
ICAO

International Civil Aviation Organization

COUNCIL — 185TH SESSION

Montréal, 22 September – 17 November 2008

SUMMARY MINUTES WITH SUBJECT INDEX



2009

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COUNCIL — 185TH SESSION**SUMMARY MINUTES OF THE FIRST MEETING****(THE COUNCIL CHAMBER, MONDAY, 22 SEPTEMBER 2008, AT 1430 HOURS)****OPEN MEETING**

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

Argentina	— Mr. S.R. Prado (Alt.)	Mexico	— Mr. D. Méndez Mayora
Australia	— Mr. P.K. Evans	Namibia	— Mr. B.T. Mujetenga
Brazil	— Mr. R.S. Magno	Nigeria	— Dr. O.B. Aliu
Cameroon	— Mr. A. Larang (Alt.)	Republic of Korea	— Mr. G.-S. Shin
Canada	— Mr. L.A. Dupuis	Romania	— Mr. C. Cotrut
China	— Mr. Tao Ma	Russian Federation	— Mr. A.A. Novgorodov
Dominican Republic	— Mr. C. A. Veras	Saudi Arabia	— Mr. S. Hashem
Ecuador	— Mr. I. Arellano Lascano	Singapore	— Mr. K.P. Bong
Egypt	— Mr. S. Elazab	South Africa	— Mr. T. Peege
El Salvador	— Mr. J.A. Aparicio Borjas	Switzerland	— Mr. D. Ruhier
France	— Mr. J.-C. Chouvet	Tunisia	— Mr. I. Sassi
Germany	— Mr. J. Mendel	Uganda	— Mr. J. Twijuke
Ghana	— Mr. K. Kwakwa	United Arab Emirates	— Mr. J. Haidar
Iceland	— Mr. H. Sigurdsson	United Kingdom	— Mr. M. Rossell
India	— Dr. N. Zaidi	United States	— Mr. D.T. Bliss
Italy	— Mr. F.P. Venier	Uruguay	— Mr. J.L. Vilaro
Japan	— Mr. W. Yoshioka (Alt.)	Venezuela	— Mr. D. Blanco Carrero
Malaysia	— Mr. S.-C. Kok		

ALSO PRESENT:

Mr. L.M. Coelho de Souza (Alt.)	— Brazil
Mr. A. Romera (Alt.)	— Brazil
Mr. A. J. de Lima (Alt.)	— Brazil
Mr. C. Ding (Alt.)	— China
Mr. P. Pape (Alt.)	— France
Mr. F. Christensen (Alt.)	— Iceland
Mr. P. Ciancaglioni (Alt.)	— Italy
Mrs. D. Jiménez Hernández (Alt.)	— Mexico
Mr. R.A. Al Kaabi (Alt.)	— United Arab Emirates
Ms. L. Faux-Gable (Alt.)	— United States

SECRETARIAT:

Dr. Fang Liu	— D/ADB
Miss S. Black	— Précis writer

Welcome to a new Representative on the Council

1. The President of the Council extended a warm welcome to Mr. A.A. Novgorodov, who was attending a meeting of the Council for the first time in his capacity as Representative of the Russian Federation.

Subject No. 5: Election of Vice-Presidents of the Council

Election of Vice-Presidents of the Council

2. On nominations by the Representative of the United States, the Council elected the following Representatives as its Vice-Presidents for the period 2008-2009 (C-WP/13204), with effect from 22 September 2008:

Mr. T. Peege (South Africa)	First Vice-President
Mr. D. Ruhier (Switzerland)	Second Vice-President
Mr. J. Haidar (United Arab Emirates)	Third Vice-President

3. The President of the Council thanked the three outgoing Vice-Presidents for their co-operation and excellent work and congratulated the newly-elected Vice-Presidents.

Subject No. 6.3: Election of Chairmen and Members of subsidiary bodies of the Council

Election of Members and Alternates of the Joint Support, Finance, Unlawful Interference and Technical Co-operation Committees (JSC, FIC, UIC and TCC)

4. It was recalled that during the third meeting of its 182nd Session (182/3), the Council had agreed to suspend, for one year, the special provision of the *Rules of Procedure for Standing Committees of the Council* (Doc 8146) whereby each Committee shall consist of not less than 13 and not more than 17 Members for the election for Members and Alternates of the Technical Co-operation Committee (TCC) and the Committee on Unlawful Interference (UIC). The Council agreed to suspend that special provision for another year for the election of the Members and Alternates of those two Committees.

5. The Council then elected the Members and Alternates of the JSC, FIC, UIC and TCC appearing in Appendices A and B of C-WP/13217 for the period 2008-2009, with effect from 22 September 2008.

Election of Chairpersons of the Air Transport, Joint Support, Finance, Unlawful Interference and Technical Co-operation Committees (ATC, JSC, FIC, UIC and TCC)

6. On nominations by the Representative of India, the following were elected Chairpersons of the Council's subsidiary bodies listed below for the period 2008-2009 (C-WP/13205), with effect from 22 September 2008:

Air Transport Committee (ATC)	Mr. R.S. Magno (Brazil)
Joint Support Committee (JSC)	Mr. H. Sigurdsson (Iceland)
Finance Committee (FIC)	Dr. O.B. Aliu (Nigeria)
Unlawful Interference Committee (UIC)	Mr. J. Mendel (Germany)
Technical Co-operation Committee (TCC)	Mr. Tao Ma (China)

7. The President of the Council expressed his sincere thanks to the outgoing Chairpersons and welcomed the newly-elected Chairpersons.

**Election of Members and Alternates of the Human Resources Committee (HRC)
and of its Chairperson**

8. The above subject was documented for the Council's consideration in C-WP/13218, presented by the President of the Council.

9. The Council elected the six Members and four Alternates of the HRC nominated by the President of the Council as set forth in the Appendix to C-WP/13218 for the period 2008-2009, with effect from 22 September 2008. The membership of the Committee would also include the three Vice-Presidents of the Council in accordance with the Council's previous decision (182/3). On a nomination by the Representative of the United Kingdom, the Council also elected Mr. P.K. Evans (Australia) as Chairperson of the Committee for the period 2008-2009, with effect from 22 September 2008. The President of the Council expressed appreciation to the outgoing Chairperson, who had been the first Chairperson of the HRC, for his excellent work.

10. While expressing confidence in the ability of the newly-elected Members and Alternates of the HRC to fulfill their mission keeping in mind the best interests of the Organization, the Representative of France expressed reservations regarding the composition of the Committee. He emphasized that, whereas the Working Group on Human Resources, which he had had the honour to chair and which had proposed the creation of the HRC, had underscored the need to provide for a sufficient degree of experience and continuity in the Committee's membership, that should not be interpreted as meaning that it had to remain almost unchanged. The Representative of France observed, in this context, that the membership of the HRC was more restricted in size than that of the other Committees and that the possible rotation rate was thus lower. Averring that the actual turnover rate of the HRC was very low, he noted that the outgoing Chairperson had been elected as a Member for the period 2008-2009. While in no way opposing the excellent choices made, the Representative of France stressed that it was a matter of principle: although it was necessary to ensure some stability, all Representatives should have the opportunity to take part in all of the activities of the Council's subordinate bodies. He noted, in this regard, that whereas the composition of the other Committees had been the subject of extensive consultations, the same consultations had apparently not taken place for membership in the HRC. The Representative of France recalled that the President's memorandum PRES RK/1555 dated 11 June 2008 had invited nominations to the Joint Support, Finance, Unlawful Interference and Technical Co-operation Committees (JSC, FIC, UIC and TCC) but not to the HRC. The Representative of South Africa shared these views.

11. The President of the Council indicated that the above comments regarding the composition of the HRC would be taken into account when revised Annex IV-A to *The ICAO Service Code* (Doc 7350) was reviewed, in the light of experience, by the Council during its 188th Session. Reminding the Council that all Representatives were welcome to attend, as observers, all meetings of the various Committees, whether open or closed, he strongly recommended that they do so.

Subject No. 46: Edward Warner Award**Election of Members of the Edward Warner Award Committee (EWA)**

12. The Council had for review C-WP/13219, in which the President of the Council presented nominations to fill two vacancies on the EWA due to the passing away of the Representative of Japan and the departure of the Representative of Venezuela. The Council elected Mr. Bong Kim Pin (Singapore) and Mr. D. Blanco Carrero (Venezuela) to fill the vacancies with effect from 22 September 2008.

Other business**Decisions taken during the recess**

13. For the record, the President of the Council recalled the following decisions made during the recess by electronic mail: that the revised theme for International Civil Aviation Day was “*Tomorrow’s Aviation — a world of opportunity for skilled aviation personnel*”; that Mr. D. Gatinet (France) had been appointed as the tenth member of the Public Key Directory (PKD) Board; and that Mr. K. Narisawa had been appointed as the new member of the Committee on Aviation Environmental Protection (CAEP) from Japan to replace Mr. M. Kawakami with effect from 9 September 2008.

Subject No. 15.16: International Financial Facility for Aviation Safety (IFFAS)**International Financial Facility for Aviation Safety (IFFAS)**

14. As no request to have C-WP/13234 on the above subject tabled for discussion by the Council had been received by close of business on 18 September 2008 in response to his memorandum PRES RK/1590 dated 28 August 2008, the President indicated that he considered that the Council had noted the information provided therein.

Subject No. 14.1.3: Regional Supplementary Procedures (SUPPs)**Approval of amendment APAC-S 08/12 to the *Regional Supplementary Procedures (Doc 7030)***

15. As no comments had been received by close of business on 15 September 2008 in response to his memorandum PRES RK/1584 dated 18 August 2008 on the approval of amendment APAC-S 08/12 to Doc 7030, the President indicated that he had, on 22 September 2008, approved that amendment on behalf of the Council in accordance with the established procedure.

Subject No. 13: Work programmes of Council and its subsidiary bodies**Meeting schedule for the 185th Session of the Council**

16. The President of the Council noted that the following changes had been made to the meeting schedule for the 185th Session of the Council set forth in his memorandum PRES RK/1564 dated 17 July 2008: a Council meeting would be convened on Wednesday, 24 September 2008 at 1000 hours to consider the Report of the External Auditor on the recruitment process of Messrs. J. Renaud and F. Souka (C-WP/13225 Restricted); an informal briefing of the Council would be given on Wednesday, 1 October 2008 at 1000 hours on the industry crisis and the next generation of aviation professionals; and in

order to allow Members of the Air Transport Committee (ATC) to attend the conclusion of the Fourth Symposium on ICAO MRTDs, Biometrics and Security Standards on Wednesday, 8 October 2008, the ATC meeting scheduled at 1000 hours on that day had been rescheduled to 1430 hours.

17. With regard to the consideration of the said Report of the External Auditor (C-WP/13225 Restricted), the President indicated that it would be for the Council to decide during its meeting on 24 September 2008 whether further information or action was required regarding a number of issues raised by the External Auditor and whether to constitute a special working group as proposed by the Representative of Australia. Under that proposal, a working group, comprising the Chairpersons of the Finance Committee (FIC), the Human Resources Committee (HRC), the Air Transport Committee (ATC) and the Council Working Groups on Efficiency and Governance, would advise the Secretary General of any such requirements in a letter by close of business on 26 September 2008. A draft of the letter would be circulated to all Representatives beforehand and as soon as possible after the Council meeting on 24 September 2008. The Secretary General's response would be considered by the Council during a meeting on 8 October 2008. The proposal was to complete consideration of the matter as soon as possible and prior to the Council phase of the 185th Session, which would begin on 27 October 2008.

Subject No. 12.5: Plans for legal meetings
Subject No. 16: Legal work of the Organization
Subject No. 16.1: Reports from the Legal Committee
Subject No. 16.3: International air law conventions

Report of the 33rd Session of the Legal Committee — Compensation for Damage Caused by Aircraft to Third Parties Arising from Acts of Unlawful Interference or from General Risks

18. It was noted that the Government of the United Arab Emirates would be sending an official communication to the Organization offering to host the Diplomatic Conference being convened for the adoption of the draft Unlawful Interference Compensation Convention and General Risks Convention (*cf.* C-DEC 184/6).

19. The meeting adjourned at 1600 hours.

COUNCIL — 185TH SESSION

SUMMARY MINUTES OF THE SECOND MEETING

(THE COUNCIL CHAMBER, WEDNESDAY, 24 SEPTEMBER 2008, AT 1000 HOURS)

CLOSED MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

Argentina	— Mr. S.R. Prado (Alt.)	Mexico	— Mr. D. Méndez Mayora
Australia	— Mr. P.K. Evans	Namibia	— Mr. B.T. Mujetenga
Brazil	— Mr. R.S. Magno	Nigeria	— Dr. O.B. Aliu
Cameroon	— Mr. E. Zoa Etundi	Republic of Korea	— Mr. Shin, G.-S.
Canada	— Mr. L.A. Dupuis	Romania	— Mr. C. Cotrut
China	— Mr. Tao Ma	Russian Federation	— Mr. A.A. Novgorodov
Dominican Republic	— Mr. E.N. Méndez (Alt.)	Saudi Arabia	— Mr. S. Hashem
Ecuador	— Mr. I. Arellano Lascano	Singapore	— Mr. K.P. Bong
Egypt	— Mr. S. Elazab	South Africa	— Mr. T. Peege
El Salvador	— Mr. J.A. Aparicio Borjas	Spain	— Mr. V.M. Aguado
France	— Mr. J.-C. Chouvet	Switzerland	— Mr. D. Ruhier
Germany	— Mr. J. Mendel	Tunisia	— Mr. I. Sassi
Ghana	— Mr. K. Kwakwa	Uganda	— Mr. J. Twijuke
Iceland	— Mr. H. Sigurdsson	United Arab Emirates	— Mr. J. Haidar
India	— Dr. N. Zaidi	United Kingdom	— Mr. P.D. Fleming (Alt.)
Italy	— Mr. F.P. Venier	United States	— Mr. D.T. Bliss
Japan	— Mr. W. Yoshioka (Alt.)	Uruguay	— Mr. J.L. Vilardo
Malaysia	— Mr. S.-C. Kok	Venezuela	— Mr. D. Blanco Carrero

ALSO PRESENT:

Mr. P. Séguin	— External Auditor
Mr. J.G. Bastianelli	— Assistant Auditor
Ms. A. Couzean	— Assistant Auditor
Mr. L.M. Coelho de Souza (Alt.)	— Brazil
Mr. A. Romera (Alt.)	— Brazil
Mr. A.J. de Lima (Alt.)	— Brazil
Ms. S. Chambers (Alt.)	— Canada
Mr. P. Pape (Alt.)	— France
Mr. F. Christensen (Alt.)	— Iceland
Mr. P. Ciancaglioni (Alt.)	— Italy
Mrs. D. Jiménez Hernández (Alt.)	— Mexico
Mr. A. Cioranu (Alt.)	— Romania
Ms. L. Faux-Gable (Alt.)	— United States
Mr. H. Dávila (Alt.)	— Uruguay

SECRETARIAT:

Mr. D. Wibaux	— D/LEB
Mr. R. Heighes-Thiessen	— D/TCB
Mr. J. Maguire	— C/EAO
Mr. A.R. Diallo	— C/HRB
Mr. J. Begin	— DD/ATB
Mr. A. Pchelnikov	— C/PRO
Mr. P. O'Hare	— C/ICT
Mr. L. Koukoui	— C/ISEC
Mr. M. Miguel	— ICT
Mr. H. Herrmann	— ICT
Mr. A. Samson	— ARGF
Mrs. C. Rideout	— CSO

1. The President of the Council extended a welcome to Mr. Philippe Séguin, who was attending a meeting of the Council for the first time in his capacity as External Auditor.

Subject No. 18.8: Financial statements and reports of the external auditor

Report of the External Auditor on audit activities in 2008

2. The Council had for consideration C-WP/13225 Restricted, to which was attached the Report of the External Auditor on certain audit activities in 2008. The comments of the Secretary General in response to the Report had been incorporated into the Report of the External Auditor.

3. The President of the Council recalled that at the previous meeting, the Representative of Australia had proposed that if the Council decided, in light of this meeting's discussion, that further information or action was required regarding issues raised by the External Auditor, a special working group could be constituted. The working group would comprise the Chairpersons of the Finance Committee (FIC), the Human Resources Committee (HRC), the Air Transport Committee (ATC) and the Council Working Groups on Efficiency and Governance, and would advise the Secretary General of any such requirements for further information or action by no later than close of business on 26 September 2008. A draft of the communication to the Secretary General would be circulated to all Representatives beforehand and as soon as possible after this meeting. The Secretary General's response would be considered by the Council during a meeting to be convened on 8 October 2008. The proposal was to complete consideration of the matter as soon as possible and prior to the Council phase of the 185th Session, which would begin on 27 October 2008.

4. Introducing his report, the External Auditor indicated that he had come to present to the Council the conclusions of the report that it had asked him to submit on the conditions in which Mr. Jean Renaud and Mr. Felicien Souka had come to ICAO. He recalled that the day after the arrest of Mr. Renaud and Mr. Souka on 18 June 2008, the Council had expressed a wish that he conduct as soon as possible an audit of the processes that had led to ICAO's recruitment of the two individuals. The External Auditor wished to clarify, firstly, that the word "recruitment" should be considered with great caution. In fact, Mr. Renaud had been made available to ICAO by the Ministry of Finance of Quebec under conditions in which he would continue to be paid by the Ministry. Mr. Souka had come into the ICAO framework as a service provider of a company that had won a call for tenders, although he was about to be given a contract for temporary employment when the affair had broken out in the media. Neither of the two had thus been officially recruited by ICAO, but both had cooperated in various activities of the Organization, and not just of any nature since they had had access to certain financial and accounting information of the Organization. Moreover their links with ICAO had been greatly expanded upon in the press, which, to put it lightly, probably had not helped the image of the Organization.

5. Since this was the first time that he was coming before the Council, and was, more so, speaking on such a sensitive issue, the External Auditor wished to comment on the ways the investigation had been conducted. In responding to the Council's request, he had sent without delay to Montréal, from 30 June to 4 July 2008, Mr. G. Bastianelli, the Manager of ICAO's external audit. Pursuant to the working procedures of the Cour des Comptes of France, the audit had been based on a consideration of documents which he, the External Auditor, had subsequently reviewed. The documents included Mr. Renaud's file in the Human Resources Branch, and documentary evidence on the contract granted to Mr. Souka's company. This consideration had been complemented and clarified by interviews with about ten people in the ICAO Secretariat as well as with the Quebec Deputy Minister of Finance. Some of the testimony reported was

contradictory with the documentary evidence collected. Although some of the people interviewed might wish to contest the report on their testimonies, the External Auditor gave assurances that it was not the custom of the judges in the Cour des Comptes of France to deform in any way in their report any testimony that they collected.

6. The audit had also called for the consideration of confidential data such as emails sent from ICAO by certain people involved in the affair. This was a rare, albeit not exceptional, procedure, used in conducting some audits and investigations for other audit situations in international organizations. It had been envisaged in Article 3 of the annex to the ICAO Financial Regulations, which allowed the Auditor or his representatives to have made available to them all of the documents, even confidential or restricted, which seemed necessary to the conduct of the audit. Without this complementary examination of certain e-mails it would not have been possible to clarify some aspects of the case. As requested by the Secretary General in the letter which he had addressed to him, the External Auditor had agreed that Mr. Bastianelli would work closely in cooperation with the Internal Auditor, who had participated in researching some documents and who had attended some of the interviews.

7. The External Auditor had, on 25 July 2008, sent to the Secretary General a draft report seeking his comments prior to 20 August 2008. The Secretary General's comments were mentioned in the final report circulated to Representatives. On 28 August 2008, the Secretary General had expressed a wish to re-read the final report. The final comments were received on 1 September 2008, accompanied by hitherto unwritten assertions on the subject of the reliability of the access badge registration system.

8. The report mentioned a certain number of items that did not appear to be directly related to the process bringing Messrs. Renaud and Souka to ICAO; however, in applying the financial regulations of the organization which gave the Auditor full latitude on the conduct and the scope of the audit, it seemed necessary to bring these elements to the Council's attention, either as information pertinent to the general context of the matter, or to any dysfunctions that might have been discovered.

9. The processes leading to the arrival of Messrs. Renaud and Souka in ICAO had been quite different. The External Auditor commenced by presenting his conclusions on the case of Mr. Renaud, a financial analyst and tax specialist who had entered the service of the Ministry of Finance of Quebec in 1997. Between 2004 and 2006, he had asked to be placed on leave without pay, and during that period he had worked for the Norbourg company which had made headline news. Not all of the people who had worked in that company had been accomplices in the misappropriation of funds by its manager; however, from 2006 it was known that there were doubts over the activities of Mr. Jean Renaud. For example, on 12 October 2006 the bankruptcy union of the Norbourg case had contacted the superior court of the district of Montréal in an attempt to recover an amount of money which had allegedly been fraudulently paid to Mr. Renaud, amounting to some \$460,000. The *Le Devoir* newspaper, a daily publication which was available in all newsstands and accessible on the internet, had, from that day on, reported on the accusations. Further details on the petition could also be accessed on the internet and were attached to the External Auditor's report.

10. Mr. Renaud's name had also cropped up in another case. On 28 January 2005 there had been a communiqué from Revenue Quebec, the institution responsible for tax collection, indicating that an investigation had been launched to determine the role of Mr. Renaud in a case of undue tax credit being granted to a company which he managed with his brother. It was thus enough to say that various suspicions were public knowledge. It was sufficiently serious for the Ministry of Finance of Quebec to ask Mr. Renaud, in January of 2006, to extend his leave without pay by one year. The next year, in January 2007, with these

suspensions still hanging over him, Mr. Renaud had asked to be reintegrated into the Ministry, and he had had the right to do so under the existing statutory rules. The Ministry had not, however, wanted to have amongst its ranks this agent who had become an embarrassment because of the suspicions hanging over him; they had therefore asked him to look for employment elsewhere. That was how Mr. Renaud had come into contact with ICAO, in this case with Mr. Samson, who was also an official of the Ministry of Finance of Quebec and who had been seconded to ICAO in September 2006 on an ex-gratia basis.

11. Mr. Samson's recollection of facts had been as follows: Although he was an official, as was Mr. Renaud, in the Ministry, he would not have known Mr. Renaud prior to his arrival in ICAO. He claimed to have been contacted at the beginning of 2007 by the Chief of Personnel of the Ministry, Mr. Lafleur, who had proposed that he look favourably upon receiving Mr. Renaud in the Organization. Mr. Samson would have advised Mr. Lafleur that he send a letter to the Secretary General proposing the services of Mr. Renaud on an ex-gratia basis, and the letter was sent on 8 March 2007. The agreement was given, and Mr. Renaud was placed under Mr. Samson to help him in the managing of the Ancillary Revenue Generation Fund (ARGF).

12. Consideration of the e-mail exchange during this period between Mr. Samson and Mr. Renaud gave quite a different version of the process and quite a different chronology. The message sent by Mr. Renaud to Mr. Samson on 18 January 2007 attested that the two men knew each other; they had met again the previous day and Mr. Samson had suggested to Mr. Renaud that he come to ICAO. Mr. Renaud said, in his e-mail, that he was quite enthusiastic with the prospect but expressed the fear that the Ministry would object to making two people available to the same organization. Mr. Samson's testimony was thus erroneous on at least two points. On the one hand, he knew Mr. Renaud, and on the other, he was at the origin of Mr. Renaud's arrival at ICAO. The fears expressed by Mr. Renaud on a possible reticence of the Ministry proved that the initiative of the procedure could not be attributed to the Ministry of Finance of Quebec.

13. After this first exchange, Mr. Samson sought the view of Mr. Elamiri on 29 January 2007. At that point Mr. Elamiri was D/ATB, with only two days left in that capacity. As D/ATB he had been the originator of the ARGF project and apparently had left that job to become the officer in charge of audits, but continued to follow certain aspects of the ARGF file. He thus had professional links with Mr. Samson and it was to him that Mr. Samson handed the curriculum vitae which he had received from Mr. Renaud, a curriculum vitae which remained silent on the period 2004 to 2006. Mr. Elamiri must have pronounced himself favourably, because three weeks later the Ministry of Finance of Quebec sent to Mr. Samson a draft letter proposing the secondment of Mr. Renaud. This draft, which was a virtual copy of the letter officially sent to the Secretary General on 8 March 2007, praised unreservedly the merits of Mr. Renaud. The Ministry of Finance of Quebec did not believe that it should inform ICAO of the actual situation of Mr. Renaud, although it knew perfectly well the suspicions surrounding him as well as the prior activities of Mr. Renaud at Norbourg and elsewhere, which could scandalize the Organization. It was because of the risk of being associated with fraudulent behaviour that the Ministry of Finance did not wish to keep Mr. Renaud in its ranks, and the letter from the Ministry of Finance of Quebec could be considered to have serious omissions.

14. In ICAO, the terms of the ministerial letter had led to consider as useless any sort of background check of the curriculum vitae of Mr. Renaud, sent to Mr. Samson several weeks before. The External Auditor could allow that ICAO might not be aware of the outcome and the content of the Norbourg affair, or that of Revenue Quebec, although both were public knowledge. The Organization's imprudence or naiveté were confirmed by the recent initiatives of the Secretary General to henceforth do background checks on any recruitment. When it came to the Ministry, if one looked for extenuating circumstances, saying

that Mr. Renaud would be protected from any media frenzy if he were employed by an international organization, in brief that he would simply be forgotten, that was really a misjudgement.

15. The Ministry could also have assumed that Mr. Samson could not have avoided telling ICAO of the risk it ran with Mr. Renaud; Mr. Samson was working for ICAO, he owed the Organization at least minimum loyalty. It was established that the serious suspicions hanging over Mr. Renaud were known to Mr. Samson. That fact was confirmed by an e-mail from the Ministry of Finance addressed to Mr. Samson after the arrest of Mr. Renaud, indicating to Mr. Samson the language that he later on used. The language in that e-mail made it quite clear that Mr. Samson had received from the Ministry the necessary information available at the time on Mr. Renaud. Mr. Samson knew that there was a Revenue Quebec investigation and also knew, at least since January 2007, that Mr. Renaud's name had been cited in the Norbourg case. Nevertheless, he did not deem it necessary to inform ICAO of the suspicions about his former colleague. Contrary to the opinion that the Secretary General had given on this, the External Auditor considered that Mr. Samson was responsible for what was tantamount to concealment. The argument of the presumption of innocence was not justified. If one admitted that suspicions should not serve as an argument to hiring, it was not up to Mr. Samson to say that that risk could be assumed. It was to ICAO, and only ICAO, to decide, fully cognizant of the details.

16. Even if Mr. Samson was unaware of the criminal investigation, he should have transmitted the substantial information about Mr. Renaud to the Secretary General so that the Secretary General could take a fully informed decision. The lack of openness on the part of Mr. Samson during the audit was an aggravating factor. The fact that he received financial compensation from ICAO in addition to the monies paid by the Ministry, that his leave was not monitored, and that his performance was not evaluated as would be appropriate, should not be an obstacle to his being sanctioned in one way or another. Mr. Samson enjoyed the true sympathy of the Secretary General, because of the role he had had in the beginning of the years 2000 when he had been in the Ministry of Finance, and had been responsible for preparing subsidies to the Organization, including the Government of Quebec assuming to pay the rent of the offices in the Bell Tower which were occupied by the Technical Cooperation Bureau. These subsidies were, of course, the initiative of the Government in power at the time.

17. In summary, Mr. Renaud's arrival in ICAO had been the consequence of two acts of insincerity, Mr. Samson's and that of the Ministry of Finance of Quebec. The first was more serious. Two recommendations in the External Auditor's report suggested the necessary measures to be taken to deal with the consequences of these acts. The Council, if, like the Office of the External Auditor, was not convinced by the explanations of Mr. Samson, should request that the Secretary General put an end to the memorandum of understanding which had been at the origin of Mr. Samson's secondment to the Organization, since it was not possible to have confidence in a person who had contributed to putting the Organization in such a difficult situation. A letter should be sent informing the Minister of Finance of the return of Mr. Samson, expressing regret, at least implicitly, that the Ministry had remained silent. It was not because Quebec was lending financial aid to the Organization that ICAO should accept to be treated so cavalierly. Finally, the External Auditor recommended that the employment of persons on secondment be undertaken within the framework of a text that would specify their conditions of recruitment, the maximum duration of their contract, the conditions of employment and salary, and an assessment of their performance and a report on their leave. While bearing in mind that the secondment of officials by States was a subject that could have various diplomatic implications, the Organization should have rules embodying the various legal and administrative aspects.

18. The External Auditor next commented on the case of Mr. Souka, a computer specialist who, between February 2003 and August 2005, had worked for the Norbourg company. As was the case of Mr. Renaud, from the outset of 2007 detailed information had been available to the public on what Mr. Souka had been charged with in the Norbourg scandal, to wit having falsified the books of the group to conceal embezzlement of funds that had been perpetrated. The petition of 12 October 2006 regarding this matter could easily be accessed on the internet. After the bankruptcy of Norbourg, Mr. Souka had also worked for a number of small computer companies including Soteria, which also employed another computer specialist from Norbourg, Mr. Jean Hilaire Yapi, who had never been implicated in the financial scandal. Mr. Yapi was made known to ICAO for having been the consultant for a major computer enterprise, PCD, which in June of 2007 had won a bid for tender on modifications to the database of ICAO. Mr. Yapi then remained in the service of ICAO for similar work, this time under the name of his own company, Yapson.

19. In November 2007 Mr. Yapi had learned that the Organization was sending out a call for tenders so as to change the currency of the professional employees' salaries from United States dollars to Canadian dollars. Mr. Yapi had asked if Soteria, a company for which he was working, could also submit a tender. Article 6.4 of the Procurement Code of the Organization stated that orders should be the subject of calls for tenders except when they were estimated under \$10,000 or when there was only one known provider. Article 5 provided, moreover, that a file on the provider should be kept up to date and serve as the basis for the tenders. The call for tenders should be addressed only to those companies already registered, unless the order was truly specific and for an amount less than \$50,000. Soteria had not been registered among the suppliers of ICAO. It was nevertheless invited to submit a tender for the modification to the payroll system, because it had been estimated at \$50,000 which corresponded to the threshold allowing an exception. Nevertheless, the two answers received to the call for tenders had been quite a bit over that threshold, which indicated that the provisional amount had not been properly estimated. Soteria had come in with the lowest bid, \$100,000, which then later was brought down to \$88,000, and it was chosen. The tender had been accompanied by the curricula vitae of three persons who would be working for ICAO. In that of Mr. Souka, which was included in the annex to the External Auditor's report, employment at Norbourg was clearly indicated. As there had been no verification procedure, employment at Norbourg had not been verified by ICAO, and Mr. Souka had been able as of December 2007 to work on the payroll system of ICAO. Mr. Souka had apparently done a good job, because six months later, when ICAO had been looking to recruit a computer expert for an initial period of three months, he had been considered as the "preferred candidate" to be given this contract. Since the curricula vitae of applicants for temporary posts were not verified, even the Secretary General had agreed to that recruitment the day before Mr. Souka was arrested. In light of those events, the Secretary General had announced that henceforth a security certificate would be required both for the recruitment of consultants and for the grant of contracts to service businesses; this was a very useful measure that should be extended to cover anybody with abilities or references as candidates being given a temporary contract, or any businesses with which contracts were concluded.

20. When it came to procurement, some procedures already existed; before being registered with ICAO's Procurement Office as suppliers, candidate companies were evaluated. There were, however, ways around these procedures, as could be seen in the case of Soteria or in the example which followed: At the beginning of June 2008, Mr. Yapi had asked to become a registered company under the name of Yapson, as a provider to ICAO, but had been refused because this very small company did not have the necessary safeguards. That had not stopped Mr. Yapi from obtaining a personal contract. ICAO did not apply the provisions of the Procurement Code to that sort of contract; however, given the ambiguity surrounding the conclusion of that contract, the purchase order had been addressed to Mr. Yapi, while the estimate and bills received and paid by ICAO were in the name of the Yapson company. Moreover, in the candidacy file that he had submitted to ICAO at the end of May 2008, Mr. Souka had indicated that his first experience in ICAO

had already taken place in the framework of the contract given to Yapson, which confirmed that it was not in fact a personal contract for Mr. Yapi as an individual.

21. Although it was not registered in the supplier database of ICAO, Soteria had been allowed to bid for two different jobs after that given in November 2007 to modify the payroll software. Since Soteria had carried out the first job successfully, it was natural that the computer service seek again to bid, although strict application of the Procurement Code would have required that Soteria be registered. It was not possible to confirm with any certainty that Soteria would have been declined had it sought again to be registered, but that would have been the only check, had it been carried out, to avoid Mr. Souka's assignment to work on the sensitive data of ICAO. His arrival in ICAO had given rise to serious consideration about the consequences of the procedures in place not having been rigorously respected. Since this was a small business which was hardly known in Montréal, checks should have been conducted before awarding it a contract which was so crucial to the Organization. Finally, the audit had shown that Mr. Souka had come and started to work, and had even started billing before the purchase order had even been signed. For these reasons, the External Auditor recommended that the Procurement Code be applied with greater vigour, which meant in particular that exemptions should be strictly limited to explicitly foreseen and stipulated cases.

22. In conclusion, the External Auditor wished to offer three observations on the outcome of this affair for ICAO as he saw them today. Two people implied in fraudulent business had had access to the financial and accounting information of ICAO, without ICAO having been in a position either to appreciate or avoid the risk that it was running. This meant that there were serious shortcomings in the procedures and their application. Moreover, ICAO had suffered damage to its image because its name had been associated in the media with a major financial scandal. Finally, although the budgetary belt was tight in the Organization, this affair had compelled ICAO to spend more unforeseen monies in order to conduct and finance investigations to bring the events to light and to counter potential dangers to the integrity of sensitive information. Aside from the remit that the Council had given its External Auditor, ICAO had had to turn to the RCMP and also recruit a private consultant. The purchase order which had been sent to determine if there had been fraud within the Organization came to an amount to \$110,000 Canadian.

23. The Secretary General would not speak against the *Cour des Comptes*, which was well-known, having been established in 1807 by Napoleon and so having just celebrated its bicentenary.

24. The report which had been submitted unfortunately did not meet the request of the Council. This was an investigation report, rather than an audit report. What the Council had requested, as was set down in the letter which had been sent by the Secretary General on 26 June 2008, could be summarized as follows. In order to avoid a similar situation arising in the future, it would be necessary as soon as possible to perform an audit of the processes which had led to the arrival of Messrs. Renaud and Souka at ICAO. It was thus a question of ascertaining, in particular, whether there were shortcomings in the recruitment and procurement procedures, and consequently formulating recommendations which would allow ICAO to mitigate these deficiencies and to make sure that similar situations did not arise in the future.

25. The reference to Article 13.5 of the Financial Regulations to explain the External Auditor's departure from the subject did not hold water, because the Council had requested, on an urgent basis, a specific audit on the processes which had led to the arrival of these two individuals. If the External Auditor had incidentally noticed certain anomalies, he could at the most recommend to Council that these anomalies be studied, but within the parameters of another audit, not in the current one. All of the points which the External Auditor had noted incidentally nevertheless formed the basis of his report, so the report did not

target the crux of the matter but, rather, dealt with related issues which the Auditor had decided to study without advising the Council in advance.

26. The Secretary General wished to thank the External Auditor for having taken into account his comments of 24 July 2008 on the first draft of his report, and which had made it possible to shorten the report by some 20 paragraphs which had weighed it down unnecessarily. Nevertheless, the report continued to dwell on useless details. It was difficult to know, for example, how the dates when Mr. Samson had come into service, as well as details on his pay, his attendance, and his performance evaluation could respond to the concerns which had been conveyed in the Council with respect to avoiding a similar situation in the future. The witness accounts and the terms under which they were drafted in the report had not been checked with the people who had provided those testimonials, a fact which reduced their value enormously. For example, an important witness statement from the Deputy Minister of Finance, which had not been confirmed, was not consistent with what had been in the initial draft of the report. A crucially important sentence in that witness account had been deleted from the final report, which made the testimony lose all credibility. As a result, the audit report also lost credibility.

27. The report was dotted with false assertions, with insinuations, with repetitions of false statements and with various inexplicable suspicions vis-à-vis the Secretariat. The Secretariat's comments were not **all** reflected in the report. In conclusion, the report was not an audit per se and did not meet the request of the Council which had hoped that the External Auditor's recommendations would, in future, make it possible to avoid the recurrence of such a situation. The recommendations in the report, the first two at least, did not answer the Council's concerns.

28. The External Auditor indicated that in his many years in the auditing service, this was the first time he had heard a civil servant attack his work under such conditions. He noted that the line of argumentation was very weak and lacking, and that the Secretary General had not supported his statements with firm evidence. The External Auditor was prepared to go into detail at the appropriate time, and could even go through the different points in his report paragraph by paragraph. To begin with, however, he wished to refute the idea that in presenting the report he had exceeded his terms of reference. With all due respect, it was not up to the Secretary General to speak on behalf of the Council, and the External Auditor did not report to the Secretary General but to the Council.

29. The Secretary General's view of the situation was that the External Auditor had been tasked by the Council with a very general mission. There had been two small incidents, and the External Auditor had simply been requested to perform an audit of the processes without making reference to the embarrassing details of the affair. But it was these details that the Council, to his understanding, wished to know. The Council was not interested in simply knowing whether the recruitment procedures in general needed to be adapted. The Council wanted to be informed of the processes which had led to this situation occurring. The procedure was just one of the many facets of the whole process. The External Auditor believed that what he had reported to the Council fully met its request. It was up to the Council to decide whether or not it was happy with the results and recommendations.

30. The Secretary General wished to clarify that when speaking of certain contradictions which existed between the witness accounts and the report, he had in mind, for example, the testimony of Mr. Richard Boivin, Assistant Deputy Minister of Finance for Quebec. In an earlier draft of the report, the External Auditor had asserted that Mr. Boivin had said he did not know Mr. Samson. In the final report, that sentence had been deleted. If part of the testimony was missing, that would mean that the testimony had been abridged and was therefore false. That sentence was crucial to the report because it contradicted other

testimonies and revealed inconsistencies in the report. Its exclusion led one to wonder whether the whole testimony was correctly reflected.

31. The External Auditor maintained that the question of whether Mr. Richard Boivin knew either of the interested parties had absolutely no significance. The fact remained that the Minister of Finance for Quebec had been called to the General Assembly of Quebec, and in that forum had stated that ICAO was aware of the fact that an investigation was taking place. That assertion was in the official records of the National Assembly of the Province of Quebec. The understanding of the Ministry of Finance of Quebec was that if Mr. Samson, who had been seconded by the Ministry to ICAO some two years earlier, was aware of the investigation, that meant that ICAO itself was aware of the investigation. The problem lay in the fact that Mr. Samson had not informed the administration of ICAO of the facts. The Secretary General indicated that he had contacted the Deputy Minister of Finance of Quebec who had had the understanding that ICAO was aware of the facts. That assumption was not correct, since to inform "ICAO" in such a situation would be to inform the Secretary General, or the Director of Administration, or the Chief of the External Relations and Publications Office, or the Public Information Officer who was the spokesperson for ICAO. When the Secretary General had spoken to Mr. Samson about the situation, Mr. Samson had confirmed that he was aware of the suspicions cast on Mr. Renaud, but that with his training as a lawyer he felt that an individual was presumed to be innocent until proven guilty. It was for this reason that he had not shared the information with the Secretary General.

32. The Representative of Saudi Arabia indicated that in reading the report, he had the impression that the Council had requested the External Auditor to ascertain whether Mr. Renaud and his colleague were guilty or not. He wished to tell the External Auditor that what was most important to the Council was to know that there had been no violation of rules or regulations in ICAO, and to determine whether ICAO was affected by the incident. Other entities in Canada would be able to determine if a crime had been committed, and it was not the task of the Council to condemn anyone. The Representative of Saudi Arabia wished to draw the Council's attention to the seriousness of accusing the Government of Quebec or of Canada, or any country that seconded employees to ICAO. ICAO was in a difficult position; it could not ask for a certificate of conduct for the employees seconded to it. The recommendation of the External Auditor was not acceptable to his Delegation because it was not based on any indication that there had been a violation of ICAO's regulations or procedures. The External Auditor indicated that Mr. Renaud had been recruited on the basis of a letter received from the Ministry of Finance of Quebec, praising his person and his ability. ICAO could in no case have doubted the sincerity of the Ministry of Finance when it came to the integrity of that person. In light of what had since happened, however, there was at least an implicit allusion. The Representative of Saudi Arabia emphasized the need to ensure that employees of the Organization, whether seconded or not, did not violate the regulations of the Organization. The External Auditor indicated that in this case, it was very difficult to ensure that the people in question had not violated any rules.

33. The Representative of Egypt observed that the main question at hand was whether Mr. Renaud and Mr. Souka had caused any damage to the Organization. In this connection, the External Auditor indicated that Mr. Renaud had dealt with the cash flow of the Ancillary Revenue Generation Fund, and Mr. Souka had had access to all payroll and banking information of the Organization. An investigation had been entrusted to a computer company to determine where things stood, but the External Auditor considered, for his part, that apart from any technical considerations, some moral damage had been done. On the one hand, an additional cost to the Organization had been incurred because \$110,000 had been paid to the computer company, and \$24,000 to the External Auditor. The question at hand was not whether Mr. Renaud and Mr. Souka were guilty, but how people who were under suspicion could be recruited without the Organization knowing about the suspicions that were hanging around them. It could be argued

that one could go ahead and hire someone who was under suspicion, and give that person the benefit of the doubt until he or she was convicted, but it should be done in full knowledge of the situation. What was serious in this case was that the recruitment had taken place with no knowledge of the suspicions. If the Council had requested the forensic investigation at a cost of \$110,000, it had to be because the Organization had been exposed to real risks.

34. The Representative of the United States believed that the President's suggestion about the way to proceed, as had initially been suggested by the Representative of Australia under other business at the previous meeting (185/1) and supported by several Council Members was the right way to proceed. It was important that the Council not try to rush to judgement today; the purpose of today's meeting was to get information, facts, and, if Council Members had questions or concerns, to address those. The Council would ask the Chairs of the Finance, Air Transport and Human Resource Committees, as well as the Chairs of the Working Groups on Efficiency and on Governance, who would make up the working group, to deliberate and consider what additional information or potential action should be considered by the Council, through a letter to the Secretary General that Representatives would receive copies of. The Council could then meet again on 8 October 2008 and review the working group's findings after everyone had had a chance to think clearly about these issues and deliberate further.

35. The Representative of the United States had two questions for the Secretary General. He wished to know, firstly, whether it was true that Mr Samson had had knowledge of the allegations against Mr Renaud at the time he recommended approval of the secondment, and had not informed the Secretary General of that information. If that was true, the Representative of the United States sought the Secretary General's views as to whether it was proper for Mr. Samson not to have given him that information. According to the report, Mr. Samson had said that a person was innocent until proven guilty in a court of law, and therefore it was unnecessary to provide the information. Did the Secretary General agree with that, or did he think that Mr. Samson should have provided him the information? And if the Secretary General believed that Mr. Samson should have provided him the information, what steps had he taken in his discussions with Mr Samson or generally to make sure that he received the information he needed before he was asked to approve a secondment or to take a major action within the Organization?

36. The Representative of the United States then referred to the additional compensation that had been provided to Mr. Samson. His understanding from reading the report was that the Secretary General had approved providing the compensation of \$41,158 to Mr Samson, but that both his legal advisor and his finance advisor had suggested he delay that payment. Was it true that D/LEB and A/C/FIN had both suggested that the Secretary General delay that payment, and, if so, why did the Secretary General decide to make that payment in any event? Had that payment been authorized by the Finance Committee under Financial Regulation 11.3, which required authorization of *ex gratia* payments in excess of \$500?

37. The Secretary General explained that the compensation which had been paid to Mr. Samson had been an incentive since Mr. Samson had had to relocate from Quebec City to Montréal, and should be paid at least at the level of the people for whom he was responsible. Those people included at least two P-5s, and the Secretary General considered that Mr. Samson should really be at a PO level; he had some 70 people working under him, and the ARGF paid for 52 posts and had contributed \$12 million to the regular budget. The monthly compensation of \$5,500 represented the difference between what the Government of Quebec paid Mr. Samson, and the salary of a P-5 officer. The Human Resources Branch, Legal Bureau and Finance Branch had agreed to the payment of the compensation. D/LEB had suggested that an amendment be introduced to the memo between ICAO and Quebec to allow for this compensation to be paid to Mr Samson, and an amended document had been signed by the Secretary General and the Quebec counterpart. The

Secretary General had subsequently learned, on the day that Mr. Samson was about to go on leave, that he had not yet received the payment of the compensation owed him. The Secretary General had been surprised to learn this, and had asked that Mr. Samson be paid immediately. The Finance Branch and Legal Bureau had had no difficulty with the principle of compensation, but had recommended a deferral of the payment. The Secretary General had not agreed to the deferral, because there was no legal basis not to pay Mr. Samson retroactively for work he had already done.

38. Responding to the first point raised by the Representative of the United States, the Secretary General indicated that Mr. Samson had told him he had not been aware of the criminal investigations by the RCMP against Mr. Renaud but knew that suspicions had been cast. The Secretary General had not been happy with Mr. Samson, since he should nevertheless have been informed, but had considered that the matter was not serious enough to discontinue Mr. Samson's secondment since he still trusted him.

39. The Representative of the United Arab Emirates wished to echo the statement and request made by the Representative of the United States, and place on record his extreme dissatisfaction and unhappiness with Mr Samson's performance, knowing that he believed that Mr. Samson had known about the criminal investigation that was taking place and had hidden this fact from the Secretary General. The Representative of the United Arab Emirates had recently urged the Secretary General to dismiss Mr Samson summarily, because he had not shared with his supervisor some sensitive information. The Secretary General's response at that time had corresponded to the response at this meeting. The Representative of the United Arab Emirates had been told by his own legal counsel that Mr Samson might have been told by the authorities conducting the investigation that he may not divulge any information about the criminal investigation. The Representative of the United Arab Emirates also wished to place on record that he was known to have been very critical of Mr Samson, his performance, his agenda and his plans even as a revenue generating official.

40. The Representative of Nigeria observed from the statements made by the Secretary General, the External Auditor, and the Representatives who had thus far taken the floor that there seemed to be a mismatch as far as the expectation of the Council with respect the work that had to be done. It should nevertheless be possible to get a group to work on the External Auditor's report, and for that group to assist the Council to precisely assess those issues which were pertinent to its expectation with respect to this issue. It was noteworthy that there was also a government investigation and a forensic investigation taking place. The issue would be reviewed from the perspective of the existing processes, and what could be done to improve the system at ICAO. The issue of background checks, the liabilities and risks that arose with seconded staff, and the Organization's responsibilities would have to be reviewed. The privileges given to the seconded staff, and the policy that increasingly gave secondees some advantages above regular staff who went through more serious scrutiny would also have to be looked into. There were thus a number of policy issues that needed to be looked at, and the group's focus should be on those elements. The report before the Council extended beyond some of those policy issues. It seemed to infer some association which at this stage was unnecessary for the purpose of the Council. The group would focus on the policy issues and leave the extra insinuations and innuendos out of the realm of the work that the Council needed to do to protect ICAO and set the Organization's policies right in regard to secondees. The other aspects could be left to other agencies to take care of.

41. The External Auditor sought clarification as to the insinuations which the Representative of Nigeria had difficulty with, since it had not been his intention to include insinuations in his report. The Representative of Nigeria wished to make clear that neither the Secretary General nor the External Auditor were on trial at this meeting. In listening to what the Secretary General and the External Auditor had said,

he had perceived some insinuations on both sides and could see an argument heating up. As regards the report, there was, for example, the issue of entering and exiting the building, and a conclusion to the effect that the security manager was not abreast of the function of the systems he was supposed to monitor. The Representative of Nigeria had believed that the report would be limited to discussing how two individuals had come to the Organization and what could be done to stop it in the future. This report contained a judgment on the performance of a staff member, and the Representative of Nigeria did not know how that was pertinent to the issue of Mr. Renaud and Mr Souka. There were thus areas where the External Auditor had gone beyond the assignment that had been given. The Representative of Nigeria asserted that Representatives had the right to make statements in the Council, and that the External Auditor should not cross-examine any Representative. The subject should now be referred to the working group and the Council should focus on the policy issue as far as this case was concerned. The External Auditor wished to clarify that reference had been made to the security system because it was not advisable, because of insurance and other legal issues, for individuals to commence working for ICAO before formal contractual arrangements were concluded. The intention had not been to check into the conditions of access to the ICAO building.

42. The Representative of Brazil recognized that this subject was not a comfortable one to deal with, but believed that this exercise, if carried out in the way proposed by the Representative of Australia, would be a balanced, transparent and open process and would lead to just and fair results. He therefore asked all participants to deal with the subject in a very objective way, so as to ensure that the future functioning of the Organization would benefit from this exercise.

