



ASSEMBLY — 38TH SESSION

TECHNICAL COMMISSION

Agenda Item 27: Aviation Safety – Policy

Agenda Item 28: Aviation Safety – Standardization

BALANCING THE PROTECTION AND USE OF SAFETY INFORMATION

(Presented by the Secretariat)

EXECUTIVE SUMMARY

Achieving the objectives of the Global Aviation Safety Plan (GASP) will depend to a large degree upon the continued availability and exchange of safety information. This paper summarizes the work in progress to enhance provisions related to the use and protection of safety information, while balancing the need for the proper administration of justice.

Strategic Objectives:

This working paper relates to Safety.

Financial implications:

No additional resources required.

References:

Annex 13 — *Aircraft Accident and Incident Investigation*
Annex 19 – *Safety Management*
Doc 9935 – *Report of the High-level Safety Conference 2010*
Doc 9914 – *Report of the Accident Investigation and Prevention (AIG) Divisional Meeting (2008)*
Doc 9954 – *Report of the Technical Commission of the 37th Session of the Assembly*
Doc 9958 – *Assembly Resolutions in Force (as of 8 October 2010)*
Report of the Special Meeting of the Safety Management Panel

1. INTRODUCTION

1.1 The collection, analysis and exchange of safety information is essential to attain the Global Aviation Safety Plan (GASP) objectives. The success of these information sharing mechanisms depends, in part, on the existence of effective legal safeguards that afford appropriate protection to the data and related sources without impeding necessary and appropriate use, thereby encouraging meaningful reporting and analysis processes that proactively address safety issues. This paper summarizes the progress made by

ICAO in enhancing provisions on the protection of certain accident and incident records and information gathered from safety data collection and processing systems (SDCPS).

2. BACKGROUND

2.1 The Accident Investigation and Prevention (AIG) Divisional Meeting (2008) (Montréal, 13 - 18 October 2008) recommended that ICAO, with the assistance of an appropriate group of experts, undertake a study with the aim of reviewing and facilitating the implementation of paragraph 5.12 and Attachment E to Annex 13 — *Aircraft Accident and Incident Investigation* (Recommendation 1.7/1 refers).

2.2 The High-level Safety Conference (HLSC 2010) (Montréal, 29 March - 1 April 2010) recommended that ICAO establish a multidisciplinary group to progress activities regarding the protection of safety data and safety information, including certain accident and incident records as well as data supporting State safety programmes (SSPs) and safety management systems (SMSs) (Recommendation 2/4 refers). The aim would be to ensure the availability of information required for safety management. The ICAO Council endorsed the HLSC 2010 recommendation (C-DEC 190/6 refers).

2.3 The 37th Session of the Assembly (Montréal, 28 September – 8 October 2010) instructed the Council to consider enhancing, in view of the results of the work of the multidisciplinary group, the provisions on the protection of certain accident and incident records as well as information gathered from SDCPS. The aim would be to facilitate the implementation of related ICAO provisions taking into account the necessary interactions between safety and judicial authorities in the context of an open reporting culture (Resolutions A37-2 and A37-3 refer).

2.4 The Safety Information Protection Task Force (SIP TF) was established to deliver products and outputs including recommendations for amendments to Standards and Recommended Practices (SARPs) and guidance material to assure an appropriate level of protection for certain accident and incident records as well as information gathered from SDCPS.

2.5 The Safety Management Panel (SMP) was then established to provide recommendations for the development of a new Annex on safety management responsibilities and processes. Annex 19 — *Safety Management* was adopted by the ICAO Council during its 198th session and will become applicable on 14 November 2013. Annex 19 is comprised of overarching safety management provisions, with those specific to a single sector of activity retained in their respective Annexes. Additionally, the legal guidance from Attachment E of Annex 13 for the protection of information from safety data collection and processing systems is replicated in Attachment B to Annex 19.

3. DISCUSSION

3.1 The SIP TF, comprised of legal, safety management, regulatory and accident investigation experts nominated by nineteen Member States and six international organizations, held four plenary meetings, informal working group meetings and teleconferences, and engaged in considerable correspondence from May 2011 to January 2013. At its fourth meeting, the SIP TF made findings and recommendations for new and/or enhanced SARPs and guidance materials to facilitate the appropriate protection and use of information generated through accident and incident investigations and information collected through safety management processes. Consistent with the Task Force's mandate, the SIP TF's recommendations considered the need to strike a balance between actions taken by competent authorities to maintain and improve aviation safety and the proper administration of justice.

3.2 With respect to the protection of information generated through accident and incident investigations, the SIP TF recommended: amendments to provisions regarding the non-disclosure of certain accident and incident records, as contained in Annex 13; enhanced protection of audio and video content from cockpit voice recordings and cockpit airborne image recordings; enhanced cooperation between accident investigation and judicial authorities; and the upgrade of the Recommended Practice in paragraph 8.8 of Annex 13 to a Standard (Recommendations 3/1, 3/2, 3/3, and 3/4 refer). The SIP TF also recommended that Attachment E to Annex 13 be further analysed by a group of experts to be coordinated by the ICAO section responsible for Annex 13. This analysis should take into account SIP TF recommended amendments to what is now Attachment B to Annex 19, and that consideration be given to upgrading Attachment E to an Appendix. All recommendations for amendments to Annex 13 would be further considered by a group of experts to be coordinated by the ICAO section responsible for that Annex.

3.3 With respect to the use and protection of information generated through safety management processes, the SIP TF recommended new and amended provisions to assure the protection of data collection, analysis and exchange and its related sources, including the amendment and upgrade of Recommended Practice in paragraph 5.3.2 of Annex 13 into a Standard. It was further recommended that Attachment B to Annex 19 be amended to include provisions ensuring that, subject to appropriate safeguards, information generated through safety management processes is available to competent authorities for demonstrably safety-related purposes, and that Attachment B be upgraded to the status of SARP as Appendix 3. Recommendations also include enhanced provisions for the protection of safety information for safety reporting systems, flight data analysis programmes and flight recorder recordings (Recommendations 4/1, 4/2 and 4/3 refer).

3.4 The SIP TF also recommended engaging with diverse groups dealing with the use and protection of safety information, namely: safety, regulatory, administrative, judicial, law enforcement, legal, prosecutorial groups and victims' support groups. It was noted that progress can be made in the areas of training, support, education, outreach and communication through the use of implementation tools and tactics to balance the protection of safety data with the administration of justice (Recommendations 2/1 refers).

4. **NEXT STEPS**

4.1 The recommendations delivered by the SIP TF will be further developed to facilitate the appropriate use and protection of safety information. Specific recommendations for new and/or enhanced provisions will be considered by the SMP and other relevant groups of experts through the normal process for the development and amendment of SARPs and supportive guidance materials.

4.2 The foundations and direction established by the SIP TF will provide the basis to further develop a balanced approach for the protection and use of safety information consistent with the GASP. These important issues will be instrumental to the future enhancement of aviation safety, and are expected to be further developed with a view to their consideration during a planned high-level safety conference in 2015.