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A “JUST CULTURE”? CONFLICTS OF INTEREST IN THE INVESTIGATION OF AVIATION ACCIDENTS

Summary. The sole purpose of air accident investigations should be the prevention of accidents and other incidents in the future, without apportioning blame or liability. A civil aviation safety system is based on feedback and lessons learned from accidents and incidents, while requiring the strict application of rules on confidentiality in order to ensure the availability of valuable sources of information in the future. Therefore, related data, especially sensitive safety information, should be protected in an appropriate manner. Information provided by an individual in the framework of a safety investigation should not be used against them, in full respect of constitutional principles, and national and international law. Each “involved person” who knows about an accident or serious incident should promptly notify the competent state authority for carrying out an investigation of the event. “Involved person” refers to one of the following: the owner; a member of the crew; the operator of the aircraft involved in an accident or serious incident; any person involved in the maintenance, design, manufacture of that aircraft or in the training of its crew; any person involved in air traffic control, providing flight information or providing airport services, which provided services for the aircraft concerned; staff of the national civil aviation authority; or staff of the European Aviation Safety Agency. In terms of the protection level of the organization (employer), employees who report an event or submit an application to the investigation cannot bear any prejudice from their employer because of information provided by the applicant.

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The protection does not cover (exclusions): infringement with wilful misconduct (direct intent, recklessness infringement); infringement committed by a clear and serious disregard of the obvious risks; and serious professional negligence, i.e., the failure to provide unquestionably duty of care required under the circumstances, causing possible or actual damage to persons or property leading the level of aviation safety being seriously compromised. All employees in the aviation sector, regardless of their function, have safety-related duties and are therefore critical to the security of the entire civil aviation system. The safety of this system requires that any event that has or may have an impact on security in aviation should be reported voluntarily and without delay, because it is necessary to conduct an appropriate investigation in order to increase the level of safety. “Just Culture” is the basic premise for the effective functioning of the reporting of events required for all aviation organizations in order to maintain and raise the safety level. As safety management is based on precise data, it is necessary to introduce appropriate procedures, which allow for obtaining information not only about the events that have already occurred, but also about any other events that could potentially cause hazardous conditions. All the procedures and rules of operation relating to the policy of Just Culture should be constructed so that they not only comply with the provisions of applicable law, but are also rational and understandable by all stakeholders, as well as provide certain comfort and confidentiality to persons reporting events that affect airline safety. Changes in the existing legal system should be established in cooperation with all concerned institutions: law enforcement, including the courts and public prosecution, aviation insurers, the Aircraft Accident Investigation Commission and other entities. Is it possible to reconcile the interests of the so-called culture of aviation safety, i.e., Just Culture, with the requirements of the above-mentioned institutions and traders involved in the implementation of air transport and the exploration of the effects of aerial surveys? The answers to this and similar questions will be widely presented in this article.

Keywords: aviation accident, conflict of interests, Just Culture, accident investigation, safety.

1. INTRODUCTION

With very low accident rates in recent decades, air transportation is widely recognized as the safest mode of transport. The aviation community, including airlines, aircraft manufacturers, maintenance organizations, air navigation service providers, airport operators and safety regulators, has been working closely to make our skies safer. Among all the stakeholders involved in the aviation industry, there is a particular group of aviation professionals who are seldom mentioned, yet they contribute significantly to improving aviation safety. They are the air accident investigators: the people whose job it is to determine the causes and circumstances of air accidents and incidents, so that similar accidents can be prevented. One accident is one too many; whenever it happens, it is bound to hit the news headlines across the globe almost instantaneously. The idealistic aspiration of zero accidents, albeit statistically unachievable, keeps everyone in the aviation profession focused on building an increasingly safe aviation system.

In the international civil aviation regime, Article 26 of the Convention on International Civil Aviation (Ninth Edition, 2006) stipulates that it is incumbent upon the state in which an aircraft accident occurs to institute an inquiry into the circumstances of the accident [2]. Annex 13 to the Convention on International Civil Aviation - Aircraft Accident and Incident Investigation (10th Edition, July 2010) (hereafter referred to as “Annex 13”) specifies that the objective of the investigation of an accident or incident is the prevention of recurrence, and not for the purpose of apportioning blame or liability [3, 6]. The identification of causal factors to prevent recurrence is best accomplished through a properly conducted investigation.

