



International Civil Aviation Organization

North American, Central American and Caribbean Office

Second Meeting of North American, Central American and Caribbean Directors of Civil Aviation (NACC/DCA/2)

Tegucigalpa, Honduras, 11 – 14 October 2005

NACC/DCA/2-WP/24

05/09/05

Agenda Item 2: Safety Oversight

2.3: Unified Strategy to resolve Safety related Deficiencies

PROCEDURE FOR TRANSPARENCY AND DISCLOSURE

(Presented by the Secretariat)

SUMMARY

This paper presents an updated procedure for transparency and disclosure of information regarding a State having significant compliance shortcomings with respect to safety-related SARPs, including failure to act in accordance with its safety oversight obligations. The procedure to inform all Contracting States, within the scope of Article 54 j) of the Convention, was called for by Assembly Resolution A35-7, operative clause 5. The proposal is presented in the context of USOAP results and forms part of the unified strategy to resolve safety-related deficiencies. It discusses data sources and analysis for use in determining scenarios for action under the unified strategy. Safeguards are included to ensure that the procedure will be applied in accordance with established principles and will be used for safety-related purposes only, to ensure that there is no discrimination between States and not to disadvantage States that lack the resources for proper safety oversight. Action by the Meeting is in paragraph 6.

References:

- Doc 8585, *Designators for Aircraft Operating Agencies, Aeronautical Authorities and Services*
- Doc 7559, *Rules of Procedure for the Council*
- Doc 7300, *Convention on International Civil Aviation*
- Doc 9846, *Assembly Resolutions in Force* (as of 8 October 2004)

1. INTRODUCTION

1.1 On 25 May 2005, the Council considered a report of the Air Navigation Commission concerning a procedure for transparency and disclosure of information regarding safety-related deficiencies. In light of comments made during the discussion and during the introduction of the paper by the President of the Air Navigation Commission and the Director of the Air Navigation Bureau, the Council requested the Secretary General to present a working paper thereon for consideration by Council during the 175 Session in conjunction with the report of the Commission.

1.2 USOAP and the unified strategy to resolve safety-related deficiencies have a common objective, i.e. promote aviation safety through adequate safety oversight by States. The unified strategy is designed to address safety concerns identified through USOAP. Under the strategy, every possible effort will be made by ICAO to facilitate the resolution of safety oversight shortfalls and promote compliance with respect to safety-related Standards and Recommended Practices (SARPs). Different scenarios for action under the unified strategy are envisaged in light of an analysis of relevant data.

1.3 If significant compliance shortfalls persist within a State and all other avenues to resolve the safety concerns have been exhausted, the matter would be brought to the attention of the Council, which may wish to make a recommendation or determination as appropriate. Should a State fail to carry out such recommendations or determinations, there is a requirement for all Contracting States to be informed, in accordance with Article 54 j) of the *Convention on International Civil Aviation* (Doc 7300). This process is illustrated. (Appendix B) The procedure to inform States, as developed by the Commission in accordance with operative clause 5 of Assembly Resolution A35-7, is clarified and updated in this paper (Appendix C). Principles to be adhered to and safety risk indicators to be taken into account are described (Appendix D).

2. USOAP RESULTS

2.1 As reported in the Council, a total of 181 of the 188 Contracting States were audited during the first cycle of audits under USOAP, while 162 States were visited for audit-follow-up. Overall, significant progress has been achieved in the implementation of State corrective action plans to enhance their safety oversight systems. However, a number of States continue to experience difficulties in this regard, mainly due to lack of resources. Moreover, concern remains over the safety oversight in most of the nineteen States who have not been visited for audit follow-up, but initially had, on average, over 50 per cent more implementation shortfalls than the 162 States who received a follow-up mission. The absence of reliable information on safety oversight in the seven States who have not been audited by ICAO primarily for security reasons is cause for even more concern.

