



ASSEMBLY — 36TH SESSION

TECHNICAL COMMISSION

Agenda Item 28: Protection of certain accident and incident records and of safety data collection and processing systems in order to improve aviation safety

JUST CULTURE

(Presented by the International Federation of Air Traffic Controllers' Associations)

EXECUTIVE SUMMARY

Four years ago, IFATCA called upon the international aviation community to develop guidelines promoting the concept of a just culture. Subsequently, much has been written and debated concerning this “non-punitive” approach. Preventing accidents and enhancing safety by protecting operators from punitive action is a popular notion – supported by the ICAO AN-Conf/11 Recommendation 2/4¹.

The high level of acceptance for the Just Culture concept by the aviation industry fostered high hopes that multi-party co-operation would have, by this point in time, bridged the gap between judicial systems and the needs of aviation. It is obvious this cannot be achieved by simply saying we want a just culture. IFATCA believes that judicial systems must reflect the importance of safety reporting without threat of criminalization. Retaliation, in particular criminal prosecution, remains a hindrance to improving aviation safety. Despite best intentions we have failed to develop Just Culture to a point of universal acceptance and implementation.

Action: The Assembly is invited to:

- a) task ICAO to assure the industry that all judicial aspects are adequately addressed in ICAO guidance material on Safety Management Systems for ATS, as a precursor to the introduction of a just culture environment in ATM; and
- b) recognize the valuable contribution a just culture environment will make to aviation safety, and to request that States review without further delay their existing legislation to remove any and all deterrents to the collection and analysis of valuable safety-related information; and to consider the protection of persons involved in the reporting, collection and/or analysis of safety-related information in aviation.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective A: Safety
<i>Financial implications:</i>	Not applicable.
<i>References:</i>	ICAO Global Aviation Safety Plan

¹ Recommendation 2/4 — The protection of sources of safety information- “...that ICAO develop guidelines which will provide support to States in adopting adequate measures of national law, for the purpose of protecting the sources and free flow of safety information, while taking into account the public interest in the proper administration of justice.”

1. INTRODUCTION

1.1 The international aviation community has long-ago come to the realization that in order for the industry to be successful in the intermediate and long term, it must re-think certain methods of doing business. One, as-yet unresolved issue is the desire to move beyond our existing 'blame culture' that singles out individuals and criminalizes error(s) and eliminate legal impediments to a new type of operating environment that we refer to as a "*Just Culture*."

1.2 We know and understand what a 'just culture' means, and what it does not mean. Several years have passed since the industry realized and admitted that our system (like any other) is flawed, and still we characterize humans as unreliable and not belonging in a complex system. We cling to the idea that safety is achieved by learning from failure, and we tend to treat learning and punishment as separate entities.

1.3 The need for a Just Culture, bolstered by the protection and free flow of safety-related information is recognized. Despite our collective acceptance we remain hesitant to progress to the next level of ensuring that judicial aspects are adequately addressed, and that States' legislation is improved to reflect the reality of a just culture environment.

2. DISCUSSION

2.1 Why is that we are unable, both as professionals in our fields and collectively as international organizations, to pool our talents and resources to advance our goal of a just culture in aviation. The difficulty may lie in the fact that this notion has different meanings to different people. What does just culture mean to a lawyer, a judge or an air traffic controller? We must acknowledge that different viewpoints will be held and regional challenges will need to be overcome but this is old news. We are too far along in the process to now say we either disagree on this or don't understand that, and therefore cannot move forward.

2.2 As previously identified it is essential we stop merely discussing just culture reporting (we all agree we need it), and focus on the domestic legal frameworks of States. We must involve the respective Ministries of Justice to challenge penal, administrative and civil codes, and perhaps even constitutional rights of nations. Changes to national criminal laws ranks highly in domestic hierarchies, therefore any amending will be an involved process, but real progress will only come as we move beyond a "blame" culture. We must impress upon our legal institutions that a just culture is the only way to maintain and improve safety.

2.3 There is no shortage of material written specifically in support of Just Culture. We have all, at one time or another pored over working papers, recommendations, resolutions, articles, reports, manual amendments that detail how the process should work and what we must do to see it through.

2.4 At the ICAO Eleventh Air Navigation Conference in 2003, IFATCA submitted a Working Paper entitled "*The Need For a Just Culture in Aviation Safety Management*." Our paper, inter alia, invited States to review existing aviation laws with the aim to remove deterrents to the collection/analysis of valuable safety-related information; develop legislation that adequately protected persons involved in the reporting, collection and/or analysis of safety-related information in aviation; and invited

the Conference to task ICAO with developing guidelines promoting the concept of a “just” culture, and to ensure that judicial aspects were adequately addressed in ICAO guidance material on SMS.

