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UNITING AVIATION

# Leasing and Article 83 *bis*

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# **Study on the Safety and Security Implications of Economic Liberalization**

**Conducted by ICAO Secretariat,  
in 2005**





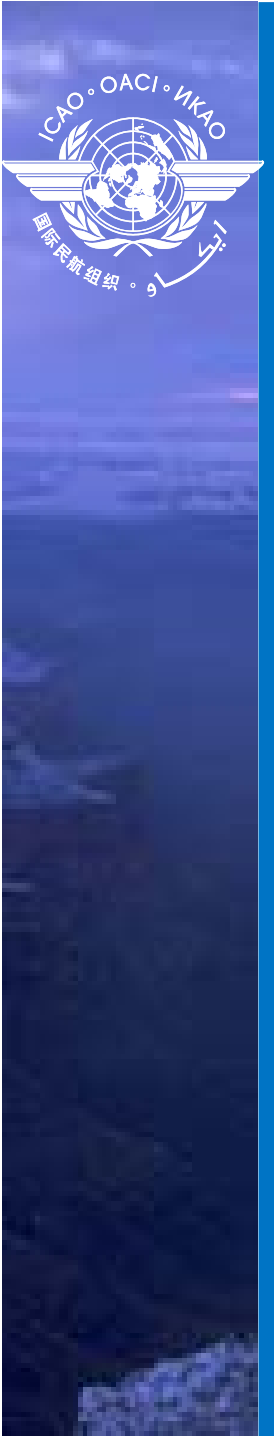
# Purpose of Study

## Identifying problems

- How safety/security regulation may be affected?
- Any gaps in existing ICAO provisions?

## Fixing the problems

- Action by ICAO
- Action by States



# Findings of Study: Part I

- Liberalization not at issue
- Implications on S/S regulations

Growth in activity



Increase pressure

Complex arrangements

Going multinational



Complicate oversight

Clear need for coherent policy



# What are the problem situations?

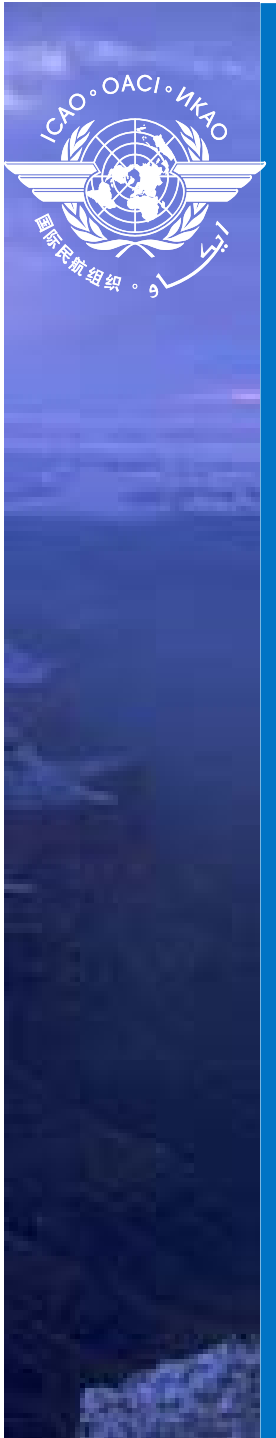
**Concerns: aircraft, air operator, personnel**

## Type 1: Single State involved

- Having an impact but clear re State's responsibility

## Type 2: Multiple States involved

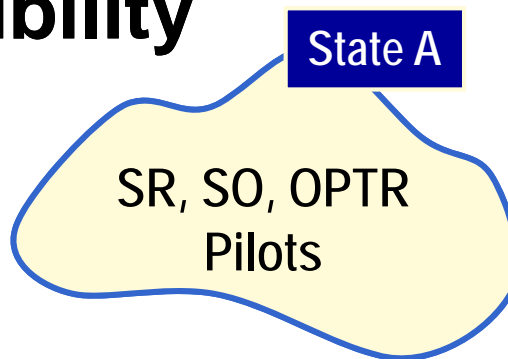
- Complicate accountability and raise questions re State's responsibility