To meet all these international obligations and to enable a proper investigation of accidents or incidents to be conducted, an appropriate establishment needs to be put in place by the contracting states. With continuous air traffic growth on a global scale, such an air accident investigation establishment is essential and instrumental to support the development of a safe and sustainable air transport system. It should comprise, inter alia, the following key elements:

1. Independence in its authority to investigate

Independence in its authority to investigate is of the utmost importance. The organization responsible for conducting air accident investigations must be strictly objective and totally impartial, and must also be perceived to be so. It should thus be established in such a way, so as to be immune from political interference or pressure.

Some states, particularly those with a large volume of air traffic and a wide range of aviation activities, have achieved this important objective by establishing their air accident investigation authority as a separate statutory body independent of the civil aviation regulatory authority.

In many other states with a relatively small scale of aviation activities, it may not be practical or economically viable to adopt such an arrangement. To achieve a certain level of independence in accident investigations, these states may set up an arrangement whereby, in the event of an accident or serious incident, the state would mobilize a normally dormant accident investigation team, comprising qualified investigators, or appoint a separate commission to conduct the investigation and report independently to the appropriate authorities.

Given the dormant characteristics of such a setup, few, if any, of the team or commission members would be fully employed as accident investigators. Some members may be seconded from the state’s regulatory agencies on a needs basis. In such circumstances, clear delineation of responsibilities and duty specifications must be included in the appropriate legislation emphasizing the importance of the independence, impartiality and objectivity of an investigation. In the course of an investigation, clear policies should also be established to ensure at least the following:

- No conflict of interest exists between members of the investigation team and parties under investigation.
- Members of the investigation team shall adhere to the objective of the accident investigation in defiance of political and commercial considerations.
- The investigation team is to report directly to the head of the investigation organization who should report directly to the government/administration, independent of the civil aviation regulatory authority.
- The findings and recommendations of the investigation team shall not be influenced nor tampered with by any other party outside the investigation.

Although the above arrangement may not be ideal, there are many successful examples worldwide that demonstrate that the independence of an investigation has been maintained. It is most important for states, administrators and all those who are involved in air accident investigations to understand the objective of maintaining independence, adopt arrangements that best suit their needs and circumstances, and implement them effectively through a sound and auditable mechanism.

2. Sound legal and regulatory framework

The second key element for the establishment of a highly functional air accident investigation setup is the availability of a sound legal and regulatory framework in support of its mission, together with the provision of accident investigators with the required legal authority to conduct a safety investigation in accordance with the provisions of Annex 13.

Appropriate legislation that defines the scope of the work and responsibilities of the accident investigation establishment and those of accident investigators must be put in place. In this respect, accident investigators should be aware that air accidents may be subjected to technical safety investigations, as well as other judicial, statutory, administration or regulatory inquiries. Clear provisions and procedures should thus be formulated to keep the technical safety investigation separate from other proceedings.

The legislation and regulations should also clearly specify that the sole objective of the technical investigation is accident prevention, not to apportion blame or liability.

The legislation must also protect certain documents and information obtained during the investigation from public disclosure in accordance with Annex 13. This is particularly important, as information contained in some records may include material given voluntarily by interviewees. Inappropriate exposure of information obtained in the course of an investigation for purposes other than the prevention of accidents would inhibit disclosure of information from witnesses in future. This, in turn, would impede the work of investigators and negatively impact the thoroughness and accuracy of future investigations at the expense of promoting safety.

3. Qualified investigators

The next key element concerns those who are actually engaged in conducting accident investigations. Even in today's highly modernized and technology-driven society, the significant involvement and contribution of human efforts in accident investigations are indispensable.

An accident investigation is a highly specialized and time-critical task involving expertise in a wide range of aviation and non-aviation disciplines. The quality and outcome of an investigation are heavily dependent on the competence and capabilities of the investigation team. As such, accident investigations should only be undertaken by people with the right calibre, experience and training.

