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# ICAO

## International Civil Aviation Organization

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### COUNCIL — 211TH SESSION

Montréal, 9 May 2017  
and 5 — 23 June 2017

### SUMMARY MINUTES WITH SUBJECT INDEX



2017

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**COUNCIL — 211TH SESSION**

**SUMMARY MINUTES OF THE FIRST MEETING**

**(THE COUNCIL CHAMBER, TUESDAY, 9 MAY 2017, AT 1000 HOURS)**

**OPEN MEETING**

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

**PRESENT:**

Algeria	— Mr. A.D. Mesroua	Kenya	— Ms. M.B. Awori
Argentina	— Mr. G.E. Ainchil	Malaysia	— Mr. Y.-H. Lim
Australia	— Mr. S. Lucas	Mexico	— Mr. D. Méndez Mayora
Brazil	— Mr. O. Vieira (Alt.)	Nigeria	— Mr. M.S. Nuhu
Cabo Verde	— Mr. C. Monteiro	Panama	— Mr. G.S. Oller
Canada	— Mr. M. Pagé	Republic of Korea	— Mr. J. Hur
China	— Mr. Shengjun Yang	Russian Federation	— Mr. A.A. Novgorodov
Colombia	— Mr. A. Muñoz Gómez	Saudi Arabia	— Mr. S.A.R. Hashem
Congo	— Mr. R.M. Ondzotto	Singapore	— Mr. T.C. Ng
Cuba	— Mrs. M. Crespo Frasquieri	South Africa	— Mr. M.D.T. Peege
Ecuador	— Mr. I. Arellano	Spain	— Mr. V.M. Aguado
Egypt	— Mr. A. Khedr	Sweden	— Ms. H. Jansson Saxe
France	— Mr. P. Bertoux	Turkey	— Mr. A.R. Çolak
Germany	— Mr. N. Naoumi (Alt.)	United Arab Emirates	— Miss A. Alhameli
India	— Mr. A. Shekhar	United Kingdom	— Mr. M. Rodmell
Ireland	— Mrs. A. Smith Floch	United Republic of Tanzania	— Mr. R.W. Bokango
Italy	— Mr. M.R. Rusconi	United States	— Mr. S. Kotis (Alt.)
Japan	— Mr. S. Matsui	Uruguay	— Mr. M. Vidal

**ALSO PRESENT:**

Mr. H. Yoshimura	— President, ANC
Dr. N. Luongo (Alt.)	— Argentina
Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. L. Sacchi Guadagnin (Alt.)	— Brazil
Mr. G. do Prado Lima (Alt.)	— Brazil
Mr. R. da Rosa Costa (Alt.)	— Brazil
Mr. R. Filippi Pecoraro (Alt.)	— Brazil
Mr. F. Neubauer (Alt.)	— Canada
Mr. Chunyu Ding (Alt.)	— China
Mr. M. Millefert (Alt.)	— France
Mr. M. Usami (Alt.)	— Japan
Mr. K.A. Ismail (Alt.)	— Malaysia
Mrs. D. Valle Álvarez (Alt.)	— Mexico
Mr. S. Kim (Alt.)	— Republic of Korea
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. A. Korsakov (Alt.)	— Russian Federation

**SECRETARIAT:**

Mrs. J. Yan	— C/OSG
Mr. B. Djibo	— D/ATB
Mr. S. Creamer	— D/ANB
Mr. C. Radu	— DD/SAF
Mr. S. Lefoyer	— DD/ASF
Mr. S. Berti	— C/ASP
Dr. K. Rooney	— C/CSS
Mr. J. Lamosa	— C/ASA
Mrs. E. Gnehm	— SAF
Mr. A. Doazan	— ASP
Miss L. McGuigan	— CSS
Miss S. Black	— Précis-writer

**ALSO PRESENT (CONTINUED):**

Mr. M.S. Habib (Alt.)	— Saudi Arabia
Mr. S. Vuokila (Alt.)	— Sweden
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mr. W. Voss (Alt.)	— United States
Mr. J. Méndez (Alt.)	— Uruguay

Representatives to ICAO

Bolivia (Plurinational State of)  
Cyprus  
Ghana  
Greece  
Lebanon  
Libya  
Peru  
Sudan  
Venezuela (Bolivarian Republic of)

Airports Council International (ACI)  
European Union (EU)

## **Welcome to a new Representative on the Council**

1. On behalf of the Council, the President extended a warm welcome to Mr. Martial Pagé, the newly-appointed Representative of Canada.

### **Subject No. 52: Unlawful interference with international civil aviation and its facilities**

#### **Threat of artfully concealed improvised explosive devices in large portable electronic devices – Restrictions in the cabin and their impact on safety**

2. Tabled for the Council's consideration was C-WP/14636 Revised, in which the Secretary General presented updated information on the threat that had led to additional security measures by various Member States, including recent restrictions requested by the United Kingdom and the United States on the carriage of certain electronic devices in the aircraft cabins on flights on certain routes, and the need to address the potential impact on safety of those restrictions. The paper outlined ICAO actions taken and proposed in response to the security threat and to the safety implications of the imposed restrictions.

3. In introducing the paper, the Secretary General highlighted that over the past few weeks, the Secretariat had held discussions with the Member States concerned and experts from relevant ICAO technical panels, in order to identify possible other security measures and to reduce the safety risk posed by storing a great number of large portable electronic devices (PEDs) in the cargo hold of passenger aircraft. Due to the multidisciplinary nature of the issue, and based on security measures having an operational impact on safety, the Secretary General was proposing a number of actions aimed at ensuring effective coordination in addressing the current security restrictions. The Council was therefore invited to note the information provided in C-WP/14636 Revised and to endorse the recommendations proposed in paragraph 6.1, with a view to addressing the threat posed by large PEDs and the operational implications thereof, through a collaborative, cross-cutting and functional approach.

4. It was recalled that an informal briefing on this subject had been given to the Council on 24 April 2017, during which factual elements relating to security and safety considerations had been presented and Council Members, as well as the Observer from the International Air Transport Association (IATA), had expressed their views, which had been duly noted (cf. PRES OBA/2635 dated 13 April 2017 with links to the Secretariat's two presentations). Further to the informal briefing, the Council had agreed to a request made by some Member States to add this subject as a supplementary item to its Work Programme for the current (211th) Session (C-WP/14581 Revised) (cf. President of the Council's e-mail dated 28 April 2017).

5. The President of the Council emphasized the need for Council Members to take into account the background information provided during the informal briefing in endeavouring to find solutions going forward.

6. Referring to the comments which he had made during the informal briefing, the Representative of Egypt reiterated his State's deep respect for the principle of State sovereignty which was highlighted in the Preamble to the Chicago Convention. Egypt was, however, concerned over the potential risk to flight safety arising from the imposition of the said security restrictions. He underscored that, if a large number of lithium batteries contained in PEDs transported in the aircraft hold were exposed to high temperatures, then there would be a heightened risk of fire and/or explosion, which would pose a serious threat to the safety of the passengers and crew. Recalling a video clip presented previously by the Representative of the Russian Federation showing the destructive impact of a single exploding lithium battery, the Representative of Egypt emphasized that such an explosion in the cargo hold could set off



thermal runaway, causing other lithium batteries contained in PEDs to explode one after another, creating an extremely dangerous situation and increasing the risk of a catastrophic event. He stressed, in this context, that the Organization's main goal was to safeguard the lives of the passengers and crew.

7. The Representative of Egypt reiterated that the said security restrictions ran counter to the global nature of civil aviation as they targeted specific airports in specific Member States. He averred that the restrictions were not an appropriate way in which to mitigate the threat and risk arising from the artful concealment of improvised explosive devices (IEDs) in large PEDs carried on board passenger aircraft as they merely transferred that threat and risk from one place to another and did not eliminate them: terrorists could circumvent the restrictions by simply going to an airport that was not covered thereunder and plant the IED-laden PED in an aircraft on a stopover or a direct flight to one of the Member States which had imposed the security restrictions, or to any other Member State. The Representative of Egypt maintained that the ideal solution to combat any such global IED-PED threat and risk would be the universal harmonized implementation of the Standards and Recommended Practices (SARPs) contained in Annex 17 – *Security*. He re-emphasized the need to amend those SARPs in order to effectively resolve the said safety concerns arising from the carriage of increased numbers of lithium battery-powered PEDs in the cargo hold of passenger aircraft.

8. In underscoring that the said security restrictions had created market distortions, the Representative of Egypt noted that they had harmed the commercial interests of the affected airlines while benefitting the commercial interests of other airlines. He highlighted that the restrictions had led to an increase in the theft of, and damage to, passenger's checked baggage, which had resulted in even more problems for passengers as their insurance often did not provide full compensation for the lost or damaged belongings.

9. Recalling that the comments made by the Observer from IATA at the informal briefing had received broad support, the Representative of Egypt noted that the latter had referred to other negative impacts of the said security restrictions which compounded those which he had described, including: operational impact (flight delays, missed connections); cost impact (higher airfares due to increased costs incurred by the affected airlines relating to additional processing time, staffing, packaging for PEDs, etc.); and commercial impact (disproportionate effect on the individual affected airlines which impacted their ability to compete in the marketplace and which had led one IATA Member airline to cancel some of its routes into North America). Observing that C-WP/14636 Revised did not address those extremely important economic and commercial impacts, which were related to the Organization's Strategic Objective *Economic Development of Air Transport*, he expressed the hope that they would be covered by the action taken by the Council. The Representative of Egypt further hoped that the imposed security restrictions were only temporary and that the said IED-PED threat and risk would be quickly and effectively mitigated. In concluding, he suggested that experts from the affected Member States be invited to serve as Members of the proposed multidisciplinary cargo safety group.

10. In expressing appreciation for the convening of the Council meeting during the Committee phase of the session, the Representative of Turkey underscored that it was very timely and served to highlight the importance of the matter now under discussion. In voicing full support for the remarks made by the Representative of Egypt, he emphasized that Turkey was committed to honouring and fulfilling the foundational principles of the Chicago Convention in every aspect, including the aspects of security, safety and facilitation, which were all inter-connected. Averring that the Member States which had imposed the said security restrictions had unfortunately not complied with Standard 2.4.1 of Annex 17 – *Security* and had not shared with the affected Member States the pertinent technical threat information, the Representative of Turkey noted that that lack of information had led to speculations that the said restrictions had been introduced mainly due to economic and political considerations. He stressed that if information on the perceived security threat had been shared with Turkey, then customized

measures to mitigate that risk would have been developed and implemented.

11. Turning to the paper, the Representative of Turkey sought clarification regarding the meaning of the term “artfully concealed” and the various techniques of concealment of IEDs in PEDs beyond simply opening up a device such as a laptop, placing the IED inside, and closing it. He maintained that the carriage of PEDs in the aircraft cabin was much safer and more secure than carriage in the cargo hold of a passenger aircraft due to the human intervention i.e. the screening by security personnel of carry-ons and the possible intervention by the crew if a situation involving a PED were to arise in the aircraft cabin. The Representative of Turkey averred that it was very difficult to detect IEDs concealed in checked baggage using only security screening equipment. Referring to the incident that had occurred on 7 March 2016 in which an IED concealed in a laptop had exploded and wounded six people at a security screening area in Beledweyne Airport in Somalia (cf. paragraph 2.3), the Representative of Turkey indicated that the security personnel had probably discovered what was transpiring and tried to intervene.

12. Affirming that Ataturk International Airport in Istanbul was one of the most secure airports in the world, the Representative of Turkey noted that stringent measures were regularly enforced with the highest commitment to national and international security. Indicating that security measures were also customized in full cooperation and consultation with the authorities of any requesting Member State in accordance with Standard 2.4.1 of Annex 17, he highlighted that for more than a decade flights from the United Kingdom and the United States had been subject to distinct procedures as requested by those two Member States. It had thus been expected that there would have been similar cooperation in the process leading up to the imposition of the said security restrictions by those and other Member States. The Representative of Turkey reiterated the concerns expressed previously by the Observer from IATA regarding the restrictions’ various impacts.

13. In expressing support for the actions recommended in paragraph 6.1 of the paper, the Representative of Turkey noted that while useful, they related to the Organization’s routine work as carried out by experts. He therefore proposed, in addition to those actions, the establishment of an Ad Hoc Committee comprised of Council Members to promptly start addressing the issue. Its purpose would be as follows: to demonstrate the highest level of solidarity with global civil aviation in combatting this threat to aviation security worldwide; to constitute an immediate proactive position against this threat with a common mindset; to combine shareable technical threat information (i.e. not specific intelligence acquired by governments) through multilateral communication and cooperation; to conduct a holistic risk assessment based on such technical threat information; to develop additional security measures with full utilization of existing technologies for security screening and behaviour detection; to mitigate the assessed risk; and to implement the mitigation measures in a collective, integrated and precise manner so as to surround and contain the threat instead of relocating the problem from the aircraft cabin to the cargo hold and creating adverse effects and implications for safety and facilitation without eliminating the root cause.

14. The Representative of the United Kingdom noted, from paragraph 2.1 of the paper, that the risk of an IED artfully concealed in a passenger’s personal belongings or on his/her body had been consistently assessed by the Aviation Security Panel’s Working Group on Threat and Risk (AVSECP WGTR) as the greatest security risk to aviation since the *ICAO Aviation Security Global Risk Context Statement* (RCS) had first been published in 2012 and that for the last two years it had been at the highest level of risk ever recorded in the RCS. He emphasized that while it was always a difficult situation to be in when considering responses to that kind of risk, it was better for the Council to be meeting to discuss how to head off that risk and the potential consequence of any security measures proposed than for it to be meeting in the aftermath of a successful attack on international civil aviation. To that extent, the present meeting was a timely one.

15. In observing that the paper's narrative was in many ways a familiar one in aviation security, the Representative of the United Kingdom noted that work often began with the development of security measures aimed at combatting the threat. All such measures had a certain degree of practical impact and often entailed trade-offs with safety, such as had been the case with the Annex 17 SARPs relating to the reinforcement of the flight crew compartment door in passenger aircraft to resist penetration by small arms fire and grenade shrapnel, as well as forcible intrusions by unauthorized persons. They also entailed additional costs and inconveniences. The Representative of the United Kingdom highlighted, in this regard, that as the airlines operating in his State were the most numerous worldwide, they were affected the most by such security measures. Noting that the second phase in developing a response to a security threat was the consideration of ways to minimize disruption, he underscored that the actions described in the paper as having already taken place, as well as the actions recommended in paragraph 6.1, went a long way in bringing some order to that process.

16. Drawing attention to paragraph 6.1 d), the Representative of the United Kingdom suggested that the reference made to "alternative" security measures be amended to read "other options of" security measures to clarify that such measures were not mutually exclusive. In welcoming the establishment of a multidisciplinary cargo safety group as recommended in sub-paragraph g), he recalled that he had often highlighted the need for ICAO to deal with matters relating to flight operations, dangerous goods, airworthiness, aerodromes, safety management, and security and facilitation in a multidisciplinary way. Observing however, that there was no indication of the nature and status of the group, the Representative of the United Kingdom suggested that as it seemed to be experimental, a time limit should be established for the completion of its task relating to lithium batteries in the Council's current decision. Following consideration of the multidisciplinary group's envisaged report thereon, the Council could decide whether or not it should become a permanent body.

17. Subject to the above, the Representative of the United Kingdom endorsed the recommendations contained in paragraph 6.1, affirming that they represented a logical course of action in relation to measures to address the said IED-PED threat.

18. With regard to the proposal made by the Representative of Turkey to establish an Ad Hoc Council Committee, the Representative of the United Kingdom cautioned against setting up a structure whereby non-expert Council Members would attempt to cut across, and prejudge the conclusions arising from the technical work being carried out concurrently by ANC panel experts. He underscored the need to respect the current procedure, whereby the ANC presented the results of its panels' technical work to the Council for consideration.

19. The Representative of China noted that the said imposed restrictions involved various areas, including security, facilitation and safety, and impacted the international air transport of the affected Member States. Questions remained, however, regarding their use as long-term solutions, their ability to achieve the desired and expected outcome, the broadening of their scope of application to include other airports, their duration and the existence of other solutions. Emphasizing that ICAO was the multilateral forum in which to address matters relating to international civil aviation, he stressed the need for it to fulfill its global leadership role and to initiate its response to this emerging issue as soon as possible by formulating the terms of reference (TOR) of the proposed multidisciplinary cargo safety group that encompassed the areas of flight operations, dangerous goods, airworthiness, aerodromes, safety management, and security and facilitation. The Representative of China indicated that once the group's composition had been determined, its Members should be informed of the date of the first meeting and be provided with a work plan for harmonizing the security- and safety-related international Standards applicable to lithium batteries. He underscored the need for the group to undertake that work as soon as possible. In concluding, the Representative of China voiced support for the actions recommended in paragraph 6.1 of the paper.

20. In likewise supporting those actions, the Representative of the United Arab Emirates endorsed the comments made by the Representative of Egypt, particularly those in support of the statement made by the Observer from IATA at the informal briefing, and his proposal that experts from the affected Member States be invited to participate in the proposed multidisciplinary cargo safety group. She underscored the need for the latter to consider the potential operational impact of any actions it proposed relating to lithium batteries.

21. Recalling the intervention which he had made during the informal briefing, the Representative of France reiterated that the French authorities, while aware of the specific security restrictions recently introduced by the United States and the United Kingdom on the carriage of certain PEDs in the aircraft cabins on flights on certain routes, had decided not to make any changes to France's conditions for the carriage of PEDs taking into account ICAO's recommendation to the effect that lithium battery-powered devices should not be concentrated in a single location in the cargo hold of passenger aircraft in order to prevent an uncontrollable fire and/or explosion. The French authorities were instead focusing on: the strengthening of the inspection/security screening procedures for cabin baggage at security checkpoints in airports; and the general improvement of training for the security personnel responsible for implementing those procedures. The Representative of France highlighted that, in a spirit of dialogue and cooperation, the French authorities were engaging in bilateral contacts with their counterparts in a number of Member States regarding the appropriate inspection/security screening procedures for cabin baggage, in particular, PEDs.

22. In expressing support for the actions recommended in paragraph 6.1 of the paper, the Representative of France indicated that in light of the urgent need to take action to address the issue of lithium batteries he accepted the proposal to convene the multidisciplinary group's first meeting on 5-6 June 2017 after AVSECP/28. He nevertheless sought clarifications regarding the group's mandate, TOR, rules of procedure, reporting line and status (e.g. Panel, Secretariat Study Group, Task Force, etc.), as well as regarding how the group would interact with the existing panels which were already addressing various aspects of the lithium batteries issue. Recalling that there had been an informal discussion between ANB and the ANC a few months earlier on how ICAO's expert groups could be organized in the future, the Representative of France underscored the importance of not prejudging the outcomes of the ANC's and the Council's possible consideration of any reforms proposed by ANB. While he could agree to the multidisciplinary group's establishment on an experimental i.e. temporary basis, he emphasized the need for the Council to discuss whether the group, and the type of work it would be undertaking, would be institutionalized i.e. made permanent. In highlighting the importance of the ANC reviewing the outcomes of the group's work before they were presented to the Council for consideration, the Representative of France enquired as to the ANC's views on C-WP/14636 Revised.

23. Noting that the Secretariat had had an initial discussion regarding the creation, membership, working methodology and reporting line of the proposed group, the Secretary General invited D/ANB to outline the preliminary plan, indicating that she welcomed any comments and advice that Council Members might wish to offer.

24. Recalling that the issue of cargo safety and the risks associated with the transport of lithium batteries by air had been on the ANC and AN Work Programmes and on the agenda of the Dangerous Goods Panel (DGP) for many years, D/ANB underscored that ICAO thus had a longstanding familiarity with the challenge. Work to develop risk mitigations which could be applied globally, particularly with regard to the transport of lithium batteries as cargo on commercial aircraft and a performance-based packaging standard for lithium batteries, was being carried out by a multidisciplinary group of experts from the DGP, the Airworthiness Panel (AIRP), the Flight Operations Panel (FLTOPS), the battery industry and packaging manufacturers, with the cooperation of SAE International.

25. The new aspect of the challenge, the increase in the potential risk arising from increased numbers of lithium batteries carried in the cargo hold of passenger aircraft, needed to be addressed in a comprehensive and expeditious manner. For that reason, following the imposition of the said security restrictions, ICAO had issued Electronic Bulletin EB 2017/23 dated 31 March 2017 to provide guidance to regulators and affected Member States, as well as Member States having operations connecting through affected flights, so that they could begin to interact with the aviation industry, notably IATA, and with their airlines to provide guidance and/or a regulatory framework. As more work clearly needed to be done, the Secretariat would be presenting, for the ANC's consideration during its meeting that afternoon, AN-WP/9174 on proposed amendments to the *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Doc 9284) to address the safety impact of the said security restrictions on PEDs and other emerging issues, which also contained a draft report thereon to the Council. While those proposed amendments would address the said new risk in the near term, in an interim way, it would not achieve the desired level of enhanced coordination. Hence the Secretary General's recommendation that a multidisciplinary cargo safety group be established to address the specific problem of higher concentrations of lithium battery-powered devices being introduced into the cargo hold [cf. paragraph 6.1 g) of the paper].

26. In elaborating thereon, D/ANB noted that the intent was essentially to create a Secretariat Study Group that would work in a Task Force manner to develop recommendations which would be reported through the Secretary General to the Council for appropriate action. As it would be a large multidisciplinary group, with between 14 to 20 experts, including some from the areas of security and facilitation, inter alia, the Secretary General had considered it important to propose the group's establishment to the Council for its endorsement. He indicated that following such endorsement, the Secretariat would enlist the appropriate experts from the relevant panels, taking into account the views expressed during the present meeting. D/ANB noted that there were multiple experts from the region affected by the said security restrictions who could also be called upon to serve as members. He recommended: that the group be allowed to develop its own TOR based upon its evaluation of the problem; and that its reports be referred to the ANC for comments which would be submitted with the group's reports to the Council. ANB would serve as Secretary to the group and would assume responsibility for the Secretariat work in collaboration with the Air Transport Bureau (ATB) to ensure that the group's reports properly covered all technical disciplines. The expectation was that the group would cease to exist after the resolution of this particular problem in the near term. D/ANB reiterated that the ANC would be intimately involved in the group's work and would review the results thereof prior to their presentation to the Council.

27. Responding to a point raised by the President of the Council, D/ANB affirmed that the inclusion of the AVSECP and the Facilitation Panel (FALP) in that review process would be an excellent additional step. It would be necessary, however, to take into account that more time might be required for the panels' review of the group's reports as neither panel was a standing body at ICAO Headquarters in Montréal.

28. The President of the ANC highlighted that the Commission had met informally the previous day, 8 May 2017, to discuss the establishment of the multidisciplinary group as recommended in paragraph 6.1 g) of the paper. Furthermore, as mentioned by D/ANB, the ANC would, that afternoon, urgently review AN-WP/9174 containing the said proposed amendments to the Technical Instructions (Doc 9284) relating to PEDs in checked baggage on board commercial aircraft and other urgent matters, which originated from a recent working group meeting of the DGP (DGP-WP/27) (Montréal, 24-28 April 2017). In view of the urgency of the said lithium batteries issue, the ANC supported the group's establishment, whose work was related to that being carried out by five existing ANC panels [DGP, FLTOPS, AIRP, Aerodromes Panel (AP) and Safety Management Panel (SMP)], as well as the AVSECP

and the FALP. It was the ANC's understanding that at the first meeting, envisaged to take place from 5-6 June 2017, the group would discuss its TOR, the problem statement, members' required competencies, and the work plan. The Commission recommended that the Chairperson and Vice-Chairperson of the said five ANC panels participate in the group's first meeting, either in person or remotely, to assist in the definition of its TOR. Thus in line with D/ANB's intervention, the ANC would review the report on the outcomes of that initial meeting, including the TOR, and present its comments and recommendations to the Council, as it would do for future reports of the group.

29. Referring to the actions recommended in paragraph 6.1, the Representative of Colombia sought information on the intent and capacity of an individual or group to carry out an attack in the near future using IEDs in PEDs transported on board passenger aircraft. Noting that the associated risk would vary depending on whether the PEDs were in cabin baggage or in the cargo hold (in checked baggage or as cargo), he enquired whether the said security restrictions appropriately addressed all potential threat types. The Representative of Colombia emphasized that if the said restrictions were considered appropriate, then ICAO, as the UN Specialized Agency responsible for ensuring aviation safety, should take action to ensure that they were applied worldwide in an equitable manner. He spoke in favour of establishing an Ad Hoc Council Committee in light of the additional political and socio-economic issues that needed to be addressed as outlined by the Representative of Turkey in putting forward his proposal. The Representative of Colombia emphasized that such a multidisciplinary approach would give the Council a complete picture of the situation and enable it to provide the expected global response.

30. Responding to an additional query by the Representative, Deputy Director, Aviation Security and Facilitation (DD/ASF) clarified that the security threat under discussion solely pertained to IEDs and was not related to cyber threats.

31. The Representative of Mexico indicated that although he considered that the actions recommended in paragraph 6.1 of the paper were reasonable and represented an orderly approach that would enable the issue to be addressed in a holistic manner, he was concerned that they would require too much time to implement for such an urgent issue. He suggested that the Council endorse the proposals made by the Representative of Egypt and take into account the statement made by the Observer from IATA at the informal briefing, as well as its related letter sent beforehand, and invite experts from the Member States affected by the security restrictions to participate in the work of the multidisciplinary group. Averting that the said recommended actions did not resolve the current situation confronting the affected Member States, the Representative of Mexico emphasized that the Council should be able to take a decision in that regard during the present (211th) session on the basis of clearly identified risks to security that would include mitigation measures to be implemented by the affected Member States. That would be in addition to the said recommended actions and might have a longer duration.

32. Reiterating that some of the affected Member States had achieved good USAP CMA audit results prior to the imposition of the security restrictions, which might suggest that the audits had not served their purpose, the Representative of Mexico underscored the need to review the Programme to determine what, if anything, had gone wrong. Emphasizing that Member States were supposed to be able to put their full trust and confidence in the USAP-CMA, he stressed that if some element thereof had failed, then the Council would need to strengthen the Programme to ensure that such a situation did not arise again.

33. DD/ASF underscored that there was no direct link between Member States' respective USAP-CMA audit results and how their national aviation security systems could be affected by terrorists. He noted that the audits assessed whether Member States each had an effective aviation security oversight system, in particular, if they each had in operation the regulatory framework, procedures and security measures called for primarily in Annex 17. While it was good for Member States to achieve a high

effective implementation (EI) rate in their audits, that was not sufficient. As terrorists were constantly challenging national aviation security systems, it was necessary for each Member State to conduct threat and risk assessments on an ongoing basis and to perform continuous risk management.

34. The Representative of the Russian Federation endorsed the comments made by the Representatives of Egypt, Turkey, France, the United Arab Emirates, China, Colombia and Mexico. Referring to paragraph 2.1 of the paper, he noted that the risk associated with IEDs in hold baggage was medium (cf. RCS, 5th edition, April 2016). The Representative of the Russian Federation underscored that although the *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Doc 9284) did not prohibit the carriage of lithium battery powered PEDs in checked baggage in the cargo hold, that was based on the assumption that there would be an extremely low concentration of such devices in the latter. However, with the imposition of the said security restrictions, there was a greater number of such PEDs in checked baggage and containers in the cargo hold. The Representative of the Russian Federation averred that transporting PEDs in the cargo hold did not reduce the security risk as terrorists could use a remote control to trigger a thermal runaway of a lithium battery contained in a PED in the cargo hold, causing a fire and/or explosion, igniting lithium batteries contained in other PEDs and giving rise to the risk of a catastrophic event. He stressed the need to respect each Member State's sovereign right to take appropriate measures to protect the safety and security of its own citizens, as well as its national security. Recalling the comments made by the Representative of China, the Representative of the Russian Federation re-emphasized the need for ICAO to exercise its global leadership role and to provide guidance to enable Member States to conduct risk assessments.

35. The Representative of the Russian Federation then drew attention to the recommended actions set forth in paragraph 6.1 of the paper, which were supported by the majority of speakers although many questions remained with regard to the establishment of the multidisciplinary group. With a view to enhancing efficiency, he proposed an alternative formulation process for the group's TOR, whereby the latter would be drafted by the Secretariat, with the support of the ANC and the Air Transport Committee (ATC), and presented to the Council for review and approval, during an additional meeting if necessary. Thereafter a State letter or individual letters would be issued inviting Member States to nominate suitably-qualified experts to serve as group Members. In understanding the interest of the Member States affected by the imposed security restrictions in participating in the group's work, the Representative of the Russian Federation indicated that while his State's aviation security experts would likewise be interested in participating therein, they would be unable to attend the group's first meeting, proposed to be held from 5-6 June 2017, as it overlapped with the conduct of a USAP CMA audit of the Russian Federation from 5-13 June 2017. He stressed that IATA, ACI and other representatives of the aviation industry had an extremely important role to play in supporting the group's work.

36. Referring to the intervention by the President of the ANC, the Representative of the Russian Federation stressed the need for the proposed amendments to the Technical Instructions (Doc 9284) to address the safety impact of the said security restrictions on PEDs and other emerging issues (AN-WP/9174) to be based on a risk assessment. While noting that the said IED-PED threat was a real one that could affect all Member States, as highlighted by the Representative of Colombia, he emphasized that the requisite screening technologies for the detection of explosives as described the *Aviation Security Manual* (Doc 8973 Restricted) were already available. Although acquiring and deploying security screening technology would necessitate financial investment on the part of Member States and the aviation industry, it was necessary to resolve the safety and security issues relating to the carriage of PEDs.

37. Drawing attention to paragraph 2.1 of the paper, the President of the Council noted that the RCS had initially been developed in the context of the *ICAO Comprehensive Aviation Security*

*Strategy* (ICASS). Highlighting that there was now an interplay with the safety risk associated with the transport of dangerous goods by air, he enquired whether, in addressing the issue of IEDs artfully concealed in PEDs, a review of the RCS would be conducted to take into account that interdependence.

38. In noting that the RCS was about to be revised, DD/ASF indicated that the AVSECP's WGTR had been requested to address the said IED-PED issue and to verify whether an update of the RCS was necessary. He underscored that although the RCS only dealt with security risks, whenever new Annex 17 SARPs were developed an impact assessment was done of their overall impact: on ICAO's Strategic Objectives relating to safety, efficiency, security and facilitation, and the environment; and on resources (financial, personnel, etc.) of Member States and the aviation industry. DD/ASF further emphasized that the security perspective regarding the IED-PED issue would be taken into account by the multidisciplinary group through the participation of an AVSECP expert(s).

39. Responding to the point raised by the Representative of the Russian Federation regarding the formulation process for the group's TOR, D/ANB clarified that the Secretariat's intent was to provide a draft proposal, based upon the outcomes of the Council's discussion, to the group at its first meeting for consideration in evaluating the problem statement and developing a work plan. The Chairpersons and Vice-Chairpersons of the said five ANC panels would participate in that meeting to ensure a comprehensive review of the TOR. The group's report would be referred to the ANC for comments and thereafter to the Council for approval before the end of the current (211th) session. D/ANB indicated that should the Council wish to entertain a different process, then it might be possible to have the ANC and the Council review the draft TOR. However, the group would be unable to commence its work until after that process had been completed. Consequently, it would probably not meet until July 2017, which was a difficult time for many experts from the region of the world that was most affected by the security restrictions because of the season. D/ANB confirmed that it was envisaged that representatives of the aviation industry [IATA and Airports Council International (ACI)] would be invited to participate in the group's work.

40. The President of the Council noted that the process outlined by D/ANB would afford the group the opportunity to propose amendments to its draft TOR for the Council's approval. Maintaining that it should be possible, with the said process, to finalize the TOR later in the current session and to convene the group's first meeting from 5-6 June 2017, he underscored that he would be concerned if the meeting were rescheduled to a later date given the urgency of the lithium batteries issue on which the group was to place initial focus.

41. The Representative of Canada indicated that he would await the details of the group's TOR before commenting thereon. In then referring to paragraph 6.1 b) of the paper, he sought clarification as to how the WGTR, of which his State was a Member, would be able to provide the requested advice to AVSECP/28 when its next meeting was planned to take place from 11-13 July 2017.

42. DD/ASF noted that the Secretariat had previously asked the Chairperson of the AVSECP to request the WGTR to undertake a further assessment of the specific IED-PED issue and that the Working Group had accordingly commenced that work at the end of March 2017, conducting it by exchange of correspondence. Efforts were being made to organize a teleconference to enable the Working Group Members to discuss their work. It was expected that the WGTR would present a paper at AVSECP/28 proposing some initial elements. Those proposals and the Panel's related recommendations, would be reflected in the Secretary General's paper *Review of the Report of the Twenty-eighth Meeting of the Aviation Security Panel (AVSECP/28)* (C-WP/14593 Restricted), to be considered by the Council later in the current session.



43. The Alternate Representative of the United States voiced support for the recommended actions set forth in paragraph 6.1 of the paper. While noting that, in the interest of brevity, he would not repeat the comments he had made during the informal briefing, he underscored that they still stood. The United States still considered that there were many opportunities for bilateral discussions with any Member State that wished to discuss the security restrictions which it had imposed on the carriage of certain PEDs in the aircraft cabins on flights on certain routes. The Alternate Representative of the United States emphasized that although those restrictions had been imposed in response to specific concerns, his State viewed ICAO as an important partner in promoting aviation security practices that met the dynamic threat environment. He affirmed the United States' interest in working with ICAO to develop its global aviation security strategy and support its capacity development activities in that area.

44. Endorsing the process described by D/ANB for the establishment of the multidisciplinary group and its TOR, as well as the timeline, the Alternate Representative of the United States expressed the hope that there would continue to be a productive and constructive dialogue in addressing this issue. In emphasizing that there could and should be discussions about the additional security measures that various Member States had decided to take, and the views of other Member States thereon, he stressed the need to bear in mind that all Member States were combatting threats against international civil aviation and working to keep aircraft and their passengers and crew flying safely.

45. Reiterating that it was the sovereign right of all Member States to take appropriate measures to protect the safety and security of their own citizens, as well as their national security, the Representative of Saudi Arabia noted that they all considered that safety and security were of paramount importance. For that reason, he supported the recommended actions set forth in paragraph 6.1. The Representative of Saudi Arabia underscored the need for clarity in the multidisciplinary group's TOR, including with regard to its relations with the Council and the ANC, as well as in its work plan, including the timeline for its completion. In endorsing the Representative of Egypt's suggestion that experts from the Member States affected by the imposed security restrictions be invited to serve as group Members, he reiterated a proposal that he had made earlier in a meeting with ANB staff that representatives of the electronics industry, such as Apple and Samsung, be invited to participate in its work, in addition to representatives of the aviation industry. The Representative of the Russian Federation endorsed this proposal.

46. In also voicing support for the paper and its recommended actions, the Representative of Australia noted that it clearly and rationally set out the background for Member States' legitimate extra security measures beyond the Annex 17 baseline, and identified the risks that those measures could then themselves raise that needed to be managed effectively within the global aviation system. He affirmed that the recommended actions for ICAO, some of which were new and some of which were already underway or planned, represented a sensible way forward for the international aviation community. The Representative of Australia cited, in particular, those actions' focus on sharing threat information and helping Member States improve their own risk and threat assessment processes into the future to aid in their own assessments of what measures they might need to take beyond the Annex 17 baseline. He stressed that in addressing those issues it was very important that the Council allow the technical experts in the technical groups to do their technical work and provide their technical advice to the Council and to Member States. The Representative of Australia did not support the Council trying to address those issues without receiving that technical advice from the experts in those fields.

47. In noting that initially he had had some uneasiness with regard to the proposed multidisciplinary group, particularly as he did not consider that a permanent new body was necessary, the Representative of Australia voiced support for the suggestions made by the Representative of the United Kingdom that a time limit should be established for the completion of its task relating to lithium batteries and that the Council decide whether or not it should become a permanent body following consideration of

the group's envisaged report thereon. The Representative of Australia appreciated the Secretariat's clarifications regarding how the new multidisciplinary group would operate and considered that it would be a good experiment for ICAO in addressing the said task in a cross-cutting manner. He looked forward to seeing ICAO present to the Council and to Member States one consolidated voice across safety and security issues, instead of speaking with two separate voices. He emphasized that that was what Member States needed to hear from ICAO, not two voices that came through different channels, at different times, on different subjects.

48. The Representative of Spain observed that the Council was close to reaching agreement on the recommended actions set forth in paragraph 6.1 of the paper, aside from a few small details. He highlighted that the Spanish authorities, after having assessed the threat posed by artfully concealed IEDs in large PEDs and exchanged views thereon with other Member States, had decided not to impose any additional security restrictions for the time being. They considered that at the present time it was indicated to increase vigilance and promote the training of relevant personnel. The Spanish authorities were closely monitoring the situation, however, and would also pay close attention to the AVSECP/28 conclusions, to be presented for the Council's consideration later in the current session. They would accordingly re-assess whether the imposition of any new security restrictions is needed.

49. While essentially agreeing with the actions recommended in paragraph 6.1, the Representative of Spain reiterated the need for urgent action and emphasized the consequent need to set target dates for completion of the actions set forth in sub-paragraphs b) and c). With regard to the latter, he queried whether the AVSECP's recommendations would be provided in the said AVSECP/28 report or whether the Council would have to wait until the end of the year to receive them. The Representative of Spain suggested that Secretariat provide Representatives with an indication of the AVSECP's calendar of current and future activities to assist them in determining whether any of those activities could be accelerated in view of the urgency of the situation.

50. The Representative of Spain considered that it would be timely and appropriate for the proposed multidisciplinary group to meet from 5-6 June 2017, particularly as it would provide AVSECP experts who would be present at ICAO Headquarters for the Panel's Twenty-eighth Meeting the opportunity to participate in the discussion. However, in light of the concerns expressed by the Representative of the Russian Federation and others, he suggested that it be constituted as an ad hoc meeting (rather than as the first meeting), at which the group's experts would review the TOR and related governance issues, as well as the problem statement and work plan and make recommendations for the Council's consideration. In that manner, the Council would not need to take a decision at the present time regarding the group's status (e.g. Secretariat Study Group, Task Force, etc.) and could instead resolve that issue at a future meeting.

51. The Representative of Spain observed that the recommended actions contained in paragraph 6.1 did not include encouraging bilateral discussions between the Member States affected by the said security restrictions and the Member States which had imposed them, an issue highlighted by the Alternate Representative of the United States. He emphasized that such bilateral discussions should take place as they could resolve, to a large extent, the problems being encountered with the said security restrictions. Referring to the comments made by the Representative of Mexico, the Representative of Spain indicated that, notwithstanding the clarifications provided by DD/ASF, it was necessary to pay closer attention to the effectiveness of the audits conducted under the USAP-CMA, as well as those conducted under the Universal Safety Oversight Audit Programme Continuous Monitoring Approach (USOAP CMA).

52. D/ANB noted that he was not concerned about the name of the multidisciplinary group's initial meeting so much as about ensuring the participation therein of the best experts in order for the

Council to receive the most comprehensive recommendations possible for addressing the risks associated with the transport of lithium-powered PEDs in the aircraft cabin or in the cargo hold. With regard to the proposal to re-schedule that meeting so that it would take place prior to AVSECP/28, he indicated that it would be possible to advance it to 1-2 June 2017, which would overlap with the last days of AVSECP/28 and thus enable the necessary Panel member(s) to participate in the group's discussion. Preparation and consideration of the group's report would be fast-tracked, with it being presented to the ANC for review at the end of its current session and subsequently submitted to the Council for discussion at the end of its present session, together with the ANC's comments thereon.

53. D/ANB underscored that audits conducted under the USOAP-CMA and the USAP CMA were a necessary part of ICAO's toolkit to ensure that the environment was available to mitigate safety and security risks and thus ensure the safety and security of international civil aviation. In reiterating that a high EI level did not eliminate risk, he emphasized that it simply reflected the audited State's capacity to regulate with the highest probability of eliminating risk through implementation of its regulations. It was the operation of the Member State's aviation system that was the determining factor of the presence of risk. D/ANB noted that the reason why there was a much higher level of aviation safety now compared to 20 years ago was not due to the increased stringency of regulations but rather to the introduction of safety management within the aviation industry. Thus Representatives should not equate the said two audit Programmes directly with the implementation of risk mitigation measures in the areas of safety and security. D/ANB recalled, in this context, that there had been four major hull losses of Boeing 777s in the last six to seven years, all of which aircraft had been operated by Member States with very high EI levels. He noted that fortunately the four hull losses had only resulted in a very low number of fatalities due to the implementation of safety management principles, as well as the design principles and the airworthiness of the aircraft. D/ANB underscored that the audit processes of the USOAP CMA, as well as the USAP-CMA, were thus not necessarily a problem.

54. Referring to the Council's previous consideration of C-WP/14559 (*Review of Assembly resolutions and decisions – Safety and Air navigation capacity and efficiency*) (210/6), the President of the ANC noted that in accordance with the decision of the 39th Session of the Assembly (cf. A39-WP/512, paragraph 33.28; P/6) a temporary group of experts (GE USR) had been established to conduct, under the ANC's guidance, a structured review of the USOAP CMA, including its processes and methodology, to identify adjustments to the Programme with a view to its further evolution and strengthening. The GE USR had held its first meeting two weeks ago, from 25-27 April 2017. Other meetings were planned to take place from 19-21 September 2017 and from 7-9 November 2017. Under the Commission's guidance, the group would complete its work by the end of 2017. The outcomes of the group's said structured review would be submitted to the Council in the form of a working paper, through the ANC, no later than at the 214th Council Session in June 2018. Any proposed enhancements to the USOAP CMA would be presented to the envisaged Thirteenth Air Navigation Conference (AN-Conf/13) in the Fall of 2018.

55. Recalling the comments made by the Representative of Australia, the President of the Council reiterated that safety and security issues should always be considered in a cross-cutting manner. He noted that in addition to the said USOAP CMA review, a comprehensive review of the scope and methodology of the USAP-CMA was being carried out by a Secretariat Study Group pursuant to Assembly Resolution A39-18 (*Consolidated statement of continuing ICAO policies related to aviation security*), Appendix E, Operative Clause 4. The President emphasized that since the USOAP CMA and the USAP-CMA were based on the same principles and modus operandi, it was necessary to share best practices and lessons learned arising from each Programme's implementation and continue to update the USOAP CMA and the USAP-CMA with a view to enhancing their effectiveness.

56. The Representative of Ecuador underscored that while the said security restrictions

clearly did not impinge upon State sovereignty, they did affect certain States. In concurring with the Representative of Spain that bilateral discussions between the latter and the States which had imposed the security restrictions could help resolve the problems being encountered, he underscored that they could also promote better implementation of Annex 17 SARPs worldwide.

57. With respect to the multidisciplinary group, the Representative of Ecuador agreed with Representatives of Egypt, the United Arab Emirates and others that it should include experts from the affected Member States. In affirming that its work on lithium batteries should be accorded high priority, he emphasized the need to tackle the root of the problem and find a solution. The Representative of Ecuador stressed the need for ICAO to demonstrate leadership in addressing that issue, particularly in view of the said security restrictions' economic and operational impacts and impact on air connectivity.

58. While welcoming and supporting all of the recommended actions to enhance security as set forth in paragraph 6.1, the Representative of Ecuador queried how they would address the impacts currently being experienced by the said affected Member States, which was the crux of the matter. Recalling the comments made by the Representative of France, he averred that lithium battery-powered PEDs should not be concentrated in a single location in the cargo hold of a passenger aircraft as that would pose a very high risk of an uncontrollable fire and/or explosion. The Representative of Ecuador indicated that that issue should consequently be the first to be addressed by the multidisciplinary group. He agreed with the Representatives of the Russian Federation and France on the need to improve security screening procedures and technologies for cabin baggage. In also endorsing the comment made by the Representative of Mexico regarding the USAP CMA, the Representative of Ecuador affirmed that the Programme was an essential tool to assess Member States' implementation of security-related SARPs. In highlighting the need to take into account emerging issues when conducting future audits, he stressed that that would benefit not only ICAO but also the audited Member States. Concluding, the Representative of Ecuador expressed his wholehearted support for the interventions by the Representatives of Egypt, the United Arab Emirates, Spain and Mexico.

59. While taking careful note of the concern expressed by the Representative of the Russian Federation regarding the originally-intended scheduling of the multidisciplinary group's First Meeting [cf. paragraph 6.1 g)], the Representative of Japan accepted the clarifications provided by the President of the Council, as well as by D/ANB and the President of the ANC. He then suggested that paragraph 6.1 f) be amended by adding after the words "imminent threats" the words "of artfully concealed IEDs in large PEDs" for greater clarity.

60. In underscoring that the said imminent threats were not limited to the particular IED-PED threat and encompassed all threat types, including new and emerging ones, the President of the Council proposed that the existing text of paragraph 6.1 f) instead be retained in its present general form, and that the following phrase be inserted at the end in light of the comments made by many Representatives: "and encouraged continuous consultation and collaboration among Member States on threat and risk mitigation."

61. In voicing support for this proposal, the Representative of Japan endorsed the other recommended actions set forth in paragraph 6.1.

62. The Representative of Cabo Verde noted that his State, like the rest of the international community, was paying close attention to the evolution of terrorist threats around the world. Cabo Verde was taking mitigation measures commensurate with the known threats, conscious of the fact that in the face of the terrorists' creativity, no mitigation measure adopted by any Member State would ever be sufficient to limit or completely eliminate such illegitimate actions, in particular the use of civil aviation as a means to achieving unlawful ends. Member States must constantly be aware of their respective

vulnerabilities. Cabo Verde supported legislative solutions at both the domestic and international levels and was promoting reforms and adjustments to existing mitigation measures with a view to addressing new types of threats which posed a risk to air transport activities and aviation safety. It was in that context that Cabo Verde viewed the said security restrictions imposed by certain Member States as identified in the paper. It considered that when put into practice, those restrictions had a negative impact on aviation safety. In Cabo Verde's view, since PEDs were powered by lithium batteries, they constituted dangerous goods as described in the ICAO *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Doc 9284). Recognizing the need to protect both ICAO Strategic Objective *Safety* and ICAO Strategic Objective *Security & Facilitation*, aware of the concerns expressed by the Observer from IATA at the said informal briefing, and noting the clarifications provided during the present meeting, Cabo Verde fully supported the recommended actions set forth in paragraph 6.1, as amended by the President of the Council.

63. While likewise endorsing the recommended actions, the Representative of Singapore suggested the following additional changes: that the first sentence of paragraph 6.1 d) be amended by adding after the words "request the Secretariat" the phrase "to work with the AVSECP", in view of the inputs to be provided by the Panel as referred to in sub-paragraphs a) to c); that the second sentence of sub-paragraph d) be amended by adding, at the end, a reference to best practices by Member States and the aviation industry" as other security measures that could be considered; and that the order of sub-paragraphs e) and f) be reversed to reflect the sequence of the actions set forth therein. In fully supporting sub-paragraph g), the Representative of Singapore reiterated the urgency of the work to be undertaken by the multidisciplinary group and suggested that the latter's terms of reference be cleared before the group's first meeting so as to avoid having too much of its time taken up in discussing the TOR.

64. In recognizing the high risk of a person-borne IED i.e. carried on the person or in cabin baggage, such as a large PED, the Representative of the United Republic of Tanzania expressed support for the work that had been done thus far in response thereto and accepted the need to continue to address that security risk. He looked forward to the said security risk being addressed in a global context, taking into account cooperation among Member States and industry partners in updating relevant Annex 17 SARPs to ensure effective measures for identifying risks, as outlined in the paper.

65. Responding to a question then raised by the Representative, the President of the Council clarified that the AVSECP would present recommendations to address that security risk after its Twenty-eighth Meeting, enabling the Council to take immediate action for the short-term. As the multidisciplinary group, which would include AVSECP members, would carry out its work over a greater period of time, it was anticipated that it would propose more conclusive, long-term solutions for the Council's consideration and approval. D/ANB confirmed that that was the expectation.

66. In voicing support for the recommended actions contained in paragraph 6.1, the Representative of Argentina affirmed that the establishment of the said multidisciplinary group, whose members would have a wide range of expertise, would enrich the handling of this complex issue. Underscoring the need for expeditious action, under the authoritative banner of ICAO, to guide Member States in taking the necessary measures, he stressed the importance of initiating and prioritizing the group's work on lithium batteries.

67. The Representative of Algeria also endorsed the recommended actions. He reiterated the importance of having experts from the Members States affected by the imposed security restrictions participate in the multidisciplinary group's work as proposed by the Representative of Egypt and supported by the Representatives of Turkey, the United Arab Emirates and others. The Representative of Algeria also emphasized the need to establish a time limit for the completion of its work relating to lithium batteries given the need for the Council to take action as expeditiously as possible.

68. The Representative of Ireland stressed the importance of: acknowledging the threat posed by IEDs artfully concealed in PEDs and more generally, any artfully-concealed IEDs as clearly illustrated in Section 2 of the paper; and understanding that that issue needed to be addressed both multilaterally, at the level of ICAO, where relevant, as well as bilaterally, between implementing and affected Member States. In affirming that a positive dialogue at both levels was essential to effectively deal with the said security threat, she expressed pleasure that the Council was conducting its dialogue in a very positive spirit.

69. Referring to paragraph 6.1, the Representative of Ireland voiced support for recommended actions a) and b). In so doing, she underscored the importance of the AVSECP's role in examining the issue and providing recommendations to the Council and its interaction with the multidisciplinary group. With regard to the possible Annex 17 amendments referred to in recommended action c), the Representative of Ireland highlighted that the AVSECP's Working Group on Annex 17 had already developed some provisions on screening technologies that would be considered at the upcoming Panel meeting. In emphasizing that any such proposal to amend Annex 17 should be carefully considered by the AVSECP and should be the ultimate goal, she suggested that other measures also be considered in this particular case. The Representative of Ireland noted that her State's experts had also emphasized the importance of a holistic risk assessment and had suggested that perhaps Annex 17 could be improved in that regard as well. Those experts had made several suggestions as to how that might be done, including: a requirement for impact assessment before the implementation of security measures; and/or a requirement for coordination between security and safety departments before such measures were introduced. The Representative of Ireland hoped that all of those suggestions would be fully considered by AVSECP/28 and looked forward to the results of the Panel's deliberations.

70. The Representative of Ireland also endorsed recommended actions d), e) and f), as amended during the discussion, as well as recommended action g). With regard to the latter, she expressed full support for a multidisciplinary approach to all issues, particularly in the present case given the safety and security aspects. The Representative of Ireland voiced appreciation for the clarification that the said group was a temporary one which would report to the ANC and the Council after its first meeting on its TOR, problem statement and work plan before moving forward. Noting that Members of the ABIS Group that she represented (Australia, Belgium, Croatia, Luxembourg, Netherlands, Portugal and Switzerland in addition to Ireland) had expressed interest in participating in the multidisciplinary group, she enquired as to the procedure for nominating experts to serve as group Members.

71. Recalling the comments made by the Representative of Mexico regarding USAP-CMA audit results, the Representative of South Africa sought clarification as to the meaning of an EI level of 95 per cent. In supporting the interventions that called for the Secretariat to prepare the draft terms of reference for the multidisciplinary group, he enquired as to what the TOR would encompass, bearing in mind the related work being carried out by the five existing ANC panels (DGP, FLTOPS, AIRP, AP and SMP), as well as the AVSECP and the FALP. The Representative of South Africa noted, in this regard, that a leading professor on the IED-PED issue had highlighted in a recent article that it did not match a conventional threat, and that an IED artfully concealed in a large PED would work just as well in the cargo hold of a passenger aircraft as in the cabin. He underscored that, in respecting the sovereign right of all Member States to take appropriate measures to protect the safety and security of their own citizens, as well as their national security, ICAO should continue to address global problems with global solutions.

72. Noting that ACI conducted its Airport Excellence (APEX) in Safety Programme and was piloting its APEX in Security Programme, and that IATA conducted its IATA Operational Safety Audit (IOSA) Programme, the Representative of South Africa enquired whether those organizations, and others such as the Civil Air Navigation Services Organisation (CANSO), were on board with the action being

undertaken to address the IED-PED issue.

73. Responding to the Representative's first question, DD/ASF explained that an EI level of 95 per cent reflected the level of compliance of the audited Member State with the eight critical elements (CEs) of an aviation security oversight system as described in the *Aviation Security Oversight Manual* (Doc 10047). It meant that there was a good result in terms of the audited Member State's regulatory framework, oversight organization, provision of training to security personnel, and effective implementation of security-related SARPs contained in Annex 17 – *Security* and Annex 9 – *Facilitation*, inter alia. That did not prevent the Member State from conducting a risk assessment to determine if its security threat level was low, medium or high, or from considering new and emerging security threats and discussing the associated threat and risk levels with other Member States. DD/ASF emphasized that while the Secretariat encouraged all Member States to make every effort to increase their EI level, it was necessary for them to also conduct threat and risk assessments on an ongoing basis and to perform continuous risk management.

74. DD/ASF noted that the Secretariat Study Group on the Universal Security Audit Programme would present a report to AVSECP/28 on the outcomes of its first meeting on the comprehensive review of the Programme's scope and methodology. Those outcomes would thereafter be presented to the Council, later in the current session, in the Secretary General's paper *Review of the Report of the Twenty-eighth Meeting of the Aviation Security Panel (AVSECP/28)* (C-WP/14593 Restricted). DD/ASF indicated that if the Council so wished an informal briefing could be given on the USAP-CMA to explain in greater detail the requirements against which State compliance is measured and the graphical presentation of audit results, inter alia. This was noted.

75. Replying to the Representative's last question, the President of the Council noted that IATA had already stated its position at the said informal briefing. He reiterated that IATA and ACI would be invited to provide experts to support the multidisciplinary group's work.

76. To an additional point raised by the Representative, DD/ASF clarified that C-WP/14636 Revised exceeded the four-page maximum as the Secretariat had been requested to present a single paper covering both the security threat posed by IEDs artfully concealed in PEDs and the safety implications of the imposed restrictions. Future papers would comply with the Council's four-page policy.

77. Expressing general support for the recommended actions set forth in paragraph 6.1, the Representative of India stressed the importance of striking the right balance between security and facilitation. He requested that the Council be informed of the composition and TOR of the multidisciplinary group at an early date.

78. In likewise endorsing the recommended actions, the Representative of Uruguay reiterated the need to deal with this issue in a comprehensive and expeditious manner. He also highlighted that in order to mitigate the potential risk of new terrorist attacks, it was necessary to exert greater control over airport ground personnel who handled checked baggage and cargo, including dangerous goods (e.g. flammables).

79. The Representative of Nigeria also spoke in favour of the recommended actions contained in paragraph 6.1. He concurred with the Representative of the Russian Federation on the need to prepare the multidisciplinary group's TOR before its first meeting in order to enhance the efficiency of its work. In supporting the amendments to sub-paragraph d) suggested by the Representative of Singapore, the Representative of Nigeria noted that very important steps were to be taken in the near term to address the issue, such as the provision by the Secretariat, working with the AVSCEP, of guidance to enable Member States to conduct risk assessments in order to determine what, if any, other options of security measures

could be introduced, as well as in the long term, by the multidisciplinary group and relevant panels. He agreed with the Representative of Egypt and others that experts from the affected Member States should participate in the group's work as those Member States would be the first to implement whatever recommendations or SARPs resulted therefrom. In affirming the high importance of the active involvement of industry partners in that work, the Representative of Nigeria expressed satisfaction that IATA and ACI would also be invited to participate therein.

80. To a question then raised by the Representative, the Chief, Aviation Security Audit Section (C/ASA) confirmed that the USAP-CMA did evaluate the audited Member State's ability to perform continuous risk assessment/management in accordance with all of the relevant security-related SARPs. He noted that that was covered in various components of a risk management process, including the threat assessment, the vulnerability assessment and the risk management assessment.

81. The Representative of Turkey indicated that while he had listened very carefully to the interventions by other Representatives, the main cause of the problem had not changed: the Member States which had imposed the security restrictions had not complied with Standard 2.4.1 of Annex 17 and had not shared the pertinent technical threat information with the affected Member States. He understood the challenge facing the Secretariat as it was the prerogative of sovereign States to impose security measures that they deemed necessary to protect the safety and security of their own citizens, as well as their national security. The Representative of Turkey observed that while in the present case the risk which had led to the imposition of security restrictions was undefined and unshared, all seemed to understand its magnitude. Noting that Section 2 of the paper only provided a couple of examples of the same type of threat, IEDs artfully concealed in large PEDs, he underscored that those cited had occurred in 2016 in conditions that were not very secure due to events in the region concerned. In recognizing that there was no direct link between Member States' respective USAP-CMA audit results and how their national aviation security systems could be affected by terrorists, as indicated by DD/ASF, the Representative of Turkey emphasized that the audit results' credibility was contingent upon a lack of security incidents at the Member States' airports.

82. Relating to the Electronic Bulletin EB 2017/23 dated 31 March 2017, the Representative of Turkey averred that the Bulletin, which had been issued in a hasty manner, lacked clarity and did not properly reflect ICAO's expertise. He stressed the need for the multidisciplinary group's recommendations to be clearer and to be targeted on solving the problem. Under these circumstances, the Representative of Turkey requested the Member States which had imposed the said security restrictions to be more flexible in sharing pertinent technical threat information, including with ICAO, to facilitate the future work of the multidisciplinary group and enable a quick and easy solution to be found. In concluding, he affirmed that Turkey's experts would do their best to contribute thereto.

83. Recalling the comments made by the Representative of the Russian Federation, the Representative of Egypt underscored that the multidisciplinary group should also take into consideration, and assess, the risk of terrorists using a remote control to detonate IEDs in PEDs in the cargo hold of passenger aircraft as the resultant fire and/or explosion would be difficult to control, jeopardizing the safety of the passengers and crew and the aircraft itself. In addition, he requested that the Council's decision be issued as soon as possible so that Representatives could transmit it to their national administrations for implementation.

84. The Council noted the additional information and clarifications provided during the discussion.

85. The President of the Council emphasized the need for ICAO to provide leadership and global coordination in all aviation matters, including in the one under consideration. It was also necessary



for the Organization to promote the sharing of threat information among Member States and to encourage increased and continuous consultation and collaboration, at both the bilateral and multilateral levels, to address threat and risk mitigation. Noting that while the Council bore the overall responsibility for adopting ICAO SARPs, it based its decisions on the work carried out by ICAO's experts, he underscored that in the present case it was similarly advisable to utilize, to the fullest extent possible, the best advice that could be obtained from the Organization's experts. That being said, the matter at hand was highly multidisciplinary in nature, in terms of not only its technical aspects, but also its aspects relating to facilitation and the efficiency of air transport for Member States as well as for the aviation industry. Consequently, while the proposed multidisciplinary group would function similar to a Secretariat Study Group but in a Task Force manner, its work would have greater visibility: its final recommendations would be presented to the Council for consideration through the Secretary General, along with the results of a prior review by the ANC, the AVSECP and the FALP.

86. In taking the action recommended in paragraph 6.1 of C-WP/14636 Revised, as amended by the President in light of the discussion, the Council:

- a) requested that the AVSECP include the issue of the Threat of artfully concealed improvised explosive devices in large portable electronic devices – Restrictions in the cabin and their impact on safety as the opening topic of the first Agenda Item of the Panel's forthcoming Twenty-eighth Meeting (AVSECP/28) (Montréal, 29 May – 2 June 2017);
- b) requested, through the AVSECP, that the said WGTR provide advice on that issue for consideration by AVSECP/28;
- c) requested that the AVSECP provide recommendations to the Council that may include:
  - i) actions to be taken by ICAO, including possible amendments to Annex 17 – *Security* and updates to the *ICAO Aviation Security Global Risk Context Statement*; and
  - ii) actions to be taken by Member States and the aviation industry;
- d) requested the Secretariat to work with the AVSECP to provide guidance to enable Member States to conduct risk assessments in order to determine what, if any, other options of security measures could be introduced to mitigate the identified threat and risk. Such measures to be considered could include, inter alia, technology-based screening and/or behaviour detection options, enhanced and targeted training, as well as other best practices by Member States and the aviation industry;
- e) requested that Member States, to the extent practicable, communicate information concerning imminent threats through the ICAO Aviation Security Point of Contact (PoC) Network, and encouraged continuous consultation and collaboration among Member States on threat and risk mitigation;
- f) requested that Member States, to the extent practicable, share details of their screening equipment through AVSECPaedia, in order that other Member States may be aware of the types of screening technologies currently deployed, and which may be taken into account when considering the need for enhanced security measures when a new threat is identified; and

- g) agreed on the establishment of a temporary multidisciplinary cargo safety group with experts from the areas of flight operations, dangerous goods, airworthiness, aerodromes, safety management, and security and facilitation, whose role will be, inter alia, to ensure the prioritization and consolidation of ICAO's cargo safety-related tasks, with an initial focus on lithium batteries.

87. With regard to paragraph 86 g) above, the Council noted that the draft TOR for the multidisciplinary group would be prepared by the Secretariat, taking into account the views expressed, and circulated to Council and ANC Members for any comments by Friday, 12 May 2017. The revised draft TOR, as well as a draft problem statement prepared by the Secretariat in consultation with the ANC, would subsequently be provided to the multidisciplinary group for review and comments when determining its work plan at its first meeting, which was envisaged to take place at ICAO Headquarters in Montréal from 1-2 June 2017, concurrently with AVSECP/28. As recommended by the ANC, the Chairpersons and Vice-Chairpersons of the said ANC panels would be invited to attend that initial meeting. The group would be provided with a copy of the summary minutes of the present Council meeting to facilitate its deliberations.

88. It was further noted that the multidisciplinary group would comprise approximately 20 experts drawn from the relevant panels (DGP, FLTOPS, AIRP, AP and SMP, AVSECP and FALP). Once the draft TOR was finalized in light of comments received from the Council and the ANC Members, the Secretariat would send invitations to prospective group members from the said panels. In addition, Council Members were invited to submit nominations of suitably-qualified experts. In constituting the group the Secretariat would make every effort to ensure that all of the said areas of expertise were covered and that the various interest groups were represented, including the Member States affected by the said security restrictions. The aviation industry (IATA and ACI) and the electronics industry [International Electrotechnical Commission (IEC)] would also be invited to provide experts to support the group's work.

89. The President of the Council emphasized that there should be close coordination between ANB (safety) and ATB (security and facilitation) in providing support to the multidisciplinary group, as well as close coordination between the Secretariat and the ANC, the AVSECP and the FALP, to the maximum extent possible, regarding those bodies' review of the group's reports. The report on the outcomes of the group's first meeting would be presented by the Secretary General for the Council's consideration later in the current (211th) session, following a review by the ANC, the AVSECP and the FALP. The President would decide whether any comments thereon received from the said two panels would be presented to the Council directly or through the ATC.

90. The President suggested that the Secretariat work expeditiously with the multidisciplinary group with the aim of possibly having its final report presented for the Council's consideration during the next (212th) session, at which time the latter would determine the extent to which the issue had been resolved and what further action, if any, was required.

91. In assuring the Council that the Secretariat would expedite the process and mobilize the human and financial resources required to deal with this matter as a priority, the Secretary General confirmed that work to prepare the group's draft TOR would commence immediately, with a view to the TOR's finalization at the group's first meeting, a report on which would be presented to the Council later in the current session. It was noted that the Council would also be considering during this session the item *Review of the Report of AVSECP/28*, on the basis of C-WP/14593 Restricted presented by the Secretary General and related oral reports by the ANC and the Committee on Unlawful Interference (UIC).

**Any other business****Subject No. 50: Questions relating to the environment****Appointment of new Members on the Committee on Aviation Environmental Protection (CAEP)**

92. In the absence of comments by 11 April 2017 and 24 April 2017 to his e-mail messages dated 30 March 2017 and 5 April 2017, respectively, the President, on behalf of the Council, has approved the nominations of: Mr. Curtis Holsclaw as the new CAEP member from the United States, to replace Dr. Lourdes Maurice with effect from 12 April 2017; and Mr. Daniel Ramos Longo as the new CAEP member from Brazil, to replace Mr. Alexandre Rodrigues Filizola with effect from 25 April 2017.

**Subject No. 6.3: Election of Chairmen and Members of subsidiary bodies of the Council****Appointment of an Alternate on the Air Navigation Commission (ANC)**

93. In the absence of comments by 21 April 2017 to the e-mail message from the President of the Council dated 19 April 2017, the Council has agreed to waive Rule 24 a) of the *Rules of Procedure for the Council* (Doc 7559) and to suspend that part of paragraph 1 of Appendix D thereof which reads “and, unless waived by unanimous agreement of the Members represented at the meeting, shall be by secret ballot” and has appointed Mr. Mark Reeves, nominated by the United States, to succeed Mr. Dan Vaca as Alternate to Mr. William Voss on the ANC with effect from 1 April 2017.

**Appointment of an Alternate on the Air Transport Committee (ATC), the Finance Committee (FIC) and the Working Group on Governance and Efficiency (WGGE)**

94. In the absence of comments by 1 May 2017 to his e-mail message dated 26 April 2017, the President, on behalf of the Council, has appointed Mr. Subramanian Swaminathan, Technical Expert, Delegation of India, as Alternate to Mr. Alok Shekhar, the Representative of India, on the ATC and the FIC in accordance with paragraph 3 of the Special Provisions applicable to the ATC and paragraph 6 of the Special Provisions applicable to the JSC, FIC, HRC, UIC and TCC of the *Rules of Procedure for Standing Committees of the Council* (Doc 8146), and has appointed Mr. Swaminathan as Alternate to Mr. Shekhar on the WGGE, with immediate effect.

**Subject No. 10: ICAO relations with the United Nations, the Specialized Agencies and other international organizations****Request from the European Union (EU) to participate as Observer in closed meetings of the Council on aviation security**

95. In the absence of comments by 4 May 2017 to the e-mail message from the President of the Council dated 25 April 2017, and in accordance with Rule 32 a) of the *Rules of Procedure for the Council* (Doc 7559), Mr. Christopher Ross, Head of Office, Office of the European Union (EU) in Montréal, has been invited to participate as Observer on behalf of the EU during the 211th Session of the Council's consideration, in closed session, of all items related to aviation security.

**Meeting schedule for the current (211th) session of the Council**

96. It was noted that subsequent to the issuance of PRES OBA/2626 Revised dated 26 April 2017 setting forth the amended meeting schedule for the current (211th) Council session, it was decided

to give an informal briefing to the Council on the *Status of preparatory activities for the implementation of the Carbon Offsetting and Reduction Scheme for International Aviation (CORSA)* on 8 June 2017 at 1430 hours. A President's memorandum providing details thereon would be issued shortly, as would a revised meeting schedule.

**Subject No. 14: Subjects relating to air navigation**

**C-DEC 210/5 and State letter SMM 1 /4 -17/51 dated 5 May 2017 relating to the discontinuation of the Conflict Zone Information Repository (CZIR)**

97. The Representative of Mexico recalled that on 26 April 2017 he had submitted a proposal to amend paragraph 5 e) of draft C-DEC 210/5, which had been circulated in all language versions to Representatives for comment under cover of an e-mail dated 17 March 2017, as follows: that a new second sentence be inserted reading "The information provided by Member States, through their links, should be related entirely to risks to civil aviation arising from conflict zones.". He had cautioned that there could be potential political ramifications if such links did not refer exclusively to risks to civil aviation operations arising from conflict zones. The proposal had been supported by 22 Representatives, which constituted a majority of Council Members. While not wishing to re-open the debate on this matter, the Representative of Mexico considered that his proposal should be taken on board for further consideration. He therefore suggested that a corresponding supplementary item be added to the Council's Work Programme for the current session in accordance with Rule 24 a) of *Rules of Procedure for the Council* (Doc 7559) and that it be considered in conjunction with the Secretary General's *Progress report on the ICAO web library of risk-based information* (C-WP/14611). The Representatives of Cuba, Egypt and the Russian Federation endorsed this suggestion.

98. Indicating that he did likewise did not wish the Council to re-open the debate, the President of the Council indicated that as the said proposal to amend paragraph 5 e) of draft C-DEC 210/5 had been received after the expiry of the three-working day timeframe for comments provided for in Rule 57 a) of the said Rules of Procedure (Doc 7559), it could not be accommodated. He highlighted that Representatives will have the opportunity to raise any concerns they might have regarding the web library when the Council considered above-mentioned C-WP/14611 later in the current session. This was noted.

99. The Representative of Mexico encouraged the Secretariat to comply with the five-working day timeframe for the circulation of draft C-DECs to Representatives for comments also set forth in Rule 57 a), which it seemed had not been observed on a number of occasions. He pointed out that if the said timeframes specified in Rule 57 a) of the Rules of Procedure were inadequate, then they should be reviewed and revised so as to enhance efficiency and effectiveness and enable Representatives to provide their comments and suggested amendments. This was noted.

100. In providing clarifications with respect to State letter SMM 1 /4-17/51 dated 5 May 2017, D/ANB indicated that it had been issued in order to be able to enact the Council's decision C-DEC 210/5 and remove the CZIR from the ICAO public website. That had been accomplished over the past weekend, 6-7 May 2017. He underscored that the existing and currently published website did not include an ICAO repository for conflict zones; rather, it included a prospective library of links to Member States' own sources of aeronautical information related to risks to civil aviation operations over or near conflict zones, as described in the said State letter. D/ANB further emphasized that all of the links which had previously existed had been removed and at the present time there were no links on the website. The Secretariat was awaiting nominations by Member States for their links before taking action to restore the previously-existing links.

101. The Representative of Cuba highlighted the non-correspondence of the text circulated to Member States in State letter SMM 1 /4-17/51 dated 5 May 2017 with the text of the Council-approved C-DEC 210/5, specifically the use of the expression “aeronautical information related to risks to civil aviation operations over or near conflict zones”, which was not consistent with the expression “risk-based information” concerning operations over or near conflict zones used in Council-approved C-DEC 210/5, paragraph 5 c), d) and e). In averring that they did not have the same meaning, she emphasized that the use of two different expressions could cause confusion, particularly for those Member States which were not themselves represented on the Council, although the latter represented all ICAO Member States. The Representative of Cuba indicated that her State’s views on this matter would be explained in its reply to the Secretary General’s said State letter and during the Council’s consideration of the *Progress report on the ICAO web library of risk-based information* (C-WP/14611) later in the current session.

102. D/ANB’s above clarifications were noted, as was the point made by the Representative of Mexico regarding the potential political ramifications if the said links did not refer exclusively to risks to civil aviation operations arising from conflict zones, which would be taken into account by the Secretariat in considering proposed links for posting in the web library.

### **President’s missions during the recess**

103. In informing the Council of his planned missions during the upcoming recess, the President indicated that he would be in Kyrgyzstan from 18-21 May 2017, Ukraine from 21-25 May 2017 and Georgia from 25-27 May 2017 for bilateral meetings with senior government officials. While in Ukraine, the President would be presented with an Honorary Doctorate from his Alma Mater, the National Aviation University of Ukraine. This was noted.

104. The meeting adjourned at 1310 hours.

**COUNCIL — 211TH SESSION****SUMMARY MINUTES OF THE SECOND MEETING****(THE COUNCIL CHAMBER, MONDAY, 5 JUNE 2017, AT 1430 HOURS)****OPEN MEETING**

First Vice-President of the Council: Miss A. Alhameli, Representative of the United Arab Emirates

Secretary: Dr. Fang Liu, Secretary General

**PRESENT:**

Algeria	— Mr. A.D. Mesroua	Malaysia	— Mr. Y.-H. Lim
Argentina	— Mr. G.E. Ainchil	Mexico	— Mr. D. Méndez Mayora
Australia	— Mr. S. Lucas	Nigeria	— Mr. M.S. Nuhu
Brazil	— Mrs. M.G. Valente da Costa	Panama	— Mr. G.S. Oller
Cabo Verde	— Mr. C. Monteiro	Republic of Korea	— Mr. J. Hur
Canada	— Mr. M. Pagé	Russian Federation	— Mr. A.A. Novgorodov
China	— Mr. Shengjun Yang	Saudi Arabia	— Mr. S.A.R. Hashem
Colombia	— Mr. A. Muñoz Gómez	Singapore	— Mr. T.C. Ng
Congo	— Mr. R.M. Ondzotto	South Africa	— Mr. M.D.T. Peege
Cuba	— Mrs. M. Crespo Frasquieri	Spain	— Mr. V.M. Aguado
Ecuador	— Mr. I. Arellano	Sweden	— Ms. H. Jansson Saxe
Egypt	— Mr. A. Khedr	Turkey	— Mr. A.R. Çolak
France	— Mr. P. Bertoux	United Arab Emirates	— Mr. M. Salem (Alt.)
Germany	— Mr. U. Schwierczinski	United Kingdom	— Mr. M. Rodmell
India	— Mr. A. Shekhar	United Republic of Tanzania	— Mr. R.W. Bokango
Ireland	— Mrs. A. Smith Floch	United States	— Mr. S. Kotis (Alt.)
Italy	— Mr. M.R. Rusconi	Uruguay	— Mr. D. Amado (Alt.)
Japan	— Mr. S. Matsui		

**ALSO PRESENT:**

Dr. N. Luongo (Alt.)	— Argentina
Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. N. Castro da Silva (Alt.)	— Brazil
Mr. R. da Rosa Costa (Alt.)	— Brazil
Mr. D.A. Tavares Taufner (Alt.)	— Brazil
Mr. P. Langlais (Alt.)	— Canada
Mr. Chunyu Ding (Alt.)	— China
Mr. M. Millefert (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mr. K.A. Ismail (Alt.)	— Malaysia
Mrs. D. Valle Álvarez (Alt.)	— Mexico
Mr. S. Kim (Alt.)	— Republic of Korea
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. M.S. Habib (Alt.)	— Saudi Arabia
Mr. S. Vuokila (Alt.)	— Sweden
Mr. Ö. Doğrukol (Alt.)	— Turkey
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mr. J. Méndez (Alt.)	— Uruguay

**SECRETARIAT:**

Mrs. J. Yan	— C/OSG
Mr. V. Smith	— D/ADB
Mr. R. Bhalla	— C/FIN
Mr. M. Belayneh	— C/GAT
Mr. R. Macfarlane	— DD/AN
Mr. T. Hasegawa	— DD/ECD
Mrs. J. Zorbas	— FIN
Mr. A. Larcos	— ACC
Mrs. C. Schultheiss	— Précis-writer

Representatives to ICAO

Bolivia (Plurinational State of)

Chile

Cyprus

Ghana

Greece

Lebanon

Libya

Paraguay

Venezuela (Bolivarian Republic of)

Airports Council International (ACI)

European Union (EU)

## **World Environment Day**

1. A statement was delivered by the First Vice-President on the occasion of World Environment Day 2017. She noted the importance of World Environment Day, held every year since it had been established by the United Nations in 1972 and celebrated this year on 5 June. She also highlighted the significance of this annual commemoration through which the UN stimulates worldwide awareness and encourages related action on behalf of global citizens and stakeholders.

2. The theme for 2017, *Connecting people to nature* invited citizens to re-connect with the earth's ecology and appreciate how intimately we depend on it. The year 2017 was designated by the UN General Assembly as the *International Year of Sustainable Tourism for Development* emphasizing how transport, eco-tourism and national parks are closely inter-related. Subsequent to the Council's special visit to the State of Ecuador, the importance of fully integrating air transport facilities and adhering to clear environmental protection policies and practices became evident while the visit to the Galapagos Islands underscored the importance of achieving a balance between preservation priorities and the positive economic and social impacts of tourism.

3. Lastly, the First Vice-President extended, on behalf of all Council Representatives, her sincere thanks to the Delegation of Canada for serving as global host country for World Environment Day as well as to the ICAO Environment Branch for its participation in hosting the reception in celebration of this day.

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

### **Schedule for consideration of items during the 211th session**

4. The Council noted the meeting schedule for the 211th Session presented in the President's memorandum PRES OBA/2626 (Revision No. 2), dated 9 May 2017, on the understanding that an additional informal briefing on the status of Preparatory Activities for the Implementation of the Carbon Offsetting and Reduction Scheme for International Aviation (CORSA), would be held on 8 June 2017 at 1430 hours. The Council also noted the schedule for consideration of items during the 211th Session as set forth in the President's memorandum PRES OBA/2628, dated 12 May 2017.

## **Subject No. 17.1: Joint Financing Agreement with Iceland**

## **Subject No. 17.5: Joint Financing Agreement with Denmark**

### **Recommendations of the Joint Support Committee Related to Items under the Danish and Icelandic Joint Financing Agreements Reviewed during the 211th Session.**

5. The Council considered this item on the basis of C-WP/14596, which provided the Council with an overview of the items under the Danish and Icelandic Joint Financing Agreements (JFAs) that were considered by the Joint Support Committee (JSC) during the 211th Session.

6. The working paper was presented by the Chairperson of the Joint Support Committee, (Representative of Singapore). He noted that working papers JS-WP/2045 and JS-WP/2046 had been reviewed at the first meeting of the JSC. The Secretary of the Committee had presented ten-year historical data on service provider costs, charges, crossings, assessment and the ICAO administrative fee. Key performance indicators on safety, service level, cost efficiency, productivity and equipment performance were reviewed and the KPI status updated.

7. The Committee had also noted that crossings within the region had increased tremendously in recent years and recommended that the Secretariat be instructed to invite non-Contracting States with a high level of crossings within the North Atlantic Region to become parties to the Joint Financing Agreements.



8. The Chairperson also highlighted the fact that no meetings in the joint support field are planned for the year 2018 nor are any currently planned for 2019 and 2020.

9. Responding to the enquiry of the Representative of South Africa, the Deputy Director, Economic Development (DD/ECD) advised that Turkey and the United Arab Emirates were among the non-contracting States with high crossing numbers.

10. The Representative of Turkey informed the Council that his State had already initiated the process to join the Agreements and that it was a matter of finalizing the administrative arrangements.

11. Following consideration, the Council:

- a) noted that in undertaking the annual review of the programme of meetings for planning and budgetary purposes, no meetings were being planned for the year 2018 in the joint support field and likewise no meetings were envisaged for the years 2019 and 2020;
- b) requested the Secretariat to invite non-Contracting States of the Joint Financing Agreements (JFAs) with a high level of crossings within the North Atlantic region to become parties to the JFAs.

**Subject: 18.1 Annual Budget**

**Subject: 18.2 Transfers from one Major Programme of the budget to another**

#### **Financial Year 2016 – Report on the Carry-Over**

12. The Council considered this item on the basis of information paper C-WP/14613, which provided the status of authorized appropriation of the Regular Budget for the financial year 2016 and which was based on audited expenditure for the year. An oral report thereon from the Finance Committee was also presented for consideration.

13. The Chairperson of the Finance Committee (FIC) (Representative of the United Kingdom) noted that as this was an information paper, no action was required by Council. During its consideration of the working paper at its meeting on 2 May 2017, the Finance Committee had noted that under Financial Regulation 5.6, the carry-over was left to the discretion of the Secretary General. However, as suggested by the external auditors, from next year onwards, the Secretariat would provide a breakdown on the total amounts to be carried over and for which activities they would be used. The Committee had also noted that the carry-over statement had been audited.

14. Endorsing the Oral Report and speaking as a member of the Finance Committee, the Representative of Spain remarked that the references in the oral report relating to the questions that had been raised in the Committee concerning the use of the carry-over appeared to suggest that this line of questioning had not been in the spirit of Financial Regulation 5.6. In this connection, the Representative indicated that he was of a rather different view in that it was certainly within the purview of Council to request such information from the Secretariat. However, as recommended by the External Auditor, the breakdown of the information on this item would henceforth be provided to Council, which was something that the Representative welcomed.

15. In response to the preceding intervention, the Chief, Finance Branch (C/FIN), clarified that the comment that had appeared in the oral report in relation to the carry-over and Financial Regulation 5.6, sought only to address the suggestion that Council should review how carry-over amounts were to be utilized. In any case,

the Secretariat would be implementing the recommendation of the External Auditor and the relevant information would be provided to Council.

16. While thanking C/FIN for the clarification, the Representative of Spain indicated that he would have nevertheless preferred that this comment had been expressed differently in the Oral Report.

17. In concluding its consideration on this item, the Council noted that information concerning actions taken on transfers of appropriations between Strategic Objectives and Supporting Implementation Strategies and the carry-over of appropriations would be provided to the next ordinary session of the Assembly, as required under Financial Regulation 5.9.

18. It was further noted that, as suggested by the External Auditors, from next year onwards, the Secretariat would provide information to the Council on the total amounts to be carried-over for deferred activities; for outstanding commitments; and for existing programmes and new initiatives that are mission-critical and /or mandatory in nature.

**Subject: 18.4 Contributions by Member States and Methods of Assessment**  
**Proposal for Settlement of Arrears of Contributions by Turkmenistan**  
**Proposal for Settlement of Arrears of Contributions by Grenada**

19. The Council agreed to consider these two items together on the basis of C-WP/14631 (Turkmenistan) and C-WP/14635 (Grenada). An oral report thereon from the Finance Committee was also presented for consideration.

20. The Chairperson of the Finance Committee (FIC) (Representative of the United Kingdom) recalled that under Assembly resolution A39-31, operative clause 3, the Council had been authorized to conclude agreements with States whose contributions were in arrears for three years or more. Both States had had their voting rights suspended at the 39th Session of the Assembly. The Secretary General had duly informed each State, in writing, that they were at risk of losing their right to vote and provided payment options. The Chairperson stressed that the Secretariat seizes every opportunity to communicate with States in arrears, including via electronic monthly statements.

21. With regard to the agreements being concluded on a ten-year basis, the Secretariat noted that Assembly Resolution A39-31 operative clause 4b) allowed for ten-year agreements and in special cases agreements with a maximum duration of 20 years. Both Grenada and Turkmenistan had indicated that they wished to settle their balance over a period of ten years.

22. Following consideration, the Council:

- a) approved the proposal by Turkmenistan for the settlement of its arrears of contributions over a period of ten years as outlined in paragraph 2.1 of C-WP/14631 and restore Turkmenistan's voting rights in accordance with Assembly Resolution A39-31, Operative clause 9; and
- b) approved the proposal by Grenada for the settlement of its arrears of contributions over a period of ten years as outlined in paragraph 2.1 of C-WP/14635 and restore Grenada's voting rights in accordance with Assembly Resolutions A39-31, Operative clause 9.

**Subject No. 42: Technical Cooperation****Report on Technical Cooperation Programme Development for 2016 and Update of Administrative and Operational Services Cost (AOSC) Income and Expenditure for the Year 2017**

23. The Council considered this item on the basis of information paper C-WP/14597, which presented a report on the financial and operational performance results of the Technical Cooperation Programme for the year ending 31 December 2016. A joint oral report from the Finance Committee and the Technical Cooperation Committee was also presented for consideration.

24. The Oral Report was presented by the Chairperson of the Finance Committee (Representative of United Kingdom) who recalled that C-WP/14597 had been considered during the joint meeting of the FIC and the TCC. The working paper presented audited financial and operational results of the Technical Cooperation Programme (TCP) for the period 1 January to 31 December 2016, as well as an update of the AOSC Fund budgetary estimates for 2017. In 2016, 138 States and 10 organizations had benefitted from the Technical Cooperation Bureau's (TCB) services. A discrepancy in implementation volume between geographical regions was underscored, as the Americas and Africa regions continued to show higher implementation results than the Asia Pacific, Europe and Middle East regions. However, it was also noted that ultimately, it was directly dependent on the States' priorities regarding their Civil Aviation Programmes and their necessity to avail themselves of the services provided by the TCB. The Committees were reassured of TCB's continued efforts to promote its services equally to all regions.

25. The Committees had noted that the AOSC positive results in the last five years had been achieved while maintaining the administrative fees charged to technical cooperation projects at a minimum (approximately 6 per cent in 2016 versus 7 per cent charged by the Regular Programme to activities funded by the ICAO voluntary funds). Moreover, as approved by the Assembly and as part of the AOSC triennial budget for 2017-2019, a yearly amount of CAD 210,000 (or CAD 30,000 each) would be allocated to ICAO's regional offices for quality assurance services and other support to technical cooperation projects.

26. The necessity to clarify the terminology in the working paper in order to distinguish concepts such as "programme implementation" and "total programme" was also highlighted as this would improve future reporting. The Committees also called for further segregation by geographical region in the data presented in Table 3 of the working paper to facilitate further analysis. While noting that a decision had been made in the last Council session that a re-categorization of the Americas region into North and South America was not necessary (C-DEC 210/3), two members suggested that the Council revisit the issue.

27. Considering the strength of the AOSC's recent results, a member of the Committee had reiterated the need for establishing a ceiling for the accumulated reserve fund. This issue had already been discussed at length in the previous Council session and the Committees cautioned that due to the volatility of the different economies and the potential risks to the AOSC fund, it was necessary to retain a sufficient reserve. Moreover, it had been decided that Council would only revisit this subject in the event that the financial position changed significantly (C-DEC210/6).

28. Expressing his approval of the working paper as a member of the FIC, the Representative of Mexico underscored the importance of tracking allocations to various regions and the necessity to reallocate unutilized funds.

29. The Representative of Saudi Arabia suggested that in order to ensure transparency, there should be a distinction between the amounts reported for North and South America and with regard to the question of whether a ceiling should be established for the Accumulated Reserve Fund (ARF), he observed that for many

States it would not be acceptable for surpluses generated by projects in developing countries to be used for the Regular Programme.

30. Responding to the requests made in previous interventions by the Representatives of Mexico and Saudi Arabia, the Director, Technical Cooperation Bureau (D/TCB) confirmed that with regard to tracking the amounts allocated, this type of reporting could be implemented by next year. With regard to differentiating the amounts between the regions of North and South America, he observed that this combined area currently incorporated North, Central and South America as well as the Caribbean Region. Therefore, it seemed to him that as there were no projects in Canada or the United States, the segregation exercise would have no benefit since all the TCB projects were in Latin America. During C-210 it had been agreed that should there be any project in Canada or the United States, it would be reported separately. He also underscored that the Accumulated Reserve Fund (ARF) was not a surplus per se. At the end of the year if the results were positive, this was considered a surplus; if negative, a deficit. The ARF was created to cope with deficits. Although there had been surpluses during the past five years, the situation could easily change. In the event that no funds would be available in the ARF, any deficit would have to be covered by the Regular Programme Budget.

31. Expressing his support for the proposal put forward by the Representative of Mexico with regard to the tracking of allocations to the regions and D/TCB's confirmation that this could be done, the Representative of Spain also referred to a previous intervention by the Representative of Saudi Arabia with regard to the need to establish a ceiling for the ARF. Although this could be considered by Council, he suggested proceeding with caution based on the crises that had been faced in the past. The Representative also underscored the necessity of aligning terminology as well as clarifying accounting data in all documentation presented to the Council. He noted for example that data that had presented to the FIC earlier that day indicated that the terminology contained in the Technical Cooperation report had not been consistent with the report of the External Auditor.

32. Recalling that the technical cooperation projects had experienced deficits for a period of seven consecutive years, the Representative of Colombia agreed that it was important to have a reserve fund to cover for such cases of shortfall. However, he questioned whether the surplus was not in fact the accumulation of administrative fees charged to various projects and whether it would instead be possible to utilize the funds and increase the type of projects offered by TCB, since the ultimate purpose was to facilitate SARP implementation rather than the accumulation of financial reserves.

33. Addressing the proposal put forward by the Representative of Colombia, the Director, Technical Cooperation Bureau (D/TCB), recalled that the practice of cross-financing and payments between the Regular Budget and the AOSC fund had been authorized by the Assembly for the current triennium. Any change to this would require the approval of the Assembly in order to be reflected in the next budget.

34. With regard to the remarks on the accounting data highlighted by the Representative of Spain, the Chief, Finance Branch (C/FIN) noted that this was indeed the case as TCB reported implementation in two different ways; firstly, in the case where TCB acted on behalf of a State and the expenditure was met by the State, the expenditure did not appear in the financial records and implementation was considered upon the issuance of the purchase order by the State. Secondly, there was the case of progressive payment: upon the issuance of the purchase order, TCB would consider this project as implemented whereas FIN would only report the figures once the payment of the purchase order had been made. Notwithstanding this, he confirmed that reconciliation of the figures could easily be effected.

