



WORKING PAPER

ASSEMBLY — 36TH SESSION

TECHNICAL COMMISSION

Agenda Item 28: Protection of certain accident and incident records and of safety data collection and processing systems in order to improve aviation safety

PROTECTION OF SAFETY INFORMATION

(Presented by the Council of ICAO)

EXECUTIVE SUMMARY

This paper presents a progress report on Assembly Resolutions A33-17 and A35-17. The paper addresses Attachment E to Annex 13, covering the legal guidance for the protection of information from safety data collection and processing systems (SDCPS), which includes the protection of certain accident and incident records. With regard to action taken, it is proposed that the aforementioned Resolutions be revised accordingly.

Action: The Assembly is invited to:

- a) adopt Resolution on non-disclosure of certain accident and incident records, as presented in Appendix A; and
- b) adopt Resolution on protecting information from safety data collection and processing systems in order to improve aviation safety, as presented in Appendix B.

<i>Strategic Objectives:</i>	The action on this paper will further Strategic Objectives A and F by providing States with legal guidance to assist them in protecting safety information from inappropriate use.
<i>Financial implications:</i>	No additional resources required.
<i>References:</i>	Doc 9848, <i>Assembly Resolutions in Force (as of 8 October 2004)</i>

1. INTRODUCTION

1.1 The Assembly, through Resolution A33-17: *Non-disclosure of certain accident and incident records*, instructed the Council, inter alia, to give further consideration to the legal aspects of the subject of protection of certain accident and incident records, and to further examine Annex 13 — *Aircraft Accident and Incident Investigation* provisions with the objective of strengthening those provisions related to the protection of privileged information gathered during accident and incident investigations. Resolution A33-17 further instructed the Secretary General to develop appropriate guidance material related to laws and regulations to protect certain accident and incident records.

1.2 The Assembly, through Resolution A35-17: *Protecting information from safety data collection and processing systems in order to improve aviation safety*, instructed the Council to develop appropriate legal guidance that will assist States to enact national laws and regulations to protect information gathered from all relevant safety data collection and processing systems, while allowing for the proper administration of justice in the State. Moreover, the Assembly instructed the Council to provide a progress report to the next ordinary Session of the Assembly on this matter.

2. ASSEMBLY RESOLUTION A33-17

2.1 In 2002, in response to Operative Clause 4 in Assembly Resolution A33-17, an amendment proposal for paragraph 5.12 of Annex 13 was developed and circulated to States for comments. A number of States indicated that the proposed amendment was too restrictive and would be incompatible with their national rules and principles of law relating to the administration of justice. States further advised that should the provisions be adopted they would be obliged to file differences to them. The Air Navigation Commission agreed not to proceed with the proposed amendment at that time. An informal consultation group of aircraft accident investigation experts was established to develop a new proposal taking into account the comments submitted by States.

2.2 The group of experts did not support the need for any substantive changes to the existing provisions of paragraph 5.12 in Annex 13. However, the group was in agreement that improving the level of implementation by States of the existing Annex 13 provisions would be beneficial, which was in line with the shift in focus within ICAO towards the implementation of Standards and Recommended Practices (SARPs), rather than the development of new SARPs.

2.3 Mindful that work to develop legal guidance to assist States, inter alia, to protect safety information from inappropriate use was well advanced, the Air Navigation Commission agreed that there was no need to amend paragraph 5.12 of Annex 13 and that it would be more effective to concentrate on assisting States to implement the existing Annex 13 provisions relating to the protection of certain accident and incident records.

3. ASSEMBLY RESOLUTION A35-17

3.1 The protection of safety information from inappropriate use is essential, since the use of safety information for other than safety-related purposes may inhibit the future availability of such information, with an adverse effect on safety.

3.2 In developing the legal guidance called for in Assembly Resolution A35-17, ICAO requested States to provide examples of their relevant laws and regulations relating to the protection of information from safety data collection and processing systems. Such systems include certain records pertaining to accident and incident investigation, mandatory safety reporting systems, voluntary safety reporting systems, and self-disclosure reporting systems. After the material received from States had been analysed, the legal guidance was developed. It took the form of a series of principles that could be adapted to meet the needs of individual States.

