. CE-1 to CE-5 are presented in Appendix I to this Thesis the "Establishment Critical Elements", while CE-6 to CE-8 are the "Implementation Critical Elements" which have been implemented to the national legal system of the Republic of Azerbaijan through the State Safety Program (the President Decree № 756, 27 June 2019).<sup>79</sup>

The role of ICAO in the field of control provisions of safety is realized according to the Universal safety Oversight Audit Program Continuous Monitoring Manual approved by the secretary General of the International Civil Aviation Organization determines the periodic audits conducting by ICAO in member states. The primary goal of this document is to describe the Universal Safety Oversight audit Program Continuous Monitoring Approach (USOAP-CMA) and to provide guidance to ICAO Member States, recognized organizations, team leaders, team members, subject matter experts and support staff involved in the planning, preparation, conduct and reporting of USOAP CMA activities. It also provides information on the background and evaluation of USOAP CMA, doing with an explanation of the management and various components and includes procedures for conducting USOAP CMA activities (ICAO/Doc 9735. Third edition-2011).<sup>80</sup>

According to the Manual, within the scope of the USOAP CMA the Deputy director of Safety Management and Monitoring is responsible for overseeing the proper management of the program. Doc 9859 Manual provides detailed guidance on the principles and practices of aviation safety management. It is designed to support States in implementing an effective State safety programme (SSP) which is a key objective outlined in the Global Aviation Safety Plan (ICAO/Doc-10004.2019).<sup>81</sup> This includes ensuring that service providers implement Safety Management Systems (SMS) under the provisions of Annex 19. It focuses on the intended outcome of each Standard and Recommended Practice (SARP) and highlights the importance of each organization tailoring the implementation of safety management to fit their specific environment.

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<sup>78</sup> Safety Management Manual. Doc 9859. Fourth Edition- 2018.

<sup>79</sup> The State Program on "Flight Safety" confirmed by the President Decree № 756, 27 June 2019.

<sup>80</sup> Universal safety Oversight Audit Program Continuous Monitoring Manual. Doc 9735. AN/960. Third edition-2011.

<sup>81</sup> Doc 10004. Global Aviation Safety Plan 2020-2022 Edition. ICAO-2019.

## ***2.5. Conclusion remarks***

In this Chapter, investigating the role of international organizations, especially ICAO in the implementation of international law and exploring the precise resources of ICAO, such as audits, based monitoring programs, I have reveal that, ICAO has a significant role in effective implementation of SARPs into national legal systems of the Contracting States. Moreover, taking into account the principle of subsidiarity which provides a great opportunity to the Contracting States in estimation and decision-making on the implementation of SARPs, I can conclude that, ratifying the Convention on International Civil Aviation, the Republic of Azerbaijan has obliged to reform its national legal system with compliance of the provisions of Convention. However, the Annexes of Convention converting the international Standards and Recommended Practices have not the same legal status with the Convention until the Member State notified about the adoption of this Annex and implementation of it into national legislation.

## **CHAPTER III. IMPLEMENTATION OF INTERNATIONAL LAW AND ICAO SARPs AS AN INTERNATIONAL OBLIGATION OF THE REPUBLIC OF AZERBAIJAN.**