35. In sharing the views expressed in previous interventions, the Representative of Cuba also expressed her support to the Representative of Mexico with regard to the tracking of allocations to the regions and the necessity to reallocate unutilized funds as well as D/TCB's engagement to update the TCC regularly on the use of the funds. Referring to the possibility evoked by C/FIN of implementing dashboards to present the accounting information, thus eliminating the ambiguity of the concepts of total programme and programme

implementation, she underscored the importance of a reporting system that would be easily understood by all. She also supported the proposal of moving forward and establishing a ceiling for the reserve fund, as this issue had often been deferred citing reasons of global economy. In addition to the assessments contributed to the Regular Budget, developing and least developed countries also signed onto technical cooperation programmes and had certain expectations in that regard. It would be only logical therefore that they their funds should be reinvested into other projects and initiatives. Speaking not only as Representative of Cuba but also as Chair of the TCC, she suggested that the Secretariat be asked to address this issue at the next committee meeting. Finally, with regard to the segregation of information between North and South America, she proposed that the Representative of Saudi Arabia discuss this matter with the Latin American representatives in order to reach an understanding on how best to proceed.

36. In also endorsing the views expressed on the separation of data according to region, the Representative of South Africa suggested that as presented, the figures seemed to favour one region over the others and this was not in line with the NCLB initiative.

37. Referring to the request to report the information on the Americas separately, the Representative of Argentina noted that while this could easily be achieved in the future, the reported figures included monies contributed by countries participating in projects and thus explained the perceived differences between regions.

38. The Representative of Saudi Arabia, agreed that the Secretariat had an obligation to provide any information requested by Council. For the sake of transparency he suggested it would be useful to add a footnote to the documentation indicating the amount for the projects implemented in North America so as to make it clear that all the funds expended on projects in the region had in fact been expended in Latin America. He also agreed with the idea of imposing a ceiling on the reserve fund and suggested instead using the funds to provide assistance to developing countries or possibly waiving the administrative fees. In agreement with setting aside an amount to protect against unforeseen future events, he nonetheless supported setting a maximum amount.

39. Addressing questions posed by the First Vice-President (Representative of the United Arab Emirates), the Chairperson, FIC (Representative of the United Kingdom) confirmed that the addition of a footnote to indicate the difference on expenditure on projects implemented in the Americas region would represent a simple solution to the concerns raised. However, on the question of the reserve fund he recalled that extensive discussions had taken place on this matter in previous sessions both in the Committee and in Council and that it would be prudent to wait before re-opening this issue. Although the surplus could be attributed in part to improved financial management, it was mainly a result of currency fluctuations. Matters could easily go the other way and, in the event a ceiling was established, would result in a liability that would need to be addressed by the regular budget. He also remarked that the suggested ceiling amount of 2 to 3 million dollars had in the past represented one year's deficit and left very little room to manoeuvre. Only in the event the surplus would be created as a result of action of the Organization would there be a reason to reopen the issue. Since a decision on this matter had been reached at the last Council session, he suggested waiting at least one year and even two before re-examining the issue.

40. In response to the First Vice-President's question as to whether any regulations or policies existed governing the reserve fund and a ceiling, the Chief, Finance Branch confirmed that while there was no policy per se, there were regulations that applied to the AOSC and the reserve fund. He cited as an example the Assembly Resolution that outlined the applicable action to be taken in the event of a deficit in the AOSC fund. The efficiency fund was created as a result of a Council decision as was the special reserve fund that was used to repay the Regular Budget for overhead charges. However, he also reminded Council that in the event there would be a deficit followed by a decision to increase the overhead recovery rate, it would take the AOSC at least two years to recover the overhead recovery rate. Projects already in progress would remain at the old rate while the new rate would be applied to new projects only. Therefore, it would take at least two to three years before the AOSC fund would once again generate a surplus.

41. Agreeing with the comments made in the previous interventions by the Representatives of Cuba and Argentina, the Representative of Uruguay recalled that the TCB projects were in great part funded by States and not funded with ICAO funds. Using his country as an example, he remarked on the effort being made by Uruguay to secure the funding necessary to undertake TCB projects and how vital these projects were to address the concerns faced by his country. He extended an invitation to his Council colleagues to discuss the efforts being made in his region directly with the GRULAC group. The developing Latin American countries as well as the Caribbean States were undertaking all efforts to improve and implement SARPs effectively.

42. As a member of the FIC, the Representative of Germany expressed his support of the report of the FIC and his agreement with the remarks of C/FIN in explanation of why the current situation existed vis-a-vis any proposed ceiling of the reserve fund. The Representative favoured retaining the current arrangement. Recalling that the AOSC funds represented charges paid by States on projects and that it was up to ICAO to cover costs that could potentially end in a surplus or a deficit, he did not see the logic of refunding States in the event there was a surplus but using ICAO funds in the event there was a deficit. This issue had been discussed previously at length on many occasions with decisions taken so he would not support re-opening the matter again at this point.

43. In also voicing support to the comments expressed by the Representative of Germany in the previous intervention, the Representative of France strongly urged letting some time pass to see whether the decision taken by Council had been effective in order to then assess the need for further action.

44. The Representative of Egypt agreed with the proposal for a footnote to be incorporated in future reports to the effect that no projects in the Americas region were being implemented in Canada and the United States. Bearing in mind that the funds in the reserve fund belonged to developing States, he also suggested instructing the TCB and Finance to prepare a proposal on the options available for a ceiling and to report back to Council on this matter.

45. The Representative of Australia recalled that according to C-DEC 210/6 the subject of the ceiling would be reopened only in the event that there had been a change in the financial position and enquired whether this was now the case.

46. Confirming that there had been no significant change in the financial situation of the AOSC that would warrant reopening the issue and, in reply to the suggestion that the Secretariat prepare a study on the impact of the reserve fund, the Director, Technical Cooperation Bureau, noted that such studies took time and were a drain on resources and proposed instead undertaking such a project only if and when the financial situation of the AOSC fund would change.

47. The First Vice-President then suggested that one option could be for the Secretariat to provide to the Council whatever information was required as per the existing Assembly Resolutions, Financial Regulations or policy documents in this regard. This would go some way to address the concerns of Council Representatives and at the same time avoid imposing an in-depth study on the Secretariat at this time.

48. In response to the proposal, Chairperson of the Finance Committee recalled that the Secretariat had at the last session, prepared a working paper that contained detailed information and enquired whether there would be any use in carrying out the same work again. He also underscored the importance of maintaining an emphasis on the need to only re-examine this issue in the event of a significant change occurring in the financial situation. This would mean that this would be the primary reason to reopen the issue.

49. The Representative of Mexico suggested that consideration could also be given to including this issue as an agenda item for the Assembly session in 2019.

50. Enquiring on the financial resources necessary in order to complete the study discussed in previous interventions, the Representative of Germany questioned the wisdom of diverting valuable resources from TCB projects to carry out any such study.

51. Echoing the views expressed in previous interventions, the Representative of Turkey agreed that since there had been no significant change in the financial situation, there was at present no need to reopen this issue.

52. The Representative of Singapore suggested that reviewing the question of the ceiling for the accumulated reserve fund could be useful but that it should be revisited in the next triennium only. He also proposed that the Secretariat put together a package of information that included all the existing references to the AOSC fund, whether they were in Assembly Resolutions or Financial Regulations.

53. Following consideration, the Council:

- a) requested that future reports on Technical Cooperation Programme development include additional precision with respect to the terminology as indicated in paragraph 5 of the oral report;
- b) requested that future reports consider a breakdown into geographical regions of the Programme implementation results by component, commencing with the year 2017;
- c) notwithstanding a previous decision of the Council against re-categorizing the Americas region into two separate regions of “North America” and “South America” (C-DEC 210/3 refers), agreed that the report at Table 2 of C-WP/14597 would henceforth incorporate a footnote to indicate if any projects had been implemented in North America (Canada and the United States);
- d) requested that in relation to the funds being allocated to the seven ICAO Regional Offices on a yearly basis for quality assurance services and other support technical cooperation projects, that the outcomes of projects undertaken as a result would be evaluated with the requirement that those evaluation reports would be made available to Council Representatives in the 212th Session; and
- e) requested that consideration be given to presenting to the Council further detailed information in relation to the technical cooperation projects implemented by region, as indicated in Table 2 of C-WP/ 14597, in the form of introducing online dashboards during the 212th Session so that the Council would be able to better access such information.

54. In relation to the issue of whether or not to establish a ceiling for the AOSC Accumulated Reserve Fund, the Council re-affirmed the previous decision it had taken in this regard (C-DEC 210/6 refers), whereby it was agreed that the Council could, at any time it chose in the future, re-consider the subject of establishing a ceiling in the event that the financial position significantly changed, bearing in mind that the approval of the Assembly would be required for the establishment of any such ceiling. In this regard, the Secretariat was requested to circulate to Representatives background information that provided the overall policy context for this subject as referenced in related documentation, including, inter alia, relevant Assembly Resolutions and provisions of Financial Regulations.

**Subject No. 42: Technical Cooperation**

**Report on the Mechanisms and Activities Implemented by the Technical Cooperation Bureau to Promote the Benefits of its Services**

55. The Council considered this item on the basis of information paper C-WP/14598, which provided information on the mechanisms and activities implemented by the Technical Cooperation Bureau to promote the benefits of its services and suggested improvements to its communication and public outreach strategy. An oral report thereon from the Technical Cooperation Committee was also presented for consideration.

56. The Oral report was presented by the Chairperson of the Technical Cooperation Committee (Representative of Cuba). She noted that the TCC considered C-WP/ 14598, which presented the mechanisms and activities implemented by the TCB to promote the benefits of its services, during its second meeting of the 211th Session. The Committee acknowledged that the TCB, throughout its history, had used every opportunity available to promote its value to States, service providers, donors, financial institutions and the private sector. Members recalled that technical cooperation projects were entrusted to the Bureau on the basis of priorities identified and financially supported by States and other entities seeking to benefit from the favourable and cost-effective conditions offered through the Technical Cooperation Programme, the strict neutrality, objectivity and transparency observed by the Bureau in all of its undertakings and the credibility it afforded to its clients. Despite the geographical imbalance, it was recognized that 72 per cent of ICAO Member States; approximately 138 countries, currently used TCB to implement projects.

57. The Committee also examined the aspect of State satisfaction with the TCB's services and recommended that a third-party customer satisfaction survey be conducted, in addition to a review by the Evaluation and Internal Audit Office (EAO) of selected projects implemented by TCB. The importance of the Regional Offices in the promotion of the Technical Cooperation Programme as well as in the recruitment and selection of TCB experts, particularly those nationals from their regions of accreditation, was also recognized. It was also recalled that the Regional Office Manual (ROM) Chapter V was currently being updated to better reflect the roles, responsibilities, processes of the Regional Offices related to quality assurance and the promotion of TCB services.

58. In order to attract a greater and more diverse number of clients, the Committee was informed that activities were planned including the second Global Aviation Symposium that would be held in Greece in October 2017, a CANSO-organized World ATM that had taken place in March in Madrid and another event for which the details had not yet been confirmed but that would target airport authorities and related stakeholders, such as concession operators.

59. The Chairperson also informed the Council that the Committee had agreed that a promotional package would be prepared by the TCB and distributed to all Representatives on the Council and Representatives to ICAO to assist in promoting the benefits of the TCB's services in the States and Regions they represent.

60. In conclusion, the Committee commended TCB's efforts, in spite of the various external constraints, to develop and implement outreach mechanisms and undertake activities to increase the awareness amongst States of the possibilities and advantages of ICAO's Technical Cooperation Programme. The need to evaluate the possible reduction of administrative costs charged to projects with a view to encouraging greater participation of least developed States and the strengthening of TCB's capacities to support the growing number of projects, were identified as future challenges for TCB.

61. Thanking the TCC for its report, the Representative of Mexico suggested that the promotional material referred to should also be sent to regional civil aviation authorities and included in ICAO's publications on the subject.



62. In also thanking the Chairperson of the TCC for the thorough report, the Representative of Saudi Arabia noted that during the AFI Aviation Week Meeting held in Botswana, he had observed a willingness on the part of organizations such as the FAA and Airbus to provide assistance to a number of African States. He noted that the Deputy Director of the TCB was also present at this meeting and had discussed ICAO efforts and training. What he found lacking however, was the dissemination of information on how assistance from the TCB can be obtained and optimized. Rather than have the States approach ICAO for assistance, he suggested it would be beneficial for ICAO to reach out to the States and propose projects. The TCB could also seek financial assistance from external sources in order to assist poor and developing countries to implement projects.

63. The Representative of the United Republic of Tanzania enquired as to whether the update of the ROM would be undertaken and/or impacted by the establishment of the new Strategic Planning, Coordination and Partnership Office (SPCP), which had recently created as part of the Office of the Secretary General. He specifically sought further information on when the updated manual would be ready.

64. The Director, Technical Cooperation Bureau (D/TCB) confirmed that the suggestion made by the Representative of Mexico, could be implemented. Already, the first issue of the periodical on the Technical Cooperation Programme had been circulated free of charge to all States and the second issue would shortly be distributed. While he had personally been unable to attend the AFI Week in Botswana, the TCB had been represented by the Deputy Director and two other officers who met bilaterally with a number of countries to promote TCB services. He agreed that the TCB should be an integral part of the AFI week and would suggest that a separate agenda item henceforth be devoted to the TCB. With regard to the ROM, it was expected that the first draft would be ready for consideration by the Secretary General by the end of June with a publication date expected at the end of July 2017.

65. Following consideration, the Council commended the Technical Cooperation Bureau (TCB) for its efforts, in spite of the various external constraints, to develop and implement outreach mechanisms and undertake activities to increase the awareness among States of the possibilities and advantages of the ICAO Technical Cooperation Programme for the implementation of their civil aviation programmes.

66. In relation to the promotional packages that would be prepared by the Secretariat and distributed to all Council Representatives, it was agreed that these packages would also be provided to regional civil aviation entities by way of assisting efforts to promote the benefits of TCB services in States and regions.

67. The Council also noted that future challenges included a need to evaluate the possible reduction of administrative costs charged to projects with a view to encouraging greater participation of least developed States in the Technical Cooperation Programme, while taking into account the need for strengthening the Bureau's administrative abilities to support the growing number of technical cooperation projects.

#### **Subject No. 14.3.8 Aviation Training**

##### **Pricing Policy for Global Aviation Training Activities**

68. The Council considered this item on the basis of C-WP/14600, which presented the Pricing Policy for the Global Aviation Training (GAT) activities. An oral report thereon from the Implementation, Strategy and Planning Group (ISPG), was also presented for consideration.

69. It was recalled that during the 210th Session of the Council, the ISPG presented an oral report on *Review of Issues Relating to the ICAO Aviation Training Policy*. In that report, the ISPG had indicated that a comprehensive Pricing Policy for GAT activities would be presented to the Council at the current (211th) session

to provide more transparency and visibility on training fees, and would be aligned to the cost-recovery nature of GAT activities.

70. The Oral Report was presented by the Chairperson of the Implementation, Strategy and Planning Group (C/ISPG), (Representative of Australia). The Group had considered C-WP 14600 on the Pricing Policy for Global Aviation Training at its first meeting during the 211th Session of the Council and had noted that the Pricing Policy had been formulated to give effect to the ICAO Civil Aviation Training Policy approved by Council. Under this Policy, the activities of the TRAINAIR PLUS Programme (TPP) operated on a cost-recovery basis and any surplus generated remained within and was used solely for TPP whereas any surpluses generated by other revenue-generating training activities could be used to support organizational priorities and Strategic Objectives. The ISPG endorsed this approach and the draft pricing policy in general, subject to a number of observations and amendments. Recognizing the principle that ICAO should not seek to generate revenue from Member States, the ISPG requested that the policy include a provision permitting price discrimination in favour of government trainees and organizations versus those originating from the private sector and that such pricing flexibility would be introduced via the regular and routine approval of pricing by the Secretary General, according to the Pricing Policy, and reviewed periodically. The ISPG also welcomed the establishment of a reserve fund that would ensure continuity of GAT activities, that would cover contingencies and that would support Member States through scholarships for trainees.

71. Secretariat Administrative Instructions would include the selection criteria for scholarships and the selection process would be undertaken jointly with Regional Offices. Moreover, the ISPG recommended flexibility in the scholarship scheme and the involvement of Regional offices, that would also allow recipients from States with EI rates above 60 per cent to be included in order to support capacity-building. The ISPG also noted that the number of scholarships had been projected to be two per State with EI rates below 60 per cent however, this rate could be increased based on the evolution of the reserve fund. The ISPG also sought advice on how to establish the reserve fund, based on the financial regulations of the Organization, and was advised that its establishment should be undertaken by the Finance Branch upon approval by Council. The ISPG noted the price benchmarking results and welcomed the indications that the pricing of ICAO training products and services are generally lower than those from comparable training providers. However, the Secretariat was urged to carry out this activity on a regular basis while enhancing the scope of training organizations benchmarked. Lastly, the revised version of the Pricing Policy incorporated the views expressed by the ISPG, which recommended that Council approve the revised ICAO Pricing Policy for GAT activities.

72. Expressing his thanks to the ISPG for the report, the Representative of Mexico stated that it was important to recall that, at the outset, ICAO's role in training was to help developing and least developed countries to create capacity and resolve certain deficiencies. While there had been a reference to price discrimination for States as opposed to the private sector in the Oral Report, the policy did not reflect this. He also proposed modifying a phrase in paragraph 1 of the proposed policy that would read, "the Secretary General in accordance with this policy" and he suggested removing the phrase in paragraph 3.1. that read "as well as support the Organization's priorities and strategic objectives". He also suggested that using the expression "reduced rate" in paragraph 3.1 could be misleading and suggested instead referring to "cost-recovery basis". Commenting on the fund, he agreed with the opinion expressed by the ISPG that the fund should be restricted to surpluses generated by courses given to the private sector. With regard to paragraph 5.1 d), he suggested deleting the phrase "contribution to support organizational priorities" as this did not align with the objective of providing training to States. With regard to programme support costs (paragraph 4.1 b)), he enquired whether the Secretariat would also consider these costs for training of staff under the Regular Programme or in a TCB programme.

73. The Representative of Germany asked for examples of "comparable training providers" referred to by the ISPG in its Oral Report and requested clarifications on the relationship between GAT training and private entities and whether GAT was in competition with private entities for the same customers.

74. In response to the preceding interventions, Manager, GAT (M/GAT) cited IATA, ACI, ENAC and the Singapore Aviation Academy as examples of comparable training providers. With regard to the question raised on the programme support costs, he clarified that for services rendered to and received from the Regular Programme and the Secretariat, an arrangement existed to report the costs of the services across all bureaus. On the creation of a reserve fund for surpluses generated, he observed that the policy did not distinguish between surpluses generated from the private sector and from developing countries. Since this aspect had not been considered during the preparation of the policy, he suggested it be referred back to the ISPG.

75. Thanking the ISPG for its report and expressing his support for the intervention by the Representative of Mexico, the Representative of the United Republic of Tanzania referred to the issue of the reserve fund and enquired why, if the purpose of the fund was to assist States with EI rates below 60 per cent had this point had been omitted from paragraphs 1.1 and 1.3.

76. In also thanking the ISPG for the report, the Representative of Spain expressed his appreciation for the flexibility shown by the ISPG in introducing most of the suggestions made by Representatives at their recent meeting. He noted that the procedure for TRAINAIR PLUS, as outlined in the Oral Report appeared to be different from the procedures for other activities undertaken by the Organization in that any surpluses generated by the TRAINAIR programme would remain and be used solely for TRAINAIR activities. If, as suggested by the Representative of Mexico, services provided to countries would be on cost-recovery basis, then any surplus generated would have to come from other activities. In the circumstances, the Representative suggested that a policy might need to be developed to define how these surpluses could be used. For example, surpluses generated from other activities could fund related activities under the various strategic objectives. He observed that there would be a need for such scenarios to be reflected in the text of the policy on training. The Representative also expressed his agreement with the Chairperson of the ISPG who had observed that the policy was more of a policy for price structure rather than a pricing policy wherein the prices would be determined by the Secretary General but only on the understanding that these would be reported to the Council.

77. M/GAT recalled that the changes with regard to the States with an EI rate below 60 per cent occurred during the discussions of the ISPG. He also highlighted that the Pricing Policy was aligned with the *ICAO Training Policy*, which clearly indicated that there were two sources of revenue; the TPP activities which were ring-fenced since the revenues were generated through membership fees, and the other through training activities outside of TPP. He informed the Council that GAT also conducted courses that were not per se part of the TRAINAIR PLUS Programme and that the fee structure included revenue to cover the resources of the GAT office. This would be an example cited in the previous ICAO training policy that specified that any surplus generated from such activities would be used to support organizational activities as opposed to the TPP membership fees that were ring-fenced. This was the main distinction.

78. To provide further clarification on the operating reserve for GAT, the Secretary General recalled that the purpose of the operating reserve was to cover contingencies and to ensure the continuity of the GAT operations. According to Financial Regulation 7.3 d) governing the ARGF fund, 25 per cent of GAT annual revenue was reserved for other ARGF activities. Should Council so decide, this percentage could be increased or decreased. TPP revenues were ring-fenced not only for the membership fees but for all other training activities contributing to the ARGF. In this was the surplus contributed to the Regular Programme budget activities and had been included in the Regular Budget of the current triennium. Furthermore, Council had approved and the Assembly endorsed using the 26 per cent increase in the ARGF fund for the Regular Budget. This amount included the contribution from training activities. The contribution of training activities to the ARGF fund assisted in meeting the targets of the ARGF contribution to the Regular Programme Activities.

79. Providing supplementary information as to why the reference to States with an EI rate below 60 per cent had been removed, the Chairperson, ISPG recalled that this was the sole criterion for ability to access the scholarship arrangement. During the group's discussions, it was highlighted that States, even those at the 60 per

cent level, would benefit from ICAO assistance and it was also observed that the input of the Regional Offices would be required in this regard. Since the mechanism for setting up the scholarship fund would be outlined in Administrative Instructions to be issued by the Secretariat, the ISPG judged that it would be better to have more flexibility. In short, the reason to remove the EI rate of less than 60 per cent was to ensure greater flexibility and increase access for the States.

80. The Representative of Singapore thanked the Chairperson of the ISPG for the work that had been carried out on the policy. However, he maintained that it was essential to remember the reasons behind the policy. First among these was the necessity to provide training packages for developing countries at the lowest possible cost. Although it might be difficult to reflect this in the policy, the underlying purpose of the policy dictated some pragmatic measures. For instance, cost-reduction could be achieved by limiting the number of persons sent on mission to carry out the training and reducing travel costs as much as possible. Likewise, streamlining overhead costs could also include eliminating the charges related to the incremental costs of training packages that already existed and were given by TPP members, instead of charging the overhead of all the contributors involved. Bulk pricing could also be implemented and, once all the costs had been recovered, discounts could be offered.

81. The Secretary General expressed her thanks to the Representative of Singapore for his suggestions aimed at reducing costs and she assured him that continuous efforts were being made in this direction. In 2016, the overhead costs had been reduced and, reducing the costs of courses to States was being envisaged, based on cost-recovery. She confirmed that additional information would be provided with regard to the financial regulations that governed the reserve fund. However, she also underscored that the revenue generated by training activities formed part of the overall revenue targets established for the ARGF Fund and that this revenue contributed to support regular programme activities and was included in the current budget. She also confirmed that the Administrative Instructions would be developed by the Secretariat as soon as practicable and posted on the website.

82. The Representative of Spain enquired whether there would be a policy proposed to Council regarding the fund or whether the policy attached to the Oral Report would serve to establish the fund. He also thanked the Secretary General for confirming that the pricing structure for the GAT activities that were to be set by the Secretary General in accordance with the relative administrative procedures would be reported to Council. With regard to the pricing policy itself, the Representative reiterated that it was important for any surpluses generated to be used to advance the strategic objectives, scholarships, promotions as well as capacity-building activities for developing countries.

83. Expressing appreciation to the Chairperson of the ISPG for the Report, the Representative of Malaysia stressed that the pricing policy would undoubtedly impact the scope of the TRAINAIR PLUS activities for ICAO. He also supported the changes proposed by the Representative of Mexico that he had indicated in his earlier intervention and recalled that in a previous Council session, the subject of cost-recovery had been thoroughly discussed. Referring to the scope in the Pricing Policy, he enquired whether there were other training activities in ICAO that were not part of GAT. Specifically, he referred to GASeP, GANP and even the implementation of CORSIA for which some States would require training in for capacity-building.

84. In response, M/GAT confirmed that the scope, as outlined in the pricing policy, was an exact copy of the text in the *ICAO Civil Aviation Training Policy*. This had been done intentionally so as to avoid introducing new concepts that would not be aligned with the *ICAO Civil Aviation Training Policy*. However, the scope of the pricing policy did not mean that there was no coverage of air navigation issues. There was always room for expansion in the coverage of the policy to take in other training areas such as aviation law, environment and facilitation, based on the support received.

85. Supplementing the comments made by M/GAT, the Secretary General confirmed that Financial Regulation paragraph 7.3 d) stipulated that the ARGF reserve fund included training activities, hence the suggestion for adding the footnote in the policy to indicate this. Since the reserve fund was already governed by a Financial Regulation, it would be reported to Council in the financial statements according to existing procedures. This would be reflected in the Administrative Instructions to be developed by the Secretariat and circulated to the Council.

86. After clarifying the wording changes to the policy that he had proposed in previous interventions, the Representative of Mexico emphasized that the ARGF activities should not be funded by training surpluses generated from States but rather, should be restricted to surpluses generated by the private sector and that a mechanism should exist to differentiate between the two. Otherwise, the references to supporting priorities and strategic objectives included in paragraphs 3.1 and 5.1 d) of the policy, should be deleted.

87. The Representative of Malaysia reiterated his concern that all training being offered by ICAO, and not necessarily only the TRAINAIR PLUS component, was now going to be offered on a cost-based basis since this would have implications for the States.

88. M/GAT confirmed that all GAT training activities were certainly on a cost-recover basis but that this was not inconsistent with the GAT mission to assist States in capacity-building especially with regard to human resource development. With this in mind, GAT was also intending to broaden the scope of courses being offered to States.

89. In approving the Pricing Policy as it had been revised and presented by the ISPG and appended to the oral report, the Council further agreed to the following additional amendments:

- a) paragraph 1.1 of the Policy would now read: “The Pricing Policy for the Global Aviation Training (GAT) activities complies with the ICAO Civil Aviation Training Policy and includes the pricing rationale, assumptions and fee structure. It also establishes a reserve fund and scholarship for trainees from States which in the context of capacity-building efforts within the *No Country Left Behind* initiative are endeavouring to either meet or maintain their Effective Implementation (EI) rates. Pricing for GAT activities is set by the Secretary General in accordance with this policy as well as relevant administrative procedures and is included in reporting to the Council”;
- b) paragraph 3.1 of the Policy would now read: “Based on its non-profit principle and the pricing mechanisms contained in the ICAO Civil Aviation Training Policy, pricing of training services and products are set to recover GAT staff costs, product development, and delivery costs.” with the originally proposed subsequent wording: “...as well as support the organization’s priorities and Strategic Objectives” to be deleted;
- c) paragraph 3.2 of the Policy would now read: “Pricing of ICAO training products and services for trainees and training organizations from civil aviation regulatory bodies will be cost-based.” with the originally proposed subsequent wording: “...and offered at a reduced rate compared to those from the private sector” to be deleted;
- d) paragraph 3.3 of the Policy in relation to the reserve fund, would now contain a footnote to indicate that: “The reserve fund is established in line with the relevant provisions set forth in paragraph 7.3 d) of *The ICAO Financial Regulations*” and in this regard, it was also understood that the Administrative Instructions that were currently being developed by the Secretariat in relation to the fund would contain additional information on how the fund

would operate and that this information would be made available to Council Representatives via the Council website; and

- e) paragraph 5.1 d) of the Policy would now read: “fees for the delivery of courses, conducted by ICAO or TRAINNAIR PLUS Members, are intended to cover the costs of course development and delivery, and any shortfall from TPP annual membership fees and contribution to the GAT reserve fund” with the originally proposed wording: “...to support organizational priorities” to be deleted.

**Subject: 14.3.8 Aviation Training**

**Customer Satisfaction Survey on the Global Aviation Training (GAT) Activities**

90. The Council considered this item on the basis of C-WP/14630, which presented the Terms of Reference (ToR) for the provision of customer satisfaction surveys on GAT activities. An oral report thereon from the Implementation, Strategy and Planning Group (ISPG), was also presented for consideration.

91. It was recalled that during its 209th Session, the Council had considered C-WP/14511 *Report on the Implementation of the ICAO Civil Aviation Training Policy and Global Training Activities for 2017-2018-2019*. In doing so, the Council had requested (C-DEC 209/4 refers) that an independent survey be conducted on Global Aviation Training (GAT) activities as a whole to determine the level of State satisfaction.

92. The Chairperson of the ISPG (Representative of Australia) presented the Oral Report and recalled that the Council had requested an independent survey on GAT activities aimed at TRAINNAIR PLUS participants and Members States and that the working paper outlined the terms of reference for the conduct of the survey. The ISPG had suggested an amendment to paragraph 5.4 of the terms of reference that would give respondents the option of identifying themselves or remaining anonymous, thus allowing respondents to provide an objective assessment of GAT activities. The ISPG had sought confirmation from the Secretariat that the role of the GAT office would be limited to ensuring the survey report would conform with the terms of reference of the survey and that the format of the report to be made to the Council would be in line with existing ICAO guidelines. The ISPG had also welcomed the confirmation that the statistical results would be provided to Council.

93. With regard to the cost of the survey, the ISPG had noted the budgeted amount of USD 70,000 to be rather high but received assurances from GAT that this amount represented a maximum amount and that necessary measures would be taken to select the most cost-effective service provider during the tendering process. The ISPG recommended that GAT draw upon the experience of the Technical Cooperation Bureau (TCB) which had conducted a similar survey recently. Subject to these observations, the ISPG had endorsed the terms of reference of the proposed survey.

94. Referring to the concerns expressed by the ISPG in the Oral Report, the Representative of Mexico underscored the importance of GAT consulting TCB before undertaking the survey given that the latter had already conducted a similar survey recently and in this context it would be helpful to establish a common practice.

95. Supporting this suggestion, the First Vice-President highlighted the importance of a consultation process being undertaken between GAT and TCB before embarking on the survey.

96. The Representative of Singapore questioned whether it would be possible to instead have the Secretariat conduct the survey. He believed that the resources were available in-house, that he trusted the Secretariat to be objective and professional about the results and that this would result in savings of USD 70,000 that could instead be used to assist States in other areas. He also suggested that this be considered as a standard

solution for the long term. For the case under consideration, he wondered whether there would not be an economy of scale if both GAT and the TCB were to work with the same survey provider.

97. Echoing the views expressed by the Representative of Singapore, the First Vice-President observed that it was the Terms of Reference for the Customer Service Survey on GAT activities that were being considered and not the pricing. However, it would be worthwhile to consider in future a joint TCB-GAT survey, since the surveys were essentially the same and this would greatly reduce the costs of conducting these surveys.

98. The Representative of the Russian Federation agreed with the proposals of the Representative of Singapore and the First Vice-President on undertaking such survey as a joint effort between different parts of the Secretariat.

99. Recalling that the customer satisfaction survey had been recommended by Council and that GAT was seeking to implement that decision, Manager, GAT (M/GAT) explained noted that GAT in fact already had three different levels of survey that it carried out: on the instructors, on the trainees and on the course material. The feedback on the products offered was already being used to effect improvements and to make sure the products were well received by the trainees themselves.

100. Noting the concern raised by the ISPG in relation to the proposed Terms of Reference with regard to the identity of the respondents, the Representative of the United Republic of Tanzania enquired whether the ISPG had made any proposals or taken any decisions on this question of guaranteeing the anonymity of respondents.

101. The First Vice-President confirmed that this issue had been discussed at the meeting of the ISPG and that the terms of reference would be changed to indicate that respondents had the option to remain anonymous unless they chose to do otherwise.

102. Confirming that this had indeed been their intention, the Chairperson of the ISPG explained that the terms of reference would be amended to indicate that respondents would remain anonymous and given the opportunity to identify themselves only if they had issues to further discuss. Since the Council was not being asked to approve the TORs but simply to take note at this stage and since GAT had been tasked with conducting the survey, the ISPG had decided to make its recommendations for the amendments instead of redrafting the document on this point.

103. In responding to the First Vice-President's specific question related to pricing and contract negotiations, M/GAT noted that the tender for the TCB survey had already been awarded and the terms of reference already conveyed to the survey entity. Therefore, changing those terms of reference in order to now reflect the requirements of the subsequent GAT survey might result in another round of negotiations with new delivery times. He suggested that at this point in time it would be more efficient to allow the GAT survey to proceed de-coupled from the previous TCB exercise while perhaps considering a joint survey in the future.

104. In concluding its consideration of this item, the Council noted that the ISPG had recommended that in order to objectively analyze customer feedback on training provided by the GAT Office, an amendment to paragraph 5.4 of the proposed terms of reference be made to ensure that respondents remain anonymous with the option of identifying themselves, should they choose to do so. The Council endorsed this recommendation.

105. In addition, it was noted that GAT has used as a reference the TCB customer satisfaction survey terms of reference. In relation to the concern expressed by the Council at the ceiling price of the survey, it was understood that GAT will negotiate the most competitive price with the prospective survey entity and in the future,

both GAT and TCB would seek to jointly negotiate one contract with an external survey entity in order to optimise cost efficiencies for the Organization.

106. Subject to the amendments indicated in the preceding paragraphs, the Council endorsed the terms of reference of the Customer Satisfaction Survey on the Global Aviation Training (GAT) activities as reflected in C-WP/14630.

107. The meeting adjourned at 1730 hours.





**COUNCIL — 211TH SESSION**

**SUMMARY MINUTES OF THE THIRD MEETING**

**(THE COUNCIL CHAMBER, WEDNESDAY, 7 JUNE 2017, AT 1000 HOURS)**

**OPEN MEETING**

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

**PRESENT:**

- |            |                              |                             |                         |
|------------|------------------------------|-----------------------------|-------------------------|
| Algeria    | — Mr. A.D. Mesroua           | Kenya                       | — Ms. M.B. Awori        |
| Argentina  | — Mr. G.E. Ainchil           | Malaysia                    | — Mr. Y.-H. Lim         |
| Australia  | — Mr. S. Lucas               | Mexico                      | — Mr. D. Méndez Mayora  |
| Brazil     | — Mrs. M.G. Valente da Costa | Nigeria                     | — Mr. M.S. Nuhu         |
| Cabo Verde | — Mr. C. Monteiro            | Panama                      | — Mr. G.S. Oller        |
| Canada     | — Mr. M. Pagé                | Republic of Korea           | — Mr. J. Hur            |
| China      | — Mr. Shengjun Yang          | Russian Federation          | — Mr. A.A. Novgorodov   |
| Colombia   | — Mr. A. Muñoz Gómez         | Saudi Arabia                | — Mr. S.A.R. Hashem     |
| Congo      | — Mr. R.M. Ondzotto          | Singapore                   | — Mr. T.C. Ng           |
| Cuba       | — Mrs. M. Crespo Frasquieri  | South Africa                | — Mr. M.D.T. Peege      |
| Ecuador    | — Mr. I. Arellano            | Spain                       | — Mr. V.M. Aguado       |
| Egypt      | — Mr. A. Khedr               | Sweden                      | — Mr. S. Vuokila (Alt.) |
| France     | — Mr. M. Millefert (Alt.)    | Turkey                      | — Mr. A.R. Çolak        |
| Germany    | — Mr. U. Schwierczinski      | United Arab Emirates        | — Miss A. Alhameli      |
| India      | — Mr. A. Shekhar             | United Kingdom              | — Mr. M. Rodmell        |
| Ireland    | — Mrs. A. Smith Floch        | United Republic of Tanzania | — Mr. R.W. Bokango      |
| Italy      | — Mr. M.R. Rusconi           | United States               | — Mr. S. Kotis (Alt.)   |
| Japan      | — Mr. S. Matsui              | Uruguay                     | — Mr. M. Vidal          |

**ALSO PRESENT:**

- |                               |                      |
|-------------------------------|----------------------|
| Dr. N. Luongo (Alt.)          | — Argentina          |
| Mrs. M.F. Loguzzo (Alt.)      | — Argentina          |
| Mr. N. Castro da Silva (Alt.) | — Brazil             |
| Mr. P. Langlais (Alt.)        | — Canada             |
| Mr. Chunyu Ding (Alt.)        | — China              |
| Mr. N. Naoumi (Alt.)          | — Germany            |
| Mr. M. Usami (Alt.)           | — Japan              |
| Mr. K.A. Ismail (Alt.)        | — Malaysia           |
| Mrs. D. Valle Álvarez (Alt.)  | — Mexico             |
| Mr. S. Kim (Alt.)             | — Republic of Korea  |
| Mr. K. Lee (Alt.)             | — Republic of Korea  |
| Mr. D. Subbotin (Alt.)        | — Russian Federation |
| Mr. M.S. Habib (Alt.)         | — Saudi Arabia       |
| Mr. Ö. Doğrukol (Alt.)        | — Turkey             |
| Mrs. K.L. Riensema (Alt.)     | — United Kingdom     |
| Mr. J. Méndez (Alt.)          | — Uruguay            |

**SECRETARIAT:**

- |                        |                 |
|------------------------|-----------------|
| Mrs. J. Yan            | — C/OSG         |
| *Mr. I. Galán          | — D/TCB         |
| *Mr. B. Djibo          | — D/ATB         |
| *Mr. V. Smith          | — D/ADB         |
| *Mr. R. Bhalla         | — C/FIN         |
| *Ms. H. Jackson        | — A/C/EAO       |
| *Mr. H. Gourджи        | — DD/MO         |
| *Mr. R. Macfarlane     | — DD/AN         |
| *Mr. A. Detchou        | — DD/LP         |
| *Mr. M. Fox            | — C/PRC         |
| *Mrs. L. Comeau-Stuart | — C/POD         |
| *Ms. K. Balram         | — C/SEA         |
| *Miss L. Lim           | — C/FSV         |
| *Ms. S. Brand          | — C/RPM         |
| *Mr. S. Jossai         | — C/RCP         |
| *Mr. T. Shatani        | — SEA/SAU       |
| *Mr. M. Leitgab        | — ADADB         |
| *Mrs. P. Romano        | — Head, ASV/ARU |
| Miss S. Black          | — Précis-writer |

*Mr. C. Mancinelli, External Auditor, Corte dei Conti*  
*Mr. S. Penati, External Auditor, Corte dei Conti*  
*Mr. E. Granelli, External Auditor, Corte dei Conti*

\*Part-time

Representatives to ICAO

Bolivia (Plurinational State of)  
Cyprus  
Ghana  
Greece  
Indonesia  
Lebanon  
Libya  
Nicaragua  
Paraguay  
Venezuela (Bolivarian Republic of)

Airports Council International (ACI)  
European Union (EU)

1. The President of the Council expressed appreciation to the First Vice-President, the Representative of the United Arab Emirates, Miss A. Alhameli, for having effectively presided over the Council's Second Meeting on 5 June 2017 while he was attending the 73rd IATA Annual General Meeting and World Transport Summit (AGM) (Cancún, 4-6 June 2017).

**Subject No. 18.8: Financial Statements and Reports of the External Auditor**

**Subject No. 18.8.1: Regular Programme Funds**

**Subject No. 18.8.2: United Nations Development Programme (UNDP) Funds**

**Subject No. 24.2: Assembly agenda and documentation**

### **Financial Statements and Report of the External Auditor for the financial year 2016**

2. On behalf of the Council, the President extended a warm welcome to Mr. Ermanno Granelli, President of the Audit Chamber for European and International Affairs of Corte dei Conti, the External Auditor of ICAO. He highlighted that Mr. Granelli was also the President of the Magistrates' Association of the Corte dei Conti, a Member of the Task Force on Audits and Ethics of the European Organisation of Supreme Audit Institutions (EUROSAI), and the recipient of the Great Official Award of Merit from Italy.

3. Mr. Granelli conveyed to the Council the best regards of the President of Corte dei Conti, Mr. Arturo Martucci di Scarfizzi, and his warmest wishes for a fruitful and beneficial meeting, which he regretfully was unable to attend due to prior commitments.

4. The Council then proceeded with the consideration of the above subject on the basis of: **C-WP/14601 (with Addenda Nos. 1 and 2)** presented by the Secretary General; and an oral report thereon by the Finance Committee (FIC). **Addendum No. 1** to the paper contained a Presentation by the Secretary General, the Opinion of the External Auditor, the Audit Certificate, and the Financial Statements and Tables for 2016. **Addendum No. 2** contained the Report of the External Auditor on the audit of the said Financial Statements, which included 17 recommendations and 8 suggestions, as well as the Secretary General's proposals and comments in response thereto. The said Addenda comprised parts of the related document to be submitted to the Assembly.

5. On behalf of the President of Corte dei Conti, Mr. Granelli gave a brief presentation highlighting: the audit report on the Organization's Financial Statements as at 31 December 2016 and the Audit Certificate; and two special performance audit reports, one relating to the efficiency and effectiveness of the recruitment process at the Bureau of Administration and Services/Human Resources (ADB/HR) (excluding the recruitment of TCB field personnel), and another relating to the effective and efficient coordination between the Technical Cooperation Bureau (TCB) and the ICAO Regional Offices (ROs) for the implementation of Part 5 (Technical Cooperation and Technical Assistance) of the *Regional Office Manual* (ROM), which had focused on the North American, Central American and Caribbean Office (NACC) (Mexico City) (cf. Addenda Nos. 1 and 2).

6. Mr. Granelli noted that the audit team had defined its timetable taking into account the schedules of the various parties involved and had conducted its work with a great spirit of cooperation, albeit within in the necessary framework and with the complete independence of judgement that was peculiar to the role of an External Auditor. With regard to the financial audit report, Corte dei Conti considered that the audit evidence which had been obtained was sufficient and appropriate to provide a basis for its opinion as stated in the said Audit Certificate signed by its President, namely, that the Financial Statements "present fairly, in all material respects, the financial position of the International Civil Aviation Organization (ICAO) as at 31 December 2016, and its financial performance, its changes in net asset, its cash flows and its comparison of budget and actual amounts for the Regular Programme

General Fund for the year then ended, in accordance with IPSAS and the ICAO Financial Regulations and Rules.”.

7. Mr. Granelli underscored that the Audit Certificate had been prepared using the new template established by International Standard on Auditing (ISA) 700 revised, which had been adopted by the Panel of External Auditors of the United Nations (UN) system at its 57th Regular Session (New York, November 2016) and which had entered into force in 2017. In accordance with that Standard, the audit report reiterated an Emphasis of Matter relating to a negative net asset financial position (-CAD 67.5 million), which was mainly due to the impact of CAD 142.4 million in actuarial liabilities relating to long-term employee benefits, notably the After Service Health Insurance (ASHI) actuarial liabilities. The External Auditor had been assured by ICAO Management, however, that it was undertaking measures to address the situation and would monitor their effectiveness. Consequently, the External Auditor’s opinion was not modified in respect of that matter.

8. Mr. Granelli noted that whereas the monitoring of the implementation of Corte dei Conti’s recommendations fell under the purview of the FIC, the monitoring of the implementation of its suggestions fell under the purview of the External Auditor.

9. In concluding his presentation, Mr. Granelli expressed gratitude to the Secretary General and to all of the ICAO officials involved for their cooperation during the conduct of Corte dei Conti’s 2016 audit.

*Oral report by the FIC*

10. The Chairperson of the FIC, the Representative of the United Kingdom, Mr. M. Rodmell, then presented the following oral report on the Committee’s review of C-WP/14601 (with Addenda Nos. 1 and 2) at its Third Meeting of the current session on 5 June 2017:

11. The representatives of the External Auditor had provided a short presentation highlighting the said audit report and two special performance audit reports and had informed the Committee that the External Auditor had issued an unqualified opinion on ICAO’s Financial Statements for 2016. They had explained the difference between the External Auditor’s recommendations and suggestions and had provided statistics on the status of implementation of those which had been issued since 2014. In also providing statistics on the status of implementation of the recommendations issued by the previous External Auditor (Cour des comptes), the representatives had clarified that they were all now closed. In addition, they had explained that pursuant to the said new ISA Standard 700 revised an “Emphasis of Matter” had again been included in the External Auditor’s report drawing attention to the negative net asset recorded on the Statement of Financial Position due to the CAD 142.4 million in actuarial liabilities relating to long-term employee benefits, notably the ASHI actuarial liabilities. It had been reiterated, however, that as measures were being undertaken by ICAO Management, which had assured the External Auditor that it would monitor their effectiveness, the External Auditor’s opinion was not modified in respect thereof.

12. Several FIC Members had noted with satisfaction the External Auditor’s unqualified opinion on the Organization’s Financial Statements for 2016. In response to a concern expressed by one Committee Member regarding ICAO’s ability to continue its activities with the said outstanding ASHI liability, the representatives had explained that ASHI was a main problem within the entire UN system. They had also confirmed that currently ICAO had no problem since it had adopted a “pay as you go” scheme. However, the actuarial reports indicated a trend to a growing actuarial liability and once the Council decided on which measure could be implemented to reduce the said liability, a new actuarial study would be performed to determine whether or not it continued to be a concern.

13. The FIC recommended to the Council to approve the draft Assembly working paper on the Financial Statements and Reports of the External Auditor for the financial year 2016 attached to C-WP/14601.

*Discussion*

14. In expressing appreciation to Corte dei Conti for its work, the Representative of Spain endorsed the oral report of the FIC, of which he was a Member. Noting that Addendum No. 2 to the paper contained the Secretary General's proposals and comments in response to the External Auditor's recommendations and suggestions, he suggested that future Council working papers on this subject contain a tabular Plan of Action with timelines for the implementation of those recommendations which had been accepted by the Secretary General to enable the Council to closely monitor their implementation.

15. The Chief of the Finance Branch (C/FIN) recalled that while in the past the Secretary General had presented, in a separate paper, a proposed Plan of Action to implement the External Auditor's recommendations, the Council had agreed (208/11) to rescind its previous related decision (196/6) in view of the different format of the current External Auditor's report, which now included the Secretary General's proposed responses, and the fact that the information contained in the Plan of Action was out-of-date by the time it was presented to the Assembly.

16. The President suggested a hybrid solution, whereby a tabular Plan of Action with timelines would be presented to the Council for follow-up, but not to the Assembly. A note could be added to the Plan of Action clarifying that it was solely for the information of the Council and was not for presentation to the Assembly.

17. In supporting this suggestion, the Representative of Spain underscored that it was unnecessary to present such a Plan of Action to the Assembly for consideration.

18. Concurring, the Representative of India suggested that the proposed Plan of Action be incorporated into the Corporate Management & Reporting Tool (CMRT) to further enable the Council to closely monitor the progress of implementation of all of the External Auditor's recommendations which had been accepted by the Secretary General.

19. The Council agreed with the above-mentioned suggestions by the President and the Representative of India. The Secretary General offered assurances that future working papers on this subject would be prepared accordingly and that the envisaged Plan of Action would be duly incorporated into the CMRT.

20. In then noting the FIC's oral report, the Council took the action proposed by the President in light of the discussion and:

- a) noted with satisfaction the External Auditor's unqualified opinion on the Organization's Financial Statements for 2016;
- b) approved the Secretary General's proposals to implement the External Auditor's recommendations as set forth in Addendum No. 2 to C-WP/14601; and

- c) as recommended by the FIC, approved, for submission to the next ordinary session (40th) of the Assembly, the financial reports for the year ended 31 December 2016 presented in Addenda Nos. 1 and 2 to C-WP/14601, as well as the draft Assembly working paper and related draft Assembly Resolution appended to that paper.

21. The President of the Council and the Secretary General thanked Mr. Granelli and his colleagues, including Mr. Carlo Mancinelli and Mr. Stefano Penati who were in attendance, for the excellent external audit work that they were doing on behalf of ICAO.

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

**Report on the performance of revenue-generating activities in 2016 with audited financial figures of the Ancillary Revenue Generation Fund (ARGF)**

22. The Council considered: information paper C-WP/14614, whereby the Secretary General, in accordance with the *Policy on Revenue-generating Activities*, reported on the financial and operational performance results of the ARGF for 2016, which showed a net surplus of CAD 5 194 000, and set forth a detailed breakdown of the ARGF's actual expenses and information on human resources, including posts and consultants funded by the ARGF; and an oral report thereon by the FIC, which had reviewed the paper at its First Meeting of the current session on 2 May 2017.

*Oral report by the FIC*

23. In presenting the FIC's oral report, its Chairperson indicated that the Committee had noted, with satisfaction, the said ARGF net surplus of CAD 5 194 000 recorded in 2016, and that it had been supported by: a) a favourable USD/CAD exchange rate; b) implementation of the business plan; and c) implementation of strict cost control measures by the Secretariat.

24. During its deliberations, the FIC had highlighted the significant impact of the said favourable USD/CAD exchange rate on ARGF revenues and had stressed the importance of risk mitigation measures to protect ICAO from future fluctuations in that exchange rate. The Secretariat had confirmed that the issue was closely monitored through the ARGF Operating Plan and key performance indicators (KPIs), and that efforts were underway to generate additional income from new revenue streams to mitigate the said risk.

25. The FIC had noted the Secretariat's intention to add extra business intelligence resources to Bureaus in order to grow revenue-generating capacity. It had been clarified that: specific revenue-generating skills, that were not available in the Secretariat, needed to be acquired in order to assist in the generation of new revenue streams to meet the increased ARGF targets; and an investment in any new ARGF-funded position would be justified by a business case that would demonstrate the generation of additional revenue. The FIC had also noted that the number of ARGF-funded consultant positions had remained largely stable over the previous year.

26. It had been further noted that discussions were ongoing with the Host Government, Canada, regarding the risk of budgetary shortfalls over the current triennium, should the ICAO conference facilities not be available for external events rental under the 2013 Supplementary Headquarters Agreement.

27. The FIC had discussed the use of the 2016 ARGF net surplus and had requested more transparency in future reporting by the Secretariat. In that connection, it had highlighted that the Regular

Programme Budget was supplemented by the ARGF, the ARGF surplus, as well as by the carry-over from the Regular Programme Budget as reported in C-WP/14613 (211/2). The FIC had requested that future financial reports include a comprehensive reporting on all additional funds used to supplement the Regular Programme Budget and how they further supported Regular Programme activities.

*Discussion*

28. Responding to a query by the President of the Council regarding paragraph 2.5 of the paper, the Director of the Bureau of Administration and Services (D/ADB) clarified that as a matter of financial prudence, CAD 800 000 of the 2016 ARGF net surplus would be set aside to protect against the risk of budgetary shortfalls over the triennium should the ICAO conference facilities not be available for external events rental as a consequence of the Government of Canada, the Host State, having become sole owner of the Headquarters building upon the entry into force, on 1 December 2016, of the 2013 Supplementary Headquarters Agreement.

29. The Representative of Canada further clarified that the Government of Canada was working closely with the ICAO Secretariat, through the Property Management Committee created under the said Agreement, to establish clear parameters for the utilization of the said conference facilities to minimize the impact on the Organization of the Government of Canada's use thereof to meet its own requirements. These clarifications were noted.

30. In endorsing the oral report of the FIC, of which he was a Member, the Representative of Mexico sought confirmation that any new positions established to increase revenue-generating capacity, as referred to in paragraph 2.4 of the paper, would be funded by the ARGF and not the Regular Programme Budget. He also requested clarification regarding the increase in the number of ARGF-funded consultant positions in ADB from 16.3 in 2015 to 27.08 in 2016 (cf. Appendix C), which seemed to contradict the statement made in the FIC's oral report that the number of such positions had remained largely stable over the previous year.

31. D/ADB confirmed that the said new positions would be funded by the ARGF. With regard to the second point raised, he indicated that, as was the case for all organizations, if the capability existed in-house to meet a corporate need, then existing personnel were used therefor. However, if the expertise did not exist within the organization at a sufficient level, then it was incumbent upon the latter to seek it externally, such as through short-term consultancies. In the case referred to by the Representative of Mexico, it was matter of merely finding the best way to address a strategic aim of ICAO given its limited human and financial resources. D/ADB noted that a portion of the ARGF 2016 net surplus would be used for additional cybersecurity initiatives, the expansion of the unmanned and remotely piloted aircraft programme, and capacity building for the ICAO safety and security audit programmes, all of which were important elements of the ICAO Business Plan.

32. The Representative of Mexico recalled, in this context, that the Council had previously agreed that Regular Programme positions would no longer be funded by the ARGF. He also emphasized that personnel performing the technical work of the Organization should not be required to also engage in revenue-generating activities as it would constitute a conflict of interest.

33. Responding to a point then raised by the President of the Council, the Secretary General indicated certain organizational activities had dual effects, resulting in products for States which could also be sold to the aviation industry to generate revenue for the Organization.

34. The Deputy Director, Air Navigation Capacity and Efficiency (DD/AN) noted that the Air Navigation Bureau (ANB) generated a substantial amount of intellectual property that was of value



not only to States but also to the aviation industry. The Regular Programme Budget provided ANB with the capability to produce material for States at a level that was useful to their regulators. As a side-product, revenue-generating activities could enhance that material to provide products that were useful to the aviation industry at a price that would yield revenue for ICAO.

35. In speaking along the same lines as the Representative of Mexico, the Representative of South Africa, who was also a FIC Member, reiterated his view that the ARGF seemed to be a “loose cannon”. He highlighted that although it was indicated in paragraph 2.4 of the paper that additional staffing resources and business intelligence expertise were necessary in order to maintain and grow revenue-generating capacity, the ARGF had generated a net surplus of CAD 5 194 000 in 2016. In enquiring as to the envisaged amount of additional surplus that would be realized, the Representative of South Africa emphasized that ICAO’s purpose was not revenue generation and stressed the need to tread very carefully in this matter.

36. Observing that DD/AN’s clarification was very useful, the Representative of Spain underscored that the marketing of ICAO’s intellectual property was additional to the Organization’s core functions, notably the development of Standards and Recommended Practices (SARPs) for States. Recalling the comments made by the Representative of Mexico, he re-emphasized the need to ensure that the said additional personnel were funded by the ARGF and not the Regular Programme Budget

37. The Representative of Colombia concurred with the Representative of Mexico that the Council had previously agreed that Regular Programme positions would no longer be funded by the ARGF, and with the Representative of South Africa that ICAO’s purpose was not revenue generation. He averred, however, that it was necessary to identify extra-budgetary sources of income, on a large scale, to enable the Organization’s work to be carried out and its Strategic Objectives to be achieved. The Representative of Colombia highlighted, in this regard, the development of ICAO SARPs, which in his view were not being produced quickly enough to meet the needs of the aviation industry as the Secretariat lacked the requisite number of experts, particularly in emerging fields such as cybersecurity. He noted that it was for that same reason that the ANC, through its relevant panels, produced the SARPs-related guidance material. The Representative of Colombia cautioned against devolving ICAO’s Standard-making function to other organizations.

38. In light of comments made regarding paragraph 2.4 of the paper, the President of the Council underscored that any addition of extra business intelligence resources to Bureaus in order to grow revenue-generating capacity should be done based on the understanding that: ANB and the Air Transport Bureau (ATB), whose core functions comprised the development of SARPs for States, the provision of implementation assistance and the conduct of compliance audits, should be allowed to continue to focus thereon; and the Revenue and Product Management Section (RPM) should determine how to market any ICAO intellectual property arising therefrom in order to generate revenue for the Organization.

39. The Secretary General emphasized that she would ensure that revenue generation to support Regular Programme activities and other activities would continue to be carried out in full compliance with the Council-approved *Policy on Revenue-generating Activities*, bearing clearly in mind that ICAO’s primary mission was to promote the safe and orderly development of international civil aviation and not to generate revenue. She highlighted that internal controls were in place to ensure proper implementation of the Policy and that audits were conducted from time to time of the ARGF for that same purpose.

40. Voicing satisfaction with the explanations provided by the Secretary General and D/ADB, the Representative of Turkey affirmed that the ARGF was a good instrument which was being properly

used by the Secretariat. He maintained that there was nothing wrong with revenue generation as long as it was done without compromising ICAO's principles.

41. In agreeing, the Representative of South Africa stressed that it was of critical importance that the Organization's principles not be compromised in carrying out revenue-generating activities to meet its needs.

42. The Representative of the Russian Federation also supported the Secretary General's intervention. Noting, from paragraph 2.4 of the paper, that the ARGF's contributions to the Regular Programme Budget had been increased by 26 per cent for the current triennium, he reiterated the need to implement measures to mitigate the risk posed by the significant impact of the USD/CAD exchange rate on ARGF revenues given the potential negative effect of an unfavourable fluctuation in that rate. The Representative of the Russian Federation encouraged the Secretary General to continue to make every effort to carry out Regular Programme activities while taking into account the Council's previous decisions regarding revenue generation and the Regular Programme Budget. He cited, in this context, the Council's recent decision (211/2) that Global Aviation Training (GAT) Office activities be carried out on a cost-recovery basis.

43. The Representative of the Republic of Korea remarked that whereas it was very difficult to obtain the agreement of the Council and the Assembly to an increase in the Organization's triennial Budget, those governing bodies were requesting the Secretariat to carry out an increasing number of tasks. For that reason, his State was always very cautious in suggesting any additional tasks. Recalling the comments made by the Representative of South Africa, the Representative of the Republic of Korea indicated that as ICAO's purpose was not revenue generation, the Council should not encourage revenue-generating activities. However, discouraging such activities was unhelpful given the Organization's budgetary constraints and the increasing amount of work to be performed.

44. The President emphasized that the concern was not whether there should be revenue-generating activities as the Council had already approved a Policy therefor, with a view to supplementing the Regular Programme Budget; rather, it was allowing the various Bureaus to focus on their core functions while RPM focused on generating revenue from any resultant intellectual property.

45. In concluding its consideration of this subject, the Council noted the comments made and clarifications provided during the discussion. In also noting the information provided in C-WP/14614 and the FIC's oral report, the Council joined the Committee in requesting that: future reporting by the Secretary General on the use of the ARGF net surplus be more transparent; and future financial reports include a comprehensive reporting on all additional funds used to supplement the Regular Programme Budget and how they further supported Regular Programme activities.

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

**Appointment of Members of the Evaluation and Audit Advisory Committee (EAAC)**

46. The Council considered this subject on the basis of: C-WP/14602, presented by the Secretary General; and an oral report thereon by the FIC, which had reviewed the paper at its Third Meeting of the current session on 5 June 2017. The paper reported on the twelve candidates nominated by Member States to serve on the EAAC for the three-year period 1 September 2017 to 31 August 2020 received in response to State letter O 4/8-17/42 dated 22 March 2017, and presented the recommendation made by the President of the Council in accordance with paragraph 2.3 of the EAAC's revised Terms of Reference (TOR) (210/9). The President proposed the appointment of seven candidates after careful review of the applications and curriculum vitae of the twelve candidates, taking into account the necessity

for geographic representation and gender balance in the membership, as well as the range and diversity of professional experience and skills.

*Oral report by the FIC*

47. In presenting the FIC's oral report, its Chairperson noted that Committee Members had not had any objections to the appointment of the seven candidates proposed. However, one FIC Member had raised concerns regarding the current appointment and selection process, stating that it was not in line with practices followed by the rest of the UN system. For example, in other UN organizations there was an open call for applications resulting in a large number of candidates and a transparent appointment process involving a selection panel. The call for nominations to serve on the EAAC had resulted in a small pool of candidates. In addition, in cases where a candidate was employed by the Government and his/her travel costs were paid by the Government, there was the potential for conflicts of interest. Best practice required that candidates should be independent and act in a personal capacity.

48. FIC Members had noted that the EAAC appointment process had been agreed by the Council during the previous session (210/9) and was in line with the EAAC's TOR, whereby nominations were reviewed by the President, who subsequently made a recommendation to the Council. Nevertheless, Committee Members had agreed that, for the future, the recruitment and appointment process for EAAC Members should be reviewed to align it with best practice to the extent appropriate.

49. The FIC had endorsed the President's proposal to appoint the seven candidates listed in paragraph 4.2 of C-WP/14602, noting that the proposed reappointment of the current Chairperson of the EAAC, Mr. Kurt Grüter, would provide continuity.

*Discussion*

50. Observing that he was the FIC Member who had raised concerns regarding the EAAC appointment and selection process, the Alternate Representative of the United States highlighted that the issue had been briefly discussed by the Working Group on Governance and Efficiency (WGGE) in connection with the *ICAO Framework on Ethics* and other related issues at its First Meeting of the current session, held the previous day (6 June 2017). As he still had some serious concerns regarding the said EAAC process and potential conflicts of interest arising therefrom, he welcomed the proposal made by the Chairperson of the WGGE to establish a sub-group to continue to examine the said issues holistically.

51. The President indicated that the Council would await the WGGE's report thereon.

52. In then noting the FIC's oral report, the Council took the action recommended by the President and appointed the following seven candidates to serve as Members on the EAAC for a period of three years commencing from 1 September 2017: Ms. Justine Potter (Australia); Mr. Richard Brisebois (Canada); Mr. Gordon Kuudang Nuurbaare (Ghana); Mr. Kurt Grüter (Switzerland) (re-appointed); Mr. Damain Brewitt (United Kingdom); Mr. Mbuttolwe Joel Kabeta (United Republic of Tanzania); and Ms. Elsa Ana Novelli Perez (Uruguay).

53. It was understood: that in accordance with the existing EAAC TOR, the Members would act in a personal capacity and be independent of the Secretariat, Council Members, the External Auditor and any other body that may be perceived as a conflict of interest; that pursuant to the Council's earlier decision (210/9) and Article 63 of the Chicago Convention, the nominating States had committed to pay for their respective candidate's travel expenses; and that the WGGE would report to the Council later in

the current session on, inter alia, the outcome of its review of proposals to amend paragraphs 5.2 and 8.1 of the EAAC's TOR [cf. C-DEC 210/9, paragraphs 27 c) and 23].

**Subject No. 11.3: Sales, pricing and agency arrangements**  
**Subject No. 20.3: Production, distribution and sale of ICAO publications**

### **Report on publications for 2016**

54. The Council had for consideration information paper C-WP/14615 (with Blue rider), in which the Secretary General reported on the status of the publications programme for 2016, including translation for deliberative bodies, meetings and programme activities, saleable publications, distribution, printing and electronic publishing; and an oral report thereon by the FIC, which had reviewed the paper at its First Meeting of the current session on 2 May 2017.

#### *Oral report by the FIC*

55. In presenting the FIC's oral report, its Chairperson observed that the paper highlighted that: translation demand and output continued to exceed capacity; a decrease in sales of printed publications was led by a significant reduction in top-selling publications; efforts were being undertaken to further enhance electronic publishing as the main delivery method for publications; and measures were being implemented to increase sales revenue.

56. The FIC's discussion had focused on the objectives and target timeframes for the delivery of publications in all languages and on how those were achieved. The Secretariat had reiterated that every effort was made to comply with the Council's decision (198/7) to deliver the language versions within 60 working days after the English version was published. It had been noted, however, that delays were a factor of translation capacity, as resources were limited. Annexes and Procedures for Air Navigation Services (PANS) were normally published simultaneously in all languages.

57. During the Committee's discussion of the decline in sales of the top-selling publications, the Secretariat had clarified that it was mainly due to the fact that revenues from the two top-selling publications on dangerous goods were split between two financial years, 2016 and 2017. It had also noted that ICAO did not follow a commercial approach to protecting its intellectual property against unauthorized use, which created added pressure on publication revenues.

58. Concerns had also been raised by the FIC regarding the level of outsourcing and its impact on the quality of translations and a risk of not complying with ICAO's terminology standards. The Secretariat had reiterated that quality management was performed for as many outsourced documents as possible to minimize risk, and that every effort was made within the limits of the Secretariat's capacity to ensure that the quality of ICAO's documents was in line with international standards.

59. In response to a question regarding the printing of large quantities of documents during the Assembly, the Secretariat had clarified that printing had been reduced considerably over the years, and that the full implementation of a paperless environment could be considered for future sessions of the Assembly.

#### *Discussion*

60. The Representative of South Africa, a FIC Member, reiterated the need to ensure the quality of the translation of ICAO publications, stressing that the latter constituted the Organization's intellectual property and were consequently of key importance to ICAO. In then highlighting perceived

inaccuracies in the regional accident statistics for Africa contained in the 2016 edition of the *ICAO Safety Report*, he emphasized that it was necessary to correct that misleading information as it could deter air travelers from flying on board African airlines.

61. It was noted that this concern would be addressed in a bilateral meeting with the relevant Secretariat staff. In inviting other Representatives to review their respective regional accident statistics and to notify the Secretariat in the event that there were similar inaccuracies, the President requested that he be briefed by the Secretariat once the matter had been clarified and resolved. In addition, he suggested that in future the Secretariat circulate draft versions of the annual *ICAO Safety Report*, the *ICAO Air Navigation Report (Capacity & Efficiency)* and other such reports to Representatives for comments so as to address any inaccuracies prior to finalization and publication.

62. The Chairperson of the FIC underscored that the issue of the quality of the translation of all ICAO publications raised by the Committee was separate and distinct from the issue raised by the Representative of South Africa, which related to the accuracy of the information contained in a particular ICAO publication.

63. The President of the Council emphasized the need for all information emanating from ICAO to be correct, in terms of both its accuracy and its translation.

64. In reiterating the proposal which his State had presented to the last Assembly to expand free web access to ICAO publications in support of the Organization's *No Country Left Behind* (NCLB) initiative (cf. A39-WP/369), the Representative of Canada re-emphasized that the focus should be more on the dissemination of information relating to air navigation safety, capacity and efficiency than on generating revenues from ICAO publications. This was noted.

65. The Representative of the Russian Federation underscored that the quality of the translation of ICAO publications suffered as a result of the level of outsourcing, which was due to the lack of sufficient resources in-house. He recalled, in this regard, that whereas the Secretary General's initial Budget proposal for the current (2017-2019) triennium had included CAD 3.5 million to support language services [cf. C-WP/14397, paragraph 3.7 c); 207/11], that provision had been removed from subsequent iterations in order to reduce expenditures and consequently had not been part of the Regular Programme Budget approved by the 39th Session of the Assembly. The Representative of the Russian Federation stressed the need for the Council to take into account the negative effect of such cost-saving measures on the quality of language services, in particular, the translation of ICAO publications, when discussing the Regular Programme Budget for the next (2020-2022) triennium

66. In endorsing these comments, the Representative of Saudi Arabia echoed the concerns expressed regarding the provision of language services.

67. The Representative of Malaysia noted that the printing of hard copies of ICAO publications was challenged by the ongoing migration to electronic publishing (Web and CD-ROM). He enquired as to plans to improve the efficiency and cost-effectiveness of the existing printing plant and equipment and to eventually retire that system and redeploy the personnel operating it.

68. D/ADB indicated that although at present ICAO still depended, to a large extent, on the existing revenue sources such as publications, reliance would likely diminish over time as the Organization migrated to the new technology. How to transfer the value of those assets, and how to redeploy the operators, would be taken into account in the Secretariat's future plans for this transition.

69. The Representative of Colombia noted that his State had supported Canada's said proposal at the last Assembly (cf. A39-WP/369) and continued to support it as it also considered that the dissemination of information relating to air navigation safety, capacity and efficiency was necessary in order to achieve ICAO's related Strategic Objectives. His State nevertheless understood the counter-argument to the proposed expansion of free access to ICAO publications, namely, that the latter served as the main source of revenue in support of the Regular Programme Budget. Colombia thus deemed it necessary to develop additional revenue streams, without, however, overcharging Member States for any new ICAO products.

70. On behalf of his State, the Representative of Colombia appealed for an increased budgetary allocation for translation services. He indicated that it was Colombia's understanding that many Member States which paid their assessed contributions did not receive ICAO publications in their respective languages although they were among the Organization's six official languages. In light of the existence of modern translation technologies such as Language Interpretation and Future Translation (LIFT), the Representative of Colombia suggested that the Council consider the development of a five-year plan to put in place a translation system that would enable the Secretariat to handle the increasing volume of ICAO publications and control the associated costs in such a way that the publications could be disseminated worldwide in all six languages, which would lead to an enhancement of the global implementation of ICAO SARPs.

71. In offering a summary of the discussion, the President underscored the importance of ICAO publications for the implementation of the Organization's SARPs, particularly under the NCLB initiative. He highlighted, in this regard, that the Council had already decided (206/6) to provide States, upon request, with free access for up to 25 electronic copies of each of ICAO's five top-selling publications. Recalling the Council's earlier discussion of C-WP/14614 on the ARGF, the President emphasized that the Secretariat would continue to explore ways in which to provide more ICAO publications for States, as well as to turn the Organization's intellectual property into marketable products for the aviation industry without detracting from the various Bureaus' core functions of developing SARPs, providing implementation assistance to States and conducting compliance audits.

72. With respect to the issue raised of the quality of the translation of ICAO publications, the President noted that it had been discussed several times by the Council over the past two triennia and was a matter of resources. Although the Secretariat had introduced a quality management system for outsourced translations of ICAO publications, it required additional resources in order to achieve optimal results. Recalling the Council's discussion of the 2016 ARGF net surplus, the President left it to the Secretary General to determine whether a portion thereof, or of future ARGF net surpluses, could be used to improve the quality of the translation of ICAO publications during the current triennium and, in the affirmative, to present proposals in that regard to the Council. In underscoring the importance of high quality translation, particularly of ICAO SARPs and PANS, he stressed the need for the Council to allocate the requisite resources for language services in the Regular Programme Budget for the next (2020-2022) triennium.

73. With reference to the issue of full implementation of a paperless environment for future sessions of the Assembly raised in paragraph 5 of the FIC's oral report, the President indicated that it was conditional upon many factors and would be left for future consideration.

74. The Council accepted the President's above summary as its decision regarding information paper C-WP/14615, whose contents it noted, together with the FIC's oral report.

**Subject No. 4: Appointment of the Secretary General****Secretary General's sessional progress report**

75. The Secretary General's progress report for the 211th Session was considered on the basis of information paper C-WP/14603. In accordance with the new reporting guidelines (210/3), it focused on those items requested in the Secretary General's Charter Letter that were not normally reported to the Council on a systematic basis, namely: new leadership initiatives; new public outreach activities; changes in the corporate risks or emerging risks, with mitigating measures; and new partnerships and agreements reached during the reporting period. In addition, the progress report provided information on the implementation of the principle of multilingualism as suggested by the Council (210/3).

76. It was recalled that the Council had endorsed the said new reporting guidelines on the understanding that the Corporate Management & Reporting Tool (CMRT) would be operational in time for the present report. The CMRT had become operational on 2 June 2017, and the Secretary General anticipated that it would provide the level of transparency needed by the Council to reduce the number of the reports, or at least the details in the reports, that were currently tabled in the Council as it incorporated a feature that allowed the latter to track the Organization's performance, at the Programme level, in respect of the triennial Budget's Operating Plan.

77. To complement the Secretary General's progress report, a brief Programme status update using the CMRT was provided by the Chief, Strategic Planning and Regional Affairs Coordination (C/PRC), who underscored that all Programmes were currently on track to meet their target timeframes. It was noted that, as indicated during the informal briefing on the CMRT that had been given on 9 May 2017, a training session for Representatives was tentatively planned for the last week of June, following the close of the current session, with a supplementary training session tentatively planned for the first two weeks of the Council phase of the next (212th) session (30 October-10 November 2017). Representatives would be informed of the exact dates in due course.

78. During the ensuing discussion, general satisfaction was expressed with the Secretary General's progress report.

79. Voicing appreciation for C/PRC's demonstration of the CMRT, the Representative of Mexico noted that Representatives would now be able to see for themselves how well that tool functioned in practice. In then drawing attention to paragraph 2.1.5 of the progress report, he indicated that he disagreed with the affirmation that "Progress was made in the provision of translation services through an ongoing re-engineering of processes to allow for more efficient workflows." Recalling the Council's earlier discussion of the *Report on publications for 2016* (C-WP/14615), Section 2 of which addressed the provision of translation services, the Representative of Mexico reiterated that the latter remained an issue of concern for a number of Representatives since this was the third consecutive triennium in which the budgetary allocation for language services had been reduced, rendering it difficult to provide the language services necessary for good management. For that reason, he did not support the said statement.

80. Emphasizing that the operationalization of the CMRT constituted a significant step forward, the Representative of Spain expressed gratitude to all those involved in its development. He underscored that while that had not been an easy undertaking, they had delivered the CMRT on schedule, on 2 June 2017. Noting that he had had the opportunity to use the CMRT for the first time the previous day, the Representative of Spain indicated that it appeared to function well. He reiterated that Representatives would now be able to assess the tool's usefulness in monitoring the implementation of ICAO's Business Plan.

81. The Representative of Spain also voiced appreciation for the Secretary General's progress report, which was more concise and focused than previous sessional reports and which of itself provided a good indication of the progress of implementation of the said Business Plan. He noted, however, that multiple titles were used for groups in paragraph 2.1.1 of the report, such as "Study Group", "Vision Team" and "Group of Experts", and that new titles seemed to be constantly invented. The Representative of Spain underscored that what was important was not the title but the governance of each group, and how its work related to that of the Council. He therefore recommended that the Secretary General review and streamline the multiple titles used for groups and inform the Council accordingly.

82. Recalling the Council's adoption of the *ICAO Resource Mobilization Policy* (207/11) and subsequent establishment of the Resource Mobilization Fund (210/8), the Representative of Spain enquired as to the current status of resource mobilization activities and their results. Furthermore, in noting that it was the common practice of the President to inform the Council, at the end of every session, of his upcoming missions, he suggested that the Secretary General do likewise, and also apprise the Council of the outcomes of her missions.

83. Responding to the comment made by the Representative of Mexico regarding paragraph 2.1.5 of the progress report, the Secretary General underscored that multilingualism was one of the fundamental principles of UN organizations, including ICAO. In noting that over the years efforts had been made to ensure that multilingualism was properly implemented in ICAO, she emphasized that during the reporting period the Languages and Publications Branch (LP) had made further efforts to implement related Assembly Resolution A37-25: *ICAO Policy on the language services*, in particular through the internal streamlining of language services activities to gain additional efficiencies, further reduce costs, and ensure the quality of outsourced translations using the resources available. The Secretary General cited, as an example, the Junior Translator project which ICAO had initiated in 2016, in cooperation with several academic institutions, as part of the Organization's succession planning activities. She noted that the Secretariat was actively seeking the cooperation and support of other academic institutions, as well as Member States, in implementing that programme, which in future would be extended to junior interpreters. The Secretary General highlighted that the administrative process for the provision of language services was being enhanced through the updating of relevant tools in order to ensure the quality and efficiency of those services.

84. In expressing gratitude to those Member States which, through their partnership agreements with ICAO, had made voluntary contributions to the important area of language services, the Secretary General thanked, in particular: the Government of Saudi Arabia, whose generous support was enabling the ICAO public website to be translated into Arabic; the Governments of Argentina and China, whose generous support had enabled the Spanish and Chinese translations thereof to be done; and the Government of the Russian Federation, which, as a result of her recent mission, had agreed to make a voluntary contribution to enable the ICAO public website to be translated into Russian.

85. Referring to the point raised by the Representative of Spain regarding paragraph 2.1.1 of the progress report, the Secretary General noted that she had had the same view regarding multiple titles used for groups and had sought an explanation from her team. She had been advised that the said titles had been used previously, with the engagement of Council Representatives and Member States. The Secretary General indicated that the Secretariat would nevertheless review and streamline the multiple titles used for groups, for greater clarity. This was noted.

86. Responding to the question raised regarding resource mobilization, the Secretary General noted that the Secretariat was still in the process of recruiting personnel for the recently-established Partnership and Resource Mobilization (PRM) Section of the new Strategic Planning, Coordination and



Partnership Office (SPCP) and soliciting secondments from Member States. In underscoring that continuous efforts were being made to mobilize resources through partnership agreements with Member States and relevant international organizations, she highlighted the signature, on 15 May 2017 during her recent mission to China, of a new agreement on Economic and Technical Cooperation between ICAO and China wherein the latter pledged to give a grant of USD 4 million to the Organization for projects relating to safety, security and the sustainable development of air transport in support of ICAO's *No Country Left Behind* (NCLB) initiative. The Secretary General emphasized that the Chinese Government, in particular its Civil Aviation Authority, wished to strengthen its cooperation with ICAO by assisting those States participating in China's "Belt and Road" initiative in implementing the Organization's SARPs.

87. The Secretary General took this opportunity to express appreciation to the Government of Saudi Arabia for its voluntary contribution of USD 1 million to ICAO's NCLB initiative.

88. In noting that the Secretariat was also working with some Member States on projects in the pipeline relating to the cooperative provision of training in various areas, the Secretary General cited, as an example, a project with the Government of the United Kingdom which was in the finalization stage. She also underscored that ICAO received, through its partnership agreements with Member States, secondees to assist in the performance of Programme activities, and that efforts were ongoing to solicit additional secondments.

89. Referring to the last point raised by the Representative of Spain, the Secretary General indicated that she would henceforth inform the Council, at the end of every session, of the missions she planned to undertake during the recess, on the understanding that they were subject to possible adjustments due to her executive functions. She recalled, in this regard, that sessional reports on the activities during the recess, which comprised descriptions of the various meetings held at ICAO Headquarters, as well as of the missions undertaken by the Secretary General and the President of the Council, were regularly posted on the Council secure website under *Periodic Reports*. This was noted.

90. Thanking the Secretary General for her well-written, well-summarized and very clear progress report, the Representative of Canada affirmed that it was highly useful to him as a newly-appointed Council Member. In also expressing appreciation for the Secretary General's efforts to promote women in aviation in Canada and around the world through various outreach activities, he underscored that he stood ready to cooperate with her and to support those efforts over the coming years.

91. In welcoming the deployment of the CMRT, the Representative of Australia highlighted that its roll-out would result in a culture change for Representatives inasmuch as they would be able to research themselves the various issues in which they were interested using the increased volume of information now available at their fingertips. Referring to Section 4 of the progress report, he also welcomed the efforts to update the ICAO Corporate Risk Register on an ongoing basis to reflect changes in the Organization's circumstances and environment as an important step in building a corporate culture in ICAO that engaged with risk and risk management. Noting that paragraph 4.1.2 outlined a comprehensive information security risk identification and assessment project in both ICAO Headquarters and the Regional Offices, the Representative of Australia enquired whether it was part of the response to the November 2016 information technology (IT) security incident outlined previously by the Secretary General in her related oral report (210/10) or whether it was an additional separate activity, and what its timeline for completion was. Recalling that he and a number of other Representatives had at that time expressed an interest and an expectation that there would be a further briefing of the Council on the outcomes of the forensic investigation into the IT security incident and the lessons learned therefrom, the Representative of Australia indicated that he looked forward to such further details and discussions as ICAO's long-term response to that cybersecurity incident was developed and implemented.

92. Observing that he had the same questions, the Alternate Representative of the United States underscored that he would likewise be very interested to receive more detailed information on actions being taken to prevent another cyber-attack against ICAO, including the timelines for completion and expected results of the said information security risk identification and assessment project.

93. Noting that cybersecurity had been added as a new risk to the ICAO Corporate Risk Register, the Secretary General clarified that the Secretariat was in the process of implementing the measures recommended by Dell Secure Works and the United Nations International Computing Centre (UN ICC) in their final reports on their forensic analyses of the said IT security incident. In light of time constraints, she would not now elaborate on the associated Action Plan and corresponding timelines but would instead report to the Council at a future date on past, present and future measures to enhance the security of ICAO's information management and the resources required therefor.

94. In voicing appreciation for the development of the CMRT, the Representative of the United Arab Emirates agreed with the Representative of Australia that its deployment would entail a culture change within the Council. She suggested that the tool's functionality be expanded to include Council decisions and Assembly resolutions, as well as the ICAO Business Plan as referred to by the Representative of Spain. Noting, from C/PRC's demonstration of the CMRT, that the corporate KPIs were accessed via a link, the Representative of the United Arab Emirates further suggested that they be made accessible live. She also underscored the need to enhance the CMRT's design in order to increase its user friendliness.

95. Drawing attention to paragraph 2.1.2 of the progress report on the economic development of air transport, the Representative of Uruguay highlighted the importance of the development by ICAO, in cooperation with the UN, Member States and partner organizations, of a standardized framework for the economic measurement of aviation activities, such as aviation's contribution to Gross Domestic Product (GDP), the number of jobs created, aviation consumption, and the impact of aviation on balance of payments, which would, inter alia, help ICAO to communicate with Member States in promoting investments in, and facilitating informed policy making for, the sustainable growth of the air transport sector. He underscored the enormous potential of air transport for the socio-economic development of all ICAO Member States. The Representative of Uruguay noted, in this regard, that his State and other States in the South American region had benefited considerably from the recent visit by the Secretary General, in the company of the Director of the Technical Cooperation Bureau (D/TCB) and the ICAO Regional Director (ICAORD), SAM (Lima), in which she had focused attention on the said approach. Her very clear message had been heard by not only civil aviation authorities (CAAs) but also Ministers responsible for development, and had had a very positive outcome, namely, the prioritization of aviation in States' national development plans and in striving to achieve UN Sustainable Development Goal (SDG) 9: *Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation*, of which ICAO was one of the custodial agencies. In thanking the Secretary General, as well as the President of the Council, for promoting the said approach to the economic development of air transport, the Representative of Uruguay emphasized that conveying that important message in all ICAO languages would make it easier for all aviation stakeholders to assimilate.

96. The President of the Council underscored the importance of the economic development of air transport to States, in particular, to their meeting SDG target 9.1: *Develop quality, reliable, sustainable and resilient infrastructure, including regional and trans-border infrastructure, to support economic development and human well-being, with a focus on affordable and equitable access for all*, which was related to aviation infrastructure development and capacity building. He highlighted that: the State of the industry briefing that would take place on 18 September 2017, the day prior to the start of the Council off-site strategy meeting (COSM2017) (Château Bromont, 19-21 September 2017), would focus on the issue of aviation infrastructure development; COSM2017 itself would focus on the implementation

of ICAO's Global Plans, particularly with respect to that same issue of aviation infrastructure development; and the Third ICAO World Aviation Forum (IWAF/3) (Abuja, Nigeria, 27-29 November 2017) would have as its theme *Financing the Development of Aviation Infrastructure*. Thus many ICAO events in 2017 would be focused on aviation infrastructure development, and the importance of aviation being part of national development plans and receiving the priority it deserved so that air transport could continue to contribute to the socio-economic development of all ICAO Member States.

97. In noting that the aviation industry was also taking that issue very seriously, the President of the Council recalled that he had highlighted it in his keynote address to the 73rd IATA AGM (Cancún, 4-6 June 2017) and that IATA had had significant discussions thereon during that and other meetings. He emphasized the importance of conveying the said message to all stakeholders in all relevant economic sectors and not solely in the aviation sector.

98. In joining previous speakers in voicing appreciation for the progress report, the Representative of Malaysia expressed satisfaction with the actions being taken to prevent future cyber-attacks against ICAO as further outlined by the Secretary General during the discussion. Noting, from paragraph 5.2, that ICAO had established a new partnership with the United Nations Institute for Training and Research (UNITAR) in order to develop a training course on States' Action Plans for CO<sub>2</sub> emissions reduction which would be made available on the *One UN Climate Change Learning Partnership (UN CC: Learn)*, he underscored that many Member States would seek that kind of capacity building in order to implement CORSIA. In enquiring whether the said training course would be classified under GAT activities, he expressed concern that it not lead to costs for Member States, which would be challenging for many to defray, particularly Small Island Developing States (SIDs) which were among those most affected by climate change. The Representative of Malaysia recalled, in this regard, the Council's earlier decision (211/2) that GAT activities were to be carried out on a cost-recovery basis.

99. The Secretary General noted that consideration was currently being given to the format of CORSIA training courses to be jointly developed by the GAT Office and the Environment Branch (ENV) of the Air Transport Bureau (ATB), taking into account the material that had been prepared for the ICAO regional seminars on CORSIA.

100. Responding to a query by the President of the Council, the Director, ATB (D/ATB) clarified that the UNITAR facilities were available to all UN organizations. By developing the said training course on States' Action Plans for CO<sub>2</sub> emissions reduction with UNITAR, ICAO was demonstrating to those organizations and other stakeholders that it was taking action to address international aviation emissions. He noted that, at the same time, the GAT Office and ENV/ATB would be developing specific training courses for CORSIA implementation pursuant to ICAO's mandate, as indicated by the Secretary General.

101. Observing that ICAO currently provided training on the development of States' Action Plans for CO<sub>2</sub> emissions reduction free-of-charge, the President requested that the Secretariat, in developing a training course on that subject through its new partnership with the UNITAR, take into account the concern expressed that it not lead to costs for Member States, which would be challenging for many to defray, particularly SIDs which were among those most affected by climate change. Such cost considerations should also be taken into account in developing ICAO's own training courses relating to CORSIA implementation. The President further requested that the Secretariat consider ways to incorporate the Organization's various i-tools, some of which were no longer being used, into one central tool.

102. In addition, in light of remarks made previously and during the present meeting, the President requested that the Secretary General provide Representatives as soon as possible with

information on the implementation of measures to address the recommendations of the forensic investigation into the IT security incident which had occurred in November 2016.

103. Comments made and clarifications provided during the current discussion were noted, as were suggestions made to enhance the CMRT's design and to expand its functionality, which would be taken into consideration by the Secretariat together with those made previously during the informal briefing given on 9 May 2017.

104. In completing its consideration of this subject, the Council noted the information provided in C-WP/14603 and during the discussion. It was understood that, in due course, the Chairperson of the Implementation, Strategy and Planning Group (ISPG) and the Secretary General would brief the Council on the programmes of COSM2017 and IWAF/3, respectively.

### **Draft communication to States on the appointment of the Secretary General**

105. The Council had for consideration: C-WP/14604 presented by the President of the Council, to which was appended a draft State letter notifying Member States of the forthcoming appointment of the Secretary General for a three-year term and inviting nominations; and an oral report thereon by the Human Resources Committee (HRC), which had reviewed the paper at its First Meeting of the current session on 8 May 2017.

#### *Oral report by the HRC*

106. In presenting the HRC's oral report, its Chairperson, the Representative of Egypt, Mr. A.H.M. Khedr, noted that the said draft State letter outlined the role and responsibilities of the Secretary General, the qualifications required, as well as the modalities of appointment, and invited Member States to submit nominations of suitable candidates.

107. During its deliberations, the HRC had noted amendments made to the text of the previous State letter on this subject issued on 30 September 2014. It had also discussed the use of the term *chief executive officer* in the second paragraph of the proposed State letter in the context of Article 54 h) of the Chicago Convention, with different views having been expressed by Committee Members. The HRC recommended that the Council approve the draft State letter as presented in the Appendix to C-WP/14604, subject to the removal of the quotation marks around the term *chief executive officer* in the second paragraph to be aligned with the terminology used in Article 54 h) of the Chicago Convention.

#### *Discussion*

108. In the absence of comments, the Council, as recommended by the HRC, approved the said draft State letter, subject to: the removal of the quotation marks around the term *chief executive officer* in the second paragraph to be aligned with the terminology used in Article 54 h) of the Chicago Convention; and the updating of the figures contained in Attachment B (Conditions of Service) thereto to reflect the amounts applicable at the time of issuance.

