
ICAO

International Civil Aviation Organization

COUNCIL — 186TH SESSION

Montréal, 20 January – 18 March 2009

SUMMARY MINUTES WITH SUBJECT INDEX



2009

Montréal

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COUNCIL — 186TH SESSION

SUMMARY MINUTES OF THE FIRST MEETING

(THE COUNCIL CHAMBER, TUESDAY, 20 JANUARY 2009, AT 1430 HOURS)

CLOSED MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

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

ALSO PRESENT:

Mr. S.R. Prado (Alt.)	— Argentina
Mr. L.M. Coelho de Souza (Alt.)	— Brazil
Mr. A. Romera (Alt.)	— Brazil
Mr. A. de Lima (Alt.)	— Brazil
Ms. S. Chambers (Alt.)	— Canada
Mr. P. Pape (Alt.)	— France
Mr. F. Christensen (Alt.)	— Iceland
Mr. P. Ciancaglioni (Alt.)	— Italy
Mr. W. Yoshioka (Alt.)	— Japan
Mrs. D. Jiménez Hernández (Alt.)	— Mexico
Mr. Seo, W.-S (Alt.)	— Republic of Korea
Mr. Yoo, H.-J. (Alt.)	— Republic of Korea
Mr. M. Baatour (Alt.)	— Tunisia
Mr. P. Fleming (Alt.)	— United Kingdom
Mr. S. Creamer (Alt.)	— United States

SECRETARIAT:

Mr. D. Wibaux	— D/LEB
Mrs. C. Rideout	— CSO

Subject No. 7: Organization and personnel**Appointments and promotions to senior level (P-4 and above) posts at ICAO**

1. The Council considered the above subject on the basis of a proposal which the Representative of Canada had addressed to the President of the Council in a letter dated 16 December 2008, and which the President had circulated to all Council Delegations by electronic mail dated 17 December 2008.

2. The above-mentioned letter was supplemented by updated information provided orally by the Representative of Canada, who recalled that during the period 28 November through 15 December 2008 he had made attempts to contact the Secretary General to discuss with him two crucial matters: one pertaining to a delicate Headquarters matter and the other to discuss with him the best approach to take for senior level appointments during an orderly transition. A letter dated 16 December 2008 had been sent in accordance with a request of numerous Representatives who wished to see an orderly transition between the two administrations; that letter had aimed at capturing the concept raised in C-DEC 177/1, paragraph 17, and introduced a wider reflection on other related topics.

3. Over the course of the end-of-the-year recess, Council Members had exchanged views on the proposed initiative. This collective reflection had transformed the original proposal, which requested a freeze on hiring, appointments and promotions, into a process of transition without imposing a freeze on such appointments. On 14 January 2009, the Representative of Canada had invited all available Council Members to discuss common objectives. During that meeting, Council Members had added that the transition measures which were the object of the 16 December 2008 initiative should instead become permanent measures based on Resolution A1-8 of the Assembly. Furthermore, the permanent nature of these measures indicated that they were taken by Council regardless of who was in the position of Secretary General.

4. Addressing the level of officials to be included in this measure, the Representative of Canada had indicated that Secretary General Philippe Rochat and then Council President Assad Kotaite had pleaded with Canada in 1994 to include P-4 officers in senior levels of employees. In 1994, Canada's initial preference had been to include only P-5 in this category. Canada had yielded to the representations of ICAO and had thus included P-4 employees in the category of senior employees, thus granting them corresponding diplomatic status with privileges and immunities. These conditions now represented the benefits package enjoyed by such P-4 senior employees. To exclude them from this category today would not be fair to them and would expose them to a review by Canada, in its capacity as host country, of their status should the Council now decide, 15 years after the fact, to only recognize P-5 as senior employees. Therefore, Canada recommended that the Organization continue to keep the P-4 formula and include these employees in the senior staff category.

5. Proposals had been made for *modus operandi* regarding the transition in specific terms: Council Members had expressed the wish that a formula be developed between the current Secretary General and the Secretary General designate in order to facilitate such transition.

6. The proposal supported by a large number of Council Members was the following:

- a) as of 20 January 2009, the Council would require the approval of the Council President for any hiring, appointment and promotion of P4 employees and above;

- b) these measures would be permanent as of the date of 20 January 2009;
- c) the Council would take further steps and instruct its Human Resources Committee to review procedures and make appropriate recommendations in order to faithfully reflect the Council's wishes in sub-paragraphs a) and b) above.

7. The President of the Council indicated that he had received a request from the Representative of Saudi Arabia to invite the Director of the Legal Bureau to provide the Council with a legal analysis of this proposal. D/LEB indicated that he did not have the text of the latest phase of the proposal made, but that subject to a further in-depth consideration of the proposed text, he could give the following information. Article 54, (*Mandatory functions of Council*), sub-paragraph h) of the Chicago Convention provided that the Council “appoint a chief executive officer who shall be called the Secretary General, and make provision for the appointment of such other personnel as may be necessary, in accordance with the provisions of Chapter XI [of the Convention]”. Chapter 11 (*Personnel*) was made of three Articles, i.e. 58 (*Appointment of Personnel*), 59 (*International character of personnel*), and 60 (*Immunities and privileges of personnel*).- Article 58 provided that “subject to any rules laid down by the Assembly and to the provisions of [the] Convention, the Council shall determine the method of appointment and of termination of appointment, the training, and the salaries, allowances and conditions of service of the Secretary General and other personnel of the Organization, and may employ or make use of the services of nationals of any Contracting State.”

8. D/LEB indicated that in his view, nothing in the above provisions or in the Assembly Resolutions or Decisions constituted a legal obstacle to a decision by the Council to the effect that certain appointments would be submitted to procedures other than those provided for by the Service Code for a certain period of time. Moreover, Assembly Resolution A1-8 (*Appointments and promotions in ICAO*) provided that “appointments and promotions to such senior positions on the staff as the Council may determine shall be subject to the approval of the President of the Council.” Assembly Resolution A1-8 referred in its preamble to Article 58 of the Chicago Convention. The provision of that Assembly Resolution had been implemented already in the past. Before it was amended in 2006, the *ICAO Service Code* had provided in Regulation 4.8 that appointments to the position of Directors and POs, now called D1s, were done subject to approval by the President of the Council. In 2003, it had been decided that appointments to certain positions would be done following consultations conducted by the President of the Council. It was therefore D/LEB’s view that it was for the Council to decide as a matter of policy whether or not it wished to impose restrictions to the appointment authority of the Secretary General, or whether certain conditions of procedure, such as approval by the President of the Council, be added.

9. The Representative of Mexico thanked the Representative of Canada for drawing the Council’s attention to this issue. His Delegation believed that the concerns regarding the post of the Secretary General were very serious and that the proposal would greatly enhance the good management of the Organization. He therefore fully supported the proposal made by the Representative of Canada. As regards the question of including P-4 level posts, the explanations of the Representative of Canada provided the basis for doing so.

10. The Representative of Nigeria believed that the Council’s action on this subject should include an instruction to the Human Resources Committee to take the necessary steps to amend the Service Code in order to be compatible with Assembly Resolution A1-8 and ensure that it became a permanent measure. On the issue of what constituted senior staff positions, he noted that only Director-level positions had been filled under the former COPAD procedure, and that a revision to the Service Code in 2006 had

expanded that to include Principal Officer level positions. The Council was now considering the inclusion of P-4 and P-5 level positions. What was important was to remain consistent, and if the Council took a decision on the subject at this time, it would have to be a permanent decision that the future Secretaries General of ICAO would be subject to.

11. The Representative of Saudi Arabia questioned the need for the measure now being considered, and sought clarification as to its objective. Resolution A1-8 organized and governed this matter, and the appropriate Rules of Procedure decided on the appointment process for professional posts. These rules had all been approved by the Council and had to be observed by the Secretary General. ICAO had to deal with institutional manners using long-term objectives, and not just to satisfy certain immediate interests by some parties. The Delegation of Saudi Arabia therefore objected to the proposal.

12. The Representative of the Russian Federation indicated that his Delegation had supported the proposal from the outset, and would go along with any further amendments as proposed by the Representative of Canada. He wished that the Executive Committee at the time of the next Assembly examine this issue. The Russian Federation whole-heartedly endorsed the need for including P-4 level professionals among the senior officials of the Secretariat for the application this procedure. .

13. The Representative of France also supported the proposal of the Representative of Canada. The Council, according to the Convention, not only had the ability and the capacity to adopt the appointment procedures that would best meet the needs of the Organization, but also to decide when it was appropriate to amend the rules and regulations that had been set in place at a certain point in time and no longer met the needs of the Organization. It would therefore be necessary to instruct the Human Resources Committee to review all rules and procedures to make sure they were in complete harmony and meet current needs. The Representative of France believed that the Council action should stipulate the need for the written approval of the President of the Council. His suggestion was supported by the Representative of the United Kingdom.

14. Further to queries raised by the Representatives of Uganda, Brazil and Nigeria in connection with the status of Resolution A1-8, the Representative of Canada indicated that in the hierarchy of laws, an Assembly Resolution which had not been amended by a later Assembly Resolution was still in force. Therefore Resolution A1-8 of 1947 remained in force. When amending the Service Code in 2006, the Council had, by oversight, not taken into account the provisions of Resolution A1-8. In this instance, however, the resolution formed the basis for the action which the Council would take.

