



大会 — 第 38 届会议

技术委员会

议程项目27：航空安全 — 政策

巴西保护安全信息的做法

(由巴西在拉美民航委员会¹其他成员国支持下提交)

执行摘要

保护安全信息一直是基于安全管理的信息化框架未来成功的主要顾虑之一。在泛美地区，地区航空安全小组（RASG-PA）一直在促进交流经验与实施做法。本工作文件提出巴西已经实施的两项保护安全信息的战略行动，可供其他国家采用。第一项建议是航空法的形式及其修订。第二项建议介绍了法官和检察官方案的结构和模式，侧重于司法部门对于飞行安全的作用。

行动：请大会：

- a) 注意所提供的信息；
- b) 鼓励各国根据附录拟议模式所载的原则，采用保护安全信息的法律框架；和
- c) 考虑到所述原则，批准国际民航组织对此制订指导材料。

战略目标:	本工作文件涉及安全战略目标
财务影响:	预计已包含在预算草案当中。
参考文件:	<ul style="list-style-type: none">• 国际民航组织全球航空安全计划（2007 年）举措 III（GSI 3）：差错和事故征候的有效报告；泛美地区航空安全小组，项目 GSI 3：修订航空立法以保护安全信息来源的建议• 2010 高级别安全会议 WP/85 号文件，结论和建议• 国际民航组织安全信息共享的行为守则• 2013 年大会第 38 届会议 — A38 文件：保护安全信息来源。

¹ 拉美民航委员会由22名成员组成：阿根廷、阿鲁巴、玻利维亚、巴西、智利、哥伦比亚、哥斯达黎加、古巴、厄瓜多尔、萨尔瓦多、危地马拉、洪都拉斯、牙买加、墨西哥、尼加拉瓜、巴拿马、巴拉圭、秘鲁、多米尼加共和国、伯利兹、乌拉圭和委内瑞拉

1. 引言

1.1 国际民航组织于 2003 年开始旨在为保护安全数据和信息来源免遭不当使用制订指导的具体活动。这项工作是通过国际民航组织多学科努力的方式开展的，国家和航空业终于在 2006 年 3 月完成附件 13 附篇 E 的工作（保护安全数据收集和处理系统（SDCPS）收集到的信息的法律指导）。本文件就各国调整其法律和法规向其提供法律指导，藉以保障安全数据来源的信息免遭不当使用。

1.2 2007 年国际民航组织大会第 36 届会议通过 A36-9 号决议，敦促所有缔约国尽可能地根据国际民航组织制定及载于附件 13 附篇 E 当中的法律指导，审议其保护安全信息所必需的法律和规章。

1.3 2007 年，在巴西发生两起重大民用航空事故之后，巴西国会邀请航空事故调查和预防中心（CENIPA），即巴西负责该问题的机构，协助国会议员和立法顾问编写保护安全信息的联邦法案，并建立航空调查的管辖权与独立性。

1.4 目前就拉丁美洲而言，巴西是最接近制订有保护安全信息联邦法律的国家。

1.5 在这方面，航空事故调查和预防中心感觉到与另一个极其重要部门联系战略的必要性：司法机关。因此，自 2011 年以来，巴西已经为法官和检察官提供名为“司法部门在飞行安全当中作用”的课程。在航空事故调查和预防中心的技术支持下，很多司法机关参加了这一课程。在其教学大纲中，课程促进对保护运行安全信息问题的研究，以及航空当局开展的调查与司法程序之间技术和司法的不兼容性。

2. 讨论

2.1 希望为了保护安全数据收集和处理系统（SDCPS）之目的审查其航空立法的国家，将不得不在其各自的立法政治机关之前做出协调和综合努力。这是一个基本前提，因为保护信息安全所涉及的问题往往颇具争议，很多时候不直接参与航空活动的人往往不能很好地理解。如果立法部门没有事先规划并制订这种方法策略，编写航空法规修订建议的任何举措将是无关紧要的。在巴西，航空和政治团体之间相互作用的动机是因为国内发生了严重的航空器事故。

