ASSEMBLY — 40TH SESSION

TECHNICAL COMMISSION

Agenda Item 30: Other issues to be considered by the Technical Commission

ENABLING INTEGRATED CROSS-BORDER OVERSIGHT

(Presented by Finland on behalf of Member States of the European Union[1], the
other Member States of the European Civil Aviation Conference[2]; and by
EUROCONTROL)

EXECUTIVE SUMMARY
The working paper describes the challenges posed to States in conducting effective cross-border oversight of organisations, which have activities in more than one State. It proposes that by enabling 'cooperative oversight' States can better and more efficiently respond to new operational concepts and technological developments and proposes a method to develop a common understanding of cooperative oversight in a 'total systems approach'.
Action: The Assembly is invited to: a) note that the uptake of innovation and new business models in aviation is leading to increased cross-border operations, posing challenges to States in conducting oversight of such operations;   b) urge States to enhance cooperation to ensure effective oversight of cross-border operations;   c) acknowledge the role of the State of the Operator in conducting such oversight;   d) request ICAO to develop the appropriate framework for cooperative oversight as proposed in paragraph 2.6;   e) acknowledge that the implementation of risk-based oversight and integrated risk management are enablers to effective safety risk management; and   f) adopt the Resolution on Cooperative Oversight in the Appendix.

Strategic Objectives:	This working paper relates to the Strategic Objectives of Safety and of Economic Development of Air Transport.
Financial implications:	The activities referred to in the attached assembly paper will be undertaken subject to the resources available in the 2020 – 2022 Regular Programme Budget and/or from extra budgetary contributions.

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[1] Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

[2] Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Iceland, Republic of Moldova, Monaco, Montenegro, North Macedonia, Norway, San Marino, Serbia, Switzerland, Turkey and Ukraine.

References:	Annex 19 – *Safety Management* ICAO Doc. 9859, *Safety Management Manual* (SMM) Resolution A36-6 recalling Assembly Resolution A35-7 *Report of the Thirteenth Air Navigation Conference (AN-Conf/13)* , Doc.10115 AN-Conf-13-WP/46 on emerging issues

1.   INTRODUCTION

1.1   Safety oversight ensures a safe operating environment and enables a State to discharge its international obligations and responsibilities under the Chicago Convention. It ensures that risks are identified and addressed regardless of where they originate, be it from operations in another State or operations of another aviation domain.

1.2   Cross-border operations have introduced new challenges for States in conducting oversight of organisations performing such operations. Examples of cross-border operations are training organisations with satellite operations in other States, so-called group operations, where air operators with air operator certificates (AOCs) in different States belong to a single parent company or holding, or aerodrome operators with activities in different States belonging to a single parent company or holding, or cross-border air navigation service providers (ANSPs).

1.3   Enhanced cooperation between States will support an effective and risk-based oversight of such organisations in an integrated manner.

1.4   Some States have already developed solutions for cooperative oversight concepts in response to new cross-border business models. For example, AN-Conf-WP/133 presented at the 13th Air Navigation Conference in 2018 described the challenges for States in overseeing aircraft interchange between airlines due to the formation of large holding companies, alliances and joint ventures, resulting in Recommendation 7.3/1 — *ICAO implementation strategies*, g)[3].

1.5   The role of the State of the Operator (SoO) is important as an enabler of risk-based cooperative oversight and as a means to ensure efficient use of oversight resources. Therefore, this paper also proposes a review of ICAO's Standards and Recommended Practices (SARPs) that relate to the role of the SoO and State of Registry (SoR) to address identified barriers to cooperative oversight.

2.   COOPERATIVE OVERSIGHT

2.1   The concept of cooperative oversight refers to States cooperating with each other to ensure oversight on the basis of identified risks, safety priorities and past oversight activities of organisations performing cross-border activities. In a cooperative oversight scenario, the State responsible for oversight of the organisation may agree to have oversight tasks performed by the State where the activity takes place or enter into an agreement with another State or a Regional Safety Oversight Organisation (RSOO), for example to ensure systematic mutual exchange of information or sharing of resources. In the scope of cross-border activities, the notion of cooperative oversight is directly linked to the concept of an integrated oversight.

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[3] 'That ICAO request an appropriate group of experts to further review and explore a process that would facilitate short-term (successive) aircraft interchange operations.'

2.2   Integrated oversight means that the State includes in its oversight programme any activity of organisations it certifies or of organisations certified by other States, but taking place within its territory, when so mutually agreed.

2.3   The Chicago Convention prescribes the duties of the SoR. The SoO is responsible for example for the issuance of the AOC in accordance with Annex 6 — *Operation of Aircraft* or of other certificates. The regulatory framework of the SoO can enable oversight to focus on 'where the risks' are, i.e. in the operational environment. RSOOs can also facilitate cooperative oversight amongst States to enable risk-based and more efficient oversight. In all scenarios, cooperative oversight needs to be based on clear lines of responsibility and accountability.

2.4   Satellite-based communications, navigation, and surveillance (CNS) services[4] provided by satellite communication (SatCOM), global navigation satellite system (GNSS), and satellite-based automatic dependent surveillance — broadcast (ADS-B) systems are provided at regional and global level. The application of a cooperative or integrated safety oversight model to satellite-based CNS services is also particularly relevant.

2.5   The provisions of Article 83bis of the Chicago Convention, providing for transfer of certain tasks from the SoR to the SoO, may not sufficiently address the need for cooperative oversight of complex cross-border or multinational operations. Therefore, ICAO should be requested to review the SARPs that relate to the role and responsibility of the SoO vs. the role and responsibilities of the SoR to determine if there are barriers to cooperative oversight and to address those identified barriers, while considering operations with or without an Article 83bis agreement. In this context, ICAO should assess the wider concept of cooperative oversight with the aim of developing more efficient and effective oversight models to assist States in meeting their obligations under the Chicago Convention.

