



ASSEMBLY — 41ST SESSION

EXECUTIVE COMMITTEE

Agenda Item 13: Facilitation Programmes

ASSISTANCE TO AIRCRAFT ACCIDENT VICTIMS AND THEIR FAMILIES

(Presented by the Council of ICAO)

REVISION NO. 1

EXECUTIVE SUMMARY

In 2016, Assembly Resolution A39-27 called upon States to reaffirm their commitment to support victims of civil aviation accidents and their family members, including through establishing legislation, regulations and/or policies to support victims and reviewing ICAO Policy in Doc 9998 and related guidance material in ICAO Doc 9973. This commitment was reaffirmed in Assembly resolution A40-16; urging Member States to implement the related Annex 9 provisions intended to facilitate assistance to aircraft accident victims and their families. In order to assist Member States in their actions, a dedicated Symposium on Assistance to Aircraft Accident Victims and their Families (AAAVF 2021) was held in December 2021, providing a list of 30 recommendations for consideration by all involved stakeholders. This paper presents developments pertaining to assistance to aircraft accident victims and their families since the last Assembly. It concludes by proposing priorities and expected outcomes during the next triennium and updates to Assembly Resolution A39-27.

Action: The Assembly is invited to:

- a) recognize the work accomplished by ICAO in paragraph 2;
- b) endorse the Organization's work programme and priorities for the 2023-2025 triennium related to AAAVF 2021 recommendations as presented in paragraph 3;
- c) encourage States, industry and other stakeholders to increase their efforts in implementing the AAAVF 2021 recommendations addressed to them; and
- d) adopt Resolution A41-XX in Appendix B to supersede Assembly Resolution A39-27.

<i>Strategic Objectives:</i>	This working paper relates to <i>Safety</i> , and <i>Security and Facilitation</i> Strategic Objectives.
<i>Financial implications:</i>	The ICAO activities referred to in this paper are expected to be undertaken within the resources available in the 2023-2025 Regular Budget and/or from extra-budgetary contributions as guided by the ICAO Business Plan 2023-2025.
<i>References:</i>	Annex 9 — <i>Facilitation</i> Annex 13 — <i>Aircraft Accident and Incident Investigation</i> Annex 14 — <i>Aerodromes</i> Doc 10140, <i>Assembly Resolutions in Force</i> (as of 4 October 2019) Doc 9998, <i>ICAO Policy on Assistance to Aircraft Accident Victims and their Families</i> Doc 9973, <i>Manual on Assistance to Aircraft Accident Victims and their Families</i> Doc 9740, <i>Convention for the Unification of Certain Rules for International Carriage by Air</i> , done at Montréal on 28 May 1999 Final Act of the International Conference on Air Law, Montréal, May 1999 Report on ICAO Symposium on Assistance to Aircraft Accident Victims and their Families (AAAVF 2021)

1. INTRODUCTION

1.1 Assembly Resolution A39-27: *Assistance to victims of aviation accidents and their families* indicates that ICAO's policy "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 Member States", and that "States should provide a homogeneous solution for treatment of victims of civil aviation accidents and their families". A39-27 also urged Member States to inform ICAO, through the compliance checklist (CC) in the Electronic Filing of Differences (EFOD) of the level of implementation of the provisions in Annex 9 – *Facilitation* associated with family assistance plans.

1.2 Similarly, the 40th Session of the Assembly adopted Resolution A40-16, which urged "Member States to implement the provisions of Annex 9 to facilitate assistance to aircraft accident victims and their families"; and requested "the Council to consider upgrading Annex 9 Recommended Practice 8.46 into an international Standard, as well as to consider introducing a new Annex 9 Recommended Practice, addressed to aircraft and airport operators on the development of appropriate plans to provide timely and effective assistance to aircraft accident victims and their families and to communicate them to ICAO".

1.3 Article 28 of the Montréal Convention of 28 May 1999 (*Convention for the Unification of Certain Rules for International Carriage by Air (MC99)*) mandates that carriers, in case of aircraft accidents resulting in death or injury of passengers, shall provide for assistance to aircraft accident victims, and any natural person or persons entitled to compensation through advance payments, without delay, in order to meet their immediate economic needs, insofar as such payments are foreseen in the carrier's national legislation. The Montréal Conference also adopted Resolution No. 2, which urges carriers to pay such advances and encourages State Parties to the Convention to take appropriate measures in their national law to promote such action by carriers. Hence, it is appropriate that the ICAO Assembly recommend that States establish such legislation.

