

Flags of convenience in civil aviation



“But this time, unlike 50 years ago, we have the knowledge and experience of just how dreadful the consequences can be of taking even a most modest step in the direction of moving towards flags of convenience in international aviation.”

Allan Mendelsohn, Georgetown Law School, 2014

“Liberalisation and deregulation have allowed airlines to register both themselves and their aircraft in countries where standards of safety oversight are below internationally-agreed standards.”

When the ITF’s civil aviation section first warned about flags of convenience (FOCs) in the aviation sector over a decade ago, it was dismissed as alarmist. That aviation might follow shipping in the use of FOCs if liberalisation and deregulation continued unchecked seemed ludicrous to some.

With the honourable exception of ITF-affiliated aviation unions, the majority of the industry chose to ignore these ‘unfounded’ concerns. After all, they argued, civil aviation was highly regulated in terms of safety – in fact it was too regulated and needed dramatic and swift liberalisation.

Unfortunately, time has proved the ITF correct. Liberalisation and deregulation have allowed airlines to register both themselves and their aircraft in countries where standards of safety oversight are below internationally-agreed standards.

Nowadays, the industry’s global regulator, the International Civil Aviation Organization (ICAO), acknowledges that flags of convenience do exist in aviation.

The term is also used by the European Commission (EC) as well as the airline industry’s association, IATA. In 2006 Giovanni Bisignani, its then director general and CEO, stated: “Flags of convenience have no place in a safe industry.”

ICAO has put in place some measures to reduce the threat to the industry’s safety record.

Interestingly, while ICAO, the EC and IATA use the term ‘flags of convenience’, it is not used officially by the International Maritime Organization (IMO).

Does this mean that all stakeholders in the industry are now aware of the danger and are tackling the problems it might cause – so there’s no need for civil aviation unions to be alarmed? Unfortunately it doesn’t; that kind of view would be overly optimistic and complacent.

ICAO identifies two different types of FOC operations in the global aviation industry:

- Those that were for fiscal reasons, where arrangements were generally made between the state of registry and the state of the operator to ensure proper oversight
- Those arranged to ‘take advantage of a system with no or minimal economic or technical oversight’.

The second group, ICAO says, is creating ‘serious safety concerns’ and requires counter-measures. ICAO says that it will consider flag of convenience operations as ‘appropriate terminology’ only for this latter group.

According to ICAO, the measures that have already been put in place are enough to minimise the risks created by aviation FOCs. It accepts that there are still some problems needing to be resolved, including more precise definitions of terms such as

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'principal base of business' and the issue of leased aircraft, where ownership rather than control rests elsewhere. Simplifying 'lines of accountability' among states in situations where aircraft are based or operated in states different from those of registration and/or of the operator is also seen as an area where further work is needed.

In 2006 the European Union began blacklisting airlines in order 'to root out the practice of flags of convenience whereby some countries issue Air Operation Certificates to dubious airlines'.

The US Federal Aviation Authority (FAA) also audits other countries' safety oversight and, based on the finding of these audits, can refuse or revoke permission to operate to or in the USA.

The million dollar question for aviation unions is, at a time when liberalisation under 'open skies' policies continues to grow, can we retain globally harmonised safety oversight?

In other words, are those measures good enough to protect the working conditions of aviation workers and to stop any further social dumping?

The case studies that you will find in this module equip us to respond critically to these crucial questions.

ICAO's and others' definitions of aviation FOCs are too narrow and don't take into consideration the social aspect of the problem.

Neither ICAO, nor the EU, FAA or IATA are genuinely worried about allowing airlines to effectively 'shop around' for the labour laws and regulations that best suit their bottom line. As these case studies reveal, there are airlines trying to use flags of convenience at the expense of decent labour standards.

By subjecting their workforces to substandard wages and conditions, these airlines also threaten the standards of aviation workers in other parts of the world.



This module aims to create awareness among ITF civil aviation affiliates of the immediate and long-term dangers stemming from an expansion of FOC practices in the global civil aviation industry.

