

**WORLDWIDE AIR TRANSPORT CONFERENCE: CHALLENGES AND
OPPORTUNITIES OF LIBERALIZATION**

Montreal, 24 to 29 March 2003

Agenda Item 1: Preview

Agenda Item 2: Examination of key regulatory issues in liberalization

**SAFEGUARDING SAFETY AND SECURITY OVERSIGHT THROUGH
THE COURSE OF ECONOMIC LIBERALIZATION**

(Presented by the United States)

SUMMARY

Compliance with ICAO Standards and Recommend Practices has improved as a result of actions by some individual States and the advent of the ICAO Universal Safety Oversight Audit Program (USOAP). Nevertheless, responsibilities for safety oversight can potentially be blurred by political developments and changes in economic regulatory arrangements. Under any new regimes that change the traditional rules involving items such as ownership and control, leasing, cabotage, and right of establishment, the responsibility and lines of authority for safety and security oversight must remain clear. A clear point of contact for safety and security oversight responsibilities must remain. In almost all cases, that will be the State of the Operator, regardless of the extent to which it has delegated execution of its responsibilities to others.

Action by the conference is in paragraph 2.

**1. RESPONSIBILITY FOR SAFETY AND SECURITY
OVERSIGHT**

1.1 Contracting States to the Convention on International Aviation (the Chicago Convention) have broad responsibilities for safety and security that are spelled out in the Convention and elaborated in the Annexes to the Convention, which set out Standards and Recommended Practices (SARPs). Although ICAO sets the Standards, it has no oversight enforcement authority. For decades, Contracting States for the most part simply trusted other States to carry out their responsibilities faithfully. Yet there were abundant indications that all was not as it should have been. Most States were decades behind in even notifying ICAO

of their implementation of changes to SARPs, as indicated in the organization's annual reports. Many accidents and other specific instances with operators showed that they were not receiving meaningful oversight from their governments.

1.2 The situation has improved as some States began to insist, as is their right, that other States demonstrate that they meet ICAO Standards in carrying out their safety oversight roles. More recently, ICAO has undertaken a comprehensive program to audit safety oversight, the USOAP, which reinforces States' obligations under Articles 37 and 38 of the Convention to notify the world community of the extent to which they comply with SARPs. The organization plans to extend the audit program to other areas in addition to safety oversight.

2. BIFURCATION OF STATE OF REGISTRY AND STATE OF THE OPERATOR

2.1 Other factors have complicated accountability for safety oversight. When the Convention first came into force, the typical carrier in international aviation was either state-owned or owned by a company that was clearly a citizen of the State of Registry (the flag State) in every respect. It employed aircraft registered at home and crews and management who were national citizens. Typical international carriers did not have economic ties to other operators, domestic or foreign, and many did not even have much of a domestic route structure.

2.2 Gradually, however, operators increasingly employed foreign-flag aircraft for various reasons. More and more, aircraft might be leased or otherwise interchanged and operated outside the State of Registry, sometimes for long periods of time. ICAO's initial response was to develop the concept of the State of the Operator, a term which does not appear in the Convention, but which is defined in Annex 6 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". The State of the Operator is responsible under the Annexes for issuance of the Air Operator Certificate (AOC) and for the lion's share of operational safety and security oversight. The State of Registry, if it is different from the State of the Operator, is responsible for aspects of the aircraft's airworthiness. The result is that, operators can be subject to the SARPs as implemented by different States. In addition, States of Registry may be responsible for airworthiness oversight of aircraft that rarely, if ever, enter their territory.

3. ARTICLE 83 *bis* OF THE CHICAGO CONVENTION

3.1 ICAO's principal response to this bifurcation has been to amend the Convention to provide for voluntary transfers of safety oversight authority from the State of Registry to the State of the Operator, thus reunifying the responsibilities that had split over the years through changes in business practices. Article 83 *bis* permits States voluntarily to enter into bilateral agreements to transfer all or a part of certain enumerated oversight responsibilities under the Convention. Even though it came into force in 1997, Article 83 *bis* has not been widely implemented. Relatively few bilateral agreements have been notified to ICAO and aircraft of all types-all over the world-are still subject to split oversight responsibility.

