



ACCIDENT INVESTIGATION AND PREVENTION (AIG) DIVISIONAL MEETING (2008)

Montréal, 13 to 18 October 2008

Agenda Item 1: Annex 13

1.7: Attachment E to Annex 13

“JUST CULTURE” (JC) DEFINITION AND IMPLEMENTATION OF A JC CONCEPT

(Presented by France, on behalf of the European Community and its Member States²,
by the other States Members of the European Civil Aviation Conference³,
and by EUROCONTROL)

SUMMARY

Transparency and sharing of information are recognized as cornerstones of aviation safety. “Just Culture” should create an environment in which the reporting and sharing of information is encouraged and facilitated.

In this context, this paper proposes a “Just Culture” definition and actions to support the implementation of an adequate “Just Culture” concept in order to address the need for the protection of safety reporting and sharing of information while respecting the principles of administration of justice and freedom of information.

A “Just Culture” is not just another safety related initiative. It is an essential enabler to proceed towards enhancing safety, taking into account the interests of all parties concerned. The establishment of a “Just Culture” requires the involvement of the representatives of the Aviation and ATM safety domain as well as those of the Judiciary of States concerned—whatever the practical, legal and societal difficulties along the way. Insights and studies from decades of safety and human factors research confirm this. Progress on safety has become synonymous with taking a systems perspective and moving beyond blame in a balanced manner.

Action by the meeting is in paragraph 5.

¹ English and French versions provided by France on behalf of EC, ECAC and EUROCONTROL.

² Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom. All these 27 States are also Members of the ECAC.

³ Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Iceland, Moldova, Monaco, Montenegro, Norway, San Marino, Serbia, Switzerland, The former Yugoslav Republic of Macedonia, Turkey and Ukraine.

1. INTRODUCTION

1.1 The improvement of aviation safety is based, to a large extent, on the knowledge derived from a systematic accident/incident data collection and analysis allowing the whole industry to adapt by modifying its equipment and procedures. The good functioning of this system is built on the existence of systematic records traceability, active participation and reporting from all the aviation actors involved in safety-critical areas and sharing of safety information. In Europe, there are well-developed accident prevention processes including mandatory incident reporting systems and independent accident investigation.

1.2 The chain of events leading to an accident or incident is often constituted of individual incidents or occurrences that, when combined, provoke a catastrophic situation. In some cases, during the investigation activities, it appears that some incidents perceived as contributing to an accident have been occurring for years but not known to the widest aviation community and without adequate global actions taken. It is therefore very important to gain as much knowledge as possible on all incidents. For this reason, Annex 13 and aviation regulation provide for mandatory incident reporting.

1.3 However, these processes do not collect information on all occurrences. It is thus necessary to supplement them by establishing voluntary incident reporting systems to give people the opportunity to provide information on incidents that they perceive to be an actual or potential hazard but which do not fall under the mandatory category.

1.4 In recent years, there has been a growing concern on the part of aviation professionals⁴ about the interpretation of flight safety by the general public and media, and especially by the judicial system. The major concern is associated with the increasing emphasis on the potential for prosecution or public blame.

2. IMPACT OF THE JUDICIARY AND MEDIA ON AVIATION SAFETY

2.1 Earlier this year, a court sentenced two air traffic controllers to suspended prison terms for their involvement in a near miss incident. One of the causes was Call Sign Confusion, a well-known problem whereby aircraft received and acted on a clearance intended for another aircraft. This is a systemic issue which can lead to a human error. The problem can be eliminated by ensuring that call signs are designed in such a way so they are sufficiently different. This is an example of a case where the judiciary addressed a human behaviour resulting from a systemic issue. This could ultimately be detrimental to safety, sending the wrong messages to those reporting incidents.

2.2 The impact of the media is also important to consider when developing a “Just Culture”. Media seeking newsworthy items and working under time constraints to be the first to issue news items are likely to report in great detail, at an early stage and with often unsubstantiated conclusions, alleged breaches of flight safety.