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In May 2013, the ITF civil aviation section held an informal meeting with a representative of pilots working for UPS. The ITF was asked to research MNG, a Turkish non-union air cargo airline, and its Slovenian affiliate, Solinair.

The results of this research reveal a fascinating pattern of aviation FOCs.

Solinair (SOP) is an airline based in Slovenia. Its hubs are Ljubljana Jože Pučnik Airport and Portorož Airport. It has secondary hubs in Cologne, Bonn and Johannesburg. Its fleet consists of three aircraft.

Its parent company is Turkish-owned MNG Airlines. MNG bought Solinair in 2008. It is likely that it did so in order to have an airline based in an EU country – allowing it to take advantage of the EU open skies policy. Like all Turkish airlines, MNG also enjoys the benefits of the protections which are in place in the Turkish aviation market.

Solinair operates mainly charter cargo services, including for logistics companies such as UPS and TNT. It also owns a flight school, which provides different licences, including for private pilots (PPL) and commercial pilots (CPL).

On 9 April 2011, Solinair put its newly acquired ex-MNG Boeing 737-4K5 S5-ABV (msn 24128) into cargo service in the colours of Spanish-owned Layonair Airways. Layonair is of Mauritanian origin, but was established in the Canary Islands in April 2010. Services linking Las Palmas with Madrid Barajas were launched on 6 April 2011, operating on behalf of Iberia Cargo.

In December 2012, the South African division of DHL Aviation awarded Solinair a wet-lease contract for cargo operations using B737-4K5F (msn 24128/S5-ABV). Since then Airstream Cargo, a Nigerian airline, has been operating the above mentioned aircraft out of Lagos. It is leased from Solinair using Axiom Air’s call sign.

Turkey, Slovenia, Nigeria, Spain, United Arab Emirates and Mauritius. These are the countries in one way or another involved in the operations of a few aircraft owned by a relatively small airline.

In a nutshell, there is a dizzying array of complex business relations, reflecting a similar FOC system to that in the maritime industry. As these airlines are non-unionised, this information is mainly based on secondary sources, and may not reflect the full picture in all its complexity.

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Case study: Jetstar

What is the background?

Foreign cabin crew working on Australian domestic flights require a class 457 visa. An employer has to establish that they cannot secure an Australian employee for the position, and that the foreign worker is not underpaid. Jetstar was able to underpay Thailand-based cabin crew by using a loophole in the Special Purpose Visas (SPV) scheme, which allows Australian airlines to pay different rates to foreign crew on domestic flights. They do this by running domestic tag flights on international flight numbers. For example, a flight is given an international flight number although it may begin in Adelaide and stop in Melbourne, Sydney and Brisbane, with some passengers only travelling domestically before it continues overseas. Jetstar’s foreign cabin crew work on such flights. Australian wages and conditions are undermined, and excessively long shifts lead to fatigue and related safety concerns.

What is the company strategy?

Jetstar is owned by the national carrier, Qantas. It employs Thai-based cabin crew through a Qantas subsidiary, Tour East Thailand. The strategy of the company is to avoid the stricter regulations which are enforced in Australia with regards to rest time, pay and other workplace laws.

In 2011, Jetstar received a complaint from a staff member identifying fatigue caused

by excessive back-to-back long-haul flights, inadequate rest time and meal facilities, and inequality between the rights of Australian staff to reject such rosters and non-Australian staff, who do not have the same options.

The practices of the airline have also been exposed publicly. The Australian Broadcasting Corporation’s Lateline programme ran a story on allegations that Jetstar Airways employees were suffering from unregulated working hours, low pay, and potentially excessive financial penalties associated with their dismissal or resignation. Jetstar’s Thai cabin crew were not paid sick leave and received only half the annual leave that Jetstar’s Australian employees did. Also, the report stated, ‘if Thai-based crew quit their jobs early or are sacked, they can be forced to pay back up to four and half months of their base wage’.