Accident investigators should ideally have a professional background in aviation; for example, they could be pilots, aeronautical engineers or aircraft maintenance engineers. The possession of expert knowledge, skills and a thorough understanding of the aviation operating environment is of paramount importance to an accident investigator. Other aviation personnel who possess experience in aviation management and operations, air traffic control, meteorology and human factors could also positively contribute to an accident investigation.

In addition to technical expertise, an accident investigator should also possess certain personal attributes, including integrity, impartiality and perseverance in collecting evidence, analysis, research and communications skills. An accident investigator should also be logical

and methodical in thinking, as well as tactful, attentive to detail and empathetic, especially when dealing with those who survived the trauma of an air accident.

Upon recruiting the right people, the next important step is the provision of a structured induction training programme. This is essential for developing investigators’ ability, competence and experience for investigation tasks of various complexity. Novice investigators should be guided by experienced mentors until they are fully competent to work independently under the most taxing situations. The training programme should include rules and regulations, Annex 13 provisions, local legislation, interview and investigation techniques, current investigation technologies, investigation procedures, and on-the-job, recurrent and specialized training.

4. Sound management system

To be prepared in the event of an accident or serious incident, a response plan must be put in place for the activation of the investigation processes in the most expeditious manner. The availability of a sound management and support system is thus essential to ensure operational readiness for the timely activation of an accident investigation process, especially in the following areas:

- regular review on safety regulations and investigation policies
- quick response plan
- safety data and information management
- public relations management and support

With the continuous growth of the aviation industry and rapidly changing technologies and safety requirements, there is a need for every aviation organization to constantly review and update their organizational policies and operations to keep pace with the latest developments.

Quick response actions can only be achieved through adequate planning, coordination and drills before an accident or incident actually occurs. Setting up quick response “Go Teams” will enable the accident investigation establishment to expeditiously respond to an accident or incident in terms of collecting evidence, especially volatile evidence, as well as the timely coordination of the investigation process.

It is also pertinent that a safety data and information management system is established for the preservation of accident information and evidence, as well as, whenever necessary, sharing safety information within the organization and with external parties during and after the investigation. Safety promotion constitutes an important component of safety management and a “state safety programme”. It is essential that safety information and accident prevention measures be promulgated widely across all spectrums of the aviation industry to achieve overall safety improvement.

Accidents or incidents often generate a high degree of interest from the public and the media. A clear public relations policy and procedure for the release of accident investigation information would be most helpful in managing public sentiment and undesirable speculation on the causes of the accident. Regular meetings with the media provide timely updates on facts to the public without prejudice to the investigation process. Senior investigators should be given training on media management and opportunities for public speaking.

5. Effective coordination with other stakeholders

The circumstances surrounding each air accident or incident are different. To prepare for the eventuality of an air accident or incident, it is important that the accident investigation establishment sets out a pre-coordinated working arrangement with other local authorities to

facilitate the smooth coordination and initiation of the respective emergency response in support of the investigation team.

To achieve this, the accident investigation organization may establish formal working or cooperative arrangements with other government agencies involved in disaster response, particularly the police department, fire services department, search and rescue units, medical services and the coroner's office. Such cooperative arrangements will foster better understanding among all stakeholders of the importance of the preservation of evidence to investigators.

The air accident investigation organization may also need to seek assistance from other organizations to provide facilities, equipment and specialized services, and additional manpower (e.g., to operate heavy salvage and lifting equipment, helicopters, metal detectors, divers and surveyors) during the investigation. It is thus important that arrangements are reviewed and expertise identified in advance to ensure that resources are readily available when needed.

6. International and regional collaboration

The ICAO and all of its contracting states share a common goal of achieving safety, security, efficiency and sustainability in civil aviation. Close regional and international collaboration serves to obliterate the confines of the physical boundaries of states and facilitates working towards achieving common standards and objectives of accident investigation between contracting states.

