



ASSEMBLY — 39TH SESSION

TECHNICAL COMMISSION

Agenda Item 33: Aviation safety and air navigation monitoring and analysis

**ANALYSIS OF THE RESULTS OF HAVING IMPLEMENTED THE CONFLICT ZONE INFORMATION REPOSITORY (CZIR) IN LIGHT OF THE CODE OF CONDUCT FOR SHARING AND USING SAFETY INFORMATION**

(Presented by the Russian Federation)

**EXECUTIVE SUMMARY**

On 17 June 2016, the Council of ICAO at the 15TH meeting of the 208TH session of the Council once again considered issues related to the online Conflict Zone Information Repository (CZIR). In particular, C-WP/14502 Restricted, presented for consideration to the Council of ICAO on behalf of 17 ICAO Member States a proposal to “suspend any further posting of the names of States until the CZIR processes are streamlined and to remove all postings that do not meet the definition of the “conflict zone.” This recommendation in the working paper stemmed from the view that “manner in which the repository has been implemented has not conformed to the initial purpose and intent of the Conflict Zone Information Repository.”

This document contains an analysis of the results of having established the CZIR in light of The Code of Conduct for Sharing and Using Safety Information, as was presented in ICAO Assembly Resolution A37-1, and also proposes options that would make it possible for the professional international aviation community to use the CZIR as a risk assessment tool related to military activity that is potentially hazardous to civil aviation flights.

**Action:** The Assembly is invited to assign the Council of ICAO to immediately reassess the procedures of how the CZIR is functioning in accordance with the provisions of the Convention on Civil Aviation and the Code of Conduct for Sharing and Using Safety Information, having ensured the necessary security of the information published, as well as control over its legality, completeness and access permissions.

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| <i>Strategic Objectives:</i>   | This working paper relates to the Safety; Air Navigation Capacity and Efficiency and Security and Facilitation Strategic Objectives. |
| <i>Financial implications:</i> | A reduction in spending from the ICAO Regular Programme Budget unrelated to ICAO Strategic Objectives                                |

<sup>1</sup> Russian version provided by the Russian Federation.

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| <i>References:</i> | Doc 10022 <i>Assembly Resolutions in Force</i> (as of 4 October 2013)<br>Doc 9554 <i>Manual Concerning Safety Measures Related to Military Potentially Hazardous to Civil Aircraft Operations</i><br>C-WP/14227 <i>Risk Assessment of Operations Over Airspace Affected by Armed Conflict – Responsibility of States for Ensuring the Flight Safety of Civil Aircraft Within Their National and Delegated Airspace over Armed Conflict Zones of Military Exercises</i><br>C-WP/14502 <i>The Conflict Zone Information Repository</i> |
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## 1. INTRODUCTION

1.1 On 27 October 2014, the first meeting of the 203rd session of the Council considered Working Paper C-WP/14227 *Risk Assessment of Operations Over Airspace Affected by Armed Conflict – Responsibility of States for Ensuring the Flight Safety of Civil Aircraft Within Their National and Delegated Airspace over Armed Conflict Zones of Military Exercises*, presented on behalf of the Plurinational State of Bolivia and the Russian Federation. Specifically, the document notes that “*the use of a dubious or a deliberately distorted information mechanism concerning risks to national or delegated airspace of third countries most likely will not yield any positive results. Instead, the result of this evaluation, carried out based on false information might lead to the introduction of undue restrictions for airlines operating international flights, or unjustified continuation of flights in the airspace over zones where there are risks associated with military activities potentially hazardous to civil aircraft operations. In addition, a distribution of inappropriately verified information is likely be used to unfair competition.*”

1.2 Despite efforts of several ICAO member countries, the online Conflict Zone Information Repository (CZIR) was established without taking into consideration the Code of Conduct for Sharing and Using Safety Information, as presented in ICAO Assembly Resolution A37-1. As noted in ICAO Council C-WP/14502 Restricted and as cited in the Executive Summary to this document, “*The manner in which the repository has been implemented has not conformed to the initial purpose and intent of the Conflict Zone Information Repository. Publications which have been made affected some States where there is no armed conflict. The implementation of the Repository has contradicted what was approved by ICAO Council during its 204th Session and forwarded through the State letter SMM 1/4-15/16 and calls for a serious review.*” In other words, the CZIR pursued goals different from the goals of the Convention on International Civil Aviation (hereinafter, the Chicago Convention, or the Convention).