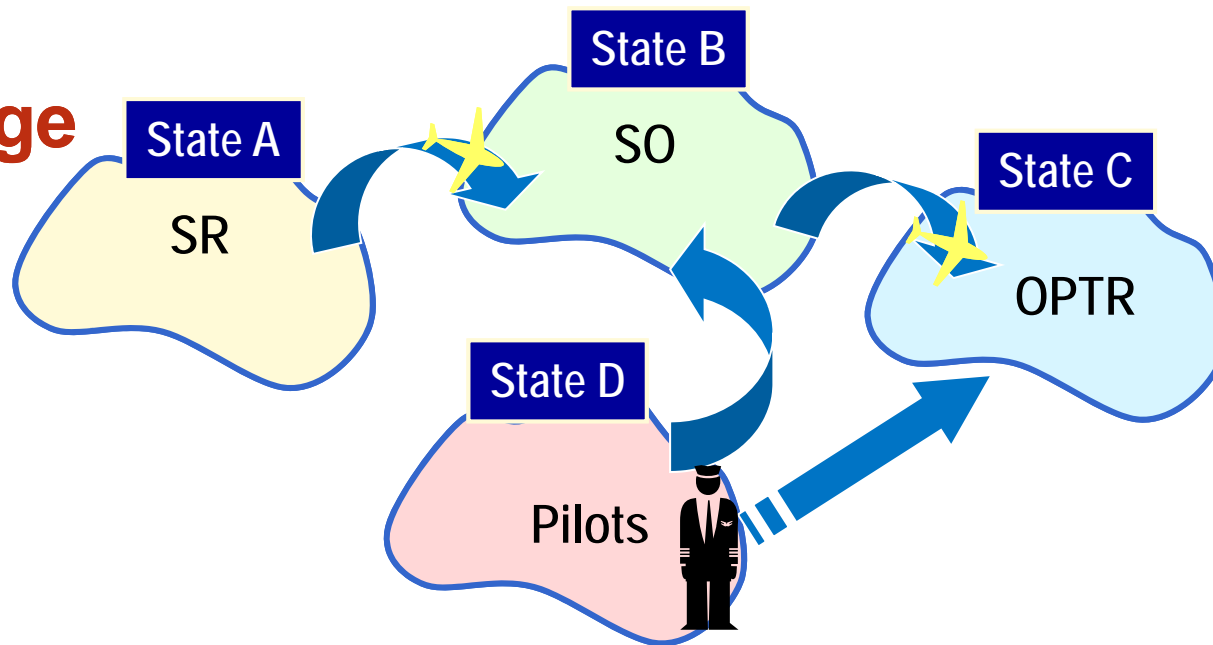
# Type 2: Case Study

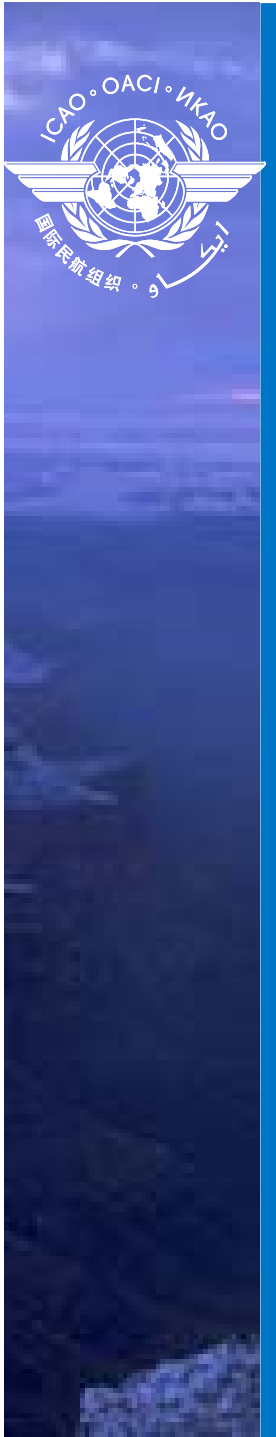
## Split responsibility

Traditionally



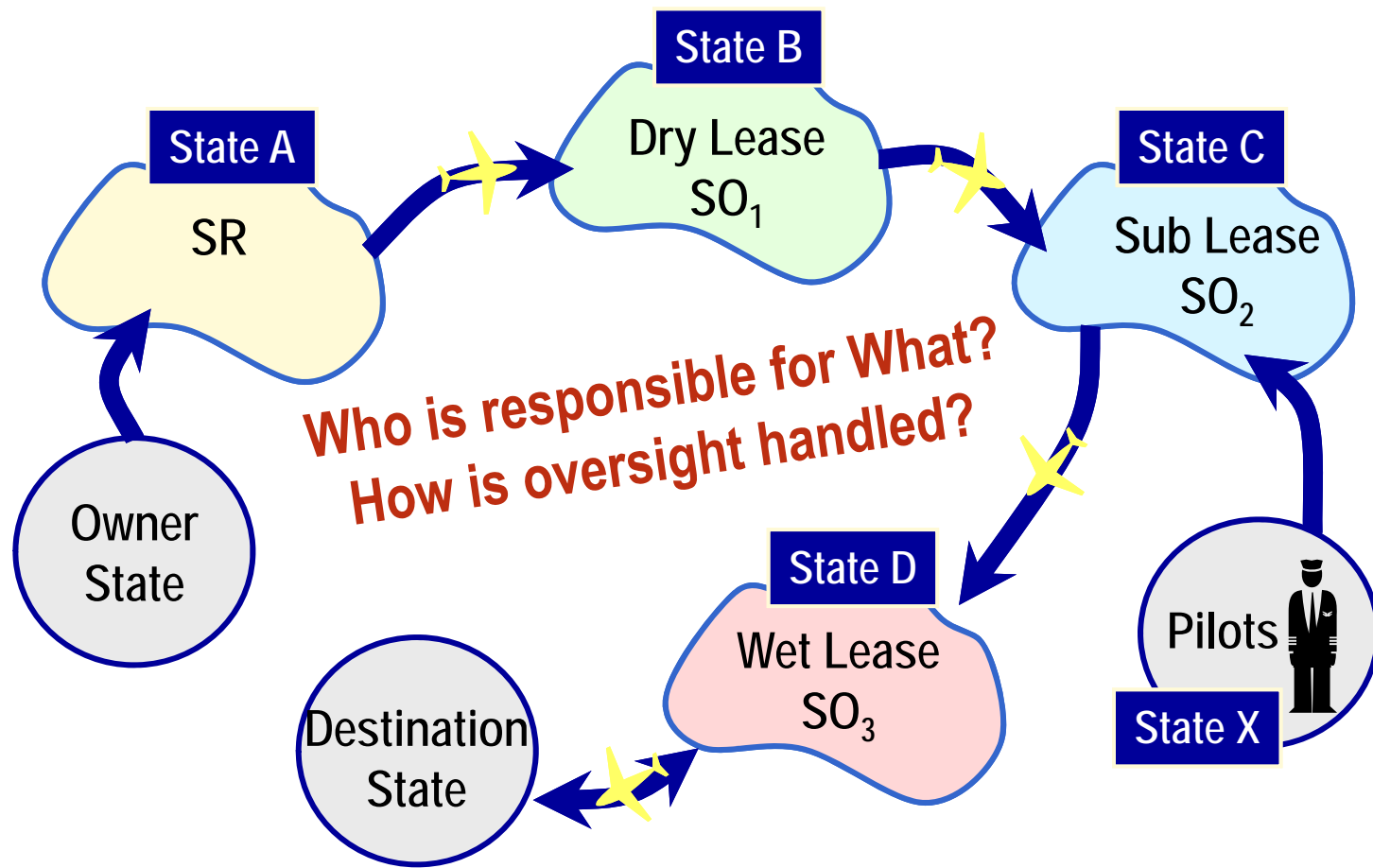
Change

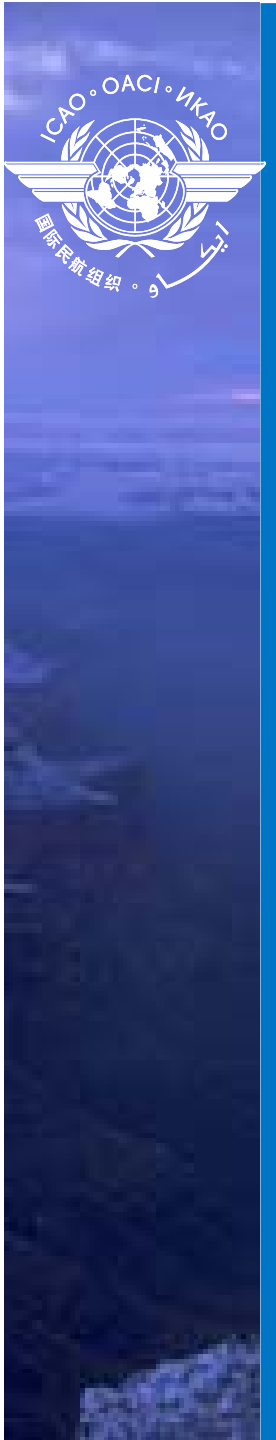