15. Commenting briefly, the Representatives of Venezuela, Ecuador, Argentina, Japan and the Republic of Korea added their support to the proposal of the Representative of Canada.

16. The proposal for Council action on the subject was amended in accordance with some suggestions put forward, and the Council accordingly:

- a) keeping in mind Resolution A1-8 (*Appointments and promotions at ICAO*), decided that as of 20 January 2009, it would require the written approval of the President of the Council for any hiring, appointment and promotion of P-4 employees and above;
- b) decided that these measures would be permanent as of the date of 20 January 2009; and

- c) instructed its Human Resources Committee to review procedures and propose amendments to the Service Code in order to faithfully reflect the Council's decisions in sub-paragraphs a) and b) above.

Other business

Decisions taken during the recess

17. For the record, the President of the Council recalled the following decisions made during the recess:

18. Further to his electronic mail dated 26 November 2008, the President of the Council had informed the Government of China that the Council had agreed to appoint Mr. Sun Xiaowu as the eleventh PKD Board Member. With respect to Mr. Li Dongsheng, however, and since there were no provisions in Attachment C of the PKD MoU for alternate members, the President had informed China that Mr. Li Dongsheng may only attend the meetings of the PKD Board as observer.

19. Further to his electronic mail dated 5 December 2008, the *Programme of Meetings for 2009* had been revised to reflect the following:

- the 22nd meeting of the Dangerous Goods Panel (DGP/22) was being scheduled from 5 to 16 October 2009;
- the Tenth Session of the Statistics Divisional Meeting (STA/10), initially scheduled from 13 to 16 October, had been postponed to 23 to 27 November 2009; and
- the ICAO/World Health Organization Symposium (ICAO/WHO), initially scheduled from 23 to 25 November, had been postponed to a later date.

20. The Council had agreed to inviting the international organizations listed in his electronic mail dated 20 November 2008 to participate in the *ICAO Workshop on Aviation and Alternative Fuels* to be held from 10 to 12 February 2009.

21. The Council had also agreed to inviting the international organizations listed in his electronic mail dated 17 December 2008 to participate in the *Fourteenth Meeting of the Statistics Panel* (STAP) to be held from 23 to 27 March 2009.

22. Further to his memorandum PRES RK/1621 dated 15 December 2008, the President had appointed Dr. Yousef A. Basodan, Vice-President of the Civil Aviation Authority for Administrative and Financial Affairs of Saudi Arabia, as a Member of the Advisory Group on Evaluation and Audit (AGEA).

Appointments on Committees

23. Pending the arrival of the new Representative of the United States on the Council, the Council appointed Ms. Laura Faux-Gable to succeed Ambassador Bliss as a Member of the Air Transport, Joint Support, Finance, Unlawful Interference and Technical Co-operation Committees and on the Working Group on Efficiency, and Mr. Stephen Creamer as her Alternate on all these Committees and the Human Resources Committee. Ms. Dal Asher would continue to serve as alternate on the Joint Support Committee.

Third Meeting of the Group on International Aviation and Climate Change (GIACC/3)

24. The President of the Council indicated that he had approved the suggestion of the Chairs of the GIACC Working Groups to have a three-day meeting preceded by a one-day coordination meeting for the Working Groups. The Coordination Meeting would be held on Monday, 16 February 2009 followed by GIACC/3 from 17 to 19 February 2009.

Informal closed meeting of the Council to conduct interviews for the post of Secretary General

25. The Council declined a request which had been put forward by D/ANB, asking that the Directors of the five Bureaux attend, as observers, the interviews which would take place on Friday, 23 January 2009 for the post of Secretary General.

26. The Representative of Australia, speaking in his capacity as Chairman of the Human Resources Committee, proposed that the Chairmen of the different Committees each prepare one question which would be addressed to the candidates on 23 January 2009 as part of the interview process. It was understood that the questions would, if possible, be circulated before the meeting of 23 January 2009 to Representatives as well as to the two candidates.

27. The meeting adjourned at 1700 hours.

COUNCIL — 186TH SESSION

SUMMARY MINUTES OF THE SECOND MEETING

(THE COUNCIL CHAMBER, MONDAY, 23 FEBRUARY 2009, AT 1640 HOURS)

CLOSED MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

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

ALSO PRESENT:

Mr. S.R. Prado (Alt.)	— Argentina
Mr. L.M. Coelho de Souza (Alt.)	— Brazil
Mr. A. Romera (Alt.)	— Brazil
Ms. S. Chambers (Alt.)	— Canada
Mr. P. Pape (Alt.)	— France
Mr. F. Christensen (Alt.)	— Iceland
Mr. J. Zamhari (Alt.)	— Malaysia
Mrs. D. Jiménez Hernández (Alt.)	— Mexico
Mr. Seo, W.-S (Alt.)	— Republic of Korea
Mr. Yoo, H.-J. (Alt.)	— Republic of Korea
Mr. M. Fernando (Alt.)	— Singapore
Mr. R.A. Al Kaabi (Alt.)	— United Arab Emirates
Mr. P. Fleming (Alt.)	— United Kingdom
Mr. H. Dávila (Alt.)	— Uruguay

SECRETARIAT:

Mrs. F.A. Odutola	— D/ATB
Mr. S. Berti	— C/SFP
Mrs. H. Biernacki	— TO/SFP
Mrs. C. Rideout	— CSO

Subject No. 52: Unlawful interference with international civil aviation and its facilities**Report on acts of unlawful interference**

1. The Council had for consideration C-WP/13269 Restricted (Blue rider Arabic, Chinese, French & Spanish only), in which the Secretary General presented a report on acts of unlawful interference with civil aviation which had occurred in 2008, and a report thereon presented by the Committee on Unlawful Interference in C-WP/13331 Restricted.

2. The Representative of Canada indicated that taking into consideration that only 33 percent of the incidents described in the 2008 summary were based on official reports, Canada considered it would be useful and helpful if, for those incidents, States could confirm whether or not a breach of an ICAO Standard had occurred.

3. In taking action on the basis of the recommendation of the UIC in C-WP/13331 Restricted, as amended in accordance with a suggestion put forward, the Council:

- a) noted the annual report on acts of unlawful interference for 2008;
- b) agreed that the statistical data, together with the analysis, observations and recommendations contained in C-WP/13269 Restricted as amended by the Committee, be officially communicated to the appropriate security authorities of Contracting States on a confidential basis, with a request that States confirm whether or not a breach of an ICAO Standard, leading to each incident, had occurred; and
- c) urged the appropriate security authorities of Contracting States to take action on the recommendations in C-WP/13331 Restricted and to provide ICAO with all pertinent information concerning the security aspects of acts of unlawful interference.

4. The meeting reconvened in open session at 1700 hours to consider other business.

COUNCIL — 186TH SESSION

SUMMARY MINUTES OF THE SECOND MEETING

(THE COUNCIL CHAMBER, MONDAY, 23 FEBRUARY 2009, AT 1430 HOURS)

OPEN MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

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

ALSO PRESENT:

Mr. S.R. Prado (Alt.)	— Argentina
Mr. L.M. Coelho de Souza (Alt.)	— Brazil
Mr. A. Romera (Alt.)	— Brazil
Ms. S. Chambers (Alt.)	— Canada
Mr. P. Pape (Alt.)	— France
Mr. F. Christensen (Alt.)	— Iceland
Mr. P. Ciancaglioni (Alt.)	— Italy
Mr. J. Zamhari (Alt.)	— Malaysia
Mrs. D. Jiménez Hernández (Alt.)	— Mexico
Mr. Seo, W.-S (Alt.)	— Republic of Korea
Mr. Yoo, H.-J. (Alt.)	— Republic of Korea
Mr. M. Fernando (Alt.)	— Singapore
Mr. R.A. Al Kaabi (Alt.)	— United Arab Emirates
Mr. P. Fleming (Alt.)	— United Kingdom
Mr. H. Dávila (Alt.)	— Uruguay

SECRETARIAT:

Ms. N. Graham	— D/ANB
Mr. R.J. Heighes-Thiessen	— D/TCB
Mrs. F.A. Odutola	— D/ATB
Mr. S.A.A. Espinola	— DD/LEB
Mr. M. Elamiri	— C/SSA
Mr. A.R. Diallo	— A/D/ADB
Mr. J. Begin	— C/CRC
Mr. R. Bhalla	— C/FIN
Mr. W. Amaro	— C/JF
Mr. A. Pchelnikov	— A/DD/TCB
Mr. T. Aberyratne	— A/DD/ATB
Dr. A. Evans	— C/MED
Mr. S. Berti	— C/SFP
Mr. E. MacBurnie	— TO/SFP
Mrs. H. Biernacki	— TO/SFP
Mr. Y. Wang	— TO/EPM
Mrs. C. Rideout	— CSO

* Part-time

Subject No. 13: Work programmes of Council and its subsidiary bodies**Schedule for consideration of items during the 186th Session of the Council**

1. The Council noted the meeting schedule for the 186th Session presented in the President's memorandum PRES RK/1618 Revised dated 15 December 2008 and the postponement of the joint TCC/FIC meeting, scheduled for 24 February, to the next (187th) Session. A meeting of the FIC would instead be convened on the afternoon of 24 February.

