International Civil Aviation Organization

WORKING PAPER

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Agenda Item 3: Strengthening regulatory and institutional frameworks
3.1: Strengthening regulatory oversight and evolving institutional frameworks

INTEROPERABILITY FOR CROSS-BORDER OPERATIONS

Presented by Oman, the Airport Services Association (ASA World), the International Federation of Air Line Pilots' Associations (IFALPA), the International Air Traffic Controllers' Association (IFATCA), and the International Transport Workers' Federation (ITF)

EXECUTIVE SUMMARY

"Cooperative Oversight," also known as "Interoperability" is a concept that facilitates day-by-day interchange leases between and among operators in different jurisdictions, and regulatory oversight flips rapidly from one national government to another and back. Often the flight crew stays with the airplane as it becomes subject to different rules on different days: this is known as "crew interoperability."

The consequences of the "fast flip" concept include making regulatory oversight more difficult, pushing the burden for compliance from operators to regulators and flight crews, and putting national regulators and crews in competition against each other as the operator searches for lower costs or more forgiving oversight. Pilots and regulators have reported serious problems with this approach.

Article 83 *bis* to the *Convention on International Civil Aviation* (Chicago Convention) does make possible the delegation of specific safety oversight responsibilities from the State of Registry to the State of the Operator through bilateral agreements, and involves a bilateral negotiation process, with international transparency provided through registration of agreements. Such a negotiation includes more than technical regulatory oversight by State Civil Aviation Administrations (CAAs), but also determinations of economic, political, social, labour, security, airport capacity and competitive concerns. Some States that want to accommodate "fast flip" interoperability see Article 83 *bis* as an obstacle, however, and have sought an alternative that could omit serious consideration of the political, economic, social, labour, and competitiveness concerns that these arrangements can trigger. Moreover, some States have suggested an alternative procedure to accommodate "fast flip" interchanges could be accomplished by aeronautical authorities' exchange of letters between themselves, and not by an Article 83 *bis*-style full-dress bilateral negotiation.

Recently, the International Civil Aviation Organization (ICAO) issued an amendment to *Manual of Procedures for Operations Inspection, Certification and Continued Surveillance* (Doc 8335) to accommodate "fast flip" interoperability, but it omits any consideration of the issues identified above. As a result, it is proposed the Conference needs to carefully consider how we may balance a proposed alternative to Article 83 *bis that* facilitates "fast flip" interoperability.

[1] English, Arabic, Chinese, French, Russian and Spanish versions provided by IFALPA.

1. JUSTIFICATION FOR AN ALTERNATIVE TO ARTICLE 83 *BIS*

1.1 "Cooperative Oversight," also known as "Interoperability," is a concept that adds more complexity to commercial aviation. It facilitates day-by-day interchange leases between and among operators in which the same airplane can fly for one company under its home jurisdiction on day one, for another company and jurisdiction on day two, and so forth. The regulatory oversight for the airplane flips rapidly from one national government to another and back; often the flight crew stays with the airplane as it becomes subject to different rules on different days: this is known as "crew interoperability."

1.2 The ultimate point of this "fast flip" concept is for operators to buy fewer planes, hire fewer flight crews, and grow their earnings but the concept has consequences. One is to make regulatory oversight more difficult by pushing the burden from operators onto regulators to determine which national government is overseeing a flight on any given day. Another is to push the burden onto flight crews to ensure that they — and their airplane — are fit to operate under one country's rules on one day and another's the next. Yet another is to pit national regulators and crews against each other in the operator's search for the lowest costs or most forgiving oversight. Pilots and regulators have reported serious problems with this approach, as shown below.

1.3 Legally, a 1997 amendment to the *Convention on International Civil Aviation* (Chicago Convention), Article 83 *bis*, made possible the delegation of specific safety oversight responsibilities from the State of Registry to the State of the Operator through bilateral agreements. Those agreements preserve State-level oversight of national aviation interests through the bilateral negotiation process, and those agreements are registered, ensuring transparency. State aviation interests include not merely technical issues for Civil Aviation Administrations (CAAs), but include economic, political, social, labour, and competitive concerns.