In 2012, litigation by the Fair Work Ombudsman (FWO), a government body that enforces compliance with Australian workplace laws, commenced against Jetstar and Valuair. The FWO claims that Jetstar and Valuair are underpaying cabin crew recruited in Thailand by up to half the cost of their minimum entitlements, and are seeking to have the practice banned while ensuring that foreign cabin crew are paid according to Australia’s Aircraft Cabin Crew Award 2010. The case is ongoing: hearings have completed but no judgement has been made as of 16 May 2014 in the Federal Court, Sydney. ITF affiliate the TWU (Transport Workers’ Union of Australia) is monitoring this case with some interest.

¹Valuair is a Singapore based low-cost carrier that merged with Jetstar Asia in 2005, although it continues to operate services between Singapore and Indonesia under its own airline code. For legal reasons requiring

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What is the union response?

The TWU has been gathering information and providing commentary on the actions of Jetstar and Valuair. It is difficult to gain access to Thai cabin crew while they are in Australia but through TWU's contacts it has been able to verify the experience of Thai-based cabin crew. In May 2012 the TWU and the Australian and International Pilots' Association (AIPA) publicly declared their support for the FWO investigation through media releases and interviews with news reporters. Since this time the TWU has maintained commentary as part of its broader aviation campaign on a variety of issues related to Qantas and Jetstar's treatment of employees. The TWU's position is 'Aussie work, Aussie rights' – that is, if workers perform work in Australia, workers

should be paid under Australian wages and conditions.

As the case with the FWO has not yet been concluded, the TWU has not taken further actions directly related to the case. The next steps for the TWU are to:

- Continue collecting evidence from Thai-based cabin crew while waiting for the judgement,
- Determine the feasibility of organising a campaign around Jetstar and Valuair's actions, and
- Determine the level of external assistance required and which organisations are able to provide support.



What are the dangers of the Jetstar model for unions?

- FOC practices can undermine the wages and conditions of aviation workers in the home country.
- Directly, and indirectly they can create similar pressures on the wages and conditions of airline employees in many other countries.
- FOCs in aviation can gradually become a normal practice within the industry.
- With the spread of FOCs, aviation unions can lose members and strength.
- Institutionalisation of FOCs in aviation can undermine flight safety.

Are airlines in your country using flags of convenience?

- Are there foreign workers employed in your airline?
- Do airlines in your country register their planes in other countries?
- Do foreign airlines register their planes in your country?
- Are there airline workers who are hired through employment agencies, either as temporary or permanent workers?

Singapore-based airlines to be majority Singapore-owned, Valuair's ownership is split between Singapore investment company Westbrook Holdings (51%) and Qantas Group subsidiary Jetstar Asia Holdings (49%).

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Case study: Norwegian Air Shuttle

What is the background?

In 2012, the low-cost carrier Norwegian Air Shuttle (NAS) placed the biggest aircraft order Europe has yet seen. It will buy 222 Boeings and Airbuses for around USD10 billion in order to compete with the largest low-cost carriers in Europe, Ryanair and EasyJet.

This fast-growing airline Norwegian Air Shuttle, employs flag of convenience (FOC) practices to avoid strict Nordic regulations, labour costs and taxes. What form do these practices take?

- It bases planes in Spain and at London's Gatwick airport.
- It hires staff in Spanish resorts and London.
- It wet-leases aircraft from Hi Fly, a European airline with its head office in Lisbon, Portugal.
- It locates the airline's administrative office in Latvia.
- It locates the airline's IT department in Ukraine.
- It runs its Asian flights out of Bangkok, using local staff with local cabin crew conditions.
- It hires pilots operating Asian flights through Air Crew Asia Ltd, an employment

agency based in Singapore. Pilots are licensed in Europe, as the aircraft are under EASA (European Aviation Safety Agency) regulations. NAS names Bangkok as its 'secondary' base. Thailand's regulations do not allow European pilots working at a home base in Thailand, when they are not employed by a local company.

- It registers aircraft in Ireland, as EI-LNA/LNB.
- It runs a crew base at JFK International Airport, USA, and has been recruiting and training cabin crew for its base in Fort Lauderdale.

So there are many countries involved in the airline's attempt to avoid stricter regulations, including Spain, Portugal, Latvia, Ukraine, Ireland, Thailand, USA and Singapore.

How does the company benefit?