2.3 The accident or incident investigation process enables safety experts to collect a large quantity of factual information from the accident itself but also from manufacturers, operators, service providers and regulators to trace back the entire chain of events which contributed to the occurrence. Whether directly involved or not, individuals from all these entities will be asked to give details or

⁴ E.g. Air Navigation Service Providers (ANSPs), Safety Regulators, manufacturers, Aviation Safety Investigation Authorities, representative bodies of aviation personnel such as IFATCA (International Federation of Air Traffic Controller’s Associations) and IFALPA (International Federation of Air Line Pilot’s Associations).

explain their actions and behaviours. They might not cooperate fully if their testimony may be used against them in court. Equally this could make it difficult for safety investigators to get valuable information, particularly when judicial proceedings are launched at the same time as the safety investigation.

2.4 Legislators, and especially aviation regulators, have a keen interest in accessing facts in a timely manner when vital information is at stake.

2.5 Timely and adequate information on issues of public interest, including aviation safety, is made available in some countries on the basis of legislation e.g. freedom of information act. A balanced approach to use such information is essential, as biased reports are likely to jeopardize the reporting mechanisms developed and implemented in the aviation system.

2.6 Every person or entity, including the aviation community, is subject to the administration of justice at national or, where applicable, at international level.

2.7 The question of judicial action must be seen as a crucial part of a balance between fundamental societal interests and sovereign functions:

- a) the right of the highest possible safety (through incident and accident investigation and reporting); and
- b) the right of independent and impartial administration of justice and freedom of public information through appropriate constitutional and legislative provisions.

2.8 These two functions serve well-recognized public interests and have generally been seen as fundamental constitutional rights.

3. **DEVELOPMENT OF AN ADEQUATE “JUST CULTURE” CONCEPT**

3.1 As shown above, excessive publicity of incident information or prosecution of reporters/authors of incidents has led to a situation where companies may tend to discourage people from reporting incidents and where individuals may be tempted not to report when they believe it will not otherwise be known. This situation may drastically affect the level of reporting in mandatory schemes and could ruin voluntary reporting schemes.

3.2 An environment that enables the judicial authorities and the media to better understand and assess the nature and purpose of aviation safety initiatives, and in particular that of “Just Culture” in the Aviation and ATM industry, will result in a safer aviation environment in the longer term.

3.3 With respect to European aviation safety legislation, a number of mandatory provisions have already been introduced to protect confidentiality and avoid blame and liability but these are still seen as too limited by aviation safety professionals. For this reason, as a starting point towards better understanding and implementing of “Just Culture” principles, European States and Organizations have suggested a common interpretation of “Just Culture”, as follows:

“A culture in which front line operators or others are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, but where gross negligence, wilful violations and destructive acts are not tolerated”.

3.4 EUROCONTROL, the European Organisation for the Safety of Air Navigation and its stakeholders issued Guidance Material on “Just Culture” and initiated a number of steps to improve the understanding of the concept and the promotion of it with justice and media. The legal aspects of “Just Culture” are being addressed, inter alia, through the establishment of a dialogue with judicial authorities and through ad-hoc workshops. Relevant European Directives are also under review and could provide a more elaborated support to the concept of Just Culture. It is, however, considered that more needs to be achieved on a global basis.

4. THE WAY FORWARD

4.1 Assembly Resolution A35-17: *Protecting information from safety data collection and processing systems in order to improve aviation safety* states that the Just Culture should create an environment in which the reporting and sharing of information is encouraged and facilitated.

4.2 A “Just Culture” is not just another safety-related initiative. It is an essential enabler to proceed towards enhancing safety. The need to do so should be recognized by all parties involved, regardless of any practical and cultural difficulties along the way.

