

IMPLICATIONS OF TRANSPARENCY IN THE INTERNATIONAL CIVIL AVIATION ORGANIZATION'S UNIVERSAL SAFETY OVERSIGHT AUDIT PROGRAMME

I. INTRODUCTION

The Convention on International Civil Aviation, which now has 190 signatories, created the International Civil Aviation Organization (ICAO), a specialized United Nations agency,¹ which adopts Standards and Recommended Practices (SARPs) "to promote the orderly, safe and efficient development of international aviation".² ICAO developed the Universal Safety Oversight Audit Program (USOAP) to conduct regular, mandatory, systematic, and harmonized safety audits in all States to assess its capability for safety oversight; for effective execution of a safety oversight system; and the level of implementation of safety-related SARPs.

Initially, the results of the USOAP audits were strictly confidential, but have evolved to become fully transparent. In this perspective, this paper will seek to analyze basic elements of the USOAP and its process to achieve full transparency in order to identify the safety, economic, political, and legal outcomes produced by this element.

II. UNIVERSAL SAFETY OVERSIGHT AUDIT PROGRAMME

In the history of ICAO, the first acknowledgement that the notification of differences from SARPs was not satisfactory can be traced back to Resolution A7-9 adopted during the 7th Assembly in 1953. The Assembly recognized a "lack of positive evidence as to the degree of implementation on a worldwide basis of International Standards, Recommended Practices and Procedures".³

It was not until 1997, that a conference of Directors General of Civil Aviation on "Global Strategy of Safety Oversight" (DGCA/97) developed a strategy for enhancing the global capacity for safety oversight through an assertive and effective program established to conduct regular, mandatory, systematic and harmonized safety audits in all States.⁴

Based on the DGCA/97 action plan, the Council approved the establishment of the USOAP on 6 May 1998. In October 1998, the 32nd Assembly unanimously adopted it, applicable to all States starting on 1 January 1999. During this cycle, States were audited

¹ As of 19 August 2008, the total count of independent States was 194.

See Bureau of Intelligence and Research, "Independent States in the World", Fact Sheet (19 August 2008), online: U.S. Department of State <<http://www.state.gov/s/inr/rls/4250.htm>>.

² Thomas Buergenthal, *Law-Making in the International Civil Aviation Organization* (Syracuse, N.Y.: Syracuse University Press, 1969) at 4 [hereinafter Buergenthal].

³ *Resolutions and Indexes to Documentation*, Res. A7-9, ICAO Doc. 7417 (1953) at 23.

⁴ See Michael Milde, "Aviation Safety Oversight: Audits and the Law" (2001) XXVI Ann. Air & Sp. L. 165 at 174 [Milde].

regarding the implementation of the *Standards* contained in Annexes 1 (Personnel Licensing), 6 (Operations of Aircraft), and 8 (Airworthiness of Aircraft) with confidential results to be used only for safety-related purposes.⁵ These audits are known as the **initial audit cycle** (1999 - 2004).

In the 33rd and 35th Sessions of the ICAO Assembly the program was expanded to audit States for compliance with every safety-related *Standard* contained in the Annexes to the Chicago Convention encompassing a "*comprehensive systems approach*".⁶ The audits conducted under this approach are known as **CSA audit cycle** (2005 - 2010).

The 36th Assembly directed the Council to examine the feasibility of a *continuous monitoring* methodology based on permanent data collection, States' updated data, ICAO regional inputs, on-site audit visits, and safety risk analysis.⁷ If the next 37th Assembly endorses the concept of *continuous monitoring approach*, the **CMA audit cycle** will begin in 2011.⁸

Even though, the implementation of SARPs has been a priority among the States, it took 45 years for the Organization to develop a program designated to improve States' aviation oversight, and hence, aviation safety.

III. SAFETY OVERSIGHT AUDIT

Safety oversight is a process by which States ensure implementation of SARPs at the domestic level through the enactment of primary aviation legislation and the establishment of an oversight agency (typically a Civil Aviation Authority (CAA)).⁹ With apt safety oversight, the State should ensure that it's national aviation industry meets or exceeds the safety levels established by the SARPs.

The conduct of safety oversight audits consist of three phases. During the **pre-audit** phase the State's organization is identified, including the establishment for safety oversight, the implementation of SARPs and the identification of differences.

In the **on-site** phase, an audit team visits the State and verifies the information provided. During this phase, the audit team will draft the findings and recommendations acknowledged during the audit.

⁵ See *Assembly Resolutions in Force*, Res. A32-11: Establishment of an ICAO Universal Safety Oversight Audit Programme, ICAO Doc. 9730 (1998) at I-48 [Doc. 9730]. Also see Milde, *supra* note 4 at 174.

⁶ *Safety Oversight Audit Manual*, ICAO Doc. 9735 AN/960 (2006) § 2.5.3 [hereinafter *Safety Oversight Audit Manual*].

⁷ See Session of the ICAO Council. *Report of the Executive Committee on Agenda Item 13*, 36th Sess., ICAO Doc. A36-WP/329 (2007) § 13.7.

⁸ See Session of the ICAO Assembly. *Vision for the future of USOAP following completion of the current audit cycle (2005-2010)*, 36th Sess., Agenda Item 13: Progress report on the implementation of the ICAO USOAP under the comprehensive systems approach, ICAO Doc. A36-WP/80 (2007) § 2.3.

⁹ See *Safety Oversight Manual*, ICAO Doc. 9734 AN/959 (2006) § 2.1.1 [hereinafter *Safety Oversight Manual*].

Finally, the **post-audit** phase starts when an interim safety oversight audit report is prepared and submitted. It finishes with the publication of the Final Safety Oversight Audit Report on the ICAO secure website and the results in the public website.

The final step in the process is the development and implementation of a Corrective Action Plan which must address all of the findings and recommendations pointed by the audit team and a detailed information of actions to be taken including their respective timeframes.¹⁰

IV. FULL TRANSPARENCY PROCESS

Since its creation in 1999, the USOAP has been an essential tool for auditing and improving State's implementation of SARPs. Additionally, it has allowed continuing determination of areas of safety concern.¹¹ However, USOAP has progressed and has experienced modifications that have in turn spawned new trends in its implementation, including the element of transparency.