The company benefits by paying lower labour costs. Spain is a country in serious economic crisis, and NAS employs unemployed Spanish flight attendants with lower conditions to operate Norwegian domestic flights. Their contracts do not have specified duties, and this allows the company to pay lower wages compared to average cabin crew wages in Spain. In fact, many of these cabin crew members fly all of their duty period in Norway and between Scandinavia and other countries.

According to a recent study, gross wage levels (indexed to New York) in the major cities of these countries are as follows:

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| City | Gross Wage Level |
|-----------|------------------|
| Oslo | 119.1 |
| Barcelona | 59.6 |
| Riga | 24.2 |
| Bangkok | 14.6 |
| Kiev | 10.5 |

Employing staff in distant, cheap labour bases is not the only tactic that NAS uses. It also demands labour-law ‘reforms’ in Norway and threatens to shift more aircraft out of the country.

What is the company’s strategy?

As fuel prices soared in the mid-2000s, and competition from other low-cost carriers like Ryanair and EasyJet intensified, Bjorn Kjosm (CEO of NAS) argued that the only route to survival was to buy lots of new, fuel-efficient planes to achieve economies of scale, and to base some of them in cheaper countries.

In April 2013, NAS announced that it was considering registering a long-haul aircraft in Ireland to circumvent Norwegian laws which prevent it from hiring cheaper Asian cabin crew.

NAS management also lobbied the Norwegian government to change its immigration laws. The airline wanted to operate its new Dreamliner flights with no EU-based employees so that it could introduce local Asian wages and working conditions. This would mean less oversight of working conditions or rest requirements by any European Union government. With its immigration law ‘reform’ proposals, the

airline aims to use cabin crew members from three different countries.

What is the union response?

The ITF-affiliated aviation union Parat has campaigned strongly against FOCs in aviation, and in particular has put pressure on the Norwegian government to reject the company’s demand to change immigration laws.

Vegard Einan, Parat vice-president, is unequivocal. He stated: “We are extremely concerned that the airline has announced that it will push ahead with its plans to employ workers on Asian conditions elsewhere in Europe, possibly Sweden. We fear that this could have a severely detrimental effect on working conditions and airline safety in both the US and the EU if airlines are allowed to use all the benefits of an open skies agreement without many of the obligations. And it will certainly create unfair transatlantic competition for other airlines.”

Parat alerted its sister unions in Scandinavia and the USA, to where NAS flights have started to travel. These unions are pressuring their governments to stop these plans.

In February 2014, the Irish authorities issued an air operator’s certificate and operating licence to Norwegian’s subsidiary, Norwegian Air International Limited (NAI), which is based in Dublin. With this permit, the administration of Norwegian’s long-haul operation will be transferred to NAI. The company has built its managerial and all mandatory regulatory functions in Dublin.

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Ireland has specific rules and regulations which allow the use of American or Asian crew. At the time of writing, the airline was waiting for a 'foreign air permit' from the US Department of Transport (DOT). This would allow it to take advantage of the EU-US open skies agreement, and to operate routes between all EU countries and the US. The American union ALPA (Air Line Pilots Association), the AFL-CIO, and Parat have jointly represented labour in a public

hearing in the USA. They have advised the DOT to decline the permission, as the company is undermining workers' rights and taking advantage of the open skies agreement beyond its intention.

When one takes all these developments into consideration it doesn't come as a surprise that Bjorn Kjos repeatedly mentioned that he was "prepared to be unpopular".



What are the dangers of the NAS model for unions?

- FOC practices can put further pressures on the wages and conditions of existing NAS employees.
- Directly and indirectly they can create similar pressures on the wages and conditions of airline employees in many other countries.
- FOCs in aviation can gradually become a normal practice within the industry.
- With the spread of FOCs, aviation unions can lose members and strength.
- Institutionalisation of FOCs in aviation can undermine flight safety.

Are airlines in your country using flags of convenience?

This case study reflects a growing trend in aviation. What is happening in your country?

- Are there foreign workers employed in your airline?
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- Do foreign airlines register their planes in your country?
- Are there airline workers who are hired through employment agencies, either as temporary or permanent workers?