



**ICAO TENTH MEETING OF THE REGIONAL AVIATION SAFETY GROUP -  
ASIA AND PACIFIC REGIONS (RASG-APAC/10)**

(Bangkok, Thailand, 17-18 December 2020 on Virtual Platform )

**Agenda Item 3: RASG-APAC considerations and approval**

**FOLLOW-UP ON APAC-AIG/7-WP/9**

(Presented by Chairman APAC-AIG)

**SUMMARY**

The paper seeks the RASG-APAC's endorsement to formally bring a proposal made in the paper APAC-AIG/7-WP/9, which was presented at the APAC-AIG/7 Meeting in July 2019, to the attention of the ICAO HQ. The proposal is to have a provision in Annex 13 to make it explicit that States that received the draft final report for comments shall reply to the State conducting the investigation regarding their comments, if any, within the deadline.

**1. INTRODUCTION**

1.1 At the APAC-AIG/7 in July 2019, Bangladesh presented the paper APAC-AIG/7-WP/9 titled "*Amendment to Standard 6.3 of Annex 13 Regarding Comments in the Draft Final Report of Investigation*" (see **Attachment A**). The paper highlighted that, while the current Standard 6.3 in Annex 13 obliges States conducting the investigation to seek comments on the draft final report from the participating States, it is not explicit as to the obligation on the part of the States receiving the draft final report to reply to the State conducting the investigation. The paper proposed to have a provision in Annex 13 to make it explicit that States that received the draft final report for comments shall reply to the State conducting the investigation regarding their comments, if any, within the deadline.

1.2 The APAC-AIG/7 noted the proposal and make the following Conclusion:

**Conclusion APAC-AIG 7/3**

That, ICAO APAC Office forward WP/9 to ICAO HQ for consideration.

**2. DISCUSSION**

2.1 The ICAO APAC Office forwarded the proposal in APAC-AIG/7-WP/9 to the ICAO HQ's Accident Investigation (AIG) Section. The proposal was well received by the AIG Section which considered the paper well-thought of.

2.2 Nevertheless, the AIG Section suggested that the Regional Aviation Safety Group - Asia and Pacific Regions (RASG-APAC) formally bring the proposal to the attention of the ICAO HQ

which may, in turn, assign the proposal to the ICAO Accident Investigation Panel (AIGP) for due deliberations.

**3. ACTION BY THE MEETING**

3.1 The Meeting is invited to:

- a) note the follow-up to the paper APAC-AIG/7-WP/9 presented at the APAC-AIG/7 Meeting in July 2019; and
- b) formally endorse bringing the proposal made in the paper APAC-AIG/7-WP/9 to the attention of the ICAO HQ.

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ICAO

SEVENTH MEETING OF THE ASIA PACIFIC ACCIDENT  
INVESTIGATION GROUP (APAC-AIG/7)

(Putrajaya, Malaysia, 22 – 23 July 2019)

APAC-AIG/7-WP/9

Agenda Item 6

Agenda Item 4: Regional cooperation

AMENDMENT TO STANDARD 6.3 OF ANNEX 13 REGARDING COMMENTS  
ON THE DRAFT FINAL REPORT OF INVESTIGATION

(Presented by Bangladesh)

SUMMARY

ICAO Annex 13 specifies, in number of places, States' 'Entitlements', 'Functions', 'Rights', 'Obligations' and 'Consultations' etc. in reference to conduct of investigations of accidents and incidents of aircraft.

Standard 6.3 outlines the responsibility of State conducting the investigation to send a copy of the draft Final Report to the applicable States for comments as soon as possible.

Standard 6.3 also specifies the 'Action' by the State conducting the investigation in case it receives or does not receive comments within sixty days from the date of transmittal letter.

Annex 13 does not specify assertively the recipient State's 'Obligation' to send comments within sixty days from the date of transmittal letter containing the 'Draft Final Report'.

This Discussion Paper (DP) proposes to consider an amendment to Standard 6.3 as specified in Para 6.1, 6.2 and 6.3 of the DP.

1. INTRODUCTION

1.1 Pursuant to Article 26 and 37 of the Chicago Convention, ICAO Annex 13 provides the required Standards and Recommended Practices that specify the States' 'Entitlements', 'Functions', 'Rights', 'Obligations' and 'Consultations' in reference to conduct of investigations of accidents and incidents of aircraft.

1.2 This Discussion Paper provides the Proposal for amendment of Standard 6.3 of Annex 13 as specified in Para 6.1, 6.2 and 6.3 of this WP for inclusion of recipient State's obligation to provide within sixty days of the transmittal correspondence by the State conducting the investigation, any significant and substantiated comments, if considered necessary, for better clarity of the Annex 13 texts.

1.3 It is worth mentioning that, similar 'text' is already in existence in Standard 6.10 of Annex 13 which is indicative of an action item for the recipient State to inform the proposing State, within ninety days of the date of the transmittal correspondence, of the preventive action taken or under consideration, or the reasons why no action will be taken.

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## 2. REASON FOR THE PROPOSED AMENDMENT

2.1 In reference to 'Consultations' associated with Standard 6.3 of Annex 13, the Standard specifies the 'Action' by the State conducting the investigation in case it receives or does not receive comments within sixty days from the date of transmittal letter. But the Standard neither mentions about the obligation of the State conducting the investigation to inform about the time limit for the recipient state to provide the comments, nor specifies any instruction/obligation for the recipient State to provide comments within sixty days. The recipient States, in an indirect means by reading through Standard 6.3, understands about the time limit for providing the comments.