### **3.1. Chapter overview.**

The Chapter gives the main reason- the occupation of Azerbaijan's territory by Armenia and inadmissibility of flights over the territory another contracting state without its permission- for the failure of fulfillment of implementation of the provisions of the Convention on International Civil Aviation and its Annexes adopted by ICAO in Nagorno-Karabakh region of the Republic of Azerbaijan. Furthermore, this Chapter proves Armenia's international responsibility for the illegal use of Khojaly airport and air space above the occupied territories of Azerbaijan. Inasmuch as the non-implementation of ICAO SARPs, the provisions of the Convention on International Civil Aviation and Aviation Law of the Republic of Azerbaijan in the Nagorno Karabakh and seven surrounding districts is the violation of international legal norms by Armenia, by the reason of Armenia realizes an effective control over this territory. By the reason of Armenia has effective control over the Nagorno-Karabakh and seven surrounding districts, the international responsibility as a member state of ICAO relies on Armenia. Moreover, in this chapter have been investigated the illegal declaration by Armenia the so-called "Nagorno-Karabakh Republic" and its international legal status. In addition to the legal point of exploration, this Chapter gives the main reasons for the failure of the fulfillment of implementation of the provisions of the Convention on International Civil Aviation and its Annexes adopted by ICAO in Nagorno-Karabakh region of the Republic of Azerbaijan. Furthermore, this chapter purposes to prove Armenia's international responsibility for the illegal use of Khojaly airport and air space above the occupied territories. Inasmuch as the non-implementation of ICAO SARPs, the provisions of the Convention on International Civil Aviation and Aviation Law of the Republic of Azerbaijan in the Nagorno Karabakh and seven surrounding districts is the violation of international legal norms by Armenia, by the reason of Armenia realizes an effective control over this territory.



### **3.2. The principle of subsidiarity in international law.**

The “Vienna Convention on the Law of Treaties”, determines the concepts of “ratification”, “acceptance”, “approval” and “accession” (Vienna/Convention/Treaties.htm).<sup>82</sup> Article 26 of this Convention called “Pacta sunt servanda” establishes that, “every treaty in force is binding upon the parties to it and must be performed by them in good faith”. Moreover, Article 27 named “Internal law and observance of treaties” determines that, “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty” (Vienna Convention on the Law of Treaties/1969).<sup>83</sup>

Ratifying the International Convention on Civil Aviation (Decision of the Milli Majlis/ from 14 July 1992. № 204),<sup>84</sup> the Republic of Azerbaijan has obliged to comply its national legislation which formulated the legal system of the State, with the international Standards and Recommended Practices (SARPs) of ICAO for the effective implementation and precise execution of its international obligations under this Convention. After the ratification of the International Convention on Civil Aviation, the Republic of Azerbaijan has taken an international obligation in front of the International Civil Aviation Organization (ICAO) to implement the Convention and its Annexes into the national legal system. The state in this regard not only has simply to write in its national legislation the provisions of international documents, but also shall efficiently provide the opportunities for the working these provisions in the civil aviation field for the purposes of aviation security and flight safety.

Memorandum of Universal Control Audit Program on Continuing monitoring (USOAP) between Republic of Azerbaijan and ICAO, establishes that Azerbaijan has the right to participate in all permanent basis events within the USOAP and takes an obligation to establish and implement the system providing the control over the flight safety and delivering the information to ICAO on flight safety. Furthermore, Azerbaijan has obliged to implement the appropriate Annexes to the Convention into the national legal system and to comply with its civil aviation function with them. According to this Memorandum, ICAO can publish the results and recommendations on the international obligation of Azerbaijan, which Azerbaijan has to do several measures for the execution of such recommendations. The crucial point of this Memorandum is that other member states of ICAO have the access to this informative publication about the current situation in Azerbaijan (Decree of the President N 688/2015).<sup>85</sup>

The agreement confirmed by the President of the Republic of Azerbaijan “On Mutual Functioning Between Civil Aviation Administration of the Republic of Azerbaijan and Interstates Aviation Committee about investigation and prevention of aviation accidents” determines that, “taking into consideration that

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<sup>82</sup> <https://www.oas.org/legal/english/docs/Vienna> Convention Treaties.htm

<sup>83</sup> “Vienna Convention on the Law of Treaties”. 1969. United Nations, Treaty Series, vol 1155, p331.

<sup>84</sup> Decision of the Milli Majlis about the ratification of “International Convention on Civil Aviation” from 14 July 1992. № 204.

