
ICAO

International Civil Aviation Organization

COUNCIL — 214TH SESSION

Montréal, 17 May 2018
and 11 — 29 June 2018

SUMMARY MINUTES WITH SUBJECT INDEX



2019

Doc 10119-C/1191 • C-Min. 214/1-12 • Council – 214th Session, 17 May 2019 and 11 – 29 June 2018 • Summary Minutes with Subject Index

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COUNCIL — 214TH SESSION

SUMMARY MINUTES OF THE FIRST MEETING

(THE COUNCIL CHAMBER, THURSDAY, 17 MAY 2018, AT 1000 HOURS)

CLOSED MEETING

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

PRESENT:

Algeria	— Mr. A.D. Mesroua	Malaysia	— Mr. K.A. Ismail
Argentina	— Mr. G.E. Ainchil	Mexico	— Mr. D. Méndez Mayora
Australia	— Mr. S. Lucas	Nigeria	— Mr. M.S. Nuhu
Brazil	— Mr. O. Vieira (Alt.)	Panama	— Mr. G.S. Oller
Cabo Verde	— Mr. C. Monteiro	Republic of Korea	— Mr. Y.J. Lee
Canada	— Mr. M. Pagé	Russian Federation	— Mr. S. Gudkov
China	— Mr. Shengjun Yang	Saudi Arabia	— Mr. S.A.R. Hashem
Ecuador	— Mr. I. Arellano	Singapore	— Mr. T.C. Ng
Egypt	— Mr. A. Khedr	Spain	— Mr. V.M. Aguado
France	— Mr. P. Bertoux	Sweden	— Mr. S. Vuokila (Alt.)
Germany	— Mr. U. Schwierczinski	Turkey	— Mr. A.R. Çolak
India	— Mr. A. Shekhar	United Arab Emirates	— H.E. S.M. Al Suwaidi, Director General, GCAA
Ireland	— Ms. N. O'Brien	United Kingdom	— Mr. D.T. Lloyd
Italy	— Mr. M.R. Rusconi	United Republic of Tanzania	— Mr. R.W. Bokango
Japan	— Mr. S. Matsui	United States	— Mr. S. Kotis (Alt.)
Kenya	— Ms. M.B. Awori	Uruguay	— Mr. M. Vidal

ALSO PRESENT:

Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. C. Fernández (Alt.)	— Argentina
Mr. M.T. Al-Kaabi, Undersecretary for Civil Aviation Affairs (Obs.)	— Bahrain
Mr. D. Krishan (Obs.)	— Bahrain
Mr. G. Petrochilos (Obs.)	— Bahrain
Mr. R.F. Pecoraro (Alt.)	— Brazil
Mr. D.M. Freitas (Alt.)	— Brazil
Mr. D. Tavares Taufner (Alt.)	— Brazil
Mr. H. Gonzales (Alt.)	— Brazil
Mr. M.G. Correia Pontes (Alt.)	— Brazil
Mr. Chunyu Ding (Alt.)	— China
Mr. M. Millefert (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mrs. D. Valle Álvarez (Alt.)	— Mexico

SECRETARIAT:

Mrs. J. Yan	— C/OSG
Ms. I. Sosina	— SA/PRES
Mr. S. Creamer	— D/ANB
Mr. J. Huang	— D/LEB
Mr. C. Dalton	— C/AMO
Mr. Y. Nyampong	— LO
Mr. M. Vaugeois	— LEB
Mr. A. Larcos	— C/ACS
Miss S. Black	— Précis-writer

ALSO PRESENT (CONTINUED):