# Type 2: Case Study

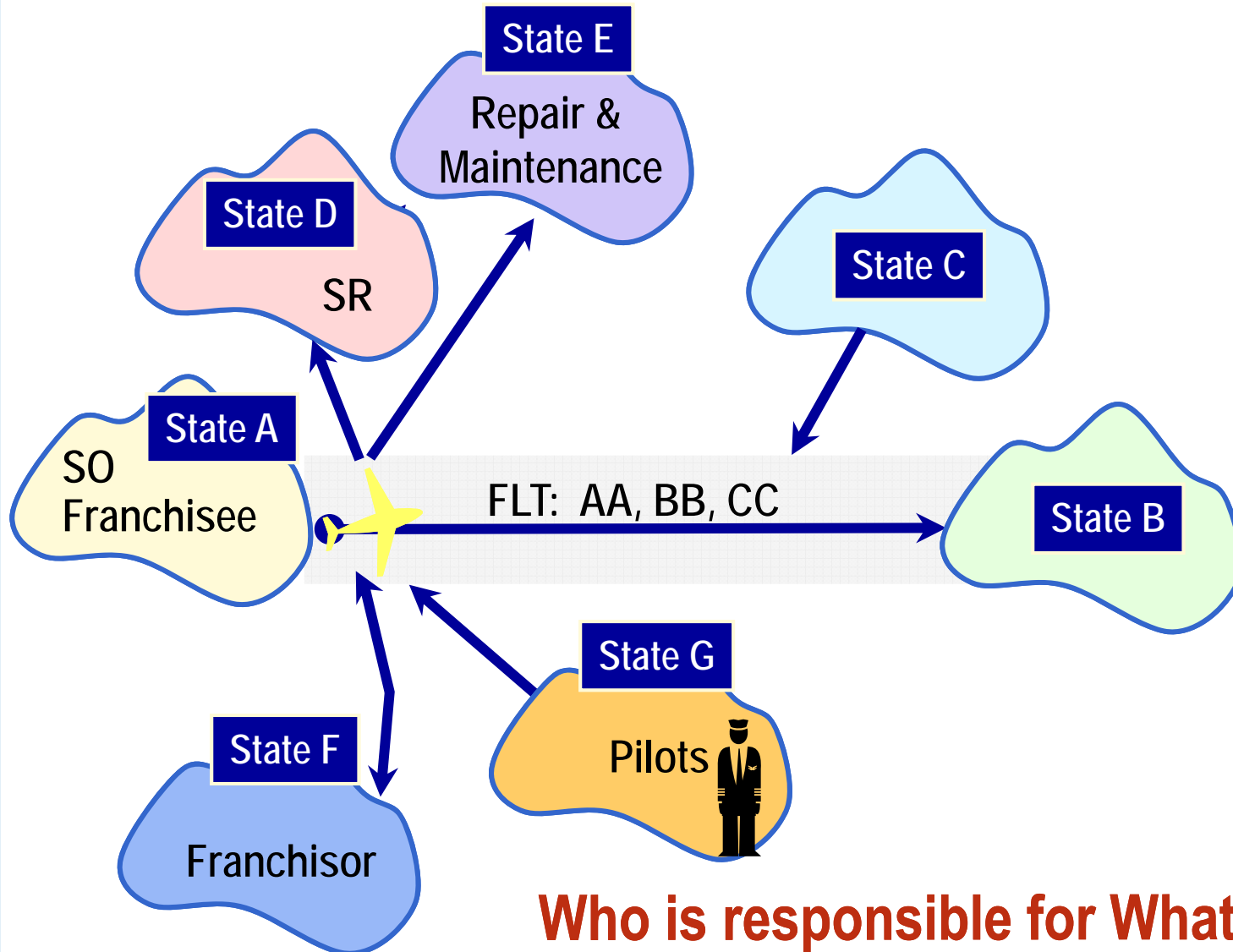
## ✈️ A moving target: Leasing





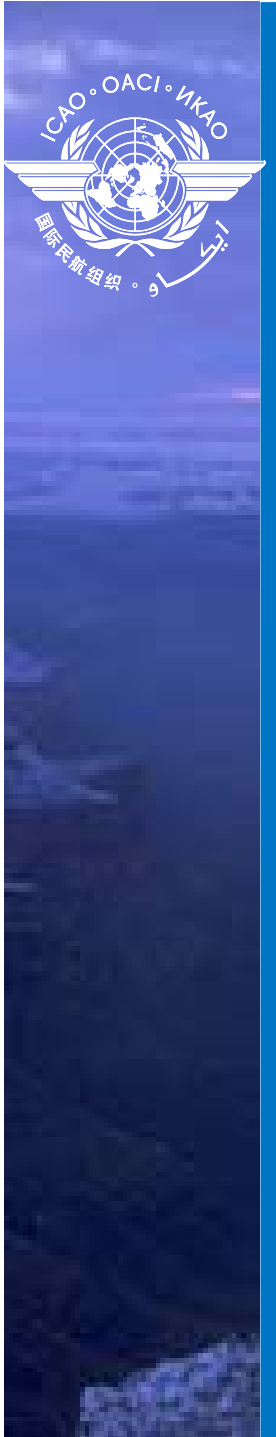
## Type 2: Case Study

Complex arrangement: Codesharing/Franchising/Leasing



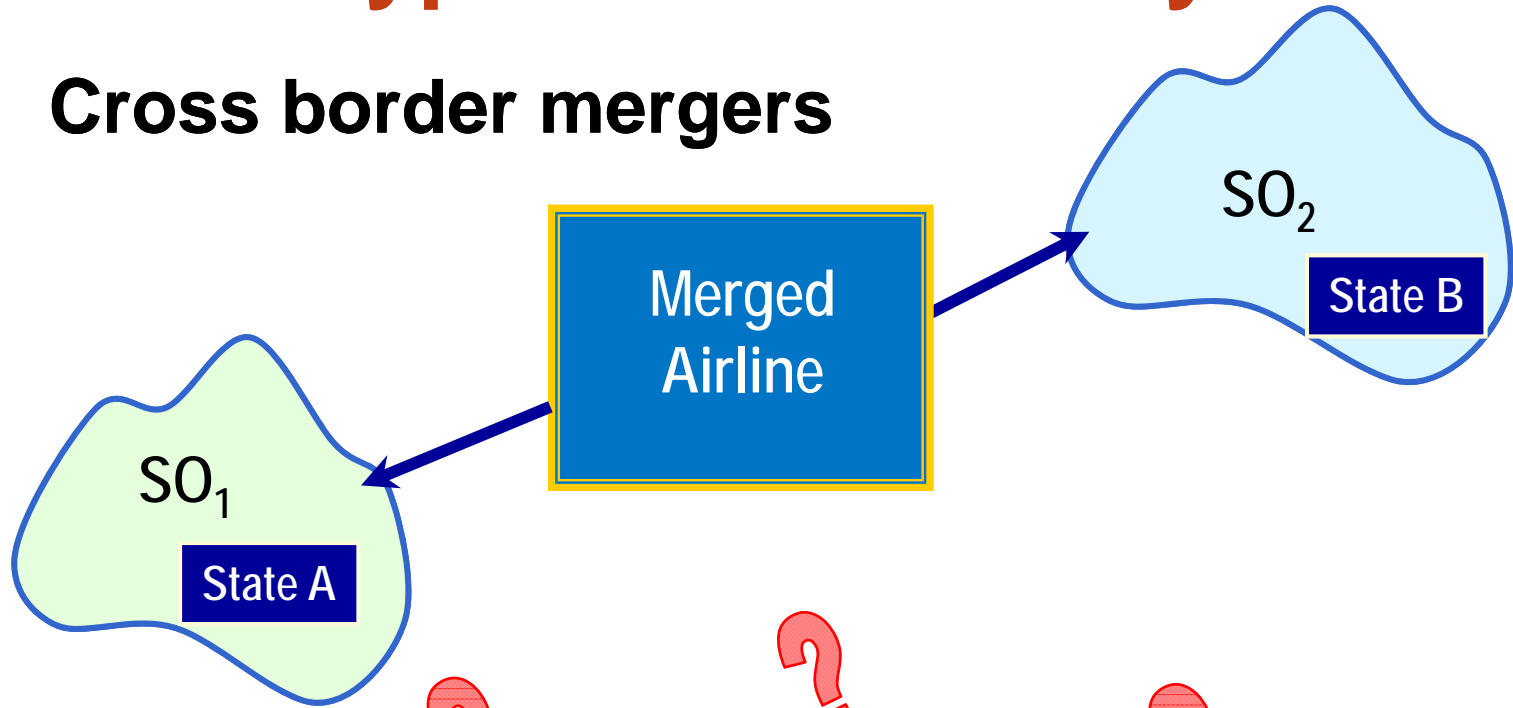
