

- b. Without prejudice to Articles 3a and 3d of the Chicago Convention, there may be exceptional circumstances when only the notification of the flight would be possible. However, in case of imperative operational necessities² which might preclude this notification, the safety of air navigation shall always be paramount in the conduct of the flight.
- c. In case of absence or suspension of the competent ATS Authority, within the area of operation:
 - Be operated within radar surveillance and under positive control of a surface or airborne radar facility, or
 - Be equipped with airborne radar that is sufficient to provide separation between themselves, aircraft they may be controlling and other aircraft, or
 - Be operated in visual meteorological conditions (VMC).

AIRWORTHINESS

11. It is assumed that all aircraft contributing to NATO or NATO-led missions and operations are airworthy, as certified by an appropriate national Authority. Nevertheless, in 2013, NATO Nations agreed the NATO Airworthiness Policy (Reference (g)), which makes provision for a NATO Airworthiness Executive (NAE). The NAE is established to perform a coordinating oversight function to establish a robust framework that ensures airworthiness of all aeronautical products, parts and appliances provided by NATO and Partner nations in the context of NATO and NATO-led missions and operations. The NATO Airworthiness Policy does not replace, nor is it intended to interfere with established national airworthiness policies and/or regulations.

² Operational necessities include but are not limited to: equipage restrictions and tactical procedures.

REFERENCES:

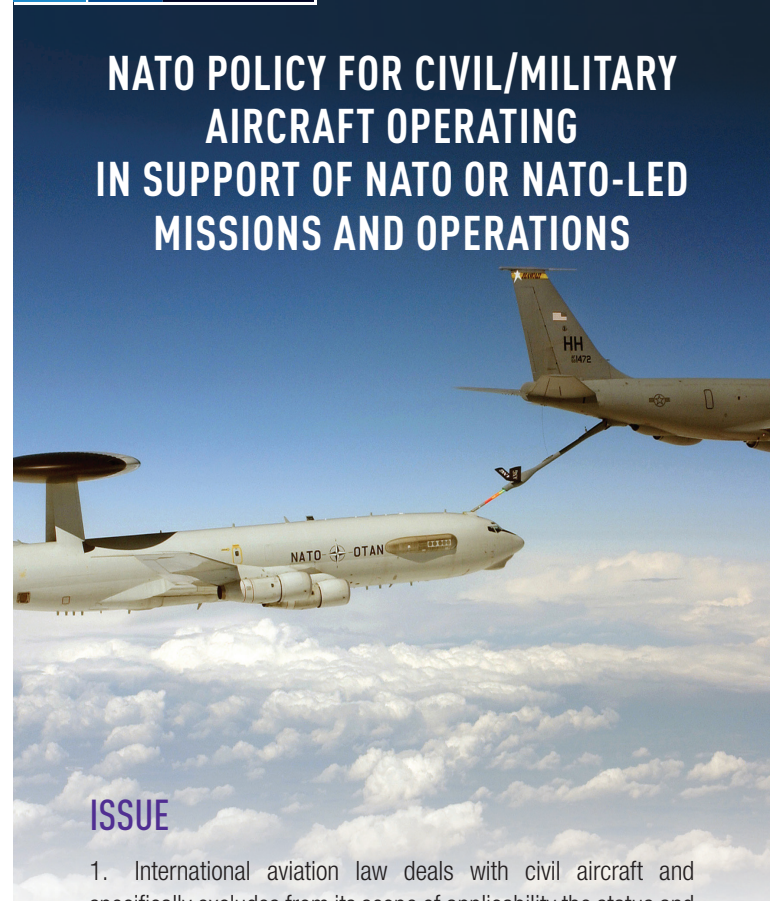
- (a) Convention on International Civil Aviation
- (b) Annex 2 and 11 to the Convention on International Civil Aviation
- (c) ICAO Doc 9554, Manual Concerning Safety Measures Relating to Military Activities Potentially Hazardous to Civil Aircraft operations
- (d) ICAO Doc 9443, Manual Concerning the Interception of Civil Aircraft
- (e) US DOD Directive 4540.01, Use of International Airspace by United States Military Aircraft and for Missile/Projectile Firings
- (f) EUROCONTROL Specifications for Harmonised Rules for Operational Air Traffic (OAT) under Instrument Flight Rules (IFR) inside controlled Airspace of the ECAC Area (EUROAT)
- (g) NATO C-M(2013)0035
- (h) NATO Status of Forces Agreement, London, 1951

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NATO POLICY FOR CIVIL/MILITARY AIRCRAFT OPERATING IN SUPPORT OF NATO OR NATO-LED MISSIONS AND OPERATIONS

ISSUE

1. International aviation law deals with civil aircraft and specifically excludes from its scope of applicability the status and operations of aircraft used in national services, including military aircraft generally designated as 'state aircraft'. In the context of NATO or NATO-led missions and operations, contributing nations employ predominantly military aircraft to conduct air operations. However, for some activities, like transport of personnel and supplies, they may decide to employ civil aircraft. In addition, NATO operations are also conducted by using collective, common assets. When operating in support of a NATO or NATO-led mission, these aircraft are normally using NATO call signs. In light of the above, there is a need to consolidate policy guidance with regard to the status and the conduct of the flights by civil and military aircraft when operating in support of a NATO or NATO-led missions and operations.

AIM

2. To provide NATO Policy with regard to the status and the conduct of the flights by civil and military aircraft when operating in support of NATO or NATO-led missions and operations.