2. WORK ACCOMPLISHED BY ICAO

2.1 In March 2022, following the recommendations made by the Twelfth Meeting of the Facilitation Panel (FALP/12) held in July 2021, the Council of ICAO adopted Amendment 29 to Annex 9 – *Facilitation*. Amendment 29 elevated Recommended Practice 8.46 to a Standard (now Standard 8.47 in Amendment 29, Sixteenth Edition, which becomes applicable on 18 November 2022), thus obliging States to establish legislation, regulations and/or policies in support of assistance to aircraft accident victims and their families. Amendment 29 also adopted a new Recommended Practice 8.48 that States should ensure that each aircraft or airport operator develop plans to provide timely and effective assistance to aircraft accident victims and their families. This should take into consideration that airport operators' plans formed as part of Aerodrome Emergency Plans (AEP) required under Annex 14 - *Aerodromes* may be applicable.

2.2 A review of the Compliance Checklist (CC) in the Electronic Filing of Differences (EFOD) system of the Annex 9 Standards and Recommended Practices (SARPs) related to assistance to aircraft accident victims and their families as contained in Annex 9, Chapter 8, Section I, showed a low implementation rate. In parallel, it was established that insufficient knowledge of the existing related ICAO guidance, namely, Doc 9998, *ICAO Policy on Assistance to Aircraft Accident Victims and their Families* and Doc 9973, *Manual on Assistance to Aircraft Accident Victims and their Families*, is leading to a low level of implementation by some States of the related SARPs. Doc 9998 sets out ICAO policies regarding the provision of family assistance, and encourages States to incorporate these policies when planning their relevant legislation, regulations and/or policies. Doc 9973 contains guidance on the types and development of family assistance plans, presents avenues available for providing such assistance, as well as information on the responsibilities of States, aircraft operators and other family assistance providers.

2.3 In order to provide States with the appropriate capacity building tools, a course entitled “Assistance to Aircraft Accident Victims and their Families” is being developed to provide Civil Aviation Authorities (CAA) representatives, government officials, aircraft and airport operators with the necessary competencies to develop or refine appropriate family assistance legislation, regulations, policies, and plans, in accordance with Docs 9973 and 9998. This four-day course supports notably the recent upgrade of Annex 9, Recommended practice (RP) 8.46 to international Standard 8.47 in Amendment 29 to Annex 9, and the introduction of new Annex 9 RP 8.48, addressed to aircraft and airport operators on the development of appropriate plans to provide timely and effective assistance to aircraft accident victims and their families. The course is available in a virtual and classroom format in English.

2.4 In December 2021, ICAO organized the first Symposium on Assistance to Aircraft Accident Victims and their Families (AAAVF 2021) hosted by the Government of Spain. The Symposium contributed to enhancing international cooperation on implementation of practical measures related to assistance to aircraft accident victims and their families across several areas. It enabled the sharing of best practices in both communication of sensitive information and in management of compensation by insurance companies while identifying gaps and formulating conclusions to support the development of short-, medium- and long-term strategies. In total the Symposium identified 30 recommendations (Appendix A) which are encapsulated in the AAAVF 2021 report <https://www.icao.int/Meetings/AAAVF2021/Pages/default.aspx>.

2.5 In particular AAAVF 2021 identified that States do not always have the legislation and/or policies in place to support family assistance as mandated by Standard 8.47. Moreover, the Symposium noted that victims, survivors and their families are still not sufficiently considered in the aviation system when an aircraft accident occurs. The participants expressed that ICAO has a key role to play to assist States in delivering a consistently stronger response to such tragic events. AAAVF 2021 took note that at least 56 States still need to ratify MC99 and that the lack of universal ratification of MC99 hinders improved and standardized compensation regimes. The Symposium encouraged global ratification of MC99 as there is no uniformity worldwide in the treatment of victims and families.

2.6 The Council of ICAO endorsed the 30 recommendations arising from the AAAVF 2021 and in so doing acknowledged that some of these recommendations might require timely follow-up and action by the relevant ICAO working groups. As per Recommendation 1 of the report, an Electronic Bulletin was issued attaching the AAAVF Symposium final report to inform States of the report’s conclusions and recommendations.

