



WORKING PAPER

ASSEMBLY — 41ST SESSION

EXECUTIVE COMMITTEE

Agenda Item 28 Other high-level policy issues to be considered by the Executive Committee

REFUSAL BY THE STATE OF DESIGN TO COMPLY WITH THE OBLIGATION TO MAINTAIN THE AIRWORTHINESS OF AIRCRAFT, IN BREACH OF THE PROVISIONS OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

(Presented by Belarus)

EXECUTIVE SUMMARY

The *Convention on International Civil Aviation* and its Annexes provide the legal foundation and operational framework for Contracting States in a global civil aviation safety system based on mutual trust and confidence. The Chicago Convention and its Annexes require all Contracting States, to the extent practicable, to fulfil their obligations to implement the Standards and Recommended Practices (SARPS) and to ensure due oversight of flight safety and compliance with the requirements of Annex 8 to the Chicago Convention: *Airworthiness of Aircraft*.

Action: The Assembly is invited to consider and adopt the resolution set out in the Appendix to the present document.

<i>Strategic Objectives:</i>	This working paper relates to the Strategic Objective “Safety”
<i>Financial implications:</i>	Preventing irremediable economic damage to the development of the global air transport system and civil aircraft production.
<i>References:</i>	Annex 8, <i>Airworthiness of Aircraft</i> Doc 7300/9, <i>Convention on International Civil Aviation</i>

1. INTRODUCTION

1.1 States of Design of aircraft are failing to comply with their obligations and to observe the requirements to maintain the airworthiness of aircraft stipulated in Annex 8 to the *Convention on International Civil Aviation* (Chicago, 1944 – the “Chicago Convention”) (Doc 7300/9), thus affecting the safe operation of aircraft by the Contracting State which has entered the aircraft in its State aircraft register.

¹ Russian version provided by Belarus.

1.2 We are appealing, through you, and thereby to the entire international aviation community, to draw attention to the manner in which States of Design that refuse to comply with Annex 8 are violating and contravening international air law, namely, the preamble to the Chicago Convention, which states the following:

“...the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security;”

“... it is desirable to avoid friction and to promote that cooperation between nations and peoples upon which the peace of the world depends; ...”.

2. **CONSEQUENCES FOR FLIGHT SAFETY OF FAILURE BY A STATE OF DESIGN OF AIRCRAFT TO COMPLY WITH ITS OBLIGATION TO MAINTAIN THE AIRWORTHINESS OF AIRCRAFT**

2.1 The consequences of refusal by the State of Design of aircraft to comply with the obligations of States of Design of aircraft affect the rights and lawful interests of any citizen of any State who uses means of air transport that are not airworthy.

2.2 The Chicago Convention and its Annexes require all Contracting States, to the extent practicable, to fulfil their obligations to implement the Standards and Recommended Practices (SARPS) and to exercise due oversight of airworthiness. At the current time, the Chicago Convention and the SARPS are being overridden by a decision not to comply with Annex 8 of the Chicago Convention, which forms the foundation for civil aviation operations.

2.3 The actions taken by States of Design of aircraft regarding the airworthiness of legally owned aircraft are unacceptable. States of Design of aircraft are not passing on information essential for maintaining the airworthiness of aircraft, remedying operational deficiencies and developing necessary airworthiness measures for the safe operation of the aircraft.

2.4 By failing to comply with the mandatory requirements of Annex 8 to the Chicago Convention, the States of Design, in their capacity as Contracting States, are in breach of the following provisions of the Standards of *Chapter 4 of Part II of Annex 8* to the Chicago Convention, namely:

- *Paragraph (a) of Standard 4.2.1.1*, which obligates the State of Design of the aircraft to transmit to every Contracting State which has entered the aircraft on its register any generally applicable information which it has found necessary for the continuing airworthiness and safe operation of the aircraft, including any engines and propellers;
- *Paragraph (b) of Standard 4.2.1.1*, which obligates the State of Design, as part of the process of gathering information, oversight, evaluation of experience in remedying operational deficiencies and developing necessary airworthiness measures, to obtain information submitted in accordance with Standard 4.2.3.1(f).