2.2 编写立法提案的各项内容时，各国必须遵守附件 13 附篇 E 中所载的指示。另一项建议是 2012 年 10 月审查泛美地区航空安全组批准的文件（建议修订保护安全信息来源的航空立法）。从上述文件中，可能得出编写与各自具体情况相适应的立法内容的建议。

2.3 建议修订巴西航空法，同时规定重点保护航空事故和事故征候调查所需要的信息来源，禁止使用自愿报告系统的数据，强调它们不得用于司法程序和行政程序举证之目的，而只能通过司法征用方式提供。

2.4 为合作之目的，并根据修订巴西航空立法的上述建议，建议编写一个包含十二条款及其意见的通用法案，它载于本工作文件附录中。

2.5 然而，可能观察到在巴西航空系统内培养一个理想的信息保护环境必须超越业界和监管机构之间以及航空服务提供商雇员和雇主之间的关系。有一个不属于航空活动，但必须鼓励其了解减少航空风险的群体，即：法官和检察官。

2.6 与联盟军事法官的司法研究中心协调之后，制定了一个结构为期 5 天和 22 小时工作量的课程。联盟军事法官通常邀请法官和检察官参加课程。课程表的学科主题包括，飞行安全、航空事故调查、保护安全信息、航空事故的刑事法，所有做法都介绍了巴西现实具体案例的研究情况。此外，访问空中交通管制单位、防空系统和航空事故调查和预防中心也是课程的一部分。

2.7 获取课程结业证书的要求之一是学员提交关于飞行安全问题的科学文章。法官编写的一些涉及旨在加强航空活动安全主体和法律协议的科学文章，是一个非常宝贵资产。按照司法领域适当的语言和逻辑结构发表这样的文章，促进制定一个专门原理作为司法决定的基础，因此可以使司法活动考虑到航空安全的价值。

2.8 在巴西，最近做出两项司法决定以整合对航空安全信息的保护：第一项是巴西联邦院所做的关于涉及商用航空器事故犯罪过程案档的决定；第二项是军事法庭关于涉及军用航空器的决定。在这两项决定当中，除了确认航空当局优先接触、保管残骸的权力之外，法官还须保证安全信息的保密性、禁止警方使用航空当局的调查数据、禁止使用自愿申报信息。因此，法理学是另外一个正在越来越多地受到司法部门此类做法行动影响的权利来源。

3. 结论

3.1 本文件中讨论的主题可作为缔约国制定各自航空立法修订提案以供立法部门批准的额外指导。

3.2 涉及保护安全信息的主题需要超出编写立法提案。它必须尽可能与司法原则和法理相互整合。

3.3 需要鼓励法官和检察官了解在司法环境之外保护安全信息的相关主题。通过讨论涉及航空安全、航空调查的独立性和保护安全信息的主题，法官和检察官的课程已发展了一种学说，除了产生具体成果之外，将作为法律的主要来源，巴西司法部门据此做出与这些目标趋同的司法决定，它将加强立法力量以支持和保护安全信息。

APPENDIX

PROPOSED BILL FOR THE PROTECTION OF SAFETY INFORMATION - BRAZIL

Investigation and Prevention of Aeronautical Accidents

Chapter I

On the Investigation

Art. 1. The investigation of aeronautical accidents and incidents has the sole objective of preventing further accidents and incidents, by means of the identification of the factors that may have, either directly or indirectly, contributed to the occurrence, and by the issuance of operational safety recommendations.

Comment: This provision restricts the purpose of the aeronautical investigation in order to prevent conflicts arising from its utilization by other State agencies or by third parties.

Art. 2. The investigation of aeronautical accidents shall comprise the practices, techniques, processes, procedures, and methods used for the identification of acts, conditions or circumstances which, either in isolation or in conjunction, represent a hazard to the integrity of people, aircraft and other assets, solely for the benefit of prevention of aeronautical accidents, incidents or ground occurrences.

Comment: This provision extends the restricted purpose of the aeronautical investigation to all existing aeronautical investigation tools.

§ 1 The investigation shall consider the facts, hypotheses, and known precedents in the identification of the possible factors contributing to the occurrence or to the worsening of the consequences of aeronautical accidents and incidents.

