



WORKING PAPER

ASSEMBLY — 37TH SESSION

TECHNICAL COMMISSION

Agenda Item 25: Follow-up of the High-level Safety Conference (2010)

MAKING NEW STANDARDS AND RECOMMENDED PRACTICES: IMPACT ASSESSMENT

(Presented by New Zealand)

EXECUTIVE SUMMARY

This paper sets out a proposal to implement a regulatory impact assessment process to explain and document the reasons behind proposals for new Standards and Recommended Practices. The proposed process consolidates and codifies the practice being developed within ICAO processes.

Action: The Assembly is invited to:

- a) recall recommendation 2.1 d) under Topic 3.1 “Safety framework for the 21st century” from the 2006 Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety;
- b) recall recommendation 2.5 b) 1) under Topic 2.5 “Implementing new safety management process” from the 2010 High-level Safety Conference;
- c) adopt the resolution in the Appendix on regulatory impact assessment for new Standards and Recommended Practices in the Annexes to the Convention; and
- d) urge Council to implement the resolution before the next cycle of Annex amendments in 2011.

<i>Strategic Objectives:</i>	This working paper relates to the following Strategic Objectives: <ol style="list-style-type: none">a) Safety - Enhance global civil aviation safety;b) Security - Enhance global civil aviation security;c) Environmental Protection - Minimize the adverse effect of global civil aviation on the environment;d) Efficiency - Enhance the efficiency of aviation operations; andf) Rule of Law - Strengthen law governing international civil aviation
<i>Financial implications:</i>	The adoption of this proposal will have cost implications for ICAO, although the Secretariat is already starting to put these processes in place. At the same time it will simplify the aviation regulation making process in many contracting States, thus lowering costs to States. It will increase the efficiency of the process for adopting new Standards and Recommended Practices.
<i>References:</i>	<i>Directors’ General of Civil Aviation Conference on a Global Strategy for Aviation Safety (DGCA/06), Doc 9866</i> <i>Report of the High-level Safety Conference (2010), Doc 9935</i>

1. INTRODUCTION

1.1 At present the international process for the development of Standards and Recommended Practices (SARPs) does not incorporate a system to systematically identify and assess the impact of the new standards on States and industry. This current approach transfers the costs of identifying this impact from ICAO, the forum where the policy and political decisions are taken, to State regulatory authorities, many of which may have had only limited involvement in the development of that standard.

2. DISCUSSION

2.1 Background

2.1.1 Like many other Contracting States, New Zealand has a process to assess the impact of new regulations (and rules) before they are adopted by the government. Recognizing the impact that regulation can have on costs and economic efficiency, adherence to this assessment process has been recently reinforced by the New Zealand Government.

2.1.2 Most ICAO SARPs are implemented through domestic aviation regulations. When adopting SARPs into domestic regulations, there is often very little information to explain the choices behind the solution adopted by the decision making forum that has formulated the proposal although some steps are now being taken to remedy this (see 2.2.2 below). This makes it extremely difficult, if not impossible, to meet the regulatory impact assessment processes that are required to justify the new regulation. In many cases States need to impute, speculate or even guess the underlying arguments that support a new SARP. In particular the documentation in the ICAO SARPs-making process provides:

- a) limited information on the problem statement;
- b) no information on other options considered to solve the problem or reasons why these were not adopted; and
- c) little evidence supporting the identified cost impacts compared with the expected benefits of the proposed new SARP.

2.2 Action within ICAO to date

2.2.1 National authorities have been aware of this issue for some time. In 2006 the Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety made the following recommendation:

Topic 3.1 Safety framework for the 21st century

2.1 The Conference agreed to the following recommendations:

...

d) ICAO should consider improvements in the process of developing and adopting Standards and Recommended Practice by:

- 1) **assessing systematically their impact on the industry and other interested parties;**
- 2) making more systematic use of recommendations published by accident investigation bodies; and
- 3) developing criteria for determining which Standards are of critical importance for ensuring global safety and for which notifying differences would be acceptable only exceptionally and which Standards are of a detailed technical nature should be changed into Recommended Practices or removed from ICAO Annexes and turned into guidance material.

(Emphasis added)

2.2.2 This recommendation was endorsed by the Council on 23 May 2006 (C-DEC 178-1) and again on 15 June 2006 (C-DEC 178/14). Since that time there has been some progress to meet the intent of the highlighted part of the recommendation. The Air Navigation Commission has taken one significant action to implement this; it now includes brief sections on the impacts in its reports to the Council which recommend the adoption of amendments to the Annexes to the Convention (C-WPs 13504-09, 13513-15).