2. The Council then noted the schedule for consideration of items during the 186th Session as set out in the President's memorandum PRES RK/1636 dated 6 February 2009, subject to the following:

Week of 23 to 27 February

It was noted that the item entitled "Appointment of the Secretary General" would be considered on Friday, 27 February.

Week of 9 to 13 March

With respect to the item entitled "Report of the External Auditor on activities in 2008 – Update on investigations", it was noted that the company KPMG would present its forensic and investigative report on Wednesday, 11 March.

The item entitled "Preliminary report on the results of the pilot study for the development of a harmonized policy on cost recovery for indirect costs" was deferred to the 187th Session of the Council to allow sufficient time for the KPMG interim report to be finalized.

3. Some additional points already explained in Addendum No. 4 & Corrigendum to C-WP/13261 (Work Programme for the 186th Session of the Council) were also noted.

4. It was also noted that the first ever Safety/Efficiency Week would be held during the second week of the Session and would focus attention on all matters relating to these two critical subjects. During that week, the Council would review ANC reports on important amendment proposals covering ten Annexes as well as reports on related topics from the ANC and from others.

Subject No. 19.1: Reports by the President of the Council**Report on activities during the recess**

5. The Council noted the information contained in the President's report (C-WP/13266) on developments that had taken place during the recess.

Subject No. 13: Work programmes of Council and its subsidiary bodies**Report on action taken to implement decisions taken by the Council during the 185th Session**

6. The Council noted the action taken to implement the decisions which it had taken during the 185th Session, set forth in C-WP/13267 presented by the Secretary General.

Subject No. 15.2: Regulation of international air transport services

Night curfews and slot allocation

7. The above subject was considered by the Council on the basis of a paper presented by the Secretary General (C-WP/13271) and an oral report presented by the Chairman of the Air Transport Committee.

8. At the first meeting of the 186th Session, the ATC had considered this item on the basis of C-WP/13271 referred to it by the Council. There had been a general recognition that international air transport was a global system, where actions taken in a State or region in order to address a local problem such as slot allocation at capacity-constrained airports or night curfews, could have an impact or an adverse effect on other States of the region. It was considered timely for the Council to address these issues, over which some States had voiced concerns.

9. There had been considerable discussion on possible actions to be taken by ICAO in addressing these problems. While some Members had considered the proposed actions by the Secretariat in the paper to be realistic and adequate at this stage, others had believed that ICAO should be proactive and do more, such as providing more data on the effects of night curfews on others and technology advancements on alleviating aircraft noise, strengthening existing ICAO policies and guidance, and studying and developing further guidance.

10. With respect to the issue of night curfews, it had been recognized that this was a complex issue involving manufacturers, including political, social, economic and environmental. While there was support that this issue had global implications and needed to be properly addressed, the Committee had felt that the issue was currently being studied by the CAEP. It would be desirable to wait until the results of this study became available so as to be in a better position to address this issue.

11. Based on this above discussion, the Committee had agreed to recommend to the Council to approve the proposed action as set out in the paper.

12. The Representative of Canada indicated his State co-chaired the CAEP WG/2 task group where night curfews were currently being discussed. Although the task group's work was already underway, the Council could urge interested States to participate in the task group as it would greatly benefit the production of a balanced final product.

13. The Representative of Singapore believed that slot allocation should be viewed as an operational issue to be resolved between airlines and airports directly. There were already existing guidelines as serviced by IATA with regard to the process of the allocation of slots. Resolving this issue through the bilateral framework would only add more complexity to the issue. Countries should take the view that negotiation over traffic rights should be on the basis of equal opportunity rather than equal outcome. Tying traffic rights directly to slot allocation outcomes and airport incapacity issues might constrain the ability of aeronautical authorities to liberalize the air services framework.

14. The Representative of Switzerland indicated that in addition to what the Representative of Singapore had just mentioned, he wished to draw the Council's attention to the fact that the 124th IATA

Scheduled Conference would be held in Montreal from 18 to 21 June 2009, and would be a good occasion to learn more about how the industry managed the subject. of slot allocation.

15. The Representative of Nigeria observed that the subject had been discussed at length in the Air Transport Committee, of which all Members of the Council were Members. His Delegation had not been happy with the outcome of the decision taken in the ATC, but could join the consensus in order to save time and enhance efficiency. He therefore felt uncomfortable with reopening the same discussion in this forum. The Representative of Nigeria requested that the Council accept the report of the Chairman of the Air Transport Committee at this time.

16. The Representative of South Africa shared the sentiments echoed by the Representatives of Nigeria and Singapore. In terms of operational issues on airlines, he observed that airlines that operated from the Equator were all affected by night curfews, and urged Representatives whose countries were close to or on the Equator to check with their airlines as to whether night curfews resulted in operational restrictions.

17. The Representative of Namibia echoed the sentiments of Nigeria, South Africa and Singapore, and supported the recommendations in C-WP/13271.

18. In taking action on the basis of the proposal in C-WP/13271, as amended in accordance with a suggestion put forward, the Council:

- a) requested the Secretary General to remind States of the existing ICAO policies and guidance, and urged them to follow these policies and guidance;
- b) requested the Secretary General to review the ICAO Bilateral Template Air Services Agreement to explore if any model clauses on slot allocation could be developed; and to keep under review the issue of night curfews within the context of ICAO's work on environmental protection;
- c) requested the Secretary General to continue to monitor the situation on night curfews and slot allocation, and to report to the Council should there be significant developments that warrant attention; and
- d) requested the CAEP to accept, as observers, those States that are interested in the subject of night curfews and slot allocation, and to invite them to participate in the discussions of the CAEP Working Group 2 (WG2) Task Group 1 (TG1), which has been tasked with estimating the environmental impact of curfews on destination countries with a case study for a major airport.

Subject No. 15: Subjects relating to air transport

Proposed Terms of Reference of the Secretariat/Council Group on Regional Bodies

19. The Council had for consideration C-WP/13272, in which the Secretary General presented proposed terms of reference of the Secretariat/Council Group on Regional Bodies. It was recalled that during the previous session (185/4), the Council had discussed the outcome of the ICAO/EC Air Transport Symposium held in April 2008 and had agreed to establish a multidisciplinary group to make recommendations to the Council with regard to further action by ICAO on the conclusions of the Symposium.

C-WP/13272 discussed the establishment of such a group, suggested its Terms of Reference, and offered some guidance material.

20. Some clarifications were provided regarding the Secretariat representation on the group, in particular the member suggested from the Air Navigation Bureau, who would be serving in the capacity of an ANB senior manager referring issues, when necessary, to the appropriate ANB officers, and the member from the Legal Affairs and External Relations Bureau, who would, among other things, review any further agreements which ICAO may conclude with regional bodies.

21. The Representative of Spain observed that the terms of reference of the group appeared to be very extensive. He suggested that the terms of reference be amended in order to avoid words such as “explore” and “examine”, and to focus on paragraphs 4, 5, 7 and 10 of Appendix A to C-WP/13272. The Representative of the United Kingdom concurred that the terms of reference would need to be more focussed and structured, identifying three types of work – i.e. information gathering, analysis, and recommendations – that were required. A proper project management approach would make it clear, not only to the participants but also to the Council, what the process and deliverables were, and what could be expected as an outcome.

22. The Representative of Nigeria suggested that instead of attempting to incorporate changes in the terms of reference at this time, the Council approve them provisionally, on the understanding that the group would review them further in order to determine whether any amendments were necessary.

23. The Representative of Ecuador suggested that the participation of regional organizations in the work of the group be made possible. The Representative of Brazil sought assurances that Members of the Council who were not members of the group would be able to attend its meetings as observers.

24. Further to a query raised by the Representative of Venezuela, D/ATB confirmed that the necessary resources were available for the group to meet and develop recommendations. No resources had been provided at this time for implementation of the recommendations which the group may offer.

25. The Council took the following action on the subject on the basis of a suggestion put forward by the President in light of the discussion.

26. The Council approved the composition of the multidisciplinary group as listed in paragraphs 2.1 and 2.2 of C-WP/13272.

27. The Council requested that at its first meeting, the multidisciplinary group examine its draft Terms of Reference, taking into account the comments offered regarding the need to produce recommendations focusing in particular on paragraphs 4, 5, 7 and 10 of Appendix A to C-WP/13272.

28. It was understood that Representatives on the Council who are not members of the multidisciplinary group, as well as regional organizations, could attend its meetings as observers.

29. The group was requested to present a progress report on its work during the next (187th) session.

Subject No. 13: Work programmes of Council and its subsidiary bodies**Convening of an International Conference on Aviation Security**

30. The Council considered the above subject on the basis of a paper presented by the Secretary General (C-WP/13268) and an oral report presented by the Chairman of the Committee on Unlawful Interference.

31. During the Committee's discussion, some Committee members had requested that the conference be designated a high-level conference, and that this designation be highlighted in the title as well as in the notes under the agenda. It had been observed that, should high-level participation be requested, the duration of the conference, which was proposed to be five days, would need to be reduced. Some Committee members had observed that the reference to technology in the title could give the wrong impression with regard to the nature of the conference, and did not express their support. The Committee had agreed that this reference should be deleted from the title.

