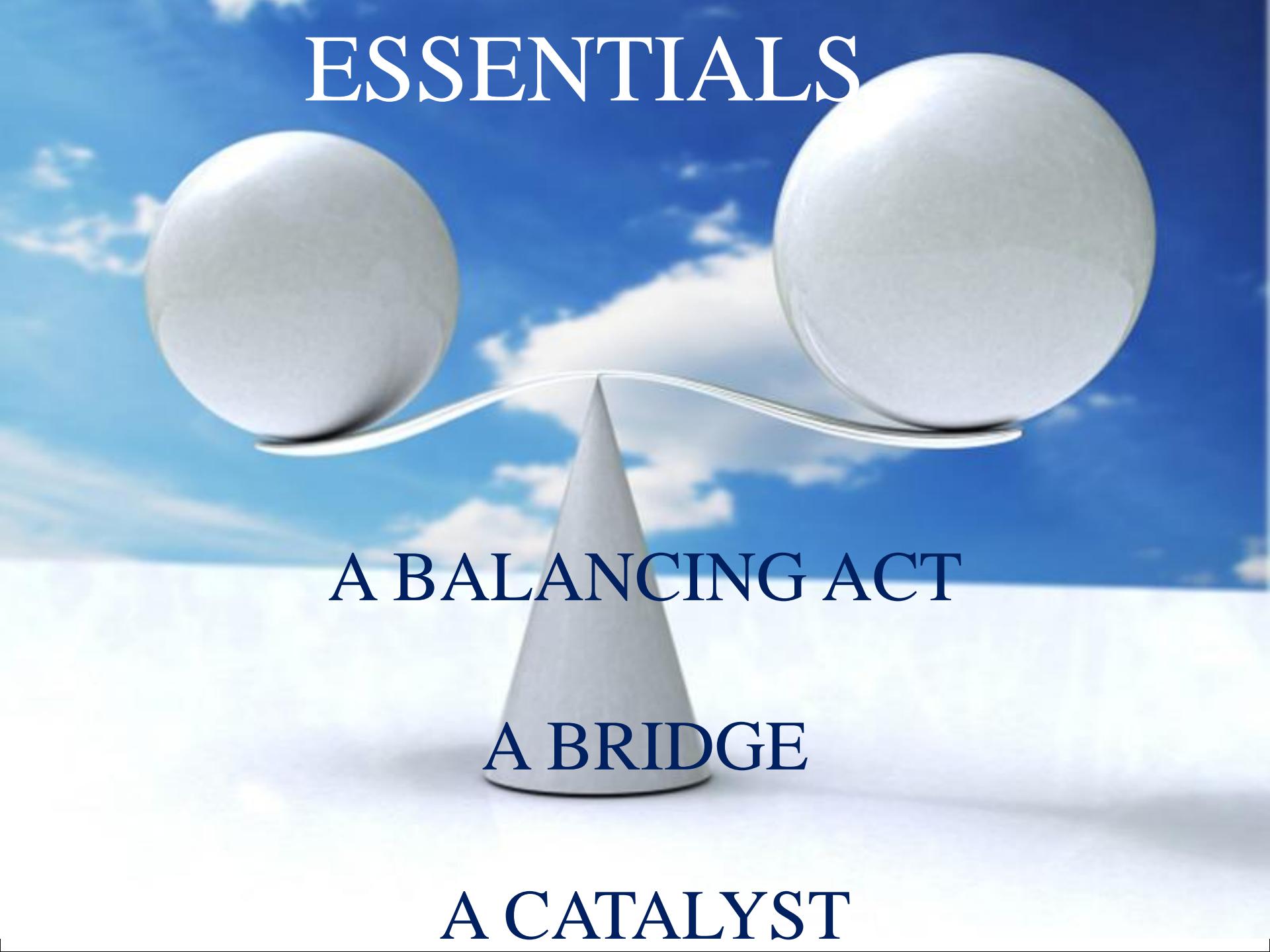


# JUST CULTURE

## ESSENTIALS DELIVERABLES GOALS

RODERICK VAN DAM

BUCHAREST 24 - 25 OCTOBER 2018



# ESSENTIALS

A BALANCING ACT

A BRIDGE

A CATALYST

# JUST CULTURE ESSENTIALS

EMPHASIS ON OCCURRENCE REPORTING

INCIDENTS

PROTECTING THE REPORTER



# JUST CULTURE: FEARS & FOLLIES

*Non-Punitive*

*Criminalization*

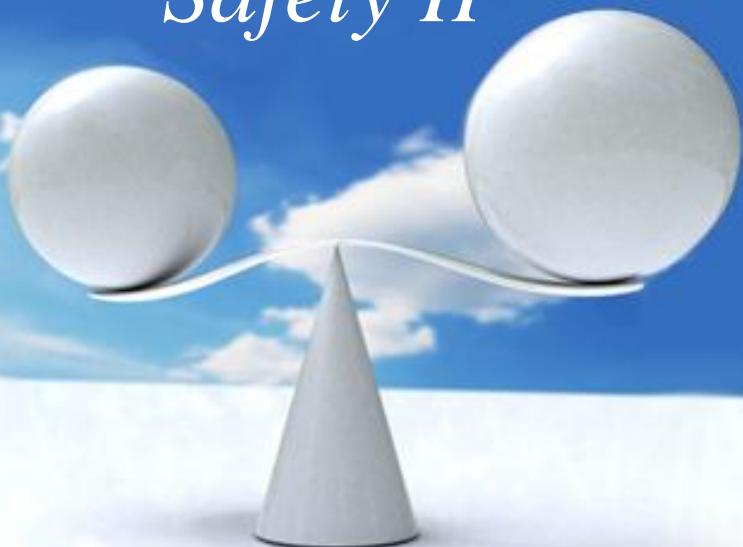
*Full Protection*

*No Blame Culture*

*Safety II*

*JC Algorithm*

*Real Culture*



# BALANCING

TWO EQUAL GOALS:  
SAFETY AND THE RULE OF LAW

NO EXTREMES:  
NO IMMUNITIES FROM PROSECUTION  
NO MISUSE OF CORPORATE OR JUDICIARY POWERS

RESOLVE AT THE ROOTS:  
PROTECT REPORTING PROCESS  
ESTABLISH PROSECUTION AND CORPORATE POLICIES  
SUPPORT JUDICIARY AND CORPORATE EDUCATION

Just Culture Concept (by any name)

## DEFINITION

A Culture where front-line operators or other persons are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, but in which Gross Negligence, Wilful Violations and Destructive Acts are not tolerated.



## TWO SEGMENTS OF JUST CULTURE

ORGANISATIONAL / CORPORATE LEVEL

INTERFACE WITH NATIONAL JUDICIARY





