SECOND INTERNATIONAL CONFERENCE ON CURRENT DEVELOPMENTS IN AIR AND SPACE LAW AVIATION SAFETY: INTERNATIONAL STANDARDS AND INDIA

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Introduction

This subject in about compliance and non-compliance of Safety and Security standards laid down by ICAO from time to time. Undoubtedly such standards and recommended practices have to be followed by all the 180 signatories to Chicago convention of 1944, which includes Asian states and India as well. To ensure compliance. ICAO conducts safety and security Audits.

But it has been obseeved that Safety standards are clearly not being met globally. This can be easily understood from following facts

- African aviation accounts for 25% of the world's accidents and only 4.5% of the world's air traffic

- ICAO has identified Latin America, Africa, and Asia as disproportionately responsible for airline accidents

- Absence of transparency and accountability in the growing Chinese aviation market.

Airline passenger safety has been the central public policy which remains a central public policy concern although there have been efforts by international bodies but these international efforts still require State-level enforcement to be effective.

This paper gives a detailed outline of the safety measures taken internationally and steps taken by India to improve its safety measures.

Blacklisting

Due to above stated reasons European countries and USA have followed the method of blacklisting to ensure safety in field of aviation.

• U.S. Approach to Blacklists

U.S. Federal Aviation Administration under International Aviation Safety Assessments ensures that all foreign air carriers that operate to or from the U.S. are properly licensed and with safety oversight provided by a competent Civil Aviation Authority (CAA) in accordance with ICAO standards. FAA looks

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towards Foreign CAA's capability for providing safety certification and its ability to provide continual oversight of its carriers, By routine checking into accidents for rule volitions, equipments failures, and pilot errors.[1] A country's failure to meet ICAO standards is published by the FAA.

● **EU Approach to Blacklists**

European Union's Program began in December 2005 as a joint venture between the European Commission and the Member States of the EU. Here member States identify carriers subject to operating bans within their territory; EU Commission then evaluates the carriers based on common criteria. Then the list of individual carriers published in the Official Journal of the European Union and updated at least every three months.

Here the Banned carriers can request a compliance review from the Commission to have itself removed from the list

  Note: EU list is distinct from U.S. list insofar as it identifies non-compliant carriersrather than countries.

Criticism

According to IATA Blacklists are a punitive measure which will not necessarily lead to improved safety standards. Rather Whitelists would provide an incentive for improved safety by promoting those carriers which comply with international standards. on the other hand any national listing should be based on objective, internationally harmonized, criteria which are consistently utilized and IATA's Operational Safety Audit serves as just such a benchmark and should be looked at by all governments as the standard.

Also, criticism is based on the issue that International aviation safety standards are the product of U.S. and EU aviation hegemony and Blacklists and other similar efforts keep new entrants from primarily developing countries out of the aviation market these safety,easures apllied should also keep in mind that Many countries which do not comply with international safety standards lack resources. And the retaliatory economic measures are disproportionate to the potential harm caused by non-compliance.

International Efforts To Improve Safety

1. ICAO Standard and Recommended Practices (SARPs)[2]

It has got a Long standing history and international legitimacy. Implementation of SARPs lies with the Contracting States to the Chicago Convention.Under it comes the Universal Safety Oversight Audit Programme (SOA)[3] wherein Regular, mandatory, systematic, and harmonized safety audits are conducted. Results from these audits are published in a Summary Reports. Since there is No "neutral" enforcement body so enforcement (blacklisting) is up to individual States.

Audits of Contracting States operate in three "phases"

a. Pre-Audit - SOA evaluates pre-audit questionnaires to analyze a State's organization, implementation of SARPs, and the complexity of its air services

b. On-Site - Visit by audit team to State to assesses its safety programs and systems

c. Post-audit - Develop a comprehensive report and construct a corrective action plan for the State if necessary

2. IATA's Operational Safety Audit[4]

IOSA is the industry's attempt to self-audit and thereby bypass repetitious inspections. There are High uniform standards required for IATA membership. Since the standards comply with current best practices in the industry, there's no question that all participants will be held to the same threshold. There is One "universal" audit will remove the need to expend airline resources for multiple inspections, thus keeping operating costs down. It enjoys strong international support, including approval from the United States, European Union, and ICAO. Compliance with IOSA opens up market incentives for carriers, including code-sharing, wet lease, and aircraft leasing opportunities. But these IATA standards have no binding authority on non-members.

3. Flight Safety Foundation[5]

Its an independent, neutral, and dedicated to compiling critical research on what causes aviation accidents. It Holds itself out as an independent, nonprofit, and international organization that performs research, inspection, advocacy, and publishing to improve safety. Works closely with other aviation organizations, including the Airline Pilots Association, Air Transport Association of America, ICAO, IATA, etc. this Organization works more on the "good will" (conscience) of the industry rather than as another regulatory overseer so No enforcement mechanism in case of failure to cooperate.

