

30th COSCAP-SA STEERING COMMITTEE MEETING
Adoption of Annex 13 Contents in National Regulations
Presentation P4
(Presented by Bangladesh)

Summary

Adoption of the Contents of the Annex 13 to the Convention into National Regulations remains a challenging task for the contracting States.

Since the contents of Annex 13 deals with many concerned stakeholders, such as, the State of Occurrence of the affected aircraft, the State of Registry, the State of Operator, the State of Manufacturer, the State of Design and ICAO, the Aircraft Accident Investigation Authorities (AAIAs) of States need to ensure proper customization of Annex 13 into their National Regulations by harmonizing and addressing the stakeholders' involvements.

As the Annex 13 has been developed in pursuance with Article 26 and Article 37 of the Convention, co-ordinated concept should govern while the National Regulations are constructed.

This Discussion Paper provides some suggestions to facilitate the Contracting States to enhance its ability for the adoption of Annex 13 into National Regulations that deals with Aircraft Accident and Incident Investigation.

1. Background

1.1 The use of the texts of the Annexes in National Regulations has been emphasized through the adoption of a 'Resolution' by the Council, on 13 April 1948. The Council invited the attention of Contracting States to the desirability of using in their own National Regulations, as far as is practicable, the precise language of those ICAO Standards and Recommended Practices that are of a regulatory character. ICAO also desires the Contracting States to indicate departures from the Standards and Recommended Practices (SARPs), including any additional National Regulations that were important for the safety or regularity of air navigation.

1.2 Although the same principle is applicable for the adoption of the SARPs of Annex 13 while of general applicability, in many cases, the existing texts of Annex 13 require amplification in order to enable a complete national code to be formulated.

1.3 Like all other Annexes, while the Annex 13 was adopted pursuant to the provisions of Article 37 of the Convention, Aircraft Accident Inquiry itself was the subject of Article 26 of the Convention. This Article imposes an obligation on the contracting State in which the aircraft accident occurs to institute an inquiry in certain circumstances and, as far as its laws permit, to conduct the inquiry in accordance with ICAO procedure. Therefore, the States intending to adopt the contents of Annex 13, should look forward to the path of harmonization between the two mentioned Articles.



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1.4 Article 26 also provides rights and privileges to the State of Registry to participate in the investigation and does not prevent the undertaking of additional action in the field of aircraft accident investigation and the procedures set forth in Annex 13.

1.5 The contents of Annex 13 deal with many stakeholders, such as, the State of occurrence the of the affected aircraft, the State of Registry, the State of Operator, the State of Manufacturer, the State of Design, the States that suffered casualty and ICAO. Due to the complexity of involvement of the mentioned stakeholders, Annex 13 provides wide-ranging tangible instructions requiring its adoption intrincating.

2. Discussion

2.1 The Aircraft Accident Investigation Authorities (AAIAs) of Contracting States require the States' AIG related National Regulations to guide them in a manner so as to accommodate all extents of involvement of the stakeholders, as compiled in Annex 13, while conducting investigation.

2.2 While adopting the National Regulations, contracting States are required to make a sound balancing of the Regulations in order to maintain the correct relationship between the provisions of Article 26 and those of the Annex 13. It may be mentioned here that, Article 37 of the Convention is the Controlling Article in the development of Annex 13, hence nothing in the Annex must contravene the express terms of Article 26 nor should it contain any provision which would do ferocity to the spirit and intent of the ICAO Convention.

2.3 The distinctiveness in the texture of the Annex 13, in existence since the time of its initial publication, demands a specific technique and skill to be followed by the contracting States to fulfil the ICAO requirements.

2.4 When 'contravention' appears as a point of discussion, it is not a deviation to the Convention for the State Regulations to deal with the rights or obligations of States other than the State of Registry and the State in which the accident occurs. At the same time, the State Regulations may deal with the privileges to be accorded to observers entitled by Article 26 to be present at the investigation. The State Regulations may also deal with accidents of a kind which do not fall within the provisions of Article 26.

