



**WORKING PAPER**

**HIGH-LEVEL SAFETY CONFERENCE 2010**

**Montréal, 29 March to 1 April 2010**

**Theme 2: Towards the proactive management of safety**

**Topic 2.4: The protection of sources of safety information**

**ENHANCING SAFETY THROUGH THE PROTECTION OF  
CRITICAL SAFETY INFORMATION**

(Presented by the ICAO Secretariat)

**SUMMARY**

State Safety Programme (SSP) and Safety Management Systems (SMS) need steady safety data inflow to function effectively. The protection of information from these sources of safety data from improper use is essential to ensure continued safety data availability. Different sources should be afforded different protection because of the nature of the information each one yields. The protection that can eventually be afforded to accident and incident records is necessarily different from the protection that can be afforded to other sources of safety data. The greatest threat to the continued inflow of safety data to support development and implementation of SSP and SMS lies mostly in the recurrent use of information from other sources of safety data for internal retribution purposes by aviation organizations.

**Action:** The Conference is invited to:

- a) note the background analysis and discussion presented in paragraphs 2 and 3 and the proposal and conclusions presented in paragraphs 4 and 5 of this working paper;
- b) agree that further action by ICAO on the protection of sources of safety data from inappropriate use should separate the protection of certain accident and incident records from the protection of safety data from other sources;
- c) agree that the focus of the task on the protection of the data from other sources should be its protection from inappropriate use by aviation organizations; and
- d) agree on the establishment of a multi-disciplinary group including both States and industry, to assist ICAO in delivering the action proposed in b) and c) above.

## 1. INTRODUCTION

1.1 Successful safety strategies have, for a long time, relied on the constant flow of safety data. A vast amount of these data was provided on a voluntary basis by front line personnel (such as pilot, maintenance technicians, air traffic controller or other) or through constant recording system (such as flight data recorder) on the understanding that such data would only be used for safety purposes and not for retribution.

1.2 The evolution toward State Safety Programme (SSP) and Safety Management Systems (SMS) makes the need for a steady flow of safety data even more important. Data are required to identify hazards and safety deficiencies, and to develop mitigation strategies. Data are also required to assess whether mitigation strategies address the consequences of hazards as they are intended to.

1.3 Numerous sources of safety data are available to generate information to feed SSP and SMS. However, their continued availability depends to a large extent on the capacity of the aviation community to ensure that such data are protected from inappropriate use which is defined as “the use of safety information for purposes different from the purposes for which it was collected, namely, use of the information for disciplinary, civil, administrative and criminal proceedings against operational personnel, and/or disclosure of the information to the public”. Protection, to a level commensurate with the nature of the data each source generates, is essential to maintain steady safety data inflow for the real advancement of safety management in international civil aviation.

## 2. BACKGROUND INFORMATION

2.1 Activities by ICAO to protect sources of safety data from inappropriate use initially focussed on the protection of certain accident and incident records. Provisions in Annex 13 – *Aircraft Accident and Incident Investigation*, for the non-disclosure of specific accident/incident records for purposes other than accident and incident investigation have evolved over time. Presently, Annex 13, paragraph 5.12 enumerates specific records (such as statements from persons, cockpit voice recordings, opinions and so forth), that “shall not be disclosed for purposes other than accident and incident investigation, unless the appropriate authority for the administration of justice in the State determines, that their disclosure outweigh the adverse domestic and international impact such action may have on that or any future investigations”.

2.2 Interpretation and application of the provisions in paragraph 5.12 vary among States. As a consequence, disclosure of records protected by paragraph 5.12 is known to take place during or following an accident/incident investigation. Similarly, there are examples of use of these records for purposes other than accident and incident investigation. Attempts to strengthen the provisions in paragraph 5.12 have not been successful, because of a view that further strengthening of paragraph 5.12 might interfere with the proper administration of justice within States.

2.3 Recent activities by ICAO to protect safety data from inappropriate use have focussed on sources of safety data other than the specific records listed in Annex 13, paragraph 5.12. This is because the safety risk-based approach of safety management has fostered the development of additional sources of safety data, necessary for safety risk based-decision making. These sources generate a volume of safety data that increases exponentially the volume generated by accident and incident investigations. Generally speaking, these sources of safety data are protected by internal and/or informal agreements, based upon mutual trust among the parties involved.

