



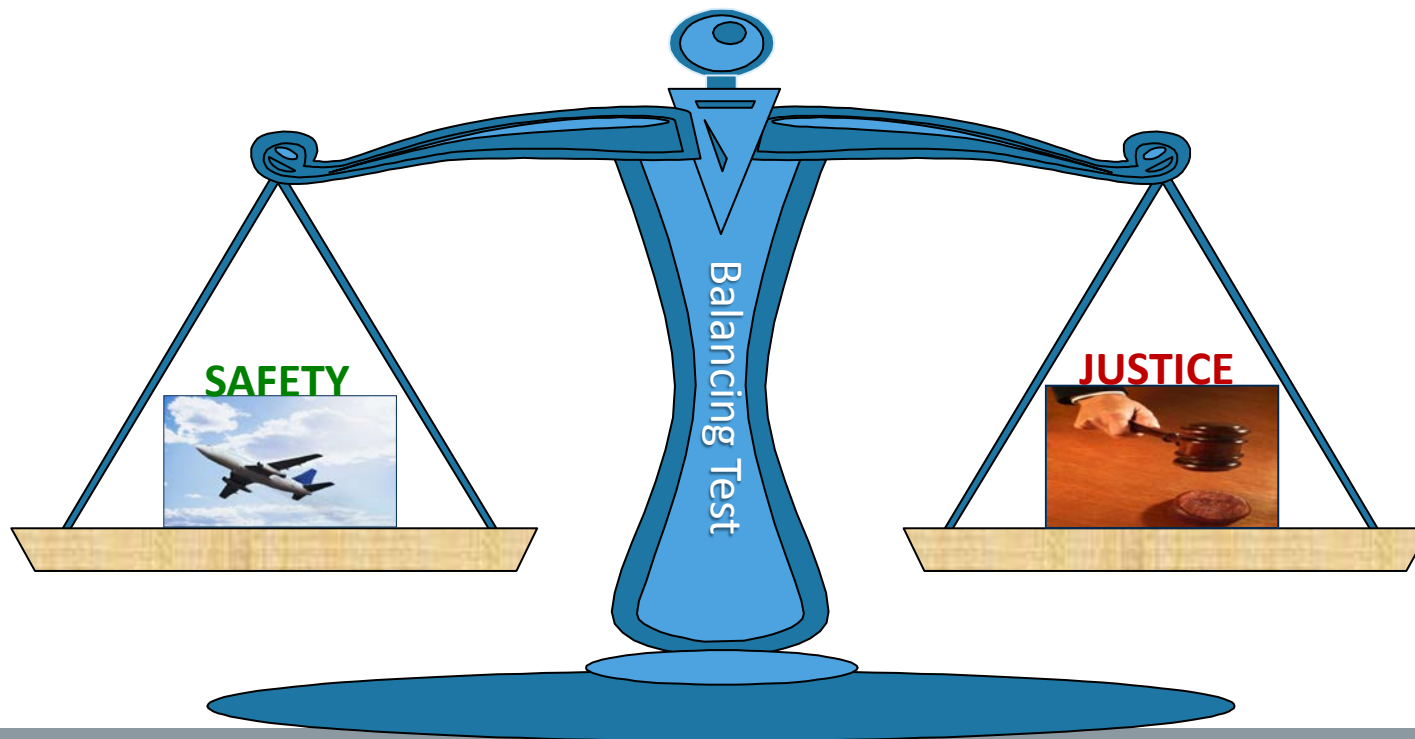
# Protection of investigation records; what lies ahead



*Marcus Costa  
Chief Accident Investigation Section  
International Civil Aviation Organization*



## Protection and administration of justice





# Overview

1. Objective
2. Challenges to investigations
3. High-level considerations
4. Paragraph 5.12
5. Appendix 2
6. FR recordings in routine operations



## ***MANDATE***

- To ensure meaningful progress toward the development of provisions on protection of investigation records in Annex 13 and related guidance material



GEPAIR





## 1. Objectives

- Main focus on investigation records in Annex 13
- Improve States' ability to implement Annex 13 protections
- Prioritization of the level of protection (CVRs/AIRs and other records)
- Means to protect records in the custody of AIA
- Guidance for administration of “balancing test”
- Strengthening provisions on non-disclosure of CVRs and AIRs to the public
- Protection of FR recordings in routine operations