H.E. A.N. Al Subaey, Chairman, QCAA (Obs.)	— Qatar
Mr. A. Al Eshaq (Obs.)	— Qatar
Mr. A. Al Hammadi (Obs.)	— Qatar
Mr. N. Al Sowaidi (Obs.)	— Qatar
Mr. M. Al Nasr (Obs.)	— Qatar
Mr. J. Augustin (Obs.)	— Qatar
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. M.S. Habib (Alt.)	— Saudi Arabia
Mr. Ö. Dođrukol (Alt.)	— Turkey
H.E. Amb. F. Al Raqbani (Alt.)	— United Arab Emirates
Mr. M. Al Dossari (Alt.)	— United Arab Emirates
Miss A. Alhameli (Alt.)	— United Arab Emirates
Mr. M. Salem (Alt.)	— United Arab Emirates
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mr. J.M. Reeves (Alt.)	— United States
Mrs. M.A. González (Alt.)	— Uruguay
Mr. F. de Medina (Alt.)	— Uruguay

Representatives to ICAO

Cameroon
 Chile
 Cyprus
 Ghana
 Greece
 Honduras
 Indonesia
 Iran (Islamic Republic of)
 Lebanon
 Peru
 Qatar
 Senegal
 Sudan

Welcome to a new Representative on the Council

1. On behalf of the Council, the President extended a warm welcome to Mr. Yun Je Lee, the newly-appointed Representative of the Republic of Korea.

Subject No. 14: Subjects relating to air navigation

Subject No. 27: Convention on International Civil Aviation (Chicago Convention)

Request of the United Arab Emirates – Item under Article 54 n) of the *Convention on International Civil Aviation* Report on the current status of ICAO coordination with States relating to the high seas airspace concerns in the Gulf region

2. The President of the Council referred to his e-mail dated 6 April 2018, by which he had forwarded to Representatives a letter signed by the Minister of Economy and Chairman of the General Civil Aviation Authority of the United Arab Emirates dated 28 March 2018, reference GCAA/C/20-18, relating to three “serious safety incidents” involving Qatari fighter jets and UAE-registered civil aircraft that had occurred on 15 January 2018 and 26 March 2018, and requesting “that the ICAO Council urgently considers this matter under Article 54 n) of the *Convention on International Civil Aviation*”. He noted that in the absence of any objections in response to his e-mail, the Council had agreed on 13 April 2018: that the approved *Work Programmes of the Council and its Committees for the 214th Session* (C-WP/14713 Revision No. 1; 213/9) be amended to include, as a supplementary item, the said request from the United Arab Emirates; and that Qatar and Bahrain be invited to participate, without a vote, in the Council’s consideration of that item on grounds of special interest, in accordance with Article 53 of the Convention and Rule 31 of the *Rules of Procedure for the Council* (Doc 7559). The President had accordingly sent letters of invitation to Qatar and Bahrain on 18 April 2018.

3. On behalf of the Council, the President warmly welcomed the following distinguished Government officials who were duly accredited to represent their respective Member States during the present meeting: H.E. Saif Mohammed Al Suwaidi, Director General, General Civil Aviation Authority (GCAA) of the United Arab Emirates; H.E. Ambassador Fahad Al Raqbani, Embassy of the United Arab Emirates to Canada in Ottawa; H.E. Abdulla Nasser Al Subaey, Chairman, Qatar Civil Aviation Authority (QCAA); and Mr. Mohammed Thamir Al-Kaabi, Undersecretary for Civil Aviation Affairs, Ministry of Transportation and Telecommunications of Bahrain. In addition, he welcomed all other officials from the said three Member States who were also in attendance.

4. The Council then commenced its consideration of the above two subjects concurrently on the basis of: C-WP/14777 Restricted presented by the United Arab Emirates and C-WP/14776 Restricted presented by Qatar, both of which related to the said request of the United Arab Emirates and were accompanied by PowerPoint presentations; and an oral report by the Secretary General on the current status of ICAO coordination with States relating to the high seas airspace concerns in the Gulf region. In accordance with ICAO’s mandate and its own mandate under the Convention, the Council considered only the technical issues relating to the said urgent Article 54 n) matter with a view to preventing future occurrences and not apportioning blame or liability. It was noted that Qatar’s two Applications under Article 84 of the Convention would be considered by the Council in due course and at a later date.