**Who is responsible for What?**



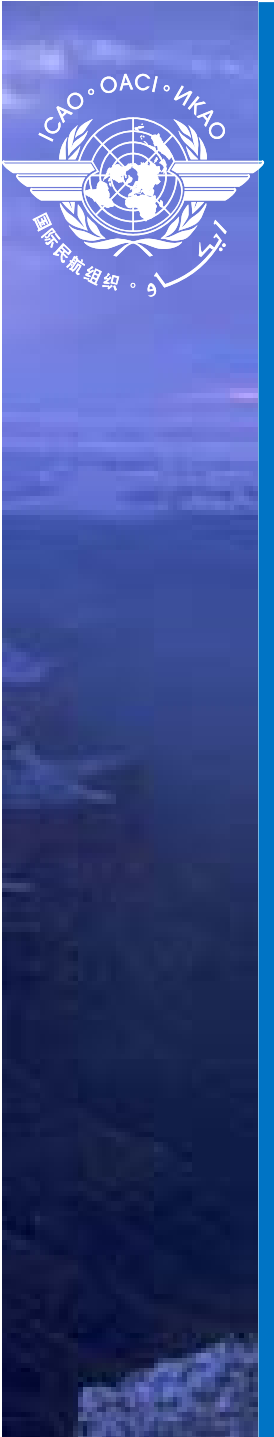


# Type 2: Case Study

## Cross border mergers



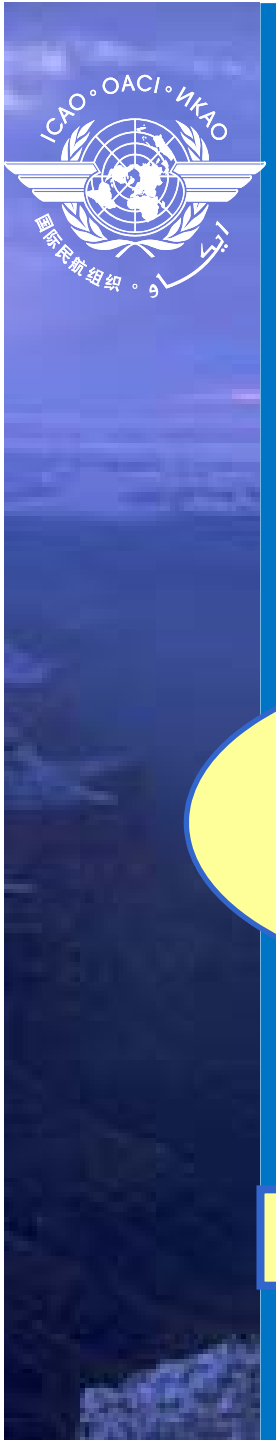
Which is the SO?  
Should there be regional AOC?