On accident investigation matters, international and regional collaboration may include the delegation of investigation responsibilities, engagement in mutual assistance and cooperation, and sharing resources, specialized facilities, equipment and expertise on the investigation. For accident investigators' training, areas of collaboration may include the provision of investigators' recurrent training, job attachment programmes and the joint organization of training events in order to facilitate and promote knowledge sharing, as well as broaden the exposure and enhance the competency of investigators.

Through strengthened and closer cooperation between states and regional investigation authorities, the capability of air accident investigation organizations can be mutually enhanced to achieve a higher quality of investigation, thereby helping to raise the standards of aviation safety.

2. JUST CULTURE IN AVIATION

Investigating the causes of aviation accidents and incidents is of key importance when looking for solutions that improve the safety of aviation and provide assurance to passengers that their flight will be uneventful. Nobody should be immune from the law, however. The use of these findings in determining whether criminally reproachable behaviour is involved forms part of the administration of justice: a function that is an integral part of any society respecting the rule of law. The issues related to this apparent conflict between these two worlds and approaches towards reconciling, or at least balancing, these activities form the basis of this paper. It introduces the notion of Just Culture, its application in Europe, and the prospects and conditions for a more global application. The role and responsibilities of the ICAO in this context are addressed, in particular, as the possible facilitator for introducing just culture-based solutions in the different ICAO regions.

Accidents and incidents happen, forming part of our daily lives. We accept their occurrence, even in air traffic management and air transport, while we hope and expect that we can avoid most of them by our actions, professionalism and compliance with established rules and practices.

Ever since the investigation of aviation accidents was undertaken in a systematic manner, with the specific aim of using the findings of each accident investigation for the prevention of other accidents, the problem of the use of these findings for purposes other than accident prevention has manifested.

Improving aviation safety depends, to a large extent, on the feedback of knowledge generated by a system of accident/incident data collection and analysis. Such a system serves the industry, as well as its regulators, by allowing it to adapt and improve equipment and procedures. A high-quality output of the system very much depends on the existence of systematic record traceability, as well as active participation and reporting from all the aviation stakeholders involved in safety areas. In the US and Europe, for example, well-developed accident prevention processes are in place, including mandatory and voluntary incident reporting systems and independent accident investigations.

From its relatively early days, the ICAO, which is responsible for setting international rules and recommendations for improving safety, has been confronted by the need to protect aviation safety interests from those parties that want access to investigation results and other safety data with the goal of what the ICAO calls apportioning blame or liability. Therefore, ICAO rules, in the interest of an uncompromised safety investigation process, are often seen as advocating protection against the interests of what is often referred to as “the administration of justice”.

In a safety-critical domain such as aviation, the legal consequences of (contributory) actions or behaviour, which could result in serious personal harm, death or other damages, are plentiful and very significant, both in the private law and, increasingly, in the criminal law domain. Criminal law is essential for a sovereign state in the exercise of its responsibility for enforcing specific domain-related norms, along with the prevention and sanctioning of unacceptable behaviour.

3. SAFETY VERSUS JUDICIAL

The administration of justice, in particular, in the criminal law domain, constitutes one of the pillars of a state’s sovereign functions, which are usually firmly imbedded at the constitutional level. Both the Convention on International Civil Aviation and the Eurocontrol Convention explicitly confirm the complete and exclusive sovereignty of a state over its territorial airspace. This certainly includes the administration of justice. States are, of course, free to choose to delegate or pool certain sovereign functions, as is the case with EU membership, although criminal jurisdiction, with only a few exceptions, generally remains firmly imbedded at the state level.

There has been a growing concern in recent years on the part of aviation professionals and aviation industry regarding the interpretation of flight safety and aviation accidents by the general public, as well as the criminal judiciary. These concerns are associated with what is seen as the increasing emphasis on legal issues in aviation safety occurrences. This has led to a growing fear of litigation and the threat of criminal sanctions against individuals and organizations that are seen as partly or fully responsible for an accident or incident in which they were involved.

We need to understand the complicated relationship between the administration of justice and the safety investigation. As in a classical drama, two antagonists are involved: one with the aim of preserving justice by investigating and prosecuting possible perpetrators, and the other with the aim of enhancing aviation safety through independent investigation and reporting.