Introduction of C-WP/14777 Restricted

[Request of the United Arab Emirates for the consideration by the ICAO Council under Article 54 n) of the Chicago Convention]

5. H.E. S.M. Al Suwaidi (United Arab Emirates) introduced C-WP/14777 Restricted, which highlighted his State's increasing concerns regarding the safety of civil aviation in the Gulf region arising from the said three serious safety incidents and two additional ones that had occurred during the first four months of 2018, in which Qatari military aircraft had manoeuvred in what the UAE considered to be abnormally close proximity to UAE-registered civil aircraft within the Bahrain Flight Information Region (FIR), thereby endangering the safety of the aircraft and the lives of the passengers and crew on board. The Appendix to the paper contained the Technical Safety Analyses by the UAE GCAA on the two reported AIRPROX occurrences on 15 January 2018 and the two reported AIRPROX occurrences on 26 March 2018, which included its conclusions and recommendations.

6. H.E. Al Suwaidi began by expressing the United Arab Emirates' gratitude to the President of the Council, the Secretary General, and the ICAO Regional Director (ICAORD), MID Regional Office (Cairo) for their efforts to respond to the concerns which it had raised regarding the said incidents in its letters addressed to the President of the Council dated 16 January 2018 (after the first two incidents on 15 January 2018), 28 March 2018 (after the third incident on 26 March 2018), and 24 April 2018 (after the last two incidents on 26 March 2018 and 22 April 2018). He also thanked Council Representatives for their prompt response to the United Arab Emirates' request to convene this meeting to consider its C-WP/14777 Restricted on this subject.

7. Noting that since the beginning of 2018 there had been a significant increase in the severity of aircraft incidents in the Bahrain FIR, H.E. Al Suwaidi underscored that they had all been carried out by Qatari military aircraft approaching UAE-registered civil aircraft while the latter were flying on agreed and published international air routes. He affirmed that those incidents undoubtedly constituted a clear and serious violation by Qatar of the *Convention on International Civil Aviation*, in particular, Article 3 d), which called upon Contracting States to ensure that their state aircraft carry out manoeuvres with "due regard to the safety of navigation of civil aircraft" in the same airspace. As would be made clear to Council Representatives in the technical PowerPoint presentation that would follow his introduction of C-WP/14777 Restricted, Qatar had not complied with that obligation. Qatar had not carried out any prior coordination of such military flights with its designated air traffic services (ATS) provider, Bahrain. Furthermore, Qatar had not complied with: the provisions of Chapter II of Annex 11 – *Air Traffic Services*; the provisions of Chapter V of Annex 15 – *Aeronautical Information Services*; and Assembly Resolution A38-12 (*Consolidated statement of continuing ICAO policies and associated practices related specifically to air navigation*), Appendix I of which dealt with the coordination and cooperation of civil and military air traffic. Qatar had consequently endangered the lives of 420 innocent passengers of 54 different nationalities who had been on board the UAE-registered civil aircraft involved in the said five incidents.

8. H.E. Al Suwaidi emphasized that as a result of those incidents and their recurrence despite the steps taken by the President of the Council, the Secretary General and the ICAO MID Regional Office (Cairo), the Government of the United Arab Emirates had increasing concerns regarding the safety of civil aviation in the Gulf region. It was very concerned that the absence of urgent action by ICAO to respond to those incidents could lead to an accident, resulting in civilian casualties. The Government of the United Arab Emirates was therefore inviting the Council to take the actions proposed in the executive summary of C-WP/14777 Restricted on an urgent basis, with a particular emphasis on the actions proposed in paragraphs c) to e). Affirming that Qatar's said practices must come to an end, H.E. Al Suwaidi underscored that in the view of his Government what Qatar had done was a serious and direct threat to the safety of civil aircraft and those on board, without a logical justification for such a reckless behaviour. It considered that ICAO should not be tolerant towards such behaviour as acceptance thereof, or a lack of firmness in such cases, encouraged its recurrence and put the lives of innocent passengers at risk.