“Honest  
Mistake”



“Unacceptable  
Behaviour”



## WHO MAKES THE CALL?

ONLY A **NATIONAL PROSECUTOR** CAN MAKE THAT CALL AND INVESTIGATE THE FACTS AND CIRCUMSTANCES IN ACCORDANCE WITH APPLICABLE CRIMINAL LAW.

**“GROSS NEGLIGENCE”** : SERIOUS DISREGARD TO AN OBVIOUS RISK AND PROFOUND FAILURE TO TAKE SUCH CARE THAT IS EVIDENTLY REQUIRED IN THE CIRCUMSTANCES. BROADLY RECOGNISED AS POTENTIAL CRIMINAL BEHAVIOUR. (CRIMINAL INTENT)



## JC AND THE REST OF THE WORLD

ICAO

ANNEX 13 Accident/Incident Investigation

ANNEX 19 Safety Management Systems

EU/COMMISSION/EASA

Regulations 691/2010; 996/2010 and 376/2014

EASA Basic Regulation – Regulation (EU) 2018/1139

## GLOBAL REALITY CHECK

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

Many States have prevented use by their Judiciary of the evidence the investigator has collected and collated;

Almost all Safety Data Protection Rules make an exception for the Administration of Justice as a protected sovereign function

## JUST CULTURE ESSENTIALS

The Just Culture definition is comprehensive and indivisible; it applies to all situations or domains.

