



WORKING PAPER

**DIRECTORS GENERAL OF CIVIL AVIATION CONFERENCE
ON A GLOBAL STRATEGY FOR AVIATION SAFETY**

Montréal, 20 to 22 March 2006

Theme 2: Improving aviation safety

Topic 2.4

MUTUAL RECOGNITION

(Presented by the Secretariat)

SUMMARY

Recognition of certificates and licences is fundamental for international civil aviation. Many States are presently basing their recognition on mutual trust, however, they should verify that the condition in Article 33 of the Convention for such recognition is met, both for scheduled air services and non-scheduled flights. It is proposed that ICAO develop provisions and guidance to promote uniformity in the recognition by States of certificates and licences as valid and in the surveillance of foreign aircraft operations in their territory. The inclusion of a safety clause in air services agreements is recommended.

Action by the Conference is in paragraph 4.

1. INTRODUCTION

1.1 Under Article 31 of the Convention on International Civil Aviation (Chicago, 1944), every aircraft engaged in international navigation shall be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered. Article 32 stipulates that pilots engaged in international navigation shall be provided with certificates of competence and licences issued or rendered valid by the State in which the aircraft is registered. Recognition of such certificates and licences issued by another Contracting State as valid is fundamental for international civil aviation; without it, international flights would not be possible. Such recognition is mandatory under Article 33, provided that the requirements under which such documents were issued or rendered valid are equal to or above the applicable minimum Standards (i.e. Annex 1 — *Personnel Licensing* and Annex 8 — *Airworthiness of Aircraft*).

1.2 Audit results of the universal safety oversight audit programme (USOAP) show that a State authority cannot reasonably assume without verification that the condition for recognition stated in Article 33 is actually being met by another State. To assist States in exercising their safety oversight obligations, specific provisions and guidance regarding surveillance of aircraft operations, including scheduled air services and non-scheduled flights by foreign aircraft, would be useful.

2. DISCUSSION

2.1 Most civil aviation authorities issue certificates and licences under requirements at least equal to the applicable Standards, and ensure that these requirements continue to be met. This constitutes effective safety oversight by States. For many years, States were generally confident that the other ICAO Contracting States were fulfilling their obligations under the Convention and recognized their certificates and licences at face value.

2.2 The USOAP was established in 1999 with the objective to ensure that Contracting States are adequately discharging their responsibilities for safety oversight. The results of the first cycle of audits showed that certificates and licences are being issued or rendered valid by a number of States without the applicable Standards being met. As a result, recognition can no longer be based solely on the principle of mutual trust. There is a need to verify the basis used by another State issuing certificates and licences, and to verify that the condition for recognition as stipulated in Article 33 is actually being met.

2.3 Before recognizing the validity of certificates and licences issued or rendered valid by another Contracting State, a State should therefore verify that, as a minimum, the relevant Standards were met when certificates and licences were issued or rendered valid and continue to be met. To this end, a State should have a process for recognition, based on harmonized criteria. It is considered that guidance material concerning the process of verification as a prerequisite to recognition would be useful and could include the following steps:

- identify the Contracting State(s) responsible for the issuance or rendering valid the applicable certificates and licences (State of Registry, State of the Operator and any other State(s)); this includes a review of any bilateral agreements, under Article 83 bis or otherwise, concerning the transfer of certain safety oversight functions and duties, as well as any lease agreements by the operator concerned;
- assess the level of safety oversight exercised by the Contracting State(s) concerned; this includes a review of review of USOAP and any other safety oversight audit reports, in particular the States' effective implementation of their licensing and certification obligations and their surveillance obligations;
- assess whether the level and nature of aviation activity are consistent with the safety oversight capability of the Contracting States concerned, i.e. the ability of the authorities responsible for safety oversight to implement and enforce the relevant safety standards; taking into account whether or not the air operator certificate has been issued by the responsible authority in the State where the operational control of the air operator resides.

2.4 It is noted that the safety oversight responsibilities and obligations of States are defined in the Convention and its Annexes, even if the term safety oversight is not used in their provisions. It is

incumbent upon a State to ensure safety in the airspace within its territory, including the operation of aircraft of foreign air operators. In addition to Article 33, Articles 16 and 21 are relevant in this respect. Article 16 enshrines the right of State authorities to search aircraft of the other Contracting States on landing or departure, and to inspect the certificates and other documents prescribed by the Convention. Under Article 21, Contracting States undertake to supply to any other Contracting State or to ICAO, on demand, information concerning the registration and ownership of any particular aircraft registered in that State. Specific provisions and guidance material related to the responsibility of a State related to foreign air operations within its territory should be developed to complement the obligations in the relevant Articles of the Convention.