2.2.3 This initiative is an extremely welcome and positive move. Nonetheless, further in-depth analysis needs to be done to fully meet the intention of the recommendation. Since 2006 ICAO has made 621 new or amended Standards and the number of ICAO Standards in force has risen from 9791 in 2006 to 9845 in 2010. On average ICAO continues to make or amend one Standard every 2.35 days. The expected impacts of these new Standards need to be fully assessed.

2.2.4 The advent of the comprehensive systems approach (CSA) to the Universal Safety Oversight Audit programme, with its requirement for maintenance of Compliance Checklists, has resulted in a significant increase in the number of differences being filed by States under Article 38. This level of non compliance implies that some ICAO SARPs may not be appropriate and may need to be reconsidered so that they meet the needs of States and the aviation sector. Rigorous impact assessment before a SARP is made can ensure that there will not be a problem in its implementation.

2.2.5 To preserve the authority of ICAO SARPs within the aviation system, ICAO's process to develop and adopt Standards needs to generate fuller explanations and justifications for its regulatory choices, consistent with the legislative processes in many of its Contracting States. The Montreal-based components of ICAO, the Council and the Air Navigation Commission and the Secretariat will need assistance and information to undertake this regulatory analysis.

2.2.6 This issue was discussed during the High-level Safety Conference (HLSC 2010) held on 29 March to 1 April this year. Under Topic 2.5 the Conference made the following recommendations:

b) SARPs and PANS development

- 1) that ICAO should develop a methodology for impact assessment to be used when proposing new SARPs and new PANS.
- b) ICAO should ensure wide dissemination of available available contextual information associated with the development of SARPs and PANS using already existing tools and platforms.

2.2.7 The resolution in the Appendix seeks to build upon the recommendations of the HLSC and reinforce existing practice. It puts in place a cooperative approach whereby contracting States are required to help identify the impact of proposed new SARPs. In many cases Contracting States will be able to use the information they provide to ICAO as the basis of their own regulatory impact analysis when they implement the final SARP in their own aviation operating regulations.

3. CONCLUSION

3.1 The resolution in the Appendix puts in place a system that will ensure that there is adequate regulatory impact assessment of new Standards and Recommended Practices when amendments are made to the Annexes to the Convention.

DRAFT RESOLUTION

**Resolution 25/xx: Follow-up of the High-level Safety Conference (2010)
Regulatory impact assessment process for the making of new Standards
and Recommended Practices**

Observing that economic liberalization has become one of the defining features of modern-day aviation and that it is having a major impact on the aviation industry;

Emphasizing that there is a need to ensure that the safety framework continues to meet the requirement for the safe and orderly development of international civil aviation;

Recognising that new Standards and Recommended Practices need to be incorporated into the aviation operating regulations of contracting States, many of which have domestic regulatory impact assessment processes that must be satisfied before new regulations can be adopted;

Recalling the recommendation from the 2006 Directors General Of Civil Aviation Conference on a Global Strategy for Aviation Safety that ICAO should systematically assess the impact of adopting Standards and Recommended Practices on the industry and other interested parties; and

Recalling the recommendation from the 2010 ICAO High-level Safety Conference, that ICAO should develop a methodology for impact assessment to be used when proposing new SARPs and new PANS, as well as to ensure wide dissemination of available contextual information associated with the development of SARPs and PANS using already existing tools and platforms.

The Assembly:

1. *Requests* the Council to put in place practices and procedures under which the Air Navigation Commission, and its supporting technical panels and working groups, ensure that all proposals for new and amended Standards and Recommended Practices and PANS be submitted to the Council:
 - a) clearly explain the problem being addressed;
 - b) outline the other options which have been examined and the underlying reasons for not adopting these options; and
 - c) explain the identified impact of the proposal based upon an assessment by the Secretary General and information obtained through the State letter process;
2. *Requests* the Secretary General, when seeking State input on proposed Standards and Recommended Practices (and PANS where applicable), to seek information through the State letter process which enables the impact of the proposed Standards and Recommended Practices to be identified;

3. *Urges* States, as part of their consideration of proposed amendments to the ICAO Annexes, to consult with relevant bodies in their aviation sectors to identify their impact and provide this information to ICAO as part of their consultation responses;
4. *Requests* the Secretary General:
 - a) to consolidate the supporting impact analysis and publish it on the public website of the Organization, in conjunction with a copy of the corresponding Annex amendment; and
 - b) pending the availability of a full regulatory impact assessment methodology, to ensure wide dissemination of available contextual information associated with the development of SARPs and PANS using already existing tools and platforms.

— END —