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ASSEMBLY — 38TH SESSION
TECHNICAL COMMISSION

DRAFT TEXT FOR THE REPORT
ON
AGENDA ITEM 27

The attached material on Agenda Item 27 is submitted for consideration by the Technical Commission.

Agenda Item 27: Aviation Safety — Policy

27.1 The Commission reviewed A38-WP/92, presented by the Council, containing a comprehensive strategy for aviation safety. The paper presented the first edition of the revised Global Aviation Safety Plan (GASP) for endorsement by the Assembly. The updated GASP maintains continuity with the version accepted by the Council in 2007, and is restructured to incorporate near-, mid- and long-term objectives supported by four high-level safety performance enablers.

27.2 The Commission reviewed A38-WP/249, presented by the Dominican Republic, citing the need for globally harmonized strategic planning processes, including the prioritization of both efficiency and safety goals. The paper called for endorsement of the GASP and the Global Air Navigation Plan (GANP), as well as establishment of a regional prioritization framework for the GANP block upgrades.

27.3 The Commission reviewed A38-WP/213, presented by the Members of the African Civil Aviation Commission, providing a report of outcomes from the July 2012 Ministerial Conference on Aviation Safety. The paper indicated that African States support endorsement of the GASP by the Assembly and called for all States to achieve the near-term targets by 2017. The paper also urged ICAO to develop roadmaps in relation to GASP implementation and urged African States to implement the targets aligned with the GASP.

27.4 All delegates who took the floor supported the endorsement of the GASP. The role of the Regional Aviation Safety Groups (RASGs) in facilitating the implementation of the GASP at the regional level was highlighted.

27.5 Recognizing the need to harmonize implementation and strategic planning, support was expressed for A38-WP/249 which called for the endorsement of the GASP and GANP, as well as the regional prioritization framework for the GANP block upgrades. Furthermore, many delegates took the floor in support of A38-WP/213, which stressed the need for continued collaboration with ICAO and aviation stakeholders in Africa.

27.6 The Commission, having reviewed A38-WP/92, A38-WP/249 and A38-WP/213, agreed to recommend that the Assembly endorse the first edition of the revised Global Aviation Safety Plan (GASP, Doc 10004), its objectives and supporting safety initiatives. The Commission agreed to recommend amendments to existing Resolutions A37-4 and A37-12 to reflect the coordinated global strategic direction in the safety and air navigation fields.

27.7 The Commission reviewed A38-WP/98, presented by the United States, citing the benefits of government and industry collaboration including the work of ICAO Regional Aviation Safety Groups (RASGs) to address safety risks at the regional level. The paper indicated the need to improve the reporting of safety issues as well as the importance of developing appropriate protections to the sources of such information as a means to promote the effective and efficient exchange of safety information. The paper supported the principles of the first edition of the revised GASP and encouraged the collaborative development of amendments in the future.

27.8 The Commission reviewed A38-WP/84, presented by Lithuania on behalf of the European Union and its Member States, other Member States of the European Civil Aviation Conference, and EUROCONTROL. This paper provided a regional perspective to safety management, inviting the Assembly to ensure that the benefits afforded through regional cooperation and Regional Safety Oversight Organizations (RSOOs) are adequately reflected in ICAO's activities.

27.9 The Commission reviewed A38-WP/191, presented by the Civil Air Navigation Services Organisation (CANSO), regarding the GASP and its evolution. The paper highlighted the importance of each of the GASP's safety performance enablers and proposed the development of planning and decision-making tools as well as roadmaps to assist RASGs, States, and industry in aligning their priorities and the allocation of their resources within the framework of the GASP.

27.10 There was broad support expressed for A38-WP/84, A38-WP/98 and A38-WP/191, which call for enhanced regional cooperation and the development of guidance material to facilitate the implementation of the GASP. One delegate expressed concerns over the frequency of amendments to the GASP and proposed that the global plans be revised once per triennium. States then expressed the need for ICAO to define a process to amend the GASP in the future, allowing time for consultation.

27.11 The Commission, having reviewed A38-WP/84, agreed to propose amendments to existing Resolution A37-8 (refer to Agenda Item 30 for the amended text of Resolution A37-8). The Commission further agreed to reiterate and reinforce the benefits of regional cooperation as they pertain to the implementation of the ICAO Continuous Monitoring Approach and Annex 19 provisions.