2.2 In keeping with the transparency and disclosure principles in Assembly Resolution A35-6, the USOAP audit reports will continue to provide sufficient information for Contracting States to make informed determinations as to the safety oversight capability of audited States, and access to all relevant information derived from the audit findings and differences database (AFDD) will be made available to all Contracting States through the secure ICAO website.

2.3 The primary purpose of making the USOAP audit results available to all States is to focus their role in the surveillance of all aircraft operations, including foreign aircraft within their territory. In view of the identified shortfalls in safety oversight in several States, and other available critical safety information, there is a need for all States to take appropriate action when necessary to preserve safety. The 35th Session of the Assembly reminded States of this need (operative clause 4 of Resolution A35-7).

3. DATA SOURCES AND ANALYSIS

3.1 The effectiveness of the unified strategy and, particularly the provision of assistance to States, depends on the availability of reliable information, as well as on the ability to identify potential sources of risk to aviation safety. In this regard, USOAP is the primary source of information concerning existing compliance shortcomings with respect to safety-related SARPs. The AFDD has been developed, *inter alia*, to record the lack of effective implementation of the critical elements of a safety oversight system. Quantitative information on the number of States facing implementation problems identified in the audits can also be determined from the information compiled under USOAP. The rigid processes applied in USOAP should provide confidence in the validity of the data obtained.

3.2 Unfortunately, it is not sufficient to rely exclusively on USOAP data, and there is a need to consider the use of additional data sources. First, it should be recognized that the data obtained during the first audit cycle is not comprehensive and up-to-date, as some States were not audited at all, the audits are dated and represent snapshots of the safety oversight situation in States at the time of the audit only, and update/validation not always possible through USOAP audits. It would not be responsible to delay action on assistance to States until the results of a new audit conducted under the comprehensive systems approach are available. In fact, States who were not audited or where no follow-up mission was undertaken, are likely to be in need of assistance; failure of a State to participate in USOAP should not be cause for ICAO to turn a blind eye to the situation in those States.

3.3 Irrespective of the data sources used in the analysis, it is necessary to update and validate the data, if possible in consultation with the State concerned, before action under the unified strategy is planned. Depending on circumstances, this may be accomplished through a special audit, an audit follow-up mission, a visit by regional office staff, or correspondence, supplemented as necessary by current information available through other reliable sources.

3.4 Bearing in mind that safety oversight responsibilities of States concerning licensing of personnel, airworthiness and operations of aircraft are clearly specified for the State of Registry and the State of the Operator, it is incumbent upon ICAO to focus on information concerning registration of aircraft and aircraft operator certificates (AOC). In this regard, it is noted that, in accordance with Article 21 of the Convention, each Contracting State undertakes to supply, on demand, information concerning the registration and ownership of any particular aircraft registered in that State. Furthermore, it is noted that AOC-related information is already available within ICAO, as States, on behalf of aircraft operators within their jurisdiction, obtain ICAO three-letter designators and radiotelephony designators, which are published in *Designators for Aircraft Operating Agencies, Aeronautical Authorities and Services* (Doc 8585).

3.5 Also, information in accident investigation reports officially notified to ICAO by States, may be used to assess data associated with a State's safety oversight responsibilities and obligations. Furthermore, it is noted that the Assembly (operative clause 7 of Resolution A35-7) requested the Secretary General to continue to foster coordination and cooperation between USOAP and audit programmes of other organizations related to aviation safety, and specifically with the International Air Transport Association (IATA) and the European Organization for the Safety of Air Navigation (EUROCONTROL). It is, however, recognized that extreme care is needed to validate the veracity and currency of safety information obtained from outside sources, in particular information from inspections/audits by other States and organizations, in view of possible underlying non-technical motives. In view of possible bias in information obtained from sources other than USOAP, the Secretariat will make special efforts to validate this information and will not base any proposal to Council on information that cannot be corroborated and validated.

