



International Civil Aviation Organization

**The Sixth Meeting of the APANPIRG ATM Sub-Group
(ATM/SG/6)**

Hong Kong, China, 30 July – 03 August 2018

ATMSG/6–WP27
30/07/2018 – 03/08/2018

Agenda Item 5: ATM Coordination (Meetings, Route Development, Contingency Planning)

‘DUE REGARD’ MILITARY OPERATIONS IN INTERNATIONAL AIRSPACE

(Presented by Airports Authority of India)

SUMMARY

This paper presents India’s concern on safety of civil aircraft operating in international airspace in oceanic airspace of Mumbai, Chennai and Kolkata FIRs.

1. INTRODUCTION

1.1 A major portion of Mumbai, Chennai and Kolkata FIRs is in international airspace. Recently many incidents of sighting of Military Aircraft in international airspace were reported by civil aircraft and ATS units. The presence of Military Aircraft was not known to the ATC unit providing ATS in the airspace. The operation of these unknown military flights is a concern for India as the safety of civil aircraft operations over high seas is affected.

2. DISCUSSION

Provisions in International Convention

2.1 Chicago convention Article 3 (c) states that

The contracting States undertake when issuing regulations for their state aircraft, that they will have due regard for the safety of navigation of civil aircraft.

2.2 UN conventions on the Law of Sea Article 39 (Section 3) states:

Aircraft in transit passage shall:

(a) observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft; state aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation;

2.3 ICAO Assembly (Resolution 32/6), regarding Safety of Navigation, resolved that:

The Assembly:

a) Urges all Contracting States to reaffirm that air traffic safety is of paramount importance for the sound development of international civil aviation;

b) Urges all Contracting States to strictly comply with the provisions of the Convention on International Civil Aviation, its Annexes and its related procedures, in order to prevent a recurrence of such potentially hazardous activities

2.4 ICAO Assembly (Resolution 38/12), regarding ‘Coordination and cooperation of civil and military traffic’, resolved that:

“the regulations and procedures established by Member States to govern the operation of their state aircraft over the high seas shall ensure that these operations do not compromise the safety, regularity and efficiency of international civil air traffic and that, to the extent practicable, these operations comply with the rules of the air in Annex 2.”

2.5 ICAO DOC 4444, Paragraph 16.1.1 regarding responsibility for military traffic states that:

“ it is recognized that some military aeronautical operations necessitate non-compliance with certain air traffic procedures. In order to ensure the safety of flight operations the appropriate military authorities shall be asked, whenever practicable, to notify the proper air traffic control unit prior to undertaking such manoeuvres ”.

2.6 ICAO Circular 330 Civil-Military Cooperation in Air Traffic Management, Chapter 5, paragraph 5.1.2 states:

In pursuit of their tasks, operators of State aircraft should, where practicable, respect international, regional and State civil aviation legislation and aim for compliancy.

2.7 A few of the recommendations made by other ANSPs for operations of military flights under ‘due regard’ are as follows:

State aircraft operating authorities and pilots can take a number of measures to mitigate the impact of "due regard" operations on civil traffic:

Flight Preparation:

- i. *Prior coordination with national airspace/ATC authorities can limit potential communication problems.*
- ii. *Aircraft commanders should also make themselves familiar with:*
 - a) *the type(s) of civil aircraft operations;*
 - b) *the airspace organization and responsible ATS unit(s);*
 - c) *ATS routes and their dimensions; and*
 - d) *relevant regulations and special rules, including airspace restrictions.*

Flight Planning:

- i. *A comment can be made in the remarks section of the flight plan, if one is filed.*
- ii. *Include the point or fix where "due regard" will commence/end on the flight plan.*

Flight Operations:- Before an aircraft commander declares "due regard" a number of conditions could be met, for instance:

- i. *the aircraft could be operated in VMC; or*
- ii. *the aircraft could be operated within surveillance and radio communications of a surface or airborne (e.g. AWACS) radar facility; or*
- iii. *the aircraft could be equipped with airborne radar that is sufficient to provide separation between themselves, aircraft they may be controlling, and other aircraft; or*
- iv. *aircraft could be operated outside controlled airspace and, when possible, away from high density traffic areas.*

2.8 Recent incidents of sighting of military aircraft operating in international airspace and that too in RVSM levels is a concern for India as it is a safety hazard for civil aircraft operating in the airspace. A few of such incidents involving known-after-query/unknown military flights are mentioned in the attachment. The density of international air traffic in Bay of Bengal and Arabian Sea airspace necessitates that safety of all military and civil flights is maintained by providing improved situational awareness to the controllers and the pilots. The improved situational awareness can be provided ONLY when appropriate information of military aircraft operations was made available to the respective ATS units.

2.9 Most of the international air traffic is concentrated between flight levels 280 and 410. India had already notified in its e-AIP (ENR 1.7) regarding the availability of VFR levels up to flight level 285 only in the Indian airspace.

2.10 APAC States are requested to note India's concern on safety of civil aircraft operating in the oceanic airspace of Mumbai, Chennai and Kolkata FIRs and convey to their military authorities to operate military flights over high seas in accordance with UN conventions and comply with provisions contained in Annex 2 Rules of the Air.

2.11 As the oceanic airspace of Mumbai, Chennai and Kolkata FIRs are prone to cyclonic activities leading to Large Scale Weather Deviations, it is essential that Indian ATS units receive the flight plans of all military flights operating in oceanic airspace. Military aircraft should operate below RVSM band and contact appropriate ATS unit for clearance to enter RVSM airspace, as there are no VFR levels in RVSM band. Military flights should coordinate with the appropriate ATS unit prior to crossing international ATS Routes.

2.12 The meeting is invited to consider the following Draft Conclusion:

Draft Conclusion ATM/SG/6-X: Civil/Military Cooperation Over the High Seas			
What: States were urged to sensitize their military authorities that :		Expected impact:	
a) Operation of Military Aircraft over High Seas be conducted in accordance with UN Conventions on “The Law of the Sea”.		☒ Political / Global	
b) Military Aircraft over High Seas enter RVSM levels only after the approval of appropriate ATS unit.		☐ Inter-regional	
		☐ Economic	
		☐ Environmental	
		☐ Ops/Technical	
Why: To protect safety of civil aircraft operating over “High Seas of Mumbai/Chennai/Kolkata FIR.		Follow-up: ☒ Required from States	
When: Open		Status: Draft to be adopted by Subgroup	
Who: ☐ Sub groups ☐ APAC States ☐ ICAO APAC RO ☐ ICAO HQ ☐ Other:			

Attachment A: European Operations Bulletin on the High Seas

3. ACTION BY THE MEETING

3.1 The meeting is invited to:

- note the information contained in this paper;
- discuss any relevant matters as appropriate, and
- Sensitize the military authorities of their states to conduct their operation over high seas in accordance with UN conventions.

.....

Attachment to WP

Incidents of Unknown aircraft operated in Oceanic airspace in Mumbai, Chennai and Kolkata FIR.

1. Brief of the incident of observation of an unidentified target at 1800 IST on 21st February 2018 at Chennai FIR.

An unidentified target squawking 1200 Mode-C FL315 Mode-S call sign XXX123 was observed in Chennai RADAR on a bearing of 142DEG/205NM southeast of Vishakhapatnam heading towards north/north-east direction. No contact with aircraft and no FPL was available with Chennai/Colombo ATC.

As per Colombo the said target transited through their FIR without contact.

The unidentified aircraft was last observed by Chennai OCC at 2130 IST on a bearing of 317DEG/172NM from point 'SADAP' at FL345 and thereafter dropped. As per Kolkata OCC the aircraft was last observed at 2300 IST.

