



A37-WP/338
TE/165
1/10/10

ASSEMBLY — 37TH SESSION
TECHNICAL COMMISSION

DRAFT TEXT FOR THE REPORT
ON
AGENDA ITEM 27

The attached material on Agenda Item 27 is submitted for consideration by the Technical Commission.

Agenda Item 27: The protection of certain accident and incident records**27:1 Further study on the protection of safety information**

27:1.1 The Commission considered A37-WP/66, presented by the Council, which addressed the protection of safety information by States in consideration of Attachment E to Annex 13 — *Aircraft Accident and Incident Investigation* and the need for the establishment of a multidisciplinary group to further study the protection of safety information from inappropriate use. The paper presented a progress report by the Council on Assembly Resolutions A36-8: *Non-disclosure of certain accident and incident records* and A36-9: *Protecting information from safety data collection and processing systems in order to improve aviation safety*, and proposed an update of these two resolutions.

27:1.2 In A37-WP/122, Australia supported the establishment of the multidisciplinary group mentioned in 27.1.1 above, and proposed that draft Assembly Resolutions 27/1 and 27/2 presented in A37-WP/66 be used to guide the direction of this group, adding that protection of information should also be commensurate with the purpose for which such information was proposed to be disclosed. Further, it was suggested that the group be encouraged to liaise with technical experts of complex safety systems other than aviation in order to determine whether a consistent approach could be taken when interacting with judicial and other relevant authorities.

27:1.3 The International Air Transport Association (IATA) presented A37-WP/180, addressing a perceived trend towards the opening of criminal prosecutions following aircraft accidents. While highlighting concerns with the “criminalization” of accident investigations, the paper stressed the need to preserve a non-punitive environment as a means to ensure the free flow of information to help determine the causes of accidents. IATA supported A37-WP/66 and proposed additions to the draft resolutions to address concerns regarding the criminalization of accident investigations.

27:1.4 The Commission reviewed A37-WP/292, presented by the Civil Air Navigation Services Organisation (CANSO), discussing the importance of development of a “just culture” as a means to educate judicial authorities and the media that the societal goal of reducing accidents was not met by punishing individuals. The paper suggested that an urgent action was needed to promote the concept of “just culture” both within and outside the aviation industry. CANSO supported the establishment of the multidisciplinary group on the protection of safety information and urged States to recognize the benefits of the implementation of a just safety culture, encouraging the establishment of a dialogue between aviation and judicial authorities.

27:1.5 The Commission was generally supportive of the actions proposed in the papers presented above, all addressing the importance of protection of safety information from improper use, and acknowledged the need to establish the multidisciplinary group on protection of safety information as soon as possible.

27:1.6 With regard to the proposals in A37-WP/122, the Commission agreed to amend draft Resolutions 27/1 and 27/2 to accommodate the notion that protection of safety information should also be commensurate with the purpose for which the information was proposed to be disclosed. A few additional changes to the resolutions were suggested and agreed from the floor.

27:1.7 Regarding A37-WP/180, the Commission agreed that some of the proposals in the paper were reflected in both draft Resolutions 27/1 and 27/2. The issue concerning the criminalization of investigations, however, would need to be addressed in draft Resolution 27/1: *Non-disclosure of certain accident and incident records*.

27:1.8 The Commission recognized the benefits and importance to safety of a just culture environment, addressed in A37-WP/292, noting that this matter was reflected in draft Resolution 27/2. Further, it was noted that the multidisciplinary group on protection of safety information would discuss, among others, ways to facilitate the interaction between safety and judicial authorities associated with the protection of safety information.

27:1.9 A paper was also presented by Australia (A37-WP/289).

27:1.10 In light of the discussion, the Commission agreed to submit, for adoption by the Plenary, the following resolutions:

Resolution 27/1: Non-disclosure of certain accident and incident 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 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 is essential to ensure the continued availability of all relevant information to accident investigators in future investigations;

Recognizing that the use of information, derived from accident investigations, for disciplinary, civil, administrative and criminal proceedings is not a means to 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 guidance to assist States in this regard;

Recognizing that the legal guidance in Attachment E to Annex 13 has assisted many States in the development and implementation of means to protect certain accident and incident records from inappropriate use;

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;

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; and

Recognizing the recommendations of the High-level Safety Conference 2010 to establish a multidisciplinary group to address the protection of certain safety information;

The Assembly:

1. *Urges* Contracting States to continue to examine and if necessary adjust their laws, regulations and policies to protect certain accident and incident records in compliance with paragraph 5.12 of 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, as set out in Attachment E to Annex 13;

2. *Instructs* the Council to consider to enhance, in view of the results of the work of the multidisciplinary group, the provisions on the protection of certain accident and incident records with the aim of facilitating the implementation of Annex 13 provisions addressing the protection of safety information, taking into account the necessary interaction between safety and judicial authorities; and

3. *Declares* that this resolution supersedes Resolution A36-8.

Resolution 27/2: Protecting information from safety data collection and processing systems in order to improve aviation safety

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;

Recognizing that the protection of safety information from inappropriate use is essential to ensure the continued availability of all relevant safety information, to enable proper and timely preventive actions to be taken;

Concerned by a trend for safety information to be used for disciplinary and enforcement actions and to be admitted as evidence in judicial proceedings;

Noting the importance of a balanced environment in which disciplinary action is not taken as consequence of actions by operational personnel that are commensurate with their experience and training, but where gross negligence or wilful violations are not tolerated;

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 improve aviation safety;

Noting that existing international laws, as well as national laws and regulations in many States, may not adequately address the manner in which safety information is protected from inappropriate use;

Noting the issuance by ICAO of legal guidance aimed at assisting States enact national laws and regulations 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 has assisted 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 a further study by ICAO on the protection of safety information; and

Recognizing the recommendations of the High-level Safety Conference 2010 to establish a multidisciplinary group to address the protection of certain safety information;

The Assembly:

1. *Urges* all Contracting States to continue to examine their existing legislation and adjust as necessary, or enact laws and regulations to protect information gathered from all relevant safety data collection and processing systems based, to the extent possible, on the legal guidance developed by ICAO, as set out in Attachment E to Annex 13;

2. *Urges* the Council to cooperate with Contracting States and appropriate international organizations regarding the development and implementation of guidance 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, while respecting principles of administration of justice and freedom of information;

3. *Instructs* the Council to consider to enhance, in view of the results of the work of the multidisciplinary group, the provisions on the protection of information gathered from safety data

collection and processing systems (SDCPS) with a view to ensure and sustain the availability of safety information required for the management of safety, taking into account the necessary interaction between safety and judicial authorities in the context of open reporting culture; and

4. *Declares* that this resolution supersedes Resolution A36-9.

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