4. SCENARIOS FOR ACTION UNDER THE UNIFIED STRATEGY

4.1 The safety oversight level of a State may cause concern as a result of persistently poor audit results as identified by USOAP, or because it was not possible to successfully complete the USOAP audit process. As USOAP expands its scope to include all safety-related annexes, it is reasonable to expect that some States will create concern regarding their ability to deal with air navigation deficiencies. It is important to understand how the various mechanisms and actors would respond to the most likely scenarios that will present themselves now and in the future. For illustrative purposes only, these scenarios for action under the unified strategy are presented in **Appendix A**. A flowchart depicting Secretariat preparation, confidential Council deliberation and disclosure to States is in **Appendix B**.

4.2 Application of the procedure may assist civil aviation administrations in areas of civil strife where illegal activities by operators cannot effectively be controlled. Information to all Contracting States about such situations may prevent the escalation, export to other States and migration of such activities, and help safeguard passenger operations.

5. **PROCEDURE FOR TRANSPARENCY AND DISCLOSURE**

5.1 The proposed procedure is a tool to identify those States that have significant compliance shortcomings with respect to ICAO safety-related SARPs and do not fulfil their international safety oversight obligations. It encourages their appropriate compliance, and is intended to be used as a last resort. Only systemic problems need to be addressed, not occasional non-compliance with specific SARPs. In the case that unsafe conditions persist, e.g. conditions which may be beyond the control of a State and the responsible authorities may not be able to overcome even with outside assistance, the procedure provides for all Contracting States to be so informed, in accordance with the principles of transparency and disclosure.

5.2 The procedure should be non-discriminatory and is not intended to disadvantage States that lack the resources for proper safety oversight. The procedure could help resolve unsafe conditions caused by States and operators that disregard safety-related SARPs. Under no circumstances should the procedure be misused for political or economic gains, and proper safeguards to this end are provided in the procedure and its associated principles and safety risk indicators.

5.3 The proposed procedure for transparency and disclosure is presented in **Appendix C**, with associated principles and safety risk indicators in **Appendix D**.

6. **ACTION BY THE MEETING**

6.1 The Meeting is invited to:

- a) note the scenarios for action under the unified strategy in Appendix A and the associated flowchart in Appendix B;
- b) note the procedure for transparency and disclosure in Appendix C and the associated principles and safety risk indicators in Appendix D; and
- c) note that the flowchart in Appendix B is being changed in accordance with para. 2.4 of Appendix C.

APPENDIX A

SCENARIOS FOR ACTION UNDER THE UNIFIED STRATEGY

1. SCENARIO 1

1.1 In the first scenario, a State participates fully in the USAOP process and has persistently poor results. This State has very few resources to devote to safety oversight. It may lack even a basic regulatory framework and have few or no qualified personnel to participate in certification and surveillance of operators. When the level of aviation activity in this State is examined, it is clear that the State engages in a relatively low level of aviation activity that is essential to the support of its economy. This indicates a deliberate balance between oversight capability and essential aviation activity.

1.2 This State will be offered assistance under the unified strategy. It will be the object of support of ICAO Headquarters, regional offices, and the Technical Cooperation Bureau. ICAO will bring the needs of this State to the attention of donors and financial institutions. ICAO will also work with this State to develop appropriate regional or subregional partnerships for safety oversight support. It will be the goal of all parties to rapidly improve the safety oversight capabilities of the State so that the State may benefit from the safe and orderly expansion of its aviation industry. The safety risk is being managed by the State itself, the transparency mechanisms under Assembly Resolution A35-7 will provide other States the insight necessary to provide oversight of foreign operations, and all possible actions are being taken to resolve the problems. Such a State would not be the object of special Council consideration regarding the procedure for transparency and disclosure under Article 54 j).

2. SCENARIO 2

2.1 In the second scenario, a State may have difficulties managing the safety and effectiveness of its air navigation facilities. The specific air navigation deficiencies will be routinely tracked through the long-standing regional planning process. When the USOAP audit occurs, there will likely be findings and recommendations regarding the State's ability to manage air navigation safety issues. This scenario has not been an issue to date, but can be expected to present itself with increasing frequency as more audits are completed under the comprehensive systems approach for the USAOP programme, expanded to all safety-related Annexes.