2.2 ICAO Document 9756, 'Manual of Accident and Incident Investigation', in Part IV, Chapter 1, Para 1.4 reflects almost similar to what is mentioned in the Annex 13. The Manual also does not provide any direct guidance for the recipient State to provide comments on the 'Draft Final Report' within sixty days.

2.3 To sum up, as Annex 13 does not provide any viable instruction for the recipient State receiving the 'Draft Final Report' to provide comments within a specified time, it is felt that a response from the recipient State appears as a courtesy-reply, hence does not fully satisfy the purpose of such 'consultation'.

2.4 Justification may be given that, while sending the 'Draft Final Report', the State conducting the investigation may, should or shall indicate the timeline (sixty days) for the State receiving the report to provide comments. But this process, too, is not obligative or assertive in nature, as any instruction to this effect for the State conducting the investigation has not been mentioned in the Annex text.

2.4 The texts of Annex 13 and that of Doc-9756 (Relevant portions) have been outlined in Para 3 for ready reference for consideration of this WP.

## 3. TEXT OF STANDARD 6.3

### 3.1 Quote:

#### *"Consultation*

6.3 The State conducting the investigation shall send a copy of the draft Final Report to the following States inviting their significant and substantiated comments on the report as soon as possible:

- a) the State that instituted the investigation;
- b) the State of Registry;
- c) the State of the Operator;
- d) the State of Design;
- e) the State of Manufacture; and,
- f) any State that participated in the investigation as per Chapter 5.

If the State conducting the investigation receives comments within sixty days of the date of the transmittal letter, it shall either amend the draft Final Report to include the substance of the comments received or, if desired by the State that provided comments, append the comments to the Final Report. If the State conducting the investigation receives no comments within sixty days of the date of the first transmittal letter, it shall issue the Final Report in accordance with 6.4, unless an extension of that period has been agreed by the States concerned."

Un-quote.

**4. TEXT OF DOC 9756 (CH-1.4) ON CONSULTATION ON THE DRAFT FINAL REPORT**

**4.1 Quote:**

“1.4.1 In accordance with Annex 13, the State conducting the investigation shall send a copy of the draft Final Report to the State which instituted the investigation and to all States that participated in the investigation, inviting their significant and substantiated comments on the report. The State conducting the investigation should also send copies of the draft Final Report to the operator and the organizations responsible for type design and final assembly of the aircraft, through the State of the Operator, the State of Design and the State of Manufacture, respectively, in order to enable the operator and such organizations to submit comments on the draft Final Report. When sending the draft Final Report to recipient States, the State conducting the investigation should consider using the most appropriate means available, such as facsimile, e-mail, courier service or express mail. When the draft Final Report is sent by electronic means, secure transmission methods should be used, when available.

(1.4.2 States shall not circulate, release or give access to a draft report or any part thereof, any group reports or any other investigation documentation obtained during an investigation of an accident, without the express consent of the State which conducted the investigation, unless such reports or documents have already been published or released by that latter State).

*(Note: Para 1.4.2 has been shown for continuity; Not directly relevant to this WP).*

1.4.3 If the State conducting the investigation receives comments within sixty days of the date of the transmittal letter, it shall either amend the draft Final Report to include the substance of the comments received or, if desired by the State that provided the comments, append the comments to the Final Report. Usually, comments to be appended to the Final Report are restricted to non-editorial, specific technical aspects of the Final Report upon which no agreement could be reached.

1.4.4 If the State conducting the investigation receives no comments within sixty days, it shall issue the Final Report, unless an extension of that period has been agreed by the States concerned.”

Un-quote

**5. RECIPROCATED ‘CONSULTATION’ IN ANNEX TEXT IS INTENDED FOR BETTER CLARITY**

5.1 This Discussion Paper proposes for a ‘Reciprocated Consultation’ to be incorporated in Standard 6.3 through amendments as specified in Para 6.1, 6.2 and 6.3 of this WP for better clarity of the Annex 13 texts.

**6. PROPOSED TEXT OF STANDARD 6.3 OF ANNEX 13**

6.1 Current Standard 6.3 may be amended to read as, “6.3 The State conducting the investigation shall send a copy of the draft Final Report to the following States inviting their significant and substantiated comments on the report as soon as possible, but not later than sixty days:”

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6.2 An additional Standard may be constructed naming, Standard 6.3.1, which may be read as, "6.3.1 States receiving the copy of the draft Final Report shall send their significant and substantiated comments on the report, if any, as soon as possible, but not later than sixty days upon receipt of the report counted from the date of transmittal of the correspondence by the state conducting the investigation."

6.3 A Standard number, 6.3.2 may be given to the existing concluding Para of Standard 6.3, which may be read as, "6.3.2 If the State conducting the investigation ..... has been agreed by the States concerned."

*(Note: Text in the concluding Para of current Standard 6.3 remains unchanged).*

## 7. ACTION BY THE MEETING

7.1 The Meeting is invited that the proposed amendment to Standard 6.3 of Annex-13 may be taken into consideration for better clarity, understanding and consideration for all concerned.

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