1.4 Some States see Article 83 *bis* as an obstacle, however, and have sought an alternative to accommodate "fast flip" interoperability by a mere exchange of letters between CAAs. That alternative was broached in a Working Paper to the 40th ICAO Assembly in 2019 (A40-WP/108 Enabling Integrated Cross-Border Oversight). Even then, the authors recognized that "fast flips" "introduced new challenges for States in conducting oversight" (Id., para 1.2), and that "States are experiencing challenges in conducting oversight in such cross-border activities" (Id., para 3.1). Plainly stated, the "challenges" introduce significant safety risks because regulators have difficulty in ensuring proper safety oversight of "fast flip" operations.[2]

1.5 Spurred on by the Working Paper, from 2020 to 2024, a subgroup of the Flight Operations Panel called "Cooperative Oversight for Cross-Border Operations" (COCBO) developed draft guidance to enable an alternative to Article 83 *bis* to accommodate "fast flip" interoperability, but the draft does not state how safety would be improved. The draft guidance has now been issued by ICAO as a formal amendment to the *ICAO Manual of Procedures for Operations Inspection, Certification and Continued Surveillance* (Doc 8335, 6th ed., Amend. No. 1, 21 Aug. 2026 ("Doc 8335")).

[2] Regulators may have even more difficulty with interoperability because they are already underfunded, as the Secretary General is pointing out partly because of "mounting complexity," the Secretary-General is calling for States "to make full use of [ATConf/7] to address a persistent and particularly significant weakness in global aviation: the chronic underfunding of regulatory oversight." (ICAO News, "States must increase funding for aviation safety and security oversight," Aug 11, 2026.). "Fast flip" interchanges add complexity and shift the compliance burden onto already overwhelmed regulators.

2. DOC 8335 GUIDANCE OMITS KEY AREAS OF CONCERN

2.1 There is concern that new amended guidance found in Doc 8335 will avoid meaningful consideration of relevant State policy objectives, including the following key issues:[3]

a) A regulator will lack any meaningful opportunity to inspect an aircraft before it departs for a third country in a case where oversight will be as short as one day. This is especially true where there may be long-deferred maintenance items that affect a pilot-in-command's decision about whether the deferred-maintenance aircraft is safe to operate.

b) A government may give up a means to address its economic, political, social, labour, and competitive concerns, which may not be within the CAA's remit.[4]

c) An operator will use crew interoperability to intentionally avoid local labour and safety regulations by using lower-cost crew from a second country subject to the second country's more lenient regime.

d) Harmonization of States' oversight systems is itself difficult and complex, and it will not result in a choice to harmonize around "the most stringent requirements of the States affected." (Id., § 4, 8th para.). The chief reason why multiple air operator certificate (AOCs) are established are to operate under the lightest regulatory burdens and the lowest costs. The expected behavior of any company is to seek the least stringent and costly regime, not the most stringent, or most costly.

e) Without a formal negotiation, third-party States may lack a clear understanding of the oversight transfers and its ramifications.

3. REPORTED PROBLEMS WITH "FAST FLIP" INTERCHANGES

3.1 The concerns with Doc 8335 are borne out by the experience of pilots operating "fast flip" interchange operations today. Some anecdotal examples of operational problems include:

a) Chaos caused by untimely pilot license validation: pilots employed by certain transnational airlines must hold pilot licenses from several States to operate airplanes registered by the airline's AOCs in those States. One regulator has not validated the pilots' licenses in another State in a timely manner, but neither the pilots nor the crew scheduling department are aware of the problem until shortly before departure, leading to disruption while crew scheduling scrambles to find a pilot with a current validation.

b) Emissions and delays caused by different equipage: recently, a Latin American-registered freighter departed from the United States for Europe. The airplane entered European airspace, and controllers instructed the crew to descend because the airplane was not authorized for Reduced Vertical Separation Minimum (RVSM) flight within Europe; it lacked fire extinguishers in the cargo hold, an RVSM requirement. Neither the crew nor dispatchers had time to check this requirement in advance. The crew descended to a lower altitude, burning more fuel, emitting more carbon and delaying its arrival.

[3] Doc 8335, amend. 1, 5.3.1.1., and 5.3.2.4 (relegating "employment, social benefits, labour disputes" to "administrative issues").

[4] ICAO has recognized the importance of addressing the social and labour consequences of its economic development function in an agreement with the International Labour Organization (ILO). Agreement between the ILO and the ICAO, March 15, 2022.

3.2 These examples, among many others, belie Doc 8335's facile recommendation that "harmonization" is the answer to many problems. In practice, "fast flips" add significant complexity.

3.3 Regulators report problems as well. Some regulators with more exacting requirements and methods report that they are pressured by operators to relax their rules to "harmonize" them with less stringent regimes in other jurisdictions with AOCs that host the operators' aircraft.

4. CONCLUSION

4.1 It is essential that any substitute framework to Article 83 *bis* include a process that permits all affected States (including destination States) to fully consider and evaluate how these "fast flip" operations can impact States, including related economic, political, labour, and social concerns.

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