<sup>85</sup> Memorandum of Universal Control Audit Program on Continuing monitoring between Azerbaijan Republic and ICAO confirmed in 20<sup>th</sup> November 2015 with the N 688 Decree of the President of Azerbaijan

ICAO has accredited the Interstates Aviation Committee, the accidents in civil aviation happened with the Azerbaijan aircraft and with the aircraft's operating in Azerbaijan jurisdiction, will be investigated together with this Committee taking into account the Annex 13 provisions" (Decree of the President № 781. 2 October 2017).<sup>86</sup>

Determining the obligation of member states in the implementation of SARPs, the fundamental principle of international law - the principle of subsidiarity should be taken into consideration. A "principle of subsidiarity" regulates how to allocate or use authority within a political or legal order, typically in those orders that disperse authority between the center and various member units (Andraes Follesdal,1998).<sup>87</sup> The principle holds that the burden of the argument lies with attempts to centralize authority. Scholars appeal to subsidiarity not only to negotiate centralization and diversity in EU law, (Grainne De Burga,1999)<sup>88</sup> but to determine the limits of sovereignty (Mattias Kumm, Jeffrey L. Dunoff & Joel P. Trachtman, 2009),<sup>89</sup> and possibly for international law more generally (Anne-Marie Slaughter,2000).<sup>90</sup>

The role of the principle of subsidiarity as the main resource for the formulation of judicial and political conversations encompass in itself both normative and empirical premises on such matters, as the allocation of authority between national and international institutions. A principle of subsidiarity is the main tool for expressing the sovereign right of states in decision-making in international law. Moreover, the essential feature of this principle is its normative legitimacy (Andreas Follesdal, 2011).<sup>91</sup> The principle of subsidiarity within the Convention system means that first and foremost, the Contracting States are responsible for civil aviation security and flight safety in civil aviation. Although there is no direct mention of this principle in the Convention on International Civil Aviation, this principle of international law should not be eliminated. Since according to its Preamble, "the undersigned governments having agreed on certain principles and arrangements so that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established based on equality of opportunity and operated soundly and economically have accordingly concluded this Convention to that end" (Convention on International Civil Aviation,1944).<sup>92</sup> Furthermore, the complementary nature of the

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<sup>86</sup> Decree of the President of the Republic Azerbaijan about the confirmation the Agreement from 2 October 2017-ci il, № 781-VQ

<sup>87</sup> Andraes Follesdal, "Subsidiarity", 6 Journal of Political Philosophy (1998).

<sup>88</sup> Grainne De Burga, "Reappraising subsidiarity's significance after Amsterdam". Jean Monnet Working Papers, Harvard Law School/NYU School of Law, no. 7/99(1999),

<sup>89</sup> Mattias Kumm, "The cosmopolitan turn in constitutionalism: On the relationship between constitutionalism in and beyond the state, in Ruling the World? Constitutionalism, International Law, and Global Governance" (Jeffrey L. Dunoff & Joel P. Trachtman eds., 2009), 294.

<sup>90</sup> Anne-Marie Slaughter, "A liberal theory of international law, 94 American society of international law proceedings "(2000).

<sup>91</sup> Andreas Follesdal. "The Principle of Subsidiarity as a Constitutional Principle in International Law". New York University School of Law. NY 10011. 2011.

<sup>92</sup> Convention on international Civil Aviation,1944 e-qanun.az

Convention system is to be found in Article 37 of the Convention on International Civil Aviation establishing that, “each Contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization concerning to aircraft, personnel, airways, and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation”.

Investigating the essence of the principle of subsidiarity, I have reveal that, the definition of this concept allows us to determine its sovereign nature for the Contracting States. By the sovereign nature, I mean the respect to the sovereignty of States in international law. Inasmuch, Contracting States have sovereignty in the formulation and structuring of its national legal system. In this regard, the discretion for the decision-making in the implementation of SARPs lies in the States.