## Findings of Study: Part 2

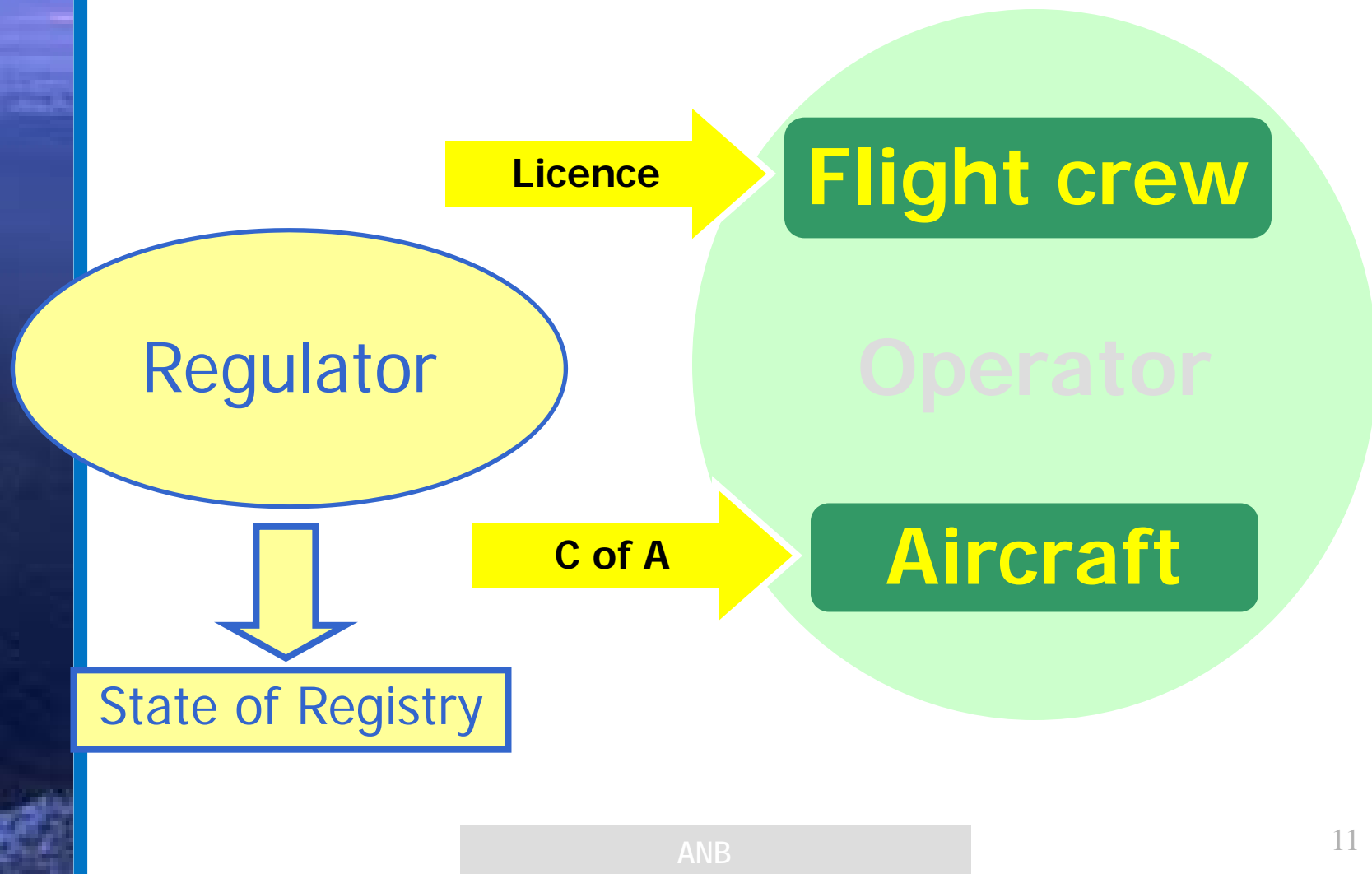
Can existing ICAO provisions  
address the changes?

(mainly in areas of technical regulation and  
safety oversight)



# Evolution of normative safety

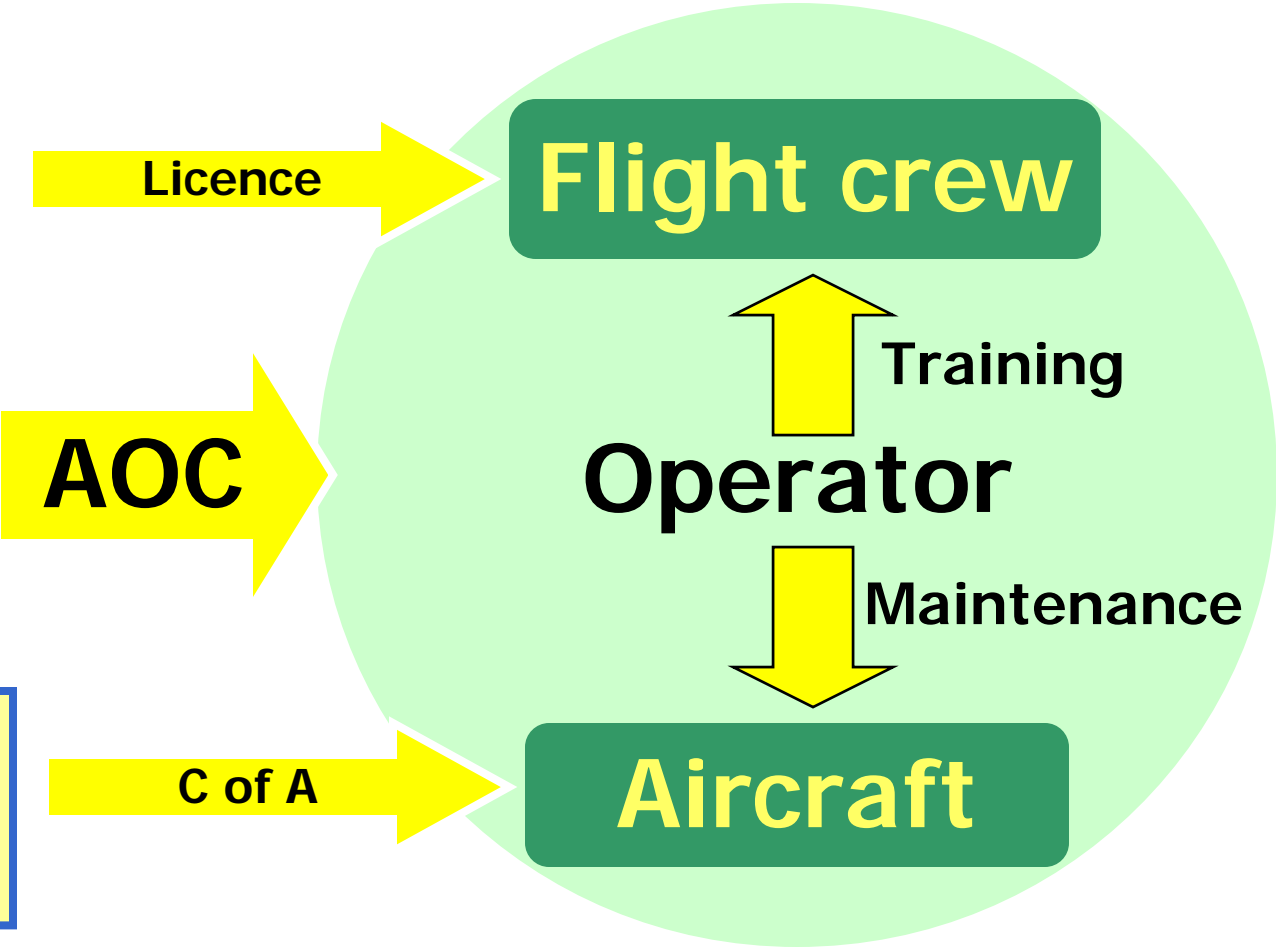
## The initial concept (1944 → 1970's)

