



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 2.5

ENHANCING SAFETY OVERSIGHT

(Presented by the Secretariat)

SUMMARY

While effective safety oversight is provided by a majority of States, some States are not in a position to do so. Full cooperation with USOAP is called for. An additional mechanism is proposed to rapidly resolve significant safety concerns identified under USOAP. In spite of the assistance offered through the unified strategy programme or otherwise, a significant risk of non-compliance with safety-related provisions remains. Global cooperation is required to ensure a fair opportunity for States and airlines to operate international air services. Direct assistance to States with inadequate safety oversight capability and to air operators of such States is proposed, based on a pool of international safety inspectors and other safety oversight experts made available by States and other stakeholders. An active role for ICAO is envisaged in this respect, for approval by the next Session of the Assembly.

Action by the Conference is in paragraph 6.

1. INTRODUCTION

1.1 The ability of States to establish and maintain effective safety oversight over the aviation industry is one of the main pillars of safety in international civil aviation. ICAO contributes to aviation safety and effective safety oversight through its Standards, Recommended Practices and associated material, which form the basis for regulations by States. Moreover, through the universal safety oversight audit programme (USOAP) and the unified strategy to resolve safety-related deficiencies, ICAO promotes safety oversight globally. However, not all States are able to fulfil their safety oversight obligations in the short term, and complementary action is required to enable safe air operations in cases where the States concerned do not provide adequate safety oversight.

2. SAFETY OVERSIGHT

2.1 The USOAP has clearly demonstrated a positive effect on the level of regulatory safety oversight by States. Such oversight should keep pace with the growth of the aviation industry. With the expansion of USOAP to address all safety-related provisions in all safety-related Annexes, its optimum functioning depends upon the full participation by States, including the acceptance of on-site audits as scheduled by ICAO.

2.2 The complexity of civil aviation, including the division of responsibilities for safety oversight between the State of Registry and the State of the Operator, make safety oversight a demanding task for States. There are various reasons why a number of States are unable to fulfil all their safety oversight obligations, including lack of resources. In some cases, unscrupulous operators, operators with malicious intent and other parties exert influence and take advantage of the prevailing situation in States, which prevent the relevant authorities from intervening adequately. Thus, unsafe situations may persist in some States.

2.3 The standard timeline for the production of a USOAP audit report does not require the State to take immediate action to address significant compliance shortcomings identified during a USOAP audit, nor does it provide ICAO the opportunity to facilitate the resolution of these findings in a timely manner. In the case of a significant safety concern, a mechanism should be established to allow the Secretariat to initiate an analysis of the safety risk for confirmation, for example if certificate holders operating internationally are not meeting the minimum ICAO SARPs. If the safety risk is confirmed after due consultation with the State, an immediate corrective plan would be requested from the State with a short-term deadline of no more than a few weeks. Depending upon the response from the State, the next action to be taken could involve assistance being offered to the State through the Unified Strategy Programme; if no corrective action is proposed or no response is received within a specified period of time, the Secretariat would then report to the Council in accordance with the procedure for transparency and disclosure (Attachment C to State letter AN 11/41-05/87, dated 12 August 2005).

2.4 The USOAP audit results are currently used by ICAO in its unified strategy programme to identify those States that are unable to fulfil their safety oversight obligations and which urgently require assistance in establishing and maintaining effective safety oversight. Such assistance may be coordinated by ICAO and provided through its Technical Cooperation Programme or through other parties, with assistance from the regional offices as necessary. In all cases, the unified strategy aims at providing States with the precise support required to enable sustainable safety oversight solutions through cooperation, assistance and partnerships. However, it should be recognized that effective safety oversight capacity cannot be expected to be established instantaneously worldwide; capacity building will require a concerted effort by many stakeholders over a substantial time period.

3. REALITY

3.1 Contracting States, by virtue of having ratified the Convention on International Civil Aviation (Chicago, 1944), have agreed not to use civil aviation for any purpose inconsistent with the aims of the Convention (Article 4), and no munitions or war implements may be carried in or above the territory of a State in aircraft engaged in international aviation, except by permission of such State (Article 35). Nevertheless, under such circumstances as civil strife, organized crime and corruption, it may not be possible for the relevant authorities to prevent such civil aviation operations, which are unlikely to respect the relevant safety provisions. This has been confirmed through various reports prepared at the request of the United Nations Security Council. There are also other reasons why some

States cannot yet fulfil their safety oversight obligations, in spite of assistance offered through ICAO or other parties.

3.2 Failure to provide for safety of aircraft operations is an unfortunate reality that needs to be recognized and dealt with. Therefore, States must remain vigilant in satisfying themselves that safety is not compromised when granting entry permission, and they may have no other option but to deny access to their airspace by operators from certain other States, if foreign operators do not comply with the applicable air regulations. Similarly, in accordance with the Council-approved procedure, ICAO may have to inform all Contracting States in the case of a State having significant compliance shortcomings with respect to safety-related SARPs, including failure to act in accordance with its safety oversight obligations (State letter AN 11/41-05/87 refers). Both cases represent drastic measures and indicate a failure of the international aviation community to preserve safety otherwise.

