

WHEN THINGS GO WRONG IN ATM

ATM LEGAL ISSUES

Roderick D van Dam

Head of EUROCONTROL Legal Service

Introduction

- ANS and legal: subject in motion
- Why are legal issues gaining importance ?
- The range of players is changing
- The ANS institutional environment is changing

Elements for discussion

- **Levels and forms of Air Navigation Legislation and Regulation**
 - Global; Regional (Europe) and National level
- **New forms of Air Navigation Service provision**
 - Classical (Public) Providers
 - Corporatized or Privatized ANSPs
 - Other providers (SERCO)
- **Legal consequences**
 - State functions
 - Competition and Privatization
 - Responsibilities and liabilities

Air Navigation legislation & regulation

GLOBAL

CHICAGO CONVENTION

Other relevant Instruments of International Law

REGIONAL

e.g. EUROPE

EUROCONTROL CONVENTION

EC Single European Sky (SES) Regulations

NATIONAL

STATES

Applicable Legislation

Implementation, Oversight and Enforcement

Liability Legislation (Private and Criminal)

- Public Function
- Responsibility (Article 28 Chicago)
- Obligation to Regulate
- Obligation to provide ANS
- Effect of Corporatisation/Privatisation of ANS
Provision Functions

Air Navigation Service Providers (1)

- ❖ Three forms of “classical” ANS provision
 - Individual State
 - Joint States (e.g. EUROCONTROL MUAC and EAD)
 - Non-Governmental Entity on behalf of a State/ States

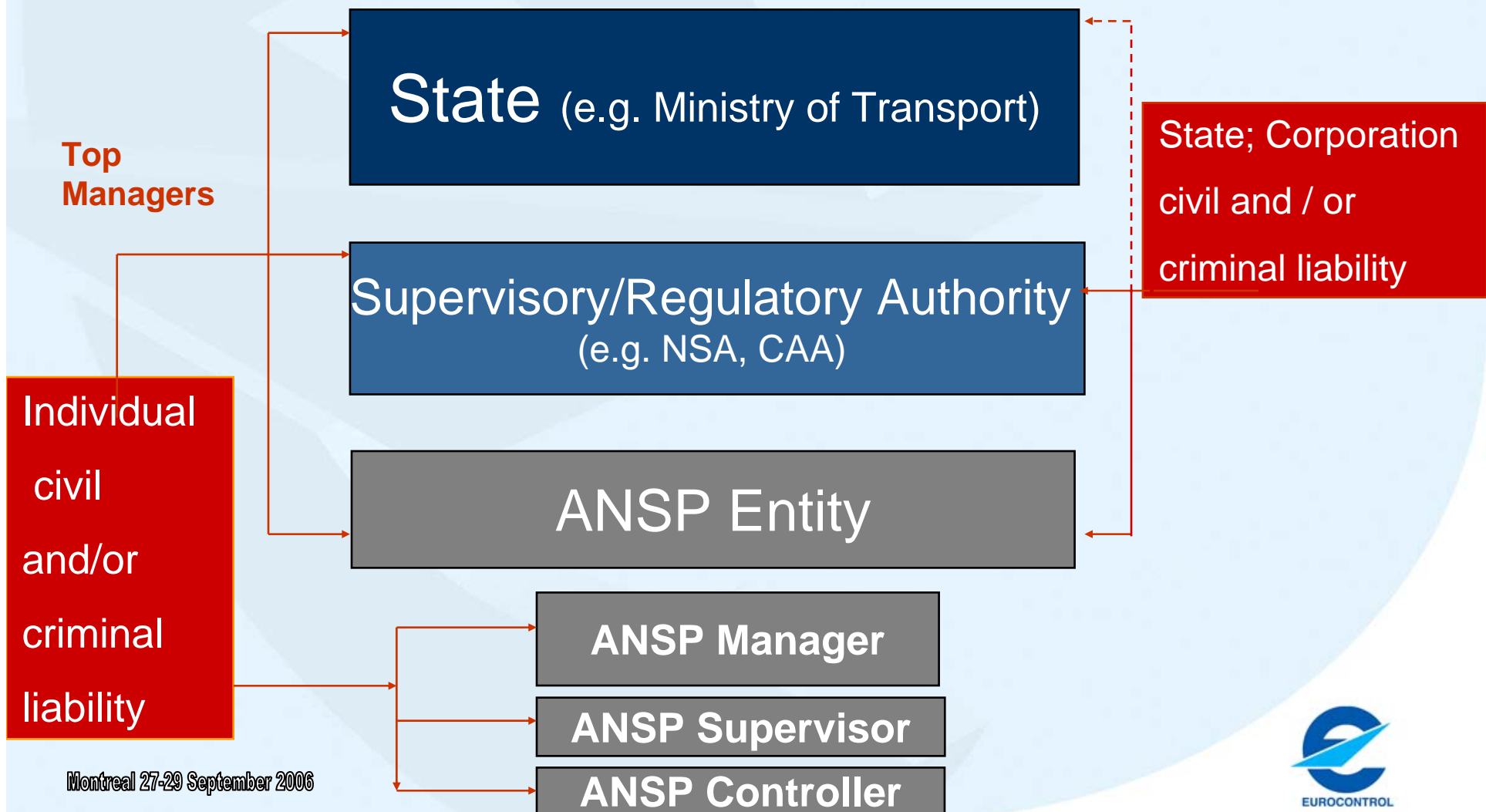
- ❖ Other providers of Air Navigation Services ?
 - ANSPs (competitive provision of e.g. MET, AIS and CNS)
 - Airlines (e.g. Corporate AIS)
 - Other Entities (SERCO)

Air Navigation Service Providers (2)

- Most EUROCONTROL States have Corporatized or privatized provision of ATS
- Corporate structure within State ownership prevails
- Tendency to reduce number of ANSPs
- States ultimately responsible for the provision of ATS (28 Chicago)
- *“FRANKENSTEIN effect”*

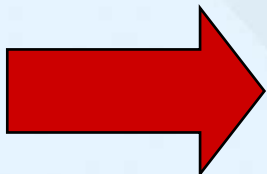
Overview of liability subjects

The chain of liabilities



State Liability

- Article 28: State responsibility and related **Liability**
- **Because** it is the ANS Provider
- **And/Or** because it exercises regulatory/oversight functions (negligence in the exercise of supervisory responsibilities)
- Ultimate liability towards third parties (subject to a right of recourse against actual entity liable)
- Civil and Criminal liabilities



Delegation, Outsourcing, Privatisation, Commercialisation, etc do NOT exonerate the State from its obligations under the Chicago Convention

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Delegation of services and liability

Delegation of air traffic services and/or buy-in of air navigation services

- Agreement between the Service Providers
- Need for States' prior approval (for ATS: agreement for the delegation of ATS to be concluded between the States)
 - Clear description of services subject of the Agreement
 - Allocation of inter-parties liability (usually, the provider of service)
- EUROCONTROL Model Agreements

Legal consequences

- Liability could be shared between different actors (State, Supranational Organisation, Air Nav Service Provider)
- Various types of liability
 - Contractual liability (e.g. outsourcing contract)
 - Non-contractual liability (mostly National law/International Agreement)
 - Criminal liability
- Demonstrates difficulty in assessing liability when dealing with public/private law instruments and concepts (such as product liability, fault-based liability, etc.)
- Moving away from traditional liability issues and doctrines

Conclusion

- Traditional Institutional framework questioned
- Public responsibilities vs Private functions
- Privatisation and Competition
- Responsibilities and Liabilities
- Article 28 Chicago Convention
- Another Liability Convention?
- (Regional) Harmonization?