The “margin of appreciation” is the concept of the principle of subsidiarity that allocates to national authorities the discretion - the authority of evaluation the international norms and make a decision on implementation of them within its territory (Gabriel Fuglistaler, 2016).<sup>93</sup> The meaning of “margin of appreciation” originates from French term –“*marge d’appréciation*”, which is translated into English as “margin of assessment/appraisal/estimation (Steven Greer, 2000).<sup>94</sup> The “discretion on implementation” gives to the decision-maker of the states - the national authorities a freehand margin of appreciation for the implementation. Generally, the fundamental principles of democracy, legality, subsidiarity, and proportionality give national democratic institutions a legitimate role in decision-making.

Having analyzed the nature of the principle of subsidiarity, I can say that, it is a fundamentally political concept, rather than judicial and national authorities are in a better position to assess local situations and conditions in civil aviation for decision-making. This sovereignty on decision making on implementation has given to national executive and administrative agencies by the Convention. It derives that national regulatory administrative organs in civil aviation are in “better position” than Convention organs in assessing the importance of the implementation of SARPs and desirability of Recommended Practices.

### **3.3. Reasons for failure of international civil aviation law provisions and SARPs of ICAO in the region of Nagorno-Karabakh of the Republic of Azerbaijan**

Article 11 of the Constitution of the Republic of Azerbaijan, grounds that, “the territory of the Republic of Azerbaijan shall contain the inner waters, the Caspian Sea (Lake), sector belonging to the

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<sup>93</sup> Gabriel Fuglistaler. “The Principle of Subsidiarity and the Margin of Appreciation doctrine in the ECHR’ Post-2011 Jurisprudence”. 2016. IDHEAP, Lausanne.

<sup>94</sup> Steven Greer. Reader in Law, University of Bristol, United Kingdom. “The Margin of Appreciation: Interpretation and Discretion under the European Convention on Human Rights”. Council of Europe. July 2000.

Republic of Azerbaijan and air space over the Republic of Azerbaijan” (Constitution,1995).<sup>95</sup> This provision is elaborated by Article 3 of the “Law on Aviation” of the Republic of Azerbaijan, establishing that “airspace over the Republic of Azerbaijan is an inalienable part of its territory, and Azerbaijan has absolute sovereignty over its territory” (Law on Aviation, 2005).<sup>96</sup>

As these legal provisions clearly describes, the legislation determines the concrete borders and jurisdiction of the Republic of Azerbaijan and provides the country with sovereignty over its territories. Glancing to Article 9 of the Convention, named “Prohibited areas” I can say that, “each Member State may in the case of military necessity or for the protection of public safety, constrain or forbid uniformly the aircraft of other states from flying over territorial jurisdiction of the country” (Convention on International Civil Aviation,1944).<sup>97</sup>

Occupying the historical territories of the Republic of Azerbaijan, Armenia has reconstructed an airport in the occupied Nagorno-Karabakh region, which constitutes a rough violation of international law and the guarantees of the Convention on International Civil Aviation. Since this region is an integral part of Azerbaijan and the air space shall be used only with the permission of Azerbaijan’s authoritative organs. Stepanakert Airport is an airport in Khocali, near Stepanakert the capital city of the “NKR” which is unrecognized by the international community as an independent state and has not any legal status according to international law. The airport has been under the control of Armenia since 1992. Flights ceased to take place with the escalation of the Nagorno-Karabakh War in 1990. As the airport lies with the internationally recognized borders of the Republic of Azerbaijan and the current government of the so-called “NKR” is unrecognized, there are no codes for the airport in the official IATA list. Attempts made to unilaterally put the Khojaly airport into operation without permission of the Azerbaijani side and perform certification were evaluated as a violation of the Convention on International Civil Aviation as well as international law. In this regard, it is essential to point Article 3 (c) of the Convention, called “Civil and State aircraft”.