2.5 Assembly Resolution A33-16 (2001): *ICAO Global Aviation Safety Plan (GASP)*, inter alia, instructed ICAO to participate in efforts by States at improving safety information reporting and exchange. States were urged to review and amend relevant legislation, with appropriate guidance provided by ICAO, and due consideration given to protection of privileged information.

2.6 Assembly Resolution A33-17 (2001): *Non-disclosure of certain accident and incident records*, also urged States to review and amend legislation regarding protection of accident/incident records.

2.7 Annex 13 — *Aircraft Accident and Incident Investigation*, paragraph 5.12, says that States conducting the investigation of an accident or incident shall not make certain records available for purposes other than accident or incident investigation. Included are all statements taken from persons by authorities in the course of their investigation; communications between persons involved in the operation of the aircraft; private information regarding persons involved in the accident or incident; cockpit voice recordings/transcripts and opinions expressed in the analysis of information.

2.8 Annex 6 — *Operation of Aircraft*, paragraph 3.2.4, establishes that data analysis programmes shall be non-punitive and shall contain safeguards to protect source(s) of said data.

2.9 In Annex 13, paragraph 8.3 establishes that voluntary incident reporting systems shall be non-punitive and sources of information shall be protected.

2.10 EUROCONTROL's SAFREP Taskforce 1 has proposed to the Provisional Council a package of recommendations that stresses the need for implementation of a Just Culture. These recommendations have been endorsed by the Provisional Council and by the permanent commission of EUROCONTROL.

2.11 Eleven months ago, the FSF, CANSO, the Royal Aeronautical Society and the Academie Nationale de l'Air et de l'Espace issued a joint resolution condemning the increasing tendency of law enforcement agencies and judicial authorities to attempt to exact punishment instead of enabling the free flow of information and to understand what happened and why. The group urged authorities to focus on gathering facts and evidence, and encouraged an environment where operators can report mistakes and shortcomings without fear of retribution.

2.12 In November 2006, CANSO's *Global Aviation Safety Sub Committee* brought together 35 representatives from the worldwide ANSP community to exchange views on how to progress in areas of great importance such as developing global aviation safety, promoting ANS safety information exchange and the establishment of a just culture.

2.13 At the IFATCA annual regional meeting of the Africa Middle East, our representatives were fortunate to have an opportunity to discuss with the CANSO Secretary General the issue of how to establish guidance material to introduce Just Culture throughout the Africa and Middle East area.

2.14 As recently as June of this year at the Just Culture conference held in Bucharest, this subject was once again debated in detail.

2.15 It should be obvious that there has been a great deal of time and effort devoted to the conception, development and implications of instituting a just culture environment in aviation. We have come quite a distance in the pursuit of a mechanism that will allow the implementation of just culture throughout the aviation community. Those examples that we have mentioned above are but some of the strategic initiatives that are already in place, and by no means represent the total number of articles, presentations and speeches given in support of the adoption of system-wide acceptance of a just culture.

2.16 But, we still have not come far enough. Outstanding issues remain that stand in the way of our progress. Critical among them is the review by States of their existing aviation laws with the intent to remove deterrents to the collection and analysis of safety-related information, and the development of legislation protecting persons involved in the reporting. We need a just culture. To be successful, we must insist upon its implementation.

3. CONCLUSIONS

3.1 The aviation industry has identified the need to introduce Just Culture. Just Culture is part of a global action plan, and its principles have received the endorsement of virtually every sector concerned with international aviation. However, to assure success in the adoption of a just culture, the judicial world must recognize certain legal impediments to progress need to be identified and solutions developed.

3.2 The introduction of a just culture will greatly assist us in coping with the forecasted traffic increases predicted worldwide. It makes little sense that we all talk about investing in the future traffic increase, improving safety by factor 10 and then, when there is a chance (one element among others is Just Culture) to make it happen, turn away by saying that it cannot be achieved because some legal impediments cannot be overcome.

3.3 As we have done on other similar occasions, IFATCA invites this 36th Assembly to task ICAO to assure the industry that all judicial aspects are adequately addressed in ICAO guidance material on Safety Management Systems for ATS, as a precursor to the introduction of a just culture environment in ATM.

3.4 IFATCA invites all Member States of ICAO to recognize the valuable contribution a just culture environment will make to aviation safety, and to review without further delay their existing legislation and to remove any and all deterrents to the collection and analysis of valuable safety-related information. We implore States to consider the protection of persons involved in the reporting, collection and/or analysis of safety-related information in aviation.

3.5 IFATCA invites States to act without further delay in 'bridging the gap' between their judicial system and the requirements of a just culture environment.