9. H.E. Al Suwaidi then asked Mr. Mohammad Al Dossari, the Director, Air Navigation & Aerodromes Department, UAE GCAA, to give a PowerPoint presentation to further explain, in detail, the said five incidents.

PowerPoint presentation relating to C-WP/14777 Restricted

10. In his PowerPoint presentation, Mr. Al Dossari highlighted that the United Arab Emirates, as part of its obligations, had conducted investigations into the four incidents that had occurred between January and March 2018 and was currently carrying out an investigation into the incident that had taken place recently, on 22 April 2018. He noted that while all of the related audio and video recordings were available, only a few had been selected to play to Council Representatives due to time limitations. Mr. Al Dossari underscored that all of the said five incidents had involved a Short-term Conflict Alert (STCA) warning to the relevant air traffic controllers (ATCOs) and that two had also involved a Traffic Alert and Collision Avoidance System Resolution Advisory (TCAS RA) to the pilots of the UAE-registered civil aircraft. He thanked the UAE flight crews and the Bahrain ATC involved in those incidents for their professionalism and for the avoidance manoeuvres they had executed, which had prevented mid-air collisions. Mr. Al Dossari recalled, in this context, seven mid-air collisions that had occurred between 1956 and 2002, resulting in more than 1 000 fatalities.

11. Mr. Al Dossari emphasized that while commercial air transport had increased over the years the number of mid-air collisions had decreased due to enhanced compliance with relevant ICAO Standards and Recommended Practices (SARPs), the utilization of technologies such as TCAS and STCAs, and ATCO and pilot training. Recalling that to assess the severity and probability of the said five incidents the UAE GCAA had used the Methodology for Operational Risk Assessment presented by the Aviation Risk Management Solutions (ARMS) Working Group to the European Aviation Safety Agency (EASA) (cf. Attachment A, on p. 23 and 67 of C-WP/14777 Restricted), he underscored that according to that ARMS methodology the TCAS RA was the last line of defence before an accident, providing avoidance instructions to the pilot from 30 seconds up to 20 seconds before a potential collision. Mr. Al Dossari stressed that although technologies such as TCAS and STCAs provided layers of protection, they did not guarantee that a collision would not occur. He noted, in this regard, that the activation of a TCAS RA meant that all defenses had already failed, such as compliance with ICAO SARPs and communication and coordination between ATS providers, inter alia. Mr. Al Dossari emphasized that compliance with ICAO SARPs and globally-accepted procedures was highly important as they provided systematic barriers to ensure the safety of civil flight operations.

12. Mr. Al Dossari highlighted several statements contained in Qatar's paper (C-WP/14776 Restricted), as follows: in paragraph 2.1, "at no point has it endangered the safety of civilian aircraft"; in paragraph 2.2, "Qatari military aircraft did not intercept or operate in 'hazardous proximity' to civil aircraft" and "they were engaged in routine training operations"; in paragraph 2.3, "the military aircraft were operating well within the guidance given them by Qatar to ensure due regard for the safety of international civil aviation"; in paragraph 2.5, "there was no interception or chase". He then provided detailed information regarding the said five incidents involving UAE-registered civil aircraft, supported by audio and video recordings.

13. First incident (15 January 2018 0632 UTC): scheduled Emirates Flight UAE837, a Boeing 777 carrying 211 passengers, had been descending for its final approach to Bahrain International Airport when two Qatari military aircraft had come in close proximity to that civil aircraft and had passed directly in front of it. The STCA had been activated, and Bahrain ATC had accordingly intervened to resolve the situation. The UAE GCAA's investigation had confirmed that: there had not been any publication of hazardous activity by Qatar; there had been no coordination by Doha Approach or Qatari

military authorities with Bahrain ATC regarding the military traffic or possible hazardous activity; there had been no communication by the two Qatari military aircraft involved; and there had been no attempt by the latter to remain clear of civil air traffic.