2.2 As in the first scenario, the State will receive appropriate assistance under the unified strategy to resolve their safety oversight shortfalls. It will be up to the State and the regional planning mechanisms to support the eventual resolution of the specific air navigation deficiencies. The Technical Cooperation Programme will provide assistance to States in the resolution of such infrastructure issues just as it does today. This State will not be the subject of special Council consideration regarding the procedure for transparency and disclosure under Article 54 j). In this case the safety risks are being managed collaboratively through the regional planning process, the necessary transparency regarding the status of air navigation deficiencies is ensured, and the deficiencies are being addressed by the most appropriate mechanism.

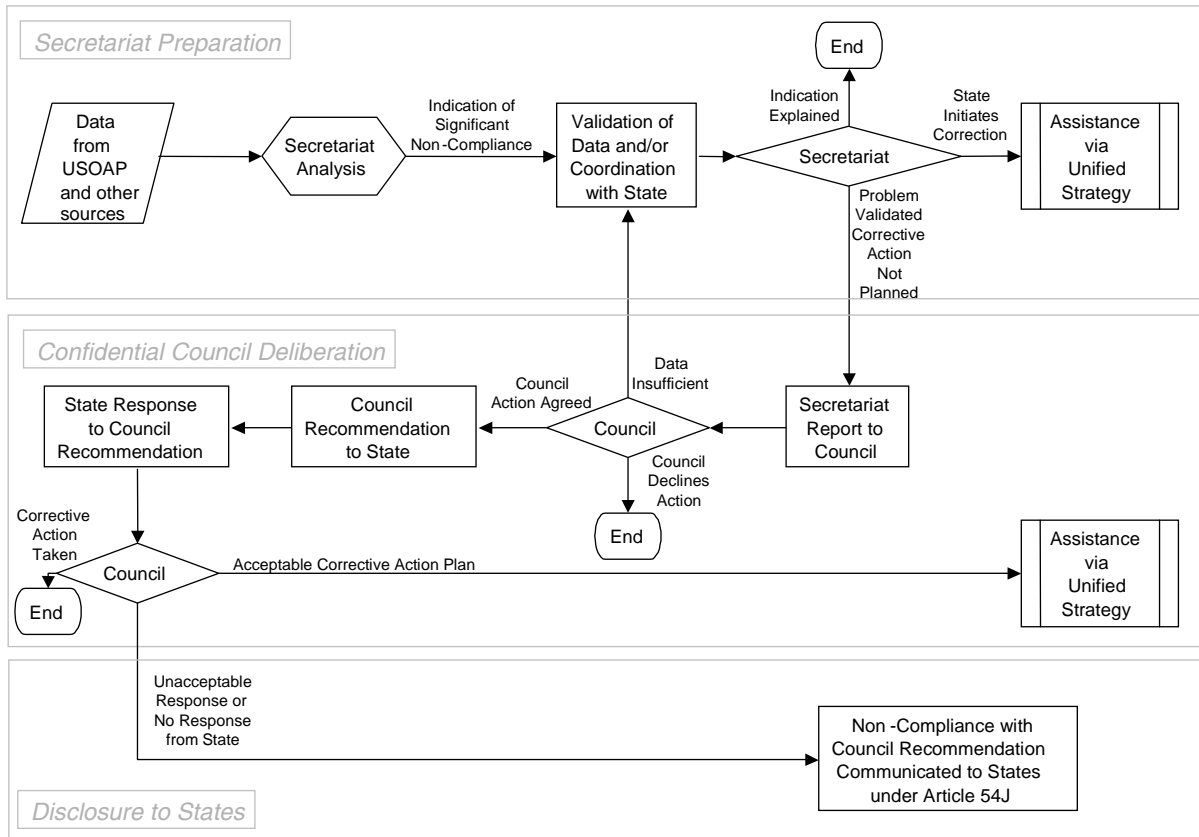
3. **SCENARIO 3**

3.1 The third and final scenario is the most difficult. A State demonstrates severe and persistent safety oversight shortfalls, similar to the State described in the first scenario. However, unlike the State described in the first scenario, this State may not have participated fully, or at all, in the USOAP audit process. The data available regarding this State's limited safety oversight capabilities may be limited. Also, data indicates that this State is engaging in aviation activities that seem implausible, given what is known about that State's safety oversight capability. For example, the State may have requested a disproportionate number of three-letter designators and radio-telephony designators from ICAO to support airline operators for which it has issued an AOC. The State may have an excessive number of large-transport aircraft on its registry, well beyond the capability of the State for safety oversight. Data regarding these aircraft and their operators show that they operate exclusively in distant countries and regions that may be thousands of miles from the State, without the State having concluded appropriate arrangements, such as the transfer of certain functions and duties in accordance with Article 83 bis of the Convention, thus making effective safety oversight virtually impossible. The State may openly advertise registration services for a fee, and United Nations Security Council reports may even link some operations to illegal activity.

3.2 In this case the first action would be to obtain better information about the State's safety oversight capabilities and aviation activities. All efforts would be made to do this through collaboration with the State. A special USOAP mission may be recommended and ICAO may choose to request this State to provide currently valid aircraft registry and ownership information, with reference to Article 21 of the Convention. It is possible this State will be unable to support such validation efforts, or could be prevented from participating because of external forces. As information is developed, this State would receive priority consideration for assistance