



**НАЦІОНАЛЬНЕ БЮРО
З РОЗСЛІДУВАННЯ АВІАЦІЙНИХ ПОДІЙ ТА ІНЦИДЕНТІВ
З ЦИВІЛЬНИМИ ПОВІТРЯНИМИ СУДНАМИ**

NATIONAL BUREAU FOR INCIDENTS AND ACCIDENTS INVESTIGATION OF CIVIL AIRCRAFT

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На № _____ від _____

Dear Mrs. Visser,

In compliance with item 6.10 of the Annex 13 to Convention on International Civil Aviation, we would like to inform you that in order to fulfill the recommendations made by Dutch Safety Board in the Final Report on the Crash of Malaysia Airlines flight MH17 (hereinafter - Final Report), the State Aviation Administration of Ukraine issued for aircraft operators the Operational Directive № ED-01-16 dated on 06.01.2016 "Threat and Risk Assessment during planning the flight over/near conflict zones".

At the same time, Ukraine, being aware of the importance and the need of taking measures related to the implementation of the Final Report recommendations, continues to work actively at the international level, including the cooperation with ICAO, Eurocontrol and the civil aviation authorities of the other States (in particular with CAA of Netherlands) in order to develop appropriate proposals regarding implementation of new and/or modifying existing ICAO Standards and Recommended Practices, which would meet the present day challenges and ensure the safety of the international civil aviation during flights over or near conflict zones.

At present, Ukrainian side has prepared the list of detailed proposals for ICAO to be considered by the CAA of Netherlands (attached).

It is expected to present the join position of Ukraine and Netherlands to ICAO that it was preliminary discussed in December 2015.

The Ukrainian side will keep you informed without delay on the results of the abovementioned activities concerning implementation of the Final Report recommendations.

Respectively,

Igor Misharin

Accredited Representative of Ukraine on the Investigation

00300

**Ukrainian proposals
for discussion and transmission to ICAO based on recommendations
made by Dutch Safety Board in the Final Report on the Crash of Malaysia Airlines
flight MH17**

It is proposed:

1) To initiate the determination of the responsibility of the State which violates the sovereignty of another State that leads to limitation of ability to comply with article 1 of the Chicago Convention.

Rationale: Doc 7300 Chicago convention principles are based on adherence of sovereignty, suzerainty, protection and mandate over the airspace above the territory of State but ICAO doesn't clarify level of obligation and responsibility of States which violate mentioned basic principles.

2) To initiate development of the new and modify existing ICAO SARPs regarding the management of airspace and civil-military coordination in order to secure airspace for civil aircraft operations in the event of armed conflict or potential armed conflict. The modifications should reflect the modern challenges and new forms of armed conflicts such as latent aggression, hybrid war, terrorism, etc.

It is important to note that in case if the State faced with undeclared military activity by another/neighboring State, the airspace of these States should be prohibited for the civil aircraft operations within identified geographical area of conflict zone and area affected by the conflict zone from the surface up to unlimited.

Rationale: In order to facilitate local application of arrangements in the event of armed conflict or the potential armed conflict the appropriate SARPs should be provided. Only Chapter 10 of Doc 9554 provides recommendations to the States regarding actions in the event of armed conflicts. Accordingly, the ICAO Doc. 9554 should be updated taking into account the importance and danger of new forms of armed conflicts such as latent aggression (hybrid war, terrorism, etc.).

3) To initiate development of the new ICAO Annex to the Chicago Convention on International Civil Aviation - "Risk assessment in civil aviation" following the existing ICAO procedures.

Rationale: It will create the possibility:

- *to regulate all areas of risk assessment in civil aviation taking into account the conclusions mentioned in the MH 17 accident investigation report at global level;*
- *to combine in one ICAO standard all requirements and recommendations for the risk assessment in civil aviation existing at the different levels of regulations and in the different documents. Such approach was used for the development of ICAO Annex 19 combining safety oversight and SMS related requirements in one document;*
- *to define policy, roles and responsibilities in the field of hazard identification and risk assessment at the global level (international aviation organizations) and the level of States, military authorities, intelligence services, NSAs, CAAs, AOs, ANSPs, APTs, maintenance organizations and other parties involved;*

- to establish clear decision making process based on risk management at the level of States (military authorities, intelligence services, NSAs, CAAs, ANSPs, AOs, APTs), international aviation organizations etc.;
- to distinguish safety and security related aspects within the risk assessment process;
- to determine interrelations between safety and security risk assessment process, data exchange between the both processes;
- to implement key definitions and terms to be used in civil aviation with regard to hazards, safety assessment, security assessment, conflict zones, military conflicts, military activities, airspace safety, airspace security etc.;
- to define the common standards for risk assessment:
 - a) risk assessment of changes in civil aviation (planned, unplanned/urgent);
 - b) risk assessment after an occurrence has happened;
 - c) risk assessment in day-to-day operations;
- to use by NSAs, CAAs, AOs, ANSPs, APTs, maintenance organizations and others interested parties the common approaches and methodologies for the risk assessment;
- to establish and implement training standards in the field of risk assessment for appropriate categories of aviation personnel;
- to establish the mechanism for sharing the results of risk assessment made by different parties to be used by AOs and/or other interested parties during flight planning, risk assessment and/or decision making process.

4) To initiate amendments to the ICAO Annex 13 regarding the situation if the State decides to delegate investigation process to another State.

Rationale: At the moment, ICAO Annex 13 does not cover the mechanism of investigation, roles and responsibilities of States, parties involved in the investigation process at the phase that begins immediately after occurrence has happened and until the moment when the official decision to delegate the investigation process from one State to another State is taken.

The practice shows that at this stage there is a need of clear mechanism to be applied by the State of occurrence and State to which the investigation is delegated in order to provide the confidentiality of the investigation related information and to avoid different interpretation of such information by different parties not involved in the official investigation (mass media, voluntary experts etc). Also, it will exclude the pressure and accusation addressed to State of occurrence before the investigation process is completed by State conducting investigation.

5) The requirements of para 6.4.1 ICAO Annex 11 shall be applied by States in any case without exemption excluding the situation if the appropriate notification about the differences was published in accordance with Article 38 of the Convention on International Civil Aviation.