1.3 The conclusions drawn above are confirmed by the words “Disclaimer and Exclusion of Liability,” published on the ICAO public website as part of a disclaimer before accessing the CZIR, which states, in part “*This site is informational in nature and its contents are made available without warranties of any kind, either express or implied...ICAO does not warrant that the contents are accurate, valid, reliable, complete, comprehensive, correct or up-to-date, that this website will be available at any particular time or location...ICAO shall not be liable for any direct, indirect, punitive, incidental, special or consequential damages (including, but not limited to, damages for loss of business profits, business interruption, or loss of programs or information).*” In this way, the goal and methods of distributing information with suspicious content via the CZIR does not in any way match the goals and spirit of the Chicago Convention or the Code of Conduct for Sharing and Using Safety Information.

## 2. PRINCIPLES OF USING THE ONLINE CZIR FOR ASSESSING RISKS RELATED TO MILITARY ACTIVITY

2.1 Article 1 *Sovereignty* of the Chicago Convention recognizes that “...every State has complete and exclusive sovereignty over the airspace over its territory”. In this way, the publication of any information by one state with respect to the sovereign airspace of another state without its consent, which is possible under the CZIR temporary procedure, is a direct violation of the founding principle of sovereignty enshrined in Article 1 of the Convention. Instead of directly violating states’ sovereignty, the Council of ICAO in urgent situations, could initiate an appeal from the President of the Council of ICAO to the government of the respective state urging her place restrictions in the corresponding area of its sovereign or delegated airspace, as was proposed in the aforementioned ICAO Council Working Paper C-WP/14227. It bears noting that the downing of the Malaysian Airlines Flight MH17, Boeing 777 on 17 July 2014, was related not to a lack of information about the conflict zone, but to the state having established inadequate restrictions on the use of the sovereign airspace directly over the zone where full-scale military activity was underway, with military aircraft and ballistic missiles. Neither ICAO leadership nor ICAO Regional Office had taken any steps to ensure international civil aviation flight safety in the region.

2.2 It is evident that risk assessment procedures, particularly in the areas of flight safety or aviation security rest on a professional analysis of information obtained from sources that are trusted and protected from deliberate tampering with initial data. In this way, the information in the CZIR but be adequately verified and encrypted and accessible to those specialists with the necessary qualifications to perform a risk assessment. For this reason, the online CZIR, at minimum, must be uploaded to the secure ICAO portal and accessible only to specialists officially appointed by ICAO Member States to perform that analysis. Another mode of uploading such special information to wide accessibility can be explained only by the initiator pursuing ends not compatible with the Chicago Convention’s goals and spirit.

2.3 A proper risk assessment can be performed using incomplete and unreliable information provided by certain states. In this way, the CZIR can be properly used as a risk assessment tool only if all relevant information collected in the repository is officially published by all ICAO member states without exception in the form of NOTAMs (Notice to Airman) and AICs (Aeronautical Information Circulars). In order to preclude the impact of the “human factor”, the information needs to be uploaded to CZIR automatically at any time of day or night. The CZIR temporary operating procedure in force right now allows only for manual data entry during ICAO working hours. In addition, as was noted in para. 1.3 of this document, ICAO shall not be liable for the reliability and relevance of the published information.

2.4 From the moment the International Civil Aviation Organization (ICAO) was founded in 1944, there have been at least 11 civil aviation aircraft crashes in various regions of the world resulting from military activity. **One thousand three hundred fifty-two people** were victims of these tragic events. Meanwhile, some of said crashes were not related to an armed confrontation, but resulted from unintentional errors related to military exercises and maneuvers. For this reason, the information gathered in the CZIR must encompass all types of military activity potentially hazardous to civil aviation aircraft flights. The current definition of “conflict zones” refers only to armed confrontation zones.