The article provides that, “no State aircraft of Contracting State shall fly over the territory of another State or land thereon, without authorization by particular consent or otherwise and under the terms thereof”. Furthermore, it is pertinent to mention the Article 3 bis (b), establishes that, “the Contracting States accept that every State in the exercise of its sovereignty, authorized to demand the landing at some designated airport of a civil aircraft flying above its territory without authority or if there are reasonable

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<sup>95</sup> The Constitution of the Republic of Azerbaijan 12 November 1995. e-qanun.az

<sup>96</sup> “Aviation Law” of the Republic of Azerbaijan. 24 June 2005. e-qanun.az.

<sup>97</sup> International Convention on Civil Aviation 1944 ratified by Azerbaijan in 1992. e-qanun.az

grounds to conclude that it is being used for any purpose inconsistent with the aims of this Convention”(Convention on International Civil Aviation, 1944).<sup>98</sup>

Civil Aviation Authority of the Republic of Azerbaijan, which controls and regulates the civil aviation field of the Republic of Azerbaijan, informed the ICAO about this violation of international law by Armenia in the 38<sup>th</sup> Assembly. Secretary-General confirmed the inadmissibility of unauthorized flights over the territory of Azerbaijan recognized by the United Nation and confirmed by the appropriate Resolutions of the Security Council on Karabakh conflict and occupation by Armenia. (38<sup>th</sup> Session Assembly caa.gov.az).<sup>99</sup>

Analyzing the international provisions on the territorial sovereignty of Contracting States, I can conclude that, Azerbaijan Civil Aviation Authority has not an effective control over the occupied territories of the Republic of Azerbaijan, by the reason of these territories are under the effective control by Armenia. Furthermore, the above-mentioned activities conducted by Armenia, contradict to the Resolutions of the United Nations Security Council, demanding the liberation of the occupied Azerbaijan territories. Besides, the commitments are undertaken by Armenia before the Council of Europe prove that Armenia’s purpose of opening this airport is a provocation act which obstacles the peace negotiations.

### **3.4. Azerbaijan has no responsibility for the failure of the effective implementation of ICAO SARPs in the occupied territories of Azerbaijan.**

It is a historical fact Karabakh was de facto within the Azerbaijan Democratic Republic in 1918-1920 and following the invasion of Azerbaijan by Red Army the Caucasian Bureau of the Central Committee of the Russian Communist Party declared in 1921 the Nagorno Karabakh region to be part of the Soviet Republic of Azerbaijan. According to this decision, the region would remain the part of Soviet Azerbaijan, but granted autonomous status, which was reaffirmed in article 86 of the Soviet Constitution (Johanna Pojanevski,2017).<sup>100</sup>

Occupation of the territories of the Republic of Azerbaijan by Armenia is a rough violation of international legal norms. According to Article 2, paragraph 4 of the Charter of the United Nations, which one of the founded purposes is to the maintenance of international peace and security, establishes “States shall refrain in their international relations from the threat or use of force against the territorial integrity

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<sup>98</sup> The “Convention on International Civil Aviation” 1944. Chicago. Ratified by Azerbaijan in 1992. e-qanun.az

<sup>99</sup> 38<sup>th</sup> Session of Assembly of the International Civil Aviation Organization (ICAO) held in Montreal 24 September-4 October 2013. <http://caa.gov.az>

<sup>100</sup> International law and the Nagorno-Karabakh conflict. Johanna Pojanevski. The International Politics of the Armenian-Azerbaijani Conflict. Svante.E. Cornell\2017.pp23-49.

or political independence of any State or in any other manner inconsistent with the Charter” (Charter of UN,1945).<sup>101</sup>

The United Nations Security Council adopted four resolutions on the Nagorno-Karabakh conflict, reaffirming the inadmissibility of the use of force for the acquisition of the territory, condemned the occupation of the territories of Azerbaijan, confirmed respect for the sovereignty and territorial integrity of Azerbaijan and the inviolability of its international borders” (UN Security Council Resolutions,1993).<sup>102</sup> Article 42 of the Regulations concerning the “Laws and Customs of War on Lands”, defines militant occupation when the territory is placed under the authority of hostile army”(E. Benvenitsi.2012).<sup>103</sup>