Chicago Convention/ICAO And Standards

The Convention on International Civil Aviation, also known as the Chicago Convention, established the *International Civil Aviation Organization* (ICAO), a specialized agency of the United Nations charged with coordinating and regulating international air travel. The Convention establishes rules of *airspace, aircraft registration* and safety, and details the rights of the signatories in relation to air travel. The Convention also exempts air fuels from tax.

The document was signed on December 7, 1944 in *Chicago*, *Illinois*, by 52 signatory states. It received the requisite 26th ratification on March 5, 1947 and went into effect on April 4, 1947, the same date that ICAO came into being. In October of the same year, ICAO became a specialized agency of the *United*

Nations Economic and Social Council (ECOSOC). The Convention has since been revised eight times (in 1959, 1963, 1969, 1975, 1980, 1997, 2000 and 2006).[6]

ICAO apex body under United Nations formed in accordance with Part II of Chicago Convention. After intensive studies, extensive deliberations and detailed analysis ICAO laid down various standards and practices to be followed by all Civil aircraft and aviation authorities the world over for achieving Safe & orderly flow of air traffic.

International Standards & Recommended Practices

As per Article 37 of Chicago Convention, ICAO is to adopt and amend from time to time, as may be necessary, international standards and recommended practices dealing with Communication Systems, airports, air traffic control, Licensing of operating personnel, Air worthiness of aircraft, exchange of meteorological information, aircraft in distress and investigation of accidents. Any infraction of the convention and any failure to carry out recommendation or determination of the council of ICAO, is reported to contracting states as per Article 54 of the convention. Adoption and amendments in the form of annexes is as per Article 90 of convention.

With regard to international standards & recommended practices on Security, Annexure 17 has been developed by ICAO This annexure has been revised twelve times since 1944 to adapt to new risks and challenges, shifting focus since the 1970 from hijacking to attacks or fascilities to sabotage, including the use ofaircraft as weapons of mass destruction.[7] This is in force since 22.3.74 and embodies provisions on the following:

    a. Potential hazards at airports.

    b. New security equipments

    c. Carriage of weapons

    d. Pilot in command

    e. Pre-flight checks

    f. Safety on board of passengers

    g. Security control of baggage.

    h. Exchange of information by contracting states for safe guarding international civil aviation against acts of unlawful interference.

Non Compliance Of Safety/Security Standards May Lead To Accidents And Consequent Black Listing And Banning Of Flights Of Particular Airlines

- Keeping in view that lives of people are at stake Black listing on the basis of performance record is neither unwarranted nor arbitrary nor irrelevant, though black listing tarnishes the reputation of an airline and is a harsh measure having disastrous effects.

- Blacklisting prevents an airline from the privilege and advantage of entering into a lawful relationship with the Govt. for purpose of gain.

- Black lists are real instruments of coercion, as every airline whose name is on, soon discovers to his cost. Airlines in the black list are for special avoidance. It indicates that Airlines does not conform to the rules. In other words black listing censures an Airline. It creates untrustworthiness. Its adverse civil consequence is on its future business.

- Even if rules do not expressly say so, it is elementary principle of natural Justice that parties affected by an order should have right of being heard and making representations against the order. Without giving a show cause notice nobody should be black listed.

The procedure to be followed for such a declaration should be reasonably fair & just, consistent with good govt. However some inconsistencies / anomalies have come to light in respect of black listings by some countries. The same are given below:

i. Pakistan international Airlines (PIA) was blacklisted by E.U., except 777s, 747s, A 310, even though the said airlines completed rigorous safety audit required for membership of IATA. FAA ranks Pakistan as category – I meaning that country conforms to highest safety standards.

ii. Ukraine is ranked as category 2 or below par by FAA and two of its airlines i.e. Volare and Ukrainian - mediterranean were banned by E.U.

iii. Indonesia's rash of accidents drew swift sanctions from E.U which banned all the country's Airlines. The FAA had designated the airlines as Category 2. Other nations viz Brazil & Russia had a string of crashes, but were rated as category I by FAA.

iv. Phuket Airlines of THAI was banned by U.K. & France after series of safety lapses in 2005.

v. E.U Threatened to ban one of high profile Russian Airlines PULKOVO, which suffered crash in 2006.

However these could be other reasons for accidents i.e. other than safety infractions viz. Absence of runway barriers, counterfeit parts of aircrafts and shoddy maintenance. Fatality figure of 2007 i.e. 653 suggests that there is still much to be done.

Safety Audits

Safety Audits are integral part of safety program. These audits cover:

- Uncover hazards

- Reveal level of compliance with reference to regulatory standards.

- Measure effectiveness of safety programs

- Evaluate management issues that could result in hazards.

