



AIG/08-WP/79
Revised
17/10/08

**ACCIDENT INVESTIGATION AND PREVENTION (AIG)
DIVISIONAL MEETING (2008) (AIG/08)**

Montréal, 13 to 18 October 2008

REPORT ON AGENDA ITEM 1.2

The Plenary, on 18 October 2008, approved the report on Agenda Item 1.2.

Note.— After removal of this covering sheet, this paper should be inserted in the appropriate place in the Report Folder.

Agenda Item 1: Annex 13
1.2: Chapter 5 of Annex 13

1.2.1 INTRODUCTION

1.2.1.1 The meeting considered proposals for amendments to Chapter 5 in Annex 13. The proposals are presented under the following headings:

- a) investigation of accidents and serious incidents;
- b) independence of the investigation;
- c) use of information from flight data recorder (FDR); and
- d) participation of States in investigations.

**1.2.2 INVESTIGATION OF ACCIDENTS
AND SERIOUS INCIDENTS**

1.2.2.1 The meeting considered proposals made by the Secretariat and presented in WP/3 to amend paragraphs 5.1.1 and 5.4 and associated notes. These proposals include:

- a) expanding paragraph 5.4 to allow accident investigation authorities to adjust the extent and scope of an investigation in relation to the safety lessons that are expected to be learned from the investigation;
- b) upgrading paragraph 5.1.1 to a Standard while limiting its applicability to aircraft over 2 250 kg; and
- c) adding a note to paragraph 5.1.1 as follows: “ In the case of serious incidents, the State of Occurrence may consider delegating the investigation to the State of Registry or the State of the Operator, in particular in occurrences in which it might be beneficial or more practical for one of these States to conduct the investigation”.

1.2.2.2 There was widespread agreement with the proposal to allow accident investigation authorities to focus their investigations on those accidents where safety lessons are expected to be learned. Many accidents involve the repetition of past occurrences, and the contributing factors are similar to previous accidents. Therefore, the benefits and lessons acquired through the investigation of those accidents may not always justify the resources allocated to them. It is envisaged that the investigation could be limited to fact-finding, which would be adequate, for example, when the accident involved a light aircraft and when no fatal injuries were sustained.

1.2.2.3 There was strong support for modifying Standard 5.4 to allow for a limited fact-finding investigation where there was little or no safety value to be gained from a detailed investigation. One State proposed that Standard 5.4 a) should be amended to read “the gathering, recording and analysis of ‘all relevant’ available information” because no investigation would otherwise comply with the existing Standard. Further suggestion was made by this State to replace the words “When possible” in the last sentence of paragraph 5.4 with wording that would better capture the intent of the Standard concerned. It was agreed that the Secretariat would suggest wording addressing this matter. This change was agreed to by the meeting.

1.2.2.4 The upgrading of paragraph 5.1.1 from a Recommended Practice to a Standard was proposed on the basis that, from an accident prevention perspective, a serious incident should have the same emphasis as that of an accident. To this end, it is considered that the investigation of serious incidents would produce the greatest safety benefits when aircraft engaged in commercial operations are involved. It was therefore further proposed that the upgraded Standard in paragraph 5.1.1 would apply only to aircraft of over 2 250 kg.

1.2.2.5 One of the States that supported the upgrading of paragraph 5.1.1 to a Standard called for improving guidance on safety occurrences that must be investigated as serious incidents in a revised Attachment C, which may now more appropriately be an Appendix. This proposal was supported. Another State supported the principle proposal of allocating resources for the investigation of accidents in view of the lessons expected to be learned; however, it did not support upgrading to a Standard the investigation of all serious incidents due to the increasing resource requirements. This State suggested that the same objective will be reached by allowing States to determine which incidents are serious and which are not. This suggestion did not receive support.

1.2.2.6 Based on its consideration, the meeting made the following recommendation:

Recommendation 1.2/1 — List of Examples of Serious Incidents

That ICAO revise the list of examples of serious incidents in Attachment C to Annex 13, and consider updating it to an appendix.

