Everything you always wanted to know about just culture (but were afraid to ask)

by Tony Licu, Marc Baumgartner & Roderick van Dam

1 Just Culture. What a strange name – What does it mean?

Just Culture signifies the growing recognition of the need to establish communication and training initiatives and advance arrangements between the aviation safety sector, regulators, law enforcement and the judiciary to avoid unnecessary interference and to build mutual trust and understanding in the relevance of their respective activities and responsibilities.

Here is a less diplomatic version: Just Culture is about creating a workable balance between Safety and Sanctions through an important message: Stay away from professionals that make an honest mistake, but someone who consciously takes an irresponsible risk should be sanctioned. It is that simple – it is that complicated.

And yes, the child was named "Just Culture". Funny name: what is Just? What is Culture? You can write books about that. That is perhaps not a good idea. Look instead at the content and deliverables and check out how well these deliver the job at hand. That is much more important than the name as such.

2 How is Just Culture supposed to work?

Accidents and Incidents happen. Two main questions always pop up when things go wrong: The first one is: Why did this happen – how can we prevent it in the future? The second one is: Should anyone be blamed, be held responsible for this?

Question one is a safety domain question; question two is asked by national judiciary authorities, by victims and perhaps also by a CEO. Whether we like it or not, both questions are completely legitimate. Both serve a primary (national or international) interest: safety and the administration of Justice

The "divide" between international safety rules and national law pertaining to civil and criminal liabilities forms one of the causes of the difficulties encountered in the safety aviation domain. It lies also at the root of the almost complete absence of communication, let alone cooperation, between those that represent the aviation safety experts and the national state prosecutors. The Just Culture approach respects those limits and explores the – promising – solutions of educating both parties and building trust and understanding towards exercising their tasks in recognition of their mutual responsibilities.

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3 Is Just Culture a European thing?

No. For a number of reasons, the Just Culture concept was picked up earlier in Europe, but that does not mean it is restricted to Europe alone. Europe, as a patchwork of sovereign states with sovereign judiciary powers that also have corporatised airlines and service providers has been a good breeding ground for JC. The EU has now enacted JC in its legal order. In ICAO the issue of misuse of safety data and protecting safety reporting has been on the agenda for many years and it has become apparent that a key part of its successful implementation relies on a number of realistic deliverables that will stimulate a further understanding and an active and open coordination between the safety and judicial authorities.

Therefore, in the discussions and findings of the 36th Assembly, the AIG Divisional meeting in 2008 and the recommendations of the ICAO HLSC 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 JC initiative instructed 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. A special Safety Information Protection Task Force (SIPTF) was created as a result of these conclusions. It in its final report, the SIPTF recommended a number of solutions, among which close cooperation between Safety and Justice and Just Culture prominently figure. As a first result, the new ICAO Annex 19 on Safety Management Systems now contains the definition of Just Culture that also is used by the EU.

The 38th ICAO Assembly of September/October 2013 actually, among other, has now instructed the ICAO Council to take appropriate steps to ensuring and sustaining the availability of safety information required for the management, maintenance and improvement of safety. The Council is ask to propagate the necessary interaction between safety and judicial authorities in the context of open reporting culture, based on the findings and recommendations of the Safety Information Protection Task Force.

The EUROCONTROL Just Culture Task Force has members and observers from US, Australia and Asia and is represented in conferences and workshops globally. Finally: Just Culture has already conquered New York! When Captain Sullenberger was honored by the City of New York after his epic ditching in the Hudson River, Mayor Bloomberg gave him a new copy of the book he had to leave in the cockpit. The title: Just Culture, of course!

4 I'm not a criminal – why should I ever be prosecuted?

We believe you! In any civil society that respects the Rule of Law, you would be a person that has committed a criminal offense if you are convicted by a criminal court after a lawful process. Lately, the words "criminal" and "criminalisation" are increasingly used in discussions and publications about the interference of the judiciary in aviation accidents and incidents.

The discussion on criminalisation of aviation incidents and accidents shows concerns on the perceived intrusion by the judiciary in the all-important effort to enhancing safety in

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aviation. It also shows a tendency to use "criminalisation" as the personification of misdirected and unwarranted activities by the authorities and to argue that the safety domain should therefore be protected from any action by the prosecution. While there are unfortunately sometimes spectacular accidents where a suspicion of misuse seems partly or wholly justified, these case are relatively too few to insist on total legislative protection.

On top of that: Invoking real or alleged criminalisation of aviation incidents or accidents as a justification for fully protective legislative action does not really work. With hardly any exception, all European or ICAO rules or standards on the protection of safety data and investigative processes in aviation contain provisions that exempt the exercise of the administration of justice by national authorities. What is needed now is the establishment of equilibrium between two equally relevant goals: aviation safety and the administration of justice.

Is my CEO aware of all of this?

We expect so, at least in Europe. If not, he or she should be! These are issues that are very closely related to safety management and related activities that are particularly relevant for any airline or ATC provider. Just Culture at corporate level is very much part of the general JC concept. Corporate activities in the safety management domain include the handling of incident reports and mistakes by controllers and other ATM front line employees. In a corporate environment with an understandable emphasis on safety, but also regarding efficiency and performance-based financial goals, the "corporate culture" will interact with the JC elements as adopted in the company.

