



ASSEMBLY — 37TH SESSION

TECHNICAL COMMISSION

Agenda Item 27: The protection of certain accident and incident records

THE VIEWS OF THE INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA)

(Presented by the International Air Transport Association¹)

EXECUTIVE SUMMARY

Effective accident investigation remains crucial to the industry's drive to improving operational safety. The free flow of information to accident and incident investigators and the protection of their reports are vital. The criminalization of accident investigations is not an effective means to improve aviation safety.

Action: The Assembly is invited to:

- a) note the information contained in this working paper; and
- b) review and adopt the proposed modifications with respect to Resolutions 27/1 and 27/2 contained in A37-WP/66, Appendices A and B.

<i>Strategic Objectives:</i>	See A37-WP/66
<i>Financial implications:</i>	See A37-WP/66
<i>References:</i>	A37-WP/66 and documents referred to therein Annex 13 — <i>Aircraft Accident and Incident Investigation</i> Doc 9902, <i>Assembly Resolutions in Force</i> (as of 28 September 2007)

1. INTRODUCTION

1.1 IATA believes that aircraft accident investigation and the unimpeded flow of information has been and remains today an integral part of the industry's overall drive towards improving operational safety. The preparation of objective and unhindered reports of accidents and incidents are vital tools in the investigation process.

¹ All language versions presented by the International Air Transport Association (IATA)

2. DISCUSSION

2.1 The general principles that govern the investigation of accidents and incidents are enshrined in Annex 13 — *Aircraft Accident and Incident Investigation* of the Chicago Convention. Annex 13 makes it clear that effective investigation and information sharing are key aspects of the prevention of future accidents but, crucially, it also underlines the necessity for a non-punitive environment.² It is only by preserving a non-punitive environment that the free flow of information used to help determine the cause of accidents and incidents can be assured. If, however, safety information obtained in the course of the investigation of an accident or incident is used for the purposes of criminal investigation and/or prosecution, this will become a hindrance to the full, frank and open communications that are essential for the preservation of safety standards.

2.2 IATA supports ICAO's proposed Resolutions 27/1 and 27/2³ which supersede Resolutions A36-8 and A36-9, since they recognize explicitly the importance of protecting certain accident and incident reports and preventing their inappropriate use.

2.3 However, there is a further aspect to this issue which must be addressed by the international aviation community, namely the growing trend towards the almost systematic opening of criminal prosecutions following aircraft accidents, and the use of information gathered for the purpose of investigation and the prevention of further incidents in those proceedings against operational personnel and senior airline management.⁴

2.4 There is no suggestion that vigorous criminal investigations and prosecutions are inappropriate in cases of intentional or unlawful conduct by an airline or its employees. But, the accident investigation regime must respect the fundamental rules of natural justice and due process.

2.5 In the face of the growing phenomenon of criminalization, there would be some justification in airlines and their legal advisers considering that an airline should only cooperate in accident investigations to the absolute minimum extent possible. Rather than assisting in improving safety, this will lead to industry actors engaging in defensive conduct from the outset. The risk of this growing trend is that important witnesses may refrain from cooperating fully with prosecutions or will do so to the minimum extent possible. That lack of cooperation will lead to the loss of valuable information on the causes of an accident and the ways of avoiding future accidents.

2.6 Member States will be aware of recent developments in the European Union (EU) in this field with the proposed Regulation on investigation and prevention of accidents and incidents in civil aviation. Whilst this Regulation is a step in the right direction, the final drafts of the text would appear to fail to address a number of key issues:

2.6.1 **The right to legal representation in the early stages of an accident investigation.** In a number of jurisdictions, the provisions of Annex 13 are not held to prevail over domestic criminal law and procedure regarding the use of witness statements in criminal proceedings. Witnesses must be able to have proper legal representation in those early stages and should always be advised of that right before they give any statement to an investigator.

2.6.2 **Communication of information.** The release of information to the public must be done in a controlled manner otherwise it can have a direct and harmful effect on those involved.

² Annex 13, paragraph 3.1

³ A37-WP/66, Appendices A and B

⁴ See Appendix A

2.7 Therefore, IATA respectfully submits that in the current context where the criminalization of aviation accidents is ever increasing, the proposed Resolutions need to be enhanced to include further consideration of the aforementioned issues by State prosecution authorities.

3. CONCLUSION

3.1 IATA invites the Assembly to consider the following additions to Resolutions 27/1 and 27/2 set out in A37-WP/66:

...

Taking into account that the overriding consideration in any aviation accident investigation is to determine the causes of the accident in order to prevent future accidents and not to prepare criminal investigation against industry stakeholders;

Recognizing that the criminalization of aviation accident investigation is not an effective deterrent or a means to improve aviation safety;

The Assembly:

1. *Urges* States to ensure that their investigation authorities comply with the provisions of Annex 13, paragraph 5.12 and Attachment E, thereby safeguarding the safety investigation process, report and safety data collection and processing systems from premature and inappropriate disclosure for direct use in criminal proceedings.

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— END —