1. EMERGENCE AS A PRINCIPLE (1997-1998)

The origin of the process to achieve full transparency of audit results can be tracked to the DGCA/97. The conference recommended that greater transparency and increased disclosure should be implemented in the release of audit results through summary reports to be used by other States to form an opinion of the safety oversight status of assessed States. It was recommended that a reasonable time should be given to States to remedy deficiencies noticed during their audits before such report would be disclosed.¹²

The rationale of greater transparency in audits results contained in the recommendation of the DGCA/97 was applied by the 32nd Assembly, when the USOAP was adopted including the concept "that greater transparency and increased disclosure [should] be implemented in the release of audit results".¹³ Importantly, the Assembly urged all States "to ensure that the results of the audits be used for safety-related purposes only".¹⁴

¹⁰ See Safety Oversight Audit Manual, *supra* note 6 § 6.4.

¹¹ See Session of the ICAO Assembly. *Progress Report on the Implementation of the ICAO USOAP*, 35th Sess., Agenda Item No. 16: Improvement of Safety Oversight, ICAO Doc. A35-WP/67 (2004) § 4 [A35-WP/67].

¹² See Session of the ICAO Assembly. *Transition to the ICAO Universal Safety Oversight Audit Programme*, 32nd Sess., Agenda Item No. 17: Safety Oversight, ICAO Doc. A32-WP/61 (1998) § 3.1.

¹³ See *Resolutions adopted at the 32nd Session of the Assembly*, Res. A32-11, ICAO Provisional Edition (2001) at 21 [hereinafter *Resolutions adopted at the 32nd Session of the Assembly*].

¹⁴ *Ibid.*

2. SHARING AUDIT FINDINGS' ANALYSIS (1998-2000)

Following the adoption by the Assembly of Resolution A32-11, the ICAO Council agreed on "posting the analysis of the audit findings at global and regional levels on a password protected ICAO webpage".¹⁵ With respect to the evolution process to achieve full transparency in the audit results, this was the first concrete step. The original aim of greater transparency and disclosure was to identify areas for States to work together to address safety issues. Proactive action was intended to achieve safer skies, as reaffirmed by the Assembly's insistence that the information derived from audits should be restricted to safety related usages.

3. DISPLAYING AUDIT SUMMARY REPORTS (2001-2002)

During the 33rd Assembly, eight fundamental principles¹⁶ were developed to assure States of the validity of the audit process. One principle is transparency and disclosure. It was proposed that "ICAO [should] publish a non-confidential audit summary report of each completed audit. The summary report [should] contain sufficient information to enable States to form an opinion as to the safety oversight status of the audited State".¹⁷ It was also proposed that the report should indicate improvements made post-CAP implementation¹⁸.

During the 165th Session of the ICAO Council, it was decided to share non-confidential information to enhance aviation safety.¹⁹ A webpage was recommended to share audits, follow-up summary reports, and successful resolution of safety deficiencies.²⁰ In 2002, a webpage dedicated to USOAP became fully operational and provided links to all audit and follow-up summary reports published.²¹ Access was, at that time, limited to States and the ICAO Secretariat.

4. DISPLAY OF AUDIT REPORTS AND PROCEDURE OF TRANSPARENCY AND DISCLOSURE (2004-2005)

¹⁵ Session of the ICAO Council. *Summary of the Minutes of the 10th Meeting*, 163rd Sess., ICAO Doc. C-MIN/10 (2001) § 20, f).

¹⁶ Sovereignty; Universality; Transparency and disclosure; Timeliness; All-inclusiveness; Systematic, consistent and objective; Fairness; and Quality.

¹⁷ Session of the ICAO Assembly. *Report on the ICAO Universal Safety Oversight Audit Programme*, 33rd Sess., Agenda Item No. 15: Improvement of safety oversight, ICAO Doc. A33-WP/47 (2001) § 2.4 [A33-WP/47].

¹⁸ Currently, States are able to post their improvements on the ICAO website; however, the information posted by the State after the audit is not verified by ICAO.

¹⁹ See Session of the ICAO Council. *Summary of Decisions*, 165th Sess., Subject No. 14.5: Progress of the ICAO Universal Safety Oversight Audit Programme, ICAO Doc. C-DEC 165/11 (2002) § 3, d).

²⁰ See Session of the ICAO Council. *Progress of the ICAO Universal Safety Oversight Audit Programme*, 166th Sess., Agenda Item No. 14.5: Safety Oversight, ICAO Doc. C-WP/11815 (2002) § 4.

²¹ See Session of the ICAO Council. *Progress of the ICAO Universal Safety Oversight Audit Programme*, 167th Sess., Agenda Item No. 14.5: Safety Oversight, ICAO Doc. C-WP/11913 (2002) § 3.2.

At the Council session prior to the 35th Assembly, the representative of France expressed concern over "the continuing trend regarding the growing number of States which [...] have not shown much progress in the implementation of their CAPs and in the resolution of identified deficiencies at the time of their initial audits".²² Thus, he proposed that audit reports should be published in their entirety and safety-related deficiencies should be reported to the Council in accordance with Article 54(j) of the Chicago Convention.²³

Twelve States supported this bid for greater transparency. It was also noted that deficiencies must be addressed within a multilateral framework without the suggestion of coercive measures or the possibility of unilateral action by States.²⁴ This subject was later presented and adopted during the 35th Assembly in Resolutions A35-6 and A35-7.

The 35th Assembly directed the Secretary General to make the final safety oversight audit reports available to States, and to provide access to all relevant information derived from the Audit Findings and Differences Database (AFDD). The Assembly also directed the Council to develop a procedure to inform all States of any State which posed a significant safety compliance concern.

The initial generic mandate to increase transparency and disclosure opened the door to the identification of non-compliant States. However, this scheme was going to be shaped to reach a specific target: States with severe and persistent safety oversight shortfalls and, as a last resort to allow other States to protect their aviation industry, airspace, passengers, and goods from safety risks. As of 31 October 2004, all audit summary reports were published and distributed to States in addition to relevant information from the AFDD.²⁵

To deal with the development of a procedure to inform all States about a State with significant safety compliance shortcomings, the Secretariat developed a *Procedure of Transparency and Disclosure*²⁶ to analyse relevant data, and if significant compliance shortfalls persisted the matter would then be brought to the Council's attention for a recommendation to be made. If the State fails to carry out such recommendation all States should be informed.²⁷ The procedure was approved unanimously by the Council

²² ICAO Council, *Progress Report on the Implementation of the ICAO USOAP*, 172nd Sess., Agenda Item No. 14.5: Safety Oversight, ICAO Doc. C-WP/12289 (2004) § 2.5.