27.12 The Commission, having reviewed A38-WP/191, and based on the discussion, agreed to support the development and use of industry best practices and establish a mechanism for stakeholder coordination as well as future amendments to the GASP. The proposal for the development of planning and decision-making tools to assist RASGs, States, and industry in aligning their priorities and the allocation of their resources within the framework of the GASP as well as the compilation of an inventory of safety initiatives and lessons learned are to be referred to the Council for consideration, subject to budgetary limitations.

27.13 The Commission, having reviewed A38-WP/92, A38-WP/84, A38-WP/98 and A38-WP/191, agreed that the focus of the High-level Safety Conference, planned for January 2015, would be to determine recommendations for amendments to the GASP, to be developed through a consultative process with States and international organizations.

27.14 In light of the discussion, the Commission agreed to submit, for adoption by the Plenary the following resolutions:

Resolution 27/1: Assistance to resolve safety deficiencies by establishing priorities and setting measurable targets

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

Whereas ensuring the safety of international civil aviation is also the responsibility of Contracting States both collectively and individually;

Whereas in accordance with Article 37 of the *Convention on International Civil Aviation* each Contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulation, standards, procedures and organization in relation to aircraft, personnel, airports, airways and auxiliary services in all matters in which uniformity will facilitate and improve air navigation;

Whereas the improvement of the safety of international civil aviation on a worldwide basis requires the active collaboration of all stakeholders;

Whereas the Convention and its Annexes provide the legal and operational framework for Contracting States to build a civil aviation safety system based on mutual trust and recognition, requiring that all Contracting States implement the SARPs as far as practicable and adequately perform safety oversight;

Whereas the results of the audits and ICAO Coordinated Validation Missions (ICVMs) conducted under the Universal Safety Oversight Audit Programme Continuous Monitoring Approach (USOAP-CMA) indicate that several Contracting States have not yet been able to establish a satisfactory national safety oversight system and some Contracting States have been identified as having significant safety concerns (SSCs);

Whereas ICAO plays a leadership role in facilitating the implementation of SARPs and the rectification of safety-related deficiencies by coordinating support and harnessing resources among aviation safety partners;

Recognizing that the ICAO Plans of Action developed for individual Contracting States serve as platforms to provide, in coordination with other stakeholders, direct assistance and guidance to those States in resolving their SSCs as well as addressing low effective implementation (EI) of critical elements;

Whereas ICAO has a Policy on Regional Cooperation which is committed to render assistance, advice and any other form of support, to the extent possible, in the technical and policy aspects of international civil aviation to Contracting States in carrying out their responsibilities pertaining to the *Convention on International Civil Aviation* and ICAO Strategic Objectives, inter alia by promoting regional cooperation through close partnerships with regional organizations and regional civil aviation bodies;

Recognizing that not all Contracting States have the requisite human, technical and financial resources to adequately perform safety oversight;

Recognizing that the establishment of subregional and regional aviation safety and safety oversight bodies, including regional safety oversight organizations (RSOOs), has great potential to assist States in complying with their obligations under the Chicago Convention through economies of scale and harmonization on a larger scale resulting from the collaboration among Contracting States in establishing and operating a common safety oversight system;

Recalling that Contracting States are responsible for implementing ICAO Standards and may, in this respect, decide on a voluntary basis to delegate certain functions to RSOOs, and that, when applicable, the word “States” should be read to include RSOOs;

Acknowledging the recognition given in Annex 19 to Regional Safety Oversight Organizations and their role in discharging delegated State safety management functions on behalf of States;

Recognizing that the assistance available to Contracting States experiencing difficulties in correcting deficiencies identified through the safety oversight audits, particularly with priority given to those States with SSCs, would be greatly enhanced by coordination amongst all Contracting States, ICAO and other concerned parties in civil aviation operations; and

Recognizing that established regional aviation safety groups (RASGs) have the objective of establishing priorities and setting measurable targets to address safety-related deficiencies in each region while ensuring consistency of action and coordination of efforts.