under the unified strategy. The goal of everyone involved would be the establishment of support mechanisms and regional partnerships that would resolve this State's problem. If the State was unwilling or unable to participate in such activities, the case would be presented to the ICAO Council for special consideration and possible future action under the procedure for transparency and disclosure under Article 54 j). This would be necessary because the safety risk posed by these States operators is not contained, the transparency mechanisms under Assembly Resolution A35-7 are not effective, and progress towards resolution is not being made.

APPENDIX B

FLOWCHART



APPENDIX C

DRAFT PROCEDURE TO INFORM ALL CONTRACTING STATES IN THE CASE OF A STATE HAVING SIGNIFICANT COMPLIANCE SHORTCOMINGS WITH RESPECT TO SAFETY-RELATED SARPS, INCLUDING FAILURE TO ACT IN ACCORDANCE WITH ITS SAFETY OVERSIGHT OBLIGATIONS

1. INTRODUCTION

1.1 The Secretariat monitors USOAP-derived and other safety information on an ongoing basis, with a view to fostering assistance to States under the unified strategy, individually or collectively, to strengthen their safety oversight capability where needed.

1.2 If the Secretariat analysis, in accordance with the attached principles and safety risk indicators, of properly validated data indicates significant compliance shortcomings with respect to safety-related SARPs and that a level of risk to safety has been reached that may warrant urgent action, the Secretariat would make all efforts to discuss the issue with the State concerned in order to obtain an explanation, to initiate corrective action by the State, or to initiate assistance through the unified strategy for corrective action.

1.3 Should the safety risk be confirmed, and the consultation with State concerned indicates that corrective action is not intended or would not resolve the safety risk even with the assistance under the Unified Strategy, the Secretariat will report the matter to Council, in accordance with the procedure below.

1.4 The procedure is a tool to identify those States that have significant compliance shortcomings with respect to ICAO safety-related SARPs and do not fulfil their international safety oversight obligations. It encourages their appropriate compliance, and is intended to be used as a last resort. In the case that unsafe conditions persist, e.g. conditions which the responsible authorities may not be able to overcome even with outside assistance, the procedure provides for all Contracting States to be so informed, in accordance with the principles of transparency and disclosure.

2. PROCEDURE

2.1 The Secretariat proposals for action by Council are documented in restricted working papers and discussed in closed meetings of the Council. States concerned will be informed accordingly and, in accordance with Article 53 of the Convention and Rule 32 of the *Rules of Procedure for the Council* (Doc 7559), will be invited to participate, without a vote, in the consideration by the Council.