4.3 Two insights, emanating from decades of safety and human factors research, confirm this. Progress on safety has become synonymous with:

- a) **Taking a systems perspective:** Accidents and incidents are not caused by failures of individuals, but emerge from the conflux or alignment of multiple contributory system factors, each necessary and only jointly sufficient. The source of occurrences is the system, not its component parts; and
- b) **Moving beyond blame:** Blame focuses on the supposed defects of individual operators and denies the importance of systemic contributions. In addition, blame has all kinds of negative side effects. It typically leads to defensive posturing, misleading information, protectionism, polarisation, and mute reporting systems.

4.4 Different States and Organizations have so far tried, to a greater or lesser extent, to address the problems at the heart of a “Just Culture” in different ways. While they may differ considerably in outward appearance, all these efforts actually centre around three main questions:

- a) Who in the State, as well as within the companies, gets to “draw the line” between acceptable and unacceptable behaviour from a criminal law point of view?
- b) What and where should the role of domain expertise be in judging whether behaviour is acceptable or unacceptable?
- c) How protected against judicial interference are safety data (either the safety data from incidents inside of the company or the safety data that come from formal accident investigations)?

4.5 The more a State has made clear agreed arrangements about the possible interference by the judiciary and the rules and protocols agreed for such interference, the more predictable the judicial but also psychological consequences of an occurrence for those directly involved are likely to be. That is, operational people will suffer less anxiety and uncertainty about what may happen in the wake of an occurrence, as arrangements have been agreed upon and are in place.

4.6 The greater the involvement of the domain expertise in support of drawing the line jointly with the judicial system, the less operational people are likely to be exposed to unfair or inappropriate judicial proceedings.

4.7 The better the safety data is protected from judicial interference or where policies and protocols exist between the representatives of aviation and the judiciary, the more likely operational people in a State would feel free to report. The protection of safety data is connected, of course, to how the State solves questions a) and b) above.

4.8 With regard to the media, an environment that enables the media to comprehend the nature and purpose of a Just Culture in the aviation industry will result in more accurate, balanced reporting. This will keep the general public, the Government and the judiciary better informed about aviation safety, improving the image of aviation safety in the spirit of the “Just Culture” principles, thus making aviation even safer in the long term.

4.9 EUROCONTROL has developed guidelines for aviation professionals on how to address the media and public needs for information. Aviation professionals and journalists have little knowledge and/or understanding for each other’s profession, however, they both have the public interests in mind. The guidelines instruct aviation professionals on what to do and how to talk to the media, in order to give accurate information but preserve the confidentiality when this is due.

5. ACTION PROPOSED

5.1 WHEREAS there is an urgent need to establish an effective balance between the requirements for improving aviation safety and the requirements at national and international level for the administration of Justice, the meeting is invited:

to support and adopt for inclusion in Annex 13 the description of “Just Culture” as “a culture in which front line operators or others are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, but where gross negligence, wilful violations and destructive acts are not tolerated.”

5.2 WHEREAS the development and establishment of a “Just Culture” will greatly facilitate the reporting and sharing of safety data as an essential contribution to enhancing safety in international aviation, the meeting is invited:

to urge States to adopt and implement the Just Culture principles contained in the above description in paragraph 5.1.

5.3 WHEREAS through expressing its concerns regarding the possible consequences of increasing involvement of judicial authorities further to aviation accidents and incidents, the meeting is invited:

to review Attachment E to Annex 13 in order to provide more precise legal guidelines for the implementation of a “Just Culture”, in particular with respect to the role of the judicial authorities, with the aim of achieving a proper balance between the objectives of the implementation of effective safety reporting systems and those of the administration of Justice.

5.4 WHEREAS the influence of media can be potentially detrimental to aviation safety, while recognizing the need for the travelling public to be properly informed about aviation safety performance, the meeting is invited:

to review Attachment E to Annex 13 or to create a new Attachment in order to provide guidelines to the aviation professionals on how to interact with the media, in order to achieve the right balance between providing relevant and accurate information to the public while preserving the needed confidentiality of individuals in the interest of aviation safety.

— END —