



WORKING PAPER

ASSEMBLY — 37TH SESSION

TECHNICAL COMMISSION

Agenda Item 27: The protection of certain accident and incident records

**SUPPORT FOR THE ESTABLISHMENT OF THE MULTIDISCIPLINARY TASK FORCE ON
THE PROTECTION OF SAFETY DATA AND INFORMATION**

(Presented by the Civil Air Navigation Services Organisation)

EXECUTIVE SUMMARY

This paper serves to support the establishment of the multidisciplinary task force on the protection of safety data and information and ensure that the principles of a “Just Culture” remain a key topic of debate and discussion, the objective being that a dialogue with judicial authorities is established in order to achieve a better understanding and support of the concept and its importance to enhancing safety.

Action: The Assembly is invited to:

- a) urge States to recognise the benefits of a judicial framework that supports the implementation of a safety culture where ... “staff 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”;
- b) encourage States to organise and conduct a genuine dialogue between the aviation and judicial authorities regarding the elements of a proactive “Just Culture”; and
- c) support the establishment of the multidisciplinary task force to bring together aviation and judicial parties to address the issues related to the protection of safety data and information.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objectives A and F.
<i>Financial implications:</i>	Not applicable.
<i>References:</i>	Annex 13 — <i>Aircraft Accident and Incident Investigation</i> Doc 9935, <i>Report of the High-level Safety Conference (2010)</i> Doc 9914, <i>Report of the Accident Investigation and Prevention Divisional Meeting (2008)</i> Doc 9899, <i>Report of the Technical Commission of the 36th Session of the Assembly</i> Doc 9902, <i>Assembly Resolutions in Force (as of 28 September 2007)</i>

¹ All language versions provided by CANSO.

1. INTRODUCTION

1.1 This paper is in support of the establishment of a multidisciplinary task force to address the protection of safety data and information. It is generally accepted that in order to continually improve safety we must learn from the experience of others and from the safety events that occur in our industry. It is recognised that the protection of safety data and information from inappropriate use is essential to ensure its continued availability for the management of safety. To this end, it is also generally accepted that a balance needs to be struck between the protection of safety information and the need for the proper administration of justice, and that the protection afforded should be to a level commensurate with the nature of the information generated. This principle is reflective of what is often referred to as a “Just Culture”.

1.2 While a globally accepted definition of “Just Culture” does not yet exist, it is generally accepted that individuals should not be punished for ‘honest, unintended errors’, but should be held accountable for wilful violations and gross negligence. Individuals are less willing to inform of their own errors and other safety problems or hazards if they are afraid of being punished or prosecuted. However, this does not imply a “no-blame” culture, as this is neither feasible nor desirable – some level of accountability must exist.

1.3 Hence, a “Just Culture” supports learning from unsafe acts in order to improve the level of safety awareness through the improved recognition of safety situations and helps to develop conscious articulation and sharing of safety information. Consequently, a “Just Culture” can be regarded as an enabler, and even an indicator, of a positive safety culture.²

1.4 While the concept of "Just Culture" originally came about in an effort to develop an organisational safety culture based on trust and information sharing, over the past decade this has expanded to overcome tensions between safety investigation processes and possible judicial consequences. This is due to an increasing tendency by judicial authorities to investigate and prosecute aviation safety occurrences.

1.5 However, while the aviation industry has been very active in promoting a “Just Culture” policy approach, there has been limited success in achieving a common understanding among regulatory and judicial authorities.

1.6 This paper therefore serves to provide clear support for the establishment of the multidisciplinary task force to ensure that a proactive safety culture continues to be developed within the aviation community and that the aim of enhancing safety through learning is advanced. We also fully support the desire for the aviation industry – operators and service providers - to work in partnership with and gain the support of other key stakeholders, namely the regulatory, investigation and judicial authorities.

² Safety culture can be described as the result of individual and group values, attitudes, perceptions, competencies and patterns of behaviour that determine the commitment to, and the style and proficiency of the organization’s safety management. Organizations with a positive safety culture are characterized by communications founded on mutual trust, by shared perceptions of the importance of safety and by confidence in the efficacy of preventive measures.

2. DISCUSSION

2.1 Framing the message from the aviation industry

2.1.1 The industry must continue to raise awareness of the issues surrounding the effective investigation of accidents and incidents and ensure that the lesson learning is not impeded by the judicial process. It should be noted that much key learning comes from the investigation of incidents.

2.1.2 The ultimate attribute of a “Just Culture” is that only those very rare occurrences that meet the definition of a criminal offence are treated by the judicial system. A prerequisite for engineering a “Just Culture” is an agreed set of principles that draw the line between acceptable and unacceptable behaviour.