2. Brief of the incident of unknown aircraft as reported by flight XXX123, type NNNN, from AAAA to BBBB at 0228 IST on 6th March 2018 at Mumbai FIR.

XXX123 (estimating IGAMA 0244 IST FL330) reported on CPDLC at 0228 hrs. IST that "A traffic descended in front and done a 180 degree turn".

On further query about the unknown traffic, XXX123 reported that "the traffic was last on TCAS at 3600 feet below at 40NM abeam heading 300 degree".

All nearby known traffic were in positive contact on HF or CPDLC and reported ops normal. It was checked with adjacent ATC Unit Mangalore about the unknown traffic. Mangalore ACC was unaware of such traffic.

3. Brief of the incident of observation of an unidentified target at 1125 IST on 16th March 2018 at Chennai FIR.

An unidentified target squawking 1200 Mode-C level FL157 Mode-S call sign ZZZ123 was observed in Chennai radar moving from south to north-east. No contact with aircraft and no flight plan was available.

There was no information available with Military/ Coast Guard or Indian Navy. Adjacent ATC centres were informed.

4. Brief of the incident of observation of unidentified target by Muscat ATC in Mumbai FIR on 22nd March 2018.

The following messages regarding unknown aircraft movement was reported by Muscat ATC to Mumbai OCC.

- At 1855 IST Muscat informed that an aircraft was observed at FL180 near TOTOX (Mumbai/Muscat FIR Boundary), SSR code 0337. The unreported aircraft had painted on their radar.
- At 1859 IST, Muscat reported 4 more aircraft with SSR code 0016, 0017, 0027, 0037 at FL274 near TOTOX.
- At 1905 IST, Muscat reported that one unreported aircraft operating between FL310-FL320 near TOTOX.
- At 1950 IST, one aircraft was observed 10 miles east of TOTOX at FL260.
- At 1959 IST, two aircraft at 6000 feet and 7000 feet 40 miles east of TOTOX was observed by Muscat.

There was no information about any of the above flights available with Mumbai OCC/FIC. There was no adverse impact on civil flights in that airspace.

5. Brief on LHD by XXX123 who reported at FL295 instead of FL270 in Mumbai FIR on 25th March 2018.

Estimate received from Muscat control that military flight XXX123, estimate PARAR(Mumbai/Muscat FIR boundary) was 0240 UTC FL270.

AT Time 0410 UTC, aircraft came in contact through relay by YYY456 and reported at FL295 instead of FL270 estimate ELKEL 0533 UTC.

Flight level was reconfirmed from another aircraft ZZZ789 who was in ADS/CPDLC through relay and confirmed that XXX123 was maintaining FL295. There was no conflicting traffic at FL280 and FL300. Flight XXX123 was in contact with ATC Unit of ZZZZ and not in Mogadishu control.

The flight XXX123, even though coordinated by previous ATC Unit, did not follow the coordinated route and level.



EUR OPS BULLETIN

Serial Number: 2015_002

Effective: 15 December 2015

Subject: Guidelines to airspace users in order to raise their awareness on **State aircraft operations especially in the High Seas airspace over the Baltic Sea**

The practical meaning for airspace users that are operating over the High Seas

- Within a Flight Information Region (FIR), classes of airspace established for volumes of airspace extending over the High Seas and their associated rules apply only to civil aviation. However, the safety of air navigation is paramount for all airspace users.
- All airspace users must be aware that State aircraft have the possibility to operate under "due regard" over the High Seas as the access of State aircraft to High Seas airspace cannot be restricted.
- State aircraft will operate in compliance with ICAO SARPS to the maximum extent practicable, but can, due to mission requirements, also operate under "due regard" for the safety of navigation of civil aircraft. When operating under "due regard", the State aircraft is not subject to ATC, irrespective of the declared airspace-class over the High Seas.