32. With regard to the draft agenda for the conference, some Committee members had expressed their concern with the lack of consultation with Contracting States in the development of the content of the agenda. In this context, the President of the Council had suggested that subject to the Council's agreement, a State letter could be sent requesting States to provide input on the draft agenda. This letter would also serve as advance information for States regarding this conference. The final agenda, incorporating contributions from States, would be circulated to the Council for its approval and thereafter distributed to States as the final agenda. The Committee had examined the draft agenda presented in the Appendix to the working paper and had expressed its concern with the wording of the notes under some agenda items. The Committee had suggested adding an item to the agenda highlighting the need for balance between security requirements and facilitation. In this context, the Secretariat had been requested to amend the proposed draft agenda, taking into account comments expressed by the Committee.

33. The Committee recommended that the Council take action as contained in the Executive Summary of C-WP/13268, and approve the proposed agenda as amended by the Committee, which had been distributed together with the Chairman's oral report to Council.

34. The Chairman of the UIC, now speaking in his capacity as Representative of Germany, wished to add a few remarks beyond the report that had been distributed before the meeting. The Representative of Germany believed that the Council should seek the views of the AVSEC Panel when it came to the agenda. The Panel would meet in about one month's time and it would be useful to hear the opinion of the Panel. When reviewing the AVSEC Panel's report during the next (187th) Session, the Council could send out a State letter incorporating any changes proposed by the Panel.

35. When discussing this possibility in the UIC, the Committee had been told by the Secretariat that there was not sufficient time to wait for the Panel to react. The Representative of Germany therefore wondered if it was really necessary to have a conference this year. The Council could consider postponing it to 2010, in order to allow more time to properly prepare the agenda which was, in the opinion of some UIC Members, still too lean in the sense that the outcome and objective of the conference was not very clear. This would in turn make it easier to attract the high-level participation that was being sought. On the other hand, there would be a regular session of the Assembly in 2010, and perhaps instead of convening the conference it could be arranged for the Assembly to have its main focus on security.

36. The Representative of the United Arab Emirates endorsed the suggestion of the Representative of Germany to possibly postpone the conference until 2010. This should allow the AVSEC Panel and other Contracting States to contribute more constructively to the shaping of the agenda. The Representative of the Republic of Korea also supported the suggestion of the Representative of Germany.

37. The Representative of Spain indicated that he had been about to ask the Secretariat what type of results they were expecting under each of the individual agenda items. As had been observed by the Representative of Germany, the agenda had been drafted in rather vague terms, using such words as “review” and “examine”. In only one item was there concrete action, where it was indicated that the conference would establish aviation security priorities for the five to ten years. If the Secretariat’s expectations were not sufficiently mature, perhaps the Council should reflect on whether or not to defer the meeting to the following year.

38. The Representative of the United Kingdom agreed that there was merit in postponing the conference if the Council could not be clear about what the conference was supposed to achieve. High level conferences took decisions which would shape the way that ICAO worked towards resolving particular policy issues over the years to come. Participants at such a conference would certainly not wish to simply take stock of developments since the last meeting; they would want to be in a position where they were setting the programme for the future. Also, if the Council were to postpone the high-level conference, it might help resolve another problem, in that it would leave a slot between 19 and 21 October free for a civil-military conference that was being planned. The Representative of the United Kingdom did not think that it would be possible to have security as the main focus of the Assembly in 2010, since there would be other issues to debate.

39. The Representative of Mexico wished to know if the proposal of the Representative of Germany for deferring the conference would in any way compromise the implementation an Assembly Resolution, it being understood that at the next Assembly it would be quite relevant to have aviation security properly documented with a firm recommendation to that Assembly. Perhaps a special meeting could be convened just before the 2010 Assembly with that objective.

40. Responding to the question raised by the Representative of Mexico, C/SFP indicated that in the Assembly, as part of the discussion in the Executive Committee on the terms of reference of the Aviation Security Panel, it had simply been suggested that special aviation security assemblies or aviation security divisional meetings could be held to address security challenges in a more comprehensive manner. As a result, the proposal had been put forward in mid-2008 to the UIC and Council, and it had been agreed that a conference would be held although no funds had been set aside to do so, and it would be done on a cost-recovery basis.

41. The Representative of France observed from the clarification just provided by C/SFP that while it was true that the point of departure was guidance from the Assembly, the recommendation was somewhat vague. Although the question of postponing the conference had never been discussed in the UIC, it would appear that some of the Representatives had consulted with their Governments and there were some doubts as regards the expectations of this conference. It would appear that if the conference were to take place in October, there would not be sufficient time to have an in-depth understanding or consultation with either the States or the AVSEC Panel. If one were to refer to the conferences which had been convened on security in 2002 and on safety in 2006, on those two occasions there had been an element of urgency with new expectations and specific objectives to be attained. This was not the same situation, and the suggestion

of the Representative of Mexico for a specific meeting prior to the Assembly might be preferable to referring the subject as a priority item to the Assembly, which would have other files on its table.

42. The Representative of Canada sympathized with the views offered by the Representative of Germany, and believed that the Council could perhaps consider a short postponement, of a maximum of two to four months, to address the points raised by Mexico, France and the United Kingdom.

43. The Representative of Saudi Arabia believed that if it was possible to maintain the current dates and confirm certain points on the agenda, it would be possible to have a clear-cut idea of the threats to aviation security, and the Directors General of Civil Aviation participating at the conference would be in a position to take decisions on the threats discussed at the conference. The Representative of Saudi Arabia felt it was important to hold the meeting either on the dates envisaged or a month or two later, depending upon the availability of Secretariat support services.

44. The Representative of Nigeria recalled that the decision to convene a conference dated back to the previous triennium, when the Council had considered the possibility of converting the Aviation Security Panel into an Aviation Security Commission. At that time, it had been argued that there were important issues that were not appropriate for a panel to handle. Since the AVSEC Panel had not been expanded, it had been decided that a conference should be convened to address those issues. That idea had filtered through the Council, gone to the Assembly, and the Assembly had also expressed similar views back to the Council. If a decision was now taken to elevate the status of the conference to a high level meeting, the Council would have to address the preoccupations expressed by Germany and United Arab Emirates. However, if the Council returned to the original idea of having a conference which would look at general issues that had impact, the conference should proceed. The confusion now was that the UIC had decided there would be a high-level meeting and the Council was now wondering what the results should be. The preference of his Delegation was to have a security conference as originally envisaged.

45. The Representative of Brazil cautioned against taking a hasty decision on such an important and sensitive subject. Perhaps at the level of the Secretariat and UIC more work could be done on the agenda, as had been suggested by the Representative of Spain. States could be consulted and, if necessary, the Conference could be postponed for one or two months.

46. The Representative of Romania had the impression that the Council was going ahead with plans for a security conference simply because it had been mentioned at the Assembly, without questioning whether such a conference should in fact take place. More thought would have to be given to the outcome of such a conference. The Representative of Romania asked the Secretariat what the expectations were of the conference, and what human resources would be put in place to work for it. It would then be possible to determine whether it was worth convening the conference either this year or next. Contracting States would not wish to see the Council simply agree to it automatically without further analysis.

47. Some further clarifications were provided by C/SFP, who observed that the Assembly's fairly general reference had been translated into a Council decision. Given the fact that he had only one AVSEC officer to assist with preparations for the conference, he would appreciate more time as well as more resources to do this work. The Secretariat had had some meetings, and a workshop had been held to which all of the sections of ICAO which dealt with security had attended. The exchange of ideas that had taken place had, in his view, resulted in some reasonable proposals which could be viewed as a skeleton which could be fleshed out. This had been seen as a way to work together with States in order to include whatever topics were felt appropriate at the conference. This would, among other things, be a good opportunity to

review the current AVSEC plan of action which had been in place since 2002 and which had to a great extent finished running its course. Most of the items of that plan of action had been achieved, and this seemed to be an opportunity to look at the way forward for the next six years. It was against that background that the agenda items were somewhat vague. The topics listed were appropriate in terms of reviewing the threats, the Council measures to address those threats, and the potential use of technology as the only viable solution. Also, since it was necessary to hold the event on a cost-recovery basis, the addition of the word “technology” would be appropriate to attract potential sponsors. The Secretariat had produced the agenda for further development by colleagues in the AVSEC Panel who had been very helpful in the past, and States who would then submit working papers as they saw fit. This work in partnership between the ICAO Secretariat and the States as well as the panel experts could formulate a more meaningful agenda than that put forward at this time.

48. The Representative of the United States believed that there was not such a great division of views. As had been indicated by C/SFP, the six agenda items were very broad, and perhaps the Council could task the AVSEC Panel, that would be meeting very shortly, to work quickly on trying to refine the agenda in such a way that it identified the kind of outcomes that were going to be most useful and most important to the States in the coming years. It was important that whenever a conference was held, it had value for the States, and was not just a series of presentations but rather a real deep thinking of what needed to be done differently or better with respect to aviation security by States, industry and ICAO. The Representative of the United States suggested that the upcoming AVSEC Panel take on this task. It may be that there would be a need to defer the conference for a couple of months.