2.5 The adoption of Annex 13 to the Convention postures inconvenience to the ability of the Contracting States as its contents, unfortunately, do not provide, unlike all the other Annexes to the Convention, the clear and segregated 'Numbers' in 'Main Headings' and 'Sub-headings' ever since its inception. During the 10th APAC-AIG Meeting, held in Bangkok in 08-10 November 2022, Bangladesh, has already raised this point for kind review of ICAO. It is expected that some solution to this effect will come which may ease out the inconveniences currently faced by some States to customise the Annex.

2.6 Appended below are a few suggestions to facilitate the States to formulate their National Regulations in the area of Aircraft Accident and Incident Investigation for their AAIAs to follow:

- (a) *Fulfilment of Basis Needs for Adoption*: By the term 'Basic Needs', this paper means the States' national policies and templates which are coherent with other regulations of those States. This part may contain the principles and policies that govern the establishment of the national regulations of other areas which may be similar in the case of Aircraft Accident Investigation. The best practice, comprehending Standard 3.2 of Annex 13 or the Ministerial Beijing Declaration of 2018, is to have an Independent Legislation developed



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on AIG which should provide the necessary State authority to promulgate the national regulations in compliance with the requirements of Annex 13.

- (b) *Setting up an Independent Accident Investigation Authority:* An ideal arrangement for setting up an independent accident Investigation Authority is that wherein the accident investigation authority reports direct to Congress, Parliament or a Ministerial level of government that is different than the Ministry, which also oversees State aviation authorities. Although Doc 9962 provides emphasis that the AAIAs should not be in the Same Ministry as that of the state aviation authority, there lies another side of the picture and that is, the Ministry of the State Civil Aviation would best understand the effectiveness of the AAIAs in a broader perspective, provided that the conduct of investigation by the AAIAs are accomplished under the firm principle of Standard 3.2 of Annex 13. In fact, the accident investigation authority must be strictly objective and totally impartial and must also be perceived to be so. It should be established legislatively in such a manner that it can withstand political or other interference or pressure from other government organizations, as well as from industry.
- (c) *Separation in the Conduct of Investigation:* According to Annex 13, any investigation conducted shall be separate from any judicial or administrative proceedings to apportion blame or liability. Separation can be achieved by the investigation being conducted by the AAIA experts, and any judicial or administrative proceedings being conducted by other appropriate experts. Contracting States are required to establish this requirement in their National Regulations, backed by the Legislation of the State.
- (d) *Cooperation with other Agencies:* The separation in the conduct of investigation may give rise to the necessity for mutual cooperation. However, the cooperation should be established vividly through legislation, protocols, agreements or other arrangements, and should cover the following subjects: *access to the site of the accident; preservation of and access to evidence; initial and ongoing debriefings of the status of each process; exchange of information; appropriate use of safety information; and resolution of conflicts.*
- (e) *Adoption of Definitions of Chapter 1 of Annex 13 into the National Regulations:* The State Aviation Organization such as the CAA or the DGCA may have a few definitions of its own incorporated in its other National Legislation or Regulations. These definitions can be duplicated or referred, as the case may be, subject to the States principles and policies. However, the AAIAs must ensure that, in addition to other definitions, the AIG related regulation in particular, shall contain the adopted definitions of ‘accident’, ‘incident’, ‘serious incident’, ‘investigator-in-charge’ and ‘accredited representative’, as contained in Annex 13. This requirement is emphasized by ICAO through its USOAP PQ No. 6.341.
- (f) *Adoption of other Contents of Annex 13 into the National Regulations:* ‘Standards’, ‘Recommended Practices’, ‘Appendices’ and ‘Attachments’ basically encompass the contents of all Annexes to the Convention. Annex 13 is no exception to this. Contracting States are required to ‘Conform’ with the ‘Standards’ contained in the Annex and ‘Endeavour to Conform’ with the ‘Recommended Practices’ during adoption of Annex 13 into National Regulations. The Appendices are the mixture of Standards and Recommended Practices, as such the contents of these are also required to be adopted in the National Regulations. The ‘Attachments’ are the supplementary to the SARPs, hence may be categorised as guidance or procedures and be incorporated in the guidance material of the AAIA. Because of the absence of numbering of some ‘Main-headings’ and ‘Sub-headings’ observed in the contents of Annex 13, States concerned are required to take additional care



