



A38-WP/387
EX/133
27/9/13

ASSEMBLY — 38TH SESSION
EXECUTIVE COMMITTEE

DRAFT TEXT FOR THE REPORT
ON
AGENDA ITEM 25

The attached material on Agenda Item 25 is submitted for consideration by the Executive Committee.

Agenda Item 25: Other high-level policy issues to be considered by the Executive Committee

Update of Assembly Resolution A22-4, Composition of the Air Navigation Commission and Participation in its Work

25.1 In relation to A38-WP/24, the Executive Committee considered a proposal for updating Resolution A22-4: Composition of the Air Navigation Commission and participation in its work, to reflect the current membership of the Air Navigation Commission which is composed of nineteen Commissioners.

25.2 In light of the discussion, the Committee agreed to submit, for adoption by the Plenary, the following resolution:

Resolution 25/1: Composition of the Air Navigation Commission and Participation in its Work

Whereas Article 56 of the Convention provides that the Air Navigation Commission shall be composed of nineteen members appointed by the Council from among persons nominated by Contracting States, but does not make any distinction of nationality nor specify whether such nominations should be made by Council-member or non-Council-member States;

Whereas it is essential that those members are not only professionally qualified but also able to devote their full time to the discharge of their responsibilities;

Whereas the Assembly desires that provision should be made for the fullest possible participation by all interested Contracting States in the work of the Air Navigation Commission;

Whereas the above objectives can be achieved, consistently with the requirements of the Convention, by the establishment of appropriate procedures by the Council; and

Whereas the Assembly has reviewed Resolutions A2-8 (part of Clause 3 and Clause 4), A4-4 and A10-9 and has decided that pursuant to A15-2 they should be consolidated and then cancelled;

The Assembly:

1. *Resolves* that the Council be directed to endeavour, each time that new appointments to the Air Navigation Commission are to be made, to secure from all Contracting States nominations from which the nineteen members of the Commission may be selected;
2. *Urges* all Contracting States, particularly those not represented on the Council, to make further efforts to nominate candidates for membership in the Commission;
3. *Recommends* that the Council not appoint more than one nominee from any one Contracting State and that it take full account of the fact that it is desirable for every region of the world to be represented;
4. *Recommends* that the Council take steps to provide for and encourage the fullest possible participation by every Contracting State in the work of the Commission; and
5. *Declares* that this resolution supersedes Resolution A22-4.

Formulation and Implementation of Standards and Recommended Practices (SARPs) and Procedures for Air Navigation Services (PANS) and Notification of Differences

25.3 The Council, in WP/48, reported on the outcome of a study on issues in respect of the notification and publication of differences, and the activities undertaken by ICAO to address these issues, and proposed a draft Resolution on Formulation and Implementation of Standards and Recommended Practices (SARPs) and Procedures for Air Navigation Services (PANS) and Notification of Differences.

25.4 Venezuela (Bolivarian Republic of), in WP/260, recommended that ICAO develop guidance material and training initiatives for the identification and notification of differences and publication of significant differences. The Committee supported the recommendations made by Venezuela. In support of WP/260, Togo proposed that regional workshops and seminars be organized on the identification and notification of differences. This will be reviewed by the Council taking into consideration budgetary implications.

25.5 With regard to WP/48, France proposed amending the draft Resolution in Appendix A to WP/48 by adding a new Associate Practice asking the Council to ensure that new Annex provisions would be in compliance with the definitions of the terms “Standard” and “Recommended Practice”. France outlined that it would be desirable that the corresponding SARPs rationales be shared through appropriate means. This would enhance the relevance of SARPs and improve their understanding and implementation by Member States.

25.6 The Committee noted with appreciation the work done by ICAO and the Filing of Differences Task Force (FDTF) in respect to identifying issues related to the notification of differences. The Committee requested the Council to take all necessary actions to rectify issues outlined in WP/48 and implement the draft Assembly Resolution, and to report on the progress achieved in this regard to the next Session of the Assembly.