43. The Representative of Mexico could support the proposal which the President had made at the beginning of the meeting, since it would be the best way to proceed in the interest of efficiency and to have a balanced approach to the subject and to the whole process, because the Council was speaking of processes in the Organization which needed to be reviewed and amended. As regards the issue of damage, the Representative of Mexico knew from his own experience and interactions with highly respected businessmen that the image of the Organization had suffered some damage. The Representative of Mexico was not satisfied with the answer which had been given to the Representative of the United States on the subject of compensation to seconded staff, since Mexico, for example, seconded experts to ICAO and never asked for compensation. He would have difficulty explaining the justification for this compensation to his authorities. Referring to the security issue and access to the ICAO building, the Representative of Mexico observed that it was a very strong accusation to say that the security manager was not abreast of the functioning of the systems he was supposed to monitor. The Representative of Mexico was not familiar with the description of the post, and did not recall seeing the vacancy notice. He wished to know how many candidates had applied for that post, and also wished to know whether the customary and appropriate procedures had been followed in recruiting C/ISEC. From the report of the External Auditor, one could observe that the crux of the problem for ICAO lay in a random series of departures from the rules and procedures concerning recruitment and procurement codes. It was for this reason that the Council would have to take some measures, because the conduct of certain officers could be considered unacceptable.

44. Responding to the question raised by the Representative of Mexico with respect to the selection of C/ISEC, the Secretary General indicated that Mr. Koukoui had been employed by the RCMP and seconded to ICAO. Prior to the 36th Session of the Assembly, the RCMP had conducted a risk assessment and provided the Secretary General with a report which specified that it was necessary to restructure the Organization's security office and place a competent individual in charge of it. The RCMP had recommended Mr Koukoui, who was already in charge of security since the time of his recruitment by ICAO, except for the fact that he was then under the authority of the Chief of Conference and Office Services (C/COS). The RCMP recommended that the chief of security should report directly to the Secretary General.

This recommendation had been approved, furthermore, by the Representative of Canada, who had congratulated the Secretary General on his choice. Mr. Koukoui was responsible for security not only at ICAO Headquarters, but also in all of the United Nations agencies in Canada and at the ICAO Regional Offices.

45. The Representative of Mexico indicated that he was not objecting to the individual himself, but simply wanted to know whether there was any human resources policy set up for the recruitment of C/ISEC. He had never seen a vacancy notice posted, and had never been made aware of any other candidates. There was no explanation as to why Mr. Koukoui had been the preferred candidate, and the Representative of Mexico wished to know whether the normal procedures for recruitment of staff had been followed. The Secretary General indicated that Mr Koukoui had already been on staff at ICAO and was already responsible for security. He had initially been recruited to that position following all the due procedures. He reported to C/COS and the recommendation of the RCMP had been to the effect that Mr. Koukoui should answer directly to the Secretary General. The reporting line had been changed accordingly. There had thus been no post announcement.

46. The Representative of Canada clarified that in the case of security positions, the candidates were all from the national police force. The recommendations of the RCMP were made directly to the Secretary General, and there was no need to have a competition.

47. The Representative of France indicated that as a Member of the Council, he was somewhat disappointed by the attitude of the Secretary General, which did not reflect international practice and which did not even fall within the realm of simple courtesy. He first wished to respond to the question which had been raised by the Representative of the United States regarding Mr. Samson, and the Secretary General's reply. In his reply, the Secretary General had repeated the contents of the External Auditor's report, because he had confirmed that Mr. Samson was aware of the investigations but had not informed him. Implicitly, Mr Samson had made a mistake, and the Secretary General had decided to keep him even though he had lost trust in him. This was not a principle on which many administrations could be based. On the issue of compensation, as had been pointed out by Representative of Mexico this was rather extraordinary, because a number of Contracting States, in particular those represented on the Council, had for years made experts available to the Organization. So far as France was concerned, the Organization had never felt it was necessary to compensate them in addition to the payment provided by their own administration. That point had not been commented upon by the Secretary General. Article 11.3 of the Financial Regulations dealt with the question of ex-gratia payments, and it was not upon the request of the Quebec government, but rather an initiative of ICAO that should have been the subject of consultations with the Finance Committee. That Article applied to all funds in the Organization, including the ARGF. The Secretary General had developed a line of argumentation to justify the compensation paid to Mr Samson, but if the reasons were that good for the compensation, why did the Secretary General not consult the Finance Committee, which would simply support his views?

48. The Secretary General wished to clarify that he had not indicated that he did not trust Mr. Samson; he had indicated that he had not been happy with him, since he should have been informed. However, taking into account the position which Mr. Samson held, and the fact that the ARGF had succeeded in keeping on board 52 staff members who would have otherwise been terminated, and in the light of the fact that Mr. Samson had been able to add \$12 million to the regular budget, he had kept him on. The Secretary General continued to trust Mr. Samson insofar as he was the driving force behind the ARGF. As regards compensation, the Secretary General wished to thank France for having recently seconded an expert, as had been the case in the past with a number of States, including the United States, Japan, the Republic of

Korea, and Italy. These experts who had been made available to ICAO were paid similarly to the other Secretariat staff. The only difference lay in the level of responsibility of Mr. Samson, who should, in the Secretary General's opinion, be at a PO level because he was responsible for over 72 staff, and, in coordination with the other Bureaux, generated significant monies. This was not the case with other seconded staff who of course performed remarkable work but did not generate any monies. It was considered appropriate to pay Mr. Samson at least at the same level as two P-5 officers working under him.

49. The External Auditor indicated that he was still very much surprised by the questions which had been raised at the beginning of the meeting, following the presentation of his report. It would appear that the Secretary General fully agreed with him on the facts, but would have preferred that the External Auditor not raise certain matters in his report. The Secretary General did not, for example, appear to have anything to say regarding Mr. Souka. As a serious auditor, he felt that he had a responsibility to divulge all of the facts to the Council. As regards the Secretary General's loyalty to Mr Samson, which was highly laudable, the External Auditor maintained that no one was irreplaceable and that if Mr. Samson's functions were all that important, there was all the more reason to question entrusting them to someone from the outside, whose position in ICAO was very precarious. This type of serious responsibility should be given to someone who had a permanent posting in the Organization.

50. The Secretary General indicated that he had not verbally mentioned Mr. Souka because his responses were recorded in the External Auditor's report. The External Auditor had recognized the fact that the term "recruitment" should be used very carefully, since Mr. Renaud had been made available to the Organization by the Ministry of Finance of Quebec, and Mr. Souka had come to work at ICAO as a member of a company which had won a bid for tenders. It was only on 21 October 2007 that the Finance Committee had decided definitely that the salaries of the Professional staff would be paid in Canadian instead of United States dollars as of January 2008. The time period allotted for the call for tenders was quite restricted. Seven companies had received the call for tenders, and only two had responded to the bid because of the short time period. The contract with Soteria was for some \$51,600, and Mr. Souka was one of the three experts proposed by that company. He had thus been recruited by Soteria and not by ICAO. Perhaps, in hindsight, there should be in place a system of security checks for companies, and the Secretary General had asked the Organization's procurement services that arrangements for such a system be made. Mr. Souka had subsequently been offered a three-month contract to temporarily occupy a P-2 opening in ICT which urgently needed to be filled.

51. The Representative of the Russian Federation wished to pick up on the question which had been raised by the Representative of Saudi Arabia, and believed that the working methods of the Organization would have to be reviewed to make sure that a similar situation did not arise in the future. A detailed investigation into the facts would have to be carried out. It was his view that the trust placed by Delegates in the Organization had been undermined. The Representative of the Russian Federation supported the proposal of the Representative of Australia for the establishment of a special group which would develop the appropriate recommendations. He drew the Council's attention to the concepts which had been raised many times by the External Auditor, regarding how such a situation could arise in the Organization. An investigation into what had taken place fell into the competency of specialized bodies, and the role of the Council lay in identifying the procedural shortcomings that had led to such a situation. The Representative of the Russian Federation could not understand how individuals recruited to such important positions in FIN and ICT had not be the subject of a security check, as was the standard practice with permanent staff members.

52. The Secretary General indicated that he would have no difficulty asking that arrangements be made for security checks of experts proposed for secondment by Contracting States, although it had not thus far been done. The Organization had not, until now, wanted to question the States on the staff which they wanted to second.

53. The External Auditor observed that security background checks might not provide a sufficient guarantee, since certain elements of an individual's criminal record could sometimes be removed in some countries. In the case of Messrs Renaud and Souka, such background checks would have served no purpose because there were no court records and the two individuals had simply been under suspicion. Governments should make available only those staff members who sincerely and honestly had something to offer to an organization, and not to turn that organization into a sort of wastebasket in which undesirable civil servants were dumped. The External Auditor also pointed out that in Quebec, there was a very marked distinction between the administrative and the political branches, and the Minister did not deal with administrative matters. This was the purview of the Deputy Minister, and it was to the Deputy Minister that ICAO should address a letter conveying its concerns.

54. The Representative of Argentina believed that well beyond the report presented there were certain facts that needed to be examined in great depth. To that effect there were three basic conclusions to be drawn from the report which should be subject to further study. First of all, it appeared that within the Organization there was an individual who had been aware of Mr Renaud's past and who had in fact sinned in remaining silent. Secondly, it appeared that certain other individuals in the Ministry of Finance of Quebec also had erred by omission and out of courtesy should have informed the Organization. Thirdly, there were certain internal recruitment procedures that needed to be revised and applied more strictly. These three points needed to be reviewed by the Council and the best manner to proceed would be to establish a working group as proposed by the Representative of Australia. The Delegation of Argentina wished to put that proposal forward as a formal motion.

55. The Representative of Iceland thanked the External Auditor for a report which was very clear and easy to understand, but sought clarification on a few points, beginning with the reference, in paragraph 44, to a "Mr. Miguel". The Representative of Iceland wished to know what Mr. Miguel's role was in this matter. There appeared to be a number of links between people such as Mr. Renaud, Mr. Souka and Mr. Yapi, who were outside the Organization, and people in ICAO, including Mr. Samson, possibly Mr. Elamiri and now Mr. Miguel. The Representative of Iceland wondered if there were other links. He also sought clarification on the procedure which was followed with procurement, and wished to know who had earmarked Mr. Souka as a "preferred candidate" for a vacancy which had been drawn up by the Human Resources Branch. Had this information regarding Mr. Souka's status as preferred candidate come up incidentally, or had it involved some research on the part of the Auditor?

56. The Representative of Iceland also requested some clarifications from the Secretary General. Firstly, it was not clear who had initiated the compensation of \$5,500 per month to Mr. Samson. In a letter which the Secretary General had sent on 27 June 2008, it was indicated that this payment was to compensate for the fact that Mr. Samson also maintained a house in Quebec City where he normally resided as a civil servant. The Representative of Iceland had later been told that the money paid by ICAO was an incentive. Now the Secretary General was indicating that this was a pay raise to place Mr. Samson at the same level as certain other staff members in the Organization. Had the Secretary General initiated the offer of the payment, or had Mr. Samson asked for it? The Representative of Iceland wished to know if other seconded staff were receiving additional incentive payments. Noting from paragraph 37 of the report that it had been envisaged to pay Mr. Renaud the same kind of supplementary pay as Mr. Samson received, the Representative of

Iceland wished to know if the draft letter which Mr. Samson's assistant had sent to the Human Resources Branch, requesting that the MoU be amended to allow Mr. Samson to be paid by ICAO and stating that the same letter should be sent for Mr. Renaud, had been initiated by the Secretary General or by Mr. Samson.

57. The Secretary General indicated that, notwithstanding the insinuations in the External Auditor's report, there had been no question of Mr. Renaud receiving compensation from ICAO. Some additional clarifications were then provided by C/PRO on the procedures which had been followed in the selection of Soteria through a call for tenders.

58. The External Auditor indicated that Mr. Miguel was a staff member in the Organization's ICT Section. The Regular Programme Procurement Section was the office responsible for procurement contracts. As regards Mr. Souka being earmarked as a "preferred candidate", the Auditor had addressed this question in writing to the Chief of the Human Resources Branch who had responded in writing that the ICT Section would be hiring Mr. Souka on a temporary contract as a consultant to ICAO given the experience and competence he had demonstrated when he had worked in the framework of the Soteria Solutions contract. The following phase, which was never completed, would have been for the Human Resources Branch to submit the recommendation for the Secretary General's approval. As a general rule, the Secretary General was simply informed by the section concerned of the preferred candidate, since the staff in that section were the specialists in their domain. This answer had therefore surprised the Auditor, since the approval of the Secretary General had been clearly requested on 11 June 2008 and the Secretary General had given that approval in writing six days later. However, when consulting C/HRB on the preliminary verifications of Mr. Souka's qualifications, the Auditor had been told that there had not been any preliminary verifications since the Secretary General's approval had not been obtained. That statement was clearly erroneous. In any event, the recommendations of the ICT Section would have sufficed to give Mr. Souka the contract.

59. The Representative of the Republic of Korea understood why Mr. Samson was receiving additional compensation, but wished to know if the Secretary General had ever considered requesting the Quebec Government to pay it. The Secretary General indicated he had decided to give Mr. Samson additional compensation for the reasons which he had explained earlier, and wished to add that this had been done in coordination with C/HRB, D/LEB and C/FIN. In order to be able to pay that compensation it had been necessary to amend the contract, and that had been at the recommendation of D/LEB, and not Mr. Elamiri as indicated in the report. On this point, the External Auditor indicated that an e-mail from Mr. Samson to C/HRB made reference to a proposal made to the Secretary General by Mr. Elamiri. It was thus Mr. Elamiri who had made the proposal for additional compensation. As regards retroactivity, under the terms of that MoU, Mr. Samson was not to receive financial compensation when he was on leave. Because of the unpaid leave, Mr. Samson's compensation was reduced by 25 per cent, from \$54,877 to 41,158.

60. The Representative of Spain found it unfortunate that the Council was discussing this subject at all. Members of the Council were responsible for safeguarding the prestige of the Organization and for mitigating both economic risks as well as public image risks. Without any doubt there were some individuals who were guilty for this embarrassing situation, and there was a need for a change in the procedures. From the conclusions of the External Auditor, the Representative of Spain had been able to draw two main ideas. Firstly, there had been a lapse in the sharing of information on the part of Mr. Samson as well as on the part of the Ministry of Finance of Quebec. Secondly, there was a lack of procedures for allocating responsibilities to secondees, who were not recruited following the rigorous process to which other members of the Secretariat were subjected. The Representative of Spain was extremely worried about the fact that there were secondees assigned responsibilities at the highest level of the Organization, as had been pointed out by the External Auditor. The Representative of Spain supported the proposal to set up a special

group. It would be necessary to establish the codes for recruitment, verification, and allocation of responsibility for consultants as well as secondees.

61. The Representative of Venezuela noted that the report of the External Auditor used the word “omission” repeatedly, which meant that the standards of the Organization had been jeopardized. Damage could be caused to the reputation of ICAO notwithstanding the best of intentions. The Representative of Venezuela supported the views offered by the Representative of Spain regarding the need to establish clear responsibilities so that the situation did not arise again in the future, as well as the proposal put forward by the Representative of Australia and the comments made by the Representative of Brazil.

62. The Representative of Namibia thanked Canada and the RCMP for having unveiled this problem, because it appeared that without the RCMP, this person could still be employed by the Organization with some unfortunate consequences. During the last session (184/5), when summarizing the views which had been offered following the Secretary General’s report, the President of the Council had observed that most Representatives had spoken for the need for an additional investigation to be carried out immediately. That investigation should have been carried out by the Internal Auditor of ICAO who was to be joined by the External Auditor. The report should therefore have been tabled jointly. The Representative of Namibia wished to know if the Chairman of the Finance Committee had consulted with the Secretary General to work out the modalities on the involvement of the External Auditor. The first draft of the report of the External Auditor, which included many paragraphs deleted in the final version, should perhaps be provided to the group that would be established by the Council. The External Auditor indicated that it would not be possible to communicate his draft report. As regards the Internal Auditor, the letter of the Secretary General had requested the External Auditor to work hand in hand with the Internal Auditor in order to avoid overlapping. The Internal Auditor was, however, within the hierarchy of the Organization, whereas the External Auditor was completely outside the organization. The Internal Auditor had not been able to participate in all of the meetings because he had been occupied with other activities.

63. The Representative of South Africa asked that the group which would be established look at the questions raised by the Representative of Namibia, and that it pay particular attention to paragraphs 9, 17, 22, 25, 27, 34, 35, 57, 58, 60 and 61 of the External Auditor’s report.

64. The Representative of India believed that the report of the External Auditor was an excellent report which laid the foundation for further action. The group would make recommendations to the Council for further action, and the Representative of India hoped that the Council would make further decisions and pass them on to the Secretary General for implementation. Implementation of the recommendations of the working group would be based on the External Auditor’s report, and further questions, answers and public records would be implemented under the oversight of the Council. The report of the External Auditor represented only the tip of the iceberg. In fact, there was an organization-wide reflection on human resources, procurement, people acting beyond their jurisdictions, employees working before their contracts took effect, security, and improper payments. The Representative of India hoped that the clarifications provided at this meeting would not be considered definitive. They would be further examined by the group, which would come up with its recommendations. In reading the report one could see that there were lapses, irregularities, violations, and non-adherences to the rules, regulations and policies at all levels in the Organization. The working group would identify the individuals who had played a role, and who have not adhered to policies, rules and regulations. The group would also make recommendations for future policies so that such events did not recur, would work in the time-bound fashion which had already been agreed to, and the Organization would be rejuvenated and work more efficiently in the future.

65. The Representative of Ecuador observed that an audit, by its nature, almost always revealed unfortunate circumstances as had just been pointed out by the Representative of India. What was absolutely essential to the dynamics of the institution was an analysis of the processes. Many aspects of the processes needed to be improved upon. The Representative of Ecuador therefore supported the establishment of a group which would deal with the processes. The task of the group would be much clearer when Representatives transmitted their questions and concerns to it. The Representative of Ecuador supported the proposals which had been put forward by the Representative of Argentina. What was important was the spirit in which the audit would be carried out. It was not necessary to go into details such as the different means of processes and procedures, and the Council should not be too judgemental or punitive. The Representative of Ecuador wished to support the criteria set forward by the Representatives of South Africa, Egypt and Nigeria. Greater transparency was needed at ICAO and would significantly improve the Organization's work.

66. The Representative of Switzerland recalled that a presentation had been made earlier in the year by the Human Resource Branch on the ICAO recruitment processes. At that time, he already had concerns about existing informal recruitment processes within the Organization. He had been told at that time that no informal recruitment processes existed. It did not matter whether the term "recruitment" was used or "appointment", "reassignment" or "secondment"; the External Auditor's report confirmed that at least for three cases dealt with in the report, informal recruitment processes did exist. His concern was that there may be other cases within ICAO where staff members had been recruited according to similar informal recruitment processes. There was work not only for the special working group but also for the Human Resources Committee in dealing with the issue.

67. The Representative of Switzerland observed that independent from the form of recruitment, all ICAO staff, and particularly those paid fully or partly from ICAO funds, were supposed to be in possession of a work contract signed by the Secretary General or the Human Resources Branch. Although the External Auditor's report provided a lot of information on the recruitment of the two persons in question, it would have been appropriate to provide, within the report and in the interest of transparency, copies of the work contracts or the MOUs, as well as descriptions of tasks, including obligations and responsibilities of these persons.

68. The Secretary General indicated that there were three types of seconded staff, each with well-defined policies governing their recruitment. These three types and the policies which governed them were as follows. a) *ex-gratia* personnel: in such cases States made available to ICAO experts for a period of time determined by the State in question, seconded to ICAO to work in a specific department of the Organization. The State continued to pay the seconded employee all of his emoluments and expenses associated with his assignment to ICAO. Once seconded to ICAO, the expert was considered a staff member of the Organization for the entire duration of the loan. The staff rules and regulations applied to the expert in question, including those pertaining to performance management. b) experts made available to ICAO in a field determined by the State: that decision was sometimes left to ICAO, but the field of specialization of the expert determined where he or she would be assigned to work. According to this formula the country paid into the ICAO coffers the amount equivalent to the salary and all of the relevant benefits of the staff member. The staff rules applied to this category as well. c) associate or junior officials: people in this category were similar to those under b), the only difference being that junior professionals, although they contributed to the work of ICAO, at the same time had an opportunity to get training for their field of speciality. They came to ICAO with scarcely more than two to four years of work experience. There was also a separate category of trainees who came to finish their training in ICAO. Some were sponsored by their governments, while others are referred by universities. In this case ICAO had the same policy as the United Nations, and a circular was

available on the subject. A copy could be made available to the External Auditor on request. Finally, in the trainee category, and given the budgetary problems of ICAO, the Secretary General had recently launched a pilot trainee project to assist various areas of ICAO, be it finance, computers, or general administration. A policy had been established for this pilot project, the results of which would be considered after one year of implementation.

69. The Representative of the Dominican Republic supported the proposal of the Representative of Australia to set up a group which would work towards enhancing the objectives of the Organization. He could not but stress the fact that the External Auditor who had been called upon to play this role had an obligation to present to the Council all the different facets of the problem which had to be taken into consideration. This was his direct responsibility pursuant to Article 54 of the Convention, and the Council was bound by that Article. The External Auditor had to respect his terms of reference but in so doing it was better to sin by excess rather than by omission.

70. The Representative of the United Arab Emirates wished to support the words of caution which had been offered by the Representative of Nigeria regarding the need to avoid turning this issue into a cross-examination. His Delegation would have some questions to ask the Secretary General and the External Auditor in order to really determine the facts.

71. The Representative of France thanked the Representatives of the Russian Federation and Spain for having spoken to the Council's obligations. The Organization needed to have the confidence of States. The Council was elected by the Assembly and it had a duty to all Contracting States to protect the reputation and ensure the proper functioning of the Organization. Those were the two criteria which should govern the work of the group set up by the Council to look at this.

72. The President of the Council observed that the proposal of the Representative of Australia that he had read out at the beginning of the meeting had been very well supported. The group would have to take into consideration this meeting's debate, the comments of the Secretary General and those of the External Auditor. The group would report to the Council, and the Council would take decisions on how to proceed. The group would be composed of the Representatives of Australia, Brazil, France, India and Nigeria. The President assured the members of the group of his assistance as well as that of the Secretary General.

73. The Representative of Saudi Arabia indicated that he fully respected the Representative of France, and was impressed with his work in the various activities of the Organization, but had reservations regarding his being a member of the group since the External Auditor was of the same nationality.

74. The Council agreed to the establishment of the special working group and the course of action described above.

75. The meeting adjourned at 1300 hours.

COUNCIL — 185TH SESSION

SUMMARY MINUTES OF THE THIRD MEETING

(THE COUNCIL CHAMBER, MONDAY, 27 OCTOBER 2008, AT 1430 HOURS)

OPEN MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

Argentina	— Mr. A.M. Singh	Mexico	— Mrs. D. Jiménez Hernández (Alt.)
Australia	— Mr. P.K. Evans	Namibia	— Mr. B.T. Mujetenga
Brazil	— Mr. R.S. Magno	Nigeria	— Dr. O.B. Aliu
Cameroon	— Mr. E. Zoa Etundi	Republic of Korea	— Mr. G.-S. Shin
Canada	— Mr. L.A. Dupuis	Romania	— Mr. C. Cotrut
China	— Mr. Tao Ma	Russian Federation	— Mr. A.A. Novgorodov
Dominican Republic	— Mr. C.A. Veras	Saudi Arabia	— Mr. S. Hashem
Ecuador	— Mr. I. Arellano Lascano	Singapore	— Mr. K.P. Bong
Egypt	— Mr. S. Elazab	South Africa	— Mr. T. Peege
El Salvador	— Mr. J.A. Aparicio Borjas	Switzerland	— Mr. D. Ruhier
France	— Mr. J.-C. Chouvet	Tunisia	— Mr. I. Sassi
Germany	— Mr. J. Mendel	Uganda	— Mr. J. Twijuke
Ghana	— Mr. K. Kwakwa	United Arab Emirates	— Mr. J. Haidar
Iceland	— Mr. H. Sigurdsson	United Kingdom	— Mr. M. Rossell
Italy	— Mr. F.P. Venier	United States	— Mr. D.T. Bliss
Japan	— Mr. S. Baba	Uruguay	— Mr. J.L. Vilardo
Malaysia	— Mr. S.-C. Kok	Venezuela	— Mr. D. Blanco Carrero

ALSO PRESENT:

Mr. A. Romera (Alt.)	— Brazil
Ms. S. Chambers (Alt.)	— Canada
Mr. Chunyu Ding (Alt.)	— China
Mrs. V. Pichinte Chacón (Alt.)	— El Salvador
Mr. P. Pape (Alt.)	— France
Mr. F. Christensen (Alt.)	— Iceland
Mr. P. Ciancaglioni (Alt.)	— Italy
Mr. W. Yoshioka (Alt.)	— Japan
Mr. W.-S. Seo (Alt.)	— Republic of Korea
Mr. H.-J. Yoo (Alt.)	— Republic of Korea
Mr. A.A. Alharthy (Alt.)	— Saudi Arabia
Mr. P.D. Fleming (Alt.)	— United Kingdom
Ms. L. Faux-Gable (Alt.)	— United States
Mr. H. Dávila (Alt.)	— Uruguay
*Mr. N. Jobim, Minister of Defense	— Brazil
*Mr. T. Fenoulhet (Obs.)	— European Commission

SECRETARIAT:

*Mr. D. Wibaux	— D/LEB
*Ms. N. Graham	— D/ANB
*Mr. R.J. Heighes-Thiessen	— D/TCB
*Mrs. F.A. Odutola	— D/ATB
*Dr. Fang Liu	— D/ADB
*Mr. P. Lamy	— DD/ANB
*Mr. M. Fox	— C/FLS
*Mr. A. Quiroz	— C/ASA
*Mr. R. Lambo	— C/ISD
*Mr. S. Berti	— C/SFP
*Mrs. H. Biernacki	— TO/SFP
Miss S. Black	— Précis-writer

*Part-time

Welcome to the Minister of Defence of Brazil

1. The President of the Council extended a warm welcome to the Brazilian Minister of Defence, Mr. Nelson Jobim, and his delegation, who were visiting the Organization. Mr. Jobim then addressed the Council, providing an overview of the important air transport activities in Brazil. In thanking Mr. Jobim for his presentation, the President expressed satisfaction that those activities were closely in line with ICAO's Strategic Objectives.

Welcome to new Representatives on the Council

2. The President of the Council also extended a warm welcome to Mr. A.M. Singh, Mr. E. Zoa Etundi and Mr. S. Baba, who were attending a meeting of the Council for the first time in their respective capacities as Representatives of Argentina, Cameroon and Japan. He also thanked Mr. M.A. Mbeng, the former Representative of Cameroon, for his co-operation and support during his tenure.

Subject No. 13: Work programmes of Council and its subsidiary bodies

Schedule for consideration of items during the 185th Session of the Council

3. The Council noted the meeting schedule for the 185th Session and the schedule for the consideration of items presented in, respectively, President's memoranda PRES RK/1564 dated 17 July 2008 and PRES RK/1602 dated 10 October 2008.

Subject No. 19.1: Reports by the President of the Council

Report on activities during the recess

4. Tabled for consideration was C-WP/13220, in which the President of the Council reported on activities during the recess, ICAO meetings held at Headquarters and missions undertaken by him and by the Secretary General.

President's mission to Australia

5. Referring to paragraph 18 of the paper, the President elaborated on his mission to Melbourne and Sydney, Australia from 15 to 18 October 2008, which he had undertaken at the invitation of the Government of Australia and in the company of the Representative of Australia on the Council. The main purpose of his visit had been to address the 2008 Sir Lawrence Hargrave Lecture at the Melbourne Branch of the Royal Aeronautical Society, a copy of which was available on the ICAO website, and to meet with high-level government and aviation officials.

6. In Melbourne, the President had met with members of the Aviation Policy Group (APG), which comprised the Secretary of Infrastructure, Transport, Regional Development and Local Government of Australia, the Chief Executive Officers (CEO) of the Civil Aviation Safety Authority (CASA) and of Airservices, and the Chief of the Royal Australian Air Force. An executive briefing had been held with members of the Aviation Safety Foundation Australasia (ASFA) and the Flight Safety Foundation (FSF), during which time views had been exchanged on issues related to safety, security, the environment, safety management systems, and training. The President had also met with officials from the Civil Aviation

Authorities of Papua New Guinea and representatives from the Pacific Aviation Safety Organisation (PASO). They had discussed possible measures to improve safety, the co-operation received from the Government of Australia and problems with the establishment of PASO. During their discussions, a special concern had been expressed regarding a lack of contact with the Asia and Pacific Regional Office. The President had also met with the Director General of Civil Aviation (DGCA) of Indonesia, with whom he had exchanged views on ways to enhance aviation safety. During his visit, the President had been afforded the opportunity to visit The Australian Advanced Air Traffic System and Training Facility (TAATS) at Melbourne Airport and Virgin's flight operations facilities.

7. In Sydney, the President had met with the Minister for Infrastructure, Transport, Regional Development and Local Government.

8. The President noted that, during all of the above meetings, discussions had focussed on ICAO's safety and security audit programmes, training, technical co-operation, environmental issues, the shortage of skilled aviation human resources and voluntary contributions to the aviation security programme. He had seized the opportunity to thank Australia for recently joining the Co-operative Aviation Security Programme (CASP) and for its voluntary contribution in the amount of CDN 35 400 to support ICAO's environment related activities.

9. The President thanked the Representative of Australia for all the arrangements he made for the successful visit.

President's mission to Sierra Leone

10. The Director of the Air Navigation Bureau (D/ANB) provided updated information regarding the mission which the President had undertaken to Freetown, Sierra Leone from 31 July 2008 to 1 August 2008 in the company of D/ANB and the ICAO Regional Director, Western and Central African Office (*cf.* paragraphs 9 to 13 of the paper).

11. D/ANB noted that they had had the opportunity to meet with many government officials, including the Head of State, and had had a very effective meeting regarding what action needed to be taken to provide Sierra Leone with the capability to oversee its air transportation system. They had been supported by the Governments of the United Kingdom, the United States and Nigeria in their meetings with the Transport Minister of Sierra Leone and his staff. Regrettably, the day after their departure the Minister of Transport and Aviation had been dismissed and replaced. The Director of Civil Aviation (DCA) had been transferred to the Roberts Flight Information Region (FIR) and the new Minister of Transport and Aviation had requested support from ICAO in terms of recommendations to fill the DCA position.

12. The Technical Co-operation Bureau (TCB) had developed a project which had been signed by the Government of Sierra Leone and which consisted of three phases. The initial phase involved putting in place two operational assistance (OPAS) inspectors. Those inspectors had been selected and would very shortly be en route to Sierra Leone to support the Government. The second phase of the project was focused on the documents (certificates, licenses, *etc.*) that were necessary to put the Government back in a position to provide oversight with the said OPAS inspectors. The third phase of the project was to have the competent, fully-trained staff available and in a position to provide direct oversight for Sierra Leone. Since the President's mission, the Civil Aviation Authority had entered into an agreement with the Russian Federation to have Russian-registered helicopters provide services between Sierra Leone's airports, with the Russian Federation providing the appropriate oversight for those helicopters. ICAO continued to liaise with

Sierra Leone to provide support and looked forward to the arrival of the OPAS inspectors. Responding to a query by the Representative of India, D/ANB clarified that the said project would cost some \$800 000. The first phase would take from three to four months to implement, with the OPAS inspectors staying as long as necessary to assist the Government of Sierra Leone. The overall project would last one year.

13. Responding to a query by the Representative of France regarding the progress made by Indonesia with respect to the USOAP findings following his mission, the President of the Council noted that an Act providing the Civil Aviation Authority of Indonesia with the legal framework and additional human and financial resources required had been presented for the Congress' approval. Indonesia was also making important progress with regard to the training of inspectors in the fields of safety oversight, airworthiness, *etc.* Observing that he would be on mission to Malaysia in November 2008 to address the 45th Conference of Directors General of Civil Aviation of the Asia and Pacific Regions, the President indicated that it had been agreed to also visit Indonesia to have a full review of the progress which that State had made. He would report to the Council on the outcome in due course.

Secretary General's mission to the United States

14. The Secretary General then provided additional information regarding his mission to New York, United States, from 23 to 25 October 2008 (*cf.* paragraph 7 of the paper). His mission had begun with the Food and Agriculture Organization of the United Nations (FAO) World Food Day 2008 celebration, whose theme had been "World Food Security: the Challenges of Climate Change and Bioenergy". The celebration had taken place at the UN with the participation of the UN Secretary-General Ban Ki-moon and former United States President Mr. W.J. Clinton, the guest of honour, who had given an excellent presentation in support of agriculture in developing countries.

15. On 24 and 25 October 2008 the Secretary General had attended the Second Regular Session of the United Nations System Chief Executives Board for Co-ordination (CEB) for 2008, which had dealt with climate change, energy, and the safety and security of personnel of the UN Specialized Agencies. The latter had been requested to redouble their efforts and their vigilance from the safety point of view.

16. The financial crisis had been at the core of the CEB deliberations. A Memorandum of Understanding (MOU) had been signed between the World Bank (WB) and the UN Secretariat. During the discussions, all had recognized that the situation was serious and that the crisis would have repercussions not only on developed countries but also on developing countries, with the most serious repercussions being on the poorest segments of the populations of the latter countries. The financial crisis, as well as the threat of a global recession and price volatility, threatened the very foundation of globalization. The CEB had committed itself to supporting the international community and to playing its role to strengthen and assist countries with a view to protecting their populations and employment.

17. The Secretary General had made a statement in his own personal capacity, in which he had emphasized that the current financial crisis was only the tip of the iceberg and that it was the developing world that would know its full extent. He had underscored that the developing world was one that was based on growth for the sake of growth and development for the sake of development, without taking into account the human element. Mankind had been disregarded, which was why at the moment there were some three billion people who had fallen below the poverty level and who lived on less than \$3 per day, two billion people who suffered from malnutrition, some 960 million people who suffered from hunger and tens of millions who died every year from hunger. Mankind's disastrous mismanagement of the planet had seen the destruction, over a few decades, of what nature had taken billions of years to create. It had led to the partial

destruction of fauna and flora, had affected biodiversity, which was considered to be the lungs of humanity, and had caused global warming. The CEB had agreed to work towards a type of development which would foster mankind, and at the moment the CEB was subject to the G-20 summit called by Mr. Sarkozy which would take place on 15 November 2008. In light of that planned summit, the CEB would prepare a response to prevent today's crisis from becoming tomorrow's disaster. The CEB would take proactive leadership among multilateral institutions to ensure a co-ordinated and comprehensive response on trade, development, employment, finance, humanitarian assistance, environment and the protection of global goals and norms to help with a fair and sustainable globalization.

18. In highlighting some of the points that the Secretary General had mentioned earlier in his discussion with the UN Secretary-General and other members of the CEB, the Representative of Canada underscored that the issue of security and protection of individuals in ICAO Headquarters was becoming an issue of paramount importance. Noting that the Secretary General and the host country, Canada, together with the RCMP, were looking into matters to make the building safer, he indicated that the Secretary General and Canada would soon inform the Council of new requirements regarding security. While recognizing that change was always a difficult thing to handle, the Representative of Canada requested that Representatives not challenge the decisions of the Secretary General and the RCMP as they were in support of collective security. Although some steps might be taken to perhaps restrict movement within the building, they would be done in full respect of Representatives' autonomy.

19. The Representative of Canada echoed the Secretary General's comments regarding the whole issue of humanity and the protection of marginalized groups. Recalling the speech which the Secretary General had made at the Conférence de Montréal earlier in the year in which he had spoken of the interest of aviation, he emphasized that Representatives should read his speech in the light of what was now happening in the world with regard to the current economic situation. In concluding, the Representative of Canada congratulated the Secretariat for its excellent work in addressing the case of Sierra Leone.

20. The Council noted C-WP/13220, as well as the information provided orally regarding the President's missions to Melbourne and Sydney (Australia) and Freetown (Sierra Leone) and the Secretary General's mission to New York (United States) (*cf.* paragraphs 18, 9 to 13 and 7 of the paper).

Subject No. 13: Work programmes of Council and its subsidiary bodies

Report on action taken to implement decisions taken by the Council during the 184th Session

21. The Council had for consideration C-WP/13226, in which the Secretary General presented a summary of the action taken to date to implement the decisions taken by the Council during its last (184th) session, as well as Council decisions taken during the 178th-183rd Sessions which took longer than one session to complete. It was noted that, during a discussion on 27 October 2008 between the President of the Council, the Secretary General and the Delegation of the United Arab Emirates, it had been decided, in light of time constraints, to convene the Diplomatic Conference on compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks at ICAO Headquarters in Montréal on the dates previously agreed by the Council, 20 April to 2 May 2009, and not in the United Arab Emirates (*cf.* C-DECs 184/6 and /7).

22. Responding to a query by the Representative of India regarding the application of Article 54 j) to security (*cf.* C-DEC 184/7), the Secretary General clarified that on 24 October 2008 an electronic bulletin (EB 2008/33) had been issued informing States of the procedure for transparency and

disclosure regarding significant compliance shortcomings with respect to security-related Standards and Recommended Practices (SARPs). Although issues such as the critical elements, security risk indicators and the concept of significant safety concerns had been included in the Agenda of the Twentieth Meeting of the Aviation Security Panel (AVSECP/20), to be held in Montréal from 30 March to 4 April 2009), the said procedure was now applicable.

23. The Representative of Egypt noted, in this context, that his State had signed the revised Memorandum of Understanding (MOU) for aviation security audits conducted under the Universal Security Audit Programme (USAP) and that the said Article 54 j) procedure would therefore apply to Egypt when it was audited.

24. To a point raised by the Representative of Saudi Arabia regarding the report on the impact of the 2008-2010 Budget on the provision of language services (*cf.* C-DECs 184/4 and 184/8), the Director of the Bureau of Administration and Services (D/ADB) noted that the following action had been taken: a memorandum had been sent to the Secretary General seeking approval for the retention of some staff members in the Language and Publications Branch (LPB) who were to have had their contracts terminated at the end of the year; the Vacancy Notice for the post of Chief, LPB (C/LPB) approved by the Human Resources Committee (HRC) had been posted on the ICAO website to initiate the recruitment process; the Secretary General had, in the meantime, appointed the Chief of the Russian Section as the Acting C/LPB; some temporary personnel had been hired to fill some other vacant posts in LPB; some adjustments had been made regarding the staffing of the Russian and Arabic Sections; and some staff members in the French Section who were to have had their contracts terminated at the end of the year would be retained for the whole triennium under the Temporary Staff Salaries Fund (TSSF). D/ADB emphasized that efforts were being made to ensure the same level of service for each of the Organization's six working languages.

25. Underscoring that 43 posts had been abolished from LPB, the Representative of the Russian Federation stressed that the Council, in presenting its budget proposal for the 2011-2013 triennium to the Assembly for approval, should highlight that the current budgetary constraints had caused serious problems in the provision of language services. Averring that the said posts should not have been abolished, he assured D/ADB that his Delegation would co-operate with her to resolve any problems relating to the provision of Russian language services.

26. The Council then noted C-WP/13226. In addition, further to suggestion made by the Representative of the United States regarding the Council's earlier decision (184/6) to refer Rule 31 of the *Rules of Procedure of the Legal Committee* (Doc 7669-LC/139/5) to the Working Group on Governance (Policy) for consideration and report to the Council, the Council requested that that Working Group also review, and report on, the process for electing the officers (Chairman and Vice-Chairmen) of the Legal Committee with a view to establishing a more systematic and effective approach (*cf.* Rule 6).

Subject No. 14: Subjects relating to air navigation

Progress report on the issue of flags of convenience

27. Further to a request dated 21 October 2008 from the Office of the European Commission in Montréal, which had been circulated under cover of the President's e-mail of the same date, the Council, in accordance with Rule 32 a) of its Rules of Procedure (Doc 7559), agreed to invite the European Commission to participate as an observer in the consideration of this item. Pursuant to the decision taken by the Council during its review of a report by the Air Navigation Commission (ANC) on the issue of flags of convenience

(183/6; C-WP/13133), an oral progress report was then given by the Chief of the Flight Safety Section (C/FLS) on the development of an international registry of air operator certificates (AOCs).

28. C/FLS noted that the project had two phases: Phase I consisted of the implementation of a database to collect the AOC and operations specifications content required under Annex 6 (*Operations of Aircraft*) from the States of the Operator. Phase II, which would take place when the AOC international registry was used on a regular basis, consisted of the definition of an additional data set and associated registry functionalities, to provide sufficient data to facilitate international civil aviation operations and their surveillance. As it was a large-scale project with multiple stakeholders, it had been decided to put some risk mitigation measures in place. A three-phased approach was being followed. The first phase, which was currently underway, consisted of the identification of core data and business rules; the second phase, project planning, approval and funding; and the third phase, development, data testing and operational implementation. In emphasizing that extra-budgetary resources were required for the project, C/FLS underscored that it was necessary to reach out to both States and industry to assist ICAO in the development of the international registry of AOCs.

29. While supporting the idea of ICAO managing such an electronic database, the Representative of Switzerland expressed doubts regarding its quick establishment given the low level of States' responses to the Organization's State letters. Furthermore, he presumed that the coverage of the international registry of AOCs would be difficult and that it would hardly compete with existing industry databases. The Representative of Switzerland cited, in this context, a database which had been established in 1966 and which currently comprised 197 States, 6 000 air operators and 60 000 aircraft. The related book, issued annually, was a widely-used work tool of government and industry organizations including the Federal Aviation Administration (FAA) of the United States, Airbus, and civil aviation and airport authorities. The data in the said book was also available in electronic format and was well-distributed to customers or license holders with monthly updates. The Representative of Switzerland urged the Secretariat to look into the possibility of establishing the ICAO international registry of AOCs on the basis of, and using, existing data collections and of having that existing data only validated by States.

30. Indicating that that was a very important point, C/FLS underscored that in order to achieve an international registry of AOCs ICAO would need to partner with many different organizations. He noted that the Secretariat had done some partnership with the international registry of civil aircraft, which covered between 70 to 80 per cent of aircraft that were involved in international operations. While there had to be some tailoring to make sure that the latter served the needs of the regulators, the Secretariat nevertheless welcomed those types of partnerships as they would be the only way to achieve such a large-scale project.

31. Responding to a query by the Representative of Nigeria, C/FLS noted that the ICAO International Aircraft Information System (ILAIS) established pursuant to Article 21 (*Report of registrations*) of the Chicago Convention was in the final stage of testing, which was expected to be completed by the end of November 2008. A State letter would then be issued advising States that the ILAIS was in place and that it would be governed by the rules established by the Council.

32. Referring to the comments made by the Representative of Switzerland, the Representative of France enquired whether the existing industry database could be of practical use to ICAO and whether any initiatives been taken to access it. Noting, from the oral report, that the new requirements of the European Aviation Safety Agency (EASA) for air operations within the EU would be taken into account in determining additional optional data fields for the international registry of AOCs, he indicated that it would be of interest for the Observer from the European Commission to provide the Council with some information on EASA's

practices to prevent the operation of flags of convenience. The Representative of India agreed that such information would be very helpful to the Council in taking further action on that issue.

33. To a question raised by the Representative of India, C/FLS clarified that, while the aviation sector had not advanced to the same point as the maritime sector, which allowed ships to be held in a port for safety reasons, Annex 6 had been strengthened as regards operational situations. In addition, under Annex 8 (*Airworthiness of Aircraft*), there were certain actions that the State of the aerodrome could take if an aircraft were suspected to be damaged. However, a substantial amount of study of means to further empower States to take appropriate action regarding foreign air operations within their territory when necessary to preserve safety was still required and the Secretariat did not currently have the resources available therefor.

34. While the Representative of the United Kingdom agreed that there was an essential need to ensure that it was possible to trace aircraft as they move around the world, he reiterated that there were already many existing databases which did just that. The only problem with those databases was that there was no unique identifier for all aircraft habitually involved in international civil aviation. The Representative of the United Kingdom therefore wondered whether it would be better if ICAO were to assist the industry by providing some format for establishing the unique identifier and allowing the commercial organizations to continue to do what they did best and for ICAO to do what it did best, which was to set the international regulatory framework and, having done that, being able to use that information more effectively for the reasons that we have discussed with respect to flags of convenience. While appreciating that the work was being funded by the International Air Transport Association (IATA), the Representative of the United Kingdom was concerned that ICAO might be spending a lot of time and energy trying to reinvent the wheel. Noting that *Janes* contained a massive amount of information, he questioned whether ICAO really wanted to get into the business of recreating that information with a few additional refinements, averring that it was better to establish those refinements so that *Janes* could then include it in its documentation.

35. C/FLS emphasized the need to differentiate between the ILAIS, which would contain records of aircraft that were habitually involved in international civil aviation, and an international registry of AOCs. As it pertained to the Article 21 element, besides the listing of the aircraft, there were two pieces of information that were vitally important as tools to reduce the number of flags of convenience: ownership and control. The Council had felt strongly that the establishment of an international registry of AOCs was something that ICAO should undertake.

36. Underscoring the importance of the project, the Representative of the United States emphasized the need to think more carefully about the role of ICAO and what value the Organization added to what was already available and how it could work more effectively with other organizations that were meeting part of the need for such information. He suggested that a meeting be held with manufacturers to discuss the issue of a unique identifier. While appreciating the funding by IATA, the Representative of the United States enquired how ICAO ensured the independence of the Secretariat's work, given ICAO's limited financial and human resources, if it was funded by an association of air carriers.

37. In response to comments made by the Representatives of France and India, the Observer from the European Commission provided some information on how the European Community had been addressing the issue of flags of convenience, specifically, on the activities of EASA with respect to the Safety of Foreign Aircraft (SAFA) Programme. The European Community had developed three basic tools to address flags of convenience: first, it had a harmonized and standardized procedure for ramp inspections, which were undertaken by national Civil Aviation Authorities, of aircraft operated by foreign carriers landing in the European Community. That was carried out within the framework of the SAFA Programme

through which the national Civil Aviation Authorities in the EU Member States verified the compliance of foreign aircraft with ICAO SARPs. Within the framework of the same programme, European carriers were also checked but against the tighter EU rules. The data collected through the SAFA Programme also included data on the AOCs and the information contained in the AOCs of the foreign operations, including its validity; that was compiled and fed into the SAFA database. There was an administrative agreement with ICAO to allow the ICAO Secretariat access to that database. The European Community was very happy to be able to contribute in that way to ICAO's project.

38. The second tool that the European Community used to address flags of convenience was through the monitoring and investigation by EASA foreseen in the framework of the recent extension of the Agency's competencies. EASA would also issue safety authorizations to foreign carriers wishing to operate into the Community. Those are additional to any permits or authorizations delivered in the framework of bilateral air service agreements. The actual implementing rules had yet to be adopted by the European Commission, but those would address the precise requirements to be fulfilled in order for foreign carriers to receive these safety authorizations.

39. The third measure was taken with respect to individual or a group of carriers in application of Regulation (EC) No 2111/2005 of The European Parliament and of the Council of 14 December 2005 in the form of a partial or total ban in instances where individual carriers failed to resolve safety deficiencies in a sustainable manner and/or where authorities failed to exercise correctly their oversight over the carriers under their regulatory control. The aim of that measure was to ensure that ICAO SARPs were effectively in force and respected at all times. Fifty-three companies operating illegally had been reported as officially de-certified as a direct result of that measure.

40. In concluding, the Observer from the European Commission emphasized that safety oversight was an area where the European Community, acting through the European Commission, was ready to help States improve their overall safety situation by means of technical assistance and accompany them all the way along the implementation of appropriate corrective action plans and projects to resolve effectively any deficiencies with a view to ensuring an appropriate level of safety, be it to avoid or be taken off the list of banned carriers.

41. Referring to the issue raised regarding the database and the kind of information that it was ICAO's responsibility to provide versus that of industry, D/ANB indicated it was a very fair question, particularly given the budget environment in which ICAO found itself. As she did not see the Organization's financial situation changing much in the next triennium, she considered it important to find a balance between core activities that were necessary in terms of databases and those activities that could be carried out in partnership with industry. The Secretariat was now working on determining a core set of data that was necessary for ICAO to retain, as well as on consolidating some of the existing databases and establishing selected authorization for accessing the databases. Its proposed policy would be a fundamental consideration in preparing the draft Budget for the next triennium.

42. The Council noted the oral report on the development of an international registry of AOCs, on the understanding that a project plan proposal therefor, which would include deliverables, a timeline and resources required and which would be funded by IATA, would be presented to the Council for consideration during the 187th Session.

Subject No. 14.5: Safety oversight
Subject No. 52.1: Universal Security Audit Programme

Progress report of the Audit Results Review Board (ARRB)

43. The Council next heard an oral progress report by the Director of the Air Navigation Bureau (D/ANB) on the activities of the ARRB undertaken since its last report (*cf.* President's memorandum PRES RK/1552; C-WP/13107).