2.5 The following States of Design of aircraft have defaulted on their *obligations under paragraphs (a) and (b) of Standard 4.2.1.1*: Brazil, the United States of America, and the international organization, the European Aviation Safety Agency of the European Union.

2.6 Canada and the United States of America have also defaulted on their obligation to implement:

- *paragraph (a) of Standard 4.2.1.2 of Chapter 4 of Part II of Annex 8* to the Chicago Convention, according to which the State of Design of an engine or a propeller, where it is different from the State of Design of the aircraft, shall transmit any continuing airworthiness information to the State of Design of the aircraft and to any other Contracting State;
- *paragraph (b) of Standard 4.2.1.2*, requiring the State of Design to obtain information in accordance with Standard 4.2.3.1(f) as part of the process of gathering information, oversight, assessment of experience in remedying operational deficiencies and developing necessary airworthiness measures.

2.7 Taken together, the developer States' actions amount to a violation of the requirements of:

- articles 4 and 11 of the Chicago Convention, inasmuch as the actions of the States of Design are intended not to ensure the safety of international air navigation, but to discriminate against aircraft on the basis of nationality and restrict their movement, which is inconsistent with the aims of ICAO and the Chicago Convention;
- default in compliance with the SARPS by the above-mentioned Contracting States may be deemed to be use of civil aviation for a purpose inconsistent with the aims of the Chicago Convention;
- articles 37 and 44 (d), (f), (g), (h) of the Chicago Convention, inasmuch as the actions of States of Design and their failure to ensure the continuing airworthiness of aircraft violate the principles of safety, regularity and efficiency of air navigation and air transport.
- pursuant to Article 44 of the Chicago Convention, the aims and objectives of ICAO are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transportation in order, among other purposes, to meet the needs of the peoples of the world for safe, regular, efficient and economical air transport and to promote safety of flight in international air navigation.

2.8 The States of Design are flouting Assembly Resolution A39-15, *Consolidated statement of continuing ICAO policies in the air transport field*, which urges Member States to avoid adopting unilateral and extraterritorial measures that may affect the orderly, sustainable and harmonious development of international air transport.

APPENDIX

Resolution A41-XX. Inadmissibility of the actions of States of Design in default of their obligations under Annex 8 to the Convention on International Civil Aviation

The Assembly,

Bearing in mind that the primary objective of the Organization is to ensure the safety of international civil aviation worldwide;

Recalling that the development of international civil aviation can contribute significantly to the establishment and maintenance of friendship and understanding among the nations and peoples of the world, while its abuse **can endanger universal flight safety**;

Recognizing that the Member States of ICAO have undertaken and agreed to certain principles and measures so that international civil aviation may develop in a safe and orderly manner, and so that international air travel may be established on the basis of equality of opportunity and be operated rationally and economically;

Emphasizing that any actions by States of Design in default of their obligations to maintain airworthiness in accordance with Annex 8 to the *Convention on International Civil Aviation* on the basis of the nationality of aircraft and the imposition of restrictions on their movement undermine the principles of the *Convention on International Civil Aviation*, violate passengers' rights to safe air travel and are conducive to lowering the overall safety level of civil aviation;

1. *Calls on* the Member States of ICAO to take measures aimed at halting activities by States of Design that are in default of their obligation to implement the requirements of the Standards and Recommended Practices (SARPS) of Annex 8 to the *Convention on International Civil Aviation*, and that override the legal mechanism established by the Convention on International Civil Aviation;
2. *Calls on* the Member States of ICAO to ensure that civil aviation should be kept out of politics and should serve to forge and maintain friendship and understanding among the nations and peoples of the world, while their failure to comply with the rules of Annex 8 to the *Convention on International Civil Aviation* and SARPS poses a threat to the global civil aviation safety system;
3. *Requests* the ICAO Council to include in its programme of work the issue of the impact on aviation safety of the failure of States to comply with their obligations under Annex 8 to the *Convention on International Civil Aviation*;
4. *Requests* the ICAO Council to report to the ICAO Assembly at its 42nd session on the results of the implementation of the present resolution.

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