25.7 Italy, on behalf of the European Union and its Member States, asked for the provision of guidance on the notification and publication of differences within twelve months. The Secretariat noted that this timeframe would be challenging due to limited resources and, in this regard, the task would be reviewed by the Council taking into consideration budgetary implications. The Secretary remarked that the Organization would welcome any support from Member States to complete the task.

25.8 In light of the discussion, the Committee agreed to submit, for adoption by the Plenary, the following resolution:

Resolution 25/2

Formulation and Implementation of Standards and Recommended Practices (SARPs) and Procedures for Air Navigation Services (PANS) and Notification of Differences

Whereas Article 37 of the *Convention on International Civil Aviation* requires each Contracting State to collaborate in securing the highest practicable degree of uniformity in regulations and practices in all matters in which such uniformity will facilitate and improve air navigation;

Whereas Article 37 of the *Convention* requires the Organization to adopt and amend international standards and recommended practices and procedures and states the purpose of and the matters to be dealt with in that action, and Articles 38, 54, 57 and 90 contain additional relevant provisions;

Whereas in accordance with Article 38 of the *Convention* any Contracting State which finds it impractical to comply in all respects with any international standard or procedure or deems it necessary to adopt regulations or practices differing therefrom is obliged to give immediate notification to ICAO;

Whereas the Assembly deems it advisable to establish certain policies to be followed in complying with these provisions of the *Convention*;

Recognizing the effective implementation of SARPs and PANS promotes safe, secure and sustainable development of international civil aviation;

Recognizing that making differences information easily available to all stakeholders in a timely manner is important to promote safety, regularity and efficiency in international civil aviation;

Noting that many Contracting States experience difficulty in fulfilling their obligations under Articles 37 and 38 of the *Convention* and keeping pace with frequent amendments to Annexes;

Recognizing that up-to-date ICAO technical guidance material provides valuable assistance to Contracting States in the effective implementation of SARPs, PANS and Regional Plans;

Recognizing that substantial resources are required to develop and maintain all ICAO technical guidance material for SARPs and PANS;

Noting the increase of the number of notified differences to ICAO;

Recognizing that there is a strong need for all available means to be sought and employed in encouraging and assisting Contracting States in overcoming their difficulties in implementation of SARPs and PANS;

The Assembly:

1. *Calls on* Contracting States to reaffirm their commitment to abide by the obligations under Articles 37 and 38 of the *Convention*;
2. *Resolves* that SARPs and PANS shall be amended as necessary to reflect changing requirements and techniques and thus, *inter alia*, to provide a sound basis for global and regional planning and implementation;
3. *Agrees* that subject to the foregoing clause, a high degree of stability in SARPs shall be maintained to enable the Contracting States to maintain stability in their national regulations. To this end amendments shall be limited to those significant to safety, regularity and efficiency and editorial amendments shall be made only if essential;