44. D/ANB noted that, since the last progress report, which had been circulated to Representatives during the 184th Session under cover of President's memorandum PRES RK/1552, six new States had been referred to the ARRB by the Safety Oversight Audit (SOA) Section, and four by the Aviation Security Audit (ASA) Section. As of 15 October 2008, a total of 36 States had been referred to the ARRB for review under the Universal Safety Oversight Audit Programme (USOAP) and 33 States under the Universal Security Audit Programme (USAP). Included in those numbers were 18 States that had been identified as being of concern to both Programmes.

45. Since the last report to the Council, the ARRB had held three regular meetings and one extraordinary meeting. In a little over a year and a half since its first meeting in March 2007, the Board had held a total of 21 regular meetings, as well as a number of extraordinary meetings to co-ordinate its activities with the Regional Offices and to address issues needing immediate attention. Noting that States that make adequate and sustained progress towards rectifying the deficiencies identified during the audit that had led to their referral to the ARRB were removed from the list of States referred to the Board, D/ANB indicated that, to date, 18 States had been removed from that list. It should be noted, however, that the referral and removal of States was a very dynamic process. For example, a State that was removed from the list for having addressed their deficiencies in the area of its safety audit might find itself re-referred soon thereafter due to problems related to a its security audit. That was the worst of all situations and it had happened. One State in particular was a good example of both the co-ordination involved in providing assistance and of the dynamism of the referral process. The State – State X – had been initially referred to the ARRB by ASA for having failed to produce an aviation security corrective action plan. After having been briefed by the Board, the ICAO Regional Director had met with the State's representative and arranged for assistance to be provided in developing an action plan. The action plan had now been completed and accepted by ICAO, while other forms of assistance were ongoing. However, the State had since also been referred to the Board by SOA as a result of the USOAP audit. A representative from the State had subsequently visited ICAO Headquarters to discuss its needs and an aviation safety corrective action plan has been submitted. The implementation of the State's corrective action plans was now being monitored.

46. Observing that the Implementation Support and Development (ISD) Section provided and co-ordinated a wide variety of support to States referred to the ARRB, D/ANB emphasized that it was a very important portion of the ARRB. ISD support included the conduct of fact-finding missions and inspections, usually through the Regional Offices, the provision of assistance in reviewing corrective action plans, the provision of guidance regarding the transfer of oversight responsibilities, the development and planning of assistance projects and the mobilization of resources in co-ordination with the Technical Co-operation Bureau (TCB), funding agencies and donor States. ISD also worked closely with TCB and ANB to identify and select technical experts to provide support to a number of States referred to the ARRB. Two assistance projects, which were just about to enter into implementation, entailed the deployment of Operational Assistance (OPAS) inspectors for the purpose of putting into place effective systems for operator certification and surveillance. In one case, ISD had conducted an assessment visit to the State in conjunction

with the Regional Office and, in collaboration with TCB, developed and planned the project and mobilized funding for its implementation. In the other case, ICAO had assisted in reviewing the State's corrective action plan and had helped to clarify and prioritize their safety focus. Subsequently, ISD, in collaboration with TCB, had developed and planned an assistance project that had been accepted and funded by the State. Pending the completion of arrangements for implementing the project, including the recruitment of technical experts, ISD and TCB had also arranged, at the request of the State, for a neighbouring Co-operative Development of Operational Safety and Continuing Airworthiness Project (COSCAP) to carry out an evaluation of the State's commercial air transport operators.

47. D/ANB noted that, in general, the initiation, planning, implementation and monitoring of projects that resulted from the recommendations of the ARRB entailed close collaboration between the various Offices and Bureaux in the Secretariat, including ISD, ANB, TCB and the Regional Offices. Those projects usually entailed a series of planning and review meetings with the recipient States and interaction with donor States for the mobilization of financial resources. In one case, funding had also been successfully negotiated with the International Financial Facility for Aviation Safety (IFFAS) for the funding of a safety oversight project. She indicated that, of the 36 States identified by the ARRB for safety concerns, 13 were being closely monitored and the other 23 were in various stages of support and implementation. D/ANB underscored that, in the interest of full transparency, it would be helpful if she could mention, at least orally, the names of the States referred to the ARRB under the USOAP. It was challenging to mention State X and State Y and she often did not feel that she was giving the Council all of the information that she should. D/ANB was, of course, restricted by the Council's guidance. Her proposed change would allow her to give the Council additional details of the assistance being provided to specific States and would facilitate the securing of assistance for those States which required it. Consequently, D/ANB requested that the Council reconsider its previous decision (182/11) that the names of States referred to the ARRB under the Universal Safety Oversight Audit Programme (USOAP) should not be disclosed in ARRB activity reports.

48. The Representative of France emphasized that there was a contradiction between the decision of the Assembly to allow a wider distribution of the results of USOAP audits and the seal of secrecy on the disclosure of the names of States referred to the ARRB on the basis of those results to the Council elected by the Assembly. Affirming that it would be very useful for the Council to be informed of the names of those States which had been referred to be ARRB by the SOA, in order to take corrective measures, if necessary, or to learn whether they required assistance, he fully supported D/ANB's proposal, both on behalf of France and the European Union (EU).

49. The Representative of Saudi Arabia indicated that while he also endorsed the said proposal, he would have to consult with his national administration regarding the disclosure of the names of States referred to the ARRB on the basis of the results of USAP audits as airport security was a part of national security.

50. The Representative of Nigeria suggested that, as the Council was being requested to reconsider its earlier decision (182/11), and as the composition of the Council had changed in the interim, a paper on the subject should be presented for its consideration. He underscored that if the names of States were to be disclosed to the Council, then it should be done in a closed meeting.

51. In agreeing to D/ANB's proposal, the Representative of the Russian Federation stressed the need for utmost caution so as to avoid creating further problems for the States concerned.

52. While agreeing for the need for transparency, the Representative of India maintained that the Council should only be informed of the names of those States which were to be brought before it for consideration under the Article 54 j) procedure. He endorsed the proposal for a paper on the subject. In sharing this view, the Representative of Namibia underscored that the Council should only be informed of the names of States in a closed meeting.

53. The President of the Council stressed the need to take into consideration the fact that ICAO had received the approval of 190 States to publish the results of their USOAP audits on its public website.

54. In supporting D/ANB's proposal, the Representative of Egypt also endorsed the comments made by the Representatives of Saudi Arabia, Nigeria, the Russian Federation and India.

55. The Representative of Canada noted that, while he tended to share the views expressed by the Representative of France, he was also interested in the views of others, especially regarding the kind of safeguards that they wished to introduce into the process. He agreed with the President of the Council on the need to take into account the willingness of 190 States to have their names appear on ICAO's public website. The Representative of Canada also agreed on the need for a paper on the subject, based on the various interventions made, and on the disclosure of any names of States being made in a closed meeting. He was now being persuaded that only those States which were to be brought before the Council under the Article 54 j) procedure should be named as in multilateral diplomacy things were not accomplished overnight. The Representative of Canada was a believer in small steps and the ARRB determined possible small steps to assist States in rectifying their deficiencies.

56. In enquiring whether there were any States which had been referred to the ARRB which had not raised any subsequent concerns, the Representative of the United Kingdom underscored that, in the affirmative, it was difficult to publish their names as there was a certain stigma attached to such a referral. In the negative, then there effectively two categories: States on a watch list and States with significant safety concerns and where it was in the interest of the public at large to be aware of them. The Representative of the United Kingdom considered that the Council needed to be made aware, in a closed meeting, of the names of those States on the watch list and the general public needed to be aware of those which had significant safety concerns. D/ANB noted, in this regard, that the Secretariat had for many months been working with the two lists referred to by the Representative.

57. Underscoring that the Council needed specific information to better assess the effectiveness of ICAO's SARPs implementation strategy, both regarding successes and areas where more work was required and the assistance provided by donor States and industry, the Representative of the United States emphasized that it would assist it determining the allocation of resources. That was a critical role for the Council to play at a critical time for the Organization. Indicating that the Council should rely on the Secretariat to use good judgement on how the information was presented, the Representative of the United States suggested that a way forward would be to have information presented orally, as it had been during the present meeting, and in a closed meeting, so that it would be only for the consideration of the Council. The Council could work on that basis for a while and then develop some guidelines based on its experience on how to establish the procedure for the future.

58. Sharing this view, the Representative of Uganda indicated that he was ready to positively consider D/ANB's proposal when the envisaged paper was presented for the Council's consideration.

59. In also endorsing the approach suggested by the Representative of the United States, the Representative of Cameroon, who was a former safety oversight auditor, stressed the need for the Council to have a global overview of the safety situation. Emphasizing that some States were not in a position to remedy their deficiencies due to a lack of knowledge and not political will, he stressed that it was important for the Council to assist such States in an efficient manner.

60. The Representative of Singapore supported the constructive comments that had been made. He underscored that, in preparing the envisaged paper, D/ANB should take into consideration that there were six States whose names had been posted on ICAO's public website as having significant safety concerns, without much prior discussion, while Sierra Leone's name had not yet been posted thereon, despite the fact that the Council had discussed its safety situation at length, due to the structure of its MOU with ICAO on the conduct of its USOAP audit. The paper should propose a way to resolve that anomaly.

61. In noting the said oral report, the Council requested that the Secretary General present, for its consideration during the next (186th) Session, a paper proposing rules for the presentation of future ARRB activity reports taking into account the views expressed during the discussion, in particular, that the names of those States which had been referred to the ARRB under the USOAP should be provided orally in a closed meeting of the Council.

Other business

Subject No. 10: ICAO relations with the United Nations, the Specialized Agencies and other international organizations

Request from the European Commission to participate as observer in the Council's consideration of certain items during the 185th Session

62. The Council then considered the full request of the Office of the European Commission in Montréal dated 21 October 2008, circulated under cover of the President's e-mail of the same date, to participate as observer in the Council's consideration, during the current session, of certain items of special interest to the European Commission. A few Representatives had expressed reservations and requested that the issue be tabled under "Other business".

63. Underscoring that he respected the European Commission's interest in attending the meetings of the Council on various subjects, the Representative of Mexico emphasized that it was not the possibility of having an Observer from the European Commission present in the Council Chamber during the Council's deliberations that was at issue; rather, it was the participation of the Observer in the Council's discussions that was at issue. He averred that to give a voice to members of organizations, as opposed to members from Contracting States, would impinge on the principle of equitable geographical representation (EGR). The Representative of Mexico noted, in this regard, that some Member States of the European Commission were already represented on the Council. He further noted that, whereas in the past the Council had agreed that an Observer from the European Commission could participate in meetings of the Council when the latter considered certain subjects, participation by the said Observer had become increasingly frequent and included meetings when subjects related to the Organization's Strategic Objectives were discussed. Recalling that France currently held the presidency of the European Union (EU), the Representative of Mexico indicated that the Representative of France could express the views of the European Commission. Stressing the need to rationalize the participation by the Observer from the European Commission in the Council's meetings, he emphasized that he did not consider that it was relevant for the

latter to participate in many of the meetings, particularly those held in closed session. Noting that most of the Council's meetings were held in open session and were thus open to the public, the Representative of Mexico indicated that the Observer from the European Commission could be present at those meetings for certain agenda items if he so wished. If he wanted to share his expertise on a given item, then he could approach Council Members as provided for in the *Rules of Procedure for the Council* (Doc 7559). The Representative of Venezuela was of the same opinion.

64. The Representative of France underscored that the Observer from the European Commission met all of the requirements for an observer set forth in the said Rules of Procedure. He emphasized that any regional organization, whether a Latin American or African or some other regional organization, could request to have an observer present at Council meetings. The Representative of France noted that, while the EU could request an EU Member State represented on the Council to have a representative of the European Commission as an alternate representative on the Council and to have him participate in meetings in that capacity, it preferred to be transparent and to have an Observer from the European Commission attend meetings. He stressed the need to consider the issue on a case-by-case basis, taking into account the Rules of Procedure. The Representative of France maintained that it would be in the interest of each and every Council Member to receive firsthand information from the Observer from the European Commission on subjects for which he had direct responsibility. Reiterating that, from the legal point of view, there was no difficulty in having the Observer from the European Commission participate in Council meetings, he indicated that perhaps the latter should be more selective in his choice of agenda items. The Representative of France affirmed that the matter could be handled in a very pragmatic manner in the interests of all.

65. While understanding the concerns of European States and also that it would be beneficial to the Council to have the views of the European Commission on certain issues, the Representative of Nigeria stressed the need to find a way to resolve the matter that was fair to everyone, not only to Council Members but also to Representatives to ICAO who attended Council meetings and who might have the need or wish to take the floor. Noting that not all shared the same understanding of the provisions of the Rules of Procedure relating to the status of observers from international organizations or other bodies, he suggested that the latter be reviewed and amended as necessary. The Representative of Saudi Arabia supported this proposal.

66. The Representative of the United Kingdom indicated that the issue was worth referring to either the Working Group on Governance or a small group that could look into the legal ramifications. To the point raised regarding the status of other observers compared to the status of the Observer from the European Commission, he emphasized that the Council should not unfairly discriminate against the European Commission. He affirmed that it had a unique position as representative of an organization which was part of a Regional Economic Integrated Organization (REIO), which had a unique status in the UN system. It was thus far from being a simple question regarding an individual; it was a much bigger legal and policy question, one that the Council did need to investigate.

67. Sharing the views expressed by the Representative of Mexico, the Representatives of Argentina and Ecuador agreed that an in-depth review of the Rules of Procedure relating to the status of observers from international organizations or other bodies should be carried out.

68. In taking the action suggested by the President in light of the discussion, the Council requested that the Working Group on Efficiency review the *Rules of Procedure for the Council* (Doc 7559) relating to the status of observers from international organizations or other bodies and report thereon to the

Council. It was understood that, in the meantime, the President would consult with the Office of the European Commission in Montréal and send Representatives another memorandum by e-mail inviting their approval of the participation of the European Commission as observer during the Council's consideration of certain items during the 185th Session, subject to certain limitations.

69. The meeting adjourned at 1740 hours.

COUNCIL — 185TH SESSION

SUMMARY MINUTES OF THE FOURTH MEETING

(THE COUNCIL CHAMBER, WEDNESDAY, 29 OCTOBER 2008, AT 1000 HOURS)

OPEN MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

Argentina	— Mr. A.M. Singh	Mexico	— Mrs. D. Jiménez Hernández (Alt.)
Australia	— Mr. P.K. Evans	Namibia	— Mr. B.T. Mujetenga
Brazil	— Mr. R.S. Magno	Nigeria	— Dr. O.B. Aliu
Cameroon	— Mr. E. Zoa Etundi	Republic of Korea	— Mr. Shin, G.-S.
Canada	— Ms. S. Chambers (Alt.)	Romania	— Mr. C. Cotrut
China	— Mr. Tao Ma	Russian Federation	— Mr. A.A. Novgorodov
Dominican Republic	— Mr. C. A. Veras	Saudi Arabia	— Mr. S. Hashem
Ecuador	— Mr. I. Arellano Lascano	Singapore	— Mr. K.P. Bong
Egypt	— Mr. S. Elazab	South Africa	— Mr. T. Peege
El Salvador	— Mr. J.A. Aparicio Borjas	Switzerland	— Mr. D. Ruhier
France	— Mr. J.-C. Chouvet	Tunisia	— Mr. I. Sassi
Germany	— Mr. J. Mendel	Uganda	— Mr. J. Twijuke
Ghana	— Mr. K. Kwakwa	United Arab Emirates	— Mr. J. Haidar
Iceland	— Mr. H. Sigurdsson	United Kingdom	— Mr. M. Rossell
Italy	— Mr. P. Ciancaglioni (Alt.)	United States	— Mr. D.T. Bliss
Japan	— Mr. S. Baba	Uruguay	— Mr. J.L. Vilardo
Malaysia	— Mr. S.-C. Kok	Venezuela	— Mr. D. Blanco Carrero

ALSO PRESENT:

Mr. S.R. Prado (Alt.)	— Argentina
Mr. A. Romera (Alt.)	— Brazil
Mr. Chunyu Ding (Alt.)	— China
Mr. F. Christensen (Alt.)	— Iceland
Mr. W. Yoshioka (Alt.)	— Japan
Ms. L. Faux-Gable (Alt.)	— United States
Mr. H. Dávila (Alt.)	— Uruguay

SECRETARIAT:

*Mr. D. Wibaux	— D/LEB
*Ms. N. Graham	— D/ANB
Mrs. F.A. Odotola	— D/ATB
*Dr. Fang Liu	— D/ADB
*Mr. J. Maguire	— C/EAO
*Mr. V. Gapakov	— A/C/LPB
*Dr. R.I.R. Abeyratne	— Coordinator, AT Programmes
*Mr. A. Quiroz	— C/ASA
*Mr. R. Lockie	— ASA
*Mr. R. Lambo	— C/ISD
*Mr. S. Berti	— C/SFP
*Mrs. H. Biernacki	— TO/SFP
Mrs. C. Rideout	— CSO

*Part-time

Subject No. 15.6: Civil aviation statistics**Convening of the Tenth Session of the Statistics Division**

1. The Council considered the above subject on the basis of C-WP/13227, in which the Secretary General proposed the convening of the Tenth Session of the Statistics Division in October 2009, and an oral report thereon by the Air Transport Committee (ATC).
2. In taking the action proposed in C-WP/13227, as amended, the Council:
 - a) noted that the Air Transport Committee had agreed to convene STAP/14 in Montréal from 23 to 27 March with the agenda set forth in Appendix B to the paper;
 - b) agreed that the Tenth Session of the Statistics Division be held at ICAO Headquarters in Montréal from 13 to 16 October 2009, working as a single body; and
 - c) agreed that the said Statistics Division meeting work in all six ICAO languages.

Subject No. 52: Unlawful interference with international civil aviation and its facilities**Organization and Programme for the Twentieth Meeting of the Aviation Security Panel (AVSECP)**

3. The Council considered this subject on the basis of C-WP/13262 presented by the Secretary General and an oral report thereon by the Committee on Unlawful Interference (UIC).
4. The Representative of China noted from the Executive Summary of C-WP/13262 that Chinese was not one of the working languages for the AVSECP/20. Although China was not a member of the Panel, it had sent an observer at previous meetings. Given the meeting's importance, he suggested that Chinese interpretation be provided, if at all possible.
5. The Representative of India noted that as part of the proposed agenda for the twentieth meeting, the AVSEC Panel would review a report of the New and Emerging Threats Working Group. He recalled that this work on the new and emerging threats was also being handled in the Legal Committee and had probably been referred to a sub-group. The Representative of India sought assurances that the two processes, one involving an international legal framework and the other the preparation of new SARPs for Annex 17, would be coordinated. The Representative of India also noted that as part of its consideration of Agenda Item 4 (Universal Security Audit Programme), the Panel would be invited to consider related issues such as critical elements and security risk indicators. He wished to know if the Panel would also be briefed about the decision of the Council on Article 54 j) and the process which had been adopted. The Panel would have to be briefed on that subject if it was to examine the issue of critical elements. The last point which the Representative of India wished to raise concerned the fact that the *Ad Hoc* Group of Specialists on the Detection of Explosives had recently considered the new technologies that were being developed to screen explosives. He wished to know if the report of the IETC and the *Ad Hoc* Group would be provided to the Panel to update it with regard to new technologies.

6. Responding to the points raised by the Representative of India, C/FSP gave assurances that the work of the Legal Committee on new and emerging threats would be made available to the AVSEC Panel's Working Group. That Working Group had not yet met, but it would be meeting in the near future in preparation for the next Panel meeting scheduled for the end of March 2009. With regard to the Council decision on Article 54 j), all States had recently been informed of the situation by means of an electronic bulletin, and Panel members would be informed directly as well by electronic mail. The Secretariat would also submit a report on the meetings of the *Ad Hoc* Group on the Detection of Explosives and the IETC to the AVSEC Panel after those reports were considered by the UIC and the Council.

7. Referring to the agenda for the AVSECP/20, the Representative of Switzerland recalled that at its previous meeting, the Council had noted that preparations were underway for the Aviation Security Conference to be held in Montréal in October 2009. He wished to know if the Panel would be involved in the preparation of the Conference in any way, and whether that should not be represented on the agenda of the AVSECP/20 meeting. C/FSP indicated that the Panel would certainly be heavily involved in discussions of the agenda before that meeting; however, since the meeting had not yet been formally approved at the time of the preparation of the agenda, it had been considered somewhat premature to include it as an item. It would be discussed in detail under other business.

8. In taking the action proposed in C-WP/13262, as recommended by the UIC, the Council:

- a) agreed to the convening of AVSECP/20 at ICAO Headquarters in Montréal from 30 March to 3 April 2009; and
- b) approved the proposed agenda for AVSECP/20 as set forth in the Appendix to the paper.

Subject No. 15: Subjects relating to air transport

**Review of the conclusions of the EC/ICAO Symposium on Regional Organizations
(Montréal, 10 to 11 April 2008)**

9. The Council had for consideration C-WP/13230, which reported on the conclusions of an EC/ICAO Symposium on regional organizations, aimed at discussing the impact of regional organizations on international civil aviation as well as the contribution such organizations could make towards supporting ICAO's work. The objective of the Symposium had been to examine different facets of regional organizations in terms of their goals, geographical coverage and scope and degree of integration, with a view to identifying areas where they could play a useful role in furthering the development of aviation as well as benefit from the support of key players in the field of international aviation. The three main conclusions of this Symposium were that it would be useful for ICAO to continue to use cooperative arrangements with regional organizations (such as MOU or memorandum of cooperation), to consider how regional safety organizations can contribute to a more effective implementation of ICAO's SARPs, and to develop a regular dialogue with regional organizations.

10. The Representative of Brazil noted that the action proposed in C-WP/13230 included a request that the Secretary General establish a multidisciplinary group in the Secretariat, and wished to know if there was any possibility that the group include Representatives on the Council, since Brazil would like to participate in this work. His suggestion was endorsed by the Representative of France, who noted that the Symposium had been co-sponsored by ICAO and the European Commission. The Representative of France

believed that the views of the Observer from the European Commission would be of interest to the Council, in order to learn what the European Commission intended to do to follow up on the conclusions of the Symposium in liaison with ICAO.

11. The Representative of the Republic of Korea appreciated the European Commission's initiative for this Symposium, which had provided an important opportunity to recognize and share the importance of regional aviation organizations and their regional cooperation. It was widely recognized that to strengthen the regional aviation organizations and their cooperation was the way forward in the future. The Representative of the Republic of Korea wished to offer two general comments. The first was that one of the conclusions of the symposium was that there was no "one size fits all" model for regional aviation parties and their cooperation. To meet the challenge which this imposed, several models for regional parties and their cooperation should be reviewed and those models could take into account the different situations of each region. The second point concerned the importance of developing and ensuring the regional governance of regional aviation parties. To do that, it would be very important to establish appropriate cooperation among ICAO Headquarters, the Regional Offices and the regional aviation parties. To do that, more in-depth reviews should be carried out for finding those appropriate models for cooperation between ICAO and the regional aviation parties.

12. The Representative of Saudi Arabia also thanked the European Commission for taking this initiative in order to serve the interests of industry and air transport. His Delegation had a number of concerns, however, because some regions did not have regional organizations. Some States in Asia and the Pacific, for example, were not members of already existing organizations. The Secretary General could perhaps clarify some of the proposals which had been made in order to deal with the problem, since the idea of cooperating with regional organizations represented a closed circle. D/ATB indicated that these were issues that the multi-disciplinary group would have to look at.

13. The Representative of Uganda supported the request which had been put forward by the Representative of Brazil on the involvement of some Council Members in the work of the multi-disciplinary group. He noted a number of similarities in the recommendations of this Symposium and the one which had taken place in Abuja, and wished to place on record his State's support for these recommendations. Uganda looked forward to the role which ICAO would play in assisting States to make sure that these recommendations were effectively implemented. The importance of regional organizations could not be overemphasized and the role of ICAO in the formation of effective regional organizations should therefore be enhanced. ICAO should probably help States to allocate the resources in these areas so that the Secretariat could effectively carry out these tasks. Noting the reference which conclusion no. 3 made to "political will", the Representative of Uganda observed that political will was really not a problem; so many documents showed that the governments were usually very supportive, and the problem arose when it came to implementation of the agreed position. The commitment then seemed to lapse at that stage and probably, instead of asking governments to show good will, the Organization should be specific and ask for commitment in making sure that the agreed positions were actually carried out. The Representative of Uganda concluded by referring to paragraph 2.5.1 of the paper, which spoke of the necessary financial resources being offered by States interested in obtaining assistance. Countries really did not have such resources; otherwise, they would not be in such dire need. States that really needed ICAO assistance should not be expected to provide significant financial resources.

14. The Representative of the United States observed that clearly, the strengthening of regional organizations in some areas of the world, and cooperation between those organizations and ICAO, particularly the Regional Offices, was a very important objective for the Organization at this time. He agreed

with the point which had been made by the Representative of the Republic of Korea to the effect that there was no “one size fits all” and that models had to be adapted to meet the needs of particular regions and the resources that were available in those regions. The Representative of the United States would concur with the proposal to establish the multi-disciplinary group to examine these issues on three conditions. The first would be that the composition of the group should be approved by the Council. The second would be that all of the recommendations of the multi-disciplinary group would be approved by the Council; there were certain sensitivities and certain legal issues that might have to be addressed, and it was important that the Council actually approve those recommendations. The third would be that the Council have a budget prepared, with the funding sources for implementation indicated in that budget; to the extent that resources were limited, the United States’ view would be that the primary focus initially should be of safety.

15. The Representative of the Russian Federation agreed with the comments offered by the Representative of the United States, and was also in support for the establishment of a multi-disciplinary group whose recommendations would be undertaken by ICAO. It had been noted that unfortunately not all regions were at the same level when it came to the nature of the regional groups, and there was some concern regarding conclusion no. 4 where it was indicated that the regional organizations could participate in the ICAO process for the development of SARPs. His own experience with working with regional organizations showed that it was very important to see what the regional organizations could contribute, but they had to follow the policies of ICAO. There was an imbalance and it was very important that that multi-disciplinary group very carefully follow the coordination with the Regional Offices and encourage the following of ICAO policies.

16. The Representative of India added his support to the establishment of a multi-disciplinary group. He had participated in the Symposium and had seen first-hand several EC institutions and regional organizations, the European Aviation Safety Agency, and Eurocontrol, and had learned about the liberalisation of air transport, in particular the ownership and control relaxation in the regional community context. Regional organizations were clearly important and could support the work of ICAO in terms of its implementation. The Representative of India noted that some regions, such as Asia and the Pacific, did not have any regional organizations. As regards budget matters, he wished to inform the Air Transport Bureau, which would coordinate the initiatives, that in the Asia/Pacific in particular, three COSCAPs had moved a proposal to set up a regional safety oversight organization. That proposal was now before the IFFAS for funding of a study. The Representative of India suggested that IFFAS resources could be used to study the models of regional organizations. The European Commission, for example, was a large organization which could also provide money to ICAO to assist the multidisciplinary group, as could some States which could also be invited to help in that work.

17. The Representative of Nigeria observed that the importance of regional organizations was growing particularly when it came to advancing the work of the Organization in ensuring the implementation of Standards and Recommended Practices. One could, of course, understand the concerns when States were not members of regional bodies. When there was no regional organization in a certain region, an important criterion in whatever work the multi-disciplinary group would do would be to look at those issues and be sure that whatever was put forward, no Contracting State of ICAO would be disadvantaged in any way. The Representative of Nigeria agreed with the views which had been offered by the Representative of the United States, to the effect that whatever decisions the multi-disciplinary group took should be approved by the Council. The Representative of Cameroon added his support to the establishment of the multi-disciplinary group, as did the Representative of El Salvador, who proposed that the Council urge all States that had not as yet joined regional organizations to do so without delay. Those organizations could really be of great help to international civil aviation since they made it possible for States to join their efforts

to ensure that they progressed in technical cooperation and other areas in which cooperation had had such positive results. In Central America, for example, the *Corporación Centroamericana de Servicios de Navegación Aérea* (COCESNA) promoted the three important elements of safety, security and training in civil aviation.

18. The Representative of Egypt thanked the Secretariat and the EC for a symposium which had been very beneficial and which had highlighted the importance of the regional organizations. He wished to echo some of the concerns which had been voiced by earlier speakers regarding the need to establish clear guidelines for the development of future regional organizations in order to ensure full benefits. There would also be a need for close coordination between the different regional organizations and the Regional Offices of ICAO. The multi-disciplinary group would also have to consider the issue of regions that did not have regional organizations to date.

19. The Observer from the European Commission indicated that as a co-organizer of the symposium, the EC greatly welcomed the fact that ICAO was following up on its conclusions. The EC was also very grateful for the work being undertaken by the Secretariat in this field. The Observer from the EC was very pleased to hear the significant interest expressed by many Council Members and thanked them for the kind words addressed to the European Commission. One of the conclusions of the Symposium had been that regional civil aviation bodies would play an increasingly important role in the governance of civil aviation in the future; that was to be encouraged as much as possible. Regional cooperation was the answer to many of the challenges faced by civil aviation today, especially where States had limited resources of their own to sustain an effective civil aviation system. ICAO audits had shown this to be the case for a worryingly significant number of States today.

20. The regional approach could assist States in pooling scarce resources as well as assist ICAO in ensuring regional implementation of SARPs more effectively and more economically. It was important that these regional bodies be tied into the global framework provided by ICAO. For this reason, working arrangements of the kind already developed by ICAO, such as MOUs or Memoranda of Cooperation, offered opportunities for closer cooperation between ICAO and regional bodies. The very existence of these arrangements with ICAO could provide a very positive incentive to the regions and could formalise ICAO's relations with them. ICAO was therefore encouraged to continue to use these flexible instruments which many organizations had already benefited from.

21. What could the EC do in this area to help? As some had remarked, there was no "one size fits all". Europe had a unique experience and expertise in this field that could be of interest to other regions. The European Commission, together with bodies such as EASA and Eurocontrol, was ready to support and contribute to assisting States that were interested in moving in the direction of regional safety oversight through, for example, contributions of several million euros to COSCAPs and other projects. The EC also planned to contribute in the framework of the AFI Comprehensive Implementation Plan. The EC believed that ICAO could encourage this process by providing more effective guidance to States interested in pursuing a regional approach, notably guidance on regional safety oversight organizations, perhaps a revision of Doc 9734 (*Safety Oversight Manual*), as well as through developing working arrangements with regional bodies. ICAO could play a very essential role in coordinating assistance, but assistance that had an emphasis on regional cooperation because this could perhaps be used more effectively and efficiently. The EC looked forward very much to working closely with ICAO in this area and contributing what it could.

22. The Council agreed to establish a multidisciplinary group composed of Council Representatives and Members of the Secretariat. The composition of the group would be approved by the

Council on the basis of proposals by the Secretary General for the Members representing the Secretariat and by the President of the Council, who would consult with Council Members from the different regions in presenting proposals for the Council representation on the group. The Council requested the Secretary General to propose the terms of reference of the group. Proposals regarding the membership and terms of reference of the multidisciplinary group would be presented to the Council during the next (186th) session. In developing the terms of reference, the Secretary General would take into consideration the comments offered by Representatives at this meeting. The multidisciplinary working group would be requested to, among other things, review the conclusions adopted during the EC/ICAO Symposium reported upon in C-WP/13230, as well as the review of the Regional Offices being carried out by the Council's Working Group on Efficiency.

Subject No. 13: Work programmes of Council and its subsidiary bodies

Report of WGOG – Progress Report of the Council Working Group on Governance (policy)

23. The Council heard a report presented by the Chairman of the Council Working Group on Governance (policy). It was noted that the contents of the Chairman's presentation had not been the subject of a consensus in the group. The Council deferred further consideration of the subject until such time as the group had finalized discussions on some of these issues.

Other business

Subject No. 6.3: Election of chairmen and members of subsidiary bodies of the Council

Decisions taken during the recess

24. For the record, the President of the Council recalled that the following decisions had been taken during the recess (by e-mail):

- a) Further to his e-mail dated 25 September 2008, and in the absence of comments by 26 September 2008, Mr. Yves Gosselin had been appointed as Alternate to Mrs. Madeleine Deshaies on the Air Navigation Commission (ANC) with effect from 22 September to 21 November 2008 inclusive;
- b) Further to his e-mail dated 6 October 2008, and in the absence of comments by 20 October 2008, the President had approved the nomination of Mr. Gilles Bourgeois to succeed Mr. Robert J. Shuter as the new member from Canada on the Committee on Aviation Environmental Protection (CAEP); and
- c) Further to his e-mail dated 8 October 2008, and in the absence of comments by 10 October 2008, as requested by the Representative of Canada, consideration of revisions to the salaries of the President of the Council and the Secretary General, originally scheduled for the 186th Session (*cf.* C-DEC 184/1) had been deferred until further notice.

Subject No. 46: Edward Warner Award

Financial report of the Edward Warner Award Fund – 2007

25. The President of the Council indicated that he had not received any requests by close of business on 7 October 2008 to have C-WP/13207 on the above subject, circulated under cover of Memorandum PRES RK/1601 dated 23 September 2008, tabled for discussion by the Council. He therefore considered that the Council had noted the information provided therein.

Subject No. 10.1: Reports on meetings of other organizations at which ICAO was represented

**Report on meetings of other organizations at which ICAO was represented
during the second quarter – 1 April to 30 June 2008**

26. The President of the Council indicated that he had not received any requests by close of business on 20 October 2008 to have C-WP/13235 on the above subject, circulated under cover of Memorandum PRES RK/1605 dated 7 October 2008, tabled for discussion by the Council. He therefore considered that the Council had noted the information provided therein.

Subject No. 6.3: Election of chairmen and members of subsidiary bodies of the Council

Appointment of a Member of the Air Transport Committee

27. The Council appointed Mr. A.M. Singh (Argentina) as a Member of the Air Transport Committee.

28. The meeting adjourned at 1215 hours.

COUNCIL — 185TH SESSION

SUMMARY MINUTES OF THE FIFTH MEETING

(THE COUNCIL CHAMBER, FRIDAY, 31 OCTOBER 2008, AT 1000 HOURS)

CLOSED MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

Argentina	— Mr. A.M. Singh	Mexico	— Mr. D. Méndez Mayora
Australia	— Mr. P.K. Evans	Namibia	— Mr. B.T. Mujetenga
Brazil	— Mr. R.S. Magno	Nigeria	— Dr. O.B. Aliu
Cameroon	— Mr. E. Zoa Etundi	Republic of Korea	— Mr. Shin, G.-S.
Canada	— Mr. L.A. Dupuis	Romania	— Mr. C. Cotrut
China	— Mr. Tao Ma	Russian Federation	— Mr. A.A. Novgorodov
Dominican Republic	— Mr. C. A. Veras	Saudi Arabia	—*Mr. S. Hashem
Ecuador	— Mr. I. Arellano Lascano	Singapore	— Mr. K.P. Bong
Egypt	— Mr. S. Elazab	South Africa	— Mr. T. Peege
El Salvador	— Mr. J.A. Aparicio Borjas	Spain	— Mr. V.M. Aguado
France	— Mr. J.-C. Chouvet	Switzerland	— Mr. D. Ruhier
Germany	— Mr. J. Mendel	Tunisia	— Mr. I. Sassi
Ghana	— Mr. K. Kwakwa	Uganda	— Mr. J. Twijuke
Iceland	— Mr. H. Sigurdsson	United Arab Emirates	— Mr. R.A. Al Kaabi (Alt.)
India	— Dr. N. Zaidi	United Kingdom	— Mr. M. Rossell
Italy	— Mr. F.P. Venier	United States	— Mr. D.T. Bliss
Japan	— Mr. S. Baba	Uruguay	— Mr. J.L. Vilardo
Malaysia	— Mr. S.-C. Kok	Venezuela	— Mr. D. Blanco Carrero

ALSO PRESENT:

Mr. S. R. Prado (Alt.)	— Argentina
*Mr. E.J. Van Der Wal (Alt.)	— Australia
Mr. L.M. Coelho de Souza (Alt.)	— Brazil
Mr. A. Romera (Alt.)	— Brazil
Ms. S. Chambers (Alt.)	— Canada
Mr. B. Pape (Alt.)	— France
Mr. F. Christensen (Alt.)	— Iceland
Mr. P. Ciancaglioni (Alt.)	— Italy
Mr. W. Yoshioka (Alt.)	— Japan
Mr. Seo, W.-S (Alt.)	— Republic of Korea
Mr. Yoo, H.-J. (Alt.)	— Republic of Korea
Mr. A.A. Alharthy (Alt.)	— Saudi Arabia
Ms. L. Faux-Gable (Alt.)	— United States
Mr. H. Dávila (Alt.)	— Uruguay

SECRETARIAT:

Mr. D. Wibaux	— D/LEB
Mrs. F.A. Oduola	— D/ATB
Dr. Fang Liu	— D/ADB
Mr. J. Maguire	— C/EAO
Mr. A.R. Diallo	— C/HRB
Mr. J. Begin	— DD/ATB
Mr. R. Bhalla	— C/FIN
Mr. C. Reitano	— C/FSV
Mr. M. Miguel	— ICT
Mrs. C. Rideout	— CSO

*Part-time

Subject No. 18.8: Financial statements and reports of the external auditor**Report of the Special Working Group – Report of the External Auditor
on audit activities in 2008**

1. The Council heard an oral report presented by the Chairman of the Special Working Group which had been constituted on 24 September 2008 (185/2) to prepare a report and recommendations in response to the Report of the External Auditor on audit activities in 2008. It was recalled that the report and recommendations were to be considered by Council at a special meeting on 8 October 2008. That meeting had been cancelled at the request of a number of Members of the Council, and consideration of the report had been deferred to this meeting.
2. The original group had been designated as the Chairpersons of the Finance Committee, the Human Resources Committee, the Air Transport Committee and the Council Working Groups on Efficiency and Governance. After an initial meeting, an alternative European representative had replaced the Chair of the Working Group on Governance.
3. The Special Working Group had met a number of times, with some members not available for all meetings. Advice had been sought from other members of the Council and the President of the Council at various points in those deliberations. It had been apparent that there were diverging views across Members of the Council as to the expected output from the Special Working Group.
4. After substantial deliberation and a revisiting of the remit in C-DEC 185/2, the Special Working Group had identified its task as responding to the recommendations contained in the Report of the External Auditor contained in paragraphs 63, 64, and 65 of the Report. The group saw no further requirement for detailed questioning of the items raised in the Report, as it did not consider its task to be an audit or investigative one. The group was strongly of the opinion its recommendations should be to reduce the likelihood of a similar event reoccurring and, in accordance with the Council's role, be policy directed.
5. The Representative of India indicated that the text of the oral report just presented by the Chairman of the Special Working Group had been circulated the previous day, and had been considered by the group of Representatives from Asia/Pacific, which had three suggestions for Council action. The first suggestion would be to include, in the work programme of the Human Resources Committee, a review of the recruitment, selection, and promotion processes in the Organization. The second suggestion would be to include, in the current work programme of the Finance Committee, a review of the audit of the Ancillary Revenue Generation Fund. The Asia/Pacific Group of Representatives on the Council was also concerned about the monthly supplementary compensation payment being made by ICAO to Mr. Samson.
6. The Representative of France indicated that as a Member of the Special Working Group at the initial meeting in his capacity as Chair of the Working Group on Governance, he had not been able to explain his position in any great depth before being replaced by an alternative European representative. He wished to point out that that matter had not been dealt with in an appropriate climate and that the way it had been handled had not compared favourably with the manner in which similar cases were dealt with in other international organizations in terms of efficiency, speed and adhering to the rules.
7. Commenting on the report of the Special Working Group, the Representative of France observed that the conclusions of this group did not conform with the mandate given it in C-DEC 185/2, where it was stated that the group was tasked with advising the Secretary General of any requirements for

further information or action. The Secretary General's response to the Report of the External Auditor, as well as the views and concerns expressed by Representatives on 20 June 2008 and 24 September 2008, would be considered by the Special Working Group in preparing its report and recommendations to the Council. The Council's mandate had thus not been limited to dealing with the follow up to paragraphs 63, 64 and 65 of the External Auditor's report, contrary to what was affirmed in the report of the Special Working Group, but to dealing with all the concerns raised in the Council. The report was therefore incomplete.

8. As regards the content of the report, the action paragraph which commenced with the words "The Council expressed its deep concerns and disappointment that an individual ..." was couched in anonymity, notwithstanding the fact that everyone was well familiar with what had taken place. Mr. Samson had been fully informed of the situation of Mr. Renaud, and had personally taken the initiative to have him seconded to ICAO, implicating the Ministry of Finance of Quebec, hiding information from ICAO, and lying during the audit. In such a situation one could envisage various scenarios. Mr. Samson could have decided to leave the Organization on his own initiative; the Ministry of Finance of Quebec, finding itself in this delicate situation, could have recalled Mr. Samson; or the Federal Government of Canada, which was hosting the Organization, could have advised the Government of Quebec to act in that way. The Secretary General had all the tools in hand to discontinue the MoU with the Government of Quebec. The fact was that no-one wanted to draw the right consequences from the facts.

9. The action paragraph by which the Council would request that the Secretary General, with the President of the Council, meet with the individual's permanent employer to discuss issues relating to current and future secondment of staff was, in his opinion, so weakly worded that the Representative of France would not comment on it.

10. The action paragraph dealing with the interim permanent filling of the post of the Manager, Revenue Generating Activities, as proposed in the Chairman's oral report, would allow the interim Manager, at the discretion of the Secretary General, to continue the secondment of the current Manager as an adviser until the permanent filling of the post. This seemed contradictory in itself, since the premise was that the current Manager, i.e. Mr. Samson, was not in a position to carry out his existing functions. Why then should he be retained in another function, especially since rumours were rampant and many felt that Mr. Samson had not been sanctioned as he should have been. As had been pointed out by the Representative of India, there were concerns in the Council as regards the additional remuneration given Mr. Samson, since this went against the Financial Regulations; this point was nevertheless not mentioned in the Special Working Group's report.

11. The action paragraph which acknowledged the action taken by the ICAO Secretary General, Canada and Quebec, as proposed by the Chairman of the Special Working Group in his oral report, seemed to confuse the matter of the reputation of ICAO –which had, in fact, been put in jeopardy and would be further threatened if the Organization did not take appropriate measures concerning this case– and the matter of the Organization's financial security, in respect of which nothing had been proven since the Council had not as yet received the final conclusions from the RCMP or the KPMG.

12. In summary, it seemed that in keeping with the basic codes of ethics, Mr. Samson should have left the Organization. The Representative of France was aware, in this connection, that a number of Members of the Council were not comfortable with the prospect of attending a briefing which Mr. Samson would present in the coming week on the ARGF. The Representative of France believed that four additional measures would be necessary to the Council action being proposed. First of all, the two reports on the issue

of financial security should be referred to the Finance Committee so as to ensure that there had been no threat to that security. The Internal Auditor should be requested to report to the Council on the matter of the additional compensation paid to Mr. Samson. An audit of the Ancillary Revenue Generation Fund and of ICAO's human resources management should be carried out by the External Auditor. The Representative of France wished to clarify that it was not a question of judging individuals, but of reviewing the actions that had been taken, and the principles which governed the Organization.

13. The Representative of Iceland referred to the additional compensation of CAD 5,500 which ICAO was paying monthly to Mr. Samson, and wished to know, should the Council today accept the recommendations of the Special Working Group, if it was the intent of the Secretary General to continue paying that supplement to Mr. Samson until March 2009. The Representative of Iceland had difficulty with the assertion, in one of the action paragraphs proposed by the group, to the effect that actions taken by the Secretary General, Canada and Quebec had ensured that no damage had been done which could have negatively impacted the reputation of ICAO, its bank accounts and its financial security. That assertion had not as yet been proven. This last point was supported by the Representatives of Mexico, Spain, the United States, the United Kingdom and the Russian Federation.

14. Responding to the points raised by the Representative of Iceland, the Secretary General indicated that he had, on 28 October 2008, received a letter from the KPMG indicating, among other things, that there was no evidence of potentially fraudulent or wrongful activities targeting ICAO or third parties. The KPMG had thus far completed 95 percent of its analysis. The Secretary General indicated that in accordance with the MoU which had been concluded with the Government of Quebec, he intended to continue paying the incentive of supplementary compensation to Mr. Samson unless the Council decided differently.

15. The Representative of Mexico congratulated the Chairman of the Special Working Group, but believed that there were a number of items in the report which still gave rise to concern. As had been pointed out by the Representative of France, the Group had only dealt with paragraphs 63, 64 and 65 of the External Auditor's report. Insofar as he was aware, the Council had asked the Group to take into account all the discussions which had taken place in the Council as well as the report of the External Auditor. A number of issues were therefore still pending.

16. Referring to the proposed action whereby the Council would request the Secretary General, with the President of the Council, to meet with the individual's employer to discuss issues relating to current and future secondment of staff, the Representative of Mexico did not think that it was the role of the President of the Council to review the terms of reference of that agreement; it should fall solely to the Secretary General.

17. The Representative of Mexico would be in a position to support what had been suggested by the Representative of India regarding an audit of both the ARGF and the management of human resources in the Organization. From the moral point of view, how could the Organization prove that it was accountable if it could not ascertain that its own procedures were correctly complied with?

18. The Delegation of Mexico would find it impossible to set a precedent by continuing to pay Mr. Samson a supplementary compensation, which already went against the Rules.

19. The Representative of Egypt thanked the Special Working Group for the conclusions reached, and thought that the report was very well-balanced. It called for an RGA Manager to be appointed,

and did not place the Organization in an embarrassing position vis-à-vis the Quebec Government. It had also established new criteria to meet a situation such as this.

20. The Representative of Spain observed that a number of issues had not been reflected in the report of the Special Working Group, as had been pointed out by the Representatives of India and France. Like in any other process, what was most difficult was to manage expectations; it had been expected that the Group would identify a number of issues in addition to those addressed in the report of the External Auditor. These issues were to be put to the Council in a final report which was to have been packaged properly. The Council's expectations had thus not been met in a final report. The Representative of Spain agreed with the Group's proposal for action, as supplemented by the suggestions made by the Representatives of India and France. One of the items raised had been the issue of the additional compensation that had been paid; that would need clarification at some point in time, if only for the good health of the Organization.

21. The Representative of Spain referred to the proposed action paragraph which, among other things, would, at the discretion of the Secretary General, permit the continued secondment of the current RGA Manager as an adviser until the permanent filling of the post. The Representative of Spain believed that the possibility of exercising such discretion was already there and did not need to be ratified by the Council; that part of the action sentence should therefore be deleted.

22. The Representative of South Africa could accept the input suggested by the Representative of India, and supported the intervention by the Representative of Egypt. He suggested that what appeared as the last action paragraph in the proposal of the Special Working Group, which acknowledged the action taken by the ICAO Secretary General, Canada and Quebec, appear as the first paragraph in the final text.

23. The Representative of the United States recognized that the Special Working Group had been given an extraordinarily difficult task. As was evident at this meeting, there were many different points of view that needed to be reconciled, and it was important to reach a consensus on this issue and move forward. The Representative of the United States could accept the recommendations by the Representative of India, and appreciated the fact that he spoke for a group of Council Members. It would be appropriate to have a legal analysis of the supplementary compensation issue; the question of whether the Finance Committee should have approved it in the first place; and the Council's concerns about the role of the individual.

24. As had been pointed out by the Representative of France, the action paragraph which would request that the Secretary General, with the President of the Council, meet with the individual's permanent employer to discuss issues relating to current and future secondment of staff was somewhat weak. The Representative of the United States believed, however, that that sentence implied that the Council would expect a very rigorous and candid discussion with the Representatives of the Quebec Government and some very specific conclusions.

25. The Representative of Canada agreed with the view of the Representative of Egypt to the effect that the report was well-balanced, considering that ICAO was a political organization and not a criminal court of law. Although he would like to be able to join a consensus at the end of the discussion, the Representative of Canada did not think that attacks on the functioning of Canadian federalism should be part of the debates of the Council.

26. The Representative of Canada was impressed by the views of the Representative of India, which could find their way into the recommendations made by the Special Working Group. Noting the views

which had been expressed in favour of deleting a sentence to the effect that the actions of the Secretary General, Quebec and Canada had ensured that no damage had been done which could have negatively impacted the reputation of ICAO, its bank accounts and its financial security, the Representative of Canada pointed out that such a deletion would run against a matter of fact. A recent communication from A/C/FIN had confirmed that no damage had been done to ICAO's bank accounts. Instead of laying blame, it would be beneficial to thank those who had ensured that this matter had not gotten any worse. The Representative of Canada wished to thank the RCMP and wished to reiterate that the Minister of Finance of Quebec, who had been involved in the MoU, had fired Mr. Renaud, the individual who, with Mr. Souka, was supposed to be the prime concern of the Council's examination at this meeting. The Government of Canada had contacted immediately the RCMP asking for a quick check of what could have happened. It was his understanding that a response had been received from the RCMP, and that confirmation that there was no damage had either been received from the KPMG or was about to be received very soon. The Representative of Canada would very much like that at the end of the meeting the Council could move on and talk about civil aviation issues. The Council seemed to be involved in a naval-gazing exercise which was of dubious usefulness for the Organization. The Council was not a court of law but a political body which took political decisions. Political decisions, by definition, were imperfect because this was an imperfect world, but they had the virtue of bringing to an end a very difficult situation for all.

