



ASSEMBLY — 36TH SESSION

EXECUTIVE COMMITTEE

Agenda Item 20: Transition to a new policy on technical co-operation

(Presented by the 22¹ Member States of the
Latin American Civil Aviation Commission)

EXECUTIVE SUMMARY

Based on the provisions of Assembly Resolutions A35-20 and A35-21, technical cooperation has been provided by ICAO to public and private non-State entities, with the result that these entities frequently implement their projects without taking into consideration the State's civil aviation plans and objectives or informing the corresponding authorities accordingly. This undermines the authority of civil aviation administrations. The proposed amendment to the original wording of A35-20 and A35-21 in Appendix A, Resolving Clause 10 and 11 attached to Assembly Working Paper A36-WP/48 is not considered suitable to remedy this situation in that it does not adequately address the need for civil aviation authorities to be informed of the technical aspects of a project at the time the discussions with ICAO for the provision of assistance to non-State entities commence.

Action: The Assembly is invited to:

- a) note the concerns expressed in this working paper; and
- b) amend Resolving Clauses 10 and 11 of the consolidated draft Assembly Resolution appended to Assembly Working Paper A36-WP/48 as proposed in paragraph 4 of this paper

<i>Strategic Objectives:</i>	This working paper relates to all Strategic Objectives
<i>Financial implications:</i>	No additional resources required
<i>References:</i>	Doc 9848, <i>Assembly Resolutions in Force</i> (as of 8 October 2004) A36-WP/48, EX/13

¹ Argentina, Aruba (Netherlands), Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

1. BACKGROUND INFORMATION

1.1 The 35th ICAO Assembly approved Resolution A35-21 on the expansion of ICAO technical co-operation activities.

1.2 Pursuant to this authorisation, the ICAO Technical Co-operation Bureau (TCB) has been entering into contracts directly with public and private non-State entities.

1.3 At this same Assembly, Resolution A35-20 "*Recognises* the need to expand the provision of technical co-operation by ICAO to non-State entities (public or private) directly involved in civil aviation, in furtherance of ICAO objectives, to encompass, *inter alia*, those activities that were traditionally provided by national civil aviation administrations and are being privatised to some degree, where the State shall, nonetheless, respond under the Chicago Convention for the quality of the services provided and their compliance with ICAO SARPS.

1.4 It is also the responsibility of the State, through its Civil Aviation Authority or its Airport authority, to draw up national civil aviation and airport development plans.

1. THE CIVIL AVIATION AUTHORITY, ITS RESPONSIBILITY AND ITS LEVEL OF AUTHORITY

2.1 The capacity of public or private non-State entities to enter into contracts directly with the ICAO Technical Co-operation Bureau, without any involvement by the Civil Aviation Authority of the contracting State insofar as the co-ordination and planning of State objectives are concerned, has enabled these non-State entities, endowed with the capacity to request advice and assistance directly from the ICAO Technical Co-operation Bureau, to frequently fail to take account of the State Civil Aviation Authority in carrying out their projects.

2.2 As a result of this, non-State entities act on their own, without considering the Civil Aviation Authority of the Contracting State and its responsibility for the State's compliance with international civil aviation obligations and ICAO SARPS.

2.3 The expansion of ICAO technical co-operation activities has encouraged non-State entities to move away from the Civil Aviation Authorities of the contracting States insofar as State planning and objectives are concerned, because these entities are being directly advised and assisted by the ICAO Technical Co-operation Bureau.

2.4 In fact, there are cases in which the Civil Aviation Authority of a State does not even find out about the visit of ICAO Technical Co-operation staff to the State, inasmuch as non-State entities may, in accordance with resolution A35-21, apply for ICAO technical assistance without the involvement of the corresponding authority of the contracting State.

2.3 This practice of the ICAO Technical Co-operation Bureau reduces the level of authority of the Civil Aviation Authority by allowing non-State entities to enter into contracts directly with the Technical Co-operation Bureau, without having to inform the State accordingly through its Authority.

2. **WORKING PAPER A36-WP/48 PRESENTED BY COUNCIL**

3.1 In regard to Agenda Item 20 for the 36th ICAO Assembly, Transition to a new policy on technical co-operation, a consolidated draft resolution of the Assembly entitled Updating of the New Policy on Technical Co-operation is appended to the working paper.

3.2 The request made to the Secretary General in paragraph 10 of the Draft resolution appended to working paper 48, to inform the CAAs in advance about projects carried out through ICAO technical co-operation, should specify when and how far in advance this should be done. The notice should be timely in order to serve its purpose, which is to keep the CAA informed and to make sure that the projects comply with ICAO SARPS.

3.3 Nonetheless, a reading of working paper A36-WP/48 reveals no reference whatsoever to this request or the reasons for it.

3.4 Furthermore, paragraph 11 of the aforementioned consolidated resolution directs the Secretary General to consider, on a case-by-case basis, the requests of non-State entities, particularly to make sure that the projects comply with ICAO SARPS.

3.5 Who is responsible for ensuring compliance with the SARPS? The States represented by their Civil Aviation Authority.

3.6 Who is responsible for the quality of the services provided? The States through their CAAs.

3.7 Who represents the States before ICAO in most cases and has relations with it? The CAAs of the Member States.

3.8 In order to ensure compliance with the SARPS, it is necessary to take the regulatory body into account and to transmit to it all relevant technical information about the fulfillment of the SARPS. It is both convenient and beneficial to advise the CAAs in advance about the main project activities.

3.9 Each State's national and international civil aviation, by having the capacity to enter into contracts with public or private, State or non-State entities such as those that operate an aeronautical service or build infrastructure for civil aviation, for example, enjoys innumerable opportunities for technical co-operation. Both elements should comply with the SARPS and the body responsible for ensuring this compliance is the CAA of the Member State.

3.10 One of ICAO purposes, as stated in the Preamble of our Convention, is to ensure the safe and orderly development of civil aviation. This requires the participation of the regulatory body in all of the technical aspects it must oversee according to its legal responsibility.

3. **MEASURES PROPOSED TO THE ASSEMBLY**

4.1 The Assembly is invited to make the following additions to paragraphs 10 and 11 of the consolidated Assembly draft Resolution:

Paragraph 10.

And requests the Secretary General, *immediately upon the start of talks with non-State entities wishing to enter into contract with the TCB*, to inform ~~in advance~~ the civil aviation authority concerned in such cases *about the technical aspects of the project.*

Paragraph 11.

and directs the Secretary General to consider, on a case-by-case basis, the requests of such entities for ICAO assistance in the traditional technical co-operation areas *and inform the corresponding Aeronautical Authorities about such considerations*, particularly to ensure project compliance with ICAO SARPS.

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