4. *Reiterates* that SARPs and PANS shall be drafted in clear, simple and concise language. SARPs shall consist of broad, mature and stable provisions specifying functional and performance requirements that provide for the requisite levels of safety, regularity and efficiency. Supporting technical specifications, when developed by ICAO, shall be placed in separate documents to the extent possible;
5. *Instructs* the Council to utilize, to the maximum extent appropriate and subject to the adequacy of a verification and validation process, the work of other recognized standards making organizations in the development of SARPs, PANS and ICAO technical guidance material. Material developed by these other standards-making organizations may be deemed appropriate by the Council as meeting ICAO requirements; in this case such material should be referenced in ICAO documentation;
6. *Resolves* that to the extent consistent with the requirements of safety regularity and efficiency, SARPs specifying the provision of facilities and services shall reflect a proper balance between the operational requirements for such facilities and services and the economic implications of providing them;
7. *Instructs* the Council to consult Contracting States on proposals for the amendment of SARPs and PANS before the Council acts on them, except when the Council may deem urgent action to be necessary. Furthermore, subject to the adequacy of the verification and validation process, technical specifications may be acted upon by the Council without consultation with Contracting States. Such material shall however be made available to Contracting States upon request;
8. *Resolves* that the applicability dates of amendments to SARPs and PANS shall be so established as to allow Contracting States sufficient time for their implementation;
9. *Agrees* that no Annex or PANS document shall be amended more frequently than once per calendar year;
10. *Reminds* Contracting States of the requirement in Annex 15 to publish any significant differences in their Aeronautical Information Publication (AIP) and to include English text for those parts expressed in plain language;
11. *Encourages* Contracting States, when notifying their differences in one of the ICAO working languages other than English, to provide also an English text of their differences in the interest of making differences information as broadly available and useful as possible;
12. *Encourages* Contracting States to use the Electronic Filing of Differences (EFOD) System when notifying their differences to ICAO.
13. *Instructs* the Secretary General to continue improving the EFOD system and assist Contracting States in transitioning from the paper-based processes to the use of the EFOD system.
14. *Directs* the Council to monitor and analyse the differences between the regulations and the practices of Contracting States and the SARPs and PANS with the aim of encouraging the elimination of those differences that are important for the safety, regularity and efficiency of international air navigation and taking appropriate actions;

15. *Instructs* the Council to explore possibilities to make differences information more easily available to all interested stakeholders and assess appropriate mechanism and form in which this information is made available;
16. *Resolves* that Contracting States shall be encouraged and assisted in the implementation of SARPs and PANS by all available means and provided with more guidance in respect of the notification and publication of differences;
17. *Calls on* all Contracting States able to do so to provide requesting States with technical cooperation in the form of financial and technical resources to enable those States to carry out their obligations under Articles 37 and 38 of the Convention;
18. *Instructs* ICAO to establish priorities for the continuing updating of the contents of present ICAO technical guidance material and the development of additional guidance material thus ensuring optimum value for Contracting States in their planning and implementation of SARPs and PANS;
19. *Resolves* that the associated practices in this Resolution constitute guidance intended to facilitate and ensure implementation of this Resolution; and
20. *Declares* that this Resolution supersedes Resolution A37-15, Appendixes A, D and E.

Associated practices

1. The Council should ensure that provisions of SARPs and PANS are completely consistent with each other. Furthermore, the Council should endeavour to improve the processing, presentation and usefulness of ICAO documents containing SARPs, PANS and other related provisions, especially for complex systems and their associated applications. To that end the Council should promote the development and upkeep of broad system-level, functional and performance requirements. The Council should continue seeking the most appropriate means of development, translation, processing and dissemination of technical specifications
2. Contracting States should comment fully and in detail on the proposals for amendment of SARPs and PANS or at least should express their agreement or disagreement on their substance. They should be allowed at least three months for this purpose. Furthermore, Contracting States should receive at least 30 days of notification of the intended approval or adoption of detailed material on which they are not consulted.
3. Contracting States should be allowed a full three months for notifying disapproval of adopted SARPs amendments; in establishing a date for notifying disapproval the Council should take into account the time needed for transmission of the adopted amendments and for receipt of notifications from States.
4. The Council should ensure that, whenever practicable, the interval between successive common applicability dates of amendments to Annexes and PANS is at least six months.

5. The Council, prior to the adoption and approval of amendments to SARPs and PANS, should take into account feasibility of the implementation of SARPs and PANS by the intended applicability dates.

6. The Council, taking into account the definitions of terms “Standard” and “Recommended Practice”, should ensure that new Annex provisions, uniform application of which is recognized as necessary, are adopted as Standards, and that those new provisions, uniform application/observance of which is recognized as desirable, are adopted as Recommended Practices”.