109. In addition, the Council agreed that, in accordance with paragraphs 1 and 2 of the rules and procedures for the appointment of the Secretary General [cf. Appendix C of the *Rules of Procedure for the Council* (Doc 7559)], and as suggested by the President: the said State letter be issued on 29 September 2017, ten months before the termination of the incumbent Secretary General's first term of

office (on 31 July 2018); the deadline for the receipt of nominations be 15 January 2018, so as to provide Member States with the requisite full three months in which to reply; and the appointment of the Secretary General take place during its 213th Session in February/March 2018, approximately five months before the termination of the incumbent's said term of office. It was noted that pursuant to paragraph 3 of the said rules and procedures, the President of the Council will circulate the names of the candidates for the Office of the Secretary General to all Member States as soon as they are received.

**Subject No. 7:                    Organization and personnel**

**Status of the ICAO workforce for 2016**

110.                    The Council commenced its consideration of information paper C-WP/14626 Revised, in which the Secretary General reported on the status and composition of the ICAO workforce as at 31 December 2016. The paper had initially been circulated under cover of President's memorandum PRES OBA/2642 dated 1 May 2017 and was now being tabled for discussion at the request of the Representative of Mexico.

111.                    In introducing the paper, the Secretary General noted that it contained information on the distribution of staff and posts, taking into account: a) the status of the post, type of appointment and funding; b) the use of consultants/contractors and gratis personnel, including the number of months worked and expenditures; c) the distribution of Professional staff by main occupational groups; d) equitable geographical representation (EGR); e) gender, staff movements, including an analysis of appointments in the Professional and higher categories and their impact on EGR and gender; f) staff turnover; g) internal staff mobility; and h) demographic human resources (HR) data on the personnel of ICAO, such as length of service, age and retirement.

112.                    The Secretary General highlighted the following key observations, which were also reflected in the executive summary of the paper: a) as at 31 December 2016, the total number of staff members in the Secretariat was 696 (339 Professional and 357 General Service); b) the overall percentage of women occupying Professional posts had reached 31 per cent, representing a 1 per cent increase from the previous year; c) 87 Member States were represented by Professional staff, of which 83 were in posts subject to EGR; d) for all categories of personnel combined, 14 per cent of existing staff members were due to retire by the end of 2019, 27 per cent by the end of 2022, and 38 per cent by the end of 2025. In anticipation of those expected retirements, HR management and workforce planning activities, including succession planning, were being intensified in order to mitigate risk to the Organization; and e) those upcoming retirements represented opportunities for the Organization to make efforts to improve the EGR of Member States and gender balance.

113.                    With regard to gender, the Secretary General underscored that currently at ICAO women occupied 31 per cent of all Professional posts, 18 per cent of technical Professional posts, 50 per cent of non-technical Professional posts, and 61 per cent of language Professional posts. In noting that ICAO was within the range of gender status of other technical UN Specialized Agencies, she cited the International Atomic Energy Agency (IAEA), which was at 29 per cent, and the World Meteorological Organization (WMO), which was at 35 per cent. The Secretary General indicated that ICAO was, however, situated behind the overall UN system of organizations, which was at 42 per cent of women occupying Professional posts. In highlighting that the number of applications from women had increased from 28 per cent in 2015 to 36 per cent in 2016, she emphasized that the rise in the number of qualified women seeking to join the Organization and being appointed to positions, thus contributing to the work of the global aviation community, was an encouraging development for ICAO.

114. In concluding her introduction, the Secretary General emphasized that the attainment and maintenance of a diverse, flexible and motivated workforce required the collaboration of Member States, senior management, line management and HR. She invited the Council to note the status of the ICAO workforce as at 31 December 2016 as presented in C-WP/14626 Revised.

115. While expressing appreciation to the Secretary General for taking action to strengthen the recruitment of women at ICAO, the Representative of Saudi Arabia underscored that it was also necessary to strengthen EGR so that more Member States would achieve the desirable level of representation as indicated in Appendix D to the paper. He also highlighted the need for succession planning in view of the many staff members who would be retiring over the next eight years. With reference to the EGR regional groupings in Appendix D, the Representative of Saudi Arabia suggested that Cyprus and Israel be listed under Europe (EUR) in Table D.4 instead of under the Middle East (MID) in Table D.6, in order to be consistent with the list of Member States to which the European and North Atlantic Office (EUR/NAT) (Paris) was accredited.

116. The Representative of Mexico noted that he had requested that C-WP/14626 Revised be tabled for the Council's consideration in view of: the evolution of civil aviation; policy shifts in ICAO; the higher level of qualified personnel in Member States; and changes in the structure and management of HR. The Council would now have the opportunity to review and assess the contents of the paper on the status of the ICAO workforce and to take appropriate decisions.

117. Referring to the 2019-2025 retirement projections cited by the Secretary General [cf. paragraph d) of the executive summary], the Representative of Mexico enquired whether they had been taken into consideration in the Council's previous decision (208/10) to apply the mandatory age of separation of 65 (MAS65) to all current serving staff (i.e. those recruited prior to 1 January 2014), effective 1 January 2019.

118. D/ADB confirmed that the said retirement projections had been taken into account when presenting C-WP/14463 (Review of the Mandatory Age of Separation) to the Council for decision at its 208th Session.

119. Noting that the Council had accorded the Secretary General the flexibility to grant exceptional consideration for extensions beyond retirement age to staff members (P-5 and below) due to retire during the transition years 2017 and 2018, the Representative of Mexico enquired as to the number of staff members who were due to retire in that period and the number who had been granted extensions.

120. In offering clarifications, D/ADB recalled that the Council had decided (208/10) to accord flexibility to the Secretary General to grant exceptional extensions to staff reaching MAS60 and MAS62 during the 2017-2018 transition period on the understanding that such extensions would not be granted automatically and that instead objective and transparent criteria therefor would be established and applied on a case-by-case basis. The criteria which had accordingly been established by the Secretariat in consultation with the ICAO Staff Association took into consideration the organizational priorities and operational/programme needs. Furthermore, the criteria required supervisors to take into account the future/evolving functions/competencies/requirements of posts and to determine if the serving staff members who were reaching MAS had the required knowledge/skills/competencies to meet the future/evolving needs of the Organization. D/ADB noted that succession planning, including the rejuvenation of skills and of processes/systems, were also important considerations that were taken into account when reviewing and prioritizing requests for exceptional extensions beyond MAS. He emphasized that the said criteria were being applied consistently to all concerned staff members, at all grade levels.

121. D/ADB further indicated that the target of 50 per cent had been taken into account when reviewing and prioritizing requests for exceptional extensions. He noted that for the two years combined, 2017 and 2018, a total of 66 staff members (all grade levels; all sources of funding) would reach MAS, out of which 35 (53 per cent) had been extended for up to a maximum of one year, and 31 staff members (47 per cent) would separate from service after reaching MAS. He underscored that these strategic decisions had been based on the future needs of the Organization as reflected in its Business Plan and the related Operating Plans of the Bureaus and Regional Offices.

122. D/ADB highlighted that to assist the Secretary General in reviewing the above-mentioned cases and in establishing overall organizational-wide priorities for posts up to and including P-5 level, an Ad-Hoc Advisory Committee comprising the five Bureau Directors had been established. The President of the ICAO Staff Association attended the Committee's meetings as an Observer. D/ADB noted that for staff members reaching MAS at the D-1 and D-2 levels, the Secretary General consulted the President of the Council, taking into account the provisions for D-1 and D-2 level staff members in *The ICAO Service Code* (Doc 7350).

123. Drawing attention to paragraph e) of the executive summary, in which it was stated that upcoming retirements represented opportunities for the Organization to make efforts to improve the geographical representation of Member States and gender balance, the Representative of Mexico emphasized that giving serious consideration to EGR and gender during the recruitment process in general would also enable more Member States to achieve their desirable levels of representation and would have a positive impact on gender balance and the diversity of competencies. D/ADB concurred.

124. Referring to paragraph b), the Representative of Mexico underscored the need to consider why there had only been a 1 per cent increase in women occupying Professional posts in 2016 and to increase efforts to achieve the aspirational goal of gender equality by 2030 as set forth in Assembly Resolution A39-30: *ICAO Gender Equality Programme promoting the participation of women in the global aviation sector*. With regard to paragraph c), he highlighted that the 83 Member States that were represented by Professional staff members in posts subject to EGR constituted less than half of the total number of Member States (191). The Representative of Mexico suggested that, while competency remained the primary criterion for recruitment, the Council should set a target for the Secretary General to enhance EGR considering that each Member State had an aviation sector from which suitably qualified personnel could be drawn. He emphasized that the fact that ICAO did not avail itself of the professional knowledge and experience of personnel from non-represented Member States should be a cause for concern, particularly for the success of the Organization's NCLB initiative.

125. In offering assurances that EGR and gender balance were always given serious consideration at all stages of the recruitment process for all levels of Professional posts, D/ADB noted that their achievement was dependent upon the various programmes in place to increase the pool of aviation professionals, including women. He cited, as examples, the Young Aviation Professionals Programme (YAPP) established by ICAO, the International Air Transport Association (IATA) and Airports Council International (ACI), and States' national programmes.

126. To an observation then made by the Representative of Mexico that paragraph 2.5 of the paper on the use of consultants/contractors and gratis personnel in 2016 did not indicate the number of Member States represented in those categories or provide information on gender balance, D/ADB indicated that such information would be added to future workforce reports, although those categories of personnel were not subject to EGR and gender balance in accordance with the existing Staff Regulations approved by the Council and relevant C-DECs. He noted that in 2016 there had been 130 consultants/contractors (76 men and 54 women) representing 36 Member States, and 55 gratis personnel (40 men and 15 women) representing 13 Member States.

127. The Representative of Mexico also observed that paragraph 2.5 did not include a comparison with the previous year to show whether there had been an increase or a decrease in the said categories of personnel. Observing that while some parts of the paper included comparisons to 2015, others did not, he stressed the need for consistency in the presentation of information. Noting, from paragraph 2.1, that there had been 696 staff members in service and a total of 760 posts as at 31 December 2016, the Representative of Mexico highlighted that the said number of consultants/contractors and gratis personnel represented some 24.34 per cent of the workforce, and an even higher percentage, 26.58 per cent when only serving staff members were taken into account. In averring that such heavy reliance on consultants/contractors and gratis personnel posed a risk to the Organization, he questioned whether it was the right profile for ICAO. The Representative of Mexico also enquired as to how ICAO compared to other relevant UN organizations in its use of such categories of personnel and as to the External Auditor's views thereon.

128. D/ADB clarified that although the comparison of ICAO's use of consultants/contractors and gratis personnel in 2015 and 2016 was not included in paragraph 2.5, it could be obtained through the information provided in Table A.7 in Appendix A. He indicated that the comparison would be included in the body/text of future workforce papers. To the question raised regarding how ICAO's use of such categories of personnel compared to their use by other relevant UN organizations, D/ADB indicated that the Secretariat currently did not have statistics for the latter. It would thus be useful for the Secretariat to consider that issue in more detail in the future.

129. The Representative of Mexico then highlighted that the paper did not present any information on vacancies at the Professional and General Service levels. While paragraph 4 addressed appointments to Professional posts, it failed to make any reference to the number of vacant Professional posts at the end of 2016 (i.e. posts advertised but not filled), the number of posts that had had to be re-advertised (and the reasons therefor), the Bureaus where the vacant posts existed and the duration of the vacancies (i.e. the amount of time since the posts had become vacant).

130. Noting that Table A.2 in Appendix A provided the details of the number of Professional posts and staff by category and by source of funding as at 31 December 2016, D/ADB indicated that a comparison between the number of Professional posts (372) and the number of Professional staff in service (339) revealed that the number of vacant Professional posts was 33 (including established posts, as well as supernumerary posts approved for filling), which was an acceptable number given natural attrition and staff turnover. He recalled, in this regard, that as part of the Assembly-approved Regular Programme Budget for the current triennium it was necessary to maintain a vacancy rate of 6.2 per cent. He noted that future workforce papers would address the number of vacant Professional posts more clearly, and that an up-to-date list of vacancies, with details on closing dates and funding information, was posted on the Council website under "HR Information".

131. Responding to the question raised regarding re-advertised Professional posts, D/ADB indicated that unfortunately it sometimes transpired during the recruitment process that no suitably-qualified candidate was identified who met all the requirements of the advertised post. It was thus in the best interests of the Organization to re-advertise it.

132. In conclusion, D/ADB underscored that as part of its workforce planning the Secretariat took a holistic approach to recruitment which took into account, inter alia, EGR, gender balance, the competency and specialty mix, and the use of consultants/contractors and gratis personnel, as well as the internal processes undertaken to fill vacant Professional posts as quickly as possible.



133. In noting, with appreciation, the clarifications provided, the Representative of Mexico requested that: written responses to his questions be circulated to all Representatives for reference purposes; and that future annual reports on the status of the ICAO workforce contain the information he had requested, as updated to reflect the situation during the reporting period.

134. The Representative of the United Arab Emirates suggested that future annual reports on the status of the ICAO workforce be issued as working papers instead of information papers to facilitate the Council's decision-making. Recalling that 80 per cent of the Regular Programme Budget was allocated to HR, she affirmed that the latter was a very important issue for the Council. In supporting the interventions by the Representatives of Saudi Arabia and Mexico, the Representative of the United Arab Emirates indicated that most of the concerns raised had been addressed by D/ADB.

135. In then offering some additional observations and suggestions, the Representative of the United Arab Emirates suggested that for future workforce papers: paragraph b) of the executive summary be expanded to also indicate the number of women in D-2 and D-1 level posts; and that in section 3.4 on gender, the distribution of women Professionals be indicated using numbers instead of percentages, which were misleading, and reflect all grade levels, including those for which there were no women Professionals. She noted, in this context, that paragraph 3.4.1 of the paper did not reflect that there were no women Professionals at the D-2 level. Furthermore, it indicated that 10 per cent of women Professionals were at the D-1 level, which was misleading as there was only one woman Professional at that level, the Deputy Director of the Environment Branch (DD/ENV). The Representative of the United Arab Emirates suggested that future workforce papers also: use numbers instead of percentages in describing the use of consultants/contractors and gratis personnel; and include developments relating to ICAO's important Next Generation of Aviation Professionals (NGAP) Programme, as well as an indication of any plans to recruit such young professionals at ICAO or to assist them in finding employment elsewhere in the global aviation sector.

136. Noting that a succession plan had yet to be presented to the Council for consideration despite having been under discussion for the past four years, the Representative of the United Arab Emirates underscored that it was difficult to motivate serving staff members to pursue their careers at ICAO in the absence thereof.

137. Turning to the issue of gender balance, the Representative of the United Arab Emirates recalled that the Assembly, in Operative Clauses 4 and 5, respectively, of Assembly Resolution A39-30, instructed the Secretary General "to establish an *ICAO Gender Equality Programme* by mid-2017 with the primary aim of facilitating and coordinating targeted programmes and projects to enable and make regular reports on progress toward the goal of gender equality by 2030, especially in Professional and higher levels of employment, within ICAO, and within States and the global aviation sector;" and requested the Secretary General "to report annually to the Council on the measures implemented and the progress being made in promoting gender equality within all levels of staff categories in the ICAO Secretariat, and on aviation gender equality statistics, to the extent that they are provided on a voluntary basis, in Member States and the international aviation industry;" and sought information regarding the envisaged *ICAO Gender Equality Programme*. Noting that ICAO was always advocating attracting, educating and retaining the next generation of aviation professionals, as well as increasing the participation of women in the global aviation sector, she emphasized the need for the Organization to practice what it preached.

138. D/ADB clarified that an experienced consultant was developing a proposal for an *ICAO Gender Equality Programme*, in coordination with the Secretariat and the various stakeholders, which would be submitted to the Secretary General for consideration in the near future.

139. With regard to the development of a succession plan, D/ADB noted that it was necessary to examine the future needs of the Organization strategically, particularly as they evolved over time. While grooming the second in line to fill the post being vacated by the retiring staff member might sometimes be the most appropriate course of action in terms of career development and the best interests of the Organization, the selection of that staff member was not automatic as there could be more suitably-qualified external candidates. In underscoring that ICAO's staff members were its intellectual capital, D/ADB stressed that the Organization should continue to invest in them through training as part of an HR strategy going forward.

140. The Secretary General fully supported the interventions by the Representatives of Saudi Arabia, Mexico and the United Arab Emirates regarding the ICAO workforce. In reiterating that the upcoming retirements afforded opportunities to enhance the EGR of Member States and gender balance, she indicated that the said Ad-Hoc Advisory Committee, with the involvement of the Staff Association, had been established to ensure proper succession planning by, on the one hand, continuing to invest in serving staff members, and on the other, recruiting external candidates to bring a fresh perspective to the Organization's work as well as address EGR and gender. Such succession planning would enable the Secretariat to meet ICAO's evolving needs, address emerging aviation issues and deliver the services which Member States and the global aviation sector expected from the Organization.

141. With respect to Assembly Resolution A39-30, the Secretary General indicated that once the composition of the Advisory Committee on Gender Equality had been completed, which should be shortly, it would lead the Organization's holistic efforts to achieve gender equality within the Secretariat. At the same time, the Secretariat would work with Council Representatives and Member States to jointly promote gender equality within Member States and the global aviation sector. In supplementing D/ADB's earlier comments, the Secretary General noted that an experienced consultant had been provided by UN Women to conduct an analysis of gender issues in ICAO, Member States and the global aviation sector with a view to developing a roadmap for the Resolution's implementation, including a proposal for an *ICAO Gender Equality Programme*. The Secretary General envisaged presenting a report thereon to the Council during its 213th Session in February/March 2018.

142. In fully agreeing with the Representative of the United Arab Emirates that NGAP presented an excellent opportunity to encourage the next generation of aviation professionals, including women professionals, the Secretary General highlighted that ICAO, in cooperation with the United Nations Educational, Scientific and Cultural Organization (UNESCO), intended to convene the inaugural NGAP Global Summit in 2017. She further underscored that: the Secretariat had already entered into arrangements with several academic institutions to engage the next generation of aviation professionals; ICAO and several Council Member States, including the United Arab Emirates, were supporting the 2017 *Dreams Soar* solo round-the-world flight by female pilot Captain Shaesta Waiz, who had visited ICAO Headquarters during her stop-over in Montréal from 15-19 May 2017 to conduct outreach activities; and the International Aviation Womens Association (IAWA) also promoted activities to encourage the next generation of aviation professionals through its IAWA Connects events.

143. In conclusion, the Secretary General urged Member States to encourage suitably-qualified candidates to apply for Professional posts at ICAO, in particular, senior management posts, to enable the recruitment of the right person, at the right time, for the right job.

144. In light of time constraints, the Council agreed to resume consideration of this subject at the next meeting (211/4). The comments made and clarifications provided during the discussion were noted, as were the suggestions made to enhance the presentation of information contained in the report on the status of the ICAO workforce (C-WP/14626 Revised) and to expand the latter's contents.

**Any other business****Subject No. 6.3: Election of Chairmen and Members of subsidiary bodies of the Council****Appointment of new Member and Alternates on the ATC, FIC, HRC, JSC, UIC and RHCC Committees**

145. In the absence of comments by 5 May 2017 to his e-mail message dated 3 May 2017, the President, on behalf of the Council, has appointed Mr. Martial Pagé, the Representative of Canada, as Member of the Air Transport (ATC), Joint Support (JSC), Finance (FIC), Unlawful Interference (UIC) and Human Resources (HRC) Committees and the Committee on Relations with the Host Country (RHCC), in accordance with paragraph 3 of the Special Provisions applicable to the ATC of the *Rules of Procedure for Standing Committees of the Council* (Doc 8146), and has appointed Mr. Frank Neubauer as Alternate on the ATC and UIC, as well as Mr. Paul Langlais as Alternate on the FIC, JSC, UIC, HRC and RHCC in accordance with paragraph 6 thereof, with immediate effect.

**Council working papers presented for information**

146. As the President of the Council did not receive any requests to have the following information papers tabled for consideration, it is considered that the Council has noted the information provided therein:

- C-WP/14625 – *Financial situation of the Organization and level of the Working Capital Fund (WCF)* – circulated under cover of PRES OBA/2650 dated 30 May 2017 with a deadline of 5 June 2017 for comments;
- C-WP/14627 – *Report of the Joint Inspection Unit (JIU) for 2016 and Programme of Work for 2017*; and
- C-WP/14628 – *Report of the Joint Inspection Unit (JIU) entitled “Evaluation of the contribution of the United Nations development system to strengthening national capacities for statistical analysis and data collection to support the achievement of the Millennium Development Goals (MDGs) and other internationally-agreed goals” (JIU/REP/2016/5)* – both of which were circulated under cover of PRES OBA/2649 dated 25 May 2017 with a deadline of 1 June 2017 for comments.

**Subject No. 13: Work Programmes of Council and its subsidiary bodies****C-DEC 210/9 relating to the revised Charter for the Evaluation and Internal Audit Office (EAO)**

147. Referring to the Council’s earlier consideration (210/9) of C-WP/14526 Revised, in which the Working Group on Governance and Efficiency (WGGE) had presented a revised EAO Charter for its approval, the President indicated that although the Council had decided to amend paragraph 6 thereof by replacing the word “consulting” with the word “advisory”, he had since been informed by the Chairperson of the WGGE and the Acting Chief, EAO (A/C/EAO) that it was necessary to maintain the word “consulting” based on the mandatory definition of internal auditors as required by the international auditing standards issued by the Institute of Internal Auditors. The Council so agreed. It was understood that: paragraph 9 of C-DEC 210/9 would be amended accordingly, and that a revised C-DEC 210/9 would be issued; and that a copy of the EAO Charter reflecting this decision would be circulated to Representatives for their information and records and posted on the Council secure website.

**Subject No. 52: Unlawful interference with international civil aviation and its facilities**

**Subject No. 14.4: Air navigation meetings**

**Subject No. 15: Subjects relating to air transport**

**Subject No. 42: Technical cooperation**

**Regional Ministerial Conference on Aviation Security in Africa and the Middle East Regions  
Third ICAO World Aviation Forum (IWAF/3)**

148. The Secretary General noted that State letters would soon be issued on the convening of: the Regional Ministerial Conference on Aviation Security in Africa and the Middle East Regions (Sharm El Sheikh, Egypt, 22-24 August 2017), whose theme was *Global Aviation Security Plan (GASeP): the Roadmap to Foster Aviation Security in Africa and the Middle East* (cf. State letter AS 58/1.9.2-17/76 dated 8 June 2017); and the Third ICAO World Aviation Forum (IWAF/3) (Abuja, Nigeria, 20-22 November 2017), whose theme was *Financing the Development of Aviation Infrastructure* (cf. State letter M 15/1.2-17/63 dated 7 June 2017).

149. On behalf of their Governments, the Representatives of Egypt and Nigeria invited the President and all Council Representatives to participate in the said Regional Ministerial Conference and IWAF/3, respectively.

150. The President requested the Representatives of Egypt and Nigeria to convey the Council's appreciation to their respective Governments for graciously hosting those important events. It was noted that: the Regional Ministerial Conference was intended for Ministers directly responsible for the implementation of security-related SARPs and would be conducted in Arabic, English and French; and IWAF/3 was intended for high-level government officials responsible for aviation, transport and infrastructure, finance, economy and tourism, as well as key industry and financial partners, and would be conducted in the Organization's six working languages.

151. The meeting adjourned at 1310 hours.



**COUNCIL — 211TH SESSION**

**SUMMARY MINUTES OF THE FOURTH MEETING**

**(THE COUNCIL CHAMBER, FRIDAY, 9 JUNE 2017, AT 1000 HOURS)**

**OPEN MEETING**

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

**PRESENT:**

- |            |                              |                             |                        |
|------------|------------------------------|-----------------------------|------------------------|
| Algeria    | — Mr. A.D. Mesroua           | Kenya                       | — Ms. M.B. Awori       |
| Argentina  | — Mr. G.E. Ainchil           | Malaysia                    | — Mr. Y.-H. Lim        |
| Australia  | — Mr. S. Lucas               | Mexico                      | — Mr. D. Méndez Mayora |
| Brazil     | — Mrs. M.G. Valente da Costa | Nigeria                     | — Mr. M.S. Nuhu        |
| Cabo Verde | — Mr. C. Monteiro            | Panama                      | — Mr. G.S. Oller       |
| Canada     | — Mr. M. Pagé                | Republic of Korea           | — Mr. J. Hur           |
| China      | — Mr. Shengjun Yang          | Russian Federation          | — Mr. A.A. Novgorodov  |
| Colombia   | — Mr. A. Muñoz Gómez         | Saudi Arabia                | — Mr. S.A.R. Hashem    |
| Congo      | — Mr. R.M. Ondzotto          | Singapore                   | — Mr. T.C. Ng          |
| Cuba       | — Mrs. M. Crespo Frasquieri  | South Africa                | — Mr. M.D.T. Peege     |
| Ecuador    | — Mr. I. Arellano            | Spain                       | — Mr. V.M. Aguado      |
| Egypt      | — Mr. A. Khedr               | Sweden                      | — Ms. H. Jansson Saxe  |
| France     | — Mr. P. Bertoux             | Turkey                      | — Mr. A.R. Çolak       |
| Germany    | — Mr. U. Schwierczinski      | United Arab Emirates        | — Mr. M. Salem (Alt.)  |
| India      | — Mr. A. Shekhar             | United Kingdom              | — Mr. M. Rodmell       |
| Ireland    | — Mrs. A. Smith Floch        | United Republic of Tanzania | — Mr. R.W. Bokango     |
| Italy      | — Mr. M.R. Rusconi           | United States               | — Mr. S. Kotis (Alt.)  |
| Japan      | — Mr. S. Matsui              | Uruguay                     | — Mr. M. Vidal         |

**ALSO PRESENT:**

- |                                 |                      |
|---------------------------------|----------------------|
| Dr. N. Luongo (Alt.)            | — Argentina          |
| Mrs. M.F. Loguzzo (Alt.)        | — Argentina          |
| Mr. N. Castro da Silva (Alt.)   | — Brazil             |
| Mr. G. do Prado Lima (Alt.)     | — Brazil             |
| Mr. R. da Rosa Costa (Alt.)     | — Brazil             |
| Mr. D.A. Tavares Taufner (Alt.) | — Brazil             |
| Mr. Chunyu Ding (Alt.)          | — China              |
| Mr. M. Millefert (Alt.)         | — France             |
| Mr. N. Naoumi (Alt.)            | — Germany            |
| Mr. M. Usami (Alt.)             | — Japan              |
| Mr. K.A. Ismail (Alt.)          | — Malaysia           |
| Mrs. D. Valle Álvarez (Alt.)    | — Mexico             |
| Mr. S. Kim (Alt.)               | — Republic of Korea  |
| Mr. K. Lee (Alt.)               | — Republic of Korea  |
| Mr. D. Subbotin (Alt.)          | — Russian Federation |
| Mr. M.S. Habib (Alt.)           | — Saudi Arabia       |
| Mr. S. Vuokila (Alt.)           | — Sweden             |
| Mr. Ö. Doğrukol (Alt.)          | — Turkey             |
| Mrs. K.L. Riensema (Alt.)       | — United Kingdom     |
| Mr. J. Méndez (Alt.)            | — Uruguay            |

**SECRETARIAT:**

- |                         |                  |
|-------------------------|------------------|
| Mrs. J. Yan             | — C/OSG          |
| *Mr. I. Galán           | — D/TCB          |
| *Mr. B. Djibo           | — D/ATB          |
| *Mr. J. Augustin        | — D/LEB          |
| *Mr. V. Smith           | — D/ADB          |
| *Mrs. J. Hupe           | — DD/ENV         |
| *Ms. H. Jackson         | — A/C/EAO        |
| *Mr. R. Macfarlane      | — DD/AN          |
| *Mr. T. Hasegawa        | — DD/ECD         |
| *Mrs. L. Comeau-Stuart  | — C/POD          |
| *Ms. K. Balram          | — C/SEA          |
| *Mr. A. Jakob           | — SLO            |
| *Mr. J. Lamosa          | — C/ASA          |
| *Mr. T. Tanaka          | — C/CC           |
| *Ms. L. Kinsella-Taylor | — Ethics Officer |
| *Mr. W. Parks           | — A/C/ISD-SEC    |
| *Mr. N. Dickson         | — C/ES           |
| *Mr. S. Jossai          | — C/RCP          |
| Miss S. Black           | — Précis-writer  |

\*Part-time

**Representatives to ICAO**

Bolivia (Plurinational State of)  
Cameroon  
Chile  
Cyprus  
Ghana  
Greece  
Lebanon  
Nicaragua  
Paraguay  
Venezuela (Bolivarian Republic of)

Airports Council International (ACI)  
European Union (EU)

**Subject No. 7:                    Organization and personnel**

**Status of the ICAO workforce for 2016**

1.                    The Council resumed (211/3) and completed its consideration of information paper C-WP/14626 Revised, in which the Secretary General reported on the status and composition of the ICAO workforce as at 31 December 2016. The paper had initially been circulated under cover of President's memorandum PRES OBA/2642 dated 1 May 2017 and had been tabled for discussion at the request of the Representative of Mexico.

2.                    The Representative of the Russian Federation endorsed the comments made during the Council's initial discussion of the paper (211/3). Drawing attention to Table D.1 *Overview of geographical distribution* in Appendix D, he underscored that although the total number of Professional posts subject to equitable geographical representation (EGR) had increased from 252 in 2015 to 256 in 2016, the number of under-represented States had increased from 16 to 17 and the number of States represented above the desirable level had increased from 25 to 26 in that same period. The Representative of the Russian Federation suggested that a key performance indicator be established using the difference between the number of States represented in posts subject to EGR above the desirable level and the number of States under-represented in such posts in order to determine if there was an equalizing trend.

3.                    The Alternate Representative of the United States noted that many of the points which he had intended to raise regarding the work being done by the Secretariat to increase the representation of women in Professional posts and to address EGR issues had been raised by other Representatives during the previous meeting. As recommended, he had subsequently provided his remaining detailed questions to the Secretariat. Pending the latter's expected written response, the Alternate Representative of the United States would only seek clarification as to why women occupied 14 per cent of Professional posts at the Regional Offices as compared to 36 per cent of Professional posts at ICAO Headquarters and as to what action was being taken or would be taken to address that disparity.

4.                    The Director of the Bureau of Administration and Services (D/ADB) clarified that the disparity was largely due to the fact that: there were fewer posts in the Regional Offices than in ICAO Headquarters; the majority of Regional Office posts were technical Professional posts; and the number of applicants, including female applicants, for any ICAO Professional posts was strongly linked to States' pools of talent for specific aviation competencies. He recalled that the latter pipeline issue had been raised during the Council's previous meeting, with some Representatives having highlighted the need to encourage the next generation of aviation professionals, including women professionals.

5.                    The Representative of Spain emphasized that the expected retirement of 38 per cent of staff (Professional and General Service categories combined) by 31 December 2025 represented a big opportunity, not only to improve EGR of States and gender balance as indicated in action paragraph e) of the paper, but also to rejuvenate the workforce and to identify the competencies required to meet the future/evolving needs of the Organization, which might not necessarily be the same as those required in the past decade. He underscored, in this context, the need for competencies in management and project management, among many other areas.

6.                    Although the Representative of Spain considered that the use of consultants/contractors and gratis personnel was entirely acceptable, he expressed concern over the ratio of those categories of personnel (221 consultants/contractors and 69 gratis personnel in 2016 for a total of 290) to the Professional and General Services categories (339 Professionals and 357 General Service staff for a total of 696) and sought clarification from the Secretariat as to how to achieve a balance. In then drawing attention to Table B.2 *Overview of technical Professional posts throughout the Organization* in



Appendix B, he highlighted that in 2016 there had only been 7 airport engineers on staff and no aeronautical or air navigation engineers. While noting that there had been “aviation specialists”, the Representative of Spain considered that that vague term did not encompass those occupations. He therefore requested that the Secretariat consider recruiting aeronautical and air navigation engineers in the future.

7. Emphasizing that it was difficult for the Council to keep track of the many staff appointments and changes in the organizational structure, the Representative of Spain suggested that the Secretariat publish an up-to-date organigramme of ICAO which provided information down to the level of Sections and which clearly indicated vacant Professional posts i.e. posts advertised but not filled. In further suggesting that future annual reports on the status of the ICAO workforce cover a number of years, rather than merely provide a snapshot of the situation during the reporting period and, in some cases, a comparison to the previous year, he underscored that that would facilitate the identification of trends and thus provide the Council with a better overview of the evolution of the Organization’s workforce.

8. Noting, from Table H.1 in Appendix H, that the total staff turnover rate in 2016 had been 9.6 per cent, with 66 of 690 staff members having separated from ICAO, the Representative of Spain stressed the need to determine the main causes therefor, such as retirement and early retirement, resignations, or better employment opportunities. He also enquired as to the number of staff falling into each of those categories.

9. The President of the Council noted, in this regard, that 54 per cent of the 2016 turnover rate had been due to retirement and early retirement and 25 per cent, to resignations (cf. paragraph 4.6).

10. In then recalling that the Administration, in consultation with the ICAO Staff Association, had conducted a staff satisfaction survey in 2005, the Representative of Spain suggested that such a survey be carried out every two years.

11. D/ADB clarified that the 2016 staff turnover rate of 9.6 per cent was the result of a combination of retirements, resignations and natural attrition in a fairly equal balance. There was a slightly higher number of separations attributable to retirements as a result of the long length of service of a large percentage of the ICAO workforce. D/ADB emphasized that while it was possible to present staff turnover statistics and other HR statistics at any one point of time, as a snapshot, it was more meaningful to analyze such statistics over time to identify trends and the causes behind those trends. He highlighted, in this regard, how the new mandatory age of separation which had already come into effect in the UN was impacting the number of retirements of UN staff. Agreeing with the Representative on the usefulness of staff satisfaction surveys, D/ADB noted that they were jointly conducted by the Administration and the Staff Association from time to time, in order to determine trends and the reasons underlying them. He also indicated that the next Confidential Employee Survey was scheduled to be held in the last quarter of 2017.

12. The Secretary General noted that the issues raised by Representatives were very important as 80 per cent of the Regular Programme Budget was allocated to human resources, and the workforce constituted a key asset of the Organization. She fully agreed with the Representative of Spain on the importance of the Secretariat availing itself of the opportunity afforded by the upcoming retirements to rejuvenate the workforce by recruiting fresh talent having the competencies required by the Organization to address the coming challenges for the global aviation sector. The Secretary General affirmed that the Organization would be strengthened by having such new staff members work together with existing personnel in carrying out its Programme activities. Highlighting that 41.8 per cent of staff members had been recruited within the last five years and that 10.5 per cent had been recruited within the last six to nine years (cf. Appendix J), she underscored that staff turnover was an ongoing issue.

13. Referring to the question posed by the Alternate Representative of the United States, the Secretary General reiterated that the Professional posts in the Regional Offices were mostly technical, and that it was the technical posts for which ICAO had the most difficulty to recruit women. Furthermore, the occupations at Headquarters where there was the largest number of women (e.g. Language Officers) were not present in the Regional Offices.

14. With regard to the points raised by other Representatives, the Secretary General noted that the Secretariat wished to use ICAO's Next Generation of Aviation Professionals (NGAP) Programme to address the gender balance issue. She welcomed any suggestions Representatives might have as to how the Secretariat could work with Member States in performing outreach activities to enhance the gender balance and EGR for the ICAO workforce.

15. The President of the Council indicated that he was personally pleased that the Representative of Spain had raised the issue of aeronautical engineers since he himself was an aeronautical engineer and he had not come across another one since he had joined ICAO, the International Civil Aviation Organization, despite the fact there were almost 700 serving staff.

16. The Chief, Policy, Organizational and Staff Development Section (C/POD) clarified that Appendix B was a grouping of posts, by occupation, on the basis of the main functions and technical competency requirements of posts. It was not a list of the profiles of staff members. Code 1.B in Table B.2, used for a total of fifteen posts in ANB and the Regional Offices, required competencies in either airport or telecommunications engineering. C/POD acknowledged that, based on the main functions and competency requirements of posts, it was possible that staff who had a background in aeronautical engineering, mechanical engineering, etc., could be occupying a post which was grouped under a different occupational code, such as air transport specialists (Code 1.N.), environmental specialists (Code 1.R.), or technical co-operation administrators (Code 1.A.). The total number of staff members with an engineering background therefore exceeded the number reported under Code 1.B.

17. Recalling the discussion at the previous Council meeting, the Representative of Japan thanked the Secretariat for having pointed out that finding a balance between EGR and gender equality was a challenge but was key to successful recruitment management. Indicating that he had no doubt that gender equality was ICAO's strategic priority in staffing the Organization, he noted that there was a clear target in Assembly Resolution A39-30: *ICAO Gender Equality Programme promoting the participation of women in the global aviation sector* for achieving gender equality by 2030. That being said, the Representative of Japan reminded the Council that EGR should never be left behind, since addressing the considerable under-representation of States in posts subject to EGR was also a UN system-wide priority, as well as a concern to Japan and other ICAO Member States. He therefore considered that gender balance and geographic balance should be pursued simultaneously and with equal importance to the extent practicable in the fair selection of Professional category staff in particular. In that regard, the Representative of Japan trusted in the Secretary General's further initiatives regarding the ICAO workforce to fully enjoy the benefits of diversity.

18. The Representative of Colombia supported all of the interventions made regarding ICAO's capacity to attract, recruit and retain personnel and to plan for succession, in particular, the comments made previously (211/3) by the Representative of the United Arab Emirates regarding succession planning. He emphasized the need for ICAO to have a good image so as to attract the best and brightest young aviation professionals. The Representative of Colombia also agreed with the comments made by the Representative of Spain, especially on the need to define the competencies required to meet the Organization's evolving needs and to recruit the most suitably-qualified candidates accordingly.

19. With regard to the retention of ICAO personnel, the Representative of Colombia sought information regarding the prospects for advancement within ICAO, in particular, the possibilities for a career path and personal development. He underscored, in this regard, that whereas many staff members in other UN organizations moved from post to post within the common system, ICAO's highly-specialized personnel could not easily do so.

20. With respect to succession planning, the Representative of Colombia emphasized the importance of ensuring an overlap between the departure of serving staff and the arrival of newly-recruited staff to enable not only knowledge sharing/transfer but also the cultivation of a sense of responsibility towards air travellers whose lives depended upon ICAO's continued good work. He also stressed the need to make every effort to retain institutional knowledge, which was a key asset of the Organization.

21. Noting that it was the fourth time that the post of D-1 Regional Director, South American (SAM) Office, Lima had been advertised, the Representative of Colombia queried why it had not been possible to recruit a suitably-qualified candidate to fill that ICAORD post. He found the situation hard to understand, especially as he knew one of the individuals who had previously applied for that post. The Representative of Colombia sought information regarding the recruitment process that had been followed by the Secretariat and the HRC's related proceedings, in particular, the impediments encountered which had necessitated the post's repetitive advertisement.

22. Indicating that he was very concerned over the amount of time it was taking to appoint a new ICAORD, SAM, the Representative of Panama failed to understand how it was possible that the Deputy Regional Director, SAM had not been selected to fill the post. He highlighted, in this regard, that for the last few years the Deputy Regional Director had served as Acting/ICAORD whenever ICAORD, SAM was away from the Lima Office. Furthermore, he had led very successful projects in the SAM region over the last two decades which had resulted in the substantial improvement in SAM States' effective implementation (EI) of the eight critical elements of a safety oversight system. The Representative of Panama therefore favoured the appointment of the Deputy Regional Director, SAM as ICAORD, SAM as soon as possible in order to ensure the continued enhancement of the States' safety oversight system.

23. Drawing attention to Table F.4 *Gender balance by grade level* in Appendix F, the Representative of Brazil noted that whereas women only occupied 30.7 per cent of Professional posts, they occupied 76.5 per cent of General Service posts, which demonstrated that there was a gender imbalance not only in terms of the number of female employees but also in terms of the grade level of the posts they occupied. While recognizing that it was very difficult to achieve equilibrium between competence, gender balance and geographical balance (EGR) in recruitment decisions, she underscored the need to strive to attain that delicate balance. The Representative of Brazil suggested, as one option, finding a middle road between having fewer female employees but at higher grade levels and having more male employees but at lower grade levels.

24. Referring to the comments made regarding Table B.2, the Representative of the Russian Federation underscored that if States were provided with a forecast of job vacancies at the Professional level which included an indication of the required knowledge/skills/competencies, then it would be easier for them to ensure that suitably-qualified candidates applied for those posts. He emphasized that that would avoid any future problems in terms of the competency and specialty mix of the ICAO workforce.

25. The Representative of South Africa cautioned against mentioning the names of individuals and promoting the appointment of certain candidates during the Council's deliberations. The President of the Council agreed.

26. The Representative of South Africa then highlighted the appointment, in early 2007, of three female Directors [Mrs. F.A. Odutola as Director, Air Transport Bureau (D/ATB); Ms. N. Graham as Director, Air Navigation Bureau (D/ANB); and Dr. Fang Liu as Director, Bureau of Administration and Services (D/ADB)], following the Council's consideration (C180) of the then Secretary General's selection. Noting that he had been a Council Member at that time, the Representative of South Africa recalled the Council's pride in their appointment. Underscoring that one of those Directors, D/ADB, had subsequently been appointed Secretary General with effect from 1 August 2015 (C204), he stressed the need to practice what ICAO preached in terms of gender equality. Observing that at present all ICAORDs were male, the Representative of South Africa underscored the need to change that concept. Noting, in that regard, that there were many dynamic female aviation professionals who were qualified to fill the post of ICAORD, he emphasized the importance of considering the issue of gender equality in totality, at both ICAO Headquarters and the Regional Offices.

27. In supporting the intervention by the Representative of Spain, the Representative of South Africa stressed the need for the Secretariat to give in-depth consideration to the future recruitment of aeronautical and air navigation engineers, who were important components of this technical Organization. Observing that the occupational group "Transport Specialists" contained in Table B.2 was very broad, he emphasized the need to be more specific and to identify the competencies of the "aviation specialists" listed thereunder. Highlighting that there was only one aviation medical specialist to deal with serious issues such as the Ebola and Zika viruses, the Representative of South Africa underscored that the Secretariat should also look into that situation.

28. Referring to the occupational group "Environmental Specialists" (Code 1.R.), the Representative of South Africa indicated that only one Officer came to mind and reiterated the need for succession planning in order to be able to pass the torch. He averred that the said staff turnover rate of 9.6 per cent in 2016 was a bitter pill to swallow as in his view it was due not to retirement/early retirement but rather to job dissatisfaction. Highlighting that such staff turnover was occurring at the same time as ICAO was striving to attract young professionals to work in the aviation field through its NGAP Programme, the Representative of South Africa sought clarification. In underscoring the need for ICAO to retain knowledgeable and experienced staff members capable of passing the torch, he drew an analogy to the introduction of the new generation of aircraft while older models were still in operation and required flight and ground crews which had the expertise necessary to pass the torch.

29. Highlighting the ever-increasing use of consultants, the Representative of South Africa stressed the need to revisit that issue, affirming that in-house staff members should be used instead. He questioned why former staff members were allowed to be engaged as consultants following their departure from the Organization.

30. As Chairperson of the Human Resources Committee (HRC), the Representative of Egypt suggested that to enhance the efficiency of the Council's deliberations annual reports on the status of the ICAO workforce be referred to that Committee in order to obtain its views and recommendations, if any, for changes to HR-related policies and strategies. In highlighting the need to develop a strategy to achieve the goal of gender equality by 2030 set forth in Assembly Resolution A39-30, he suggested that a goal of EGR by 2030 should also be established, together with a corresponding strategy for its attainment.

31. Endorsing the comments made by the Representative of Brazil, the Representative of Sweden observed that Table F.4 depicted a very conservative distribution of men and women in Professional and General Service posts by grade level, with men occupying almost 70 per cent of Professional posts and women almost 77 per cent of the General Service posts. She averred that the fact that there was a high number of women occupying General Service posts did not constitute gender

balance as those posts were in administrative and not technical areas. The Representative of Sweden emphasized that for that situation to change it would be necessary to have a strategy to achieve gender equality by 2030 as proposed by the Chairperson of the HRC. She averred, in this regard, that when men occupied the top posts, there was a tendency for them to recruit male candidates to fill Professional posts. Noting that she was very disturbed to hear that women lacked the required competencies to fill such posts, the Representative of Sweden maintained that there were many women around the world who had the necessary qualifications. Stressing that it was necessary to encourage them to apply for ICAO Professional posts, she indicated that she very much looked forward to the establishment, by the Secretary General, of an *ICAO Gender Equality Programme* by mid-2017 as called for in Assembly Resolution A39-30.

32. The President of the Council observed that there were many competent aviation professionals worldwide, both male and female.

33. Responding to the comments made by the Representative of Japan and other Representatives regarding EGR, D/ADB emphasized that while the overall goal was to have as many of ICAO's 191 Member States as possible represented in the Secretariat, there was a limited number of posts that were subject to EGR. He recalled that, at 31 December 2016, 83 Member States had been represented in the 256 posts subject to EGR. D/ADB underscored that although the magnitude of the Organization's membership rendered it very difficult to completely resolve the EGR issue, it was necessary to continually address it and to increase the number of Member States represented in posts subject to EGR. Observing that a similar situation existed with regard to gender equality, he stressed the need in both cases to have a policy in place to achieve the established goal and to make continuous progress in meeting that goal.

34. Referring to the intervention by the Representative of Colombia, D/ADB stressed the importance of retaining not only personnel but also institutional knowledge, which was key to any organization, particularly when there were many longstanding staff members who would be retiring or leaving through natural attrition. That situation had led to the development of a "Knowledge Transfer Questionnaire" which separating staff members were required to complete, as part of their separation procedures, in order to assist in ensuring business continuity.

35. With regard to comments made regarding the D-1 post of ICAORD, SAM, D/ADB underscored that the customary, transparent recruitment process had been followed: advertisement of the vacancy; review of all candidatures by the Panel of Directors appointed by the Secretary General; subsequent interview of suitable candidates by the Panel, and the evaluation of selected candidates at an external assessment centre; submission of the Panel's recommendations to the Secretary General of the candidates suitable for the shortlist; decision by the Secretary General on the candidates to be shortlisted; and presentation of the selection report to the Human Resources Committee (HRC) to ensure that the shortlisted candidates met the requirements of the said post as set forth in the Vacancy Notice. D/ADB emphasized that the overall determination had been very clear: there had not been any candidates who were suitably qualified to discharge the functions of ICAORD, SAM. For that reason, the vacancy had been re-advertised.

36. Referring to the points raised by the Representatives of Brazil and Sweden, D/ADB indicated that there was a tendency at all UN organizations to have a large number of women occupying General Service support posts, with a lower number of women occupying Professional posts at the P-3, P-4 and sometimes P-5 levels, and an even lower number occupying Professional posts at the D-1 and D-2 levels. To the point made by the Representative of the Russian Federation that a forecast of Professional job vacancies would assist in reaching out to qualified candidates in advance, he indicated that information regarding expected vacancies could be communicated to States in order to assist them in

addressing the matter. D/ADB reiterated that the level of representation of women in ICAO Professional posts was due in part to States' pools of talent with specific aviation competencies, and the number of female applicants. D/ADB emphasized that increasing not only the number of female candidates for ICAO Professional posts but also the number of candidates from un-represented and under-represented States would help in addressing the situation.

37. Responding to the comment made by the Representative of South Africa regarding staff turnover, D/ADB noted from Table H.1 *Annual turnover rate* and Table H.2 *Reasons for staff turnover* in Appendix H that there had been 66 separations from ICAO in 2016, 16 (24 per cent) of which had been due to resignations. In emphasizing that staff members did not necessarily resign as a result of job dissatisfaction, he noted that it could also be due to career growth opportunities or inter-agency transfers, inter alia. Observing that the same situation existed in the public and private sectors globally, he affirmed that resignations by ICAO personnel were thus not necessarily a poor reflection on the Organization.

38. The Representative of Ecuador, an HRC Member, concurred with the Representative of South Africa and the President that Representatives should refrain from mentioning the names of individuals and promoting the appointment of certain candidates during the Council's discussions. In highlighting the need to uphold the established recruitment process for ICAORDs, inter alia, he underscored that the Council should not micromanage that process. The Representative of Ecuador emphasized that the Council's sole function, in that regard, was to set the rules that governed HR management.

39. In fully endorsing the comments made by the Representative of Brazil regarding achieving equilibrium between competence, gender balance and geographical balance (EGR) in recruitment decisions, the Representative of Ecuador commended ICAO's goal of gender equality by 2030 and stressed the need to commence work right away to attain it. He supported such equilibrium in all its aspects as it would afford greater opportunities for aviation professionals, particularly those from developing States, to work at ICAO and would support the Organization's activities to attract the next generation and thus help reduce the anticipated shortage of aviation professionals. The Representative of Ecuador supported the Secretariat's efforts in that regard.

40. In also supporting the paper, the Representative of Ecuador noted that it constituted a compendium of all relevant information required by the Council and provided a framework for designing HR programmes and taking related actions. The Representative of Ecuador thus endorsed the suggestion made previously (211/3) by the Representative of the United Arab Emirates that future annual reports on the status of the ICAO workforce be issued as working papers instead of information papers to facilitate the Council's decision-making. He also supported the comments made by the Representative of Spain regarding Table B.2. In conclusion, the Representative of Ecuador underscored that the organizational structure and the various organizational processes, including the recruitment process, were designed to achieve ICAO's Strategic Objectives. He noted, in this regard, that Representatives participated in the Council's Committees with the aim of ensuring the continuous improvement of the said processes.

41. The Representative of Kenya agreed with the explanations provided by D/ADB except with regard to the filling of the D-1 post of ICAORD, SAM. She considered that the recruitment process itself might be deficient in some way if it was only possible to determine that there was no suitably-qualified candidate after reviewing the full list and short list of candidates and conducting interviews and assessments. In her view, it should have been possible to determine whether or not the candidates were suitably qualified to discharge the functions of the post when drawing up the full list or the short list of candidates. The Representative of Kenya supported the suggestion made by the Chairperson of the HRC that further discussions on the whole issue of staffing be held in the Committee.

42. The Representative of Canada agreed with many previous speakers on the importance of gender equality and the promotion of women. Observing that the aviation industry itself did not have gender equality in terms of pilots and administrators, he emphasized the consequent need for ICAO to lead by example. The Representative of Canada suggested, in this context, that the importance of gender equality be further highlighted by referring to Assembly Resolution A39-30 when advertising vacant ICAO positions and conducting outreach activities.

43. Recalling the comments made regarding staff turnover, the Representative of Canada enquired whether HR conducted exit interviews with departing personnel. He emphasized that such interviews provided very useful information about the reasons for leaving, which could be positive in nature, and offered the opportunity to learn how the functioning of a given organization could be improved, particularly as it was sometimes easier for staff members to express their views when they were separating from the organization.

44. The Representative of Malaysia endorsed the proposal by the Chairperson of the HRC that annual reports on the status of the ICAO workforce be referred to the Committee for review prior to consideration by the Council as it would increase efficiency. In then referring to paragraph 2.1 of the paper, he enquired as to how many of the 760 posts (583 established and 177 supernumerary) had been filled and how many had been vacant at the end of 2016. Voicing support for the comments made by the Representative of Japan with respect to EGR, the Representative of Malaysia stressed the need for the Secretary General to consider EGR for the various regions when appointing D-2 Bureau Directors. In suggesting that the Secretariat seek ways in which to further enhance efficiency, he cited, as an example, multi-tasking by staff members on the basis of their multidisciplinary qualifications, which would also provide flexibility in future strategic planning in terms of the number of posts required to carry out ICAO's various programmes.

45. In also endorsing the Chairperson's intervention, the Representative of South Africa suggested that exit interviews be conducted in order to have a clear picture of the main causes of staff turnover, especially of resignations.

46. Agreeing with the Representatives of Canada and South Africa on the importance of exit interviews, D/ADB highlighted that staff members separating from ICAO were required to complete an online anonymous "Exit Interview Questionnaire" in which information was sought regarding, inter alia, the primary reasons for leaving the Organization and the staff member's level of satisfaction with various aspects of his/her employment, notably: compensation and benefits; career-related human resources policies and practices; the work environment; diversity, equality and inclusion; managerial and organizational effectiveness; working conditions and work/life balance; and career development.

47. In then responding to the comments made by the Representative of Kenya, D/ADB clarified that the D-1 recruitment process which he had outlined earlier in the context of the post of ICAORD, SAM (cf. paragraph 35) took place in three stages, each of which enabled the analysis of different aspects of the candidates' suitability to discharge the functions of the advertised Professional post. He noted that the review by the Panel of Directors of the full list of candidates was done on the basis of the written documents submitted by each candidate, i.e. the motivation letters, job application and curriculum vitae. During the Panel interview process, candidates were asked specific questions directly, sometimes creating a different impression than the one initially formed on the basis of their written submissions. The candidates' subsequent evaluation at an external assessment centre tested their suitability through not only a written exam but also role playing in real-life situations. D/ADB highlighted that it was necessary for a candidate to be successful in all three stages of the said recruitment process in order to be considered suitably-qualified for the D-1 post in question. He maintained that the fact that a candidate who had appeared to be suitable on the basis of his/her written submissions did not do well

during the subsequent interview or during the evaluation at the external assessment centre did not imply that the recruitment process itself was in any way deficient.

48. Expressing appreciation for the valuable suggestions and advice offered during the previous and present Council meeting to enhance EGR and gender equality in Professional and higher category positions, the Secretary General underscored that they were well noted and would be taken into consideration by Human Resources (HR) in taking further actions. Recalling the good suggestion made by the Representative of Canada, she indicated that when advertising vacant positions and conducting outreach activities, the importance of gender equality would be further highlighted by including a reference to Assembly Resolution A39-30. Assuring the Council that EGR and gender equality were a priority for her and for the Secretariat, the Secretary General emphasized that the combined efforts of the Secretariat, Representatives and States were required to attain the overall diversity goals of the Organization.

49. In summarizing the discussions, the President of the Council affirmed that the status of the ICAO workforce was an important subject, particularly as 80 per cent of the Regular Programme Budget was allocated to human resources. He underscored that while a number of issues of concern had been raised, including geographic balance (EGR), gender balance, the competency and specialty mix, the retention of institutional knowledge, staff turnover, resignations, the use of consultants, repetitive recruitment and trend analyses, the Council currently lacked the opportunity to learn lessons without the conduct of trend analyses and the opportunity to develop appropriate HR-related policies and strategies to address those issues over time.

50. Reiterating that some useful suggestions had been made, the President of the Council recalled the Representative of the United Arab Emirates' suggestion that future annual reports on the status of the ICAO workforce be issued as working papers instead of information papers. He also cited the suggestion made by the Representative of Egypt as the Chairperson of the HRC, and supported by other Representatives, that to enhance the efficiency of the Council's deliberations such annual reports be referred to the HRC in order to obtain its views and recommendations, if any, for changes to HR-related policies and strategies. In indicating that both of those suggestions should be taken on board, the President proposed that rather than waiting for the next annual report on the status of the ICAO workforce, the 2016 report (C-WP/14626 Revised) be referred to the HRC for the purpose of presenting to the Council any concrete proposals it might have for changes to the said policies and strategies in order to address the various issues of concern raised. He stressed the need for appropriate and timely action to implement Operative Clause 4 of Assembly Resolution A39-30, which called for the establishment of an *ICAO Gender Equality Programme* by mid-2017.

51. The Council accepted the President's above summary as its decision regarding C-WP/14626 Revised, whose contents it noted. It was understood: that written responses to the questions raised by the Representative of Mexico at the previous meeting, as well as to the questions subsequently submitted to the Secretariat, would soon be circulated to all Representatives for reference purposes; and that future annual reports on the status of the ICAO workforce would contain the information requested by the Representative of Mexico, as updated to reflect the situation during the reporting period.

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

**Report of the Joint Inspection Unit (JIU) entitled "Fraud prevention, detection and response in United Nations system organizations" (JIU/REP/2016/4)**



52. The Council had for consideration information paper C-WP/14629 presented by the Secretary General, which highlighted the key findings of the JIU's report on fraud prevention, detection and response in UN system organizations (JIU/REP/2016/4). A summary of the JIU Report's 15 recommendations addressed to ICAO, the comments of the UN System Chief Executives Board for Coordination (CEB) and the suggested responses and proposed actions of the ICAO Secretariat was set forth in the Appendix to the paper.

53. Of the said 15 recommendations, 11 recommendations had already been implemented. As reflected in the Secretariat's suggested responses thereto, the Organization had in place the *ICAO Anti-fraud and Anti-corruption Policy* which had been adopted by the Council in November 2014 (203/6), and anti-fraud and anti-corruption awareness training was accordingly provided to ICAO personnel. Risks associated with fraudulent or corrupt practices were identified and managed as part of ICAO's Internal Control Framework, and basic anti-fraud controls were in place. The recently-adopted (210/3) *ICAO Vendor Sanction Policy* also aimed to mitigate fraud and corruption risks. Those measures were deemed to be an appropriate and cost-effective response to the level of risk faced at ICAO.

54. The paper, which had initially been circulated under cover of President's memorandum PRES OBA/2649 dated 25 May 2017, was now being tabled for discussion at the request of the Representative of Mexico, who had concerns regarding the Secretariat's suggested non-acceptance of three of the said JIU recommendations addressed to ICAO, including the one directed to the Council as governing body (Recommendation 16).

55. Drawing attention to Recommendation 6 on the development of organization-specific anti-fraud strategies and action plans for implementing fraud policies, the Representative of Mexico noted that the Secretariat suggested that it not be accepted since ICAO had limited resources with which to engage in prevention activities. Asserting, however, that the Recommendation's implementation should not require a large amount of resources, he suggested that the matter be referred to the Working Group on Governance and Efficiency (WGGE) for consideration, taking into account the related corporate risks and the relevant experiences of other UN organizations.

56. Recalling that an anti-fraud action plan and strategy was already in place, the Secretary General agreed that instead the Secretariat's suggested response to Recommendation 6 be amended accordingly to reflect that it was "Accepted, already implemented". She emphasized that the Ethics Officer would report on the implementation of that plan and strategy in her annual report on activities undertaken in connection with the *ICAO Framework on Ethics*, and that the Evaluation and Audit Advisory Committee (EAAC), as the oversight body, would monitor anti-fraud policy and activities and report thereon to the Council.

57. In then referring to Recommendation 15 on the presentation of an annual consolidated and comprehensive management report on the performance of anti-fraud activities, based on key performance indicators, the Representative of Mexico noted that the Secretariat suggested that it not be accepted based on the fact that there had not been any fraud-related allegations in 2016. Averring, however, that that suggested response was unacceptable, he stressed that although the risk of an incident of fraud might be low, if such an incident did occur it could be catastrophic for ICAO's reputation, which was of particular relevance at a time when the Organization was making every effort to mobilize resources with which to support its Programme activities. The Representative of Mexico underscored that it was therefore necessary for the Secretariat to introduce a minimum framework to implement Recommendation 15, taking into account the relevant experiences of other UN organizations.

58. Turning to Recommendation 16, the Representative of Mexico expressed concern, irrespective of its underlying issue, that the Secretariat was suggesting a response thereto on the Council's

behalf and sought clarification. He proposed that, similar to the action he had suggested as a response to Recommendation 15, the Secretariat put in place a minimum framework to implement Recommendation 16, which related to the placement on the Council's agenda of a permanent or standing item relating to fraud prevention, detection and response and the review, on an annual basis, of the said consolidated and comprehensive management report.

59. In noting that the Secretariat's suggested responses to the JIU Report's recommendations addressed to ICAO had been prepared by her in coordination with the Ethics Officer, the Acting Chief, Evaluation and Audit Office (A/C/EAO) stressed that it was for the Council to decide on their appropriateness and to take action accordingly.

60. The Ethics Officer agreed with the Representative of Mexico that even one incident of fraud could have catastrophic consequences for ICAO. In then elaborating on the rationale for the Secretariat's suggested non-acceptance of Recommendation 15, the Ethics Officer underscored that in the last reporting period the Ethics Office had received 40 allegations of misconduct and 22 allegations of harassment, abuse of authority and discrimination. It had not received any allegations of fraud in 2016. In noting that the rationale was thus to have the freedom to tailor prevention work given the limited resources available in ICAO, she highlighted that at present she was the sole Ethics Officer on staff to serve some 2 000 personnel, including TCB project staff. In emphasizing that the suggested non-acceptance of Recommendation 15 should not to be interpreted as an indication that fraud was not a very important potential misconduct to address, the Ethics Officer clarified that it arose from the concern that by agreeing to the annual exercise ICAO might be overextending its limited resources in an area for which, in her view, there was not a great indicator of need. She underscored that the Secretariat would still have the freedom to undertake risk assessments in response to any new allegations of fraud or other indicators raised through ICAO's Internal Control Framework and at the direction of the Council or the Secretary General. The Ethics Officer emphasized that the level of assessment recommended by the JIU in Recommendation 15 would take her approximately four weeks of full-time work to implement.

61. Noting that he was fully aware of the scant resources available, the Representative of Mexico clarified that he was proposing that the Secretariat's suggested responses for Recommendations 15 and 16 be amended to indicate that they were accepted and that a minimum framework would be put in place to ensure continuous oversight of fraud given the magnitude of the funds managed by the Organization.

62. The Chairperson of the WGGE, the Representative of India, Mr. A. Shekhar, suggested that the Working Group review Recommendations 15 and 16 as part of its ongoing review of the *ICAO Framework on Ethics* to determine if the Ethics Office had sufficient resources to execute its mandate and/or if there was action required to strengthen the ethics function in ICAO.

63. The Representative of Spain reiterated the importance of adopting a holistic approach and taking into account the work done by both the Ethics Officer and EAO with regard to anti-fraud issues. In endorsing the proposal by the Representative of Mexico, he reiterated the need for a minimum framework to ensure continuous oversight of fraud. Noting that an assessment of the risks associated with fraudulent or corrupt practices was already included in EAO's annual report on activities, the Representative of Spain suggested that the Ethics Officer also address the issue of fraud in her annual report to the Council.

64. In the absence of further comments, the Council agreed to the proposal by the Representative of Mexico to amend the suggested responses to Recommendations 15 and 16, both of which related to the provision to the Council, as governing body, of information on fraud prevention, detection and responses (cf. paragraph 61).

65. It was noted that the WGGE would review Recommendations 15 and 16 as part of its ongoing review of the *ICAO Framework on Ethics*, as suggested by its Chairperson (cf. paragraph 62).

66. The Council endorsed the Secretariat's suggested responses and proposed actions to the JIU's 15 recommendations addressed to ICAO set forth in the Appendix to C-WP/14629, as amended above, on the understanding that: the Ethics Officer would report to the Council on fraud as part of her annual report on activities undertaken in connection with the *ICAO Framework on Ethics*; and that the EAAC, as the oversight body, would monitor anti-fraud policy and activities and report thereon to the Council.

67. In underscoring that the current practice of handling JIU Reports by circulation under cover of a President's memorandum would continue, whereby Representatives could request discussion of any such Report in the Council, the President asked that in future the Secretariat bring to his attention, for clearance, any suggested responses to JIU recommendations addressed to the Council and/or relating to the provision of information to the Council to enable him to determine if they required further consideration by the latter.

### **ICAO Industry High Level Group (IHLG)**

68. The Council reviewed information paper C-WP/14606 in which the Secretary General, further to its earlier requests (206/2 and 209/2), presented a summary of the work accomplished thus far by the informal IHLG and outlined its future work plan. The IHLG, which comprised the Secretary General (Chairperson) and the Heads of four industry organizations [Airports Council International (ACI), the Civil Air Navigation Services Organisation (CANSO), the International Air Transport Association (IATA) and the International Coordinating Council of Aerospace Industries Associations (ICCAIA)], considered matters of global significance to international civil aviation through coordinated arrangements between ICAO and key aviation stakeholders. Its Terms of Reference (TOR), as agreed by the Group, were appended to the paper. The IHLG's current priority areas were: cybersecurity in civil aviation; and maximizing and showcasing to better communicate the benefits of aviation.

69. It was recalled that the informal IHLG had been established in September 2013 at the initiative of the previous Secretary General, building upon the experience with the Future Aviation Challenge Team (FACT) in preparation for the Aviation System Block Upgrades (ASBUs), without prior discussion by the Council. The current Secretary General clarified that the Group's purpose was to discuss the implementation of ICAO's policies and related Council decisions, as well as the carrying out of ICAO's Programme activities; and to coordinate with a view to developing synergies that would enable resources to be used more efficiently to achieve the targets set by the Council.

70. Recalling comments made by the Representative of Spain during the Council's earlier discussion of the Global Air Navigation Plan (GANP) Multidisciplinary Vision Team (GMVT), the Representative of Singapore indicated that he had similar concerns regarding the IHLG. While he supported the IHLG and its continuation, he was unsure regarding its governance and reporting line. Although the Representative of Singapore considered that dialogue between ICAO and non-governmental organizations (NGOs) was beneficial, he suggested that the IHLG be expanded to include Members of the Air Navigation Commission (ANC) or at least the President of the ANC in order to inject inputs from States into the Group's discussions. He highlighted, in this regard, the reference made to States in paragraphs 2 and 4 of the IHLG's TOR, which read, respectively, "The aim of the Group is to consider matters of global significance to international civil aviation that could be better addressed in a collaborative arrangement between States and industry rather than working individually on such matters" and "The expectation is of combined teams of ICAO and industry experts, working in a collaborative

manner, with the objective of achieving effective results through a coordinated framework of key aviation stakeholders that will meet the needs of both States and industry”.

71. Emphasizing that the ANC reported to the Council, the President of the Council indicated that the Representative’s suggestion was dependent upon the level which he wished to accord the IHLG’s discussions i.e. informal or formal.

72. In expressing support for consultations with industry, the Representative of the Russian Federation highlighted their importance as a means of obtaining industry’s views on ICAO’s various Programme activities. He emphasized, however, that any work done by the IHLG should be brought to the attention of the Council to enable it to take appropriate decisions and actions. The Representative of the Russian Federation recalled, in this regard, that the Group’s TOR had not been discussed by the Council, a very unusual situation as it was the governing body of ICAO. He stressed that the IHLG’s work should be done within the framework of ICAO and not within a parallel structure. Affirming that the Representative of Singapore’s suggestion that the President of the ANC participate in the IHLG was a reasonable one, the Representative of the Russian Federation indicated that others from the Council and/or Committees should also participate therein.

73. In reiterating that there had not been any discussion in the Council regarding the establishment of the IHLG in September 2013, the President noted that there had only been informal consultations thereon. He emphasized that subsequently the only references made in the Council to the IHLG had been in the form of requests for information by Representatives regarding its mandate and the expected outcomes of its meetings, inter alia. The President observed that C-WP/14606 seemed to portray the IHLG as more than an informal group by indicating that it had determined its own TOR, as well as priorities, which might not necessarily be aligned with the Organization’s priorities as established by the Council.

74. Noting that from the outset it had been his understanding that the IHLG would be an informal group comprising the Secretary General and the heads of other relevant industry associations which were interested in, and were involved on a daily basis with, the aviation issues being addressed by ICAO, the Representative of Mexico emphasized that he would prefer that the IHLG continue to conduct its work in an informal manner. While he was not opposed to the Representative of Singapore’s suggestion, he considered that it might have the effect of transforming the IHLG into a formal group, which he did not favour. The Representative of Mexico underscored the need for the IHLG’s various initiatives involving matters of policy and additional resources to be presented to the Council for approval prior to implementation so as to enable the Council to maintain strict control over the Organization’s policies and resources. Apart from that, he had no problem with the Secretary General informally consulting with heads of industry through the IHLG.

75. The Representative of Spain emphasized that while having fluid, informal relations with the heads of industry was positive, it was necessary for them to be carried out within the logical framework of ICAO. He was not entirely convinced that the IHLG’s work since its establishment in September 2013 had been completely visible and transparent to the Council. Drawing attention to Section 3 of the paper on the IHLG’s next steps, the Representative of Spain noted that the Group would continue to work together on the issue of cybersecurity, as well as showcasing the benefits of aviation. He underscored, in this regard, that in response to Assembly Resolution A39-19 a Secretariat Study Group on Cybersecurity (SSGC) was being established to serve as the focal point of all ICAO cybersecurity-, cyber safety- and cyber resilience-related work. With respect to paragraph 3.1, the Representative of Spain questioned the need to refer specifically to the IHLG’s participation in the third ICAO World Aviation Forum (IWAF/3) (Abuja, Nigeria, 27-29 November 2017), although he considered that it would be beneficial for industry to participate in that event. Indicating that it was his impression that IHLG

meetings were like meetings between friends, he underscored that those informal relations should continue. The Representative of Spain highlighted, in this context, that industry representatives were invited to make presentations during the annual informal briefing to the Council on the State of the Industry.

76. The Representative of Spain thus tended to agree with the positions expressed by the Representatives of Singapore, the Russian Federation and Mexico, namely, that the IHLG should continue to conduct its work in an informal manner and that it should not be formalized into a parallel structure to the Council. Referring to the suggestion made by the Representative of Singapore, he proposed that the President and the Vice-Presidents of the Council participate in the IHLG in addition to the President of the ANC.

77. In elaborating on industry's participation in ICAO's activities, the President of the Council noted that there were several observers from industry on the ANC and the Air Transport Committee (ATC). Furthermore, representatives from industry were invited to make presentations at relevant informal briefings to the Council/ANC and to participate in the Council's annual off-site strategy meeting. Highlighting that, in addition, ICAO officials attended the annual general meetings of relevant industry associations, he emphasized that there was thus a substantial amount of collaboration between ICAO and industry. The President did not consider that it would be beneficial to expand the IHLG to include the President of the ANC, and the President and Vice-Presidents of the Council as that would have the undesirable effect of formalizing the Group into a parallel structure to the Council. He underscored that when it was required, industry representatives could be invited to ICAO for a dialogue on how to address a given crisis situation, which was what he had done following the disappearance of Malaysia Airlines Flight MH370 on 7 March 2014 while en route from Kuala Lumpur to Beijing, and the downing of Malaysia Airlines Flight MH17 over eastern Ukraine on 17 July 2014. The President of the Council emphasized that he would not invite industry representatives to ICAO on a regular basis for discussions as there was a formal process by which the Council developed the Organization's policies. He recalled that the Council, acting on the advice of the WGGE, had not proceeded with the establishment of a "Friends of the Council" informal group as proposed by China (cf. C-WP/14133; 201/6) as it would have constituted a parallel structure.

78. Although the President of the Council recognized the importance of consultations with industry through the IHLG, he stressed that they should remain informal in nature. He had no objection to the continuation of such informal IHLG discussions to enhance the relationship between the Secretary General and the heads of industry and to promote a better understanding of aviation issues. The President was not in favour of the Council endorsing the IHLG's TOR and determining or endorsing its priority areas of work, however, as that would formalize the Group into a parallel structure to the Council. Noting that that would, inter alia, lead to further debates on who should participate in the IHLG, he questioned why the Chairperson of the ATC should not participate if, as suggested, the President of the ANC, the President and Vice-Presidents of the Council did. In cautioning against the inclusion of States in the IHLG, the President highlighted that ICAO was the platform for bringing States and industry together, whether in the panels, the ANC or the Assembly. Including States in the IHLG would have the effect of creating a parallel platform and would give rise to contentious discussions regarding the selection of those States. In emphasizing that ICAO's priorities could not be decided by any other informal group, the President underscored that they were established by the Council on the basis of the Organization's Strategic Objectives, which were supported by its Member States and were reflected in ICAO's Assembly Resolutions. He expressed doubt that the IHLG's two priorities, cybersecurity and showcasing the benefits of aviation, were the only two priorities of the global aviation sector given the current situation.

79. While agreeing on the importance of, and reiterating his support for, such consultation with industry, the Representative of the Russian Federation averred that the activities of the IHLG were

not entirely informal. He highlighted, in this regard, paragraph 2.1 of the paper, in which it was indicated that “In 2014, the IHLG had a further meeting and established the Industry High-Level Civil Aviation Cybersecurity Action Plan.” The Representative of the Russian Federation cited, as another example, Recommendation 1.1 e) of the Twenty-Sixth Meeting of the Aviation Security Panel (AVSECP/26), that “the Panel should consider a progress report on the Industry High Level Group (IHLG) Civil Aviation Cybersecurity Action Plan prior to it being presented to the 39th Session of the ICAO Assembly;” (cf. C-WP/14267 Restricted; 205/4). In questioning why only the AVSECP would discuss such a progress report and not the Council, he underscored that the Council was merely an observer of the IHLG’s activities, which he considered to be a very strange situation for the governing body of ICAO. While not opposed to the IHLG, given the importance of ICAO knowing the views of industry on its various programmes, the Representative of the Russian Federation emphasized that the Group’s work should be conducted in an informal and transparent manner and that the Council should be provided with full information thereon.

80. Sharing this view, the Representative of Singapore reiterated his support for the continuation of the IHLG. He emphasized that in suggesting that the President of the ANC participate in the Group’s informal discussions he was not advocating the formalization of the IHLG into a parallel structure to the Council; rather, he was seeking a means to inject States’ inputs into those discussions as the Group considered issues that involved States. While the Representative of Singapore was of the opinion that that would enrich the IHLG’s discussions, he would not insist upon it and would instead leave the matter in the President’s hands. He noted that he could entrust the Secretary General with representing the views expressed by States in the Council at the IHLG’s meetings.

81. The President of the Council indicated that there would be no difficulty in so entrusting the Secretary General. Referring to the comments made by the Representative of the Russian Federation regarding AVSECP/26 Recommendation 1.1 e), he noted that the IHLG, of which ICAO was a Member, had developed the said Civil Aviation Cybersecurity Action Plan, which had subsequently been referred to the AVSECP for consideration. Confusion arose from the fact that the AVSECP’s Working Group on Threat and Risk (WGTR), in which industry also participated, was also working on the issue of cybersecurity.

82. Note was taken of the Representatives’ comments, concerns and suggestions regarding the IHLG.

83. In summarizing the discussion, the President of the Council observed that Representatives had expressed their preference for the IHLG continuing to conduct its work in an informal manner and did not favour formalizing the Group into a parallel structure to the Council, through, for example: the Council’s endorsement of its TOR and determination or endorsement of its priority areas of work; and/or its expansion to include other participants, such as the President of the ANC, the President and Vice-Presidents of the Council, the Chairperson of the ATC, or States, as had been suggested. It had been emphasized that the priorities of the Organization were established by the Council and could not be decided by any other informal group. The President had also recalled, in this context, that in the past the Council, acting on the advice of the WGGE, had not proceeded with the establishment of a “Friends of the Council” informal group as proposed by China (cf. C-WP/14133; 201/6) as it would have constituted a parallel structure.

84. In taking the action then proposed by the President in light of the discussion, the Council noted the information contained in C-WP/14606, in particular, that while the IHLG’s work could continue to be conducted in an informal manner and that any significant developments in its work could be reported to the Council through the Secretary General’s sessional progress reports, the established statutory process for the development of ICAO’s policies and Standards and Recommended Practices (SARPs) would continue to be implemented as is.

**Subject No. 50: Questions relating to the environment****Membership of the Committee on Aviation Environmental Protection (CAEP)**

85. This subject was documented for the Council's consideration in information paper C-WP/14618, in which the Secretary General provided updated information on participation in CAEP working groups, task forces and support groups, as well as summarized the changes in CAEP membership and participation since the last report on this subject in May 2016 (C-WP/14490; 208/13).

86. The Deputy Director, Environment (DD/ENV) highlighted that during the reporting period there had been three changes in CAEP Member States representatives, namely those of Australia, Brazil and the United States. There had also been four changes in CAEP Observers, namely Peru, the International Air Transport Association (IATA), the International Business Aviation Council (IBAC), and the International Coordinating Council of Aerospace Industries Associations (ICCAIA). In addition, Chile and Ireland had obtained Observer status. DD/ENV underscored that the share amongst participants in the CAEP working groups and task forces was currently, on average, 54.7 per cent from CAEP Members and 40.3 per cent from CAEP Observers. She further indicated that, pursuant to the Council's earlier request (208/13), a more detailed breakdown of participation in the CAEP working groups was available on the Council's secure website.

87. Responding to a question raised by the Alternate Representative of the United States regarding paragraph 2.1 of the paper, DD/ENV confirmed that the Forecasting and Economic Analysis Support Group (FESG) and the Modelling and Databases Group (MDG) had only met twice during the reporting period, once in September 2016 and once in December 2016. Their earlier April 2016 meeting had been duly reflected in the previous paper on CAEP membership (cf. C-WP/14490, paragraph 2.1; 208/13). DD/ENV highlighted that the next FESG/MDG meeting was scheduled to take place in Cambridge, United States, from 19-23 June 2017.

88. In the absence of further comments, the Council noted the information provided in C-WP/14618. In addition, the Council encouraged all CAEP Members to continue to attend all meetings of the Committee's working groups, task forces and support groups, and expressed appreciation for the interest demonstrated by non-CAEP Member States in participating in the CAEP's work as Observers.

**Environmental protection – Recent developments in ICAO  
and other United Nations bodies and international organizations**

89. Tabled for the Council's consideration was information paper C-WP/14619, in which the Secretary General reported on recent developments within ICAO in the field of aviation and the environment, including the results of the five ICAO regional seminars on States' Action Plans for CO<sub>2</sub> emissions reduction activities which had been conducted from 27 March to 20 April 2017; elaborated on the States' Action Plans and Assistance initiative, including on progress being made under ICAO's joint assistance projects with the European Union (EU) and with the United Nations Development Programme (UNDP)/Global Environment Facility (GEF); outlined the results of the ICAO Alternative Fuels Seminar (Montréal, 8-9 February 2017); and provided an update on the arrangements for the second ICAO Conference on Aviation and Alternative Fuels (CAAF/2) (Mexico City, 11-13 October 2017) (cf. State letter ENV 5/1.6-17/58 dated 16 May 2017) and the ICAO Green Airports Seminar (Montréal, 29-30 November 2017). In addition, the paper detailed ICAO's cooperation with other UN bodies, including the ongoing negotiations under the United Nations Framework Convention on Climate Change (UNFCCC) process.

90. Noting, from paragraph 2.1 of the paper, that by 1 May 2017 103 Member States, representing more than 90.11 per cent of international aviation RTKs had voluntarily submitted Action Plans on CO<sub>2</sub> emissions reduction activities, the Representative of Mexico commended the Secretariat's assistance and capacity-building activities which were yielding such positive results. Referring to paragraph 2.3, he expressed appreciation to the EU for funding the ICAO-EU Joint Assistance Project *Capacity Building for CO<sub>2</sub> Mitigation from International Aviation*, whereby the Organization supported fourteen selected States from Africa and the Caribbean in the implementation of the mitigation measures in their Action Plans. Underscoring that the project was a good example of how to reduce aviation emissions and promote the use of clean energy, the Representative of Mexico emphasized that it could be further developed in the future to facilitate the implementation of ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). In then drawing attention to paragraph 3.1, the Representative of Mexico, on behalf of his Government, invited the President and all Council Representatives to participate in CAAF/2, to be held in Mexico City from 11-13 October 2017. In emphasizing the importance of their participation to the achievement of the Conference's goals and thus to its success, he indicated that he would soon issue invitations which would contain more details about CAAF/2, including the logistics.

91. In requesting the Representative of Mexico to convey the Council's appreciation for this invitation to his Government, the President underscored that CAAF/2 was expected to determine an important ICAO Vision on Aviation Alternative Fuels, such fuels being one of the four elements of the basket of measures to address CO<sub>2</sub> emissions from international aviation. Highlighting ICAO's work relating to the other elements thereof [a global market-based measure (GMBM) scheme, aircraft technologies and Standards, and operational improvements], he cited: the adoption of CORSIA and the aeroplane CO<sub>2</sub> emissions certification Standard, the first of their kind for any sector; the implementation of performance-based navigation (PBN); improvements in air traffic management (ATM); and the implementation of the Global Air Navigation Plan (GANP). The President underscored that action regarding aviation alternative fuels was required to complete the said basket of measures.

92. The Representative of the United Republic of Tanzania commended ICAO's efforts in the field of aviation and the environment, in particular its convening of the five regional seminars on States' Action Plans. Recalling that he had attended the regional seminar that had been held in Nairobi, Kenya, from 10-13 April 2017, he affirmed that it had been very useful for the participating States. Referring to paragraph 2.1 of the paper, the Representative of the United Republic of Tanzania highlighted that 88 out of 191 Member States, some 46 per cent, had not yet submitted their Action Plans to ICAO. Noting that during the said regional seminar he had met with some AFI States that had not yet developed their Action Plans, he emphasized that they required assistance and expressed the hope that ICAO was working hard to address their needs. The Representative of the United Republic of Tanzania noted, with satisfaction, that ICAO was creating, with the United Nations Institute for Training and Research (UNITAR), an online training course for the development of State Action Plans on emissions reduction which would be made available to all Focal Points at no cost through the UNITAR website dedicated to training courses on climate change (cf. paragraph 2.4). He affirmed that it would greatly assist States in terms of building their capacity to develop their Action Plans.

93. In thanking the EU for supporting the fourteen beneficiary States of the very useful and successful ICAO-EU Joint Assistance Project, the Representative of the United Republic of Tanzania queried whether the latter would be extended to other States and, in the affirmative, how they would be selected.

94. The Deputy Director, Environment (DD/ENV) remarked that the ICAO-EU Joint Assistance Project was one of the most rewarding assistance projects that the Organization had initiated as the positive results were overwhelming, with all of the objectives having been achieved, far exceeding



the Secretariat's expectations, and with very important synergies having been established. She underscored that the development by the project's beneficiary States of their Action Plans had triggered their interest in, and helped prepare them for, participating in CORSIA. Furthermore, the project's success had prompted a number of other States to request assistance in developing their Action Plans through the project's envisaged extension. Noting that the Secretariat had started to prepare the outline for that second project, DD/ENV indicated that the latter would place more emphasis on preparing for participation in CORSIA, and would commence in 2018. The Secretariat would follow the same procedure as for the initial project and prioritize States requesting assistance in accordance with certain criteria, one being their expressed interest in, and their commitment to, engaging in the project. DD/ENV highlighted that the Secretariat had received very positive signals from the EU that they were committed to proceeding with the second project, which they considered to be a very important undertaking.

95. Noting that he did not wish the Council to have the impression that the EU would fund all of the second project's requirements, the Director of the Air Transport Bureau (D/ATB) emphasized that while the Secretariat would, to the maximum extent possible, work within the existing EU framework, it would also make a global call to other stakeholders to join ICAO and the EU in carrying out the same assistance and capacity building activities with a view to achieving the same positive results. He highlighted, in this regard, that the African Civil Aviation Commission (AFCAC) had officially committed to join in the second project and, if possible, to provide additional funding. In thanking the EU for its support thus far, D/ATB underscored that it had given the project impetus. He stressed, however, that other stakeholders should also support the second project going forward as it was of benefit to the entire international civil aviation community.

96. Affirming that every effort was being made to have the EU fund the second project, the Secretary General recalled that the EU had indicated to her that it was giving the matter positive consideration. She underscored that the Secretariat was also seeking financial support, as well as technical expertise, from States in order to enhance assistance and capacity building in the area of the environment in support of ICAO's *No Country Left Behind* (NCLB) initiative. The Secretary General noted, in this regard, that some Council Member States, including those with substantial expertise in aviation emissions reduction, had expressed interest in participating in the second project.

97. In voicing appreciation to the Secretariat for having organized the recent ICAO Alternative Fuels Seminar (Montréal, 8-9 February 2017), the Representative of France emphasized that it had been very interesting. He also thanked the Representative of Mexico for the invitation to attend CAAF/2. Observing that the latter's website currently did not contain many details regarding the Conference, which was still far off, the Representative of France indicated that he looked forward to receiving information on the logistics from the Representative of Mexico and the Secretariat. In then raising a point of caution, he recalled the problems that had arisen during recent meetings dealing with other subjects due to the fact that delegates had only been made aware of the meetings' expected recommendations/outcomes just prior to their commencement. Stressing the importance of avoiding a recurrence of those problems, the Representative of France emphasized the need for all CAAF/2 delegates to be informed of the expected recommendations/outcomes sufficiently in advance so that they would be in a better position to discuss them and make any necessary changes thereto during the Conference, thus ensuring that the process was inclusive. In suggesting that Council Representatives be provided with supplementary information when they returned from the summer recess, prior to the convening of CAAF/2, he underscored that it was important that they know the "rules of the game" in terms of the Conference's organization, level of representation, accreditation and expected recommendations/outcomes so that they could act accordingly and arrive at CAAF/2 with their eyes open and a spirit of cooperation.

98. The President of the Council assured the Representative of France that any draft recommendations/outcomes would be circulated to CAAF/2 delegates sufficiently in advance and would be considered in-depth during the Conference to ensure that they were very clear and that there was a way in which to monitor their implementation.

99. In reiterating the EU's commitment to funding the extension of its joint assistance project with ICAO, the Representative of Ireland noted that the details were currently being worked out. Echoing the comments made by D/ATB, she underscored that not all of the second project's requirements could be met by the EU and thus also encouraged other stakeholders to consider what support they might be in a position to provide in that vein. Sharing the concerns expressed by the Representative of France regarding the formulation of the CAAF/2 recommendations/outcomes, the Representative of Ireland sought information on the procedure that would lead to the development of the specific recommendations to the Council on an ICAO Vision on Aviation Alternative Fuels referred to in paragraph 3.5 of the paper. Reiterating that alternative fuels was a very important element of the basket of measures to address CO<sub>2</sub> emissions from international aviation, she underscored that it needed careful and full consideration.

100. The Representative of Kenya thanked ICAO and the EU for their said Joint Assistance Project. Recalling the intervention by the Representative of the United Republic of Tanzania, she emphasized that 33 out of 54 AFI States, some 61 per cent, still did not have Action Plans. As AFCAC considered that the latter were essential to enable the States' participation in CORSIA, it had committed to taking part in the second project, as indicated by D/ATB. In addition, AFCAC was encouraging regional economic groups to become involved therein. It considered that since funds from the EU would not meet all requirements, as highlighted by the Representative of Ireland, the participation of other States in the second project was necessary. The Representative of Kenya highlighted, in this regard, that in the Eastern and Southern African (ESAF) region, Zambia had already offered to provide logistical support for the second project. She noted that in order to further enhance AFCAC's said commitment the Commission was currently looking to ICAO Headquarters to provide resources, and to the Economic Community of West African States (ECOWAS) to identify a Member State to provide financial support. The Representative of Kenya stressed that it would only be possible to increase the participation of AFI States, and other States, in CORSIA by placing more emphasis on the development of their Action Plans.

101. The Representative of Nigeria underscored that his State, an ECOWAS Member, had recently offered to host a CORSIA seminar in conjunction with AFCAC. Following a meeting between Nigerian and ECOWAS officials with D/ATB, an appropriate letter had been sent to ICAO offering to host the said seminar. The Representative of Nigeria availed himself of this opportunity to announce that his State had voluntarily joined the pilot phase of CORSIA (2021-2023).

102. The President of the Council asked the Representative of Nigeria to convey to his State the Council's appreciation for its offer to host a CORSIA seminar in conjunction with AFCAC.

103. In providing clarifications to various points raised, DD/ENV noted that a CAAF/2 preparatory committee was drafting an annotated Provisional Agenda for the Conference containing key topics relating to the development and deployment of sustainable aviation alternative fuels. Presenters for the various key topics had all been requested to identify expected recommendations to the Council, and the Secretariat was distilling the many suggestions made with a view to incorporating the selected expected recommendations in the Provisional Agenda and subsequently bringing them to the attention of the Conference for consideration. Observing that the Representative of France had raised an extremely important issue, DD/ENV underscored that the Secretariat did not wish delegates to arrive at CAAF/2 without knowing what actions it was inviting them to consider and recommend to the Council. For that reason, the Secretariat had created an additional means to raise delegates' awareness in the form of eight

short videos, each dedicated to one specific topic relating to aviation alternative fuels, in which selected experts who had worked on that topic since CAAF/1 in November 2009 described subsequent developments, identified challenges, and outlined expectations from CAAF/2 in terms of further advancing that topic and thus the scaling up of aviation alternative fuels. DD/ENV noted that whereas CAAF/1 had been dedicated to discovery and sharing the new possibility of developing and deploying such fuels, CAAF/2 was focused on facilitation and scaling up to further advance aviation alternative fuels.

