

Safety Investigations with Foreign Partners



Mishap Investigations Directorate
Naval Safety Command



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Annex 13 provides the overarching policy and direction for aircraft incident and accident investigations but does not provide step-by-step guidance. There are 10 follow-on ICAO manuals that provide investigators with information on how to conduct investigations should they not have a process already in place.

NATO STANAGs:

NATO STANAGs are very similar to ICAO Annex 13, providing standard definitions of terms, expected responsibilities, specified rights of defined parties and discussion about protected information while providing amplification in two areas not covered in Annex 13. NATO STANAG 3531 is an adoption of the AIR STANDARD ACS 4086, an agreement amongst the United States, Canada, Australia, United Kingdom and New Zealand. The NATO STANAG 3531 specifically gives the right to independent investigations when requested. This specified right allows the U. S. DoD to conduct independent investigations of military aircraft mishaps. This right is essential because the Office of the Secretary of Defense guidance states we will not share privileged information with foreign countries unless very stringent agreements have been made. The other amplification to Annex 13 is the formation of the Coordination Committee. This group comprises the designated senior member of each involved nation's military safety investigation body/department. The committee is not part of the Safety Investigation Board and aims to facilitate the liaison/communication between all involved nations. This structure provides a framework to rectify and adjudicate disagreements during the investigation. Though the STANAGs amplify Annex 13, it is still considered a recommendation and a starting point versus a mandatory procedure.

COMNAVSAFECOM Past Experiences:

- **March 2015, UH-1Y, Nepal** – Nepalese Armed Forces (NAF) provided initial response and site security as Host Nation representative. They did not disturb the wreckage or evidence and established a base camp on the summit. The NAF established and led a joint mishap investigation board and, though not a signatory to the NATO STANAG 3531, used it and followed the format, developing a well-managed board free of disagreement or strife. The NAF provided logistical support, including transportation, food, shelter, medical assistance and equipment.
- **March 2022, MV-22B, Norway** – The Norwegian Safety Investigation Authority (NSIA) was designated by the Norwegians to conduct the investigation. At first, the NSIA did not release the investigation to the Aviation Mishap Board (AMB), even after the AMB cited STANAG 3531. The NSIA cited that the STANAG was more of a “suggestion” versus a mandate. Due to this disagreement, the NSIA initially did not allow the AMB access to the crash site, the crash survivable flight incident recorder (CSFIR) or the mishap crew's Go-Pro camera. During this custody and access dispute, the NSIA corrupted some of the Go-Pro footage when they accidentally recorded over it during viewing. In addition, the NSIA wanted to conduct autopsies before the Armed Forces Medical Examiner System (AFMES) arrival. However, after great effort, the AMB successfully delayed this initiative. The remains, however, were transported to the United States without coordinating with NAVSAFECOM Investigations Branch or the AFMES, potentially causing some evidence to be discarded or missed. Contrary to U.S. AMB practices, another friction point with the Norwegians is they were very interested in sharing as much data with the local media as possible. Over time, as relationships developed, the AMB eventually gained access to the crash site and the CSFIR. After initial friction points, the Norwegian locals, the Red Cross and military forces were very accommodating and proved to be great hosts to the AMB, to the point they allowed the wreckage to stay in place until springtime, when it was safer to move.
- **August 2023, MV-22B, Australia** – During the August U.S. Marine Corps MV-22B investigation, the local coroner took jurisdiction and did not allow the AMB to be onsite until all remains could be uncovered and the investigation complete. Additionally, via statutory obligation, the local coroner requested interviews of U.S. personnel without command knowledge and called the next of kin, providing information to them and asking questions. Under the Australian nationally passed crime bill, the coroner would typically have jurisdiction over the site when there are fatalities. The local coroner, under Australian law, is more aligned to a District Attorney in the United States, and because of this role, generally refers to any crash site as a crime scene while initiating a coronial investigation. Due to this bill, an Australian coronial investigation is a combined safety and criminal inquiry conducted to assess safety issues and potential charges. In this investigation, the local coroner was unaware of the status of forces agreement and stated only the Federal Attorney General in Canberra could waive or direct her to deviate from her statutory obligations. After several days of delay, the Australian Federal Government stepped in. It informed the local coroner of the DEFENCE (VISITING FORCES) ACT of 1963 - SECT 14. At that time, the coroner ultimately released jurisdiction to the visiting defense force and relinquished her control of the scene. Once done, the Australian military, citing the same DEFENCE ACT, allowed the AMB to conduct the investigation independently while providing support.

Of note, Section 14 of the DEFENCE ACT of 1963 specifically talks about coronial affairs. When NAVSAFECOM Investigations Directorate asked the Australian liaison officer (LNO), if no one died, what document would give the U.S. military jurisdiction of the investigation, the answer became murky. For Australia, the governing instruction for mishap investigations is Joint Directive 21/2021, The Defence Aviation Safety Framework, which only specifies Australian military mishaps. However, the Defence Aviation Safety Manual states the responsibility for foreign military occurrences

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generally lies with the visiting force but provides no direction, meaning it is up to the Australian military on how to proceed. The LNO acknowledged the lack of direction and informed us that this document is currently being updated, adding more guidance and direction while aligning closer to the NATO STANAG and other agreements already in place. Since these discussions, NAVSAFECOM Investigations Directorate discovered AIR STANDARD ACS 4086. Though this agreement should have covered the investigation, it is clear that some are not aware it exists.

Summary and Recommendations

Though standards, agreements and recommendations are published for aviation mishap investigations, no mandate requires a country to follow these agreements. As noted in the Australia and Norway examples, the cited documents are considered as suggestions versus legal mandates. Though there is a benefit to these documents providing a common framework and definition, there is no standardized practice for conducting an investigation. For maritime and ground mishap investigations, there is even less guidance and recommendations for nations to follow, further requiring relationship building.

In all the examples above, the investigations occurred only after relationships were formed. During this time of building relationships, there were delays in access to the crash site, compromised evidence and follow-on delays with completing the investigation.

To mitigate these issues, the U.S. military operational commands, before any exercise, should preemptively include detailed planning and policy guidance for a major mishap in their Concept of Operations and follow-on investigations. This Concept of Operations should consist of host-nation military and embassy inputs and identifying visiting forces agreements that were previously unknown. Because safety investigations are generally run by civilian organizations in the State of Occurrence, it is imperative for convening authorities, with NAVSAFECOM assistance, to contact the Military Attaché as soon as possible post mishap, requesting diplomatic coordination with the Department of State. This diplomatic coordination, along with early military communication with the involved foreign partner nation, will smooth out initial friction points. Finally, understanding the specific foreign policies prior to travel will also better prepare the investigation team, setting up for proper expectations upon arrival.

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Cover: An MH-60S that crashed into the North Pacific Ocean in January 2020 clears the surface after a nine-hour ascent from record depth. The sea-dye marker from the aircraft's water-logged Search and Recovery (SAR) bags flush to the sea during a recovery operation March 19, 2021. Marine dye markers are a safe, effective alternative to flares and smoke for SAR operations. The recovery operation, coordinated by then-Naval Safety Center aviation mishap investigators and Supervisor of Salvage and Diving, provides an opportunity for investigators to examine critical evidence needed to determine why the aircraft went down. (U.S. Navy photo by David Clark)