1.2.2.7 It was recognized that a serious incident can occur within the airspace of a State that is otherwise not involved with a flight in terms of aircraft operations or airworthiness standards. In such a situation, it might be more practical for the State of occurrence to delegate the investigation of the serious incident to, for example, the State of Registry or the State of Operator. It was suggested and agreed to that a Note to this effect be added to paragraph 5.1.1.

1.2.2.8 It was proposed by one international organization that all runway incursions be investigated, regardless of the severity of the outcome of the events. It was further proposed that a classification scheme be developed for runway incursions that is based on the Threat and Error Management (TEM) framework rather than the severity of the outcome. These proposals were not supported.

1.2.2.9 A State proposed the following Recommendation to Annex 13: “States should adapt their organizations so that they make it possible to conduct general aviation accident investigations of greater scope and depth, disseminating, particularly among flight instructors, the safety information obtained as a result.” The meeting noted that this concept was adequately covered by existing provisions in the Annex and that no further change was required.

1.2.2.10 As a result of these discussions, the meeting agreed to upgrade paragraph 5.1.1 from a Recommended Practice to a Standard and to amend paragraphs 5.1.1 and 5.4 as follows:

RSP

Recommendation 1.2/2 – Amendment to Annex 13, Chapter 5, paragraphs 5.1.1 and 5.4

That Annex 13, Chapter 5, be amended as follows:

In Chapter 5, *amend* paragraphs 5.1.1 and 5.4 as follows:

CHAPTER 5. INVESTIGATION

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State of Occurrence

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5.1.1 The State of Occurrence shall institute an investigation into the circumstances of a serious incident when the aircraft is of a maximum mass of over 2 250 kg. Such a State may delegate the whole or any part of the conducting of such investigation to another State by mutual arrangement and consent. In any event the State of Occurrence should use every means to facilitate the investigation.

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Note 3.— In the case of serious incidents, the State of Occurrence may consider delegating the investigation to the State of Registry or the State of the Operator, in particular involving occurrences in which it might be beneficial or more practical for one of these States to conduct the investigation.

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General

5.4 The accident investigation authority shall have independence in the conduct of the investigation and have unrestricted authority over its conduct, consistent with the provisions of this Annex. The investigation shall normally include:

- a) the gathering, recording and analysis of all relevant information on that accident or incident;
- b) if appropriate, the issuance of safety recommendations;
- c) if possible, the determination of the causes; and

d) the completion of the final report.

Where feasible, the scene of the accident shall be visited, the wreckage examined and statements taken from witnesses.

The extent of the investigation and the procedure to be followed in carrying out such an investigation shall be determined by the accident investigation authority, depending on the lessons it expects to draw from the investigation for the improvement of safety.

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1.2.3 INDEPENDENCE OF THE INVESTIGATION

1.2.3.1 The meeting was presented with a review of paragraph 3.1 in Annex 13, which states that the sole objective of accident and incident investigation is the prevention of future accidents and not to apportion blame or liability. Furthermore, paragraph 5.4.1 recommends that any judicial or administrative proceedings should be separate from the investigation conducted under the provisions of Annex 13.

1.2.3.2 The meeting considered a proposal to upgrade Recommended Practice 5.4.1 to a Standard in order to fully align it with the spirit of Annex 13 regarding the objective of accident and incident investigations. It was brought to the meeting's attention that in the proposal the order of the sentence had been changed to reflect the emphasis on Annex 13 investigations. A further clarification to the intent of paragraph 5.4.1 was proposed in the form of a "note" that provides advice regarding the coordination between the investigations. The meeting supported both proposals.

1.2.3.3 An international organization suggested that the term "separate from" should be replaced with "independent of". It also proposed that the safety investigation shall take priority over the judicial investigation/proceedings. The meeting considered the proposal to replace "separate from" by "independent from" and eventually rejected it. There was support for the proposal on the priority of the accident investigation over the judicial investigations and proceedings but the meeting felt that it should be a Recommendation rather than a Standard and that it should focus on the fact that the judicial investigations and proceedings should not impede the technical accident/incident investigation.