²³ See ICAO Council, *Summary Minutes of the 14th Meeting*, 172nd Sess., Agenda Item No. 14.5: Safety Oversight, ICAO Doc. C-MIN 172/14 (2004) § 28.

²⁴ *Ibid.*

²⁵ See Session of the ICAO Council. *Progress report on the implementation of the ICAO Universal Safety Oversight Audit Programme*, 173rd Sess., Agenda Item No. 14.5: Universal Safety Oversight Programme, ICAO Doc. C-WP/12314 (2004) § 2.1.1.

²⁶ See ICAO Council, *Procedure of Transparency and Disclosure*, 174th Sess., Agenda Item No. 14.5: Safety Oversight, ICAO Doc. C-WP/12497 (2005) [C-WP/12497].

²⁷ See *Ibid.* § 1 and 6.

on 13 June 2005.²⁸

5. PUBLICATION OF RESULTS ON THE PUBLIC WEBSITE (2006-2008)

In March 2006, ICAO held a Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety (DGCA/06). The Secretariat propose that final audit reports derived from the initial and current audit cycles should be made publicly available through the ICAO website.²⁹

The European Community, its Members, other European Civil Aviation Conference (ECAC) Members and EUROCONTROL, urged ICAO to make the USOAP reports available to all States and to inform them about infractions of the Convention.³⁰ The African States presented a document in support of the principles of transparency of safety information asking that the reports would be transmitted only to States.³¹ Members of the Latin American Civil Aviation Commission expressed concern about the improper use of information on aviation safety, and thus requested ICAO's vigilance of any such misuse.³²

The following recommendations³³ were adopted in the DGCA/06 and later endorsed by the ICAO Council:³⁴

- a. States were urged to authorize the publication of their initial audits results and report on the ICAO public website.
- b. States should have the opportunity to upload post-audit progress.
- c. States should authorize ICAO to display safety data gathered under the CSA audit cycle.
- d. States should consent to publish all relevant information not later than 23 March 2008.
- e. ICAO would make public the identity of the States that have not authorized

²⁸ See ICAO Council, *Summary Minutes of the Thirteenth Meeting, 175th Sess., Agenda Item No. 14.5: Safety Oversight*, ICAO Doc. C-MIN 175/13 (2005) § 44, c).

²⁹ See Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety. *Transparency and Sharing of Safety Information*, Theme 2: Improving aviation safety, ICAO Doc. DGCA/06-WP/5 Revised (2006) § 2.13.

³⁰ See Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety. *Proposals for further Improvement of Aviation Safety Worldwide*, Theme 2: Improving aviation safety, ICAO Doc. DGCA/06-WP/11¹ Revised (2006) § 6.1, a) and f).

³¹ See Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety. *Free flow and protection of safety information*, Theme 2: Improving aviation safety, ICAO Doc. DGCA/06-WP/26 (2006) § 4.1, b), c) and d).

³² See Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety. *Transparency and Protection of Safety Information against Improper Use*, Theme 2: Improving aviation safety, ICAO Doc. DGCA/06-WP/30 Revised (2006) § 2.3 and 4.1, a) and c).

³³ Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety. Report approved by the Conference and Published by authority of the Secretary General, 6th Sess., ICAO Doc. 9866, DGAC/06 (2006) at 3-4, 3-5 and 3-11.

³⁴ See Session of the ICAO Council. *Summary of Decisions, 178th Sess., 1st Mtg., Subject No. 14.5: Outcome of the Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety 2006*, ICAO Doc. C-DEC 178/1 (2006) § 26.

- their audit results and/or reports release.
- f. ICAO should develop a mechanism to resolve significant safety concerns.

ICAO informed on 28 March 2008 that six States did not consented to release their audit information, namely: Iran, Kazakhstan, Kiribati, Sierra Leone, Swaziland, and Zimbabwe. Subsequently, on 16 July 2008, ICAO announced that "**all Member States** [audited] have given their consent for ICAO to release the results of audits conducted in their territory".³⁵

6. SIGNIFICANT SAFETY CONCERN (2006-2008)

A significant safety concern occurs "when a holder of an authorization or approval does not meet the minimum requirements established by the State and by the Standards set forth in the Annexes to the Chicago Convention are not met, resulting in an imminent safety risk to international civil aviation".³⁶

On 29 November 2006, the Council approved the following mechanism to deal with significant safety concerns.³⁷

- a. If a preliminary significant safety concern is identified during the course of an audit, it will be described to the audited State during the on-site audit phase.
- b. ICAO will officially: i) notify the audited State about the existence of any significant safety concern within fifteen days of the conclusion of the on-site phase, and ii) request a corrective action to be taken within a stipulated timeframe.
- c. If the State fails to provide the corrective action to resolve the significant safety concern, it will be contacted to determine why such action was not satisfied. The results will be reported to the Council.
- d. Unresolved significant safety concerns will be notified to all States through the ICAO secure website.

On 30 April 2008, the Secretary General notified the Council that six States had not resolved significant safety concerns. Due to the sensitivity of this information, the identity of these States subject remains confidential to the Council.

7. IMPLEMENTATION OF THE PROCEDURE OF TRANSPARENCY AND DISCLOSURE (2005-2008)

³⁵ ICAO, "All Audited States now authorize ICAO to post audit results on public website", online: ICAO <http://www.icao.int/icao/en/nr/2008/pio200804_e.pdf>.

³⁶ Session of the ICAO Council. *Review of the Memorandum of Understanding (MOU) relating to the conduct of safety oversight audits under the comprehensive systems approach*, 179th Sess., 12th Mtg., Subject No. 14.5: Safety Oversight, ICAO Doc. C-MIN 179/12 (2006) § 49.

³⁷ See Session of the ICAO Council. *Review of the Memorandum of Understanding (MOU) relating to the conduct of safety oversight audits under the comprehensive systems approach*, 179th Sess., 12th Mtg., Subject No. 14.5: Safety Oversight, ICAO Doc. C-WP/12774 (2006) § 2.2 and 2.3.