7.6 The Council should urge Contracting States to notify the Organization of any differences that exist between their national regulations and practices and the provisions of SARPs as well as the date or dates by which they will comply with the SARPs. If a Contracting State finds itself unable to comply with any SARPs, it should inform ICAO of the reason for non-implementation, including any applicable national regulations and practices which are different in character or in principle.

8.7. Differences from SARPs received should be promptly made available to Contracting States.

9.8. In encouraging and assisting Contracting States in the implementation of SARPs and PANS, the Council should make use of all existing means of ICAO and strengthen partnerships with entities which provide resources and assistance towards development of international civil aviation.

10.9. Contracting States should establish internal processes and procedures by which they give effect to the implementation of provisions of SARPs and PANS.

11.40. ICAO should update and develop guidance material in accordance with the established priorities to adequately cover all technical fields.

A Policy on Assistance to Aircraft Accident Victims and their Families

25.9 The Committee reviewed A38-WP/22, presented by the Council, providing a progress report on actions taken by ICAO pursuant to Assembly Resolution A32-7: *Harmonization of the regulations and programmes for dealing with assistance to victims of aviation accidents and their families*, including the recent publishing of *ICAO Policy on Assistance to Aircraft Accident Victims and their Families* (Doc 9998) in May 2013. The efforts by the Council in developing Doc 9998 were highly appreciated by the Committee which agreed with the proposed Resolution in A38-WP/22 to supersede Resolution A32-7.

25.10 The Committee discussed A38-WP/301 presented by Spain. The paper, which supported the Assembly resolution in WP/22, invited the Assembly to acknowledge the work by the special Task Force and the Council and to endorse with appreciation the *ICAO Policy on Assistance to Aircraft Accident Victims and their Families* (Doc 9998) and invited the Council to consider the introduction of a relevant provision in an appropriate Annex to the Convention, while ensuring that the independence and effectiveness of investigations would not be adversely affected.

25.11 The Committee agreed that the Council consider the introduction of a provision related to assistance to aircraft accident victims and their families in an Annex other than Annex 13 (so as to ensure the independence of accident investigations). One State mentioned that taking into account the new Strategic Objective – Security and Facilitation, and considering the commonalities of objectives between facilitation and the protection of the interests of air transport users, it may be appropriate to request the Council to include in the work programme of facilitation all the related activities. Several States supported this proposal and the Committee agreed that the Council should be requested to consider developing recommended practices in Annex 9 to the Convention dedicated to the protection of the interests of air transport users, including appropriate restructuring of the Annex 9 if necessary.

25.12 The Committee also agreed to submit, for adoption by the Plenary, the following resolution:

Resolution 25/xx: Assistance to victims of aviation accidents and their families

Having considered that, even though international air transport is the safest means of transportation, the total elimination of serious accidents cannot be guaranteed;

Whereas the actions of the State of Occurrence should address the most critical needs of persons affected by a civil aviation accident;

Whereas the policy of the International Civil Aviation Organization (ICAO) should be to ensure that the mental, physical, and spiritual well-being of victims involved in civil aviation accidents and their families are considered and accommodated by ICAO and its Contracting States;

Whereas it is essential that ICAO and its Contracting States recognize the importance of timely notification of family members of victims involved in civil aviation accidents; the prompt recovery and accurate identification of victims; the return of the victims' personal effects; and the dissemination of accurate information to family members;

Recognizing the role of Governments of nationals, who are victims of civil aviation accidents, in notifying and assisting families of the victims;

Whereas it is essential that support be provided to family members of victims of civil aviation accidents, wherever the accident may occur, and any lessons learned from support providers, including effective procedures and policies, be promptly disseminated to other Contracting States and ICAO to improve States' family support operations;

Considering that harmonization of the regulations for dealing with the needs of victims of civil aviation accidents and their families is also a humanitarian duty and an optional function of the ICAO Council contemplated in Article 55 (c) of the Chicago Convention;