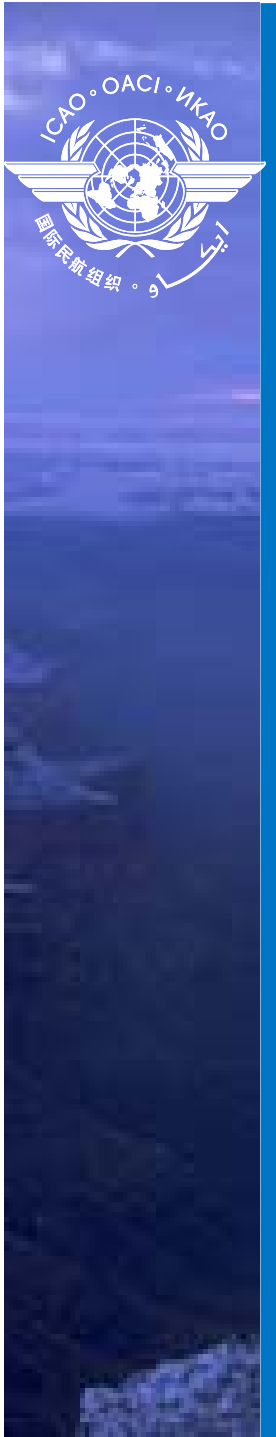




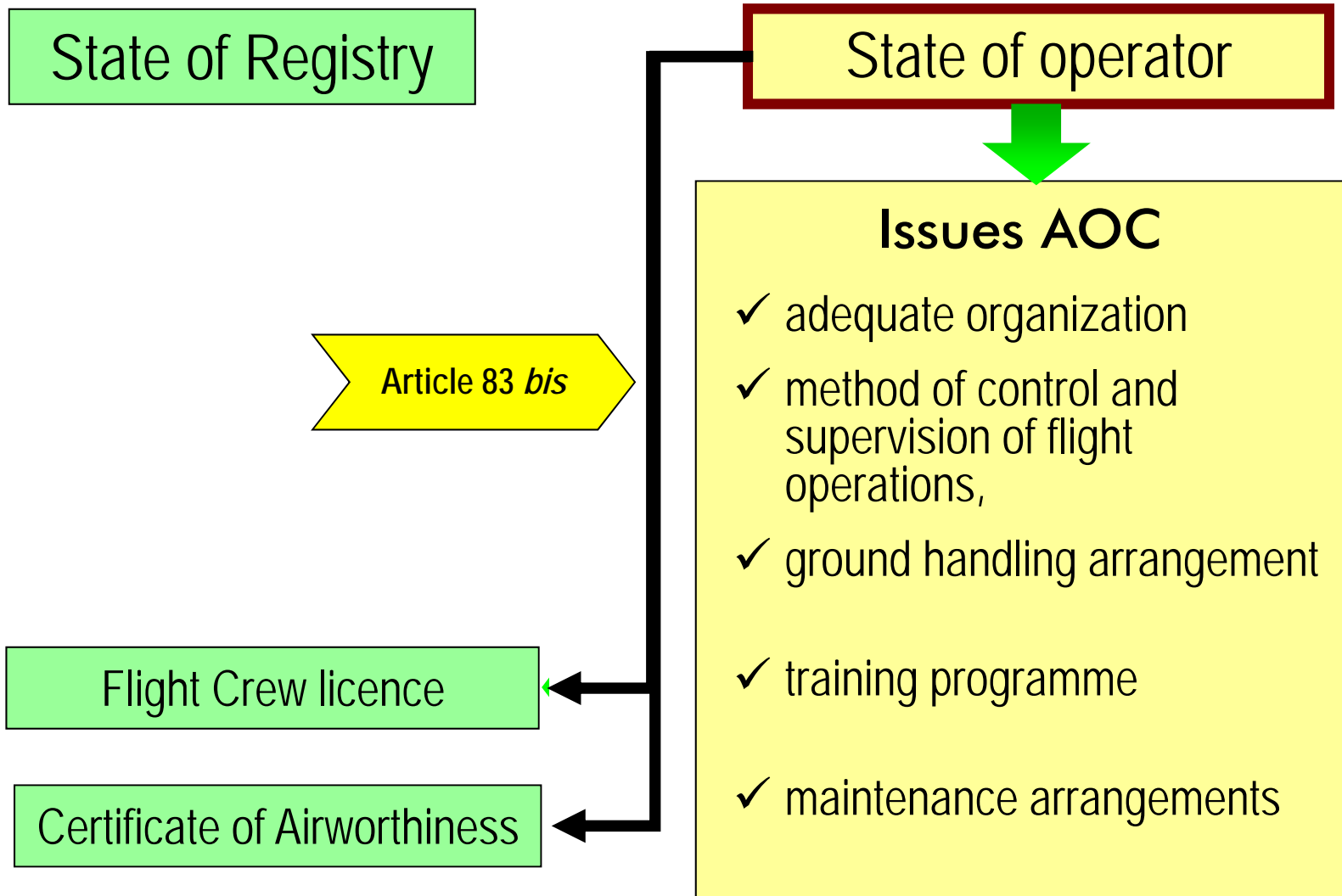
# Evolution of normative safety

## ➤ Today's concept





# Respective responsibilities

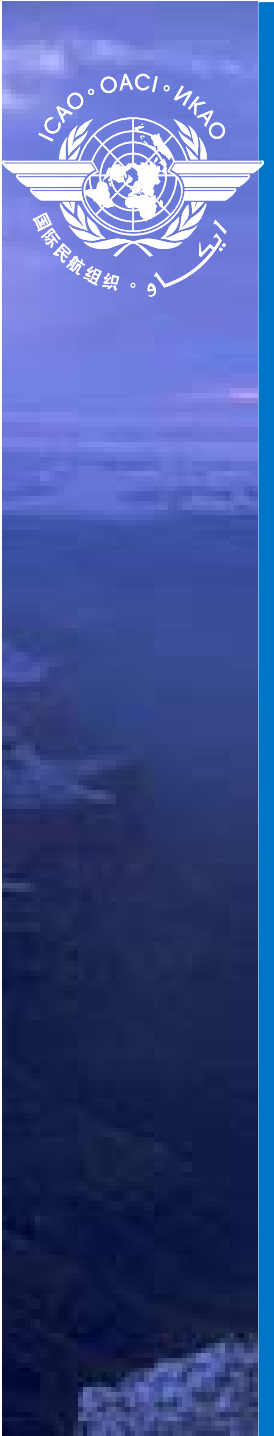




# Shared responsibilities

## ■ Flight crew

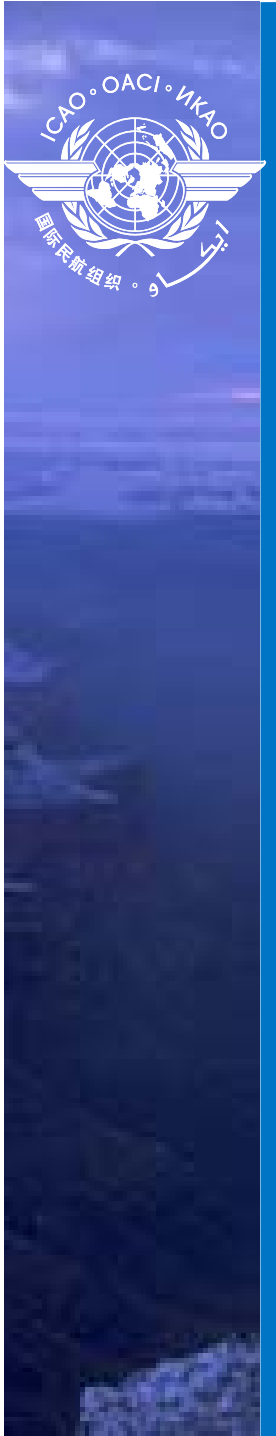
- Licence validity and extension of privileges (e.g. type rating) are under the responsibility of the ***State of registry***
- An operator shall establish and maintain a ground and flight training programme, approved by the ***State of the Operator***, which ensures that all flight crew members are adequately trained to perform their assigned duties (Annex 6, part I, Para 9.3.1)
- Annex 1 Note 1. to paragraph 1.2.5.1.1 — The maintenance of competency of flight crew members, engaged in commercial air transport operations, may be satisfactorily established by demonstration of skill during proficiency flight checks completed in accordance with Annex 6.



