

**58th CONFERENCE OF
DIRECTORS GENERAL OF CIVIL AVIATION
ASIA AND PACIFIC REGIONS**

*Dhaka, Bangladesh
15 to 19 October 2023*

AGENDA ITEM 3: AVIATION SAFETY

**ENHANCING INFORMATION SHARING ON ALTERNATIVE MEANS
OF COMPLIANCE WITH STANDARDS AND RECOMMENDED
PRACTICES (SARPS)**

Presented by New Zealand & Australia

SUMMARY

In order to achieve good safety and security outcomes in the context of their individual aviation systems, States sometimes use alternative approaches to meeting the requirements of SARPs than that prescribed by the SARP itself. This is reflected in the filing of differences where States have adopted outcome-based and/or risk-based approaches to achieving compliance with standards.

However, there is little clarity on how such approaches can be used as an enduring means of compliance that is acceptable to ICAO. The sharing of information on how States within the APAC region use alternative means of compliance with SARPs would help to address this.

ACTION BY THE CONFERENCE

The Conference is invited to:

- a) Note the information contained in this Working Paper
- b) Agree in principle to the need for coordinated information sharing to build an understanding of how and why alternative means of SARP compliance are being utilized by APAC States
- c) Task the relevant Asia Pacific aviation security and safety groups to consider how security and safety audit information can be shared to gain an understanding of common areas where States in our region

ENHANCING INFORMATION SHARING ON ALTERNATIVE MEANS OF COMPLIANCE WITH SARPS

1. INTRODUCTION

1.1 The Universal Safety Oversight Audit Programme (USOAP) was established in 1999, and the USOAP-Continuous Monitoring Approach (USOAP-CMA) was fully launched in 2013. The respective first and second cycles of the Universal Security Audit Programme (USAP) commenced in 2005 and USAP – Continuous Monitoring Approach (USAP-CMA) was fully launched in 2015.

1.2 The objective of ICAO’s audit programmes is to improve global aviation safety and security through auditing and continuous monitoring of the performance of ICAO Member States. To achieve this objective requires an assessment of the level of effective implementation (EI) of the critical elements (CEs) of a State’s aviation safety and security oversight systems.

1.3 ICAO has developed specific manuals for the USAP-CMA¹ and the USOAP-CMA², in addition to other ICAO documents and publications. Collectively, these documents provide useful information and guidance for Member States to refer to, pre and post safety and security audits. They assist States in promoting safety and security in civil aviation and facilitate ICAO auditors’ decision-making process.

1.4 Both audit programmes have evolved significantly since their launch and this has, in some part, been made possible through the valuable feedback from audited States. As intended by the “continuous improvement” focus of the audit process, such feedback has helped shape the contents and guidance reflected in ICAO documents and publications. One aspect of the programme that appears to have changed is the process for recognising the different means of compliance used by audited States, which may differ from prescribed SARPs, but which achieve the same outcome.

2. ALTERNATIVE MEANS OF COMPLIANCE WITH SARPS

2.1 Whether a State performs well in an USOAP or USAP Audit is largely determined by how closely its aviation oversight systems conform to the requirements prescribed in ICAO Standards and Recommended Practices (SARPs) in specific Annexes.

2.2 Article 38 of the Chicago Convention provides for a State to notify ICAO and other States when it has found it impracticable to comply in all respects with a SARP or deems it necessary to adopt regulations or practices differing from those established by a SARP.

2.3 This long-standing process allowing States to file differences has more recently incorporated aspects of modern regulatory practice, which recognises the benefits of ‘outcome-based’ and/or ‘risk-based’ approaches to achieving compliance with standards. These approaches can be used instead of the well accustomed ‘prescriptive’ approach, or in a tailored combination³. A Category B difference⁴ can be used when a State chooses this pathway.

2.4 However, there is little clarity around the status of existing Category B differences in

¹ ICAO Doc 9807 *Universal Security Audit Programme Continuous Monitoring Manual* (Third Edition, 2021) at ‘1.2 References’ lists key ICAO Documents in addition to Annex 17 and Annex 9.

² ICAO Doc 9735 *Universal Safety Oversight Audit Programme Continuous Monitoring Manual* (Fifth Edition, 2023) at ‘1.2 References’ where principal reference documents of the Programme are listed.