The issue of the criminalization of aviation accidents or incidents illustrates the delicate relationship between the propagation of aviation safety and the administration of justice in the aviation domain. These are two distinct worlds that seldom meet. One is, by nature, international, dynamic and very sensitive to safety; the other is, by nature, national, resistant to progressive change and very sensitive to the rule of law. It is no wonder that their interaction, or perhaps the lack of it, generates difficult and often passionate discussions.

Accidents and serious incidents very often occur as the result of a series of events, which in a peculiar, albeit inevitable, way leads to disastrous results. When mistakes are involved, they can often be labelled as “honest mistakes”, which would not qualify as criminal behaviour. Controllers and pilots are professionals who are ready to realize that nobody can claim criminal immunity in any civilized country. But, it is equally true that a small, but highly visible, number of cases raises questions about the relevance and motives of some criminal prosecution and court cases.

Here lies the root of the issue: who will determine whether a mistake was made by a qualified professional acting in a responsible manner or whether this was a clear case of gross negligence, wilful misconduct or criminal intent, to use just a few of many legal terms for criminally reproachable behaviour? That person cannot be a chief pilot or a control room supervisor; such a call can only be made by a professional in the judiciary, a prosecutor and, ultimately, a court of law.

The key is what happens next: a qualified criminal investigator or prosecutor must assess whether, under the applicable criminal law, the actions leading to the accident/incident warrant further steps, such as investigations and indictment. A number of high-profile accidents and serious incidents has not resulted in criminal investigations and proceedings, even though strong concerns have been raised by the air traffic control and air transport community about the criminalization of aviation. That is not all, as events have shown that further complications could arise as a result of public and media pressure, which generally accompanies any crash or serious incident with the associated “search” for the guilty party.

The discussion on the criminalization of aviation incidents and accidents highlights concerns about perceived intrusion by the judiciary in the all-important effort to enhance safety in aviation. It also shows a tendency to use “criminalization” as the epitome of misdirected and unwarranted activities by the authorities, as well as argue that the safety domain should therefore be protected from any action by the prosecution.

The problem is that invoking the real or alleged criminalization of aviation incidents or accidents as a justification for fully protective legislative action does not really work. All the regional and global rules and standards related to the protection of safety data and investigative processes in aviation create an exception for the actions of a sovereign state in the exercise of the administration of justice. What is needed now is the establishment of equilibrium between two equally relevant goals: aviation safety and the administration of justice.

4. DIALOGUE BETWEEN NATIONAL AUTHORITIES.

Rather than trying to silence the judiciary, the focus has now shifted towards initiating a dialogue between the national authorities concerned. A better understanding of the consequences of a judicial inquiry must be the starting point. In most states, national criminal legislation provides prosecutors with a level of discretion as to how to apply those laws; a clearer appreciation of the associated safety consequences may actually influence the application of those laws.

This is where the Just Culture initiative, as developed for aviation by Eurocontrol, enters the equation. Attempting to describe, let alone define, Just Culture is not simple, to put it mildly. The results may vary from one person, culture or legal system to another. The following description of Just Culture in the aviation domain has been accepted in Europe: “A Culture where front line operators are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, but where gross negligence, wilful violations and destructive acts are not tolerated.”

This description introduces the notion of gross negligence and wilful violations for qualifying criminally relevant behaviours that are not in accordance with internationally agreed definitions. Although the criteria to establish gross negligence or related legal concepts in common or civil law may be similar in most countries, their interpretation and application with respect to individual cases will ultimately lie in the hands of prosecutors and, ultimately, a criminal court.

When the legal consequences of Just Culture were first discussed, the initial reaction was that most European States would need to significantly amend their laws in order to implement Just Culture in a non-punitive environment. Calls were made for changes to criminal laws and to regulate and fully protect access to information. The general feeling was that Just Culture could not be implemented without these.