27. The paper produced by the Special Working Group was a solid paper, which could perhaps be reorganized along the lines of the suggestions put forward by the Representatives of India and South Africa. The Representative of Canada cautioned against making the issue bigger than it really was. It was his understanding that the President and the Secretary General would have a conversation with the Deputy Minister of Finance of Quebec, who was eager to speak with them. The Council had before it the formula of a decision, it had lessons learned of what it should and should not do in the future, and that included the supplementary compensation of CAD 5,500 per month to Mr. Samson which troubled the Representative of Canada as anyone else in the Council. He was nevertheless trying to see the forest and not just the trees. Nobody would accuse the Organization of not having done due diligence, it had a report of the External Auditor and some very long discussions in the Council which hopefully, today, would bring this matter to an end.

28. The Representative of Saudi Arabia thanked the Chairman and the Members of the Special Working Group for a very good, balanced report which his Delegation could accept because what was of interest to Saudi Arabia was whether there had been prejudice or damage done to the Organization. He agreed with what had been said by the Representatives of Egypt and South Africa, and confirmed and endorsed what had been said by the Representative of Canada.

29. The Representative of Ecuador thanked the Chairman of the Special Working Group for his work, because the task that the Council had entrusted him with really was not an easy one. The report was very much to the point, was respectful and balanced, and made it possible for the Organization to turn the page. The report contained recommendations that would help with the management of the Organization. The Delegation of Ecuador would therefore support the content and the letter of the report as it stood, and would also support what had been said by the Representatives of Egypt and Canada, whose words fully expressed his Delegation's views. Perhaps the only change would be that suggested by the Representative of South Africa.

30. The Representative of Venezuela added his thanks to the team who had worked on this issue and come up with the report now under consideration. His Delegation felt that at first glance, the causes leading to this situation had been out of the ordinary and needed to be covered by firm procedures regarding

the secondment of staff. The proposals presented by the Special Working Group on such a delicate issue were aimed at avoiding any further damage. It seemed to be impossible to ignore the repercussions that this situation had on ICAO. The Representative of Venezuela concurred that the actions of the local authorities in the month of June had been immediate, and that they had acted correctly in the light of this problem. What would be best for the Organization would be to accept the recommendations of this constructive and positive report, which looked to the future and at avoiding the recurrence of similar situations. While supporting the proposed appointment of an interim manager of the RGA, the Representative of Venezuela believed that the additional compensation paid to Mr Samson, in the order of CAD 5,500 per month, would have to be discontinued. CAD

31. The Representative of the United Kingdom wished to associate himself in particular with the remarks from India, Spain and the United States. He would be prepared to accept the report subject to some amendments. The first concerned the change proposed by Iceland and recorded above. The second change would, in that same paragraph, replace the words “ensure that no damage occurred” with “to minimize the damage”. The third would replace the words “as soon as possible” with “with immediate effect” where they applied to the appointment of an employee of the Secretariat as interim Manager RGA. Recognizing that there were many unanswered questions, that there was much that could and perhaps should have been done, the Representative of the United States agreed with those who said that the Council needed to move forward. The Representative of the United States also supported the changes suggested by the Representative of India on behalf of the Asia Pacific group of Council Members.

32. Following a short recess, the Council took the following course of action which was recommended by the Special Working Group, as amended in light of suggestions put forward during the discussion.

33. The Council acknowledged the action taken by the ICAO Secretary General, Canada and Quebec immediately following the arrest of the individuals who were the focus of the External Auditor’s report. As reported at the Council meeting of 20 June 2008 (184/5), all three had taken collective and immediate action in order to minimize the possibility of damage occurring to ICAO bank accounts and to the ICAO financial framework and integrity.

34. The Council expressed its deep concern and disappointment that an individual had been offered to ICAO for secondment, with strong endorsement as to his capabilities, when it was known he was under investigation for finance related issues, and that this information was not passed to the Secretary General.

35. The Council requested that the Secretary General, with the President of the Council, meet with the individual’s permanent employer to discuss issues relating to current and future secondment of staff.

36. The Council requested that, given the importance of the senior role of Manager, Revenue Generating Activities, and the nature of its revenue generation in support of the ICAO Regular Programme:

- a) the Secretary General appoint, with immediate effect, an employee of the Secretariat as interim Manager RGA.
- b) a job description be prepared and the job advertised for permanent filling, to ensure that the role is an integral part of the ICAO Secretariat and subject to all ICAO controls and processes.

- c) the process should aim to have the permanent Manager in place by March 2009.

37. The Council requested that, consistent with the United Nations standards and policies, all staff offered for secondment or employment from any source, be required to provide assurances from their State or other reputable authority as to their integrity and probity as a condition for employment. In addition the Human Resources Committee should include in its work programme:

- a) a review of the MoU relating to seconded staff to define the positions which may be offered; the conditions of recruitment; the maximum duration of the arrangement; the remuneration, performance management and leave requirements; and the responsibilities of all parties for risks and liabilities associated with the secondment;
- b) to review recruitment, selection and promotion processes in ICAO and identify further actions;

and provide recommendations to the Council as required during the 186th Session.

38. The Finance Committee should include in its current work programme:

- a) a review of the ICAO Procurement Code;
- b) review of exceptional remuneration made to the seconded staff; and
- c) audit of Ancillary Revenue Generation Fund;

and provide recommendations to the Council as required during the 186th Session.

39. The Council further advised the Secretary General to provide an update on the report of the RCMP and KPMG for information of Council Members.

40. After the Council decision was agreed by consensus, the Representative of Canada highlighted the need for the ICAO Council and the Secretariat to continue remaining outside of any involvement in the local electoral processes and also to ensure that the criminal trial of the person who had been charged by the RCMP would follow its course without involvement or perceived influence from ICAO.

41. The meeting adjourned at 1300 hours.

COUNCIL — 185TH SESSION

SUMMARY MINUTES OF THE SIXTH MEETING

(THE COUNCIL CHAMBER, MONDAY, 3 NOVEMBER 2008, AT 1430 HOURS)

OPEN MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

Argentina	— Mr. A.M. Singh	Mexico	— Mr. D. Méndez Mayora
Australia	— Mr. P.K. Evans	Namibia	— Mr. B.T. Mujetenga
Brazil	— Mr. R.S. Magno	Nigeria	— Dr. O.B. Aliu
Cameroon	— Mr. E. Zoa Etundi	Republic of Korea	— Mr. Shin, G.-S.
Canada	— Mr. L.A. Dupuis	Romania	— Mr. C. Cotrut
China	— Mr. Tao Ma	Russian Federation	— Mr. A.A. Novgorodov
Dominican Republic	— Mr. C.A. Veras	Saudi Arabia	— Mr. S. Hashem
Ecuador	— Mr. I. Arellano Lascano	Singapore	— Mr. K.P. Bong
Egypt	— Mr. S. Elazab	South Africa	— Mr. T. Peege
El Salvador	— Mr. J.A. Aparicio Borjas	Spain	— Mr. V.M. Aguado
France	— Mr. J.-C. Chouvet	Switzerland	— Mr. D. Ruhier
Germany	— Mr. J. Mendel	Tunisia	— Mr. I. Sassi
Ghana	— Mr. K. Kwakwa	Uganda	— Mr. J. Twijuke
Iceland	— Mr. H. Sigurdsson	United Kingdom	— Mr. M. Rossell
India	— Dr. N. Zaidi	United States	— Mr. D.T. Bliss
Italy	— Mr. P. Ciancaglioni (Alt.)	Uruguay	— Mr. J.L. Vilardo
Japan	— Mr. S. Baba	Venezuela	— Mr. D. Blanco Carrero
Malaysia	— Mr. S.-C. Kok		

ALSO PRESENT:

Mr. A. Romera (Alt.)	— Brazil
Mr. F. Christensen (Alt.)	— Iceland
Mr. W. Yoshioka (Alt.)	— Japan
Mrs. D. Jiménez Hernández (Alt.)	— Mexico
Mr. Yoo, H.-J. (Alt.)	— Republic of Korea
Mr. A.A. Alharthy (Alt.)	— Saudi Arabia
Mr. P.D. Fleming (Alt.)	— United Kingdom
Mr. S. P. Creamer (Alt.)	— United States
Mr. T. Fenoulhet (Obs.)	— European Commission

SECRETARIAT:

*Mr. R.J. Heighes-Thiessen	— D/TCB
*Mr. J. Begin	— DD/ATB
*Mr. H. Belai	— C/ACIP
*Mr. P. Lamy	— DD/ANB
*Mr. M. Fox	— C/FLS
*Mr. A. Pchelnikov	— C/RPRO
*Mrs. C. Ouerghi	— C/ASV
*Mr. C. Reitano	— A/C/FIN
*Mr. R. Lambo	— C/ISD/SAF
*Mr. H. Pretorius	— RAO/PCI
*Mr. E. Liapakis	— Travel Officer/TCB
*Mr. K. Miller	— Consultant, RGA
Miss S. Black	— Précis writer

*Part-time

Subject No. 14: Subjects relating to air navigation**Developments of the AFI Comprehensive Implementation Programme (ACIP)**

1. Following introductory remarks by the Secretary General, the Chief of the AFI Comprehensive Implementation Programme (C/ACIP) gave an oral report on some of the activities, advances and achievements of the ACIP. The Chairman of the ACIP Steering Committee (ACIP-SC) then gave an oral report on the outcome of the Steering Committee's Second Meeting, held in Montréal from 20 to 21 October 2008, and proposed, for approval by the Council, a list of actions arising from that meeting and from the Tenth Plenary Session of the Banjul Accord Group (BAG) States, held in Banjul on 30 and 31 October 2008.
2. The Representative of Egypt voiced strong support for the action proposed by the Chairman of the ACIP-SC.
3. The Representative of Spain supported all of the initiatives being undertaken to launch activities in the African region as they were the best way to rectify the latter's aviation safety-related problems. To a question by the Representative regarding paragraph d) of the proposed action ("to approve that ACIP take necessary measures to assist BAG States in the implementation of the priority actions;"), C/ACIP recalled that the Council had approved the transfer of funds to the ACIP for the provision of assistance to States. In addition, States had been requested to contribute towards the provision of such assistance. He emphasized that the ACIP, without requesting any additional resources, was capable of at least assisting in the study of the framework for a regional safety oversight organization and regional accident investigation agency. It was also capable of supporting the development of the guidance material for the organization and operation of such organizations/agencies and the tools required for the technical personnel. To a further query by the Representative, C/ACIP noted that other sub-regional and regional groups in Africa included the Economic and Monetary Union of Western Africa (UEMOA), the Southern African Development Community (SADC), the East African Community (EAC), the Economic and Monetary Community of Central Africa (CEMAC), the Maghreb Community and the Inter-Governmental Agency for Development (IGAD). He underscored that the Council had instructed the ACIP to use existing platforms when conducting gap analyses and providing any required assistance.
4. Recalling that C/ACIP, in his oral report, had indicated that thus far only two Contracting States, China and Saudi Arabia, had contributed to the Programme in cash as they had pledged to do during the High-level Meeting on a Comprehensive Regional Implementation Plan for Aviation Safety in Africa (Montréal, 17 September 2007) and in subsequent Council meetings, the Representative of the Republic of Korea indicated that his State was currently going through the necessary budget process and would make a financial contribution in 2009. He endorsed the action proposed by the Chairman of the ACIP-SC, in particular, paragraph e), which directed the ACIP to expedite action on the completion of the gap analysis for other sub-regional groups and States in Africa.
5. Observing that the Council's political and financial commitment to addressing aviation safety-related problems in the African region was well-known, the Representative of India indicated that he fully supported the actions that had already been approved by the Council. He noted that the first sight of solid and concrete actions that were available to the Council was in the shape of the results of the gap analyses and follow-up actions. Referring to the envisaged study of a framework for a regional safety oversight organization and regional accident investigation agency, the Representative of India recalled that a study had also been proposed by the Co-operative Development of Operational Safety and Continuing

Airworthiness Project (COSCAP) for South Asia, South East Asia and North Asia and the International Financial Facility for Aviation Safety (IFFAS) to enable harmonization and a pooling of resources. That study was currently being conducted by a group of experts which would be making recommendations thereon. He noted that the establishment of such regional organizations was in line with the conclusions of the European Community (EC)/ICAO Symposium on Regional Organizations (Montréal, 10-11 April 2008) which had been reviewed by the Council earlier in the current session (C-WP/13230; 185/4).

6. Emphasizing that the timely completion of the envisaged study of a framework was crucial for the work proposed by the Chairman of the ACIP-SC, the Representative of India enquired as to the timeframe therefor. He also queried how the work would be funded. The Representative of India noted, in this regard, that his State was ready to provide support once it knew in what form it was expected. In supporting the proposed action, he stressed the need to evolve a tight, time-bound Programme with more financial and human resources.

7. C/ACIP indicated that he was not currently in a position to say in what form contributions should be made as it was not yet known what kind of regional safety oversight organization and regional accident investigation agency would be established and how much responsibility they would assume and how much would be left to the States concerned. That would only be known once the framework study had been completed. Once the Council had approved the conduct of the study, work would commence immediately. Some four to six months would be required for its completion.

8. The Representative of Namibia fully supported the action proposed by the Chairman of the ACIP-SC, particularly paragraph g), which called for a report on ACIP activities to be presented to the Council every session for decision. He underscored, in this regard, the importance of the Council keeping abreast of developments. In stressing the importance of the Council being aware of the gaps identified during the gap analyses of the BAG COSCAP and other areas, the Representative of Namibia suggested that information thereon be posted on ICAO's secure website. Responding to a point then raised by the Representative regarding ACIP seminars, workshops and training, C/ACIP indicated that they were intended to be given Africa-wide and only in one language (English or French) at a time. As far as practicable, an event in one language would be immediately followed by the same event in the other language. In that manner, participants would be able to take part in the discussions without worrying about any incorrect interpretation of the instructors' comments or their comments. AFI region States would be invited to host seminars, workshops and training courses in order to have a balance between the regions. If there were no host State, then the event would be held in the Regional Office.

9. In thanking China and Saudi Arabia for their contributions to the ACIP and in welcoming the statement made by the Representative of the Republic of Korea, the Representative of South Africa queried how many States had pledged to make such contributions and which States had yet to honour those pledges. He supported the action proposed by the Chairman of the ACIP-SC, as well as the comments made by the Representatives of Egypt and Namibia.

10. C/ACIP recalled that some six States had made pledges during the said High-level Meeting. Only two had subsequently fulfilled them, however. He underscored that some States and organizations considered that whatever support they provided to African States, even if it did not come directly under the ACIP, was part of their contribution to that Programme.

11. Noting that tremendous efforts were being made to rectify the safety situation in the African region, the Representative of El Salvador indicated that there was a similar, very effective project being

implemented in the Central American region. He affirmed that such regional projects would enhance not only aviation safety but also the development of international civil aviation.

12. In endorsing the action proposed by the Chairman of the ACIP-SC, the Representative of Cameroon thanked China, Saudi Arabia and the Republic of Korea for their support of the Programme. He enquired as to the activities being undertaken in the EC to support the ACIP.

13. The Observer from the European Commission noted that the EC had traditionally engaged in substantial co-operation with the African region and African States and that aviation was no exception. Its assistance ran into the tens of millions of euros for air traffic management (ATM) projects, for organizations such as the Agency for Air Navigation Safety in Africa and Madagascar (ASECNA), through support for the liberalization of air transport in Africa under the 1999 Yamoussoukro Decision and also through the funding of COSCAPs led by ICAO. However, it was the EC's expertise and experience in regional co-operation that was probably most valuable in bringing sustainable solutions to civil aviation safety in Africa.

14. The EC supported ICAO's ACIP and welcomed the latest progress. The EC was contributing to the implementation of the ACIP in substantial ways, with a focus on supporting regional initiatives. It was also developing important programmes for the future. In the framework of its external aviation policy, the EC was taking a three-pillar approach towards Sub-Saharan Africa. The first pillar was the removal of economic and regulatory barriers to air transport through supporting the liberalization process under the framework of the 1999 Yamoussoukro Decision. Secondly, the EC supported regulatory convergence and co-operation in establishing robust regulatory frameworks. Thirdly, the EC was engaging in technical co-operation, in particular through training, especially in the field of safety.

15. The EC's main interlocutors were the African Union (AU), regional economic communities and individual States. The aim was to develop a comprehensive dialogue with them in the said three areas, leading to concrete initiatives and operational support. The EC, in its relations with those countries, was emphasizing and supporting the regional approach. An example of that was the aviation agreement signed in May 2008 between the EC and UEMOA. That agreement was an example of the legal recognition by the European Union (EU) of regional integration processes in Africa. The Observer from the European Commission noted, in this context, that the European Commission was planning an EU-Africa Aviation Conference to take place in Windhoek, Namibia, from 2-3 April 2009, to which ICAO would be invited. The purpose of that high-level conference would be to create a basis for partnership on aviation and engage in priority areas such as safety and ATM, as well as reinforcement of legal frameworks, security, and the environment. The European Commission hoped to then develop a roadmap for certain concrete co-operation initiatives, such as support to regional safety oversight organizations and co-operation under GALILEO and SESAR.

16. For the future, starting in 2009, a framework contract was being negotiated between the European Commission and the European Aviation Safety Agency (EASA), to provide assistance to those States encountering systemic safety problems, notably those whose airlines had been the subject of bans as a result of the inability for some authorities to carry out effective safety oversight and comply with ICAO SARPs. The discussions in the recent ACIP-SC meeting again highlighted the importance of regional safety oversight organizations. The EC strongly believed that that was the way to go in Africa. Regional bodies would allow a pooling of resources and economies of scale, as well as an effective way of channeling assistance. Resources on all sides were limited, but co-operation at the regional level could leverage the most value out of those resources. The economic sustainability of those initiatives would be the key.

17. The Representative of the Russian Federation expressed support for the action proposed by the Chairman of the ACIP-SC. To a query by the Representative, C/ACIP elaborated on the establishment of Regional Office Safety Teams comprised of the Safety Officer of the Regional Office concerned and the two ACIP Technical Officers assigned to the latter and chaired by a very senior Officer. Noting that the ACIP was currently working on the terms of reference of the Regional Office Safety Teams, he indicated that their main responsibility would be to receive information from the USOAP, the Audit Results Review Board (ARRB) and the States themselves and to identify areas where, within the capacity of the ACIP and within the capability of ICAO, a certain level of assistance could be provided to at least mitigate some of the identified deficiencies. C/ACIP emphasized that this focus area of assisting States in resolving their deficiencies was only temporary, until States were enabled to establish an effective and sustainable safety oversight system, whether at the national level, if the State's resources could support it, or at the regional level.

18. The Representative of France, while endorsing the action proposed by the Chairman of the ACIP-SC and not willing to delay the implementation of the AFI Plan, suggested that next time a formal report on developments of the ACIP be given and that any draft Council decision be distributed well in advance and not just prior to the meeting. Observing that the AFI Plan was entering its operational phase, which would give rise to a series of meetings as mentioned by C/ACIP in his oral report, he noted that the Special Africa-Indian Ocean Regional Air Navigation (SP AFI/08 RAN) Meeting would be taking place in Durban, South Africa, from 24-29 November 2008, which would allow for a further exchange of views. The Representative of France agreed with C/ACIP that the two axes of duration and regional context should drive the AFI Plan and that prompt action should be taken on the basis of those axes.

19. While noting with satisfaction that the issue of languages had been taken into consideration in the activities carried out under the AFI Plan, the Representative of France averred that there was a problem beyond those activities. He recalled that whenever he visited the ICAO Regional Director of the Dakar Office the latter underscored that there was a backlog in French translation of various ICAO documents, Annexes, circulars, *etc.* The Representative of France emphasized that, to the extent that the AFI Plan was a priority, making ICAO documents available to French-speaking African States in their working language should also be considered a priority.

20. Referring to paragraph g) of the proposed action, the President of the Council recommended that the Council retain its previous decision that reports on developments of the ACIP be presented at least every other Council session as the Secretariat might not have much to report every session. He underscored that the Council could always request the Secretary General to present a report before the envisaged time.

21. While not objecting to the President's recommendation, the Chairman of the ACIP-SC suggested, and the Council agreed, that paragraph g) of the said list of actions be amended by adding the words "as may be required" so that it would refer to a report on ACIP activities being "brought to the attention of the Council as may be required every session for Council decision" to avoid delaying further action to be taken by the ACIP. It was understood that the Council's previous decision on the periodicity of reports on ACIP activities would continue to be respected in that such reports would be presented at least every other Council session.

22. In noting the said oral reports, the Council took the action proposed by the Chairman of the ACIP-SC, as amended above, and:

- a) approved that critical States in need of immediate action to rectify safety oversight concerns should be engaged at the highest level by either the ICAO Secretary General or the President of the Council;
- b) agreed to notify States, industry and donors of the priority projects/actions determined by the BAG gap analysis, and strongly encouraged notification to ICAO of current or proposed projects/actions underway for listing on the ICAO International Database of Assistance Projects (IDAP);
- c) requested Contracting States, industry and donors to assist the BAG States to implement priority projects/actions as determined during the BAG States' Tenth Plenary Session held in Banjul on 30 and 31 October 2008;
- d) approved that ACIP take the necessary measures to assist BAG States in the implementation of the priority actions;
- e) directed ACIP to expedite action on the completion of the gap analysis for other sub-regional groups and States in Africa;
- f) strongly urged States in the AFI Region to take effective decisions to implement prioritized projects resulting from the gap analysis conducted and encouraged States, industry and donors to assist States in the AFI Region to implement prioritized projects; and
- g) agreed that a report on ACIP activities be brought to the attention of the Council as may be required every session for Council decision in accordance with Resolving Clauses 3 and 4 of Assembly Resolution A36-1 (*Comprehensive Regional Implementation Plan for Aviation Safety in Africa*).

Subject No. 18.10: Working Capital Fund (WCF)

Level of the Working Capital Fund (WCF)

23. The Council considered this subject on the basis of C-WP/13211 presented by the Secretary General and an oral report thereon by the Finance Committee (FIC). The FIC supported the Secretary General's view that, notwithstanding the Organization's cash flow situation, an increase in the level of the WCF was not needed at the present time and should not be recommended to the Council. It was noted, in this regard, that the roadmap for implementing split assessment which would be presented for the Council's consideration during the next (186th) Session pursuant to its earlier decision (184/3) would include options for soliciting Contracting States to pay their contributions on time based on the best practices adopted by other UN organizations.

24. Responding to a question by the Representative of Canada, the Acting Chief of the Finance Branch (A/C/FIN) noted that while there had been a steep improvement in ICAO's cash position throughout the summer until July 2008, it had then deteriorated. It was not possible to say what had caused that deterioration as the payment of assessed contributions by States was not under the Organization's control. A/C/FIN further indicated that, although the Organization's cash position had slightly improved to CDN 22.8 million as of 24 October 2008, it was anticipated, on the basis of projected budget expenditures, that in the next few weeks there would be a cash shortage of some CDN 0.9 million. Noting, however, that

there were a couple of States which traditionally paid their assessed contributions for the following fiscal year well in advance, he underscored that those early payments would offset the said cash shortage. A/C/FIN thanked the President of the Council for his personal involvement in expediting some of the payments of assessed contributions and thus resolving the financial situation very significantly over the last few weeks.

25. Underscoring that the late payment of assessed contributions was not a new issue, the Representative of South Africa emphasized that it was totally unacceptable, especially for those States which were represented on the Council. The latter should set an example to the other Contracting States. He stressed that all States, particularly those represented on the Council, should pay their assessed contributions on time, if not early.

26. While supporting the recommendation that an increase in the level of the WCF was not needed at the present time, the Representative of Canada indicated that, in light of the precarious situation of the WCF, if the same problem arose during the next (186th) session for the same reason, then the Council should, in its decision, express its disappointment to States that did not pay their assessed contributions on time.

27. In taking the action proposed in the executive summary of C-WP/13211, as recommended by the FIC, the Council decided that, based on the information provided in that paper on the level of the WCF and the cash balances and additional information provided orally regarding the said roadmap for implementing split assessment, an increase in the level of the WCF was not needed at the present time. The WCF would consequently remain at CDN 6.0 million. It was noted that if, in the future, the cash flow situation of the Organization required an increase in the level of the WCF, then a proposal would be presented to the Council for approval so that the Secretary General would be able to meet the Organization's financial responsibilities. It was further noted that, as requested by the Representative of South Africa, the Secretariat would provide the Council with information regarding the payment of assessed contributions by those States represented on the Council at the beginning of the 186th Session.

Subject No. 42.1.3: Administrative and Operational Services Cost (AOSC)

**2009 Technical Co-operation Administrative and Operational Services Cost (AOSC)
budget estimates and update of the budget for 2008 AOSC income and expenditure**

28. The Council considered the above subject on the basis of C-WP/13210 (with Addendum No. 1), in which the Secretary General provided financial information on the evolution of the Technical Co-operation Programme (TCP) for 2008 in relation to United Nations Development Programme (UNDP), Trust Fund (TF), Management Service Agreement (MSA) and Civil Aviation Purchasing Service (CAPS) projects, an update of the 2008 and 2009 AOSC budget estimates approved by the 36th Session of the Assembly on an indicative basis in Canadian dollars and information on the number of staff and costs in the Regular Programme funded through the AOSC Fund; and an oral report thereon by the Finance Committee (FIC).

29. In his oral report, the Chairman of the FIC noted, *inter alia*, that, at the request of the Committee, the Secretariat had provided an update on the pilot project for the establishment of a harmonized cost recovery policy applicable to all extra-budgetary activities of the Organization. The Secretariat had informed the FIC that, after the Council had approved the Secretariat's strategy, an invitation for tender had been issued in July 2008 to several potential suppliers. The Secretariat had also indicated that it had approached Audit Services Canada (ASC), a government agency of Canada recommended by the former

External Auditor, but that that company had not participated in the tender. While two other companies had responded to the tender, both proposals received had been rejected. A sole source offer had then been issued to ASC and a proposal of CAD 175 000 had been received in response. The Secretariat had requested further clarification from ASC due to its reservations that the latter's proposal might not be in full compliance with the terms of reference for the pilot project approved by the Council. In response, ASC had withdrawn its offer. Committee members had expressed the need to ensure timely completion of this very important pilot project. The Secretariat had informed the FIC that a new call for tenders had been issued with a closing date of 21 October 2008. Some FIC members had suggested that ICAO negotiate further with ASC to reach an agreement so that the Organization could benefit from the very qualified professional services offered by the agency.

30. In providing additional information regarding the new call for tenders, the Director of the Technical Co-operation Bureau (D/TCB) noted that by the said closing date five proposals had been received. Technical and financial evaluations thereof were being carried out by the Secretariat and would be concluded shortly. Their prices ranged from CAD 72,000 to CAD 154,000 and completion dates for the pilot project ranged from early January to March 2009. Upon the suggestion of some FIC members, the Secretariat had also contacted again, and met with, ASC and the firm had agreed to resubmit a proposal in full compliance with the terms of reference approved by the Council. From the Secretariat's initial review of the proposals, there were at least two international reputable companies which fully complied with the terms of reference and could do a quality job, plus the new proposal from ASC which had the advantage of being a government agency. The matter would be concluded shortly and an offer made based on compliance with the terms of reference, best quality and price.

31. Referring to the action proposed in paragraph b) of the executive summary of the paper, which invited the Council to "approve the 2009 budget estimates to be financed by the AOSC income and, if required, the accumulated AOSC surplus", the Representative of Canada maintained that it was inconsistent with the Council's practice. He averred that, as the Council had no power over the AOSC estimates and budget and did not have any accountability therefor, it could not approve them. Governance-wise and constitutionally speaking, the Council could not take the action proposed. The Representative of Canada thus suggested that the word "approve" be replaced with the words "take note", as had been done in the past; otherwise, he would make a reservation regarding action paragraph b).

32. The President of the Council recalled that the Council had recently amended Financial Regulation 9.5 so that any adjustment to the ordinary administrative and operational costs for the year exceeding a 5 per cent increase over the amount approved by the Assembly or previously approved by the Council was subject to prior approval of the Council. Noting that the issue of the approval of AOSC budget estimates would thus be coming before the Council more frequently, as the 5 per cent threshold was less than the previous 10 per cent threshold, the President suggested that the Working Group on Efficiency (WGOE) be requested to review Financial Regulation 9.5.

33. Noting that the information provided in the paper had been prepared before the current global financial crisis and that the projected AOSC surpluses for 2008 and 2009 of US \$54 000 and US \$111 000, respectively, were small, the Representative of Mexico stressed the need for caution and for action to be taken to ensure that those minimal surpluses were maintained. Such action should not necessarily result in an increase in the administrative charge levied on States for their ICAO-executed technical co-operation projects. He emphasized the need for the TCP to be managed as efficiently as possible.

34. The Representative of Singapore agreed that the projected meagre surplus of US \$54 000, or 0.5 per cent of AOSC income in 2008, and US \$111 000, or 1 per cent of AOSC income in 2009, did not leave much room for TCB to manoeuvre. He underscored that there was an urgency for TCB to consider achieving efficiencies by reducing the cost of support services provided by the Regular Programme, instead of increasing it, as given in the estimated increase from \$2.2 million to \$2.26 million. The Representative of Singapore emphasized that, for TCB to continue to enjoy the trust and confidence of user States, it was imperative for it to demonstrate that TCB was not supporting the Regular Programme using money earned from developing countries that used TCB's services.

35. In underscoring that the TCP operated on a cost recovery basis, the President of the Council emphasized that it should not have a large surplus, as that would be an indication that it was over-charging States for their technical co-operation projects.

36. The Representative of India enquired as to the latest update on the estimated AOSC budget surplus for 2008 and on the trend of expenditures, particularly in the Americas, which constituted the major portion of ICAO's TCP. He then highlighted that the AOSC was funding 24 Regular Programme posts in the amount of some US \$2 million per year while a dozen posts in TCB, including the post of Deputy Director, the posts of five Chiefs of Sections and several P-4 level posts, remained vacant, which negatively affected programme delivery and the pace of implementation of technical co-operation activities. The Representative of India underscored that the said funding was a subsidy of the Regular Programme by developing countries. While aware that the cost recovery pilot project was underway, he emphasized that it was for the future. The Representative of India therefore proposed that the amount owed by the Regular Programme to the AOSC be determined by either the Internal Auditor or the External Auditor or, alternatively, that it be determined by retroactively applying the formula for the apportionment of costs between the Regular Programme and the AOSC resulting from the cost recovery pilot project.

37. Noting that the pilot project was very much delayed, the Representative of India urged the Secretariat to follow the Procurement Code and the advice of the Procurement Board and to finalize the tenders without delay. In underscoring, in this context, that no other extra-budgetary programmes, such as the Ancillary Revenue Generating Fund (ARGF) or the Aviation Security Plan of Action, were being charged for financial and legal services provided by the Regular Programme, he averred that it was discriminatory to charge the AOSC for such services.

38. In noting that the estimated AOSC budget surplus for 2008 was still the same, D/TCB emphasized that that did not mean that it would not be affected by the global financial crisis. Noting that it was estimated that income could decrease by 5 per cent between September and December 2008, he indicated that expenditures were being adjusted immediately as income declined so as to ensure that the AOSC did not incur a deficit.

39. D/TCB noted that the projected programme for 2008 for the Americas had decreased from the 31 March 2008 estimate of US \$172.6 million to US \$155.4 million by 31 August 2008, a decline of some 17.2 per cent. The projected programme for 2009 was US \$156.0 million. He recalled that one of his goals, when he first assumed the post of D/TCB in April 2007, had been to balance the participation of different regions of the world in ICAO's TCP. The latter had been too concentrated in the Americas. Whereas when he had arrived at the Organization the Americas had represented some 80 per cent of the TCP, they now represented a little more than 60 per cent. This meant that technical co-operation projects were growing at a much faster rate in Africa, in particular, as well as in Europe and the Middle East. D/TCB

stressed that TCB could not put all of its efforts into the Americas as its goal was to serve ICAO's 190 Contracting States.

40. With regard to the cost recovery pilot project, D/TCB indicated that the tender process would be completed that week and that a preliminary report on the outcome of the project could be presented to the Council during its next (186th) Session in February/March 2009.

41. In agreeing that it would be useful to review Financial Regulation 9.5, the Representative of France underscored that it should be done through the FIC and not the WGOE. He further indicated that the said preliminary report should be added to the Council's work programme for the next session.

42. Concurring with the Representative of Canada that it was strange for the Council to be requested to approve an estimate of the 2009 AOSC budget, the Representative of Brazil considered that Financial Regulation 9.5 should be reviewed by the WGOE or some other group. In sharing the views expressed by the Representatives of Singapore and India regarding the cross-funding between the Regular Programme and the AOSC, he emphasized that it was time that that practice, which had begun in the 1950's, stop.

43. The Representative of Namibia underscored that if TCB wished to increase its revenue base among ICAO's 190 Contracting States, then it must vigorously market itself to attract projects from those States. In stressing that it was important for TCB to revisit its administrative charge, he averred that it might be on the high side when compared to the charges levied by other organizations for similar assistance and therefore discourage States from entrusting their technical co-operation projects to ICAO. The Representative of Namibia also suggested that TCB review its MSA and make it more generic so that it would be more acceptable to a larger number of States. He noted that the MSA currently contained some legal aspects to which many States could not agree. In supporting the suggestion made by the Representative of Canada regarding action paragraph b) of the executive summary of C-WP/13210, the Representative of Namibia indicated that the Council's previous decision to amend Financial Regulation 9.5 was to be regretted.

44. Observing that as ICAO was a not-for-profit organization TCB did not market its services, D/TCB indicated that it instead raised the level of awareness of the right of Contracting States to use its services. He noted that some 105 Contracting States were currently availing themselves of those services. With regard to the administrative charge levied by TCB, 5 per cent, D/TCB emphasized that it was lower than that charged by other UN organizations. He cited, in this context, the UNDP, which charged 15 per cent. Referring to the MSA, D/TCB underscored that it was a platform document. It was only when the project document detailing the budget lines was being concluded that the differing needs and regulations of States were taken into account.

45. The Representative of Spain considered that the ability of the Council, under Financial Regulation 9.5, to exert some control over an excessive increase in technical co-operation activities was an important part of the Organization's policy. Averring that it would be insufficient for the Council to only note an increase in AOSC budget estimates, which could be as high as 20, 30 or 40 per cent, he agreed that Financial Regulation 9.5 should be reviewed.

46. In emphasizing that the global financial crisis could have an impact on the TCP, the Representative of Spain underscored that TCB did not have much operational flexibility to adjust thereto: there were only two areas where costs could be reduced: the use of consultants and payments for support

services provided by the Regular Programme. That was one reason why the cross-funding between the AOSC and the Regular Programme should be studied.

47. While observing that the new format of the paper did improve transparency from the point of view of the FIC, the Representative of Spain averred that the paper was not sufficient from the point of view of the Technical Co-operation Committee (TCC). He stressed that it was necessary to distinguish between financial and technical co-operation aspects and to clearly define what was expected from the Secretariat in terms of information to be provided to each Committee so that they each had the information that they required. Referring to the comments made by the Representative of Namibia, the Representative of Spain indicated that it would be interesting for the Council to have a benchmark for TCB's administrative charge in terms of the charges being levied in the market.

48. D/TCB agreed that it would not be sufficient for the Council to simply note the AOSC budget estimates. He observed that, while the TCP was not yet increasing at the rate of 40 per cent per year, it had achieved close to a 16 per cent growth in the last two years — a significant amount. Reiterating that the size of the TCP depended on States' requirements for TCB's services, he indicated that, with the global financial crisis, the TCP could quite easily decrease by 20 per cent. It would only be possible to ascertain the extent of its impact by March 2009.

49. D/TCB emphasized that TCB had maximum operational flexibility to deal with fluctuations in the size of the TCP. It could reduce not only the costs relating to the use of consultants and payments for support services provided by the Regular Programme, but also Professional and General Service staff costs since many of those posts were temporary. As TCB functioned on the basis of the core staff concept, it was possible for it to make any staffing adjustments necessitated by increases or decreases in the size of the TCP.

50. Recalling that the Council had previously requested that two separate papers be prepared, one for the TCC and one for the FIC, D/TCB noted that there would be a meeting the following afternoon at 1430 hours, presided over by the Chairman of the TCC, to discuss the content of the new paper on technical co-operation.

51. Responding to a question raised by the Representative of the United Kingdom regarding the call for tenders for the cost recovery pilot project, the Chief of the Regular Programme Procurement Section (C/RPRO) noted that, as FIC Members had been informed, the Secretariat had received confirmation on 6 October 2008 that the ASC would not be able to participate in the new call for tenders as they could not meet the terms of reference. Due to time constraints, the Secretariat had immediately called for tender, setting the closing date at 21 October 2008. At the same time, some FIC Members had recommended that ASC be invited to participate therein and to submit a proposal that was in compliance with the terms of reference and that had a lower price than its original bid. While ASC had agreed to submit a proposal, it had indicated that, due to time constraints and limited resources, the proposal could only be presented on 24 October 2008. The Secretariat had not extended the deadline for the call for tenders; rather, it had decided to treat the five proposals received by 21 October 2008 and the one received on 24 October 2008 as equally valid and to evaluate them.

52. Referring to the comments made by the Representative of Spain, the Representative of Nigeria noted that, in accordance with Assembly Resolution A36-17 (*Consolidated statement of ICAO policies on technical co-operation*), Appendix A (*The ICAO Technical Co-operation Programme*), Preambular Clause 10, all technical co-operation activities of the Organization were to continue "to be based

on the principle of cost recovery and measures should be taken to minimize administrative and operational costs to the extent possible". In his view, the purpose of Financial Regulation 9.5 was to monitor that process.

53. Drawing attention to the table appended to Addendum No. 1 to the paper, the Representative of Switzerland observed that while the estimated income from travel arrangements for 2008 was US \$189 000, the estimated official business travel costs for 2008 was US \$132 000. Underscoring that the revenue generated was considerably more than that generated by the execution of some technical co-operation projects, he sought clarification. A Travel Officer from TCB indicated that the said revenue was generated by the "back-end" mechanism in place with three airlines, under which the latter informed TCB at year end of its percentage discount based on the overall volume of travel.

54. The Representative of El Salvador averred that the administrative charge levied by ICAO for the execution of technical co-operation projects was minimal when compared to those levied by other organizations carrying out similar projects. Elaborating on the technical co-operation projects underway in Guatemala, El Salvador, Honduras and Nicaragua, he expressed appreciation to TCB for its support and underscored that all of the projects were running smoothly.

55. Noting that the Representative of Spain had raised an important issue, the Representative of Canada averred that the problem was that Financial Regulation 9.5 had been adopted in an unconstitutional manner. As he had mentioned previously, neither the Council nor the FIC had the power to adopt the said amendment to Financial Regulation 9.5. Unfortunately, it had been adopted anyway. As the Representative of Spain had indicated, the Council had to know how the TCP was functioning and whether the size of the Programme was increasing or decreasing. Observing that the Council was now faced with a dilemma which it could not easily solve, the Representative of Canada emphasized that it should take a holistic view and consider whether or not there should be a Financial Regulation 9.5.

56. Recalling that the TCB had a different kind of immunity from ICAO when it was functioning on a commercial basis, the Representative of Canada indicated that he did not wish to test his immunity with the courts. Maintaining that it was inconsistent for the Council to approve the 2009 AOSC budget estimates when it did not have the power to do so and that Financial Regulation 9.5 could not be applied, he expressed a reservation regarding action paragraph b) of the executive summary of the paper.

57. The President of the Council emphasized that Financial Regulation 9.5 had been in existence for many years and that the amendment thereto adopted recently by the Council only changed the threshold for the Council's approval of AOSC budget estimates from 10 per cent to 5 per cent. He indicated that, as suggested by the Representative of France, Financial Regulation 9.5 could be reviewed by the FIC. In then referring to the proposals made by the Representative of India, the President suggested that the Council await the results of the cost recovery pilot project before deciding on the next step to take regarding past payments by the AOSC to the Regular Programme.

58. The Representative of Nigeria underscored that if the Council only noted the 2009 AOSC budget estimates, then it would hamper the operations of the TCB as it would have to use the last AOSC budget estimates approved by the Council, which were no longer realistic. He maintained that the Council should approve the 2009 AOSC budget estimates on the understanding that the FIC would review Financial Regulation 9.5 so that TCB could proceed with the implementation of the TCP. The Representatives of Italy, Mexico and Spain concurred.

59. In sharing the concerns expressed by the Representative of the United Kingdom regarding the conditions under which the call for tenders for the cost recovery pilot project had taken place, the Representative of France cited the sliding deadline for the submission of bids and the parallel negotiations with one supplier for a proposal. He averred that the procedure followed was not very orthodox. Recalling that a recent incident had already shown deficiencies in ICAO's tendering procedure, the Representative of France underscored that the Organization should draw lessons therefrom. Noting that ICAO could use or abuse its immunity, he underscored that there was at least a risk to its reputation. The Council should reflect on that point. The Representative of France wished to record his reservation regarding the procedure followed in the call for tenders to carry out the said pilot project.

60. The Representative of South Africa shared the views expressed by the Representatives of the United Kingdom and France regarding the said call for tenders. He also endorsed the comments made by the Representatives of India, Spain and Namibia.

61. The Representative of Saudi Arabia supported the proposals made by the Representative of India, as well as the remarks made by the Representative of Nigeria.

62. In taking the action proposed in the executive summary of C-WP/13210 as recommended by the FIC and as amended by the President of the Council in light of the discussion, the Council:

- a) noted the revised estimated financial results of the AOSC budget for 2008;
- b) approved the 2009 AOSC budget estimates to be financed by the AOSC income and, if required, the accumulated AOSC surplus; and
- c) requested that the FIC include in its work programme for the next (186th) session the review of Financial Regulation 9.5 based on a proposal to be presented by the Secretary General and that it report thereon to the Council.

63. The reservation expressed by the Representative of Canada regarding paragraph 62 b) above on the Council's approval of the 2009 AOSC budget estimates and the reservation expressed by the Representative of France regarding the procedure followed in the call for tenders to carry out the cost recovery pilot project were duly noted.

64. It was also noted that, as requested by the Representative of the United Kingdom, an informal briefing by the successful bidder to conduct the pilot project would be given to Representatives during the week of 10-14 November 2008 and that a preliminary report by the Secretary General on the results of that pilot project would be presented for Council's consideration through the TCC and the FIC during the next (186th) session. It was further noted that, as requested by the Representative of France, the oral report by the Chairman of the FIC and the updated information provided orally by D/TCB would be circulated electronically to Representatives.

Other business

Subject No. 18.14: Other finance matters for consideration by Council

Financial situation of the Organization

65. As no request had been received by close of business on 31 October 2008 to have C-WP/13206 on the above subject tabled for discussion in response to his memorandum PRES RK/1609 dated 20 October 2008, the President indicated that he considered that the Council had noted the information contained therein.

66. The Council agreed to waive the five-day rule for the listing of documents in the order of business set forth in Rule 26 b) ii) of the *Rules of Procedure for the Council* (Doc 7559) so that the papers and oral reports relating to the programme of meetings for 2009 and tentative programme of meetings for 2010-2012 (C-WPs/13243-13248) could be considered during its next meeting on Wednesday, 5 November 2008.

67. The meeting adjourned at 1740 hours.

COUNCIL — 185TH SESSION

SUMMARY MINUTES OF THE SEVENTH MEETING

(THE COUNCIL CHAMBER, WEDNESDAY, 5 NOVEMBER 2008, AT 1000 HOURS)

OPEN MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

Argentina	— Mr. A.M. Singh	Mexico	— Mr. D. Méndez Mayora
Australia	— Mr. P.K. Evans	Namibia	— Mr. B.T. Mujetenga
Brazil	— Mr. R.S. Magno	Nigeria	— Dr. O.B. Aliu
Cameroon	— Mr. E. Zoa Etundi	Republic of Korea	— Mr. Shin, G.-S.
Canada	— Mr. L.A. Dupuis	Romania	— Mr. C. Cotrut
China	— Mr. Tao Ma	Russian Federation	— Mr. A.A. Novgorodov
Dominican Republic	— Mr. C.A. Veras	Saudi Arabia	— Mr. A.A. Alharthy (Alt.)
Ecuador	— Mr. I. Arellano Lascano	Singapore	— Mr. K.P. Bong
Egypt	— Mr. S. Elazab	South Africa	— Mr. T. Peege
El Salvador	— Mr. J.A. Aparicio Borjas	Spain	— Mr. V.M. Aguado
France	— Mr. J.-C. Chouvet	Switzerland	— Mr. D. Ruhier
Germany	— Mr. J. Mendel	Tunisia	— Mr. I. Sassi
Ghana	— Mr. K. Kwakwa	Uganda	— Mr. J. Twijuke
Iceland	— Mr. H. Sigurdsson	United Arab Emirates	— Mr. R.A. Al Kaabi (Alt.)
India	— Dr. N. Zaidi	United Kingdom	— Mr. M. Rossell
Italy	— Mr. P. Ciancaglioni (Alt.)	United States	— Mr. D.T. Bliss
Japan	— Mr. S. Baba	Uruguay	— Mr. J.L. Vilardo
Malaysia	— Mr. S.-C. Kok	Venezuela	— Mr. D. Blanco Carrero

ALSO PRESENT:

Mr. O.R. Nundu	— President, ANC
Mr. A. Romera (Alt.)	— Brazil
Ms. S. Chambers (Alt.)	— Canada
Mr. Chunyu Ding (Alt.)	— China
Mr. P. Pape (Alt.)	— France
Mr. F. Christensen (Alt.)	— Iceland
Mr. W. Yoshioka (Alt.)	— Japan
Mrs. D. Jiménez Hernández (Alt.)	— Mexico
Mr. Seo, W.-S (Alt.)	— Republic of Korea
Mr. Yoo, H.-J. (Alt.)	— Republic of Korea
Mr. H. Dávila (Alt.)	— Uruguay

SECRETARIAT:

*Mr. D. Wibaux	— D/LEB
*Mrs. F.A. Oduola	— D/ATB
*Dr. Fang Liu	— D/ADB
*Mr. A. Diallo	— C/HRB
*Mr. J. Begin	— DD/ATB
*Mr. P. Lamy	— DD/ANB
*Mr. V. Gapakov	— A/C/LPB
*Mr. M. Blanch	— C/COS
*Mr. J.V. Augustin	— SLO
*Mrs. C. Ouerghi	— C/ASV
*Mr. R. Lambo	— C/ISD
*Mrs. R. Zagoritis	— COS
*Miss L. Lim	— Consultant, FSV/FSP
*Ms. E. Kandelman	— Consultant, FSV/FSC
*Mr. K. Miller	— Consultant, RGA
Miss S. Black	— Précis-writer

*Part-time

Subject No. 18.14: Other finance matters for consideration by Council**Progress report on the Ancillary Revenue Generation Fund (ARGF)
and Revenue-Generating Activities (RGA)**

1. Tabled for consideration were: C-WP/13208, in which the Secretary General provided a progress report on the ARGF and RGA, including the latter's operation management, as well as a review of its first seven months' financial performance from 1 January to 31 July 2008; and C-WP/13209, a report thereon by the Finance Committee (FIC). The FIC shared the confidence of the RGA team that the first year's target surplus revenue for 2008 of CAD 3.85 million established in the Organization's budget for 2008-2010 (Doc 9895) would likely be achieved.
2. The Secretary General informed the Council that he had appointed Mr. J. Begin, currently the Deputy Director of the Air Transport Bureau (DD/ATB), as the new RGA Manager, pursuant to the decision taken by the Council during its earlier consideration of the oral report of the Special Working Group on the Report of the External Auditor on audit activities in 2008 (C-WP/13225 Restricted; C-DEC 185/5). He would issue a memorandum thereon shortly.
3. The Representative of Mexico noted the progress made with regard to the ARGF and the RGA. In emphasizing that the net target surplus for ARGF for the 2008-2010 triennium of CAD 12.3 million given in Doc 9895 should not be regarded as the maximum surplus to be achieved, he underscored that the Secretariat should be more ambitious. The Representative of Mexico suggested, in this regard, that costs be further streamlined, particularly staff costs and costs for consultants and contractors.
4. The Representative of France observed, from paragraph 1.2 of C-WP/13208, that the ARGF funded business-like operations *i.e.* quasi-commercial activities. The ARGF did not, however, have a legal identity. As a fund comprising various ICAO accounts, it was just an accounting reality. In querying what would happen if there were a lawsuit arising from ARGF-funded activities and if ICAO would be held responsible, he noted that that issue had not been examined when the Council had decided to create the ARGF. The Representative of France observed, in this regard, that the only text defining the ARGF's status and administration was contained in Financial Regulation 7.3 c) of *The ICAO Financial Regulations* (Doc 7515), which indicated the "the Ancillary Revenue Generation Fund shall be used to record all revenues and expenditures relating to self-financing activities". The ARGF was thus merely an accounting instrument. Legally-speaking, only ICAO existed with regard to the ARGF's external partners. Averting that that could give rise to problems, the Representative of France emphasized the need to study that issue in-depth. In further noting that there was no text defining the procedures which the ARGF should follow, in particular with respect to the conclusion of contracts, the issuance of calls for tenders and the establishment of a network of suppliers, he underscored that that issue should also be studied in order to safeguard the Organization against any potential risks, even if the financial results of the ARGF had thus far been positive.
5. Referring to the table contained in paragraph 3.1 of C-WP/13208, the Representative of France enquired as to ARGF-funded training activities and whether they were linked to the training provided by the Technical Co-operation Bureau (TCB). In then drawing attention to Table 1 appended to the FIC's report, he sought clarification regarding the item Licensing agreements. Observing that the balance of the Commissariat Fund as of 31 July 2008 was rather high, CAD 673 677, the Representative of France queried whether it would henceforth be included in the ARGF, which seemed to be the logical answer. In stressing the need to consider how the Organization could use the ARGF balance, he enquired whether, above a certain threshold, it would added to the Regular Budget and whether a fund should be created to cover a

potential ARGF deficit. While recognizing that the ARGF had only recently been set up, the Representative of France underscored that all of the issues that he had raised should be studied.