## 2. Challenges to investigations

- Multiple parties with different interests and agendas
- Investigation environment has changed significantly
  - Expectations from victims' families
  - Impact of social media (MH370: after 4 days over 1 million tweets)
  - Media pressure and public expectation
  - Increasing legal proceedings/litigious society
  - Complexity of the aircraft and aviation systems
  - New business models
  - Increasing globalization of aviation
  - Investigation capabilities and resources



### 3. High-level considerations

- Different circumstances require different rules on protection
- Accommodating different legal systems
- Different protection methodologies
- Diverging implementation of 5.12
- Acknowledgement that full protection is counterproductive
- Aiming at appropriate and achievable level of protection
- Finding a balance between the objectives of the investigation and other public interests
- Recognize that judicial authorities cannot be regulated under the Chicago Convention





## 4. Paragraph 5.12 of Annex 13

- Prioritization of records in 5.12
  - protection for CVRs and AIRs; protection of other records only when in the custody or control of the investigation authority
- Protection to draft Final Reports
- Appropriate authority X Competent authority
- Balancing test includes disclosure and use of records
- States to consider extending 5.12 protections to other records
- Introduction of the “request to the original source”
- Non-disclosure of CVRs and AIRs to the public
- Non-disclosure of draft Final reports to the public



## 5. Appendix 2 to Annex 13

- Purpose: to assist States in transposing protection of 5.12 records at national level
- Assist the competent authority in administering the *balancing test* under 5.12.
- Duration of 5.12 records protection clarified - continues after publication of Final Report
- Means to prevent public disclosure of CVRs and AIRs content; prevention through law, regulation or policy/ authoritative safeguards / technical means



## 5. Appendix 2 to Annex 13

- Designation of the competent authority - different competent authorities for different purposes
- Administration of the *balancing test* - list of factors to be taken into account for the balancing test (e.g. intended use/consent of person involved/sensitive nature)
- Recording of reasons of *balancing test* outcome to promote consistency in decision
- Recommendation to limit use of Final Reports for purposes other than accident prevention
- Recommendation to prevent investigation personnel from being asked to give opinion on blame or liability in proceedings



## 6. Protection of FR recordings in routine operations



- CVRs and AIRs initially made for supporting accident and incident investigation
- Outside the context of Annex 13 investigations, CVRs and AIRs are currently not protected
- Increasing use of CVRs and AIRs by operators



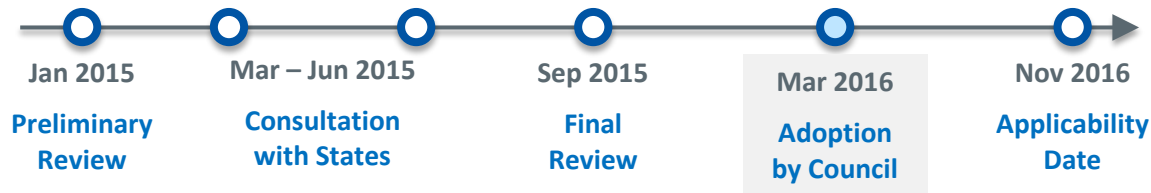
## 6. Annex 6: FR recordings in routine operations

- Subject to protections in Annex 19!
- **CVRs** and **Class A AIRs** use not allowed *unless* for safety-related events in SMS context and restricted to de-identified portions; sought for criminal proceedings not related to an accident or incident; or inspections of FR systems.
- **FDR, Class B and C AIRs** use not allowed *unless* for FDA programme, airworthiness or maintenance purposes; are de-identified; disclosed under secure proceedings; use in proceedings not related to an accident or incident



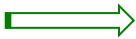
# Protection of Investigation Records

- **Group of Experts on Protection of Accident and Incident Records (GPAIR)** established to enhance provisions and guidance material related to protection of certain accident and incident records, and flight recorder recordings in routine operations





## Annex 13

- Restructure/expansion of Para 5.12
- Attachment E  Appendix 2

## Annex 6

- Standards on protection of CVR, AIRs, FDRs.  
(outside scope of investigations)



ICAO

UNITING AVIATION

NO COUNTRY LEFT BEHIND



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and Caribbean  
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(SAM) Office  
Lima

ICAO  
Headquarters  
Montréal

Western and  
Central African  
(WACAF) Office  
Dakar

European and  
North Atlantic  
(EUR/NAT) Office  
Paris

Middle East  
(MID) Office  
Cairo

Eastern and  
Southern African  
(ESAF) Office  
Nairobi

Asia and Pacific  
(APAC) Sub-office  
Beijing

Asia and Pacific  
(APAC) Office  
Bangkok



THANK YOU