On 12 August 2005, the Council sent a State Letter informing all States about the *Procedure of Transparency and Disclosure*³⁸ and an individual letter to those States which had not submitted a CAP or where a follow-up mission could not be conducted.³⁹ During the DGCA/06, the Secretary General presented significant issues of concern as shown in the following chart:⁴⁰

States not audited	States without action plan	States without follow-up missions	States not visited for follow-up missions
Afghanistan	Central African Republic	Chad	Andorra
Burundi	Djibouti	Congo	San Marino
Iraq	Equatorial Guinea	Eritrea	Israel
Liberia	Guinea-Bissau	Kiribati	Democratic Republic of the Congo
Sierra Leone	Micronesia	Libyan Arab Jamahiriya	
Solomon Islands	Nauru	Marshall Islands	
Somalia	Sao Tome and Principe	Rwanda	
		Swaziland	

The following chart describes the activities performed as of 21 July 2008 under the initial audit cycle and after the implementation of the *Procedure of Transparency and Disclosure*:

States not audited	States without action plan	States without follow-up missions	States not visited for follow-up missions
Afghanistan	Micronesia	Chad	
Burundi		Congo	
Iraq		Eritrea	
Somalia		Kiribati	
Afghanistan, Burundi, Iraq, Somalia, Micronesia, Chad, Congo, Eritrea and Kiribati are scheduled to be audited sometime in 2010.			

The 36th Assembly specifically directed the Council to apply the *Procedure of*

³⁸ See Session of the ICAO Council. *Implementation of the Article 54 j) of the Chicago Convention in the Field of Safety and Safety Oversight*, 176th Sess., Agenda Item No. 13: Work programmes of the Council and its Subsidiary Bodies, ICAO Doc. C-WP/12588 (2005) § 1.2.

³⁹ See Session of the ICAO Council. *Progress Report on the Implementation of the ICAO Universal Safety Oversight Audit Programme under the Comprehensive System Approach*, 177th Sess., Agenda Item No. 14.5: Safety Oversight, ICAO Doc. C-WP/12614 (2006) § 7.1.

⁴⁰ See Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety. *The Status of Safety Oversight*, 6th Sess., Theme 1: The status of aviation safety today, ICAO DGCA/06-WP/3 (2006) § 4 [DGCA/06-WP/3].

Transparency and Disclosure in the case of a State with significant shortcomings.⁴¹ This procedure was considered for the first time during the 184th Session of the Council.

8. CURRENT SITUATION OF AUDIT INFORMATION

For nine years, the Transparency and Disclosure principle was based on confidence and trust. Therefore, transparency enjoys a high degree of acceptance among the States. The Assembly built the principle of Transparency and Disclosure on fundamental pillars that have facilitated the release and sharing of information. However, increased disclosure should be used only for safety-related purposes; common deficiencies should be identified in order to find collective solutions; the sharing of information is not intended to disadvantage States that lack resources and cannot be misused for political or economic reasons.

Many States still do not benefit from ICAO initiatives to improve SARPs implementation because of the lack of technical, financial, or human resources. For this reason ICAO has developed different sources to assist States in resolving safety-related shortcomings, such as: the ICAO Technical Co-operation Bureau; the Implementation Support and Development Branch; the International Financial Facility for Aviation Safety; and a partnership system to analyse causes and develop and implement solutions.

Currently, ICAO, States, other international organizations, air navigation service providers and financial institutions are promoting global, regional and national programmes to encourage cooperation and assistance to resolve safety-related deficiencies identified by the USOAP. Today, it is difficult to argue that a State cannot improve its level of compliance with the SARPs or cannot implement its CAP. The ingredients required in this formula are transparency, sharing of information and political will to fulfill the obligations prescribed by the Chicago Convention and its Annexes.

V. OUTCOMES OF FULL TRANSPARENCY

Certainly, consequences flow from the public display of sensitive information about States' level of compliance with SARPs and safety oversight capabilities. This part of the article assesses the outcomes of ICAO's USOAP transparency in the following areas: safety, economic, political, and legal.

A. SAFETY OUTCOMES

The USOAP has helped States identifying and correcting deficiencies in the implementation of SARPs, resulting in important gains in aviation safety, and transparency has underpinned this progress.

⁴¹ Resolutions adopted by the 36th Session of the Assembly, Res. A36-24 ICAO Provisional Edition (2007) at 3.

The first USOAP report presented to the 33rd Assembly indicated that, as of August 2001, 180 States and 5 territories, representing 97% of all States were audited. Seminars and workshops were attended by 600 participants, and 3 auditor training courses were conducted.⁴² Due to confidentiality, data was displayed in general terms without reference to particular States.

The report presented to the 35th Assembly in 2004 indicated that, as of 31 July 2004, 181 States, 3 territories, and 2 Special Administrative Regions of China were audited. Following the Resolution A32-11 mandate of greater transparency and increased disclosure, the report made public for the first time the identity of the eight States that failed to submit a CAP to rectify deficiencies identified by the audits.⁴³ The report indicated that this failure was due to limited financial and human resources in these countries.⁴⁴ The report noted that the AFDD improved and that the data collected in the audits and follow-up missions continued to enable ICAO to identify and quantify safety oversight-related deficiencies and to prioritize solutions. It was noted that the success of USOAP was bound to States' commitment to implement the recommendations contained in their CAPs. The report showed general significant progress in the implementation of the CAPs but unsatisfactory progress amongst 24% of States.⁴⁵

Improvements flowing from audits have had tangible results. The rate of safety related accidents involving passenger fatalities in scheduled air transport operations worldwide for the period 1994-1999 was 1.3; this declined to 0.8 for the period 2000-2004, a 61.5% reduction.⁴⁶

The report presented to the 36th Assembly noted that audits conducted during the CSA audit cycle from April 2005 to April 2008 to 90 States⁴⁷ indicates a lack of implementation of the critical elements of safety oversight of just over 40%,⁴⁸ increasing the awareness of safety oversight responsibilities, compliance with ICAO provisions, and implementation of critical elements. However, ICAO has no enforcement powers, thus transparency is key to encouraging compliance. The soft law status of SARPs

⁴² See Session of the ICAO Assembly. *Report on the ICAO Universal Safety Oversight Audit Programme, 33rd Sess.*, Agenda Item No. 15: Improvement of safety oversight, ICAO Doc. A33-WP/47 (2001) § 3.