6. The RGA Manager emphasized the need to distinguish between the ARGF, an accounting fund, and the RGA, the entity principally focussed on generating revenue for ICAO. In noting that the role of the RGA was in some ways commercial in nature, he indicated that it did conclude commercial agreements with external entities in co-ordination with the Legal Bureau (LEB). In underscoring that the said training was not provided through TCB, the RGA Manager noted that it had been provided by some experts from the Air Transport Bureau (ATB) in collaboration with Airports Council International (ACI).

7. With regard to licensing agreements, the RGA Manager indicated that RGA did have agreements with commercial firms granting them access to information and data that ICAO had and/or produced. Those firms, in turn, used or relied on that information and data to produce commercial products which they subsequently sold. Referring to the Commissariat Fund, the RGA Manager confirmed that the Secretary General had approved its inclusion in the ARGF on 8 May 2008, after the latter's inception. It had not been possible to include the Commissariat Fund's financial results in C-WP/13208 as at the time the report was finalized not all accounts had been uploaded in the Agresso financial system. The status of the Commissariat Fund as at 31 July 2008 had been included in the FIC's report to supplement the information contained in C-WP/13208.

8. In commending the decision to appoint Mr. Begin as the RGA Manager, the Representative of the United Arab Emirates affirmed that by having the important RGA programme managed by a Secretariat staff member with a reporting line to the Secretary General would make the process more institutionalized. Noting the good comments made by the Representatives of Mexico and France regarding legalities and procedural aspects of the ARGF, he queried whether the latter would be subject to an annual audit and whether the financial results had already been audited in order to ensure that they were correct. Drawing attention to the table contained in paragraph 3.1 of C-WP/13208, the Representative of the United Arab Emirates questioned why reference was only made to dangerous goods, given that that was not the only guidance issued by ICAO. In querying whether ICAO was copying the International Air Transport Association (IATA), he noted that the latter had used ICAO's *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Doc 9284) as a basis for generating a considerable amount of revenue. Observing that training was already offered through, *inter alia*, TCB and the ICAO Aviation Security Training Network, the Representative of the United Arab Emirates enquired as to how the ARGF-funded training would affect the training and related products provided under the various institutional mechanisms. He underscored, in this regard, that he supported the holding of workshops and symposia as a good revenue source. The Representative of the United Arab Emirates emphasized that if the points which he and others had raised were not addressed from a legal perspective, then the ARGF and RGA could run into problems.

9. Recalling that RGA had been established on 1 January 2008, the RGA Manager underscored that it did not even have a full year of experience as an institution. It was, nonetheless, undergoing an audit by the Office for Programmes Evaluation, Audit, and Management Review (EAO) to ensure that its accounting procedures were appropriate and that the information presented to the Council and other bodies was in conformity with the relevant standards. He confirmed that the ARGF would be subject to an annual audit. With respect to the table set forth in paragraph 3.1 of C-WP/13208, the RGA Manager noted that its purpose was to present data for the first seven months in a format that was consistent with the Regular Programme Budget and that the account names were those from the previous accounting system. The account names given in the executive summary of the paper reflected those used in the current financial system, Agresso. With reference to IATA, he indicated that ICAO was currently in commercial discussions

with that association. He had recently signed a letter of intent with IATA, in advance of a meeting to be held with representatives from the latter at ICAO Headquarters on 24 November 2008 with a view to concluding a new agreement regarding ICAO's *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Doc 9284). With reference to training, the RGA Manager indicated that it was provided in a commercial sense. In the present case involving ACI, experts had been provided to assist in the development of a curriculum for a training programme offered by ACI to airport officials. RGA received a proportion of the revenue collected by ACI when giving such training.

10. Noting the negative trends for the items Dangerous goods (-CAD 12 504), ICAO Support (-CAD 280 996) and Governance (-CAD 41 158), which resulted in a deficit of over CAD 330 000, the Representative of India enquired how they had arisen and how RGA planned to rectify the situation. In also querying whether RGA was paying for the provision of financial and legal services provided by the Regular Programme, he indicated that such payments would, in future, be subject to the outcome of the cost recovery pilot project. The Representative of India also enquired as to the utilization of the projected ARGF surplus, in particular, whether it would be reinvested into the ARGF and used to fulfil the Organization's Strategic Objectives and implementation strategies.

11. Observing that C-WP/13208 was a financial report at a specific point in time, the RGA Manager noted that the principal source of revenue for dangerous goods was IATA. IATA paid its fee in the fourth quarter of each year, with the fee for 2008 being US \$500 000. He noted that that would be the last payment of the current contract with IATA, which had been negotiated three years ago and was in United States dollars. Thus when the books were closed at the end of the year, the amount for dangerous goods would be greater. As the Organization had arrangements to generate revenue from the item Dangerous goods from other sources, the total revenue from the item Dangerous goods would be greater than the sum received from IATA. With respect to Regular Programme support services, the RGA Manager indicated that RGA received such services from the Finance Branch (FIN) and the Human Resources Branch (HRB) and, to a limited degree, from LEB. RGA actually provided the funding for one post in HRB and three posts in FIN, which would increase to four posts in 2008. Thus the expenses for the item ICAO Support included the associated salaries.

12. With regard to the utilization of any RGA surplus, the RGA Manager confirmed that any surplus went into the ARGF. The use of the latter was at the discretion of the Secretary General who, under the Financial Regulations, was accountable to the FIC and the Council. He noted that RGA would be presenting to the Secretary General in 2009 a number of new opportunities for commercial products which would require some of the RGA surplus to develop but which were expected to generate additional income.

13. With reference to the cross-funding between the RGA and the Regular Programme, the Representative of the United Kingdom stressed the importance of recognizing that there were costs to the latter of providing support services to the RGA. He considered, however, that the procedure that was being followed by RGA of funding one post in HRB and three in FIN was a slippery slope and that it would create problems in the future along the lines of those encountered with cross-funding between the Technical Co-operation Administrative and Operational Services Cost (AOSC) Fund and the Regular Programme. The Representative of the United Kingdom emphasized the need to establish sooner rather than later a proper way of assessing any cross-funding between the two parts of the Organization.

14. Referring to new opportunities for generating revenue, the Representative of the United Kingdom underscored that as RGA moved into untested areas there would be more questions about the extent to which ICAO could be involved in quasi-commercial activities and whether the Organization would

be competing with the private sector. Stressing that it was therefore becoming increasingly important to ensure that any such activities were carried out on a proper legal basis, he queried whether it was now time to consider establishing RGA with a separate arms-length legal personality.

15. Responding to the point raised regarding cross-funding, the RGA Manager indicated that it was possible to have an assessment process as opposed to a direct funding process and that he would discuss the matter with A/C/FIN. With respect to the second issue raised by the Representative of the United Kingdom, he noted that RGA was supposed to complement the core activities of ICAO while also seeking out opportunities for ICAO to generate revenue as a result of its work products and intellectual property. In observing that there were some mechanisms in place to manage a reasonable balance internally, the RGA Manager indicated that there was an Advisory Group for the ARGF, of which he was the Chairman, that met on a monthly basis to review the work being done, the performance level achieved, new opportunities of interest and efforts to develop them. There was an understanding with the Secretary General and the Senior Management Group (SMG) that as new business opportunities were developed they would be brought before the SMG to obtain its view on whether or not the appropriate balance was being maintained between the core objectives of ICAO, maintaining its image and reputation, and finding opportunities to commercially exploit to the financial benefit of the Organization. The RGA Manager indicated that he would request the opinion of LEB regarding setting up RGA with a separate arms-length legal personality.

16. In observing that the item Dangerous goods had incurred a deficit of CAD 12 504, the Representative of the Russian Federation reiterated the proposal that he had made in the FIC that ICAO's *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Doc 9284) be made available online in the ICAO e-shop in order to generate additional revenue.

17. The Representative of France emphasized that it would be useful to examine how systems similar to the RGA operated in other UN organizations. In endorsing the proposal made by the Representative of the Russian Federation, he stressed that the development of commercial opportunities should not deprive ICAO Contracting States of open and free access to documents produced by the Organization using their assessed contributions. The Representative of France underscored, in this context, that ICAO Contracting States had no intention of paying twice.

18. The Representative of Canada shared the view expressed by the Representative of the United Kingdom regarding establishing RGA as a legally autonomous entity. Recalling that he had been rather skeptical when the Secretary General had proposed the creation of the ARGF, he now congratulated the latter on the fact that in its first seven months of operations the ARGF had generated a surplus of CAD 2.57 million, which was 66.8 per cent of the 2008 target. In underscoring that all of the points raised during the discussion needed to be addressed by the Secretary General and the Council, the Representative of Canada affirmed that it would continue to be the useful tool that it had thus far proven to be.

19. The Representative of Canada reiterated that the term "Commissariat" was profoundly offensive as it meant a police station. He therefore requested that the term "Commissary" be used in the English language, the word used in the military tradition, and the term "Magasin de détaxe" in the French language, the term used by the Office de la langue française du Québec, and that the sign for the Commissariat in the lobby be removed.

20. In also commending the Secretary General for the steps that he had taken in the management of the ARGF, the Representative of the United States suggested that he consider appointing a new Chairman of the Advisory Group since Mr. Begin had assumed the responsibility of RGA Manager.

21. The Council then noted the information contained in C-WP/13208, as well as C-WP/13209. It was understood that the legal concerns raised regarding the RGA and the other comments made during the discussion had been noted by the Secretary General and would be addressed in future reports on this subject.

Subject No. 7: Organization and personnel

Report of HRC — Progress report on the work of the Human Resources Committee

22. The Council next considered C-WP/13264, in which the Chairman of the HRC reported on the work undertaken by that Committee during the 185th Session. It was noted, with regard to paragraph 2.5.1 of the paper, that a copy of the Secretary General's reply to the UN Secretary-General's letter on ethics would be circulated to Representatives. It was also noted, with regard to paragraph 2.6.1, that while it was still the intent to circulate the proposed *Charter Letter for the Selection of the Secretary General* to Representatives under cover of a President's memorandum before the end of the current Council session, it might be necessary to circulate it by e-mail after the close of the session and to send responses thereto by e-mail if that target could not be met.

23. In reiterating the need to have rotation in the HRC, the Representative of France expressed the hope that if, as he considered, other Council Representatives shared his view, then it would be taken into account when the Council next elected the Members, Alternates and Chairman of the Committee. While noting that he only attended the HRC meetings as an observer, the Representative of France indicated that it seemed to him that when the HRC had examined the candidacies for two posts, one during the last session and one during the current session, the review had not been entirely satisfactory or completely in conformity with its mandate. While recognizing that the HRC had only recently been established and that it had yet to define its working methods, he underscored that there were certain policy issues that had not been addressed, such as the treatment of external candidates versus that of internal candidates. Although that was a very important aspect of human resources policy, there did not seem to be an clear principle or rule governing it.

24. Observing that another issue was equitable geographical representation (EGR), the Representative of France noted that one did not always get the impression that that criterion was truly taken into account in appointing candidates. In suggesting that the Organization apply the principle of EGR using weights which varied in accordance with the importance of each post, he noted that it was not the same thing for a State to have a national in a P-2 post in a Regional Office and in a Director-level post at ICAO Headquarters. The Representative of France averred that the language criterion was likewise not taken into consideration in an evident manner. Although the paper indicated, in paragraph 2.2.1, that all six ICAO languages would continue to be treated equally for non-language posts at ICAO Headquarters, that had obviously not been the case in the HRC's review of the candidacies for the said two posts. The Representative of France underscored that there thus remained much work to be done on the Committee's procedures before the results were entirely satisfactory.

25. Drawing attention to paragraph 2.7.2 of the paper, the Representative of Venezuela noted that as the response rate for the post of ICAO Regional Director (ICAORD) for the Lima Office had been very low, the HRC had endorsed the Secretariat's and Secretary General's recommendation that that post be re-advertised. He indicated that one reason for the low response rate might be the fact that potential applicants from the civil aviation administrations in the Latin American region might have a military background, which they might consider would affect their candidacies.

26. Noting that he participated in the HRC as an observer, the President of the Council underscored that he had never seen, at any time, that the military background of a candidate had been taken into account in the final decision of the Secretary General. The Director of the Bureau of Administration and Services (D/ADB) indicated that that issue could be considered by the HRC in the future.

27. Referring to paragraph 2.2.1 of the paper, the Representative of Brazil commended the confirmation by the HRC of the current practice of stipulating specific language requirements for language posts and for posts located in the Regional Offices. To a query by the Representative, D/ADB clarified that after pre-screening, there had been 30 applications for the post of ICAORD, Lima Office. Only two of them had met the minimum requirements. As the Secretariat had considered that that number was insufficient, it had recommended to the Secretary General that he re-advertise the post. The Secretary General had supported that recommendation, which had subsequently been endorsed by the HRC. Noting that it was hoped that there would be more applicants, D/ADB recalled that Representatives from the Latin American region had been consulted regarding appropriate magazines in which to advertise the post of ICAORD, Lima Office. She suggested that Representatives contact their national administrations and invite them to encourage suitably qualified personnel to apply.

28. The Representative of India proposed that the Secretary General and the HRC consider a three-year tenure for Director-level posts so as to be in line with the tenures of the President of the Council and the Secretary General.

29. Noting that he also attended the HRC meetings as an observer, the Representative of Spain reiterated that the Committee should avoid any attempt to micro-manage. Referring to paragraph 2.2.3 of the paper on educational qualifications, he enquired whether the term “advanced university degree” used in vacancy notices for Principal Officer (P-O) and Director-level posts meant a Master’s Degree. Answering in the affirmative, D/ADB clarified that the term “advanced university degree” was used as there were different educational systems throughout the world. She recalled that, in the past, the term “Master’s Degree” had appeared in parentheses after the term “advanced university degree” but had been deleted following a review by the HRC.

30. The Representative of Ecuador questioned the necessity of re-advertising the post for ICAORD, Lima Office when there had been two candidates who had met the minimum requirements. He also expressed concern that, if the requirements and qualifications specified in the vacancy notice for that post had not changed, then the same applicants would apply. The Representative of Ecuador considered that there was a substantial difference between an advanced university degree, which could be a Bachelor’s Degree, and a Master’s Degree, which was a post-graduate degree. He observed that while, in the Latin American region, experience in the fields of safety, security and operations carried a great deal of weight, that fell under professional training and not under educational qualifications. That might be one reason why more candidates from his region had not applied for the post of ICAORD, Lima Office.

31. Noting that the civil aviation authorities in the Latin American region had offered to publish the vacancy notice for that post free-of-charge, the Representative of the Dominican Republic affirmed that the region would provide the necessary candidates.

32. D/ADB suggested, and it was agreed, that a group meeting of Representatives from the Latin American region be held so that she could provide further clarifications regarding the post of ICAORD, Lima Office and receive the Representatives’ advice.

33. The Representative of the Russian Federation fully endorsed the HRC's excellent report. In then drawing attention to Appendix B of reference document FI-WP/673, he noted that the Human Resources Working Group (HRWG) of the Finance Committee (FIC), in paragraph 3 of its report on ICAO human resources policy, had recommended that "a delay of three months shall be given for the presentation of candidacies". Nonetheless, a vacancy notice had been issued the previous day, 4 November 2008, with the deadline for the submission of applications of 1 December 2008. Averring that it would not be possible for national administrations to come up with suitably qualified applicants within that short timeframe, the Representative of the Russian Federation proposed that the HRC review the procedure for notifying vacancies so as to ensure that the three-month period for the submission of applications was adhered to or even extended. D/ADB clarified that the advertisement period was two months for the time being, as agreed by the HRC and endorsed by the Council. Observing that whenever a vacancy notice was issued Representatives received a copy thereof via e-mail, she indicated that they could take the vacancy notices with them whenever they returned to their home States. D/ADB welcomed any suggestions on how to improve the process.

34. Referring to paragraph 1.1 of C-WP/13264, the Representative of the Russian Federation noted that the HRC had agreed that its work would be conducted in English. While indicating that that was a correct decision in light of the Committee's present membership and the Organization's current budgetary constraints, he underscored the need to apply a rotation principle to the HRC so that no Member would sit on the Committee for more than two years and to change the working languages of the HRC accordingly. The Representative of the Russian Federation noted, in this context, that his State was willing to have a representative serve on the Committee and was even prepared to have the latter work in the English language. The President of the Council recalled that, under Rule 39 of the *Rules of Procedure for Standing Committees of the Council* (Doc 8146), a Committee may decide, by unanimous agreement, that interpretation or translation into one or more of the Organization's working languages shall be waived.

35. The Representative of Italy shared the concerns expressed by the Representative of France, especially with regard to the appointment of C/FIN, one of the two posts considered recently by the HRC. He underscored that despite having served in a very satisfactory manner for many months, A/C/FIN had not been included on the HRC's short-list of candidates. The Secretary General assured the Representative that the candidate whom he had selected was the most competent one.

36. In applauding the Secretary General's choice for the post of C/FIN, the Representative of South Africa recalled that all three short-listed candidates were competent. He emphasized that the Council should not question the expertise of the HRC and the Secretary General in selecting candidates and should not let national interests come into play. The Representative of France was of the same view.

37. In then taking the action proposed in the executive summary of C-WP/13264, the Council noted the report of the HRC and approved the change in the nomenclature of the Principal Officer (P-O) and Director (D) levels to D-1 and D-2, respectively, in *The ICAO Service Code* (Doc 7350) as proposed in paragraph 2.2.5 of the paper in order to align the nomenclature with that of the UN. It was understood that the said change in nomenclature did not have any financial implications.

Subject No. 12: Programme of ICAO meetings

Programme of meetings for 2009 and tentative programme of meetings for 2010-2012

38. The Council gave initial consideration to this subject on the basis of: a report by the Air Navigation Commission (C-WP/13243) on meetings in the air navigation field; reports by the Secretary General (C-WPs/13244-13247) on meetings in the air transport, joint support, aviation security and legal fields; oral reports by the Air Transport Committee (ATC), the Joint Support Committee (JSC) and the Committee on Unlawful Interference (UIC) on the programmes of meetings in their respective fields; and a consolidated report by the President of the Council and the Secretary General (C-WP/13248).

39. During the review of the ANC's report (C-WP/13243), the Representative of Singapore, highlighted the meetings of ANC Panel Chairpersons or representatives, the Aerodromes Panel (AP), the Navigation Systems Panel (NSP) and the Aeronautical Communications Panel (ACP). He underscored that the informal briefing held on 1 September 2008 on the issues of human capital and aviation fuel had revealed that unfolding events would no doubt impose tremendous pressure on the entire aviation industry to adapt to the new operating environment and to achieve maximum efficiency in order to survive the challenging and uncertain economic environment in the foreseeable future and beyond. Observing that many Council Representatives believed that ICAO must respond to the challenges ahead, the Representative of Singapore indicated that, towards that end, the Representatives of India, France, Mexico, Nigeria, the Russian Federation, South Africa and Venezuela had explicitly supported the proposal that there was an urgent need for the ANC and the Secretariat to review the Standards and Recommended Practices (SARPs) to ensure their relevance for the 21st century. A review of the many decades-old SARPs could now draw on the cumulative operational experiences and apply new technologies and risk management to make the SARPs more efficient and relevant. The Representative of Singapore therefore reiterated the proposal that the Secretariat and the ANC, through its President, prepare a comprehensive work plan for the review of existing SARPs and submit it for Council's consideration during its 187th Session.

40. Referring to the Civil and Military Global Summit, which was being held for the first time, the Representative of Spain queried if the term "summit" reflected the status of that meeting and the expectations regarding its outcome and suggested that the title of the meeting be reviewed. He noted, in this regard, that ICAO meetings usually were referred to as conferences, symposia or seminars, *inter alia*. In supporting the convening of the meeting, the Representative of Spain affirmed that it was essential for the future implementation of the Global Air Navigation Plan, as well as for civil/military co-operation and co-ordination. He agreed with the comment made by the President of the ANC in introducing C-WP/13243 that to ensure the meeting's success, the representatives of the military should be at the decision-making level; otherwise, it would lead nowhere: it would be just another meeting with a series of observations and documents and nothing more.

41. Commending the convening of the meeting of ANC Panel Chairpersons or representatives, the Representative of Spain emphasized the need for co-ordination and synergy among all of the initiatives of all of the various Panels. In then noting, from paragraph 7.1 b) of the paper, that the High-level Safety Conference in 2009 and 2010, the Civil and Military Global Summit in 2009, the ICAO/International Air Transport Association (IATA) Next Generation of Aviation Professionals Symposium in 2010 and the NextGen/SESAR meeting in 2010 had not been considered when the meetings programme budget had been prepared, he enquired as to their financial implications.

42. The President of the Council indicated that the title of the Civil and Military Global Summit was being reviewed and would be changed in order to be consistent with the nomenclature commonly used.

43. The Deputy Director of the Air Navigation Bureau (DD/ANB) noted that two types of financing had been traditionally used for air navigation meetings: the transfer of funds that had been allocated in the budget for panel meetings; and self-financing *i.e.* having the meeting generate revenue to cover the expenses associated with its organization. He expressed confidence that a way would be found to finance the Civil and Military Global Summit and the other said meetings.

44. The President of the ANC recalled that the Commission had had to convince itself that ICAO was the appropriate venue for the summit. Observing that civil and military co-operation was already taking place in individual States and in the various regions, he indicated that the ANC wished to use the summit as a platform for launching global awareness of the need for such co-operation. The President of the ANC reiterated the need to attract high-level representatives of the military to ensure that the summit would have concrete results.

45. The Representative of the United Kingdom indicated that, although he had not been able to attend the said informal briefing, he did consider that the issues of human capital and aviation fuel needed to be addressed. Averting that the review of SARPs was long overdue, he requested that the United Kingdom be added to the list of States referred to by the Representative of Singapore which supported such a review. The Representative of the United Kingdom emphasized that it was very important work that was related to streamlining the Organization and the functions that it exercised.

46. While fully supporting the convening of a High-level Safety Conference in 2009, the Representative of the United Kingdom stressed the need to be careful with the nomenclature used. He noted that, whereas the term “summit” implied representation at the level of Heads of Government or near-Heads of Government, the term “conference” implied representation at a different level, namely, at the level of Directors General of Civil Aviation (DGCAs). In requesting confirmation that that was the intention, the Representative of the United Kingdom also enquired whether the ANC could sustain a High-level Safety Conference in 2010, 2011 and 2012. He maintained that having three such meetings would place a considerable demand on the DGCAs in terms of time and workload, particularly in view of the significant policy questions that they would be expected to address. The Representative of the United Kingdom suggested that if the ANC wished to have an ongoing assessment of the status of safety management, then the said three meetings be retained with the same periodicity but with those planned for 2010 and 2011 being downgraded to the level of a Panel or Working Group which would undertake such a continuous assessment.

47. In confirming that the Commission wished to have representation at the level of DGCAs at the 2009 High-level Safety Conference, the President of the ANC indicated that it was seeking to have regulators attend as that meeting was being used to launch ICAO’s State Safety Programme (SSP), as well as to set forth the approach to the Universal Safety Oversight Programme (USOAP) after 2010. While the ANC could not say, at the present time, what form the subsequent meetings should take, it considered that it was necessary to do follow-up. The Commission was trying to avoid having further conferences as the latter were promotional and intended to get all of the DGCAs on board. What followed was the implementation phase. The said three High-level Safety Conferences presented in Appendix B to the paper for 2010, 2011 and 2012 were merely for planning and budgetary purposes. It had been agreed that the Secretariat would provide the ANC with the necessary information to review the said meetings in due course.

48. The Representative of Canada shared the views expressed by the Representatives of Spain and the United Kingdom regarding the management of the Organization's meetings. He recalled that Canada had repeatedly stressed that the plethora of different types of meetings, conferences, symposia, seminars, panels, *etc.*, could lead to confusion as the meetings did not result in specific conclusions which then became instructions to the Council. Noting that it was only the Assembly which could give instructions to the Council, the Representative of Canada affirmed that greater use should be made of extraordinary sessions of the Assembly in order to better associate the work of the Assembly with that of the Council. He was not saying that there should not be any conferences, symposia or seminars; rather, there should be fewer such meetings. The Representative of Canada underscored that advantage should be taken of the next ordinary session of the Assembly in 2010 to present technical recommendations so that the Assembly could give instructions thereon to the Council.

49. In concurring with the Representative of the United Kingdom that summits usually involved Heads of Government, the Representative of Canada averred that the title of the Civil and Military Global Summit was not appropriate. He noted that it was being reviewed. In questioning whether the Council should continue with the approach of convening meetings which were outside the legal framework of the Organization, namely, the Assembly, the Council and the ANC, the Representative of Canada suggested that the Working Group on Efficiency (WGOE) review the issue. He maintained that the Council should not continue holding multiple conferences, symposia and seminars each year when it had the opportunity of grouping the various subjects together and presenting them at an extraordinary session of the Assembly once a year or once every two years. The Representative of Canada emphasized, in this regard, that although the High-level, Ministerial Conference on Aviation Security held in Montréal from 19-22 February 2002 following the tragic events of 11 September 2001 had been successful, it would have been even more so if the meeting had been convened as an extraordinary session of the Assembly as that would have given a more accurate image of what the Council was seeking and would have resulted in precise instructions to the Council — something which had not been provided by the High-level, Ministerial Conference.

50. Agreeing that the term "summit" was utilized for meetings of Heads of Government or Heads of State, the Representative of Brazil underscored that another term should be used. He concurred with the Representative of Canada that the multiplicity of meetings usually did not result in direct guidance for the Council. Referring to the comments made by the Representative of Spain, the Representative of Brazil observed that his State had a positive experience with civil/military co-operation in the management of the airspace and would come to the Civil and Military Global Summit with some good proposals.

51. In endorsing the comments made by the Representatives of Spain, the United Kingdom, Canada and Brazil on the issue of nomenclature, the Representative of Nigeria observed that traditionally a High-level Meeting in ICAO was a meeting of Ministers. He suggested that, before a review of the nomenclature be undertaken, the Secretary General prepare a list of the various categories of ICAO meetings and the corresponding levels of representation and decisions for greater clarity for the Council and the Secretariat.

52. Observing that the Council was discussing certain meetings which had not been foreseen when the meetings programme budget had been prepared, the Representative of Nigeria suggested that the words "See Note 2" be added in the "Remarks" column for the Meeting of ANC Panels, the High-level Safety Conference and the Civil and Military Global Summit listed in Appendix A (*Tentative programme of meetings for 2009*) to the paper to reflect the fact that, in accordance with standard practice, a separate paper on the need, agenda, dates, site and administrative arrangements for each of those meetings would be submitted to the Council for final decision. In then referring to the action proposed in paragraph a) of the

executive summary of the paper, he emphasized that the Council could only approve the updated meeting programme for 2009 in a tentative manner, pending its consideration of the said papers.

53. The Representative of the Russian Federation emphasized that, in taking the action proposed in paragraph b) of the executive summary of the paper and approving, for planning and budgetary purposes, the tentative programme of meetings for 2010, the Council should take into consideration Appendix C to reference document AN-WP/8334 outlining the panel and committee working group meetings for 2008 to 2012. In noting that many of the working group meetings were working groups of the whole, which meant that no interpretation services were provided, he expressed concern that, while the Russian Federation could accept that, it would have a negative impact on the outcome of the meetings as it would prevent some members from participating fully in the deliberations.

54. In enquiring as to what concrete results were expected from the Civil and Military Global Summit, the Representative of France queried if the latter would be developing general principles governing the distribution of the airspace between civil and military authorities, a matter which affected each State. In fully supporting the remarks made by the Representative of Canada, he recalled that he had made a similar comment when the Council had reviewed the conclusions of the 2006 DGCA Conference on a Global Strategy for Aviation Safety. In maintaining that such high-level meetings had no constitutional status, which complicated the decision-making process, the Representative of France underscored the need to review the various categories of meetings.

55. In also endorsing the comments made by the Representative of the Russian Federation, the Representative of France averred that the increasing replacement of panels of experts by working groups of the whole did not enhance the work of the Organization and did not promote the participation of all States in the important meetings where Annex amendment proposals were initiated. He thus wished to have the latter issue handled differently from the way it was currently treated.

56. The Representative of Namibia supported the comments made by the Representatives of Spain and Nigeria and others regarding the nomenclature used for the Civil and Military Global Summit. He considered that the latter should be attended by Ministers for Air Transport and Defence and that interpretation services should be provided. The Representative of Namibia commended the active involvement of Brazil in that meeting and the sharing of its knowledge and experience in civil/military co-operation in the management of its airspace.

57. Observing that some of the conferences being discussed largely concerned the governance of ICAO, the Representative of India voiced support for uniform nomenclature for the Organization's various meetings. He suggested that the issue be referred to the Working Group on Governance (WGOG) for consideration, taking into account international practices. In endorsing the comments made by the Representative of Canada, the Representative of India noted that there had been concern over the years that the role of the Assembly had become a routine, triennial one and that several responsible people had urged that its role be increased. In stressing that the Civil and Military Global Summit would be dealing with the very sensitive issues of airspace, sovereignty and co-ordination between civil and military authorities which were directly related to the efficiency of air transport, he suggested that, if need be, Heads of State or relevant Ministers be invited to attend. The Representative of India also suggested that the WGOG consider how important issues of governance could be combined and considered at an extraordinary session of the Assembly and the financial implications.

58. The Representative of El Salvador noted that his State and the Latin American region was working on a project relating to civil/military co-operation that had led to an invitation by the South Command of the United States to attend a meeting in Minneapolis. He emphasized the need for all States to more actively participate with military authorities in the management of their respective airspaces as it could be very beneficial for aviation safety, as well as for search and rescue operations. The Representative of El Salvador nevertheless agreed on the need to change the name of the Civil and Military Global Summit.

59. In underscoring that civil/military co-operation was an extremely complex issue, the Representative of the United Arab Emirates indicated that, in addition to relevant Ministers, officials from States' air forces should be invited to attend the summit. He affirmed that participation by civilian and military authorities at the cabinet level would greatly facilitate matters.

60. Summarizing the discussion, the President of the Council reiterated that the title of the Civil and Military Global Summit was being reviewed and would be changed in order to be consistent with the nomenclature commonly used. He noted that the Council agreed to the suggestion made by the Representative of Nigeria that Appendix A (*Tentative programme of meetings for 2009*) should be amended by adding the words "See Note 2" in the "Remarks" column for the Meeting of ANC Panels, the High-level Safety Conference and the Civil and Military Global Summit to reflect the fact that, in accordance with standard practice, a separate paper on the need, agenda, dates, site and administrative arrangements for each of those meetings would be submitted to the Council for final decision. It was understood that the comments made by Representatives would be taken into account by the Secretariat and the ANC in presenting the meeting proposals. The President further noted that the Council requested that the Secretariat and the ANC review Appendix B (*Tentative triennial programme of AN meetings for 2010-2012*) as it was unrealistic to convene a High-level Safety Conference every year. The Council also requested that the WGOG, which was tasked with reviewing the Assembly's procedures, consider the comments made by the Representatives of Canada and India regarding the increased use of extraordinary sessions of the Assembly to avoid a multiplicity of meetings every year and to facilitate the decision-making process and report thereon to the Council.

61. The Council then took the action proposed in the executive summary of C-WP/13243 and, subject to paragraph 60 above:

- a) approved the updated programme of meetings in the air navigation field for 2009 appearing at Appendix A to the paper, as amended; and
- b) approved, for planning and budgetary purposes, the tentative programme of meetings in the air navigation field for the years 2010-2012 set forth in Appendix B.

62. It was understood that a proposal by a number of Representatives that the Secretariat and the ANC prepare, for the Council's consideration during its 187th Session, a comprehensive work plan for the review of existing SARPs in order to ensure their relevance for the 21st century would be taken into account when the Council reviewed the Work Programme of the ANC for its 180th Session (C-WP/13256) later in the current session. The request made by the Representative of Nigeria for a list showing the various categories of ICAO meetings and the corresponding level of representation and decisions was noted.

Other business

Subject No. 17.1: Joint Financing Agreement with Iceland
Subject No. 17.5: Joint Financing Agreement with Denmark

**Recommendations of the Joint Support Committee (JSC) related to items under the
Danish and Icelandic Joint Financing Agreements reviewed during the 185th Session
Information on crossings of the North Atlantic during the calendar year 2007**

63. As no request had been received by close of business on 4 November 2008 to have C-WPs/13242 and /13241 on the above subjects tabled for discussion in response to his memorandum PRES RK/1607 dated 21 October 2008, the President indicated that he considered that the Council had noted the information contained therein.

64. The meeting adjourned at 1300 hours.

COUNCIL — 185TH SESSION

SUMMARY MINUTES OF THE EIGHTH MEETING

(THE COUNCIL CHAMBER, FRIDAY, 7 NOVEMBER 2008, AT 1000 HOURS)

OPEN MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

Argentina	— Mr. A.M. Singh	Mexico	— Mr. D. Méndez Mayora
Australia	— Mr. P.K. Evans	Namibia	— Mr. B.T. Mujetenga
Brazil	— Mr. A. Romera (Alt.)	Nigeria	— Dr. O.B. Aliu
Cameroon	— Mr. E. Zoa Etundi	Republic of Korea	— Mr. Shin, G.-S.
Canada	— Mr. L.A. Dupuis	Romania	— Mr. C. Cotrut
China	— Mr. Tao Ma	Russian Federation	— Mr. A.A. Novgorodov
Dominican Republic	— Mr. C.A. Veras	Saudi Arabia	— Mr. S. Hashem
Ecuador	— Mr. I. Arellano Lascano	Singapore	— Mr. K.P. Bong
Egypt	— Mr. S. Elazab	South Africa	— Mr. T. Peege
El Salvador	— Mr. J.A. Aparicio Borjas	Spain	— Mr. J. Herrero (Alt.)
France	— Mr. J.-C. Chouvet	Switzerland	— Mr. D. Ruhier
Germany	— Mr. J. Mendel	Uganda	— Mr. J. Twijuke
Ghana	— Mr. K. Kwakwa	United Arab Emirates	— Mr. J. Haidar
Iceland	— Mr. H. Sigurdsson	United Kingdom	— Mr. M. Rossell
India	— Dr. N. Zaidi	United States	— Mr. D.T. Bliss
Italy	— Mr. F.P. Venier	Uruguay	— Mr. J.L. Vilardo
Japan	— Mr. S. Baba	Venezuela	— Mr. D. Blanco Carrero
Malaysia	— Mr. S.-C. Kok		

ALSO PRESENT:

Mr. O.R. Nundu	— President, ANC
Mr. A. Romera (Alt.)	— Brazil
Ms. S. Chambers (Alt.)	— Canada
Mr. P. Pape (Alt.)	— France
Mr. F. Christensen (Alt.)	— Iceland
Mr. P. Ciancaglioni (Alt.)	— Italy
Mr. W. Yoshioka (Alt.)	— Japan
Mrs. D. Jiménez Hernández (Alt.)	— Mexico
Mr. Seo, W.-S (Alt.)	— Republic of Korea
Mr. Yoo, H.-J. (Alt.)	— Republic of Korea
Mr. A.A. Alharthy (Alt.)	— Saudi Arabia
Mr. P. Fleming (Alt.)	— United kingdom

SECRETARIAT:

*Mr. D. Wibaux	— D/LEB
*Mrs. F.A. Odutola	— D/ATB
*Dr. Fang Liu	— D/ADB
*Mr. P. Lamy	— DD/ANB
*Mr. V. Gapakov	— A/C/LPB
*Mr. M. Blanch	— C/COS
*Mr. O. Magnusson	— C/EPM
*Dr. R.I.R. Abeyratne	— Coordinator, AT Programmes
*Mrs. J. Hupe	— C/ENV
*Mr. C. Reitano	— A/C/FIN
*Mr. S. Berti	— C/SFP
*Mrs. R. Zagoritis	— COS
Miss S. Black	— Précis-writer

*Part-time

Subject No. 12: Programme of ICAO meetings**Programme of meetings for 2009 and tentative programme of meetings for 2010-2012**

1. The Council resumed (185/7) and completed consideration of this subject on the basis of: a report by the Air Navigation Commission (ANC) (C-WP/13243) on meetings in the air navigation field; reports by the Secretary General (C-WPs/13244-13247) on meetings in the air transport, joint support, aviation security and legal fields; oral reports by the Air Transport Committee (ATC), the Joint Support Committee (JSC) and the Committee on Unlawful Interference (UIC) on the programmes of meetings in their respective fields; and a consolidated report by the President of the Council and the Secretary General (C-WP/13248).

2. During consideration of C-WP/13244 on meetings in the air transport field and the oral report thereon by the ATC, the President of the Council noted, further to a point raised by the Representative of Canada, that the Group on International Aviation and Climate Change (GIACC) might, as a result of its third meeting (Montréal, 16-18 February 2009), suggest a change in the date for its fourth meeting, scheduled to be held in Montréal from 1-3 June 2009, and propose the convening of an additional meeting or meetings to enable it to complete its Programme of Action and to present it to the Council and to a High-level Meeting for consideration. He further indicated that the Council would be requested to decide whether the said High-level Meeting should take place before or after the Fifteenth Meeting of the UNFCCC Conference of the Parties (COP15) in December 2009 and on the date for the meeting when it considered, later in the current session, C-WP/13249 [*Progress report on the Group on International Aviation and Climate Change (GIACC)*]. The President recalled, in this context, that the ATC, in its oral report, had emphasized that the High-level Meeting to review the GIACC's recommended Programme of Action should be held by September 2009 but no later than October 2009.

3. The Representative of France stressed the need for flexibility so that additional GIACC meetings could be held, if necessary, and for the said High-level Meeting to be convened prior to COP15.

4. The Representative of India supported the air transport activities set forth in C-WP/13244. He then recalled that, in a recent meeting of the Working Group on Efficiency (WGOE), of which he was the Chairman, Members had noted that the air transport industry was undergoing a grave crisis relating to liquidity and the decline in global demand for its services. Global passenger traffic had decreased by some 1.7 per cent and global cargo traffic, by 7 per cent. More than 30 airlines had gone bankrupt. Observing that the International Air Transport Association (IATA) was seeking to liberalize the seventh freedom of air transport, ownership and control of aircraft and international investment, *inter alia*, he underscored that, at the 2003 Worldwide Air Transport Conference on the challenges and opportunities of liberalization, it had already been established that ICAO would take the leadership role in those areas. In emphasizing that ICAO needed to be more proactive, the Representative of India affirmed that governments should discuss the said issues within the framework of ICAO. He suggested that a meeting be held in early 2009 on the sustainability of the air transport industry and related issues. The Representative of India noted, in this regard, that the WGOE was recommending that an informal briefing on the situation of the air transport industry be given during the next (186th) Session.

5. In endorsing the comments made by the Representative of India, the Representative of South Africa observed that when financial institutions or the car industry was in crisis, governments intervened, whereas the latter did not intervene when the aviation industry was in crisis. Noting that two Workshops on Universal Implementation of Machine Readable Travel Documents (UIMRTDs) were

planned for 2009, he enquired how many States had implemented MRTDs and how many had not and the reason for their non-implementation. The Representative of South Africa also requested information concerning the new marketing initiatives on board aircraft and a possible common pricing for airline tickets.

6. The Representative of Saudi Arabia also supported the remarks made by the Representative of India, as well as those relating to the need for flexibility to hold additional GIACC meetings, if necessary. Noting that the WGOE had discussed certain issues relating to the future of the air transport industry, he averred that they should have instead been referred to the envisaged Council Planning Group. It was his understanding that the WGOE was to address internal and not external matters.

7. The Representative of France recalled, in this context, that under Article 55 (*Permissive functions of the Council*), paragraph d), of the Chicago Convention, the Council may “study any matters affecting the organization and operation of international air transport, including the international ownership and operation of international air services on trunk routes, and submit to the Assembly plans in relation thereto;”. Affirming that there was thus an incontrovertible legal basis for the Council to address issues relating to the sustainability of the air transport industry, he underscored that the current circumstances warranted the Council’s consideration of such issues.

8. The Representative of the Russian Federation likewise endorsed the comments made by the Representative of India. Recalling that the Representative of Spain had made a proposal during a meeting of the WGOE to resurrect the practice of having joint meetings between ANC Members and industry representatives, he affirmed that it would be worth looking into. The President of the ANC noted that the ANC was resuming contact with industry in a more structured and constructive way.

9. In supporting the paper, the Representative of Namibia suggested that future such reports indicate the expected level of representation for each meeting. Endorsing the comments made by the Representatives of India and South Africa, he underscored the need to issue a State letter enquiring as to the status of implementation of MRTDs and any impediments so that ICAO could provide assistance. Stressing the importance for the Technical Co-operation Bureau (D/TCB) to assist States in the development and implementation of MRTDs, the Representative of Namibia underscored that the provision of such assistance would enable TCB to increase its revenue base.

10. The Director of the Air Transport Bureau (D/ATB) clarified that the State letters inviting States to attend the various air transport meetings would provide the necessary details regarding the envisaged level of representation. It was, however, for the States to decide who would participate.

11. The proposal by the Representative of India for a meeting in early 2009 on the sustainability of the air transport industry and other related issues was noted by the Secretariat for consideration. It was understood that a comprehensive status report on the situation of the air transport industry would be given in an informal briefing during the Committee phase of the next (186th) Session and would include all of the issues raised during the discussion.

12. The Council then noted, without comment, C-WP/13245 on meetings in the joint support field and the oral report thereon by the JSC.

13. During consideration of C-WP/13246 on meetings in the aviation security field and the oral report thereon by the UIC, the Representative of Canada drew attention to the International Conference on Aviation Security, to be held in Montréal from 19-22 October 2009. Noting that it was his understanding that

the Conference would result in practical conclusions that would be presented to the Council for consideration, he reiterated the point that he had raised during the previous meeting (185/7) during the review of C-WP/13243 on meetings in the air navigation field that the right forum was an extraordinary session of the Assembly and not an international conference. The Representative of Canada maintained that, if the purpose of the meeting was to brainstorm, then a seminar or conference would be useful. If, however, the meeting was action-oriented, then an extraordinary session of the Assembly was needed so that the latter could give instructions to the Council. Noting that the Council's discussion of this issue had taken place after the issuance of the paper, the Representative of Canada underscored that the Council still had the possibility of structuring its work a little better. The President of the Council recalled, in this context, that the Working Group on Governance (WGOG) had been requested (185/7) to consider the increased use of extraordinary sessions of the Assembly and to report thereon to the Council.

14. The Chief of the Aviation Security and Facilitation Policy Section (C/SFP) noted that, while the agenda for the meeting had not yet been defined and would only be presented to the Council for consideration during the next (186th) session, it was foreseen that it would transform policies into actions.

15. The Representative of Canada emphasized that, if it was an action-oriented meeting, then it should be an extraordinary session of the Assembly as the latter gave instructions to the Council and not recommendations and conclusions as a conference did. Underscoring that he was not much in favour of conferences as they usually resulted in another round of discussions in the Council as to which recommendations and conclusions of the conference should be retained, he indicated that he was trying to avoid that situation. The Representative of Canada reiterated that, if the meeting would be a brainstorming session, then it could be a conference or a seminar. If, on the other hand, it was action-oriented, then a conference was the wrong format; the meeting should instead be an extraordinary session of the Assembly.

16. Observing that the air transport industry, under the umbrella of the International Air Transport Association (IATA), organized annual aviation security conferences which were also attended by government representatives, the Representative of Switzerland underscored the need to co-ordinate the dates of the envisaged ICAO International Conference of Aviation Security with the aviation industry so that the two conferences would not take place during the same period in 2009. The President of the Council assured the Representative that the dates would be duly co-ordinated.

17. In fully supporting the point raised by the Representative of Canada, the Representative of India reiterated the need to increase the use of the Assembly so as to receive instructions for the Council. He emphasized, in this context, that there were three important issues that were ready for action by the Assembly. One was aviation security issues. Another was the situation of the air transport industry. Recalling the comment made by the Representative of France regarding Article 55 d) of the Chicago Convention, the Representative of India underscored that the Council was to submit plans to the Assembly regarding any matters affecting the organization and operation of international air transport. He indicated that the Council could either wait two years for the next ordinary session of the Assembly to discuss the issue, during which time the air transport industry might go bankrupt, or convene an extraordinary session of the Assembly. The Representative of India queried if the Council did not convene an extraordinary session of the Assembly to consider such an issue, then when would it convene one. The third issue was the outcome of the 2009 Diplomatic Conference on compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks.

18. The Representative of the United Arab Emirates endorsed the oral report by the UIC, as well as the comments made by the Representatives of Canada, India and Switzerland. Observing that there was

a global vacuum in leadership in aviation security, he noted that the annual aviation security conference referred to by the Representative of Switzerland, AVSEC World, had become the mecca of aviation security meetings worldwide. The Representative of the United Arab Emirates considered that IATA provided a good platform in that regard. Referring to the point raised by the Representative of Canada, he indicated that as much as he would wish to see an International Conference on Aviation Security take place under the umbrella of ICAO, some institutional and practical parameters of aviation security needed to be addressed by the Assembly. A fundamental look at what was happening in aviation security both inside and outside ICAO was required.

19. Averring that the meeting would be more of a brainstorming session, the Representative of Nigeria emphasized that it was premature to convene an extraordinary session of the Assembly. Noting that the meeting would have to be held on a cost-recovery basis as no funds had been allocated therefor in the budget, he queried whether an Assembly could be held on that basis. The Representative of Nigeria maintained that the subject matter to be considered by the envisaged High-level Meeting on International Aviation and Climate Change was more ripe for consideration by an extraordinary session of the Assembly. He therefore suggested that the Council take note of the pertinent issues raised by the Representative of Canada and others and let the WGOG consider the increased use of extraordinary sessions of the Assembly. For the time being, the Council should agree to convene the said International Conference on Aviation Security which would consider the various aspects of aviation security and make recommendations as to the way forward which the Council could propose to the next ordinary session of the Assembly.

20. Responding to a question raised by the Representative of South Africa, C/SFP indicated that the AVSEC World conference was an industry event which was also attended by a number of State representatives and, on occasion, by ICAO. The ICAO Conference was more of a State level meeting which was also attended by industry representatives (airports, airlines, *etc.*). There was thus interaction in both directions in the respective events. D/ATB noted that the Chief of the Safety and Security Audits Branch (C/SSA) would be attending the AVSEC World 2009.

21. The Representative of the United Arab Emirates emphasized that ICAO should not only attend such meetings held under the auspices of IATA but also bring the latter to the table to discuss how to address aviation security-related matters in the future and how to reach a real partnership. He underscored, in that regard, that in order to do that, it was necessary to consider the Secretariat's situation: it was badly understaffed and needed support. The Representative of the United Arab Emirates stressed that the Secretariat could only do as much as the Council allowed it to do.

22. During the review of C-WP/13247 on meetings in the legal field, the Representative of the Republic of Korea, drawing attention to paragraph 2.3.1, noted that the regional legal seminar which his Government would be hosting would take place in Seoul from 31 March to 1 April 2009. The schedule and programme details were still being co-ordinated with the Legal Bureau (LEB) and, once finalized, would be sent to relevant Contracting States. Expressing the hope that the seminar would be attended by a large number of participants, the Representative of the Republic of Korea indicated that he looked forward to welcoming States' delegates to Seoul the following year.