Following are the various international safety audit/ assessment programmes running worldwide-

• ICAO Universal Safety Oversight Audit Programme[8]

In 1998 the International Civial Aviation Organisation (ICAO) established a universal safety oversight audit programme, comprised of regular, mandatory, systematic and harmonized safety audits to be carried out by ICAO on all Contracting States. Since 1 January 1999, the Safety Oversight Audit (SOA) Section of the Air Navigation Bureau of ICAO has been conducting safety oversight audits of the civil aviation authorities of member countries in relation to personnel licensing, operation of aircraft, and airworthiness. The audits are designed to determine the status of States' implementation of the critical elements of a safety oversight system and the implementation of relevant ICAO Standards and Recommended Practices, associated procedures, guidance material and safety-related practices.

• FAA International Aviation Safety Assessment (IASA)[9]

The FAA's IASA program focuses on a country's ability, not the individual air carrier, to adhere to international standards and recommended practices for aircraft operations and maintenance established by the United Nation's technical agency for aviation, the International Civil Aviation Organization (ICAO). These audits are limited to civil aviation authorities of countries with existing air carrier service to the U.S., or authorities of foreign air carriers wanting to start services to the U.S.

• IATA's IOSA[10]

The International Air Transport Association (IATA) Operational Safety Audit (IOSA) Programme is an internationally recognised and accepted evaluation system designed to assess the operational management and control systems of an airline. IOSA uses internationally recognised quality audit principles, and is designed so that audits are conducted in a standardised and consistent manner. By 2007, all IATA Members will need to have successfully undergone the IOSA audit in order to achieve or maintain IATA Membership.

• EU Blacklist[11]

In March 2006 the EU published a Community list of air carriers subject to an operating ban within the European Community. Bans and operational restrictions are only imposed based on evidenc. e of violation of objective and transparent criteria. These criteria focus on the results of checks carried out in European airports; the use of poorly maintained, antiquated or obsolete aircraft; the inability of the airlines to rectify shortcomings identified during inspections; and the inability of the authority responsible for overseeing an airline to perform

its task properly. Member States reported that five countries have an inadequate system for regulatory oversight. One important consequence of the black list will be to root out the practice of flags of convenience whereby some countries issue Air Operation Certificates to dubious airline companies.

- **ECAC Safety Assessment of Foreign Aircraft - SAFA[12]**

The SAFA (Safety Assessment of Foreign Aircraft) programme is an international programme established in the countries that are members of the ECAC (European Civil Aviation Conference) or the JAA (Joint Aviation Authorities). The programme provides for inspections of foreign aircraft by the participating countries for the purpose of promoting the safety of international civil aviation.

Year	Inspected aircraft	Participating ECAC states
2003	3411	27
2002	3234	25
2001	2706	25
2000	2394	22
1999	2801	20
1998	2752	22
1997	ca. 1713	19
1996	ca 110	9

India And Compliance Of Safety Standards & Recommended Practices

- D.G.C.A (Directorate General of Civil Aviation) is the Regulatory Body in the field of Civil Aviation primarily dealing with safety issues. Vision of DGCA is Endeavour to promote safe and efficient. Air Transportation through regulation and proactive safety oversight system.[13] D.G.C.A takes all necessary action arising out of Universal Safety audit programme (USOAP) of ICAO.

- Air Safety Directorate[14] in India coordinates regional air safety offices with Air safety Headquarters.

- Air Worthiness Directorate[15] in India ensures effective implementation of safety related standards and recommended practices contained in ICAO annexes.

- Large part of Air Law in India is contributed and developed by ICAO. National aviation laws are interlinked with international air law.

- Aviation security clause is put in all bilateral air services agreements in pursuance to resolution dated. 25.06.1986. of ICAO.

- International convention lead to three acts in India viz Tokyo convention Act 1975,[16] Anti hijacking Act 1982[17] and Suppression of unlawful Acts against safety of Civil aviation Act 1982.[18]

- Section 5A was added in 1972 to Aricraft Act,[19] 1934 thereby authorizing DGCA to issue directions with regard to various matters viz Aerodromes, maintenance of aircraft, air routes, & equipments to be carried for safety in the aircraft. Non compliance of the directions could lead to 6 months rigorous imprisonment and / or fine up to Rs. 10 Lacs. In the interest of public safety, central government could issue orders under section 6 of the Act.

- As part of India's commitment to safety, IATA and its members developed IATA operational safety Audit (IOSA), the first global standard for airline operational safety management.

Conclusion

Further focal points that are required to be taken for aviation safety are-Since safety of air navigation is and will remain the overriding priority for traveling public, operators, States and international organizations, States have to agree with ICAO in further advanced international safety standards. And compliance with standards has to be strictly audited by ICAO mechanism and / or by international regional organizations.

Investigations into accidents should lead to effective corrections of any faults in Technology, procedures or human conduct. There has to be continuing vigilance to check unlawful acts against safety of aviation which in case of aviation safety is unavoidable. Good order on board is essential to prevent unruly passengers causing danger to safety of flight.

International & national legal steps need to be taken to keep aviation drug free by enforcing pre employment, periodic, post accident and random testing of aviation personnel And more and more conventions are needed to bring decline in incidents of unlawful acts against aviation Last but not the least safety management courses need to be introduced, where ever not existing at present.

Endnotes

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