2.1.3 This approach must include dialogue with the judicial authorities and an acceptance that there are situations (although extremely rare) where a judicial enquiry, or even prosecution, is justified. For a judicial investigation to be justified, the following cumulative conditions should be met:

- a) The occurrence must have resulted in a formal accident, as defined by ICAO. An investigation into an incident should only be considered if there is evidence of a concrete danger and not of a hypothetical risk; and
- b) There must be clear evidence of gross negligence or deliberate criminal intent.

2.2 The expertise issue

2.2.1 The most significant obstacle remains, however, the question of whether prosecutors and judges have the capability to properly interpret the contents of factual reports in terms of “concrete danger” and “gross negligence”. Experience has convincingly shown that the same investigation report is understood in a totally different manner, with significantly different conclusions drawn, when it is read by an aviation professional or by the judicial authorities.

2.2.2 An important reason for the lack of progress in the field of “Just Culture” derives directly from the different reading and interpretation given to the same report. Instead of challenging the legitimacy of an “intrusion” of a judicial enquiry, the effort should be put on developing the necessary expertise within the judicial authorities. This proposal stands a better chance of gaining the support of the judicial authorities. This should also decrease the risk that a judicial procedure is launched in respect of an event for which such an action is not justified.

2.2.3 CANSO members are creating their own approach to “Just Culture” by adopting operational rules and algorithms to determine appropriate actions based on the types of behaviour that were a factor in the incident or accident. A “Just Culture” is non-punitive in the case of human error, yet holds individuals accountable for behaviour that creates unjustifiable risk. ANSP leaders can use these models to educate the judicial authorities on the advantages of a “Just Culture”. They are then in a position to educate and influence the judicial system and media that the societal goals of reducing accidents are not met by punishing individuals. By promoting a “Just Culture” - where actions leading to safety issues are judged by the intent of the behaviour, not by the outcome - ANSPs are able to learn about the factors that can lead to incidents before they result in accidents. They can promote a true Learning Culture, where risks in the system can be uncovered and mitigated, thus improving safety.

2.2.4 The concrete actions that could be undertaken to address this dimension could be the following:

2.2.4.1 Judges and prosecutors do rely on technical expertise to compensate for their lack of specific aviation knowledge. It is worrying to observe that a number of judicial decisions are issued on the basis of damning opinions expressed by aviation professionals themselves. A very urgent action is needed to promote the concept of “Just Culture” not only externally, but also within the aviation industry to avoid a destructive practice of peer incrimination. Often, the negative impact of the expertise is unintended. It derives, once again, from the legal reading and interpretation of a statement written by technical experts. The awareness education that needs to be dispensed to aviation professionals serving as experts must include clear drafting guidance to minimise the risk of unintended legal interpretation and potential misreading;

2.2.4.2 Safety investigation boards are slowly awakening to the reality that the non-legal character of safety investigation reports has become a myth. Although judicial consequences downstream of their work is not under their responsibility, these consequences can no longer be ignored in the light of the devastating effect they have on the integrity and quality of the safety processes themselves. These boards also realise that great care must be taken in the way the reports and their conclusions are drafted, to avoid unintended consequences beyond the scope of their specific responsibilities. While the safety investigation experts must in no way be invited to express any opinion regarding the legal dimension of a specific case, in the light of the acute current topicality of the safety investigation dilemma, appropriate training should be developed and dispensed to ensure that the potential of a misreading is not ignored. Another solution could be to include an additional step in the production of safety investigation reports, in the form of a neutral legal reading of the report before it is released, in order to avoid implied conclusions that are not intended.

2.2.4.3 Some jurisdictions that have been regularly confronted with aviation cases, have also realised the criticality of the expertise matter and the risks associated with an erroneous interpretation. For instance, the Canton of Zurich (Switzerland) has set-up a dedicated pool of prosecutors that will receive specific aviation training to increase their awareness and knowledge of the technical aviation reality. In addition to such dedicated training, the concerned officials should also be able to develop their own network of experts. Such programs should be actively promoted.

2.2.4.4 In the same spirit, a very promising path currently being investigated by EUROCONTROL is to train a team of international specialists who would benefit from both a technical and a legal background. These specialists would be available to judicial authorities throughout Europe and beyond. Their task would be to advise judicial officials upon request, in particular in respect of the interpretation of safety investigation reports and other factual evidence.

3. CONCLUSIONS

3.1 A “Just Culture” safety reporting environment is a key enabler of a positive safety culture. Over the past decade, the importance of a "Just Culture" has become ever more relevant in view of the increasing tendency to criminalise aviation safety occurrences. The protection of safety data is essential if the aviation community is to truly embrace a learning approach to safety improvement. CANSO therefore fully supports the establishment of the multidisciplinary task force to address this important issue.