2.4 In 2003, ICAO initiated activities to develop guidance for the protection of safety data from sources of safety information from inappropriate use. The work was developed through a multi-disciplinary effort by ICAO, States and industry and led to the introduction, in March 2006 of Attachment E to Annex 13 (*Legal guidance for the protection of information from safety data collection and processing systems*) which provides legal guidance for States to adapt existing national laws and regulations to protect from inappropriate use the information from sources of safety data.

2.5 A consultation by ICAO during 2008 showed general satisfaction by States with the application of Attachment E for the protection of the specific records listed in paragraph 5.12 of Annex 13. Nevertheless, the accident investigation and prevention divisional meeting held in October 2008 (AIG/08) recommended that ICAO undertake a further study on the protection of safety data with the aim of reviewing and facilitating the implementation of paragraph 5.12 and Attachment E to Annex 13. The Air Navigation approved the intent of the recommendation and requested the Secretary to reassess this matter as part of the progress report on the implementation of paragraph 5.12 of Annex 13 to be presented at the next ordinary Session of the Assembly.

### 3. DISCUSSION

3.1 The nature of the information derived from accident and incident records is clearly and significantly different from the nature of the information derived by the additional sources of safety data. Accident and incident records provide information about *consequential* occurrences. Accidents in particular usually reflect circumstances with damaging consequences in terms of loss of life, property and/or damage to equipment. The deficiencies – systemic, technical or human – leading to the accident have unleashed their damaging potential, mainly because defences in the system have *failed*. The loss for society – human and/or material – is generally significant. The involvement of the legal system at some stage of the investigation or its aftermath should not be unexpected. Denying information to a legal system, no matter how technically justified might the reasons be, will likely be construed as interfering with the legal process. Protection of such data is not an easy task.

3.2 On the other hand, the information gleaned from other sources of safety data refers to *inconsequential* occurrences, i.e., events that have *not* generated damaging consequences in terms of loss of life, property and/or damage to equipment. The deficiencies – systemic, technical or human – leading to the report have not unleashed their damaging potential, mainly because defences in the system have *worked*. There is no loss for society – human and/or material. The involvement of the legal process, while possible, is more unlikely. Because of this, protection of such data – if predicated upon principles developed through consensus – is a more feasible task.

3.3 A further consideration that is fundamental to this discussion refers to properly focussing on *why* it is necessary to protect safety information from improper use. Quite often the need to protect sources of safety data from improper use is justified in avoiding the so-called “criminalization of error”, *and thus* ensuring safety data availability. The term “criminalization of error” is applied to those situations where, in the aftermath of an accident, operational personnel involved in the occurrence face legal action (or the threat of it). Such legal action is oftentimes supported by evidence provided by records from the occurrence investigation, including records specifically protected by the non-disclosure provisions in paragraph 5.12 of Annex 13.

3.4 The objective of ICAO in providing guidance for protecting information from safety sources from inappropriate use is to secure constant flow of safety data to support SSP and SMS implementation. Linking exclusively the “criminalization of error” with the protection of sources of safety data from improper use tends to blur the purpose of the task. Clarity of purpose is essential in an undertaking of such multi-layered complexity that stands at the intersection of politics, law and safety.

3.5 The most significant threat to the future of safety management in international civil aviation may lie within the aviation community. A significant body of informal, yet reliable evidence unequivocally supports the conclusion that retribution by aviation organizations against operational personnel, as consequence of information gleaned from sources of safety data *other than* accident and incident records, continues to take place throughout the community.

#### 4. PROPOSAL

4.1 The discussion above suggests a need to re-focus further action by ICAO on the protection of sources of safety data from improper use. Such action should build on two premises:

- a) there is a need to protect safety data to ensure its continued availability for the implementation and advancement of SSP and SMS; and,
- b) separate endeavours are required to protect accident and incident records from endeavours to protect safety data from other sources, with a focus on protecting safety data from the other sources from inappropriate use by aviation organizations.

#### 5. CONCLUSIONS

5.1 SSP and SMS are systems for the management of safety and both need steady safety data inflow to function effectively. The protection of information from these sources of safety data from improper use is essential to ensure continued safety data availability.

5.2 The protection that can eventually be afforded to accident and incident records is necessarily different from the protection that can be afforded to other sources of safety data, because of the nature of the information each one yields. Such differentiation is a foremost consideration when deciding on the level of protection possible for different sources of safety data.

5.3 The greatest threat to the continued inflow of safety data to support development and implementation of SSP and SMS lies mostly in the recurrent use of information from other sources of safety data for internal retribution purposes by aviation organizations.

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