

CAN WE SERVE THE INTERESTS OF AVIATION SAFETY and JUST CULTURE?

RODERICK VAN DAM
CHAIRMAN
EUROCONTROL JUST CULTURE TASK FORCE

MADRID 21.11.2013

PROTECTION OF SAFETY DATA

- **Balance between two goals:**
 - Enhancing Safety and Administration of Justice
- **No Extremes:**
 - No immunities from Prosecution
 - No misuse of Prosecution/Judicial Powers
- **Resolve at the root:**
 - Protect reporting/investigation process
 - Establish prosecution policy
 - Support and Educate Judiciary
- **Just Culture Concept (By any name)**

SAFETY DATA

Where is safety information created and is the protection of safety data and safety reporters deemed important?

- ACCIDENT/INCIDENT INVESTIGATION
- MANDATORY and VOLUNTARY OCCURRENCE REPORTING
- OTHER REGULATORY or SERVICE PROVISION ACTIVITIES – CERTIFICATION, SAFETY MANAGEMENT, etc.
- **JUST CULTURE FOCUS: INCIDENT REPORTING!**

WHO WANTS ACCESS?

AVIATION SAFETY AUTHORITIES:

- Accident & Incident Investigators
- Regulators

JUDICIAL AUTHORITIES:

- Administration of Justice, Retribution

CORPORATE MANAGEMENT (Airline or ATC Provider):

- Use of internal reporting for SMS purposes
- Other

PUBLIC AND MEDIA:

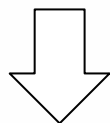
- Freedom of Information; Freedom of the Press

BALANCING PUBLIC INTERESTS

Aviation Safety

Incident reporting

Accident & Incident Investigation



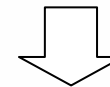
Safety and Protection



Justice & Public information

Prosecution of criminal offences

Freedom of Information and Press



Punishment & Disclosure

TWO DOMAINS

SAFETY

JUDICIARY

INTERNATIONAL

SOVEREIGN

SUPRANATIONAL RULES

NATIONAL LAW

DYNAMIC

STATIC

SAFETY FIRST

THE RULE OF LAW

Just Culture

- Addresses Safety and Accountability
- Triggered by perceived “Criminalisation” of aviation accidents/incidents and its effects on safety reporting
- Evolved from “confrontational” concepts such as punitive-free reporting, blame free reporting
- Main Objective - To safeguard and increase incident reporting levels, not to justify absence of reporting
- Main Task – To balance the responsibilities of aviation safety with those of the national criminal judiciary

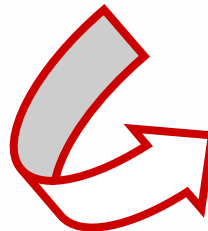
JUST CULTURE – MAIN ELEMENTS

Actions, omissions and decisions expected from someone with your level of training and experience



Not prosecuted

Gross Negligence or Wilful Misconduct



Not tolerated

BUT WHO DRAWS THE LINE ?

REALITY CHECK

Most States have established in their applicable legislation a priority for the Judiciary (Police and Prosecutorial Officials) in the investigation of accidents and incidents;

Most States have legislation that prevents use by their Judiciary of the evidence the investigator has collected and collated;

Almost all national or international legislation makes an exception for the National Judiciary in the exercise of their functions.

JUST CULTURE TASK FORCE

KEY DELIVERABLES

- ✓ Model for a National Aviation Prosecution Policy
- To be discussed and implemented at National or Regional level

- ✓ Support to the Judiciary:
- Dedicated prosecutor expert course for assisting Judiciary
- Establishing a dialogue between safety and judicial experts

- ✓ Unanimously endorsed by all EUROCONTROL States and the EU.

MODEL FOR A NATIONAL AVIATION PROSECUTION POLICY

Main objective: *“To provide directions regarding the criminal investigation and prosecution of potential criminal offences resulting from aviation accidents or incidents that come to the attention of prosecutors through the reporting of civil aviation incidents.”*

A model text that can be implemented and adapted to reflect national specific elements or requirements

National implementation based on a unilateral decision by the State concerned, in particular the national judiciary authorities

PROSECUTOR SUPPORT COURSE

- Train & educate Aviation Experts for Prosecutors and (where necessary) Criminal Courts;
- Dedicated Experts - Exclusively available on request with the sole purpose of providing them with technical and operational expertise and insight.
- Institutionalised dialogue between Safety and Judiciary that results in further communication and mutual education

THE MYTH OF TOTAL PROTECTION

ICAO Legislation: Standards & Recommended Practices

- ANNEX 13 Standards and advisory material (Attachment E)
- ANNEX 19 (Appendix B)

EU Legislation

- Performance regulation 691/2010
- Accident/Incident regulation 996/2010
- Draft Occurrence Reporting Regulation discussion:
 - Just Culture
 - Definition of “Gross Negligence” at Corporate level
 - EU Competences re Administration of Justice

“GROSS NEGLIGENCE”

- Part of Just Culture description – generic identification of criminally unacceptable behaviour (together with “Wilful Misconduct”)
- *gross negligence implies a degree of severity, serious disregard to an obvious risk and profound failure to take such care that is evidently required in the circumstances*
- "**Render unto Caesar the things that are Caesar's**"... It must be left to a National Prosecutor or Court to address and adjudicate such behaviour in accordance with national criminal law
- “Gross Negligence” presently defined in EC proposal for an Occurrence Reporting regulation. Subject to animated discussion between European Parliament and the States of the EU Transport Council.

ISSUES

- “Criminalisation of Aviation” trend
- “Wilful Misconduct” and “Gross Negligence”
- Prosecutor Discretionary Powers
- EU Competencies & Ambitions
- “Safety Czars” & National Judiciary “Ivory Towers”
- Communication, Communication, Communication!