104. Observing that the industry was also focused on the development and deployment of such fuels, the President of the Council recalled that the 73rd IATA Annual General Meeting and World Transport Summit (AGM) (Cancún, 4-6 June 2017), at which he had given a keynote address, had approved a *Resolution on the Commercial Deployment of Sustainable Alternative Fuel for Aviation*. He encouraged the Secretariat to continue to coordinate with industry in this area as airlines were ultimately the end-users of such alternative fuels. The President emphasized that while CAAF/2 was intended for high-level delegates from States, representatives of the industry, as well as of other stakeholders working in the area of alternative fuels, including research and development, certification and deployment, should actively participate therein.

105. The Representative of South Africa expressed support for the President's intervention.

106. All comments made and clarifications provided were noted.

107. In concluding its consideration of this subject, the Council took note of the information provided in C-WP/14619.

**Subject No. 52: Unlawful interference with international civil aviation and its facilities**

**Development of a regional Aviation Security and Facilitation Plan for the Middle East Region**

108. The Council had for consideration: information paper C-WP/14595, in which the Secretary General provided a progress report on the development of a regional Aviation Security and Facilitation Plan for the Middle East Region (MID SECFAL Plan), pursuant to the *Riyadh Declaration on Aviation Security and Facilitation in the ACAC and ICAO MID Regions* adopted on 31 August 2016 and appended to the paper; and a joint oral report thereon by the Committee on Unlawful Interference (UIC) and the Air Transport Committee (ATC), which had reviewed the paper on 8 May 2017.

*Joint UIC/ATC oral report*

109. In presenting the joint oral report, the Chairperson of the ATC, the Representative of Kenya, Ms. M. Awori, indicated that the Committees had been informed by the Secretariat that since the adoption of the Riyadh Declaration on 31 August 2016, further action to develop the MID SECFAL Plan had been taken by ICAO, Member States, and regional entities. For example, the composition of the first draft of the MID SECFAL Procedural Handbook had been completed. In addition, efforts were underway throughout the MID region to identify and prioritize assistance targets to serve as the foundation for future assistance action within the MID SECFAL Plan.

110. The Committees had highlighted the importance of coordinating with key international partners throughout the development of the MID SECFAL Plan in order to ensure its future success. They had commented that ICAO should continue to include the Arab Civil Aviation Commission (ACAC) throughout the development and implementation of the MID SECFAL Plan. Additionally, the

Committees had advised that those involved in developing the MID SECFAL Plan work closely with their counterparts working on the AFI SECFAL Plan in order to share best practices and lessons learned in generating a comprehensive regional assistance plan.

111. In concluding their discussion, the Committees had noted the information presented in C-WP/14595.

*Discussion*

112. In noting the significant efforts being made in the African region to implement the AFI SECFAL Plan, and the major efforts underway in the Middle East region to develop the MID SECFAL Plan, the Representative of Spain highlighted the need to align those regional plans with any related ICAO global plans. He underscored that whereas there was a Global Aviation Security Plan (GASeP) with which they could be aligned, following its envisaged approval by the Council during its next (212th) session, there was not, at present, a Global Aviation Facilitation Plan (GAFP) to align them with. The Representative of Spain remarked that this illustrated the ultimate need for a coherent system which led logically from the Organization's various global plans to regional plans to States' national plans.

113. Observing that that was a very important matter, the President of the Council recalled that the Council had often discussed ICAO global plans in other areas, such as air navigation [Global Air Navigation Plan (GANP)] and safety [Global Aviation Safety Plan (GASP)]. He underscored that ICAO grouped security and facilitation together as one Strategic Objective as those issues were cross-cutting in nature and it was necessary to strike a balance between them. The President noted that it was for that reason that the AFI and MID regions had each seen a benefit in establishing combined SECFAL Plans. He indicated that while the GASeP had already been prepared, it was a good question whether a GAFP would be developed. In querying how facilitation issues, such as Machine Readable Travel Documents (MRTDs), would be addressed in the absence thereof, the President enquired whether they would be covered in a future edition of the GASeP if they were of sufficient maturity. He also queried how actions called for in United Nations Security Council (UNSC) Resolution 2309 (2016) – *Threats to international peace and security caused by terrorist acts: Aviation security* would be addressed in the GASeP.

114. The Director of the Air Transport Bureau (D/ATB) recalled that security-related provisions of Annex 9 – *Facilitation* were already audited under the ICAO Universal Security Audit Programme – Continuous Monitoring Approach (USAP-CMA) and that States were encouraged to complete the online Compliance Checklist for Annex 9 using the Electronic Filing of Differences (EFOD) system. Noting that States had agreed on the need for the GASeP, as reflected most recently in Assembly Resolution A39-18, he cited, as one of the challenges currently being faced at the national and regional levels, a State's membership in two regional groupings whose aviation security plans were not necessarily aligned. In further indicating that a report on the GASeP would be included in C-WP/14593 Restricted – *Review of the Report of the Twenty-Eighth Meeting of the Aviation Security Panel (AVSECP/28)*, which would be considered later in the current session, he underscored that the Council would have the opportunity, at that time, to continue its current discussion on addressing facilitation issues at the global level and on ICAO actions in response to UNSC Resolution 2309 (2016).

115. The President of the Council proposed that the Council not only take note of information paper C-WP/14595, and the related joint UIC/ATC oral report, but also of the ongoing work to develop the GASeP and regional implementation roadmaps, which had to continue to enable the GASeP's finalization and subsequent approval by the Council during its next session. He indicated that thereafter it would be necessary for the Council to determine how to globally address facilitation issues, such as through a GAFP or the expansion of the GASeP.

116. Averring that the fact that the AFI SECFAL Plan and the MID SECFAL Plan had been developed prior to the GAsEP, and in the case of the former, had become operational, should not pose a problem, the President of the Council recalled that a similar situation had arisen with the GASP, which had been developed after the Comprehensive Regional Implementation Plan for Aviation Safety in Africa (AFI Plan) had been put in place. Noting that some of the AFI Plan targets had been used to update the GASP's targets, and observing that the AFI SECFAL Plan contained clearly-determined key performance indicators (KPIs), he suggested that consideration be given to including well-defined KPIs in the GAsEP to enable it to be determined if the latter was being well-implemented. The President of the Council requested that the Secretariat provide answers to the issues he had raised when the Council considered the GAsEP during its discussion of C-WP/14593 Restricted – *Review of the Report of the Twenty-Eighth Meeting of the Aviation Security Panel (AVSECP/28)* later in the current session.

117. D/ATB noted that regional SECFAL frameworks already existed in the form of the AFI SECFAL Plan and the MID SECFAL Plan, which was being developed pursuant to the said *Riyadh Declaration*. However, with the GAsEP's envisaged adoption by the Council during the next session, it would be necessary to determine how to align their regional priorities, targets and objectives with the global ones set forth in the GAsEP. D/ATB highlighted, in this context, that the Government of Egypt would host a Regional Ministerial Conference on Aviation Security in Africa and the Middle East Regions (Sharm El Sheikh, Egypt, 22-24 August 2017), whose theme was *Global Aviation Security Plan (GAsEP): the Roadmap to Foster Aviation Security in Africa and the Middle East* (cf. State letter AS 58/1.9.2-17/76 dated 8 June 2017). In also underscoring that the Government of Thailand would host a regional meeting of States in the Asia/Pacific region (Bangkok, 20-21 December 2017) to consider a roadmap for regional implementation of the GAsEP, he indicated that it was anticipated that the other regions that had not already done so would likewise consider the development of such roadmaps. D/ATB noted that in due course the Secretariat would be in a position to present to the Council a complete picture of all of the regional GAsEP implementation roadmaps.

118. In supplementing D/ATB's comments, the Secretary General highlighted that she had instructed all ICAO Regional Directors (ICAO RDs) to work on the implementation of the GAsEP in their respective regions following the Plan's envisaged approval by the Council during the upcoming (212th) session. She further underscored that she was currently seeking a South American State to host a regional meeting to consider a roadmap for GAsEP implementation in the SAM region and that she would similarly seek hosts for such meetings in other regions where they had not yet taken place.

119. There being no further comments, the Council noted the information provided in C-WP/14595, as well as the joint UIC/ATC oral report thereon.

120. In also noting the supplementary information provided by the Secretary General and D/ATB regarding the ongoing work to develop the GAsEP and roadmaps for the Plan's regional implementation, the Council emphasized the need to continue work to finalize the draft GAsEP with a view to its approval at the Council's next (212th) Session in October/November 2017. Recalling that the AFI SECFAL Plan contained clearly-determined KPIs, the Council further underscored the need for the GAsEP to also include well-defined KPIs so as to facilitate monitoring of its implementation. It was noted that a report on the GAsEP would be included in C-WP/14593 Restricted – *Review of the Report of the Twenty-Eighth Meeting of the Aviation Security Panel (AVSECP/28)*, which would be presented to the Council for consideration, through the UIC and the ANC, later in the current session. It was understood that following the GAsEP's envisaged adoption, the Council would further consider options to globally address facilitation issues, such as through a Global Aviation Facilitation Plan (GAFFP) or the expansion of the GAsEP to take account of such issues.

**Subject No. 52.1: Universal Security Audit Programme**

**Update on the implementation of the Universal Security Audit Programme –  
Continuous Monitoring Approach (USAP-CMA)**

121. The Council considered: information paper C-WP/14594, in which the Secretary General provided updated information on the overall implementation of the USAP-CMA since the 208th Session (C-WP/14424; 208/2), including on the comprehensive review of the Programme's scope and methodology being conducted pursuant to Assembly Resolution A39-18, and on the auditing of Amendment 15 to Annex 17 – *Security*, which would become applicable on 3 August 2017; and an oral report thereon by the UIC, which had reviewed the paper at its First Meeting of the current session on 8 May 2017.

*UIC oral report*

122. In presenting the UIC's oral report, its Chairperson, the Representative of South Africa, Mr. T. Peege, indicated that the Committee had noted the report on the implementation of the USAP-CMA, and had expressed its continued support for the Programme. The Committee had also requested that additional data be provided in future reports showing the evolution of the effective implementation of the eight critical elements (CEs) of a State's aviation security oversight system over time.

123. In response to a question raised by the Committee regarding ICAO's participation, once a year, in European Commission (EC) inspections, the Secretariat had clarified that such participation formed part of the Secretariat's oversight of the EC's inspection system in accordance with the Memorandum of Cooperation (MoC) signed on 17 September 2008. The MoC established mutual cooperation in the field of aviation security audits and inspections to ensure optimum use of limited resources and to avoid duplication of efforts, given that most of the Standards contained in Annex 17 – *Security* to the Chicago Convention were also covered by relevant European Union (EU) legislation.

*Discussion*

124. In the absence of comments, the Council noted the information contained in C-WP/14594, as well as the UIC's oral report thereon.

**Subject No. 42.1.1: Technical Assistance Programme**

**Report on the ICAO Technical Assistance Programme for 2016**

125. The Council had for consideration: information paper C-WP/14599, in which the Secretary General presented a consolidated report for the year 2016 on the ICAO Technical Assistance Programme in the fields of aviation safety, air navigation capacity and efficiency, security and facilitation, economic development of air transport and environmental protection, particularly those implementation projects that were supported by the financial contributions to the ICAO Voluntary Funds, contributions in-kind, as well as activities funded by the Regular Programme Budget, and elaborated on the establishment of the new Resource Mobilization Fund (RMF) and the holistic Project Review Committee for ICAO Voluntary Funds (PRC-IVFs); and a joint oral report thereon by the ATC and the UIC, which had reviewed the paper during a meeting on 8 May 2017.

*Joint ATC/UIC oral report*

126. In presenting the joint oral report, the Chairperson of the UIC, the Representative of South Africa, Mr. T. Peege, indicated that the Secretariat had provided the Committees with a report on ICAO's technical assistance programmes for 2016, including the types of assistance provided to Member States and the use of voluntary funding to finance operations and assistance activities.

127. The Committees had requested additional details relating to the purpose and use of each ICAO Voluntary Fund identified in Section 3 of C-WP/14599, either within the paper or via a website made available to Committee Members. The Committees had also expressed interest in receiving additional details on the process for the allocation of voluntary contributions to specific programmes [noting specifically the Human Resources Development Fund (HRDF)] and had requested additional clarification on financial reports included in the Appendices to the paper, notably the process for reporting overhead charges and the reason why a positive balance existed for some ICAO Voluntary Funds at the end of 2016. Specifically relating to aviation security, the Committees had requested additional information on Aviation Security Improvement Plans (ASIPs), to include a State's status, timeline for completion, and planned and/or observed security outcomes.

128. The Committees had expressed concern over the use of voluntary funds to finance Regular Programme Budget positions both within the Secretariat and in the Regional Offices [e.g. positions in the Aviation Security and Facilitation Branch (ASF) and the Environment Branch (ENV)] and had strongly suggested to the Council that those budgetary concerns should be addressed and that funding for Regular Programme Budget positions should be included in the Regular Programme Budget.

129. In concluding their discussion, the Committees had noted the information presented in C-WP/14599.

*Discussion*

130. Referring to the Tables set forth on p. A-3 and A-4 of Appendix A to the paper, the Representative of Spain indicated that the Committees had not received a full explanation from the Secretariat as to: why the total technical assistance budget for 2016, CAD 17 513 000, had not been expended, with CAD 3 185 000 remaining unspent at the end of the year; and why the total amount of voluntary contributions in 2016, CAD 14 018, had not been expended, with there being a surplus for that year of CAD 7 928 000. Observing that there was thus a total of CAD 11 113 000 that could be used for the provision of technical assistance, he sought further clarification. In affirming that it was very positive that the Regular Programme Budget for 2016 allocated some CAD 17 million to technical assistance and that additionally there was some CAD 14 million available for technical assistance from voluntary funds, for a total of some CAD 31 531 000, he emphasized that it was a good percentage when compared to the overall Regular Programme Budget for 2016 of approximately CAD 100 million.

131. While agreeing that it was a good percentage (approximately 31 per cent), the President of the Council stressed the importance of using those funds for the provision of technical assistance, given that many States were requesting such support. He queried why there were unspent funds i.e. positive balances for some ICAO Voluntary Funds at the end of 2016, given ICAO's *No Country Left Behind* (NCLB) initiative.

132. The Deputy Director, Air Navigation Capacity and Efficiency (DD/AN) noted that the discrepancy between the proposed spending versus the actual expenditures, particularly for the Strategic Objective: Air Navigation Capacity and Efficiency, was mainly due to the division of resources in 2016.

He underscored that in the case of the said Strategic Objective it had been necessary to delay to 2017 a large number of missions, especially those associated with Aviation System Block Upgrades (ASBUs) and airworthiness, to enable the technical officers to carry out the substantial amount of preparatory work required to address the unforeseen issue of cyber safety, as a sub-set of cybersecurity, to allow work to get underway once the Assembly gave the Secretariat the mandate to do so.

133. The above comments and additional clarifications were noted.

134. The President of the Council highlighted that although many States were fully committed to implementing ICAO's SARPs and requested implementation assistance from the relevant Regional Offices, the latter were unable to provide the requisite support, ostensibly due to a lack of resources. He therefore suggested that the Secretary General consider allocating some of the said positive balance that existed for certain of the ICAO Voluntary Funds to the Regional Offices to help them meet States' implementation assistance requirements. The President underscored the need for ICAO to deliver sustainable results for the voluntary contributions it received.

135. Indicating that the President's advice was well-taken with regard to the Regional Offices, which were at the forefront of the Organization, the Secretary General recalled that she had requested them to identify priority needs in their regions according to their respective Work Programmes and to submit to the PRC-IVFs extra-budgetary project proposals which included an indication of the resources required therefor. Recalling that she was the Chairperson of the PRC-IVFs, the Secretary General underscored that the PRC-IVFs' review, prioritization and approval of those and other extra-budgetary project proposals enabled the Organization to efficiently deliver sustainable results to the various donors. The Secretary General thanked donor States and international organizations for their voluntary contributions to ICAO and highlighted that some of the said balance represented earmarked voluntary contributions which could not be used for any purpose other than that specified by the donor.

136. On behalf of the Council, the President expressed appreciation to the many States from which ICAO had received voluntary contributions in 2016 as listed in Appendix A to the paper. He also thanked Malaysia for its voluntary contributions to the SAFE Fund and the AVSEC Fund which had been received in 2017. In addition, the President encouraged all States, as well as other donors, to continue to make voluntary contributions, financial and in-kind, to the ICAO Technical Assistance Programme.

137. Concluding its consideration of this subject, the Council noted the information provided in C-WP/14599, as supplemented during the discussion. It also noted the joint ATC/UIC oral report, in particular the Committees' concern over the use of voluntary funds to finance Regular Programme Budget positions both within the Secretariat and in the Regional Offices (e.g. positions in ASF and ENV) and their strong suggestion to the Council that those budgetary concerns should be addressed and funding for Regular Programme Budget positions should be included in the Regular Programme Budget. The President emphasized the need for the Council to bear that issue in mind during the upcoming discussions of the next triennial Regular Programme Budget.

**Subject No. 12.6: Plans for Council off-site strategy meetings and visits**

**ICAO Council Visit – Ecuador (12-17 March 2017)**

138. This subject was considered on the basis of: information paper C-WP/14622, in which the Secretary General highlighted: the agenda for the Council visit to Ecuador; the meetings that had taken place with Government and aviation officials, as well as with industry and aviation stakeholders, in Quito, Guayaquil and Galapagos Island to share Ecuador's experience and achievements with regard to aeronautical infrastructure and environmental protection and to obtain the current South American (SAM)



regional perspective on current and emerging aviation issues and environmental protection; and the conclusions reached; and an oral report thereon by the Implementation, Strategy and Planning Group (ISPG), which had reviewed the paper at its First Meeting of the current session on 15 May 2017.

*ISPG oral report*

139. In presenting the ISPG's oral report, its Chairperson, the Representative of Australia, Mr. S. Lucas, indicated that the Group had noted that paragraph 2.6.1 of C-WP/14622 omitted a suggestion made by the Representative of Spain during his presentation on balancing facilitation and security to have performance-based reviews for airports. Regarding the arrangements that had been made to publicize the Council visit, the Secretariat had explained that a press release had been issued at the end of the event.

140. In identifying the lessons learned from the Council visit, the Group had observed that there had been a high level of coordination between the Government and industry locally in arranging the visit, even though some of the entities involved were privatized. The development of a greenfield airport in Quito without Government funding, and with a successful transfer of operations in a manner that ensured the continuity of all services, including air navigation services, provided a valuable lesson for the development of airport projects. Finally, the example of the Galapagos Airport as an eco-friendly project, demonstrated that a system-wide approach could be taken to achieve the greening of aviation.

141. The Group had appreciated the value of the visit as an excellent opportunity to gain insights into the benefits of close coordination between the States and industry in implementing initiatives that could be applied to SARPs, as well as to increase and reinforce the visibility of the Organization in the host State and the region. Two-way information exchanges were a key opportunity arising from such visits, and the Group had observed that organization of the event could be improved in the future through earlier communication of the programme to the Council and by reviewing the sequence of presentations and events so as to facilitate even better interaction and feedback, including between the Council and DGCA's.

142. The ISPG recommended that the Council note information paper C-WP/14622, with the above observations.

*Discussion*

143. In expressing his gratitude for the arrangements made by the Representative of Ecuador, and his happiness at having visited that country, the Representative of South Africa affirmed that the Council's visit to Ecuador had been worthwhile. He noted that he had learned much, including new Spanish words.

144. Also voicing appreciation to the Representative of Ecuador for having organized the Council's visit, the Representative of Colombia noted that a highlight for him had been the technical visit to the Galapagos Ecological Airport, which had the first "green" terminal, with full LEED certification, as well as clean energy generation installations. In underscoring ICAO's tremendous efforts to address the issue of international aviation and climate change, he suggested that once the establishment of CORSIA was complete, the Organization should turn its attention to providing assistance to States for the development of green airports, for which there was an increasing demand. The Representative of Colombia noted that currently there were five "green" airports in Europe, in addition to the Galapagos Ecological Airport in Ecuador.

145. In emphasizing that the Council's visit had served to promote regional integration, the Representative of Colombia underscored the substantial support provided by the Latin American Civil Aviation Commission (LACAC) in promoting the participation of States, industry and aviation stakeholders in the various meetings and related activities, which had facilitated the exchange of views. He expressed the hope that such regional integration efforts would continue.

146. Recalling, that as the Third Vice-President of the Council he had been afforded the opportunity to sit at the main table during the various proceedings, the Representative of Colombia affirmed that it had been an excellent experience for him.

147. Agreeing with previous speakers that the Council visit to Ecuador had been wonderful and indicating that she had likewise learned a great deal, the Representative of Brazil voiced appreciation for the tremendous efforts made by the entire Delegation of Ecuador, as well as to all of the Ministers and aviation officials who had met with Council Representatives and who had extended to them such stupendous hospitality. She took her hat off to them.

148. The Representative of the United Republic of Tanzania also voiced gratitude for the warm hospitality accorded Council Representatives during their great visit to Ecuador. In highlighting, as one of the lessons learned, that the remarkable achievement in SAM States' safety oversight effective implementation (EI) level under ICAO's Universal Safety Oversight Audit Programme (USOAP) was due to regional cooperation, the sharing of resources and the commitment of the SAM States themselves, he expressed the hope that that example would be followed in other regions with a view to obtaining the same fruitful results. The Representative of the United Republic of Tanzania underscored, as another lesson learned, the impressive achievement of a greenfield airport in Quito through a public/private partnership. He affirmed that that very successful project served as an exemplary model of airport infrastructure modernization that could be used by other States which needed to modernize their airports but which lacked sufficient resources therefor. In concluding, the Representative of the United Republic of Tanzania agreed with the Chairperson of the ISPG and other Representatives that the Council visit to Ecuador had been excellent, particularly as it had afforded a wonderful opportunity to gain insightful information on the benefits of close cooperation between States and industry in implementing ICAO SARPs. He expressed thanks for the related presentations made by industry representatives during the said visit.

149. The Representative of Spain highlighted that there had been extremely positive surprises during the Council visit to Ecuador in terms of the construction of a new greenfield airport in Quito and the priority given by existing airports to environmentally sustainable operations. In expressing appreciation to the Representative of Ecuador for the enormous logistical arrangements which had been made for the visit, he emphasized that they were all the more impressive given that the latter had taken place just days before the presidential election in Ecuador.

150. In the absence of further comments, the Council noted the information provided in the Secretary General's report (C-WP/14622). It also noted the ISPG's oral report, in particular, the following lessons learned: the importance of a high level of coordination between the Government and industry locally, in terms of not only arranging the Council visit but also implementing initiatives that could be applied to SARPs and increasing and reinforcing ICAO's visibility in the host State and the region, which it requested the relevant ICAO Bureaus to take note of as a best practice; the development of a greenfield airport without Government funding, notably the successful transfer of operations from an old airport to a new airport in a manner that ensured the continuity of all services, in particular, the maintenance of efficiency and safety, which was critical; and that a system-wide approach could be taken to achieve the greening of aviation, which it requested the Environment Branch (ENV) to take note of. It was underscored, in this regard, that it was becoming increasingly possible to enhance the environment

through green aviation operations, and that it was necessary to view journey management as a complete package and to promote ICAO's activities in support of international civil aviation, both airside and landside as they applied to each phase of the journey, from airport to airport throughout the world. In that manner, air travelers would be able to take-off from a green airport on board an aircraft that met ICAO's CO<sub>2</sub> emissions certification Standard by using sustainable alternative fuels and fuel efficient air navigation processes, including continuous descent operation, and to land at another green airport.

151. The Council noted, as another lesson learned, that it was necessary to improve the organization of the event in the future through earlier communication of the programme to the Council and by reviewing the sequence of presentations and events so as to facilitate better interaction and feedback, including between the Council and Directors General of Civil Aviation (DGCAs).

152. Referring to paragraph 4.3 of the paper, the President reiterated the Council's appreciation to the Government of Ecuador, the Representative of Ecuador and all others involved in arranging its highly successful visit. In also reiterating the Council's support for the benefits of future Council visits to other regions, he emphasized that they would offer the Council the opportunity to gain insights into the challenges being faced and to bring ICAO closer to the States in those other regions.

153. The Representative of Ecuador underscored that the Government and people of Ecuador had been very honoured to have received the governing body of ICAO. He expressed deep gratitude to the President and Representatives for their effective leadership during the visit, which had enriched the SAM region, and by extension the Latin American region, and had enhanced the Council's visibility in those regions. The Representative of Ecuador also thanked the Secretary General and the SAM Regional Office staff in Lima for their collaboration and efforts to ensure the visit's success.

#### **Any other business**

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

**Subject No. 14: Subjects relating to air navigation**

**Subject No. 15: Subjects relating to air transport**

#### **Political developments in the Middle East region impacting air traffic management – Request by Qatar for the intervention of the Council**

154. Referring to recent political developments in the Middle East region that have impacted air traffic management, the President informed the Council that the Secretary General had received a letter on 5 June 2017 from Qatar regarding "the closure of Bahrain, Cairo, Jeddah and UAE Flight Information Regions (FIRs) for traffic to/from Qatar, including Qatar Airways flights landing to/or overflying the respective FIRs". Restrictions to aircraft registered in the State of Qatar commenced at 0000 UTC (Coordinated Universal Time) on 5 June 2017 and, more recently, on 7 June 2017 similar restrictions had been applied by Yemen.

155. The Secretary General and the President had also received letters from Saudi Arabia and Egypt dated 7 and 8 June 2017, respectively, in which both States had confirmed the bans instituted on Qatari aircraft entering their airspaces as well as landing at their airports. It was also stated in those letters that there was no ban on foreign aircraft crossing Egyptian or Saudi airspace from and to Qatar.

156. By another letter dated 8 June 2017 addressed to the President, Qatar had indicated its intention to make an application on this matter under Article 84 of the Chicago Convention. Qatar in its letter made reference to violations of certain provisions of the Convention, the International Air Services Transit Agreement of 1944, as well as Assembly Resolution A39-15 by the other States. Qatar had also

requested that the Council urgently consider under Article 54 n) of the Chicago Convention certain actions of Bahrain.

157. As Representatives were aware, under Rules 24 b) and 26 d) of the *Rules of Procedure for the Council* (Doc 7559), a supplementary item to the Work Programme of the Council requested by a Contracting State “shall be considered only if the Council so decides by a majority of its Members”.

158. The President had consulted on these developments severally with the Representatives of Egypt, Saudi Arabia and the United Arab Emirates, and the Administration of the States, including Bahrain, had also been informed.

159. The President was pleased to inform Representatives that the ICAO Middle East Regional Office in Cairo, according to its procedures, had immediately activated a Contingency Coordination Team of States and international organizations concerned. Contingency routes based on the NOTAMS issued by States had been allocated to ensure flight safety. That had been expanded, where possible, and included a flight level allocation scheme and reduced separation minima to guarantee the safe operation. He would wish to add that the work of the team at the ICAO Middle East Office in Cairo in that regard had been exceptional as they maintained direct and continuous communication with all States involved, including regular reports to Headquarters of the evolving situation.

160. The President emphasized that it was important that they all work together to ensure the safety and efficiency of international civil aviation, as solutions were being sought to resolve this matter.

161. The Organization continued to monitor the situation and the President would keep the Council informed. His above statement would be circulated electronically to Representatives for reference purposes, as requested by the Representative of the United Kingdom.

162. The meeting adjourned at 1310 hours.



**COUNCIL — 211TH SESSION**

**SUMMARY MINUTES OF THE FIFTH MEETING**

**(THE COUNCIL CHAMBER, MONDAY, 12 JUNE 2017, AT 1430 HOURS)**

**OPEN MEETING**

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

**PRESENT:**

- |            |                              |                             |                          |
|------------|------------------------------|-----------------------------|--------------------------|
| Algeria    | — Mr. A.D. Mesroua           | Kenya                       | — Ms. M.B. Awori         |
| Argentina  | — Mr. G.E. Ainchil           | Malaysia                    | — Mr. Y.-H. Lim          |
| Australia  | — Mr. S. Lucas               | Mexico                      | — Mr. D. Méndez Mayora   |
| Brazil     | — Mrs. M.G. Valente da Costa | Nigeria                     | — Mr. M.S. Nuhu          |
| Cabo Verde | — Mr. C. Monteiro            | Panama                      | — Mr. G.S. Oller         |
| Canada     | — Mr. M. Pagé                | Republic of Korea           | — Mr. J. Hur             |
| China      | — Mr. Shengjun Yang          | Russian Federation          | — Mr. A.A. Novgorodov    |
| Colombia   | — Mr. A. Muñoz Gómez         | Saudi Arabia                | — Mr. M.S. Habib (Alt.)  |
| Congo      | — Mr. R.M. Ondzotto          | Singapore                   | — Mr. T.C. Ng            |
| Cuba       | — Mrs. M. Crespo Frasier     | South Africa                | — Mr. M.D.T. Peege       |
| Ecuador    | — Mr. I. Arellano            | Spain                       | — Mr. V.M. Aguado        |
| Egypt      | — Mr. A. Khedr               | Sweden                      | — Ms. H. Jansson Saxe    |
| France     | — Mr. P. Bertoux             | Turkey                      | — Mr. Ö. Doğrukol (Alt.) |
| Germany    | — Mr. U. Schwierczinski      | United Arab Emirates        | — Miss A. Alhameli       |
| India      | — Mr. S. Subramanian (Alt.)  | United Kingdom              | — Mr. M. Rodmell         |
| Ireland    | — Mrs. A. Smith Floch        | United Republic of Tanzania | — Mr. R.W. Bokango       |
| Italy      | — Mr. M.R. Rusconi           | United States               | — Mr. S. Kotis (Alt.)    |
| Japan      | — Mr. S. Matsui              | Uruguay                     | — Mr. M. Vidal           |

**ALSO PRESENT:**

- |                                |                        |
|--------------------------------|------------------------|
| Mr. H. Yoshimura               | — President, ANC       |
| Dr. N. Luongo (Alt.)           | — Argentina            |
| Mrs. M.F. Loguzzo (Alt.)       | — Argentina            |
| Mr. L. Sacchi Guadagnin (Alt.) | — Brazil               |
| Mr. D. Tavares Taufner (Alt.)  | — Brazil               |
| Mr. R. da Rosa Costa (Alt.)    | — Brazil               |
| Mr. R.H. Godinho (Alt.)        | — Brazil               |
| Mr. Chunyu Ding (Alt.)         | — China                |
| Mr. M. Millefert (Alt.)        | — France               |
| Mr. N. Naoumi (Alt.)           | — Germany              |
| Mr. M. Usami (Alt.)            | — Japan                |
| Mr. K.A. Ismail (Alt.)         | — Malaysia             |
| Mrs. D. Valle Álvarez (Alt.)   | — Mexico               |
| Mr. S. Kim (Alt.)              | — Republic of Korea    |
| Mr. K. Lee (Alt.)              | — Republic of Korea    |
| Mr. D. Subbotin (Alt.)         | — Russian Federation   |
| Mr. S. Vuokila (Alt.)          | — Sweden               |
| Mr. M. Salem (Alt.)            | — United Arab Emirates |
| Mrs. K.L. Riensema (Alt.)      | — United Kingdom       |
| Mr. W. Voss (Alt.)             | — United States        |
| Mr. J. Méndez (Alt.)           | — Uruguay              |

**SECRETARIAT:**

- |                   |                 |
|-------------------|-----------------|
| Mrs. J. Yan       | — C/OSG         |
| Mr. B. Djibo      | — D/ATB         |
| Mr. S. Creamer    | — D/ANB         |
| Mr. R. Macfarlane | — DD/AN         |
| Mr. C. Radu       | — DD/SAF        |
| Mr. S. Lefoyer    | — DD/ASF        |
| Mr. A. Larcos     | — ACC           |
| Ms. D. Cooper     | — Précis-writer |

Representatives to ICAO

Cameroon  
Chile  
Cyprus  
Ghana  
Greece  
Honduras  
Indonesia  
Lebanon  
Niger  
Paraguay  
Peru

Airports Council International (ACI)  
Civil Air Navigation Services Organization (CANSO)  
European Union (EU)  
International Air Transport Association (IATA)

## **Subject No. 14.4.2: Regional air navigation meetings**

### **Report of ANC – Consolidated Annual Report on Planning and Implementation Regional Groups (PIRGs) and Regional Aviation Safety Groups (RASGs)**

1. The Council considered this item on the basis of C-WP/14607, which presented a consolidated annual report on Planning and Implementation Regional Groups (PIRGs) and Regional Aviation Safety Groups (RASGs), covering the period from April 2016 to March 2017. A summary of PIRG/RASG regional implementation progress was contained in Appendix A and common challenges faced by regions were contained in Appendix B. An oral report from the Implementation Strategy and Planning Group (ISPG) was also presented for consideration.
2. In delivering his oral report, the Chairperson of the ISPG (Representative of Australia) indicated that discussions within the ISPG focussed on the conclusions and actions the Council should take from the report. The ISPG welcomed the coordinated efforts of the Air Navigation Commission (ANC) and Secretariat to improve the utility of the report, as compared to previous years, by introducing common challenges faced by regions that would assist the Council to take note of the global challenges and ensure that ICAO had properly positioned itself to deal with those challenges by making adjustments to the Organization's work programme, if required. The Group took note of the Secretariat's explanation that the actions identified in Appendix B had all been initiated or planned and that no action by the Council was necessary at this point.
3. The Group suggested further improvements could be made to enhance the utility of the report, such as specifying timelines for completing the actions to address the common challenges and identifying and recommending particular actions that needed to be taken by the Council to address particular challenges.
4. In relation to questions on particular work items raised:
  - a) the ISPG noted with interest the suggestion in paragraph 4.1.2 to reconsider the use of accident rates as meaningful targets, and, while no action was required of Council at the moment, identified this as an important issue for future consideration by the Council in light of the process to revise the Global Aviation Safety Plan (GASP);
  - b) in regard to the assignment of addresses for internet protocol version 6 (IPv6) reported in paragraph 3.1.2, the President of the Air Navigation Commission explained that a job card relating to the subject was already approved by the Air Navigation Commission to task the Communications Panel;
  - c) with respect to the issue of the availability and competence of technical and inspectorate personnel in administrations, the Secretariat cited the publication of the Manual on the Competencies of Civil Aviation Safety Inspectors (Doc 10070) and the TRAINAIR PLUS Safety Management Course launched in May 2016 as examples of guidance and training developed for States. Other examples cited were the CAA HR toolkit and a mechanism introduced at the latest Regional Safety Oversight Organizations (RSOOs) forum for recognition of inspectors to help States cope with the lack of expertise, and efforts to set up a global pool of inspectors; and



- d) in relation to the four-tier meeting structure cited in paragraph 4.3.1, it was explained that this was the hierarchical structure applied in the European Region, with DGCA meetings at the top, then PIRG/RASG meetings, then Coordinating Group (COG) meetings and finally workgroup meetings.

5. The ISPG noted the importance of making more efficient use of the PIRGs and RASGs meetings including improvement in participation and feedback on implementation of the global plans. The Secretariat explained that various efforts were underway by developing new processes aligning the Headquarters and Regional programmes as well as an action plan based on C-DEC 210/4 recommendations.

6. The ISPG recommended that the focus of future reports be on advising the Council regarding the actions it would need to take to position the Organization to address the common global challenges identified; and invited the Council to offer any further guidance on the issues presented.

7. The President of the Air Navigation Commission (P/ANC) highlighted the table in Appendix B which outlined common challenges identified by the regions and related implementation activities undertaken by the Air Navigation Bureau. He indicated that the relevant elements of these activities, presented in the third column of the table, were being incorporated in the Air Navigation Work Programme and aligned with those of the Regional Offices in order to avoid duplication of efforts. In regard to Appendix C on participation in PIRG and RASG meetings, outcomes related to Council recommendations on the subject (C-DEC 210/4 refers) would be included in the 2018 consolidated annual report.

8. In thanking the ISPG Chairperson and President of the ANC for their reports, the Representative of South Africa observed the ISPG suggestions for further improvements to the report and the need to make the PIRGs and RASGs more efficient. Referring to the PIRG identified common issue of ASBU implementation in all the regions, indicated on page B-3 of the paper and also identified by the ICAO Regional Directors during their informal briefing to the Council (C-DEC 210/4 refers), the Representative of South Africa underscored the need for the ANC to urgently address this issue and advise the Council accordingly. He also considered the 2019 timeframe for publication of the 6th Edition of the *Global Air Navigation Plan* (GANP, Doc 9750) too late in providing the necessary guidance for the new eANP. Lastly, he queried when work would be completed on the long outstanding alignment of areas of applicability in the Air Navigation Plans (ANPs) and the *Regional Supplementary Procedures* (Doc 7030) which impacted the regional Air Navigation Plans and affected the AFI-EUR interface area and flight information region (FIR) delineation.

9. Acknowledging the problems faced with implementation strategies adopted at the national level, the Director of the Air Navigation Bureau (D/ANB) indicated that the restructured GANP would provide a more appropriate link between the global plans and the regional and national strategies for implementation. He observed a key component of this challenge was a lack of understanding of the cost benefit ratio between the airspace requirements and the capabilities of the air navigation service provider or operators using that airspace. The updated plans would include a minimum path for ASBU implementation and the PIRGs and RASGs could lend support for effective implementation of the Block 0 modules. He underscored that new technologies were unnecessary to solve many of the problems and that the Secretariat and Regional Offices were working to identify and improve implementation strategies that would include training and evaluations.

10. The President of the ANC added that the common challenge with ASBU implementation was the selection of the performance-based approach to be used and the updated GANP would include guidance on completing the impact assessment. Given the level of ASBU implementation was at a State's

discretion based on its needs and challenges, the GANP would also outline the minimum requirements for global implementation.

11. Underscoring the need for harmonization between the global and regional plans to achieve implementation, the Representative of the Republic of Korea requested supplementary information on regional implementation progress to which the President of the ANC indicated was available on the iSTARS website.

12. The Representative of Cuba thanked the ISPG Chairperson for his report, the ANC and ANB in their assessment of the PIRGs/RASGs efforts and the regional groups for all their work. On the common issue relating to a lack of global guidance on the Aeronautical Information Service (AIS) to Aeronautical Information Management (AIM) transition in the Pacific and CAR/SAM regions, the Representative of Cuba recalled her comments on this matter during the previous session (paragraph 38 of C-MIN 210/1 and paragraph 17 of C-MIN 210/6 refer) and questioned when these guidance texts would be available in final form especially taking into consideration that they are global guidance on AIS-AIM transition for implementation in all regions. In querying whether guidance material to support implementation of the upcoming amendment to Annex 15 — *Aeronautical Information Services* and new *Procedures for Air Navigation Services — Aeronautical Information Management* (PANS-AIM) would be published in good time and in all ICAO languages, she reiterated the importance of having a KPI to measure the efficiency and timeliness of certain ICAO documents that were essential for the orderly development of global civil aviation.

13. The President of the ANC confirmed that the guidance material would be developed in time for the 2018 applicability date of the Annex 15 amendment and introduction of PANS-AIM although translation of the documents may require prioritization due to budget constraints. Even so, the Commission realized the importance of the timely publication of the guidance material in all ICAO working languages and the detailed publication plan would be included in the State letter notifying adoption of the Annex 15 amendment.

14. Welcoming the information provided in Appendix B and the ISPG suggestions for the focus of future reports, the Representative of Turkey suggested it would be beneficial to add two columns to the Appendix B table, one to provide information on the ANP, GANP and GASP objectives related to these common challenges and another on the relative impact and importance of these common challenges in relation to each other and the GANP and GASP objectives. The action/status column could also identify outstanding items awaiting Headquarters action or regional difficulties or deficiencies in overcoming these challenges. This additional information would allow for a more detailed analysis of the actions to be taken and the global challenges in implementing GANP and GASP. For future reporting and analysis of these challenges, the table could be further enhanced by using the quality function deployment methodology to provide an overall understanding of the problems in globally implementing the GANP and GASP plans by grouping and defining the relative importance of these common challenges, determining the priorities in action to be taken and benchmarking regions in terms of their achievements in implementing these plans and in overcoming the specifically defined problems and challenges.

15. The President of the ANC thanked the Representative of Turkey for his suggestions to improve the format of Appendix B which would be taken into consideration in the preparation of the 2018 annual report.

16. As to the ASBU implementation challenges faced by States, D/ANB explained that many factors determined which elements of the air navigation service a State chose to enhance. The suggestion by the Representative of Turkey to have benchmarks for States to compare their own capabilities with those of

other States in the region was part of the implementation process and it was important to continue the development and refinement of those models so that a State could compare the impact on its safety, efficiency and capacity services, including the overall cost of its implementation, based on the ASBUs selected. He believed the minimum path developments would assist in this regard but would require significant programme management oversight by States. The Secretariat and Regional Offices were working to create a set of tools that would assist in the decision-making process and that further progress would be reported by the Commission in future reports. The focus of the development work was to provide implementation tools to support the Standards being adopted.

17. Highlighting the ISPG recommendation on the focus of future reports, the Representative of Spain remarked on the usefulness to include Secretariat and ANC suggestions, such as resource requirements, to facilitate the Council in determining the appropriate action to be taken to address the common global challenges. Pointing to the European Region's four-tier hierarchical meeting structure (paragraph 4.3.1 of the working paper refers), the Representative of Spain believed other regions could follow the same approach which would require PIRG and RASG commitments upgraded to an appropriate level of authority and he suggested that perhaps the four-tier meeting structure could be evaluated at the forthcoming Council offsite strategy meeting in September.

18. In response, the President of the ANC explained that each region would consider the best structural fit for the PIRGs and RASGs to increase State participation and that the effectiveness of the new meeting structure in the EUR Region would be presented to the Council in the 2018 consolidated annual report.

19. The Representative of South Africa reiterated the urgent need to address the issue of ASBU implementation by identifying the exact problem within States and to advise Council on the course of action to be taken. The Council also needed to be appraised of any problems related to the publication of the next edition of the *Regional Supplementary Procedures* (Doc 7030) and the Regional Air Navigation Plans, Volume II. He also pointed to the need for completion of the revision to the ICAO uniform methodology for the identification, assessment and reporting of air navigation deficiencies, as noted on page A-11, which impacted directly on the PIRGs work and had to be aligned to the new Air Navigation Plans. Lastly, in follow-up to C-DEC 190/4 on C-WP/13558, he queried when the rotation of the Regional Directors serving as Secretaries of the APIRG and AFI RASG would take place in order to balance the Secretariat responsibilities between the two regions. In this regard, the President of the Council suggested that there be some flexibility, depending on the expertise of a Regional Director and D/ANB added that he would consult with both Regional Directors on an appropriate schedule for the transition and report back to the Council on action taken. As to the other issues identified, the President of the ANC indicated that he would review them in coordination with the Secretariat.

20. Summarizing the discussion thus far, the President of the Council considered the issues raised by the Representative of South Africa to be very important. The ASBU methodology was developed in part to make it possible for States to have investment certainties and for industry to develop systems in good time, but the experience to date had been more complicated. He questioned whether ICAO had sufficient expertise or focus within the Regional Offices to provide support to States as recent experience underscored the importance of the present phase of implementation and the *No Country Left Behind* initiative had also increased the responsibility of the Regional Offices to provide the appropriate expert advice to States. The need for collaboration between Headquarters and the Regional Offices to provide the required guidance to States was important. In relation to the GANP and the Regional Air Navigation Plans, he underscored the need for every State to meet those requirements and that there be coherence between the national, regional and global plans.

21. In regard to the issue of availability and competence of technical and inspectorate personnel in civil aviation administrations, the President of the Council suggested that the guidance and training cited in paragraph 4 c) above be considered a package to enhance the inspectorate capabilities of States and he suggested the Secretariat could provide a briefing on progress in this regard. He also suggested a support system to States be developed for ASBU implementation similar to that for the five-step process for Air Operator Certification. A concrete solution needed to be developed to advise States on ASBU implementation that also enabled the Regional Offices, Headquarters and States to similarly develop hands-on capabilities and best practice examples for strategic decision-making.

22. In support of the summary by the President of the Council, the Representative of the Russian Federation referred to action item c) of C-WP/14607 on the importance of the Black Sea Task Force (BSTF) work and its continuation. Underscoring the technical nature of the task force, the Representative of the Russian Federation supported its continuation and proposed its terms of reference be reviewed to align its activities with Appendix G of Assembly Resolution A38-12: *Consolidated statement of continuing ICAO policies and associated practices related specifically to air navigation*, and he also requested that the Secretary General select the BSTF Secretary from the ICAO Secretariat in order to ensure a completely unbiased approach to the technical activities of the group from both an economic and a safety standpoint.

23. The President of the Council pointed out that as the BSTF was a subsidiary group of the EANPG, which reported to the ANC and in turn to Council, it was procedurally outside the purview of the Council to make changes to its terms of reference; and that the Secretary of the Task Force, which was presently the European Office Regional Director, was determined by the Secretary General. The Representatives of France, the United Kingdom and the United States endorsed the President's remark and the Secretary General indicated her willingness to provide any further clarifications to the Russian Delegation.

24. **In concluding its consideration of this item, the Council:**

- a) noted the information provided in C-WP/14607;
- b) welcomed the outline of common global challenges faced by regions that was contained in Appendix B of the working paper while noting that the Secretariat had taken certain actions therein to address these challenges, and no action by the Council was required to give effect to these initiatives at this time;
- c) requested that in future reports on this item, the Secretariat give consideration to revising the format of Appendix B so that further improvements could be made to the information presented, with a view to specifying timelines for completing actions to address the common challenges, linking the actions to objectives contained in the GANP and the GASP, cross-referencing the issues listed to actions that need to be undertaken by ICAO Headquarters as well as the Regional Offices, and identifying as well as recommending particular actions that would need to be taken by the Council to address particular challenges;
- d) emphasized the importance of addressing challenges faced by States in relation to the implementation of elements of the Aviation System Block Upgrades (ASBU), particularly in the context of the No Country Left Behind initiative, and noted the significance of the role that the ICAO Regional Offices would need to play in this regard in supporting States to enhance their capabilities in their implementation efforts; and

- e) requested that in relation to the issue of the availability and competence of technical and inspectorate personnel in civil administrations, the Secretariat provide further information in an informal briefing during the 212th Session on the status and availability of the necessary guidance material, including, inter alia, Doc 10070 – Manual on the Competencies of Civil Aviation Safety Inspectors, the CAA HR Toolkit, and the TRAINAIR PLUS Safety Management Course.

25. In recalling its previous consideration of this item and the decision taken by the Council in the establishment of the Regional Aviation Safety Groups in May 2010 (C-DEC 190/4 refers), the Secretariat also undertook to review the alternating Secretariat responsibilities wherever two Regional Directors are involved to balance the Secretariat responsibilities between the Groups.

26. Finally, the Council also took note of the importance of the work currently being undertaken by the Black Sea Task Force and agreed that this work should continue on the understanding that any recommendations arising would, in the first instance, be presented to the Air Navigation Commission for consideration.

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

#### **Report of ANC – ANC Work Programme for the 206th Session**

27. The Council considered this item on the basis of C-WP/14609, which presented in Appendix A the proposed work programme for the 206th Session of the Air Navigation Commission (ANC). Also provided for information purposes, in Appendices B and C, were forward looks to planned items for the 207th and 208th Sessions, respectively.

28. During his introduction of the working paper, the President of the Air Navigation Commission (P/ANC) highlighted that the Commission agreed that high priority in scheduling should be accorded to items related to Annex amendments proposed for applicability in 2018 and to the proposed Thirteenth Air Navigation Conference (AN-Conf/13).

29. In thanking the President of the ANC for the paper, the Representative of Cuba expressed concern regarding the substantial number of working papers related to Annex and PANS amendments for consideration in the next session. She highlighted the overwhelming impact these numerous amendments were having on smaller Civil Aviation Authorities to achieve effective implementation and questioned the possibility of minimizing the volume of Standards and Recommended Practices (SARPs) amendments being introduced given the subsequent impact on regulators and service providers. In this regard, the President of the ANC explained that prior to developing a SARP proposal, the Commission now reviewed an impact assessment of the proposed amendment to ensure its necessity.

30. In lead-up to the preparations for the ICAO RPAS Symposium – African and Indian Ocean (RPAS AFI) scheduled from 17 to 18 July 2017 in Abuja, Nigeria, the Representative of South Africa requested a meeting with the President of the ANC and Director of the Air Navigation Bureau (D/ANB), to which the President of the ANC confirmed availability the following week.

31. The Representative of Turkey sought clarification that the amendments to Annex 2 — *Rules of the Air*, Annex 11 — *Air Traffic Services*, Annex 15 — *Aeronautical Information* and the *Procedures for Air Navigation Services — Air Traffic Management* (PANS-ATM, Doc 4444) regarding contingency planning related to conflict zones, (item 20601 on page A-1 of the working paper) would be presented to

the Council for adoption in its 214th Session to which the President of the ANC indicated that this would be in 2020 as the amendment proposals would not be ready in time to meet the 2018 applicability date.

32. Following consideration, the Council approved the work programme of the Air Navigation Commission for its 206th Session, on the understanding that any subsequent developments of particular significance that might affect the work programme would be brought to the attention of the Council for consideration.

#### **Subject No. 14: Subjects relating to air navigation**

##### **Progress report on the ICAO web library of risk-based information**

33. The Council commenced consideration of this item on the basis of information paper C-WP/14611, which reported on the implementation and progress of the modification of the ICAO Conflict Zone Information Repository (CZIR) into a library of links to States' websites with aeronautical information related to risks to civil operations over or near conflict zones through a designated State focal point.

34. In her introduction of the paper, the Secretary General recalled that the Council (C-DEC 210/5 refers) had noted that the Conflict Zone Information Repository (CZIR) had ceased to function as an effective means to convey information related to civil aviation risks arising from conflict zones and had agreed that the CZIR be discontinued and in its place a library of links to States' own aeronautical information related to risks to civil aviation operation on or near conflict zones be established. The Secretariat, in consultation with the Repository Review Group (RRG) developed appropriate modifications and she approved the new ICAO Conflict Zone Risk Information website which became operational on 8 May 2017. States were informed of these changes through State letter SMM1/4-17/51, dated 5 May 2017 and since the new library became operational France had submitted information for inclusion in the library of links and an additional State had provided a State focal point. The Director of the Air Navigation Bureau (D/ANB) added that Ukraine had posted a conflict zone link and that three more focal points had been added totalling 99 focal points provided to ICAO.

35. In thanking the Secretary General for her report, the Representative of Mexico recalled that twenty-two States had expressed concerns regarding the drafting of the State letter and it should not have been distributed until discussions had been completed. As all States had sovereign responsibility to submit links to the website, they should adhere to the requirements set out by Council that the information provided should be exclusively on risks to civil aviation resulting from conflict zones, as requested by the twenty-two Council representatives (C-MIN 210/5 (Closed), paragraph 46 refers).

36. Voicing strong support for the intervention by the Representative of Mexico, the Representative of Egypt was surprised that the State letter had been dispatched despite the reservations expressed by twenty-two Council Representatives on the matter as reflected in the previous decision taken by the Council (C-DEC 210/5 paragraph 5 c). The links to States' information placed in the Repository should refer only to conflict zones and be in compliance with the definition approved by the Council, in accordance with the decision of the High Level Safety Conference, and he insisted that the State letter be amended to address this and take into consideration the reservations expressed by the twenty-two Member States.

37. In support of the interventions by the Representatives of Egypt and Mexico, the Representative of the Russian Federation remarked that following the Council decision to modify the

procedures governing the Repository, the Secretary General should have reported to Council on the new criteria and its functioning in order that the Council could have made an informed decision. As it was, the Representative of the Russian Federation did not understand how the process worked and whether the Council decision was being adhered to. It was of critical importance that ICAO provide the requisite information to the aviation community otherwise the professional reputation of the Organization could be undermined.

38. Expressing thanks for the progress report by the Secretary General, the Representative of Cuba endorsed the interventions by the Representatives of Egypt, Mexico and the Russian Federation that the State letter should have been drafted differently. Calling attention to the indiscriminate use of the terms “aeronautical information” and “risk information”, she highlighted the need to use “information on risks to civil aviation or operations over or near conflict zones” in keeping with the C-DEC 210/5 and to add “in accordance with definition of conflict zones approved by the Council”. Even though risk information was generally issued in NOTAMs, Aeronautical Information Circulars and Aeronautical Information Publications, more had to be done to clarify this information in SARPs and guidance material. As well, adequate resources were required to support these efforts, to promote focal points and to ensure consistent publication of risk-related information. The Representative of Cuba pointed out that the Council had provisionally approved the Repository on the understanding that information provided by States should be entirely on risks to civil aviation operations over or near conflict zones in accordance with the Council approved definition. States were obliged to ensure the information provided was accurate and in accordance with the Standards in Annex 15 — *Aeronautical Information Services*. States also had the responsibility to provide aeronautical information covering their territory and those areas over the high seas for which they were responsible in providing air traffic services in accordance with Annex 15, Chapter 2, 2.1.2, and that no information should be provided without the approval of the State concerned. These requirements must be upheld otherwise States could be adversely impacted. Although realizing the importance of providing information on risks, the Representative of Cuba expressed reservations with the web-based library and indicated that Cuba would not be designating a focal point at this time.

39. D/ANB indicated that the Secretariat appreciated the comments of the twenty-two States on the definition and the difficulties it posed. Given the challenges associated with refining these libraries to accommodate the procedures and the limited scope of the information, he suggested the Council give consideration to terminating the links library. Furthermore, industry had integrated available published information from States in NOTAMs and Aeronautical Information Publications so that the information included in the library was becoming irrelevant. As the ICAO task was to assist in the effort to provide greater transparency and visibility of the risk information through NOTAMs and Aeronautical Information Publications, a decision to end the link library would allow the Secretariat to effectively focus on the further technical work required on the NOTAMs in order to provide an improvement beyond what had already been accomplished by industry with State support.

40. The Secretary General also understood the concerns of the twenty-two Member States, but requested they appreciate the Secretariat’s task to implement the Council Decision which was confirmed as being valid prior to issuance of the State letter, even so, she felt that enhanced communication was required in such cases.

41. The President of the Council recalled that at the time of the High-level Safety Conference there was a gap in the risk-based information available to States which ultimately led to the Council decision that had now been surpassed by industry and if appropriate, the Council could suspend the links library. In keeping with the previous Council decision, it would be more appropriate to focus efforts on assisting States to develop risk assessment capabilities as recommended by the High-level Safety Conference rather than providing support to industry or third party commercial organizations involved in these matters.

42. The Representative of Nigeria endorsed the suggestions made by D/ANB.

43. The Representative of the United Kingdom remarked that the State letter and C-DEC 210/5 reflected precisely the Council discussion and the President's summary and that a number of Council Representatives now appeared to be seeking to reopen a past decision, which to his mind might constitute a contravention to the *Rules of Procedure for the Council* (Doc 7559). As to the comments by D/ANB, he felt that States should be allowed more time to respond to the State letter especially given the new request and thereafter an appropriate course of action could be decided upon as it would be odd for the Organization to revoke a decision that had been lately requested in a State letter. In the meantime, the focus should be on capacity-building in relation to the provision of information.

44. The Representative of the United Republic of Tanzania thanked the Secretary General for the information paper and her subsequent suggestion to enhance communications. In sharing the views of the Representatives of Cuba, Egypt, Mexico and the Russian Federation, he observed that there was no doubting the type of information being sought, even so, he suggested the State letter be amended to include the most important information required, as raised by the twenty-two Member States.

45. In sharing the Representative of the United Kingdom's reluctance to revisit this subject, the Representative of Ireland believed there was no convincing evidence to support the proposal by D/ANB to cease the links library altogether on the basis that industry now provided the necessary information. She endorsed the views of the Representative of the United Kingdom in response to the comment by the Representative of Mexico, that the Council decision clearly reflected the discussion on the item and a solution had been reached to circumvent political difficulties in sharing conflict zone information and risk information related to conflict zones. She supported the continuation of the web-based library and felt that States should be allowed adequate time to respond to the State letter after which the matter could be reviewed.

46. The Representative of Colombia supported D/ANB's proposal to terminate the links library in order to avoid replication of information and to preserve consensus.

47. The Representative of Australia also shared the views of the Representatives of Ireland and the United Kingdom. To reopen discussions on an item that had reached a compromise solution was disappointing, especially given the MH17 tragedy had highlighted the need for greater information sharing. He preferred retention of the original decision and the continuation of the links library to facilitate the requisite information sharing that had been called for. Should the Council decide to discontinue the web-based library, it was absolutely essential that the other work items approved in C-DEC 210/5 continue in regard to capacity-building and assistance to States to improve their ability to make risk assessments of the conflict zone information, otherwise it would demonstrate an inability on the part of ICAO to respond adequately or appropriately to this issue.

48. The President of the Council made clear that the decision for Council at this point in time was to either continue to publish the links to States' websites with aeronautical information related strictly to risks to civil aviation operations over or near conflict zones or to discontinue the ICAO web-based library as the point of contact network or other sources of information could be used instead which would then allow the Secretariat to focus on assistance to States in developing the capability to carry out necessary risk assessments.

49. The Representative of the Russian Federation supported D/ANB's proposal to concentrate the Secretariat resources on assisting States in developing a methodology for risk assessments as risk-based information was available to all air operators.



50. The Representative of Egypt supported D/ANB's proposal, the President's summary and the intervention by the Representative of the Russian Federation to focus on assisting States in their capacity to assess risks to civil aviation in conflict zones.

51. Realizing the solutions offered were not optimum and consensus could not be reached on an effective solution at this point, the President of the Council suggested consultations take place outside the chamber bearing in mind the practical challenges for States to differentiate between general risks to civil aviation and conflict zones when posting links and for the Secretariat to navigate through all those links in order that they relate only to conflict zones.

52. In the circumstances, the Council agreed to adjourn further consideration of this item until a subsequent meeting of the current session.

**Subject No. 14: Subjects relating to air navigation**

**Report on the Forum on Regional Safety Oversight Organizations (RSOOs) for Global Aviation Safety**

53. The Council considered this item on the basis of information paper C-WP/14632, which presented a report on the Forum on Regional Safety Oversight Organizations (RSOOs) for Global Aviation Safety, held from 22 to 24 March 2017 in Ezulwini, Swaziland.

54. During her introduction of the information paper, the Secretary General took the opportunity to thank Swaziland and the European Aviation Safety Agency for organizing the event and the African States for supporting the proposed global strategy and action plan for RSOOs in Africa, namely the Ezulwini Declaration on Regional Safety Oversight Organizations in Africa, as contained in Appendix B to the information paper.

55. In highlighting the two outcomes of the forum which were the establishment of a global system for the provision of safety oversight and the Declaration on Regional Safety Oversight Organizations in Africa, the President of the Council queried whether the Air Navigation Commission (ANC) had already reviewed the new global aviation safety oversight system (GASOS) concept.

56. Appreciating the separation of the two fundamental concepts, the Representative of Spain remarked that in regard to GASOS, the future trend would be towards regional organization cooperation and echoing the President of the Council's query, suggested the views of the ANC be sought on this new structure. As to the Ministerial Declaration, he observed a Council decision would be required on the request to ICAO through the Comprehensive Regional Implementation Plan for Aviation Safety in Africa (AFI Plan) to coordinate the funding of development and implementation of the Strategic Plan.

57. The President of the Council clarified that no decision was required at this point as the Secretariat had yet to give substance to GASOS, after which the ANC would present the concept policy to the Council for approval. As to the item regarding the AFI Plan, it was just to draw attention to the additional work placed on it arising from the RSOOs Forum as the development of the RSOOs in Africa were already supported by the AFI Plan.

58. The Representative of Singapore echoed support for the comments by the Representative of Spain on the necessity for the ANC to review the GASOS on the understanding that it did not need to be

linked to a RSOO. He lent support to this new concept and requested that it be appraised from a legal standpoint prior to the ANC review.

59. In concurrence with the Representative of Singapore on the need for a legal review, the Representative of the United Kingdom remarked on the importance of the RSOOs work in their role of assisting with regional SARPs implementation and that the GASOS was very much a model for the future.

60. In closing its consideration of this item, the Council noted that Appendix A to the information paper contained a global strategy and action plan for the improvement of RSOOs and the establishment of a global system for the provision of safety oversight. In this connection, it was understood that actions arising would be presented to the Council for consideration following prior consultation with the ANC, at a subsequent session of the Council before the AN Conf/13. In particular, in relation to the proposed new global aviation safety oversight system (GASOS), the Secretariat was requested to ensure that any actions arising would take into account any legal implications arising vis-a-vis the *Convention on International Civil Aviation*.

## **Subject No. 52: Unlawful interference with international civil aviation and its facilities**

### **Report on the ICAO Cyber Summit and Exhibition**

61. The Council considered this item on the basis of information paper C-WP/14633, which reported on the organization of and the subjects addressed at the ICAO Cyber Summit held in Dubai, United Arab Emirates (UAE) from 4 to 6 April 2017.

62. While presenting the information paper, the Secretary General took the opportunity to thank the United Arab Emirates for hosting the event in cooperation with ICAO and highlighted the Dubai Declaration on Cybersecurity in Civil Aviation, contained in the Appendix to the information paper, as important first step in an enhanced collaborative approach to cyber coordination and cyber response.

63. The Representative of France thanked the United Arab Emirates for the excellent organization of the summit and the many lessons learned for the Organization and given the high expectations of States and industry on the next steps for cybersecurity, queried the Organization's plans to develop a well-coordinated strategy on this topic.

64. From a security aspect, the Deputy Director, Aviation Security and Facilitation (DD/ASF) indicated that in the near-term, the Secretariat was recruiting a P-4 Technical Officer to manage the cybersecurity programme with the assistance of a secondee, at the P-2 technical officer level, from the United Arab Emirates. On the organizational side, a steering group was being established with terms of reference presently being drafted, to lead and coordinate the work of existing groups and panels already tasked with cybersecurity issues within their respective fields of expertise and DD/ASF highlighted the close coordination with Air Navigation Bureau in this regard.

65. In turn, the Deputy Director, Air Navigation Capacity and Efficiency (DD/AN), explained that from a safety perspective, strategies were being developed for review by the ANC and for presentation to the Council and thereafter to the Second Global Air Navigation Industry Symposium (GANIS/2) scheduled to take place in Montréal from 11 to 15 December 2017.

66. The Representative of the United Arab Emirates thanked all those who were able to participate in the Summit and highlighted an editorial correction to add “Dubai” at the beginning of the title of the Declaration as presented in the Appendix to the information paper.

67. In thanking the United Arab Emirates for hosting such a well-organized Summit, the Representative of Nigeria considered one of the lessons learned was the importance of ICAO in taking a leadership role in dealing with cybersecurity and in this regard queried the work being done by the ANC in coordination with the Secretariat.

68. Having attended the Summit, the President of the Air Navigation Commission (P/ANC) extended his thanks to the United Arab Emirates for their kind hospitality and in response to the question by the Representative of Nigeria explained that the ANC and Air Navigation Bureau had conducted informal discussions in early May to determine a future plan of action. Several panels, such as the Communications Panel and Information Management Panel had been tasked with cybersecurity, nevertheless, the strategy being developed by the steering group would be reviewed by the ANC and should any additional work programme items be identified regarding safety-related cybersecurity issues, revisions to existing job-cards or new panel job-cards would be prepared.

69. The Representative of the Russian Federation also expressed sincere gratitude to the United Arab Emirates for conducting the Summit. Many topical issues were discussed which raised awareness that the entire international civil aviation system must be reviewed as a result of these new challenges. Appreciative of the Secretariat undertakings in this regard, he suggested that cybersecurity be added to the ICAO Strategic Objectives for Safety, Capacity and Efficiency and Security and Facilitation as it would be an ongoing issue well into the future.

70. The Representative of Spain considered the Summit very timely and was very grateful to the United Arab Emirates for the excellent organization and kind hospitality extended to all delegations. Given the multidisciplinary aspects of this issue, the coordination efforts between the steering group and the various panels and ANC to move forward with a plan of action to be presented to the Council soon was encouraging. As cybersecurity was a recent phenomenon, he suggested the Secretariat give consideration as to how cybersecurity and States’ responsibilities would be dealt with in the context of the Chicago and Beijing Conventions and this was something that may require action in the legal domain.

71. The Representative of Malaysia expressed appreciation to the United Arab Emirates for hosting the ICAO Cyber Summit and Exhibition and the resulting Declaration which provided the initial measures towards a collaborative approach to cyber coordination and cyber response. It was very important to have a coordinated effort by States to act and mitigate risks posed by cyber threats and to have ICAO take the lead to ensure States implemented an appropriate legislative framework which Malaysia was now progressing. In response to concerns expressed in previous interventions for adequate expertise within ICAO to undertake cybersecurity issues and to pursue the necessary work on this issue, the President of the Council explained that presently the recruitment process was underway for a P-4 technical officer dedicated to this subject and as the work advanced, further needs would be considered.

72. In thanking the United Arab Emirates for hosting the Summit, the Representative of Colombia highlighted two important conclusions that had been drawn from the event, namely that the fundamental basis to handling cybersecurity was through the design of a secure system; and that aircraft currently being manufactured were designed with cybersecurity systems.

73. Voicing thanks for the wonderful hospitality and organization of the Summit by the United Arab Emirates, the Representative of Brazil underscored the seriousness of the subject matter and echoed

support for the remarks by the Representatives of the Russian Federation and Spain. This would be an ongoing work item given the unpredictable nature of this issue.

74. Expressing sincere appreciation to the United Arab Emirates for hosting the Summit, the Representative of Japan suggested the outcomes be taken into account in the implementation of follow-up work in relation to the United Nations Security Council Resolution 2309.

75. In closing its consideration of the item, the Council agreed that the Declaration represented an important first step in reaffirming the prominent role of ICAO as aviation's highest-level forum for collaboratively addressing cybersecurity in civil aviation.

76. It was understood that the Secretariat was adopting a multi-disciplinary approach in the pursuance of work being undertaken on this issue and that the Council would be presented with a more detailed working paper on the item at a subsequent session with a view to approving recommendations that would be presented to the Assembly for adoption at its 40th Session in 2019.

#### **Subject No. 14.3.16: Search and rescue**

##### **Report on the High-level Ministerial Conference on Search and Rescue**

77. The Council considered this item on the basis of information paper C-WP/14634, which presented the outcome of the High-level Ministerial Conference on the improvement of search and rescue (SAR) services in Africa, which was held in Lomé, Togo, from 10 to 12 April 2017. It was noted that the Lomé Declaration on the improvement of SAR services and Action Plan were provided in Appendices B and C, respectively, to the information paper.

78. During her introduction of the paper, the Secretary General took the opportunity to thank Togo for hosting the event and for the African Civil Aviation Commission (AFCAC) in organizing the conference in conjunction with the African Union Commission (AUC) and ICAO.

79. In expressing thanks for the Lomé Declaration, the Representative of Spain observed the recommendations had a global application and pointing to page 4, paragraph 4.1 a) of the paper, considered the recommendation of a legal framework for a sustainable and adequate funding mechanism of search and rescue (SAR) systems and services to be essential.

80. In concluding its consideration of this item, the Council endorsed the following recommendations that had been made to States by the High-level Ministerial Conference:

- a) ensure a legal framework is established for a sustainable and adequate funding mechanism of SAR systems and services;
- b) ensure that the necessary bilateral/multilateral SAR agreements as required in Annex 12 — Search and Rescue are negotiated, signed and implemented with all neighbouring and adjacent search and rescue regions (SRR) and flight information regions;

- c) endeavour to negotiate, sign and implement multilateral agreements with as many partner States and organizations that can combine efficient search and rescue operations pooling resources and skills;
- d) organize multi-agencies, multi-States and combined regional SAR exercises to test SAR systems in place involving as many SAR units as practicable;
- e) take advantage of the Regional Economic Commissions' platforms such as ECOWAS, UEMOA, CEMAC, EAC, ECCAS, SADC, COMESA, UMA, or other sub-regional arrangements to establish sub-regional, harmonized SAR arrangements;
- f) develop and implement training programmes and plans for capacity-building of search and rescue personnel, including those involved in the oversight of SAR;
- g) establish a joint rescue coordination centre (JRCC) to coordinate aeronautical and maritime SAR operations, where practicable, and pooling resources (human, assets, funding, etc.); and
- h) mandate the carriage and operation of emergency locator transmitters (ELTs) on the aircraft registered under them, in order to facilitate the timely deployment of SAR services.

81. In addition, the Council endorsed the Lomé Declaration on the improvement of the provision of search and rescue services in Africa, and welcomed the emphasis it had placed on ensuring alignment between the Comprehensive Regional Implementation Plan for Aviation Safety in Africa (AFI Plan) and efforts to implement programmes and projects aimed at improving the provision of search and rescue services.

82. The meeting adjourned at 1730 hours.

**COUNCIL — 211TH SESSION**

**SUMMARY MINUTES OF THE SIXTH MEETING**

**(THE COUNCIL CHAMBER, WEDNESDAY, 14 JUNE 2017, AT 1000 HOURS)**

**OPEN MEETING**

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

**PRESENT:**

Algeria	— Mr. A.D. Mesroua	Kenya	— Ms. M.B. Awori
Argentina	— Mr. G.E. Ainchil	Malaysia	— Mr. Y.-H. Lim
Australia	— Mr. S. Lucas	Mexico	— Mr. D. Méndez Mayora
Brazil	— Mrs. M.G. Valente da Costa	Nigeria	— Mr. M.S. Nuhu
Cabo Verde	— Mr. C. Monteiro	Panama	— Mr. G.S. Oller
Canada	— Mr. M. Pagé	Republic of Korea	— Mr. J. Hur
China	— Mr. Shengjun Yang	Russian Federation	— Mr. A.A. Novgorodov
Colombia	— Mr. A. Muñoz Gómez	Saudi Arabia	— Mr. J.K. Metwalli (Alt.)
Congo	— Mr. R.M. Ondzotto	Singapore	— Mr. T.C. Ng
Cuba	— Mrs. M. Crespo Frasquieri	South Africa	— Mr. M.D.T. Peege
Ecuador	— Mr. I. Arellano	Spain	— Mr. V.M. Aguado
Egypt	— Mr. A. Khedr	Sweden	— Ms. H. Jansson Saxe
France	— Mr. P. Bertoux	Turkey	— Mr. A.R. Çolak
Germany	— Mr. U. Schwierczinski	United Arab Emirates	— Mr. M. Salem (Alt.)
India	— Mr. A. Shekhar	United Kingdom	— Mr. M. Rodmell
Ireland	— Mrs. A. Smith Floch	United Republic of Tanzania	— Mr. R.W. Bokango
Italy	— Mr. M.R. Rusconi	United States	— Mr. S. Kotis (Alt.)
Japan	— Mr. S. Matsui	Uruguay	— Mr. M. Vidal

**ALSO PRESENT:**

Mr. H. Yoshimura	— President, ANC
Dr. N. Luongo (Alt.)	— Argentina
Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. J. Bollard (Alt.)	— Australia
Mr. R. da Rosa Costa (Alt.)	— Brazil
Mr. D.A. Tavares Taufner (Alt.)	— Brazil
Mr. Chunyu Ding (Alt.)	— China
Mr. M. Millefert (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mr. K.A. Ismail (Alt.)	— Malaysia
Mrs. D. Valle Álvarez (Alt.)	— Mexico
Mr. S. Kim (Alt.)	— Republic of Korea
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. S. Vuokila (Alt.)	— Sweden
Mr. Ö. Doğrukol (Alt.)	— Turkey
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mr. J. Méndez (Alt.)	— Uruguay

**SECRETARIAT:**

Mrs. J. Yan	— C/OSG
Mr. B. Djibo	— D/ATB
Mr. S. Creamer	— D/ANB
*Mr. H. Gourджи	— DD/MO
*Mr. C. Radu	— DD/SAF
*Mr. S. Lefoyer	— DD/ASF
*Mr. M. Fox	— C/PRC
*Mr. M. Vreedenburgh	— C/IMP/SAF
*Dr. K. Rooney	— C/CSS
*Mr. E. Lassooij	— PCI
*Mr. N. Rallo	— C/OAS
*Mr. M. Merens	— C/IAA
Miss S. Black	— Précis-writer

\*Part-time

*Mr. M. Halidou, Chairperson of the AFI Plan Steering Committee  
and Representative of Niger to ICAO*

**Representatives to ICAO**

Chile  
Cyprus  
Ghana  
Greece  
Indonesia  
Lebanon  
Niger  
Paraguay  
Peru  
Uganda  
Venezuela (Bolivarian Republic of)

Airports Council International (ACI)  
European Union (EU)

**Subject No. 52: Unlawful interference with international civil aviation and its facilities**

**Report of the First Meeting of the Multidisciplinary Cargo Safety Group (CSG)**

1. The Council considered this subject on the basis of: C-WP/14638, in which the Secretary General, in accordance with its earlier decision (211/1), reported on the establishment and composition of the CSG and its introductory meeting (Montréal, 1-2 June 2017), during which the Group's draft Terms of Reference (TOR) and problem statement had been reviewed and finalized, and its Work Programme, with expected deliverables and timelines, had been developed based on the objectives defined in the TOR; and an oral report thereon by the Air Navigation Commission (ANC).

*ANC oral report*

2. Based on its discussion of C-WP/14638 at the Sixth Meeting of its 205th Session on 8 June 2017, the Commission put forward the following recommendations for the Council's consideration:

- a) recognizing that the Aviation Security Panel's (AVSECP's) proposed Task Force on Improvised Explosive Devices (TF IEDs) would be considering the operational and facilitation impact arising from security mitigating measures and would also be taking the work of the CSG into account, the Commission recommended that the focus of the CSG be on technical safety issues.
- b) the Commission understood that the role of the CSG's introductory meeting had been to review and finalize the draft TOR and to develop a Work Programme. The Commission considered the revisions made by the CSG to the TOR to be an improvement and that the structure was now more logical and clear. The Commission recommended that the composition of the CSG be re-established by the Secretariat with appropriate experts and of a manageable size to quickly and efficiently address the Work Programme items. It considered that that would best be accomplished through a study group in a manner that allowed for greater visibility to the Council.

3. With regard to the CSG's TOR presented in Appendix C to the paper, the Commission had sought clarification from the Secretariat on Objective D) *Identify mitigation strategies*:

- a) concerns had been raised that including the element "avoid the risk by not carrying PEDs in the cargo compartment" as a singular mitigation strategy might lead to an undesirable outcome. The Secretariat had noted that the elements under Objective D) were not in any specific order of priority and that maintaining that element was important. While prohibiting carriage of PEDs on aircraft was not the desired outcome, it needed to be considered an option if safety hazards introduced through security measures could not be mitigated. That message needed to be clear to the security community.
- b) the Secretariat had also clarified the intent of the last element under Objective D) "Identify recovery measures". Its addition had been recommended to the CSG by safety management experts with the recognition that an effective mitigation strategy would include recovery measures to reduce the severity of consequence if the event that needed to be prevented still occurred.

4. With reference to the CSG's Work Programme set forth in Appendix D, the Commission had acknowledged the relevance of including the development of realistic scenarios to be used for the



evaluation of the capabilities of the aircraft system associated with PEDs in the *cabin* given that most reported incidents related to PEDs had occurred in the cabin and that evaluating those events would be an essential step to understanding the risks PEDs posed in *checked* baggage. However, the Commission had agreed that that item should have a lower priority than the evaluation of the capability of the aircraft system associated with PEDs in *checked* baggage.

5. The Commission had noted the importance of guidance material to passengers, operators and all affected stakeholders. The Secretariat had advised that a web-based system to efficiently disseminate guidance material developed through the CSG was being considered.

6. The Commission had also agreed that the Council should be informed about the ongoing work of the ANC and its Panels relating to cargo safety issues.

7. Finally, to avoid the risk of ambiguity between security and safety, the Commission had recommended that references to “risk” and “hazard” in the CSG’s TOR and Work Programme be indicated as “safety risk” and “safety hazard”.

### *Discussion*

8. Providing supplementary information, the Director of the Air Navigation Bureau (D/ANB) highlighted that the timelines for the CSG’s expected deliverables outlined in Appendix D to the paper might need to be amended once the CSG was fully constituted and had commenced its work. In noting that the CSG’s composition would be finalized in light of the Council’s current deliberations, he underscored that every effort would be made to conduct the CSG’s work as expeditiously as possible with the aim of presenting a consolidated report thereon to the Council during its next (212th) session. D/ANB further indicated that a coordination meeting of all of the relevant ANC Panel Secretaries had already taken place to discuss the CSG’s Work Programme and the expected deliverables. In addition, a list of subject matter experts (SMEs) had been compiled by the Chief of the Cargo Safety Section (C/CSS) in coordination with the said Panels’ Chairpersons. Based on the Council’s present discussion, another meeting would take place later during the week to assign tasks to the SMEs. Recalling that Council Representatives had been invited (211/1) to nominate suitably-qualified experts, D/ANB noted that the nominations received would be taken into consideration in drawing up the final SME roster.

9. D/ANB emphasized that the CSG would be working in parallel with the AVSECP’s proposed TF IEDs and that their meetings would be aligned and their Work Programmes coordinated to the maximum extent possible. He observed that the CSG’s next meeting was tentatively scheduled to take place in Paris from 19-21 July 2017, immediately after the TF IED’s envisaged meeting. Underscoring that States were invited to evaluate capabilities of aircraft systems with regard to the transport of PEDs in checked baggage and/or to work collaboratively with other States in that testing process, D/ANB highlighted that the United States, Germany and France had expressed interest in conducting tests and that Canada was exploring the possibility of also doing so. He further underscored that major lithium battery manufacturing States, such as China, the Republic of Korea and Japan, were encouraged to support that research.

10. In seeking clarification regarding the focus of the multidisciplinary CSG, the President of the Council enquired whether it was still on safety, security and facilitation or if it was solely on the various aspects of cargo safety. He also queried how the work of the CSG and the TF IEDs would be coordinated in order to balance the associated safety and security risks while ensuring that facilitation issues did not fall by the wayside.

11. D/ANB indicated that the overall strategy was that the CSG and the TF IEDs would work interdependently, to some degree, to produce findings within their respective TORs. The CSG would focus on the safety aspects of the carriage of PEDs on aircraft, regardless of their location, and the development of measures that might be necessary to mitigate the associated risks. In so doing, the CSG would work in close coordination with the TF IEDs, which would examine the risks associated with artfully concealed IEDs in large PEDs and develop any measures to mitigate those risks. The Secretariat [ANB and the Air Transport Bureau (ATB)] would combine the two groups' findings into a single, consolidated report containing an integrated, holistic set of recommendations arising from their work, which would be submitted to the Council for consideration through the ANC and the Committee on Unlawful Interference (UIC). D/ANB emphasized that although there was no formal framework for a cross-cutting structure within the Secretariat for addressing multidisciplinary issues it would thus still be possible to present such a consolidated report.

12. The President of the ANC noted that during its review, the previous day, of the Report of the Twenty-Eighth Meeting of the Aviation Security Panel (AVSECP/28) (C-WP/14593 Restricted), the ANC had supported the coordination between the multidisciplinary CSG and the AVSECP's TF IEDs and had recommended that the latter consider the safety aspects of possible security mitigation measures in close coordination with the said CSG with a view to developing a balanced solution as referred to by the President of the Council.

13. To a further question by the President of the Council regarding the TF IEDs' TOR and how facilitation-related issues would be addressed, the Deputy Director of Aviation Security and Facilitation (DD/ASF) clarified that the Task Force would examine the possibility of detecting artfully concealed IEDs in personal items and putting in place security measures aimed at preventing a terrorist from bringing such IEDs on board aircraft, whether they were carried on the person or concealed in cabin baggage or in checked baggage stowed in the cargo compartment. He underscored that all of the Task Force's proposed security measures would be analyzed to determine their potential impact on facilitation, inter alia, to avoid having passengers spend hours at screening points, handing over their PEDs, removing articles of clothing such as shoes and emptying their carry-on baggage. DD/ASF emphasized that the objective was to make sure that the passengers' experience was at the heart of the security process and to facilitate their movement by ensuring that the security measures were the least intrusive possible and that they were implemented as efficiently, effectively and rapidly as possible. He underscored that facilitation was an aspect that was taken into consideration systematically in developing and implementing all security measures.

14. The Director, ATB (D/ATB) noted that in parallel to the formal work to be carried out by the TF IEDs, the Secretariat was working with the States which had recently imposed restrictions on the carriage of certain PEDs in the aircraft cabins on flights on certain routes, as well as with the States and airlines affected, to ensure that the restrictions' negative impact on facilitation, in particular as it related to full-fare and business travel, was clearly understood.

15. D/ANB highlighted, in this context, that the CSG's TOR contained, under Objective D) *Identify mitigation strategies*, the following element: "Determine costs (direct and indirect), operational feasibility, and outcomes of implementation of identified mitigation strategies, to include, but not limited to, impact on facilitation, acquisition of equipment or materials, additional staffing, training, additional time on gate for loading and gate checks, and missed passenger connections." [cf. Appendix C, Objective D), element 5]. He underscored that the CSG, which would include facilitation experts, would thus be examining all aspects of the challenge of addressing the threat posed by artfully concealed IEDs.

16. The President of the Council emphasized that if, as recommended by the ANC, the CSG focused on technical safety issues, then security and facilitation issues might not be given full visibility. He reiterated that facilitation issues should not fall through any gaps between the two specialized groups' TORs and work.

17. In voicing gratitude for the above clarifications, provided in a polyphonic yet harmonious manner, the Representative of France noted that they would assist the Council in its deliberations. He also expressed appreciation to ANB and ATB for their close coordination in not only preparing C-WP/14638 but also overseeing the future work of the CSG and TF IEDs. The Representative of France reiterated the importance of effective coordination with the AVSECP and with the relevant ANC Panels, as highlighted in the paper and in the supplementary information provided. Referring to the invitation to Council Representatives to nominate suitably-qualified SMEs to serve on the CSG, he sought further clarification regarding the possible establishment of sub-groups so that their States would be better able to mobilize experts having the competencies required and to propose them to the Secretariat with a view to enriching the CSG's work. In then drawing attention to the CSG's Work Programme set forth in Appendix D to the paper, the Representative of France emphasized the need for more precise timelines for the various expected deliverables instead of the vague ones indicated ("short term" and "long term"), as well as for the presentation of the envisaged single, consolidated report to the ANC and the UIC and subsequently to the Council. He underscored the desirability of the CSG conducting its work as expeditiously as possible and of the consolidated report being submitted to the said bodies during the next session.

18. D/ANB clarified that the expected deliverables whose timeline was "short term" were those which would be presented in the consolidated report during the upcoming 212th session in October/November 2017, while those deliverables whose timeline was "long term" would probably not be completed in time to be integrated therein. The latter deliverables related to additional testing or research which would be used to augment or refine any recommendations emanating from the two groups' work over the summer. D/ANB noted that following their said meetings in Paris in July 2017, the CSG and the TF IEDs would have to complete their work on "short term" deliverables by August 2017 in order to present their consolidated report during the next session. He highlighted that that work related to the following three areas: airworthiness and the evaluation of the capabilities of aircraft fire suppression systems; the evaluation of the flight operations procedures utilized by operators to assist in risk mitigation; and testing how well PEDs could respond to mitigation strategies such as storage/segregation in the carriage compartment of aircraft. While the Secretariat considered, on the basis of the work already being undertaken by the CSG, that that would enable a fairly complete report to be presented to the Council during the Fall session, it was also of the view that it would identify more information that would need to be evaluated, which the Secretariat would aim to do within the next six to twelve months, resources from States permitting.

19. Offering further clarifications, C/CSS indicated that it was likely that CSG sub-groups would be established as the said three areas of work required specific expertise. In emphasizing that the airworthiness component was of primary concern, she noted that efforts were still underway to determine the most efficient and expeditious manner to complete work thereon and that a certain degree of flexibility was required to ensure that suitably-qualified SMEs were selected in the short time available.

20. In reiterating the need for close coordination between the CSG, the TF IEDs, the relevant ANC panels [the Aerodromes Panel (AP), Airworthiness Panel (AIRP), Dangerous Goods Panel (DGP), Flight Operations Panel (FLTOPS), and Safety Management Panel (SMP)], as well as the AVSECP and the Facilitation Panel (FALP)], the President of the ANC recalled that the CSG's introductory meeting had been attended by the Chairperson, Vice-Chairperson or expert from the seven Panels involved. As indicated in its oral report, the ANC considered that the CSG's work would best be accomplished through a study group comprising, inter alia, Panel experts selected by the Secretariat. The chosen Panel experts

would serve as a focal point and communicate the latest developments and the outcomes achieved by the study group to their respective Panels to ensure proper coordination. The President of the ANC noted that as it would not be possible for the relevant panels to hold face-to-face meetings in the short time available, they would advance their work by correspondence with a view to providing the required information.

21. The Representative of Mexico endorsed the actions proposed in the executive summary of C-WP/14638, taking into account the ANC's recommendations and the Secretariat's clarifications. He affirmed that ensuring the necessary diversity to address the said problem in a holistic manner was very important to achieving a balanced solution, as was effective coordination between the CSG and the TF IEDs. The Representative of Mexico also highly recommended that due consideration be given to facilitation issues in addressing the problem. Recalling that the ANC had indicated, in its oral report, that most reported incidents related to PEDs had occurred in the cabin and that evaluating those events would be an essential step to understanding the risks PEDs posed in checked baggage, he stressed the need for the CSG and the TF IEDs to also take into account the number of accidents, including fatal ones, which had occurred as the result of the carriage of lithium batteries in cargo aircraft.

22. The President of the ANC underscored that a holistic analysis and assessment of the risk would be conducted of incidents involving PEDs in the cabin as well as in checked baggage. Recalling the Council's previous discussion of the safe transport of lithium batteries by air (cf. C-WP/14519; 209/5), he noted that the FLTOPS was developing risk assessment provisions for inclusion in Annex 6 – *Operation of Aircraft, Part I – International Commercial Air Transport – Aeroplanes* which were expected to include a Standard requiring operators to conduct risk assessments for cargo transport and related guidance material. In so doing, the FLTOPS was taking into consideration, inter alia, accidents, including fatal ones, resulting from the carriage of lithium batteries in cargo aircraft.

23. D/ANB confirmed that information from accidents resulting from cargo fires in cargo aircraft would be integrated into the operating procedures to be reviewed in order to better understand how such fires might be detected in the cargo compartment.

24. The Representative of the Russian Federation expressed full support for the ANC's oral report. To a point he then raised regarding the nomination by the Russian Federation of an explosives detection expert to be a member of the CSG, D/ANB clarified that in light of developments relating to the working methodology to address the matter at hand and the development of the TORs of the CSG and the AVSECP's TF IEDs, it had been forwarded to ATB to take into consideration in establishing the Task Force's composition. DD/ASF further indicated that the said nomination had been duly reviewed and that the Russian Federation would accordingly be informed of the decision to appoint its nominee as a member of the TF IEDs so that it could make the necessary secondment arrangements.

25. Responding to a query by the President of the Council, DD/ASF confirmed that there were no gaps between the said two groups' proposed TORs and work to address the issue *Threat of artfully concealed IEDs in large PEDs – Restrictions in the cabin and their impact on safety*. He noted that the Secretariat did not consider it necessary to establish a CSG sub-group dealing with explosives detection as that issue would be addressed by the TF IEDs. DD/ASF underscored that the scope of the Task Force's proposed TOR had been expanded to cover IEDs concealed in personal items and not solely PEDs so as to not overlook any security vulnerabilities. He further emphasized that the objective was to prevent any IEDs from being brought on board aircraft, whether carried on the person or concealed in cabin or checked baggage. The President of the Council requested that the Task Force's proposed TOR be circulated to Representatives for their information so as to ensure that they had a full picture of how the said issue was being tackled.