2.6   To support a common understanding of cooperative oversight, it is proposed that ICAO undertakes the following activities:

   a) to collect information on oversight challenges resulting from technological developments such as satellite-based CNS service provision, cross-border and multinational operations, or other complex oversight scenarios from all regions and States;

   b) to foster a global common understanding of cooperative oversight by developing a 'tool-kit on cooperative oversight'. Such a tool-kit should focus on practical solutions, describing different cooperative oversight arrangements and stages of cooperation. The tool-kit should contain model agreements on oversight activities and provide sample solutions on issues such as the allocation of resources and distribution of oversight tasks;

   c) to review the relevant ICAO SARPs and guidance material to assess the drivers and possible barriers to cooperative oversight arrangements. This may include considerations on the benefit of the role of the State of Operation as a facilitator of cooperative oversight arrangements; and

   d) to remain relevant in a fast-changing world, not only in terms of technology but also in terms of State and industry operating models, ICAO strengthens its cross-domain

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[4] A40-WP/82 on Interference-resilient satellite-based CNS systems

approach across the whole spectrum of the aviation system and apply and promote integrated risk management.[5]

2.7   New industry business models also demonstrate the need to strengthen the cross-domain approach applied by authorities. Industry is increasingly implementing integrated management systems, encompassing safety, security, quality, human resource and other areas. Such integrated management systems are used to steer and manage all of the organisation activities. Safety hazards and threats are analysed in a holistic manner with mitigating actions taken in the most suitable area and ensuring appropriate balancing of various risks. Moreover, States should apply and promote integrated risk management when developing their State Safety Programme and plans to enable more focussed oversight.

3.   CONCLUSION

3.1   Effective safety oversight is a crucial pillar in the safe and orderly running of the aviation system. Oversight shall be able to ensure risks are identified and adequately addressed regardless of where they originate, be it from operations in another State or operations of another aviation domain. States are experiencing challenges in conducting oversight in such cross-border activities. This paper proposes that a cooperative oversight system would assist States in addressing these challenges.

3.2   Risk-based oversight is also an important pillar of safety risk management. Safety hazards and threats should be analysed in a holistic manner with mitigating actions taken in the most appropriate area. Therefore, this paper concludes that in the context of technological innovations and cross-border operating models and integrated management systems, States should develop a common understanding of cooperative oversight to enable integrated cross-border oversight.

3.3   Next to a common understanding of the enablers and benefits of cooperative oversight, a 'toolkit' on cooperative oversight should be developed to assist States in implementing a standardised approach to cooperative oversight. Such a toolkit should include practical solutions and examples of cooperative oversight.

3.4   The different possible scenarios amongst States regarding the role and responsibility of the SoO vs. the role and responsibilities of the SoR are a challenge and should be assessed to remove any barriers or difficulties for cooperative oversight.

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[5] A40-WP/84 on GANP/ATM contains proposals on the ICAO Standards-making process.

APPENDIX

A-40-XX: COOPERATIVE OVERSIGHT

Whereas the Chicago Convention and its Annexes provide the legal and operational framework for Member States to build a civil aviation safety system based on mutual trust and recognition, requiring that all Member States fulfil their obligations in implementing the Standards and Recommended Practices as far as practicable and in adequately performing safety oversight;

Whereas Article 37 of the Chicago Convention requires each Member State to collaborate in securing the highest practicable degree of uniformity in regulations and practices in all matters in which such uniformity will facilitate and improve air navigation;

Whereas a primary objective of the Organization continues to be that of ensuring the safety of international civil aviation worldwide;

Recalling that ultimate responsibility for safety oversight rests with Member States, who shall continuously review their respective safety oversight capabilities;

Whereas ensuring the safety of international civil aviation is also the responsibility of Member States both collectively and individually;

Whereas the improvement of the safety of international civil aviation on a worldwide basis requires the active collaboration of all stakeholders;

Recognizing the increase of multi-national activities of civil aviation entities and challenges faced by Member States in conducting effective cross-border oversight of such entities having activities in more than one Member State;

Recognizing that cooperative oversight arrangements may enable Member States to respond appropriately and efficiently to new business models and technological developments;

Recalling Assembly Resolution 37-5, which, inter alia, urged all Member States to share with other Member States critical safety information which may have an impact on the safety of international air navigation and to facilitate access to all relevant safety information and encouraged Member States to make full use of available safety information when performing their safety oversight functions;

Whereas the Chicago Convention and the Annexes lay out the responsibilities of the State of Operator and Registry;

Whereas the provisions of Article 83bis of the Chicago Convention, providing for transfer of certain tasks from the State of Registry to the State of the Operator, may not sufficiently address the need for cooperative oversight of complex cross-border or multinational operations; and

Recalling that the Global Aviation Safety Plan (GASP) strives to enhance global aviation safety through, inter alia, encouraging risk-based prioritisation and taking data-driven decisions;

The Assembly:

1.   *Directs* the Council to develop a common understanding of cooperative oversight, as an enabler of integrated cross-border oversight, especially in the context of new technological innovations and cross-border operating models, that should also address the sharing or reallocation of responsibilities among the involved States;

2.   *Directs* the Council to facilitate implementation of risk-based oversight as an important pillar of safety risk management by developing a tool-kit on cooperative oversight; and

3.   *Directs* the Council to review the SARPs that relate to the role and responsibility of the State of the Operator and the State of Registry to determine if there are barriers to cooperative oversight and to address those identified barriers, also considering operations with or without an Article 83bis agreement.

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