# Shared responsibilities

## ■ Maintenance

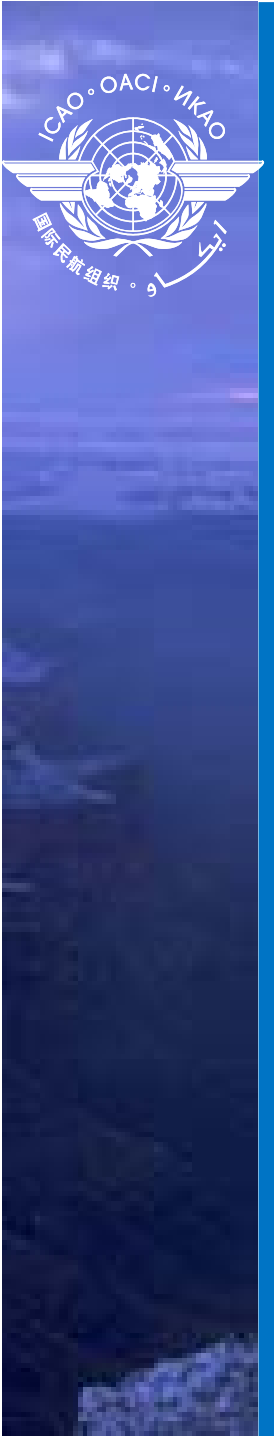
- The maintenance arrangement of the operator shall be acceptable to the ***State of the Operator*** (Annex 6, Part I, Para. 4.2.1.3)
- The maintenance programme shall be approved by the ***State of Registry*** (Annex 6, Part I, Para. 8.3.1)
- The Maintenance Control Manual shall be acceptable by the ***State of Registry*** (Annex 6, Part I, Para. 8.2.1) and shall include material required by the ***State of Registry*** and ***State of Operator*** (Annex 6, Part I, Para. 8.2.4)



# Shared responsibilities

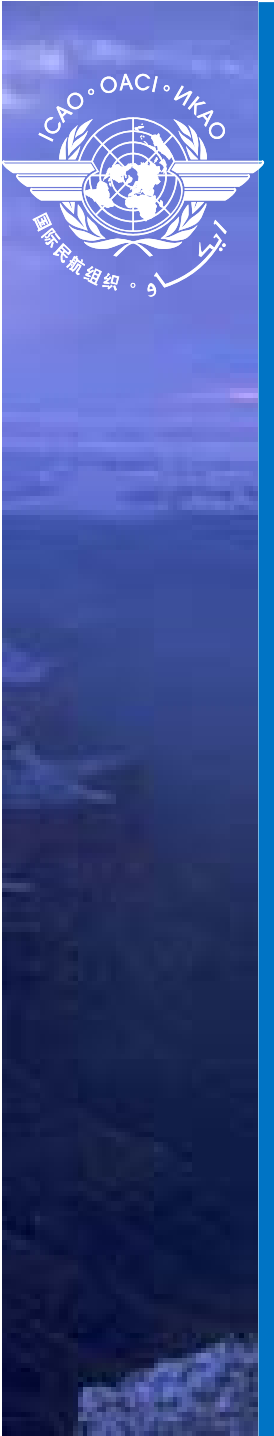
- Flight Operations
  - Are generally under the oversight of the State of the Operator but the State of Registry has responsibility for:
    - Code of performance (A6,PI, 5.1.1)
    - Flight Manual – Performance data (A6,PI, 11.1 – A8, 2.2.1.1)
  - MEL is approved by the State of the Operator but shall comply with airworthiness requirements established by the State of Registry – (A6,PI, 6.1.2)