49. The Representative of Ecuador shared the concerns which had been expressed by previous speakers regarding the question of whether it was appropriate to hold a security conference at the time proposed, simply on the basis of a suggestion which had been put forward during the last Assembly. Instead of referring the matter to the AVSEC Panel, the Representative of Ecuador would prefer to ask the Secretariat for guidance as to what would be the final objectives of this conference and what expectations it would have.

50. The Representative of the United Arab Emirates observed that there were many developments at this time in aviation security, and that these were driven by several factors, mainly threat levels, technological changes, geopolitical changes, and the evolution of the USAP programme which happened to be an ICAO success story, as well as internal ICAO developments. ICAO would, at the same time, be facing many other challenges. While not suggesting that aviation security was not a top priority, the Representative of the United Arab Emirates was not sure about highlighting it as the next Assembly’s theme in 2010, at a time when the aviation industry around the world was facing a potential meltdown, with airlines and airports failing and thousands of people being laid off. It would be wise to have the AVSEC Panel review the matter. The Representative of the United Arab Emirates urged the Council to consider postponing the conference not only because of time considerations but to really have a better product that States could benefit from.

51. The Council agreed to postpone the Conference on Aviation Security, and referred the matter to the Aviation Security Panel, requesting it to report to the Council, through the Committee on Unlawful Interference, with a recommendation as to how to proceed. The Council would thus await the report of the Aviation Security Panel before taking a decision on the convening of the Conference.

52. The Council considered the next item on its order of business in closed session, returning to open session at 1730 hours to consider other business.

Other business

Farewell to Mr. Gil-sou Shin, Representative of the Republic of Korea

53. The Council bade farewell to Mr. Gil-sou Shin, the Representative of Korea on the Council.

COUNCIL — 186TH SESSION

SUMMARY MINUTES OF THE THIRD MEETING

(THE COUNCIL CHAMBER, WEDNESDAY, 25 FEBRUARY 2009, AT 1000 HOURS)

OPEN MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

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

ALSO PRESENT:

Mr. A. Romera (Alt.)	— Brazil
Mr. A. Labarang (Alt.)	— Cameroon
Ms. S. Chambers (Alt.)	— Canada
Mrs. D. Jiménez Hernández (Alt.)	— Mexico
Mr. A.A. Alharthy (Alt.)	— Saudi Arabia

SECRETARIAT:

Mr. D. Wibaux	— D/LEB
Mr. S.A.A. Espinola	— PLO
Mr. R. Bhalla	— C/FIN
Mr. J. Huang	— LO/LEB
Mr. D. de Andrade Filho	— Acting IRIS Project Manager, ATB
Ms. M. Weinstein	— Consultant, LEB
Miss S. Black	— Précis-writer

Subject No. 16.3: International air law conventions

**Diplomatic Conference on Compensation for Damage Caused by Aircraft
to Third Parties Arising from Acts of Unlawful Interference or from General Risks
(Montréal, 20 April – 2 May 2009)**

1. In presenting an oral report on responses to State letter 08/61 dated 7 November 2008 on the convening of the Diplomatic Conference on Compensation for Damage Caused by Aircraft to Third Parties Arising from Acts of Unlawful Interference or from General Risks (Montréal, 20 April – 2 May 2009) pursuant to the Council's earlier request (185/12), the Director of the Legal Bureau (D/LEB) recalled that the said State letter had requested States and Observer Organizations to indicate, as early as possible, if they intended to participate and, if so, the composition of their delegations. Thus far, six States had indicated their intention to participate. Five of those States had indicated the composition of their delegations. Three Organizations had indicated their attendance. Two of those Organizations had indicated the composition of their delegations. One additional organization, although not formally advising of its participation or delegation, had already submitted a working paper. Apart from the working paper from the observer Organization, no other working paper had thus far been received. D/LEB emphasized that past experience in ICAO indicated that the number of responses at this stage, two months before the opening of the Diplomatic Conference, did not provide guidance on the eventual number of delegations and participants in the Diplomatic Conference. He indicated that Council Representatives might wish to encourage their States to participate and to inform the Organization of their attendance and the composition of their delegations.

2. The Representative of Ecuador noted that the Latin American region had held meetings, and was planning further meetings, to address the issue of compensation for damage by aircraft to third parties arising from acts of unlawful interference or from general risks, reach a consensus and devise policies. In particular, the Executive Committee of the Latin American Civil Aviation Commission (LACAC) would be meeting in Easter Island, Chile, from 5 to 6 April 2009 to discuss the issue. The President of the Council expressed the hope that LACAC would encourage more States in the Latin American region to inform ICAO of their participation in the Diplomatic Conference and the composition of their delegations.

3. The Council noted the above oral report, on the understanding that, as requested by the Representative of Switzerland, updated information regarding participation in the Diplomatic Conference would be circulated electronically to Representatives by the end of the current Council session.

Subject No. 16: Legal work of the Organization

International interests in mobile equipment (aircraft equipment)

4. The Council next considered C-WP/13273, in which the Secretary General reported on the outcome of the Third Meeting of the Commission of Experts of the Supervisory Authority of the International Registry (CESAIR) (Montréal, 1-2 December 2008) and proposed, *inter alia*, changes to the *Regulations and Procedures for the International Registry* (Doc 9864). Appendix E to the paper was updated to reflect that China, Cuba and the United Republic of Tanzania, having now ratified the Cape Town Convention and Protocol, were to be listed as Contracting States and not Signatory States and that Singapore, having adhered to the said Convention and Protocol, was also to be listed as a Contracting State.

5. The Representative of the United Kingdom observed that if all Members of CESAIR were appointed for a three-year term, then there would be no continuity from one term to the next. He queried

whether there was either the possibility of, or merit in, appointing some Members for three years and some for two years so that there would be a rolling membership and no bulk renewal point. In also enquiring whether there was any limit as to the number of times a Member could be re-appointed, he indicated that these two issues, while not matters of great import as the CESAIR was a technical body and not a political one, needed to be addressed.

6. The Principal Legal Officer (PLO) clarified that Rule 2 c) of the Rules of Procedure for the CESAIR (Doc 9893) stipulated that Members may be reappointed for subsequent three-year terms without limit. He noted that, although a three-year term had been established in order to ensure rotation among the Members, States were free to re-nominate their Members.

7. In then taking the action proposed in the executive summary of C-WP/13273, the Council noted the information provided in the paper and:

- a) approved the changes to the *Regulations and Procedures for the International Registry* (Doc 9864) as described in paragraphs 2.3, 2.4 and 2.5 of the paper and indicated in Appendix C thereto;
- b) approved the initiation of the process to appoint Members to CESAIR for a three-year term commencing 12 June 2009 and, in accordance with the procedure outlined in paragraph 3.2 of the paper, requested the President of the Council to appoint the members on the basis of nominations received in response to a State letter to be sent by the Secretary General to Signatory States and Contracting States to the Cape Town Convention and Protocol on the subject;
- c) delegated authority to the Secretariat for certain day-to-day and other specific tasks associated with the discharge of the Council's function as the Supervisory Authority of the International Registry and the functioning of the International Registry as follows (cf. paragraphs 4.1 and 4.2 of the paper):
 - i) consideration of operational complaints made to the Supervisory Authority;
 - ii) provision of guidance to the Registrar;
 - iii) any action necessary to ensure that the International Registry operates efficiently;
 - iv) the ability to determine the dates of effectiveness of amendments to the *Regulations and Procedures for the International Registry* (Doc 9864), as required; and
 - v) approval of the Registrar's subcontractors.

Subject No. 12.5: Plans for legal meetings

Subject No. 16: Legal work of the Organization

Subject No. 16.3: International air law conventions

Convening of the 34th Session of the Legal Committee

8. Tabled next for the Council's consideration was C-WP/13275 [with Blue rider (English only)] presented by the Secretary General on this subject. It was recalled that the Council had previously agreed (184/6) to convene the 34th Session of the Legal Committee in the second half of 2009.

9. As a Representative from the Central American region, the Representative of Ecuador requested that the Central American Corporation for Air Navigation Services (COCESNA) be invited to attend the Legal Committee as an observer. The Representative of Nigeria indicated that it would be beneficial to also invite the Civil Air Navigation Services Organisation (CANSO), as well as the regional civil aviation commissions, namely, the Arab Civil Aviation Commission (ACAC), the African Civil Aviation Commission (AFCAC), the European Civil Aviation Conference (ECAC) and the Latin American Civil Aviation Commission (LACAC).

10. In taking the action proposed in the executive summary of C-WP/13275, as amended by the President of the Council in light of the discussion, the Council:

- a) agreed to convene the 34th Session of the Legal Committee in Montréal from 9 to 17 September 2009 for the purpose of considering draft instruments addressing new and emerging threats;
- b) approved the Provisional Agenda for the 34th Session of the Legal Committee as set out in Appendix A to the paper; and
- c) agreed that invitations to attend the 34th Session of the Legal Committee be extended to all Contracting States and all non-Contracting States, as well as the international organizations set out in Appendix B to the paper, subject to the addition of CANSO, COCESNA and the regional civil aviation commissions (ACAC, AFCAC, ECAC and LACAC).

11. It was understood that the President of the Council would report to the Council on any requests received in the future from international or regional organizations to participate in the 34th Session of the Legal Committee as observers.