Subsequently, when the discussions became more mature, it dawned upon the participants that amending laws and principles, which constitute the basis of sovereign judicial systems, was, in most cases, not a realistic option. Equally important, it was not deemed essential. The issue was not necessarily the need for more legislative actions, but rather the way in which those existing laws and regulations were implemented and enforced by the national judicial authorities.

Provisions that could result in a legal environment supporting Just Culture, while taking a realistic view of the need to respect some fundamentals with regard to the administration of criminal justice, already exist. A number of relevant instruments dealing with accident investigations and incident reporting, supported in some cases by guidance material, is in place.

5. GLOBAL AND REGIONAL PROGRESS

It has become apparent that, for Just Culture, which has been on the agenda for many years, a key part of its successful implementation relies on a number of realistic deliverables that could facilitate further understanding and active and open coordination between the safety and judicial authorities.

Within the ICAO, the discussions and findings of its 36th Assembly, the Accident Investigation and Prevention Divisional Meeting in 2008 and the recommendations of the ICAO High-level Safety Conference in March 2010 resulted in Resolutions A37-2 and A37-3

of the 37th General Assembly on the sharing of safety information and the protection of safety data. Both resolutions, using the description of the Just Culture initiative, instructed the Council to strike a balance between the need for the protection of safety information and the need for the proper administration of justice. The Assembly furthermore noted the need to take into account the necessary interaction between safety and judicial authorities in the context of an open reporting culture. The ICAO Safety Information Protection Task Force (SIPTF) was, among other reasons, created as a result of these conclusions, which, to a great extent, have inspired its findings and recommendations.

In Europe, the EU has not only formally enacted Just Culture as part of EU law with the introduction of Performance Regulation (EU) No. 691/2010 [1], but has also recently introduced elements of it in Regulation (EU) No. 996/2010, governing air accident and incident investigations, which also addresses the need to achieve a balance between the objectives of the judiciary to determine whether criminality was involved, and the need for the aviation industry to be able to run a real-time self-diagnostic system without unnecessary interference from the justice system.

Regulation (EU) No. 996/2010 stipulates that its purpose is twofold: to regulate both “the investigation and prevention of accidents and incidents” [4]. The regulation states that: “An accident raises a number of different public interests such as the prevention of future accidents and the proper administration of justice. Those interests go beyond the individual interests of the parties involved and beyond the specific event. The right balance among all interests is necessary to guarantee the overall public interest.”

Although it may sound a little negative, the strength of Just Culture (or a concept known by any other name, as long as it addresses the same processes) is the understanding that there is realistically no other way forward. Formal legislation that fully protects pilots or controllers or sidelines criminal prosecution is a dead-end street, as demonstrated by all the existing national, regional and international legislation. Providing a reasonable expectation, for example, to a controller or a pilot, that the chances that they would ever be invited to be part of a preliminary criminal investigation, let alone prosecution, are very minimal, would provide a sound basis for continued incident reporting, as well as measured and balanced accident investigations.

Just Culture represents the fundamental recognition that both the aviation safety drive and the administration of justice would benefit from a carefully established equilibrium, moving away from criminalization fears. It is based on the understanding that controllers and pilots can blunder, while the line between an “honest mistake” and intentional or reckless behaviour can only be drawn by a judiciary professional.

This is easier said than done, of course. But, the time has come to seriously question the added value of endless and generally unsuccessful efforts at the international level to “protect” controllers and pilots against judiciary actions by creating standards, regulations and laws that are supposed to shield them against interference by the justice system. This is perhaps a good time to point out that this paper primarily focuses on the introduction and benefits of Just Culture at the state and international level, as well as on the interaction between safety experts and the judiciary. At the (national) corporate level, in the interaction between management and staff of, say, airlines and air traffic service providers, Just Culture inevitably plays an equally important role in the actions of pilots and controllers and the application of company rules, contracts and labour law.

Much progress has already been made in this domain through safety management and related practices, while the new ICAO Annex 19 will also play an important role in this area. It is noteworthy that these developments will also require the recognition and possible

harmonization of corporate Just Culture with criminal law requirements and policies at the state level.