14. Second incident (15 January 2018 0709 UTC): scheduled Etihad Flight ETD23B, an Airbus 320, with 85 passengers on board, following the same route as Emirates Flight UAE837, had been descending for its final approach to Bahrain International Airport when the same two Qatari military aircraft had come in close proximity to it. The STCA had once again been activated and Bahrain ATC had intervened to resolve the situation. The UAE GCAA's investigation had once again revealed that: there had not been any publication of hazardous activity by Qatar; there had been no coordination by Doha Approach or Qatari military authorities with Bahrain ATC regarding the military traffic or possible hazardous activity; there had been no communication by the two Qatari military aircraft involved; and there had been no attempt by the latter to remain clear of civil air traffic. Mr. Al Dossari underscored that despite the fact that the United Arab Emirates had brought this issue to ICAO's attention, the situation had become more severe.

15. Third incident (26 March 2018 0701 UTC): a UAE-registered civil helicopter operated by the largest helicopter operator in the MID region, Abu Dhabi Aviation Company, and holding a valid Certificate No. 0799, had been flying well clear of Qatar's territorial airspace, more than 30 nautical miles (NM) offshore, within Bahrain FIR, when surprisingly Doha TMA had advised Bahrain ACC that the Qatari military objected to its presence and would "hot scramble" the helicopter, that being a common military term used for an armed interception. Mr. Al Dossari played an audio recording as evidence of coordination by Doha TMA, which clearly indicated the intention of the two Qatari military aircraft to intercept the helicopter, and showed a speeded-up video of the incident as evidence of the hazardous manoeuvres performed over a period of ten minutes in very close proximity to the civil helicopter, the closest point having been only 60 feet. The helicopter pilot had sighted the two military aircraft but at no point had the latter communicated with him.

16. Fourth incident (26 March 2018 1136 UTC): an Emirates civil aircraft A6HMS, an Airbus 320 carrying 28 passengers on board and holding a valid Certificate No. 100-09, had been flying outside of Qatar's territorial airspace when two Qatari military aircraft had been observed flying directly towards it and turning to follow behind it, speeding up, climbing, and chasing it. The civil aircraft's STCA had been activated for the ATCOs. In addition, its TCAS RA had been activated for the pilot for 49 seconds, to the extent that the latter had had to reduce the rate of climb due to aircraft performance restrictions. The UAE GCAA's investigation had revealed that the Qatari military aircraft had kept climbing below the civil aircraft in a hazardous manner, causing the said prolonged TCAS-RA. The two Qatari military aircraft had not communicated with Bahrain ATC or the pilot of the civil aircraft. Once again, there had been no coordination by Doha ATC or the Qatari military authorities with Bahrain ATC. Mr. Al Dossari played an audio recording of that incident, as well as a video showing a TCAS RA taking place in an Airbus 320 simulator.

17. Fifth incident (22 April 2018 0750 UTC): despite the action taken by ICAO (cf. Secretary General's oral report, issued on 15 May 2018), in particular the ICAO mission to Qatar on 10-11 April 2018 in which ICAO had highlighted the importance of civil/military cooperation and the effective application of the principle of due regard to the safety of navigation of civil aircraft, ten days later another incident had surprisingly taken place: scheduled Etihad Flight ETD88N carrying 93 passengers on board had received a TCAS RA and descended to avoid a mid-air collision with two Qatari military aircraft passing directly overhead that civil aircraft.

18. Mr. Al Dossari emphasized that despite the 22 April 2018 incident, the United Arab Emirates and Bahrain had collaborated positively with Qatar at the Fourth ATM Contingency

Coordination Meeting (ACCM/4) held in Amman, Jordan, on 28 April 2018, as confirmed in the Secretary General's oral report. He further underscored that regardless of the five safety incidents that had taken place involving UAE-registered civil aircraft and Qatari military aircraft, on the operational level the UAE had day-to-day communications with the Qatari ATS civil authorities.