2.2 Several options are available to the Council. The Council might not be satisfied that the data is adequate and direct that further validation and/or coordination with the State concerned is undertaken. The Council might also decide that no further action is required. If action is deemed necessary by the Council concerning significant compliance shortcomings by a State with respect to safety-related SARPs, including failure by a State to act in accordance with its safety oversight obligations, the Council may wish to make a recommendation or determination, as appropriate. The following recommendations or determinations may be envisaged:

- State to explain actions within a specified time.
- State to remedy identified safety (oversight) problem(s) within a specified time.
- Council may determine that a specified activity is clearly inconsistent with the State's safety oversight obligations and urge the State to immediately ban or discontinue that activity and take appropriate corrective action within a specified time.

2.3 Upon receipt of the response by the State, or when no response is received within the specified time, the Council will consider in a closed meeting whether the State complies or fails to carry out the recommendations or determinations of the Council. The State may also participate in this meeting. Any failure to carry out such recommendations or determinations will be reported on behalf of the Council by the Secretary General to all Contracting States, in accordance with Article 54 j) of the Convention.

2.4 Should a State subsequently provide information of appropriate action having been completed and the Council is satisfied that the State has carried out the recommendations or determinations of the Council, all States will be so informed immediately. Completion of appropriate action may need to be validated by ICAO.

APPENDIX D

DRAFT PRINCIPLES AND SAFETY RISK INDICATORS

1. PRINCIPLES

1.1 The following principles will be adhered to when applying the procedure:

Fairness Only reliable, validated, or corroborated data in which there is a high level of confidence will be used. The State concerned will be invited to participate in the process.

Transparency The method of validation or corroboration of the data, as well as its source and use in the procedure, will be transparent.

Non-discrimination The procedure will be used for safety-related purposes only, to ensure that there is no discrimination between States, and not to disadvantage States that lack the resources for proper safety oversight. Lack of resources alone, will not trigger application of the procedure.

Timeliness The procedure should be commenced and executed in a timely manner. All States should be informed without delay of the action by Council in case of recommendations or determinations by Council, as well as completion of appropriate action by the State concerned.

2. SAFETY RISK INDICATORS

2.1 The following safety risk indicators should be taken into account in determining that a level of risk to safety which may warrant action by Council has been reached:

- 1) Failure to participate in USOAP audit process.
- 2) Failure to complete the State Aviation Activity Questionnaire and compliance checklists.
- 3) Failure to participate in an on-site audit under USOAP.
- 4) Failure to submit an acceptable corrective action plan.
- 5) Failure to resolve the safety-related deficiencies identified in the USOAP audit.
- 6) Level of activity inconsistent with safety oversight capability.¹
- 7) Nature of activity inconsistent with safety oversight capability.^{1,2}
- 8) Aircraft accident and incident data associated with a State’s safety oversight responsibilities and obligations.

1 It is important to note that, should a State have a low level of safety oversight capability, this alone would not trigger application of the procedure. For many of these States the best method of increasing their safety oversight capability is through cooperation and assistance.

2 The following type of activities would indicate that a State's level or nature of aviation activity is not consistent with their safety oversight capability:

- A State, without having the capability to provide proper safety oversight over their operations, is issuing multiple AOCs to aircraft operators which operate mostly in distant countries or with a significant number of aircraft on the Registry of a State operating in different parts of the world.
- A State is issuing AOCs or airworthiness certificates for a fee, without any safety oversight provided.
- A State is issuing certificates of airworthiness for aircraft which are then leased by foreign operators, without, when necessary, an agreement under Article 83 bis of the Convention for transfer of certain oversight functions having been concluded with the State (or States) of the Operator, thus making it difficult to provide proper safety oversight over maintenance and continuing airworthiness. (This text is being amplified to cover cases whereby virtually all operations of an aircraft are carried out in a country which is at some distance from the State of Registry).
- Significant discrepancies between information provided by the State in the USOAP process and validated information obtained through other sources concerning AOCs and airworthiness certificates issued.
- Frequent changes in the State of Registry of a single aircraft, with the States involved having limited safety oversight capability.

— END —