- A State aircraft operating under "due regard" might not have filed a flightplan, might not necessarily establish radio communications or enable its identification through means of cooperative surveillance. State aircraft operating under "due regard" are required to maintain safe separation from civil aircraft flying in their proximity
- Civil Air Traffic Control (ATC) units have normally no responsibilities for the separation of State aircraft when they are operating under "due regard", and can only, when know to them, provide traffic information to all other aircraft which are in the vicinity of the particular State aircraft.
- All civil airspace users must adhere to ICAO SARPS, in particular to the Rules of the Air in ICAO Annex 2, when operating over the High Seas. They must be aware that State aircraft are authorised to operate under "due regard" at any time in the airspace over the High Seas.

Additional information can be found in:

- ICAO Circular 330, Civil/Military Cooperation in Air Traffic Management
- ICAO EUR Doc 032, Interim Guidance Material on Civil/Military Cooperation in ATM

The legal background

UN Convention on the Law of the Sea (UNCLOS) with Relevance for Aviation



Article 2, Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil

1. The **sovereignty of a coastal State extends**, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as **the territorial sea**.
2. This **sovereignty extends to the air space over the territorial sea** as well as to its bed and subsoil.
3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

Article 3, Breadth of the territorial sea

Every State has the right to establish the breadth of its territorial sea **up to a limit not exceeding 12 nautical miles**, measured from baselines determined in accordance with this Convention.

Article 58, Rights and duties of other States in the exclusive economic zone

In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, **the freedoms referred to in article 87 of navigation and over-flight** and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the **operation** of ships, **aircraft** and submarine cables and pipelines, and compatible with the other provisions of this Convention.

Article 86

The provisions apply to all **parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State**, or in the archipelagic waters of an archipelagic State. This article does **not entail any abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58**.

Article 87, Freedom of the high seas

The **high seas are open to all States**, whether coastal or land-locked.

1. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:

- (a) Freedom of navigation
- (b) **Freedom of over-flight**

ICAO Provisions

The ICAO Chicago Convention in **Article 3 (a) expressly excludes State aircraft from its scope of applicability**. Articles 3 (b), (c) and (d) further clarify the definition and scope of application of the Articles of the Convention. As a consequence of Article 3, in particular subparagraph 3 (d), **States are required to safeguard navigation of civil aircraft when setting rules for their State aircraft**. This leaves it up to the individual State to regulate these operations and services, generating a wide diversity of military regulations. However, especially in congested airspace, harmonized regulation is a precondition for a safe, efficient and ecologically sustainable aviation system.

At the same time, States are aware of the limitations of ICAO Standards and Recommended Practices (SARPs) and designated Annexes to the Convention, including PANS and regional supplementary procedures (SUPPs), as they relate to State/military aircraft and their services. Indeed, as seen above, Article 3 of the Convention specifically exempts State aircraft from compliance with articles of the Convention. More and more multinational military operations that cross international boundaries require complex coordination and planning processes to avoid unnecessary segregation or restrictions and to achieve the required level of safety.

In accordance with the Chicago Convention, **Article 3 (b), “Aircraft used in military, customs and police services shall be deemed to be State aircraft”**. In broad terms, the right to access all airspace, within the limits of the operational needs, is a crucial requirement to enable the military, customs and police to perform the security, defence and law enforcement missions mandated by their States and by international agreements. It is, therefore, a fundamental requirement that each State be able to train and operate its State aircraft effectively. In this manner, it is vital for State aircraft to be provided access to sufficient space, enabling adequate opportunities for the training and execution of security, defence and law enforcement elements.

