



WORKING PAPER

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

Montréal, 20 to 22 March 2006

Theme 3: Beyond the current framework

Topic 3.1

SAFETY FRAMEWORK FOR THE 21ST CENTURY

(Presented by the Secretariat)

SUMMARY

Economic liberalization has become one of the defining features of modern-day aviation. Along with the economic benefits of liberalization, commercial arrangements or practices which affect the operation of aircraft or the operating personnel may give rise to safety concerns. This evolution of air transport has a direct effect on the States, which retain the ultimate responsibility for safety. It requires that the relationship between a global industry and the appropriate governmental authorities be clarified. Measures to enhance such a framework in a liberalized environment are proposed.

Action by the Conference is in paragraph 4.

1. INTRODUCTION

1.1 Economic liberalization has become one of the defining features of modern-day aviation and it is having a major impact on the aviation industry. The traditional network of national airlines complemented by some domestic carriers has given way to a much more global air transport industry with a few global air carriers or alliances of carriers whose networks span the entire world. There is also a general trend towards the outsourcing of functions that were traditionally performed directly by the operators, such as maintenance and flight training. This evolution of air transport has a direct effect on States that retain the ultimate responsibility for safety. It requires that the relationship between a global industry and its governmental authorities be clarified. This paper presents some of the existing challenges and proposes a course of action to address them.

2. DISCUSSION

2.1 The existing safety framework for international civil aviation functions was established by the *Convention on International Civil Aviation* (Chicago, 1944). This framework has evolved progressively to take into account the significant changes that have taken place in the civil aviation industry in the last sixty years. The evolution of the framework has taken place essentially through the amendment of Annexes to the Convention. The most substantive changes to the Convention that directly impact international civil aviation activities have been the inclusion of ratification of Articles 3 bis and 83 bis.

2.2 Based on the experience gained from the ICAO Universal Safety Oversight Audit Programme, the results of the recent [ICAO Secretariat study on the safety and security aspects of economic liberalization](#) (State letter EC 2/93, AN 11/41-05/83 of 12 August 2005) and ongoing interaction with States and the industry, the ICAO Secretariat has identified the following issues that are potential impediments to the safe development of civil aviation.

Fragmentation of States' Responsibilities

2.3 The ICAO study on the safety and security aspects of economic liberalization mentioned above found that commercial arrangements or practices which affect the operation of aircraft or the operating personnel may give rise to safety concerns. The various leasing arrangements and outsourcing of functions such as maintenance and training create situations where an airline operation might involve multiple parties from different States. The existing provisions contained in the Convention and the relevant Annexes were found adequate to establish the respective responsibilities of the States involved. However, the study found that more work could be done to improve the existing SARPs and/or guidance material to address the new challenges brought about by the evolution of business practices in international air transport.

2.4 Under Annex 6 provisions, an air operator is responsible for conducting commercial operations in accordance with an air operator certificate (AOC) issued by the State of the Operator. Annex 6 considers the operator as the entity that has operational control over the aircraft and exercises the authority over the initiation, continuation, diversion or termination of a flight in the interest of safety of the aircraft and the regularity and efficiency of the flight. Nevertheless, in today's increasingly complex environment, States' authorities are experiencing difficulties in identifying the State responsible for safety oversight of an operator and the related issuance of an AOC. New provisions related to the carriage of a 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. These proposed provisions could greatly assist States' authorities in identifying the State of the Operator of carriers. However, amendments to Annex 6 provisions may still be needed in light of today's realities.

2.5 According to Article 83 bis and Annex 6 the State of the Operator is defined as the State in which the operator's principal place of business is located or, if there is no such place of business, the operator's permanent residence. This is generally understood as the location of an operator's centre of corporate activities. The economic implication of this definition has led to situations in which it is difficult to identify which State is in fact the State of the Operator and consequently responsible for safety oversight. For example, there are situations in which an air operator's centre of corporate activities is in one State, while its centre of operations is actually based in another State. Thus the State of the Operator may not, in fact, be the State in which operational control is exercised. This lack of clarity in the existing provisions creates the possibility in which it may be impractical for the State of the Operator to oversee a carrier whose centre of corporate activities is within its territory, but is actually operating out of another

State. In addition, a State may not always be aware that an operator has its centre of operations in its territory. This problem has manifested itself particularly in “wet-lease” scenarios.

2.6 Clarification may be needed so that the “State of the Operator” and the “operator” would be further defined in terms of aviation safety. Consideration should be given to further amplification to these definitions in Annex 6 by specifying the necessary correspondence between the principal place of business and the location where operational control is exercised.

Aeronautical Agreements

2.7 The ICAO Secretariat study on the safety and security aspects of economic liberalization concluded that States should be strongly encouraged to use Article 83 bis which provides a useful means of avoiding complex situations involving aircraft transferred abroad. Agreements entered into under Article 83 bis must be registered with the Council and made public pursuant to Article 83. The Rules for Registration with ICAO of Aeronautical Agreements and Arrangements (Doc 6685) stipulate that agreements to be registered with the Council, pursuant to Article 83, are those between a Contracting State and: any other State; an airline of any other State; a national (physical person or corporation) of any other State if it relates to the ownership or operation of any international air service, aerodrome or air navigation service.

2.8 Article 83 of the Convention addresses the need for transparency by establishing the clear and unequivocal obligation of States to register “forthwith” with the Council of ICAO any arrangement related to international aviation, which shall be made “public as soon as possible”. However, the ICAO Universal Safety Oversight Audit programme has found that several States have entered into bilateral aeronautical agreements related to airworthiness, operations and personnel licensing issues, while they have not registered those agreements with the Council. Transparency in these areas is essential to maintain the necessary mutual trust between Contracting States. Thus, there may be a need to further urge Contracting States to fulfil their obligation to register all agreements related to civil aviation safety.

Coherent policies involving both economic and technical oversight authorities

2.9 Safety (and security) must remain of paramount importance in the operation and development of international air transport and should at no time be compromised by economic considerations. Consequently if all States are to benefit from the potential opportunities afforded by economic liberalization of air transport they need to have the necessary legal, regulatory and organizational infrastructure as well as the human and financial resources to perform the required safety regulatory functions. This requires States to provide safety oversight not only to its own aircraft operators but also surveillance of those foreign operators that operate into their airspace. In addition, the resulting growth in air transport activities and complex commercial arrangements from the evolution of business and operating practices may put additional strain on States in terms of their safety oversight capabilities. It is therefore necessary that States implement coherent economic and technical regulations for their oversight authorities to promote the safe and orderly development of international air transport.

3. CONCLUSIONS

3.1 Economic liberalization has become one of the defining features of modern-day aviation and it is having a major impact on the aviation industry. There is a need to ensure that the current safety framework continues to meet the requirement for the safe and orderly development of international

civil aviation.

3.2 There is a need to clarify the concept of the operator and the relationship with the State responsible for its safety oversight.

4. **ACTION BY THE CONFERENCE**

4.1 The Conference is invited to recommend that:

- a) the Council consider amplification to the definition of “State of the Operator” and “operator” by further specifying the necessary correspondence between the “principal place of business” and the location where “operational control” is exercised as a means to identify the State responsible for safety oversight;
- b) the Council further urge Contracting States to fulfil their obligation under Article 83 to register all agreements related to civil aviation safety; and
- c) ICAO develop guidance material to be used by States to implement coherent economic and technical policies by their civil aviation authorities.

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