According to Montevideo Convention of 1933, the traditional requirements for independent statehood in international law are the following: a permanent population, a defined territory, and an effective government (Montevideo Convention on the Rights and Duties of States,1933).<sup>104</sup> In the case of Nagorno-Karabakh all three of these requirements pose obstacles for the establishment of de jure state. Inasmuch as, since the war early 1991th, Armenia has exercised an effective control not only of Nagorno-Karabakh but also seven surrounding administrative districts. This makes the existence of fixed borders or a defined territory highly questionable. From 1921 the region was declared as a de jure part of Soviet Azerbaijan and remained so throughout the Soviet era. Indeed on December 1, 1989, the Supreme Soviet of Armenia attempted to formally annex the region by proclaiming Nagorno-Karabakh a part of Armenia (Tim Potier,2001).<sup>105</sup> Its subsequent occupation of internationally recognized territories of the Republic of Azerbaijan, further speaks against the existence of defined borders in the region.

The criterion of the permanent population is equally problematic given that virtually the entire ethnic Azerbaijani population has been expelled from the region. Indeed while the question of whether the population in the meaning of the Convention needs to be of a certain size or composition remains open to interpretation, it is reasonable to assume the requirement of a level of consistency concerning inhabitation of the territory. The mass expulsions from the region that took place in the early 1990th which led up to 7 percent of Azerbaijan population being displaced speaks strongly against any permanently demographic situation in the region (UNHCR “Azerbaijan: Analysis of Gaps in the Protection of Internally Displaced People” (IDP) October 2009).<sup>106</sup>

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<sup>101</sup> Charter of the United Nations (1945) New York: United Nations Department of public Information (2001).

<sup>102</sup> United Nations security council Resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993).

<sup>103</sup> E. Benvenitsi. “The International law on occupation”. (Oxford: Oxford University Press, 2012), p 43;Y.Dinstein “The International law of Belligerent Occupation” (Cambridge: Cambridge University Press, 2009), p 42-45.

<sup>104</sup> “Montevideo Convention on the Rights and Duties of States” signed in Montevideo at the 7<sup>th</sup> International Conference of American States, December 26, 1933.

<sup>105</sup> Tim Potier, Conflict in Nagorno-Karabakh, Abkhazia and South Ossetia: A legal Appraisal (The Hague: Kluwer Law, 2001), 103

<sup>106</sup> UNHCR “Azerbaijan: Analysis of Gaps in the Protection of Internally Displaced People” (IDP) October 2009, at <http://www.unhcr.org/4bd7edbd9.html>.

Another important of the three principles is effective governance which means that control over the territory needs, as far as possible to be exercised independently from external actors (Shaw, Emerson, Neiko Kruger, 2010).<sup>107</sup> In case of Nagorno-Karabakh it is relevant to examine the level of interference of Armenia in the region, and its implications for effective control over the territory. From 1986 Armenia began mobilizing itself militarily in the region through providing weapons to the separatist army. Over the following years, Yerevan's role in Nagorno-Karabakh became all the more pronounced. Following self-proclaimed elections in 1989, a "National movement" was formed in the region, which was recognized by the Yerevan as the only legitimate representative of the Karabakh Armenian.

In assessing the significance of Yerevan's troop presence in the region, and how it affects the ability of the separatist authorities to exercise effective control over its territory, it is relevant to recall the conclusions drawn by the European Court of Human Rights (ECHR) in the case of *Ilascu and Others* concerning Moldova's secessionist region of Transnistria. The Court stated that, inter alia, that Russia's military and political support to the secessionist authorities amounted to effective control of the region (ECHR/Judgement, 2004).<sup>108</sup> In light of the above-mentioned case, the European Court of Human Rights (ECHR) elaborated on the concept of effective control with its interpretation in the case of *Chiragov and others v. Armenia*. Since the Court held that: "the Republic of Armenia from the early days of the Nagorno-Karabakh conflict has had an important and crucial impact over the "NKR". Moreover, the Court determined, that unrecognized "NKR" and its administration survives by force of the military, political, financial and other support given to it by Armenia which as a result exercises effective control over Nagorno-Karabakh and the surrounding territories, including the district of Lachin"(ECHR/Judgement, 2015).<sup>109</sup>