2.5 Risk assessment as currently practiced allows flights directly over armed conflict zones. Meanwhile, for technical reasons, for example, a loss of pressure integrity, a fire onboard the aircraft, or an engine failure, the aircraft at any moment of flight may need to alter its altitude or make an emergency landing on a territory touched by an armed confrontation. For this reason, ICAO should urge Member States to completely restrict aircraft flights in the airspace directly above conflict zones or military exercises and in buffer zones as determined by the radius of potential harm from the weaponry used.

2.6 In accordance with the Resolution of the ICAO Assembly A37-1, the Council of ICAO developed the Code of Conduct for Sharing and Using Safety Information, set forth in Annex 3 to Doc 10004 *Global Aviation Safety Plan: 2014-2016*. In this connection, it would seem necessary to bring the temporary CZIR procedure into compliance with said Code.

### 3. THE RESPONSIBILITY OF STATES FOR ENSURING CIVIL AVIATION FLIGHT SAFETY IN THEIR NATIONAL AND DELEGATED AIRSPACE OVER CONFLICT ZONES OR ZONES OF MILITARY EXERCISES

3.1 The Dutch Safety Board (DSB), in its final report on the investigation of the circumstances of the downing of Flight MH17 (Malaysian Airlines Boeing 777) on 17 July 2014, among other things, wrote in recommendation 4, addressed to ICAO Member States urges to, "*Guarantee that the obligations of States to ensure the safety of the airspace over its territory be in strict compliance with the Chicago Convention and the respective Standards and Recommended Practices, so that it is clearly understood in what cases airspace is to be closed.*"

3.2 A similar question was brought for the consideration by the Council of ICAO one year prior to the publication of said report in the Council of ICAO Working Paper C-WP/14227. In particular, it was noted that the ICAO Assembly "... Urges all Contracting States to strictly comply with the provisions of the Convention on International Civil Aviation, its Annexes and its related procedures, in order to prevent a recurrence of such potentially hazardous activities (a rocket's launching)" (Resolution A32-6). These ICAO member states acknowledge that they "...bear both collective and individual responsibility for ensuring the safety of international civil aviation" (Resolution A37-1), meanwhile "...the main responsibility for ensuring civil aviation flight safety and security are borne by the member states" (Resolution A38-15, Attachment E).

3.3 Article 9 of the Convention "*Prohibited Zones*" states: "*a) Each contracting State may, for reasons of military necessity or public safety, restrict or prohibit uniformly the aircraft of other States over certain areas of its territory ...*" On that basis, Standard 5.1 of Annex 15 to the Convention ("*Aeronautical Navigation Information Services*") directs states to issue a NOTAM in the event there is a presence, among other things, "...of hazards which affect air navigation (including obstacles, military exercises...)".

3.4 In this way, although the Chicago Convention enshrines the principle of the complete and exclusive state sovereignty over the airspace over its territory, including the sovereign right to the state establishing prohibited zones in this airspace, it doesn't contain provisions that directly call for an **obligation** on the part of states in certain instances to establish restrictions or prohibitions for civil aviation aircraft in the airspace above a part or all of their territory. Such an obligation will obviously have a positive impact on states' ability to establish adequate restrictions on the use of sovereign or delegated airspace and will contribute to objective investigations of aviation incidents, resulting from acts of unlawful interference in civil aviation. On the contrary, the lack of such obligations on the states' part is creating fertile soil for the use of weaponry against civil aviation aircraft in flight, and does not motivate states to cooperate in investigating aviation accidents, as occurred during said investigation of the downing of Malaysian Airlines Flight MH17.

3.5 Nonetheless, the Special Group to Review the Application of ICAO Treaties Relating to Conflict Zones (SGRIT-CZ), having addressed these questions during their first and only meeting from

13-15 July 2015, came to the conclusion that it is inadvisable to make any changes in this respect to the Convention, its Annexes, and other ICAO documents. However, in light of the growing terrorist threat, the question of whether it is advisable to include these kinds of provisions and their content in the Annexes to the Chicago Convention and/or other ICAO documents does require further study, including an assessment of the possible impacts on uninterrupted air navigation and its safety.

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