Comment: This provision grants broad cognition to the investigators, seeking to provide them with maximum prevention effectiveness, in a way that even hypotheses may be included in the investigation, bringing forth a material difference in relation to a judicial process.

§ 2 The aeronautical investigation authority may decide either not to conduct an aeronautical investigation, or discontinue an investigation in progress, in the cases where an intentional illicit act is found to be connected with the causation of the event, and if the investigation is not expected to bring any benefits to the prevention of future aeronautical accidents and incidents, without detriment to notifying the competent police authority.

Comment: Some occurrences may have a criminal origin, and investigating them may not be of interest to the aeronautical investigation authority. It is important to grant discretionary power to this kind of authority, be it for the purpose of staying away from the investigation or maintaining it, even when dealing with accidents connected with criminal actions.

Art. 3. The aeronautical investigation shall be conducted in a way that makes it independent of any other investigation related to the same event.

Comment: This provision establishes the independence of the aeronautical investigation, and, therefore, the need of other instances of the State to conduct their own investigations, preventing appropriation of the aeronautical investigation data in case of omission by other state agencies.

Art. 4. The aeronautical investigation shall neither preclude the institution of other investigations nor provide for their need, even if for purposes of prevention. Since it aims at preserving human life by means of air transport safety, it shall have precedence over concomitant and non-concomitant procedures related to the access and custody of items of interest for the investigation.

Comment: This provision endorses the previous one, and gives priority to the aeronautical investigation, in view of the possibility of conflicts related to the custody of and access to the wreckage. Such priority is founded in the Principle of Human Life Preservation, a paramount value for the aeronautical investigation.

Art. 5. If, in the course of an aeronautical investigation, evidence of crime arises, related or not to the chain of events leading to the accident, one must make pertinent communication of it to the competent police authority.

Comment: Optative provision, which assigns the aeronautical investigator with the obligation to notify the event to the police authorities. In Brazil, it is a duty-bound issue, attributed by the legal norm.

Chapter II

On the competence to conduct an aeronautical investigation

Art. 6. The investigation of a civil aircraft event shall be conducted by the aeronautical investigation authority, who will decide on the institution of an investigation commission, whose presidency will be assigned to a qualified professional accredited by the investigation organization.

§ 1 With priority over other requisitions, the aeronautical investigation authority is entitled to request from the competent organizations and entities the technical awards, examination reports, including autopsies, and copies of other documents of interest to the investigation.

§ 2 To the aeronautical investigation commission, within the limits established by the aeronautical investigation authority, is guaranteed access to the accident aircraft, its wreckage and objects transported by it, as well as to the installations, equipment, documents and any other elements necessary for the Investigation, wherever their location may be.

Comment: The three provisions above aim at defining the competence for the conduction of an aeronautical investigation, preventing manipulation of the composition of the commission on account of foreign interests. They also bring limits to the competence of commission members, in addition to the coercive power of requisition by the aeronautical authority in relation to documents held by third parties or even by other public organizations.

Art. 7. The aeronautical investigation is concluded with the issuance of a final report, a document that represents the statement of the investigation authority on the possible contributing factors of a given aeronautical accident, and that presents recommendations concerning solely the benefit of operation safety of the air activity.

Comment: this provision prevents the manipulation of not- yet conclusive data of an aeronautical investigation. The rule also points out the final limits of the safety recommendations, preventing their use for purposes other than the prevention of future accidents, with an inappropriate apportion of blame or liability, just based on the fact that someone is the addressee of a safety recommendation.

Chapter III

On professional secrecy and information protection

Art. 8. The following are protected information sources:

I – recordings of the communications between air traffic control units, as well as their respective transcripts;

II – recordings of conversations in the cockpit, along with their transcripts;

III – data from the voluntary occurrence notification systems;

IV – recordings of communication between the aircraft and air traffic control units, along with their transcripts;

V – Recordings of flight data, and the graphs extracted or transcribed from them, or extracted and transcribed from them;

VI – Data from either automatic or manual data collecting systems; and

VII – other records used in the activities of investigation.