After the ratification of the Chicago Convention, Azerbaijan has obliged to fulfill its provisions and provisions of its Annexes in the territorial jurisdiction of the country. Article 1 called "Sovereignty" of the Convention on International Civil Aviation establishes that "the Contracting States recognize that every state has complete and exclusive sovereignty over the airspace above its territory". According to Article 2 "the territory of the state shall be deemed to be the land area and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State" (Convention on International Civil Aviation, 1944).<sup>110</sup>

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<sup>107</sup> Shaw, International law; Emerson, "Self-determination"; and Neiko Kruger "the Nagorno Karabakh Conflict": A Legal Analysis (Springer-Verlag Berlin Heidelberg, 2010).

<sup>108</sup> European court of Human Rights, "*Ilascu and Others v. Moldova and the Russian Federation*" (App N 48787/99), Judgement of July 8, 2004.

<sup>109</sup> European Court of Human Rights, "*Case of Chiragov and others v. Armenia*", (APP.N 13216/05), Grand Chamber Judgement of June 16, 2015. HUDOC.

<sup>110</sup> The "Convention on International Civil Aviation" 1944. Chicago. Ratified by Azerbaijan in 1992. e-qanun.az

The aforementioned international documents openly confirm that Azerbaijan has not an effective control over its legally recognized by international law territories and is not responsible for the non-implementation of civil aviation law, the Convention on International Civil Aviation and ICAO Standards and Recommended Practices adopted in the form of Annexes to this Convention in the occupied by Armenia territories.

### ***3.5. Conclusion remarks***

Having analyzing the main points of the Armenian-Azerbaijan conflict from the legal point of view and investigating the international documents confirming the illegality of the occupation of Nagorno-Karabakh and seven regions of the Republic of Azerbaijan, based on the self-determination assumptions by Armenia, which is strongly in contradiction with the internationally accepted principle- the territorial integrity of the states I can conclude that, so-called the “Nagorno-Karabakh Republic” is not an independent state and any attempt by Armenia to rebuild and use of Khojali airport is a violation of international legal norms, especially Convention on International Civil Aviation.



## CONCLUSION

Analyzing the international law, Convention and its Annexes, the recommended practices of ICAO, published audit results and monitoring results, national and international legislation on civil aviation field, the legislative process in Azerbaijan, I can reveal several significant factors which lead to the challenge for effective implementation of SARPs. As an international organization, ICAO which is the main purpose is to provide legal standards and recommendation in the civil aviation to the member and third states and have the right to audit the legal system and the level of effective implementation of the international norms and standards in civil aviation has a considerable role in the lawmaking process.

By the reason of such supervision by ICAO, the state has to effectively implement the SARPs, because ratification of Convention on International Civil Aviation has obliged the state in implementation of international norms and standards in civil aviation into the national legal system. Exploring the national legislation and the lawmaking process of the Republic of Azerbaijan, I can reveal that there is a challengeable process for lawmaking which makes obstacles for the effective implementation of SARPs. The implementation of ICAO SARPs has begun from the date of ratification of the International Convention on Civil Aviation and this process is ongoing today at the legislative level. But the current situation shows that the national laws and regulations regulating this field have not been prepared and approved at the normative level.

So, the policymakers in the legislative field have to analyze and make a decision comparing the international standards with the current practice and legislation. Legislative actors are governmental actors that authorize the assessment of implementation using democratic values and legal principles. The main differences between the legislative and intergovernmental actors are that the legislative actors have the authority to formulate the body of rules and the legal status to make final decisions about governance.