4. OTHER ECONOMIC DEVELOPMENTS

4.1 Operators have increasingly built economic ties to non-homeland carriers in the creation of code-sharing, alliances and other business relationships. They have increasingly engaged in a variety of domestic and international leasing arrangements-wet (with crew and operational management), dry (without crew), and so-called “damp” leases (various intermediate forms). Although alliances can serve to “multinationalize” the economic identity of an operation, the State exercising safety oversight must remain clear.

5. FUTURE ECONOMIC DEVELOPMENTS

5.1 Proposals for liberalization include some that go beyond international traffic rights. Such proposals include liberalization of ownership and control rules, expanded leasing, cabotage, and the right of establishment. These proposals present additional reasons for ensuring that there are clear lines of responsibilities for safety and security oversight.

6. REGIONAL OVERSIGHT ORGANIZATIONS AND PRIVATIZATION

6.1 A political development having a potentially positive impact on safety and security responsibilities is the emergence of Regional Civil Aviation Authorities (RCAAs) over the last two decades. A number of RCAAs already exist and others are in the formative stage. Member States cannot, of course, transfer to an RCAA their safety and security responsibilities under the Convention, but they may delegate the execution of the responsibilities to an RCAA. RCAAs have many advantages, chiefly including economies of scale and the promotion of uniformity. The existing RCAAs vary a great deal in the extent to which they have been delegated the execution of national responsibilities. Some have not much more than an advisory role; others have promulgated region-wide laws and regulations and oversee the safety of member State’s national carriers. No RCAA has thus far proposed to issue a regional AOC.

6.2 In addition, there has been increasing reliance of States on private companies or quasi-public agencies to execute their safety and security oversight responsibilities. However, States remain responsible for the adequacy of the oversight even if they employ outside resources.

7. THE RESPONSE TO ECONOMIC LIBERALIZATION

7.1 Compliance with SARPs has increased markedly over the last fifteen years - a period of marked liberalization in international air services - due to an increased focus on the actual practices of Contracting States, first by individual States exercising their right to look behind the certifications and representations of their aviation partners, and more recently by the substantial success of the ICAO safety audit program. In order to continue this record of improvement, all future economic regulatory measures should be crafted so as to ensure that any given operation is associated with a clearly identifiable State or other regulatory authority that has responsibility for safety and security oversight. If that State has delegated execution of its responsibilities to another entity - whether a private or quasi-public entity or an RCAA - the locus of the responsibility must still be clear. Moreover, the responsible party must be apparent to the safety and security officials of third States.

8. CONCLUSION

8.1 Under any new regimes that change the traditional rules involving items such as ownership and control, leasing, cabotage, and right of establishment, the responsibility and lines of authority for safety and security oversight must remain clear. Article 83 *bis* has helped to re-balance responsibilities by restoring a nexus between location of aircraft and safety responsibility, but it has only begun to be implemented, and some States are not transferring the full range of their responsibilities. The vast majority of aircraft transferred abroad are not covered by Article 83 *bis* arrangements.

8.2 Regardless of what form economic regulatory arrangements take, we must retain a clear point of contact for safety and security oversight responsibilities. In almost all cases, that will be the State of the Operator, regardless of the extent to which it has delegated execution of responsibilities to others. There must be a clearly identifiable State of the Operator for every operation, regardless of the economic arrangements and the relationships among the parties in the transaction.

9. ACTION BY THE CONFERENCE

9.1 The Conference is invited:

- a) to take note of the contents of this paper; and
- b) to conclude that
 - i) safety and security must continue to be of paramount importance in the operation and development of air transport; and
 - ii) regardless of the form of economic regulatory arrangements, there should be a clear point of safety and security oversight responsibility in a clearly identified ICAO Contracting State or other regulatory authority for any given aircraft operation.

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