26. Recalling the reference made by the Representative of France to polyphony, the Representative of Spain stressed that it was essential for the Secretariat to act as a conductor to ensure that the work to be carried out by the CSG and the TF IEDs, as well as by the relevant panels, was done in a harmonious and coherent manner, particularly as the issue of facilitation would be addressed by both the CSG and the Task Force. He expressed satisfaction that a single, consolidated report would be presented to the Council for consideration during its next session, through the ANC and the UIC. Noting that while it was clear that the TF IEDs was temporary in nature and would be disbanded upon completion of its specific tasks, it was unclear whether the CSG was likewise a temporary body or whether it would become a permanent standing body, the Representative of Spain sought clarification.

27. In confirming that the issue of facilitation would be addressed by both the CSG and the TF IEDs, the President of the Council underscored that it was the Secretary General who would act as the conductor and assume responsibility for ensuring that all of the various aspects of the matter at hand were fully covered.

28. D/ANB further clarified that the CSG, a project-oriented group, would continue in existence until it had completed its work. As the Secretariat considered that its structure and working methodology had wider application within the Organization's technical work programme, it had begun a dialogue with the ANC on future ways to enhance panel processes which might incorporate some form of that type of multidisciplinary work under the Commission's auspices. Underscoring that that discussion was still in the very early stages, D/ANB indicated that it would consequently be inappropriate for him to elaborate thereon.

29. The Secretary General assured the Council that she would ensure that effective coordination took place within the Secretariat in addressing safety, security and facilitation issues relating to the matter at hand. Confirming that the CSG was a project-oriented group, she indicated that it was like a pilot project as it was envisaged that it might also be necessary in future to have experts from multiple disciplines working together to address one specific matter. The Secretariat would draw lessons from the experience gained with the CSG and work with the ANC to determine how to enhance panel processes and would, in due course, report thereon to the Council.

30. In expressing full support for the paper and the ANC's oral report, the Representative of Turkey commended the holistic approach to this important matter as outlined by the Secretariat in its clear, concrete and satisfactory explanations. His only remaining question related to the amount of time that would be required to complete the "long term" work.

31. The President of the ANC observed that, at present, there was no specific deadline for the completion of that work. He also indicated that it was expected that at the CSG's next meeting (Paris, July 2017) its Work Programme would be reviewed and a determination made as to whether it was necessary to further amend the relevant Annexes, such as Annex 18 – *The Safe Transport of Dangerous Goods by Air*, Annex 6 – *Operation of Aircraft, Part I – International Commercial Air Transport – Aeroplanes*, and Annex 8 – *Airworthiness of Aircraft*. The ANC would report thereon to the Council in its oral report on the said consolidated report of the CSG and the TF IEDs.

32. The President of the Council noted that the CSG's recommendations could relate not only to issues of a policy nature or procedures but also to the amendment of existing Annex provisions or the development of new ones. He underscored that the timeline for the formulation and adoption of Annex amendment proposals was different from, and should not be confused with, the timeline set forth in Appendix D to the paper for the completion of the CSG's expected deliverables.

33. The Representative of Australia welcomed the assurances given that, notwithstanding what was indicated in the paper, the work of the CSG and the TF IEDs would be largely completed by August so that the Council would receive their advice as contained in their consolidated report during the upcoming (212th) session. He noted that while his initial concerns regarding the timelines for their work had been addressed, he remained a little concerned about what seemed to be the unravelling of the rapid, cross-cutting structure and work that had previously been promised (211/1). The Representative of Australia observed, in this regard, that there was a move back towards the instinctive institutional silos of a safety group and a security group, which would set forth their collective findings in a consolidated report. He emphasized the need to learn how to have, in future, more multidisciplinary issues addressed together rather than in such institutional silos. The Representative of Australia also highlighted the need for the envisaged consolidated report to set forth integrated holistic recommendations, as originally requested by the Council (211/1), rather than recommendations which addressed safety and security issues separately.

34. While understanding the Representative's frustration that "old habits die hard", in line with the adage, the President of the Council underscored that it was necessary to ensure efficiency and effectiveness. For that reason, it had been decided to work with the experts in the way in which they wished to work, namely using the existing structures of a study group, in the case of the CSG, and a task force, in the case of the TF IEDs. The Council nevertheless was requesting a single, consolidated report which presented a balanced view of all of the issues and integrated holistic recommendations as referred to by the Representative of Australia.

35. D/ANB noted that while the Council had previously directed (211/1) that an integrated product be presented for its consideration, an integrated governance structure below the level of the Council was not yet in place, despite the fact that ICAO had been in existence for almost 75 years. The lack of such a structure had been acknowledged in the CSG, which had considered that it would be best to align with the governance structures for which there was already a working methodology. The Secretariat had accordingly informally agreed to make every effort to integrate the products of both the CSG and the TF IEDs into a single, consolidated report as requested, for consideration by the Council, through the ANC and the UIC. In underscoring that the Secretariat would work to develop an organizational culture for the delivery of integrated ICAO products, D/ANB indicated that it might, in future, request the Council for revisions to the governance structure.

36. The President of the Council emphasized that the problem was due not only to the lack of a framework for an integrated governance structure but also to the fact that experts from different disciplines, such as safety, security and facilitation, often found it difficult to work together in a single group. He stressed the consequent need for experts to open up their minds to working together to address issues of a multidisciplinary nature.

37. In speaking along the lines of the Representatives of Spain and Australia, the Representative of Brazil reiterated the high importance of the work being undertaken by the CSG and the TF IEDs. She emphasized that although aviation security was of paramount importance for all States, it could not, and should not, be separated from safety. The Representative of Brazil noted that it was the desire of all States that aviation security and safety be addressed hand-in-hand. She was thus pleased to hear that the Secretariat was bearing that in mind and would make every effort to coordinate the work of the CSG and the TF IEDs. Noting that all regions were concerned by the matter at hand, the Representative of Brazil stressed the importance of taking into account equitable geographical representation (EGR) in appointing safety and security experts to those bodies.

38. Endorsing the actions proposed in the executive summary of the paper, the Representative of Malaysia reiterated the need to ensure that there was no gap in the TOR and work of the

CSG and the TF IEDs in addressing this highly important matter. In also supporting the ANC's recommendation for a study group, he agreed with the Representative of Brazil on the need to ensure EGR of safety and security experts. Referring to the two tasks listed for Objective 2 of the CSG's Work Programme (cf. Appendix D) relating to the development of realistic scenarios to be used for the evaluation of the capabilities of the aircraft system associated with PEDs containing lithium batteries, the Representative of Malaysia expressed concern that the ANC recommended that lower priority be given to scenarios involving such PEDs in the cabin than in checked baggage. He emphasized the need to accord the same priority to the two tasks and to give all of the issues due regard, bearing in mind that the cause of the disappearance of Malaysia Airlines Flight MH370 on 7 March 2014 while en route from Kuala Lumpur to Beijing remained a mystery.

39. The Representative of the United Kingdom also spoke in favour of the actions proposed in the paper's executive summary. Noting that he understood the reasons for a partial division of the work between the CSG and the TF IEDs, he indicated that while that was not the ideal way in which to proceed, as highlighted by the Representative of Australia, ICAO was not living in an ideal world but in a complicated and dangerous one. In thus supporting the working methodology, the Representative of the United Kingdom underscored that it was necessary to await the results to determine the effectiveness of that approach. While heartened to know that a single report would be presented by the two groups, he reiterated the importance of ensuring that it was actually a consolidated integrated report and not two separate reports stapled together in the same document. The Representative of the United Kingdom emphasized that one way in which to ensure genuine integration would be to have the Chairpersons of the CSG and the TF IEDs coordinate with one another and work on each other's draft text.

40. The Representative of Japan joined previous speakers in expressing appreciation for the tremendous work done by the CSG, the Secretariat and the ANC, particularly under the existing governance structure and the informal arrangement referred to by D/ANB. He very much looked forward to receiving the TOR of the TF IEDs, in which Japan had a continued interest in participating. In expressing satisfaction with the explanations provided by the President of the ANC regarding the possible development of Annex amendments and related guidance material, the Representative of Japan also voiced support for the actions proposed in the paper.

41. In thanking the Secretariat and the ANC for their tireless efforts in addressing the matter at hand, the Representative of Egypt expressed support for the measures taken thus far by ICAO to address safety- and security-related issues arising from the imposition of the said restrictions by certain States. He strongly endorsed the comment made by the Representative of Brazil on the need for safety and security to be addressed hand-in-hand. The Representative of Egypt also emphasized the importance of establishing a strict timeline for the completion and implementation of ICAO's envisaged short-term work. In addition, he underscored the need for ICAO actions to address the said safety issues as a priority and to be based on the Organization's relevant SARPs, which were equally applicable to all States, without any discrimination.

42. The Representative of the Russian Federation questioned why the key issue of explosives detection had been included in the TOR of the TF IEDs and not in the TOR of the CSG. Referring to the CSG's proposed Work Programme in Appendix D to the paper, which resembled that of a study group, he underscored that it did not clearly indicate the main priorities. The Representative of the Russian Federation noted, moreover, that work on some of the listed tasks was either already underway or completed. He agreed on the need to ensure EGR in the composition of the CSG and the TF IEDs. In then referring to the actions proposed in the paper's executive summary, the Representative of the Russian Federation stressed that the Council should take concrete decisions instead of merely noting the problem statement, TOR and Work Programme of the CSG.

43. While sharing, to a certain extent, the concerns expressed regarding the working methodology that had been adopted, the President of the Council reiterated that it had been the decision of the experts involved, and that every effort would be made to ensure that the Council received a single, consolidated report. He noted that he would be proposing concrete actions to be taken by the Council to address the matter at hand.

44. Note was taken of the comments made and the extensive clarifications provided in response by the Secretariat, the President of the ANC, the President of the Council and the Secretary General regarding, inter alia, the CSG's duration, membership, structure, working methodology, scope of work, and expected deliverables for the short- and long-terms.

45. In taking the action proposed by the President of the Council in light of the ANC's oral report and the discussion, the Council:

- a) noted the CSG's problem statement, TOR and Work Programme contained in Appendices A, B and C, respectively, to C-WP/14638;
- b) noted the ANC's recommendation that the focus of the CSG should be on technical safety issues, in recognition of: the lack of an existing framework for the initially-envisaged cross-cutting structure; the fact that the TF IEDs will be considering the operational and facilitation impact arising from security mitigating measures and will be taking into account the CSG's work; and the challenges posed by the confidential nature of the security information;
- c) noted the ANC's recommendation that, in view of the urgency of the issue: the composition of the CSG be reestablished by the Secretariat with appropriate experts and of a manageable size to quickly and efficiently address the CSG Work Programme items (cf. Appendix D); and that it will best be accomplished through a study group in which the various interest groups are represented, including the States affected by the imposed security restrictions, and in a manner that allows for greater visibility to the Council;
- d) underscored that the two tasks listed for Objective 2 of the CSG's Work Programme (cf. Appendix D) relating to the development of realistic scenarios to be used for the evaluation of the capabilities of the aircraft system associated with PEDs containing lithium batteries in checked baggage and with PEDs containing lithium batteries in the cabin should be accorded the same priority, with all of the issues being given due regard;
- e) emphasized that an effective mitigation strategy for hazards associated with PEDs containing lithium batteries in checked baggage and in the cabin would include recovery measures to reduce the severity of the consequences if the event that needed to be prevented still occurred;
- f) stressed that it was of critical importance to accord priority to efforts to ensure the resilience of the aircraft system in terms of safety and airworthiness when confronting such PEDs-related hazards;
- g) noted the need to develop an efficient way in which to disseminate to passengers, operators and all affected stakeholders guidance material developed through the CSG and that a web-based system is under consideration by the Secretariat;



h) noted that the ANC recommended that the references made to “risk” and “hazard” in the CSG’s TOR and Work Programme should be revised to refer to “safety risk” and “safety hazard” to avoid the risk of ambiguity between security and safety; and

i) requested that the Secretariat:

- ensure and facilitate the effective coordination between the CSG and the TF IEDs and their Chairpersons, noting that their respective memberships will be reviewed and finalized;
- ensure a balance in the consideration of safety, security and facilitation issues related to this issue;
- ensure that there is geographical balance and a balance of interests in the CSG’s membership to enable the items in its Work Programme to be addressed in a holistic manner with a view to achieving a balanced solution;
- ensure strict adherence to the timelines for the expected deliverables as set forth in the CSG’s Work Programme (cf. Appendix D);
- present for its consideration during the next (212th) session, through the ANC and the UIC, a single, consolidated report containing an integrated, holistic set of recommendations arising from CSG’s and the TF IEDs’ work, on the understanding that: the President of the Council will decide how the facilitation issues raised in that report will be handled, such as through the Air Transport Committee (ATC); and the Council will indicate the process and timelines for any further action arising from its deliberations thereon, such as the development of any additional policies and guidance material and the review and amendment of relevant SARPs and/or the development of new SARPs.

46. It was further noted: that the proposed TOR of the AVSECP’s TF IEDs would be e-mailed to Representatives for their information; and that the next meeting of the CSG was tentatively scheduled to be held in Paris from 19-21 July 2017, immediately after the TF IEDs’ envisaged meeting. States were invited to evaluate capabilities of aircraft systems with regard to the transport of PEDs in checked baggage and/or to work collaboratively with other States, and major lithium battery manufacturing States were encouraged to support that research.

**Subject No. 14.4.3: Panels**

**Proposed amendment to the  
*Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284)***

47. The Council reviewed C-WP/14637, in which the ANC presented a proposal, which originated from a working group meeting of the Dangerous Goods Panel (DGP-WG/17) (Montréal, 24-28 April 2017), to amend the current 2017-2018 Edition of the *Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284)* to address the safety impact of recent security restrictions on the carriage of portable electronic devices (PEDs) by requiring PEDs containing lithium batteries in checked baggage to be protected from damage and unintentional activation. As the measures would enhance safety, the ANC proposed that they be incorporated into current 2017-2018 Edition of the

Technical Instructions by way of an Addendum rather than integrating them into the amendments for the 2019-2020 Edition which would be reviewed by the DGP at its Twenty-Sixth Meeting (Montréal, 16-27 October 2017). Furthermore, the ANC recommended that the Addendum become applicable on 1 July 2017 considering the need for outreach to the travelling public.

48. The ANC also reported on the outcome of its consideration of the Panel's proposed amendment to the Technical Instructions to highlight the need for operators to take the potential impact of changes in the operating environment into account in their safety risk assessments, which it had not supported as it was already a requirement under Annex 19 – *Safety Management*. While the ANC had requested the DGP to consider a revised proposal specifically referring to the potential impact of security measures on safety, the Panel had considered that it would be more appropriate to include a provision in Annex 17 – *Security* requiring that potential safety impacts be taken into account before implementing security measures. The ANC consequently did not recommend making any amendments to the safety risk assessment provisions in Annex 18 – *The Safe Transport of Dangerous Goods by Air* at this time.

49. The President of the Council highlighted: that the Technical Instructions amendment proposal did not create a new requirement and that it was aimed at enhancing safety at the present time by preventing the possibility of hazard in the cargo hold of aircraft arising from the carriage of PEDs containing lithium batteries in checked baggage; and that it neither precluded the work which the Council had assigned to the CSG nor prejudged the Council's future actions arising therefrom.

50. Noting, from paragraph 3.1 of the paper, that the DGP had considered that it would be more appropriate to include in Annex 17 – *Security* a provision requiring that potential safety impacts be taken into account before implementing security, the Representative of Mexico cautioned that it would be necessary for the Secretariat to duly coordinate and take follow-up action to ensure that there were no gaps in coverage and, if necessary, to amend the safety risk assessment provisions in Annex 18. He supported the Council's approval of the proposed amendment to the 2017-2018 Edition of the Technical Instructions as he considered that the latter mitigated the possibility of hazard arising from the carriage of PEDs containing lithium batteries in the specific case where they were located in checked baggage. The Representative of Mexico was concerned, however, that such action by the Council would legitimize a practice that did not address all potential cases.

51. While also endorsing the action proposed as a compromise solution, the Representative of the Russian Federation underscored the need for the Council to review the Technical Instructions following its consideration, during the next (212th) session, of the envisaged consolidated report setting forth the recommendations of the CSG and the TF IEDs, given the difficulties in ensuring that all such devices carried in checked baggage were completely switched off (not in sleep or hibernation mode), which rendered the new provision unimplementable. The Representative of South Africa was of the same view.

52. Recalling the Council's earlier consideration (211/1) of C-WP/14636 Revised (*Threat of artfully concealed improvised explosive devices in large portable electronic devices – Restrictions in the cabin and their impact on safety*), during which he had clearly expressed his opinion regarding Electronic Bulletin EB 2017/23 dated 31 March 2017 outlining preliminary actions to mitigate safety-related risks, the Representative of Turkey reiterated that the EB had been issued in a hasty manner, lacked clarity and did not properly reflect ICAO's expertise (cf. C-MIN 211/1, paragraph 82). He nevertheless agreed to the action proposed by the ANC in its report as a compromise solution. The Representative of Turkey emphasized that the EB should be read in conjunction with the amended Technical Instructions to give it meaning, as by itself the EB was very insufficient. While he concurred with the Representative of the Russian Federation that it was not feasible to check that every PED containing lithium batteries carried in checked baggage was completely switched off, he hoped that it would be possible to raise passengers'

awareness of the importance of the new measures so that they would take those necessary precautions and thus sustain flight safety and security.

53. Speaking along the same lines as the Representatives of the Russian Federation and Turkey, the Representative of Spain also agreed that the Council should approve the proposed amendment to the 2017-2018 Edition of the Technical Instructions as the measures it contained were only temporary in nature. It was to be hoped that the work being done over the summer by the CSG and the TF IEDs would enable the Council to reach firm conclusions on how to address the matter at hand. Noting that the amendment required not only that devices carried in checked baggage be completely switched off but also that measures be taken to prevent their unintentional activation and to protect them from damage, the Representative of Spain enquired as to how airlines and airports would be able to implement those provisions, aside from providing guidance to passengers as referred to by the Representative of Turkey. He also asked whether there were any other measures that could be taken to prevent accidents from arising as a result of the carriage of such devices in checked baggage.

54. Noting that in his experience flight attendants did not verify that all passengers had switched off their cellular phones when asked to do so via the public announcement, it being assumed that the passengers would act responsibly and duly comply, the President of the Council emphasized the need to determine how the proposed provisions would be applied in practice.

55. In underscoring that the current (2017-2018) edition of the Technical Instructions (Doc 9284) already contained a provision requiring that measures be taken to prevent unintentional activation if PEDs containing lithium batteries were carried in checked baggage, the President of the ANC clarified that it was now being proposed to expand that provision so as to also require that such devices be protected from damage. The Commission acknowledged that the proposed amendment to the Technical Instructions might not be sufficient. However, as it was envisaged that the further work to be undertaken by the CSG and the TF IEDs would result in an integrated, holistic set of recommendations to address the matter at hand, the ANC considered that the amendment was appropriate at the present time to prevent the possibility of a hazard in the cargo compartment.

56. The Representative of Cuba joined other Representatives in speaking in favour of the compilation of information on the risk posed by the carriage of such PEDs in checked baggage for use in the integrated study being undertaken by the CSG (and possible sub-groups) and the TF IEDs. While noting the clear explanations which had been provided, she still had some doubts. Although EB 2017/23 outlining preliminary actions to mitigate safety-related risks had been disseminated, it had been issued under the authority of the Secretary General and not the Council. While not wishing to be polemical, the Representative of Cuba expressed the view that the Council should carefully consider this matter and not rush to approve the proposed amendment to the current edition of the Technical Instructions without first considering the envisaged single, consolidated report containing the recommendations of the CSG and the TF IEDs for integrated global measures applicable to all States, to be presented during the next (212th) session. She concurred with the Representative of Mexico that if the Council approved the proposed amendment, which would be issued as an Addendum to Doc 9284, then the Council would be legitimizing very specific measures that were focused on one particular case, namely, when the PEDs were carried in checked baggage. The Representative of Cuba emphasized that the said consolidated report should be considered by the DGP in developing its next amendment proposal for the Technical Instructions.

57. While appreciating the concerns expressed regarding the capacity to implement the proposed provisions of the Technical Instructions, D/ANB underscored that they were not unlike existing provisions requiring that cellular phones be switched off or be in flight mode when on the aircraft. Noting that there were already many provisions relating to the carriage of dangerous goods in carry-on baggage

and checked baggage and how passengers should treat such items, he emphasized that the proposed provisions were merely an expansion thereof, and of the guidance which was being provided through the operators' focal points who disseminated it to their passengers. D/ANB noted that previously it had not been considered that a high number of passengers would place their valuable laptops and other PEDs containing lithium batteries in their checked baggage. While the Technical Instructions had not prohibited the carriage of PEDs in checked baggage, they had recommended that they be carried in the passenger cabin where an incident could be immediately mitigated. That was still recommended. However, in the event that such PEDs were carried in checked baggage, operators were encouraged to implement the proposed provisions by providing guidance to their passengers on the measures to be taken to prevent the PEDs' unintentional activation and to protect them from damage and informing them that sleep mode or hibernation mode was inappropriate and that their devices must be completely switched off.

58. In highlighting that the Technical Instructions were different from Annex 18, the President of the Council noted that they amplified the Annex's basic provisions and contained all the detailed instructions necessary for the safe international transport of dangerous goods by air. They were thus intended for use by aviation professionals directly involved in operations. The President observed that although EB 2017/23 had been disseminated to all States, there appeared to be some uncertainty that it had reached those aviation professionals who were directly involved in the handling of passengers.

59. The Representative of India shared some of the concerns voiced by previous speakers regarding the proposed provisions' implementability. Referring to the comments made by D/ANB, he noted that passengers were currently advised to switch off their cellular phones as they would interfere with navigational aids and emphasized that the switching-off of PEDs containing lithium batteries carried in checked baggage was a different case altogether. The Representative of India then enquired whether it was possible, with existing screening equipment, to determine if such PEDs had been completely switched off.

60. Remarking that that question would best be answered by ICAO's aviation security personnel, C/CSS indicated that to the best of her knowledge there currently was no means to detect whether such PEDs had been completely switched off or not.

61. The President of the Council underscored that there was nothing in the proposed provisions that specified that PEDs containing lithium batteries must be carried in checked baggage; rather, they recommended that if a passenger, of his/her own volition, decided to carry such a PED in checked baggage, then that passenger should be advised by the operator on the way to handle the PED in accordance with the Technical Instructions. While understanding Representatives' concerns about the practical implementation of the proposed provisions, the President of the Council affirmed that the latter enhanced safety. He clarified that they did not constitute SARPs.

62. Note was taken of the concerns expressed regarding the Council's approval of the proposed Technical Instructions amendment prior to its consideration, during the next (212th) session, of the consolidated report setting forth recommendations for integrated global measures to address the issue of the carriage of PEDs containing lithium batteries, as well as regarding the amendment's implementability and its potential impact on facilitation. The ANC and the CSG were requested to consider the implementation and facilitation issues raised in their related future work.

63. In taking the action recommended by the ANC, the Council approved the amendment to the 2017-2018 Edition of the *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Doc 9284) as presented in the Appendix to C-WP/14637, which would be issued as an Addendum and would become applicable on 1 July 2017.

**Subject No. 14: Subjects relating to air navigation****Report on the Eighteenth and Nineteenth AFI Plan Steering Committee Meetings**

64. The Council considered this subject on the basis of the following oral report by the Chairperson of the AFI Plan Steering Committee (SC), the Representative of Niger to ICAO, Mr. Moussa Halidou, which was accompanied by a PowerPoint presentation (available on the Council's secure website):

"1. The Eighteenth and Nineteenth Meetings of the Comprehensive Regional Implementation Plan for Aviation Safety in Africa (AFI Plan) Steering Committee (AFI Plan SC/18 and /19) were held on 30 November 2016 at the ICAO Headquarters in Montréal, Canada and 23 May 2017 in Gaborone, Botswana, respectively.

"2. During the two meetings, the Steering Committee reviewed the overall progress made in the implementation of the AFI Plan, including actions taken on the decisions and recommendations of previous meetings, and reviewed the status of implementation of the ICAO Plans of Action. The meetings were also updated on the progress made in the proposed revision of the Abuja Safety Targets, the development of the Aviation Training Roadmap for Africa, the programme activities of the African Flight Procedure Programme (AFPP), as well as the implementation of the AFI Plan evaluation recommendations made by the Evaluation and Internal Audit Office (EAO). Various presentations were also made by partners and stakeholders on their contributions and programmes within the context of the AFI Plan.

"3. Particular attention was paid to the status of implementation of the Abuja Safety Targets and updates received on the key AFI Plan goals for 2016 and 2017 relating to the attainment of 60 per cent effective implementation (EI) by 70 per cent (2016) and 80 per cent (2017) of AFI States; resolution of all Significant Safety Concerns (SSCs), certification of 45 per cent of international aerodromes, implementation of the AFI Plan Projects and the 2016/2017 Work Programme and training activities.

"4. At both meetings, the Steering Committee noted with appreciation the high-level contacts made by the ICAO Council President and the Secretary General to urge those States with low levels of safety oversight EI to make more efforts towards the improvement of their safety oversight systems.

"5. The following decisions and recommendations are the key outcomes of the Eighteenth and Nineteenth Steering Committee Meetings:

- a) the AFI Plan Steering Committee's approval of the Terms of Reference (TOR) for the development and implementation of a Strategic Plan to support and strengthen Regional Safety Oversight Organizations (RSOOs) in the AFI region as was endorsed by the AFI Ministerial Forum on RSOOs on 24 March 2017 at Ezulwini, Swaziland (*Ezulwini Declaration*); and its request that the AFI Plan Secretariat coordinate the implementation of the AFI RSOOs strategy study in accordance with the TOR and report back on progress to its Twentieth Meeting (SC/20);
- b) the AFI Plan Secretariat should continue to coordinate and monitor implementation of the four AFI Plan approved projects, namely, Aerodrome Certification, Safety Management System/State Safety Programme (SMS/SSP), Air Navigation Services Provider (ANSP) Peer Review Programme and Search and Rescue (SAR), as well as to develop and propose for the consideration of the AFI Plan SC/20 Meeting at least two additional projects, including Fundamentals of Safety Oversight (FSO) and Aircraft Accident and Incident Investigation (AIG);

- c) the ICAO Council President and the Secretary General are encouraged to continue to engage, at the highest level, especially during visits to States and regional meetings, those States that are not cooperating and/or sufficiently advancing in addressing their aviation safety deficiencies;
- d) the AFI Plan Secretariat is to coordinate with the African Civil Aviation Commission (AFCAC) for presentation of the proposed revised Abuja Safety Targets to the RASG-AFI/4 and APIRG/21 Meetings for approval, and to report on the approved Targets to the AFI Plan SC/20 Meeting;
- e) the AFI Plan Secretariat, in collaboration with the African Representatives on the Council, RASG-AFI, APIRG and key partners, is to continue the review and finalization of the updated AFI Plan programme document and Regional Office Safety Team (ROST) TOR for presentation at the AFI Plan SC/20 Meeting;
- f) the AFI Plan Secretariat, through the two ICAO Regional Offices, the Western and Central African Office (Dakar) (WACAF) and the Eastern and Southern African Office (Nairobi) (ESAF), is to develop and implement a strategy and assist all African States to have an accepted ICAO Plan of Action by the end of 2019;
- g) the ROSTs, technical assistance and cooperation projects, and AFI Cooperative Inspectorate Scheme (AFI-CIS) missions are to continue in further assisting States in the implementation of their Corrective Action Plans (CAPs) to specifically resolve or prevent SSCs and improve levels of safety oversight EI in low performing States;
- h) development partners are encouraged to continue providing support to African States through their implementation assistance activities aimed at improving aviation safety in the region;
- i) the AFI Plan Secretariat is to pursue coordination with partners and incorporate relevant activities into the 2017/2018 Work Programmes (as may be applicable), taking in to account the updates provided during the AFI Plan SC18/19 Meetings and subsequent meetings;
- j) the AFI Plan Secretariat and ICAO Global Aviation Training (GAT) Office are to provide the necessary support to the Association of African Aviation Training Organizations (AATO) for finalization of the Aviation Training Roadmap for Africa, based on the framework agreed at the AATO Steering Committee Meeting on 10 April 2017 in Addis Ababa, Ethiopia; and
- k) the AFI Plan Secretariat is to incorporate the relevant outcomes of the Fourth AFI Aviation Safety Symposium (Gaborone, 22 May 2017) in the AFI Plan Work Programme for implementation.

“6. The Council is hereby invited to note the contents of this oral report and endorse the Decisions and Recommendations of the Eighteenth and Nineteenth Meeting of the AFI Plan Steering Committee as outlined above.”

#### *Discussion*

65. The President of the Council, on behalf of all Representatives, and the Secretary General thanked the Chairperson of the AFI Plan Steering Committee for his leadership and the excellent work done by the AFI Plan Secretariat.

66. In so doing, the President of the Council underscored that while the oral report and PowerPoint presentation clearly showed that progress was being made, there remained much work to do to not only enhance the pace of that progress but also to sustain that progress, which required continuous efforts. He noted that ICAO's validation of recent actions taken by certain African States to rectify their safety-related deficiencies as identified through their Universal Safety Oversight Audit Programme (USOAP) audits should result in increased EI levels for those States, as well as a higher average EI level for Africa. The President underscored that the significant decline in the accident rate for commercial flights in Africa, in particular, the recording of zero fatal accidents in 2013, 2015 and 2016, demonstrated the practical impact on the aviation industry of the efforts made by States in the region in coordination with ICAO and other enablers. Observing that safety challenges existed worldwide, the President emphasized the importance of continuing to support the ICAO Regional Offices in the work they were carrying out under the Organization's *No Country Left Behind* (NCLB) initiative to assist all States in all regions in meeting their respective challenges.

67. In then reporting to the Council on the recent AFI Aviation Week (Gaborone, 22-25 May 2017), during which the Fourth AFI Aviation Safety Symposium and AFI Plan SC/19 Meeting had taken place, the Secretary General underscored that it had gone very well. She thanked Council Representatives, in particular those from donor States and from the AFI regional group, for having attended, which had contributed to the events' success. The Secretary General also expressed appreciation to donors to the AFI Plan and encouraged their continued support to ensure the appropriate financial resources and technical expertise for the further implementation of the AFI Plan Work Programme. In recalling that the latter had been incorporated into the operating plans of the relevant ICAO Bureaus and Regional Offices, she highlighted the ongoing review of the AFI Plan Work Programme to enhance the efficiency of its implementation and thus the delivery of services to States, which was being conducted by the Secretariat in coordination with the AFI regional group on the Council and the AFI Plan Steering Committee, the results of which would be reported to the Council in due course.

68. Endorsing the comments made by the President of the Council, the Representative of Nigeria emphasized that despite the progress being made much work remained to be done. While he found the average safety oversight EI level for Africa disheartening, he was very encouraged that the accident rate for commercial flights in Africa was greatly reduced, which was a very good indication of progress. In thanking donor States for their continued support of the AFI Plan, the Representative of Nigeria urged other States to provide assistance, not necessarily in terms of financial resources but rather in terms of human resources i.e. experts, particularly in the area of training for technical personnel, which was very difficult to obtain in Africa. He also thanked the Secretariat for its continued support.

69. The President of the Council reiterated that the said average EI level for Africa (50.18 per cent) was below the target of 60 per cent due largely to the fact that the progress made recently by some African States with a very low EI level had not yet been validated by ICAO. He was encouraged to see that some African States whose EI level had initially been around 10 per cent now had an EI level of 60 per cent plus as a result of their committed actions over the past two years. Recalling the Chairperson's PowerPoint presentation, the President emphasized the importance of sustaining progress made even after validation by ICAO, which required continuous efforts, on the part of not only those States with a low EI level, such as the ten cited by the Chairperson whose EI level was less than 20 per cent, but also those States which had achieved a high EI level and which should now start focusing on safety management-related issues such as a SSP.

70. The Representative of South Africa noted, with pleasure, that: the number of African States with a safety oversight EI level at or above the target of 60 per cent was expected to increase following validation by ICAO of their recent progress in rectifying their identified safety deficiencies, and

that the corresponding colour-coded chart set forth in Slide 4 of the PowerPoint presentation would be accordingly revised to reflect their change in status; and that a target of zero SSCs by 31 December 2017 had been collectively identified and set for African States, which he affirmed was the right approach. The Representative of South Africa considered, in view of those developments, and the implementation of the said four AFI Plan approved projects, inter alia, that the implementation of the AFI Plan was proceeding well. He expressed appreciation to the President of the Council and the Secretary General for their official visits to the region, which had led to some of the AFI Plan's positive results.

71. Recalling that he had participated in the Nineteenth AFI Plan Steering Committee Meeting, as well as in the other events that had taken place in Gaborone, Botswana during the AFI Aviation Week, the Representative of Congo affirmed that the Chairperson's excellent oral report and PowerPoint presentation accurately reflected the SC's deliberations. He expressed concern regarding Eritrea, which had a SSC. In also voicing concern regarding the Central African Republic, to which no on-site assistance could be provided by ICAO due to its United Nations Department of Safety and Security (UNDSS) security level, the Representative of Congo enquired as to any plans the Organization might have to render assistance, underscoring that it was necessary for ICAO to take action as the Central African Republic paid its assessed contributions on a regular basis. Recalling the concerns raised previously (211/3) by the Representative of South Africa regarding perceived inaccuracies in the regional accident statistics for Africa contained in the 2016 edition of the *ICAO Safety Report*, the Representative of Congo emphasized that the Secretariat would be able to rectify those inaccuracies on the basis of the Chairperson's oral report and PowerPoint presentation.

72. In response to some of the points raised, the President of the Council provided the following information on his meetings with high-level Government officials from certain African States which had low levels of safety oversight EI to garner their commitment to take appropriate and timely remedial action. With regard to Djibouti, one of the three African States which had a SSC, the President recalled that during its earlier consideration of the *Progress Report of the Monitoring and Assistance Review Board (MARB)* [C-WP/14518 (Restricted) with Corrigendum No. 1; 209/5], he had informed Representatives of his meeting with the President of Djibouti and several of his Ministers while attending the African Union (AU) Heads of Government Meeting in Addis Ababa, Ethiopia in January 2016. They had recognized the need for political commitment and had agreed on a timetable to address outstanding safety issues. Information which he had received since that time confirmed that significant work had been done by Djibouti, in collaboration with the ICAO ESAF Regional Office, to rectify the situation. The President of the Council emphasized that although Djibouti had a very weak base in terms of safety oversight, it was still possible for that State to improve its EI level if it had the necessary political will. He cited, as examples, those States whose safety oversight EI level had increased from 10 to 60 plus per cent over the last two years.

73. With respect to Malawi, which also had a SSC, the President of the Council noted that he had visited that State in the company of the Representative of the United Republic of Tanzania, the ICAO Regional Director (ICAORD), ESAF, the Representative of the South African Development Community (SADC) States and the Secretary General of the African Civil Aviation Commission (AFCAC). The President of the Council had participated in a very constructive bilateral meeting with the President of Malawi on 25 March 2017, during which he had highlighted the need to ensure the provision of adequate resources for safety oversight, inter alia. In expressing appreciation to the European Aviation Safety Agency (EASA) for its ongoing project to provide support to Malawi in rectifying its identified safety deficiencies, he indicated that it was his expectation, arising from these interventions, that the safety situation in Malawi would change for the better.

74. With regard to Eritrea, the third African State with a SSC, the President of the Council emphasized that ICAO had thus far been unable to engage with that State due to its political challenges.



However, AFCAC and the ICAO ESAF Regional Office were working to determine how that could be done.

75. With reference to the Central African Republic, which ICAO personnel could not visit due to its UNDSS security level, the President of the Council highlighted that pursuant to the agreement reached between the Organization and AFCAC, he had sent a letter to the President of the Central African Republic proposing ways forward. An indication of strong political commitment from the Government had been received in response, and officials from the Central African Republic had undertaken visits to the ICAO ESAF Regional Office to discuss that State's safety situation. Furthermore, in accordance with the said agreement, AFCAC had assembled a team of experts to provide support to that State through the AFI-CIS, with ICAO's advice. The President of the Council indicated that he expected to meet with the Minister of Transport of the Central African Republic to further discuss his State's safety situation during the upcoming Second ICAO Meeting on Air Cargo Development in Africa (Addis Ababa, Ethiopia, 27-29 June 2017). He relied upon the Representative of Congo's support of these ongoing efforts as he was from the same African sub-region as the Central African Republic.

76. In acknowledging the Chairperson's commitment to, and leadership in, implementing the AFI Plan, the Representative of the United Republic of Tanzania commended the impressive results achieved thus far. He observed, however, that regardless of the efforts being made, there were many challenges which remained to be addressed, including the average safety oversight EI level for Africa. The Representative of the United Republic of Tanzania noted that it was expected that the latter would increase following validation by ICAO of recent actions taken by some States to rectify their identified safety deficiencies.

77. The Representative of the United Republic of Tanzania recalled, from the Council's consideration, during its previous meeting (211/5), of information papers C-WPs/14632 and /14634, that: the Forum on Regional Safety Oversight Organizations (RSOOs) for Global Aviation Safety (Ezulwini, Swaziland, 22-24 March 2017) had resulted in the adoption by the African Ministers responsible for Aviation of the *Ezulwini Declaration on Regional Safety Oversight Organizations in Africa*, as well as of a *Global Strategy and Action Plan for the improvement of RSOOs and the establishment of a Global System for the Provision of Safety Oversight (GASOS)*; and that the High-level Ministerial Conference on Search and Rescue (SAR) services in Africa (Lomé, Togo, 10-12 April 2017) had resulted in their adoption of the *Lomé Declaration on the improvement of the provision of search and rescue services in Africa*, as well as the related Action Plan. He suggested that the said Action Plans be integrated into the AFI Plan to enhance it. In addition, the Representative of the United Republic of Tanzania stressed the need to expedite the finalization of the Aviation Training Roadmap for Africa by the AATO, with the support of the AFI Plan Secretariat and the ICAO GAT, as it would facilitate the implementation of the AFI Plan.

78. The Representative of the United Republic of Tanzania noted that prior to the said visit to Malawi, the President of the Council, accompanied by him, as well as by the ICAORD, ESAF, the Representative of SADC States and the Secretary General of AFCAC, had met with several Ministers from Malawi at the above-mentioned Forum and had received their commitment on the way forward to address their State's safety deficiencies. He underscored that while Malawi had been referred to the MARB with a SSC in December 2011, the Ministers' commitment, and the commitment subsequently expressed by the President of Malawi, was encouraging and was the basis for the expectation of positive changes in that State's safety situation as referred to by the President of the Council. In concluding, the Representative of the United Republic of Tanzania commended the President of the Council and the Secretary General for their visits to African States with low safety oversight EI levels and their very effective efforts to encourage the latter to raise their level of political commitment to addressing their identified safety deficiencies.

79. In thanking all of the contributors to the AFI Plan, the Representative of Cabo Verde underscored that by their actions they were benefitting not only African States but the entire international civil aviation community. He also expressed appreciation to the President of the Council and the Secretary General for the special efforts they were making. Noting the progress being made, the Representative of Cabo Verde reiterated that there had not been any fatal accidents in Africa in 2013, 2015 and 2016. In emphasizing the need to put the Chairperson's oral report in its rightful context and to consider the safety situation of African States when the AFI Plan had first been adopted, he affirmed that they had come a long way in meeting the challenges they faced. The Representative of Cabo Verde emphasized the need for the Council to request States to contribute to sustaining the progress that had been achieved thus far despite those difficulties and to continue to promote specific projects, such as the four AFI Plan approved projects relating to aerodrome certification, SMS/SSP, SAR and ANSP.

80. The Representative of Ecuador joined in the expressions of appreciation made by previous speakers. In underscoring the importance of the development of aviation safety under the AFI Plan, he noted that 27 out of 52 audited African States (51.92 per cent) now exceeded the safety oversight EI threshold of 60 per cent. While there were many challenges still ahead, as highlighted by the Representative of Cabo Verde, it was important to ensure the sustainability of the "success stories", which were the results of: the continued efforts of ICAO, in particular, the leadership demonstrated by the President of the Council in visiting African States with low safety oversight EI levels and the work of the Secretary General and her team; and the various contributions of States. In taking pride in the safety-related achievements of African States, the Representative of Ecuador noted that ICAO's validation of recent remedial action would probably paint an even better picture. He stressed the need for the Council to acknowledge the progress made thus far and to recognize the role played by ICAO's leadership and its focus on safety, security and the sustainability of air transport.

81. The Representative of Egypt thanked the President of the Council for all of his constructive initiatives in providing support to States throughout his tenure. In also applauding the achievements made thus far under the AFI Plan, he underscored that they demonstrated that Africa was making a strong comeback to assume its rightful place in international civil aviation.

82. Reiterating that the successful AFI Plan constituted a blue print for all of the other regions, the Representative of Kenya underscored that the entire international civil aviation community would be very grateful when additional comprehensive regional implementation plans for aviation safety were developed and implemented. In expressing appreciation to the President of the Council and the Secretary General for their deliberate actions in visiting African States with low safety oversight EI levels, she affirmed that they were very encouraging as they were a reflection of the work of the Council and of ICAO as a whole.

83. In underscoring that compliance with ICAO SARPs was of paramount importance in making sure that all States reaped the significant socio-economic benefits of aviation and its associated global connectivity, the Representative of Colombia applauded the AFI Plan as a means of ensuring that no country would be left behind in Africa. He expressed the sincere hope that other regions, including his, the South American region, would adopt the excellent model of the AFI Plan. The Representative of Colombia wished the Chairperson and the Members of the AFI Plan Steering Committee, as well as the AFI Plan Secretariat, every success in carrying out the work that lay ahead.

84. In then noting the oral report by the Chairperson of the AFI Plan Steering Committee on the Committee's deliberations during its Eighteenth and Nineteenth Meetings (Montréal, 30 November 2016 and Gaborone, Botswana, 23 May 2017, respectively), and the supplementary information provided in the accompanying PowerPoint presentation (available on the Council's secure website), the Council

endorsed the decisions and recommendations arising therefrom as set forth in paragraph 64, subparagraph 5 a) to k) above.

85. In addition, the Council took note of the supplementary information provided by the President of the Council and the Secretary General.

**Subject No. 45: Policy and programme of ICAO for provision of air navigation facilities and services**

### **Proposal for an ICAO Crisis Response Policy and Disaster Risk Reduction Strategy**

86. The Council commenced its consideration of C-WP/14612, in which the Secretary General, pursuant to Assembly Resolution A39-24, Operative Clause 3, proposed an ICAO Crisis Response Policy, as well as a Disaster Risk Reduction Strategy. The Policy's primary aim was to address the Organization's response to aviation-specific crises, including aircraft accidents, natural and man-made disasters, acts of unlawful interference and pandemics that significantly impact air transport and affect public confidence in the safety and security of air transportation. The Strategy's intent was to: promote the vital role of civil aviation in responding to emergencies; assist States in taking a more proactive role to identify risks and vulnerabilities in their civil aviation infrastructure; and provide assistance to States in building disaster resilience into their aviation systems.

87. In commenting on the proposed Disaster Risk Reduction Strategy set forth in Section 3 of the paper, the Representative of Mexico averred that two of its key activities, c) "ICAO will assist States in incorporating disaster risk reduction priorities, as contained in the Sendai Framework for Disaster Risk Reduction, in the development of the State emergency response plans" and f) "ICAO will promote investments in resilient aviation infrastructures. ICAO will continue its work on a multilateral level" (cf. paragraph 3.2) and its conclusion (cf. paragraph 4.1) went beyond what was called for in Assembly Resolution A39-24. Recalling that the Assembly, in Preambular Clause 4 thereof, had acknowledged that "States are primarily responsible for prevention and reduction of disaster risk and any response undertaken by the Organization should be guided by, and in concert with, the State(s) affected", he stressed that ICAO's role was that of a facilitator, providing assistance to those States in need thereof. Questioning whether the Strategy was in line with the proposed ICAO Crisis Response Policy appended to the paper, the Representative of Mexico indicated that it should be reviewed.

88. Referring to the draft Policy itself, the Representative of Mexico enquired whether it had been examined beforehand by the Legal Affairs and External Relations Bureau (LEB). He observed that Section 1. Background seemed to provide more of a justification for the Policy than historical information. Drawing attention to paragraph 3.1, the Representative of Mexico queried whether the given definitions of the terms "risk", "crisis" and "disaster" were the same as those approved previously by the Organization, either by the Council or the Assembly. He also questioned whether the role of ICAO should include "elevating risks that pose an increasing threat to populated areas to a crisis or disaster, as appropriate;" as indicated in the second bullet of paragraph 4.2. While the Representative of Mexico was of the view that the Policy was a good step forward, he considered that it was necessary: to align the Policy more closely with Assembly Resolution A39-24: to clarify its scope and the Strategic Objectives to which it related; to introduce provisions specifying the issuing authority and the authority responsible for overseeing the Policy's implementation, as well as provisions relating to the Policy's entry into force and its amendment procedure, and the Organization's liability. Emphasizing that the Policy needed to mature, the Representative of Mexico suggested that it be reviewed and revised by the Working Group on Governance and Efficiency (WGGE) and re-submitted for the Council's consideration at a future session.

89. In commending ICAO for considering the crucial issue of an aviation-specific Crisis Response Policy and a Disaster Risk Reduction Strategy, the Representative of Turkey expressed support for the paper and the actions proposed in its executive summary. Noting, however, that he had some questions as it was a new field, he enquired as to the financial and human resources required to implement the proposed Policy and Strategy. The Representative of Turkey also queried whether ICAO would interact with other UN organizations and the States affected through the Secretariat at Headquarters or at the Regional Offices and, in the latter case, whether the Regional Offices had a sufficient number of disaster management experts. He further enquired whether States' requests for ICAO assistance in this field should be submitted to Headquarters rather than to the Regional Offices as was the customary practice, and whether Headquarters or the Regional Offices would be responsible for providing such assistance and making any necessary recommendations.

90. While considering that the draft Policy was a good first step towards implementing Assembly Resolution A39-24, the Representative of the Russian Federation emphasized that it would be useful to have the WGGE review it and determine what types of concrete actions ICAO, as the UN Specialized Agency responsible for international civil aviation, could take under the Policy to assist the States affected in responding to crises, in coordination with them and other stakeholders. He highlighted the need for the WGGE to take into account the importance of prompt action in the immediate aftermath of disasters to minimize the number of casualties and fatalities. The Representative of the Russian Federation noted that in future aviation could play an important role in a UN multilateral convention on crisis response. In the meantime, he suggested that the title of the proposed Policy be amended by adding the word "framework" to read "ICAO Crisis Response Policy Framework". He also sought clarification regarding the organizational procedures to implement the Policy referred to in paragraph 5.1 thereof.

91. The Representative of Spain indicated that he would await the Secretariat's responses to the questions raised by previous speakers before posing his own questions. He nevertheless considered that it might not be a bad idea to request the WGGE to review the draft Policy in order to clarify the various points raised, as suggested by the Representative of Mexico.

92. Noting that background information on the proposed Policy should ordinarily be provided in the body of the working paper rather than in the Policy itself, the Representative of Sweden suggested that the inclusion of Section 1. Background be reconsidered. She highlighted that the second sentence thereof, which indicated that "To date, ICAO has not established a formal or structured approach to respond to crises", could give rise to confusion in the future as to which date was being referred to.

93. The Representative of Panama supported the intervention by the Representative of Mexico. In highlighting the role played by the military, in particular, States' air forces and navies, in responding to crises, he emphasized that the proposed Policy should focus on the Organization's participation in search and rescue operations following aviation accidents with a view to saving the lives of the passengers and crew and recovering the wreckage to enable proper accident investigations to be conducted by the States concerned.

94. The Representative of Ecuador noted that all were aware of the impacts of climate change on the various regions of the world, in particular, of the effects of rising sea levels on airports located at sea level. They were also aware of the impacts of strong earthquakes, such as the dozens that had been reported in the Pacific region in recent years. Highlighting that his State had experienced a crisis in the form of a devastating 7.8 magnitude earthquake on 16 April 2016, the Representative of Ecuador recalled that he had expressed its profound appreciation to ICAO (208/8) for immediately undertaking a technical assessment mission. The Organization's technical personnel had enabled Ecuador to maintain key airport operations and aviation safety in the disaster zone. The Representative of Ecuador underscored that, in addition to its role in search and rescue operations as referred to by the Representative of Panama, ICAO

had a role to play in restoring calm during a crisis and guiding and coordinating the continued provision of key airport operations. He thus applauded and supported the paper, as well as the valid suggestions made by Representatives to improve the proposed ICAO Crisis Response Policy, whose purpose was to “provide a formalized and structured framework to enabling the Organization to respond effectively to risks, crises or disasters involving international civil aviation” (cf. paragraph 2.1). In so doing, the Representative of Ecuador reiterated that the Policy was a good first step and that enhancements could be made thereto.

95. At the suggestion of the President, the Council then suspended its consideration of C-WP/14612 and requested the Implementation, Strategy and Planning Group (ISPG), together with the Secretariat, to review the draft ICAO Crisis Response Policy set forth in Appendix A to the paper, taking into account the various issues raised, and to present a revised English text of the Policy for its further review later in the current session. The Secretariat was also requested to provide information to the Council at that time regarding the organizational procedures to implement the Policy as referred to in paragraph 5.1 thereof. Representatives were invited to provide the Secretariat and the ISPG with any proposals they might have to enhance the Policy.

#### **Any other business**

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

##### **Appointment of Members on the Air Navigation Commission (ANC)**

96. In the absence of comments by 2 and 7 June 2017 to the President of the Council’s e-mails dated 1 June 2017, Mr. Tom Andersen, nominated by Iceland, has been appointed as a new ANC Member, succeeding Mr. Einar Orn Hedinsson with effect from 1 June 2017, and Mr. Mark Reeves, nominated by the United States, has been appointed as a new ANC Member, succeeding Mr. William Voss with effect from 14 June 2017.

#### **Subject No. 16: Legal work of the Organization**

#### **Subject No 26: Settlement of disputes between Contracting States**

##### **Settlement of Differences: Brazil and the United States (2016)**

97. It was noted that an informal briefing on the above subject will take place on Friday, 16 June 2017 to facilitate the Council’s consideration of related C-WP/14617 Restricted on Wednesday, 21 June 2017.

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

#### **Subject No. 14: Subjects relating to air navigation**

#### **Subject No. 15: Subjects relating to air transport**

#### **Political developments in the Middle East Region impacting air traffic management – Request by Qatar for the intervention of the Council**

98. With reference to the information provided earlier to the Council on this subject (211/4), it was noted that the President has communicated with Qatar regarding its possible request for the inclusion of a related supplementary item in the Council’s Work Programme for the current (211th) session under Rule 24 b) and Rule 24 d) of the *Rules of Procedure for the Council* (Doc 7559) and the convening of a meeting of the Council to consider certain issues under Article 54 n) of the Chicago

Convention. Any such formal request which the President receives from Qatar will be circulated to Representatives to obtain their concurrence.

99. The meeting adjourned at 1315 hours.



**COUNCIL — 211TH SESSION**

**SUMMARY MINUTES OF THE SEVENTH MEETING**

**(THE COUNCIL CHAMBER, FRIDAY, 16 JUNE 2017, AT 1000 HOURS)**

**CLOSED MEETING**

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

**PRESENT:**

Algeria	— Mr. A.D. Mesroua	Kenya	— Ms. M.B. Awori
Argentina	— Mr. G.E. Ainchil	Malaysia	— Mr. Y.-H. Lim
Australia	— Mr. S. Lucas	Mexico	— Mr. D. Méndez Mayora
Brazil	— Mrs. M.G. Valente da Costa	Nigeria	— Mr. M.S. Nuhu
Cabo Verde	— Mr. C. Monteiro	Panama	— Mr. G.S. Oller
Canada	— Mr. M. Pagé	Republic of Korea	— Mr. J. Hur
China	— Mr. Chunyu Ding (Alt.)	Russian Federation	— Mr. A.A. Novgorodov
Colombia	— Mr. A. Muñoz Gómez	Saudi Arabia	— Mr. S.A.R. Hashem
Congo	— Mr. R.M. Ondzotto	Singapore	— Mr. T.C. Ng
Cuba	— Mrs. M. Crespo Frasquieri	South Africa	— Mr. M.D.T. Peege
Ecuador	— Mr. I. Arellano	Spain	— Mr. V.M. Aguado
Egypt	— Mr. A. Khedr	Sweden	— Ms. H. Jansson Saxe
France	— Mr. P. Bertoux	Turkey	— Mr. A.R. Çolak
Germany	— Mr. U. Schwierczinski	United Arab Emirates	— Miss A. Alhameli
India	— Mr. A. Shekhar	United Kingdom	— Mr. M. Rodmell
Ireland	— Mrs. A. Smith Floch	United Republic of Tanzania	— Mr. R.W. Bokango
Italy	— Mr. M.R. Rusconi	United States	— Mr. S. Kotis (Alt.)
Japan	— Mr. S. Matsui	Uruguay	— Mr. M. Vidal

**ALSO PRESENT:**

Mr. H. Yoshimura	— President, ANC
Dr. N. Luongo (Alt.)	— Argentina
Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. J. Bollard (Alt.)	— Australia
Mr. O. Vieira (Alt.)	— Brazil
Mr. L.H. Sacchi Guadagnin (Alt.)	— Brazil
Mr. R. da Rosa Costa (Alt.)	— Brazil
Mr. D.A. Tavares Taufner (Alt.)	— Brazil
Mr. R.H. Godinho (Alt.)	— Brazil
Mr. R.F. Pecoraro (Alt.)	— Brazil
Mr. M. Millefert (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mr. K.A. Ismail (Alt.)	— Malaysia
Mrs. D. Valle Álvarez (Alt.)	— Mexico
Mr. S. Kim (Alt.)	— Republic of Korea
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. M.S. Habib (Alt.)	— Saudi Arabia
Mr. S. Vuokila (Alt.)	— Sweden
Mr. Ö. Doğrukol (Alt.)	— Turkey
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mr. J. Méndez (Alt.)	— Uruguay

**SECRETARIAT:**

Mrs. J. Yan	— C/OSG
Mr. B. Djibo	— D/ATB
Mr. S. Creamer	— D/ANB
Mr. S. Lefoyer	— DD/ASF
Mrs. N. Abdennebi	— C/FAL
Mr. S. Berti	— C/ASP
Mr. J. Lamosa	— C/ASA
Mr. M. Marin	— A/C/OPS
Mr. J. Thaker	— FAL
Mr. A. Djojonegoro	— ASP
Mr. A. Doazan	— ASP
Miss S. Black	— Précis-writer



**Representatives to ICAO**

Cameroon

Chile

Cyprus

Ethiopia

Greece

Indonesia

Lebanon

Paraguay

Uganda

Venezuela (Bolivarian Republic of)

European Union (EU)

**Subject No. 52: Unlawful interference with international civil aviation and its facilities**

**Review of the Report of the Twenty-Eighth Meeting of the Aviation Security Panel (AVSECP/28)  
(Montréal, 29 May-2 June 2017)**

1. The outcomes of the AVSECP/28 Meeting were considered by the Council on the basis of: C-WP/14593 Restricted, in which the Secretary General presented the Panel's recommendations regarding the various Agenda items, as well as the draft Global Aviation Security Plan (GASeP) (with Roadmap for implementation) developed by the Panel's Task Force, and proposed Amendment 16 to Annex 17 – Security developed by its Working Group on Annex 17 (WGA17); and oral reports thereon by the Committee on Unlawful Interference (UIC) and the Air Navigation Commission (ANC). The Secretariat agreed with all of the AVSECP's recommendations.

2. The AVSECP had unanimously supported the draft GASeP, which was the successor to ICAO's Comprehensive Aviation Security Strategy (ICASS). The GASeP's core objective was to enhance the effectiveness of global aviation security and improve the practical and sustainable implementation of preventive aviation security measures, in line with the United Nations Security Council Resolution 2309 (2016), ICAO Assembly Resolution A39-18 and other relevant Assembly Resolutions. The Plan set forth five key priorities where ICAO, States and other stakeholders should focus their urgent attention, resources and efforts to make rapid progress in delivering that objective, and corresponding priority actions at the global, national and local levels. The Roadmap for implementation appended to the GASeP set forth specific measures/tasks associated with each priority outcome and priority action, with corresponding indicators and target dates for completion, to be carried out over the next three years, until the 40th Session of the Assembly in 2019. Being a living document, it would be periodically reviewed and adjusted as necessary, taking into account new and emerging aviation security threats.

3. Proposed Amendment 16 to Annex 17 – *Security* contained new and updated provisions relating to, inter alia, information sharing and communication, passenger and cabin baggage screening, and security controls for catering, stores and supplies.

*UIC oral report*

4. In presenting the UIC's oral report on its review of C-WP/14593 Restricted during its Second Meeting of the current session on 14 June 2017, the Chairperson, the Representative of South Africa, Mr. M.D.T. Peege, indicated that the Committee had congratulated the AVSECP and Secretariat on the organization and outcomes of the AVSECP/28 Meeting. Some UIC Members had noted that it was one of the most successful and widely attended Panel meetings yet. The Committee had recognized that part of that success was due to the Meeting having taken place over five days with full interpretation services, which had ensured that the AVSECP had had sufficient time to properly engage in the issues that required discussion.

5. The UIC had expressed unanimous support for the main outcomes of the AVSECP/28 Meeting, including the draft GASeP and draft Amendment 16 to Annex 17 – *Security*. In supporting draft Amendment 16, the Committee had indicated that it presented several important updates, despite the Panel's lack of agreement on moving forward with a proposed Standard on the sharing of Universal Security Audit Programme (USAP) audit information.

6. The UIC had commended the Task Force on the GASeP for the excellent work done in a short timeframe, and had noted the ambitious nature of the GASeP, which had been recognized as being a work in progress.

7. Upon the suggestion of the President of the Council that the GAsEP should contain global security targets for some of its priority outcomes, such as those found in the Global Aviation Safety Plan (GASP), the Committee had engaged in an extensive discussion. Some UIC Members had held the view that global targets would serve to aid with the GAsEP's implementation, noting that they would provide an easily understandable benchmark for States in order to foster the political will needed to improve security measures. Others had cautioned that global security targets would not be as useful as the safety targets, and in fact might prove to be discouraging to States that were currently performing well below such targets. The UIC had concluded that the Task Force on the GAsEP should revisit that issue and report back to the Committee on its recommendations through the AVSECP.

8. One UIC Member had sought further clarification on the role of facilitation in both the GAsEP and the proposed work of the Task Force on Improvised Explosive Devices (TF IEDs). The Secretariat had reassured the Committee that facilitation aspects of security would be addressed both in the GAsEP and by the TF IEDs and that the convenience and comfort of the travelling public were at the heart of all security considerations.

9. The UIC had supported the proposal to maintain the Secretariat Study Group on the Universal Security Audit Programme (USAP), and to expand its scope to consider all elements of oversight and quality control. One Committee Member had questioned the AVSECP's view, contained in paragraph 3.3 of the paper, that a graph depicting audit results by documentation, oversight and implementation should not be shared at the individual State level. The Secretariat had confirmed that the Panel had unanimously agreed that individual State results should not be shared.

10. In conclusion, the UIC had recommended that the Council agree to the actions proposed in the executive summary of C-WP/14593 Restricted, taking into account the Committee's comments.

*ANC oral report*

11. The President of the ANC, Mr. H. Yoshimura, then presented the following oral report on the Commission's review of the AVSECP/28 Report at the Seventh Meeting of its 205th Session on 13 June 2017.

12. The Report of the AVSECP/28 Meeting outlined the discussions and presented the recommendations of the Panel for each of the six Agenda items. On several of those items, the ANC had emphasized the need to ensure proper coordination between the AVSECP and relevant ANC panels, so that any proposed measure was developed considering both security and safety aspects.

13. The Commission had been aware that the AVSECP focused mainly on threats with terrorist intent and would take that aspect into account when tasking ANC panels to develop controls to mitigate threats to civil aviation safety. Whereas the AVSECP was mostly concerned with threats from unlawful interference, the ANC considered threats and vulnerabilities affecting the safety of the aviation system. The ANC had therefore considered it essential to develop appropriately coordinated mitigations to identified risks and threats, whatever their source. Issues that inter-related between safety and security should be managed in a coordinated and systematic way to identify the best possible solutions to security threats while effectively balancing safety risks.

14. Under Agenda Item 1 (*Developments in Aviation Security since AVSECP/27*), the ANC had supported the ongoing coordination between the AVSECP RPAS Task Force and the RPAS Panel to ensure the safety and security of RPAS operations, and had specifically invited the Council to consider

any safety and air navigation impacts of technical systems restricting RPAS operations, deployed by States or other lawful actors in sensitive areas.

15. The ANC had also supported the coordination between the multidisciplinary Cargo Safety Group and the AVSECP Task Force to address the threat posed by improvised explosive devices concealed in personal items (TF IEDs) and had recommended that the latter consider the safety aspects of possible mitigation measures in close coordination with the said Cargo Safety Group.

16. Furthermore, the ANC had acknowledged that the locked flight deck door remained a particularly important mitigation measure against the threat of hijacking and the use of commercial aircraft as weapons, and would continue working on operational aspects and safety implications of locked cockpit doors.

17. The ANC had commended the AVSECP for delivering the draft GASeP in full alignment with the GASP and the Global Air Navigation Plan (GANP), and had recognized its importance. The Commission looked forward to the future development of well-clarified roles for States and stakeholders and of longer-term objectives as part of the GASeP.

18. Under Agenda Item 2 (*Work Programme of the Panel and its Working Groups*), the ANC had supported the phasing-out of account and other non-approved consignors.

19. Under Agenda Item 3 (*Annex 17 and other regulatory issues*), the ANC had welcomed the new requirement for State procedures to share with aviation entities appropriate relevant information to assist them in conducting effective security risk assessments.

20. The ANC had also acknowledged the new requirement for screening methods capable of detecting explosive devices carried by passengers, and the expanded requirements for cybersecurity protection of critical systems in aviation.

21. The Commission had noted without further comment the parts of the AVSECP/28 Report on: Agenda Item 4 (*Universal Security Audit Programme*); Agenda Item 5 (*Implementation Support and Development – Security Programme*); and Agenda Item 6 (*Other business*).

#### *Discussion*

22. The Representative of Spain endorsed the oral reports of the UIC and the ANC and the actions proposed therein, in particular, the circulation, in separate State letters, of draft Amendment 16 to Annex 17 – *Security* and the draft GASeP to States and concerned international organizations for comments. With regard to draft Amendment 16, he suggested that the Secretariat consider reformulating proposed Recommended Practice 4.9.2, which contained two distinct concepts, as two separate Recommended Practices and putting it forward for comments during the envisaged consultation process. This was noted.

23. Turning to the draft GASeP, the Representative of Spain suggested that clarification be provided therein regarding the Plan's approval/endorsement authority and how it would guide regional aviation security plans and ICAO's Work Programme. Reiterating that the draft GASeP was a work in progress, and thus would be subject to improvements over time, he emphasized the need to be more ambitious in terms of providing greater specificity in the indicators and the target dates for completion for the measures/tasks set forth in the Roadmap for implementation. In citing, as an example, Priority Outcome 3: *Improve technological resources and foster innovation*, which he considered to be fundamental in addressing security issues, the Representative of Spain noted that while priority actions

3.E (*Establish initial minimum detection requirement for each type of security equipment*), 3.F (*Establish operational specifications for each type of security equipment*), 3.G (*Assess available technologies for each type of security equipment*) and 3.H (*Establish and maintain technical specification for each type of security equipment*) were all essential, their respective target dates for completion was “On-going”. Consequently, it was not known when the expected results were to be delivered. He further underscored that the most important indicators for those priority actions related to the achievement of the specific measures/tasks and not to “Greater information sharing between States on equipment information, requirements and specifications”, which was the indicator currently listed. The Representative of Spain suggested that the Secretariat take his comments into account in refining the Roadmap in future.

24. The Representative of Canada endorsed the paper and the AVSECP/28 Report, as well as the UIC’s and the ANC’s oral reports. Drawing attention to Priority Outcome 2: *Develop security culture and human capability*, priority action 2.B (*Develop security awareness programmes that effectively promote a positive security culture*), he stressed that in the spirit of continuous improvement, work was needed to update the USAP auditor training methodology so that ICAO could reinforce its ability to effectively assess the innovative risk- and outcomes-based approaches of those States which were achieving the security outcomes required under the audited ICAO Standards and Recommended Practices (SARPs).

25. The Representative of the United Republic of Tanzania was of the same view. While fully supporting the AVSECP/28 Report, he sought clarification regarding: the concept of unpredictability reflected in the second sentence of proposed Standard 4.4.1 *bis* in draft Amendment 16 to Annex 17; and action paragraph d) in the executive summary of the paper relating to the work of Secretariat Study Group on the Universal Security Audit Programme (USAP).

26. Responding to the first question, the Deputy Director of Aviation Security and Facilitation (DD/ASF) recalled that the concept of unpredictability had been introduced into Annex 17 by means of Amendment 14, which had been adopted by the Council on 26 February 2014 (C-WP/14092 Restricted; 201/2) and which had included the following definition of the term “unpredictability”: “The implementation of security measures in order to increase their deterrent effect and their efficiency, by applying them at irregular frequencies, different locations and/or with varying means, in accordance with a defined framework.”. Noting that proposed Standard 4.4.1 *bis* stipulated that “Each Contracting State shall ensure the use of appropriate screening methods that are capable of detecting the presence of explosives and explosive devices carried by passengers on their persons or in cabin baggage. Where these methods are not applied continuously, they shall be used in an unpredictable manner.”, he emphasized that it was only in the case where a Contracting State did not apply the said screening methods continuously that it was required to apply them randomly so as to prevent terrorists from being able to determine in advance when they would be implemented and to organize their attacks accordingly.

27. With respect to the second question raised, DD/ASF clarified that Section 3 of the paper contained information regarding the AVSECP’s deliberations on the work of the Secretariat Study Group on the Universal Security Audit Programme (USAP) and not the SSG’s recommendations and the Secretariat’s proposed actions as indicated in action paragraph d) in the executive summary.

28. The Representative of China voiced support for the UIC’s and the ANC’s oral reports, as well as for the actions proposed in C-WP/14593 Restricted. He also expressed appreciation to the Representative of Singapore, whose efforts as Chairperson of the Task Force on the GAsEP had enabled the drafting of the Plan to be completed within a short period of time. Observing that the Plan’s Roadmap for implementation only covered the next three years, until the 40th Session of the Assembly in 2019, and that for many of the priority actions contained therein the target date for completion was “On-going”, the

Representative of China suggested that the said Task Force consider longer-term objectives for the GAsEP and report thereon to the AVSECP.

29. In agreeing that the Plan's objectives and targets were currently only for the short term, DD/ASF noted that time constraints had precluded taking a medium- and long-term view. That was, however, the intention: as a living document, the GAsEP would evolve and be updated like the GASP and the GANP. He underscored that the said Task Force would continue its work on the draft Plan in the coming months, taking into account the views expressed and suggestions made by the UIC, the ANC and Council Representatives, as well as replies received in response to the envisaged State letter transmitting the draft GAsEP to States and international organizations concerned for comments.

30. Observing that the Representative of China's suggestion was in line with the ANC's view regarding the future development of longer-term objectives as part of the GAsEP, the President of the Council requested that the Task Force consider that issue.

31. As a Member of the UIC, the Representative of France fully endorsed the Committee's oral report. He highlighted the extraordinary quality of the AVSECP/28 Report and the excellent support provided to the Panel by the Secretariat. The Representative of France also underscored that the unanimous support which the draft GAsEP had received from the Panel and the UIC was a sure indication that it was a great success and a big step forward for ICAO.

32. Recalling that the UIC, in its oral report, had attributed part of the success of the AVSECP/28 Meeting to its having taken place over five days with full interpretation services, the Representative of France indicated that it was gratifying to see, *a posteriori*, that the Council had taken the right decision (209/4) in extending the proposed duration by one day, following confirmation from the Secretary General of resource availability for the provision of interpretation services for the entire five-day duration. While aware that resources were limited, he emphasized the importance of allocating sufficient time and adequate interpretation services for future AVSECP Meetings dealing with issues of strategic importance for the Organization.

33. Referring to the comments made by the ANC regarding the issue of the locked flight deck door of passenger aircraft, the Representative of Congo enquired as to what actions were being taken by industry to enable the door to be opened from the cabin side in light of recent incidents where the hijackers had been inside the cockpit and had even been members of the flight crew, notably the co-pilots. He cited, as an example of the latter case, the crash of Germanwings Flight 9525 in the French Alps on 24 March 2015.

34. Concurring that it was an important matter to be addressed, the President of the Council recalled the hijacking by the co-pilot of Ethiopian Airlines Flight 702 on 17 February 2014 while the aircraft was en route from Addis Ababa to Milan.

35. The President of the ANC noted, in this context, that the Commission had, during its current session, conducted a preliminary review of a proposed amendment to Annex 6 – *Operation of Aircraft*, Part I – *International Commercial Air Transport – Aeroplanes* regarding aircraft weight criteria for the cockpit door. The proposal had been produced in consultation with the AVSECP and the Flight Operations Panel (FLTOPSP) (cf. AN-WP/9142.PDP and State letter AN 11/1.1.32-17/66 dated 29 May 2017). The Commission had, however, acknowledged that the locked flight deck door remained a particularly important mitigation measure against the threat of hijacking and the use of commercial aircraft as weapons. The President of the ANC indicated that while the Commission had not discussed the said Germanwings incident in detail, it had recognized that such incidents could be prevented through the implementation of operational measures, such as requiring two authorized personnel to be present in the

cockpit of large passenger aircraft at all times. He underscored that many States had implemented such a requirement.

36. Highlighting that some airlines which had introduced such a “rule of two” had subsequently withdrawn it, the President of the Council indicated that the Council would leave it to the experts to continue to study the issue and find a solution.

37. The Chairperson of the UIC requested that during the next (212th) session, the ANC provide the Council with a holistic synopsis of the actions being taken by industry to address the various dimensions of the issue of the locked flight deck door of passenger aircraft, including human factors, aviation medicine, and “bottle and throttle” i.e. the use of alcohol. This was noted.

38. In referring to the view expressed by some UIC Members that his suggested establishment of global security targets for some priority outcomes of the GAsEP, such as those found in the GASP, might prove to be discouraging to States that were currently performing well below such targets, the President of the Council reiterated that that was a dangerous notion for ICAO’s work that should be dispelled as it implied that the Organization expected those underperforming States to lose their political will and motivation to perform well. Recognizing that if a low target were set then those States that had already surpassed it would feel complacent, he stressed the need for ICAO to encourage those States that were performing above the global average effective implementation (EI) level of USAP results to continuously improve their security oversight system. The President of the Council emphasized that it was the obligation of all States to fully implement ICAO’s security-related SARPs, regardless of their current performance level.

39. The Chairperson of the UIC underscored that the President’s said suggestion had been very well received by the Committee. Although some UIC Members had considered that global targets were more useful for the GASP than for the GAsEP, and might discourage underperforming States, the majority had been of the view that global security targets constituted milestones that were necessary to encourage States to take the actions required to implement the GAsEP, and to provide a sense of achievement. The UIC had concluded that the Task Force on the GAsEP should revisit the issue of global security targets and report back to the UIC, through the AVSECP, on its recommendations.

40. Noting that following the UIC’s meeting he had discussed that issue with the Chairperson of the Task Force on the GAsEP, DD/ASF suggested that ICAO proceed with the establishment of a global security target using the current situation as a baseline to enable States to monitor their progress under the GAsEP. Observing that at present there were 66 States that were performing below the 65 per cent EI threshold for USAP results, he proposed that as a target for 2030, which was the timeline for the achievement of the United Nations’ Sustainable Development Goals (SDGs), no country be left behind that threshold. DD/ASF emphasized that on the basis of the progress made by States in the intervening time, a new EI threshold and global security target would be established to enable further progress to be made. He recognized, however, that 2030 was quite distant and that the said target might not be sufficiently ambitious. DD/ASF therefore suggested that in the envisaged State letter transmitting the draft GAsEP to States and concerned international organizations for comments the Secretary General solicit views on the issue of global security targets. He noted that those views would subsequently be considered by the said Task Force and would be reported on in a working paper to be presented to the Council, through the UIC, during the upcoming (212th) session.

41. The President of the Council indicated that Representatives would only take note of the information provided by DD/ASF and would not take a decision on the issue at the present time, leaving it to the Secretariat and the Task Force on the GAsEP to consider it further and present a proposal to the Council at its next session.

42. In supporting this approach, the Alternate Representative of the United States underscored that there had been a fulsome discussion of the issue of global security targets in the UIC and that the consensus had been that the said Task Force should revisit it and report back to the UIC on its recommendations through the AVSECP.

43. The Representative of Singapore also endorsed the President's approach. In affirming that the Secretariat was on the right track, he suggested that when establishing global security targets in terms of EI level of USAP results, consideration be given to separating the single EI level index for security into two or three large components as was the case under the Universal Safety Oversight Audit Programme (USOAP) so that it would be multi-dimensional and multi-variant and thus avoid creating a sense of complacency among States. This was noted.

44. In likewise supporting the President's approach, the Representative of the United Kingdom indicated that the Secretariat should be given some discretion in determining if the issue of global security targets should be quickly referred to the experts concerned and/or be part of the State consultation process on the draft GAsEP so as to not prejudice the tight timeline which had deliberately been set by ICAO for the Plan's development due to factors within the UN system. Noting that that sense of urgency had led to a good piece of work being done, he stressed the importance of not creating any lengthy additional steps that could delay the GAsEP's finalization and its approval by the Council.

45. Agreeing that the Council should not take a decision during the present meeting on any global security targets, the Representative of the United Kingdom averred that the target suggested by DD/ASF of levelling up 66 States' performance to the 65 per cent EI threshold for USAP results was far too unambitious. He underscored that focus should be on ensuring that those States which were already performing well rose substantially above that 65 per cent threshold. While emphasizing that the 65 per cent threshold was quite insufficient for the kind of strong level baseline that was needed in order for ICAO to take a more global approach to aviation security, the Representative of the United Kingdom left that issue to be addressed through whatever process the Secretariat chose.

46. The Secretary General indicated that the Secretariat had noted the comments and advice of Council Representatives, in particular with regard to the improvement of the draft GAsEP. She agreed with the President of the Council that the Plan's enhancement was on ongoing process. In also agreeing with the Representative of the United Kingdom that there was a tight timeline for producing the GAsEP, the Secretary General stressed the need to deliver the Plan accordingly. Noting that it was clear from the AVSECP/28 Report and the UIC's oral report that there was strong State support for the draft GAsEP, she indicated that the Secretariat would continue to provide support to the AVSECP's Task Force on the GAsEP as it pursued its work. The Secretary General further indicated that in her envisaged State letter circulating the draft Plan to States and concerned international organizations for comments she would also solicit views on the issue of global security targets for some priority outcomes of the GAsEP, as well as on the issue of longer term objectives, for subsequent consideration by the said Task Force.

47. Recalling the emphasis which the Council had placed on the interrelationship between safety and security during its previous meetings, and highlighting that the draft GAsEP addressed some safety issues in addition to security issues, the Secretary General underscored that the Secretariat would take into consideration the inter-related security and safety issues in progressing the work on the GAsEP, as well as in preparing the next edition of the GASP.

48. The Secretary General took this opportunity to express appreciation to the Chairperson of the Task Force on the GAsEP, Mr. B. Lim (Singapore), for his effective leadership, to the former Chairperson of the AVSECP, Ms. P. Khoza (South Africa), for providing support in the development of the draft GAsEP, and in particular to all of the experts on the Task Force and the Panel, who had made it



possible to deliver such a high quality product. She also thanked the Secretariat team for efficiently supporting that work, as well the Council, the UIC and the ANC for their cooperation and guidance regarding the development of the draft GASeP.

49. In voicing gratitude for all of the work done by the AVSECP, with the support of the Secretariat, the Representative of Ecuador reiterated that ICAO was on the right track. He then sought clarification regarding: AVSECP/28 Recommendation 3.1 b), which called for the Secretariat to conduct a follow-up enquiry with States as to the progress they had achieved since the issuance of ICAO State letter AS 8/5-14/83 dated 4 December 2014 on the subject of laser illumination of aircraft and air navigation facilities; AVSECP/28 Recommendation 4.1 b), which called for the Secretariat to develop tools to ensure alignment with Standards and that consistency of interpretation of the USAP-CMA PQs be maintained for all ICAO auditors; and the timeframe and possible additional resources required for the publication of the new and/or updated guidance material referred to in AVSECP/28 Recommendation 2.1 f).

50. Replying to the first question, DD/ASF noted that AVSECP/28 Recommendation 3.1 b) was based on the action proposed by the International Federation of Air Line Pilots' Associations (IFALPA) and the International Federation of Air Traffic Controllers' Association (IFATCA) in AVSECP/28-WP/42 Restricted (*Proposal for consideration of progress achieved since 2014 on the issue of laser attacks on aircraft and next steps to be taken*). The purpose of the recommended follow-up enquiry was to obtain an updated global overview of the regulatory and technical measures taken by States to address the hazard posed by laser attacks against civil aircraft.

51. Responding to the query regarding AVSECP/28 Recommendation 4.1 b), DD/ASF observed that in the course of USAP audits there were occasionally differences in interpretation in analyzing compliance with the audited SARPs as the latter were sometimes not as detailed as national legislation or, for example, those of the European Community. Consequently, the audited States sometimes considered that the deficiencies identified by the USAP auditors were unfounded, not being supported by a specific Standard or Recommended Practice. DD/ASF underscored that discussions were currently underway within the Secretariat Working Group on the Universal Security Audit Programme (USAP) and the AVSECP on the way in which compliance or non-compliance with audited SARPs should be assessed through the USAP-CMA Protocol Questions (PQs). He noted that it had been proposed during the AVSECP/28 Meeting that tools be developed to facilitate the consistent interpretation of the audited SARPs and the PQs, which had led to Recommendation 4.1 b).

52. Referring to the Representative's third question, DD/ASF noted that while there was a significant demand for the guidance material cited in AVSECP/28 Recommendation 2.1 f), there was a limited number of State experts in the AVSECP's various working groups to produce the documents. Despite the consequent problems relating to resource mobilization and planning, the Secretariat would work with the Panel's relevant working groups to produce the guidance material as expeditiously as possible and thus meet the expectations of States and industry.

53. Having concluded its consideration of this subject, the Council noted the UIC's oral report. In so doing, the Council dispelled the notion that the President's previously suggested establishment of global security targets for some priority outcomes of the GASeP, such as those found in the GASP, might prove to be discouraging to States that were currently performing well below such targets as contended by some UIC Members. There was general consensus that such global security targets would instead encourage underperforming States and serve as a catalyst for other States above the global average effective implementation (EI) level of USAP results to make further improvements.

54. The Council also noted the ANC's oral report, as well as the comments and suggestions made and the clarifications provided in response by the President of the Council, the Secretary General and the Secretariat.

55. In then taking the action proposed in the executive summary of C-WP/14593 Restricted, as amended by the President in light of the UIC's and the ANC's oral reports and the discussion, the Council:

- a) expressed pleasure and satisfaction with the outcomes of the AVSECP/28 Meeting as described in the paper, and noted that work on most of the issues identified therein was continuing;
- b) commended both the Task Force on the GASeP and the Secretariat for their excellent work in developing the draft Global Aviation Security Plan (GASeP) in a short timeframe;
- c) expressed appreciation to the ANC for its work as outlined in its oral report;
- d) noted the information provided in Sections 2 and 3 of the paper regarding the AVSECP's deliberations on the draft GASeP and Secretariat Study Group on the Universal Security Audit Programme (USAP), respectively;
- e) endorsed the AVSECP/28 Meeting recommendations contained in Appendix A to the paper, on the understanding that the Secretariat would work in collaboration with the various working groups to ensure their effective implementation;
- f) accordingly endorsed the draft GASeP set forth in Appendix B, taking into account the AVSECP's said deliberations thereon (cf. Section 2 of the paper), as well as those of the UIC and the ANC as outlined in their respective oral reports, and agreed that the draft GASeP be circulated to States and concerned international organizations for comments by means of a State letter issued by the Secretary General;
- g) noted that in the above-mentioned State letter the Secretary General would also solicit views on the issues of global security targets for some priority outcomes of the GASeP and longer term objectives, which would subsequently be considered by the Task Force on the GASeP in reviewing all replies received in response to the State letter and updating the draft Plan, and that a report thereon would be included in the working paper to be presented to the Council, through the UIC, during the next (212th) session, setting forth the updated draft GASeP for final approval;
- h) as recommended by the AVSECP, agreed that the proposed Amendment 16 to Annex 17 – *Security*, presented in Appendix C to the paper, be circulated to States and concerned international organizations for comments by means of a State letter issued by the Secretary General;
- i) noted the concerns expressed during the discussion with respect to the issue of the locked flight deck door of passenger aircraft and that the ANC would continue working on the operational aspects and the safety implications thereof; and

j) endorsed the AVSECP/28 Report (Yellow Cover) (Restricted).

56. The Council reconvened in open session at 1115 hours to consider the remaining items on its order of business.

**COUNCIL — 211TH SESSION**

**SUMMARY MINUTES OF THE SEVENTH MEETING**

**(THE COUNCIL CHAMBER, FRIDAY, 16 JUNE 2017, AT 1115 HOURS)**

**OPEN MEETING**

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

**PRESENT:**

Algeria	— Mr. A.D. Mesroua	Kenya	— Ms. M.B. Awori
Argentina	— Mr. G.E. Ainchil	Malaysia	— Mr. Y.-H. Lim
Australia	— Mr. S. Lucas	Mexico	— Mr. D. Méndez Mayora
Brazil	— Mrs. M.G. Valente da Costa	Nigeria	— Mr. M.S. Nuhu
Cabo Verde	— Mr. C. Monteiro	Panama	— Mr. G.S. Oller
Canada	— Mr. M. Pagé	Republic of Korea	— Mr. J. Hur
China	— Mr. Chunyu Ding (Alt.)	Russian Federation	— Mr. A.A. Novgorodov
Colombia	— Mr. A. Muñoz Gómez	Saudi Arabia	— Mr. S.A.R. Hashem
Congo	— Mr. R.M. Ondzotto	Singapore	— Mr. T.C. Ng
Cuba	— Mrs. M. Crespo Frasquiere	South Africa	— Mr. M.D.T. Peege
Ecuador	— Mr. I. Arellano	Spain	— Mr. V.M. Aguado
Egypt	— Mr. A. Khedr	Sweden	— Ms. H. Jansson Saxe
France	— Mr. P. Bertoux	Turkey	— Mr. A.R. Çolak
Germany	— Mr. U. Schwierczinski	United Arab Emirates	— Miss A. Alhameli
India	— Mr. A. Shekhar	United Kingdom	— Mr. M. Rodmell
Ireland	— Mrs. A. Smith Floch	United Republic of Tanzania	— Mr. R.W. Bokango
Italy	— Mr. M.R. Rusconi	United States	— Mr. S. Kotis (Alt.)
Japan	— Mr. S. Matsui	Uruguay	— Mr. M. Vidal

**ALSO PRESENT:**

Dr. N. Luongo (Alt.)	— Argentina
Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. J. Bollard (Alt.)	— Australia
Mr. O. Vieira (Alt.)	— Brazil
Mr. L.H. Sacchi Guadagnin (Alt.)	— Brazil
Mr. R. da Rosa Costa (Alt.)	— Brazil
Mr. D.A. Tavares Taufner (Alt.)	— Brazil
Mr. R.H. Godinho (Alt.)	— Brazil
Mr. R.F. Pecoraro (Alt.)	— Brazil
Mr. M. Millefert (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mr. K.A. Ismail (Alt.)	— Malaysia
Mrs. D. Valle Álvarez (Alt.)	— Mexico

**SECRETARIAT:**

Mrs. J. Yan	— C/OSG
Mr. B. Djibo	— D/ATB
Mr. S. Creamer	— D/ANB
*Mr. V. Smith	— D/ADB
*Mr. S. Lefoyer	— DD/ASF
*Mrs. N. Abdennebi	— C/FAL
*Mr. S. Berti	— C/ASP
*Mrs. L. Comeau-Stuart	— C/POD
*Ms. K. Balram	— C/SEA
*Mr. J. Lamosa	— C/ASA
*Mr. J. Thaker	— FAL
*Mr. A. Djojonegoro	— ASP
*Mr. A. Doazan	— ASP
Miss S. Black	— Précis-writer

*Mr. J.W. Kabbs Twijuke,  
Chairperson of the AFI SECFAL  
Plan Steering Committee and  
Representative of Uganda to ICAO*

\*Part-time

**ALSO PRESENT (CONTINUED):**

Mr. S. Kim (Alt.)	— Republic of Korea
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. M.S. Habib (Alt.)	— Saudi Arabia
Mr. S. Vuokila (Alt.)	— Sweden
Mr. Ö. Dođrukol (Alt.)	— Turkey
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mr. J. Méndez (Alt.)	— Uruguay

**Representatives to ICAO**

Cameroon  
Chile  
Cyprus  
Ethiopia  
Greece  
Indonesia  
Lebanon  
Paraguay  
Uganda  
Venezuela (Bolivarian Republic of)

Airports Council International (ACI)  
European Union (EU)

**Subject No. 15.4: Facilitation**

**Adoption of Amendment 26 to Annex 9**

1. The Council had for consideration: C-WP/14557 (with Blue rider), in which the Secretary General reported on comments received on the proposal to amend Annex 9 – *Facilitation* circulated to States and relevant international organizations under cover of State letter EC 6/3-16/93 dated 10 November 2016, and the Secretariat’s corresponding views and proposed actions, and presented resultant Amendment 26 for adoption by the Council; and an oral report thereon by the Air Transport Committee (ATC). Amendment 26 related to, inter alia, Machine Readable Travel Documents (MRTDs), the transport of minors by air, passenger data exchange systems and the passenger manifest.

*ATC oral report*

2. In presenting the ATC’s oral report on its review of C-WP/14557 at its First Meeting of the current session on 4 May 2017, the Chairperson, the Representative of Kenya, Ms. M.B. Awori, indicated that the Committee had agreed that Amendment 26 to Annex 9 – *Facilitation* set out in Appendix C to the paper be recommended for adoption, with the following changes:

- a) that new paragraph 9.1 on the Passenger Data Single Window facility be retained as a Recommended Practice, as initially proposed by the Facilitation Panel (FALP) at its Ninth Meeting in April 2016 and circulated to States in State letter EC 6/3-16/93 dated 10 November 2016, to which no objections had been made by the more than 100 States which had replied thereto; and
- b) that Note 4 to new Standard 9.6 on the use of the Advance Passenger Information (API) system be amended to read as follows in order to clarify that the World Customs Organization (WCO)/International Air Transport Association (IATA)/ICAO guidelines define the *United Nations Rules for Electronic Data Interchange for Administration, Commerce and Transport* (UN/EDIFACT PAXLST) message:

“Note 4.—The UN/EDIFACT PAXLST message is currently defined by the internationally recognized WCO/IATA/ICAO guidelines.”.

3. During the ATC’s said meeting, a Member had queried the reference to guidance material in proposed Standard 9.22. Following subsequent discussions with the Secretariat, the Member had indicated that the text as proposed by the FALP be retained, as it had not been commented on by States during the consultation phase, and had also suggested that the issue regarding guidance material in SARPs could be taken up by the FALP in future deliberations on Annex 9 – *Facilitation*.

4. The Secretariat had agreed to the suggestion made by an ATC Member that, in the future, Council working papers proposing amendments to Annex 9 would also contain a brief summary of the topics addressed in the amendments.