⁴³ Central African Republic, Congo, Djibouti, Equatorial Guinea, Guinea-Bissau, Micronesia, Nauru, and Sao Tome & Principe

⁴⁴ In addition and primarily for security reasons, at that time ICAO did not conduct audits in seven States: Afghanistan, Burundi, Iraq, Liberia, Sierra Leone, Solomon Islands and Somalia. See A35-WP/67, *supra* note 11 at § 3.

⁴⁵ The report mentioned that 24% of audited States did not have the appropriate improvements. The main reason of this situation was describe as "resource-related problems" and for very few States due to "lack of political will".

⁴⁶ See Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety. *Worldwide and Regional Trends in Aviation Safety, 6th Sess.*, Theme 1: The status of aviation safety, ICAO Doc. DGCA/06-WP/2 (2006) § A-3.

⁴⁷ At 31 July 2008 ICAO had 190 States. Therefore, the sample covers almost half of the members States of the Organization (47.37 per cent). See ICAO, "States", online: ICAO <http://www.icao.int/cgi/goto_m.pl?cgi/statesDB4.pl?en>.

⁴⁸ See Session of the ICAO Council. *Progress Report on ICAO Audit Activities: USOAP and USAP, 184th Sess.*, Subject No. 14.5: Safety Oversight, ICAO Doc. C-WP/13171 (2008) at Appendix A.

prevents affirmative ICAO action, yet States have granted ICAO limited power to publicize audit reports⁴⁹ and the Council has the opportunity to apply the *Procedure of Transparency and Disclosure*.

As noted by Professor Paul Dempsey, "there also instances of compliance inspired by the desire to avoid the costs of non compliance such as [...] the adverse publicity and negative world opinion to which the uncooperative nation may be subjected if it is perceived as a delinquent".⁵⁰ ICAO uses transparency to inform States of potential safety risks. While this process may operate as planned, other economic and political mechanisms help States to overcome their deficiencies.

For private donors who invest funds for technical cooperation and assistance programs, access to information showing tangible results is crucial. As Giovanni Bisignani, Director General and Chief Executive Officer of IATA observed in September 2007, "ICAO's Universal Safety Oversight Audit Programme plays an important role, growing in relevance with increasing transparency".⁵¹ Moreover, ICAO bases assistance programs, such as the Implementation Support Development Programme (ISD), on transparency and information sharing.⁵²

On the other hand, Article 1 of the Chicago Convention recognizes that each State has "complete and exclusive sovereignty over [its] airspace";⁵³ Article 6 grants them the right to prohibit flights through or into its jurisdiction; and Article 33 establishes that "certificates of airworthiness and certificates of competency and licenses issued or rendered valid by the State in which the aircraft is registered, shall be recognized as valid by the other States, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards [SARPs] which may be established from time to time pursuant to this Convention".⁵⁴

Mutual recognition of certificates and licences is fundamental to commercial operations. This implies that States are satisfied with each others' level of compliance with ICAO's safety provisions and the safety oversight provided. The satisfaction of the requirements can be performed directly through bilateral agreements or by analyzing data regarding the State. If the summaries or the audit results of the USOAP show that a

⁴⁹ This power was conferred by each State. See ICAO, "All Audited States now authorize ICAO to post audit results on public website", online: ICAO <http://www.icao.int/icao/en/nr/2008/pio200804_e.pdf>.

⁵⁰ Paul Stephen Dempsey, "Blacklisting: Banning the Unfit from the Heavens" (2007) XXXII Ann. Air & Sp. L. 29 at 60 [hereinafter Dempsey].

⁵¹ Giovanni Bisignani, "Keynote address delivered at the 2007 ICAO-McGill Conference on Aviation Safety, Security and Environment - The way forward" (2007) XXXIII Ann. Air & Sp. L. 496 at 498.

⁵² See Ruwantissa Abeyratne, "Blacklisting of Airlines by the European Union and the Disclosure of Safety Critical Information" 14:5 Issues in Aviation Law and Policy (May 2008) 1135 at 1144.

⁵³ *Convention on International Civil Aviation*, Dec. 7, 1994, 15 U.N.T.S. 295, ICAO Doc. No. 7300/9 § Art. 1. [Chicago Convention].

⁵⁴ *Ibid.*, Art. 33.

State is not satisfying the minimum safety requirements, the "State authority cannot reasonably assume without verification that the condition for recognition stated in Article 33 is actually being met by another State".⁵⁵

States can obtain the audit summary reports or the full audit results through the ICAO website. Once this information is acknowledged, States are encouraged to take actions when necessary to preserve safety.⁵⁶ The "appropriate actions" could include an increase of safety measures or non-recognition of certificates and licenses resulting in a denial of operations from an "unsafe" State. Therefore, "a State could only legitimately deny another State's aircraft (so long as it held traffic rights) if the registering State was failing to comply with its obligations under the SARPs".⁵⁷

Before the USOAP, most States were generally confident that other members were fulfilling their safety obligations and thus recognized their certificates and licences. However, the USOAP results showed that some States did not respect applicable SARPs. Consequently, if a State does not fully-comply with the standards, it risks the non-recognition of its certificates by other States, thus restricting the operations of its certificate-holders. Unfortunately, on several occasions, economic and political considerations are disguised as a "safety measures" taken by a State to restrict operations from another State.

B. ECONOMIC AND POLITICAL CONSIDERATIONS

The exchange of traffic rights takes place through bilateral or multilateral negotiations between States. In the seminal Bermuda I agreement concluded by the US and UK in 1946, the issue of safety was contemplated by the provision that certificates of airworthiness and licenses issued or rendered valid by one State would be mutually recognized. In further agreements, the same clause served as a model until ICAO proposed a modern approach in 2001. This model clause has incorporated the concept that the recognition of certificates and licenses is reliant on their compliance, at least, with the minimum requirements established by the Chicago Convention and its Annexes.

The transparency achieved by the USOAP allows States to assess if another State is compliant with safety regulations and to act – such as to withhold, revoke, suspend, limit, or impose conditions on the operating authorization or technical permission to perform operations with that State.

1. US INTERNATIONAL AVIATION SAFETY ASSESSMENTS

⁵⁵ Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety. *Mutual Recognition*, 6th Sess., Theme 2: Improving aviation safety, ICAO Doc. DGCA/06-WP/8 (2006) § 1.2.

