



WORKING PAPER

ACCIDENT INVESTIGATION PANEL (AIGP)

SIXTH MEETING

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Agenda Item xx: ICAO ANNEX 13 TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

STRENGTHENING THE INDEPENDENCE AND CREDIBILITY OF AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATIONS IN CONFLICT OF INTEREST SITUATIONS

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SUMMARY

This working paper highlights how the current framework established under ICAO Annex 13 may not be well suited for situations where the State of Occurrence (the State responsible for conducting the investigation, as per Article 26 of the *Convention on International Civil Aviation*) has admitted its involvement in the downing of a civilian aircraft, or when there is reliable and verified evidence that strongly suggests that acts or omissions of the State of Occurrence have directly led to the downing.

In such cases, the investigation authority may be exposed, confronted and/or succumb to external pressures driven by competing national interests. The State of Occurrence can thus find itself in a conflict of interest situation (actual or perceived), which can compromise the independence and undermine the credibility of its investigation under Annex 13, as well as the uptake of its resulting findings and safety recommendations. Accordingly, the absence of prescribed measures to address actual or perceived conflicts of interest in accident and incident investigations can jeopardize the effectivity of Annex 13 and hinder the global advancement of air safety.

With a view of reinforcing the independence of investigations and improving their integrity, transparency, credibility, and impartiality, the Accident Investigation Panel (AIGP) is therefore invited to consider how conflicts of interest (actual or perceived) ought to be managed under Annex 13 when the State of Occurrence has admitted its involvement in the downing of a civilian aircraft, or when there is reliable and verified evidence that strongly suggests that acts or omissions of the State of Occurrence have directly led to the downing.

1. INTRODUCTION

1.1 Under Annex 13, the sole purpose of investigations is to prevent accidents and incidents.¹ To achieve this objective, investigation authorities must remain independent from national and foreign entities that could interfere with the conduct or objectivity of their investigations.² Investigation authorities, therefore, have a fundamental responsibility to uphold this independence to remain unimpeded from undue pressures,³ and to preserve the integrity, transparency, credibility, and impartiality of all investigations.

1.2 Annex 13 has been generally successful in tempering and neutralizing outside influences stemming from judicial, political and economic interests. However, the current accident and incident investigation framework does not specifically prescribe the conduct that ought to be followed by the State of Occurrence when conflicts of interest arise due to its acknowledged involvement in the downing of a civilian aircraft, or when there is reliable and verified evidence that strongly suggests that acts or omissions of the State of Occurrence have directly led to the downing.

2. DISCUSSION

2.1 ICAO ANNEX 13 - THE INDEPENDENCE OF AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATIONS

2.1.1 The independence of accident and incident investigation authorities is a fundamental tenet of Annex 13. This principle guarantees that parties who may possess a particular interest, broader than the singular interest of accident prevention, are not allowed to interfere with the conduct or objectivity of the investigation. Since its adoption in 1951, Annex 13 and its Standards and Recommended Practices have been periodically amended to strengthen the independence of investigations, namely by delineating the rights and privileges afforded to various States involved in an investigation, and establishing a clear separation between aircraft accident and incident investigations, and concurrent judicial and administrative proceedings.

2.1.2 ICAO and its AIGP have a longstanding history of achievements aimed at reinforcing the independence of aircraft accident and incident investigations. Following an Accident Investigation (AIG) Divisional Meeting in 1992, Annex 13 was amended in 1994 to bring new specifications concerning the separation between an accident investigation and any judicial or administrative proceedings seeking to assign blame or liability.⁴ Following an AIG Divisional Meeting in 2008, Annex 13 was once again amended in 2010 to ensure that aircraft accident and incident investigations are not impeded by administrative or judicial investigations.⁵ In 2016, new and amended provisions were adopted under Annex 13 to enhance the standards regarding the establishment of independent accident investigation authorities.⁶

¹ International Civil Aviation Organization, Annex 13 to the Convention on International Civil Aviation: *Aircraft Accident and Incident Investigation*, Twelfth Edition (July 2020), paragraph 3.1.

² *Ibid.*, paragraph 3.2.

³ International Civil Aviation Organization, *Manual of Aircraft Accident and Incident Investigation* (Doc 9756), Part I — Organization and Planning, Second Edition (2015), paragraphs 2.1.2 and 2.1.3

⁴ International Civil Aviation Organization, Annex 13 to the Convention on International Civil Aviation: *Aircraft Accident and Incident Investigation*, Twelfth Edition (July 2020), p. xiv. See also paragraph 5.4.1.

⁵ *Ibid.*, p. xv. See also paragraph 5.4.4.

⁶ *Ibid.*, p. xvi. See also paragraphs 3.2 and 5.4.

