



WORKING PAPER

THIRTEENTH AIR NAVIGATION CONFERENCE

Montréal, Canada, 9 to 19 October 2018

COMMITTEE B

- Agenda Item 6: Organizational safety issues**
6.1 Strategic plan
6.1.3: Global Aviation Safety Oversight System (GASOS)

PROGRESSION OF THE GLOBAL AVIATION SAFETY OVERSIGHT SYSTEM (GASOS)

(Presented by Australia and co-sponsored by New Zealand and Singapore)

EXECUTIVE SUMMARY

This paper highlights three important areas for future work in relation to legal liability, governance and cost/benefit analysis that will support progression of the global aviation safety oversight system (GASOS).

Action: The Conference is invited to agree to the recommendation in paragraph 5.2.

1. INTRODUCTION

1.1 Australia supports the global aviation safety oversight system (GASOS) concept and ICAO's efforts in developing appropriate arrangements. GASOS has the potential to deliver significant benefits, such as improved safety, efficiency and capacity in the performance of safety regulatory oversight functions

1.2 Australia proposes that future work be undertaken by ICAO on three important areas including legal liability, governance and cost/benefit analysis to support progression of GASOS.

2. LEGAL LIABILITY AND TRANSFER OF RISK

2.1 GASOS, while outlining the mechanism to delegate safety oversight functions to a Safety Oversight Organization (SOO), needs to clearly establish the legal implications of the levels of accountability between SOOs and States.

2.2 GASOS maintains that States retain overall responsibility for safety oversight under the *Convention on International Civil Aviation* (Chicago Convention, Doc 7300), and highlights that oversight undertaken by ICAO and the delegating State as sufficient mitigation against potential issues.

2.3 Should a SOO be found by ICAO, the local jurisdiction or the broader aviation community to be negligent or not competent in its oversight or certification, under GASOS it is envisaged that:

- a) ICAO can limit, impose conditions on, suspend or revoke the recognition certificate;
- b) the State may implement mitigations or require corrective action; or
- c) the State may revoke their safety oversight delegation.

2.4 Noting the above, the current framework for GASOS needs to consider the legal liability in the situation where a SOO is found to be negligent or not competent in its oversight, or where an activity carried out by the SOO is inconsistent with the interests of a State. The mere existence of another entity involved in the operation of safety oversight could itself implicate that entity in any legal dispute or investigation. The extent of any transfer of liability, risk or responsibility from the State to SOO should be considered and clarified in the final GASOS arrangements. Furthermore, further work is suggested to define the method of ensuring continued awareness by ICAO of the competency of a SOO.

2.5 Further work is also required to determine the extent of accountability a SOO would have in respect of any delegation by a State of safety oversight functions. The development of a clear and legally sound mechanism – separate to, but philosophically aligned with Article 83 bis of the Chicago Convention – should be included in the oversight delegation to clarify the extent of shared liability and whether any indemnification is necessary.

2.6 Details on the delegation process should be included under GASOS to provide States and SOOs with certainty in their roles and responsibilities in performing safety oversight functions. Failing to settle appropriate apportionment of liability and risk could limit the delegation by States of level 2 and level 3 safety oversight functions.

2.7 Settling liability arrangements is also important to limit any potential exposure to ICAO as a result of endorsing the capability of a SOO through assessments and continuous monitoring. It is vital to settle the question around liability and risk to prevent any compromise of ICAO's reputation or financial position.

3. GOVERNANCE

3.1 The core oversight mechanism outlined in under GASOS relies on the ability of a State to dedicate resources and expertise to ensure the SOO is adequately performing its functions as formalised in the delegation instrument.

3.2 Often the reason a State would delegate safety oversight functions to a GASOS-recognised agency may be due to the fact that the State does not have sufficient capability to undertake the work themselves. However, GASOS requires the State to have the capability to define and oversee the delegation issued. While this concept seems adequate for larger State safety agencies to manage, it may prove very difficult for a smaller State agency with insufficient technical capability, i.e. the type of State GASOS is designed to assist, to adequately assess ongoing competency. Therefore, further work should be undertaken to develop arrangements to support smaller States to satisfy themselves regarding the performance of a SOO, such as expert assistance from larger States or ICAO.

3.3 Under GASOS, a State will receive a Universal Safety Oversight Audit Programme (USOAP) credit for the functions delegated to a recognised SOO. However, there is little detail about whether non-compliance by a SOO will impact upon a State's USOAP score.

3.4 In addition to clarifying these matters, ICAO should provide guidance and measures to assist States to move efficiently and effectively to another SOO. Measures to preserve a State's USOAP score in these circumstances should also be considered, such as providing an appropriate time period of grace to allow for a State to transition to an alternate SOO.

3.5 The ability to manage potential conflicts of interest within an organisation that is being held accountable for the USOAP scores of their client States, but also in those SOOs that are conducting technical or certification functions also should be given further consideration. It will be necessary to develop measures and guidance material to assess governance arrangements of SOOs on their ability to manage and prevent any potential conflicts of interests.

4. COST-BENEFIT ANALYSIS

4.1 Having regard for the different level of resources available to State safety oversight agencies, consideration should be given to undertaking cost benefit analysis to identify and quantify the benefits for States and the aviation industry flowing out of GASOS from improved aviation safety, efficiency and capacity outcomes.

4.2 Noting the proposed system is intended to operate on a cost-recovery basis, a cost-benefit analysis would enable States to understand that the value of the cost-recovery for adopting GASOS is more than compensated for by the savings and efficiencies realised from the delegation of certain safety oversight functions.

4.3 This cost benefit analysis might also encourage well-resourced States to assist other States in their oversight efforts of a SOO. This would support existing ICAO policies to ensure that no country is left behind.

5. CONCLUSION

5.1 While Australia supports GASOS, we propose future work be undertaken by ICAO on three specific areas: legal liability, governance and cost-benefit analysis to support the progression of GASOS.

5.2 The Conference is invited to agree on the following recommendation:

Recommendation 6.1/x — Progression of the global aviation safety oversight system (GASOS)

That the Conference:

- a) request ICAO undertake future work to progress the global aviation safety oversight system (GASOS) regarding:
 - 1) the legal liability and risk for States, ICAO and recognised Safety Oversight Organizations (SOO) arising from the delegation of safety oversight functions;
 - 2) governance measures to support the adoption of the GASOS concept by States including the potential to assist States' oversight a delegation to a SOO;

- 3) the impact on a State's Universal Safety Oversight Audit Programme (USOAP) score from assessment and continuous monitoring by ICAO of a SOO, particularly where a SOO does not meet the relevant Standards;
- 4) the development of guidance to clarify the process for the transition of oversight from one SOO to another, and the impact on a State's USOAP score in these circumstances;
- 5) the development of governance criteria to be used to measure whether SOOs implement and adhere to sound governance arrangements in performing safety oversight functions including managing conflicts of interest; and
- 6) the development of cost-benefit analysis to support participation in GASOS and highlight the quantifiable benefits for States and the aviation industry.

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