23. In thanking the Republic of Korea for hosting the legal seminar, the Director of the Legal Bureau (D/LEB) emphasized that it would afford an excellent opportunity for promoting the legal instruments which would be submitted to the Diplomatic Conference on compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks a few weeks later. Observing that the Organization was only in a position to hold one legal seminar per triennium, he indicated

that the initiative of the Republic of Korea was all the more commendable as it made it possible to convene one extra seminar during the current triennium.

24. The Representative of Nigeria underscored that, although the legal seminar would be hosted by the Republic of Korea, with no budgetary implications for the Organization, it was still an ICAO seminar. He therefore suggested that paragraph a) of the proposed action set forth in the executive summary of the paper be amended to refer to the legal seminar to reflect that the Council had approved it.

25. In strongly supporting the convening of the said Diplomatic Conference, as agreed by the Council during its previous session (184/6), the Representative of Canada underscored the urgent need to take that important measure to reduce the financial impact of terrorism on aviation and to fully protect victims whose chances of useful recovery from airlines was strictly limited owing to the fact that today's world airlines simply no longer had substantial unencumbered assets from which victims could benefit. He noted, in this context, that the airlines' only substantial asset was their insurance, which, in the case of terrorist acts, was largely unavailable at a manageable cost.

26. The Council then took the action proposed in the executive summary of C-WP/13247, as amended by the President of the Council in light of the discussion, and approved, for planning and budgetary purposes: a) the plan for legal meetings in 2009 as indicated in paragraphs 2.1, 2.2 and 2.3 of the paper, namely, a Diplomatic Conference on compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks, a session (34th) of the Legal Committee and a regional legal seminar to be held in the Republic of Korea at no cost to ICAO; and b) the plan for legal meetings for the period 2010 to 2012 as set out in paragraph 3.1.

27. The Council next reviewed the consolidated report on meetings presented by the President of the Council and the Secretary General in C-WP/13248, taking into consideration the meetings listed in C-WPs/13244-13247 and the related oral reports. The President of the Council noted that, further to the Council's earlier consideration (185/7) of C-WP/13243 on meetings in the air navigation field, the title of the meeting "Civil and Military Global Summit" should be amended to read "Global Air Traffic Management Forum on Civil/Military Co-operation" throughout the paper. It was further noted by the Representative of Nigeria that the date of the workshop on UIMRTDs to be held in Nigeria (10-12 February 2009) (*cf.* Appendix A) was still being negotiated with his Government and might slightly change, although it would still take place in the first quarter of 2009.

28. Responding to a question raised by the Representative of Venezuela regarding paragraph 5.1 of the paper, the Director of the Bureau of Administration and Services (D/ADB) indicated that the WGOG was currently considering the possible implementation of a new electronic voting system for the next Assembly in 2010. It was intended to use part of the savings arising from the 2009 meeting programme to introduce such a voting system, subject to approval by the Council.

29. Drawing attention to Appendix C to the paper setting forth the duration, structure and cost data for the proposed programme of meetings for 2009, the Representative of China observed that there were several Panel meetings where services in only five of the Organization's six working languages would be provided. He requested that, in such cases, as there would be Chinese participants in those Panel meetings, consideration be given to also providing language services in Chinese. Noting that the staffing level of the Chinese Section was equivalent to that of the other language sections, D/ADB indicated that she would ask the relevant Bureaux to consider the use of the Chinese language as a working language of the said Panel meetings.

30. In supporting the comments made by the Representative of China, the Representative of the Russian Federation emphasized the need to fully implement the principle of parity in all working languages of the Organization pursuant to Assembly Resolution A31-17 (*Level of services provided in the working languages of ICAO*).

31. Noting the number of reports on programmes of meetings by the various subordinate bodies, the Representative of Namibia questioned the efficiency in having so many papers when all of the issues were reflected in the consolidated report on meetings presented by the President of the Council and the Secretary General (C-WP/13248).

32. In sharing this view, the Representative of the United States observed that there was much duplication in the Council's discussion of the issues raised in the various reports. Noting that the ATC comprised all Council Representatives, he underscored that many of the said issues could be discussed in that forum. Emphasizing that every dollar spent in providing services to the Council was a dollar that was not spent in helping States deal with the many challenges facing the aviation industry, the Representative of the United States stressed the need to think of ways of focussing the Council's work on high-level policy issues.

33. The Representative of India, as the Chairman of the Working Group on Efficiency (WGOE), voiced full support for these comments and underscored that the same issues were being discussed at several levels when one level was sufficient.

34. Observing that meetings of the Steering Group and various Working Groups of the Committee on Aviation Environmental Protection (CAEP) were held outside of ICAO Headquarters than meetings for other such groups, the Representative of France sought confirmation that convening the said meetings in the various regions did not entail a greater cost than convening them in Montréal. Referring to the comments made by the Representatives of China and the Russian Federation, he also queried whether holding meetings outside of ICAO Headquarters restricted the provision of language services.

35. The Chief of the Environment Unit (C/ENV), who was also the Secretary of the CAEP, noted that the usual procedure was to hold the triennial CAEP meetings at ICAO Headquarters. In the interim, annual meetings of its Steering Group were held with the Rapporteurs of the various CAEP Working Groups to review developments. A technical meeting, it did not entail the provision of language services. While it was possible for the Steering Group meetings to be held at ICAO Headquarters, they were usually hosted in regions where regular Working Group meetings were not held in order to give the opportunity to States to highlight their work in the field of environmental protection. In such instances, the only cost to ICAO was the travel costs and *per diem* for one or two Officers. There was an agreement whereby half of the CAEP Working Group meetings were held in Montréal and half were hosted in the various regions to minimize the resources required from ICAO and the States concerned. However, the Working Group meetings were usually held in either North America or Europe as the vast majority of participants were from those regions.

36. The Representative of Canada noted that there was an understanding in ICAO that any meetings of a regional nature were to be held in the various regions and that meetings that were of a universal nature, of interest to all Contracting States, were to be held at ICAO Headquarters. Averring that the CAEP Steering Group meetings were universal meetings and not regional ones, he underscored that holding them in the various regions was not in accordance with the *ICAO Headquarters Agreement*. In emphasizing that there should not be different parameters for some Groups, the Representative of Canada underscored that

ICAO was a structured organization with rules and that meetings should be held where they were supposed to be held.

37. In view of the comments made, the President of the Council requested that the WGOE consider the issue of how to best handle subordinate bodies' reports on programmes of meetings and report thereon in its report on improving the efficiencies and effectiveness of the ICAO Governing Bodies, to be considered later in the current session. It was understood that, following its discussion of that paper, the Council could decide how to integrate the terms of reference of the now discontinued Working Group on Meetings into those of the envisaged Council Planning Group, as suggested by the Representative of Nigeria and supported by the Representatives of the United States and the United Arab Emirates.

38. Subject to its earlier decision (185/7) regarding the programme of meetings in the air navigation field for 2009 and the tentative programme of meetings for 2010-2012 (C-WP/13243) and the above, the Council took the action proposed in the executive summary of C-WP/13248, as amended by the President of the Council in light of the discussions, and:

- a) approved the programme of meetings for 2009 appearing at Appendix A to C-WP/13248, as amended in paragraph 27 above, in light of the information provided in Appendix C to that paper and taking into consideration that the dates for the convening of certain meetings would be decided subsequently and noting that such programme was within the funding envelope established under the *Budget of the Organization 2008-2009-2010* (Doc 9895) for meetings;
- b) approved, for planning purposes, the programmes of meetings for the years 2010-2012 set forth in Appendices D, E and F to C-WP/13248, on the understanding that those schedules would be subject to continuing review and that the schedules for 2011-2012 were subject to approval of the Budget of the Organization for 2011-2012-2013 by the Assembly;
- c) approved the advancement in appropriations from 2010 to 2009 for the Diplomatic Conference on compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks [already approved by the Council (184/6) to be held in 2009];
- d) noted the estimated carry-over of CAD 168 590 from the 2008 meeting programme to the 2009 meeting programme; and
- e) agreed to grant the GIACC the flexibility to change the date of its fourth meeting, scheduled to be held in Montréal from 1-3 June 2009, and to propose the convening of an additional meeting or meetings, in light of the results of its third meeting (Montréal, 16-18 February 2009), so as to enable the completion of the GIACC's Programme of Action, which was to be presented to the Council and to a High-level Meeting for consideration.

Other business

Subject No. 4: Appointment of the Secretary General

Appointment of the Secretary General

39. As the deadline for the receipt of candidatures for the post of the Secretary General was 1 December 2008 and since the Council would not be in session at that time, the Council decided, pursuant to paragraph 4 of Appendix C of the *Rules of Procedure for the Council* (Doc 7559), that an informal closed meeting of the Council to conduct interviews would be convened on Friday, 23 January 2009 at 1000 hours. The Council also agreed to the President's proposed text of the letter inviting the candidates for interviews, in particular, that the dialogue would focus on the same topics as on the last occasion, namely: challenges for global aviation and ICAO; ICAO's priorities; actions to be taken to meet these challenges and priorities; and areas for change/reform at ICAO. It was understood that the said letter would only be sent after 1 December 2008. It was noted that the President would inform Representatives of all of the candidatures received on 2 December 2008 and that the President's paper on the appointment of the Secretary General, to which would be appended the *curricula vitae* of all candidates, would be distributed by mid-December 2008 for consideration by the Council during the next (186th) session in February/March 2009.

Subject No. 14.4.2: Regional air navigation meetings

**Participation in the Special Africa-Indian Ocean (AFI) Regional Air Navigation (RAN) Meeting
(Durban, South Africa, 24-29 November 2008)**

40. The Council approved the participation of the Airlines Association of Southern Africa (AASA) as an observer in the forthcoming Special AFI RAN Meeting. It also delegated authority to the President of the Council to approve, as appropriate, any further requests from organizations not included in the list of international organizations that may be invited to attend suitable ICAO meetings (*cf.* Secretary General's memorandum SG 1946/07 dated 20 June 2007) to participate as an observer in that meeting.

Subject No. 13: Work programmes of Council and its subsidiary bodies

Working Group on Governance (WGOG)

41. Further to a point raised by the Representative of South Africa, the Council requested that the WGOG review the allocation of seats on the Council under Part 1 (States of chief importance in air transport), Part 2 (States not otherwise included which make the largest contribution to the provision of facilities for international civil air navigation) and Part 3 (States not otherwise included whose designation will ensure that all the major geographic areas of the world are represented on the Council) of the election of the Council by the Assembly pursuant to Article 50 b) of the *Convention on International Civil Aviation*. It was understood that the WGOG would give that issue priority after it had completed its other tasks.

42. The meeting adjourned at 1240 hours.

COUNCIL — 185TH SESSION

SUMMARY MINUTES OF THE NINTH MEETING

(THE COUNCIL CHAMBER, MONDAY, 10 NOVEMBER 2008, AT 1430 HOURS)

OPEN MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

Argentina	— Mr. A.M. Singh	Mexico	— Mr. D. Méndez Mayora
Australia	— Mr. P.K. Evans	Namibia	— Mr. B.T. Mujetenga
Brazil	— Mr. R.S. Magno	Nigeria	— Dr. O.B. Aliu
Cameroon	— Mr. E. Zoa Etundi	Republic of Korea	— Mr. Shin, G.-S.
Canada	— Mr. L.A. Dupuis	Romania	— Mr. C. Cotrut
China	— Mr. Chunyu Ding (Alt.)	Russian Federation	— Mr. A.A. Novgorodov
Dominican Republic	— Mr. C. A. Veras	Saudi Arabia	— Mr. S. Hashem
Ecuador	— Mr. I. Arellano Lascano	Singapore	— Mr. K.P. Bong
Egypt	— Mr. S. Elazab	South Africa	— Mr. T. Peege
El Salvador	— Mr. J.A. Aparicio Borjas	Spain	— Mr. V. M. Aguado
France	— Mr. J.-C. Chouvet	Switzerland	— Mr. D. Ruhier
Germany	— Mr. J. Mendel	Tunisia	— Mr. I. Sassi
Ghana	— Mr. K. Kwakwa	Uganda	— Mr. J. Twijuke
Iceland	— Mr. F. Christensen (Alt.)	United Arab Emirates	— Mr. J. Haidar
India	— Dr. N. Zaidi	United Kingdom	— Mr. M. Rossell
Italy	— Mr. P. Ciancaglioni (Alt.)	United States	— Mr. D.T. Bliss
Japan	— Mr. S. Baba	Uruguay	— Mr. J.L. Vilardo
Malaysia	— Mr. S.-C. Kok	Venezuela	— Mr. D. Blanco Carrero

ALSO PRESENT:

Mr. S.R. Prado (Alt.)	— Argentina
Mr. A. Romera (Alt.)	— Brazil
Ms. S. Chambers (Alt.)	— Canada
Mr. E.N. Méndez (Alt.)	— Dominican Republic
Mr. P. Pape (Alt.)	— France
Mr. W. Yoshioka (Alt.)	— Japan
Mr. Seo, W.-S (Alt.)	— Republic of Korea
Mr. Yoo, H.-J. (Alt.)	— Republic of Korea
Mr. R.A. Al Kaabi (Alt.)	— United Arab Emirates

SECRETARIAT:

Mrs. F.A. Odutola	— D/ATB
Mr. J. Begin	— DD/ATB
Mr. H. Belai	— C/ACIP
Mr. V. Galotti	— C/ATM
Mrs. J. Hupe	— C/ENV
Mr. T. Thrasher	— ENV
Mr. T. Tenaka	— ENV
Mrs. C. Rideout	— CSO

Subject No. 50.3: Aircraft engine emissions**Progress Report on the Group on International Aviation and Climate Change (GIACC)**

1. The Council had for consideration C-WP/13249, in which the Secretary General summarized the results of the second meeting of the Group on International Aviation and Climate Change (GIACC). The meeting had reviewed, in detail, proposals made by the participants on elements of a programme of action as called for in Resolution A36-22 (Consolidated statement of continuing ICAO policies and practices related to environmental protection), Appendix K (ICAO Programme of Action on international aviation and climate change).

2. Under general comments, the Representative of Malaysia wished to make two observations, the first being that ICAO should establish a strong presence and visibility by sending a high-level delegation to the coming Conference of the Parties, in order to further exert authority and a leadership role in aviation environmental protection issues. ICAO should also take the opportunity to highlight the initiatives and success stories of the Organization in its effort to address aviation emissions. His Delegation wished to applaud GIACC for the setting up of three working groups, but believed that the terms of reference of those working groups should be more specific. The Representative of Malaysia trusted that in pursuance of the measures to achieve emissions reductions as identified by WG/2, the GIACC would not overlook the importance of efficient operation in the air and on the ground, and improvement of air traffic management, airport infrastructure and also alternative fuels.

3. The Representative of the United States wished to endorse the comments offered by the Representative of Malaysia. The United States was fully committed to GIACC and looked forward to a consensus on a global solution to this difficult issue. There had been a great deal of discussion regarding the dates of the high-level meeting, and it was the United States' view that it was still too early in the GIACC process to set a time. If the Council had to commit to a date today, the United States believed that the meeting should take place in 2010. It would however, prefer to defer the decision until the next Council session. GIACC had made a good start and the working groups as described by Mr. Begin would provide an analytical basis for moving toward a global consensus based on good information and analysis. The Organization was far from a global consensus on what should be an aggressive ICAO plan of action. In the judgment of the United States, ICAO was more likely to achieve such a consensus to be endorsed in a high level meeting after the COP/15. It was important to allow for the good work of CAEP and its working groups, and to give the opportunity for all States to participate in coming to a consensus. The process should be allowed to develop using "deliberate haste"; a rushed outcome in ICAO would not show leadership to the world, rather it would send a worse signal to the international community. The United States was not concerned that ICAO needed to have a final result before COP/15; COP/15 did not have the authority to decide the jurisdictional issue of whether ICAO should continue to have this responsibility. That decision would be made by 192 countries that would agree to the post-Kyoto framework, and the United States seriously doubted that States would want to remove ICAO, with the expertise and the record that it had, from an important central part in this process. It was more important to let this progress unfold and come up with a global consensus and a good result, and this was more likely to be achieved after COP/15. It was for this reason that the United States recommended that the timing of the high level meeting and the action proposed in paragraphs a) and b) of C-WP/13249 be deferred until the next session, at which time the Council could take an assessment of the progress that the GIACC was making and make a judgment at that time on what would be appropriate timing for the high-level meeting.

4. The Representative of France observed that if there was a consensus for the ambitious objective of including efficiency in fuel consumption, there was no consensus that this would in fact be effective in reducing fuel consumption. He regretted that WG/3, which was very important because it was intended to establish the methodology and the monitoring and reporting processes, was apparently lagging behind the WG/1 and WG/2. When it came to the high-level meeting, the European members of the Council had already expressed their position. It would seem that it would be useful to know if ICAO would be able to make a contribution of substance to COP/15, and to determine that it would of course be necessary for the high-level meeting to take place prior to COP/15. The risk was that ICAO would not be perceived as having acted in a way that was willing to help, and that it was dragging its feet on purpose. It was quite laudable that the Council wanted to get as extensive as consensus as possible, but it would have to take into consideration as well the need to come up with concrete results and to be able to share those with the rest of the international community. For these reasons, it seemed to his Delegation that the high-level meeting should take place prior to COP/15. It would also be useful to determine quickly who would head the ICAO delegation to the COP/15 to report on progress in ICAO, make proposals on ICAO's behalf, and answer any questions put to ICAO.

5. The Representative of Spain observed from DD/ATB's introduction of C-WP/13249 that the Secretariat appeared to be satisfied with the progress made in WGs/1, 2 and 3, and that they would be up to speed before the next GIACC meeting was held; if that was not the case, he would seek further views from DD/ATB. As regards the high level meeting, he believed it was necessary for ICAO to have some weight at the COP/15 and in order to have that weight, the high-level meeting would have to take place before. In any case, he could agree with what had been said by the Representative of the United States regarding the deferment of a decision on the dates to a future meeting of the Council. As regards ICAO's role at COP/15, and the question of who would head the ICAO delegation, he agreed with the Representative of Malaysia that ICAO should have the highest possible level of representation. The President of the Council should have the opportunity to make a statement at the COP/15, and his statement would have to cover the work carried out both by the GIACC and the high level meeting.

6. The Representative of the United Arab Emirates indicated that as important as the high level meeting would be, in order to reach a global solution it would be necessary to have a global consensus, and that consensus could be achieved through a series of regional contacts before the Council rushed into the decision-making process to determine when the high-level meeting would take place. The Representative of the United Arab Emirates urged the President and his colleagues on the Council to consider deferring making a decision at least until the next session.

7. The Representative of Switzerland could agree with the views which had been expressed by the Representatives of Malaysia, Spain, and others to the effect that participation at COP/15 by ICAO should be at the highest level. Since the President would take the opportunity to address the COP/15, the Council should give him enough "ammunition", and the high level meeting should therefore take place before COP/15. Since the result of the high-level meeting would probably have to first be considered by the Council, the high level meeting should take place as early as possible in autumn of 2009.

8. The Representative of Japan observed that clearly, the GIACC process was ongoing and might require another meeting soon. His Delegation therefore believed that the Council should carefully watch developments in the work of the GIACC, and supported the proposal made by the United States, i.e. not to decide at this time on the timing of the high level meeting in 2009.

9. The Representative of the United Kingdom agreed with previous speakers who believed that the President of the Council should attend the COP/15, a meeting whose importance would rank with the meeting on the Kyoto Protocol in terms of the decisions which would be taken. As the Representative of Switzerland had said, if the President was going to attend the meeting, he would have to have something to say on behalf of ICAO which was not peppered with 'ifs', 'buts', and 'maybes'; it would have to be a position from ICAO that was very clear and catch the attention of the world. The high-level meeting would have to take place well in advance so that the Council could finalise the text that the President would take with him, and before that, there could be a GIACC/3 and a GIACC/4. If the Council could set a date for the high-level meeting at this time, it would help in focussing towards that delivery. The Representative of the United Kingdom did not doubt that by the end of 2009, ICAO would be facing one of the most crucial times for the future of the Organization with respect to its credibility on aviation and environment.

10. The President of the Council requested clarification from the Secretariat on ICAO's participation, as an observer, in the United Nations Framework Convention on Climate Change meetings. DD/ATB indicated that COP/15 would be attended by participants and observers measured in thousands of people, probably exceeding ten thousand people over the course of the meeting, and, as was typically the case, it was the States that were Parties to the process and that could intervene from the floor. ICAO, as other agencies of the United Nations, had observer status. It would therefore prepare a document that would be submitted for the record of the meeting. C/ENV added that at high-level meetings such as the COP/15, which would be on parallel with the Rio/92 meeting [*United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (The Earth Summit)*] only the heads of UN agencies could directly participate and speak during the high level part of the meeting, which was the part which followed the meetings of the subsidiary bodies. In the case of ICAO, only the Secretary General or the President of the Council would be able to speak directly at the high level part of the meeting. It would also be very important to consider that at a meeting such as the COP/15, every single one of the 192 Parties would consider including an advisor from the aviation sector in its delegation. Representatives on the Council could be instrumental in coordinating with their States to ensure that they would also have a representative speaking on the work being developed by ICAO.

11. The Representative of Nigeria observed that ICAO's programme was providing a level of flexibility with respect to the work of the GIACC, and that the participation either at ICAO or at the UNFCCC was coordinated internally. There was a relationship between the position taken by States within ICAO or within the UNFCCC, and that situation was creating an issue of concern regarding the date. Nigeria's position within ICAO would be informed by the position being taken at the UNFCCC level with particular reference to the issue of Common but differentiated responsibilities (CBDR), so some level of flexibility would need to apply while determining what ICAO would pursue at COP/15. The basic minimum would be for ICAO to have responsibility for aviation emissions. After the work of the GIACC, an intermediate situation could be envisaged whereby the Council would consider the results of the GIACC's work, which could be taken to COP/15. An additional commitment by Contracting States would be best informed by the results of the COP/15 with respect to CBDR. To that extent, Nigeria would support the position of the United States to keep this item open and not take a decision at this meeting.

12. The Representative of the Russian Federation wished to pick up on the words of the United Arab Emirates regarding the importance of adopting global decisions and achieving a global consensus. The Representative of the United States had presented a very weighted, convincing line of argument which spoke to deferring a decision regarding the dates of the high level meeting to the 186th session, and the Representative of the Russian Federation would support that suggestion.

13. The Representative of Saudi Arabia added his support to the proposal by Malaysia regarding high-level representation of ICAO at the COP/15. It seemed that the Council had two views concerning a decision on the timing of the high level meeting, and whether that decision could be taken at this meeting or deferred. His Delegation believed there were good and beneficial points in the statement made by the United States and therefore supported it.

14. The Representative of Canada observed that the COP/15 was only thirteen months away, and that the Council had before it a report to the effect that everything was going according to plan. There was, nevertheless, an air of pessimism insofar as whether the Organization would be able to meet the deadlines. The Representative of Canada did not wish to be a pessimist. When he had recently asked for flexibility, he had not meant flexibility beyond COP/15, but had been concerned as to whether there could be some flexibility in allowing for a fifth meeting of the GIACC, should it prove necessary, before the convening of the COP/15. The Representative of Canada trusted that this request had not helped to launch a certain pessimism in the Council in that thirteen months before the COP/15, it would have problems insofar as organizing its work and deciding to postpone to another session the determination of a high level meeting. The Council should follow the course proposed in C-WP/13249, which GIACC had delineated for itself. The Representative of Canada recalled that a few months earlier, if not before the last Assembly, many States, mainly from the European Union, had accused ICAO of dragging its feet. Unfortunately, today it was mainly some of these same States who were asking the Council to delay its decision.

15. The Representative of India observed that the high-level meeting to be convened by ICAO would generally be attended by ministers of civil aviation or ministers of transport, who would not be able to take views which were independent of their respective governments. Those governments' views would be taken in the COP/15, and it would therefore be very much in order if the high-level meeting took place after the COP/15. In the meantime, however, ICAO would have to continue to evolve the programme of action as resolved by the 36th Session of the Assembly, and come up with an aggressive programme of action, take it as a document to the COP/15, and demonstrate that it was set to start its work. As regards the composition of the delegation from ICAO, it was clear that whereas in technical bodies the Secretariat should represent the Organization, in the high level meeting the President should do so.

16. The Representative of the Republic of Korea noted the arguments which had been offered to the effect that if the high-level meeting took place before the COP/15, ICAO would make a more effective contribution to the COP/15 and provide better input to the discussions. Although this view had its merits, it also sounded somewhat ambitious because the two forthcoming meetings of the GIACC were not, in his view, likely to make enough of a breakthrough to have the high-level meeting take place before COP/15, especially when one considered the time constraints. It seemed preferable to take a practical approach, and to see how the outcome of the COP/15 and negotiations over post Kyoto Protocol regimes could provide ICAO with helpful input in the high-level meeting discussions.

17. The Representative of Singapore commended the Secretariat's efforts to publicise the collective environment protection efforts of the community at the last two UNFCCC meetings, and was also encouraged to note that GIACC had formed three working groups to address the environmental issues. With barely three months before GIACC/3 being convened in February 2009, Singapore could not over-emphasise the need for GIACC/3 to achieve substantive discussions around concrete goals and measures. Before talking about COP/15, the Representative of Singapore sought an update from the Secretariat's preparations for the upcoming COP/14 meeting in Poznan (Poland) which would take place from 1-12 December 2008. Singapore was also of the view that the timing of the high-level meeting would have to be such that enough time was given for finalisation of decisions and action plans arising from the

high-level meeting in time for ICAO to be represented at the highest level, i.e. by the President, who would report on ICAO's programme of action on international aviation and climate change to address the international aviation emissions at UNFCCC COP/15. If such a programme of action was not delivered before COP/15, ICAO's credibility in addressing international aviation emissions would be at stake.

18. The Representative of the Dominican Republic wished to assert that no-one could ever question ICAO's interests in matters related to the environment. As regards the timing of the high-level meeting, the Council could defer a decision in order to consolidate its position. The Representative of the Dominican Republic therefore supported the views expressed by the Representatives of the United States and the United Kingdom.

19. The Representative of Germany wished to align himself with the positions taken by the Representatives of Switzerland, the United Kingdom, and Canada. The conclusion in paragraph 4 of C-WP/13249 was very clear; the work of GIACC would culminate in a report to be delivered to a high-level meeting and, as suggested in the Executive Summary, the Council should take a decision on the timing of the high-level meeting at this time. If it did not do so, the Council would in effect "take pressure out of the tyres" and that was not the signal it should send to GIACC. The Representative of Germany therefore supported taking a decision on the meeting now as proposed in the paper.

20. The Representative of Italy was in favour of a high level meeting taking place in advance of COP/15, and believed that a decision on timing should be taken at this meeting. As regards ICAO's representation at the COP/15, Italy supported that it be done by the President of ICAO.

21. The Representative of South Africa indicated that like the Representative of Singapore, he would be anxious to learn, under the next item on the order of business, what ICAO's plans were for the forthcoming COP/14 meeting. Commenting on the timing of the high-level meeting, he wished to be associated with the views which had been offered by the Representatives of Canada, the United Kingdom, Switzerland, Spain, the Republic of Korea, Singapore, Germany and Italy. It would be necessary to facilitate the high level meeting before COP/15.

22. The Representative of Mexico felt that a coordinated position during the COP/15 was absolutely essential, and should include international civil aviation. This meant that the statement of the President at the COP/15 would have to be strengthened or supported by the COP itself. It would be necessary to present a clear, accurate position of ICAO on the issue of emissions. As a result, it would be necessary for the high-level meeting to take place prior to COP/15. If that was not the case, certain doubts could arise and there could be some ambiguity on ICAO's leadership role.

23. The Representative of Australia wished to add his support to the position put by Canada, the United Kingdom, Switzerland, Germany and others who thought that the approach in timing could be kept under review to take account of developments over the next six or nine months. A date for the high-level meeting should be set at this time and retained if at all possible. It would not be prudent to organise a high level meeting in 2010, given that there would be a regular session of the Assembly later that year.

24. The President of the Council observed that it was extremely important that the Council take decisions in order to assure the future work of ICAO on the environment. One of the paragraphs of the Assembly Resolution A36-22 [*Appendix K*] read: "Convene at an appropriate time, taking into account the fact that the fifteenth meeting of the Conference of the Parties (COP/15) of the UNFCCC will be held in December 2009, a high-level meeting to review the programme of actions recommended by the Group".

This was a signal from the Assembly. In another paragraph it was indicated: "Requests that the Council facilitate action by States by vigorously developing policy options to limit or reduce the environmental impact of aircraft engine emissions, developing concrete proposals and providing advice as soon as possible to the Conference of the Parties of the UNFCCC, encompassing technical solutions and market-based measures, while taking into account potential implications of such measures for developing as well as developed countries." The Resolution gave some orientation to ICAO in order to provide advice to the Conference of the Parties. The work of the GIACC would be the more important part for the Conference of the Parties, and the high-level meeting would review the report of the GIACC; this was the intention established in the Assembly Resolution. The Council did not have to take a decision today, but it would have to keep the issue in mind because the President had not received a clear signal at this time from the Council.

25. The Council deferred to its next (186th) Session a decision with respect to the timing of a high-level meeting. The Council would return to the proposed dates in C-WP/13249 following the GIACC/3 meeting, scheduled to take place from 16 to 18 February 2009. The majority of Representatives who had spoken on the subject had agreed that in principle, the high-level meeting should take place before the Fifteenth Meeting of the Conference of the Parties (COP/15) at the end of 2009.

26. The observer delegation which would represent ICAO at the COP/15 meeting would consist of the President of the Council, assisted by members of the Secretariat. The President of the Council would, in due course, present information on the ICAO delegation as well as a draft message for the Council's review.

27. The subject of funding for the work of the GIACC, addressed in sub-paragraph c) of the action proposed in C-WP/13249, would be discussed further during the Council's consideration, at this meeting, of C-WP/13251 Revision 1, "Update and progress report on voluntary contributions to the Environmental Programme."

Subject No. 50: Questions relating to the environment

Results of the Committee on Aviation Environmental Protection (CAEP) Steering Group (SG) Meeting and other developments

28. An information paper on the above subject, presented by the Secretary General in C-WP/13250, was presented for the Council's consideration.

29. Some additional detailed clarifications were provided by C/ENV in response to queries raised by the Representatives of the United Kingdom, Brazil, Nigeria France and the United States. C/ENV confirmed that information on the conclusions of meeting of the IMO Environmental Committee which had taken place from 6 to 10 October 2008 would be circulated to Representatives.

30. The Representative of Singapore congratulated the CAEP on the substantial work that had been done since its last Steering Group meeting in Zurich, noting in particular that there had been significant progress in the modelling framework for noise, local air quality and greenhouse gases. He was also pleased to note that CAEP had introduced Doc 9885 (*Draft Guidance on the Use of Emissions Trading for Aviation (Provisional Edition)*) and the Carbon Calculator. The CAEP Steering Group also deserved special commendation for reorganizing the schedule to give priority to addressing the reduction of aviation greenhouse emissions. This reflected the ability of CAEP to deal with important issues at hand and with

flexibility. Singapore looked forward to GIACC/3 reaching concrete and meaningful conclusions derived from the information given by CAEP.

31. The Representative of South Africa congratulated the team led by D/ATB on its work in the environmental field, and offered some suggestions for Council action on C-WP/13250 which were accepted.

The Representative of Spain also thanked the Secretariat and C/ENV for the paper before the Council. He observed from paragraph 4.2 of the conclusions that there were great expectations of ICAO to adopt an action programme and assume a leadership role; to start an action programme would require high level meetings so that States could reach consensus. The need for leadership was clear in this area, and taking appropriate action in due time was crucial. When it came to the progress in CAEP, the Representative of Spain believed that the paper presented some very positive and optimistic aspects. Significant progress had been made in the various working groups in emissions and pollution reductions and the expectations over the next ten years. Reference was also made to fuel consumption and the various measures taken, in respect of which he congratulated CAEP on the work done.

32. The Council noted the information provided in C-WP/13250, recognized the good work which the CAEP was doing in this regard, and expressed its continuing support for the work of the CAEP.

Update and progress report on voluntary contributions to the Environmental Programme

33. The Council reviewed C-WP/13251 (Revision No. 1), an information paper in which the Secretary General presented a summary and overview of the status of voluntary contributions by Contracting States to the ICAO Environmental Programme. Introducing the paper, DD/ATB indicated that this important issue was rapidly becoming critical, and that if the Environmental Fund did not receive contributions by late 2008 or early 2009, the Programme would reach the point where it could not meet its financial obligations.

34. The Representative of the United States urged the Secretary General to have the loan of CAD 196,000 which the Environmental Fund had made to the Temporary Staff Salaries Fund repaid as soon as possible. The United States had decided for the time being not to contribute to the Programme, but to instead expend \$400,000 to fund two studies, the results of which, in its judgement, would be quite important to the policy decisions that GIACC would make and the work of the working groups in support of those policy decisions. The two studies which the United States was funding with its academic and industry partners were, first, an assessment of global greenhouse gas emission growth trends through 2050, including a sensitivity analysis of impacts on fleets and operations under a number of fuel price scenarios so as to gain a better understanding of the relationship of fuel price to the actual impact on greenhouse gas emissions through 2050. The second study would be an assessment of the environmental benefits of renewable fuels. The United States believed that both these studies would help to provide an important technical basis for GIACC in making the policy decisions that would underlie the recommendations to Council and to the high-level meeting. The United States had decided to take the same approach with the AFI Plan, and would fund its Safe Skies in Africa programme directly, while coordinating them fully with ICAO. The United States' position was that States had the responsibility to implement these ICAO policies, and wished to work closely with ICAO, but for the time being saw this as the most efficient way to expend its resources to get the proper information that would underline decisions made by the Organization.

35. The Representative of Saudi Arabia suggested that the information provided by DD/ATB be sent to States, urging them to contribute to the Fund. The Representative of Italy indicated that his country was prepared to provide a Junior Professional Officer. The memorandum of understanding had

recently been signed by the Secretary General and the Representative of Italy, and the expert should arrive within one or two weeks. He called on the Secretariat to complete all the details concerning this secondment. The Representative of the Dominican Republic indicated that his country would be making a contribution in the very near future.

36. In summarizing the discussion, the President of the Council observed that the Secretary General would, of course, continue to make every effort to urge States to participate in this very important Programme by making voluntary contributions. The Council had, on numerous occasions, been reminded of how little ICAO was doing with respect to the environment and, in particular, emissions. Without resources, it was very difficult to make progress. The President hoped that all States would sincerely reflect on the possibility of contributing to the Environmental Programme. As the Secretary General had indicated, measures would continue to be taken, perhaps initially with the “inner circle” of States represented on the Council. The President hoped that the Secretariat would not have to resort to an urgent call in the near future, and would be able to count on the cooperation of Contracting States, and Council Member States in particular.

Other business

Subject No. 6.3: Election of chairmen and members of subsidiary bodies of the Council

Appointment of the President of the Air Navigation Commission

37. Taking into account that there was only one candidate for the presidency of the ANC for the year 2009 (cf. C-WP/13221, to be considered on 14 November 2008), the Council, in order to facilitate the procedure, suspended that part of paragraph 1 of Appendix D (Rules and Procedures governing the appointment of the Members, Alternates and President of the Air Navigation Commission) of its Rules of Procedure which reads: “... and, unless waived by unanimous agreement of the Members represented at the meeting, shall be by secret ballot” insofar as it concerned this forthcoming appointment.

38. The meeting adjourned at 1800 hours.

COUNCIL — 185TH SESSION

SUMMARY MINUTES OF THE TENTH MEETING

(THE COUNCIL CHAMBER, WEDNESDAY, 12 NOVEMBER 2008, AT 1000 HOURS)

OPEN MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

Argentina	— Mr. A.M. Singh	Mexico	— Mr. D. Méndez Mayora
Australia	— Mr. P.K. Evans	Nigeria	— Dr. O.B. Aliu
Brazil	— Mr. R.S. Magno	Republic of Korea	— Mr. Shin, G.-S.
Cameroon	— Mr. E. Zoa Etundi	Romania	— Mr. C. Cotrut
Canada	— Mr. L.A. Dupuis	Russian Federation	— Mr. A.A. Novgorodov
China	— Mr. Chunyu Ding (Alt.)	Saudi Arabia	— Mr. S. Hashem
Dominican Republic	— Mr. C.A. Veras	Singapore	— Mr. K.P. Bong
Ecuador	— Mr. I. Arellano Lascano	South Africa	— Mr. T. Peege
Egypt	— Mr. S. Elazab	Spain	— Mr. V.M. Aguado
El Salvador	— Mr. J.A. Aparicio Borjas	Switzerland	— Mr. D. Ruhier
France	— Mr. J.-C. Chouvet	Tunisia	— Mr. I. Sassi
Germany	— Mr. J. Mendel	Uganda	— Mr. J. Twijuke
Ghana	— Mr. K. Kwakwa	United Kingdom	— Mr. M. Rossell
Iceland	— Mr. H. Sigurdsson	United States	— Mr. D.T. Bliss
India	— Dr. N. Zaidi	Uruguay	— Mr. J.L. Vilardo
Italy	— Mr. F.P. Venier	Venezuela	— Mr. D. Blanco Carrero
Japan	— Mr. S. Baba		
Malaysia	— Mr. S.-C. Kok		

ALSO PRESENT:

Mr. P. Maertens	— Chairman, AGEA
Mr. A. Romera (Alt.)	— Brazil
Ms. S. Chambers (Alt.)	— Canada
Mr. F. Christensen (Alt.)	— Iceland
Mr. W. Yoshioka (Alt.)	— Japan
Mrs. D. Jiménez Hernández (Alt.)	— Mexico
Mr. Seo, W.-S (Alt.)	— Republic of Korea
Mr. Yoo, H.-J. (Alt.)	— Republic of Korea

SECRETARIAT:

*Mr. J. Maguire	— C/EAO
Miss S. Black	— Précis-writer

*Part-time

Subject No. 13: Work programmes of Council and its subsidiary bodies**Report of AGEA — Report of the Advisory Group on Evaluation and Audit**

1. The Council had for consideration C-WP/13263, in which the AGEA reported on the outcome of its first meeting. The paper set forth recommendations applicable to either the Council or the Secretariat aimed at providing guidance on ICAO's audit, risk management and internal control processes. It was noted that, at its upcoming meeting in January 2009, the AGEA would take a closer look at the work of the External Auditor of ICAO, Cour des Comptes of France, as well as consider internal audit reports and controls in the Regional Offices. The AGEA would also consider issues raised by the Council during the discussion.

2. Referring to paragraph 2.1 of the paper, the Representative of France expressed regret that the AGEA member nominated by Paraguay had been unable to participate in the Group's meetings and was unlikely to be able to do so in the future. Noting that the Secretary General intended to issue a State letter requesting nominations of at least one new candidate, he emphasized that the State letter should instead be issued by the President of the Council as the AGEA was a body which reported to the Council and ultimately to the Assembly. With regard to paragraph 2.5, the Representative of France recalled that the Council had decided that the expenses incurred by AGEA Members would be defrayed by the States which had made them available rather than by ICAO in order to preserve their independence. While aware that that might pose a problem for some States, he averred that the costs, which were low and which included personal expenses, such as travel expenses, could be covered by the relevant regional organizations. He preferred retaining the existing system, which best guaranteed the independence of the AGEA Members.

3. In then drawing attention to paragraph 3 and the Appendix to the paper relating to Capability Maturity Models (CMM), the Representative of France indicated that, while the CMM might be well thought-out, it was necessary to provide further clarification thereon as it was difficult to judge them without knowing their bases and underlying principles. In agreeing with the AGEA recommendations concerning the Office for Programmes Evaluation, Audit, and Management Review (EAO) set forth in paragraph 4.2, he stressed the need to distinguish between two distinct problems in EAO, namely, its lack of resources and the fact that EAO was exercising functions which were not directly related to auditing.

4. Referring to paragraph 5.1 on Secretariat support to the Council, the Representative of France recalled that the Chairman of the AGEA had indicated, in his introduction of C-WP/13263, that it might have been inappropriate for the Group to recommend the examination of ways to further and significantly reduce the burden of Governing bodies on the Secretariat. Confirming that it had been inappropriate, he underscored that that issue did not fall within the AGEA's terms of reference as set forth in Attachment A to State letter 08/6 dated 25 January 2008. The AGEA Members should have been made aware that the issue was the subject of a polemic debate in the Council. The Representative of France noted that if an employee working in a Government's Department of Administration were to say that the Government was a burden for that Department, then he would be disciplined. The said problem was between the Council and the Secretariat. Maintaining that it was not within the AGEA's competence to make recommendations relating to Secretariat support to the Council, he indicated that he would prefer it if, in future, the Group strictly followed its terms of reference and provided guidance on the Organization's audit, risk management and internal control processes. The same applied to the comments which the Chairman of the AGEA had made regarding the strengthening of the Human Resources Branch (HRB).

5. Noting that the procedure for handling allegations from whistleblowers was a specific element of the AGEA's terms of reference [*cf.* paragraph 4.3. d) thereof], the Representative of France underscored that the AGEA's paper setting forth guidance on a whistleblower policy should have been appended to C-WP/13263 rather than being available upon request from the Chief of EAO (C/EAO) as the development of such a policy was a long-standing request from the Council and fell within the Group's mandate.

6. The Representative of India supported the AGEA's recommendations and conclusions regarding: the nomination of at least one new AGEA Member; a two-year cooling-off period before appointing former employees of ICAO, as well as Council Representatives and their Alternates, as AGEA Members; a quorum for AGEA meetings; and flexibility in order to obtain a balanced geographic representation if costs represented a hardship for a State having a candidate with the appropriate expertise to serve on the AGEA. He considered, however, that AGEA Members should continue to be financed by the States concerned to maintain their independence.

7. Voicing concern over the low CMM level for EAO, between 1 and 2, which was between initial and basic, the Representative of India emphasized that it needed to be brought up to an acceptable level. In noting the AGEA's recommendations regarding the strengthening of EAO and its mandate, he indicated that he had no difficulty accepting them. Observing, however, that they did not address the reporting line of EAO, an issue which had been discussed in the Council, with the suggestion having been made that EAO should report directly to the latter, the Representative of India proposed that the AGEA consider that issue and provide its advice. He underscored that it should be for the Council to maintain the AGEA's independence. Furthermore, the AGEA should work within the framework of its terms of reference and not introduce external elements, as indicated by the Representative of France.

8. With regard to the issue of the efficiency and effectiveness of ICAO's governing bodies, which the Council dealt with directly, the Representative of India noted that the Report of the Working Group on Efficiency thereon (C-WP/13240 Revision No. 1) would be considered later in the present meeting. He enquired as to what action the Council was to take regarding the AGEA's recommendations.

9. Referring to paragraph 2.5 of the paper on the payment of AGEA Members' expenses, the Representative of Singapore supported the views expressed by the previous speakers on the need to preserve Members' independence. He emphasized that ICAO must continue to preserve and promote the principle of cost-sharing and voluntary contributions by States and industry to enable the Organization to continue to deal with the ever-expanding scope of issues to achieve its Strategic Objectives. Drawing attention to the recommendation made in paragraph 4.3 that the AGEA be consulted regarding the appointment of a new C/EAO, the Representative of Singapore indicated that it should be submitted to the Human Resources Committee (HRC) for consideration as it might set a precedent for other bodies to make similar requests.

10. Noting, from paragraph 5.1.1, that over 30 per cent of the Secretariat's activities related directly to supporting the activities of the governing bodies and that that figure had grown over the last few years, the Representative of Singapore sought a quantifiable explanation from the Secretary General. Observing that the latter activities were primarily those of the Council, he underscored that the objective should be to reduce the burden on the Secretariat. The Representative of Singapore strongly supported the recommendation made in paragraph 5.4.2 that an internal audit of the implementation of the new accounting system, IRIS, be carried out as that had a significant impact on the transparency, efficiency and governance of ICAO.

11. The Representative of Spain affirmed that the AGEA's encyclopedia of recommendations on ICAO's activities would have an important impact on the Organization's governance as they were very objective and focussed. He queried whether the Group had taken into account EAO's work programme for the year 2009 (C-WP/13255), to be considered later in the meeting, and whether EAO had taken into account the AGEA's recommendations. Recalling the comment made by the Chairman in introducing the Group's report that EAO had limited resources, having only three Professional staff members when he had had a staff of 25 when on assignment at a similar international organization, the Representative of Spain, citing his experience with international organizations, suggested that EAO should have a few more Professionals, such as a total of five. He agreed with the suggestions and requests for clarifications made by the Representative of Singapore.

12. Noting the important comment made by the Chairman on the need for a process to verify that the recommendations had been implemented in ICAO, the Representative of Spain found it shocking that there was neither such a monitoring process nor culture.

13. Responding to the point raised regarding the State letter requesting nominations for at least one new AGEA Member, the Chairman emphasized that regardless of whether it was issued by the President of the Council or the Secretary General, it was from the Organization. While agreeing that the payment of AGEA Members' costs by the States which had made them available did give the Members independence, he underscored that ICAO was the first organization that he had encountered with that policy.

14. In then elaborating on the CMM, the Chairman clarified that a target for ICAO of 3 had been recommended as that would be an indication that the Organization was solid, not above the average and not in a leadership capacity. Referring to the comments made on the need to stay within the AGEA's terms of reference, he noted that the Group had decided to comment on Secretariat support to the Council as it had considered that diverting resources away from the Organization had an impact on risk management and internal controls. The AGEA would not address that issue in the future. The Chairman indicated that the issue of human resources was closer to the Group's terms of reference as it related to control and the division of control in the Organization. He noted that the Group had wished to provide the Council with more information on, *inter alia*, a whistleblower policy and the rationale for its recommendations but had been instructed to limit its report to six pages.

15. Recalling the comment made regarding EAO's reporting line, the Chairman underscored that the latter was not simple as EAO's mandate was a combination of audit and evaluation. The results of evaluation were usually reported directly to the Council, whereas the results of internal audits were usually reported to management. While there was a move within international organizations to report on both of those activities at the level of the governing body, in ICAO's case, the Council, there was a certain cost in terms of what could be expected from internal audits and the frankness of discussions. The AGEA would consider the issue of EAO's reporting line at its forthcoming meeting and provide appropriate advice thereon to the Council in its next report.

16. Referring to the point raised on the need for an appropriate level of human resources in EAO, the Chairman indicated that, while he had had a staff of 25 when he had been on assignment at an international organization and a staff of 30 when he had been on assignment at an international bank, those numbers were too high for ICAO, which was a smaller organization and which was simpler in terms of some of its products. The issue needed to be addressed by the Secretariat and brought before the Council at the appropriate time. Responding to the question raised regarding the action to be taken regarding the AGEA's recommendations, he underscored that the Group was calling for a change in culture. If the culture were right,

then the Council would not have to become involved in the implementation of individual recommendations; it could instead receive a status report thereon from time to time. The culture and control mechanisms would reside within the Secretariat. The Chairman recalled, in this regard that, in his previous assignments, the implementation of recommendations had become part of the top executive's evaluation of senior managers.

17. Expressing concern that the AGEA had not been able to attach its paper on a whistleblower policy to its report due to the instructions it had received regarding the latter's length, the Representative of France emphasized that independent groups such as the AGEA were not to be given instructions. Recalling that there were no constraints on the volume of the reports of the External Auditor of ICAO, he stressed that the same rule should apply to the reports of the AGEA. The Group should communicate to the Council all that it deemed should be communicated, whether it involved five or six pages or thirteen or seventeen pages. As the Council would not be receiving reports from the AGEA very often, there should not be any constraints on the volume of its reports. Such constraints were completely contrary to the AGEA's independence, to which the Council attached much importance. The Representative of France suggested that the Group's paper on a whistleblower policy be circulated to Representatives under cover of a memorandum from the President of the Council.

18. Noting that it was his impression that most of the AGEA's recommendations should be addressed to the Secretariat and that only those relating to the Organization's culture should be addressed to the Council, the Representative of Spain maintained that, as the Group had been established by the Council, all of its recommendations should be addressed to the Council with a view to improving ICAO's governance. The President of the Council clarified that the Group's recommendations were addressed to the Council and that it was for the Council to decide whether or not to refer them to the Secretary General.

19. Observing that some of the AGEA's recommendations had been marked by a C to indicate that action would be required by the Council at some point in time, the Chairman underscored that it would first be necessary to work out the details. What the Group required of the Council was an awareness of the points raised in its report, general support for the implementation of the recommendations as various aspects thereof came before it in the months and years ahead and action on those specific points which related to ICAO itself.