SCOPE

3. The paper firstly sets the context for what is meant by 'operating in support of NATO or NATO-led missions/ operations' before recalling the Convention on International Aviation with respect to state aircraft and the associated rules for such flights over international waters. The paper will also examine the differences between the status and conduct of flights by state aircraft before outlining procedures to mitigate risks of state aircraft to civilian flights. While mentioned in the paper, airworthiness, as an associated topic, will not be dealt with in specific detail; the paper makes the assumption that civil and state aircraft operating in support of NATO operations will be certified 'airworthy' by appropriate national authorities.

FLIGHTS OPERATING IN SUPPORT OF NATO OR NATO-LED MISSIONS AND OPERATIONS

4. In setting the context of this Policy, "flights operating in support of NATO or NATO-led Missions and Operations" are defined as the operation of those flights by state and civil aircraft used in support of a NATO or NATO-led operation, as agreed by the North Atlantic Council, and bearing a NATO call sign. A NATO designated call sign may be defined through coordination with relevant national, regional and international aviation bodies associated to the theatre of operation, in order to designate participating state and civil aircraft who shall operate in accordance with the legal framework of such an agreement and designation. Nevertheless, such aircraft will retain the Nationality of their state of registration and will display their nationality marks in international navigation.



STATUS OF THE PARTICIPATING AIRCRAFT

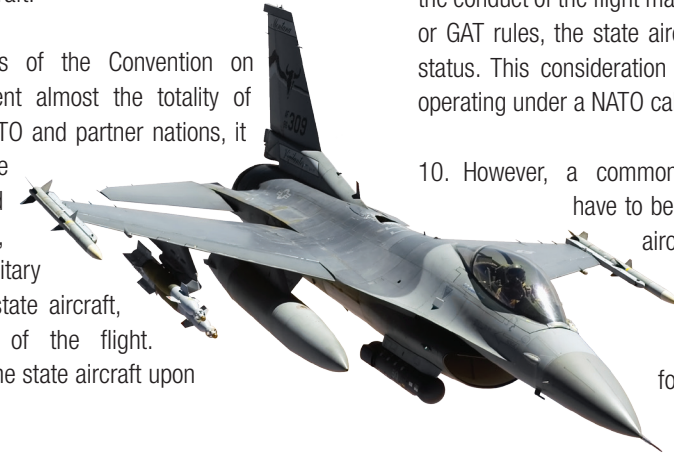
5. The 191 Contracting States of the Convention on International Civil Aviation recognise that every State has complete and exclusive sovereignty over the airspace above its territory¹ and stipulated that "this Convention shall be applicable only to civil aircraft, and shall not be applicable to state aircraft". They have also agreed on a common definition of state aircraft, thus: "Aircraft used in military, customs and police services shall be deemed to be state aircraft". However, Contracting States stipulated that "...The contracting States undertake, when issuing regulations for their state aircraft, that they will have due regard for the safety of navigation of civil aircraft." (Reference (a), Part 1, Chapter 1, Article 1 and Article 3). While Contracting States have committed to the principles of the Convention with regard to the regulation of civil aircraft, they decided to maintain, at exclusive national level, the competency to regulate the operations of state aircraft.

6. Since the Contracting States of the Convention on International Civil Aviation represent almost the totality of recognised States, including all NATO and partner nations, it is assumed that Allies support the definition of state aircraft enshrined in the Convention. Consequently, aircraft reported in the national military registry are, and always will be, state aircraft, independent from the conduct of the flight. Moreover, a civil aircraft may become state aircraft upon designation by the State of registry.

CONDUCT OF FLIGHTS

7. Given the above, it is also assumed that Allies, as ICAO Contracting States, have developed a national set of rules and procedures to regulate the operations of their state aircraft within their territory¹, and in the international airspace, in order to safeguard the safety of civil aviation.

¹ For the purpose of the Convention, the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, protection or mandate of such State (Art.2).



8. When operating within the territory of another state, visiting state aircraft will comply with the rules and procedures of that state, as reflected in the special authorisation received (Diplomatic Clearance). Therefore, when outside their state of registration, state aircraft operating under a NATO call sign will comply with the rules and procedures of the state sovereign over the territory where they operate¹. It should be noted that the NATO SOFA (Reference (h)) does not establish a multilateral regime among NATO member states for the mutual overflight and landing of their state aircraft and/or civil aircraft, not even when engaged in NATO operations.

9. Within Europe, Reference (f) defines specifications for flights which are not conducted in full conformity with ICAO standards and recommended practices (SARPS), which are defined as Operational Air Traffic (OAT), whereas ICAO-compliant rules are known as General Air Traffic (GAT). While the conduct of the flight may be in accordance with either OAT or GAT rules, the state aircraft will retain their state aircraft status. This consideration is also valid for all state aircraft operating under a NATO call sign.

10. However, a common set of harmonised principles have to be adopted by the Alliance for state aircraft operating under a NATO call sign within the international airspace, in order to satisfy the requirement to ensure due regard for the safety of civil aviation. Taking due account of the regulations and best practices adopted by Allies with large experience of international air operations and in order to ensure the safety of civil aviation, state aircraft operating under a NATO call sign within the international airspace should comply with the following principles, as appropriate:

- a. Access to high seas airspace cannot be denied. However, the conduct of the flight will have to conform, to the maximum extent practicable, to the standards and recommended practices issued by ICAO, as indicated in ICAO Circular 330/AN189.