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to understand the in-depth meaning of line-by-line texts of the Annex and arrange them in a manner so as to fit into the context of national perspective and applicability ensuring that the national regulations are conceptually clear to understand about complexity of responsibility and obligations of involved States.

- (g) *Investigation of Incident*: Recently, the Annex 13 has stressed upon the need for conducting investigation of ‘Incident’ but does not emphatically indicate what all incidents are to be investigated upon. Attachment ‘C’ to Annex 13 provides some guidance to determine an event risk-based analysis that should be taken into account in order to determine the ‘most credible scenario’ which could be responsible whereby an incident may escalate and the effectiveness of the ‘remaining defences’ between the incident and the potential accident may be lost to give rise to an accident. Attachment ‘C’ to the Annex 13 is a new attachment, incorporated in Edition 12, Amendment 1-18 and probably needs additional guidance material to be incorporated for clarity for the accident investigation authorities of States for clarity, decision-making and implementation. Having said all these, contracting States need to develop their own policy and procedure to investigate aircraft incidents. Bangladesh, to this extent, has developed the procedure to isolate the potential incidents that need to be investigated and has defined them as ‘*Investigable Incidents*’ and has incorporated the same in its regulation.
- (h) *Comments on the Draft Final Report*: According to Standard 6.3, the State conducting the investigation is required to send a copy of the Draft Final Report (DFR) to the involved States and Organizations inviting their significant and substantiated comments on the report as soon as possible, but not later than sixty days. And, according to 6.3.1, the States receiving the copy of the DFR is required to 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. Standard 6.3.2 mentions that 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. The Meeting may note that, there lies some gap, obligatory in nature, in the consultation between the State sending the DFR and the State receiving the same, but not responding to consultation. During the 7th APAC-AIG Meeting, held in Kuala Lumpur in 20-25 July 2019, Bangladesh highlighted about the obligation for the recipient States and Organizations to provide feedback within 60 days or ensure to establish consultation following the transmittal correspondence of the DFR by the State conducting the investigation. The ICAO, however, has proposed in its State Letter, AN 6/1.2-22/85, dated 14 October 2022 for the amendment of Annex 13, arising from the sixth meeting of the Accident Investigation Panel (AIGP/6), regarding amendment to Standard 6.3 (Consultation). In response to the mentioned State Letter, Bangladesh will reiterate the point regarding ‘obligation’ of the recipient States to correspond with the despatching State as a means of consultation.
- (i) *Adoption of Annex 13 Contents by Customizing the Contents of the Model Act and the Model Regulations of ICAO Doc 9962*: ICAO Doc 9962 contains the Model Act and the Model Regulations which stand as excellent tools to develop the National Regulations comprehending the contents of Annex 13. However, in this case, the AAIs of the Contracting States may require a strong supplementary document, almost equivalent to national regulations, to be able to address all the requirements of ICAO, more so, the Compliance Checklist (CC) and the Protocol Questions (PQs) of the ICAO’s Safety Oversight Audit Program encompassing AIG area.



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3. Action by the Meeting

3.1 The Meeting is invited to note the techniques to be followed, if considered informative, for necessary adoption of the Annex 13 contents in the National Regulations of Contracting States of ICAO.

3.2 The meeting may encourage Contracting States who have not yet established potential National Regulations on AIG to take guidance mentioned in this Discussion Paper.
