



ASSEMBLY — 40TH SESSION

TECHNICAL COMMISSION

Agenda Item 28: Aviation Safety and Air Navigation Policy

UPDATES TO ASSEMBLY RESOLUTIONS RELATING TO SAFETY MANAGEMENT

(Presented by the Council of ICAO)

EXECUTIVE SUMMARY

The protection of safety information is essential to ensure its continued availability, since the use of safety information for purposes other than maintaining or improving safety may inhibit the future availability of such information, with an adverse effect on safety. Assembly Resolutions A38-3 and A38-4 instructed the Council, inter alia, to take such steps as may be necessary to ensure meaningful progress toward the development of new and/or enhanced provisions for the protection of safety information in Annex 13 — *Aircraft Accident and Incident Investigation*, Annex 19 — *Safety Management*, other Annexes as appropriate, and related guidance material. Accordingly, the Council adopted new amendments to Annexes 13, 19 and Annex 6 — *Operation of Aircraft*, which provide more practical and effective means to accord protection to certain accident and incident investigation records; safety data, safety information and related sources; and flight recorder recordings in normal operations.

This paper proposes updates to Assembly Resolutions A38-3 and A38-4 to reflect relevant amendments to Annexes 13, 19 and 6.

Action: The Assembly is invited to:

- a) note the information contained in this paper;
- b) adopt the resolution in Appendix A on protection of accident and incident investigation records to supersede Resolution A38-3; and
- c) adopt the resolution in Appendix B on protection of safety data and safety information collected for maintaining or improving safety and of flight recorder recordings in normal operations to supersede Resolution A38-4.

<i>Strategic Objectives:</i>	This working paper relates to the Safety Strategic Objective.
<i>Financial implications:</i>	The activities referred to in this paper will continue subject to the resources available in the 2020-2022 Regular Programme Budget and/or from extra budgetary contributions.
<i>References:</i>	Annex 6 — <i>Operation of Aircraft</i> Annex 13 — <i>Aircraft Accident and Incident Investigation</i> Annex 19 — <i>Safety Management</i> Doc 10115, <i>Report of the Thirteenth Air Navigation Conference (AN-Conf/13)</i> , Corrigenda Nos. 1 and 2, and Supplement No. 1 Doc 10075, <i>Assembly Resolutions in Force (as of 6 October 2016)</i>

1. INTRODUCTION

1.1 Aviation safety activities have always relied on the constant flow of safety information. Historically, information derived from accident and incident records formed the backbone of activities aimed at improving aviation safety. The evolution of safety management along with new recording technologies has expanded the types of data and information used to maintain or improve safety.

1.2 The 38th Session of the Assembly, held in Montréal from 24 September to 4 October 2013, adopted Assembly Resolutions A38-3: *Protection of certain accident and incident records* and A38-4: *Protecting information from safety data collection and processing systems in order to maintain and improve aviation safety*, instructing the Council, inter alia, to take such steps as may be necessary to ensure meaningful progress toward the development of new and/or enhanced provisions for the protection of safety information in Annex 13 — *Aircraft Accident and Incident Investigation*, Annex 19 — *Safety Management*, other Annexes as appropriate, and related guidance material.

1.3 Following the decisions of the Assembly, in 2016 the Council adopted amendments to Annexes 13, 19 and 6 — *Operation of Aircraft* that provide more practical and effective means to accord protection to certain accident and incident investigation records; safety data, safety information and related sources; and flight recorder recordings in normal operations.

2. DISCUSSION

2.1 The Thirteenth Air Navigation Conference (AN-Conf/13), held in Montréal from 9 to 19 October 2018, inter alia, recommended that ICAO update for adoption by the 40th Session of the ICAO Assembly, Assembly Resolutions related to safety management to reflect Amendment 1 to Annex 19, as well as Amendment 15 to Annex 13. To this effect, the Council, at the fifth meeting of its 216th Session on 27 February 2019, requested the Secretary General to take appropriate actions accordingly.

2.2 The Secretariat reviewed all Assembly Resolutions in Force related to safety management. As a result of the review, it is proposed to amend Assembly Resolutions A38-3 and A38-4 to reflect Amendment 15 to Annex 13, Amendment 1 to Annex 19, as well as Amendments 40-B, 34-B and 20-B to Annex 6, Part I — *International Commercial Air Transport — Aeroplanes*, Part II — *International General Aviation — Aeroplanes* and Part III — *International Operations — Helicopters*, respectively.

2.2.1 *Protection of certain accident and incident records*

2.2.1.1 Amendment 15 to Annex 13 was adopted by the Council on 22 February 2016 and became applicable on 10 November 2016. It included new and enhanced provisions on the protection of certain accident and incident investigation records.

2.2.1.2 The objective of protecting certain accident and incident investigation records is to improve aviation safety by safeguarding accident investigation authorities' continued access to essential information during the course of an investigation, while recognizing that a balance needs to be struck between the need for the protection of accident and incident investigation records and the need for their disclosure or use, and that protection is not aimed at preventing the administration of justice.

2.2.2 *Protection of safety data, safety information and related sources*

2.2.2.1 Amendment 1 to Annex 19 was adopted by the Council on 2 March 2016 and will be applicable on 7 November 2019. The amendment includes protection provisions that apply to safety data captured by, and safety information derived from, voluntary and mandatory safety reporting systems and related sources.

2.2.2.2 The protection of safety data, safety information and related sources is an important enabler of safety management that is critical to ensure the continued availability of safety data and safety information. The use of safety data and safety information for purposes other than maintaining or improving safety may inhibit the future availability of such data and information, with a significant adverse effect on safety.

2.2.3 *Protection of flight recorder recordings in normal operations*

2.2.2.3 Amendments 40-B, 34-B and 20-B to Annex 6, Parts I, II and III, respectively, were adopted by the Council on 2 March 2016 and will become applicable on 7 November 2019.

