



ASSEMBLY — 36TH SESSION

TECHNICAL COMMISSION

Agenda Item 25: Follow-up of the DGCA/06 Conference on a Global Strategy for Aviation Safety

ICAO SAFETY EVALUATIONS/AUDITS OF INTERNATIONAL AIR OPERATORS

(Presented by the United States)

EXECUTIVE SUMMARY

This working paper addresses the aspect of Recommendation 2/5 to provide direct assistance, using a pool of international inspectors and safety experts, to non-compliant States and their international air operators. The latter role to assist operators would involve safety evaluations/audits of these operators so that, if the results were satisfactory, such operators would not face restrictions by other States, due to the shortcomings of their own States' safety oversight. Such a role is at odds with the international scheme for foreign air operator oversight; moreover, ICAO would dilute its own efforts to assist States, if it assumes a new and inappropriate role that must instead be performed by Contracting States in their roles as States of the Operator.

Action: The Assembly is invited to:

- a) endorse the concept of direct assistance to States proposed in A36-WP/63-TE/14; and
- b) oppose the implementation of direct assistance to air operators discussed in A36-WP/63-TE/14.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective A.
<i>Financial implications:</i>	No additional resources required.
<i>References:</i>	A36-WP/63-TE/14 Doc 9866, Report of the Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety

1. INTRODUCTION

1.1 The ICAO Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety held in Montreal in March 2006 addressed the issue of ICAO's direct assistance to States with inadequate safety oversight capabilities **and** to air operators of such States. Such assistance would be provided by safety inspectors and experts drawn from a pool managed by ICAO. With regard to air operator assistance, an ICAO-provided team of experts would conduct a safety audit/evaluation of the operator and, if the results were deemed satisfactory, ICAO's view is that such an operator should be allowed to continue its international operations while the inadequacy of the State's safety oversight is being addressed. While this concept was endorsed by the conference, ICAO, in its working paper for Agenda Item 25, is now apparently deferring its endorsement by the Assembly pending further study since this issue is "considered more complex and poses a range of legal questions".

2. DISCUSSION

2.1 The issue of oversight of foreign air operators, in the context of mutual recognition, was also addressed at last March's conference. The central fixture of the international scheme in this regard lies in Article 33 of the Chicago Convention (certificates of airworthiness, certificates of competency and personnel licenses) and Annex 6 — *Operation of Aircraft* (air operator certificates). Before any State recognizes the validity of such documentation relevant to personnel, aircraft, and air operators of other States, it can and should assure itself that the requirements under which such documents were issued or rendered valid by other States "are equal to or above the minimum standards which may be prescribed from time to time" pursuant to the Chicago Convention.

2.2 One of the primary objectives of the ICAO Universal Safety Oversight Audit Programme (USOAP) is to provide other States with sufficient information to make well-informed determinations about the compliance status of an audited State. More specifically, USOAP audit results are intended to assist States in making the judgments about other States that are specified in Article 33 and Annex 6. Such judgments appropriately form a key basis for State decisions on whether to permit new, continued, or expanded air service by foreign air operators. The key issue, in this long-sanctioned scheme, is a State's compliance with its obligations under the Chicago Convention, not the safety posture of its air operators. If the State is not in compliance, other States should take actions to prevent, restrict, and/or curtail operations from this State, regardless of a "successful" air operator audit conducted by an ICAO-managed team of experts, the International Air Transport Association (IATA), or any other reliable auditing organization. This fundamental oversight responsibility cannot be delegated by States of the Operator to any third party, including ICAO. Even if there were an appropriate or legitimate way for other States to "accept" the results of such audits (one-time, "snapshot-in-time" events), they would not be adequately assured that the State of the Operator was subsequently assuring continuing validity and effectively resolving identified safety concerns related to the operations of the audited air operator.

2.3 ICAO is an organization devoted to the interests of the Contracting States that have obligated themselves by ratifying and abiding by the provisions of the Chicago Convention. The focus of ICAO assistance initiatives, therefore, should be on States' compliance with all the specific obligations in the Convention and its Annexes. As USOAP results have emphatically demonstrated, the need for ICAO assistance remains great as substantial non-compliance by States remains widespread. ICAO's attention and efforts should not be diluted by taking on the task of auditing or assisting international air operators.

3. CONCLUSION

3.1 One intent of the ICAO proposal, to provide a degree of relief to international air operators that are allegedly being “penalized” for the shortcomings of their States, is at odds with the ICAO scheme that focuses on State obligations, including those relevant to oversight of foreign air operators. In addition, this measure, if honored by States, could also have at least two other undesirable consequences. First, it would relieve the powerful pressures often brought to bear on non-compliant States by their operators that are being subjected to restrictions by other States. Secondly, it would provide a potential disincentive for States to affiliate themselves with new or existing regional safety oversight organizations for assistance in providing effective safety oversight.

3.2 For the foreseeable future, ICAO needs to focus on continuously monitoring State compliance through its USOAP programme and on actively fostering State compliance through its Unified Strategy Programme (USP). Efforts to actively audit and assist air operators should more appropriately be left to States and industry organizations.

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