U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

JUN - 1 2015

Paul D. Asmus
President and Founder
Humanitarian Air Logistics
P.O. Box 61088
Palo Alto, CA 94306

Re: State aircraft operations under the Convention on International Civil Aviation

Dear Mr. Asmus:

This is in response to your February 11, 2015, letter asking whether aircraft operations carried out for the purposes of medical services and disaster relief qualify as "state aircraft," as that term is used in the Convention on International Civil Aviation (the "Chicago Convention"), to which the United States is a party. As your letter notes, Article 3(b) of the Chicago Convention states that "aircraft used in military, customs and police services shall be deemed to be state aircraft." Your letter also quotes the following paragraph, which you represent comes from a draft of FAA Advisory Circular AC 00-1.1A, *Public Aircraft Operations*, which did not appear in the final version of that document:

> Since many other types of aircraft and associated missions are involved in activities of a "state" (country) such as Coast Guard, scientific research and development, search and rescue, medical services, mapping and geological survey services, disaster relief, VIP and government transport, etc., the statement given in Article 3(b) of the Chicago Convention cannot be taken as all comprehensive. (Your emphasis.)

Language from a draft advisory circular that was not included in the final version of the document cannot be interpreted as an official statement of FAA policy.

The state or civil status of each flight must be considered on a government-to-government basis, for each individual case. While the purpose of the flight is an important consideration, it is not the only relevant factor. A U.S. state aircraft operation must be conducted on behalf of a U.S. government department or agency, and that department or agency must request and obtain via diplomatic channels an official designation of the flight as a state aircraft operation. The request and approval or disapproval must be conducted on a formal basis between embassy officials and host-

nation authorities. A non-governmental entity may not, under any circumstances, designate its own flight operations, or those of any other entity, as state aircraft operations.

It also is important to note that designation of a flight as a state aircraft operation carries with it significant logistical and safety oversight consequences. Article 3(c) of the Chicago Convention provides that "[no] state aircraft of a contracting State [i.e., country] shall fly over the territory of another State or land thereon without authorization by special agreement or otherwise, and in accordance with the terms thereof." Every foreign country whose airspace the aircraft transits or in which it will take off or land must grant such authorization. Typically, this authorization comes in the form of a diplomatic clearance that the Department of State obtains. It is also important to recognize that the FAA does not provide safety oversight of flights conducted as state aircraft operations. The department or agency on whose behalf the operation is being conducted assumes responsibility for ensuring that it is conducted with "due regard for the safety of navigation of civil aircraft," in accordance with Article 3(d) of the Chicago Convention.

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-8018. This response was prepared by Mary E. Mason, Attorney, Regulations Division of the Office of the Chief Counsel, and coordinated with the Department of State.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for Regulations