20. The Representative of Venezuela affirmed that the AGEA's report would be very important in addressing identified shortcomings and improving efficiency and governance. He underscored that it provided flexibility and enabled a better, more continuous follow-up of recommendations using an appropriate procedure. With regard to the promotion of a whistleblower policy, the Representative of Venezuela underscored that, rather than referring to illegal activities, such a policy should refer to the inadequate application of practices which warranted investigation. Such investigations should aim at the development of positive measures which could be implemented in the Organization.

21. Recalling that the Chairman had requested the Council's guidance on those aspects of the AGEA's terms of reference that the Group should concentrate on in its future meetings, the Representative of the United States indicated that it should focus in the immediate future on the internal audit process and resources, the work of the External Auditor of ICAO, Cour des Comptes of France, and the whistleblower policy. He considered that the latter was an important initiative that should get underway and that the Council should have the opportunity to review it, as suggested by the Representative of France.

22. In emphasizing that the Organization had limited resources and noting that the Council had recognized for some time that EAO was understaffed and underfunded, the Representative of the United

States underscored that every dollar that was spent on administrative oversight was a dollar that was not spent on implementing ICAO's Strategic Objectives. That was the problem that the Organization faced. If its resources were not being used to assist States in the areas of safety, security, the environment, *etc.*, then what was ICAO's purpose? It was a very difficult dilemma. Until it could be demonstrated that ICAO was using its resources for, and being successful in, advancing its Strategic Objectives, the Organization would not receive more support from States. The Representative of the United States asked that the AGEA take that into account when it considered ways to strengthen the evaluation process. He agreed that it was necessary to evaluate which programmes worked and which did not and to eliminate the latter as the Organization only had the resources to focus on those programmes that did work. The Representative of the United States thus fully supported the AGEA in that endeavour.

23. Referring to paragraph 5.1 of the paper on Secretariat support to the Council, the Representative of the United States agreed with the comments made thereon by the Representatives of France, Singapore, India and others only to the extent that he considered that the AGEA should focus on those other issues where Members' outside expertise was so critical so that some progress could be made thereon. He averred that the issues raised in paragraph 5.1.1 were issues upon which the Council had to decide. The Representative of the United States, for one, did not wish to censor the AGEA in the future. If, in reviewing the performance of the Organization, there were issues which the Group considered it should highlight and bring to the Council's attention, then it should feel free to do so. The Council could accept or reject the AGEA's advice but it wished to hear, based on the Members' experience and expertise, what the critical issues were. The Representative of the United States welcomed that.

24. Recalling that the Representative of Singapore had specifically requested clarification regarding the reference to 30 per cent of the Secretariat's activities relating directly to supporting the activities of the governing bodies and the increase in that percentage over the last few years, as referred to in C-WP/13153, the Representative of the United States indicated that the said reference was to translation services, which had gone from 22 per cent of the resources being used to support the governing bodies in 2003 to 38 per cent in 2007. As that had been an Assembly year, however, the demand for Secretariat support had been greater. He considered that when the Council received the results for 2008, it would find that rapid strides had been made in improving the efficiency of the governing bodies due to the efforts made by the President of the Council and the Working Group on Efficiency (WGOE) to achieve that objective. The Representative of the United States emphasized that Secretariat support did not relate solely to the translation of documents; it also related to the preparation of working papers, information papers and periodic reports on many issues and to the provision of interpretation services for informal briefings and meetings. The resource load of the Secretariat was thus quite substantial. The Representative of the United States considered that the AGEA had been right to point that out in its report. It was necessary to address that issue and it was the Council's responsibility to do so. He then enquired, whether the Chairman, with his vast experience in international organizations, considered that 30 per cent of Secretariat resources being used to support the activities of the governing bodies was an appropriate benchmark and whether there was another international organization, corporation, university, or other institution where 30 per cent or more of the Secretariat resources were so used.

25. The Chairman of the AGEA clarified that the amount of Secretariat resources that should be used to support the governance of an organization depended on the latter's size. The larger the organization, the more programmes it had and the lower the percentage would be. When an organization had a permanent governing body, its members being full-time, the percentage tended to increase and the only way to reduce it would be a very significant change in terms of the permanence of that governing body. The Chairman was not aware of any other organization where over 30 per cent of Secretariat resources was used to support the

activities of its governing body. For an organization with full-time representation of its Member States, the percentage was high as the latter had extensive delegations and embassies which resulted in a greater demand for information. The Chairman noted that another model of governing body which he had encountered was the equivalent of a Board of Directors which met once a month. The overhead was some 1 per cent and the Board's effectiveness was fairly high as Members concentrated on high-level policies. While he did not know of any cases where the percentage of Secretariat resources used to support the activities of the governing body was higher than 30 per cent, he did have examples of where it was lower.

26. The Representative of Mexico emphasized that the information and recommendations contained in the AGEA's report should be taken into consideration. He also underscored that it was the AGEA's first report and that the Group should take into account the comments made by Representatives in its future work. The Representative of Mexico agreed with previous speakers that the expenses incurred by AGEA Members should continue to be defrayed by the States which had made them available in order to ensure the Group's independence. He also voiced preference for maintaining the AGEA's current membership.

27. The Representative of Mexico stressed that EAO's mandate should be considered in the light of the explanations which had been given. It was also necessary to bear in mind that ICAO was a small to medium-sized organization which had a permanent Council, as well as some subordinate bodies such as the Finance Committee (FIC) and the Human Resources Committee (HRC). EAO should be adapted accordingly so that it was as efficient as possible. As he had often said in the past, and as the Representative of India had indicated, EAO depended directly on the Council. That did not mean, however, that the Secretary General did not have the flexibility to request EAO to carry out audits and evaluations that he considered were necessary.

28. While supporting the continuation of the AGEA's activities, the Representative of Mexico sought clarification regarding the proposed action set forth in the executive summary of the paper, in which the Council was asked to "take the guidance provided by the AGEA into account and encourage actions by the Secretariat where appropriate". He indicated that he would prefer that the FIC, the HRC and the WGOE looked into some of the issues raised. In then referring to the Chairman's request for guidance from the Council regarding the Group's future work, the Representative of Mexico indicated that the AGEA should take into account the existing controls in the field of human resources.

29. The Representative of Canada stressed the importance of the comments made by the Representative of Spain. Recalling the novel *1984* by George Orwell, he emphasized that the Council should listen to what was being said in the corridors of the Organization as much related to ICAO's governance. With regard to the issue of whistleblowing, he noted that the Chairman of the AGEA had clearly indicated that there was the beginning of a policy in the form of the Group's paper. In strongly supporting the intervention made by the Representative of the United States in that regard, the Representative of Canada indicated that a whistleblower policy, once developed, would at least put an end to the very troubling anonymous letters that were regularly received, some of which had a threatening tone. He underscored that whistleblowing was very much an issue of modern governance.

30. In agreeing with the Chairman of the AGEA that ICAO was a smaller Organization than other UN Specialized Agencies, the Representative of Canada was interested by his statement that some of its products were simpler, which made him think the Council might have collectively complicated matters unnecessarily. That was his personal opinion. The Representative of Canada was still having difficulty understanding the functions of the HRB and the HRC, in particular, what the latter was supposed to

accomplish. He observed that, in the last five or six years, after a somewhat monolithic management for three decades, there seemed to have always been problems between the Council and the Secretary General regarding human resources matters. While the Secretary General, as Chief Executive Officer, was responsible for making appointments, the Council had decided to have some sort of a mirror in order to exercise control. The Representative of Canada was not sure, however, that the Council had done it the right way. Although aware that the Chairman was seeking advice from the Council as to a way forward for the Group, he wished to ask the Chairman for advice on how the Council should be going forward in the area of human resources. The structure of the mandate of the HRC and the structure of the mandate of the Secretary General on human resources management needed to be quickly clarified. The Representative of Canada therefore requested that the AGEA provide the Council with some sort of an indication as to what should be the mandate of the HRC on one side and the HRB function on the other and at least a methodology for going forward.

31. The Representative of the United Kingdom suggested that more time be allocated for the Council's consideration of the AGEA's next report so that Representatives could discuss it in more detail and give a more directive response to the AGEA. He noted that the Group's first report had shown the value of setting up the AGEA. Observing that it stated many things explicitly that the Representatives already knew implicitly, he indicated that it had been very helpful to have them set out in plain language. It was clearly a very important step towards reforming the Organization and improving its governance. While the Representative of the United Kingdom could certainly agree to the action proposed in the executive summary of the paper, he considered that there were many other implicit action points within the text. In recognizing the difficulty of reviewing each AGEA recommendation one at a time during the present meeting, he suggested that when future reports were presented by the Group there should be a clear list of the actions which were for the Council and for the Secretariat, with the latter having had time to prepare a response to its action points. The Representative of the United Kingdom considered that the Council should accept the AGEA's report contained in C-WP/13263 as a interim report. He did not think that it would be helpful to either the Council or to the AGEA to try to respond to any of the action points that had been set out other than the general one in the executive summary of the paper.

32. The President of the Council agreed that more time should be allocated for discussing the AGEA's next report, possible an entire meeting.

33. In endorsing the Chairman of the AGEA's view of the role of the Council and the Secretariat, the Representative of Saudi Arabia underscored that the two roles should be distinct as the Council was a political entity and the Secretariat, an executive entity. He agreed with the Representative of the United States that the AGEA should have the freedom to express its views and that it was for the Council to either accept or reject them. The Representative of Saudi Arabia also supported the comments made by the Representative of Canada. The Representative of Egypt shared these views.

34. In likewise endorsing the comments made by the Representative of Canada, the Representative of South Africa requested that the AGEA clarify how the Council could be "hands-on" and not "hands-in" with regard to human resources issues. He also endorsed the interventions made by the Representatives of the United States and Spain, especially with regard to paragraph 5.1 of the paper on Secretariat support to the Council.

35. The Chairman of the AGEA noted, from the many comments made, that there was strong endorsement for the Group to continue its work and to provide advice to the Council. He indicated that, during its forthcoming meeting in January 2009, the AGEA would consider the issues raised, including the

reporting line of EAO and the respective responsibilities and mandates of the HRC and the Secretary General in human resources management, and seek to provide, in its next report, appropriate advice on those and the other issues to which he had referred in introducing C-WP/13263.

36. In then taking the action proposed by the President of the Council in light of the discussion, the Council:

- a) noted the report of the AGEA contained in C-WP/13263 and agreed to take the advice provided by the Group into account and to encourage actions by the Secretariat where appropriate;
- b) requested that the AGEA take into consideration the comments made and concerns expressed by Representatives in its future reports;
- c) with reference to paragraph 2.4 of the report, agreed that the required quorum for meetings of the AGEA, which currently comprised five Members, be reduced from four to three in order to give more flexibility to the Group; and
- d) with reference to paragraph 2.1 of the report, requested that the Secretary General issue a State letter inviting nominations of at least one new candidate, including nominations from the regions not represented on the AGEA.

37. In expressing appreciation to the Chairman of the AGEA for having been present for the discussion of the Group's report, the President of the Council indicated that more time would be allocated for the Council's review of future reports. He noted, in this regard, that the AGEA would present an annual report on the activities it had undertaken in 2008 for the Council's consideration early in 2009.

Work programme of the Office for Programmes Evaluation, Audit, and Management Review (EAO) for the year 2009

38. The Council considered this subject on the basis of C-WP/13255 presented by the Secretary General. It was noted that, in developing its work programme for the year 2009, EAO had, to the degree possible, followed the methodology recommended by the Advisory Group on Evaluation and Audit (AGEA) in its report (C-WP/13263), considered under the previous agenda item. Furthermore, a new item had been added under the sub-programme "Management Review" relating to the provision of information and the co-ordination of activities for the AGEA, as required.

39. Referring to paragraph 4.2 a) of the paper, which indicated that EAO would undertake an audit of recruitment procedures for consultants, the Representative of the United Kingdom queried why it would be limited to consultants. He recalled that, in earlier discussions, a number of Representatives had expressed interest in an audit of recruitment procedures in general, *i.e.* for the Regular Programme as well as for consultants. Noting that the AGEA, in its said report (C-WP/13263), had referred to the establishment of a system for risk management and an internal control framework, the Representative of the United Kingdom also enquired what preliminary work EAO would do in that regard.

40. The Chief of the Office for Programmes Evaluation, Audit, and Management Review (C/EAO) clarified that while his Office would wish to audit recruitment procedures in general, the scope had been limited to recruitment procedures for consultants given the amount of time required for such audits. He

would, however, take the suggestion on board to see if EAO could possibly do such an expanded audit within its work programme in 2009. C/EAO emphasized that he did not wish to undertake more work than his Office could possibly do with its limited resources. He noted that there were a number of different items on which EAO would be concentrating, many of which were related to risk management and risk registers. C/EAO cited the said new item relating to the provision of information and the co-ordination of activities for the AGEA, an area where EAO would be doing considerably more work. C/EAO noted that its work also linked to the ICAO Knowledge Shared Network (IKSN) project; which would include a built-in risk management facility.

41. Suggesting that an evaluation of the IKSN and ICAO websites be deferred until they were more mature and could be evaluated in their totality, the Representative of Spain underscored that that would free up resources for EAO. Referring to paragraph 4.2 of the paper, he indicated that he agreed with the comments made by the Representative of the United Kingdom regarding the audit of recruitment procedures. He supported the audit of field/project procurement. With regard to the review of the implementation of the Agresso system/IRIS project, the Representative of Spain underscored that, given the difficulty of auditing computer systems, it might be necessary to recruit consultants.

42. C/EAO emphasized that the IKSN, an area of interest to the Council, cut across all of the Organization and was strongly linked to ICAO's Business Plan. Noting that it had been in development for a considerable amount time, he indicated that EAO wished to provide advice on how to proceed and make sure that the project was on track. C/EAO observed, in this regard, that there were two ways of conducting an evaluation or audit: one was doing it after the fact, once the work had been completed, and the other was doing it while the project was in mid-course so as to make sure it stayed on track. It was EAO's intention to evaluate the IKSN while it was still in development so that the processes could be improved rather than wait until the project had been completed.

43. The Representative of Germany averred that EAO's work programme for 2009 was somewhat ambitious and overloaded bearing in mind that the AGEA report (C-WP/13263) considered under the previous agenda item stated that EAO was completely understaffed and that a new C/EAO would be assuming office in January 2009. Recalling that the said AGEA report further indicated that EAO was lacking human and financial resources, not only for its audit tasks but also for its additional activities, that it lacked a Charter, that it performed a number of non-oversight tasks and that only one out of EAO's two Professionals was fully trained, he underscored the importance of the Secretary General finding ways to improve EAO's situation, especially with regard to the recruitment of additional staff members.

44. Drawing attention to paragraph 4 of the paper, the Representative of India noted that, in earlier Council discussions he, along with other Representatives, had raised two broad issues: one had been the accountability and responsibility régime in the Organization and whether there were policies, rules and regulations in place covering all areas. C/EAO had indicated that there were certain areas where accountability and responsibility régimes were either lacking or were deficient. The second issue had been the lack of a definite policy, rules or regulations with regard to contractual hiring. C/EAO had clarified that work was underway regarding the hiring of personnel on contracts. Given that background, and noting that an audit was to be conducted on the recruitment procedures for consultants, the Representative of India sought clarification as to whether there were policies, rules and regulations in the field of the accountability and responsibility régime and contractual hiring. He indicated that if there were policies in place, then an audit was perfectly justified; The Representative of India queried whether, if no policy was in place, in particular regarding the hiring of consultants, EAO would still wish to conduct its audit and what the justification would be therefore.

45. In noting that the accountability and responsibility régime was part of the IKSAN, C/EAO indicated that it showed the amount of work being undertaken, the reason why it was being done and when it would be completed. The régime itself, which related to all managers and all staff members, was thus the accountability framework which the Organization was developing. That was one of the reasons why EAO would be evaluating the IKSAN at this point in time. While it was being developed for the Air Navigation Bureau (ANB), it was scheduled to be rolled out to all areas of the Organization in 2009 and EAO wished to make sure that the accountability régime and the risk registers were fully thought out beforehand.

46. C/EAO noted that, as part of its work programme for 2008 his Office had undertaken an evaluation of various types of contracts for temporary staff and consultants, *inter alia*, and had made recommendations to the managers of the Organization, who were in the process of replying to EAO's report. On that basis, EAO wished to go further and look more at the recruitment procedures for consultants. His Office had noted in the past that there had been shortcomings in the area of employing certain consultants and it wished to make recommendations so that there would be improvements. That would be complementary to some of the work which was being done either under the HRC or in various areas of the Organization itself. C/EAO underscored that his Office tried to build its work programme on the concerns of the Council, as well as on areas where there was a perceived need for improvement. It was for that reason that EAO had included an audit of the recruitment procedures for consultants in its work programme for 2009.

47. In endorsing the comments made by the Representative of the United Kingdom regarding paragraph 4.2 a) of the paper, the Representative of Mexico noted that while EAO would begin with auditing the recruitment procedures for consultants, the scope of the audit remained open. To a point then raised by the Representative regarding paragraph 4.3, C/EAO observed that the Organization was currently adapting the International Public Sector Accounting Standards (IPSAS). While ICAO had initially intended to be an early adapter, it had been realized that the task would be more complex than anticipated and it was now envisaged that IPSAS would be fully implemented by the end of the current triennium. ICAO's new financial system, at least the first phase, had been designed to accept IPSAS. EAO had been providing advice as necessary on IPSAS implementation and had encouraged co-ordination with other organizations which were also implementing IPSAS, in particular, the United Nations (UN) in New York, which had an elaborate network relating to IPSAS. EAO had also encouraged co-ordination with the External Auditor of ICAO to ensure that it was clear in the notes to ICAO's financial statements which IPSAS had been adapted and which ones had not.

48. Responding to a query by the Representative of the Republic of Korea, C/EAO indicated that his Office endorsed the recommendations made by the AGEA in its said report (C-WP/13263), at least those which related to EAO. His Office found them to be extremely helpful. Given EAO's limited resources, it would not be possible to implement the AGEA's recommendations overnight, however. They would not be implemented within a year's time but rather within three year's time. One of EAO's first tasks would be to work with the AGEA, starting probably in January 2009, on the establishment of a preliminary plan to accomplish the tasks recommended in the Group's report. As he had previously indicated, EAO's work programme for 2009 had been based on one of the AGEA's recommendations. EAO would work with the AGEA and the Council so that the Organization could move forward and make improvements so that EAO's Capability Maturity Model (CMM), which was currently between 1 and 2, *i.e.* between initial and basic, would be better in future.

49. In seeking clarification regarding paragraph 3.2 b) of the paper on the evaluation of results-based budgeting, the Representative of Nigeria recalled the comments made in previous discussions that results-based budgeting had some degree of rigidity built into it with respect to the pre-determined outcomes on which the budget was based and that as the budget was adopted once every three years there might be the need for several changes in the interim to take into account the dynamic nature of aviation. He enquired whether the scope of the evaluation would include an analysis of that particular need for some built-in flexibility and, in the negative, whether EAO would advise the Council that that was beyond the evaluation's scope and that the Council would need to find other ways to undertake that evaluation or analysis in time for the next budget cycle. Observing that the scope of the said evaluation had not yet been established, C/EAO indicated that he would take the comments of the Representative of Nigeria into account.

50. Referring to the comments made by the Representatives of the United Kingdom and Mexico, the President of the Council recalled that the Council had requested (185/5) the HRC to review recruitment, selection and promotion processes in ICAO and that that item would be included in the Committee's work programme for the 186th Session.

51. The Council then noted EAO's proposed work programme for the year 2009 as set forth in C-WP/13255, on the understanding that comments made during the discussion, notably regarding the scope of the evaluation of results-based budgeting and of the audit of recruitment procedures, would be taken into account in EAO's future work. It was understood that a performance assessment report of EAO would be presented for the Council's consideration during the next (186th) session.

Subject No. 10: ICAO relations with the United Nations, the Specialized Agencies and other international organizations

The status of implementation of recommendations of the Joint Inspection Unit (JIU)

52. Tabled next for Council's consideration was C-WP/13252 presented by the Secretary General relating to the status of implementation of recommendations made in JIU reports.

53. Referring to the Appendix to the paper, the Representative of France averred that it did not give a precise indication of what follow-up action had been taken with regard to applicable JIU recommendations. In enquiring what the vague term "in progress" meant, he observed that it could mean that action to implement a given JIU recommendation had just been undertaken or that such action had almost been completed. Moreover, it was unclear when the follow-up action was actually taken. The Representative of France cited, as an example, the JIU recommendation to establish realistic financial resources for training contained in the JIU Report *Review of Management and Administration at ICAO* (JIU/REP/2007/5; C-WP/13034). While it was indicated that action to implement that recommendation had been taken, budgetary constraints had precluded the allocation of resources for training at the level requested by the Secretariat. The Representative of France queried whether the JIU recommendation had, in that case, actually been implemented. He emphasized that the Appendix, in which "Xs" were used to indicate if follow-up action had been taken or was in progress or if the JIU recommendation were not applicable, was not very informative.

54. Observing that the paper was an information paper, the Representative of Nigeria enquired as to what the result of the Council's discussion was to be, in particular, whether it was to direct the Secretariat to implement certain JIU recommendations or to expedite follow-up action. As an example, he referred to the Council's consideration of the previous report on this subject (C-WP/13035; 182/10), when

he had suggested that, even if the implementation of ICAO's Comprehensive Regional Implementation Plan for Aviation Safety in Africa (the AFI Plan) were not clearly related to the issues raised in the JIU Report *Further measures to strengthen United Nations system support to the New Partnership for Africa's Development (NEPAD)* (JIU/REP/2005/8), it should be reported on to the JIU and UN system organizations. The Representative of South Africa had echoed his comments and C/EAO had agreed that the AFI Plan should be publicized as widely as possible, particularly to the JIU and UN system organizations. The Council still did not know what action had been taken.

55. C/EAO underscored that, as an information paper, C-WP/13252 did not require any decision by the Council. Noting that he found the process to be less than efficient, he recalled that a recommendation had been made in another ICAO forum that JIU recommendations, whether internal or external, be placed on a website so that there would be a real-time indication of their status of implementation rather than having a discrete analysis every year presented to the Council in the form of an information paper.

56. The Council noted the information provided in C-WP/13252 on the status of implementation of recommendations of the JIU, on the understanding that an updated report which would take into account the comments made during the discussion would be presented to the Council for consideration during the 188th Session.

Subject No. 13: Work programmes of Council and its subsidiary bodies

Report of WGOE — Recommendations of the Working Group on Efficiency to improve the efficiency and effectiveness of the ICAO governing bodies

57. The Chairperson of the WGOE introduced C-WP/13240 Revision No. 1, which set forth the Group's recommendations on how to improve the efficiency and effectiveness of the Council and its subsidiary bodies and to ensure the quality of language support for the governing bodies. The Representatives of the United States, Brazil and Switzerland expressed appreciation to the Chairperson and the WGOE for their efforts. It was agreed to discuss the paper at the next meeting.

Other business

Subject No. 42: Technical co-operation

Information on large-scale technical co-operation projects

58. As no request had been received by close of business on 10 November 2008 to have C-WP/13213 on the above subject tabled for discussion in response to his memorandum PRES RK/1611 dated 3 November 2008, the President indicated that he considered that the Council had noted the information contained therein.

59. Further to a problem raised by the Representative of Saudi Arabia regarding the hazard posed by laser beams to the safety of aviation operations, the President of the Council invited the Representative of Canada to provide the Organization with the results of an investigation being carried out by Transport Canada safety and security specialists so that the Council could discuss what further action could be taken, if any.

60. The meeting adjourned at 1255 hours.

COUNCIL — 185TH SESSION

SUMMARY MINUTES OF THE ELEVENTH MEETING

(THE COUNCIL CHAMBER, FRIDAY, 14 NOVEMBER 2008, AT 1000 HOURS)

OPEN MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

Argentina	— Mr. A.M. Singh	Namibia	— Mr. B.T. Mujetenga
Australia	— Mr. P.K. Evans	Nigeria	— Dr. O.B. Aliu
Brazil	— Mr. R.S. Magno	Republic of Korea	— Mr. Shin, G.-S.
Cameroon	— Mr. E. Zoa Etundi	Romania	— Mr. C. Cotrut
Canada	—*Mr. L.A. Dupuis	Russian Federation	— Mr. A.A. Novgorodov
China	— Mr. Chunyu Ding (Alt.)	Saudi Arabia	— Mr. S. Hashem
Dominican Republic	— Mr. C. A. Veras	Singapore	— Mr. K.P. Bong
Ecuador	— Mr. I. Arellano Lascano	South Africa	— Mr. T. Peege
Egypt	— Mr. S. Elazab	Spain	— Mr. V. M. Aguado
El Salvador	— Mr. J.A. Aparicio Borjas	Switzerland	— Mr. D. Ruhier
France	— Mr. J.-C. Chouvet	Tunisia	— Mr. I. Sassi
Germany	— Mr. J. Mendel	Uganda	— Mr. J. Twijuke
Ghana	— Mr. K. Kwakwa	United Arab Emirates	— Mr. R.A. Al Kaabi (Alt.)
Iceland	— Mr. H. Sigurdsson	United Kingdom	— Mr. M. Rossell
Italy	—*Mr. F.P. Venier	United States	— Mr. D.T. Bliss
Japan	— Mr. S. Baba	Uruguay	— Mr. J.L. Vilardo
Malaysia	— Mr. S.-C. Kok	Venezuela	— Mr. D. Blanco Carrero
Mexico	—*Mr. D. Méndez Mayora		

ALSO PRESENT:

Mr. S.R. Prado (Alt.)	— Argentina
Mr. A. Romera (Alt.)	— Brazil
Ms. S. Chambers (Alt.)	— Canada
Mr. Chunyu Ding (Alt.)	— China
Mr. F. Christensen (Alt.)	— Iceland
Mr. P. Ciancaglioni (Alt.)	— Italy
Mr. W. Yoshioka (Alt.)	— Japan
Mrs. D. Jiménez Hernández (Alt.)	— Mexico
Mr. Seo, W.-S (Alt.)	— Republic of Korea
Mr. Yoo, H.-J. (Alt.)	— Republic of Korea
Mr. P.D. Fleming (Alt.)	— United Kingdom
Mr. H. Dávila (Alt.)	— Uruguay

SECRETARIAT:

Ms. N. Graham	— D/ANB
*Mrs. F.A. Odutola	— D/ATB
*Dr. Fang Liu	— D/ADB
*Mr. J. Maguire	— C/EAO
*Mr. V. Gapakov	— A/C/LPB
*Mr. O. Magnusson	— C/EPM
*Mr. S. Berti	— C/SFP
Mr. B. Peguillan	— EPM
*Mrs. H. Biernacki	— TO/SFP
Mr. J. De La Cámara	— EPM
Mrs. C. Rideout	— CSO

*Part-time

Subject No. 13: Work programmes of Council and its subsidiary bodies**Report of WGOE – Recommendations of the WGOE to improve the efficiency and effectiveness of the ICAO Governing Bodies**

1. The Council resumed (185/10) its consideration of the above subject, documented in C-WP/13240 Revision No. 1, presented by the Chairman of the Working Group on Efficiency.
2. Under general comments, the Representative of Egypt expressed his appreciation to the Working Group, but indicated that he would need some clarification on what he perceived to be a number of contradictions in the working paper. For example, paragraph 2.2 indicated that the Group in its expanded form was purely advisory, while elsewhere in the paper it spoke of the WGOE's role in planning and setting the Council's agenda. Another, even more important item, concerned the level of language services, and the seemingly contradictory indications as to whether the quality of those services would be maintained. Mention was also made of paperless meetings in the ANC, which would not make it possible to follow the discussions. The Representative of Egypt did not think that efficiency and effectiveness should be contingent upon reductions in publications and translations, but rather through optimisation of the resources available. Effectiveness and efficiency should take into consideration the need to communicate messages to the Council Members in a clear way, and this could only be done by recognizing the languages in which safety and security were expressed. Language services were a critical element to achieving the Strategic Objectives. The Representative of Egypt suggested that the Council defer consideration of this subject to the next session to allow the Working Group to be able to consider in depth all of the critical aspects of its proposals. The concerns expressed by the Representative of Egypt with respect to language services were echoed by the Representatives of the Russian Federation, Mexico and Saudi Arabia.
3. The Representative of Japan appreciated the intensive work which had been done by the WGOE and fully shared the ideas presented in its report. The WGOE in an expanded form would continue to contribute to the efficiency of the Council's work. The indication, in paragraph 2.4 of the paper, that all Council Members would receive notification of WGOE meetings and would have the possibility of participating in deliberations, was very important in ensuring a close cooperation between the WGOE and the Council. The Representative of Japan sought clarification on the difference between the status of WGOE members and other Council members who participated in meetings. The Secretary of the WGOE indicated that the question of status had not been discussed in the Group; in his personal opinion, all members had the same status as Representatives on the Council. They could speak regardless of whether they were Members of the Group, and the only distinction concerned the Chairman, who had to govern the procedures.
4. The Representative of France thanked the WGOE not only for the work it had produced, but for the open-mindedness it had displayed in taking into consideration all of the views expressed during the first discussion in the Council. He could not, however, subscribe to all of the elements in the Group's report, and fully endorsed what had been said by the Representative of Egypt.
5. The Representative of France was sorry to note what he perceived to be a counter-indication between the Strategic Objectives and the direction being taken in achieving those Objectives in the report. The governing bodies were naturally seeking to achieve the Strategic Objectives, whether that be in the ANC or the Council; it was therefore objectionable to be squaring off the Secretariat against the governing bodies as if the Secretariat was only dealing with Strategic Objectives and the governing bodies not at all.

6. Commenting on the report at hand, the Representative of France observed that some improvements had been made over the previous version and a number of ideas, such as that of limiting the duration of sessions, had been abandoned by consensus in light of objections raised. He did have problems, however, with some proposals for planning tasks and the role being given to what had been called the expanded WGOE. At no point in time had it ever been said that the WGOE would be a Standing Group of the Council. Thus far, working groups had been temporary groups, and that was the case with the Working Group on Governance which was elaborating the work for the next Session of the Assembly. The Representative of France was therefore surprised to see that the expanded group was proposing that it be perpetuated with its role.

7. The Representative of Nigeria observed that the result of the WGOE's work was largely a compromise with which his Delegation was comfortable. The expanded role would remain an *ad hoc* arrangement which would be reviewed by the 188th session, and there might also be a need to take a second look at the issue of standing working groups. By the time of the 188th session it should be possible to decide whether to formalise a process for handling this. The terms of reference of the defunct Council Working Group on Meetings should be added to the responsibilities of this Working Group. As regards other issues that had been raised, he recognized that the WGOE was an advisory group, with final decisions resting with the Council. Representatives who were not members of the WGOE could nevertheless attend the Group's meetings and address issues at that level.

8. The Representative of the United Kingdom wished to join those speakers who supported the principles reflected in C-WP/13240. It was in his view a very modest proposal to improve efficiency. Although it could probably be improved, the Council could go round in circles never approving it because there would always be something to just make it that little bit better. It was a compromise and the United Kingdom was certainly happy to agree to all of the action points at this meeting, with the understanding that the Council would review it again during the 188th session as was proposed.

9. The Representative of El Salvador supported the paper presented by the Working Group on Efficiency, which he viewed as the first step towards seeking improvements. The Representative of El Salvador considered paragraph 4 in particular, which dealt with the orientation of new Council Representatives, to be an excellent proposal. Some other points could be covered as regards the issue of health care, which was a stumbling block to many members of the Council. Assistance in this regard would have to be provided to new Council members.

10. The Representative of the United States, speaking as a member of the Working Group, wished to respond to some of the comments that had been made at this meeting. Firstly, since this was a purely advisory group, the Council and its President retained all the power, under the Convention, to convene its meetings and to set its agenda and priorities. Secondly, this was a work in progress; in fact, the Working Group on Efficiency had invited the Committee Chairs to its last meeting to discuss the programme for the next session, and a number of good ideas had been expressed that would be reflected in the work programme which the Council would decide on for the next session with the benefit of the input of the expanded WGOE.

11. The Working Group on Efficiency was open to all Council Members, and some of the non-members of the Working Group on Efficiency had contributed a lot to the discussion. The proposal before the Council reflected as much from non-members of the Working Group as it did from members. There had been a consistent participation by those Council Members who chose to become involved and participate.

12. As had been pointed out by several speakers, this was only a proposal for one year, and the Council would then re-evaluate the situation. Statements concerning the status of the Working Group on Efficiency could be taken up during the 188th session.

13. On the issue of languages, a principal objective, as the Representative of Egypt had clearly stated at the outset, was to maintain and improve the quality of language services. The intention was to have the six UN languages available for making policy in the Organization. If the Council made a decision only to have it take two years for the guidance to States to be translated, that was not quality language support. Since the Organization had limited resources, the objective was to make sure that the language resources were used efficiently to achieve the Strategic Objectives. Languages should be used to support the high-level decision-making that was appropriate for getting information out to States so that they, in a timely way, were informed of the work of the Organization. The issues in Appendix B would simply be sent back to the expanded Working Group to take into account and come back to the Council; no decision was being made on the ideas in Appendix B. For example, the use of paperless meetings in the ANC was clearly an issue the ANC had to debate, discuss, and report back on to the Council

14. The Representative of the United States would not be in favour of deferring a decision on this subject, taking into account that it was work in progress, and believed that if the Council did not endorse the paper, it would send the wrong signal that it was really not interested in continuing with this process. The paper was a step in the right direction and it certainly involved a much closer working relationship between the Council, the Secretary General and Secretariat in having an efficient agenda in setting priorities. The Representative of the United States supported the proposal as a step forward and would look forward to learning how the Council could refine and improve it in future years.

15. The Representative of Iceland expressed his Delegation's satisfaction with the paper, whose revised version was in his view excellent in taking account of previous discussions. Like the Representatives of the United Kingdom and the United States, he believed that the Council should not defer action any further.

16. The Representative of Spain recalled that he had participated in some of the meetings of the Group as an observer, and had therefore had the opportunity to voice his views from time to time. The revised version of the paper did provide some flexibility, and he could therefore support paragraphs 3 (Council Website) and 4 (Orientation of the new Council Representatives) in particular. The Council website would be a very efficient tool, and would be most useful to all Representatives. The orientation of new Representatives would also enhance the efficiency of Council management. His Delegation was also very sensitive to the issue of languages, and agreed that some ideas in the Appendix that were being offered for purposes of reflection and discussion were worthy of the Council's attention. As regards the status of the expanded Working Group, the Representative of Spain observed that the Council had many types of sub-groups, but that if this expanded Working Group was dedicated to efficiency, it should be possible to continue on a permanent basis.

17. The Representative of Argentina viewed improvements in efficiencies and effectiveness as an ongoing task, and supported those speakers who wished to see the Council take action on the recommendations in C-WP/13240 Revision No. 1 at this time, especially since the mechanism would be reviewed by the Council in one year's time.

18. The President of the Council clarified that no decisions were being sought of the Council at this time on the suggested guidelines outlined in the Appendices to C-WP/13240 Revision No. 1, and that no measures would be implemented without the recommendations of the WGOE and the approval of the Council. Any action that could affect language services, in particular, would be referred to the Council for its consideration. The Secretary of the WGOE confirmed that the proposals presented in C-WP/13240 Revision No. 1 were simply guidelines. The proposal for a Council website, and the type of information that would be posted on that website, were still being developed. The Secretary General was at this time simply seeking the Council's endorsement of the idea, as well as of the other proposals in the paper, which would have to be reviewed by the Working Group on Efficiency and subsequently brought forward to the Council. The Secretary of the WGOE also clarified that there was no intention of changing the current level of language services, which had a high priority. The information which would be provided on the Council website would be provided in the Organization's six working languages.

19. The Representatives of Brazil, Uganda, Germany, Singapore, Venezuela, Ecuador, Namibia and Italy added their support to the recommendations in C-WP/13240 Revision No. 1 and spoke in favour of taking action at this time, as did the Representative of Ghana, who nevertheless had some concerns with the proposal to discontinue the Working Group on Meetings.

20. Paragraph 4 (Orientation of the new Council Representatives) of C-WP/13240 Revision No. 1 was amended to include the President of the ANC among those who would make presentations. The title of Appendix B to the paper was amended to read "**Draft** guidelines on eliminating the translation of unnecessary documents, reducing distribution costs, and preserving the quality of language support for policy making."

21. The action proposed in C-WP/13240 Revision No. 1 was amended in accordance with some suggestions put forward, and the Council accordingly:

- a) approved the composition of the WGOE in an expanded form as described in paragraph 2.4 of C-WP/13240 Revision No. 1 when considering the work programme of the Council for each Session as well as for the Council's annual work programme and the Organization's programmes of meetings, and approved that this mechanism be reviewed by the Council in one year's time during the 188th Session. It was understood that the composition of the WGOE would respect the principle of equitable geographical representation;
- b) approved the procedures for the WGOE in an expanded form as described in paragraphs 2.6 and 2.7 of C-WP/13240 Revision No. 1;
- c) noted the guidelines for meetings as described in paragraphs 2.9 to 2.12 of the paper;
- d) noted the developments to be studied by the WGOE and the Secretary General on the use of Council website, the improved orientation of new Council Members as described in paragraphs 3 and 4 of the paper and in Appendix A;
- e) noted that, in advising the Council, the WGOE in its expanded form would take into account additional efficiencies that could be achieved by eliminating unnecessary documents and reducing distribution costs, thereby improving the quality of

language support for policy making as described in paragraph 5 of the paper and in the draft guidelines on eliminating the translation of unnecessary documents, reducing distribution costs, and preserving the quality of language support for policy making in Appendix B;

- f) noted that meetings of the WGOE would be open to all Council Members; and
- g) noted that the WGOE was purely an advisory group.

Subject No. 6.3: Election of chairmen and members of subsidiary bodies of the Council

Appointment of the President of the Air Navigation Commission

22. The appointment of the President of the Air Navigation Commission was documented for the Council's consideration in C-WP/13221, presented by the President of the Council.

23. The appointment of the President of the ANC was governed by Rule 16c) and Appendix D of the Rules of Procedure for the Council, and Section 2, Rule 4 of the Rules of Procedure for the Air Navigation Commission.

24. The President of the Council had invited Members of the Air Navigation Commission, under cover of PRES RK/1580 dated 25 August 2008, to present to him in writing before the close of business on 10 October 2008 their candidatures for the post of the President of the Commission. By the close of business on 10 October 2008, Mr. Omari R. Nundu had presented his candidature for the post for another year. An abridged version of Mr. Nundu's curriculum vitae was attached to C-WP/13221.

25. It was recalled that taking into account that there was only one candidate for the presidency of the ANC for the year 2009, the Council, under Other Business at its Ninth Meeting of the current session (185/9), had agreed to suspend that part of paragraph 1 of Appendix D (Rules and Procedures governing the appointment of the Members, Alternates and President of the Air Navigation Commission) of its Rules of Procedure which reads: "... and, unless waived by unanimous agreement of the Members represented at the meeting, shall be by secret ballot" insofar as it concerned this appointment.

26. The Council confirmed the decision it had taken at its Ninth Meeting of the current session, and, by acclamation, reappointed Mr. Omari R. Nundu as President of the Air Navigation Commission for a period of one year starting on 1 January 2009 in accordance with paragraph 3 of Appendix D to the Rules of Procedure for the Council.

Subject No. 13: Work programmes of Council and its subsidiary bodies

Review of the conclusions of the Air Transport Symposium (Abuja, 28 to 30 April 2008)

27. The above subject was documented for the Council's consideration in C-WP/13232, presented by the Secretary General, and a report of the Air Transport Committee presented in C-WP/13233. The report of the Air Transport Committee presented the recommendations of a working group which had been formed with a view to developing recommendations to the Council pertaining to specific actions to be taken with regard to the conclusions that impact ICAO.

28. In taking the action recommended by the Air Transport Committee, the Council endorsed the proposals contained in C-WP/13233.

Subject No. 15.17: Economic policy and infrastructure management

Report of the Conference on the Economics of Airports and Air Navigation Services (CEANS)

29. The Council reviewed the above subject on the basis of a paper presented by the Secretary General (C-WP/13228), and a report thereon presented by the Air Transport Committee (C-WP/13229).

30. During the Council's review of the proposed amendments to *ICAO's Policies on Charges for Airports and Air Navigation Services* in Appendix C to C-WP/13228, it was understood that the first sentence of paragraph 19 would be amended in light of concerns expressed by the Representative of Spain. It also noted the comment made by the Representative of France about the necessity to reflect upon the appropriateness of modulated charges for air navigation services.

31. In taking action on the subject on the basis of the report of the Air Transport Committee (C-WP/13229), the Council:

- a) endorsed the recommendations of the Conference in Appendix A to C-WP/13228;
- b) approved the proposed actions in Appendix B to C-WP/13228, including the specific action on slot allocation and night curfews, as well as a future review of Doc 9082, referred to in paragraph 2.2 of C-WP/13229, taking into account, *inter alia*, the point raised by the Representative of France touching upon the modulated charges for air navigation services; and
- c) approved the revised text of Doc 9082 as presented in Appendix C to C-WP/13228, subject to the amendments indicated in paragraphs 3.1 and 3.2 of C-WP/13229 and the additional amendment to paragraph 19 referred to above, for publication as the eighth edition of Doc 9082.

Other business

32. The Representative of Canada provided the Council with information on a recent incident in Canada involving laser beams which had posed a hazard to the safety of aviation operations and related matters. The text of the information provided by the Representative of Canada would be forwarded to Representatives. .

33. The Representative of South Africa appealed to Representatives to arrive on time for Council meetings, with effect from the next (186th) Session.

34. The meeting adjourned at 1300 hours.

COUNCIL — 185TH SESSION

SUMMARY MINUTES OF THE TWELFTH MEETING

(THE COUNCIL CHAMBER, MONDAY, 17 NOVEMBER 2008, AT 1430 HOURS)

CLOSED MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

Argentina	— Mr. A.M. Singh	Mexico	— Mr. D. Méndez Mayora
Australia	— Mr. P.K. Evans	Namibia	— Mr. B.T. Mujetenga
Brazil	— Mr. R.S. Magno	Nigeria	— Dr. O.B. Aliu
Cameroon	— Mr. E. Zoa Etundi	Republic of Korea	— Mr. Shin, G.-S.
Canada	— Mr. L.A. Dupuis	Romania	— Mr. C. Cotrut
China	— Mr. Tao Ma	Russian Federation	— Mr. A.A. Novgorodov
Dominican Republic	— Mr. C.A. Veras	Saudi Arabia	— Mr. S. Hashem
Ecuador	— Mr. I. Arellano Lascano	Singapore	— Mr. K.P. Bong
Egypt	— Mr. S. Elazab	South Africa	— Mr. T. Peege
El Salvador	— Mr. J.A. Aparicio Borjas	Spain	— Mr. V.M. Aguado
France	— Mr. J.-C. Chouvet	Switzerland	— Mr. D. Ruhier
Germany	— Mr. J. Mendel	Tunisia	— Mr. I. Sassi
Ghana	— Mr. K. Kwakwa	Uganda	— Mr. J. Twijuke
Iceland	— Mr. H. Sigurdsson	United Arab Emirates	— Mr. J. Haidar
Italy	— Mr. F.P. Venier	United Kingdom	— Mr. M. Rossell
Japan	— Mr. S. Baba	United States	— Mr. D.T. Bliss
Malaysia	— Mr. S.-C. Kok	Uruguay	— Mr. J.L. Vilardo
		Venezuela	— Mr. D. Blanco Carrero

ALSO PRESENT:

Mr. O.R. Nundu	— President, ANC
Mr. A. Romera (Alt.)	— Brazil
Ms. S. Chambers (Alt.)	— Canada
Mr. P. Pape (Alt.)	— France
Mr. F. Christensen (Alt.)	— Iceland
Mr. W. Yoshioka (Alt.)	— Japan
Mrs. D. Jiménez Hernández (Alt.)	— Mexico
Mr. A.A. Alharthy (Alt.)	— Saudi Arabia
Ms. L. Faux-Gable (Alt.)	— United States
Mr. H. Dávila (Alt.)	— Uruguay

SECRETARIAT:

Mrs. F.A. Odutola	— D/ATB
Mr. S. Berti	— C/SFP
Mrs. H. Biernacki	— TO/SFP
Miss S. Black	— Précis-writer

Subject No. 52: Unlawful interference with international civil aviation and its facilities**Review of the Reports of the Seventh Session of the International Explosives Technical Commission (IETC/7) and the Seventeenth Meeting of the *Ad Hoc* Group of Specialists on the Detection of Explosives (AH-DE/17)**

1. The Council considered this subject on the basis of a paper presented by the President of the Council (C-WP/13253 Restricted), which summarized the Reports of the AH-DE/17 Meeting (Montréal, 20 and 21 October 2008) and the IETC/7 Session (Montréal, 22 and 23 October 2008), and an oral report thereon by the Committee on Unlawful Interference (UIC).
2. The Representative of the United States indicated that his State supported the proposal set forth in paragraph 3.4.1 of the paper to convene the next meetings of the AH-DE and the IETC as a joint meeting over a period of three days, on a trial basis, while maintaining the status of the two bodies. His State noted, with appreciation, that 139 States were now parties to the 1991 *Convention on the Marking of Plastic Explosives for the Purpose of Detection* and that, in accordance with Article XIII of the Convention, 25 States had declared themselves to be producer States, which represented considerable progress. The United States urged all producers and sellers and providers of plastic explosives that had not yet done so, including two major known producers, to both become parties to the Convention and to implement it. It also encouraged the Secretariat to continue to work with representatives of those States as a high priority.
3. The Representatives of the United Arab Emirates, France and Spain endorsed these comments.
4. Responding to a query by the Representative of France, the Chief of the Aviation Security and Facilitation Policy Section (C/SFP) noted that the joint meeting of the AH-DE and the IETC had been proposed as it was considered that it would be more efficient and effective than having separate meetings. As indicated by the Chairman of the UIC in his oral report, some 95 per cent of the members of the two groups were the same. Consequently, when the IETC members reviewed the report of the AH-DE, they were essentially reviewing their own report. Recalling, however, that most of the experts of the AH-DE had been members since its inception in 1989, C/SFP underscored that it was difficult to suggest to the group that it abolish itself. In his view, the AH-DE represented a great pool of expertise. Its members were the top experts in the world, not only in the detection of explosives but in all aviation security-related technology. Averting that it would be a shame to dispense with them altogether, C/SFP suggested that it might be a good time to refocus the work of the AH-DE to a greater benefit in various aviation security-related matters, perhaps even beyond the detection of explosives. He recalled that, although there had been a number of different points of view expressed during the AH-DE/17 Meeting and the IETC/7 Session regarding the amalgamation of the two groups, there had been consensus that no drastic change should be made immediately; rather, as an interim measure, a joint meeting of the AH-DE and the IETC should be convened while maintaining their distinct identities for that first occasion, with a view to considering further changes at the next meeting.
5. While supporting the action proposed in the paper, the Representative of Spain expressed disappointment that the AH-DE had not adopted more extensive measures as a result of its deliberations with a view to its future work programme.
6. In then taking action on the basis of that proposed in the executive summary of C-WP/13253 Restricted, as recommended by the UIC in its oral report, the Council:

- a) noted the Reports of the AH-DE/17 Meeting and the IETC/7 Session, as well as the oral report thereon by the UIC; and
- b) approved the course of action recommended by the AH-DE and the IETC as described in paragraphs 3.2.3 and 3.4.1 of the paper, namely:
 - 1) that a letter be sent to all States Parties to the 1991 *Convention on the Marking of Plastic Explosives for the Purpose of Detection* reminding them of the obligation, under Article IV, paragraph 3, thereof, to either destroy or mark within a period of fifteen years from the entry into force of the Convention in respect of each State all unmarked stocks of military explosives and requesting them to inform ICAO whether any difficulties would be encountered in complying with that requirement;
 - 2) that the issue of State compliance with Article IV, paragraph 3, of the said Convention be placed on the agenda of future meetings of the IETC; and
 - 3) agreed to the convening of the next meetings of the AH-DE and the IETC as a joint meeting over a period of three days, on a trial basis, while maintaining the status of the two bodies.