The Assembly:

1. *Directs* the Council, in partnership with all aviation safety partners, to implement a comprehensive assistance programme that will help Contracting States to correct deficiencies identified through USOAP-CMA, with priority given to the resolution of SSCs;
2. *Directs* the Council to promote the concepts of regional cooperation, including the strengthening of RSOOs and RASGs, as well as the establishment of priorities and setting of measurable targets to address SSCs and safety-related deficiencies;
3. *Directs* the Council to continue to partner with Contracting States, industry and other aviation safety partners for coordinating and facilitating the provision of financial and technical assistance to States and subregional and regional safety and safety oversight bodies, including RSOOs and RASGs, in order to enhance safety and strengthen safety oversight capabilities;
4. *Directs* the Council to continue the analysis of relevant safety-critical information for determining effective means of providing assistance to States and subregional and regional safety and safety oversight bodies, including RSOOs and RASGs;
5. *Directs* the Secretary General to continue to foster coordination and cooperation between ICAO, RSOOs and other organizations with aviation safety-related activities in order to reduce the burden on States caused by repetitive audits or inspections and to decrease the duplication of monitoring activities;
6. *Urges* Contracting States to give the highest priority to the resolution of SSCs in order to ensure that there are no immediate safety risks to international civil aviation and that the minimum requirements established by the Standards set forth in the ICAO Annexes are met;
7. *Urges* Contracting States to utilize the Flight Procedures Programme, where available, for PBN implementation;
8. *Urges* Contracting States to develop and further strengthen regional and subregional cooperation in order to promote the highest degree of aviation safety;
9. *Calls upon* all Contracting States and relevant aviation safety partners, wherever possible, to assist requesting States with financial and technical resources to ensure the immediate resolution of identified SSCs and the longer-term sustainability of the State safety oversight system;

10. *Encourages* Contracting States to establish partnerships with other States, industry, financial institutions and other aviation safety partners to strengthen safety oversight capabilities, in order to better discharge State responsibilities and foster a safer international civil aviation system;
11. *Encourages* Contracting States to foster the creation of regional or sub-regional partnerships to collaborate in the development of solutions to common problems to build State safety oversight capability, and to participate in, or provide tangible support for, the strengthening and furtherance of subregional and regional aviation safety and safety oversight bodies, including RSOOs;
12. *Requests* the Secretary General to play a leading role in coordinating efforts to assist States to resolve SSCs through the development of ICAO Plans of Action and/or specific project proposals and to assist States to obtain the necessary financial resources to fund such assistance projects;
13. *Requests* the Council to report to the next ordinary session of the Assembly on the overall implementation of the comprehensive assistance programme; and
14. *Declares* that this resolution supersedes Resolution A37-8.

27.15 The Commission reviewed A38-WP/173, presented by Australia regarding ICAO's current and future work on the appropriate use and protection of safety information. The paper reported on the work of the multidisciplinary Safety Information Protection Task Force (SIP TF), which was established to provide recommendations for new or enhanced ICAO provisions related to the protection of safety information. The paper noted the importance of ensuring that the work undertaken by the SIP TF be considered by appropriate ICAO bodies in the development of new or amended provisions and guidance materials. The paper further recommended amendments to Resolutions A37-2 and A37-3 to reflect the work successfully delivered by the SIP TF.

27.16 The Commission reviewed A38-WP/223, presented by Brazil, providing the Brazilian approach to safety information protection. The paper suggested two strategic actions already implemented in Brazil for consideration by other States, including amendments to aeronautical legislation and educational programmes for judges and public prosecutors regarding the judiciary's role in the context of aviation safety. The paper requested that the Assembly endorse a proposal for ICAO to develop additional guidance material related to the protection of safety information to support such educational initiatives.

27.17 The Commission reviewed A38-WP/280, Revision No. 1, presented by the Republic of Korea, regarding the implementation of safeguards for informants under a voluntary reporting system. The paper suggests that ICAO develop recommendations for States to include non-punitive principles in their legislation rather than as administrative guidelines. The paper further requests the development of guidelines on the formation and facilitation of just culture, in addition to a standardized list of issues that would be subject to mandatory or voluntary incident reporting.

27.18 The Commission reviewed A38-WP/102, presented by the United States and Brazil, regarding the protection of safety information sources. The paper discussed the need to ensure protections for safety data sources and encouraged the development of guidance towards implementing legal protections to enable successful safety management principles.

27.19 The Commission reviewed A38-WP/296, presented by the International Transport Workers Federation (ITF), regarding the implementation of a just culture in reporting systems. The paper requests that the Assembly recognize the valuable contribution a just culture will make to aviation safety and asks ICAO to monitor and review the implementation of just culture and non-punitive reporting systems. The paper further requests that ICAO identify any barriers to the implementation of non-punitive reporting systems and provide guidance to States that have not yet introduced such systems.