³ ICAO Doc 10047 at paragraph 3.5.8 and ICAO Doc 9807 at paragraph 7.2.1.5.

⁴ The Category B difference category applies when the national regulation is different in character from the corresponding ICAO SARP, or when the national regulation differs in principle, type or system from the corresponding SARP, without necessarily imposing an additional obligation (ICAO Doc 10055 *Manual on Notification and Publication of Differences*).

the context of USOAP and USAP audits. From recent experience in its 2022 USAP audit, New Zealand observed that ICAO's expectation was that such differences should only be applied as a temporary measure while the State works towards full compliance with a SARP.

2.5 The USAP audit manual outlines the principles which ought to guide the decision-making process of USAP-CMA auditors when assessing the approach(es) States have chosen to achieve compliance with SARPs. Although this information is invaluable, there would be further benefit in determining the extent to which States are utilising alternative means of compliance with SARPs, and consequently whether there might be value in certain SARPs being more outcome-based and less prescriptive.

2.6 There would also be value to States in sharing insights and lessons learned through the use of alternative means of SARP compliance, both with respect to the safety and security outcomes achieved, and with respect to ICAO audit outcomes.

2.7 A means of achieving this would be through coordinated information sharing between States, and with ICAO, on common areas where States are making use of Category B differences.

3. INFORMATION SHARING

3.1 The process a State undertakes to select the appropriate approach or combination of approaches to compliance could be enhanced through the sharing of information by other States that have been recently audited. Where these States have experienced a positive safety or security outcome from implementing the chosen approach(es), the timely sharing of lessons learned and insights of how to achieve the desired outcome would be invaluable to other States about to be audited.

3.2 A further layer in this process should ensure consideration is given to the size, maturity and complexity of different aviation security systems. This would improve the comparisons between 'like for like' States and minimise the risk of sharing information that would be impracticable to implement. An extension of this approach should include access to such information by less developed States, should they wish to develop aspirational longer-term goals, such as achieving an Effective Implementation score for USOAP-CMA or USAP-CMA to the level achieved by developed States.

3.3 Fundamental to this proposed approach would be the sharing of information collated over the decades from past safety and security audits overseen by ICAO.

3.4 This process of collecting and analysing such information and utilising it to improve efficiency, amongst other benefits, already exists through the ICAO USOAP-CMA and USAP-CMA 'risk-based approach' to auditing, which ICAO uses to establish the priorities and frequencies of audit activities for a State.⁵

3.5 Secondly, in line with established USOAP-CMA and USAP-CMA Principles⁶ (the principles), the sharing of information between ICAO and the audited States, to better understand the rationale behind audit results, would equally be invaluable. In particular, it would be helpful for States to understand how and why other States with significantly different aviation security systems (in terms of size, maturity and complexity) that all choose to comply with a particular SARP by way of an 'outcome-based approach' subsequently achieve a different audit result for that SARP – for instance, some may achieve the desired outcome, while others may not. Sharing this information would improve the Member States' confidence in the audit programmes, as it would illustrate that the principles are being practiced by ICAO as intended.

⁵ ICAO Doc 9807 at paragraph 3.1.3.

⁶ Most notably the principles of: universality; transparency of methodology; consistency of objectivity, and; fairness.

3.6 It is acknowledged that information collected from the USAP-CMA audits, in particular, are sensitive and contain confidential security information owned by each State. Recognition of this under the Audit Programme is illustrated by ICAO's "Confidentiality" principle. Exploring effective ways to share the information derived from the audits needs to remain consistent with this principle, for example by presenting the information in a thematic manner and ensuring anonymity. Consistency with the USOAP-CMA and USAP-CMA principles would improve the likelihood that the proposed approach is received favourably by States.

4. ACTION BY THE CONFERENCE

4.1 The Conference is invited to:

- a) Note the information contained in this Working Paper
- b) Agree in principle to the need for coordinated information-sharing to build an understanding of how and why alternative means of SARP compliance are being utilised by APAC States
- c) Task the relevant Asia Pacific aviation security and safety groups to consider how security and safety audit information can be shared to gain an understanding of common areas where States in our region are making use of alternative means of SARP compliance and the application of Category B differences.

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