⁵⁶ *Resolutions adopted at the 35th Session of the Assembly*, Res. A35-7, ICAO Provisional Edition (2004) at 26 [hereinafter *Resolutions adopted at the 32nd Session of the Assembly*].

⁵⁷ Paul Stephen Dempsey, "Blacklisting: Banning the Unfit from the Heavens" (2007) XXXII Ann. Air & Sp. L. 29 at 41.

The US International Aviation Safety Assessments (IASA) Program was established in August 1992 to address the fear that some States were not implementing the required safety standards. This program was a response to the Avianca Airlines accident over New York on 25 January 1990.⁵⁸ In addition to safety concerns, it has been theorized that the move was a response to complaints that US carriers were being undercut on price by less safety-conscious competitors.⁵⁹

The IASA program sends teams to the assessed State to review its national laws, aviation authority's organizational structure, personnel qualifications, aviation safety regulations, licensing systems, and air carrier procedures of certification against the SARPs⁶⁰. Following the assessment, IASA assigns a rating (Category 1 - in compliance; Category 2 - **not** in compliance;) to the assessed State regarding its level of compliance with the SARPs.⁶¹

In the first round of assessments, the Federal Aviation Authority (FAA) rated nine States,⁶² mostly Latin American, as Category 2. In 1994, the US Department of Transportation publicly announced its findings and encouraged use of US carriers over non-compliant States' carriers, thus negatively impacting these latter carriers and tourism in their home States.⁶³ As of June 2008, 20 States were considered non-compliant with ICAO standards by the FAA: Bangladesh, Belize, Côte d'Ivoire, Democratic Republic of Congo, Gambia, Ghana, Guyana, Haiti, Honduras, Indonesia, Kiribati, Nauru, Nicaragua, Paraguay, Philippines, Serbia and Montenegro, Swaziland, Ukraine, Uruguay and Zimbabwe.⁶⁴

Professor Dempsey gives two instances in which political and economic factors may have been taken into account in arriving at the rating:

- a. In 1995, the FAA found Venezuela non-compliant. The FAA did not revise this despite positive feedback from ICAO audits. US carriers Continental and

⁵⁸ See Accident Database & Synopses, "NTSB Identification: DCA90MA019", online: National Transportation Safety Board <http://www.ntsb.gov/NTSB/brief.asp?ev_id=20001212X22401&key=1>.

⁵⁹ Dempsey, *supra* note 57 at 46.

⁶⁰ Note that only *Standards* as defined by ICAO are binding on a State.

⁶¹ See Maglena Boteva, *A New Century and a New Attitude Towards Safety Oversight in the Air Transportation* (LLM Thesis, McGill University Faculty of Law, Institute of Air and Space Law, 2000) [unpublished] at 89-94.

⁶² Belize, Dominican Republic, Honduras, Nicaragua, Paraguay, Uruguay, Ghana, Gambia and Zaire. See M.L. Morrison, "Navigating the Tumultuous Skies of International Aviation: The Federal Aviation Administration's Response to Non-Compliance with International Safety Standards" (1995) 2 Sw. J. Trade Am. 621 at 626.

⁶³ See Dempsey, *supra* note 57 at 48.

⁶⁴ These are Bangladesh, Belize, Côte d'Ivoire, Democratic Republic of Congo, Gambia, Ghana, Guyana, Haiti, Honduras, Indonesia, Kiribati, Nauru, Nicaragua, Paraguay, Philippines, Serbia and Montenegro, Swaziland, Ukraine, Uruguay, and Zimbabwe. See FAA, "International Aviation Safety Assessments (IASA) Program, Results (MS Excel)", online: Federal Aviation Administration <http://www.faa.gov/safety/programs_initiatives/oversight/iasa/?CFID=3308078&CFTOKEN=b92fcf02b2914d78-8BC11DDC-1372-4138C9C0D46092E1498E&jsessionid=1230cde4194cf5d79346>.

Delta dominated the US-Venezuela market until in 2006 the Venezuelan government threatened to halt US flights to Venezuela, which prompted a re-evaluation and upgrading of Venezuela to Category 1.

- b. Although undocumented, it has been noted that Ecuador was elevated to Category 1 only after Ecuador threatened to cancel oil exploration contracts with US oil firms.

Examples of shifts in rating between 2004 and 2008 are Argentina, Ecuador, Greece, and Venezuela upgraded from Category 2 to Category 1, while Ghana and the Ukraine fell from Category 1 to Category 2.⁶⁵

On the other hand, USOAP information about 11 States rated as Category 2 shows progress in resolving deficiencies identified during audit and/or follow-up missions. The progress recorded is exemplified in the following chart.

**CRITICAL ELEMENTS OF A SAFETY OVERSIGHT SYSTEM
LACK OF EFFECTIVE IMPLEMENTATION (%)⁶⁶**

State	Initial Audit	Follow-up Mission
Bangladesh	28.18% (March 2000)	10.03% (November 2004)
Belize	47.97% (March 2001)	19.39% (August 2003)
Côte d'Ivoire	59.82% (May 2000)	34.55% (March 2004)
Democratic Republic of Congo	N/A*	-
Gambia	I/P** (March 1999)	I/P** (February 2003)
Ghana	21.86% (April 2001)	16.70% (May 2003)
Guyana	40.47% (March 2001)	24.40% (June 2003)
Haiti	40.39% (March 2001)	28.59% (February 2004)
Honduras	57.36% (July 2000)	11.80% (May 2004)
Indonesia	-	-
Kiribati	N/A*	-
Nauru	N/A*	-
Nicaragua	-	-
Paraguay	35.55% (August 1999)	0.00% (September 2001)
Philippines	-	-
Serbia and Montenegro	-	-
Swaziland	N/A*	-
Ukraine	-	-
Uruguay	13.45% (April 2001)	8.23% (May 2004)
Zimbabwe	30.61% (June 2001)	14.19% (July 2004)

⁶⁵ See Dempsey, *supra* note 57 at 49.

⁶⁶ See ICAO, "List of States that have authorized ICAO to release information on their Safety Oversight Audit conducted between 1999 and 2004", Graph, online: The International Civil Aviation Organization <<http://www.icao.int/fsix/auditRep1.cfm>>.

N/A*: Information is not incorporated in the public site of ICAO. I/P**: Information is in process. -: No information available in the public site of ICAO.