1.2.3.4 During further deliberations, cautions were aired relating to the national priorities of States with relation to the proposed Recommended Practice. A State indicated that cooperation with judicial investigations is possible, but needs to be transparent. Several States reiterated that the investigations should be separate but could be in parallel; however, the safety investigation should have priority.

1.2.3.5 Another international organization agreed to the separation of the Annex 13 investigations and the judicial investigations. However, this organization was concerned that these provisions were becoming too restrictive and would not allow for the manufacturers to be able to provide adequate support to the investigation team as they would not be able to have access to the factual information.

1.2.3.6 The meeting finally agreed to the proposal to upgrade paragraph 5.4.1 to a Standard and to change the order of the paragraph to emphasize the Annex 13 investigations. The "note" will also be included in order to clarify the reference to the expertise that should be involved in the respective

investigations. Furthermore, the meeting agreed to a new Recommended Practice as discussed and agreed that the wording to this Recommended Practice will be determined by the Secretariat.

1.2.3.7 Accordingly, the meeting made the following recommendations:

RSPP Recommendation 1.2/3 — Amendments to paragraph 5.4.1

Amend paragraph 5.4.1 as follows:

CHAPTER 5. INVESTIGATION

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**ORGANIZATION AND CONDUCT
OF THE INVESTIGATION**

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General

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5.4.1 Recommendation. Any investigation conducted under the provisions of this Annex shall be separate from any judicial or administrative proceedings to apportion blame or liability.

Note 1.— Separation can be achieved by the investigation being conducted by State accident investigation authority experts, and any judicial or administrative proceedings being conducted by other appropriate experts. Coordination, as per 5.10, between the two processes would likely be required at the accident site and in the gathering of factual information, with due consideration to the provisions in 5.12.

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Recommendation 1.2/4 — New Recommended Practice

The meeting formulated a new Recommended Practice as follows:

5.4.2 Recommendation.— *A State should ensure that any investigations conducted under the provisions of this Annex have unrestricted access to all evidential material without delay and are not impeded by administrative or judicial investigations or proceedings.*

Note.— *The intent of this recommendation may be achieved through legislation, protocols or agreements between the accident investigation authorities and the judicial authorities.*

1.2.4 USE OF INFORMATION FROM FLIGHT DATA RECORDERS

1.2.4.1 The meeting considered whether there was a need to provide protection of flight data recorder (FDR) data when such data was shared with another State. It was noted that, given the current emphasis on transparency and public access to information, it might be difficult to protect such data from disclosure.

1.2.4.2 With regards to the protection of flight data recorder information, an international organization supported the concerns raised regarding the improper use of the data but noted that protection of such data might limit the manufacturers' access to the data, thus adversely affecting flight safety. With this concern in mind, the meeting agreed that there was no need to address the issue of FDR data protection in ICAO provisions.

1.2.4.3 An international organization suggested that the last part of the first sentence in paragraph 5.12, "unless the appropriate authority for the administration of justice in that State determines that their disclosure outweighs the adverse domestic and international impact such action may have on that or any future investigations" weakened the intent of this paragraph. This concern was not supported by the meeting. The organization further proposed that part d) of paragraph 5.12, "cockpit voice recordings" be changed to "all recorders". This proposal was not supported. Finally, the organization proposed to add a new sentence to paragraph 5.12.1 along the lines: "In no case shall the identities of the persons involved be disclosed to the public." A State supported this proposal but suggested that the word "identities" should be changed to the word "names". Following further discussion, it was agreed that a new paragraph 5.12.2 be developed to address this issue. There was widespread support for this proposal as amended.