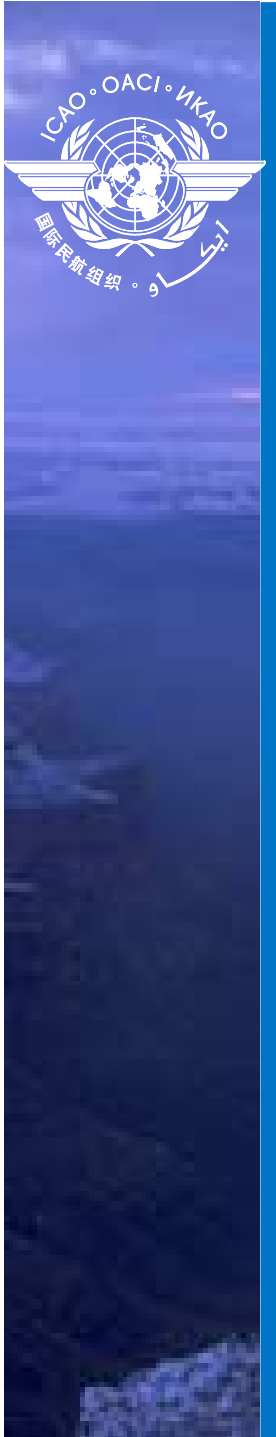
# Lease and code sharing

- Code sharing and Franchising
  - The aircraft is operated under the AOC of the operator that is actually operating the flight (A6,P1,Chap. 2 and 4.2.1)
- Dry lease and Wet lease
  - The aircraft is operated under the operator's AOC
  - In the case of wet lease from an AOC holder, the operator may be the lessor or the lessee depending on the lease



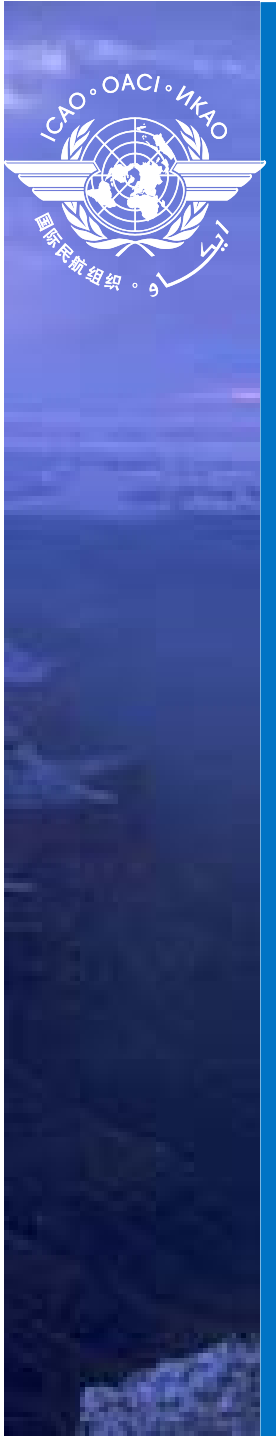
## Conclusions: the way forward

- Compliance with ICAO SARPS is essential.
  - Accident reports and Data from SOA Audit indicate that lack of compliance is the most important issue;
- The current system clearly allocates responsibilities but creates a fragmentation of responsibility in some circumstances (State of registration vs. State of operator)



# Conclusions: the way forward

- Fragmentation of responsibilities is not a problem where handled properly but complicates the accountability for safety oversight
- Article 83 *bis* provides a solution when the State of the Operator and the States of Registry are willing to enter in such agreement



## Conclusions: the way forward

- State capability to identify the State of the operator would be facilitated by the carriage of a true copy of the AOC (**now made mandatory in Annex 6**);
- Additional guidance material of the relation between state of Registry, State of the Operator and operator would be useful (Doc 8335, Cir. 295, etc...)



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# Leasing and Article 83 *bis*

*(Part 2)*



# Different responsibilities

- Leases Within the same State
  - All responsibilities with one State
- Between entities from different States
  - Each State retains some responsibilities



## State responsibilities

- For leases agreed between two entities within the same State
  - The State of Registry and the State of the operator is the same
- For leases agreed between two entities, each from a different State
  - The State of the operator is different from the State of Registry



# Convention and Annexes

- State of Registry responsibilities
  - Certificate of Registration
  - Certificate of Airworthiness
  - Flight crew licenses
- State of the operator responsibilities
  - Air Operator certification (AOC)
  - Surveillance





## Annex 6, Part I, 4.2.1.1

- 4.2.1.1 An operator shall not engage in commercial air transport operations unless in possession of a valid **air operator certificate** or equivalent document issued by the State of the Operator.



## Wet lease & AOC

- An aircraft can be operated only under ONE AOC
- In any case there can be only ONE State of Registry and only;
- And only ONE State of the Operator



## Article 83 bis

- The agreement:
  - identifies the lessor and the lessee;
  - the aircraft;
  - the nature and scope of the responsibilities transferred;
- **IT MUST BE REGISTERED WITH ICAO**
- A copy of the agreement should preferably be on board each aircraft leased and operated pursuant to 83 bis



## Article 83 bis

- How are States informed ?
  - “List of Agreements and Arrangements Concerning International Civil Aviation Registered with ICAO”
    - Published on the WEB:
    - <http://www.icao.int/icao/en/leb/>
    - Select aeronautical agreements, all signatories and (subject) 83 bis



## Article 83 bis

- How are States informed ?
  - (In the case of short term agreements)
  - Once the agreement is registered with ICAO
  - All States to be affected by the agreement can be informed directly by the States party to the agreement.



# Key elements

- Regulations
- Implementation
  - Scrutiny
  - Authorizations
  - Monitoring
    - Safety oversight
    - Follow-up



## Questions to consider

- Regulation?
- Implementation?
- Responsibilities?
- Procedures?
- Oversight capability?





# Practical implementation problems

- When need an A83 bis agreement?
- How to deal with short term leasing arrangements?
- Who can sign such agreement?
- Who should register the agreement, SR or SO?





## ICAO's current work on Article 83 bis

- Task force to review situation
- To identify issues & determine what further work/guidance need to be developed
  - Update/revise guidance?
  - Develop additional guidance?
  - TF to meet and produce recommendations
  - TF to report back to governing bodies



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***THANK YOU***

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