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

Report on the processes for delegation of financial authority

12. The Council then considered C-WP/13306 presented by the Secretary General, which reported on the current financial delegation of authority within the ICAO Secretariat and identified areas where delegation had been authorized to, or by, the Secretary General; and C-WP/13307, a report thereon by the Finance Committee (FIC).

13. Referring to paragraph 2.3 of the FIC report, the Representative of France enquired as to when the treasury guidelines and investment rules currently being prepared would be completed and communicated to Committee Members. Affirming the importance of such guidelines and rules, he noted that, as had been seen in the present financial crisis, certain investment policies could have negative consequences on public and private institutions and other entities. Observing that ICAO had always had a very prudent financial policy, the Representative of France underscored that, while he did not consider the Organization to be at risk, one could never be too careful. In then drawing attention to paragraph 2.4, he emphasized that if *ex gratia* payments had to be made “in the interest of the Organization”, then there should be a very strict procedure for determining that interest.

14. The Chief of the Finance Branch (C/FIN) clarified that ICAO did not make investments; it only made cash and term deposits. Agreeing that the Organization had a very conservative financial policy, he stressed that it was not being proposed to change that policy. What FIN was doing was establishing guidelines as to which banking institutions to favour with ICAO's cash and term deposits. As those guidelines were expected to be finalized by the end of March 2009, FIN would be in a position to communicate them to the FIC by the next (187th) session. In noting that under Financial Regulation 11.3 there was a \$500 limit on *ex gratia* payments authorized by the Secretary General and that payments above that amount required the authorization of the FIC, C/FIN indicated that it might be excessive to have an additional procedure for such payments.

15. To a question raised by the Representative of Malaysia regarding paragraph 3.1, C/FIN noted that if *The ICAO Financial Regulations* (Doc 7515) were not followed, then it would be reflected in the staff member's Performance and Competency Enhancement (PACE) report. It would then be for the Secretary General, as Chief Executive Officer, to take appropriate action.

16. The Representative of Canada indicated that he disliked the concept of *ex gratia* payments and would have difficulty explaining to his national administration why it had been necessary "in the interest of the Organization" to make any \$500 *ex gratia* payment.

17. The Representative of India endorsed these comments, as well as those made by the Representative of France.

18. The Council, bearing in mind the comments made by the FIC in C-WP/13307, took the action recommended by the Committee and noted the current financial delegation of authority as shown in the Appendix to C-WP/13306. It also noted the intention of the Secretariat to undertake further reviews, on the basis of the said Appendix, of the existing financial delegations of authority that would need to be streamlined to increase efficiency and effectiveness and to identify areas where financial delegation of authority was required but where neither policy nor practice was currently in place.

Subject No. 18.9: Suspension or amendment of the Financial Regulations

Report on review of Financial Regulations 7.8 and 9.5

19. The Council next considered C-WP/13310 [with Corrigendum No. 1 (French only)], in which the Secretary General proposed amendments to Financial Regulations 7.8 and 9.5 of *The ICAO Financial Regulations* (Doc 7515); and an oral report thereon by the Finance Committee (FIC). Under the proposed amendment to Financial Regulation 7.8, all transactions relating to after service health insurance (ASHI) benefits would be recorded in the Revolving Fund following the application of the International Public Sector Accounting Standards (IPSAS), as was the case for other unfunded liabilities and deficits mentioned in sub-paragraph b) of that Financial Regulation, for which adoption was planned in 2010. In addition, sub-paragraphs a) and b) of Financial Regulation 7.8 would be merged so that all of the liabilities would be recorded in the Revolving Fund at the same time in 2010. Under the proposed amendment to Financial Regulation 9.5, any adjustments to the Administrative and Operational Services Cost (AOSC) budget estimates for the year exceeding a 5 per cent increase over the amount approved by the Assembly, or previously approved by the Council, would be reported to the Council rather than submitted to the Council for its approval.

20. The FIC agreed with the proposed amendment to Financial Regulation 7.8 as presented in the Appendix to C-WP/13310, subject to the French text thereof being reviewed to ensure that it was aligned with the other language versions, and recommended its approval by the Council. The Committee found, however, that the proposed amendment to Financial Regulation 9.5 was unacceptable. It recommended that Financial Regulation 9.5 instead be amended to indicate that any adjustments in cost to the AOSC budget exceeding 5 per cent but less than 10 per cent over the amount approved by the Assembly, or previously approved by the Council, would be reported to the Council and that an increase in excess of 10 per cent would be subject to prior approval by the Council. The FIC was of the view that its proposed amendment to Financial Regulation 9.5 would help maintain adequate oversight and control over AOSC budget expenditures.

21. The Council took the above action recommended by the FIC in its oral report.

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

Report on the use of the Information and Communication Technology (ICT) Fund and possible means of financing the modernization of financial systems

22. The Council then heard an oral report by the Acting IRIS Project Manager on the implementation of Phases I and II of the new financial system, Agresso, and on the latter's implementation and deployment to the Regional and Field Offices.

23. Responding to a query by the Representative of the United States, the Acting IRIS Project Manager noted that one of the activities of the pre-planning team was to establish an estimate as to how much the deployment of the Agresso financial system to the Regional Offices would cost. On the basis of the experience gained in implementing Phases I and II at ICAO Headquarters, it was considered that it would cost some \$1.5 million. To a further question raised by the Representative of Nigeria, the Acting IRIS Project Manager indicated that the Technical Co-operation Bureau (TCB) would work with the pre-planning team to identify which Field Offices should be considered for the deployment of the Agresso financial system. It was expected that those Field Offices responsible for major technical co-operation projects would be good candidates.

24. The Council noted the oral report on the new Agresso financial system.

Other business

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

Report on meetings of other organizations at which ICAO was represented during the third quarter – 1 July to 30 September 2008

25. As no request had been received by close of business on 30 January 2009 to have C-WP/13274 on this subject tabled for discussion in response to his memorandum PRES RK/1630 dated 19 January 2009, the President of the Council indicated that he considered that the Council had noted the information contained therein.

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

Status report on the audit of the Ancillary Revenue Generation Fund (ARGF)

26. As no request had been received by close of business on 4 February 2009 to have C-WP/13305 on the above subject tabled for discussion in response to his memorandum PRES RK/1633 dated 21 January 2009, the President of the Council indicated that he considered that the Council had noted the information contained therein.

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

Report on the implementation of Assembly Resolution A36-19: Threat to civil aviation posed by man-portable air defence systems (MANPADS)

27. As no request had been received by close of business on 13 February 2009 to have C-WP/13270 Restricted (with Addendum No. 1) on this subject tabled for discussion in response to his memorandum PRES RK/1641 dated 30 January 2009, the President of the Council indicated that he considered that the Council had noted the information contained therein.

Subject No. 12: Programme of ICAO meetings

Programme of Meetings for 2009

28. The President of the Council noted that, further to his e-mail dated 5 February 2009, the Programme of Meetings for 2009 approved by the Council (C-WP/13248; 185/8) had been revised to reflect that:

- a) the third meeting of the Group on International Aviation and Climate Change (GIACC/3) was held from 17 to 19 February 2009 instead of from 16 to 18 February 2009;
- b) the meeting of the Technical Advisory Group on Machine Readable Travel Documents (TAG-MRTD), initially scheduled for 25 to 28 May 2009, had been postponed to 7 to 9 December 2009;
- c) the Global Air Traffic Management Forum on Civil/Military Cooperation (GATM-CIV/MIL), initially scheduled from 3 to 5 June 2009, had been postponed to a later date; and
- d) the International Conference on Aviation Security would be held from 19 to 23 October 2009 instead of from 19 to 22 October 2009.

Processing of credentials of Representatives and Alternates on the Council

29. In an effort to accelerate the processing of credentials of Representatives and Alternates on the Council, the President of the Council suggested that the memorandum reporting on such credentials no

longer be translated. In accordance with Rule 2 of the *Rules of Procedure for the Council* (Doc 7559), credentials would continue to be examined by the President, one of the Vice-Presidents and the Secretary General, who would report to the Council under cover of a memorandum which would be posted on the ICAO-Net in the English language only. The Council agreed to this proposal.