3.3 In March 2006, Council approved, as part of Amendment 11 to Annex 13, the legal guidance for the protection of information from safety data collection and processing systems, which was incorporated into Annex 13 as Attachment E.

4. CONCLUSION

4.1 In response to Assembly Resolutions A33-17 and A35-17, legal guidance for the protection of information from safety data collection and processing systems was developed by ICAO. Council approved, as part of Amendment 11 to Annex 13, this legal guidance, which was incorporated into Annex 13 as Attachment E. Two draft Assembly Resolutions are proposed to supersede Assembly Resolutions A33-17 and A35-17, so as to reflect the issuance of the legal guidance by ICAO.

APPENDIX A

DRAFT ASSEMBLY RESOLUTION TO SUPERSEDE RESOLUTION A33-17 ON NON-DISCLOSURE OF CERTAIN ACCIDENT AND INCIDENT RECORDS

Resolution 36/

Non-disclosure of certain accident and incident records

Whereas the primary objective of the Organization continues to be that of ensuring the safety of international civil aviation worldwide;

Whereas it is essential that cognizance be taken that it is not the purpose of the investigation of accidents and incidents to apportion blame or liability;

Recognizing that it is essential that all relevant information be made available to the accident investigators to facilitate the establishment of the causes of accidents and incidents in order to enable preventative action to be taken;

Recognizing that the prevention of accidents is essential to safeguard the continued confidence in air transport;

Recognizing that public attention will continue to focus on States' investigative actions, including calls for access to accident and incident records;

Recognizing that the protection of certain accident and incident records from inappropriate use is essential to ensure the continued availability of all relevant information to accident investigators in future investigations;

Recognizing that the measures taken so far to ensure the protection of certain accident and incident records may not be sufficient, and noting the issuance by ICAO of legal guidance to assist States in this regard;

The Assembly:

1. Urges Contracting States to examine and if necessary adjust their laws, regulations and policies to protect certain accident and incident records in compliance with paragraph 5.12 of Annex 13, in order to mitigate impediments to accident and incident investigations, in consideration of the legal guidance for the protection of information from safety data collection and processing systems issued by ICAO, as set out in Attachment E to Annex 13; and

2. Declares that this resolution supersedes Resolution A33-17.

APPENDIX B

DRAFT ASSEMBLY RESOLUTION TO SUPERSEDE RESOLUTION A35-17 ON PROTECTING INFORMATION FROM SAFETY DATA COLLECTION AND PROCESSING SYSTEMS IN ORDER TO IMPROVE AVIATION SAFETY

Resolution 36/

Protecting information from safety data collection and processing systems in order to improve aviation safety

Whereas the primary objective of the Organization continues to be that of ensuring the safety of international civil aviation worldwide;

Recognizing the importance of the free communication of safety information amongst the stakeholders of the aviation system;

Recognizing that the protection of safety information from inappropriate use is essential to ensure the continued availability of all relevant safety information, to enable proper and timely preventive actions to be taken;

Concerned by a trend for safety information to be used for disciplinary and enforcement actions and to be admitted as evidence in judicial proceedings;

Mindful that the use of safety information for other than safety-related purposes may inhibit the provision of such information, with an adverse effect on aviation safety;

Considering that a balance needs to be struck between the need for the protection of safety information and the need for the proper administration of justice;

Recognizing that technological advances have made possible new safety data collection, processing and exchange systems, resulting in multiple sources of safety information that are essential in order to improve aviation safety;

Noting that existing international laws, as well as national laws and regulations in many States, may not adequately address the manner in which safety information is protected from inappropriate use; and

Noting the issuance by ICAO of legal guidance aimed at assisting States enact national laws and regulations to protect information gathered from safety data collection and processing systems, while allowing for the proper administration of justice.

The Assembly:

1. Urges all Contracting States to examine their existing legislation and adjust as necessary, or enact laws and regulations to protect information gathered from all relevant safety data collection and processing systems based, to the extent possible, on the legal guidance developed by ICAO, as set out in Attachment E to Annex 13;
2. Instructs the Council to provide a progress report to the next ordinary Session of the Assembly on this matter; and
3. Declares that this resolution supersedes Resolution A35-17.

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