It is remarkable and interesting to note that other States rated as Category 1 in the IASA audits fall between the highest (Côte d'Ivoire with 34.55% after the Follow-Up Mission) and lowest (Uruguay with 8.23% after the Follow-Up Mission) percentages of lack of implementation of the SARPs of the States rated as Category 2 by the FAA, without any explanation about this difference. In the respective cases of Ecuador and Venezuela, their safety status is not as good as Uruguay, however, both are rated as Category 1. Finally, it is notable that Brazil (10.14%), China (11.06%), Portugal (16.93%) and Switzerland (8.87%) are also between these ranges in terms of level of compliance, but they have never been rated as Category 2 by the FAA. ICAO data on performance of States demonstrate that US categorization does not correlate with ICAO's findings on compliance, thus reinforcing the assertions made by Professor Paul Dempsey that political and economic factors may also be at play.

2. EUROPEAN UNION LIST OF BANNED AIR CARRIERS

In 1996, ECAC launched the Safety Assessment of Foreign Aircraft (SAFA) Program to assess compliance with ICAO Standards by ramp inspections of aircraft landing in any of its members.⁶⁷ By 2001, EU member States were obliged to "ensure that third-country aircraft suspected of non-compliance with international safety standards landing at any of its airports open to international air traffic [should] be subject to ramp inspections".⁶⁸

On 14 December 2005, the European Parliament and the Council of the European Union promulgated Regulation (EC) No. 2111/2005 and established a Community list of air carriers subject to an operating ban within the Community and to inform air transport passengers of the identity of the operating air carriers.⁶⁹ Additionally, the regulation establishes that the decision to blacklist an air carrier is based "upon the merits of each case"⁷⁰ taking into consideration if the carrier meets *the relevant safety standards*.⁷¹ As of 24 July 2008, 156 airlines were subject to an operational ban within the

⁶⁷ See See Zachary D. Detra, *The Legitimacy of the International Civil Aviation Organization's Universal Safety Oversight Audit Program* (LLM Thesis, McGill University Faculty of Law, Institute of Air and Space Law, 2006) [unpublished] at 58.

⁶⁸ EC, *Council Directive 2004/36/CE of April 2004 on the safety of third-country aircraft using Community airports*, [2004] O.J. L.143/76.

⁶⁹ EC, *Council Regulation 2004/36/CE of 14 December 2005 on the on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC*, [2005] O.J. L 344/15 Art. 3.

⁷⁰ See *Ibid.*, at Annex.

⁷¹ Relevant safety standards are defined as "the international safety standards contained in the Chicago convention and its Annexes, as well as, where applicable, **those in relevant community law**." [Emphasis added]. *Ibid.*, § Article 2 j).

European Community.⁷² Air carriers may be restricted or prohibited from European skies if they violate the safety standards "in relevant community law", even though the carriers are in compliance with the SARPs. This author believes that this contravenes Article 33 of the Chicago Convention since States undertake to recognize as valid the certificates and licenses issued by the registering State, contingent on compliance with ICAO Standards only.

The consequences of this measure are that new and appropriately maintained aircraft will be used to operate to Europe but older aircraft will remain active elsewhere, with the consequence that developing States will have even less safe aircraft. Further, the economic impact of a prohibition on the blacklisted airlines from operating in Europe may result in facilitating the achievement of market dominance by European carriers which would exclusively fly all the approved routes.

Both programs generate an adverse impact against a State or an airline, resulting in economic losses for the State's transportation, commerce and tourism. However, these programs have encouraged compliance with the Annexes of the Chicago Convention by exposing SARPs deficiencies. For States that are unable to comply, technical assistance and cooperation from developed countries are needed to resolve these deficiencies rather than retaliation which only serves to extend the gulf. However, the States' solid commitment to achieve higher levels of compliance with SARPs is a core element.

Although, if a government is not satisfied with the aviation safety requirements of another State, the logical response not only lie in revoking the permits or authorization granted to the carriers of that deficient country, but must also extend to stopping or suspending the operations of its own air carriers to that State until deficiencies are resolved.⁷³

Transparency and sharing of safety information are fundamental tenets of a safe global air transport system. The disclosure initiative was intended to foster mutual trust between States, increase public confidence in air travel, and help maintain the integrity of aviation in a non-discriminatory manner. If, gradually, the safety goal of disclosure of information encompasses economic or political interests, the essence of USOAP and the trust of States would have been mislaid.

C. LEGAL OUTCOMES

The implementation of the principle of transparency in the USOAP has generated several obligations for ICAO and its members:

1. OBLIGATIONS OF ICAO

⁷² See EU, "List of Air Carriers of Which all Operations are Subject to a Ban within The Community", online: EC <http://ec.europa.eu/transport/air-ban/pdf/list_en.pdf>.

⁷³ See George N. Tompkins, Jr., "Enforcement of aviation safety standards" (1995) XX-I Ann. Air & Sp. L. 319 at 326.

1.1. Obligation of Transparency

To achieve the goals of the Chicago Convention, States have undertaken "to collaborate in securing the *highest practicable* degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways, and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation".⁷⁴

The ideal situation would be for every State to implement all SARPs. However, under Article 38 of the Chicago Convention, if compliance is impracticable, a State shall notify ICAO of differences, and this one has the obligation to inform all States of such "notified differences".

"Audited differences" identified by the USOAP are instances of non-compliance identified during an audit. The question therefore arises as to whether the Council is required to notify States of the "audited differences" also.

The Council's mandate to disclose flows from the following provisions:

- a. Assembly Resolution A32-11 mandates "greater transparency and disclosure to audits"
- b. Article 54 (j) of the Chicago Convention obliges the Council to "report to States any [...] failure to carry out recommendations or determinations of the Council".
- c. The recommendation of the DGCA/06 endorsed by the Council entitles ICAO to upload the final safety oversight audit results on the public website.

This author argues that ICAO does not have the same obligation to inform States of "audited differences" as it does with regard to "notified differences". The only obligation regarding the audited differences is limited to transparency and disclosure with the exception of the *Procedure of Transparency and Disclosure* which is applied exceptionally.

1.2 Obligation of Assistance

Article 44 of the Chicago Convention establishes an obligation of technical

⁷⁴ See Chicago Convention, *supra* note 53 § Article 37.

assistance upon ICAO.⁷⁵ The literal interpretation of this Article establishes that one of the principal objectives of ICAO is to foster the development of international air transport. In this regard, the development and implementation of programs focused on technical cooperation and assistance in order to help States to achieve a better level of compliance with the international regulations developed by ICAO is in compliance with this objective; especially, where these programs promote the safe and orderly growth of international civil aviation.

