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

Montréal, 13 to 18 October 2008

REPORT ON AGENDA ITEM 1.7

The Plenary, on 18 October 2008, approved the report on Agenda Item 1.7.

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

(5 pages)

Agenda Item 1: Annex 13
1.7 Attachment E to Annex 13

1.7.1 INTRODUCTION

1.7.1.1 The meeting noted that Attachment E was included in Annex 13 as of November 2006. A proposal to review Attachment E was subsequently discussed at the ICAO 36th Assembly in September 2007 which agreed that the AIG/08 would be the right forum to further address the subject.

1.7.1.2 In May 2008, the Secretariat had sent a State letter seeking States' views on the implementation of paragraph 5.12 of Annex 13 in consideration of the legal guidance set out in Attachment E. By September 2008, 53 States had replied. Forty-one States or 77 % had indicated that Attachment E had assisted them in the implementation of protection of certain records as set forth in paragraph 5.12. On the other hand, 12 States had indicated that Attachment E had not been of assistance in protecting certain records, mainly due to impediments in their national laws and regulations.

1.7.2 DISCUSSION

1.7.2.1 Several working papers were presented by States and International Organizations which included several proposed actions on this subject.

1.7.2.2 The main points raised by States in their papers included:

a) The inconsistencies which exist between the Annex and Attachment E that require further consideration;

b) The difficulties of implementation of Standard 5.12. The fact that it is worded in very broad terms makes it difficult to implement in practical terms with the risks of undermining protection for really critical material such as CVR recordings, investigator interviews of operational staff, and analysis opinions. It was suggested that grading the protections required in 5.12, with an emphasis on these records, could lead to a more sustainable regime for the future and greater State compliance;

c) The importance of transparency and sharing of information as cornerstones of aviation safety and the need to implement a "Just Culture" which creates an environment in which the reporting and sharing of information are encouraged and facilitated;

d) The need to review Attachment E to Annex 13 in order to provide more precise legal guidelines for the implementation of a "Just Culture";

e) The need to provide guidelines to the aviation professionals on how to interact with the media, in order to achieve the right balance between providing relevant and accurate information to the public while preserving the needed confidentiality of individuals in the interest of aviation safety;

f) The need to review Attachment E, taking into account the proper balance between transparency and, where necessary, to protect specific information sources' confidentiality, to better serve aviation safety and the global accident investigation community;

g) A request for ICAO to provide reference material on protection measures that have been put in place by States or that are deemed practical to be put in place; and

h) A recommendation that ICAO establish a working group to review how sensitive safety information is to be protected under the framework provided by the Convention and Annex 13.

1.7.2.3 The proposals made by international organizations were supported and included:

a) The protection of data obtained in investigations should be such as to maintain the manufacturer's access to it, so that the manufacturer could support investigations, take safety actions and support on-going safety programmes;

b) Protection of the area voice recordings in the ATC environment similar to the procedures and constraints for cockpit voice recordings; and

c) Although the concept of "just culture" was supported, the development of a definition, at this point in time, might be premature.

1.7.2.4 The ensuing discussion indicated a very broad support for all the points that were raised in the various papers. The concept of just culture was fully supported but some doubt were expressed on the need to formalize a definition or even using the term "just culture" as it is still an evolving concept.

1.7.2.5 Based on the discussion, the meeting unanimously agreed to recommend that ICAO undertake a study aimed at reviewing and facilitating the implementation of paragraph 5.12 and Attachment E with the assistance of an appropriate group of experts. It was agreed that the terms of reference for the group should be quite general, and that the documentation on this agenda item and the comments made in the discussion of this agenda item be part of the group's consideration.

Recommendation 1.7/1 – Further Study of Protection of Safety Data

That ICAO undertake a study with the aim of reviewing and facilitating the implementation of paragraph 5.12 and Attachment E to Annex 13. The work is to be undertaken with the assistance of an appropriate group of experts, and due consideration is to be given to the issues documented and discussed under agenda item 1.7 of AIG/08.

1.7.3 NON-DISCLOSURE OF IMAGE RECORDINGS

1.7.3.1 Views were expressed that image recording of the cockpit environment was needed to augment existing data and audio recordings. Such recordings had become economically realistic in a crash-protected recording medium. The technology to implement such systems had been demonstrated and a minimum operational performance specification (Eurocae ED-112) for such recordings was issued in 2003.

1.7.3.2 It was proposed that an amendment to paragraph 5.12 be made in order to afford image recordings and their transcripts, in whole or in part, the same or higher level of protection from disclosure as cockpit voice recordings. The meeting agreed with the proposal. One international organization objected to the inclusion of image recorders on the basis that it preferred that this issue be first dealt with by the working group reviewing Attachment E and Annex 13, paragraph 5.12; this objection was not accepted.

1.7.3.3 The meeting also noted a concern regarding methods of protection of image recordings from disclosure in those States which were unable or unwilling to afford such protection in their national legislation.

1.7.3.4 The meeting made the following recommendation.

RSPP **Recommendation 1.7/2 – Amendments to Annex 13, Chapter 5**

Amend Chapter 5, paragraph 5.12, as follows**:**

ORGANIZATION AND CONDUCT OF THE INVESTIGATION

. . .

RESPONSIBILITY OF THE STATE CONDUCTING THE INVESTIGATION

. . .

Non-disclosure of records

5.12 The State conducting the investigation of an accident or incident shall not make the following records available for purposes other than accident or incident investigation, 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:

a) all statements taken from persons by the investigation authorities in the course of their investigation;

b) all communications between persons having been involved in the operation of the aircraft;

c) medical or private information regarding persons involved in the accident or incident;

d) cockpit voice recordings and transcripts from such recordings; ~~and~~

Recommendation 1.7/2 (cont'd)

e) recordings and transcriptions of recordings from air traffic control units; ~~and~~

f) cockpit airborne image recordings and any part or transcripts from such recordings; and

~~f)~~g) opinions expressed in the analysis of information, including flight recorder information.

— — — — — — — —