## **SUGGESTIONS FOR FURTHER RESEACRH**

Having discussed the significant provisions in international and national law for the effective implementation of SARP s and Recommended practices and taking into account an international obligation of the Republic of Azerbaijan for effective implementation of SARPs, at the end of this research, I can conclude that, there shall be several significant changes and reforms in legislation for the effective incorporation and transportation of SARPs of ICAO.

*So, I have following proposals for the reformation of national lawmaking process and formulation of the legislation:*

1. The authority in the civil aviation field which executes the government policy of the State should be tasked with conducting an annual review of the implementation of SARPs and Recommended practices (the Regulation of the Ministry of Transport, Communication and High Technologies-amendment);
2. The authority in the civil aviation field which regulates and has authority on control of this field should have rulemaking opportunities and possibilities (the Regulation of the Civil Aviation Agency - amendment);
3. The state should appoint an independent coordinator in the authority controlling and regulating civil aviation field, who are directly responsible for the analyzing and reviewing the SARPs incorporation process and who has the authority decide for the implementation or non-implementation of ICAO SARPs into the national legal system;
4. During the preparation of the national legislation and other normative legal acts, the opinions of the industry in civil aviation and service providers should be taken into account;
5. The function of SARPs management group established by the Civil Aviation Agency shall be acknowledged in the governmental level and should be reported to the legislative branch of the Republic of Azerbaijan- Milli Mejlis;
6. The Parliament should be tasked with conducting an annual review of the current situation on implementation of SARPs;
7. The main tools of the regulatory administrative organs – oversight, certification, and enforcement - should be incorporated into the “Law on Aviation” of the Republic of Azerbaijan and other regulatory normative legal acts in the civil aviation field.

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**APPENDIX I.**

**The following chart classifies the steps for the flight safety provisions in civil aviation, describing the measures, which the policymaker of the state should take into consideration during the implementation of international standards.<sup>111</sup>**

*Four Components and fifteen elements for the flight safety management in civil aviation*



<sup>111</sup> Annex 19 to the Convention on International Civil Aviation "Safety Management". Second Edition-July-2016



**APPENDIX II.**

**The following table describes the measures added to the State Safety Program (SSP) of Azerbaijan Republic.<sup>112</sup>**

The Plan of measures for the effective implementation of State Safety Program (the part of SSP)

<b>№</b>	<b>The name of the measure</b>	<b>Executive organs</b>	<b>Time limit for the implementation</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<b>10.1. Improvement of normative legal framework on flight safety</b>			
10.1.1.	Preparation of proposals on improvement of normative legal acts on flight safety and civil aviation	Cabinet of Ministries; The Ministry of Justice; The Ministry of Transport, Communication, and High technologies; The Civil Aviation Agency	2019-2021
10.1.2.	Adoption of prosedural regulations on flight safety	The Ministry of Justice; The Ministry of Transport, Communication, and High technologies; The Civil Aviation Agency	2019-2020
10.1.3	Preparation of normative legal acts on information about flight safety	The Civil Aviation Agency	2019-2021
<b>10.4. Risk management on flight safety</b>			
10.4.1.	Improvement of the mechanisms of certification	The Ministry of Transport, Communication, and High technologies; The Civil Aviation Agency	2019-2021
10.4.2.	Measures for the improvement of flight safety provision system	The Civil Aviation Agency; The Service Providers	2019-2022
10.4.3.	Investigation of accidents and serious incidents in civil aviation	The Civil Aviation Agency; The General Prosecutors office	periodically
10.4.4.	Risk assessment and management for the flight safety	The Civil Aviation Agency	periodically
10.4.5.	Provision of control and elimination of gaps on flight safety	The Ministry of Transport, Communication, and High technologies; The Civil Aviation Agency	periodically
10.4.6.	Measures for the increasing the provision on flight safety	The Civil Aviation Agency	periodically

<sup>112</sup> State Safety Program of Azerbaijan Republic confirmed by the President Decree from 27 June 2019/ N756

