



ASSEMBLY — 38TH SESSION
TECHNICAL COMMISSION

Agenda Item 27: Aviation Safety — Policy

IMPROVEMENT OF LEGAL PROTECTION FOR AVIATION SAFETY INFORMANTS

(Presented by the Republic of Korea)

EXECUTIVE SUMMARY

This paper proposes the implementation of legally protecting safeguards for informants under a voluntary aviation reporting system. The formation and invigoration of a just culture shall include the realization of a non-punitive legal protection system as a part of aviation accident prevention policy.

Action: The Assembly is invited to:

- a) request ICAO to establish a standardized list of issues subject to either mandatory or voluntary incident reporting;
- b) request ICAO to recommend that the non-punitive principle that appears in Annex 13 shall be enshrined in the domestic law of Member States; and
- c) request ICAO to develop and include guidelines on the formation and facilitation of just culture into the Safety Management Manual (SMM) or newly enacted Annex 19 — Safety Management.

<i>Strategic Objectives:</i>	This working paper relates to the Safety Strategic Objective.
<i>Financial implications:</i>	Not applicable.
<i>References:</i>	Annex 13 — <i>Aircraft Accident and Incident Investigation</i> Annex 19 — <i>Safety Management</i> Doc 9859 — <i>Safety Management Manual (SMM)</i>

1. INTRODUCTION

1.1 States around the world have recognized that the most efficient method of preventing aviation accident is to effectively collect and analyze information on the various actual and/or potential hazards witnessed and/or experienced by aviation personnel, then to be followed up by the establishment

of appropriate countermeasures. Accordingly, these States are implementing a safety reporting system together with diverse legal safeguards for informants.

1.2 In order to collate information and statements from concerned individuals during the aviation safety reporting process more efficiently, ICAO also encourages i) the establishment of guidelines to protect the sources of information and to provide legal protection for informants, and ii) incorporating these guidelines into the domestic legislation of Member States.

1.3 ICAO Annex 13 stipulates the obligation for States to maintain an incident reporting system as a part of its aviation safety reporting system, having a non-punitive voluntary incident reporting system in particular. Thus, it makes legal protection for informants a part of aviation accident prevention policy. Regarding such a recommendation, some States have a clearly defined non-punitive principle in their domestic legislation, whereas others have merely included the principle in their administrative guidelines. While this principle is managed only within States' administrative guidelines, it may be applied in an arbitrary manner, meaning that the non-punitive principle is not fully guaranteed. It is therefore recommended that ICAO provide guidance to the Member States on this issue.

1.4 Furthermore, it is essential to establish an aviation safety reporting system in which any individual may freely make a report without concern of punishment or disadvantage. The creation of such a "just culture" is vital to a voluntary incident reporting system. The establishment of concrete practical guidelines by ICAO is crucial to realizing the formation and invigoration of such a culture.

2. DISCUSSION

2.1 ICAO Annex 13 stipulates that a State shall establish a mandatory incident reporting system. Annex 13 Chapter 8.1 states that a State shall establish a mandatory incident reporting system to facilitate collection of information on actual or potential safety deficiencies. Annex 13 Chapter 8.2 states that a State shall establish a voluntary incident reporting system to facilitate collection of information on actual or potential safety deficiencies that may not be captured by the mandatory incident reporting system. The subjects of mandatory and voluntary incident reporting, however, vary amongst the different Member States. For instance, a matter which may be included in voluntary incident reporting in State "A" may be a subject for mandatory incident reporting in State "B".

2.2 Annex 13 Chapter 8.3, in particular, clarifies that a voluntary incident reporting system shall be non-punitive and afford protection to the sources of information for the sake of the successful operation of a voluntary incident reporting system. Any disclosure or punishment of informants may result in individuals concealing facts, and therefore complicating the goal of accident prevention, which is the fundamental purpose of introducing the system. In most States which have implemented a voluntary incident reporting system to date, the identity of informants has been kept confidential and the non-punitive principle adopted. In regard of the non-punitive principle, unless the case is intentional or deliberate, exemption, under certain conditions, is restrictively granted from civil, criminal or administrative procedures. The non-punitive principle may be applied in an arbitrary manner in States which enshrine it in their administrative guidelines rather than in law, resulting in the non-punitive principle not being fully guaranteed. Complementary measures are therefore required.

2.3 A just culture means a culture in which aviation personnel, having full confidence in a voluntary incident reporting system, feel able to report their mistakes or errors without concern of punishment or disadvantage, thus ultimately contributing to an improvement in aviation safety. There has been extensive discussion about the definition of what such a just culture would be. Member States now share the common perception that it is the foundation of voluntary incident reporting culture for the sake of aviation safety. Also, ICAO's *Safety Management Manual (SMM)* clarifies that non-punitive reporting constitutes the foundation of a just culture in aviation safety; that a just culture does not necessarily mean making exemptions for intentional or deliberate violations; and that acceptable actions should be distinguished from unacceptable actions. Yet in reality, there are some cases in which the administrative authority administers punishment upon safety issue informants, or in which safety issue informants experience disadvantages due to a lack of understanding on the part of airline company management. As a result, a just culture has not yet been satisfactorily established.

3. CONCLUSION

3.1 There exists a significant difference in the issues subject to the mandatory and voluntary incident reporting systems of the different States. It would be beneficial for ICAO to establish a standardized list of issues subject to either mandatory or voluntary incident reporting system, as well as taxonomy on a case-by-case basis, and to notify the Member States, as the case of a serious incident.

3.2 The key to a successful voluntary incident reporting system lies in the voluntary informants' confidence in the non-punitive consequences of their actions in providing information. Most Member States assure a non-punitive principle for voluntary incident reporting, but it is necessary to guarantee the principle systemically. In the case of States which manage the non-punitive principle through their administrative guidelines, a government authority should be made to make a written commitment that the Member States shall not utilize voluntary incident reporting as material with which to seek punishment; or the non-punitive principle should be enshrined in the domestic law of that Member State. The result will be that voluntary informants have confidence in their national non-punitive reporting system, in turn bolstering the voluntary incident reporting system of the respective Member State.

3.3 In addition to the efforts that are to be exerted by the government authority of each Member State, institutions and organizations related to aviation safety reporting shall take steps to foster a just culture in which any individual feels able to freely report all that they know without fear of disadvantage or punishment. Current ICAO documents describe only the necessity and importance of such a culture, but do not include any specific guidelines towards it. The ROK hereby proposes the development and inclusion of guidelines on the formation and facilitation of such a just culture into the SMM or newly enacted Annex 19 *Safety Management*.