2.7 Following a proposal made by the Air Crash Victims’ Families’ Federation International (ACVFFI), the Council has officially designated 20 February as the international day for commemorating air crash victims and their families (C-DEC 224/5, refers). On 20 February 2022, ICAO organized the first commemoration day, which included a dedicated webpage with resources, a video message from the Chairperson of the ACVFFI, and a social media campaign to raise awareness for the importance of the occasion.

3. PRIORITIES AND OUTCOMES FOR THE 2023 – 2025 TRIENNIUM

3.1 The Council requested (C-DEC 225/2 refers) that the AAAVF 2021 recommendations be shared with the Assembly and incorporate into the next triennium Business Plan those Symposium’s recommendations that require further consultation with expert groups, taking into account capacity building assistance to Member States.

3.2 In line with the AAVF 2021 recommendations, the Programme's work and priorities for the area related to assistance to aircraft accident victims for the next triennium addresses the following areas:

3.2.1 Monitoring of States' level of implementation of the relevant ICAO Annexes SARPs: the compliance monitoring of AAVF-related SARPs will be done via the ICAO USOAP, while additional information will be gathered through the EFOD mechanism;

3.2.2 Identification of any gap and formulation of further recommendations: An assessment will be conducted considering the overarching issue of support to victims and families in all the Annexes in order to identify possible missing guidance and develop ad hoc further recommendations as required in close coordination with relevant ICAO bureaus, Panels, ICAO working groups, Member States, international organizations and industry through a focus group;

3.2.3 Assistance to Member States through training, guidance material, regional implementation seminars, assistance projects for capacity building by the:

- a) provision of the recently developed training course related to assistance to aircraft accident victims and their families which is based on Doc 9998 and Doc 9973, allowing States to establish foundational knowledge; and
- b) organization of regional workshops in States/Regions with special needs relying on the support of ACVFFI and its associations, to provide additional factual experience and credibility as required.

3.2.4 Promotion of the corresponding regulations and policies in order to enhance their level of implementation:

- a) Regional Offices will play an active part in promoting the relevant policies and guidance such as Doc 9998;
- b) Celebration of the commemoration day on 20 February 2023, 2024 and 2025 in order to reiterate the importance of this occasion in remembering the victims and in expressing solidarity with their families, and to pledge ICAO's commitment to continue to work with Member States and stakeholders to enhance aviation safety and prevent such tragedies from happening in the future; and
- c) Organization of a symposium in 2024: ICAO will issue a State letter requesting States to host the next AAVF symposium in order to ensure that the first AAVF Symposium, hosted by the Government of Spain, will be given continuity by convening similarly-arranged symposia to fit within the ICAO Assembly cycle with the objective to inform the Assembly of the outcomes of these events.

3.3 The Assembly is urged to encourage States, industry and other stakeholders to increase their efforts in implementing the AAVF 2021 recommendations addressed to them in order to provide the appropriate assistance to aircraft accident victims and their families. Member States are invited to adopt the Assembly Resolution A41-XX, found in Appendix B, which supersedes A39-27.

APPENDIX A

LIST OF THE THIRTY RECOMMENDATIONS OF AAVF 2021

The AAVF 2021 Recommendations listed below refer to potential actions by ICAO, by States and/or by other stakeholders:

- 1) ICAO to encourage States to implement existing Annex 9 Recommended Practice 8.46¹, as well as ICAO Doc 9998 and Doc 9937. The participants suggested that ICAO issue a State Letter attaching the AAVF Symposium final report, in the process requesting implementation of the report's conclusions and recommendations;
- 2) It was also suggested for ICAO to review and update Doc 9998 and Doc 9973 building on recent experiences;
- 3) ICAO to continue to monitor compliance of AAVF-related SARPs via the ICAO USOAP, while additional information is gathered through the EFOD mechanism;
- 4) ICAO Council to upgrade ICAO Recommended Practice 8.46 to an international Standard, thus in accordance with Article 37 of the *Convention on International Civil Aviation* (Chicago Convention) creating an obligation for States to comply with the provision, if no difference is filed. The Standard is to be audited by USOAP;
- 5) An assessment is to be conducted considering the overarching issue of support to victims and families in all the Annexes, identifying any gaps and formulating further recommendations as required;
- 6) ICAO should promote a combination of regulation, training and cooperation among authorities, service providers, airlines and including the ACVFFI and its associations in order to improve the implementation by States, aircraft and airport operators of the ICAO Doc 9998;
- 7) ICAO should promote implementation of ICAO Doc 9998, the ratification of MC99 and compliance with Annex 9 SARPs. ICAO should organize regional workshops in States/Regions with special needs relying on the support of ACVFFI and its associations, as required;
- 8) Regional offices of ICAO should play an active part in promoting the policies above and organizing the workshops relying on the support of ACVFFI and its associations, as required;
- 9) The AAVF function in the ICAO Secretariat should be focused and supported by an identified responsible unit;
- 10) Wide effort is required to call upon the responsibility of communication media and agencies to treat accident information respecting the dignity of victims, families and individuals. Building on experiences of some recent tragedies beyond aviation could help. ICAO should prepare a compilation

