

International Conference on Contemporary Issues in Air Transport, Air Law & Regulation

Aviation Safety

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Why Blacklists?

- Safety standards are clearly not being met globally
 - African aviation accounts for 25% of the world's accidents and only 4.5% of the world's air traffic
 - ICAO has identified Latin America, Africa, and Asia as disproportionately responsible for airline accidents
 - Absence of transparency and accountability in the growing Chinese aviation market
- Airline passenger safety has been and remains a central public policy concern
- International efforts still require State-level enforcement to be effective



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U.S. Approach to Blacklists

U.S. Federal Aviation Administration → International Aviation Safety Assessments

Purpose: To ensure that all foreign air carriers that operate to or from the U.S. are properly licensed and with safety oversight provided by a competent Civil Aviation Authority (CAA) in accordance with ICAO standards



What does the FAA look at?

1. Foreign CAA's capability for providing safety certification
2. Foreign CAA's ability to provide continual oversight of its carriers

A country's failure to meet ICAO standards is published by the FAA → India is in compliance

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EU Approach to Blacklists

- Program began in December 2005 as a joint venture between the European Commission and the Member States of the EU
- Member States identify carriers subject to operating bans within their territory; EU Commission then evaluates the carriers based on common criteria
- List of individual carriers published in the Official Journal of the European Union and updated at least every three months
- Banned carriers can request a compliance review from the Commission to have itself removed from the list



Note: EU list is distinct from U.S. list insofar as it identifies non-compliant *carriers* rather than countries

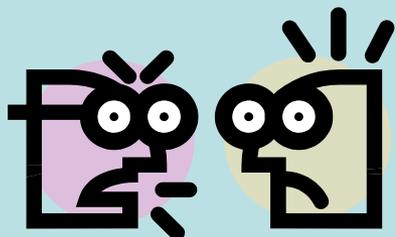
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IATA's Critique of Blacklists



Blacklists Alone Do Not Improve Safety!



According to IATA...

- Blacklists are a punitive measure which will not necessarily lead to improved safety standards
- Whitelists would provide an incentive for improved safety by promoting those carriers which comply with international standards
- Any national listing should be based on objective, internationally harmonized, criteria which are consistently utilized
- IATA's Operational Safety Audit serves as just such a benchmark and should be looked at by all governments as the standard

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More Criticisms

- International aviation safety standards are the product of U.S. and EU aviation hegemony
- Blacklists and other similar efforts keep new entrants from primarily developing countries out of the aviation market
- Many countries which do not comply with international safety standards lack resources
- Retaliatory economic measures are disproportionate to the potential harm caused by non-compliance



Are any of these compelling reasons *not* to promote international safety standards for aviation? No!

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International Efforts to Improve Safety

- ICAO Standard and Recommended Practices (SARPs)
 - **Pro:** Longstanding history and international legitimacy
 - **Con:** No “neutral” enforcement body
- IATA’s Operational Safety Audit
 - **Pro:** High uniform standards required for IATA membership
 - **Con:** IATA standards have no binding authority on non-members
- Flight Safety Foundation
 - **Pro:** Independent, neutral, and dedicated to compiling critical research on what causes aviation accidents
 - **Con:** No enforcement for failure to cooperate



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ICAO SARPs

Important: Implementation of SARPs lies with the Contracting States to the Chicago Convention → What guarantees are there?

- Universal Safety Oversight Audit Programme (SOA) → Regular, mandatory, systematic, and harmonized safety audits
 - Results from the audits are published in a Summary Report
 - Enforcement (blacklisting) still up to individual States
- Audits of Contracting States operate in three “phases”
 1. Pre-Audit → SOA evaluates pre-audit questionnaires to analyze a State’s organization, implementation of SARPs, and the complexity of its air services
 2. On-Site → Visit by audit team to State to assesses its safety programs and systems
 3. Post-audit → Develop a comprehensive report and construct a corrective action plan for the State if necessary



IATA Operational Safety Audit

IOSA → The industry's attempt to self-audit and thereby bypass repetitious inspections

Uniformity: Since the standards comply with current best practices in the industry, there's no question that all participants will be held to the same threshold

Costs: One "universal" audit will remove the need to expend airline resources for multiple inspections, thus keeping operating costs down

Support: Strong international support, including approval from the United States, European Union, and ICAO

Incentives: Compliance with IOSA opens up market incentives for carriers, including code-sharing, wet lease, and aircraft leasing opportunities



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Flight Safety Foundation

- Holds itself out as an independent, nonprofit, and international organization that performs research, inspection, advocacy, and publishing to improve safety
- Works closely with other aviation organizations, including the Airline Pilots Association, Air Transport Association of America, ICAO, IATA, etc.
- Organization works more on the “good will” (conscience) of the industry rather than as another regulatory overseer



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Where To Go From Here?

- Balance must be struck between high standards of safety and not barring new entrants to the market
- U.S. and EU approaches out-of-synch in the credibility they give to foreign CAA's
- Which serves the purpose of safety more? The EU's "carrier-based" approach or the U.S. "country-based" approach? Neither?



Proactive measures to improve aviation safety globally through financial assistance and training will go further to protect citizens compelled to travel internationally

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