This brings us to an important issue; not necessarily a problem but certainly a challenge. Applying JC at corporate level means that there should be a corporate charter or manifest policies to address unacceptable behaviour by staff and management. These could be seen as the corporate "equivalent" of the criminal law principles of gross negligence or wilful misconduct. In other words: "Honest mistakes" should not result in sanctions by management, but manifestly irresponsible behaviour will result in sanctions under applicable corporate law.

The challenge lies in assuring that no conflicts arise between the applications of corporate rules that would be based on, e.g., national labour or corporate law with those governing in national criminal judiciary processes. Corporate sanctions cannot be compared with criminal law sanctions. Unacceptable behaviour at corporate level must therefore be reconciled with applicable criminal rules that govern the responsibilities of the criminal judicial authorities. Assistance for establishing harmonised norms for corporations would be very helpful. Presently, a discussion is ongoing to "revive" the initiative of a European Just Culture Charter that could also be of use to address this issue.

Pilots and Controllers are sent to jail as we speak. Is that Just Culture?

It could be – but only if they were drunk or did whatever it takes to be deemed criminally negligent under applicable criminal law. By the way, it would also apply, apart from the front line operators, to your management or corporation. That may sound a bit rude. But the bottom line is that we have to realise and accept that nobody can be above the law and that if you commit a serious crime you should go to court. Again, under the Just Culture principles grossly negligent or intentional criminal behaviour should be punished; but not so for "honest mistakes".

It is also clear that such a call can only be made by a prosecutor or a judge. Mind you: When a prosecutor will only prosecute in cases of gross negligence or willful misconduct, the chances for a pilot or controller to be ever indicted for his or her actions will be very small indeed. Such a prosecution policy is already effective in a number of European States and we are working very hard to invite other States to follow these examples.

Just Culture requires understanding and appreciation of the different processes and commitments by both safety people and the judiciary. And let there be no mistake: Just Culture also implies that misuse of criminal processes or ignorance from the part of the Judiciary is completely unacceptable! An equally important part of the Just Culture concept is to expose and stop misuse and ignorance. An initiative to e to educate and assist prosecutors and judges in the exercise of their responsibilities has already made a very promising start.

What are the disadvantages of JC?

We don't think that disadvantage is the right term here, as the alternative – full legislative protection – is simply not attainable. There are certainly weak spots as Just Culture is

based on cooperation and the establishment of e.g. restrictive aviation prosecution policies and voluntary reporting schemes. It also requires the basic recognition that pilots and controllers as well as prosecutors and judges can make mistakes. That is not necessary self-evident for all involved…

Just Culture is not a wonder drug against injustice and misuse of judiciary processes. It has been introduced to protect as much as possible the mundane but ever so important ongoing processes of incident or occurrence reporting: literally thousands of daily events that feed into the well established system of using the reports for the improvement of safety and the prevention of incidents and accidents. That requires active and enduring support from all involved.

It is certainly not a disadvantage, but this is also the moment to emphasise the need for close interaction between the available and upcoming legislation in Europe as well as at ICAO level and the Just Culture initiatives. There is no competition here: Just Culture basically continues where legislation stops. It builds on the very affective and widely implemented ICAO rules and of course the well-timed and comprehensive EU regulations on performance review, accident and incident investigation and – still warmly debated – the new occurrence reporting regulation.

"I consider ICAO rules, I consider National Laws, ICAO rules, National Laws, ICAO, National..."

A lot of words - Has anything been done yet?

We kind of expected that question… The answer is a firm yes! Look at this:

Each year at least one general Just Culture Workshop is organised in a European Capital in which safety people, CAA's, EC, EASA, ECA, IFATCA, ECTL and National Prosecutors jointly discuss the pros and cons of Just Culture. These meetings with a 200+ audience are instructive and effective.

The ECTL JCTF has now started the implementation of two main deliverables: -

- One of them is a joint IFATCA and EUROCONTROL initiative with two goals: Expert advice and communication through setting up groups of independent aviation experts in the air transport and ATM domain, which are exclusively available on request to Prosecutors and ultimately a Court. The sole purpose is to providing judiciary with technical and operation expertise and insight. At the time of printing this HINDSIGHT edition two prosecutor expert courses have been held and have also proven to be very useful for the interaction between both groups that results in further communication and mutual education. Numerous prosecutors and judges from a growing number of States attend, act as teacher and discuss with experts from all over Europe.

- The second is about inviting states to implement a national safety prosecution policy, among other, confirming that only gross negligence and willful misconduct will be prosecuted. Discussions take place in regional focused and well prepared workshops with prosecutors and safety/CAA representatives of 4 to 6 States. IFATCA is also an active contributor in these road shows. A handful events have been held in 2013 three others are lined up already in 2014. First results are very encouraging.

Both deliverables were unanimously endorsed by all EUROCONTROL member States and the EU. The next step will be to submit these deliverables for global consideration in ICAO. Our focus has to lie in the pursuance of the practical goals identified by the Just Culture activities. The real work is only starting now. There is still a long way to go, in Europe and certainly globally. But experiences and responses up to now are outright encouraging.