¹ The ICAO Council on 9 March 2022, adopted Amendment 29 to Annex 9, Sixteen Edition, which included the elevation of Recommended Practice 8.46 to a Standard. Recommended Practice 8.46 has now become Standard 8.47 in Amendment 29, to Annex 9, Sixteen Edition, which becomes applicable on 18 November 2022.

of best practices currently applied by States and agents. An assessment of those best practices may need to consider the formulation of a communication code of conduct to be shared worldwide;

- 11) The ratification of MC99 is to be encouraged as there is no uniformity worldwide in the treatment of victims and families;
- 12) A specific initiative is required to standardize the process to be followed by families when an accident occurs, including proper guidance that puts steps into simple language;
- 13) The timely issuance of advance payments must become global practice. A targeted workshop is suggested to advance on the topic so as to identify further decisions to be taken. Additionally, a total level of compulsory compensation is to be reviewed in proportion to the insurance policies subscribed by aircraft operators. ICAO should organize a specific ad hoc forum to deal with compensation and facilitating procedures for survivors and families of victims;
- 14) An ICAO group, supported by the appropriate legal expertise, should consider best practices of insurance companies and their relationship with victims and families, balancing the needs of airlines and also victims and families;
- 15) Following the specific forum held to discuss compensation, and after having analysed the best practices of insurance companies, the community should assess whether review of MC99 and other related treaties is needed;
- 16) The ICAO Accident Investigation Panel (AIGP) should consider proposing guidance material for accident investigators to provide focused briefing material, including “what, when and how” information to families of victims;
- 17) The AIGP should also consider providing guidance on how to address communication media when an accident occurs and how to continue providing verified, on-time information for public release, while protecting the investigation process;
- 18) Independence, rigor and technical capability of accident investigation authorities are fundamental prerequisites for providing value to the accident investigation findings and also, importantly, to provide credibility to the accident reports. Absence of conflict of interest is essential. Promotion by ICAO of regional cooperation will assist in improving the investigation process alleviating cases of limited technical resources and/or experience in certain States;
- 19) Clear independence of the accident investigation authority, whose main objective is to determine the root causes of the accident and avoid its recurrence, and the judicial investigation, to conclude on potential criminal responsibilities, needs to be stressed by ICAO;
- 20) Accident investigation Final Reports should be easily understandable for families and translated in all the languages of interest to the families;
- 21) Transparency regarding accident investigation reports should be enhanced through an ICAO web platform, where the exchange of reports and their recommendations amongst investigation authorities and experts could be facilitated;
- 22) ICAO should create a web platform to facilitate the exchange of information for safety investigation authorities and experts;

- 23) ICAO should support State's capacity building, including through the recently developed training course related to assistance to aircraft accident victims and their families and based on Doc 9998 and Doc 9973, to help States establish foundational knowledge. In delivering the course ICAO should cooperate with the ACVFFI to provide additional factual experience and credibility;
 - 24) IATA is encouraged to make use of the ICAO Doc 9998 and incorporate AAASF into their plans. While ICAO audits States in the compliance of SARPs, IATA is invited to integrate the monitoring of airlines plans through its IOSA audit program;
 - 25) IATA is invited to integrate the assistance to victims and families into the work of its expert group on Emergency Planning and to consider the participation of ACVFFI in this group;
 - 26) ACI, considering the importance of the airports of departure and arrival and those located close to the site of the accident in facilitating the arrangements following an air catastrophe, is invited to include the auditing, monitoring and accrediting of plans for support to victims and families in its accreditation programmes of their members;
 - 27) ICAO should enhance cooperation between ICAO, IATA, ACI and CANSO, and other interested organizations, including through the development of multi-branded guidance documents;
 - 28) The report of the first AAASF Symposium, including conclusions and recommendations, should be posted on the ICAO website and also be published in paper format so as to extend the lessons learned and to serve as a basis for future similar events in other States;
 - 29) States, and associations such as IATA and ACI, are invited to collaborate with ACVFFI before, during and after an aircraft accident occurs, making use of previous experiences; and
 - 30) It is recommended that the AAASF Symposium be given continuity in the future with similarly arranged symposia, to be organized on a biannual or triannual basis to fit within the ICAO Assembly cycle. ICAO should inform the Assembly of the outcomes of these events.
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APPENDIX B