30. The meeting adjourned at 1140 hours.

COUNCIL — 186TH SESSION

SUMMARY MINUTES OF THE FOURTH MEETING

(THE COUNCIL CHAMBER, FRIDAY, 27 FEBRUARY 2009, AT 1000 HOURS)

OPEN MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

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

ALSO PRESENT:

Mr. S.R. Prado (Alt.)	— Argentina
Mr. G.I. Tagino (Alt.)	— Argentina
Mr. E.J. Van Der Wal (Alt.)	— Australia
Mr. L.R. Nascimento (Alt.)	— Brazil
Mr. A. Romera (Alt.)	— Brazil
Ms. S. Chambers (Alt.)	— Canada
Mr. Chunyu Ding (Alt.)	— China
Mr. E.N. Mendez (Alt.)	— Dominican Republic
Mr. P. Pape (Alt.)	— France
Mr. F. Christensen (Alt.)	— Iceland
Mr. P. Ciancaglioni (Alt.)	— Italy
Mr. W. Yoshioka (Alt.)	— Japan
Mr. J. Zamhari (Alt.)	— Malaysia
Ms. D. Jiménez Hernández (Alt.)	— Mexico

SECRETARIAT:

Mr. D. Wibaux	— D/LEB
Ms. N. Graham	— D/ANB
Mrs. D. Mauri	— PA/PRES
Mrs. C. Rideout	— CSO

ALSO PRESENT: (CONTINUED)

Mr. Seo, W.-S (Alt.)	— Republic of Korea
Mr. Yoo, H.-J. (Alt.)	— Republic of Korea
Mr. A.A. Korsakov (Alt.)	— Russian Federation
Mr. A.A. Alharthy (Alt.)	— Saudi Arabia
Mr. M. Fernando (Alt.)	— Singapore
Mr. J. Herrero (Alt.)	— Spain
Mr. M.A. De Jong (Alt)	— Switzerland
Mr. R.A. Al Kaabi (Alt.)	— United Arab Emirates
Mr. P. Fleming (Alt.)	— United Kingdom
Mr. S. Creamer (Alt.)	— United States

Subject No. 4: Appointment of the Secretary General

Appointment of the Secretary General

1. The above subject was documented in C-WP/13265 and Addendum No. 1, presented by the President of the Council. The President indicated that in accordance with C-DEC 185/8, paragraph 9, and following the deadline of 1 December 2008 for the receipt of nominations for the post of Secretary General of ICAO, the nomination of Mr. Raymond Benjamin had been presented by France and the nomination of Mr. Vladimir Zubkov had been presented by the Russian Federation. Also, the nomination of Dr. Charles Mgana had been presented by the United Republic of Tanzania and had since been withdrawn.
2. The *curricula vitae* of Mr. Benjamin and Mr. Zubkov were reproduced in C-WP/13265. Pursuant to paragraph 4 of Appendix C of the *Rules of Procedure for the Council* (Doc 7559/8), an informal closed meeting of the Council had been held on Friday, 23 January 2009, to interview the two candidates. The summary minutes of the interviews had been circulated to Representatives on the Council under cover of PRES RK/1643 dated 6 February 2009.
3. Pursuant to Article 54 (h) of the *Convention on International Civil Aviation* and in accordance with Appendix C of the *Rules of Procedure for the Council*, the Council proceeded, by secret ballot, to the appointment of the Secretary General). As indicated in paragraphs 5 to 7 of Appendix C, the appointment of the Secretary General would require a majority of the Members of the Council. If no candidate received a majority on the first ballot a second and, if necessary, subsequent ballots would be held on the two candidates who received the largest number of votes in the preceding ballot. The election would take place by secret ballot, unless waived by unanimous decision of the Members represented at the meeting. All ballots would be secret. On all ballots, each Representative would not vote for more than one name. Should both candidates be marked on a ballot, the ballot would be considered invalid. Blank ballots would be recorded as such in the minutes of the meeting. A majority of 19 votes, that is to say the majority of the Council Members, would be needed by a candidate in order to be appointed Secretary General.
4. The result of the ballot was as follows:

Mr. Raymond Benjamin (France)	- 27 votes
Mr. Vladimir Zubkov (Russian Federation)	- 9 votes
5. Mr. R. Benjamin was therefore declared appointed as Secretary General, his term of office to be, as previously decided (184/1), three years beginning on 1 August 2009 and continuing until 31 July 2012.
6. The President of the Council thanked the three Vice-Presidents – i.e. the Representatives of South Africa, Switzerland and the United Arab Emirates -- who had acted as tellers, and on behalf of the Council expressed to the Governments of France and the Russian Federation his sincere appreciation for having presented excellent candidates for the post of Secretary General who could serve the Organization and its 190 Contracting States with competence, ability, integrity and objectivity. The President also congratulated Mr. Raymond Benjamin on his appointment.
7. The Representative of France wished to first address Mr. Zubkov; his interest in this election had allowed the Council to discuss the future orientation of the work of the Organization Mr. Zubkov had made a great contribution and had rendered yet a new service to ICAO in allowing the Council to have this

discussion. He also thanked the Council for having lent a majority of votes to the French candidate, supported by the 44 States of the European Civil Aviation Conference. The preparation for this election had allowed for numerous contacts and discussions among States which would enrich the life of the Organization. Everyone present was aware of the challenges which faced the Organization; they were considerable in all fields and within an international economic situation which was also difficult. An open dialogue between the Council and the Secretary General would allow ICAO to meet these challenges. Mr. Benjamin now belonged to the Organization and would no doubt make his utmost effort to serve it in an efficient and effective way.

8. The Representative of India congratulated the Secretary General-elect, Mr. Raymond Benjamin, and thanked Mr. Zubkov for having brought a great deal of competition in the election process. The Representative of India observed that the term of the Secretary General-elect would start on 1 August 2009 and that the Council therefore had approximately five months as the transition period. While recognizing that the present incumbent had full authority until the end of his mandate on 31 July 2009, in order to make the best use of the time available between now and the commencement of the period of the next incumbent, he encouraged the present Secretary General to endeavour to communicate to his successor all the relevant information which he would deem necessary to prepare him for the commencement of his term, including the perusal of some records. The Representative of India also suggested that the present Secretary General help in preparing the Secretary General-elect for the commencement of his term by facilitating contacts with the staff of ICAO. His proposal was intended to make the best use of the transition time and to also ensure that the scarce resources of the Organization were put to the best use from day one and that the Secretary General-elect did not spend his time in office on the learning curve.

9. The Representative of Ecuador could not but express his Delegation's gratitude to the contenders in this democratic process and to congratulate the one who had been elected, Mr. Benjamin, as the future Secretary General of the Organization as of 1 August 2009. The Representative of Ecuador endorsed the motion by India since he believed it was very timely. The Council had, in the past, discussed the matter of the transition period. The proposal of the Representative of India should, in his view, be reflected as a Council decision in the light of the fact that the new Secretary General should have the necessary support.

10. The Representative of the Russian Federation wished to join in the congratulations to the Secretary General-elect, Mr. Raymond Benjamin, and wished him every success in his work. The Secretary General would have to adhere to the principles underlying this United Nations Organization. The Delegation of the Russian Federation joined with the proposals made by the Representative of India, and gave assurances of its intention to cooperate with the Secretary General-elect for the good of the Organization.

11. The Representative of El Salvador congratulated both the Governments of France as well as the Russian Federation on having presented such excellent candidates. International civil aviation had benefited from this situation because it had been possible to ascertain that the Council had elected an individual who would be able to head the Organization as Secretary General. The Representative of El Salvador endorsed the proposal made by the Representative of India, since he believed it was correct that in the transition period the tasks should be shared, and that this period should be used to share the experience of the current Secretary General so that when Mr. Benjamin assumed his office he would be up-to-date. This would be beneficial to all Contracting States.

12. The President of the Council wished to provide some comments regarding the suggestion of the Representative of India. It was important to bear in mind that Secretary General Chérif was the Secretary General of the Organization until 31 July 2009. The Secretary General would of course cooperate in a

transition with the Secretary General-elect. This was a decision of the Secretary General, and was part of the cooperation of Dr. Chérif with Mr. Benjamin for the transition period.

13. The Secretary General congratulated Mr. Benjamin for this outstanding victory. It was, of course, normal practice for the current and future Secretaries General to coordinate. It was important for there to be continuity of work in optimum conditions, with the sole objective of best serving the interests of the Organization in the short-, medium-, and long-term. The Secretary General would cooperate fully in order to facilitate this transition and to allow a new kick-off for the Organization. The President of the Council gave assurances that he would also participate in this transition to the best of his capacity.

14. The Representative of South Africa congratulated France and the Russian Federation for having submitted their candidatures for consideration to the post of Secretary General of ICAO. The two candidates, in his view, were both brilliant, excellent and very credible and in a race there was always a winner. He therefore congratulated France and Mr. Benjamin for having won the race. He was also encouraged to hear from the French Delegation that it was delivering Mr. Benjamin to ICAO as an international civil servant, and looked forward to working with him. As to what had been said by the Secretary General, the Representative of South Africa fully supported and endorsed it; for continuity purposes this had to be the *modus operandi*.

15. The meeting adjourned at 1130 hours.

COUNCIL — 186TH SESSION

SUMMARY MINUTES OF THE FIFTH MEETING

(THE COUNCIL CHAMBER, MONDAY, 2 MARCH 2009, AT 1430 HOURS)

OPEN MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Dr. Taïeb Chérif, Secretary General

PRESENT:

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

ALSO PRESENT:

Mr. O.R. Nundu	— President, ANC
Mr. R. Macfarlane (Alt.)	— Australia
Mr. L.R. Nascimento (Alt.)	— Brazil
Mr. A. Romera (Alt.)	— Brazil
Ms. S. Chambers (Alt.)	— Canada
Mrs. M. Deshaies (Alt.)	— Canada
Mr. Chunyu Ding (Alt.)	— China
Mr. P. Pape (Alt.)	— France
Mr. A.A. Alharthy (Alt.)	— United Arab Emirates

SECRETARIAT:

Ms. N. Graham	— D/ANB
Mr. M. Elamiri	— C/SSA
Mr. P. Lamy	— DD/ANB
Mr. M. Fox	— C/FLS
Mr. V.P. Galotti	— C/ATM
Mr. M. Costa	— C/AIG
Dr. A.D.B. Evans	— C/MED
Mr. D. Maurino	— C/ISM
Mr. J.D. Monaco	— TO/FLS
Mr. T. Thormodsson	— TO/AIG
Mr. A.L. De Kock	— TO/ISM
Miss S. Black	— Précis-writer

1. Observing that it was Safety Efficiency Week, the President of the Council noted that the Council would be considering reports by the Air Navigation Commission (ANC) proposing amendments to ten Annexes to the Chicago Convention. The Director of the Air Navigation Bureau (D/ANB) then briefed the Council on safety and efficiency strategies, after which the President of the ANC presented an overview of the said Annex amendment proposals. The texts of the briefing and presentation had been circulated in advance to Representatives.