6. CONCLUSION

The time has come to focus on the pursuance of practical goals identified by Just Culture activities. The first steps toward the proliferation of the model aviation prosecution policy concept have started, while the first prosecutor expert courses have been held. The relevance of offering assistance and education to prosecutors and judges, together with the introduction and implementation of the model for an aviation prosecution policy in Europe and beyond, is obvious. After the historic support offered by the full 39-state Eurocontrol membership and the EU for these deliverables, the next step will be to submit them for global consideration at the ICAO.

At the ICAO’s 37th General Assembly, Resolutions A37-2 and A37-3 on the sharing of safety information and the protection of safety data included an instruction to the ICAO Council to strike a balance between the need for the protection of safety information and the need for the proper administration of justice [5]. The Assembly furthermore noted the need to take into account the necessary interaction between safety and judicial authorities in the context of an open reporting culture.

As mentioned earlier, the ICAO SIPTF was tasked with analysing current ICAO rules, standards and recommended practices and national legislation, as well as considering enhanced communication and interaction mechanisms, in order to improve the efficiency and credibility of data protection and occurrence reporting, along with the relationship between safety activities and the national judiciary.

It may be expected that the SIPTF, which held its last meeting in January 2013, will come forward with realistic proposals for the enhancement of safety data protection, which recognize and reconcile the existing national and international legislation and regulatory processes and their limitations. In addition to SIPTF recommendations regarding changes in positive law or ICAO standards and recommended practices, considerable progress could be made in advancing safety information protection with deliverables in the domains of training, support, education and communication, through the innovative implementation tools and tactics, in order to balance the adequate protection of safety data with the proper administration of justice.

There is a general recognition of the need to establish communication and training initiatives and advance arrangements between the aviation safety sector, regulators, law enforcement and the judiciary in order to avoid unnecessary interference and build mutual trust and understanding. Furthermore, making high-level aviation expertise available to law enforcement and the judiciary would facilitate the exercise of their appropriate investigative and judicial processes.

A number of states and groups of states in different ICAO regions is already organizing training and communication between safety and judicial authorities, which address implementation tools and deliverables that could lead to a stable and successful basis for enhanced safety data protection and a balanced interaction between safety and the administration of justice. It is important to note that these recommendations address processes and activities that are expected to continue well beyond the active life of the SIPTF. Training, support, cooperation, communication and advanced arrangements form decisive conditions for efficient and realistic safety data protection.

The time has come for the ICAO to further build on the Just Culture principles and become the facilitator, at the regional level, to educate and encourage states to establish (joint) permanent frameworks to ensure a constructive and ongoing dialogue with the judiciary in order to inform them of the possibilities for establishing a national aviation prosecution policy, while providing them, at their request, with dedicated and impartial aviation expertise in the exercise of their functions.

The ICAO should also establish and regularly update a repository of training and education activities related to the protection of safety data, interaction with the judiciary, and existing or new best practices and policies. It should provide coordination and support, as well as organize progress reporting and information on a regular basis to all contracting states.

Just Culture is not a “magic wand” to wave in the face injustice and the misuse of judiciary processes. It has also been introduced to protect, as much as possible, the mundane, but ever so important, ongoing processes of incident or occurrence reporting: there are literally thousands of daily events that are fed into the well-established system of using reports for the improvement of safety and the prevention of incidents and accidents. This represents an ongoing daily routine, which is certainly not as dramatic as the aftermath of an accident, but is absolutely vital to the continued effort to improve safety by learning from mistakes and other relevant occurrences.

Just Culture requires an understanding and appreciation of the different processes and commitments involving both safety personnel and the judiciary. Let there be no mistake: Just Culture also implies that misuse of criminal processes or ignorance on the part of the judiciary is equally unacceptable! There is still a long way to go, both in Europe as well as within the ICAO; but, most of the signs are outright encouraging, as witnessed by the deliverables of the Just Culture Task Force, as well as those expected from the SIPTF and reactions from third parties.

Finally, as the best concepts are often the most simple ones, I would submit that the essence of Just Culture, which reconciles safety and justice interests, can be conveyed in the well-known saying, “It takes two to tango”.

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