4. GLOBAL COOPERATION

4.1 As recognized in the Preamble to the Convention and in Articles 44 f) and g), every Contracting State should have a fair opportunity to operate international airlines and discrimination should be avoided. Air operators that follow safe operating practices in accordance with applicable rules should not become victims of such drastic measures as non-recognition. Failure of safety oversight carries an inherent risk of such measures. Therefore, if the State safety oversight fails and remedial action is not possible in the short term, other avenues should be explored to permit continued safe operations by operators concerned.

4.2 The unified strategy to resolve safety-related deficiencies requires an ongoing effort by all stakeholders to ensure effective and sustainable safety oversight solutions and full compliance with safety-related provisions. However, ICAO should have an active role in identifying States where immediate action is required to initiate safety oversight enhancements, and enter into a dialogue with the State(s) concerned to implement an immediate interim solution for their air operators.

4.3 One option is for the State of the Operator or the State of Registry concerned to transfer, on a temporary basis, certain safety oversight functions and duties to another State by mutual agreement, on a bilateral basis. While certain functions and duties may be transferred, it should be noted that the responsibility for safety oversight cannot be transferred and always remains with the State of the Operator and State of Registry. In all cases, such arrangements should be notified to ICAO and be made public by ICAO, in accordance with Article 83 of the Convention and the principles of transparency and sharing of safety information.

4.4 Another option would be to establish a pool of international inspectors, made available by States on a voluntary basis, from which ICAO could assemble a team of experts to perform safety oversight functions on behalf of States in need and build a sustainable safety oversight organization within such States, on a State-by-State or (sub)regional basis. Such a team of experts would undertake any assignment to assist a recipient State only with the express agreement of the State concerned, and would have the status of operational assistance (OPAS) experts and be considered as temporary staff of the civil aviation administration concerned. Performing actual safety oversight duties and building capacity would benefit in particular developing States.

4.5 While the safety oversight capacity of a State may be deemed inadequate, which could lead to non-recognition of their operators by other States, an air operator lacking safety oversight may still follow safe operating practices. If this is the case, such an operator should be allowed to continue its

international operations while the inadequacy of the State's safety oversight is being addressed. This would be conditional upon a recognized safety audit/evaluation demonstrating that the air operator meets established criteria to enable safe operations. In the absence of relevant competency in the State administration and another State being prepared to conduct such a safety audit/evaluation, such a safety audit/evaluation could also be undertaken by a team of international safety inspectors (OPAS experts) under the auspices of ICAO, if such a mandate were endorsed by the Assembly.

4.6 Cooperation between States at a global level and other stakeholders is a prerequisite for the envisaged new role for ICAO to establish expert teams to perform safety oversight capacity building, audits and evaluations on behalf of a qualifying State. Within the budget established for safety oversight activities in the Programme Budget for the next triennium (2008-2009-2010), a careful balance should be established between funds allocated to USOAP and remedial action, including the unified strategy programme and the direct safety oversight assistance to States envisioned in the preceding paragraphs. However, the majority of the funding for remedial action will have to come from external sources, such as the World Bank and major aviation industry stakeholders. Such outside funding may be contingent upon an agreement between donors and ICAO about a specific, well-defined project, with clearly stated beneficiaries, objectives, deliverables and quality assurance mechanisms.

5. CONCLUSIONS

5.1 Full cooperation by States is required for optimum functioning of USOAP. To this end, acceptance of on-site audits as scheduled by ICAO is essential.

5.2 An additional mechanism to rapidly resolve significant safety concerns identified under USOAP should be developed to require States to address these concerns in a timely manner agreed by the Secretariat and amend the Generic Memorandum of Understanding (MOU) accordingly.

5.3 The unified strategy to resolve safety-related deficiencies requires an ongoing effort by all stakeholders to ensure effective and sustainable safety oversight solutions and full compliance with safety-related provisions.

5.4 Interim measures are required to ensure that every Contracting State has a fair opportunity to operate international airlines. An active role is envisaged for ICAO to identify States where immediate action is required to initiate safety oversight enhancements, consult with the State(s) concerned to implement an immediate interim solution for their air operators, and coordinate the establishment of a pool of international safety inspectors and other safety oversight experts to this end. Such a role requires endorsement by the Assembly and generous cooperation by States and other stakeholders in a position to do so. A scheme for ICAO to manage direct assistance to States and air operators should be developed accordingly.

6. ACTION BY THE CONFERENCE

6.1 The Conference is invited to :

- a) call upon States to fully cooperate with USOAP, including acceptance of on-site audits as scheduled by ICAO;

- b) recommend that ICAO develop an additional mechanism to rapidly resolve significant safety concerns identified under USOAP and amend the Generic Memorandum of Understanding (MOU) accordingly.
- c) recommend that ICAO develop a scheme, to be approved by the next Session of the Assembly, for ICAO to manage direct assistance to States having inadequate safety oversight capability and to air operators of such States, based on a pool of international safety inspectors and other safety oversight experts made available by States and other stakeholders; and
- d) recommend that ICAO allocate funds for the unified strategy programme and direct safety oversight assistance within the Programme Budget for the triennium 2008-2009-2010.

— END —