7. The Council went into open session at 1445 hours to consider the remaining items on its order of business.

COUNCIL — 185TH SESSION

SUMMARY MINUTES OF THE TWELFTH MEETING

(THE COUNCIL CHAMBER, MONDAY, 17 NOVEMBER 2008, AT 1445 HOURS)

OPEN MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

Argentina	— Mr. A.M. Singh	Mexico	— Mr. D. Méndez Mayora
Australia	— Mr. P.K. Evans	Namibia	— Mr. B.T. Mujetenga
Brazil	— Mr. R.S. Magno	Nigeria	— Dr. O.B. Aliu
Cameroon	— Mr. E. Zoa Etundi	Republic of Korea	— Mr. Shin, G.-S.
Canada	— Mr. L.A. Dupuis	Romania	— Mr. C. Cotrut
China	— Mr. Tao Ma	Russian Federation	— Mr. A.A. Novgorodov
Dominican Republic	— Mr. C. A. Veras	Saudi Arabia	— Mr. S. Hashem
Ecuador	— Mr. I. Arellano Lascano	Singapore	— Mr. K.P. Bong
Egypt	— Mr. S. Elazab	South Africa	— Mr. T. Peege
El Salvador	— Mr. J.A. Aparicio Borjas	Spain	— Mr. V.M. Aguado
France	— Mr. J.-C. Chouvet	Switzerland	— Mr. D. Ruhier
Germany	— Mr. J. Mendel	Tunisia	— Mr. I. Sassi
Ghana	— Mr. K. Kwakwa	Uganda	— Mr. J. Twijuke
Iceland	— Mr. H. Sigurdsson	United Arab Emirates	— Mr. J. Haidar
Italy	— Mr. F.P. Venier	United Kingdom	— Mr. M. Rossell
Japan	— Mr. S. Baba	United States	— Mr. D.T. Bliss
Malaysia	— Mr. S.-C. Kok	Uruguay	— Mr. J.L. Vilardo
		Venezuela	— Mr. D. Blanco Carrero

ALSO PRESENT:

Mr. O.R. Nundu	— President, ANC
Mr. A. Romera (Alt.)	— Brazil
Ms. S. Chambers (Alt.)	— Canada
Mr. P. Pape (Alt.)	— France
Mr. F. Christensen (Alt.)	— Iceland
Mr. W. Yoshioka (Alt.)	— Japan
Mrs. D. Jiménez Hernández (Alt.)	— Mexico
Mr. A.A. Alharthy (Alt.)	— Saudi Arabia
Ms. L. Faux-Gable (Alt.)	— United States
Mr. H. Dávila (Alt.)	— Uruguay
*Mr. T. Fenoulhet (Obs.)	— European Commission

SECRETARIAT:

*Mr. D. Wibaux	— D/LEB
*Ms. N. Graham	— D/ANB
*Mr. R.J. Heighes-Thiessen	— D/TCB
*Mr. M. Fox	— C/FLS
*Mr. R. Lambo	— C/ISD
Mr. W. Amaro	— C/JF
Mr. M. Siciliano	— TO/MRTD
Mrs. C. Dermakar	— JFO
*Ms. A. Andrade	— ADTC
Miss S. Black	— Précis-writer

*Part-time

Subject No. 15.4: Facilitation**Public Key Directory — Amendments to the PKD Memorandum of Understanding (MoU)**

1. The Council had for consideration C-WP/13141 [with Corrigendum No. 1 (French only) and Addendum No. 1] presented by the Secretary General on the results of the extraordinary meeting of the PKD Board which, further to the Council's decision contained in paragraph 14 of C-DEC 182/12, had been convened in Christchurch, New Zealand on 11 February 2008 to review the technical amendments to the PKD MoU contained in C-WP/13079 and the amendment to paragraph 2.3 thereof proposed by China in C-WP/13088. Appendix A to C-WP/13141 set forth the technical amendments to the PKD MoU proposed by the PKD Board and Appendix B, an updated list of PKD Board Members. Addendum No. 1 proposed additional changes to paragraph 4.5 of C-WP/13141 and paragraph 1.1.1.1 of Attachment B (Cost Sharing/Fee Schedule) to the PKD MoU arising from the Sixth Meeting of the PKD Board held in Montréal on 8 October 2008, whereby the Registration Fee would be changed from US \$25 000 to US \$56 000. An amended text of Attachment A (Model Notice of Participation) to the PKD MoU, as approved by the PKD Board, was distributed to Representatives during the meeting and is appended hereto. It was recalled, with regard to paragraph a) of the action proposed in the executive summary of C-WP/13141, that the Council had earlier (183/3) appointed Dr. E. Brauer (Germany) as the eighth PKD Board Member.

2. It was noted that the Representative of China had sent a letter to other Representatives on 10 November 2008 elaborating on China's proposal and requesting that the Council: take note of the current situation of its proposed amendment to paragraph 2.3 of the PKD MoU; request the PKD Board to follow the Council's decision of 7 December 2007 (C-DEC 182/12); and consider positively China's proposal dated 3 November 2008 to amend paragraph (c) of the Recitals of the PKD MoU as set forth in Attachment A to the letter and China's comment dated 3 November 2008 to the draft Council decision as set forth in Attachment B thereto. It was further noted that the Representative of China, in a letter to the Secretary General dated 10 November 2008, had forwarded China's Notice of Participation in the PKD MoU.

3. During the ensuing discussion, the Representative of China recalled that paragraph 14 of C-DEC 182/12 indicated that "The Council requested the PKD Board to take into consideration the discussions of the Council and that the majority of the Council Members agreed with the proposal of China in C-WP/13088.". However, the PKD Board had not accepted the decision of the Council. The Representative of China underscored, in this context, that the ICAO Council had been set up under the Chicago Convention. Elected by 190 Contracting States, the Council was the governing body of ICAO. Article 54 of the Chicago Convention entrusted it with a wide range of mandatory functions with regard to ICAO policies and principles. The Representative of China emphasized that, as a body of ICAO responsible for a particular project, the PKD Board should abide by the said decision of the Council. Averring that it was hard to imagine that a Council decision on a political and policy issue would not be respected, the Representative of China indicated that his State wished to draw the Council's attention to the seriousness of the matter so as to avoid setting a precedent for challenging the Council's authority. The Council should take further action in that regard.

4. The Representative of China recalled that in his memorandum SG 1906/07 dated 5 January 2007 transmitting the draft text of the PKD MoU for comment, the Secretary General had stated that "Should you have any comments, I would be grateful to receive them no later than 19 January 2007. In the absence of any comments by that date, the text of the MoU will be considered final.". He underscored that while the Chinese Delegation had submitted its proposed amendment to paragraph 2.3 of the PKD MoU on 17 January 2007, it had not been taken on board by the Secretary General on the grounds that it involved changes to the substance of the PKD MoU. The final version of the PKD MoU distributed under cover of the Secretary General's memorandum SG 1917/07 dated

27 February 2007 had not included China's proposed amendment. That cast doubt on the validity of the PKD MoU.

5. The Representative of China noted that, guided by the decision taken by the Council during the Twelfth Meeting of its 182nd Session, his State had been engaged in active consultation with Council Members represented on the PKD Board, as well as with the Board itself, and had attended the Board's meetings on three occasions as an observer. While this showed China's utmost sincerity and flexibility in trying to solve this issue, the latter could not be settled at the expense of the United Nations (UN) and ICAO policies and principles.

6. The Representative of China noted that paragraph 2.3 of the PKD MoU used the wording "in consultation with ICAO" as the participation of other entities using electronic Machine Readable Travel Documents (eMRTDs) in the PKD involved political and policy issues and the PKD Board, as a technical body, needed to seek the opinion of ICAO. Affirming that only the Council was in a position to make decisions on political and policy issues, he indicated that that was the fundamental reason why such a procedure had been envisaged in paragraph 2.3. The Representative of China maintained that the current delay in amending the PKD MoU had been caused entirely by the non-implementation by the PKD Board of C-DEC 182/12. Recalling that he had stated that position of China in his letter to Representatives dated 10 November 2008, he noted that China maintained that the ICAO PKD MoU must undoubtedly comply with UN and ICAO policies. China proposed that when the issue of PKD Participants involved political and policy matters, a decision should always be made by the ICAO Council and that that decision should be observed by the PKD Board. That would not necessitate any additional amendment to the PKD MoU; rather, it would require the implementation of the existing contents of paragraph 2.3.

7. Recalling that under paragraph 3 a) of the PKD MoU ICAO was invited to "perform, in the interest of the Participants, the activities necessary to provide for the establishment and operation of the ICAO PKD", the Representative of China underscored that ICAO's role was the operation of the PKD. Under paragraphs 3 b), d) and j), ICAO was invited to publish and disseminate the ICAO PKD Regulations and any amendments to the PKD MoU, *inter alia*, and to act as trust agent between the Participants and the Operator for receiving fee payments. He therefore considered that ICAO was greatly involved in the PKD. That being the case, it could not be said that the PKD was independent from ICAO.

8. In concluding, the Representative of China noted that his State requested that paragraph (c) of the Recitals of the PKD MoU be amended to read as follows (new text appears in bold):

"(c) The objective of this MoU is to set out the arrangements for participation in the ICAO Public Key Directory, **and all Public Key Directory-related procedures and activities should conform to the policies of the United Nations and ICAO**".

He emphasized that the Council must take further action regarding the PKD Board's non-acceptance of C-DEC 182/12.

9. The Secretary General recalled that, during its review of C-WP/12803 and Addendum No. 1 thereto containing the revised draft text of the PKD MoU, the Council had decided (179/18) not to retain some suggested amendments, including the suggestion by the Representative of China to expand paragraph 2.3 to include the text shown in italics: "2.3 ... in consultation with ICAO *and in consideration of the policy of the concerned Contracting States*". The Council had then endorsed the final draft of the MoU in the Appendix to Addendum No. 1 to C-WP/12803, with a request that, after the revised draft MoU, as amended during the discussion, had been reviewed by the appropriate members of the Secretariat to ensure that the changes did not

affect the legal issues, the document be circulated by the Secretary General to the Members of the Council for their final agreement. Memorandum SG 1906/07 dated 5 January 2007 had subsequently been issued.

10. The Representative of Saudi Arabia underscored that as travel took place not only by air but also by land and by sea, the issue of a PKD was of interest to many countries, as well as to other organizations such as INTERPOL. Recalling that ICAO had adopted Annex 9 (*Facilitation*) to the Chicago Convention which dealt with passports, *inter alia*, he affirmed that general policy matters relating to eMRTDs should be established within the Organization and that the PKD Board should only deal with the technical aspects of authenticating the electronic signature of the issuers of such e-passports. The Representative of Saudi Arabia averred that it was regrettable that the PKD Board had not accepted China's proposal to amend paragraph 2.3 of the PKD MoU when the majority of Council Representatives had agreed with it. He likened the PKD Board to a prodigal son who had separated himself from his parents. The Representative of Saudi Arabia emphasized that either the gap between the Council and the PKD Board should be filled or the PKD should no longer fall under the auspices of ICAO. Underscoring that ICAO and the Council represented States whose needs had to be met, he maintained that the PKD Board had no right to reject a Council decision. For that reason, the Representative of Saudi Arabia supported the comments made by the Representative of China and all of the proposals made by his State.

11. The Representative of Venezuela supported the proposal made by China to amend paragraph 2.3 of the PKD MoU, as well as the comments made by the Representative of China on the subject.

12. The Representative of Argentina emphasized that, while China's proposal was logical, any amendment to the PKD MoU had to be agreed upon by both the Council and the PKD Board. It could not be adopted unilaterally. Concurring with the Representative of Saudi Arabia that the PKD Board work was technical in nature, he underscored that it should not deal with policy issues. As the latter were specific to States, they should be addressed by a higher body, such as the UN. The Representative of Argentina stressed that the Council should make every effort to arrive at an agreement with the PKD Board so that it would at least be open to some of the minor amendment proposals presented by China. In averring that it was a serious problem, he emphasized that it was not specific to China and that all States represented on the Council, both now and in the future, could experience a similar problem. The Representative of Argentina indicated that the Council should make a recommendation to the PKD Board regarding China's proposal to amend paragraph 2.3 of the PKD MoU and clearly specify what would happen if it were rejected.

13. Noting that the Council constituted its subsidiary bodies, the Representative of Egypt maintained that it should always have the last word. He therefore supported China's proposal. The Representative of Egypt emphasized that, if the latter gave rise to political problems, then it should be referred to the UN, as was customary. He considered that the issue should be examined as it would likely have repercussions on other States.

14. In associating himself with the comments made by the Representatives of Saudi Arabia and Egypt, among others, the Representative of Namibia affirmed that what China was proposing was entirely consistent with the policies of the UN and ICAO and that China had done everything within its power to reiterate ICAO's ownership of the PKD. The Council had taken a decision to that effect which had been ignored by the PKD Board. That was unbecoming. In underscoring that the Council should take ownership of what was rightfully its responsibility in terms of PKD policies and procedures, the Representative of Namibia voiced strong support for what China was requesting, including the amendment to paragraph (c) of the Recitals of the PKD MoU.

15. The Representative of Canada indicated that, while he had taken note of the statement made by the Representative of China, he could not support that approach. In highlighting the interventions made by the

Representatives of Saudi Arabia, Argentina, Namibia and Egypt, he averred that the Council seemed to be more in the realm of what should be than in the realm of what is. If the discussion was about a different structure for the PKD MoU and a different role for the Organization and the Council, then that was all very well but that was not the issue that was to be addressed during the present meeting. He maintained, with due deference to the opposite opinion, that that was not a very logical methodology. What was a logical methodology was to address the technical amendments to the PKD MoU that were before the Council in a spirit of cooperation and consensus. With regard to a more constitutional structure of the PKD Board as referred to by the Representative of Saudi Arabia, the Representative of Canada indicated that, while there might be merit in looking at that issue, it should only be done at a future date. At the moment, in law, the PKD Board and the Council were equal partners.

16. The Representative of Canada noted that his State deemed the PKD to be an essential mechanism for a cooperative and interoperable régime for passport security that should be accessible to all Member States of the Organization. The PKD must also be a global and universal response to security threats in the facilitation environment. Canada believed so strongly in the PKD that it was a Member at the present time, despite the fact that it had not yet started issuing e-passports. The Representative of Canada emphasized that it was important that the Council move forward today and approve the technical amendments to the PKD MoU which had been accepted by the PKD Board. Further delay in the approval of those amendments would mean a delay in the full operation of the PKD and would deprive other States of the opportunity to join the PKD, as well as to have a positive international impact on border control and security. Canada was very concerned that the text of the Chinese amendment to paragraph 2.3 of the PKD MoU was a politicization of a substantive security matter. It did not believe that that was conducive to broader cooperation on operational and technical security issues. The Representative of Canada considered that China, through the last statements made by its Representative, was attempting to have the ICAO Council endorse its own statement of policy as to how the relationship between Beijing and Taiwan should be conducted. Canada and many other States did not intend to address that matter in the Council of a UN Specialized Agency such as ICAO since that was not their role at ICAO. Reiterating that it was a politicization of the process, the Representative of Canada stressed that China should be careful before embarking on the path of using a UN Specialized Agency to advance its own political agenda.

17. The Representative of Canada noted that his State acknowledged that PKD Participants and China had worked extensively for more than eighteen months to come to a practical solution regarding the proposed Chinese amendment to paragraph 2.3 of the PKD MoU. Canada welcomed China's interest in the PKD and its joining the latter. Canada strongly believed, however, that the PKD should remain in ICAO; moving the PKD out of ICAO was not an option for his State as it believed that the viability of the PKD could be compromised. Recalling that ICAO had been entrusted with the regulation of travel documents since almost World War II, the Representative of Canada emphasized that the PKD was closely linked to the aviation security agenda. That was, and should remain, front and centre as the Council's job to fulfill. The Council was not a political body in this instance and it was not to address political matters which belonged to the UN.

18. The Representative of Nigeria indicated that, to the extent that ICAO had, for many years, been addressing travel documents, including eMRTDs, he supported ICAO's involvement in the PKD process. Having said that, such involvement depended upon how one looked at the issue under discussion: was it purely technical in nature, or was there also a policy aspect? What the Representative of Nigeria found interesting was that, although the ICAO Council had been requested to approve amendments to the PKD MoU which were of a technical nature, it seemed that it could not make policy statements in the arrangement which it had put in place. Averring that that was strange, the Representative of Nigeria emphasized that it was necessary for the PKD Board to take a second look at its position in view of the nature of the participation of its Members. He queried whether PKD Board Members participated in their own capacity or as representatives of States, having been nominated by

States and approved by the Council, which comprised Representatives of States. While the Representative of Nigeria would wish to think that the Council had some responsibility of a technical nature, he recognized that primarily its responsibility was that of policy. In that regard, he found it unusual that the Council had been put in a catch-22 situation with the PKD MoU, in which each time it was requested to approve technical amendments it could not make any policy statements that could be accepted by a technical board, the PKD Board. He underscored that the Council should look at that problem and resolve it appropriately. Until then, the Representative of Nigeria found it difficult to understand why the Council continued to be involved in ratifying technical amendments to the PKD MoU. To that extent, he considered that the Council should take a second look at the amendment to paragraph 2.3 of the PKD MoU proposed by China. In stressing the need to resolve the problem, the Representative of Nigeria emphasized that it could not continue to be shifted from one meeting to the other and that the Council should not be reduced to approving only technical amendments to the PKD MoU and being unable to make any policy statements.

19. While fully supporting the underlying principles of the PKD, the Representative of Tunisia shared these views.

20. Averring that the text of the PKD MoU was undoubtedly incomplete as it only related to technical issues, the Representative of Brazil suggested that, if the Council so wished, the Secretariat could find ways to include therein the amendment to paragraph 2.3 proposed by China. In that manner, the Council would not lose its power regarding political issues such as the one under discussion.

21. The Representative of Spain drew attention to paragraph (a) of the Recitals of the PKD MoU, which stated that “ICAO has received a request for the establishment of an ICAO Public Key Directory, as defined in Section 1, to promote the global interoperability of the validation system for electronic travel documents.”. In stressing the term “global”, which had also been referred to by the Representative of Canada, he emphasized that it was not just a question of the interoperability of the validation system of ten, twelve or twenty-four States; rather, it was the interoperability of a validation system for the entire world. The Representative of Spain underscored that, if that was ICAO’s objective, and it should be, then the Organization should aim to ensure that all its Member States were within the PKD system, as otherwise the system would not be efficient. ICAO should thus monitor and defend the global positions.

22. Recalling the comments made by the Representative of Brazil, the Representative of Spain agreed that the PKD MoU was not perfect; it was not all that clear where the responsibilities lay; furthermore, the distinction between political and technical issues was not entirely clear. The PKD Board was to take into account technical and operational issues. However, as any amendments to the PKD MoU required acceptance by two-thirds of the Participants, the Board also addressed political issues. The Representative of Spain was thus of the view that there was some merit in considering amending the PKD MoU in order to resolve the problems of the future, if not those of today.

23. The Representative of the United States voiced support for the intervention made by the Representative of Canada. Noting that the Representative of Argentina had made the point that this required a bilateral decision, he underscored that there was a cooperative partnership between the PKD Board and the Council. Observing that many Representatives whose States were not yet members of the PKD had spoken, the Representative of the United States encouraged those States to join. He agreed completely with the Representative of Spain that to be effective the PKD had to be a global system. In underscoring that the United States was fully committed to a strong and positive relationship with China, the Representative of the United States indicated that he could not think of any more important relationship given the events of the past six months. The United States fully supported the policy in the UN that there was only one China and it recognized the Chinese Government in

Beijing as the sole legal government of China. There was no question about China's sovereign status and its voice in the UN Specialized Agencies.

24. The United States was also fully committed to the Strategic Objectives of ICAO to promote a safe, efficient and secure aviation system. The PKD had been established to promote security in travel with a robust authentication mechanism for eMRTDs in a way that would present minimal obstacles to travellers crossing by air, land and sea. He stressed that, for the security objectives intended by the PKD, and to be truly useful, there needed to be the broadest possible participation by issuers of e-passports. As the Representative of Spain has indicated, a global system was needed. That was the foundation of the potential strength of the PKD. In that context, the PKD MoU had been developed and careful attention had been given to broad participation by States, as well as other entities that issued e-passports. Exclusion of certain major e-passport issuers, whether sovereign States or not, would create a major loophole in the PKD, threatening global security.

25. The Representative of the United States recalled that, in his letter to Representatives dated 10 November 2008, the Representative of China had conveyed his view that the only thing that China sought was clarification of the ambiguity in Section 2 (Participation) of the PKD MoU. In the view of PKD Participating States, however, China's proposal was not merely clarifying ambiguity; it raised, as the Representative of Canada had stated, a political question beyond the jurisdiction of ICAO. The issue that China wanted to address in the PKD was a matter that would best be addressed by the two parties across the Straits. Fundamentally, it was not an aviation issue. The ICAO Council did not have the competency, jurisdiction or responsibility to solve that issue. According to press reports, aviation issues were being addressed at the highest levels across the Straits. That was as it should be, and the United States welcomed the progress that was being made. The Representative of the United States recalled that PKD Participants had offered China multiple times over the past twenty months compromise language that addressed the concerns of both sides. There had been extensive involvement of their capitals. Most recently China had been offered four elements which underscored the sovereignty of China, including the addition to the Model Notice of Participation (Attachment A to the PKD MoU) which had been distributed to Representatives. Many hours had been spent addressing a policy question when it would have been preferable to address aviation's challenges. In the meantime, the functional benefits of the PKD had been delayed for almost two years because non-controversial technical amendments had not been approved. Among the results of the delay was the cost of PKD participation. The PKD's poor record might be due to the fact that the Council had not facilitated the work of the PKD by approving improvements that had been recommended unanimously by the PKD Board and not opposed by anyone. The Representative of the United States emphasized that, as more joined the PKD, the fees for each would go down dramatically. He further stressed that the Council was sacrificing this robust security system, the PKD, for travellers using all modes of transportation, land, air and sea, over an issue that should be addressed outside the aviation sector and outside of ICAO.

26. The Representative of the United States underscored that, although some Representatives apparently would like to unilaterally direct the PKD Board, the latter had been established as a cooperative partnership, as the Representative of Argentina had indicated. If Representatives wished to review the structure of the PKD Board in the future, then the Council should look at it. That was not, however, something that could be resolved during the present meeting. The PKD MoU reflected the said partnership and it was the basis upon which its Members had committed resources, time and technology. The PKD Participants simply could not agree to decisions of the Council that would dictate terms in advance, without even knowing what those decisions would be. They could not write a blank cheque. Representatives now had an opportunity to try to embrace a Council consensus that had the support of all PKD Members. Alternatively, the Council could remain divided on this issue since, as several Representatives had pointed out, it would require approval by two-thirds of the PKD Participants in order to have any legal effect. The PKD Members had repeatedly urged China to join the PKD, where it would have substantial influence. The Representative of the United States encouraged the Council to now proceed with

the technical amendments that were before it. The Council had waited much too long. If Representatives wanted the PKD to work, then they had to cooperate and advance and facilitate its work by approving non-controversial amendments to the PKD MoU. The Representative of the United States urged China to continue its work in other fora and to continue the dialogue with China's Prime Minister, who was now making great progress across the Straits in aviation. The focus in the Council should be on security and facilitation. That was the purpose of the PKD. The Council needed to move forward by approving the technical amendments to the PKD MoU set forth in C-WP/13141.

27. The Representative of Japan endorsed the views expressed by the Representatives of Canada, Spain and the United States. However, the PKD was a purely technical mechanism and was not an integral part of ICAO's activities. Those facts were related to how the universality of the PKD could be achieved. The Representative of Japan stressed the importance of keeping the PKD door open everywhere and of not bringing political considerations into the PKD operations.

28. Observing that no Representative had objected to the technical amendments to the PKD MoU proposed in C-WP/13141, the Representative of France affirmed that the Council could live with the consequences of approving them. With reference to China's proposal to amend paragraph 2.3 of the PKD MoU, he noted that it was a well-known proposal that had already been discussed in the Council. There had also been lengthy negotiations outside that body. In observing that there were two aspects to the issue, a legal aspect and a practical aspect, the Representative of France underscored that the legal aspect did not give rise to any difficulties. Paragraph 8.1 of the PKD MoU approved by the Council clearly indicated that no amendment to the MoU was possible if it were not first and foremost approved by the PKD Board and then by the Council. Both parties had to agree to the amendment. The PKD Board took the first decision regarding an amendment to the PKD MoU. In reaffirming the political authority of the Council, the Representative of France emphasized that it could only be exercised if the Board took a different view. It was true that the PKD Board had not accepted China's proposed amendment to paragraph 2.3 of the PKD MoU contained in C-WP/13088. While that was perhaps politically regrettable, the PKD Board legally had the right not to accept amendment proposals. Thus from the legal standpoint, no blame could be laid on the PKD Board. All PKD Members had adhered to the PKD on the basis of the existing MoU, and China had requested to join the PKD, implicitly accepting the MoU *in toto*, including paragraph 8.1 on amendments. That was the legal standpoint. It did not give rise to any difficulties as it emanated from a Council decision.

29. The Representative of France noted that there was a concrete case where paragraph 2.3 of the PKD MoU came into play, namely in dealing with adherence to the PKD of a non-State, non-sovereign entity, in which case it had been envisaged that the PKD Board would act "in consultation with ICAO". He recalled that the Council had previously decided (C-DEC 182/12) that if the PKD Board were to seek consultation pursuant to paragraph 2.3, then the Council would take fully into account the policies of the UN and ICAO. The Council had also requested the PKD Board to take those policies into account when considering the proposed amendments. It went without saying that when China became a Member of the PKD Board, then the latter would be even more prone to take its position into consideration. If the issue under discussion arose in the PKD Board, then the latter would be aware of its political implications. The issue should thus be resolved in a manner that was satisfactory for all concerned.

30. The Representative of France would not say that all the problems had already been resolved. It was currently not possible to amend the PKD MoU without the agreement of the PKD Board. He noted that the existing text of the PKD MoU would not prevent the issue of Taiwan's adherence to the PKD, if it arose, from being addressed by the PKD Board and by the Council, bearing in mind the policy of one China referred to by the Representative of the United States. Averring that if the Council were to undertake a byzantine discussion it

would overcomplicate matters, the Representative of France maintained that the issue could be easily resolved on the basis of the current text of the PKD MoU. He reiterated that the Council should approve the proposed technical amendments thereto set forth in C-WP/13141.

31. In concurring with the Representatives of Spain and the United States that the PKD was designed for all e-passport issuing authorities to improve security and operational efficiency, the Representative of Singapore emphasized that, for the PKD to work effectively, it was necessary to adopt an inclusive and pragmatic approach. He welcomed the participation of China in the PKD. The Representative of Singapore noted that there was a separate PKD MoU amendment proposed by China which was not referred to in C-WP/13141 and which must be addressed separately. He further noted that the Registration Fee set at US \$25,000 in Attachment B to the PKD MoU had been revised upwards to US \$56,000, as agreed by two-thirds of the PKD Members in October 2008, and that Attachment A had also been amended with the approval of the PKD Board. In that regard, the Representative of Singapore supported the technical amendments to the PKD MoU set forth in C-WP/13141, with the said revised Registration Fee of US \$56,000 and the amended Attachment A, on the understanding that China's proposed amendment was being addressed and would be submitted to the Council separately.

32. The Representative of the United Kingdom observed that the Representatives of Canada and the United States had very clearly set out the policy and political arguments and that the Representatives of Spain, Japan, France and Singapore had addressed the legal and logical handling arguments. He considered that there was sufficient agreement that the technical amendments to the PKD MoU were important and that the Council should approve them during the present meeting. The United Kingdom would certainly support that action. While recognizing that China had raised some important questions, the Representative of the United Kingdom did not consider that the Council would be able to resolve them today.

33. Underscoring that paragraph 8.1 of the PKD MoU established that the Council and the PKD Participants were equal partners, the Representative of the United Kingdom indicated that he looked forward to the day when there were many more PKD Participants, such as fifty or more, a majority of which would not be States represented on the Council. He stressed the need to be able to balance the views of the Council, which had established the PKD MoU in the first place, and the views of the PKD Participants, who might not be represented on the Council or associated with States represented on the Council and who might hold different views. The Representative of the United Kingdom noted, in this context, that while the PKD Board was a strictly technical board, the PKD Member from his State was a civil servant and was instructed by the Government of the United Kingdom. He therefore had exactly the same status on the PKD Board as the Representative of the United Kingdom had on the ICAO Council. The Representative of the United Kingdom underscored that the PKD Board Members were not mere technicians; rather, they were people who represented their nations. Averring that the Council should resolve at least part of subject under discussion today, he indicated that he certainly would support approval of the proposed technical amendments to the PKD MoU, with the other issues being considered at a later date.

34. The Representative of Uganda emphasized that his State fully supported the objectives and goals of the PKD. In light of the comments made by the Representatives of Nigeria, Saudi Arabia, Namibia and others, it appeared to him that, for the long term, and in order to ensure the smooth operation of the PKD, as well as to avoid some issues that might become very complicated and were not yet resolved, the PKD MoU needed to be revisited. The Representative of Uganda therefore joined those Representatives who had called for an amendment of the PKD MoU as soon as possible.

35. The Representative of Germany supported the position expressed by the Representatives of Canada and the United States and agreed with the statements made by the Representatives of France, Japan,

the United Kingdom and Spain. Recalling that the said technical amendments to the PKD MoU had originally been proposed by Germany, he underscored that his State strongly believed that they would improve the operation of the PKD. Noting that none of the previous speakers had spoken against the quality of those amendments, the Representative of Germany stressed that they were urgently needed. Noting that an agreement would soon be signed between ICAO and the company from Singapore which was providing the services (Netrust), he underscored that the said amendments were needed for the operation of the PKD and were needed now. Much time had already been lost. The Council should therefore approve the proposed technical amendments during the present meeting and find a solution to the concerns raised by the Representative of Saudi Arabia and others at another time and on the basis of a separate paper.

36. The Representative of Australia supported the position stated by the Representatives of the United States, Canada, France, Spain, Japan, Singapore and Germany. His State's position was that it opposed the proposed amendment to paragraph (c) of the Recitals to the PKD MoU broadly on the basis that the latter was deliberately designed not to speak to sovereignty and to allow for non-State participation. The intent had always been for universal application. The Representative of Australia reiterated that changes to the policies and practices of the PKD required the agreement of both the PKD Participants and the Council. The Council alone could not amend the PKD MoU. He noted that Australia supported the technical amendments proposed in C-WP/13141.

37. In endorsing the comments made by the Representative of Germany, the Representative of Italy noted that there were some issues that were non-controversial that no one opposed, namely, the technical amendments to the PKD MoU. He urged the Council to approve them. While observing that there had been a very comprehensive and cooperative discussion regarding the other issues, the Representative of Italy agreed with the Representative of the United Kingdom that it was difficult to find a solution to them at the present time. He therefore suggested that those controversial issues that had been somewhat clarified during the discussion be left for another time.

38. Recalling that some Representatives had indicated that the PKD Board was a purely technical body, the Representative of China questioned how, if that were the case, it had rejected the Council's decision (C-DEC 182/12), which was of a political nature. Referring to the comment made that China was politicizing the PKD issue and that it wanted to make use of the PKD to achieve its political agenda, he emphasized that that was unacceptable to his State. China's only political purpose was to ensure that ICAO and its various projects conformed to the policies of the UN and ICAO.

39. The Representative of Mexico agreed with previous speakers that the Council was faced with two different types of amendment proposals: on the one hand, the technical amendments to the PKD MoU proposed in C-WP/13141, which the Council should proceed to either approve or reject as it was one of its functions; and on the other hand, China's proposal to amend paragraph 2.3 of the PKD MoU. Underscoring that he could not ignore China's legitimate concern, the Representative of Mexico averred that, as the PKD Board had been established by the Council, it should consider that proposal. As he understood it, the proposal was very reasonable and did not give rise to any problems. The Representative of Mexico maintained that if the PKD Board did not consider China's proposal, then the PKD would be doomed to failure.

40. In expressing support for China's amendment proposal, the Representative of Malaysia endorsed the comments made by the Representatives of Saudi Arabia, Egypt, Namibia, Venezuela, Uganda and Mexico.

41. The Representative of Ghana noted that the best argument that he had heard during the discussion had come from the Representative of France. He had also heard that the Council should take into account, and take a decision on, China's proposal, but that paragraph 8.1 of the PKD MoU and paragraph 1.2 m)

of the PKD Board's terms of reference (*cf.* Attachment C to the PKD MoU) posed problems. Underscoring that whatever the Council decided had to be accepted by the PKD Participants, the Representative of Ghana averred that it would not make any difference if the Council did take a decision today as China's proposal would still have to be referred to the PKD Board for its acceptance. That being the case, China's proposal should be brought before the PKD Board for its approval and then brought before the Council for the latter's approval.

42. The Representative of Namibia felt undermined by the PKD Board as the Council had requested that it consider China's proposal, which had been made in a friendly manner, so as to ensure that the PKD functioned smoothly. Noting that the PKD Board was now requesting that the Council approve the proposed technical amendments to the PKD MoU, he averred that it was a *quid pro quo* situation and that the PKD Board should first demonstrate its willingness to consider China's proposal to amend paragraph 2.3 of the PKD MoU before requesting that the Council approve the said technical amendments.

43. The Representative of Nigeria emphasized that, for his Delegation, the key issue was not the policy issue of one or two Chinas. Representatives had individual positions as far as that policy was concerned, on a bilateral level. The main issue for his Delegation was one of principle: how to marry the Council's responsibility for policy and its responsibility for the activities of the PKD Board in technical issues. Observing that many references had been made to paragraph 8.1 of the PKD MoU and the legal issues surrounding it, the Representative of Nigeria queried whether, if this recurring issue were not resolved and the PKD failed, there was an exit clause in the PKD MoU for the Council and the PKD Board.

44. The Representative of Argentina noted that no objections had been voiced to the technical amendments to the PKD MoU proposed in C-WP/13141 and that although China's proposal had been discussed at some length, the Council was still no closer to a solution. He therefore supported the suggestion that the two amendment proposals be considered separately. The Representative of Argentina indicated the Council should first approve the said technical amendments to the PKD MoU and later consider China's proposal. As many Representatives had indicated, the latter should not be politicized. A solution should be found within the UN framework.

45. In offering a summary of the discussion, the President of the Council underscored that the Council established ICAO's policies. He noted that the Council had adopted some UN Resolutions, one of which referred to China, as pointed out by the Representative of the United States. In emphasizing that a MoU could not in any way amend or annul the policy-related resolutions adopted by the Council, the President stressed that it was not the intent of the PKD MoU to amend any policies of the Organization. ICAO's position was clear and was laid down in a Council Resolution. In observing that it was not the first time that ICAO had participated in agreements which facilitated coordination and cooperation among States, he cited, as an example, the Joint Financing Agreements, in which it was stated that participants had to agree on any amendments as they were the ones financing the work carried out under the Agreements. The PKD MoU was similar in nature.

46. Noting that China's proposal to amend paragraph (c) of the PKD MoU was not addressed in the Council's earlier decision (C-DEC 182/12), the President emphasized that the need for the Council to observe the terms of the PKD MoU which it had approved, notably paragraph 8.1 on amendments. Having not heard any objections to the technical amendments to the PKD MoU contained in C-WP/13141, the President proposed that the Council approve them. He further proposed that the Council request the PKD Board to consider the amendment to paragraph (c) of the Recitals of the PKD MoU proposed by China today and to report back to the Council. It was to be hoped that, with China's membership in the PKD, negotiations would be facilitated.

47. In voicing support for the President's summary, the Representative of Saudi Arabia stressed the importance of the PKD Board's *modus operandi*. Averring that a boat with more than one captain would sink, he underscored the need to consider the Board's operation during the next (186th) Session of the Council.

48. The Representative of China shared this view. Emphasizing that China's purpose was coordination, he noted that it had always actively promoted the development of the PKD. It had never been China's intention to delay the process and it had, over the years, made many compromises. In order to solve the problem, China had applied to participate in the PKD MoU. As it remained unresolved, the Council should continue its discussion thereof during its next session.

49. The Representative of the United States fully supported the President's summary and recognized that it would be beneficial to take another look at the structure of the PKD Board to ensure that it functioned efficiently. He left it to the Council's judgment when the most appropriate time would be to do that. Noting that the best news that he had heard today was that China had joined the PKD, the Representative of the United States assured the Representative of China that the PKD Board Members would listen attentively to China's views. He affirmed that China would be an important PKD Participant.

50. In light of comments made by the Representatives of Canada, Nigeria and China, the President of the Council suggested that the Council request that the PKD Board report on the outcome of its consideration of China's proposal to amend paragraph (c) of the Recitals of the PKD MoU as soon as possible.

51. The Representatives of the United Arab Emirates and Namibia voiced support for the President's summary. In also congratulating China on joining the PKD, the Representative of Namibia hoped that it would receive the fullest cooperation from the other Participants.

52. The Council then took the action indicated in the executive summary of C-WP/13141, as amended by the President of the Council in light of the discussion, and:

- a) endorsed the revised text of the PKD MoU contained in Appendix A to the paper, subject to the replacement of Attachment A with the amended version distributed during the meeting (*cf.* Appendix hereto) and to paragraph 1.1.1.1 of Attachment B being amended to indicate that the Registration Fee was US \$56 000 for all PKD Participants; and
- b) requested that the PKD Board consider the amendment to paragraph (c) of the Recitals of the PKD MoU proposed in the letter from the Representative of China dated 10 November 2008 as given below (new text appears in bold):

“(c) The objective of this MoU is to set out the arrangements for participation in the ICAO Public Key Directory, **and all Public Key Directory-related procedures and activities should conform to the policies of the United Nations and ICAO**”.

and that it report on the outcome of its deliberations to the Council as soon as possible.

53. It was understood that the President of the Council would consult with the Secretary General and the Secretariat on the best way to proceed with regard to comments made on the need to convene an informal meeting on this subject.

Deliberations of the Public Key Directory (PKD) Board Meeting No. 4

54. Tabled next for consideration was C-WP/13200 Revised, in which the Secretary General reported on the outcome of the Fourth Meeting of the PKD Board held in Montréal on 8 May 2008 to further consider the amendment to paragraph 2.3 of the PKD Memorandum of Understanding (MoU) proposed by China in C-WP/13088 and to elect a new Chairperson. It was recalled that the Council had previously (184/10) appointed Mr. Koo Bon-yul (Republic of Korea) as the ninth PKD Board Member.

55. In taking action on the basis of the executive summary of C-WP/13200 Revised, the Council noted the report on the Fourth Meeting of the PKD Board contained in the paper, including the appointment of Dr. E. Brauer (Germany) as the new PKD Board Chairperson for a one-year term and the deliberations regarding the amendment to paragraph 2.3 of the PKD MoU proposed by China in C-WP/13088.

Subject No. 13: Work programmes of Council and its subsidiary bodies

Work programme of the Council for the 186th Session

56. The Acting Chairperson of the Working Group on Efficiency (WGOE) gave an oral report on the outcome of the Group's consideration of the Council's work programme for the 186th Session (C-WP/13261), a copy of which would be circulated electronically to Representatives. In addition to recommending the inclusion of items in the work programme, the WGOE recommended the holding of a joint ICAO/industry briefing on the state of the air transport industry which would include a report on liberalization and cross border investment issues, as well as ideas emanating from meetings in Istanbul and Dubai. The Representatives of Egypt and France emphasized that in future reports of the WGOE should be made available to Representatives prior to consideration of the Council's work programme in order to facilitate their deliberations. The President of the Council noted that, while it might not be possible to circulate electronically the texts of oral reports beforehand, it would be possible to circulate electronically the texts of written reports in advance.

57. In noting the WGOE's report, the Council approved the Work Programme for its 186th Session presented in C-WP/13261, subject to the addition of the following, as recommended by the WGOE: an oral report on responses received to State letter 08/61 dated 7 November 2008 on the convening of the Diplomatic Conference on compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks, which could be given in conjunction with item 31 (Convening of the 34th Session of the Legal Committee); an oral report on the outcome of the Special Africa-Indian Ocean (AFI) Regional Air Navigation (RAN) Meeting, on the understanding that a written report thereon would be presented at a later date; a report, as may be required, on developments of the AFI Comprehensive Implementation Programme (ACIP) focussing on specific Council decisions that must be made in the next session; a progress report on the outcome of the Third Meeting of the Group on International Aviation and Climate Change (GIACC/3) and implications for the date of the envisaged high-level meeting to consider the GIACC's Programme of Action (item 24); a report on the External Auditor's review of the Dakar and Paris Regional Offices (carried over from C 185); a report on the proposed terms of reference for the Secretariat/Council Group on Regional Bodies, which could be combined with the said report on the Dakar and Paris Regional Offices; an oral report by the Audit Results Review Board (ARRB) on the future approach to identifying States subject to referral to the ARRB and actions taken to assist those States; a report by the Secretary General and an oral report by the Air Transport Committee (ATC) on the issue of night curfews and slot allocation; a report by the Advisory Group on Evaluation and Audit (AGEA) on the activities it had undertaken in 2008; an information paper on the United Nations Climate Neutral Initiative; and, depending on progress made, a report on the Public Key Directory (PKD)

Board's consideration of China's proposed amendment to paragraph (c) of the Recitals of the PKD MoU and a report by the WGOE on the development of a Council website and a new Council Member orientation programme. It was understood that the above would be included in Addendum No. 1 to C-WP/13261; that any other new items required in light of developments during the recess would be added to the work programme, subject to the Council's approval; and that the Council could also include additional items deemed necessary to its work programme during the course of the 186th Session.

58. The Council approved the work programme for the 180th Session of the Air Navigation Commission, documented in a report of the ANC (C-WP/13256), on the understanding that the President of the ANC and the Secretariat would give a presentation on the ANC's work plan for the year 2009, as requested by the Representative of the United Kingdom. It was noted that, as recommended by the WGOE, that presentation would also explain the safety- and efficiency-related Annex amendment proposals to be considered by the Council during its 186th Session in the context of the Organization's Strategic Objectives and Business Plan. It was further noted, with regard to the suggestion made previously (185/7) by the Representatives of Singapore, France, India, Mexico, Nigeria, the Russian Federation, South Africa, the United Kingdom and Venezuela for a comprehensive work plan for the review of existing SARPs, that although that issue was not included in the said work programme for the ANC, the President of the ANC and the Secretariat had made an initial assessment to develop an overall approach to the issue. It was now intended to establish a small Secretariat and ANC team to build on that initial assessment. A report on the outcome of the team's work, which would include a plan of action and timeframe, would be presented to the Council for consideration during its 187th Session.

59. The Council approved the work programme for the 186th Session of the Air Transport Committee on the basis of an oral report by the Chairperson of the ATC and C-WP/13257, presented by the Secretary General, subject to the inclusion of the item "Night curfews and slot allocation" and an informal briefing on the state of the air transport industry. The results of the ATC's consideration of the said item would be reported orally to the Council for appropriate action.

60. The Council approved the work programme for the 186th Session of the Joint Support Committee, which was the subject of an oral report by the Chairperson of the JSC and C-WP/13258, presented by the Secretary General. The Representative of the United States informed the Council that his Government had consented to the adoption of the proposed amendments to the Danish and Icelandic Joint Financing Agreements and their Annexes attached to State letter IND/08/11 dated 30 June 2008 as revised in State letter IND/08/22 dated 23 September 2008. As had been the case when the Government of the United States had accepted the 1956 Joint Financing Agreements and the Montréal Protocols of 1982, it intended to make its acceptance of the said proposed amendments pursuant to Article XXVI, paragraph 3, of the two Joint Financing Agreements subject to the availability of funds.

61. The Council also approved the work programme for the 186th Session of the Finance Committee on the basis of an oral report by the Chairperson of the FIC and C-WP/13212, presented by the Secretary General, subject to the inclusion of the following four items arising from the Council's Fifth and Sixth Meetings: a review of the ICAO Procurement Code; a review of exceptional remuneration made to seconded staff; an audit of the Ancillary Revenue Generation Fund (ARGF); and a review of Financial Regulation 9.5. The results of the FIC's deliberations on these items would be reported to the Council for appropriate action. The said items would therefore be included in Addendum No. 1 to the Council's work programme for the 186th Session (C-WP/13261).

62. In addition, the Council approved the work programme for the 186th Session of the Committee on Unlawful Interference on the basis of an oral report by the Chairperson of the UIC and C-WP/13259, presented by the Secretary General.

63. The Council approved the work programme for the 186th Session of the Technical Cooperation Committee on the basis of an oral report presented by the Chairperson of the TCC and C-WP/13216, presented by the Secretary General, subject to the inclusion of the item “Technical Co-operation Programme Development”. The results of the TCC’s consideration of that item would be reported to the Council for appropriate action under item 4 of the Council’s work programme for the 186th Session (C-WP/13261).

64. The Council approved the work programme for the 186th Session of the Human Resource Committee on the basis of an oral report presented by the Chairperson of the HRC and C-WP/13260, presented by the Secretary General, subject to the following: the inclusion of two items arising from the Council’s Fifth Meeting, namely a review of the MoU relating to seconded staff to define the positions which may be offered, the conditions of recruitment, the maximum duration of the arrangement, the remuneration, performance management and leave requirements, and the responsibilities of all parties for risks and liabilities associated with the secondment; and the review of the recruitment, selection and promotion processes in ICAO. The results of the HRC’s deliberations on these two items would be reported to the Council for appropriate action. The description of item 2 (Review of Vacancy Notices for Senior Officials) was amended to also refer to the posts of Deputy Director, Technical Co-operation Bureau (DD/TCB) and Deputy Director, Air Transport Bureau (DD/ATB). Consideration of item 3 (Training Programme for the 2008-2010 Triennium) was postponed to a later session. Noting that under item 5 (Selection of Senior Officials) the HRC would be considering candidatures for the post of Chief, Language and Publications Branch (C/LPB), the Representative of France, recalling that the necessary funds had been allocated several months earlier by the Council (184/8), expressed surprise at the slowness of the recruitment procedure for that important post.

Other business

Subject No. 10: ICAO relations with the United Nations, the Specialized Agencies and other international organizations

Report of JIU: “Age structure of human resources in the organizations of the United Nations systems” (JIU/REP/2007/4)

Report of JIU: “United Nations system staff medical coverage” (JIU/REP/2007/2)

Report of JIU: “Voluntary contributions in United Nations system organizations: Impact on programme delivery and resource mobilization strategies” (JIU/REP/2007/1)

Report of JIU: “Report of the Joint Inspection Unit for 2007 and programme of work for 2008” (A/62/34/Add. 1)

65. As no request had been received by close of business on 12 November 2008 to have C-WP/13222, C-WP/13223, C-WP/13224 and C-WP/13254 on the above subjects tabled for discussion in response to his memorandum PRES RK/1612 dated 5 November 2008, the President indicated that he considered that the Council had noted the information contained therein.

Subject No. 14.1.3: Regional Supplementary Procedures (SUPPs)

Approval of amendment EUR/NAT-SO8/1 to the *Regional Supplementary Procedures* (Doc 7030)

66. As no comments had been received by close of business on 14 November 2008 in response to his memorandum PRES RK/1613 dated 31 October 2008 concerning the approval of amendment EUR/NAT-SO8/1

to the *Regional Supplementary Procedures* (Doc 7030), the President had approved that amendment on 17 November 2008 on behalf of the Council, in accordance with the established procedure.

Subject No. 7.1: Organization of the Secretariat

Changes to the structure of the ICAO Secretariat

67. Further to the information which he had provided earlier (185/7) regarding the appointment of Mr. J. Begin, the Deputy Director of the Air Transport Bureau (DD/ATB), as the new Manager of the Revenue-Generating Activities (RGA), the Secretary General indicated that subsequently further changes to the structure of the ICAO Secretariat had been made. Mr. Begin had also been designated the Chief, Coordination, Revenue and Communication (CRC) Office, a new entity under the Office of the Secretary General. He would be responsible for coordination of the Regional Offices' programmes and RGA, as well as communications and public information, which were formerly part of the External Relations and Public Information Office (EPO). Although Mr. Begin would no longer serve as DD/ATB, he would continue to serve as the Secretary of the Group on International Aviation and Climate Change (GIACC). In further noting that the external relations function of EPO would be merged with the Legal Bureau (LEB) under the direct supervision of the Director of that Bureau, the Secretary General indicated that EPO would thus cease to exist as an entity. A Staff Notice detailing these and other changes would be issued. Council Representatives would also be provided with an updated organigramme, as requested by the Representative of France.

68. The meeting adjourned and the session ended at 1800 hours.

ATTACHMENT A

**MEMORANDUM OF UNDERSTANDING (MOU)
REGARDING PARTICIPATION AND COST SHARING IN THE
ELECTRONIC MACHINE READABLE TRAVEL DOCUMENTS
ICAO PUBLIC KEY DIRECTORY (ICAO PKD)**

**MODEL
NOTICE OF PARTICIPATION**

The _____
(name of the Authority designated by the Participant concerned as its authorized organ)

of _____
(name of Participant)

hereby gives the Secretary General of the International Civil Aviation Organization (ICAO)
notice of participation of _____

(name and address of the Participant)

in the *Memorandum of Understanding (MoU) Regarding Participation and Cost Sharing in the ICAO
Electronic Machine Readable Travel Documents Public Key Directory (ICAO PKD).*

NOTE: Participation by a non-State entity in the ICAO PKD (the functions of which are technical and operational) will not afford such non-State entities the rights or privileges accorded to ICAO Contracting States under the Chicago Convention.

Signed at _____ on _____
(place) (date)

On behalf of _____

Name of Authority _____

Name, title _____

Signature _____

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