Considering that States should provide a homogeneous solution for treatment of victims of civil aviation accidents and their families;

Recognizing that the air carrier involved in a civil aviation accident is often best situated to assist families in the immediate aftermath of the accident;

Noting that family members of victims of a civil aviation accident, irrespective of where the accident occurs or the national origin of the victims, express certain fundamental human needs and emotions;

Recognizing that public attention will continue to focus on States' investigative actions, as well as the human interest aspects of a civil aviation accident;

Recalling the issuance of ICAO *Guidance on Assistance to Aircraft Accident Victims and their Families* (Circ 285) in 2001 as well as the inclusion, in 2005, of provisions in Annex 9 to enable expeditious entry into the State in which an accident occurs for family members of victims of aircraft accidents; and

Acknowledging the approval by the Council of the *ICAO Policy on Assistance to Aircraft Accident Victims and their Families* (Doc 9998) in March 2013;

The Assembly:

1. *Calls on* Contracting States to reaffirm their commitment to support victims of civil aviation accidents and their family members;
2. *Urges* Contracting States to establish legislation, regulations and/or policies to support victims of civil aviation accidents and their family members, in consideration of the ICAO Policy in Doc 9998;
3. *Encourages* States that have legislation, regulations and/or policies to support civil aviation accident victims and their families to review these documents, as necessary, in consideration of the ICAO Policy in Doc 9998;
4. *Urges* the Council to give further consideration to the development of Standards and Recommended Practices regarding the establishment by States of legislation, regulations and/or policies to support victims of civil aviation accidents and their family members; and
5. *Declares* that this resolution supersedes Resolution A32-7.

Policy on Third-Party Endorsements and Memoranda of Understanding (MOUs)

25.13 Columbia presented A38-WP/338, proposing that the Assembly direct the Council to establish an ICAO policy on cooperation with third-parties (e.g., other international and regional organizations, industry and academia), specifically to address matters such as the bases and standards for such cooperation; ICAO endorsement of third-party entities or activities; and use of the ICAO emblem by third-party entities or activities. The Assembly would further be asked to call upon the Council to develop and publish a list of existing Memoranda of Understanding (MoU) that have been entered into by ICAO with outside parties. While recognizing the important role that key third-party stakeholders play in supporting ICAO strategic objectives, the delegation of Columbia urged that these measures were necessary in the interests of, inter alia, transparency, fair competition and equal opportunity.

25.14 Numerous other delegations took to the floor in full support of A38-WP/338 and the need for a clear and express framework for ICAO cooperation with other international bodies and industry, with one State proposing that the existing United Nations framework for cooperation with the business sector serve as the basis for the Council's work.

25.15 The Committee supported the action requested of the Assembly, namely, to request:

- a) the Council to provide guidelines and adopt policies for the interactions of ICAO with third parties in the form of endorsements and memoranda of understanding, and
- b) the Council, in the interests of transparency, to publish the list of MOUs and endorsements in force.

Alignment of ICAO Strategic Objectives with Member States and a Progress Reporting Mechanism

25.16 The United Arab Emirates presented A38-WP/335 entitled *Alignment of ICAO Strategic Objectives with Member States and a Progress Reporting Mechanism* to the Executive Committee on 27 September 2013.

25.17 This Working Paper proposes the implementation of an Integrated Performance Management System at ICAO that will cascade the overall ICAO Strategic Objectives and link these with the Operational Plans at Member State level thus ensuring a strategic alignment of ICAO with Member States and the Regional Organizations.

25.18 The Assembly was invited to request the Council to develop a system that supports the dissemination of ICAO Strategic Objectives into the Business Plans of Member States and a transparent reporting mechanism to promote the culture of commitment and accountability.

25.19 Colombia, Egypt, Somalia and Yemen all voiced their support for the aforementioned Working Paper (WP/335) and encouraged it be approved.

25.20 The Chair of the Executive Committee stated that WP/335 was approved.