2.5 The safety oversight obligations of the State of Registry and the State of the Operator, as reflected in the Convention and its Annexes, are summarized in Attachment B to State letter EC 2/93, AN 11/41-05/83 dated 12 August 2005. However, surveillance over aircraft operations is needed not only over aircraft under the direct responsibility of the State, but also over foreign aircraft within their own territory. States were reminded of this need in operative clause 4 of Assembly Resolution A35-7: Unified strategy to resolve safety-related deficiencies. Such surveillance is of course not limited to aircraft engaged in scheduled air services, but also applies to non-scheduled flights.

2.6 The ICAO *Manual of Procedures for Operations Inspection, Certification and Continued Surveillance* (Doc 8335) outlines the process for conducting continuing surveillance of a State's national air operators; however, there is little guidance provided concerning a foreign air operator. To assist States in exercising their safety oversight functions, it would be useful for ICAO to develop specific provisions and guidance regarding surveillance obligations, including foreign aircraft operations within States' own territory, and guidance on harmonized criteria for recognition process. This material should take into account the experience of States, including the United States Federal Aviation Regulations Part 129 concerning foreign air carriers and the recent regulation of the European Parliament and of the Council concerning air carriers which are subject to an operating ban.

2.7 The globalization and expansion of international civil aviation over the last decades, as well as advancement of aviation technology, have created complexities that were not envisioned in the Convention. The Annexes have been kept up to date to reflect the changing environment and facilitate the safety oversight by States. In this connection, the concept of an air operator certificate (AOC) was introduced in 1990 in Annex 6 - *Operation of Aircraft*, Part I, *International Commercial Air Transport – Aeroplanes* and Part III, *International Operations – Helicopters*. The new Standards clearly set out the safety obligations of an air operator and the role of the State of the Operator concerning certification and continued surveillance of the operator. Implementation of the related Standards is audited under USOAP.

2.8 New provisions related to the carriage of the copy of the AOC and on its recognition by other States are under consideration and may have been adopted by the time of the conference (State letter AN 11/43-05/76 dated 12 August 2005 refers). Thus, a recognition mechanism for AOCs would be introduced in Annex 6, similar to that provided in Article 33 of the Convention for certificates of airworthiness and pilot licences.

2.9 States enter into air services agreements to allow their operators to provide service to another State and vice versa. These bilateral agreements are often based primarily on political and economic considerations, and do not always address safety. On 13 June 2001, the Council adopted a resolution and a related model clause on aviation safety, that should be included in air services agreements (State letter AN 6/42-01/84 dated 14 September 2001 refers). It addresses safety requirements that each party to the agreement would need to maintain and helps to ensure that aircraft using airspace

and airports in another State are operated and maintained in accordance with ICAO Standards. Ongoing dialogue, as well as surveillance of foreign air operations, would be required to maintain the validity of such an agreement. The Resolution and related model clause are included under reference documents on the website for this conference.

3. **CONCLUSIONS**

3.1 There is a need for verification, before recognizing certificates and licences as valid, that the conditions for such recognition are met, i.e. that these documents were issued under requirements at least equal to the applicable Standards.

3.2 A harmonized process for recognition of certificates and licences as valid, as well as a uniform approach to the surveillance of foreign aircraft operations is desirable. To this end, ICAO should develop provisions and guidance material as necessary.

3.3 The inclusion of a safety clause in bilateral agreements is advisable.

4. **ACTION BY CONFERENCE**

4.1 The Conference is invited to recommend that:

- a) States verify that the conditions for recognition of certificates and licences of other States as valid are met;
- b) States implement and strengthen their surveillance of foreign aircraft operations within their territory;
- c) ICAO develop provisions and guidance as necessary to assist States in securing the highest practicable degree of uniformity in the recognition of certificates and licences as valid and in the surveillance of foreign aircraft operations in their territory; and
- d) States include a safety clause in their bilateral air service agreements, based on the model safety clause developed by ICAO.

— END —