Adopting JC as part of the ICAO/EU or National Legal Order cannot change its scope. Take it or leave it!

Any interference with the exclusive right of a national Prosecutor or Court to address criminally relevant behaviour would jeopardize Just Culture and the universal principle of the Rule of Law



# JUST CULTURE DELIVERABLES

# TRAINS & PLANES...



# JUST CULTURE TASK FORCE DELIVERABLES

- GLOBAL JUST CULTURE CONFERENCES
- NATIONAL AVIATION PROSECUTION POLICIES
- PROSECUTOR EXPERTS COURSES
- JC REPOSITORY & KNOWLEDGE CENTER
  - EUROPEAN TRANSPORT:
    - AVIATION ✓
    - RAILWAYS ✓
    - MARITIME (✓)
  - HEALTHCARE: ?

# MODEL TRANSPORT PROSECUTION POLICY

Coordination between safety investigators and judiciary authorities

Recognises the need to protect accidents and incidents findings; not to be used by a prosecutor as evidence

Criminal prosecution limited to cases of “gross negligence” and “wilful misconduct”

No prosecution for actions, omissions or decisions of a reasonable person, even in the case of an unpremeditated or inadvertent infringement of the law

Full recognition of the Independence of the National Prosecutor

# PROSECUTOR EXPERT COURSE

EUROCONTROL/IFATCA initiative

Train & Educate Aviation/Railway Experts for Prosecutors;

Dedicated Experts - exclusively available on request;

A dialogue between Safety and National Judiciary;



# PROSECUTOR SUPPORT

Full recognition role and function Prosecutor

“Kitchen Table” phase

FACTS:

- Their relevance for an occurrence or accident
- Helping a Prosecutor to decide to investigate or not
- Helping a Prosecutor when applying a Prosecution Policy



# NUMBERS AND ACTIVITIES

## JC AND MODEL PROSECUTION POLICIES

- › 20 STATES in Europe
- › 100 PROSECUTORS and JUDGES

## PROSECUTOR EXPERT TRAINING

- › 10 Courses in EUROCONTROL (Luxembourg & HQ)
- › 60 ATCO's › 40 PILOTS › 60 PROSECUTORS (and some JUDGES)



# JC REPOSITORY AND KNOWLEDGE CENTER

## REPOSITORY

- INTRODUCTION AND EXPLANATION OF JC
- ALL AVAILABLE DIGITAL DOCUMENTATION
- HARD & SOFT LAW, POLICIES, DECLARATIONS, ETC
- JURISPRUDENCE, ARTICLES, BOOKS
- INDEPENDENTLY MANAGED AND UPDATED
- AT GLOBAL LEVEL

## KNOWLEDGE CENTER

- PROVIDING INFO AND BACKGROUND
- ADDRESSING MEDIA, ORGANISATIONS, PUBLIC
- SUPPORTING AND ENGAGING WITH PARTIES

# JUST CULTURE AT CORPORATE LEVEL

EU REGULATION 376

EU DECLARATION OF NOVEMBER 2015

PROLIFERATION OF VARIOUS CORPORATE JC POLICIES

INSTITUTIONALISED INTERNAL JC CORPORATE  
PROCESSES



# JUST CULTURE GOALS



# DELTA CASE

## Incident at Schiphol

Runway incursion: An aircraft cleared for take-off and another towed aircraft crossing same runway – Incident was avoided thanks to pilot – No damages

## Consequences

- Criminal proceedings against a trainee-controller, a supervisor and another employee of Dutch ATC
- On appeal, two defendants were found guilty as charged – no sentence imposed.



# TURKISH AIRLINES CRASH SCHIPHOL



# ISSUES

JUST CULTURE AS A UNIVERSAL REMEDY

DIFFERENT JUST CULTURE FOR DIFFERENT SITUATIONS

JUST CULTURE AS A FORMAL LEGAL OBLIGATION

THE MYTH OF TOTAL PROTECTION





# FUTURE OF JUST CULTURE



REALISTIC  
CONCEPT

FULLY BALANCED

(EU) HARMONISED  
CRIMINAL NORMS