Subject No. 14.1.1: International Standards and Recommended Practices (SARPs)

Report of ANC — Adoption of Amendment 169 to Annex 1

2. Then the Council considered 13280, in which the Air Navigation Commission (ANC) presented a proposal for the amendment of Annex 1 — *Personnel Licensing*.

3. Under general comments, the Representative of Singapore noted that his State supported the proposed amendment to address aeromedical risks to flight safety as it would align the medical licensing Standard and Recommended Practice (SARP) with contemporary medical practices and could be expected to lower costs in the aviation industry given lower attrition rates of pilots due to health reasons. In then drawing attention to the amendment to the harmonization provision relating to safety management, which was repeated in the Annex amendment proposals for four other Annexes included in the order of business (Annex 6 — *Operation of Aircraft*; Annex 11 — *Air Traffic Services*; Annex 13 — *Aircraft Accident and Incident Investigation*; and Annex 14 — *Aerodromes*), he observed that the amendment's objective seemed innocuous, which might explain the low reply rate from States to the Annex 1 amendment proposal: only 63 replies had been received, representing only 33 per cent of ICAO Contracting States. Noting that the Annex amendment would become effective on 19 November 2009 and applicable on 18 November 2010, the Representative of Singapore emphasized that that meant that States would have only one year in which to implement the two new proposed frameworks, one for the implementation and maintenance of a State Safety Programme (SSP) and the other for the implementation and maintenance of a service provider's Safety Management System (SMS). He underscored that the eight States which had significant safety concerns and the 37 States that were on the watch list of the Audit Results Review Board (ARRB) which were already struggling to keep up with the existing ten thousand SARPs would now have to contend with the introduction of the two new frameworks which were to be implemented in 12 months.

4. The Representative of Singapore considered that the *Safety Management Manual* (Doc 9859) and the harmonized SSP framework were insufficient to assist States in implementing the SSP, as evidenced during the conduct of the first SSP implementation course held the previous week. He stressed that, in order to achieve widespread implementation, it was imperative that top priority be given to developing a comprehensive guideline manual on the SSP considering that SSP implementation would be a fundamental component of the proposed new continuous monitoring approach to be introduced in 2011.

5. The President of the ANC emphasized that the new Appendix 4 [*Framework for Safety Management Systems (SMS)*] and new Attachment C [*Framework for the State Safety Programme (SSP)*] to Annex 1 were intended to assist States in implementing the SMS and SSP. The Chief of the Integrated Safety Management Section (C/ISM) indicated that a third edition of the *Safety Management Manual* (Doc 9859) would be developed using feedback from the SSP training courses. Noting that the new edition would comprise a first part on the general concept, a second part on the SSP and a third part on the SMS, he affirmed that it would meet the needs of States.

6. While supporting the Annex amendment proposal, the Representative of France questioned the distribution of the material among various documents having different legal status. He noted, in this regard, that whereas the provisions relating to SMS to be implemented by the service providers were contained in the Annex and Appendix 4, and thus had the status of SARPs, the provisions relating to the SSP to be implemented by States, which were direct interlocutors with ICAO, were contained only in Attachment C and in the *Safety Management Manual* (Doc 9859), and therefore only had the status of guidance. In questioning the legal coherence of this distribution, the Representative of France indicated that the same was true of the other said Annex amendment proposals.

7. Noting that the difference in status was intentional for the time being, C/ISM emphasized that while the SMS framework was proven, the SSP framework was still in an evolutionary stage. It had been considered that the prudent way to proceed would be to first propose the latter in an Attachment to Annex 1, as guidance material. When feedback from the SSP training courses was received, the status of the SSP framework could be reconsidered, as circumstances dictated.

8. The Representative of the Russian Federation indicated that, while he also could adopt the proposed Annex 1 amendment proposal, his State, along with some others, had, in its reply to State letter 08/33 dated 5 May 2008, expressed disagreement regarding the inclusion of text whereby applicants with depression, being treated with antidepressant medication, and applicants who were seropositive for human immunodeficiency (HIV) would be assessed as fit to fly if the medical assessor considered that the condition was unlikely to interfere with the safe exercise of the applicant's licence and rating privileges. He noted, in this regard, that depression was defined as an emotional state involving feelings of helplessness, hopelessness, sadness, self-criticism and listlessness which would affect physical activity, regardless of the amount of sleep or physical state of the person. It could also lead to physical weakness. The Russian Federation could accept the Annex amendment proposal on the understanding that the said text relating to depression remained a Recommended Practice and was not upgraded to a Standard.

9. The Chief of the Aviation Medicine Section (C/MED) concurred that individuals with depression should not fly. It was, however, a question of balancing the risk to flight safety. He recalled, from a study done by the US Airline Pilots Association (USAPA), that a number of pilots, when informed of the position of the United States and other States not to allow pilots to fly while taking anti-depressants, had decided not to declare that they had been given a diagnosis of depression to their designated medical examiner and to fly without taking their medication. C/MED noted that the majority of States represented on the Medical Provisions Study Group (MPSG) considered that it would pose less risk to allow individuals to fly if they had been properly assessed and were undergoing a treatment approved by the designated authority. He further indicated that the Secretariat's psychiatric opinion was that individuals would not suffer from significant side-effects from modern anti-depressants. Observing that the provisions relating to depression were in the form of Recommended Practices, C/MED noted that that was deliberate as not all States were ready at the present stage to accept that an individual being treated with anti-depressants could fly. As the proposals were relatively new for some States and completely new for others, it had been decided not to require States to do anything different from what they were currently doing.

10. With regard to individuals diagnosed as being HIV seropositive, C/MED noted that the MPSG considered that, as HIV had a long latent phase and the antiretroviral drugs had very few side-effects, individuals could fly for many years without any problems.

11. Responding to a query by the Representative of the United Kingdom, C/MED noted that the *Manual of Civil Aviation Medicine* (Doc 8984) was being completely revised. The draft English version was

available on the ICAO public website. Once the new Annex provisions had been adopted, extra guidance material would be added to Doc 8984. The new edition of the Manual would be translated into all of ICAO's working languages as soon as resources permitted.

12. The Representative of the United Arab Emirates affirmed that issuing licenses to individuals who were being treated with anti-depressants was a positive development. Furthermore, it would encourage other individuals in the aviation community to come forward and be treated. Noting that aviation was a very high pressure environment, whether in flight or on the ground, he indicated that the Council should support the Annex amendment proposal.

13. Agreeing, the Representative of Australia voiced strong support for the Secretariat's position and the Annex amendment proposal. He noted that his State considered that awareness and supervision of depression and HIV provided a better and a safer outcome for licence holders than leaving individuals in a position where they might need to hide their condition to continue their careers.

14. The Representative of Canada also supported the Annex amendment proposal, especially in light of the reasonable explanations provided by C/MED. Underscoring that with medical advances it was now possible for patients under treatment to function normally in society, he averred that if the Council did not approve the said provisions relating to depression and HIV it would be discriminatory to the aviation sector.

15. The Representative of Nigeria likewise endorsed the Annex amendment proposal for the reasons cited by C/MED.

16. The Council then reviewed the Annex amendment material set forth in Appendix A to C-WP/13280. Responding to a query by the Representative of Namibia regarding the definition of the term "medical assessor", C/MED clarified that it did not exclude a part-time official who was undertaking the functions of a medical assessor. To further points raised by the Representative, C/MED noted that the proposed provisions relating to depression and HIV, under which an individual was considered to be unfit unless he could demonstrate that he had an acceptable aeromedical risk, were in line with other medical SARPs. He further indicated that guidance on acceptable treatment for HIV was contained in the *Manual of Civil Aviation Medicine* (Doc 8984).

17. The Council, by 35 votes in favour, none against and no abstentions, then adopted, as Amendment 169 to Annex 1, the amendment to definitions and to Standards and Recommended Practices (SARPs) as contained in Appendix A to C-WP/13280. As part of the said amendment, the Council approved the amendment to Notes and attachments as contained in Appendix A to that paper and the amendment to the Foreword to Annex 1 as contained in Appendix C. The Council also approved the Resolution of Adoption at Appendix B to the paper.

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18. The Council considered C-WP/13281, in which the Air Navigation Commission (ANC) presented a proposal for the amendment of Annex 6 — *Operation of Aircraft, Part I — International Commercial Air Transport — Aeroplanes*.

19. During the review of the Annex amendment material set forth in Appendix A to the paper, the Representative of Spain drew attention to the categories of precision approach and landing operations