1.2.4.4 A State suggested that the Secretariat should consider amending paragraph 4.2 d) to eliminate a possible conflict with what the meeting had agreed regarding the non-disclosure to the public of names of persons involved in an accident. It was suggested to change the word "name" in paragraph 4.2 d) to "qualification". The meeting agreed.

1.2.4.5 The meeting made the following recommendations:

RSPP

Recommendation 1.2/5 — Amendment to Annex 13, Chapter 4, paragraph 4.2 and Chapter 5, paragraph 5.12.1

Amend Chapter 4, paragraph 4.2 d) and Chapter 5, paragraph 5.12.1 as follows:

CHAPTER 4. NOTIFICATION

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Format and content

4.2 The notification shall be in plain language and contain as much of the following information as is readily available, but its dispatch shall not be delayed due to the lack of complete information:

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d) ~~name~~ **qualification** of the pilot-in-command, and nationality of crew and passengers;

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CHAPTER 5. INVESTIGATION

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Non-disclosure of records

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5.12.2 **The names of the persons involved in the accident or incident shall not be disclosed to the public by the accident investigation authority.**

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1.2.5 PARTICIPATION OF STATES IN INVESTIGATIONS

1.2.5.1 The meeting considered proposals to:

- a) amend the Standard in paragraph 5.27 to clarify the provision and to extend its applicability to all State having its citizens on board rather than only those with fatalities and serious injuries; and
- b) add a new Recommendation to ensure that States directly involved in an investigation receive in a timely manner established factual information from the investigation.

1.2.5.2 There was general support for the proposed changes but concerns were expressed by several States on the extension of the applicability of Annex 13 paragraph 5.27 to a State having its citizens on board. It was felt that this proposal might increase the participation in an investigation and the associated costs and could slow down the investigation process and delay the submission of factual safety information. Recognizing that States whose citizens died, have a greater need for information to be able to inform the families of victims, the meeting agreed to revert to the existing scope of paragraph 5.27 which is limited to States whose citizens have died or suffered serious injuries.

1.2.5.3 A State did not support existing paragraph 5.27 a) which deals with visiting the scene of the accident, while another State suggested that the term “expert” was not clearly defined in Annex 13, and recommended that the Secretariat provide clarification of this term. A State also suggested using the word “is” in place of the words “has been” as contained in the proposed amendment to paragraph 5.27 b). The meeting agreed to this suggestion.

1.2.5.4 There was a broad support with the proposed Recommendation on the provision in a timely manner of established factual information from the investigation. A State expressed the view that the Recommendation was similar to the Recommendation in paragraph 6.6 and the Secretariat provided clarifications on the existing differences between the two provisions concerned.

1.2.5.5 As a result of these discussions, the meeting agreed to amend paragraph 5.27 and to add a new paragraph 5.28 along the following lines:

RSPP

Recommendation 1.2/6 — Amendment to Chapter 5, paragraph 5.27 and addition of a new paragraph 5.28

Amend Chapter 5, paragraph 5.27 and add a new paragraph 5.28 as follows:

CHAPTER 5: INVESTIGATION

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**PARTICIPATION OF STATES HAVING SUFFERED
FATALITIES OR SERIOUS INJURIES TO ITS
CITIZENS**

Rights and entitlement

5.27 A State which has a special interest in an accident by virtue of fatalities or serious injuries to its citizens shall, ~~upon making a request to do so, be permitted by the State conducting the investigation~~ be entitled to appoint an expert who shall be entitled to:

- a) visit the scene of the accident;
- b) have access to the relevant factual information, which is approved for public release by the State conducting the investigation and information on the progress of the investigation; and
- ~~c) participate in the identification of victims;~~
- ~~d) assist in questioning surviving passengers who are citizens of the expert's State; and~~ c) receive a copy of the Final Report.

This will not preclude the State from also assisting in the identification of victims and in meetings with survivors from that State.

5.28 **Recommendation.**— *The State conducting the investigation should release, at least during the first year of the investigation, established factual information and indicate the progress of the investigation in a timely manner.*

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