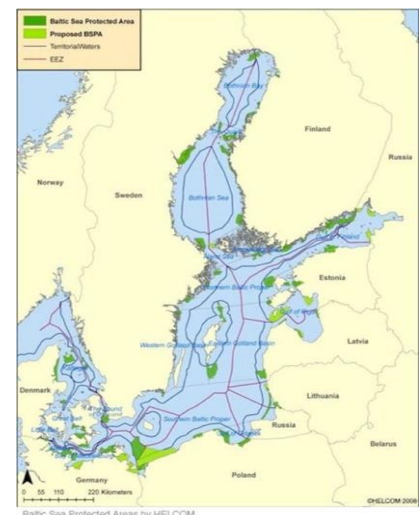


In pursuit of their tasks, operators of State aircraft should, where practicable, respect international, regional and State civil aviation legislation and aim for compliance. However, it is recognized that the nature of the defence and security tasks can create unique situations that need special handling and considerations. In this regard, ICAO Circular 330 chapter 5 explains in detail what roles are performed by military and non-military flights under the title of “State aircraft”. It also highlights circumstances when State aircraft can be fully compliant or partially compliant with international civil aviation rules and procedures, as provided for in ICAO SARPs, and it lists the general expectations for handling such aircraft by an air navigation service provider (ANSP). A number of States and international organisations have regulated the operation of State aircraft and made this information publicly available.

ICAO Annex 11 specifies a number of provisions that address the aspects of air traffic services over the High Seas, including the division of airspace in Flight Information Regions (each under the responsibility of ICAO Member States). The State that has accepted the provision of ATS over the High Seas must provide air traffic services in accordance with Annex 11, but “may apply the SARPs in a manner consistent with that adopted for airspace under its jurisdiction” and the obligation on States that their ATS authorities closely coordinate with military authorities on activities that may affect flights of civil aircraft (e.g. provide flight plans and other relevant data)

In Summary

- Over the High Sea only the relevant international law applies
- All States enjoy the freedom to overfly the high seas and so called “passages” (i.e. international straits)
- High seas start outside the territorial sea and the territorial sea extends up to a maximum of 12 NM from the national coastline
- High Seas airspace is not territorial airspace, hence national and/or other legislation DO NOT apply
- ICAO SARPs apply to civil aircraft over the High Seas, but not to State aircraft in military services (‘military aircraft’) or other State aircraft
- States must have due regard for the safety of civil aircraft and must have established respective regulations for national State aircraft



Notice

The purpose of European Operations Bulletin **2015_002** is to promulgate guidelines to airspace users in order to raise their awareness on State aircraft operations under due regard, or when State aircraft operations are conducted only partially in accordance with ICAO provisions, especially in the High Seas airspace over the Baltic Sea.

This Bulletin was prepared in response to one of the recommendations from the ICAO Civil/Military Cooperation Symposium (ICAO EUR/NAT Office, April 2015) and is also reflecting the outcome of the Baltic Sea Project Team, which was established by the EANPG COG/62 Meeting (May 2015) to address several coordination issues and operational aspects identified in the Baltic Sea area. It was endorsed by the 57th Meeting of the European Air Navigation Planning Group in November 2015.

EUR Ops Bulletins are used to distribute information on behalf of the European Air Navigation Planning Group (EANPG). The material contained therein may be developed within the working structure of the EANPG or be third party documents posted at the request of an EANPG Member State. A printed or electronic copy of this Bulletin, plus any associated documentation, is provided to the recipient as is and without any warranties as to its description, condition, quality, fitness for purpose or functionality and for use by the recipient solely for guidance only. The information published by ICAO in this document is made available without warranty of any kind; the Organization accepts no responsibility or liability whether direct or indirect, as to the currency, accuracy or quality of the information, nor for any consequence of its use. The designations and the presentation of material in this publication do not imply the expression of any opinion whatsoever on the part of ICAO concerning the legal status of any country, territory, city or area of its authorities, or concerning the delimitation of its frontiers or boundaries.

The EUR OPS Bulletin Checklist available on www.icao.int/EURNAT/ (EUR & NAT Documents, EUR Documents), contains an up to date list of all current EUR Ops Bulletins.

There is no objection to the reproduction of extracts of information contained in this Bulletin if the source is acknowledged.

Questions or comments regarding this OPS Bulletin may be directed to the ICAO European and North Atlantic Office at icaoeurnat@paris.icao.int



European and North Atlantic Office



– END –