2.2.2.4 The amendments to Annex 6 address the protection and use of flight recorder recordings in routine operations. Some of the key elements of the amendments include: acknowledgement that there were no provisions on protection of cockpit voice recorder (CVR) and airborne image recorder (AIR) recordings outside the scope of an Annex 13-type investigation; and limiting the use of such recordings by operators for safety management purposes, for inspections, or when recordings or transcripts are sought for criminal proceedings.

3. **IMPLEMENTATION SUPPORT BY ICAO**

3.1 ICAO developed material that provides guidance and advice on the implementation of protection provisions by State aviation regulatory authorities, accident investigation authorities, service providers, legislators, lawyers, prosecutors, judicial officers and other competent authorities. The guidance material is complemented by toolkits and implementation websites. The websites serve as a repository for the sharing of examples, laws and cases to support implementation.

3.2 Over the course of twenty-four months, ICAO delivered six regional workshops on the protection of accident and incident investigation records, as well as four workshops which included a session on the protection of safety data, safety information and related sources, combined with regional safety management symposia.

4. **CONCLUSION**

4.1 In response to Assembly Resolutions A38-3 and A38-4, the Council adopted new amendments to Annexes 13, 19 and 6 which provide more practical and effective means to accord protection to: accident and incident investigation records; safety data, safety information and related sources; and flight recorder recordings in normal operations.

4.2 In order to reflect the aforementioned, two draft Assembly resolutions are proposed to supersede Assembly Resolutions A38-3 and A38-4.

APPENDIX A

DRAFT RESOLUTION FOR ADOPTION BY THE 40TH SESSION OF THE ASSEMBLY

28/xx: Protection of certain accident and incident investigation 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 investigation authorities 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 purposes other than accident or incident investigation is essential to ensure the continued availability of all relevant information to accident investigators investigation authorities 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~~ new and enhanced provisions for the protection of accident and incident investigation records in Annex 13 — *Aircraft Accident and Incident Investigation*;

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 the need to incorporate into national laws the protection of accident and incident investigation records listed in Annex 13 in order to afford legal standing for the administration of the balancing test by the competent authorities designated by Member States;

Considering that a balance needs to be struck between the need for the protection of safety information accident and incident investigation records and the need for the proper administration of justice their disclosure or use, 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 is not aimed at preventing the administration of justice ; and

~~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 can only afford protection to certain investigation records that are under their custody or control; 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. ~~Calls on Member States to reaffirm their commitment to protect accident and incident investigation records in compliance with Annex 13;~~

1.2. ~~Urges Member States to continue to examine and if necessary adjust their laws, regulations and policies to protect certain accident and incident investigation records in compliance with paragraph 5.12 of and Appendix 2 to 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 and to ensure continued availability of all relevant information to accident investigation authorities; and~~

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, other Annexes as appropriate and related guidance material before the next ordinary session of the Assembly; and~~

3. ~~Declares that this resolution supersedes Resolution A37-2 A38-3.~~

APPENDIX B

DRAFT RESOLUTION FOR ADOPTION BY THE 40TH SESSION OF THE ASSEMBLY

28/xx: ~~Protecting~~ Protection of safety data and safety information from safety data collection and processing systems in order to maintain and improve aviation safety collected for maintaining or improving safety and of flight recorder recordings in normal operations

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;

Recalling that Annex 19 — *Safety Management* accords protection to safety data and safety information collected for maintaining or improving safety and their related sources;

Recognizing that the protection of safety data, safety information from inappropriate use and related sources is essential to ensure their continued availability of all relevant safety information, to enable proper and timely preventive actions to be taken since the use of safety data and safety information for purposes other than maintaining or improving safety may inhibit the future availability of such data and information, with a significant adverse effect on safety;

Considering that a balance needs to be struck between the need for the protection of safety data, safety information and related sources to maintain or improve aviation safety and the need for the proper administration of justice;

Noting that the flight recorder recordings and their transcripts were introduced to support accident and incident investigations;

Whereas Annex 6 — *Operation of Aircraft* provides for protection of flight recorder recordings or transcripts in normal operations;

Mindful of the importance of protecting the flight recorder recordings or transcripts in normal operations, outside of Annex 13-type investigations;

Concerned by a trend for safety information to be used for that safety data, safety information and flight recorder recordings or transcripts in normal operations may be used for purposes other than those for which they were collected, including disciplinary, civil, administrative and criminal and punitive enforcement actions and to be admitted as evidence in judicial proceedings;

Noting the importance of that a balanced reporting environment in which disciplinary action is not taken as consequence of actions by where employees and operational personnel may trust that their actions or omissions that are commensurate with their training and experience will not be punished is fundamental to safety reporting that are commensurate with their experience and training, but where gross negligence or willful violations are not tolerated; and

Appendix B

~~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 may expand the type of recordings, safety data and safety information that can be captured by safety reporting systems and flight recorders;~~

~~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. ~~Calls on Member States to reaffirm their commitment to protect safety data and safety information collected for maintaining or improving safety and their related sources;~~

2. ~~Urges Member States to accord protection to the flight recorder recordings or transcripts in normal operations, outside of Annex 13-type investigations;~~

13. ~~Urges all Member 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 safety data, safety 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 and related sources, and the flight recorder recordings or transcripts in normal operations;~~

2. ~~Urges the Council to cooperate with Member 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 ICAO Standards and Recommended Practices in Annex 19, other Annexes as appropriate 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. *Directs* the Secretary General to continue to provide support to States in implementing the protective frameworks in Annexes 6 and 19; and

45. *Declares* that this resolution supersedes Resolution A37-3 A38-4.

— END —