2.1.3 The independence of aircraft accident and incident investigations from judicial or administrative proceedings is now firmly enshrined in Annex 13 and its related guidance materials. In its *Manual of Aircraft Accident and Incident Investigation*, for instance, ICAO states that:

The accident investigation authority must be strictly objective and totally impartial and must also be perceived to be so. The authority should be established in such a way that it can withstand political or other interference or pressure from other government organizations, as well as from industry.⁷

2.1.4 Under the ICAO *Manual on Accident and Incident Investigation Policies and Procedures*, an investigation authority must remain independent from “any other party whose interests could conflict with the task entrusted to the investigation authority”.⁸ This manual further states that:

Maintaining independence in the conduct of investigations will result in enhancing the credibility of the [*Accident Investigation Authority*] and its ability to avoid situations that have the potential to create conflicts of interest. Maintaining independence of the investigation function is equally important for accident and incident investigations.⁹

2.1.5 However, the potential for undue influences in exceptional circumstances still remains. The functional independence of an investigative body from other national authorities (as prescribed under Annex 13) may not be a sufficient safeguard when the State of Occurrence has a direct involvement in the occurrence, namely in situations where it has admitted its involvement in the downing of a civilian aircraft, or when there is reliable and verified evidence that strongly suggests that acts or omissions of the State of Occurrence have directly led to the downing. In such circumstances, the connection between an investigative body and its domestic government, whose responsibility and national interests can weigh heavily, can give rise to conflicts of interest.

2.2 THE IMPACT OF CONFLICTS OF INTEREST IN AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATIONS

2.2.1 Although its general concept is widely recognized, the definition for conflicts of interest, in both private and public matters, varies depending on the jurisdiction or the organization in question. In 2016, ICAO adopted a resolution regarding conflicts of interest relating to safety oversight functions in civil aviation;¹⁰ however, ICAO does not have a formal definition for conflicts of interest with respect to investigation authorities. Its parent organization—the United Nations—does provide a definition for organizational conflicts of interest, which includes situations where (1) an organization is unable to render impartial services because of other activities or relationships; or (2) an organization’s objectivity in performing mandated work is or might be impaired.¹¹

2.2.2 Drawing upon this definition, *actual* or *perceived* conflicts of interest may arise in the context of aircraft accident and incident investigations when, by an act or omission, competing interests

⁷ International Civil Aviation Organization, *Manual of Aircraft Accident and Incident Investigation* (Doc 9756), Part I — Organization and Planning, Second Edition (2015), paragraph 2.1.7.

⁸ International Civil Aviation Organization, *Manual on Accident and Incident Investigation Policies and Procedures* (Doc 9962), Second Edition (2019), paragraph 3.2.2.

⁹ *Ibid.*, paragraph 3.2.1.

¹⁰ International Civil Aviation Organization, [Assembly Resolution A39-8: Conflicts of interest in civil aviation](#), adopted at the 39th Session, held in Montréal, 27 September—6 October 2016.

¹¹ United Nations General Assembly, [Report of the Secretary-General’s on Personal conflict of interest \(A/66/98\) \(27 June 2011\)](#), p. 4.

interfere or may be perceived to interfere with the independence of an investigation authority and its mandate to investigate aircraft occurrences, as well as the investigation's overall integrity, transparency, credibility, and impartiality.

2.2.3 *Actual* conflicts of interest, involving direct or indirect intrusions in the investigation process due to competing interests, can seriously hinder the proper conduct and outcome of safety investigations. When reliable and verified evidence strongly suggests that the State of Occurrence was involved in the downing of a civilian aircraft or if the State of Occurrence admits its involvement in the occurrence, the political pressure and prospect of concurrent judicial and administrative proceedings can create an incentive for the State of Occurrence to act in a way that may not be in the best interest of safety, including attempts to influence the investigation's conclusions, or even assign blame or liability in contravention of Annex 13. These competing national interests can result in the investigation authority being pressured or restricted in the conduct of its investigation, thus hindering its ability to make and/or communicate valuable findings and safety recommendations, and to produce a truly independent investigation report.

2.2.4 In the absence of actual interference, *perceived* conflicts of interest may still occur in situations where the State of Occurrence admits its involvement in the downing of a civilian aircraft or when there is reliable and verified evidence that strongly suggests that acts or omissions of the State of Occurrence have directly led to the downing. The investigation authority's apparent connection with its national government will be seen to compromise the objectivity and impartiality of the aircraft accident and incident investigation. Even if the investigation authority were to uphold the highest degree of independence and compliance with Annex 13, international and public perception may still question the integrity, transparency, credibility, and impartiality of the investigation, as a result of the perceived conflicts of interest. Consequently, valuable findings and safety recommendations in the final investigation report may be viewed as biased or partial, and could, therefore, be challenged. In addition, the findings and safety recommendations may not have the legitimacy required to prompt appropriate safety actions.

3. ACTION BY THE AIGP

3.1 Not having effective safeguards to manage conflicts of interest under Annex 13 constitutes a potential barrier to the advancement of air safety. In situations where reliable and verified evidence strongly suggests that the State of Occurrence was involved in the downing of a civilian aircraft or when the State of Occurrence admits its involvement in the occurrence, the resulting conflicts of interest (actual or perceived) hamper the independence of the investigation and the credibility of its subsequent safety findings and recommendations. As a whole, this undermines the global effectiveness of accident and incident prevention—the fundamental safety purpose of Annex 13.

3.2 Based on the foregoing, the AIGP may wish to consider how conflicts of interest (actual or perceived) ought to be managed under Annex 13 when the State of Occurrence has admitted its involvement in the downing of a civilian aircraft or when reliable and verified evidence that strongly suggests that acts or omissions of the State of Occurrence have directly led to the downing. With a view of reinforcing the independence of the resulting investigation and improving its integrity, transparency, credibility, and impartiality, corresponding safeguards under Annex 13 would therefore ensure that the investigation and its report can be as effective as possible at preventing future aircraft incidents and accidents.