DRAFT RESOLUTION FOR ADOPTION BY THE
41ST SESSION OF THE ASSEMBLY

A39-27 Resolution 41/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 and recalling 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;

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 Member States;

Whereas it is essential that ICAO and its Member 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;

Recalling the provision of Article 28 of the Montréal Convention of 1999 as well as Resolution No. 2 adopted by the Montréal Conference, which called for the provision of advance payments, without delay, to aircraft accident victims, and their families and acknowledging that lack of universal ratification of the Montréal Convention hinders improved and standardized compensation regimes;

Recalling the adoption of Amendment 29 to ICAO Annex 9 – *Facilitation* which has elevated Recommended Practice 8.46 to Standard 8.47, thus obliging States to establish legislation, regulations and/or policies in support of assistance to aircraft accident victims and their families;

Acknowledging the approval by the Council of the *ICAO Policy on Assistance to Aircraft Accident Victims and their Families* (Doc 9998) in March 2013 and the issuance of the *Manual on Assistance to Aircraft Accident Victims and their Families* (Doc 9973) in December 2013; ~~and~~

Acknowledging that a review of the Electronic Filing of Differences (EFOD) system compliance checklist (CC) has indicated a low implementation rate of Annex 9 Standards and Recommended Practices (SARPs);

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 Member 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 a permissive 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;

Recognizing the importance of the Council's decision to officially designate 20 February as the International Day for Commemorating Air Crash Victims and their Families in remembering the victims and expressing solidarity with their families, as well as continuing to enhance aviation safety and prevent such tragedies from happening in the future;

Acknowledging the outcomes of the ICAO Symposium on Assistance to Aircraft Accident Victims and their Families (AAAVF 2021), including the 30 recommendations encapsulated in the Symposium report;

Recalling the useful initiatives of the Air Crash Victims' Families' Federation International (ACVFFI) in assisting family members of victims;

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; **and**

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;~~

~~*Noting* the inclusion, in 2015, of a provision in Annex 9 for States to establish legislation, regulations and/or policies in support of assistance to aircraft accident victims and their families;~~

The Assembly:

1. *Calls on* Member States to reaffirm their commitment to support victims of civil aviation accidents and their family members;

2. *Urges* Member 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 and of Annex 9~~ as mandated by ICAO Annex 9 Standard 8.47, and pursuant to Article 28 of the Montréal Convention of 28 May 1999 and Resolution No. 2 adopted by the Montréal Conference;

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 and of the guidance material in Doc 9973;

4. *Urges* Member States to regularly inform ICAO, through the compliance checklist (CC) in the Electronic Filing of Differences (EFOD), of the system regarding their level of implementation of the provisions in Annex 9 provisions associated with family assistance plans;
5. *Urges* Member States to recognize 20 February as the International Day for Commemorating Air Crash Victims and their Families and conduct national commemorations relevant to their citizens impacted by civil aviation tragedies;
6. *Urges* Member States which have not already done so, to ratify and implement the Montréal Convention of 28 May 1999 (*Convention for the Unification of Certain Rules for International Carriage by Air*);
7. *Welcomes* the recommendations of the Symposium and directs the Council to incorporate into the next triennium Business Plan those Symposium's recommendations that require further consultation with expert groups, and in particular to support capacity-building needs of Member States;
8. *Directs* the Council to actively and timely follow-up the relevant ICAO expert groups regarding those recommendations emanating from the Symposium as required;
- 5.9 *Directs* the Council, when considering the extent of the level of implementation of family assistance plans obtained through the CC, to give further consideration to the development of Standards and Recommended Practices to support victims of civil aviation accidents and their family members; and
610. *Declares* that this resolution supersedes Resolution A38-1/A39-27.

— END —