19. Mr. Al Dossari highlighted that the UAE GCAA's Technical Safety Analyses of the first four incidents (cf. Appendix to C-WP/14777 Restricted) identified multiple violations by Qatar of the *Convention on International Civil Aviation*, in particular, of Article 3 d) which required States to ensure that their State aircraft "have due regard for the safety of navigation of civil aircraft", and of Article 3 bis a), which required States to ensure that "in case of interception, the lives of persons on board and the safety of aircraft must not be endangered".

20. With respect to the said principle of "due regard", Mr. Al Dossari indicated that, based on the ICAO framework and States' best practices: State aircraft should separate themselves from civil air traffic or, if not possible, their operations should be segregated; and there should be coordination of military activities with civil ATS units, which could include advance notification to civil air traffic. He noted that the UAE GCAA's Technical Safety Analyses had also identified several violations by Qatar of ICAO SARPs and guidance material, including: the provisions of Annex 11, which stipulated the need to maintain close cooperation between military and civil ATS regarding any potentially hazardous activities, with the coordination of arrangements taking place before such hazardous military activities commenced; the provisions of Annex 15, which required notification to airspace users regarding potentially hazardous activities, including routine or training military operations; and ICAO Doc 9554-AN/932 (*Manual Concerning Safety Measures relating to Military Activities Potentially Hazardous to Civil Aircraft Operations*), paragraph 3.4 of which specified that: "Co-ordination with regard to activities potentially hazardous to civil aircraft operations over the high seas should be effected even if the States whose military organization and ATS authorities are concerned find themselves temporarily in diplomatic disagreement. If direct co-ordination with the appropriate ATS authorities via aeronautical or diplomatic channels is not possible, the co-ordination should be effected with the assistance of the appropriate Regional Office of ICAO or the ATS authorities of another State."

21. In summary, Mr. Al Dossari indicated that Qatar had failed to: notify in advance hazardous activities; adequately coordinate between their military and civil ATS units; adequately coordinate with Bahrain ATC; and most importantly, ensure that their state aircraft operated with due regard to the safety of navigation of civil aircraft. To conclude, he presented a short extract of a video interview of the pilot of the Emirates civil aircraft A6HMS involved in the fourth serious incident on 26 March 2018 in which a 49 second-long TCAS RA had been triggered by the hazardous manoeuvring of two Qatari military aircraft, and highlighted the following three important issues raised therein: the pilot had not been trained to follow such a lengthy TCAS RA; he had not known the intention of the said two Qatari military aircraft; and an interception by military aircraft was normally communicated to the civil aircraft concerned.

Additional comments by H.E. Al Suwaidi (United Arab Emirates) regarding C-WP/14777 Restricted

22. H.E. Al Suwaidi indicated that, based on the above explanation, his State invited the Council to take the actions proposed in the executive summary of C-WP/14777 Restricted on an urgent basis, with a particular emphasis on the actions proposed in paragraphs c) to e), as follows:

- a) note the five serious safety incidents reported in that paper and the Technical Safety Analyses set out in the Appendix ;
- b) note that these incidents keep recurring and that if no action at the international level is

taken urgently, such events could occur again with potentially far worse consequences;

- c) find that by conducting military aircraft manoeuvres which seriously endanger the safety of flight of civil aircraft registered in the United Arab Emirates, Qatar failed to comply with its obligations under the *Convention on International Civil Aviation*, in particular Article 3 d) (due regard for the safety of navigation of civil aircraft), in conjunction with applicable provisions of Annexes 2, 11 and 15;
- d) urge Qatar to promptly comply in good faith with its obligations under the *Convention on International Civil Aviation*, Article 3 d), in conjunction with Annexes 2, 11 and 15; and
- e) request the Secretary General to instruct the ICAO Regional MID Office in Cairo to take all appropriate actions with Qatar to stop military activities from presenting a hazard to civil aviation safety, including guidance and assistance in respecting the “due regard” principle set out in the *Convention on International Civil Aviation*, as explained in ICAO Doc 9554-AN/932 (*Manual Concerning Safety Measures relating to Military Activities Potentially Hazardous to Civil Aircraft Operations*).