5. The ATC had recommended that the Council endorse the action presented in the executive summary of C-WP/14557, subject to the above-mentioned changes relating to new paragraph 9.1 and Note 4 to new Standard 9.6.

*Discussion*

6. The Council noted the ATC’s oral report, in particular, its recommended action.

7. It was recalled by the Director of the Air Transport Bureau (D/ATB) that the Representative of Australia, in an e-mail dated 9 June 2017 to the President of the Council, the Secretary General, the Chairperson of the ATC, and Council Representatives, had proposed that the Council not approve the deletion of the word “normally” from Recommended Practice 3.18 on passport validity as proposed by the Secretariat on the basis of a suggestion made during the said State consultation process on the Annex 9 amendment proposal. Australia considered that the proposed deletion of the word “normally” would undermine the legitimate routine issuance of passports by States for a period of less than five years. Furthermore, the proposal had not been subject to the normal analysis by the FALP and thus had not been properly subject to an Impact Assessment or included in the Implementation Checklist or other supporting material. As a result, the proposal’s impact had not been properly considered and appropriate guidance had not been prepared to aid States in implementing the change, which in many cases would involve legislative or regulatory change by States. Australia did, however, strongly support the adoption of the rest of Amendment 26 to Annex 9, including the other changes to Standard 3.18 as originally proposed by the FALP and circulated to States in the above-mentioned State letter EC 6/3-16/93 dated 10 November 2016.

8. During the discussion, the Alternate Representative of the United States, as well as the Representatives of the United Kingdom and Canada, voiced support for the Representative of Australia’s proposal for the reasons cited in the latter’s e-mail.

9. In so doing, the Representative of the United Kingdom suggested that future Council working papers presenting Annex 9 amendment proposals not only contain a brief summary of the topics addressed therein, as proposed during the ATC’s meeting, but also highlight any amendments suggested during the State consultation process which were subsequently accepted by the Secretariat and included in the Annex 9 amendment proposals so that they could be readily identified and addressed by the Committee during a scheduled meeting rather than subsequently through correspondence. He noted, in this context, that while a great majority of those States which had replied to State letter EC 6/3-16/93 dated 10 November 2016 had agreed, without comment, to draft Amendment 26 to Annex 9, the said two substantive changes proposed by States relating to new paragraph 9.1 on the Passenger Data Single Window facility and Recommended Practice 3.18 on passport validity had been accepted by the Secretariat and subsequently inserted that Annex amendment without, however, having been highlighted in the covering paper, which had rendered it very difficult to locate them in Amendment 26.

10. Speaking in the same vein, the Representative of France enquired whether the Secretariat planned to communicate externally the Council’s adoption of this important Amendment 26. Underscoring that Annex amendments were a core element of ICAO’s work programme, with a substantial amount of work being carried out by the Organization in developing them and a considerable amount of time being spent by the Council in reviewing and adopting them, he affirmed that they deserved to be accorded a higher profile. The Representative of France thus suggested that consideration be given to enhancing the external communication of the Council’s adoption of Annex amendments.

11. The President of the Council indicated that although ICAO did publicize the adoption of Annex amendments, particularly in the case of issues of critical concern to the public, the manner in which it did so could possibly be improved. He emphasized that in disseminating information on the related work carried out by ICAO’s panels a continuous effort was made to strike the optimal balance between the Organization’s interest and the public’s interest.

12. In expressing support for Amendment 26, the Representative of Saudi Arabia indicated that he would provide the Secretariat with suggested editorial amendments to the Arabic version thereof.

13. In noting that the Secretariat had agreed to the suggestion by an ATC Member that future Council working papers presenting Annex 9 amendment proposals contain a brief summary of the topics addressed therein, the Council, pursuant to the suggestion by the Representative of the United Kingdom, requested that such working papers also highlight any amendments suggested during the State consultation process which were subsequently accepted by the Secretariat and included in the Annex 9 amendment proposals to facilitate the ATC's and the Council's deliberations. Note was taken of the suggestion by the Representative of France to enhance the external communication of the Council's adoption of Annex amendments.

14. The Council, by 35 votes in favour, none against and no abstentions (one Representative being absent), then adopted, as Amendment 26 to Annex 9 – *Facilitation*, the amendment material contained in Appendix C to C-WP/14557, subject to the retention of new paragraph 9.1 as a Recommended Practice, and to the retention of the word “normally” in Recommended Practice 3.18. The Council also approved, as part of Amendment 26, the Notes contained in Appendix C, subject to Note 4 to Standard 9.6 being amended as indicated in paragraph 2 b) above, and the revised Foreword to Annex 9 as set forth in Appendix D. In addition, the Council approved the Resolution of Adoption presented in Appendix E.

15. It was noted: that the Representative of Saudi Arabia would provide the Secretariat with suggested editorial amendments to the Arabic version of Amendment 26, and that the Secretariat would verify that all languages versions were duly harmonized as requested by the President of the Council; that the appropriate adoption, effective and applicability dates would be inserted in the said Resolution of Adoption and revised Foreword; and that a new Fifteenth Edition of Annex 9 would be published incorporating Amendment 26 and all previously-adopted amendments.

**Subject No. 52: Unlawful interference with international civil aviation and its facilities**

**Report of the Fourth and Fifth Meetings of the AFI SECFAL Plan Steering Committee**

16. The Council considered this subject on the basis of the following oral report by the Chairperson of the AFI SECFAL Plan Steering Committee (SC), the Representative of Uganda to ICAO, Mr. J.W. Kabbs Twijuke, which was accompanied by a PowerPoint presentation (available on the Council's secure website):

“1. Background

1.1 To enable the Council to monitor and guide the implementation of the Comprehensive Regional Implementation Plan for Aviation Security and Facilitation in Africa (AFI SECFAL Plan), the Chairperson of the Steering Committee (SC) is required to present bi-annual progress reports to the Council. The last report was in November 2016 and since then, the SC has held its Fourth and Fifth Meetings on 1 December 2016 (in Montréal, Canada) and 25 May 2017 (in Gaborone, Botswana), respectively.

“2. Achievements

- a) the majority of short-term programme activities are done and the remaining items will be completed by the target date of December 2017. The impact of this manifests that the continent's average effective implementation (EI) for security has improved from 48 per cent in 2015 to the current 56 per cent and with the assistance of ICAO, all Significant Security Concerns (SSeCs) have been removed except one;



- b) some development partners, namely France, Malaysia, Saudi Arabia and Uganda, have collectively contributed USD 250 000 to the Plan and one AVSEC expert (in-kind) in the Western and Central African (Dakar) (WACAF) Regional Office;
- c) two projects have been approved whose focus areas will be the resolution of the SSeC, conducting awareness and sensitization workshops/seminars, designing and implementing blended e-learning programmes and training on authenticity and validity of Travel Document at Airport Borders-Level 1. The two projects will be funded by USD 250 000;
- d) the AFI Regional Aviation Security and Facilitation Group (RASFALG-AFI) is operational. It focuses on the removal of SSeCs and assisting States with low EIs to develop and implement Corrective Action Plans (CAPs);
- e) a mechanism has been created to monitor and maintain a register for all security and facilitation assistance programmes taking place in Africa to prevent wasteful duplication and to achieve maximum impact through effective utilization of the limited resources;
- f) through seminars and symposia States are being helped to implement relevant ICAO Assembly Resolutions, as well as UN Security Council Resolutions 2178 and 2309, with a focus on the ICAO Traveller Identification Programme (TRIP) Strategy, the ICAO Public Key Directory (PKD), Advance Passenger Information (API), INTERPOL and Automatic Border Controls (ABCs) to effectively address the threat from international terrorists;
- g) the Windhoek Targets, together with the implementation action plan, have been cleared by the African Union (AU) Special Committee on Transport for endorsement by the AU Summit in July 2017, thus pledging ultimate political commitment to AVSEC and FAL matters in Africa;
- h) in the Sixth Meeting of the Directors General of Civil Aviation Authorities (DGCA/6), held in Brazzaville, Republic of the Congo, the Civil Aviation Authorities (CAAs) gave total commitment to the implementation of the Windhoek Targets. Specific decisions of DGCA/6 have been incorporated into the Work Programme of the Plan.

“3.

Major challenges

- a) there is an inadequate level of sharing of information and best practices, particularly the mitigating measures for the new and emerging threats. The SC urges the Council to determine modalities for implementing Assembly Resolution A39-18, which endorsed limited disclosure of Universal Security Audit Programme – Continuous Monitoring Approach (USAP-CMA) information to facilitate assistance programmes in regions of need;
- b) there is a lack of a security and facilitation culture, which requires sustained sensitization through workshops/seminars and other outreach programmes;

- c) there is an inadequate use of innovative solutions for ABCs, API protocols and INTERPOL databases for the smooth flow of passengers/cargo in a secure manner;
- d) there is a lack of a sustainable funding mechanism, as well as insufficient qualified personnel to perform operational activities and oversight for security and facilitation systems;
- e) there is a minimal amount of USAP-CMA audit missions to the AFI region, which hampers continuous monitoring of the Plan's impact. Currently only about 24 per cent of AFI States are audited per year;
- f) there is an inadequate outreach mechanism to promote the implementation of particularly the ICAO TRIP Strategy and the ICAO Public Key Directory (PKD)/Public Key Infrastructure (PKI). The majority of AFI States are unaware of the benefits of these programmes;
- g) many States do not consider implementation of Annex 9 Standards and Recommended Practices (SARPs) as a requirement except those related to security. The Council is requested to devise measures to change this mindset.

“4. Moving forward

- a) the 39th Session of the Assembly endorsed limited disclosure of USAP-CMA information which facilitates accurate needs assessment and formulation of appropriate programmes to help States resolve the audit findings. In this respect, the Council is requested to determine the extent of disclosure in accordance with Assembly Resolution A39-18, Appendix E, Operative Clauses 5 and 7;
- b) the Global Aviation Security Plan (GASeP) will support the implementation of regional security initiatives such as the AFI SECFAL Plan. The SC commends the work being done on the development of GASeP and calls for its expedited adoption;
- c) ICAO, in collaboration with the African Civil Aviation Commission (AFCAC) and the AFI SECFAL Plan SC, needs to enhance its outreach mechanism to effectively sensitize and assist AFI States to implement the ICAO TRIP Strategy and the ICAO PKD/PKI to elevate the national and continental levels of aviation security and facilitation;
- d) the AFI SECFAL Plan SC, in collaboration with AFCAC and ICAO Regional Offices, will develop a database/pool of AFI security and facilitation experts (active and retired). This will enable the creation of a regional cooperative scheme of these experts to assist States in need;
- e) ICAO will continue to collaborate with Airports Council International (ACI) and take advantage of its Airport Excellence (APEX) – Security Programme to assist States in identifying and closing security gaps in their aerodrome facilities and services;
- f) the recruitment of two P-4 staff in the Eastern and Southern African (ESAF) (Nairobi) and the Western and Central African (Dakar) (WACAF) Regional Offices by the end of June 2017 will provide huge impetus to the AFI SECFAL Plan. This will be

augmented by secondees through the Human Resources Development Fund (HRDF) and the ICAO Programme for Aviation Volunteers (IPAV);

- g) it is requested that the President of the Council and the Secretary General continue their efforts to sensitize States regarding a security and facilitation culture, as well as to solicit support (human and financial resources) from States and the donor community, especially UN Agencies and industry;
- h) the Council should consider including the AFI SECFAL Plan in the ICAO Regular Budget under the *No Country Left Behind* (NCLB) initiative, allowing availability of resources to assist AFI States left far behind in compliance with SARPs;
- i) as there is a limited number of USAP-CMA audit missions to the AFI region, with only some 24 per cent of AFI States being audited per year, which hampers continuous monitoring of the AFI SECFAL Plan's impact, ICAO is encouraged to conduct more audits under the Programme (but not on a cost-recovery basis); and
- j) the next SC meeting is scheduled for November 2017 in Montréal, Canada.”

### *Discussion*

17. In thanking the Chairperson of the AFI SECFAL Plan Steering Committee Plan for his excellent work, the Secretary General concurred with him that while progress had been made in implementing the Plan, much remained to be done. Taking into account the Plan's wide scope and the limited resources available for its implementation, she reiterated her appeal for voluntary contributions, both financial and in-kind (technical expertise), in order to make further progress. In noting that the ICAO Secretariat was also soliciting such voluntary contributions, the Secretary General affirmed that they would have a positive impact on the Plan's implementation. She highlighted that ICAO was now working with various organizations, including the African Union Commission (AUC), in order to develop partnerships and synergies to optimize the use of resources. In thanking States, in particular, Council Member States, for their support in previous years, the Secretary General emphasized that their continued support, especially that of Council Member States, was crucial for the success of the AFI SECFAL Plan. She took this opportunity to thank the Members of the AFI regional group on the Council for their coordination and support with their respective capitals in order to garner the requisite political will to assume ownership of the Plan's implementation.

18. While noting from the Chairperson's PowerPoint presentation that good progress had been made in almost all of the Plan's matrices, the Representative of Nigeria agreed that a substantial amount of work still needed to be done. Recalling that one of the major challenges which had been highlighted was the low priority which many AFI States accorded to the implementation of non-security-related Annex 9 provisions, he enquired whether the AFI SECFAL Plan Steering Committee had any plans to encourage AFI States to pay more serious attention to the issue of facilitation. The Representative of Nigeria took this opportunity to thank the President of the Council for his ongoing support of the AFI SECFAL Programme. He also thanked the Secretary General and the Secretariat for their continued support thereof, as well as for the planned activities which the Secretary General had just outlined, particularly in light of the Plan's budgetary requirements. In expressing appreciation to those States which had made voluntary contributions to the Programme, the Representative of Nigeria echoed the Secretary General's appeal for additional contributions, especially in terms of technical expertise. Underscoring that aviation security was a global issue and that a security breach in Africa could have repercussions in any other region of the world, he emphasized that it was thus States' collective responsibility to ensure a high level of aviation security worldwide.

19. The Representative of Malaysia fully supported the Chairperson's oral report and the actions proposed therein, as well as the appeal made for voluntary contributions, both financial and in-kind. In apologizing for Malaysia's absence at the Steering Committee's Fourth Meeting, he indicated that it had been due to a scheduling conflict.

20. Responding to a query by the President of the Council, the Chairperson confirmed that Malaysia, France, Saudi Arabia and Uganda had all made voluntary contributions to the AFI SECFAL Programme during the reporting period.

21. The Representative of Cabo Verde congratulated the President of the Council for his involvement in, and support for, African initiatives, and for the initiatives of all States in general. He also thanked the Secretary General for her efforts to support the AFI SECFAL Programme, as well as the Chairperson for his substantial work in that regard. In underscoring that security and facilitation were very sensitive issues, particularly for the African continent, the Representative of Cabo Verde emphasized that the latter had been the victim of acts of international terrorism which had threatened social peace and the integrity of some AFI States. For that reason, AFI States were making concerted efforts to counter that phenomenon.

22. While noting that the Chairperson's oral report highlighted some of the progress made in implementing the AFI SECFAL Plan, the Representative of Cabo Verde observed that it also revealed that AFI States' compliance with the established targets was not at the desired level. The oral report also revealed that some of the identified problems and challenges were due to the lack of a security and facilitation culture in the African continent. The Representative of Cabo Verde was pleased to note, however, that AFI States were making efforts to enhance cooperation, not only among themselves but also with other States, including donor States. He emphasized the need to concentrate the support received from AFI States, notably Uganda, and other States and to proceed in a coordinated and structured way to implement the agreed actions. The Representative of Cabo Verde highlighted, in this context, the need to promote information-sharing through sustained sensitization/outreach activities, such as at workshops/seminars held in Africa. He also underscored the need to consider those areas where there were deficiencies that required a redoubling of efforts, such as the said low priority which many AFI States accorded to the implementation of non-security-related Annex 9 provisions. The Representative of Cabo Verde urged the Secretariat to support efforts to rectify the identified deficiencies. In concluding, he appealed to all involved in the AFI SECFAL Programme to promote closer cooperation with States, AFCAC and international organizations such as ACI in order to strengthen aviation security in the African continent and globally.

23. The Representative of Spain expressed appreciation for the Chairperson's enthusiastic vision of the significant progress being achieved in Africa in the fields of both security and facilitation. He then drew attention to two issues which the Chairperson had highlighted in his oral report. The first issue was the need for more USAP-CMA audits in the AFI region. Affirming that that was essential, and that the Council should take note thereof, the Representative of Spain underscored that such audits were a part of States' systematic improvement of their security oversight systems. The second issue was that the facilitation-related provisions of Annex 9 were not audited under the USAP-CMA. Noting that that issue had been highlighted previously in the Council on a number of occasions, he recalled the consequent issuance of State letter EC 6/3-15/90 dated 21 December 2015 on the completion of the online Compliance Checklist for Annex 9 – *Facilitation* in the Electronic Filing of Differences (EFOD) system and sought information as to the outcome of that State consultation process.

24. In endorsing the Steering Committee's recommendations as set forth in the Chairperson's oral report, the Representative of Kenya agreed with the Representative of Spain on the need to determine

the extent of State compliance with Annex 9 provisions. She also thanked the Secretary General and the Secretariat for their support of the AFI SECFAL Programme. In affirming that the AFI SECFAL Plan was very important for the work of ICAO and that it should be replicated in those regions where there was a need for such a Plan, the Representative of Kenya commended the Middle East region for initiating the development of a regional MID SECFAL Plan.

25. The Representative of Egypt joined in the expressions of appreciation to the Chairperson for his tireless efforts, in cooperation with the Secretariat, to ensure the success of the AFI SECFAL Plan. He also thanked the President of the Council for all of his initiatives in the African continent since assuming Office on 1 January 2014. In addition, the Representative of Egypt expressed gratitude to the Secretary General and her team for their support of the efforts underway to develop the said MID SECFAL Plan, which was similar in nature to the AFI SECFAL Plan. He noted, in this regard, that the ICAO MID Regional Office in Cairo had begun coordination efforts with accredited States of the ACAC and MID regions.

26. The Representative of the United Republic of Tanzania supported all of the comments made by previous speakers. Recalling that the issue of the sharing of USAP-CMA audit results had also been raised in earlier reports by the AFI SECFAL Plan Steering Committee, he sought clarification from the Chairperson as to the level of information-sharing that would be required to enhance the implementation of the AFI SECFAL Plan, taking into account the limited level of disclosure of USAP-CMA audit results provided for in Assembly Resolution A39-18 (*Consolidated statement on continuing ICAO policies related to aviation security*), Appendix E, Operative Clauses 5 and 7. The Representative of the United Republic of Tanzania also asked the Secretariat what action it could take in terms of information-sharing.

27. The Representative of Ecuador was pleased to hear the Chairperson's oral report as it highlighted security and facilitation. He emphasized that while all agreed that security was extremely important, facilitation was likewise extremely important as it enhanced States' tourism industries and thus their economies. The Representative of Ecuador noted that the Council's approval, under the previous item, of Amendment 26 to Annex 9 – *Facilitation* reflected the need to focus more on facilitation. He agreed with the Representative of Spain that the Chairperson had presented an enthusiastic vision of the significant progress being achieved in Africa in the fields of both security and facilitation. The Representative of Ecuador emphasized that the Steering Committee's proposed actions were practical and addressed the real needs of the AFI SECFAL Plan, which his State fully supported. He thanked the Secretariat for the support which it was providing to enhance the Plan's implementation.

28. In noting that it had been possible to immediately resolve some of the problems being faced by AFI States through a more direct focus of assistance efforts, such as the wider dissemination of information on the ICAO TRIP Strategy and increasing State membership in the ICAO PKD/PKI, the Representative of Ecuador underscored the need to provide more targeted assistance under the AFI SECFAL Plan. He stressed, in this regard, the importance of industry's active participation in the Plan, which was at the very heart of ICAO's NCLB initiative. The Representative of Ecuador highlighted that industry could provide to those AFI States which lacked sufficient means the resources they required to implement the ICAO TRIP Strategy and technologies such as API and Passenger Name Record (PNR) at their respective airports.

29. In expressing special thanks to the Chairperson for his excellent PowerPoint presentation and analysis, the Representative of Japan noted that the solid outcomes of the AFI SECFAL Plan's implementation were a clear demonstration of his work. He concurred with the Chairperson's observations and noted the points which he had raised, in particular, the importance of: developing a database/pool of AFI security and facilitation experts (active and retired); and enhancing the

Organization's outreach mechanism to effectively sensitize AFI States regarding the ICAO TRIP Strategy and the ICAO PKD/PKI and provide implementation assistance, which he considered was necessary to strengthen the infrastructure in all AFI States so that it would be resilient in the face of international security challenges.

30. Responding to the query by the Representative of Spain regarding State letter EC 6/3-15/90 dated 21 December 2015, which had been issued to assess the level of compliance with all Annex 9 SARPs, the Chief of the Facilitation Section (C/FAL) noted that in view of the low number of replies that had been received by the end of 2016, and Standard 8.17 of Annex 9 requiring States to establish a National Air Transport Facilitation Programme (NATFP), the Secretary General had requested all States to nominate a national focal point for facilitation (cf. State letter EC 6/1-16/106 dated 14 December 2016). Such national focal points could, inter alia, assist in the dissemination of State letters to all agencies and ministries active in facilitation-related matters. In underscoring that thus far more than 130 national focal points had been nominated, she indicated that the Secretariat had requested their assistance in obtaining more replies to State letter EC 6/3-15/90. C/FAL noted that a report would be presented to the ATC during the next (212th) session in October/November 2017 on the status of replies to the said State letter and that the Committee would be invited to consider, inter alia, suggestions for expanding the scope of the USAP-CMA and/or the Universal Safety Oversight Audit Programme Continuous Monitoring Approach (USOAP CMA) to include auditing of appropriate additional Annex 9 Standards.

31. Replying to the question raised by the Representative of the United Republic of Tanzania, the Director of the Air Transport Bureau (D/ATB) noted that as a result of the last terrorist attack in Africa the AU and some regional economic communities had started to officially share information on aviation security issues and unlawful activities. He indicated that the Secretariat would work with relevant States and organizations to determine how, under the umbrella of the AFI SECFAL Plan, such information-sharing could be extended to issues of interest relating to aviation security and facilitation. In highlighting that the ICAO Aviation Security Point of Contact (PoC) Network could be used to share risk-based information in accordance with Annex 17 – *Security*, D/ATB underscored that the PoCs from AFI States had the flexibility to share issues of interest on a regional basis as most of the unlawful activities that took place in the continent did not relate solely to one State.

32. In providing further clarification regarding the sharing of USAP-CMA audit information, the Chief of the Aviation Security Audit Section (C/ASA) noted that, in line with the restrictions imposed under Assembly Resolution A39-18, Appendix E, Operative Clauses 5 and 7, the Secretariat currently shared with all Member States, on the USAP secure portal, a chart providing an indication of the EI level of the eight critical elements of an audited State's aviation security oversight system, and a chart providing an indication of the level of compliance with Annex 17 Standards. In noting that the Chairperson's PowerPoint presentation had included such charts for the AFI region, as well as a chart depicting the EI level by audit area for the AFI region, he emphasized that the Secretariat could only provide such information on a regional level and not at the individual State level. C/ASA underscored, however, that in line with the policy established in Assembly Resolution A39-18, Appendix E, if the Secretariat received written authorization from the audited State concerned, it could then disclose more detailed information regarding that State's USAP-CMA audit results. He then highlighted the various types of analyses which his Section conducted on the data obtained through USAP-CMA audits.

33. Recalling, from the Chairperson's PowerPoint presentation, that only some 24 per cent of AFI States were audited per year, the President of the Council enquired how the validation of the actions taken by AFI States to improve their security oversight systems could be accelerated so as to provide the Secretariat and the Council with a better picture of the situation, in particular, of those areas where progress had been made and those areas where improvements were necessary.

34. In noting that his Section worked in very close coordination with the Implementation Support and Development Section – Security (ISD/SEC), C/ASA indicated that once a State’s assistance programme was completed, a USAP-CMA audit was scheduled in order to collect the latest information regarding the level of security oversight that State provided. Underscoring that budgetary constraints would make it challenging to increase the number of audits of AFI States conducted each year, he emphasized that the percentage of AFI States being audited annually was consistent with the percentage for other regions.

35. The President of the Council suggested that the Secretariat draw a lesson from the USOAP CMA which provided for the off-site validation of certain audit-related documentation, not only for audits but also for ICAO Coordinated Validation Missions (ICVMs).

36. The above comments and clarifications were noted, in particular, with reference to the major challenge posed by the low priority which many AFI States accorded to the implementation of non-security-related Annex 9 provisions, that during the next (212th) session the ATC will consider the extent of the level of Annex 9 compliance on the basis of analyses of replies to State letter EC 6/3-15/90 dated 21 December 2015 (Completion of online Compliance Checklist for Annex 9 – *Facilitation*) and determine if further action should be taken in that regard.

37. In noting the Chairperson’s consolidated oral report, as well as the supplementary information provided in the accompanying PowerPoint presentation (available on the Council’s secure website), the Council endorsed the AFI SECFAL Plan Steering Committee’s decisions and recommendations relating to the said identified challenges, as set forth above [cf. paragraph 16, sub- paragraphs 4 a) to j)].

38. On behalf of the Council, the President expressed appreciation to the Chairperson of the AFI SECFAL Plan Steering Committee for his oral report and PowerPoint presentation and the good lines of thought he had put forward. He also thanked all donors for their support in implementing the AFI SECFAL Plan, as well as the ICAO Secretariat for its efforts in that regard.

**Subject No. 7.2: Recruitment policy**

**Report on the Review of the ICAO Policy on Secondment**

39. The Chairperson of the Human Resources Committee (HRC), the Representative of Egypt, Mr. A. Khedr, presented the following oral report on the review of the *ICAO Policy on Secondment*:

40. At its Tenth Meeting of the 210th Session (210/10), on 8 March 2017, the Council had considered C-WP/14590, which presented consequential amendments to Regulations 4.30.1 and 4.30.2 of *The ICAO Service Code* (Doc 7350) to align with the *ICAO Policy on Secondment* approved by Council at its 208th Session (208/14), as well as an additional amendment to paragraph 5.1 of the said Policy to address operational issues. Noting the decision by the HRC to establish a Working Group to perform a holistic review of the existing Policy, the Council had decided to maintain the provisions in the *ICAO Policy on Secondment* and *The ICAO Service Code* (Doc 7350) unchanged until the Working Group had completed its review, following which the HRC would report to the Council on recommendations arising therefrom.

41. At its First Meeting of the 211th Session of the Council (211/1), on 8 May 2017, the HRC had welcomed and reviewed the *Report of the Working Group on the ICAO Policy on Secondment*.

During its deliberations, the HRC had reiterated the principles of transparency, efficiency and equal opportunity for providing secondments to ICAO. It had also been stressed that: any secondment offer would be based on the strategic and operational requirements of the Organization; and any secondee ultimately accepted by ICAO would possess all of the necessary experience and qualification commensurate with the requirements of the secondment position.

42. In this connection, the HRC had noted, with appreciation, the ongoing efforts by the Secretariat to identify areas in which additional resources for Programme activities would be required in order to cover the Work Programme for the 2017-2019 triennium, as presented in the *ICAO Business Plan*. The HRC had also noted that those identified needs would address the resources gap between the *ICAO Business Plan* and the Organization's Budget as approved by the 39th Session of the Assembly.

43. The Secretariat had been requested to announce the identified areas of need for additional support to Member States through State letter, in order to allow States to consider assisting the Organization through secondments. With such a process, the principles of transparency, efficiency and equal opportunity would be upheld, and any offer received would be based on ICAO's strategic and operational requirements. The HRC had highlighted that any change in the process would not affect existing agreements that ICAO had concluded with States or organizations. Furthermore, the HRC had recognized that given that ICAO operated in a dynamic industry, and that consequently additional Programme needs might appear during the course of the triennium. In such instances, the Secretary General would inform Member States, in order to update the Programme requirements and to request additional support from States for the work of ICAO.

44. The Secretariat had reiterated that it would only accept secondment offers if they matched an identified need in line with the Organization's strategic and operational requirements, that the secondee's qualifications and experience met the Organization's requirements, and that acceptance would also be subject to available office space and other resource constraints within the Organization.

45. After comprehensive review of the issues reported by the HRC Working Group and further to its own deliberations, the HRC recommended that the Council:

- a) leave the *ICAO Policy on Secondment* and *The ICAO Service Code* (Doc 7350) unchanged; and
- b) endorse the above process of announcing programme needs to all Member States in order to solicit secondment offers in support of the Organization, while ensuring the principles of transparency, efficiency and equal opportunity, and with the understanding that this process will not affect existing agreements.

#### *Discussion*

46. While endorsing the HRC's oral report, the Representative of Mexico suggested that its proposed action paragraph b) be revised to reflect that the envisaged process of announcing programme needs would not affect existing agreements until their expiration. He underscored that once existing agreements expired secondment opportunities would need to be announced in order to ensure full and equal opportunity and to avoid monopolies.

47. The Representative of Singapore fully supported the oral report, being a Member of the HRC and of the Committee's said Working Group on the ICAO Policy on Secondment. He emphasized that the areas of need for additional support in accordance with ICAO's Business Plan, Regular Programme Budget and Strategic Objectives should not only be announced in a State letter but also be concurrently published on the ICAO-NET to further enhance the equal opportunity of States to access that



information. The Representative of Singapore affirmed that that was a very advantageous and transparent process as when a secondment offer was made following the already agreed and accepted practices, ICAO could accept it if the proposed secondee met all of the stated requirements. In noting that the areas of need evolved over time, he emphasized that the information published on the ICAO-NET should be updated accordingly and that a link thereto should be included in the State letter/communication announcing the identified areas of need for the triennium.

48. The Alternate Representative of the United States reiterated the need to make every effort to make it as easy as possible for those States that were in a position to offer secondments to do so in a way that reduced the administrative burden on the Secretariat in processing such offers. Underscoring that there were resource constraints in States as well as in the Organization, he expressed the hope that the way in which the *ICAO Policy on Secondment* was implemented in future would facilitate the process and not render it more cumbersome than it needed to be. The Representatives of Germany and the United Kingdom wholeheartedly supported these comments.

49. The Representative of Turkey endorsed the HRC's oral report.

50. To a point raised by the Observer from Uganda, who also served as Chairperson of the AFI SECFAL Steering Committee, the President of the Council reiterated that the needs of the ESAF and WACAF Regional Offices would be addressed through the provision of secondees through the HRDF and the IPAV [cf. paragraph 16, sub-paragraph 4 f) above].

51. In then noting the HRC's oral report, the Council took the action recommended by the Committee, as amended by the President in light of the discussion, and:

- a) decided to leave the *ICAO Policy on Secondment* and *The ICAO Service Code* (Doc 7350) unchanged;
- b) endorsed the process outlined in paragraph 4 of the HRC's oral report whereby the Secretary General will issue a State letter announcing to all Member States the identified areas in which additional resources for Programme activities are required to cover ICAO's Work Programme for the triennium 2017-2019 as presented in the *ICAO Business Plan*, in order to solicit secondment offers in support of the Organization's work, while ensuring that the principles of transparency, efficiency and equal opportunity are upheld, it being understood that the process will not affect existing agreements concluded by ICAO with States or organizations until their expiration;
- c) noted that when the above-mentioned State letter, and any future communication of additional Programme requirements that might arise during the course of the triennium, are disseminated, such information will be posted on the ICAO-NET to enhance accessibility, with a link thereto being included in the State letter/communication; and
- d) noted that the processing of secondment offers should be done in as expeditious a manner as possible.

#### **Any other business**

**Subject No. 13: Work Programmes of Council and its subsidiary bodies**  
**Subject No. 14: Subjects relating to air navigation**

**Subject No. 15: Subjects relating to air transport**

**Political developments in the Middle East Region impacting air traffic management –  
Request by Qatar for the intervention of the Council**

52. The Representative of Egypt, as Coordinator of the Arab Group on the Council, expressed gratitude for the successful visit to ICAO Headquarters the previous day, 15 June 2017, by a high-level Delegation comprising the Ministers of Transport of Saudi Arabia and Bahrain, and the Presidents of the National Civil Aviation Authorities of Saudi Arabia, Bahrain, Egypt and the United Arab Emirates, to convey to the President of the Council and Council Representatives the latest developments in the Middle East region regarding Qatar. He also thanked the President and Council Representatives for their participation in the various meetings that had taken place, which had led to the visit's fruitful results. This statement was duly noted.

53. The meeting adjourned at 1240 hours.



**COUNCIL — 211TH SESSION**

**SUMMARY MINUTES OF THE EIGHTH MEETING**

**(THE COUNCIL CHAMBER, MONDAY, 19 JUNE 2017, AT 1430 HOURS)**

**OPEN MEETING**

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

**PRESENT:**

- |            |                              |                             |                           |
|------------|------------------------------|-----------------------------|---------------------------|
| Algeria    | — Mr. A.D. Mesroua           | Kenya                       | — Ms. M.B. Awori          |
| Argentina  | — Mr. G.E. Ainchil           | Malaysia                    | — Mr. Y.-H. Lim           |
| Australia  | — Mr. S. Lucas               | Mexico                      | — Mr. D. Méndez Mayora    |
| Brazil     | — Mrs. M.G. Valente da Costa | Nigeria                     | — Mr. M.S. Nuhu           |
| Cabo Verde | — Mr. C. Monteiro            | Panama                      | — Mr. G.S. Oller          |
| Canada     | — Mr. M. Pagé                | Republic of Korea           | — Mr. J. Hur              |
| China      | — Mr. Shengjun Yang          | Russian Federation          | — Mr. A.A. Novgorodov     |
| Colombia   | — Mr. A. Muñoz Gómez         | Saudi Arabia                | — Mr. S.A.R. Hashem       |
| Congo      | — Mr. R.M. Ondzotto          | Singapore                   | — Mr. T.C. Ng             |
| Cuba       | — Mrs. M. Crespo Frasier     | South Africa                | — Mr. M.D.T. Peege        |
| Ecuador    | — Mr. I. Arellano            | Spain                       | — Mr. V.M. Aguado         |
| Egypt      | — Mr. A. Khedr               | Sweden                      | — Ms. H. Jansson Saxe     |
| France     | — Mr. P. Bertoux             | Turkey                      | — Mr. A.R. Çolak          |
| Germany    | — Mr. N. Naoumi (Alt.)       | United Arab Emirates        | — Miss A. Alhameli        |
| India      | — Mr. A. Shekhar             | United Kingdom              | — Mr. M. Rodmell          |
| Ireland    | — Mrs. A. Smith Floch        | United Republic of Tanzania | — Mr. R.W. Bokango        |
| Italy      | — Mr. M.R. Rusconi           | United States               | — Mr. S. Kotis (Alt.)     |
| Japan      | — Mr. S. Matsui              | Uruguay                     | — Mrs. M. Gonzalez (Alt.) |

**ALSO PRESENT:**

- |                               |                        |
|-------------------------------|------------------------|
| Mr. H. Yoshimura              | — President, ANC       |
| Dr. N. Luongo (Alt.)          | — Argentina            |
| Mrs. M.F. Loguzzo (Alt.)      | — Argentina            |
| Mr. D. Tavares Taufner (Alt.) | — Brazil               |
| Mr. Chunyu Ding (Alt.)        | — China                |
| Mr. M. Millefert (Alt.)       | — France               |
| Mr. M. Usami (Alt.)           | — Japan                |
| Mr. K.A. Ismail (Alt.)        | — Malaysia             |
| Mrs. D. Valle Álvarez (Alt.)  | — Mexico               |
| Mr. S. Kim (Alt.)             | — Republic of Korea    |
| Mr. K. Lee (Alt.)             | — Republic of Korea    |
| Mr. D. Subbotin (Alt.)        | — Russian Federation   |
| Mr. M.S. Habib (Alt.)         | — Saudi Arabia         |
| Mr. S. Vuokila (Alt.)         | — Sweden               |
| Mr. Ö. Doğrukol (Alt.)        | — Turkey               |
| Mr. M. Salem (Alt.)           | — United Arab Emirates |
| Mrs. K.L. Riensema (Alt.)     | — United Kingdom       |
| Mr. W. Voss (Alt.)            | — United States        |
| Mr. F. de Medina (Alt.)       | — Uruguay              |

**SECRETARIAT:**

- |                  |                 |
|------------------|-----------------|
| Mrs. J. Yan      | — C/OSG         |
| Mr. J. Augustin  | — D/LEB         |
| Mr. S. Creamer   | — D/ANB         |
| Mr. V. Smith     | — D/ADB         |
| Mr. B. Verhaegen | — SELO          |
| Ms. H. Jackson   | — A/C/EAO       |
| Mr. C. Petras    | — LEB           |
| Mr. A. Opolot    | — LEB           |
| Ms. O. Bondareva | — LEB           |
| Mr. A. Larcos    | — ACC           |
| Miss Y. Que      | — Précis-writer |

Representatives to ICAO

Chile  
Ethiopia  
Ghana  
Greece  
Indonesia  
Lebanon  
Mozambique  
Paraguay  
Sudan

Airports Council International (ACI)  
Civil Air Navigation Services Organization (CANSO)  
International Air Transport Association (IATA)  
European Union (EU)

**Subject No. 12.5: Plans for legal meetings**  
**Subject No. 16: Legal work of the Organization**

**Convening of the 37th Session of the Legal Committee**

1. The Council considered this item on the basis of C-WP/14616 (Revised), which recommended to the Council to convene the 37th Session of the Legal Committee to consider the General Work Programme of the Committee.

2. In presenting the working paper, the Secretary General emphasized that the period of 4 to 7 September 2018 had been identified as the most suitable date for the holding of the 37th Session of the Legal Committee, following due consideration by the Chairman of the Legal Committee and given the varying degrees of maturity of the items on the work programme.

3. Turning to paragraph 1.1, item 8 of the work programme, the Representative of France took note of a survey to be completed by the Secretariat on the implementation of Article 21 of the Chicago Convention by the end of July 2017 and of the convening of a meeting from 27 to 29 September 2017. Mindful of the work slowdown in the summer months, he expressed hope that the survey could be sent out to the States as soon as possible in order to obtain as many responses as possible and thereby ensure an efficient and fruitful meeting. In response, the Director of the Legal Affairs and External Relations Bureau (D/LEB) informed that the survey and the letter of invitation to the September meeting had all been approved internally and were currently in translation. He added that they would be sent out once translation was completed.

4. Responding to a comment by the Representative of South Africa for the inclusion in the work programme of the issue of air space within the context of the work of ICAO and the United Nations Office for Outer Space Affairs (UNOOSA), especially in view of a related conference held in Vienna this month, D/LEB reminded the Council that a paper on the subject had been presented at the Legal Committee meeting in early December 2015, where it was decided not to include the item in the work programme because the issue of commercial space flights was deemed to be still in a nascent stage. However, he indicated that the request could be resubmitted to the Legal Committee if the Council so desired.

5. D/LEB also addressed other issues raised by the Representative of South Africa: On the status of the Cape Town Convention and Protocol, he replied that there were 66 Parties to the Convention thus far. On the ratification of Articles 50 (a) and 56 of the Chicago Convention to increase the number of seats in the Council and the Air Navigation Commission (ANC), the Council was informed that only one ratification from Sweden had been received so far. With respect to the International Union of Aerospace Insurers (IUAI) which had been invited to the meeting of the Legal Committee, D/LEB advised that it was a UK-based umbrella organization of aviation insurers that had been active during the diplomatic conference and negotiations leading up to the 2009 Convention but not so much at the moment. Finally, regarding the suggestion of the Representative of South Africa to replace the phrase “on demand” with “upon request” in Article 21 of the Chicago Convention, D/LEB affirmed that “on demand” was the phrase used in the Chicago Convention and was so duly reproduced.

6. The President of the Council commented that should the issue of commercial space flights gain increasing prominence in the immediate future, then it would be possible for the IUAI to be invited to be a party to the discussions because of the issue of third party liabilities arising from space travel or commercial space travel.

7. While concurring with Action items a), b) and c) as outlined in the Executive Summary of the working paper, the Representative of Spain asked how the issue of cybersecurity and States' responsibilities was to be dealt with under the ICAO conventions. D/LEB replied that while the issue of cybersecurity was not covered within the context of Article 3 *bis* of the Chicago Convention, the Beijing Convention did have a provision (Article 1 (d) refers) encompassing attacks against civil aviation, including "air navigation facilities" whose definition had been broadened to include data and other elements necessary for the navigation of the aircraft. He added that though not yet entered into force, the Beijing instruments were comprehensive enough and had made such acts illegal.

8. Addressing the query of the Representative of Brazil on how to provide for possible addition of issues to the provisional agenda between now and the meeting next year, D/LEB agreed with the option of adding "Any other business" as item (9) to the provisional agenda, which would adequately account for any new or emerging issues especially since it would otherwise be difficult to modify the agenda once it had been approved by the Council.

9. Responding to a comment by the President of the Council, D/LEB reaffirmed that the issue of cybersecurity was covered, not by the existing items of the work programme as outlined in Appendix A of C-WP/14616 (Revised), Appendix A, but rather by the Beijing Convention. He further explained that this item 2, no. 3) of the work programme was last used to cover the issue of unruly passengers and was essentially aimed at issues, acts or offences of concern to the aviation community which were otherwise not covered by the existing air law instruments. However, he added that the Legal Committee could certainly pronounce itself on the adequacy of the Beijing provisions vis-a-vis cybersecurity if so instructed by the Council.

10. The President of the Council suggested, and D/LEB concurred, that the Legal Committee consider reexamining the issue of aerospace law, that is, aviation law and space law, by including it under "Any other business" in order to study new knowledge gained and new developments in the field.

11. While endorsing Action items a), b) and c) outlined in the Executive Summary of C-WP/14616 (Revised), the Representative of Malaysia took note of paragraph 2.6 and suggested that the Secretariat carry out more work with respect to the issue of CNS/ATM systems including global navigation satellite systems (GNSS) and the establishment of a legal framework. For instance, the Representative suggested that the Secretariat could conduct surveys and solicit feedback from States.

12. In response, D/LEB recounted that exhaustive work involving enormous resources and energies of the Secretariat and the States had already conducted over the years in this area by the Secretariat, resulting in one Appendix in a Resolution and two separate Assembly Resolutions, including a chapter on the rights and obligations of States. These outcomes had been presented to the Legal Committee and then to successive Assemblies, including the last Assembly, where it was decided not to pursue the issue any further. He also explained that despite attempts in the past to remove item 4) from the work programme, it had been kept because of the expectation of financial assistance for the implementation of the global navigation system (GNS) and CNS/ATM. In view of this, D/LEB questioned if this was still a legal issue that deserved a legal solution.

13. Commending D/LEB for his clarification and summation of the historical context in relation to the CNS/ATM systems item, the Representative of the United States pointed out that throughout the entire discussion of the issue, the Chicago Convention and the Annexes had provided all the legal framework necessary to run air traffic control, including all the navigation aids, and that there had never been a case where an operator had not been able to implement the GNSS due to a lack of legal framework. Highlighting the ongoing and anticipated budget constraints at ICAO, the Representative of the United States stressed that limited resources should not be devoted anymore to this issue.

14. Separately, on the issue of civil/State aircraft (Appendix A, item 2, no. 5) of C-WP/14616 (Revised) refers), the Representative of the United States was of the view that this should not be part of the work programme for the following reasons: The very thorough study that LEB had conducted on the subject over 20 years ago had, in the view of experts, stood the test of time. Moreover, it was unlikely that States could agree on the definition of State aircraft beyond Article 3 b) of the Chicago Convention. The Representative of the United States also disagreed that there were grey areas on the issue, contending that any given aircraft was either civil, in which case it has civil clearance, or State, in which case it has diplomatic clearance. He repeated that limited resources should not be spent any more than they had to be on items for which for further work was required such as this item.

15. The Representative of Spain meanwhile was in favour of maintaining the issue of CNS/ATM on the work programme in view of the growing shift to an air navigation system with global components and a possible new satellite constellation providing support for services around the world.

16. With respect to the general work programme of the Legal Committee, the President of the Council indicated that none of the items could be removed since they had already been approved by the Council. However, he suggested bringing to the attention of the Legal Committee the need to reformulate the items on the agenda in order to better reflect the developments in certain technical areas.

17. Concurring with the comment of the President, the Representative of Colombia noted the importance of dealing with the issue of global tracking in a proactive way and suggested establishing a committee to address the issue in coordination with the Legal Committee.

18. To the comment by the Representative of Saudi Arabia about the timing of the Legal Committee meeting being inconvenient to certain countries given observances in the Islamic religion, D/LEB reassured him that in fact these considerations had already been taken fully account of and that the dates of the Legal Committee meeting had been duly shifted from the beginning of June to September 2018 in order to accommodate potential participation from all countries.

19. The Secretary General agreed on the need to consider the more complex and emerging issues as well as issues closer to the programme activities in various areas, such as air navigation, safety, cybersecurity and security. She stressed in particular that industry was urgently in need of legal advice, so ICAO needed to be proactive in providing leadership. With respect to the issue of ratification, she stressed the need for the Secretariat to reach out more to the States, in particular encourage them to promote the ratification of the international legal instruments in order to support further development of safe, secure and efficient civil aviation operations. She indicated that the Legal Bureau and the Secretariat would work with the Council to promote the legal instruments for safeguarding international civil aviation.

20. On the ratification of international air law instruments, the President of the Council pointed out that this was not only a combined responsibility for him and the Secretary General, but also the collective responsibility of the States. In particular, he urged those States that had called for the increase of the number of seats of the Council and the ANC to promote, either individually, collaboratively or regionally, the ratification of not only the air law instruments but also the implementation of the relevant Assembly Resolutions.

21. Following consideration, the Council:

- a) approved the convening of the 37th Session of the Legal Committee for four working days from 4 to 7 September 2018;



- b) approved the provisional agenda of the Session as set out in Appendix A to the working paper, subject to the addition of an item “Any other business” that would enable the Legal Committee to consider additional items that might arise in the intervening period following the issuance of the provisional agenda;
- c) requested the Legal Committee to give consideration to including in the provisional agenda an item concerning legal aspects related to developments in space law in the context of activities being undertaken by the UNOOSA insofar as they apply to the ICAO mandate, on the understanding that any such consideration could be proceeded with under the agenda item “Any other business” as determined in the preceding sub-paragraph;
- d) also requested the Legal Committee to give consideration to including in the provisional agenda an item concerning cybersecurity and specifically whether the legal aspects of this issue are currently adequately covered by provisions of the Beijing Convention;
- e) further requested the Legal Committee to review the current wording of item 4 of the provisional agenda “Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), and the regional multinational organisms, of the establishment of a legal framework”, with a view to reformulating the wording of this item in a manner that better reflected developments in the technical arena that had occurred in recent years, including, inter alia, global tracking initiatives as well as the adoption of the Global Air Navigation Plan (GANP); and
- f) agreed that the invitation to attend the Session be extended to all non-Contracting States as well as those international organizations set out in Appendix B to the working paper.

22. In relation to any other subsequent items that might be added to provisional agenda of the Legal Committee in the period between the issuance of the agenda and the meeting taking place in September 2018, it was understood that such new items would be brought to the attention of the Council.

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

**Oral Report of the RHCC — Progress achieved by  
the Committee on Relations with the Host Country (RHCC)**

23. The Council considered this item on the basis of an oral report presented by the Chairperson of the RHCC (Representative of the Russian Federation). The Council was also informed by the Chairperson of the RHCC that the Canadian Delegation had arranged a meeting with Quebec and municipal police officials for Tuesday, 27 June 2017. Aside from the Chairperson himself, the Dean of the Council (Representative of Mexico), representatives from LEB, the Director of ADB, the Chief of the Staff Employment Administration Section, representative from the Staff Association and the Representative from the Permanent Mission of Canada would attend the meeting, while from the Quebec side, representatives from the municipal police of Quebec, the Ville de Montreal, the Sureté of Quebec and the Service de Police de la Ville de Montréal (SPVM) would take part.

24. On the meeting, the Representative of Canada explained that together with the Chairperson of the RHCC, it was thought that a preliminary meeting with the police authorities would be useful to get a better understanding of the problems that had been raised, prior to a meeting taking place with all Council Representatives.

25. The Representative of Kenya thanked the Chairperson of the RHCC for invigorating the work of the Committee and for facilitating a clear direction with solutions since he had been appointed to the role.

26. The Representative of Colombia endorsed the report and also thanked Canada for all the courtesies and facilities extended. Pointing to the negotiations with Quebec over the years, he expressed delight over the anticipated outcome of the meeting between the Secretary General and the Quebec authorities. On the bank issue, he suggested that the RHCC also talk to other banks to better acquaint them with ICAO and use the leverage to obtain for the Representatives to ICAO the same banking benefits that ICAO staff enjoyed at the Royal Bank of Canada (RBC).

27. In relation to the proposed New Understanding with Quebec, it was noted by the Council that the discussions on the remaining outstanding items were currently in their final stages and that once the finalized draft text of the document was received, it would be immediately considered by the RHCC following which it would be submitted to the Council.

28. In relation to issues that had been previously raised vis-a-vis ensuring that the Montreal municipal police (SPVM) gained a better appreciation of the privileges and immunities of the ICAO diplomatic community (C-DEC 209/4 refers), the Council took note of the preliminary meeting to be held on Tuesday, 20 June 2017 involving the Chairperson of the RHCC, Representative of Canada and representatives of the SPVM, with a view to holding a briefing of all Representatives on a subsequent date.

29. In closing, the Council expressed its appreciation to the Chairperson of the RHCC as well as to the Delegation of Canada for the excellent progress that had been achieved and for all the assistance they had provided in facilitating the consideration and resolution of a number of issues.

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

**Oral Report of the WGGE — Review of the  
Terms of Reference of the Evaluation and Audit Advisory Committee (EAAC)**

30. The Council considered this item on the basis of an oral report presented by the Chairperson of the Working Group on Governance and Efficiency (Representative of India).

31. In his report, the Chairperson of the WGGE recalled that at its ninth meeting during the 210th Session, the Council had requested the WGGE to review certain proposals to amend paragraphs 5.2 and 8.1 of the EAAC terms of reference (TORs) and report to the Council during the 211th Session. The proposed amendments concern extending the EAAC oversight role to cover the ethics function and other ethics-related matters.

32. The Council noted the conclusions reached by the WGGE insofar as the proposals to amend the EAAC TORs could be addressed as part of the proposed review of the ICAO Framework on Ethics, which the WGGE was separately undertaking (C-DEC 210/8 refers). In this connection, the Council agreed to defer further consideration of the proposed amendments to the EAAC TORs to a future

session in order to facilitate a holistic review by the WGGE of those amendments alongside the ICAO Framework on Ethics. In addition, the Council agreed that the WGGE be mandated to include in its review of the EAAC TORs, the process for the nomination and selection of the EAAC members.

**Subject No. 14.3.9: Communications**

**Approval of the ICAO position for the International Telecommunication Union (ITU)  
World Radiocommunication Conference (2019) (WRC-19) and  
Updates to the ICAO Frequency Policy Statements**

33. The Council considered this item on the basis of C-WP/14608, which presented a proposal of the Air Navigation Commission (ANC) for the ICAO Position on items of interest to aviation that are on the agenda of the International Telecommunication Union (ITU) World Radiocommunication Conference (2019) (WRC-19). Also presented were proposed amendments to the ICAO spectrum strategy and policy statements, which were included in the ICAO *Handbook on Radio Frequency Spectrum Requirements for Civil Aviation*, Volume I — *ICAO Spectrum Strategy, Policy Statements and Related Information* (Doc 9718).

34. In presenting the working paper, the President of the ANC (P/ANC) pointed out that the development and review of the proposed ICAO position for WRC-19 had followed the established process and had resulted in the receipt of 28 replies to the related State Letter (SL E 3/5-16/90 refers). He summed up the key features of the ICAO position, described the major threats to aviation should ICAO's spectrum goal not be met in a satisfactory manner, and highlighted the measures that States should take to support the ICAO position with respect to the ITU WRC-19. He also reminded that Assembly Resolution A38-6 *Support of the ICAO policy on radio frequency spectrum matters*, had instructed both the Council and the Secretary General to ensure necessary resources to support increased participation by ICAO in international and regional spectrum management activities.

35. The Secretary General advised the Council that while attending the Chief Executives Board meeting of the United Nations held in Geneva last April, she had met with the Secretary-General of International Telecommunication Union (ITU) to discuss strengthening the partnership and communication between the two organizations, including working closely on the ITU WRC-19. She added that the ICAO Regional Directors had been instructed to follow closely regional spectrum events preparing for the ITU WRC-19 in order to build up the ICAO position, in cooperation with the Member States and regional organizations, as well as to secure the spectrum for the development of civil aviation globally.

36. The Representative of Spain thanked P/ANC and the Secretary General for the working paper and for identifying the actions required, respectively. He observed however that the 28 replies received in response to the State Letter was not very much given the importance of the issue. With respect to the two issues of global aeronautical distress and safety system (GADSS) and the stations on board sub-orbital vehicles, referred to in paragraph 2.3, he underlined the need for electromagnetic spectrum in view of the evolving global aviation system. Turning to Appendix B of C-WP/14608, he welcomed the information about the future development of the system, the strategy and the 40-year long-term vision which he deemed necessary for the proper development of the air navigation system. Concurring with the need for a holistic approach to the CNS system, new systems and the necessary spectrum, he asked that the right spectrum for these services be ensured. Finally, he supported the recommendation outlined by P/ANC in paragraph 3.1 and suggested its inclusion in the State Letter advising States of the actions that they should take.

37. To the comments by the Representative of Spain, the President of the Council added that the State Letter might also take into account paragraphs 2.3, 2.4 and 2.5 of the working paper, specifically all the possible risks should ICAO's spectrum goals not be achieved.

38. Following consideration, the Council:

- a) approved the ICAO Position for the ITU WRC-19 as contained in Appendix A to the working paper;
- b) requested the Secretary General to submit to the ITU WRC-19, in an appropriate format, the contents of Appendix A together with any additional supporting material from ICAO studies;
- c) approved the amendments to the ICAO frequency (RF) spectrum strategy and policy statements as contained in Appendix B for later incorporation in Doc 9718;
- d) requested the Secretary General to transmit the approved ICAO Position to States, international organizations and relevant regional telecommunications organizations, taking into account the issues referred to in paragraphs 2.3, 2.4 and 2.5 of C-WP/14608, while indicating the need for their support and their participation in regional WRC-19 preparatory meetings and symposia; and
- e) requested the Secretary General to ensure adequate resources and participation of ICAO Secretariat personnel in the ITU and regional preparatory groups leading to this conference, and during WRC-19.

**Subject No. 12: Programme of ICAO meetings**

**Programme of ICAO meetings for 2018 and  
Tentative Programme of Meetings for 2019-2020 (C-WP/14623)**

39. The Council considered this item on the basis of C-WP/14623, which presented the programme of meetings for the year 2018 and, for planning purposes, the tentative programme of meetings for the years 2019 and 2020. The Council also had, for consideration, an oral report thereon from the Working Group on Governance and Efficiency (WGGE).

40. In presenting his oral report, the Chairperson of the WGGE (Representative of India) took note of the scheduling conflict of certain meetings with the Ramadan in 2018 and recalled that the issue had been settled accordingly for the 37th Session of the Legal Committee.

41. To a query by the Representative of Spain about the convening of a global meeting on assistance to families of victims, the Director, Bureau of Administration and Services (D/ADB) confirmed that the meeting had been proposed for the second quarter of 2020.

42. Referring to paragraphs 5 and 6 of C-WP/14623, the Representative of the Russian Federation brought up the issue of language services and expressed hope that the related concern would be addressed with concrete action in that these services would be provided to the events listed. He also questioned the Category 4 classification of the ICAO World Aviation Forum (IWAF), which he deemed important, and called for a review of the categorization of the meetings.

43. To the query of the Representative of South Africa about issues concerning search and rescue, COSPAS-SARSAT and ICAO's relations with the International Maritime Organization, D/ANB suggested a bilateral meeting to address the issues. P/ANC added that depending on the comments received from the Member States, search and rescue might be included in the agenda of the Thirteenth Air Navigation Conference (AN-Conf/13) in 2018.

44. Commenting on the IWAF, the President of the Council first expressed his appreciation to the Government of Nigeria for its offer to host the 2017 event, which would help to bring an added focus on the need for infrastructure development in Africa. In his view, such events warranted a classification beyond category 4, especially since in the case of the IWAF, the outcomes carried significant implications vis-a-vis ensuring that infrastructure development in Africa would be consistent with the ICAO global plans, including the GANP and the GASP.

45. In closing its consideration of this item, the Council noted that the proposed agenda for the Thirteenth Air Navigation Conference (AN-Conf/13), as reflected in Appendix page A-3 of C-WP/14623, would be submitted to the Council for consideration at its next session, at which time the proposed number of days for the meeting would be further reviewed. It was further *noted* that with regard to convening a global ICAO meeting on family assistance, this would now be added to the programme of meetings and scheduled to occur in the second quarter of 2020.

46. In addition, it was understood that the Secretariat would be undertaking an ongoing review of the requirements in the provision of language services, as appropriate, for all events scheduled in the programme of meetings.

47. Following its consideration, the Council:

- a) approved the programme of meetings for 2018 presented in Appendix A to C-WP/14623 and taking into consideration that the dates for the convening of certain meetings will be decided at a later date; and
- b) approved, for planning purposes, the programme of meetings of the years 2019 and 2020, as presented in Appendices B and C respectively, subject to the Council's agreement to any amendments that will be proposed by the Secretariat.

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

**Request from the Aviation Accreditation Board International (AABI) to be included in the List of international organizations that may be invited to attend suitable ICAO meetings (C-WP/14610)**

48. The Council decided to defer consideration of this item until the 212th Session of the Council.

**Any Other Business**

**Subject No.16: Legal work of the Organization**

**Subject No. 26: Settlement of disputes between Contracting States  
Settlement of Differences: Brazil and the United States**

49. Recalling that this item was scheduled for consideration at the next meeting in the current session (Wednesday, 21 June 2017), the President of the Council indicated that in accordance to Articles 7.4 and 9 of the *Rules for the Settlement of Differences* (Doc 7782), it was necessary for the Council to establish a time limit for the submission by the parties of documentation pertaining to the case. He then advised of a request by the Delegation of the United States to submit additional information. Given that no time limit had previously been set by the Council, the proposal before the Council was that either party could submit additional information and evidence related to the case by no later than close of

business on Tuesday, 20 June 2017 and that the additional evidence would be circulated before the Council meeting on Wednesday, 21 June 2017.

50. The Representative of the United States confirmed the planned submission of two additional pieces of information from his State, with one document aiming to supplement the package of information presented by Brazil and another providing background information.

51. The Representative of Brazil expressed concern that the proposed time limit would not give the Brazilian Delegation, which was already on its way to Montreal and arriving only on Tuesday (20 June 2017), enough time or the resources needed to respond properly to the additional information being provided in the United States submission. To her query if the consent of both parties involved in the dispute was necessary to approve the time limit, D/LEB clarified that pursuant to the relevant articles of the *Rules for the Settlement of Differences*, the consent of the other party was not necessary if the Council itself gave permission for the submission of additional documents and that time limit could be set by the Council.

52. Taking note of the concern of Brazil, the Representative of the Russian Federation suggested extending the time limit to give Brazil sufficient time to react to the additional information submitted. This was supported by the Representative of South Africa, who also brought up the need for more time for the Council Representatives to confer with their respective governments. So he proposed deferring the discussions to the next session of the Council.

53. In general, the comments put forward were in favour of allowing the parties to submit additional information and of extending the deadline, possibly to Friday, 21 June 2017, to give more time for the Council, including Brazil, to review the information. The comments to that effect came from the Representatives of the Russian Federation, South Africa, Saudi Arabia, Singapore, Malaysia, Colombia and Panama.

54. The Representative of Turkey was of the view that the Council schedule be kept as is and the additional evidence be evaluated at a later date. He further suggested that the United States might share the additional information informally with the Council to expedite the review process.

55. Responding to a query raised by the Representative of Kenya, D/LEB ruled out the applicability of Article 19.5 of the *Rules for the Settlement of Differences* in this case.

56. Citing Article 7.4 of the *Rules for the Settlement of Differences*, the Representative of Australia suggested that the two parties involved meet to discuss and review the additional material before the Council moved forward. Furthermore, he cautioned against the circulation of evidence on an informal basis for the Council in its judicial function. This view was supported by the Representative of the United Kingdom who, mindful of the heavy work programme of the Council for the current session, also asked that all avenues be exhausted before making a decision on deferral.

57. Following consideration of the requirement to establish a time limit for the submission of documentation as well as of the request by the United States to be permitted to submit additional information, the Council *agreed* that the President should consult with both the Representatives of Brazil and the United States in order to ascertain whether there was agreement between the parties on the question of whether additional information could be submitted by either party at this stage.

58. Note was also *taken* of a proposal to defer consideration by the Council of this item and in this connection, the President undertook to consult with both the Representatives of Brazil and the

United States in order to determine the implications, if any, arising for both parties should this item be deferred.

59. Subject to the consultations that would be undertaken as referred to in the preceding paragraphs, it was understood that the Council would be informed in due course on the outcomes thereof.

**Subject No. 27: Convention on International Civil Aviation (Chicago Convention)**

**Request by Qatar pursuant to Articles 54 (n) and 84 of the Chicago Convention**

60. The Council was informed that the President of the Council had received correspondence from Qatar formally requesting the Council to consider during the current session a matter under Article 54 (n) of the Chicago Convention. It was noted that this request would entail the inclusion of a supplementary item in the work programme of the current session. The President indicated that in an e-mail message that he had circulated earlier in the day, Council Representatives were requested to consider and respond to this request before noon on Wednesday, 21 June 2017.

61. The President of the Council further advised that should the Council vote in favour of inclusion of the supplementary item in the current session, then in line with Article 53 of the Chicago Convention, Bahrain and Qatar would be invited to the pertinent Council meeting on grounds of special interest. If, however, the overall Council vote was negative, then a decision would have to be made either to include the supplementary item in the next session or to convene an extraordinary session because once a request was made under Article 54 (n), the issue had to be considered and a decision taken. He also assured the Council that the Organization was continuing its efforts to reach an amicable resolution of the pertinent issues through the Office of the President, the Office of the Secretary General and the Regional Office in Cairo.

62. The Representative of the Russian Federation commented that Article 2 (g) of the *Rules for the Settlement of Differences* should apply with respect to the request of Qatar, stressing that the practice had always been to encourage the parties to try to find bilateral solutions.

63. In response, the President of the Council explained that aside from two Article 84 (of the Chicago Convention) Applications and Memorials that Qatar had submitted to the Secretariat, it had also submitted this aforementioned request under Article 54 (n) and that it was this request that the Council Representatives had to vote for or against.

64. In his comments, the Representative of Egypt first thanked the Council and the Secretariat for their positive reactions to the clarifications presented by the high level delegation of Egypt during its visit to ICAO on 15 June 2017. On the Article 54 (n)-related request of Qatar, he maintained that such an item could not be considered due to the lack of information from Qatar as well as given the ongoing talks currently taking place under the auspices of the Regional Office.

65. Endorsing the comment of the Representative of Egypt, the Representatives of Saudi Arabia and the United Arab Emirates both contended that the Qatar request should be addressed under Article 84 as a matter of dispute settlement.

66. To the questions raised by the Representatives of the Russian Federation and Kenya on the expected outcome of the Qatar request, the President of the Council reiterated that no decision other than a yes or no to the Qatar request was being asked of the Council members for the moment, adding that they had until Wednesday, 21 June 2017, to consult their respective governments.

67. The Council was also informed by the Secretary General of the related request from Qatar by which ICAO had been presented with two Applications and Memorials under the formal dispute settlement mechanism of Chapter XVIII of the Convention. In this connection, it was understood that both applications and memorials were currently being reviewed by the Secretariat in order to ensure that they comply in form with the requirements set out in Article 2 of the ICAO *Rules for the Settlement of Differences* and that the Council would be informed of the outcome of this review in due course.

68. The Secretary General further advised that through the Regional Office in Cairo and the Air Navigation Bureau, ICAO was working with the Member States in the region at the technical level in order to find a technical solution for a contingency plan for this region over the high seas. She added that coordination was ongoing and that the Council would be informed accordingly of any progress made.

69. The meeting adjourned 1740 hours.





**COUNCIL — 211TH SESSION**

**SUMMARY MINUTES OF THE NINTH MEETING**

**(THE COUNCIL CHAMBER, WEDNESDAY, 21 JUNE 2017, AT 1000 HOURS)**

**CLOSED MEETING**

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

**PRESENT:**

- |            |                              |                             |                        |
|------------|------------------------------|-----------------------------|------------------------|
| Algeria    | — Mr. A.D. Mesroua           | Kenya                       | — Ms. M.B. Awori       |
| Argentina  | — Mr. G.E. Ainchil           | Malaysia                    | — Mr. Y.-H. Lim        |
| Australia  | — Mr. S. Lucas               | Mexico                      | — Mr. D. Méndez Mayora |
| Brazil     | — Mrs. M.G. Valente da Costa | Nigeria                     | — Mr. M.S. Nuhu        |
| Cabo Verde | — Mr. C. Monteiro            | Panama                      | — Mr. G.S. Oller       |
| Canada     | — Mr. M. Pagé                | Republic of Korea           | — Mr. J. Hur           |
| China      | — Mr. Shengjun Yang          | Russian Federation          | — Mr. A.A. Novgorodov  |
| Colombia   | — Mr. A. Muñoz Gómez         | Saudi Arabia                | — Mr. S.A.R. Hashem    |
| Congo      | — Mr. R.M. Ondzotto          | Singapore                   | — Mr. T.C. Ng          |
| Cuba       | — Mrs. M. Crespo Frasier     | South Africa                | — Mr. M.D.T. Peege     |
| Ecuador    | — Mr. I. Arellano            | Spain                       | — Mr. V.M. Aguado      |
| Egypt      | — Mr. A. Khedr               | Sweden                      | — Ms. H. Jansson Saxe  |
| France     | — Mr. P. Bertoux             | Turkey                      | — Mr. A.R. Çolak       |
| Germany    | — Mr. U. Schwierczinski      | United Arab Emirates        | — Miss A. Alhameli     |
| India      | — Mr. A. Shekhar             | United Kingdom              | — Mr. M. Rodmell       |
| Ireland    | — Mrs. A. Smith Floch        | United Republic of Tanzania | — Mr. R.W. Bokango     |
| Italy      | — Mr. M.R. Rusconi           | United States               | — Mr. S. Kotis (Alt.)  |
| Japan      | — Mr. S. Matsui              | Uruguay                     | — Mr. M. Vidal         |

**ALSO PRESENT:**

- |                                  |                     |
|----------------------------------|---------------------|
| Dr. N. Luongo (Alt.)             | — Argentina         |
| Mrs. M.F. Loguzzo (Alt.)         | — Argentina         |
| Mr. O. Vieira (Authorized Agent) | — Brazil            |
| Mr. N. Moretti (Alt.)            | — Brazil            |
| Mr. N. Castro da Silva (Alt.)    | — Brazil            |
| Mr. L. Sacchi Guadagnin (Alt.)   | — Brazil            |
| Mr. G. do Prado Lima (Alt.)      | — Brazil            |
| Mr. R. da Rosa Costa (Alt.)      | — Brazil            |
| Mr. D.A. Tavares Taufner (Alt.)  | — Brazil            |
| Mr. R.H. Godinho (Alt.)          | — Brazil            |
| Ms. A. Brandão Barbosa (Alt.)    | — Brazil            |
| Mr. L.A. Angelo Junior (Alt.)    | — Brazil            |
| Mr. P. Langlais (Alt.)           | — Canada            |
| Mr. F. Neubauer (Alt.)           | — Canada            |
| Mr. Chunyu Ding (Alt.)           | — China             |
| Mr. M. Millefert (Alt.)          | — France            |
| Mr. N. Naoumi (Alt.)             | — Germany           |
| Mr. M. Usami (Alt.)              | — Japan             |
| Mr. K. A'amali bin Ismail (Alt.) | — Malaysia          |
| Mrs. D. Valle Álvarez (Alt.)     | — Mexico            |
| Mr. S. Kim (Alt.)                | — Republic of Korea |
| Mr. K. Lee (Alt.)                | — Republic of Korea |

**SECRETARIAT:**

- |                  |                 |
|------------------|-----------------|
| Mrs. J. Yan      | — C/OSG         |
| Mr. J. Augustin  | — D/LEB         |
| Mr. S. Creamer   | — D/ANB         |
| Mr. B. Verhaegen | — SELO          |
| Mr. A. Jakob     | — SLO           |
| Mr. C. Petras    | — LO            |
| Mr. A. Opolot    | — LO            |
| Ms. M. Weinstein | — LO            |
| Mr. Y. Nyampong  | — LO            |
| Mrs. D. Brookes  | — LEB           |
| Mr. M. Vaugeois  | — LEB           |
| Mr. A. Larcos    | — ACC           |
| Miss S. Black    | — Précis-writer |

**ALSO PRESENT (CONTINUED):**

Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. M.S. Habib (Alt.)	— Saudi Arabia
Mr. S. Vuokila (Alt.)	— Sweden
Mr. Ö. Dođrukol (Alt.)	— Turkey
Mr. M.A.B. Salem (Alt.)	— United Arab Emirates
Mr. A. Alnaqbi (Alt.)	— United Arab Emirates
Mr. J.C. Salazar (Alt.)	— United Arab Emirates
Mrs. L. Coquard-Patry (Alt.)	— United Arab Emirates
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Ms. K. McManus (Authorized Agent)	— United States
Ms. D. Polebaum (Alt.)	— United States
Ms. L. Fussell (Alt.)	— United States
Ms. W. Teel (Alt.)	— United States
Mr A. Iyi-Eweka (Alt.)	— United States
Mr. C. Burleson (Alt.)	— United States
Mr. D. Sullivan (Alt.)	— United States
Mr. J. Klang (Alt.)	— United States
Mr. J. Duncan (Alt.)	— United States
Mrs. M. Gonzalez (Alt.)	— Uruguay
Mr. F. de Medina (Alt.)	— Uruguay

**Representatives to ICAO**

Bolivia (Plurinational State of)  
Chile  
Cyprus  
Ghana  
Greece  
Indonesia  
Nicaragua  
Paraguay  
Peru  
Sudan  
Venezuela (Bolivarian Republic of)

**Subject No. 16:           Legal work of the Organization**  
**Subject No. 26:           Settlement of disputes between Contracting States**

**Settlement of Differences: Brazil and the United States (2016) – Preliminary Objection stage**

1.           On behalf of the Council, the President extended a welcome to Mr. Olyntho Vieira, the Authorized Agent of Brazil, Ms. Katherine McManus, the Authorized Agent of the United States, and their respective Delegations.
2.           The Council then proceeded to consider the above case on the basis of: **C-WP/14617 Restricted (with Addendum No. 1)**, in which the Secretary General provided an overview of the procedure applicable to the disagreement between Brazil and the United States during the preliminary objection stage; memorandum **SG 2360/17** dated 10 April 2017, in which the Secretary General transmitted the Statement of Preliminary Objection filed by the Delegation of the United States to ICAO in accordance with Article 5 of the *Rules for the Settlement of Differences* (Doc 7782), and related memorandum **SG 2362** dated 23 May 2017; memorandum **SG 2364/17** (with Blue rider) dated 24 May 2017, in which the Secretary General transmitted the Comments in response to the Statement of Preliminary Objection, including exhibits, filed on behalf of Brazil; and, pursuant to C-DEC 211/8, paragraphs 19 and 20, memorandum **SG 2368/17** dated 20 June 2017, in which, with the agreement of the two Parties on the understanding that circulation on that date should not be used as a reason to postpone discussion and decision on this matter, the Secretary General transmitted a Note Verbale from the Delegation of the United States to ICAO dated, and received on, 16 June 2017, submitting two documents as additional evidence and requesting their inclusion in the record.
3.           Document C-WP/14617 Restricted presented, in paragraph 2, the Application and Memorial filed by Brazil on 2 December 2016 for the settlement, under Article 84 of the Chicago Convention and Article 2 of the *Rules for the Settlement of Differences* (Doc 7782), of the disagreement with the United States regarding the application of Article 12 of the Chicago Convention and Standard 3.1.1 of its Annex 2 – *Rules of the Air* in the aftermath of “the collision, on September 29<sup>th</sup> 2006, of the air carrier Boeing 737-8EH operating a regular flight GLO 1907, and air jet Legacy EMB-135BJ operating a flight by ExcelAire Services Inc.” The four types of relief sought from the Council by Brazil, as Applicant, were also set forth in that paragraph.
4.           The Statement of Preliminary Objection submitted by the United States, as Respondent, on 27 March 2017 in accordance with Article 5 of the *Rules for the Settlement of Differences* (Doc 7782) requested that the Applicant’s claim be dismissed by the Council as time-barred under the generally-accepted international law principle of extinctive prescription.
5.           Pursuant to Article 5 (3) of the said Rules, upon a preliminary objection being filed, the proceedings on the merits shall be suspended and, with respect to the time-limit fixed under Article 3 (1) (c) of the Rules as regards to the Counter-Memorial, time shall cease to run from the moment the preliminary objection is filed until the objection is decided by the Council
6.           Addendum No. 1 to document C-WP/14617 Restricted summarized the Comments submitted by the Applicant (Brazil) on 19 May 2017 in response to the Statement of Preliminary Objection of the Respondent (United States), in which the Applicant requested the Council to: reject the propositions in the Respondent’s Preliminary Objection and reaffirm the Council’s competence to consider Brazil’s Application and Memorial; and order that the period given to the Respondent for the filing of its Counter-Memorial shall begin to run again immediately following the Council’s rejection of the Preliminary Objection.

7. In the executive summary of the paper, the Council was invited to hear the arguments of the Parties relating to the Preliminary Objection and to take a decision on the matter in line with the procedure set forth in Article 5 of the Rules for the Settlement of Differences (Doc 7782), paragraph (4) of which specified that “If a preliminary objection has been filed, the Council, after hearing the Parties, shall decide the question as a preliminary issue before any further steps are taken under these Rules.”. The requirements set forth in Article 15 of the said Rules were referenced in paragraph 5.3 of the paper.

8. It was recalled that, for the case before it, the Council was sitting as a judicial body under Article 84 of the Chicago Convention, taking its decisions on the basis of the submission of written documents by the Parties, as well as on the basis of oral arguments. The Council’s consideration was limited to the United States’ Statement of Preliminary Objection and to Brazil’s Comments in response thereto, and would not address the merits of the case. The *Rules for the Settlement of Differences* (Doc 7782) and the *Rules of Procedure for the Council* (Doc 7559) served as reference documents.

9. In then inviting each Party to present their arguments relating to the Preliminary Objection, the President of the Council indicated that the presentations should not exceed 20 minutes in duration and that each Party would subsequently be afforded an additional five minutes for a rebuttal, if necessary.

#### ***Presentation by the Authorized Agent of the United States***

10. The Council heard a presentation by Ms. Katherine McManus, a Deputy Legal Adviser at the United States’ Department of State, who was the Authorized Agent of the United States in this proceeding. She was joined by a highly qualified group of United States Government colleagues – technical and legal experts from the Department of State and the Federal Aviation Administration (FAA), including FAA Deputy Assistant Administrator Carl Burleson. They appreciated the opportunity to set forth the United States’ position concerning its Preliminary Objection to the Members of the Council.

11. Ms. McManus recalled that the present case had arisen out of a tragic accident which had occurred on 29 September 2006 when a Boeing 737 with 154 on board (148 passengers and 6 crew members) and an Embraer executive jet, flying on the same airway in opposite directions at the same altitude as directed by Air Traffic Control, had collided in mid-air. All aboard the passenger jet had perished; the Embraer had successfully made an emergency landing.

12. The United States recognized the shock and profound loss that tragic accident had caused for Brazil and for the families of those lost. In the aftermath of the accident, it had taken immediate action both to work with Brazil in the accident investigation and to undertake its own investigation into the conduct of the flight – as was standard procedure. The United States had also taken several positive actions to promote aviation safety after the accident. Brazil was now asking the Council to find that the United States’ actions in investigating that matter and the conduct of the US airmen, and its 2007 decision not to impose punitive measures against them, violated the Chicago Convention.

13. The United States strongly affirmed that its investigation and conclusions concerning the conduct of the US airmen fully complied with the Chicago Convention. The United States was firmly committed to aviation safety. It had been committed to ICAO and the safety of civil aviation for decades, and remained so today. The United States also recognized Brazil as an important partner on those issues. It stood ready to work with Brazil and other States to enhance aviation safety.

14. The present discussion, however, was about the United States’ Preliminary Objection, which demonstrated that Brazil had waited too long to bring its claim, and that undue delay had prejudiced the United States’ ability to defend this case on the merits. Thus the United States urged the

Council to apply the doctrine of extinctive prescription, also known as *laches*, to dismiss this 10-year-old claim as untimely. Representatives were thus being asked to decide today whether the case should proceed before the Council.

15. Ms. McManus indicated that in her opening statement she would: set forth the key facts related to the United States' Preliminary Objection; demonstrate that each element of the legal defense of extinctive prescription was met; and finally, identify some additional reasons for applying that doctrine and dismissing Brazil's claim.

#### Factual situation

16. In beginning with the facts, Ms. McManus underscored that the United States took the said accident very seriously. Immediately after the accident in 2006, an accident investigation had been initiated. That official investigation had been led by Brazil's Center for Investigation and Prevention of Aeronautical Accidents (CENIPA), with United States' participation under Annex 13 – *Aircraft Accident and Incident Investigation* by both the National Transportation Safety Board (NTSB) and the FAA. The investigation had been completed in 2008.

17. Ms. McManus noted that, simultaneously, the FAA had led a regulatory compliance investigation to determine whether to bring enforcement action against the US airmen. The FAA had determined in 2007 that the conduct of the pilot-in-command and second-in-command of the US-registered aircraft had not warranted enforcement measures. Nevertheless, the FAA had taken the extra precaution of sending inspectors to monitor the training of the two airmen, and to personally conduct their line checks. Of course, the FAA had an interest in insuring that US pilots who fly in the United States and other countries were fully qualified. That was a crucial aspect of its aviation safety mission. Additionally, in order to promote safety, the FAA had issued safety alerts for operators and had taken actions responsive to the NTSB's three safety recommendations arising from the accident investigation. The FAA had also provided English-language training for air traffic controllers, and co-authored a number of papers relating to safety as a result of "lessons-learned" from the said accident.

18. It was recalled by Ms. McManus that the Government of Brazil had been made aware in December 2008, April 2010, and December 2011 that the United States had concluded that no enforcement action against the said airmen was warranted but that the United States was taking broader steps in the interests of aviation safety. It had been the considered conclusion of the United States, as had been expressed to Brazil at an early date, that the primary responsibility for the accident had been with Brazilian Air Traffic Control which, in managing the airspace, had directed the two aircraft to fly directly at each other, on a collision course. Not until five years after the accident, in late 2011 and early 2012, did Brazil submit Notices of Infraction (NOI) to the United States raising regulatory issues against the pilot-in-command: that the flight lacked a Letter of Authorization (LOA) from the FAA to fly in reduced vertical separation minimum (RVSM) airspace and that the flight was operated with the transponder and Traffic Alert and Collision Avoidance System (TCAS) "switched off".

19. Thereafter, in 2011 and 2012, Brazil and the United States had engaged in diplomatic exchanges, in which the United States had reiterated its conclusions that no enforcement action against the said airmen was warranted. No further diplomatic exchanges had occurred from 2012 to 2015.

20. It had not been until 2015, when Brazil had asked for bilateral consultations regarding the airmen's conduct, that Brazil had finally alleged that the United States was in violation of Article 12 of the Chicago Convention. And Brazil had not filed this claim under the Convention until December 2016.

21. Ms. McManus emphasized that Brazil's delays in (1) submitting NOIs (2) in notifying the United States that it believed it had a claim under the Chicago Convention, and (3) in bringing this claim had prejudiced the United States' ability to defend on the merits and to provide the relief sought. For that reason, it was appropriate for the Council to dismiss Brazil's claim as barred by the equitable principle of prescription.

Legal argument – laches

22. In then outlining the elements of the United States' legal argument, Ms. McManus noted that the principle of prescription held that a Claimant cannot delay in presenting and pressing a claim if such delay prevents the respondent government from preparing its defense and invoking remedies in response to the claim.

23. The first point that Ms. McManus wished to make was that prescription was a long-established principle of international law that applied to the present case. As Brazil stated in its Comments (cf. memorandum SG 2364/17 dated 24 May 2017, Part IV.2, Section B, p. 21, second paragraph), it did not dispute that extinctive prescription was a recognized general principle of international law. Prescription was applicable in this case as a background principle of international law. That was true even though it is not specifically mentioned in the Chicago Convention or in the ICAO *Rules for the Settlement of Differences* (Doc 7782). As a principle of international law, prescription was applied by bodies deciding disputes under international law. The ICAO Council, when acting in an Article 84 case, was such a body.

24. Ms. McManus noted that, as the cases cited in both briefs illustrated, for prescription to be applied, it need not be written in the specific treaty that was being interpreted by an international tribunal. Indeed, the doctrine existed primarily for cases like this where there was no time limit in the treaty. She recalled that the International Court of Justice (ICJ), which had jurisdiction over an appeal under the Chicago Convention, had held that the principle of extinctive prescription was effective "even in the absence of any applicable treaty provision." [cf. *Certain Phosphate Lands in Nauru (Nauru vs. Austl.)*, Preliminary Objection, 1992 I.C.J. 240, ¶32 (June 26) (Ex. L-16)]. Thus, there was no real dispute that prescription can be a bar to a claim under Article 84 of the Chicago Convention.

25. The next step was to examine how the two elements of prescription were met in the present case. The two elements of extinctive prescription were undue delay, and prejudice as a result. Before showing how each element was met, Ms. McManus wanted to show how Brazil's Comments confused prescription with other international doctrines, such as abandonment. Contrary to the implications of Brazil's Comments, abandonment was not a required element of prescription. As numerous tribunals had recognized, the only two elements were undue delay and prejudice.

26. In looking specifically at the said two elements of prescription, Ms. McManus noted that the first element was met as Brazil's delay was undue. Brazil claimed that its delay of ten years between the accident and the submission of its Application was not sufficiently long to give rise to prescription (cf. memorandum SG 2364/17 dated 24 May 2017, Part IV.1, p. 13, second paragraph). However, the time period for a finding of undue delay was not fixed by international law, but depended on the circumstances of each case. It was a case-by-case determination. As Brazil itself had noted, the ICJ had stated that "international law does not lay down any specific time-limit in that regard. It is therefore for the Court [or other entity that is deciding the case] to determine in the light of the circumstances of each case whether the passage of time renders an application inadmissible." (cf. memorandum SG 2364/17 dated 24 May 2017, Part IV.1, p. 12, second paragraph, citing the above-mentioned ICJ *Phosphate Lands* case at paragraph 32 of the Report). To try to buttress its argument that ten years was too short, Brazil cited cases where delays of 40 years had not qualified for prescription.

27. In underscoring that the timeframes in those cases should not apply in the present case, Ms. McManus emphasized that they did not concern aviation safety. In that topic, as the Council knew, a delay of five years or more was certainly unacceptable and may, in fact, risk lives. Moreover, none dealt with a situation where the Claimant was seeking to have a State punish private individuals.

28. Ms. McManus stressed that the Council must make its determination based upon an evaluation of the specific facts of the present case – both the period of the delay and the resulting prejudice. The fact that some cases found no prescription for lapses significantly longer than ten years was not relevant – the Council must look to the circumstances of this case. She affirmed that a five-year delay to send an NOI was undue delay, and that a nine-year delay in notifying the United States of a potential claim under the Chicago Convention was also undue. Ms. McManus noted that the regular practice was to send NOIs promptly so that potential hazards may be quickly remedied.

29. In addition, Ms. McManus noted that the Chicago Convention contemplated that administrative proceedings of this type were to be carried out under the domestic law of each country, and the ICAO *Safety Management Manual (SMM)* (Doc 9859) recognized that private parties in such procedures should be afforded fair treatment and an adequate opportunity to defend themselves, also known as due process. In this context, national laws that impose a limitations period were a standard part of a regulatory framework and also supported the requirement that NOIs be promptly provided.

30. It was recalled by Ms. McManus that Brazil argued that its delay was justified by its own enforcement actions, but a review of the record showed that Brazil had no justification for waiting five years. CENIPA's official accident investigation report, which included NTSB comments, had been completed and published by December 2008. And Brazilian authorities had filed criminal charges against the said US air crew almost immediately after the accident. Further, according to Brazil's timeline, in 2009 it had felt that it had sufficient information to include the lack of an LOA and the deactivation of the transponder in criminal charges. It was clear that Brazil had had enough information to send the NOIs very early on.

31. Brazil would argue that it needed to complete all of its internal processes first, before providing NOIs asking the United States to pursue administrative action, but Ms. McManus asserted that that cannot be a reason to wait in those circumstances. Brazil had known, or should have known, about the alleged violations it later included in the NOIs by 2007 or 2008 at the latest, and so it could have sent the NOIs then. Further, given that Brazil had its own statute of limitations governing when it could bring administrative action for failure to comply with regulations, it should not have been any surprise that the United States had a similar time-bar provision such that timely notification would be important.

32. Ms. McManus reiterated that the United States had taken immediate action to investigate the conduct of the US airmen and had decided enforcement action was not appropriate. The FAA had concluded that the deactivation of the transponder and TCAS had been inadvertent and that the lack of an LOA had not warranted punishment, since both the air crew and the aircraft had been qualified to operate in RVSM airspace. Brazil had known of the United States' decision not to impose punitive measures on the airmen, certainly by 2008, given that the NTSB annexes to the CENIPA accident investigation report stated the FAA's conclusions in that regard. Additionally, even when Brazil had sent the NOIs, that had not been notice to the United States that Brazil thought it had a claim under Article 12 of the Chicago Convention and was considering bringing proceedings under Article 84 thereof. Brazil had been silent on its view that the Convention had been violated until 2015, nine years after the accident.

33. The issues raised in Brazil's case related to punitive measures against individuals, as well as to aviation safety. It was clear that, under the circumstances of the present case, a five-year delay in



sending NOIs after the accident, a nine-year delay in notifying the United States of a potential claim under the Chicago Convention, and a ten-year delay in seeking Council review of the United States' response to the said accident each constituted undue delay. Ms. McManus thus asserted that the first element for prescription was met.

34. Ms. McManus affirmed that the second element was also met: the United States had suffered a disadvantage as a result of the said delay. Indeed, it had suffered *significant* prejudice.

35. In noting that Brazil was asking the Council to find that the United States' conduct in investigating this accident, and its decision in 2007 not to impose punitive measures against the US airmen, violated the Chicago Convention, Ms. McManus underscored that that would require the Council to review the specific evidence considered by the FAA, make factual findings as to the conduct of the US airmen, and second guess the outcome of an agency regulatory process that had occurred ten years ago.

36. Ms. McManus underscored that the delay in bringing this case made it difficult for the United States to proffer proof of the adequacy of its processes and the accuracy of the facts in dispute. The United States had submitted declarations demonstrating that, where an FAA investigation resulted in the conclusion that enforcement action was not warranted, the case files on such investigations were not maintained for long periods of time. Thus, because of the passage of time, records documenting the regulatory investigation were unavailable, and people with relevant information had memories that were limited and less detailed.

37. Ms. McManus noted, for example, that a thorough search of the United States' records had located no documents from the regulatory investigation that the FAA had conducted immediately after the accident. They would have been destroyed under the FAA's regular document-retention policies. She emphasized that, contrary to Brazil's claim that those were the type of documents that a country should be reasonably expected to have ten years after the accident, the type of records developed by the FAA in reaching a decision as to whether to bring an enforcement action were working documents which were appropriately disposed of a reasonable time after a decision was made not to go forward with enforcement. Therefore, the United States would not be able to provide the Council with *all* of the factual information needed for the United States to properly defend itself against Brazil's claim and for the Council to accurately reach a conclusion as to what actions had been taken and what facts had been evaluated ten years ago. While the United States had taken steps to locate and interview various employees or former employees of the FAA who remembered some details about the accident, as one of the United States' declarants, Ronald Hughes, the head of the FAA office that had conducted the investigation, had explained, they recalled much less than they would have ten years ago.