§ 1 For the benefit of the aeronautical investigation, the aeronautical authority shall have priority for the access to and custody of the sources mentioned in the caput.

§ 2° The source of information referred to in item III, as well as the analyses and conclusions of the aeronautical investigation shall not be utilized for purposes of proof in the judicial processes and administrative proceedings, and shall only be provided by means of a judicial requisition, in conformity with the article 9 of this Law.

§ 3 All information for the benefit of an aeronautical investigation and other related activities shall only be provided in a spontaneous manner and based on the legal assurance of its exclusive use for purposes of prevention.

Comment: the provisions list the sources by means of which an entire Aviation System is fed, limiting the use of some of the sources in judicial processes, as well as imposing processual secrecy to all of them. These are the most important provisions of the whole bill. The setting of limits to the use of such sources in judicial processes is opposable to the voluntary information and to the investigation conclusions. The former ones, on account of the confidence deposited by the informers and contributors of the system; and the latter ones, on account of the very technical incompatibility between the aeronautical investigation

procedure and its police/judicial counterpart, since the aeronautical investigation has purpose which is different from one of the judicial investigation. Furthermore, the aeronautical investigation may utilize hypotheses and indirect conditions in its analyses, a technique that is rejected in the judicial cognition. In the aeronautical Investigation, this is allowed, because it brings a broader comprehensiveness to the Studies aimed at preventing the event from recurring

§ 4 Except for the benefit of the aeronautical investigation and other activities of prevention, an aeronautical investigation professional is not allowed to disclose his or her sources and respective contents, and is forbidden to give testimonies or perform expert activities in judicial or administrative processes strange to the aeronautical investigation organization.

Comment: This provision bestows the aeronautical investigator with the right of refusing to testify, while forbidding him/her to work in the function of expert, thus ensuring a higher level of protection to the investigation activities and to the information he/she has had access to. With the “right of refusing to testify” and “forbiddance to work as an expert” prescribed by law, such protection is given more stability by force of the rule, no longer depending on a judicial evaluation.

Art. 9. The sources and information whose utilization in a judicial or administrative enquiry or process has been allowed are protected by processual secrecy.

Comment: this provision grants secrecy to all items of information and reinforces that there is restriction for the use of some sources in judicial processes (Item III of the art. 8).

Art. 10. The aeronautical investigation authority, or the person appointed by him/her, is entitled to decide on the convenience of publicizing, with no detriment to the prevention of accidents and legal provisions, information relative to the aeronautical investigation in progress and respective information sources.

Comment: this provision explains the power to publicize a certain phase of the Investigation before the issuance of the final report, in response to the desire of the society provided that there is no damage to the main objective of the investigation: prevention.

Chapter IV

On the access to the aircraft wreckage

Art. 11. The civil aircraft involved in an aeronautical accident or incident may be interdicted by the aeronautical investigation authority, taking into account that:

I – the notification of interdiction shall be signed by the aeronautical investigation authority and, if possible, by the aircraft operator or his/her representative;

II – pending authorization granted by the aeronautical investigation authority, the interdicted aircraft may be put in operation for purposes of maintenance; and

III – the operator is held responsible for the compliance of any contractual obligations concerning the aircraft.

Comment: This provision bestows the aeronautical investigation authority with power to embargo and interdict an aircraft in order to guarantee the development of an aeronautical investigation, solving a contingent conflict between the owner and the operator of the aircraft.

Art. 12 Except for the purpose of saving lives, preserving people's safety, or preservation of evidence, no accident aircraft may be searched or removed, unless authorization is granted by the aeronautical investigation authority, which will have custody of the items of interest for the investigation up to their release in the terms of this Law.

Comment: this provision points out, once again, the priority of the aeronautical Investigation over the other organizations of the State, solving a serious difficulty concerning access to the wreckage by the aeronautical investigator in the moments following the mishap, when many conflicts with other authorities end up occurring. It brings a better guaranty of evidence preservation to the aeronautical investigation, since the pieces of evidence will only be accessed under the supervision of qualified personnel, with prescribed exceptions respected.

— END —