Assembly Resolution A35-7: *Unified Strategy to Resolve Safety-Related*,⁷⁶ adopted nine strategies to resolve deficiencies identified by USOAP, focusing on States with a solid commitment to comply with the required actions, but lack the means to fulfill them.

Consequently, ICAO seems to have an obligation to develop programs that promote the resolution of safety-related deficiencies identified by USOAP with the objective of achieving the *highest practicable degree* of uniformity in safety-related regulations, standards, procedures, and organization. Indeed, this obligation has been fulfilled with the development of programs to help States comply with the SARPs and to assist them in acquiring affordable means of funding CAPs.

2. INTERNATIONAL OBLIGATIONS OF STATES

The primary obligation of States is to follow the actions expected by ICAO regarding the standard auditing procedures and the significant elements of the procedures applied in the USOAP as contained in the *Safety Oversight Audit Manual*.⁷⁷ This obligation finds its origin in two sources: the Memorandum of Understanding signed prior the conduct of the audit and Article 37 of the Chicago Convention which establishes that "Each State undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation".⁷⁸

All the efforts and recommendations of USOAP seek to achieve improved

⁷⁵ Chicago Convention Article 44 provides: The aims and objectives of the Organization are to develop the *principles and techniques of international air navigation and to foster the planning and development of international air transport* so as to:

(a) Insure the safe and orderly growth of international civil aviation throughout the world;

[...]

(d) Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;

[...]

(f) Insure that the rights of States are fully respected and that every State has a fair opportunity to operate international airlines;

(g) Avoid discrimination between States;

(h) Promote safety of flight in international air navigation;

[...]

⁷⁶ See Res. A35-7, *supra* note 56 at 26 and 27.

⁷⁷ See Safety Oversight Audit Manual, *supra* note 6 at Chapter 5.

⁷⁸ Chicago Convention, *supra* note 53 § Art. 37.

implementation of SARPs and promote uniformity of international aviation practices. States unable to comply with these obligations must seek assistance from ICAO or externally from such institutions as the World Bank or Regional Organizations in order to comply.

The current Memorandum of Understanding establishes the obligations of States prior, during and after the audit. With respect to transparency, it obliges the State: i) to grant authorization to ICAO to make available the final audit report in its entirety through the secure website of the Organization; and ii) to notify ICAO of any differences or non-compliance with the SARPs contained in any Annex.

3. NATIONAL OBLIGATIONS OF STATES

The implementation of the principle of transparency in the USOAP has produced a broad channel of communication between ICAO and States. With the information contained on the secure site (restricted to States) and on the public webpage, any interested party can reasonably assess safety compliance of States. Therefore, once a State is recognized as a persistent safety risk; the entire aviation community has the duty to act.

The 35th Assembly reminded "States of the need for surveillance of all aircraft operations, including foreign aircraft within their territory and [of the need] *to take appropriate actions when necessary to preserve safety*".⁷⁹ Appropriate action may be equated to non-recognition of certificates and licenses. Although such action is legitimate and even desirable, it is also subject to limits.

The first limitation flows from Resolution A32-11 which urged "all States to ensure that the results of the audits be used for safety-related purposes only",⁸⁰ thus discouraging other uses. The second limitation is in Article 44(g) of the Chicago Convention, which provides that ICAO should "avoid discrimination between States". If actions are going to be taken to preserve safety, they must be taken equally against all offending States. As previously demonstrated, some States have adopted seemingly⁸¹ discriminatory and thus illegitimate measures.

VI. CONCLUSIONS

- SARPs are constantly evolving to enhance safety, and States are expected to implement them. Therefore, there is a continuous need to monitor performance. Recurrent follow-up missions and audits are expensive for ICAO which is funded by its members. In this connection, an efficient monitoring system based on the real needs of each State and an efficient usage of the data collected by the USOAP is

⁷⁹ Res. A35-7, *supra* note 56 at 26.

⁸⁰ Resolutions adopted at the 32nd Session of the Assembly, Res. A32-11, see *supra* note 37 at 21.

⁸¹ The affirmation of this statement should be done only after a thorough investigation of every single case.

suggested.

- ICAO could serve as the sole agency for determining State implementation of SARPs. It is necessary to maintain the link of trust between the Organization and its members. Unilateral State audits which are aimed at the same objectives as the USOAP should be avoided since economic and political considerations and consequences are inevitably taken into consideration when performing them. Repetition of audits which ICAO is well placed to carry out is a waste of precious financial resources which could be better invested in provision of assistance to States in need.
- USOAP information must be used exclusively for safety related purposes. Safety-related information has to serve as a tool to achieve a safer and more harmonious aviation sector, and should be inclusionary and de-politicized.
- Transparency in the USOAP has been used as a "quasi-enforcement" power by ICAO. Today, States, international organizations, financial institutions, and passengers have access to the safety oversight audit results of most States. Transparency used as a "quasi-enforcement" power has improved aviation safety, especially among States that previously did not have the political will to comply. International organizations lack legal mechanisms to ensure compliance with international law developed by them. Transparency has proven to be an efficient "quasi-enforcement" tool to ensure compliance with SARPs.
- Transparency needs to be balanced with technical cooperation and assistance. Many States lack the infrastructure or means to comply with the SARPs. However, their strong political commitment to aviation safety supported by multilateral assistance rendered by partnerships and alliances can lead to significant improvements in the safety field.
- The intrinsic nature of international law suggests that the group of parties that empower the organization which develops directives in a specific area must comply with them especially if those parties are involved in the development of the directives. Specifically, in air transport, States act jointly to ensure maximum global safety. Therefore, it would be irrational to be part of an international organization, such as ICAO, and fail to comply as far as possible with SARPs.
- A balance between the obligations mentioned above to achieve the highest level of compliance with the SARPs among the States is expected. Transparency cannot be viewed alone, it must be understood and used in a multifunctional approach where the following elements form part of the program as a unified strategy to improve aviation safety: implementation of SARPs; mutual recognition of airworthiness certificates and licenses adequately issued; enhancement of safety oversight performance; and cooperation, assistance and partnerships between ICAO, States, airspace users, air navigation services providers and the aviation industry.