38. Another highly relevant factor to prejudice was the legal remedy sought. The United States believed that no legal remedy would be appropriate, but Brazil's delays in presenting its claims had also resulted in prejudice in this regard as it was no longer possible for the United States to take the action Brazil sought – enforcement action against the US airmen. The United States had a statute of limitations applicable to violations of aviation rules. The “stale complaint rule” was a NTSB regulation which barred the FAA from bringing enforcement action for an incident that was more than six months old, although that rule may be waived on occasion for reasons, including good cause and the public interest. Furthermore, a federal statute imposed an absolute five-year statute of limitations for punitive enforcement action. Thus, even if there were grounds for imposing penalties, the United States could not do so now and could not have done so when Brazil had sent the NOIs, the first of which had been dated less than two weeks before the five-year statute of limitations had run out. Notably, domestic statutes of limitations were relevant here. ICAO Members applied their domestic law to implement and enforce the Chicago Convention. The United States was not alone in having a statute of limitations on actions against airmen for violations of aviation regulations.

39. Ms. McManus underscored that the United States had clearly demonstrated, based upon the application of the law to the facts of the present case, that the Council should dismiss Brazil's claim at this Preliminary Objection stage.

40. Ms. McManus noted that prescription goes to the admissibility of a claim, and in this case presented issues separate from the merits. Admissibility claims had been considered at the preliminary objection phase by both the ICAO Council [*Settlement of Differences: United States and 15 European States (2000) regarding European Council Regulation (EC) No. 925/1999* ("Hushkits")] and the ICJ. She affirmed that it would be proper for the Council to apply that doctrine in the present case.

#### Policy arguments

41. Finally, beyond the legal justification for the United States' position that she had developed in detail, Ms. McManus wished to identify some of the broader implications that the Council should consider in determining whether to dismiss the claim due to Brazil's delay. Such policy reasons were particularly significant in the present situation, where a political and technical body was entrusted to answer a question of law. By taking Brazil's claim, the Council would turn itself into a court of appeal, second-guessing the facts and judgment of investigators and the outcome of agency regulatory proceedings long after the fact. Further, proceeding to consider Brazil's claim on its merits would detract from the other work of the Council on aviation safety issues – by encouraging adjudication of bilateral disputes over specific incidents that had occurred years ago.

42. Ms. McManus emphasized that the Council's decision on the United States' Preliminary Objection should send a message that it will not take up stale, outdated cases brought by one Member State to challenge another Member State's administrative actions taken years earlier. Additionally, if the Council granted the United States' Preliminary Objection, that would not foreclose a review of the meaning of Article 12 of the Chicago Convention by the Council on its own accord, at any time.

#### Conclusion

43. Ms. McManus noted that while she had not been able to address every point made by Brazil given time constraints, she would nevertheless be happy to respond to any questions in that regard.

44. In concluding her opening statement Ms. McManus indicated that the Government of the United States stood behind its response to the tragic mid-air collision of 29 September 2006 as appropriate and fully consistent with Article 12 of the Chicago Convention. It considered that the Applicant's long delay in bringing its claim should lead the Council to dismiss this proceeding as time-barred under the generally accepted international law principle of extinctive prescription.

#### ***Presentation by the Authorized Agent of Brazil***

45. Mr. Olyntho Vieira then addressed the Council in his capacity as Authorized Agent for the Federative Republic of Brazil in the proceedings related to the disagreement submitted by his Government regarding the failure of the United States of America, hereinafter the Respondent, to apply Article 12 of the Chicago Convention, as well as Standard 3.1.1 of its Annex 2 – *Rules of the Air*, after the mid-air collision, on 29 September 2006, of air carrier Boeing 737-8EH registered in Brazil as PR-GTD, operating regular flight GLO 1907, and air jet Legacy EMB-135BJ, Embraer, registered in the United States of America as N600XL, operating flight by ExcelAire Services Inc.

46. Mr. Vieira recalled that all of the 154 occupants on board the Boeing air carrier had been killed in the accident. The Legacy had landed safely, with its seven occupants, including the two US pilots, all unscathed. The relevant institutions in Brazil had undertaken administrative and criminal investigations on the conduct of the Brazilian Air Traffic Controllers and the US pilots. Criminally, both the Air Traffic Controllers and the pilots had been found guilty and had been convicted. Administratively, it had been determined that the US airmen had violated three important regulations of the air applicable in Brazil, all of which directly related to air safety.

47. Mr. Vieira noted that the Respondent alleged that it had conducted an investigation in the aftermath of the accident which had determined that no enforcement action regarding the US pilots was warranted. What Brazil had been claiming for years now, and claimed in the disagreement now before the Council, was that such alleged investigation did not meet the requirements of Article 12 of the Chicago Convention, according to which Member States must “insure the prosecution of all persons violating the regulations applicable”. Although there was room for debate on what it took to comply with the said provision, it was extremely difficult to sustain that whatever action the Respondent had taken in 2006/2007 amounted to insuring the prosecution of violators. Mr. Vieira added that it was an uncontested fact that the US pilots had violated important air safety regulations of another Member State; furthermore, they had lacked documentation, the importance of which went far beyond the realm of a simple bureaucratic requirement; and they had operated for about an hour without noticing that mandatory equipment, the TCAS and the transponder, that were key to avoiding collisions, were switched off. Those were only some of the several errors committed before and during the flight. Having allegedly examined such serious misconduct, the Respondent had concluded that no enforcement action whatsoever, not even a letter of warning, had been warranted. If one added the fact that no formal report of such alleged investigation had ever been provided to Brazil, how could one possibly believe that such a proceeding satisfied the obligation to “insure the prosecution” of violators, as per Article 12 of the Chicago Convention? Mr. Vieira compared the present case with the FAA investigation and its determination, mentioned in Brazil’s Application, regarding the pilot who had failed to contact the Air Traffic Control Center in the United States and had over-flown the airport where he had been supposed to land the aircraft, which was mentioned in Brazil’s Application (cf. memorandum SG 2343/16 dated 12 December 2016, p. A-17, second paragraph, and Attachment No. 5). In that specific case, where no casualties had occurred, the FAA had considered that the pilot did not have the necessary qualifications to hold an Airline Transport Pilot Certificate and had revoked it.

48. In making one very important correction, Mr. Vieira underscored that, contrary to what the Respondent had asserted in its Statement of Preliminary Objection, Brazil did not claim that Member States must “impose penal sanctions under every circumstance, or that Member States are permitted no discretion in administering their compliance and enforcement programs” (cf. memorandum SG 2360/17 dated 10 April 2017, Attachment, p. 4, footnote 2). Domestic proceedings – be they criminal or administrative – that were consistent with Article 12 of the Chicago Convention may or may not impose sanctions on airmen. That was for the proceedings to determine. What Brazil claimed was that, in the 2006 accident in question, the Respondent had failed to apply the said provision.

49. Although those issues were key, they pertained to the merits of the dispute between Brazil and the United States and were to be discussed in due time. Today, under Article 5(4) of the *Rules for the Settlement of Differences* (Doc 7782), the Council “shall decide” the Preliminary Objection by the Respondent to Brazil’s claim. The object of the Council’s current deliberations was only the Respondent’s Preliminary Objection.

50. Therefore, today’s discussion was legal in nature and not related to the technical aspects of the accident, its circumstances or its causes. Neither was it financial in nature or purpose. Mr. Vieira stressed, in this regard, that Brazil did not seek any kind of compensation for itself or anyone else, the

families of the deceased having already been granted compensation through the Brazilian judicial system or by settlement with the Brazilian airline concerned. Thus, this was a dispute under international public law between two Member States regarding the application and interpretation of Article 12 of the Chicago Convention, and there was no reference to compensation among the remedies requested by Brazil in its Application.

51. As Brazil understood it, the essence of the Respondent's Preliminary Objection was as follows: the lapse of ten years between the accident and the submission of the claim would constitute an undue delay on the part of Brazil, a delay for which there would be no reasonable explanation and one that would cause unfair prejudice to the defense of the Respondent, mainly due to the alleged difficulty in assembling evidence, in particular records, and its ability to invoke remedies. Under those circumstances, the claim would be untimely and inadmissible, according to the principle of extinctive prescription. In addition, the Respondent argued that admitting the claim would bring uncertainty to the work of ICAO, the Chicago Convention and civil aviation.

52. Mr. Vieira affirmed that the Respondent's Preliminary Objection was unfounded: it applied the wrong legal standard to an inaccurate set of facts, as he would now explain in a manner as clear and abridged as possible.

53. Neither the Chicago Convention nor the *Rules for the Settlement of Differences* (Doc 7782) set any statutory time limit for bringing a case. Therefore Brazil's Application must not be barred under such instruments.

54. As recognized by the ICJ, the passage of time may affect the admissibility of a claim, even in the absence of any applicable treaty. However, the decision of barring claims by lapse of time had been applied with extreme caution, on a case-by-case basis, taking into consideration the specific circumstances of each and every case.

55. According to such jurisprudence: passage of time is not a reason *per se* for prescription; there is no fixed time after which a claim becomes stale; and ten years is not a long period by any means. In every case where prescription was accepted in international fora, the time lapses were all much longer than ten years. Examples: Nauru case – 24 years; Williams case – 26 years; Tagliaferro case – 31 years; Giacomini case – 32 years.

56. Also based on the jurisprudence, a fundamental aspect in determining whether passage of time rendered a claim inadmissible was whether there was silence or inaction on the part of the Claimant during the time elapsed. That was important because the sole purpose of prescription in international disputes was to preserve the stability of a factual situation that had not been challenged or questioned. The clearest example was the possession of territories. If a given territory had been under the jurisdiction of a State without being challenged or questioned, the law would tend to protect such unchallenged possession in the name of stability and legal security. It followed that, when a situation was not considered pacified, i.e. when there has been challenge, prescription does not apply. In the case before the Council, Brazil had not been inactive or silent, the situation had not been pacified and therefore prescription must not apply.

#### Examination of the facts

57. From 2006 to 2011, the Brazilian State had collected evidence needed in a case that the Respondent itself considered very complex: it had conducted the Annex 13 investigation on the causes of the accident; federal police had conducted its investigation; the federal prosecutor had indicted the two US pilots; Justice had condemned the pilots; and Brazil's National Agency for Civil Aviation (ANAC) had determined the responsibilities of the pilots and had issued them three NOIs.

58. Mr. Vieira noted that all of those actions had ascertained the culpability of the two US pilots and had pointed to the need for a proper investigation of their conduct. All of them had either had the participation of the Respondent (Annex 13 accident investigation) or had been of specific knowledge of the Respondent (the prosecution of pilots, the administrative enforcement action by Brazil's ANAC, the report commissioned to an expert by the relatives and friends of the victims) or had been of public knowledge. The Respondent had also received requests from the relatives and friends of the victims that a proper investigation be undertaken.

59. From June 2010 onwards, there had been repeated official and unofficial communications, and diplomatic and political *démarches* by Brazil in order to obtain from the Respondent compliance with Article 12 of the Chicago Convention and avoid a dispute, as all States were called upon to do. Such lapse of time cannot be considered as "undue delay" either legally or otherwise.

60. Mr. Vieira affirmed that nothing in Brazil's conduct could be considered as implying a decision to leave this case to rest. Quite to the contrary, the case had never been dormant, as demonstrated by the facts.

61. Ten years of: a) administrative and criminal proceedings to establish the causes of the accident and determine responsibilities; b) bilateral discussions; c) repeated formal and informal requests for the Respondent to comply with Article 12 cannot and must not be considered pacified. In other words, there was not a situation of factual or legal stability to protect by means of prescription. Consequently, the Respondent cannot possibly claim the right to repose.

#### Argument by the Respondent

62. Mr. Vieira then turned to the Respondent's argument that the alleged undue delay on the part of Brazil prejudiced its ability to defend itself as records and other relevant information had no longer been available.

63. There was considerable authority to affirm that a claim cannot be barred, for instance, if the Respondent State had a contemporary record of the facts or may reasonably be expected to possess records relevant to the claim. That was precisely the case here.

64. It was more than reasonable to expect that the Respondent would possess the records: it was inconceivable not to expect it, given that the case involved the death of 154 persons and that, as acknowledged by the Respondent itself, there had been indications, in the very aftermath of the accident, of misconduct by the two US pilots, which had later been confirmed by ANAC's administrative proceeding. The Respondent had been perfectly aware of the ongoing investigations and the diligences undertaken by Brazil. In light of its obligations under the ICAO Chicago Convention, the Respondent should therefore have kept all of the records.

65. Mr. Vieira recalled that the issue of knowledge of wrongdoing had been discussed in the Tagliaferro Case. Thirty-one years had elapsed before the presentation of the claim and yet the arbitrators had recognized that the "responsible authorities knew all the time of the wrongdoing ...", and therefore should have kept records. Although Venezuela had insisted upon prescription as a sufficient defense, the Umpire had denied it (cf. memorandum SG 2364/17 dated 24 May 2017, p. 31, third paragraph).

66. Mr. Vieira affirmed that that was the case here. As mentioned before, the Respondent had had indications, in the very aftermath of the accident, of the wrongdoing of the pilots. Even if its alleged investigation had concluded that there had been no basis to take action against them, “records must exist to demonstrate that”, as the Umpire had decided in the Tagliaferro Case (cf. memorandum SG 2364/17 dated 24 May 2017, p. 31, fourth paragraph).

67. In addition, the Respondent informed in its Preliminary Objection that, under FAA Order 1350.15C (Record Order), records pertaining to alleged investigations where no legal enforcement action was deemed warranted, have to be destroyed within 90 days after such determination, even in the one allegedly conducted in the present case. The conclusion, therefore, was that the records relevant to this case would have been destroyed sometime in 2007, pursuant to FAA Order 1350.15C. Therefore, if there was any prejudice to the Respondent’s defense for alleged lack of records, it was caused by the Respondent and not by Brazil.

68. It was emphasized by Mr. Vieira that accepting the argument that Brazil’s alleged undue delay had caused the alleged lack of records would not only be unfair but also would expose all Member States to a grave risk. In an investigation by the Respondent that determined that no enforcement action had been warranted, any Member State could be prevented from exercising its rights under the Chicago Convention 91 days after such determination, as the Respondent could claim prejudice in its defense on the grounds that records had been destroyed in such a short period. Brazil did not and must not suppose that the Council wanted to take that perilous road.

69. The Respondent had also invoked its six-month statute of limitations for the FAA to resort to any kind of remedy, thus rendering void the recourse to the Council. Mr. Vieira recalled that the preliminary proceedings under Article 5 of the *Rules for the Settlement of Differences* (Doc 7782) were not the proper place to address the scope of Article 12 of the Chicago Convention, as that matter pertained to the merits of the dispute itself. To the extent, however, that the Council decided to examine the arguments put forward by the Respondent in that regard, it should recall that it was well established that the domestic statutes of limitations were inapposite to international claims. The 1969 *Vienna Convention on the Law of Treaties*, international customary law and the jurisprudence were unequivocal in that regard.

70. In addition, Mr. Vieira highlighted that acceptance of a six-month statute of limitations would lead to absurd results, both legally and in practice. With the United States being able to claim that it could not take action after the six-month FAA statute of limitations, all ICAO Member States would be forced to investigate, issue NOIs and submit a claim in less than six months in order to be in a position to seek compliance by the Respondent with its international obligation. That would basically deprive the Chicago Convention of any meaning.

71. Finally, the Respondent argued that admission of the claim would bring uncertainty as it would open up the Council to reviewing old closed cases. Brazil strongly opposed that view. Nothing in the factual accounts of the present dispute gave grounds to the Respondent’s contention that, in admitting Brazil’s claim, the Council would be reopening a “ten-year-old case”. A case that was consistently and diligently pursued through several means, as well as amply documented throughout the years, was simply neither old nor closed. Actually, the Respondent had never opened an investigation that met the requirement of Article 12 of the Chicago Convention.

72. As had emerged clearly from the records of the present case, from 2006 to 2016 the Brazilian State had undertaken numerous actions in order to gather the evidence needed to establish the causes of the very complex accident and to determine responsibilities. It had also sought to obtain that the Respondent comply with Article 12 and made a sustained effort to avoid a dispute.

73. The accurate and complete factual background, combined with the proper legal standard regarding prescription, could only lead to the conclusion that the Respondent's Preliminary Objection was unfounded and must be dismissed.

### Conclusion

74. At the heart of Brazil's claim was the key issue of air safety, one that was of the *utmost* importance for all Member States. Preventing the Council from considering Brazil's claim would not serve the interests of civil aviation, but rather unwarrantedly miss the opportunity to strengthen it.

75. Examining the merits of Brazil's claim would certainly help clarify the scope of the obligation contained in Article 12 of the Chicago Convention to the benefit of all ICAO Member States and air safety. Therefore where Brazil did see grave prejudice was in preventing the Council from even discussing the matter. That – and not the admission of the claim – would bring uncertainty as it would send the message that pilots of a Member State were allowed to violate air safety rules of any other Member State and not even be subject to any proceedings that met the requirements of Article 12.

76. For the reasons set forth above, Brazil respectfully requested that the Council: reject the propositions in the Respondent's Preliminary Objection and reaffirm the Council's competence to consider Brazil's Application and Memorial; and order that the period given to the Respondent for the filing of its Counter-Memorial, which was interrupted by the filing of the Preliminary Objection, shall begin to run again immediately following the Council's rejection of the Preliminary Objection.

77. Should the Council reject the Preliminary Objection and order the filing of the Counter-Memorial, the President and all Council Members could rest assured that Brazil would be ready and willing to positively consider whatever actions the Council saw fit under Article 6 of the *Rules for the Settlement of Differences* (Doc 7782).

78. The President of the Council then offered each Party the opportunity to make a five-minute rebuttal to the other Party's arguments.

### ***Response by the Authorized Agent of the United States***

79. Ms. McManus focussed her rebuttal on five of the issues raised by Mr. Vieira during his presentation. First, to the extent that the Council believed that there was an interest in deciding the appropriate interpretation and application of Article 12 of the Chicago Convention, she affirmed that the present case was not the appropriate vehicle therefor. Ms. McManus considered that it would be better to decide and examine those matters in a less contentious setting and not when looking at a specific case where experts had disagreed for ten years as to the facts and the appropriate remedies.

80. Secondly, Ms. McManus noted that the Brazilian argument did recognize that this was supposed to be a case-by-case determination and that the passage of time rendering a claim inadmissible was not set by other cases. She underscored that the cases that had been cited by Mr. Vieira as having a lapse of from 25 to 32 years between the infliction of damage and the bringing of the claim were factually very different from the case now before the Council. The present case dealt with aviation safety, whereas many of the cases cited dealt with territorial and border disputes which were recognized as going on for decades. Ms. McManus indicated that the important question for the Council was whether it believed that aviation safety issues could wait between 25 to 30+ years to be resolved.

81. The third point that Ms. McManus wished to make related to the numerous steps which Mr. Vieira had indicated had been taken by Brazil in seeking to resolve this dispute. In emphasizing that many of those steps had instead sought to impose significant penalties on the two US pilots, she noted

that they were the criminal proceedings, the civil cases and the administrative proceedings in Brazil brought against the pilots. As the United States Government had not been a party to any of those proceedings, they could not be considered as having put it on notice that the United States was going to face a claim that it had failed to apply Article 12 of the Chicago Convention, as well as Standard 3.1.1 of its Annex 2 – *Rules of the Air*.

82. Another point that Ms. McManus wished to make was that Mr. Vieira had misstated the duration of the United States’ statute of limitations as being six months. She reiterated that the “stale complaint rule” was a NTSB regulation which barred the FAA from bringing enforcement action for an incident that was more than six months old. The statute of limitations which would bar the United States’ action was an absolute five-year statute of limitations for punitive enforcement action. Ms. McManus noted that in its Statement of Preliminary Objection the United States had cited a number of other Council Member States that had statutes of limitations that were that long or shorter.

83. The last point that Ms. McManus wished to make was that Mr. Vieira’s assertion that the United States had not taken any steps to investigate and address safety issues in response to a major aviation accident involving US pilots was unwarranted and simply not credible. Recalling, in this regard, the repeated references made by Mr. Vieira to the United States’ “alleged” investigation, Ms. McManus underscored that that assertion had been rebutted by the declaration of the responsible FAA official that had been submitted with the United States’ Statement of Preliminary Objection (cf. Attachment A to memorandum SG 2360/17 dated 10 April 2017) and by the remedial actions ordered by the FAA. She indicated that the Council could also evaluate, given its experience with the United States’ commitment to aviation safety, whether it was credible that the United States Government would not investigate the circumstances of such an accident, including the pilot’s conduct.

84. In concluding, Ms. McManus strongly defended the steps that the United States had taken. In reiterating that there was prejudice in this long delay, she emphasized that the idea that that prejudice could be remedied by the Council, at this late date, making a factual and legal determinations on a stale record was not a wise course. Therefore, as the elements of extinctive prescription had been met in the present case, Ms. McManus urged the Council to grant the United States’ Preliminary Objection.

***Response by Mr. Norberto Moretti on behalf of the Authorized Agent of Brazil***

85. In his rebuttal, Mr. Moretti concentrated on five of the issues that had been raised by Ms. McManus. Recalling that she had cited undue delay as being one of the key elements for determining extinctive prescription and had claimed that Brazil had been tardy in taking measures, he underscored that that had not been the case: as reflected in the timeline provided in Brazil’s Comments in response to the United States’ Preliminary Objection, Brazil had been constant in investigating this very complex case diligently and seriously, which had taken time. While Ms. McManus had mentioned Brazil’s lack of agility in many instances, Mr. Moretti emphasized that it was not credible that such a complex case could be investigated and NOIs issued within six months.

86. Secondly, as Mr. Vieira had highlighted at the beginning of his presentation, this was mainly a legal discussion. What the law provided for, and jurisprudence supported, was not limitations on the right of the Claimant to present its claim but rather protection of the Respondent from being prejudiced by the time taken by the Claimant in so doing. One of the key issues raised was prejudice to the United States’ right, as the Respondent, to prepare its defense, with it being claimed that there was a lack of records with which to do so. Recalling that Mr. Vieira had already addressed that issue, Mr. Moretti reiterated that Brazil could not be held responsible for the decision of another Member State to institute a policy requiring the destruction of documents within 90 days of a determination that no enforcement action was warranted. He thus affirmed that there was no prejudice caused by Brazil in the



present case.

87. Observing that Ms. McManus had taken issue with the references made to the United States “alleged” investigation, Mr. Moretti emphasized that it had in no way been done out of disrespect. It had arisen from the fact that, as Brazil had long claimed, it had never been provided with any indications that an investigation consistent with Article 12 of the Chicago Convention had ever been conducted by the United States. That related to the merits of the case, which the Council would discuss in due course. At this point in time, the Respondent could not, as a preliminary objection, say that it had conducted an investigation, the records of which had apparently been destroyed pursuant to FAA Order 1350.15C (Record Order), and then claim a prejudice in defending its case. That claim was not to be accepted by the Council.

88. Noting that another important point raised by Ms. McManus was that the United States had not been a party to any of the punitive measures taken against the two US pilots referred to in Brazil’s timeline, Mr. Moretti emphasized that Brazil had made it very clear in its documents that the United States had been a part of the Annex 13 accident investigation and that all of the actions taken by Brazil had been of the United States’ specific knowledge or had been of public knowledge. Consequently, the United States was not in a position to expect that Brazil would not bring a case before the Council. Recalling that Ms. McManus had highlighted the fact that the NOIs had not mentioned a violation by the United States of Article 12 of the Chicago Convention, Mr. Moretti underscored that in the Notes sent by the Brazilian Embassy to the Department of State and letters addressed by Brazil’s ANAC to the FAA after the issuance of the NOIs there had been repeated references to the United States being requested to comply with Article 12. Thus it was not accurate to say that the United States had only been notified in 2015 about the possibility of an Article 12-related dispute being brought before the Council.

89. Mr. Moretti reiterated that it was very difficult to sustain that an investigation on which no reports had ever been provided to Brazil (apparently as they had been destroyed or had never existed) and which had concluded that there had not been any neglect on the part of the two US pilots when all evidence had suggested the contrary and they had actually been convicted in Brazil for neglectful conduct, complied with Article 12 of the Chicago Convention. Although as Mr. Vieira had indicated Brazil was not seeking compensation for the families of the deceased, the issue of the nature of the investigation that the United States had conducted, or had allegedly conducted, and that Brazil believed did not conform to, and was not consistent with, Article 12, did require the Council to allow this discussion to move on as, contrary to what Ms. McManus had claimed, the present dispute was a vehicle for establishing clearly what was required to comply with Article 12. Mr. Moretti emphasized, in this regard, that as was the case in many organizations, disputes not only addressed issues of prejudice and damage, but also clarified positive law.

90. All of the preceding oral arguments were duly noted and recorded for the minutes of the meeting.

91. In the absence of any direct questions to the Authorized Agents, the Council proceeded to deliberate, during which time both Parties remained in attendance.

### ***Deliberations***

92. Observing that a number of the statements and arguments made by the United States in its Preliminary Objection and reiterated during the present meeting appeared to go beyond the narrow question of jurisdiction which the Council had been requested to consider, the Representative of the United Kingdom emphasized the need to ensure that a rejection by the Council of the Preliminary Objection would not imply that those statements and arguments, in particular those relating to the

question of extinctive prescription, were also rejected and would thus not be taken into account by the Council when subsequently examining the merits of the case. He noted that Article 5(4) of the *Rules for the Settlement of Differences* (Doc 7782) only indicated that the Council shall decide on the Preliminary Objection and did not state the range of decisions that it could take. By contrast, Article 79, paragraph 9, of the ICJ's *Rules of Court* specified that "... the Court shall give its decision in the form of a judgment, by which it shall either uphold the objection, reject it, or declare that the objection does not possess, in the circumstances of the case, an exclusively preliminary character ...". The Representative of the United Kingdom suggested that, given the breadth of the issues raised, the Council decide that the said statements and arguments made by the United States in its Preliminary Objection did not possess, in the circumstances of the case, an exclusively preliminary character and that they may be joined to the merits of the case.

93. In confirming that the Council could take such a decision, if it so desired, the Director of the Bureau of Legal Affairs and External Relations (D/LEB) recalled that it had taken similar action in the case *Settlement of Differences: United States and 15 European States (2000) regarding European Council Regulation (EC) No. 925/1999 ("Hushkits"): Preliminary Objections*, when it had decided that "The third preliminary objection, not being preliminary in nature but related to the merits, shall be joined to the merits." (cf. Council Resolution/Decision adopted on 16 November 2000, Operative Clause 3; C-DEC 161/6).

94. Noting that his State's position on the admissibility of the Preliminary Objection was conditional on the joining of the said statements and arguments made by the United States to the merits of the case at hand, the Representative of the United Kingdom suggested that the Council consider that question prior to considering whether or not to accept the Preliminary Objection as it would provide a greater guarantee regarding the conduct of the future stages of the proceedings.

95. The Representative of Cuba expressed appreciation for the excellent presentations made by both Parties. She noted that her State considered that the Council did have jurisdiction to consider the Application and Memorial filed by Brazil on 2 December 2016 for the settlement, under Article 84 of the Chicago Convention and Article 2 of the said *Rules*, of the disagreement with the United States regarding the application of Article 12 of the Chicago Convention and Standard 3.1.1 of its Annex 2 – *Rules of the Air*. Cuba was of the view that the Respondent's Preliminary Objection, presented on the basis of extinctive prescription, was not sustainable, neither by the Chicago Convention nor by the *Rules for the Settlement of Differences* (Doc 7782). It considered that passage of time per se was not sufficient reason to deny the Council's jurisdiction. Cuba firmly supported multilateralism and in that context defended the legitimate right of Member States, always in strict compliance with established rules, to make pronouncements, in a transparent manner, on matters of interest to all. Ensuring the safety of international civil aviation was the highest priority of the Council and of each of its Members, and preventing the Council from considering the merits of the present case would be inconsistent therewith. For these reasons, Cuba did not support the Preliminary Objection and considered that the proceedings should continue on the basis of the Council's jurisdiction and the *Rules for the Settlement of Differences* (Doc 7782). Its position regarding the Respondent's Preliminary Objection did not in any way prejudice Cuba's position regarding the merits of the case.

96. In the absence of further comments, the Council agreed to decide on the Preliminary Objection first and thereafter, if relevant, to consider the question raised by the Representative of the United Kingdom of whether the statements and arguments made in the Preliminary Objection may be joined to the merits of the case. That question was subsequently rephrased by the President of the Council to refer to whether the statements and arguments made by the Respondent in the Preliminary Objection and by the Applicant in its Comments in response may be joined to the merits of the case.

97. On a proposal then made by the Representative of the United Arab Emirates and supported by the Representatives of Turkey, the Russian Federation, Ecuador, Argentina, Congo, France, Nigeria, Cabo Verde, Egypt, China, Spain, Algeria, Mexico, the United Republic of Tanzania, Sweden, Australia, Canada, India and Malaysia, constituting the majority of Representatives, the Council proceeded to a vote by secret ballot, pursuant to Article 50 of the *Rules of Procedure for the Council* (Doc 7559), on the question “Do you accept the Preliminary Objection of the United States?”. Under Article 52 of the Chicago Convention, decisions by the Council required approval by a majority of its Members. As the Council comprised 36 Members, acceptance of the Preliminary Objection required 19 positive votes. Brazil and the United States were not entitled to vote under Article 84 of the Chicago Convention and Article 15 (5) of the *Rules for the Settlement of Differences* (Doc 7782), which specified that “No Member of the Council shall vote in the consideration by the Council of any dispute to which it is a Party”. Following the completion of the secret ballot, the three Vice-Presidents of the Council, namely, the Representatives of the United Arab Emirates, Sweden and Colombia, monitored and scrutinized the tallying of all of the votes cast for the purpose of ensuring its accuracy.

98. The result of the secret ballot on the question whether to accept the Preliminary Objection of the United States, in which 34 votes were cast by the Council Members eligible to vote, was as follows:

In favour	4 votes
Against	19 votes
Abstentions	11 votes

There were no invalid ballots or blank votes.

99. Based on this result, the President declared that the Statement of Preliminary Objection filed by the United States, as Respondent, was not accepted by the Council.

100. During the ensuing discussion of the question of joining the statements and arguments made in the Respondent’s Preliminary Objection and in the Applicant’s Comments in response to the merits of the case, the Representative of the Russian Federation noted that the Representative of the United Kingdom’s concerns were addressed by Article 9 of the said Rules, according to which “If the Parties should desire to produce evidence in addition to any evidence produced with the pleadings, such evidence, including testimony of witnesses and experts, shall be submitted in writing, within a time-limit fixed by the Council ...”. In sharing this view, the Representatives of Uruguay and Cabo Verde both averred that the said question was thus moot. Noting that under Article 4(1) of the Rules, the Respondent could present any additional facts and supporting data, as well as statements of law, in its Counter-Memorial, the Representative of the Russian Federation enquired whether it was the intention of the United States to submit a Counter-Memorial.

101. The Representative of the United Kingdom reiterated the need to ensure, by whatever appropriate means, that despite the Council’s rejection of the United States’ Preliminary Objection, the statements and arguments made therein were readmissible as part of any further evidence being submitted relating to the merits of the case.

102. Speaking along the same lines, the Representative of Argentina suggested that the Parties first discuss amongst themselves what evidence they wished to submit and that only in the event they disagreed that the Council proceed to take a decision on the matter.

103. While noting that adequate provision was made in Article 9 of the said Rules for the submission by the Parties of any additional evidence they saw fit to defend their respective cases, the President suggested that the Council nevertheless take a decision on the joining of the statements and

arguments made in the Preliminary Objection and in the Comments in response to the merits of the case in order to provide the necessary clarity for the future proceedings.

104. Further to a suggestion by the Representative of France, the President sought the views of the two Parties thereon.

105. Ms. McManus, the Authorized Agent of the United States, indicated that the United States would welcome the opportunity to have the statements and arguments made in its Preliminary Objection also available for consideration by the Council in examining the merits of the case. It was her understanding, from the Council's deliberations prior to the vote, that some Representatives had assumed that that would be the case even if they voted to reject the Preliminary Objection. Ms. McManus highlighted that both the case *Settlement of Differences: United States and 15 European States (2000) regarding European Council Regulation (EC) No. 925/1999 ("Hushkits"): Preliminary Objections*, and an ICJ case provided precedents for joining the statements and arguments made in both the Respondent's Preliminary Objection and the Applicant's Comments in response to the merits of the case.

106. Speaking on behalf of the Authorized Agent of Brazil, the Representative of Brazil underscored that as sovereign States the United States and Brazil could include any evidence they saw fit in their respective Counter-Memorial and pleading in reply.

107. In light of the discussion, the Council unanimously decided that as the statements and arguments made in the Respondent's Preliminary Objection and in the Applicant's Comments in response did not possess, in the circumstances of the case, an exclusively preliminary character, they may be joined to the merits of the case and included in the Respondent's Counter-Memorial and any additional pleadings. The President underscored that it was the prerogative of the two Parties to take such action.

108. In seeking additional time for the submission of the Counter-Memorial, the Authorized Agent of the United States requested that the time-limit therefor be set at two weeks from the Respondent's receipt of the verbatim transcript of the proceedings provided for in Article 30(2) of the *Rules for the Settlement of Differences* (Doc 7782) in order to afford it sufficient time in which to prepare its response to the various points raised during the present meeting. The President clarified, in this regard, that it was the Council-approved minutes, prepared on the basis of the verbatim transcript, which constituted the official record of the oral proceedings on the Preliminary Objection.

109. Responding to a query by the President, the Representative of Brazil indicated that the Authorized Agent of Brazil did not have any objection to the proposed extension of the original time-limit, in principle, and recognized that it was a matter for the Council to decide under Article 28(2) of the said Rules.

110. Notwithstanding that 11 calendar days remained for the submission of the Respondent's Counter-Memorial under the original time-limit established therefor under Article 3 (1) (c) of the said Rules, the Council, further to the said request by the Authorized Agent of the United States for additional time, unanimously decided to set the time-limit for the submission of the Counter-Memorial at two weeks from the Respondent's receipt of the Council-approved minutes of the present meeting, which constituted the official record of the oral proceedings on the Preliminary Objection. It was noted that the Applicant (Brazil) could also take advantage of the said minutes, and that it may, in accordance with the said Rules, file a pleading in reply to the Counter-Memorial to provide comments in response.

111. The Representative of Japan enquired whether either Party was seeking a diplomatic solution to the disagreement through bilateral negotiations.

112. Noting that she had the same question, the Representative of Sweden indicated that it was not clear to her that there had been negotiations between Brazil and the United States to resolve their disagreement and that those negotiations had failed, which was a condition for the application of Article 84 of the Chicago Convention under which the Council would take a decision on the matter.

113. The Representative of Saudi Arabia queried whether it was possible for the President to provide his good offices as Conciliator to further any negotiations between the Parties and to report on the outcome thereof to the Council.

114. Replying in the affirmative, the President noted that Article 14(3) of the said Rules stated that “Subject to the consent of the Parties concerned, the Council may render any assistance likely to further the negotiations, including the designation of any individual or a group of individuals to act as Conciliator during the negotiations”.

115. Responding to a procedural point raised by the Representative of India and supported by the Representative of Sweden, the President clarified that under Article 14(1) of the Rules, “The Council may, at any time during the proceedings and prior to the meeting at which the decision is rendered ..., invite the Parties to the dispute to engage in direct negotiations, if the Council deems that the possibilities of settling the dispute or narrowing the issues through negotiations have not been exhausted.” He further indicated that, pursuant to Article 14(2), “If the Parties accept the invitation to negotiate, the Council may set a time-limit for the completion of such negotiations, during which other proceedings on the merits shall be suspended”.

116. Ms. McManus, the Authorized Agent of the United States, noted that prior to the present meeting both Parties had discussed the issue of continuing negotiations and that both were willing to do so and to accept the assistance of the President of the Council if he was willing to work with them, or of any other individual he might appoint whom they found to be mutually-acceptable. While welcoming such assistance, Ms. McManus was uncertain regarding the establishment of a time-limit for the completion of such negotiations since it was a long-standing disagreement. Given the time-limit for the submission of the Counter-Memorial, she assumed that the next time the matter would come before the Council would be during its 212th Session in October/November 2017. Ms. McManus indicated that while there was thus a reasonable amount of time in which to begin the negotiations, she would have to consult further with her Delegation regarding the establishment, at the outset, of a time-limit for their completion.

117. Mr. Moretti, speaking on behalf of the Authorized Agent of Brazil, reiterated that Brazil was willing to work with the President of the Council, if he decided to make himself available, or any other individual he might appoint whom the Parties found to be mutually-acceptable. He underscored the importance of ensuring that any time-limit that might be set for the completion of the negotiations was not too short as to render it difficult for the Parties to settle their disagreement and that the Council would have the opportunity to be informed by the Parties of the status of their negotiations. Mr. Moretti further emphasized that any such time-limit should be after the date of submission of the United States’ Counter-Memorial.

118. In expressing pleasure that both Parties were willing to renew their negotiations, the Representative of Turkey noted that it was the common wish of all Representatives that they find a satisfactory solution to their disagreement. Agreeing that it could prove difficult to complete the negotiations by a set time-limit, he indicated that it would be sufficient if the Council were informed from time to time on the status of the negotiations. The Representatives of the Russian Federation, the United Arab Emirates, Egypt, Spain, Singapore, Australia, Japan, Uruguay, Nigeria, Canada, the United Republic of Tanzania and France endorsed these comments.

119. The Representatives of Egypt, Spain, Singapore, Australia, Japan, Uruguay, Nigeria, Canada, the United Republic of Tanzania and France also encouraged the President of the Council to provide his good offices as Conciliator during the negotiations to facilitate an amicable settlement of the Parties' disagreement.

120. The Representatives of the Russian Federation and Spain underscored that a positive outcome of the negotiations would enable the Council to terminate the proceedings pursuant to Article 20 of the said Rules. In addition, the Representative of Spain emphasized that even if no explicit time-limit were set for the completion of the negotiations, the implicit time-limit therefor was the next (212th) session in October/November 2017 when it was envisaged that the Council would consider the merits of the case. The Representatives of Japan, Uruguay, Nigeria and the United Republic of Tanzania shared this view.

121. The President of the Council observed, from the discussion, that: the two Parties were desirous of continuing their negotiations and welcomed his support in that process as Conciliator; and that many Representatives welcomed the Parties' statements to that effect and wished to be apprised of the progress of the negotiations. He emphasized that, pursuant to Article 14 (2) of the said Rules, while the negotiations were underway no date should be established for the Council to examine the merits of the case as the disagreement might be resolved in the interim.

122. Mr. Moretti indicated that, without prejudice to the time and the efforts that the two Parties would expend in their negotiations, Brazil agreed with those Representatives who had stated that it would be useful for the Council to review the matter. Recalling that in its Resolution relating to the case *Settlement of Differences: United States and 15 European States (2000) regarding European Council Regulation (EC) No. 925/1999 ("Hushkits"): Preliminary Objections*, the Council had decided to further review the Parties' continued negotiations (cf. Operative Clause 6), he indicated that the Council could similarly decide, in the present case, to review at its next (212th) session any progress that might have been made by the two Parties through their renewed negotiations.

123. The President clarified that such a review would be carried out on the basis of a progress report on the status of the negotiations which would be presented at the Council's upcoming session. He reiterated that while the negotiations were underway no date should be established for the Council's consideration of the merits of the case.

124. In indicating that that was his understanding, Mr. Moretti recalled that in accordance with Article 14 (4) of the said Rules, the Council would examine the merits of the case in the event that, if so indicated by one or both Parties, no solution was found to the disagreement through the Parties' renewed negotiations.

125. In light of the discussion, the Council unanimously decided to invite the two Parties to engage in direct negotiations pursuant to Article 14 (1) of the *Rules for the Settlement of Differences* (Doc 7782) with a view to achieving a satisfactory resolution of their disagreement. Ms. McManus and Mr. Moretti accepted this invitation on behalf of the Governments of the United States and Brazil, respectively.

126. In addition, the Council unanimously decided to invite the President to be available to provide his good offices as Conciliator during the Parties' renewed negotiations.

127. Furthermore, the Council unanimously decided not to set a time-limit for the completion of the negotiations in order to give both Parties full opportunity to successfully resolve their disagreement,

on the understanding that a progress report on the status of the negotiations would be presented for its consideration during its next (212th) session in October/November 2017.

128. On behalf of the Council, the President expressed appreciation to both Parties for their spirit of compromise, and their willingness to resolve their disagreement amicably.

129. It was noted that, on the basis of the Council's above deliberations, the President would prepare and circulate the draft text of the Council's decision in the Preliminary Objection stage of the case *Settlement of Differences: Brazil and the United States* (2016), which would be tabled for the Council's consideration and approval at its next meeting (211/10) on Friday, 23 June 2017.

130. The meeting adjourned at 1350 hours.

**COUNCIL — 211TH SESSION**

**SUMMARY MINUTES OF THE TENTH MEETING**

**(THE COUNCIL CHAMBER, FRIDAY, 23 JUNE 2017, AT 1000 & 1200 HOURS)**

**CLOSED MEETING**

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

**PRESENT:**

Algeria	— Mr. A.D. Mesroua	Kenya	— Ms. M.B. Awori
Argentina	— Mr. G.E. Ainchil	Malaysia	— Mr. Y.-H. Lim
Australia	— Mr. S. Lucas	Mexico	— Mr. D. Méndez Mayora
Brazil	— Mrs. M.G. Valente da Costa	Nigeria	— Mr. M.S. Nuhu
Cabo Verde	— Mr. C. Monteiro	Panama	— Mr. G.S. Oller
Canada	— Mr. M. Pagé	Republic of Korea	— Mr. J. Hur
China	— Mr. Shengjun Yang	Russian Federation	— Mr. A.A. Novgorodov
Colombia	— Mr. A. Muñoz Gómez	Saudi Arabia	— Mr. S.A.R. Hashem
Congo	— Mr. R.M. Ondzotto	Singapore	— Mr. T.C. Ng
Cuba	— Mrs. M. Crespo Frasquieri	South Africa	— Mr. M.D.T. Peege
Ecuador	— Mr. I. Arellano	Spain	— Mr. V.M. Aguado
Egypt	— Mr. A. Khedr	Sweden	— Ms. H. Jansson Saxe
France	— Mr. P. Bertoux	Turkey	— Mr. A.R. Çolak
Germany	— Mr. U. Schwierczinski	United Arab Emirates	— Miss A. Alhameli
India	— Mr. A. Shekhar	United Kingdom	— Mr. M. Rodmell
Ireland	— Mrs. A. Smith Floch	United Republic of Tanzania	— Mr. R.W. Bokango
Italy	— Mr. M.R. Rusconi	United States	— Mr. S. Kotis (Alt.)
Japan	— Mr. S. Matsui	Uruguay	— Mr. M. Vidal

**ALSO PRESENT:**

Dr. N. Luongo (Alt.)	— Argentina
Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. O. Vieira (Authorized Agent)	— Brazil
Mr. L. Sacchi Guadagnin (Alt.)	— Brazil
Mr. G. do Prado Lima (Alt.)	— Brazil
Mr. R. da Rosa Costa (Alt.)	— Brazil
Mr. D.A. Tavares Taufner (Alt.)	— Brazil
Mr. Chunyu Ding (Alt.)	— China
Mr. M. Millefert (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mr. K.A. Ismail (Alt.)	— Malaysia
Mrs. D. Valle Álvarez (Alt.)	— Mexico
Mr. S. Kim (Alt.)	— Republic of Korea
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. M.S. Habib (Alt.)	— Saudi Arabia
Mr. S. Vuokila (Alt.)	— Sweden

**SECRETARIAT:**

Mrs. J. Yan	— C/OSG
Mr. B. Djibo	— D/ATB
Mr. J. Augustin	— D/LEB
Mr. S. Creamer	— D/ANB
Mr. V. Smith	— D/ADB
Mr. A. Opolot	— LO
Mr. A. Larcos	— ACC
Miss A. Tyo	— Précis-writer



**ALSO PRESENT (CONTINUED):**

Mr. Ö. Dođrukol (Alt.)	— Turkey
Mr. A. Alnaqbi (Alt.)	— United Arab Emirates
Mr. J.C. Salazar (Alt.)	— United Arab Emirates
Mrs. L. Coquard-Patry (Alt.)	— United Arab Emirates
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Ms. K. McManus (Authorized Agent)	— United States
Mr. W. Voss (Alt.)	— United States
Mr. J. Méndez (Alt.)	— Uruguay

Representatives to ICAO

Chile  
Cyprus  
Ethiopia  
Greece  
Indonesia  
Lebanon  
Paraguay  
Sudan  
Venezuela (Bolivarian Republic of)

Airports Council International (ACI)  
International Air Transport Association (IATA)  
European Union (EU)

**Subject No. 16:           Legal work of the organization**  
**Subject No. 26:           Settlement of disputes between Contracting States**

**Settlement of Differences: Brazil and United States – preliminary objection stage**

1.           The Council resumed consideration of this item, which had been first discussed at the Ninth Meeting of the current session on Wednesday, 21 June 2017. In doing so, it was recalled that at the previous meeting, the President had indicated his intention to prepare and circulate the draft text of the Council’s decision on the preliminary objection in the matter: Brazil and United States, so that it could be considered and approved at this the Tenth Meeting of the 211th Session (C-DEC 211/9 refers). In this connection, it was noted that the draft text of the decision had been circulated (in all languages) to Council Representatives on the afternoon of Thursday, 22 June 2017.

2.           Following consideration, the Council adopted the decision, which is reproduced in the Attachment to this C-MIN.

3.           The Representative of Brazil thanked all the delegates who took part in the settlement process and expressed her gratitude to the Legal Affairs and External Relations Bureau (LEB) for its excellent work in leading the parties through a very difficult situation, a task which it had undertaken despite the demands of other important pressing assignments. She also commended the President of the Council for his leadership role in this endeavour and availed herself of the opportunity to express her appreciation of the constructive process that the Brazilian Delegation had had with the Delegation of the United States. She was confident that the two Delegations would work well together in future and congratulated the United States Delegation on the very constructive process and on the views that they had demonstrated to her delegation since the decision.

4.           The Authorized Agent of the United States (Ms. Katherine McManus) thanked the Secretary General for her assistance and the President of the Council for his guiding hand on this matter. Although the Council did not reach the decision that the United States Delegation had hoped for when it filed its preliminary objection, the matter was now in a posture with which her delegation was comfortable. She also thanked the many members of the Council who played constructive roles and helped the parties reach this point. The United States Delegation extended its gratitude to the Secretariat, particularly the LEB, for their excellent work in bringing about the result that the Council had now adopted. She assured that the United States would negotiate with its Brazilian counterparts in good faith, and it was hoped that these negotiations would come to a constructive and mutually beneficial resolution within a reasonable time. She added that a preliminary discussion of modalities with Brazil had already taken place, and expressed her appreciation of the offer from the President of the Council of further assistance as needed in this regard.

5.           The President of the Council congratulated the delegations of Brazil and the United States for the spirit of compromise and consensus that had been exhibited. Both delegations had displayed exemplary leadership in the statements presented and in their readiness to work together. The President confirmed his availability to support the continuing process in whatever way possible, but stressed that the key element was the determination of both sides to continue direct bilateral negotiations.

6.           The Council reconvened in open session at 1015 hours to consider the remaining items on its order of business. The closed session was then reconvened at 1200 to consider the following item.

**Subject No. 27: Convention on International Civil Aviation (Chicago Convention)****Item under Article 54 n) of the Convention on International Civil Aviation**

7. The Council had for consideration the Oral Report by the Secretary General on a State's request under Article 54 n) of the *Convention on International Civil Aviation* – request of Qatar.

8. Prior to commencing consideration of this item, the Council decided that despite this matter being considered in closed session, the representatives of the European Union, International Air Transport Association (IATA), and Airports Council International (ACI), should be permitted to attend and observe the proceedings.

9. The Secretary General presented her Oral Report, as follows:

“A series of correspondence from the State of Qatar related to a request to the Council of ICAO to consider a matter pursuant to Article 54 n) of the Chicago Convention under which it is a mandatory function of the Council “to consider any matter relating to the Convention which any contracting State refers to it”. Such consideration under Article 54 n) may be about a dispute but is not part of the process for settlement of disputes provided in Article 84; in other words, the consideration of a matter under Article 54 n) is fully governed by the *Rules of Procedure for the Council*, not by the Rules for the Settlement of Differences. Consideration of a matter by the Council under Article 54 n) is not uncommon as there were several cases over the years. In terms of outcomes, the Council approved a variety of actions that are recorded either in Decisions, Declarations or Resolutions.

“In a letter dated 8 June 2017 addressed to the President of the Council, the Chairman of the Civil Aviation Authority of Qatar requested “the intervention of the ICAO Council in the Matter of the Actions of the Arab Republic of Egypt, the Kingdom of Saudi Arabia, the United Arab Emirates (UAE) and the Kingdom of Bahrain to close their Airspace to aircraft registered in the State of Qatar”. He indicated Qatar's intention to make an application under Article 84 of the Chicago Convention and requested that the Council urgently consider under Article 54 n) certain actions of Bahrain.

“By letter dated 13 June 2017, the President of the Council advised the Chairman of the Civil Aviation Authority of Qatar that the authorities of Bahrain had been duly informed of Qatar's request under Article 54 n) but, considering that his afore-mentioned letter of 8 June addressed a range of issues, involving several States at various degrees, the President further requested from Qatar a separate and dedicated communication specifically on the Article 54 n) request, which would be circulated to the Council for decision on adding this item to its Work Programme.

“Following a letter dated 15 June supplemented by supporting documentation provided by e-mail message dated 16 June addressed to me, the Chairman of the Civil Aviation Authority of Qatar, by letter dated 17 June 2017 to the President of the Council, confirmed “the decision of the State of Qatar to invoke Article 54 n)” of the Chicago Convention. He further requested the Council to include this matter on a “top-urgent” basis as an item in the Work Programme of the current 211th Session. The letter

referenced earlier correspondence from the State of Qatar which specifically requested the intervention of the Council under Article 54 *n*) “in the Matter of the Actions of the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia and the UAE to Close their Airspace to Aircraft Registered in the State of Qatar”, i.e. not only the actions of Bahrain.

“As regards the technical aspects of the issue, you will recall that I provided you with a technical brief on 9 June and so I will not repeat here all those points but I wish to point out the following:

- During the week of 5 June and subsequently, after coordination by the ICAO Regional Office in Cairo supported by Headquarters and the Air Navigation Bureau (ANB) with the States concerned, a number of NOTAMs promulgating restrictions were modified, clarifying that restrictions against Qatari-registered aircraft was over their airspace – meaning territory of the State within the Flight Information Region(s) (FIR) concerned.
- From 12 June until today three contingency routes have been promulgated by Bahrain, Iran (Islamic Republic of) and Oman, to add to some existing air traffic services (ATS) routes over the Gulf already being utilized for arrival and departures to/from Qatar.
- An additional contingency route; an extension of an existing ATS route via the Emirates FIR has been turned down for operational reasons. The ICAO Regional Office in Cairo continues to press for more effective contingency routes and arrangements to facilitate the traffic flow in and out of Qatar for Qatari-registered aircraft with the support of the Headquarters and the ANB.
- On 15 June, a technical delegation from Qatar visited ICAO Headquarters in Montréal, as well as a high-level delegation from Bahrain, Egypt, Saudi Arabia and UAE. Also, the Directors General of these four States have agreed to hold a Special Technical meeting with ICAO in Cairo on 6 July. I decided to send Chief Air Navigation Bureau from headquarters to join the Regional Office in Cairo to participate in this meeting.”

10. The Secretary General reported as additional information not pertaining to Article 54 *n*) but regarding Article 84:

- By letter dated 13 June 2017 from H.E. Jassim Bin Saif Al-Sulaiti, Minister of Transport and Communications of the State of Qatar, it was stated that formal applications by the State of Qatar, pursuant to Article 84, would be lodged, one regarding the Chicago Convention and the other the International Air Services Transit Agreement, along with their supporting memorials, which would be submitted under separate cover.
- Such separate cover has since not been received from Qatar but meanwhile two Applications and Memorials were hand-delivered to me on 15 June 2017 and a letter of the same date further transmitted updates on evidence through related Appendices.
- In accordance with Article 3 (1) (a) of the Rules for the Settlement of Differences, upon receipt of an application, the Secretary General shall verify whether it complies

in form with the requirements of Article 2 of the said Rules and, if necessary, require the applicant to supply any deficiencies appearing therein.

- Besides necessary clarification regarding any “separate cover” from Qatar authorities invoking Article 84 of the Chicago Convention as mentioned above, the two hand-delivered applications and memorials were verified and deficiencies were identified. Accordingly, by letter dated 21 June, I requested the Chairman of the Qatar Civil Aviation Authority to provide necessary information so as to rectify such deficiencies.

11. The President of the Council thanked the Secretary General for providing this updated information on the technical work that had been done and the details of the plan moving forward. He then made the following introductory remarks:

“Further to my email dated 19 June 2017, in which I sought your comments regarding the State of Qatar’s request to include an item under Article 54 *n*) of the Convention on International Civil Aviation in the current 211th Session, please note the following:

- A majority of members on the Council were in favour of including an item in the Work Programme of the Council. With respect to this session, a significant number but not the majority of members accepted to include the item in the current 211th Session, while others, noting practical challenges, suggested that it could be dealt with at a later session or at an extraordinary session, that is a session between this session and next session. There were also suggestions for an informal briefing as soon as possible.
- Many Representatives also indicated the need to prepare properly for the meeting, provide opportunities to States that have special interest to participate and make submissions and that the focus of the meeting should be strictly on technical matters of safety, security and regularity of air navigation.
- And finally that the Council’s consideration of the item should not be seen to discuss nor escalate any political differences.”

12. The President of the Council advised that the discussion of the current meeting would focus on how the Council would address this issue. As a first step the Council had been apprised of the technical developments on the contingency arrangements and that ongoing consultation was taking place between ICAO Headquarters, the Middle East Regional Office in Cairo and the States. The President then announced that on 30 June 2017 a detailed informal briefing by the Secretariat led by the Secretary General, and presented by the Director of the Air Navigation Bureau (D/ANB), would inform on the exact situation as of that date with respect to the issues of flights, contingency arrangements, efficiency and safety of operations in the Region. At that stage it would be necessary to identify a period for an extraordinary meeting by the Council to be held between its 211th Session and the scheduled start of its 212th Session.

13. The Council availed itself of the opportunity to thank the Secretary General for her Oral Report, and the Secretariat, in particular the Middle East Regional Office in Cairo, for the prompt action taken in response to the situation in the region in the service of international air navigation. The Council also expressed its appreciation to the President of the Council for the efforts made in his key role in addressing the urgent matter under consideration.

14. The Representative of Mexico supported the steps proposed by the President of the Council and relayed his belief that this delicate topic should be addressed urgently, in good faith and in a responsible manner, and that the differences between the States concerned be examined solely with a view to ensuring the safety, security and regularity of air operations regardless of the registration number of the aircraft, in line with the mandate of ICAO. Although cognizant of the urgency of the matter, he was of the view that reliable information was needed when taking the matter under review, and the Council should consider whether the information provided was sufficient. He suggested that the States concerned could formally share their positions with the Council so as to support it in determining the priority of the case and determining how it should be resolved. He cautioned against acting in an overly hasty manner which could lead to an unfair or incomplete decision that could negatively impact on the safety and continuity of air travel.

15. Conveying his respect to the State that had requested that this item be presented to the Council, the Representative of Saudi Arabia agreed that the focus of the discussion should rest on safety, security and air navigation. He noted that two communications had been presented: one addressed to the President of the Council under Article 54 n) of the Chicago Convention that requested the submission of this item to the Council, and the other from the State of Qatar addressed to the Secretary General requesting the resolution of the settlement of this difference under Article 84 of the Convention. He opined that the Council's discussions should not address the settlement of the difference under Article 84 as he was of the view that this would be in contradiction to the Chicago Convention, and the Council could not take decisions that were contrary to the Convention. In response to the President's email request for comments, the Delegation of Saudi Arabia had asked for an update or briefing on the current situation so that the Council could be appraised of the safety plans and of the arrangements taken to guarantee the safety and security of air navigation. The Representative of Saudi Arabia took the opportunity to underline that Saudi Arabia considered air safety as a sacred subject and no State should violate or compromise it.

16. The Representative of the United States informed the Council that his State had been closely monitoring the situation. It was his understanding that Qatari aircraft had been restricted from operating in certain portions of the region, and this included flights originating from and destined for Qatar. His State had also been reviewing information shared by the Government of Qatar alleging that these actions, including the discontinuation of a vital airway, were creating an unsafe operational environment in already congested airspace. Over the last week, the United States Delegation had met with special representatives and high-level officials from all parties to this dispute and had heard their concerns concerning these extraordinary measures. The operational situation had also been discussed with experts from both the United States Federal Aviation Administration and the ANB of ICAO. While welcoming the informal briefings, he believed that the respective positions of the countries involved must be considered immediately in light of ICAO's primary responsibility to ensure the safety and security of international civil aviation in the region. He opined that the immediate concern was to ensure the safe operation of civil aviation in the region and stressed that all steps should be taken to ensure that transit aircraft were not placed in unsafe conditions due to the ongoing dispute between the Gulf countries. It was incumbent on ICAO to determine if contingency routes that allowed for the safe and regular passage of international traffic on international routes had been properly established or if additional measures were warranted. As the delegation of administrative control of international airspace was an ICAO responsibility, it was incumbent upon ICAO to react quickly to situations where aviation safety in these areas might be jeopardized.

17. In light of the received complaint and disputed statements on the ability of ICAO's Middle East Office to reach an agreement between the parties, the Representative of the United States believed it was incumbent on the ICAO Council to address this aspect of the dispute with a sense of urgency and called on the Council to take up this action immediately and without delay. In addition, as these measures hindered international aviation, his delegation urged the States concerned to continue to negotiate their differences. He advised that his State was in close communication with all parties to de-escalate and resolve the underlying irritants that had led to the airspace closures. It was critical that strong ties be maintained among key partners to sustain the fight against terrorism and violent extremist ideology. Such ties extended to commercial aviation activities so he reiterated that all steps should be taken to ensure safe and secure civil aviation operations.

18. The Representative of the United Arab Emirates (UAE) supported the comments of the Representative of Saudi Arabia and while averring that every State had the right to seek a hearing by ICAO, she reminded that rules and procedures existed within the Organization and these needed to be followed. It was necessary to distinguish between what was to be considered urgent and what needed to follow established procedures. In particular the Secretariat of ICAO and the Middle East Regional Office needed to advise what was occurring on the ground, what contingency plans were in place, and what procedures were to be followed before the Council could make any assumptions about whether any aspects of this case needed to be dealt with urgently. She urged the Council to consider all the facts with open minds and reminded that two articles, Article 54 *n*) and Article 84, were involved but that these were separate issues.

19. The Representative of France stated that ICAO must stick strictly to its prerogatives and not enter into political issues which fell under the mandate of other institutions. His view was that sustainable solutions must be found quickly in order to ensure the international aviation regulations in accordance with the Chicago Convention were respected. While he supported the Secretariat's proposal to hold a technical meeting on 6 July 2017, as well as the proposal to hold an informal briefing on 30 June, he felt these measures were insufficient. There was a legitimate need for the Council to listen to all parties involved in this issue. Since a formal, urgent request relating to Article 54 *n*) had been presented, the Council should abide by the provisions of the Chicago Convention. Member States that did not sit on the Council must not be left behind. It would be regrettable for third parties not to be included, when the President of the Council and the Secretary General had already made fruitful efforts in this regard. The Representative of France was of the view that the deadlines needed to be tightened, and that a formal extraordinary meeting of the Council should be held as soon as possible where all sides could present their cases. This action would send a necessary message that ICAO was addressing the quick resolution of the relevant measures and abiding by its mandate to ensure the highest level possible of safety in the region.

20. Wishing to underscore that the work of ICAO was on the technical aspects of air navigation safety only, the Representative of Egypt opined that the Organization should not delve into political considerations or address subjects that were under the purview of other international entities. He also emphasized his State's full respect for international conventions and treaties and for international law. The Chicago Convention, as the legal framework that governed the work of ICAO, underlined the sovereignty of States and in its Article 4 underlined the commitment of all Contracting States not to abuse or misuse air navigation for other purposes. Under consideration at the current meeting were the actions taken by certain States, including Egypt, who he stated had evidence that Qatar was misusing civil aviation in violation of Article 4 of the Chicago Convention. He added that the recent period had borne witness to the cooperation of civil aviation authorities with ICAO in order to guarantee the security and safety of aviation in international airspace to ensure aviation would not be affected by the actions taken in

the region. He underlined his State's readiness to continue to cooperate with the Secretary General, either through ANB or through the Regional Office in Cairo, in order to solve any problems and to respond to any request to continue the flow of air traffic in international airspace. He expressed agreement with the proposal to hold an informal briefing, in coordination with the Middle East Regional Office, so as to enable the Council to be appraised of all aspects of the matter. He also emphasized the view that the actions taken were exclusively related to Egyptian airspace against a country which his State considered to have misused civil aviation for purposes inconsistent with the aims of the Chicago Convention.

21. The Representative of Turkey conveyed his sadness at witnessing this problem among good friends in the same region and expressed the hope that political solutions would be found to this issue as soon as possible. Because it was not ICAO's role to find a political solution, however, the Organization needed to focus on safety, security and air navigation and to do so promptly. He added that it would be useful for the Council to be provided with the text of the Secretary General's oral report for further reference. He expressed support for the remarks made by the Representatives of the United States and of France for the need to act quickly on this matter. While the informal briefing would assist in establishing a clear vision of events taking place in the region, subsequent to that informal briefing there should not be a long delay before hearing from the Qatari authorities because their demand followed from Article 54 *n*) of the Chicago Convention and had been accepted by the Council. He believed that the Article 54 *n*) hearing should be implemented immediately after the informal briefing, and notwithstanding the technical meeting forecast for 6 July in the Middle East Office, it was important to hear from the State of Qatar to determine the nature of its request. He concluded with the suggestion that every attempt should be made for the Article 54 *n*) Council meeting to take place as early as possible in the month of July.

22. The request to have the Secretary General's oral report made available to the Council for consultation was seconded by the Representative of the United Kingdom who felt it outlined aspects of the history of the case, and it was important that the Representatives report the facts accurately to their respective authorities. Referring to the views put forward by the Representatives of the United States, France, and Turkey regarding the action being proposed, he agreed that the Council should have the information to hand, and he felt it necessary to show a certain degree of urgency. In particular, as a specific request had been received from a Contracting State of the Organization and it appeared that a majority of Council Representatives had agreed that this matter be taken quite soon, he feared that inaction would risk the appearance of a lack of urgency in addressing this matter which could reflect badly on the Organization. He expressed the hope that the current meeting would come to a clear decision in that respect.

23. The Representative of Singapore expressed his appreciation for the briefing provided by the Secretariat and to the delegations of Egypt, Saudi Arabia, and the UAE for tirelessly updating the Council on many of these issues. He advised that Singapore was also closely monitoring the developments in the Gulf region with all concerned and, as a friend of all the Gulf Cooperation Council (GCC) Member States, Singapore hoped that all sides would take steps to reduce tensions. The ongoing efforts to find a peaceful resolution to the dispute through diplomacy and dialogue and on the basis of international law were welcomed. The Middle East countries played an important role in countering terrorism, and it was essential for the GCC Members and the Arab countries to stay united and to work together as this would ensure that ongoing multinational efforts, of which Singapore was a part, to combat terrorism remained unaffected.



24. Having listened carefully to all the comments, the Representative of Singapore agreed that the present was a complex and sensitive political issue involving more than civil aviation, and, as the United Nations agency responsible for international aviation with clear jurisdiction over global aviation matters, ICAO needed to look at this issue. Having listened to all parties including Saudi Arabia, the UAE and Egypt, he was of the opinion that none on the Council would disagree on the importance of the rule of law which was premised in international law and agreements. For over 70 years, civil aviation had been built upon Member States individually and together upholding the rule of law. Member States had fulfilled their commitments to international law and to the agreements that they had signed and ratified to ensure freedom of overflight for international aviation traffic, including international agreements such as the Chicago Convention and the International Air Services Transit Agreement, through which Member States ensured that air navigation services were provided professionally and objectively based on operational and technical considerations with safety being paramount. He expressed the opinion that, looking to the future, Member States must and would continue to uphold the same commitments for civil aviation to grow from strength to strength benefiting people around the world. He urged that more work be done so that operational solutions could be found to ease the situation and to guarantee the unhindered flow of air traffic in the region. He agreed with the viewpoints expressed by the Representatives of the UAE and of Turkey that all available information be presented and expressed support for the informal briefing set for 30 June. On procedural matters, he queried, with regard to the hearing on Article 54 *n*) of the Convention, whether the governments of Qatar and of the States concerned would be required to table working papers for the Council's consideration.

25. The President of the Council commented that some speakers had made clear the requirement to provide opportunities to States to present submissions to the Council, and it was on that basis he anticipated that those submissions to be made by the relevant States would outline what action the Council was expected to take. Further, the President stressed that for the Council it was necessary to differentiate the Article 54 *n*) process from the Article 84 resolution mechanism.

26. With regard to Article 54 *n*) proceedings, the Director of the Legal Affairs and External Relations Bureau (D/LEB) explained that there were a variety of ways that this could be brought to the Council in terms of information from the State, but ideally the State should provide a comprehensive, cohesive document which clearly outlined an action item which the State would request from the Council. In this particular case it would be important to sever the Article 54 *n*) proceedings from Article 84 proceedings. LEB had received numerous communications that had combined references to Article 54 *n*) and to Article 84. It was not the task of the Secretariat, but rather that of the requesting State, to decide which aspects fell under Article 54 *n*) and which fell under Article 84. As an example of a working paper that had invoked Article 54 *n*), D/LEB referenced a resolution attached to C-MIN 203/1 on the issue of the Malaysia Airlines Flight MH17, the discussion of which had raised the invoking of Article 54 *n*) of the Chicago Convention.

27. The President of the Council confirmed that it was his expectation that matters proceed in accordance with the *Rules of the Procedure for the Council*. It was his expectation that the State requesting consideration of Article 54 *n*) would be required to submit a working paper which would contain an action item for consideration by the Council. Thereafter, it would also be important, in accordance with the *Rules of Procedure for the Council*, to ensure that States with an interest in the matter be invited, if they so wished, to submit a working paper with an action item.

28. In view of the urgency of the situation, the Representative of Canada supported the position of the Representatives of France, Turkey, the United States and the United Kingdom to the effect that the Council of ICAO should address the matter as soon as possible.

29. Having listened carefully and with the greatest respect to the various contributions, the Representative of Spain welcomed the comments by the Representatives of Egypt and the UAE with regard to being faithful to the Chicago Convention and to upholding the rule of law. Noting that time was passing in addressing this crisis, which was both delicate and complex, he was of the view that the situation had possibly improved somewhat according to the latest information received. While he expressed support for the proposal to hold an informal briefing on 30 June, nevertheless, there was a need to distinguish between the receipt of information and the obligations of the Organization with respect to Article 54 *n*). The actions taken by the Council, as guardians of the Chicago Convention, needed to comply with the Convention and to align to ICAO's strategic objectives of safety and efficiency of air transport. On that basis, he proposed that the Council schedule an extraordinary meeting to take place as soon as practicable following the technical briefing set for 6 July in Cairo.

30. The Representative of Uruguay prefaced his comments by thanking the Representatives of Saudi Arabia, the UAE and Egypt for the timely information provided. He was pleased to be able to share information directly with them and with the pertinent regional groups. He agreed with previous speakers that the focus should be on essential air navigation matters, these being the technical issues of aviation safety and security. All parties concerned should be given the opportunity to speak directly on this urgent matter and in particular it was important in this case to uphold international law. He agreed with the Representative of Mexico and others on the importance of possessing reliable information upon which the Council would make an appropriate determination. He concluded by adding that the timeframe suggested by the Representative of Spain seemed to him to be sensible and should be given consideration.

31. The Representative of Germany concurred with all the speakers who expressed their concern over the situation and its impact on international civil aviation as regards safety, security and efficiency, as well as with the views expressed that the Council should consider this matter as one of urgency and of the highest priority. He considered this a fundamental function and responsibility of the ICAO Council, and urgent attention was necessary to provide the urgently needed clarity on the situation based on reliable facts in the interest of the international civil aviation.

32. Endorsing the contextual observations by the Representative of Singapore, the Representative of Australia wished to emphasize that the Australian Government looked forward to a resolution of these kind of issues from diplomatic efforts. For ICAO, procedurally it was important firstly that information be shared and secondly that the concerns of a Member State be heard. It was also important on this issue that the Council engage and satisfy itself as to the appropriateness of the Organization's response. Consideration of the matter in the Council following the informal briefing should not be delayed, and the Council's discussion should focus on ICAO's jurisdiction, being the safety of air navigation and the measures ICAO had taken and could yet take on contingency and other planning to ensure the safety of civil air navigation in the region.

33. Noting that previous speakers had referred to the technical work that needed to be done by the Organization, the Representative of Argentina reminded that nonetheless it was necessary to recognize the political dimension of the situation. International terrorism was the enemy of all and no effort should be spared to combat it. He echoed the support of other speakers for the informal briefing to be held on 30 June and shared the view as well that the right of a Member State to have its formal request heard by the Council must be respected. As "justice delayed was justice denied", a Member State of the Organization could not be prevented or delayed from making its case. The world would look upon ICAO, including its Council and all its bodies, and judge it by the measures it took. He supported the timeline proposed by the Representative of Spain, and noting the complexity of the problem and that the region

comprised a very congested air space, believed it would be helpful to relay the technical information to the Council as quickly as possible so that the Council could meet soon after. In particular, he did not believe that the month of July should pass without the extraordinary meeting taking place subsequent to the technical meeting in Cairo.

34. Expressing her agreement with the majority of speakers, the Representative of Brazil opined that information and security were important and that the Council's commitment was to see that aviation security was upheld in civil aviation. She affirmed that the extraordinary meeting of the Council should be held immediately after the Cairo meeting on 6 July so as to consider the way forward to help in creating safe and secure airline traffic for all.

35. The Representative of Saudi Arabia agreed with the Representatives of Spain and Argentina, and wished to remind that the Organization had technical committees and expert panels which dealt with safety and security under the aegis of the Secretary General. The Cairo meeting on 6 July would give the technical experts an opportunity to transmit their assessment to the Council. Proper preparation for a subsequent Council meeting would entail a review of these findings. As well, following submission by Qatar of its working paper, the Representative suggested that a two-week interval period might be required to allow for its assessment and for the preparation of a response by the other States concerned.

36. The views expressed by the Representative of Saudi Arabia were strongly supported by the Representatives of the United Arab Emirates and of Egypt.

37. In support of the timeline proposed by the Representative of Spain, the Representative of the United States felt that any delay by the Organization in taking action risked damage to its reputation. Therefore he called for the extraordinary meeting of the Council to be scheduled as soon as possible following the Cairo technical meeting. Outside observers would not be interested in the internal procedures of the Organization, but would want only to know what ICAO did to ensure the safety of passengers from all countries flying through the region. He hoped that the Council's role as the only resident Council of any United Nations technical agency and ICAO's unique structure and format would be called into play to address this situation proactively and as soon as practicable.

38. In response to the preceding intervention, the Representative of Saudi Arabia emphasized from a legal point of view, the right of all States concerned to have sufficient time to rebut the position that Qatar might submit in its documentation.

39. Expressing support for the comments made by the Representative of the United States and in support of the view that in accordance with the Chicago Convention, it was the right of a Member State not represented on the Council to be given the opportunity to be heard, the Representative of Turkey reminded that the matter was not open ended, and that it was important to address the issue within a reasonable timeframe. All States concerned should be given the opportunity to present their cases to the Council, after which the technical process could continue.

40. The President of the Council took the opportunity to remind all present that the Council's consideration of the item should not be seen to discuss nor escalate any political differences and called on all Council Members to focus on technical matters but in so doing to also ensure that opportunities be given to all interested parties to be heard. Of the interested States, two, Qatar and Bahrain, did not enjoy representation on the Council, and both States should be given the opportunity of a hearing. Summarizing the discussion thus far, the President said that, first, there was clear support for the need for credible

information. He suggested that credible information was the essence of the upcoming informal briefing wherein the Secretariat would explain the current situation. Second, it was agreed that the technical coordination meeting in Cairo should be continued and the participation of Headquarters in that process was welcomed. Third was the need to ensure that the Council formally consider this item as soon as possible following the Cairo technical meeting and that the Council meeting should be properly but expeditiously prepared.

41. It had been noted that the process regarding Article 54 *n*) was different from that for Article 84, and that those two processes should not be confused. The State of Qatar had submitted three requests, one with respect to Article 54 *n*), and two with respect with Article 84, and the Secretariat was in the process of clarifying the three requests. Therefore the President advised that what still needed to be done was for the Council to set a date for its consideration of this subject. A proposal had been brought forth that the meeting of the Council should be held during the month of July. Rule 19 a) of the *Rules of Procedure for the Council* stated that “between two consecutive sessions of the Council, the President, on his own initiative or at the request of a Contracting State, after consulting the Members of the Council and with the approval of the majority of the Members of the Council, shall call an extraordinary session or change the date which the Council has set for the opening of the next session. No such action shall result in a Council Meeting being held on less than seven days’ notice.” The President advised that the extraordinary meeting would take place in July falling between the 211th and 212th Sessions. He advised that he would consult with the Secretariat on the exact date of the Council extraordinary meeting following the informal briefing set for 30 June. All States would be kept informed and would be given the opportunity to prepare working papers with clear action items for the Council. States of special interest in particular would have the opportunity to prepare their own working papers, with action items by the Council. The President then requested that the Council decide at the current meeting to ask the Secretariat to work expeditiously on all the operational and contingency arrangements to ensure the safety and efficiency of international civil aviation and in that regard to undertake necessary consultations with all States concerned.

42. The summary by the President of the Council was supported by the Representatives of Congo, Ecuador, Kenya, Saudi Arabia, South Africa and United Republic of Tanzania, without additional comment.

43. The Representative of Turkey agreed with the summary outlined by the President of the Council and on the need for expeditious action for the sake of ICAO’s reputation and with regard to public opinion. He stressed the need to uphold the Chicago Convention and the role of Article 54 *n*).

44. Thanking the President of the Council for his summary, the Representative of Spain highlighted that it was important for the Middle East Regional Office and the ANB to progress in their endeavours and to make the necessary arrangements for a contingency plan for the region. It should be emphasized that this Secretariat action should not wait for the extraordinary meeting of the Council, which should be held as soon as possible.

45. Responding to a query from the Representative of France for clarification on the status of consultations, and a desire that, if they had not already commenced, such consultations begin immediately, the President of the Council advised that consultation with the Secretariat had been ongoing with regard to the request from Qatar, but subsequent to the current meeting, it was necessary to continue to review the situation. He reiterated that the extraordinary Council meeting would take place in July, and States would be informed accordingly.

46. The Representative of the United States voiced his appreciation for the President's summary and wished to ensure that the proposal from the Representative of Spain to have the extraordinary Council meeting follow immediately from the Cairo technical meeting had been noted as it comported closely with the sense of urgency expressed by many speakers.

47. The Representative of Egypt supported the summary presented by the President and reiterated the earlier request from the Representative of Saudi Arabia regarding the need to allow ample time after the dissemination of the working paper from the State of Qatar in order that other delegations might have sufficient time to prepare their comments and submit their own documentation.

48. The proposed summary from the President was supported by the Representative of the United Arab Emirates, who also supported the preceding intervention from the Representative of Egypt.

49. The Representative of Colombia supported the summary and stated that the position of the Council was above and beyond State disputes. In the midst of turmoil, the Council Representatives had the obligation, because they were elected by all Member States, to ensure the stability of air transport. Thus he appealed to all parties to set aside any differences in so far as possible and to take the fairest possible decision as expeditiously as possible for the good of international civil aviation.

50. The Representative of Nigeria supported the President's summary and echoed the sentiments of the Representative of Colombia that, despite any political differences, ICAO was a technical body and the Organization needed to work for the interests of air transportation.

51. Following a query from the Representative of the United Kingdom on the application of the *Rules of Procedures for the Council* as regarded the extraordinary Council meeting to be held under Article 54 n), the President of the Council confirmed that the said Rules would apply including the requirement that all Council members receive all the working papers at least five days before the meeting.

52. Following consideration, the Council requested that an informal briefing on technical issues arising should be provided by the Secretariat and the date set for this informal briefing would be Friday, 30 June 2017 at 1500 hours. It was understood that further information regarding this informal briefing would be circulated in due course.

53. In addition, the Council agreed that in accordance with Rule 19 of the *Rules of Procedure for the Council*, an extraordinary session of the Council would be scheduled as soon as practicable following the technical meeting that would take place in the Regional Office in Cairo on 6 July 2017, on the understanding that the extraordinary session would occur before the end of the month of July 2017, taking into account the need to ensure that representatives from all the parties could attend as well as the need to prepare and circulate documentation that would form the basis for deliberations by the Council at the said extraordinary session.

54. In advance of the extraordinary session of the Council, the Secretariat was requested to continue to work cooperatively, diligently and expeditiously with all the parties involved in this matter.

55. Finally, the Council emphasized that in its deliberations on this item at subsequent sessions, it would be necessary to clearly differentiate between any actions that it as a governing body might consider taking in relation to Article 54 n) and any actions that it might consider taking in relation to Article 84 of the *Convention on International Civil Aviation*.

56. The meeting reconvened in open session at 1430 hours to consider the remaining items on its order of business.

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**ATTACHMENT****DECISION OF THE ICAO COUNCIL  
ON THE PRELIMINARY OBJECTION  
IN THE MATTER: BRAZIL AND UNITED STATES (2016)***THE COUNCIL,*

*ACTING* under Article 84 of the *Convention on International Civil Aviation* and the *Rules for the Settlement of Differences*;

*COMPOSED* of the following Representatives entitled to vote: Mr. A.D. Mesroua (Algeria), Mr. G.E. Ainchil (Argentina), Mr. S. Lucas (Australia), Mr. C. Monteiro, (Cabo Verde), Mr. M. Pagé (Canada), Mr. Shengjun Yang (China), Mr. A. Muñoz Gómez (Colombia), Mr. R.M. Ondzotto (Congo), Mrs. M. Crespo Frasier (Cuba), Mr. I. Arellano (Ecuador), Mr. A. Khedr (Egypt), Mr. P. Bertoux (France), Mr. U. Schwierczinski (Germany), Mr. A. Shekhar (India), Mrs. A. Smith Floch (Ireland), Mr. M.R. Rusconi (Italy), Mr. S. Matsui (Japan), Ms. M.B. Awori (Kenya), Mr. Y.-H. Lim (Malaysia), Mr. D. Méndez Mayora (Mexico), Mr. M.S. Nuhu (Nigeria), Mr. G.S. Oller (Panama), Mr. J. Hur (Republic of Korea), Mr. A.A. Novgorodov (Russian Federation), Mr. S.A.R. Hashem (Saudi Arabia), Mr. T.C. Ng (Singapore), Mr. M.D.T. Peege (South Africa), Mr. V.M. Aguado (Spain), Ms. H. Jansson Saxe (Sweden), Mr. A.R. Çolak (Turkey), Miss A. Alhameli (United Arab Emirates), Mr. M. Rodmell (United Kingdom), Mr. R.W. Bokango (United Republic of Tanzania), Mr. M. Vidal (Uruguay).

*THE PARTIES* being: Brazil (Applicant), represented by Mr. Olyntho Vieira, Authorized Agent, assisted by Mrs. Mitzi Gurgel Valente da Costa, Mr. Norberto Moretti, Ms. Andrezza Brandão Barbosa, Mr. Lucio Alves Angelo Junior, Mr. Nil Castro da Silva, Mr. Luis Henrique Sacchi Guadagnin, Mr. Guilherme do Prado Lima, Mr. Roberto da Rosa Costa, Mr. Dário Alexandre Tavares Taufner, and Mr. Rodrigo Henriques Godinho on the one hand; and the United States (Respondent), represented by Ms. Katherine McManus, Authorized Agent, assisted by Mr. Samuel Kotis, Ms. Wynne Teel, Ms. Danielle Polebaum, Mr. David Sullivan, Mr. Amen Iyi-Eweka, Mr. Carl Burleson, Mr. John Duncan, Mr. Jeffrey Klang, and Ms. Lorrie Fussell on the other hand;

*CONSIDERING* that an Application and Memorial by Brazil under Article 84 of the *Convention on International Civil Aviation* was filed on 2 December 2016; that a Statement of preliminary objection of the United States was filed on 27 March 2017; and that Comments to the Statement of preliminary objection were filed by Brazil on 19 May 2017;

*HAVING HEARD* the Parties in the above matter on the preliminary objection and having held its deliberations at the ninth meeting of its 211th Session on 21 June 2017;

*HAVING CONSIDERED* the preliminary objection of the Respondent, namely that the Council should dismiss the proceeding as time-barred under the generally accepted international law principle of extinctive prescription;

*CONSIDERING* that the question before the Council was whether to accept the preliminary objection of the Respondent;

*DECIDES* as follows:

1. The preliminary objection of the Respondent is not accepted.
2. The statements and arguments made in the preliminary objection of the Respondent and in the comments of the Applicant not possessing, in the circumstances of the case, an exclusively preliminary character, may be joined to the merits of the case and included in the counter-memorial and any additional pleadings.
3. The time-limit for the Respondent to submit its counter-memorial is set at two weeks from the date of receipt by the Respondent of the minutes of the ninth meeting of the 211th Session of the Council, which will include a record of the oral proceedings on the preliminary objection.
4. The Parties having accepted an invitation to continue to seek a settlement of the matter in dispute, it is desirable for such negotiations to continue.
5. The President of the Council is invited to be available to provide his good offices as Conciliator during such negotiations.
6. No time-limit is set for the completion of negotiations, although the Council will be informed of the progress of the negotiations at its 212th Session.

Decision number 1, on the question whether to accept the preliminary objection of the Respondent, was taken by a secret ballot with 4 Members voting in favor, a majority of 19 Members voting against, and 11 Members abstaining. Decisions numbers 2 to 6 were taken unanimously without a vote.

Rendered on 23 June 2017 in Montréal.





**COUNCIL — 211TH SESSION**

**SUMMARY MINUTES OF THE TENTH MEETING**

**(THE COUNCIL CHAMBER, FRIDAY, 23 JUNE 2017, AT 1530 HOURS)**

**CLOSED MEETING**

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

**PRESENT:**

- |            |                              |                             |                        |
|------------|------------------------------|-----------------------------|------------------------|
| Algeria    | — Mr. A.D. Mesroua           | Kenya                       | — Ms. M.B. Awori       |
| Argentina  | — Mr. G.E. Ainchil           | Malaysia                    | — Mr. Y.-H. Lim        |
| Australia  | — Mr. S. Lucas               | Mexico                      | — Mr. D. Méndez Mayora |
| Brazil     | — Mrs. M.G. Valente da Costa | Nigeria                     | — Mr. M.S. Nuhu        |
| Cabo Verde | — Mr. C. Monteiro            | Panama                      | — Mr. G.S. Oller       |
| Canada     | — Mr. M. Pagé                | Republic of Korea           | — Mr. J. Hur           |
| China      | — Mr. Shengjun Yang          | Russian Federation          | — Mr. A.A. Novgorodov  |
| Colombia   | — Mr. A. Muñoz Gómez         | Saudi Arabia                | — Mr. S.A.R. Hashem    |
| Congo      | — Mr. R.M. Ondzotto          | Singapore                   | — Mr. T.C. Ng          |
| Cuba       | — Mrs. M. Crespo Frasier     | South Africa                | — Mr. M.D.T. Peege     |
| Ecuador    | — Mr. I. Arellano            | Spain                       | — Mr. V.M. Aguado      |
| Egypt      | — Mr. A. Khedr               | Sweden                      | — Ms. H. Jansson Saxe  |
| France     | — Mr. P. Bertoux             | Turkey                      | — Mr. A.R. Çolak       |
| Germany    | — Mr. U. Schwierczinski      | United Arab Emirates        | — Miss A. Alhameli     |
| India      | — Mr. A. Shekhar             | United Kingdom              | — Mr. M. Rodmell       |
| Ireland    | — Mrs. A. Smith Floch        | United Republic of Tanzania | — Mr. R.W. Bokango     |
| Italy      | — Mr. M.R. Rusconi           | United States               | — Mr. S. Kotis (Alt.)  |
| Japan      | — Mr. S. Matsui              | Uruguay                     | — Mr. M. Vidal         |

**ALSO PRESENT:**

- |                                 |             |
|---------------------------------|-------------|
| Dr. N. Luongo (Alt.)            | — Argentina |
| Mrs. M.F. Loguzzo (Alt.)        | — Argentina |
| Mr. R. da Rosa Costa (Alt.)     | — Brazil    |
| Mr. D.A. Tavares Taufner (Alt.) | — Brazil    |
| Mr. R.F. Pecoraro (Alt.)        | — Brazil    |
| Mr. Chunyu Ding (Alt.)          | — China     |
| Mr. M. Millefert (Alt.)         | — France    |
| Mr. N. Naoumi (Alt.)            | — Germany   |
| Mr. M. Usami (Alt.)             | — Japan     |
| Mr. K.A. Ismail (Alt.)          | — Malaysia  |
| Mrs. D. Valle Álvarez (Alt.)    | — Mexico    |

**SECRETARIAT:**

- |                 |                 |
|-----------------|-----------------|
| Mrs. J. Yan     | — C/OSG         |
| Mr. B. Djibo    | — D/ATB         |
| Mr. J. Augustin | — D/LEB         |
| Mr. S. Creamer  | — D/ANB         |
| Mr. V. Smith    | — D/ADB         |
| Mr. A. Opolot   | — LO            |
| Mr. A. Larcos   | — ACC           |
| Miss A. Tyo     | — Précis-writer |

**ALSO PRESENT (CONTINUED):**

Mr. S. Kim (Alt.)	— Republic of Korea
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. M.S. Habib (Alt.)	— Saudi Arabia
Mr. S. Vuokila (Alt.)	— Sweden
Mr. Ö. Dođrukol (Alt.)	— Turkey
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mr. W. Voss (Alt.)	— United States
Mr. J. Méndez (Alt.)	— Uruguay

Representatives to ICAO

Chile  
Cyprus  
Ethiopia  
Greece  
Indonesia  
Lebanon  
Paraguay  
Sudan  
Venezuela (Bolivarian Republic of)

Airports Council International (ACI)  
International Air Transport Association (IATA)  
European Union (EU)

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

**Work programmes of the Council and its Committees for the 212th Session**

1. The Council considered this item on the basis of C-WP/14624, which presented the work programme for the 212th Session of the Council and its Committees. The Council also had for consideration an oral report thereon from the Working Group on Governance and Efficiency (WGGE).
2. The Chairperson of the WGGE (Representative of India) informed the Council that for this review, the WGGE had met in its expanded form by inviting the Chairpersons and Secretaries of the Committees of the Council.
3. With respect to the nature of work to be undertaken by the Air Transport Committee (ATC) on item 4 in Appendix C (Compliance with the Standards of Annex 9 – *Facilitation*), the Secretariat had explained that the ATC would be invited to review suggestions for including additional Annex 9 provisions in the Universal Security Audit Programme–Continuous Monitoring Approach (USAP – CMA) and/or Universal Safety Oversight Audit Programme–Continuous Monitoring Approach (USOAP – CMA), as appropriate. The ATC would also be receiving an update on the decision of the 39th Session of the Assembly for further consideration to be given on a proposal to upgrade Recommended Practice 8.46 of Annex 9 (on assistance to victims of aircraft accidents and their families) to a Standard (A39-WP/528, paras. 31-5 and 31-6, refer).
4. Additionally, the Secretary General had requested the WGGE to note that, pending further discussions, an item on the review of the vacancy notice for the post of D-2 Director, Legal Affairs and External Relations Bureau (LEB) may be added to the work programme of the Human Resources Committee (HRC). The WGGE did not recommend any change to the work programme of the Council and its Committees for the 212th Session as contained in C-WP/14624, and the WGGE further recommended that the Council adopt the list of Informal Briefings in its Appendix.
5. The Representative of the Russian Federation advised that it was his understanding that the Council in its 212th Session would again be considering two additional matters that were considered during the current session: the ICAO Crisis Response Policy on Disaster Risk and the subject of the ICAO web library of risk-based information. Accordingly, he requested that both items be added to the work programme for the next session.
6. Regarding the work programme of the Technical Cooperation Committee (TCC), the Representative of Cuba recalled that in its second meeting there had been an agreement by the Council to include in the work programme for the 212th Session information from the Secretariat to the Committee regarding the subject of the administrative and operational services costs (AOSC) fund and the overhead charged on technical cooperation projects for States. It had been agreed to conduct a review of this matter prior to the next budget.
7. Referring to the work programme of the ATC, included in Appendix B of C-WP/14624, under item no. 4 on the subject of “Compliance with Standards of Annex 9 – *Facilitation*”, the Representative of Spain noted that it indicated that a report would be presented on the status of responses to the State letter on the compliance check list, but this item did not appear on the Council’s work programme. He therefore suggested that the Secretariat take this on board in order that this item be presented to the ATC, which would subsequently likely refer it to the Council. In addition, he echoed the suggestion from the Representative of the Russian Federation on the inclusion of an item on a Crisis Response Policy, as well as the addition of a report to the Council on the ongoing negotiations between Brazil and the United States in the settlement of differences under Article 84. Also, based on recent

events and depending on the timetable proposed, the Council would also need to be updated on any developments on this subject in the context of Article 84 of the Chicago Convention.