27.20 The Commission, having reviewed A38-WP/102, A38-WP/173, A38-WP/223, A38 WP280 Revision No. 1, and A38-WP/296 agreed to propose amendments to Resolutions A37-2 and A37-3 to reflect the SIP TF's delivery of its findings and recommendations, which should inform further work undertaken by the appropriate ICAO bodies on this matter. The Assembly further recognized the value of additional guidance material, which could be used to inform aviation safety experts as well as judicial authorities on the need to ensure there is a balance between the protection and use of safety information.

27.21 Information Paper A38-WP/80 was provided by the Secretariat.

27.22 In light of the discussion, the Commission agreed to submit, for adoption by the Plenary the following resolutions:

Resolution 27/2: Protection 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 and/or contributing factors 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 use of information, derived from accident investigations, for disciplinary, civil, administrative and criminal proceedings is generally not a means to maintain or improve aviation safety;

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 and other guidance to assist

States in this regard;

Recognizing that the legal guidance in Attachment E to Annex 13, and in Attachment B to Annex 19, will continue to assist many States in the development and implementation of means to protect certain accident and incident records from inappropriate use;

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, and that protection should be to a level commensurate with the nature of the information each source generates, as well as with the purpose of disclosure of such information;

Mindful that the accident investigation authorities and the civil aviation authorities acknowledged the need for further study by ICAO on the protection of safety information; and

Recognizing the Safety Information Protection Task Force established pursuant to recommendations of the High-level Safety Conference 2010 and in response to Resolution A37-2, has promulgated for consideration a number of findings and recommendations with respect to the appropriate use and protection of safety information:

The Assembly:

1. *Urges* Contracting States to continue 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;
2. *Instructs* the Council, taking into account the findings and recommendations of the Safety Information Protection Task Force and further work informed by those findings and recommendations, to take such steps as may be necessary to ensure meaningful progress toward the development of new and/or amended provisions in Annex 13, and related guidance material before the next ordinary session of the Assembly; and
3. *Declares* that this resolution supersedes Resolution A37-2.

Resolution 27/3: Protecting information from safety data collection and processing systems in order to maintain and 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 punitive enforcement actions and to be admitted as evidence in judicial proceedings;

Noting the importance of a balanced environment in which disciplinary action is not taken as consequence of actions by operational personnel that are commensurate with their experience and training, but where gross negligence or willful violations are not tolerated;

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, and that protection should be to a level commensurate with the nature of the information each source generates, as well as with the purpose of disclosure of such information;

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 maintain and improve aviation safety;

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

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

Recognizing that the legal guidance in Attachment E to Annex 13, and in Attachment B to Annex 19, will continue to assist many States in the development and implementation of means to protect information gathered from safety data collection and processing systems;

Mindful that the civil aviation authorities acknowledged the need for continuing study by ICAO on the protection of safety information; and

Recognizing the Safety Information Protection Task Force established pursuant to recommendations of the High-level Safety Conference 2010 and in response to Resolution A37-3, has promulgated for consideration a number of findings and recommendations with respect to the appropriate use and protection of safety information:

The Assembly:

1. *Urges* all Contracting States to continue to examine their existing legislation and adjust as necessary, or enact laws and regulations and introduce supportive policies and practices, to protect information gathered from all relevant safety data collection and processing systems based, to the extent possible, on the legal and other guidance developed by ICAO;
2. *Urges* the Council to cooperate with Contracting States and appropriate international organizations

regarding the development and implementation of guidance, taking into account the findings and recommendations of the Safety Information Protection Task Force and further work informed by those findings and recommendations, to support the establishment of effective safety-reporting systems, and the achievement of a balanced environment where valuable information derived from all relevant safety data collection and processing systems is readily accessible for the purposes of maintaining and improving aviation safety, while respecting principles of administration of justice and freedom of information;

3. *Instructs* the Council to take appropriate steps to ensure that provisions in ICAO Standards and Recommended Practices in Annex 19 and guidance materials on the protection of information gathered from safety data collection and processing systems (SDCPS) are enhanced, taking into account the findings and recommendations of the Safety Information Protection Task Force and further work informed by those findings and recommendations, with a view to ensuring and sustaining the availability of safety information required for the management, maintenance and improvement of safety, taking into account the necessary interaction between safety and judicial authorities in the context of open reporting culture; and

4. *Declares* that this resolution supersedes Resolution A37-3.