8. The President of the Council assured the Council that as always, a review would be undertaken of all Council decisions taken in the current session, and that a revised work programme (C-WP/14624 Revised) would be issued in due course following the current meeting.

9. Referring to the message from the Secretary General on the work programme for the HRC for the 212th Session which he fully endorsed, the Representative of Germany was of the view that the Secretary General should have all the leeway necessary to fulfil the expectations which the Council had expressed in the Charter Letter and that she had outlined in the Business Plan. He therefore supported that, as a matter of principle, the post of D/LEB be advertised, and that the Council should not by any means restrict the Secretary General in her decision as to how and who she selected for her senior staff because ultimately it was the Secretary General, and not the Directors, who was accountable to the Council.

10. Voicing his agreement with the views of the Representative of Germany that the matter was in the remit of the Secretary General, the Representative of Malaysia believed as well that the Secretary General had the capability to carry out a decision to initiate a recruitment process for the D/LEB post following consultation with the President. The work was entrusted to the Secretary General but the Representative expressed the hope that in filling the post, she would take into consideration in her selection the factor of equitable geographic representation (EGR).

11. The Representative of Egypt clarified that he had received an email from the Secretary General addressed to him in his capacity as Chairperson of the HRC and to the Chairperson of the WGGE requesting the inclusion in the work programme of the item concerning the review of the vacancy notice for the post of D/LEB. He therefore requested that the President of the Council consider this request.

12. In line with receipt of the aforementioned email from the Secretary General, the Representative of the United Arab Emirates (UAE) requested clarification with regard to the proposed vacancy notice for the D/LEB position. Specifically, the Representative referred to Annex IV, Article 19 of the ICAO Service Code, which read: “Approximately ten months prior to the end of the first term of a D-2 Bureau Director, the Secretary General, following consideration of the incumbent’s performance, and after having obtained the written approval of the President of the Council, shall inform the Council, in writing, of his intention to either reappoint the incumbent for the second term or to advertise the post.” She requested confirmation from the Secretary General that the process outlined in the Service Code had taken place.

13. The President of the Council commented on the situation by reminding the Council that during the current session various issues had been addressed and in tackling them the Council had encouraged States to communicate, coordinate, consult and compromise. In an effort to pre-empt a worsening situation, he outlined that it was important that the two executive offices; the President of the Council and the Secretary General, be able to work together. The Council, the governing bodies and the Secretariat comprised the ICAO system; these bodies would remain long after the current incumbents had left their posts. In order for the system to work properly the rules of procedure needed to be respected because those rules were pertinent to confidence-building which would allow the system to work, and a key requirement for that was the issue of communication, consensus and coordination.

14. The Convention on International Civil Aviation granted some duties to the President of the Council, and the Charter Letter granted some duties to the Secretary General, but beyond what was written in extant regulations it was important to be able to find compromise in all situations. An emerging

scenario had involved significant consultation ongoing with Representatives, and with groups of Representatives. The President advised that all members of the Council, inadvertently through what they did or did not do, might unduly affect the relationship between the President of the Council and the Secretary General only to detract from it. Were activities by members of the Council to lead to taking a position on issues where the President of the Council and the Secretary General needed to cooperate, this would not add value to a confidence-building atmosphere and might not allow the relationship between the two executive offices to grow, and could in fact be undermining it. In his own capacity, the President of the Council advised that he would always look to work to find solutions and improve the situation in order that ICAO Member States be better served. The work programme of the Council had been presented jointly by the President of the Council and the Secretary General, an endeavour which demanded consultation and agreement.

15. With respect to human resources matters, the President of the Council opined that it was becoming increasingly difficult to make or to seek the necessary compromise. The Council in its wisdom for many years maintained the need for checks and balances for recruitment at top levels of the Organization, being posts at the D-1 and D-2 level. In filling posts at the level of D-1, consultation between the Secretary General and the President of the Council was required, followed by the President's approval. At the level of D-2, there existed a double check and balance, which consisted of consultation between the Secretary General and the President of the Council, and written approval by the President, followed by submission to the Council for its approval. Of the over 700 posts in the Organization, only about 20 staff fell into these categories. While he did not feel it was necessary to outline why the system of checks and balances existed, the President warned that when there were no existing rules and procedures in place, everyone would end up doing as they pleased. If it were to be found that in the interest of ICAO some responsibilities in this regard were not given to the President of the Council, that would be a decision by the Council but as long as the current rules existed, it was important to encourage that consultation and collaboration continue to take place. The President advised that the Council could take any decision on this subject because the ultimate power was in its hands, but should members of the Council adjudicate the relationship between the two executives offices, this would not build confidence between the two incumbents.

16. Considering specifically the post of D/LEB, who as a member of the Secretariat, acted as legal advisor to the Organization and to an extent as advisor the Council, to the Assembly, and also to the President of the Council on day-to-day business, it was important for the Organization to consider carefully this position going forward in developing procedures for this office because invariably given the emerging recruitment scenario mentioned above, it would very easy for the incumbent to run into conflicting requests. Therefore, it was important that a proper structure be put in place in order to protect the person recruited to the D/LEB post. Such arrangement had been made for the post of Chief, Evaluation and Internal Audit Office (C/EAO). If similar arrangements were not put in place for D/LEB, the incumbent would face challenges as to whom to be answerable and to whom to give advice. The Council and the executive offices collectively would need to arrest this situation, and the Representatives themselves had a role to play either to support the confidence-building or to be a party that affected the level of confidence.

17. The Secretary General thanked the President of the Council and confirmed her commitment to work together with him, as she had demonstrated thus far in her term through her efforts and achievements. She recalled that the Charter Letter defined the relationship between the Council and the Secretary General and was very clear in stating that the Secretary General was accountable to the Council, and that the Secretary General was responsible for the overall administration of the Secretariat. Addressing the query from the Representative of the UAE, the Secretary General clarified that the issue of how to interpret the Service Code did not rest on the question of a reappointment but rather on the fact that the current staff member was reaching the mandatory age of retirement. According to the existing

rules in the Service Code, which applied to all staff members, it was the case that only under exceptional circumstances could a staff member be extended upon having reached the mandatory retirement age. The Secretary General could make this decision for staff at the P-5 level and below, while for D-1 posts and above, her decision to extend the staff member would require the President's approval. The Council gave the Secretary General the discretionary authority to consider the case of staff members who reached the retirement age in 2017 and 2018 and requested the Secretary General to develop transparent and fair criteria that would apply to all staff members (C-DEC 208/10 refers). Of the five criteria developed by the Secretariat in consultation with the Staff Association, two were pertinent to the case in question, one was confirmation of the continuous needs and to meet the evolving needs and challenges of the Organization, and the second involved the need for succession planning for the Organization. In recent discussions, the Council had instructed the Secretary General to use the opportunity presented by the mandatory retirement age to enhance EGR and gender equality, while remembering that the paramount principles in recruitment were the competencies, integrity and efficiency of the candidates. These were the principles that she as Secretary General was attempting to fulfil in this instance as well. Regardless however, the Secretary General assured the Council that she would always undertake consultation with due diligence and from those consultations, including those with the President of the Council, there sometimes emerged similar views and sometimes divergent views.

18. The Secretary General also emphasized the importance of the rule of law. Citing as an example the successful conclusion to the settlement of differences under Article 84 reached between Brazil and the United States during the morning's Council meeting, she stated that the Secretariat, and herself as Secretary General, always followed the rules approved by the Council as well as the decisions taken by the Council. In this context, she requested that the Council allow her to carry out the tasks that had been assigned to her as the Secretary General. She underscored that the matter under consideration at the current meeting involved solely the introduction of the item into the work programme for the 212th Session. This was merely to begin a recruitment process, and opportunities would exist throughout the process to address any matter that arose. She concluded her comments with a request that the Council continue to place its confidence in both herself and the President of the Council to work together.

19. Following from the intervention by the Secretary General, the President of the Council referenced Article 16 of the ICAO Service Code which read "When a D-1 post unexpectedly becomes vacant [due to] (resignation without appropriate notice, summary dismissal, death of incumbent, etc.), the Secretary General, after obtaining the written approval of the President of the Council, may decide to transfer and/or reassign another staff member at the D-1 level to this vacant post (Staff Regulation 4.37). Alternatively, pending completion of the recruitment process, the Secretary General, after obtaining the written approval of the President of the Council, may decide to temporarily assign the functions of the post to a staff member who is at a lower grade level and to grant him a Special Post Allowance (Staff Rule 103.15), under the conditions specified in this staff rule, and for a duration which shall not exceed 12 months. Under no circumstances should such an assignment result in a permanent promotion without prior competitive process...".

20. The President of the Council elaborated that while an incumbent occupying a P-5 level post could be granted approval to act at a D-1 level after obtaining written approval of the President of the Council, cases had occurred in the Organization where this reassignment had taken place without obtaining the approval of the President of the Council. In the circumstances, it was up to the Council to review the rule and to decide whether any action was necessary in this regard. Where there was a lack of clarity within the rule and it created a conflict situation, the rule should be harmonized, but as long as rules existed, the President of the Council asked that those rules be respected. This was not the first time that the Council was being put in a very difficult situation, and individual members of the Council had expressed their desire not to be in such a situation whereby they had to discuss an issue between the President of the Council and the Secretary General. For some, the issue was being raised as an issue of

policy which required clarification of the existing rules and for the stability of the Organization. The President requested that all parties join in an effort to clear the air and to help foster a more conducive climate rather than contribute to a worsening environment. Ultimately, he as President would abide to whatever decision the Council adopted. As to the question raised by the Representative of the UAE, the provisions of the Service Code had in his view not been applied in the current situation, and agreement had not been reached between himself and the Secretary General, but the topic was nevertheless currently before the Council for consideration.

21. Subsequent to these interventions, all speakers expressed their appreciation to the President of the Council for his candour in stating his position on this subject and his concerns regarding the current climate in the Council. They were also grateful to the Secretary General for her comments and her expression of ongoing commitment to work collaboratively with the President of the Council.

22. The Representative of Uruguay opined that this was not a case of being on the side of the Secretary General or of the President of the Council or of driving a wedge between the two executive office-holders of the Organization. On the contrary, he wished to offer his full support to both of them within the remit of their respective powers. The challenges met throughout the 211th Session, including the settlement of differences between two States and the initiatives taken to address the serious situation currently faced by Middle Eastern States, had made clear to all the Representatives on the Council the cooperation that existed between the Secretary General and the President of the Council and had demonstrated as well the trust which the Council placed in both executives. He opined that common sense dictated that it was necessary to have confidence in both leaders, and any serious concerns by one or other of the leaders demanded that the Council listen and address the situation. ICAO played a very important role among organizations and among nations, and issues of internal mechanisms of the Organization did not need to reach a level of crisis, as there were much greater matters to be addressed.

23. The Representative of Argentina noted that the Organization currently faced major, complex challenges, and the Council had recently dealt with several very important diplomatic issues as well as the CORSIA, and both executive office-holders had played very important roles in all of this. Referring to the comment from the President of the Council that rules were upheld by confidence, he noted that in the afternoon discussion of the appointment of the Council Vice-Presidents and Committee Chairpersons, it had been agreed not to apply certain rules, a decision which had been made possible because of the confidence upheld by the existing foundation of trust and the highest level of professional qualifications. While the current issue was very sensitive, in the interest of time, the Representative of Argentina suggested that the Council conditionally approve the inclusion of the vacancy notice on the D/LEB post in the HRC work programme. For the present, the Council could include the item provisionally and continue the discussion of this item, as it was important that the Organization function at 100 per cent capacity.

24. Regarding the addition of the item concerning the review of a vacancy notice for the post of D/LEB, the Representative of Mexico opined that his delegation believed that the Secretary General had a prerogative to manage the officials of the Organization, and there were a number of officials subject to different rules. Having listened carefully to the interventions by both executive office-holders, the Representative of Mexico declared that ICAO had just one leader and that was the Council, and the Council was represented by its President. In this matter, as had been said, perhaps certain procedures were not correctly followed including proper consultation with the President of the Council and approval of the decision, but more importantly what was at play were the best interests of the Organization.

25. As had been stated, D/LEB was not just the legal counsel to the Secretariat, but was also the lawyer of the Organization and the legal counsel for the Council for important issues, particularly policy issues. This situation gave pause for thought in the near future of the roles of certain officials such



as the Ethics Officer, C/EAO, and D/LEB. The roles of these incumbents vis-à-vis the Council and the Secretariat needed to be clarified so as to avoid future misunderstandings. Having said that, he queried what might be the justifications for taking a quick decision on this matter which appeared to not be fully in line with the procedures. He then invited the Secretary General to adhere to the procedures and take account of the views expressed and make her decision on this post with due consultation with the Council.

26. The Representative of Colombia felt it was clear that the governing authority between sessions of the Assembly was the Council of ICAO, and the Organization had clearly defined roles at its highest level; the Council took policy decisions and the Secretariat executed those decisions and in executing them the Secretariat had full discretion. Checks and balances, however, had to be observed. The foundation of ICAO was the Chicago Convention and not the Agreement with the United Nations, which sometimes came to the fore. ICAO's membership was comprised of its Member States and not of other clients who might lobby ICAO. The Member States had conferred certain sovereignties on ICAO to create Standards, and those functions could not be delegated to third parties.

27. With regard to the specific case at hand, and generally speaking, the fundamental issue was that of the independence of those who carried out certain functions. Recalling the comments of the Representative of Mexico on the subject of the requirements of the post of C/EAO, in reporting to Council there needed to be independence. When faced with major crises and instability it was important to consider a candidate who was familiar with the history of ICAO and with its issues. The Representative of Colombia reminded that subsequent to Council discussions regarding Articles 54 and 84 as well as CORSIA, certain decisions were taken and he opined that certain changes in the Organization might deepen the crisis in the run-up to the next Assembly.

28. While he understood the position held by the Secretary General, his suggestion was that the rules should be adhered to and this item not be included in the work programme until approval had been granted by the President of the Council. While greatly appreciative of the work done by the Secretary General, he believed that in the future a very clear delineation was needed between the powers of the President under the Chicago Convention, Assembly resolutions and Council decisions on the other hand and the powers of the Secretary General. The Assembly and the Council gave instructions to the Secretary General, and on that basis it should be possible to work much more harmoniously especially in view of increasingly serious issues in the aviation field.

29. The Representative of Germany reminded the Council that the topic under discussion was the work programme of the ICAO Council for the next session. While the inner mechanisms of any Organization might not always run smoothly, that had nothing to do with the topic at hand. Recalling the intervention by the Secretary General, the debate rested on the rule on the mandatory age of retirement, and the Council had given the Secretary General discretionary power to decide on staff extensions of service on a case-by-case basis. It appeared from the discussion that the ICAO Council had defined discretionary power as equivalent to a standing rule, and in his view, this did not equate to granting discretion.

30. As the issue at hand was whether or not to put an item on the work programme of the HRC to discuss a vacancy notice, the Representative of Germany opined that the Council would err in not letting the Secretary General go forward. While a staff member of ICAO possessed a contract and could not be hired and fired without any reason, it was also the case that every contract inevitably would end at some point in time. He stated that while he could say that he was totally opposed to permanently interfering with personnel issues and decisions of the Secretary General, at the same time the Council could say that it did not want to micromanage the Organization but would still hold the Secretary General and the President of the Council responsible for all the staff decisions.

31. His suggestion was that the Council concentrate on its functions which were to oversee that the rules were adhered to and the rules in this case were in the ICAO Service Code. An incumbent would be reaching the mandatory age of retirement. The normal procedure would be to advertise the post but the current argument by some required bending the rules and involved discretion being applied in each case. In such a scenario, one of two courses of action would apply, first the Service Code could be amended to state that ICAO no longer had a mandatory age of retirement, or the rule could be amended to say that discretion would no longer be applied to extension of contracts of ICAO Secretariat. The current scenario, however, was untenable.

32. Noting that many substantial decisions had been taken during the 211th Session, the Representative of France expressed regret that the session would end on a sour note on personnel issues. His delegation was in line with the views of the Representatives of Germany and of Malaysia. He believed that it was up to the HRC to review this matter, and there would be time to pursue consultations between the executive office-holders. The Delegation of France would continue working with both executives and supported the activities that were being conducted within their specific, respective mandates. France's positions were not dictated by support for one or the other, but were determined by issues of substance and should not be interpreted on the basis of personal matters.

33. The Representative of France stated that ICAO could not function without transparency and trust between the President of the Council and the Secretary General. Expectations were that everyone placed the interests of ICAO above personal matters and that the path toward a peaceful conclusion commenced at the executive level. There was a great deal of work ahead of the next Session of the Assembly and many decisions to be taken. Success would not be forthcoming without trust and symbioses between the President of the Council and the Secretary General.

34. The Representative of Egypt confirmed the hope of all Council members that a spirit of understanding would prevail which would serve the interests of ICAO. At the end of the day, he opined, working relations should be professional and this had indeed been the case. He suggested that the two leaders be given another opportunity to settle this matter in accordance with the rules governing the work of ICAO.

35. Commenting that the rules adopted by the Council should not be violated, the Representative of Saudi Arabia believed that the Secretary General had the right to select the officials who would work with her. He observed that if the Council did not give her this right, then the Council would itself forfeit the right to hold her accountable. In support of the interventions from the Representatives of France and Germany, he added that his delegation would like to see new blood among the ICAO staff. He opined that the compensation offered to staff who must be in possession of high-level legal skills was perhaps not enticing enough to attract the most highly skilled applicants. At the same time it was also important to guarantee EGR at the Director level. Reiterating the importance that the regulations adopted by the Council be respected, he proposed that one option might be for the Secretary General and the President of the Council to jointly nominate a group of Representatives who could review all these issues for the benefit of the Organization.

36. In the face of this unusual and delicate subject, the Representative of the Russian Federation underscored the importance of adhering to the rules set by the Council. He supported the intervention from the Representative of France, and agreed with the comments from the Representative of Mexico who said that D/LEB should not be solely an advisor to the President but rather should be the legal counsel for the Council. He therefore suggested that in order not to place additional pressure on the two executives to make a quick decision, a longer meeting of the HRC could be held so that in an informal way the matter could be discussed and a solution could be devised that would be in the best interests of ICAO. There was a need to ensure that the candidate selected for the post of D/LEB be

independent. Routing the discussion through the HRC ahead of further discussion in the Council would facilitate an independent discussion that would not add an additional burden on the President of the Council or the Secretary General.

37. The Representative of Japan expressed no doubt about the Secretary General's commitment to comply with all the rules and with the Charter Letter. At the same time he was encouraged by the remarks from the President of the Council on the importance of mutual confidence-building in this matter. He felt that what was of paramount importance for the Council was to select and retain the best qualified person in the important position as D/LEB, in order to ensure confidence in this choice. Therefore he encouraged the two executives to bring to the Council a mutual understanding and one voice in order that the Council could decide on this matter.

38. The Representative of Singapore offered his support to both executives and looked to both to provide the required organizational stability. As a way forward, he suggested as a first measure to define which rules were applicable in the current case. It appeared that the rule cited by the Representative of the UAE differed slightly from the scenario outlined by the Secretary General. It was important to clarify if the debate involved a rule about strictly enforcing the mandatory age of retirement or one involving either the reappointment of a staff member or extension a staff member's contract. Secondly, he suggested that the President of the Council and the Secretary General undertake further consultations which would lead to one of two outcomes, adding that he would be neutral on whichever decision was presented because what was imperative was that the process be robust. On the other hand, if an agreement were not to be reached, then the matter could be brought informally back to the Council, out of session, in a closed briefing. Under this scenario, the Council could decide how to proceed on the basis of consensus.

39. Echoing the sentiments from the Representative of Singapore, the Representative of Spain asked not to be put in a position of choosing one or the other personal stand and emphasized the importance of following the Council's standing procedures. In praising LEB, he recalled the success achieved during the 39th Session of the Assembly having had LEB supporting the Council, its President and the plenary of the Assembly. Major decisions taken by the Council in its current session on the settlement of differences between Brazil and the United States, and on the serious situation currently faced by Middle Eastern States, were facilitated by the valuable legal support of LEB. He reminded all Representatives that, earlier in the meeting, the Representative of Brazil had praised the LEB officials for their efforts, and success had been possible because of LEB's professional conduct of affairs. The current unfortunate situation demanded that clarity be reached in the existing procedure, and the Representative of Spain hoped that would be upheld. As underscored by previous speakers, if the procedure needed to be clarified or amended, the Council could consider it, but in any case, in the meantime, it must be adhered to what today exists. In concluding, he opined that if it was not possible to take a decision at the current meeting then more time might need to be allocated so that the issue could be resolved in future sessions.

40. The Representative of China declared his delegation's resolute support for the work of the President of the Council and the Secretary General. In the current session, the Council had dealt with many difficult issues, and the Delegation of China appreciated the leadership of both executives and their spirit of cooperation. With regard to the vacancy notice for the D/LEB position, the Representative of China supported the statements made by the Representatives of Germany, Malaysia, and France, and he suggested, in accordance with the rules, that the item be incorporated into the work programme. He also voiced his belief that with coordination and consultation between the President of the Council and the Secretary General this issue could be resolved satisfactorily.

41. Recalling that throughout the month of June the Council had tackled a number of heavy issues, the Representative of the Republic of Korea defined the current personnel issue as being a small

crisis of crisis management. He expressed his pleasure that the dispute between the United States and Brazil had been resolved with the generosity of both States, and in a spirit of all's well that ends well. He opined that crisis management could be more dangerous than crisis itself. Sharing the sentiments of those Representatives who appreciated the candour shown by the President of the Council and the Secretary General in addressing a delicate staffing matter, he advised that he was prepared to await any decision, but cautioned that any proposal brought forth might still contain conflicting views.

42. The Representative of the United Republic of Tanzania echoed the comments of previous speakers on the recent successes and decisions of the Council and noted that these actions were indicative of good working relationships and collaboration. Reflecting on the intervention by the Representative of Germany who reminded all that the discussion should be focused on the addition of an item to the work programme, the Representative of the United Republic of Tanzania put forth that never before in his tenure on the Council had a decision on the work programme involved such tense and prolonged discussion. He reiterated the point made by earlier speakers regarding the neutrality of Council representatives vis-à-vis the two executive offices of the Organization and supported the earlier comment that everyone in ICAO was there to support the Organization and its activities, under the expectation of collaborating in a transparent and trusting manner. He supported an earlier suggestion that the President of the Council and the Secretary General embark on another consultation in an attempt to reach an agreement. He concluded by commenting that this matter should be resolved and what had transpired under this agenda item would offer some lessons to be learned with the hope that such a situation would not happen again in a Council meeting.

43. The views expressed by the Representatives of Germany and France were supported by the Representative of Turkey who agreed as well that Council Representatives held a neutral position toward the two leaders, as both offices were very valuable to the Organization. He stressed that actions taken by the leaders should remain within their respective boundaries in an atmosphere of mutual respect.

44. The Representative of Kenya felt that very pertinent issues had been raised in the current discussion, which could be seen as symptomatic of a potential failure between the two executive offices, which in turn should be seen as a failure of the Council. The Council appointed the Secretary General and the Council elected a President to represent the Organization. While there was a school of thought that recommended that the two leaders should consult further until coming to an agreement, she believed that the Council also had its role to play.

45. There should be an examination of what responsibilities the Council had given its President, and what responsibilities had been given to the Secretary General and whether their areas of authority had been clearly demarcated. At the end of the day, the oversight was on the Council as the governing body, and the Council should ask itself how the powers of the two executive offices should be balanced and how ICAO should be led. The Representative of Kenya believed that rather than simply to ask the two leaders to come back to the Council with a decision, an in-depth examination of the internal mechanisms of the Organization was required.

46. The Representative of Cuba felt the Council should heed the words of the Representative of Kenya. She then expressed her support for the earlier suggestion that the two executives consult again and together bring a proposal to the Council.

47. Stressing his support of the candid discussion, the Representative of Algeria felt it was important to insist that ICAO had its rules which all parties must respect. The Council currently had very serious and important issues to consider which required all its attention, and its work must be undertaken in a climate of trust. For this particular issue he believed that it would be wise to submit the item to the HRC for the Committee to then present a solution to the Council. It was undesirable to have the session

end on a negative note, but the Representative of Algeria wished to highlight his confidence that a solution would be found.

48. Recalling similar issues of conflict that had been brought before the Council, the Representative of Sweden felt that it did not serve an organization to have rules that were not crystal clear. The rules should be clear as to which roles and responsibilities were held by each of the persons in the management team, and it was possible that the current situation presented a good opportunity to review the existing rules. As said earlier, the offices of the Secretary General and of the President of the Council would continue past the terms of the two current incumbents, so the roles of each executive must be totally clear irrespective of the office-holders. In the matter at hand, she supported the suggestion that the two leaders continue their consultation because it was not necessary to take a decision on this matter at the current meeting, since it would be possible to amend the work programme at a later date.

49. The Representative of South Africa perceived the interventions by the President of the Council and Secretary General very positively and saw the opportunity for a new beginning, in a spirit of openness in moving forward. The draft work programme had been presented by both executives, and although he had served in the Council for many years the Representative of South Africa did not recall ever before having seen the work programme jointly presented. Echoing the comments from the Representative of Kenya, both executives were appointed by the Council, and it was incumbent upon the Council to ensure a good working relationship between the two offices. Both executives had their specific mandates, and the Council was duty bound to support both at all times, at all costs.

50. The Representative of Nigeria expressed agreement with the view that the debate surrounding this item was a symptom of some deep underlying issues and equally that this was not the first time that this type of disagreement had arisen. Since both executives had been appointed by the Council, the latter bore a lot of responsibility to ensure that both worked together in a spirit of trust, openness and consultation on all matters. Echoing the sentiments of the Representative of South Africa, despite the gloomy appearance of the situation, the Representative of Nigeria felt it offered an opportunity for a new positive beginning, and he hoped this spirit would carry on to be open, candid and trusting on all matters.

51. Being in agreement with the view that there existed a need for continuing discussions between the two executives in order to work toward an amicable resolution of the problem, the Representative of India believed, as had been mentioned by the Representative of Sweden, that the issue rested on the interpretation and clarity of the rules and of the respective authority of each office. A rule that had been adopted by the Council should be followed but if there existed a problem in interpretation, it should be mutually discussed and, if that did not occur, it should be brought to the HRC for more thorough discussion before being brought to the Council.

52. Referring back to the views expressed by the Representatives of France, Kenya and Cuba, the Representative of Congo felt that the President of the Council and the Secretary General should embark on another round of discussion. He viewed this opportunity as a new beginning, and the item should only be included into the work programme if both executives agreed on it.

53. The Representative of Canada noted that in any organization the rules could not anticipate every scenario and that unforeseen situations would always arise, as would issues of overlapping authority. It was always possible to examine the rules and possibly change or adapt them, on the basis of lessons learned. In this case, the rules could be referred to the HRC as had been suggested to get a better understanding of them and possibly propose changes to them, and the Council could thereafter take up any new proposals that were presented thereon.

54. Recalling the sentiments raised by several speakers that the responsibility for the current situation might lay with the Council and not with the two executives, the Representative of Brazil commented that if difficulties arose in interpreting the roles and authority of each office, the Council should review the matter in order that things could be ironed out. The difficult subjects undertaken throughout the 211th Session had placed great pressure on both the President of the Council and the Secretary General as well as on LEB. She then suggested that an item be added to the agenda of the HRC to review the matter at hand to try to determine the separate and specific attributes of each office in an effort to avoid unnecessary friction.

55. The Secretary General thanked all the Council members who took the floor to express their views and advice, and was grateful for the trust and confidence expressed in both the President of the Council and herself. She reiterated her continuing commitment to working with the President, and said that from her side, she did not perceive there to be a crisis. She fully agreed on the need to have consultations and that the responsibilities and roles of the executives should be clear. Through the Charter Letter, the Council had instructed the Secretary General on her required duties, and she was accountable to the Council. She endeavoured to follow the rules set by the Council and, as mentioned in her earlier comments, she felt it was her responsibility to include this item on the vacancy notice of the D/LEB post in the work programme. She reminded that while there existed a timeline for the process in question, she was nonetheless fully prepared to continue the consultation as proposed by several Representatives. She wished to emphasize at the end of the day that the clear lines of responsibility should be set by the Council. She agreed that if it so desired, the Council could take a decision to review the rules, and she would of course abide by any outcomes of that decision. It was understood that ultimate responsibility lay with the Council. She reiterated that it was her due diligence to initiate the recruitment process and to bring the vacancy notice to the HRC. In this regard, the Secretary General indicated her appreciation for the support, trust and confidence expressed by the Representatives who had spoken and assured them of her 100 per cent commitment to work together with the President of the Council.

56. The President of the Council likewise thanked all the Representatives who had spoken, and agreed with the comments made by the Representative of France that the interests of ICAO needed to be placed above personal matters. Recent changes in the dynamic outside and inside of the Council were an issue of concern to the President. As to the statement that the current matter was a symptom of a growing problem, he advised that it had been precisely for this reason that he had felt the need to bring it to the fore as he wished to ensure that in fact no crisis would be forthcoming. He wished to ensure that the Council did not find itself in a situation whereby in its decision-making it might inadvertently or unknowingly undermine the expected confidence-building between the two executive offices. In reference to the existing rules, he agreed that the HRC could be requested to examine the rules in this particular case, but the President did not believe that to be the key issue. Of greatest importance was to continue to work as a team, and because friction should not be an ongoing condition of work, he restated his commitment to work with the Secretary General. Therefore the HRC could be requested to look into the applicable rules and to the issue of the role of D/LEB. Many issues needed to be addressed and the work programme could be amended at any time. He would continue to work with the Secretary General on this matter, and in concluding, asked the Council to play a positive role in the process between the two executive office-holders.

57. In concluding its consideration of this item, the Council noted that the WGGE had recommended that no changes were necessary to the work programme contained in C-WP/14624, and accordingly, the Council approved the work programme of the Council and of its Committees for the 212th Session. It was understood that decisions taken in the course of the 211th Session that affect the work programme for the 212th Session in terms of additional items, amendments to titles of items, or deferral of items, and which were not currently reflected in the work programme, would be incorporated in a revised version of C-WP/14624 that would be issued in due course.

58. In relation to item 4 of Appendix B (Work Programme of the Air Transport Committee), which related to “Compliance with Standards of Annex 9 – *Facilitation*”, the Council noted that although this item was currently listed for consideration by the ATC only, it could, subject to the deliberations of the ATC, also be presented to the Council for consideration.

59. In relation to Appendix G (Work Programme of the Human Resources Committee), the Council noted a request by the Secretary General for an additional item concerning the review of a vacancy notice for the post of D-2 Director, Legal Affairs and External Relations Bureau, and agreed that this be left to further consultation with the President of the Council. Similarly, suggestions regarding the need to review the job description and reporting lines for the Director, Legal Affairs and External Relations Bureau in view of his/her responsibilities as Legal Adviser not only to the Secretariat but to the Council, its President and the Assembly was further noted for possible further consideration by the HRC and decision by the Council. Pending these further consultations, the Council approved the Work Programme of the HRC without any changes.

60. In relation to the proposed informal briefings for the 212th Session, the Council agreed that these should occur during the Committee phase of the 212th Session, which was scheduled from 18 September to 6 October 2017. It was noted that a range of topics were currently under consideration for this purpose including: State of the Industry, Council-ANC relationship, and United Nations Crisis Response Framework.

61. The meeting reconvened in open session at 1700 hours to consider the remaining items on its order of business.

**COUNCIL — 211TH SESSION**

**SUMMARY MINUTES OF THE TENTH MEETING**

**(THE COUNCIL CHAMBER, FRIDAY, 23 JUNE 2017, AT 1020 & 1430 HOURS)**

**OPEN MEETING**

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

**PRESENT:**

Algeria	— Mr. A.D. Mesroua	Kenya	— Ms. M.B. Awori
Argentina	— Mr. G.E. Ainchil	Malaysia	— Mr. Y.-H. Lim
Australia	— Mr. S. Lucas	Mexico	— Mr. D. Méndez Mayora
Brazil	— Mrs. M.G. Valente da Costa	Nigeria	— Mr. M.S. Nuhu
Cabo Verde	— Mr. C. Monteiro	Panama	— Mr. G.S. Oller
Canada	— Mr. M. Pagé	Republic of Korea	— Mr. J. Hur
China	— Mr. Shengjun Yang	Russian Federation	— Mr. A.A. Novgorodov
Colombia	— Mr. A. Muñoz Gómez	Saudi Arabia	— Mr. S.A.R. Hashem
Congo	— Mr. R.M. Ondzotto	Singapore	— Mr. T.C. Ng
Cuba	— Mrs. M. Crespo Frasquieri	South Africa	— Mr. M.D.T. Peege
Ecuador	— Mr. I. Arellano	Spain	— Mr. V.M. Aguado
Egypt	— Mr. A. Khedr	Sweden	— Ms. H. Jansson Saxe
France	— Mr. P. Bertoux	Turkey	— Mr. A.R. Çolak
Germany	— Mr. U. Schwierczinski	United Arab Emirates	— Miss A. Alhameli
India	— Mr. A. Shekhar	United Kingdom	— Mr. M. Rodmell
Ireland	— Mrs. A. Smith Floch	United Republic of Tanzania	— Mr. R.W. Bokango
Italy	— Mr. M.R. Rusconi	United States	— Mr. S. Kotis (Alt.)
Japan	— Mr. S. Matsui	Uruguay	— Mr. M. Vidal

**ALSO PRESENT:**

Dr. N. Luongo (Alt.)	— Argentina
Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. L. Sacchi Guadagnin (Alt.)	— Brazil
Mr. G. do Prado Lima (Alt.)	— Brazil
Mr. R. da Rosa Costa (Alt.)	— Brazil
Mr. D. Tavares Taufner (Alt.)	— Brazil
Mr. Chunyu Ding (Alt.)	— China
Mr. M. Millefert (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mr. K.A. Ismail (Alt.)	— Malaysia
Mrs. D. Valle Álvarez (Alt.)	— Mexico
Mr. S. Kim (Alt.)	— Republic of Korea
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. M.S. Habib (Alt.)	— Saudi Arabia

**SECRETARIAT:**

Mrs. J. Yan	— C/OSG
Mr. B. Djibo	— D/ATB
Mr. J. Augustin	— D/LEB
Mr. S. Creamer	— D/ANB
Mr. V. Smith	— D/ADB
Mrs. J. Hupe	— DD/ENV
Mr. H. Gourdji	— DD/MO
Mr. C. Radu	— DD/SAF
Mr. M. Fox	— C/PRC
Mr. B. Verhaegen	— SELO
Mr. T. Tanaka	— C/CC
Mr. A. Bilaver	— OSG
Mr. A. Opolot	— LO
Mr. Y. Nyampong	— LO
Mrs. D. Brookes	— LEB
Mr. A. Larcos	— ACC
Miss A. Tyo	— Précis-writer



**ALSO PRESENT (CONTINUED):**

Mr. S. Vuokila (Alt.)	— Sweden
Mr. Ö. Dođrukol (Alt.)	— Turkey
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mr. W. Voss (Alt.)	— United States
Mr. J. Méndez (Alt.)	— Uruguay

Representatives to ICAO

Chile  
Cyprus  
Ethiopia  
Greece  
Indonesia  
Lebanon  
Paraguay  
Sudan  
Venezuela (Bolivarian Republic of)

Airports Council International (ACI)  
International Air Transport Association (IATA)  
European Union (EU)

### **Minute of silence and condolences**

1. The Council observed a minute of silence and expressed its condolences at the passing away on 17 June 2017 of the President of Vanuatu, Father Baldwin Lonsdale Womtelo, who served as the Republic's Eighth President from 22 September 2014 until his death. Lonsdale was occasionally referred to as Womtelo Reverend Baldwin Lonsdale, Womtelo which means "Rising Sun" is the highest rank within the customary system of chiefly grades of his native island Mota Lava.

**Subject No. 45: Policy and programme of ICAO for provision of air navigation facilities and services**

### **Proposal for an ICAO Crisis Response Policy and Disaster Risk Reduction Strategy**

2. The Council resumed consideration of this item (C211/6) on the basis of C-WP/14612, which pursuant to Assembly Resolution A39-24, Operative Clause 3, proposed an ICAO Crisis Response Policy as well as a Disaster Risk Reduction Strategy. The Council also had for consideration an oral report thereon from the Implementation, Strategy and Planning Group (ISPG).

3. In presenting the oral report, the Chairperson of the ISPG (Representative of Australia) reminded that in the earlier consideration of this item during the sixth meeting of the current session, the Council had requested (C-DEC 211/6) the ISPG to review the draft Crisis Response Policy taking into account the various issues raised in the Council's preliminary consideration, and present a revised policy for further review by the Council at this meeting of the session. The Secretariat was also requested to provide information to the Council regarding the organizational procedures to implement the policy. In addition, Representatives were invited to submit any proposals they might have to enhance the draft policy.

4. The ISPG met on 15 June 2017 to review the proposed policy, and in principle, the ISPG was supportive of Crisis Response Policy. However, the Group agreed that there was insufficient time to analyse the proposal in depth and to table an amended version in Council by the end of this session. Additional time was considered essential in order to: a) gain an understanding of the United Nations Crisis Response Framework and how ICAO would operate within and complement this existing structure; b) exercise due diligence to review the policy and ensure that it is consistent with the remit of the Organization and the available resources of the Secretariat in order to implement the policy; and c) clarify the overall 'concept of operations' envisaged for the implementation of the policy.

5. To ensure that the proposal was sufficiently mature and took into consideration the concerns raised by members of the Council, the ISPG recommended that the Secretariat organize an informal briefing for the Council early in the 212th Session to provide an overview of the United Nations Crisis Response framework; the lessons learned by ICAO in responding to previous crises; an overview of the proposal; the resources available to support implementation; and a review of the coherence of the proposal within the remit of the Organization. Following the informal briefing, the ISPG should finalize its in-depth review of the proposed Crisis Response Policy, as well as the Disaster Risk Reduction Strategy contained in the main body of C-WP/14612, prior to consideration by the 212th Session. It was envisaged that a working paper on the proposal with an oral report thereon by the ISPG be presented during the 212th Session. The ISPG also expressed a general need to review Council working methods when considering proposals such as this. The Group noted the importance of appropriate discussion of proposals in sub-groups or Committees of the Council prior to consideration by Council, to ensure all proposals have been clearly understood and thoroughly discussed in the interests of efficient

consideration in the Council. The ISPG noted there was no external deadline for the finalization of the formal Crisis Response Policy, and that in the absence of a formal policy, the Secretariat would continue to respond to emerging crises within the ICAO institutional framework, and the Council would be apprised of any response by the Organization to a crisis during this interim period.

6. The Representative of Spain supported the ISPG's proposal and took the opportunity to underscore paragraph 4 of the oral report wherein the group focused on a general need to review Council working methods when considering proposals such as that under deliberation. Future proposals such as these should not go directly to the Council for consideration as it would be more efficient for items first to be discussed and properly understood in a timely fashion in the relevant sub-group or committee.

7. The above comment was supported by the Representative of the Russian Federation, who also voiced appreciation for the ISPG oral report and added that a draft of the revised policy should have been reflected in a working paper so that the Council would have been in a better position to review it.

8. Clarification was sought by the Representative of Saudi Arabia as to the current methodologies utilized by the Secretariat in response to a crisis. He suggested that if no approved actions currently existed, the Organization should make use of the proposals outlined in the working paper and improve upon them until such time as firm procedures and processes were put in place.

9. The Chief, Strategic Planning and Regional Affairs Coordination, advised that historically the Organization's response had varied considerably depending on the types of crises or disasters that had been faced. Typically ICAO's response had been to work with Member States in the implementation or modification of contingency plans to ensure the continuity and regularity of international civil aviation into the areas affected. In contrast, certain disasters, such as the response to the tsunami which struck Japan in 2011 and the ensuing crisis with the nuclear reactor in Fukushima, involved inter-agency cooperation with other United Nations entities as well as industry engagement to ensure the continuity and regularity of civil aviation operations. Overall the Organization's response would be categorized as institutional responses in terms of ICAO support from Headquarters to the Regional Offices and with States in the implementation or modification of contingency plans.

10. Taking into account the conclusions reached by the ISPG, the Council decided that:
- a) the Secretariat should organize an informal briefing for the Council early in the 212th Session to provide an overview of the United Nations Crisis Response Framework, lessons learned by ICAO in responding to previous crises, overview of the proposal, resources available to support implementation, and review of the coherence of this proposal within the remit of the Organization;
  - b) following the informal briefing, the ISPG should finalize its in-depth analysis of the proposed Crisis Response Policy and Disaster Risk Reduction Strategy, so that a revised policy could be presented to the Council for consideration during the 212th Session; and
  - c) a working paper on the proposal together with an oral report by the ISPG, should be presented during the 212th Session.

11. The Council also took the opportunity to note the importance of appropriate discussion of policy proposals such as this taking place in the Committees of the Council as well as relevant working

groups before they were presented to the Council. It was emphasized that this would help to facilitate more efficient deliberations by the Council by ensuring that all such proposals were clearly understood and thoroughly discussed in advance.

**Subject No. 50: Questions relating to the environment**

**Update on work on a Global Market-based Measure (GMBM) Scheme**

12. The Council considered this item on the basis of C-WP/14620, which as part of the capacity-building and assistance activities for the implementation of the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), reported on the regional seminars that were held in five venues throughout March and April 2017, followed by a global seminar held at ICAO Headquarters in May 2017. The document also updated on the status of the work being undertaken by the Committee on Aviation Environmental Protection (CAEP) on the development of CORSIA-related Standard and Recommended Practices (SARPs) and guidance and also presented the proposed procedures of work for the Interim Programme Assessment Group (IPAG), which was established by the CAEP in February 2016, with the aim of recommending to the Council programmes (and potentially project types) whose emissions units would be eligible for early action by aircraft operators.

13. In its consideration of this item, the Council also had the benefit of an oral report presented by the Chairperson of the Advisory Group on CORSIA (AGC) (Representative of Mexico) who advised that the discussions held during the fourth and fifth meetings of AGC had focused on three topics: results of the CORSIA seminars and possible means to provide capacity-building and assistance; progress in the development of CORSIA-related draft SARPs and guidance and early action; and the CAEP IPAG.

14. The AGC recognized the results of CORSIA regional seminars and the global seminar held at ICAO Headquarters and agreed on the means to provide further capacity-building and assistance, as identified in paragraph 1.6 of C-WP/14620. In addition, the AGC highlighted the importance of keeping track of the readiness of States for the CORSIA implementation in respective regions, so that the Secretariat could effectively plan and provide necessary support to States. In this regard, concerns were expressed about the lack of clarity on the availability of resources for capacity-building. It was further suggested that, as more information became available for CORSIA-related requirements, necessary actions for States and operators be well communicated and the progress monitored, in cooperation with ICAO's Regional Offices. The convenience of the development of an ICAO action plan was also suggested.

15. The Group supported that the development of CORSIA provisions and guidance material be done in a well-structured package of draft SARPs as described in paragraph 2 and Appendix A to C-WP/14620.

16. The AGC received clarification on the five supporting information items with regard to their linkages to relevant paragraphs of Assembly Resolution A39-3. It was understood that while all elements in a structured package would need to be approved, the supporting information would be located outside of the SARPs text and referenced within the SARPs text for several reasons including the nature of supporting information, the availability of the information at the time of adoption of the SARPs, the periodicity of information, updates and users. Differing concerns had been expressed within the AGC as to whether emissions units criteria (EUC) should be part of the SARPs text or should be contained in the supporting information. It was clarified that EUC were different from eligible emissions units. Concerns were raised by some members that the inclusion of criteria within the SARPs could infer that States,

rather than the Council and the Technical Advisory Body (TAB), could decide on application of the criteria. It was also clarified that the Council could still decide to consult on any item of critical importance to States even if the item was not part of the text. Regarding paragraph 3.3 of the oral report, the following possible additional SARPs text for EUC was proposed by the President of the Council for subsequent consideration: “No emissions units shall be used for offsetting under the CORSIA except such units that meet the emissions units criteria that are approved by the Council as published periodically on the CORSIA webpage”. The Group agreed that further consideration should be given on the specific location of EUC in a structured package of CORSIA-related draft SARPs and guidance. Regarding the legal status of supporting information as part of the package, the Legal Affairs and External Relations Bureau (LEB) clarified that SARPs might not be an appropriate medium for setting out the supporting information especially if such material did not specify the functional and performance requirements to be implemented by Member States or by their air operators.

17. On the subject of early action and the CAEP IPAG, the AGC was briefed on the background, proposed procedures and the timeline of the IPAG which was aiming to make recommendations on eligible programmes (and potentially project types) whose emissions units would be purchased by aircraft operators by 2020, for use to meet offsetting requirements from 2021 to 2023. A number of AGC members expressed concerns about the proposal, in terms of: 1) the lack of direct linkage with the requests contained in Assembly Resolution A39-3; 2) potential competitive distortion in case such opportunities for early actions were not available equally to all aircraft operators; 3) uncertainty on the progress under the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement; 4) impacts on the Secretariat workload and resources; and 5) the risk of undertaking the proposed public processes before the Council had considered recommendations, and the liability which might be incurred by ICAO. Therefore, the AGC did not consider the work on the early action as priority at this stage, and felt that priority should be given to the work on eligible emissions units for CORSIA, as requested by Resolution A39-3, paragraph 20 d). AGC members were invited to continue to consult each other and the aviation industry on this matter, for later consideration.

18. The AGC felt the value for CAEP to make further progress on the application of EUC, including informally testing some programmes against the criteria. The need for clarifying the status of EUC themselves, as part of delivering CORSIA-related draft SARPs and guidance to the Council, was also highlighted. It was recognized that such further work by CAEP should aim at providing technical contributions to the Council, when requested, on the establishment of the TAB and its process of work to evaluate programmes and make recommendations to the Council on the eligible emissions units for use by CORSIA, as per A39-3, paragraph 20 d).

19. The President of the Council thanked the Chairperson of the AGC for the report and clarified that the proposal which he had presented to the AGC had been submitted for consideration in an attempt to find a balance between the legal interpretation of what a SARP should be, the request from the Assembly as outlined in Resolution A39-3, the development of the necessary SARPs, and the flexibility required periodically with respect to the EUC. The President advised that his proposed wording was flexible but this did not mean that all other views would not be taken into consideration in the development of the necessary provisions.

20. Thanking the Chairperson for the accurate reporting of the discussions of the AGC, the Representative of France highlighted the discussion of the SARPs package and its supporting documentation. While some clarification had been garnered at that meeting, it appeared that this topic was not sufficiently mature to be decided on, and his delegation noted with satisfaction that the oral report of the AGC considered that further consideration be given on the specific location of EUC in a structured package of CORSIA-related draft SARPs and guidance. Underscoring the importance of the EUC, which

he described as being at the heart of the system and which would guarantee that CORSIA would be upheld and would have positive environmental benefits, he declared his delegation's continuing commitment and vigilance on that particular issue. He also noted that the topic of early action did raise certain fears, however, the oral report rightly highlighted the utility of CAEP's work in this area which would enable the Council in due time to approve the programme and ensure the CORSIA was fully functional as soon as the pilot stage was launched, since that would be the major deadline for many participating Member States. In conclusion, the Representative of France supported the balanced recommendations contained in the oral report which would enable the pursuit of the work and the provision of any necessary clarification. Additionally, it was felt the work on the configuration of the TAB should be addressed quickly in the coming months.

21. The Representative of the United States recalled the spirited discussion within the AGC and was of the view that there still existed a need for further discussion and clarification on certain items. Commenting on the text proposed by the President of the Council, the United States put forth a proposal to add the word "and" so that the text would read: "No emissions units shall be used for offsetting under the CORSIA except such units that meet the emissions units criteria and that are approved by the Council as published periodically on the CORSIA webpage." It was felt that this addition was critical for the environmental integrity of the entire effort.

22. Voicing disappointment that most of the proposals put forth by his delegation had not been reflected in the AGC's oral report, the Representative of the United States advised that on action item b) of C-WP/14620, given that the Council would play a leading role in this initiative, the United States felt it was important to amend the item so that it read:

"b) recognize the progress being made by CAEP for the development of CORSIA-related draft SARPs and guidance, as described in paragraph 2, and request CAEP to keep the Council and its Advisory Group on CORSIA (AGC) informed of further progress and that any references in the SARPs to unit eligibility should reiterate the Council's responsibility for such decisions;".

23. Turning to other parts of the oral report and the proposed revised action items, the Representative of the United States expressed the opinion that there was a big difference between early action and an early decision. CAEP's recommendations did not propose when units would be purchased; they simply asked that the Council start toward the decision on units that would be eligible for a pilot phase so that they could be purchased at any time between the decision and 2024. The proposed paragraph as currently appeared in the oral report stated that the Council was deprioritizing early action, when in fact it was a decision on unit eligibility that was being deprioritized. While the United States did not support this decision, it was felt that it was owed to the experts to make clear that the Council would review its proposal fully and clearly understood what action was being decided. He emphasized that offset requirements were the reason that operators would collect emissions data; they were the reason for registries, and the basis for capacity-building. The Representative of the United States observed that CORSIA, if it went forth in its current trajectory, would be the first carbon market in existence to place this decision last. In other mechanisms, it had been the first question to be addressed, and States would not be concerned how robust or stable the monitoring, reporting and verification (MRV) requirements or the criteria were but would be concerned about compliance costs and what their operators would have to buy. Many States, including the United States, would have to answer that question soon because in operative paragraph 20 j) of Assembly Resolution A39-3 it was agreed to ensure that the necessary national policies and regulatory framework be established for the compliance and enforcement of the scheme by 2020. This presented no equivocation about which policies or regulations because, based on CAEP's progress, it was understood by the Assembly that the answers needed in order to implement the CORSIA by 2020 would be known before then and this included the most important answer of all which was what operators must purchase. The Representative of the United States expressed the view that

ignoring this question put implementation of CORSIA in real jeopardy and therefore reiterated his delegation's request to delay a decision on the related proposal, which was the product of several years' of work so as not to make such a decision within a very tight timeframe and thereby risk taking ICAO's reputation or carbon market development backwards. In that vein, the Representative also requested that the Council consider postponing a decision until the 212th Session and use the time to engage in briefings with technical experts and with key stakeholders to understand the decision to be made and its impact on domestic implementation and on the CORSIA timeline.

24. The President of the Council reiterated his request to the Council to simply to note the contents of paragraph 3.3 of the oral report. He did not wish the substantive discussion to be reopened at this point in the Council since the agreement from the AGC was already clearly contained in paragraph 3.5 in which the group agreed that further consideration be given to the specific location of EUC in a structured package of CORSIA-related draft SARPs and guidance. This had been the agreement of the AGC, notwithstanding the proposal for paragraph 3.3.

25. Thanking the Secretariat for its working paper and the Chairperson of the AGC for the oral report, the Representative of China referred to paragraph 1.7 of C-WP/14620 which stated that the CORSIA would be functional as of 2021. He stressed the need to ensure that the list of participating States would be accurate. This was particularly important with regard to the calculation of the purchase of carbon credits because the confirmation of voluntary participation should be established officially by the State. He then reiterated the point raised earlier by the Representative of France that the nomination process for the TAB should begin as soon as possible. He proposed the addition of an action item to invite States to nominate as soon as possible their participants in the advisory group. If the TAB should be established, he suggested that it should conduct its work as soon as possible, and the CAEP should not do any tests in this case. In addition, the technical advisory list should be opened and should be updated periodically. It should also be restrictive and exclusive and should be the only option for the airlines. The UNFCCC and the Paris Agreement, and the units resulting from these mechanisms should not be subject to further evaluation by ICAO. He then expressed serious concern regarding paragraph 4.6 of C-WP/14620 which referred to the fact that Assembly Resolution A39-3 requested that the consideration of eligible emissions units under CORSIA should take into account relevant developments in the UNFCCC and Article 6 of the Paris Agreement. He opined that ICAO should not set a precedent that could be seen as separate from the UNFCCC process by working on its own. He stated that the work of ICAO in this aspect should respect the sovereignty of the Member States as well as the principle of common but differentiated responsibilities and restrictive capability of States. In this way, ICAO should aim to strictly abide by the provisions of the Chicago Convention.

26. Expressing the opinion that not all issues might have been fully digested in the meetings of the IPAG and the AGC and therefore some points might need to be addressed again by the Council, the Representative of Brazil recognized the important work done by CAEP, IPAG and other bodies as they progressed on the recommendations needed to build a CORSIA framework. She underscored that the fundamental role of the Council was to oversee the entire process and to take the necessary decisions to make the CORSIA operational. In this regard, the Representative of Brazil expressed her delegation's concern with the risk of some initiatives that seemed to pre-empt future decisions of the Council. With regard to the action item which read: "requests CAEP, as part of its work to finalize CORSIA-related draft SARPs and guidance, to deliver the emissions units criteria for consideration by the 212th Session of the Council", the Representative indicated that while understanding that the discussions held in the AGC were very time-constrained she wished to have it noted that her delegation firmly opposed any allegation that the language contained in the text she had just quoted - in particular, "as part of the work to finalize CORSIA-related draft SARPs and guidance" - was a tacit recognition that the EUC should be in the main text of the SARPs, and her delegation did not support that proposal. Commenting on the text which the

President of the Council had proposed, which suggested that no emissions units shall be used for offsetting under the CORSIA, she wished to register her delegation's understanding that this issue would be considered at an appropriate time in the future and that the text proposed was not to be taken as a set decision by the Council.

27. With regard to early action, the Representative of Brazil expressed the belief that careful consideration by States needed to take place before any decision regarding early action could move forward, and sufficient time needed to be allocated for States to consider this element. With regard to testing and the criteria, she voiced concern because it could appear that even though it could be interpreted that the Council was leaving an action to be decided in the future, it might be perceived that this action had already been condoned by the Council. A final concern was raised regarding the mandatory sustainability criteria that were being included in the proposed draft for alternative fuels. She opined that such mandatory criteria did not exist in any other international bodies that dealt with these issues, including relevant environmental organizations as well as the World Trade Organization, which had opted for voluntary sustainability criteria only. Therefore if ICAO were to adopt and implement mandatory sustainability criteria it would risk jeopardizing the entire process before it was even launched. She concluded by voicing her delegation's support of the comments and concerns expressed by the Representative of China as she felt some of the issues raised were also pertinent for Brazil.

28. The Representative of Australia thanked the Chairperson for the oral report which he felt accurately summed up the discussions that took place in the AGC and recognized and proposed a balanced way forward that took note of and recognized the risk of actions pre-empting decisions of the Council. Echoing the comments of the Representative of France, he believed the oral report also recognized the value of testing and of getting the systems and processes right so that they would work properly when the CORSIA was deployed. For these reasons, the Representative of Australia supported the actions as set out in the oral report.

29. The Representative of Canada agreed that work on the determination of ensuring eligible emission units for CORSIA was critical. A decision needed to be made during the 212th Session on the EUC to be used and how to evaluate them to provide the CORSIA with environmental integrity. While this decision was critical, it was also important that the Council not lose sight of what information it needed to have in order to implement the system in its respective States. His delegation shared the concerns raised by the Representative of the United States about not having enough certainty on needed elements to be able to implement the CORSIA domestically in a timely manner. He had also noted the views of those States that were concerned about the complexity of implementation and were calling for prioritization as the scheme moved forward. In Canada's view a continued dialogue in the 212th Session on who would use the criteria to assess eligible units and further discussions on a timeline for the assessment would be beneficial, and the Representative proposed that the decision to be taken by the Council reflect the need for timely further consideration of this matter. In the meantime, it would be beneficial to allow the CAEP to continue its work in order to support the Council discussions on this issue in the 212th Session.

30. The view expressed by the Representative of Saudi Arabia was that the early action measures had the potential to destabilize the harmony of Assembly Resolution A39-3 and so his delegation supported the amendment to paragraph 3.3 of the oral report as put forth by the United States. His delegation also accepted the recommendations presented during the discussions at the AGC as these represented an acceptable compromise.

31. As far as early action was concerned, the Representative of India stated the position that early action had potential to distort the market and lead to speculative trading in carbon units which India



did not support, but as a compromise, the related text in the oral report could be supported. With the implementation of the CORSIA set from 2020 and with 18 months left before the start of reporting by different States, there was a need to prioritize what actions the Organization needed to take and this included all 191 Member States. He believed that the prioritization of the reporting mechanism and the verification mechanism was very clear. He also mentioned that the setting up of the TAB as was required by the Assembly Resolution A39-3 needed to be addressed early so that it could work in parallel on the other EUC criteria mentioned by other Representatives. In addition, while on the topic of the EUC, he opined that it was important to highlight operative clause 20 c) of Assembly Resolution A39-3 which mentioned that the UNFCCC progress should be taken into account while developing the EUC criteria and that was why it was very important to not divert whatever ICAO was doing from the UNFCCC process. It was his understanding that the UNFCCC was already on its 2018 schedule to consider the rule book for implementation of the Paris Agreement, and EUC criteria would be part of this. So this fact should be taken into consideration before developing any EUC criteria, and ICAO might risk creating a mechanism that covered more than what the UNFCCC agreed. He concluded by supporting and endorsing other concerns that had been raised by the Representative of China, Brazil and Saudi Arabia.

32. Thanking the Secretariat for its working paper, and the Chairperson of the AGC for the oral report which improved on previous drafts and reflected in a balanced way the different concerns which were expressed during the meetings, the Representative of Ireland focused particularly on the proposed structure of the SARP package, which was a discussion that would continue. This was an important question in two aspects, the first being the legal weight and effect of the content contained in the SARPs versus the legal weight and effect of content outside the SARPs, which was important if the goal was to provide a scheme that was robust, comprehensible and enforced by all parties in the same way. Second, however, while it was true that the Council could decide to consult with States in relation to supporting information, a Council decision was not binding on States in the way that a SARP was, and a decision could be later amended if a majority of the Council so decided. The SARP process had the advantage that consultation was inbuilt, integral, and assured so that the views of all States, and not only those represented on the Council, would be considered. Regarding the proposed action item related to early action, she expressed that her delegation would be open to further discussions on the issue of early action as proposed by the Delegation of the United States but that the important point was that the testing process which had already begun under the CAEP would continue and that any discussion on early action would be separated from testing. Serious real-world testing was about the implementation of the scheme, and it was necessary to be sure that this scheme would work from the outset of the voluntary phase in 2021. All States and their airlines that had committed to begin the phase in that year needed to be sure of this. For the CORSIA to succeed the voluntary phase needed to work well, and since there was time available to ensure that that would be the case, the Council should do everything it could to support that.

33. Prefacing his comments by offering thanks to the Chairperson of the AGC, as well as the CAEP, the Secretariat and the GMTF for all the work done, the Representative of Spain agreed with the recommendations of the oral report, but wished to highlight two recurring points of discussion: the SARPs and the early action. With regard to the SARPs, he agreed that while paragraph 3.3 of the oral report would not be taken as an action item or a rule, it did point to an indication as to how things would work out. The credibility of the CORSIA was founded on it being a robust scheme, as highlighted by the Representative of Ireland, and a robust scheme needed good reference criteria which had to be stable and had to apply to all. As far as the production of SARPs was concerned, there existed examples of cross-referencing within existing Annexes and that had helped civil aviation to function properly. So while this issue needed to be revisited, there did exist a precedent for cross-referencing. With regard to early action, he agreed with the distinction made by the Representative of the United States between early action and early decision. The Council was not in a position to take a decision yet, but consideration needed to be given to this in the future especially because, as was mentioned by the Representative of India, other UN

entities such as the UNFCCC were already taking action, and the issue of setting up the TAB was something that needed to be considered in light of actions taking place elsewhere in the UN system. The Representative of Spain was of the view that it might be necessary to accelerate action on the configuration of the TAB so that it would be possible to move quickly from the pre-pilot to the voluntary phase with the acceptable criteria as soon as practicable.

34. The Representative of the Russian Federation voiced his support for all the proposals made in the oral report of the AGC. He suggested that it would be useful to dispatch an ICAO State letter in order that States might confirm their participation in the voluntary stage. He supported the comments from the Representative of India and those from the Representative of Ireland regarding the importance of consultation with States in developing the SARPs. As well, his delegation supported the oral report which proposed that the emissions criteria should be sent to States for consultation in the 212th Session as there was interest in hearing their feedback. He underscored what the Representative of the United States said about the distinction between early action and early decision, and advised that his State was against early action but was not against early decisions. Sufficient time for testing was desirable and it was necessary to make sure that there was enough time to ensure that no actions would be taken that would destabilize the system as a whole.

35. Thanking all the bodies whose work brought the matter to the current stage, the Representative of Colombia expressed support in principle for action item a) of C-WP/14620. He was of the view that it was important to find funds for capacity-building and stated that there were many foundations prepared to make a donation if this would be for the good of the planet and the environment. On action item b), regarding whether the eligibility criteria should be included in the SARPs so that they would be sufficiently robust, he asked that more be said about the UNFCCC criteria in that clarity, transparency and understanding of the measures should be absolute if this was solely a financial issue but cautioned that there was also an environmental issue which was one of survival. So he believed that it needed to be made clear that the CORSIA included reductions and further, as was initially said, offsetting would be temporary and complementary. Offsetting was not meant to last forever but over time reductions would occur within the sector. It had also been mentioned that the volume of demand for emissions units for aviation should not distort the market and drive up the price which would impact on civil aviation operations. The Representative of Colombia wished for those points to be clearly outlined in the item and above all that the criteria should lead to units that were more ecological because the survival of the planet depended on it. He expressed agreement with the comments from the Representative of Ireland on the need for a State consultation on what should be included in the SARPs. He also suggested that perhaps those States supporting the views expressed by the Representative of China could suggest using the eligibility criteria in the UNFCCC and that might put to rest the concerns about early action expressed the Representatives of the United States and Canada.

36. On matters relating to legal certainty and testing, the Representative of the United Kingdom voiced his agreement with the interventions made by the Representatives of France and Ireland. Like other Representatives, he expressed some concerns about the working paper and the oral report but advised that the oral report did accurately describe the current situation and to that extent it was satisfactory. In agreement with the Representative of Spain, he declared that what was needed at this time was not immobility but progress and therefore he supported the actions as amended, subject to the notes about continuing concerns which he had expressed during the meeting of the AGC.

37. The Representative of Germany congratulated the Chairperson for providing a well-balanced summary of the AGC discussions and fully concurred with the action proposed in the oral report. He nonetheless stated that his delegation shared the concerns raised by the Representative of Ireland and others as regards to the EUC in a package of SARPs. He expressed pleasure that on the issue of early

testing CAEP was able to continue its work because his delegation considered early testing to be somewhat more important than early action. Early action was an industry issue and it was believed that industry could do as it saw fit, but this issue could be considered at a later stage of the process.

38. Offering his thanks to the Chairperson of the AGC for the presentation of the oral report, the Representative of Japan voiced support for the points made by the Representatives of Australia, France, and Canada in particular and also shared the concerns expressed by the Representative of Brazil. He also advised that his delegation had no objection to the proposed action as amended by the United States and looked forward to the further discussion at the briefing in the AGC.

39. The Representative of Argentina expressed his appreciation to the Chairperson of the AGC for the oral report and for the manner in which he had led the meetings of the group and for his openness in allowing all delegations to participate which had fostered enriching debate and made it easier for the Council to deal with this subject matter. The Delegation of Argentina had no objection to supporting the report as presented in terms of substance and believed that it aptly reflected the discussions. He cautioned that he believed there was insufficient time to consider early action. Stating that this was a very complex issue and a number of delegations had expressed certain concerns, he was of the view that it was too early to close debate and no harm could come from allotting more time for consideration until the 212th Session. He concluded by reminding that the Assembly had delegated this task to the Council and support should not be lost on either side as the matter progressed.

40. Thanking the Chairperson of the AGC for the oral report, and while on the subject of all things CORSIA-related, the Representative of South Africa availed himself of the opportunity to congratulate Air Canada on having been voted the best airline in North America. He noted that the other recipients of the Skytrax World Airline Awards included COPA in Central America and Lufthansa in Germany. Equally he offered congratulations to the following which had been voted the top ten airlines in 2017: Qatar Airways, Singapore Airlines, ANA All Nippon Airways, Emirates, Cathay Pacific, EVA Air, Lufthansa, Etihad Airways, Hainan Airlines and Garuda.

41. In concluding its consideration of this item, the Council noted that the AGC had highlighted in particular, the importance of keeping track of the readiness of States for the implementation of CORSIA so that the Secretariat could effectively plan and provide necessary support to States. In this regard, note was taken of concerns that had been expressed about the lack of clarity on the availability of resources for capacity-building. In addition, the Council took note of the suggestion that as more information became available for CORSIA-related requirements, necessary actions for States and operators should be well-communicated and for progress to be monitored, in cooperation with Regional Offices.

42. In taking into account the recommendations presented by the AGC in its oral report, the Council:

- a) requested the Secretariat to continue to provide capacity-building and assistance for the implementation of CORSIA, as identified in paragraph 1.6 of C-WP/14620 and taking into account the views articulated by the AGC as noted in the preceding paragraph;
- b) recognized the progress being made by CAEP in the development of CORSIA-related draft SARP and guidance, while requesting CAEP to keep the Council and the AGC informed of further progress, and in this connection agreed that any references in

SARPs to emissions units criteria should reiterate that the Council was the responsible entity for taking such decisions;

- c) agreed that further consideration should be given to the specific location of emissions units criteria in a structured package of the CORSIA-related draft SARPs and guidance;
- d) noted that while CAEP had undertaken work on early action, this task was not requested by Assembly Resolution A39-3, so that the Council did not consider this work on early action to be a priority at this stage and requested that priority should instead be given to the work on eligible emissions units for CORSIA, as stipulated by Assembly Resolution A39-3, operative clauses 20 c) and d), and in addition, requested CAEP to deliver emissions units criteria for consideration by the Council at the 212th Session; and
- e) requested CAEP, subject to the decision to be taken by the Council during the 212th Session, to further progress work on the application of the emissions units criteria, including the informal testing of some programmes against the criteria, with a view to providing technical input to the Council, when requested, on the establishment of a Technical Advisory Body (TAB) and its process of work to evaluate programmes with resultant recommendations to the Council on the eligible emissions units for use by CORSIA in accordance with Assembly Resolution A39-3, operative clause 20 d).

43. In addition, the Council noted the importance of ensuring that CAEP also prioritized its work on the monitoring, reporting and verification (MRV) system under CORSIA in order to assist Member States in their implementation efforts in this regard.

**Subject No. 14:           Subjects relating to air navigation**

**Progress report on the ICAO web library of risk-based information**

44. The Council resumed consideration of this item (C211/5) on the basis of information paper C-WP/14611, which reported on the implementation and progress of the modification of the ICAO Conflict Zone Information Repository (CZIR) into a library of links to States' websites with aeronautical information related to risks to civil operations over or near conflict zones through a designated State focal point. In doing so, it was recalled that during the fifth meeting of the 210th Session, the Council had on a provisional basis approved this modification of the CZIR into a library of links to States' websites where such risk-based information would be made available.

45. The Director, Air Navigation Bureau (D/ANB), advised that several bilateral conversations had taken place among Council Representatives, and the Secretariat had tried to gauge the interest in reaching a consensus on the implementation and progress of the modification of the ICAO CZIR. The interest of many of the States was to have the process continue so that the Council could truly gauge the effectiveness of the revisions and see if the CZIR was meeting the requested outputs. There had been concern that links appearing on the site referred to more than simply the strict definition of a conflict zone, which it was recalled had been the original intent when the CZIR had been established. Understanding the concerns and reviewing responses to the State letter which had requested revisions of State focal points and library links, it was clear that the State letter had invited information related to conflict zones but that it also had not prohibited those links from having other information available on the same pages. Given the sentiment that had been expressed to the Secretariat, if the Council were to choose to direct the Secretariat to ensure that its dialogue with those States informed them to produce

links which were focused solely on conflict zones, the Secretariat could take that up and ensure that the CZIR met the intent of the Council. D/ANB did not believe that a new State letter was necessary to achieve these aims because there would be very few States submitting information, and bilateral discussions with each of those States might be sufficient to attain the same objective. The Secretariat's proposal was that the Secretariat would take on the responsibility to ensure that the published links would contain only information relating to conflict zones.

46. The Representative of Malaysia agreed with the proposal made by the Secretariat and felt confusion might result from the issuance of a subsequent overlapping State letter. He supported that the Secretariat continue working on modification of the CZIR by communicating directly with those States that had links to the websites to advise them of such needs which would hopefully ensure the removal of information not relevant to conflict zones.

47. The Representative of the Russian Federation also agreed with the Secretariat's proposal, but reminded that the reputation of ICAO also needed to be considered. Therefore he suggested that this topic be deferred to the 212th Session which would allow an opportunity to see whether States were responding actively, and thereafter a decision on the continuation of the CZIR could be taken during the 213th Session. These comments were supported by the Representative of Egypt.

48. Noting that the Secretariat had been working to bridge the gap in the current situation, the Representative of Ireland supported the Secretariat's proposal. As the State letter had only recently been circulated, issuing an amended version of the letter would not be ideal and might cause confusion for Member States. She voiced the opinion that it was important that those States that were submitting information engage in a dialogue with the Secretariat about what those links contained and, if the Council wished to provide some focus on that in terms of conflict zones, she would hold no objection to that action, but the important thing was for the dialogue to take place.

49. The Representative of Australia advised that he would also support the way forward proposed by the Secretariat. He was of the view that it was important to find a way to continue this important work that the Organization had been set by past decisions, but noting the concerns expressed by some Council Representatives, it appeared to him to be sensible to pursue the matter through dialogue with States as proposed, bearing in mind the observations from the Representative of the Russian Federation about the reputation of ICAO. Moving forward through dialogue would serve to avoid confusion and not to appear as though ICAO was changing course on this matter.

50. Reminding the Council that a specific position on this subject had been supported by 22 Representatives during the previous consideration of the CZIR, the Representative of Mexico advised that it was not an aim of his delegation to hinder the work and the progress of the Organization, but nevertheless, and in agreement with the comment by the Representative of the Russian Federation that the Secretariat might be taking on a risk to its reputation by accepting this role, his delegation could support the Secretariat's proposal as a temporary mechanism before the 212th Session as long as the Secretariat committed not to include information that was not strictly related to conflict zones and that any links deviating from that subject should not be included. If these measures were followed, the proposal represented a good compromise which could be supported. If for whatever reason, however, a problem remained, it was not a discussion which should be raised again in future sessions. He reiterated that the specific position supported by 22 Representatives remained and the item would need to be revisited at the 212th Session if visible improvements were not made to the site.

51. Joining her comments to those of the Representatives of the Russian Federation and Egypt, and supporting the intervention from the Representative of Mexico, the Representative of Cuba expressed her pleasure at learning that the Secretariat would be taking on the responsibility for the

definition and clarification of the information provided by States to be published on the CZIR and to ensure that this information would be about conflict zones and risks only. While understanding that the preference would be not to issue a follow-up State letter, she wished to reiterate that there was a difference between referring to information on risks related to conflict zones and to aeronautical information as had been stated in the State letter. Publishing risk information was not the same as publishing Integrated Aeronautical Information Package.

52. The Representative of Cuba elaborated that her State had responded to the recent State letter and in performing of ICAO survey of operators it had become clear that there was a lack of uniformity as well as some difficulty in using the CZIR mechanism and in sharing the information being requested. Cuba recognized that the appropriateness of the review of the ICAO Council's definition of conflict zones in State letter 2016/71 (*Modification to the centralized web-based repository for information related to risks to civil aviation arising from conflict zones*) under the Chicago Convention should be assessed. The Representative also referred to the differentiation made during the discussion of the previous agenda item between the legal weight of a Council decision in contrast to that of a SARP. This important step would lead to possibly including in a NOTAM those elements on events taking place in airspace where there might be a military conflict including airspace where there existed a heightened level of alert which could endanger civilian aircraft and which was not currently reflected in Standard 5.1.1.1 of Annex 15. Therefore clarification was needed of the term "activities of a dangerous nature" as contained in an Aeronautical Information Publication (AIP), in Standard 5.3.1 of Appendix 1 of Annex 15. She opined that States required clarity and for this reason as work continued on the CZIR, work should also continue on the SARPs, as the latter were of high importance. She agreed with the comment from the Representative of Mexico that the action taken should be temporary until the 212th Session and stressed that clarity within ICAO SARPs needed to be addressed.

53. The Representative of Kenya commented that there was a lesson to be learned from this whole process and especially about the decision to issue a State letter even though 22 States had outlined their concerns and made their views very clear. She felt that the action to do so had been ill-advised in as much as it did not meet the threshold of the procedures. That having been said, she voiced her delegation's support of the Secretariat's proposal as an interim measure, but added that this matter should be raised substantially during the 212th Session as had been suggested by the Representative of the Russian Federation. In closing, she voiced support of the sentiments expressed by the Representatives of Mexico and Cuba.

54. The intervention by the Representative of the Russian Federation, supported by the Representatives of Egypt, Mexico, Cuba and Kenya, was also supported by the Representative of Saudi Arabia.

55. The above comments were also supported by the Representative of the United Republic of Tanzania who supported the Secretariat proposal and felt that it should be a temporary measure which could be refined during the 212th Session.

56. The Representative of Turkey also supported the comments by Representative of the Russian Federation, and shared the sentiments expressed by the Representative of Mexico. He also noted the remarks of the Representative of Kenya on the lessons learned from the issuance of a State letter after 22 States had made their views known.

57. The Representative of the United Kingdom commented that there was always a willingness to discuss the ways in which information could better be shared, but he wished to caution against Council members being too focused on the phrase "exclusivity to conflict zones". The United Kingdom published its information by drawing attention to the AIP, and this was clearly not exclusively

limited to conflict zones because the AIP contained all safety information of interest to the industry. It was unlikely that a decision would be made by his State that it was not suitable to link to the AIP from the CZIR website. Expressing the view that the way forward might be more nuanced, he felt the Secretariat could be relied upon to apply flexibility and to re-concentrate the Organization's efforts on finding the best means of actually disseminating information rather than suppressing it.

58. Thanking the Secretariat for its proposal, the Representative of Sweden expressed support for the way forward through dialogue with those Member States that had information to share.

59. The Secretariat's proposal was acceptable as a possible, albeit temporary, compromise by the Representative of Algeria, who additionally expressed full agreement with the interventions made by the Representatives of Mexico, Cuba, Egypt and Kenya.

60. Thanking the Secretariat for its information paper, the Representative of South Africa was of the view that the comment from the Representative of the Russian Federation as regards the reputation of the Organization was very important and needed to be considered fully.

61. The Representatives of France and Republic of Korea voiced their delegations' support for the Secretariat proposal, as did the Representative of the United Arab Emirates, who also supported the statement made by the Representative of Kenya.

62. Thanking the Secretariat for its information paper, the Representative of Nigeria also supported the comment made by Representative of Kenya on lessons learned as well as the comments by the Representative of the Russian Federation to re-examine this issue in the 212th Session to allow more time for its consideration.

63. The Representative of Spain agreed on the way forward as proposed by the Secretariat and took note as well as the comments made by the Representative of Cuba with regard to precautions relating to Annex 15.

64. In concluding the consideration of this item, while noting concerns expressed by some Representatives in relation to the perceived intelligibility of the content of State letter SMM 1/4-17/51 that had been issued on 5 May 2017, in order to inform States about the discontinuation of the CZIR and the establishment of the web-based library of links relating to risk-based information, the Council nonetheless agreed that in order to avoid potential confusion, a subsequent State letter on the same matter should not be issued. However, the Council requested the Secretariat to liaise with Member States to ensure that there was coherence and a clear understanding on the part of their designated focal parts as to the purpose of the web-based library of links and the importance of ensuring that the information being provided thereon via the links should relate to risks to civil operations over or near conflict zones. It was requested that the Secretariat provide an update on progress in this regard at the 212th Session.

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

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

**Subject No. 46: Edward Warner Award**

### **Elections by the Council**

65. The Council considered this item on the basis of C-WP/14605, which related to the election of the three Vice-Presidents of the Council, the Members and Alternates of the Air Transport,

Joint Support, Finance, Unlawful Interference, Technical Cooperation, and Human Resources Committees (ATC, JSC, FIC, UIC, TCC and HRC) and the Chairpersons of these Committees; the composition of the Committee on Relations with the Host Country (RHCC); the appointment of whose members the Council had delegated to the President; and the election of its Chairperson; and the election of Members of the Edward Warner (EWA) Committee.

66. The Council agreed to suspend paragraph 3 of Appendix B and that part of paragraph 2 of Appendix E of the *Rules of Procedure for the Council* related to the elections taking place by secret ballot unless waived by unanimous decision of the Members represented at the meeting. The Council also agreed to suspend that part of Rule 9 of the *Rules of Procedure for the Council*, which provides that the term of office of a Vice-President shall commence from the date of election.

67. On the nomination of the Representative of Mexico, seconded by the Representative of Kenya, the Council elected the following Representatives as its Vice-Presidents for the period 2017-2018, with effect from the date of the extraordinary session of the Council (to be held on 31 July 2017), pursuant to Appendix B of its Rules of Procedure:

Mr. Tee Chiou Ng (Singapore) as First Vice-President  
Mr. Musa Shuaibu Nuhu (Nigeria) as Second Vice-President  
Mr. Germinal Sarasqueta Oller (Panama) as Third Vice-President

68. In electing the three incoming Vice-Presidents, the Council expressed its appreciation by acclamation to the three out-going Vice-Presidents: Ms. Aysha Alhameli (United Arab Emirates), Ms. Helene Jansson Saxe (Sweden), and Mr. Alberto Muñoz Gómez (Colombia).

69. Pursuant to Appendix E of the *Rules of Procedure for the Council*, as well as the Special Provisions of the Rules of Procedure for Standing Committees of the Council, the Council then elected the Members and Alternates of the JSC, FIC, UIC, TCC, and HRC, appearing in Appendix B of C-WP/14605, for the period 2017-2018, with effect from the date of the extraordinary session of the Council.

70. The Council noted the proposed composition of the Relations with the Host Country Committee (RHCC) for the period 2017-2018, as presented in Appendix B of C-WP/14605. In addition, the Council noted the proposed composition of the Edward Warner Award Committee, as presented in Appendix D of C-WP/14605.

71. On the nomination of the Representative of the United Arab Emirates, seconded by the Representative of the Russian Federation, the Council elected the following Representatives as the respective Chairpersons of its subsidiary bodies, for the period 2017-2018 with effect from the date of the extraordinary session of the Council :

Mr. Saud A. R. Hashem (Saudi Arabia) as Chairperson of the ATC  
Mr. Victor Aguado (Spain) as Chairperson of the JSC  
Mrs. Mitzi Gurgel Valente da Costa (Brazil) as Chairperson of the FIC  
Mr. Philippe Bertoux (France) as Chairperson of the UIC  
Mr. Raphael Bokango (United Republic of Tanzania) as Chairperson of the TCC  
Mr. Iván Fernando Arellano Lascano (Ecuador) as Chairperson of the HRC  
Mr. Marco Riccardo Rusconi (Italy) as Chairperson of the RHCC

72. In electing the incoming Chairpersons of the Committees, the Council expressed its appreciation by acclamation to all the out-going Chairpersons of the Committees.



73. It was noted that the President, under authority delegated to him by the Council, was consulting with Representatives regarding the composition of the Working Group on Governance and Efficiency (WGGE), Implementation, Strategy and Planning Group (ISPG), and the Advisory Group on CORSIA (AGC), and would provide the Council with updated information in this regard in due course.

74. In relation to the Air Transport Committee (ATC), in accordance with the *Rules of Procedure for Standing Committees of the Council*, it was recalled that the members of the ATC had been appointed by the Council on 17 October 2016 (C-DEC 209/1 refers) and would serve until the end of the term of the current Council, insofar as the States that are represented continue to be Members of the Council until the Council elects the new Committee.

### **Any other business**

#### **Ballistic missile launches**

75. The Representative of Japan took the floor to raise the issue of unbearable risks against civil aviation safety in the Asia and Pacific Region which affected all Member States. He stated that, since the 210th Session of the Council, the Democratic People's Republic of Korea, disregarding repeated cautions by the international community, had continued its ballistic missile launches over the High Seas on as many as seven occasions and that without giving prior notice. The Group of Seven (G7) States — Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States — announced in its communiqué released on 27 May 2017 that the Democratic People's Republic of Korea, as a top priority in the international agenda, increasingly posed new levels of threat of a grave nature through its repeated and ongoing breaches of international law. Moreover, the United Nations Security Council determined in its Resolution 2356 adopted on 2 June 2017 that there continued to exist a clear threat by the Democratic People's Republic of Korea to international peace and security, and condemned the series of ballistic missile launches and other acts in the strongest terms. The Representative of Japan underscored that the ballistic missile launches by the Democratic People's Republic of Korea were threatening the safety of civil aviation more seriously than ever while clearly violating relevant UN Security Council resolutions. Such continued threat to aviation safety was a matter to be discussed in the Council. The Delegation of Japan thus stressed the paramount importance that all ICAO Member States comply with its rules to ensure aviation safety. In this connection, the Delegation of Japan requested that the Council be updated on the status of any offline action taken as had been indicated in the last session.

76. The President undertook to provide further information to the Council on this matter in due course.

77. The statement delivered by the Representative of Japan was supported by the Representatives of Argentina, France, Republic of Korea and United States.

78. The Representative of the Republic of Korea took the opportunity to stress that the ballistic missile launch was not only a bilateral issue between the Republic of Korea and the Democratic People's Republic of Korea but, as outlined by the Representative of Japan, was jeopardizing and making a very serious threat to both regional and global security.

#### **Rules of Settlement of Differences**

79. The Representative of Algeria expressed his concerns regarding the settlement of differences between Contracting States. Noting that the *Rules for the Settlement of Differences* (Doc 7782/2), was a long-standing document that contained only high-level guidance to settle differences

among Contracting States, that document by itself could give only some guidance on the details of the procedures to be followed by the Council and the parties involved. He commented that these kind of cases were often handled by arbitration courts and the International Court of Justice (ICJ) according to very well-established procedures, and such procedures facilitated the work of the judges and the parties and ensured equal treatment and equity between the parties. He then proposed, if the Council so agreed, to ask the Legal Committee and the Secretariat to consider this matter with a view to proposing to the Council draft updated procedures to follow for the settlement of differences among Member States to be submitted to the Council, using as models the procedures of the Arbitration Tribunal, the ICJ, and other appropriate bodies.

80. The Council requested the Secretariat to review the *Rules for the Settlement of Differences* (Doc 7782/2), with the aim of determining whether the rules needed to be revised and updated taking into account relevant developments that had occurred since the publication of the document. The Council further requested that this review should also take into account comparable documentation that was in use for similar purposes elsewhere in the United Nations system as well as international governmental organizations, and in particular the Rules of Court of the ICJ. In undertaking this review, the Secretariat was specifically requested to advise on whether it would be necessary for this issue to be referred to the Legal Committee for consideration.

#### **United Nations meetings**

81. The Secretary General informed the Council that a special meeting of the United Nations Counter-Terrorism Committee was to be convened in New York on 7 July 2017 to discuss “Terrorist threats to civil aviation”. She encouraged Representatives on the Council to join their national delegations to the UN and attend the special meeting. It was noted that the meeting would be open to Representatives of all Member States of the United Nations.

82. Separately, she also informed that pursuant to the adoption by the United Nations Security Council (UNSC) of Resolution 2309 (“Threats to international peace and security caused by terrorist acts – aviation security”, adopted on 22 September 2016), it was anticipated that the UNSC would convene to consider issues arising on countering terrorist threats to civil aviation in September 2017, and that the ICAO Secretary General could be invited to be present at such a meeting of the Security Council, and if so, Representatives on the ICAO Council would be advised accordingly.

83. It was agreed that any submissions to be made by ICAO to the UNCTC or UNSC on these matters should be jointly reviewed by the Secretary General and the President of the Council.

#### **Activities during the recess**

84. The Council took note of the forthcoming missions to be conducted by the Secretary General during the recess following the conclusion of the current session: attendance at the 2017 ECAC/EU Dialogue and meeting with government aviation officials of Italy; meeting with the Secretary General and the President of the Executive Board of INTEPOL; participation at the ICAO TRIP Regional Seminar in Hong Kong, as well as the Ibero-American Symposium on Environment, Civil Aviation and Climate Change in Guatemala, the ICAO CAR/SAM Aviation Data Analysis Regional Seminar in Cuba, the meeting of the DGCA of the Asia/Pacific Region in Mongolia, and ECAC DGCA Special Meeting in Iceland.

85. In informing the Council of his planned travel during the recess, the President of the Council indicated that on the invitation of the Government of Viet Nam, he would visit Viet Nam to confer with high-level officials and hoped to be able during that trip to present to the government its

Council President Certificate of Recognition for improvements made in safety oversight. On the invitation of the Government of Singapore, he would attend the World Aviation Chief Executive Forum. Thereafter he would embark on the following missions: to Nigeria to open the RPAS Symposium for African States; to Mongolia to attend the DGCA Conference of the Asia/Pacific Region; to Egypt to attend the Regional Ministerial Conference on Aviation Security to determine the roadmap for the Global Aviation Security Plan for the Africa and Middle East countries; to Turkmenistan to discuss with high-level officials with respect to the issue of enhancing the effective implementation under No Country Left Behind (NCLB); to the Former Yugoslav Republic of Macedonia also with respect to NCLB; and to Bosnia and Herzegovina, where he hoped to also have an opportunity to present a Council President Certificate of Recognition.

#### **Farewell to Council Representatives and Alternates**

86. The Council bade farewell to Dr. N. Luongo (Alternate Representative of Argentina), and also to Mr. W. Voss (Alternate Representative of the United States).

87. The meeting adjourned at 1720 hours.

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