23. Emphasizing that ensuring the safety of international civil aviation was ICAO’s main objective and its very raison d’être, H.E. Al Suwaidi underscored that all rejected any kind of negligence that could endanger the lives of passengers and crew on board civil aircraft. The United Arab Emirates was therefore requesting that Qatar immediately cease carrying out the said dangerous military activities.

Introduction of C-WP/14776 Restricted

[Request of the United Arab Emirates for the consideration by the ICAO Council under Article 54 n) of the Chicago Convention] - Response by Qatar

24. H.E. Al Subaey (Qatar) introduced C-WP/14776 Restricted, which set forth Qatar’s response to the United Arab Emirates’ allegations in C-WP/14777 Restricted regarding the first three alleged “serious safety incidents”. Qatar reaffirmed its commitment to the safety, security and efficiency of air navigation in the Gulf region. It asserted that in each of the three cases its military aircraft had not intercepted or operated in “hazardous proximity” to the civil aircraft in question and maintained that they had been engaged in customary, routine training operations on routes within the Bahrain FIR, outside Bahrain territorial airspace. In addition, the paper set forth Qatar’s allegations that State aircraft, including military aircraft, from the United Arab Emirates, Egypt and Bahrain had violated its sovereignty a dozen times by penetrating its territorial airspace without the required diplomatic clearance from Qatar, all while under control of Bahrain ATC. It was asserted that the latter had not responded to Doha ATC’s requests to redirect the said State aircraft into international airspace.

25. Appendix A to C-WP/14776 Restricted contained Qatar’s Memorandum examining the legal authorities listed by the United Arab Emirates in its paper, which Qatar considered did not support its allegations. Appendices B and C contained Qatar’s two letters to the President of the Council dated 22 January 2018 on the allegations by the United Arab Emirates and Bahrain regarding the 15 January 2018 occurrences, which Qatar considered to be unfounded.

26. H.E. Al Subaey thanked the President of the Council and the Secretary General for all of their efforts in the interest of civil aviation. He also expressed appreciation to the ICAO MID Regional Office for all of its efforts to ensure the safety of civil aviation in Qatar, especially after the imposition of the unlawful air blockade on Qatar on 5 June 2017 by Bahrain, Egypt, Saudi Arabia and the United Arab Emirates. H.E. Al Subaey highlighted that subsequently Qatar had experienced a number of violations of

its sovereign airspace by the blockading States which threatened the safety of air transport in Qatar. He underscored that Bahrain, Qatar's designated ATS services provider, had not respected the terms of its 2000 Letter of Agreement with Qatar or the *Convention on International Civil Aviation* and had not taken any action with regard to the said airspace violations. Bahrain had ignored Qatar's requirements as set out in its Aeronautical Information Plan (AIP), which guaranteed Qatar's sovereignty over its territorial airspace. It had also ignored Qatar's sovereign rights in terms of the provision of relevant flight plans and ensuring that state aircraft had diplomatic clearance from Qatar before routing them through its territorial airspace.

27. H.E. Al Subaey emphasized that Qatar's aviation sector, both civil and military, were committed to upholding the highest standards of safety for civil aviation. Qatar had allowed UAE-registered civil aircraft to transit its territorial airspace even though the reverse was not true: Qatar-registered aircraft had been barred from overflying the UAE's territorial airspace and landing at or departing from UAE airports. H.E. Al Subaey underscored that Qatar condemned the media campaign against Qatar to mislead the public based on untrue information that its military aircraft were carrying out unsafe and unlawful activities. He expressed gratitude for the cooperation and coordination in efforts to pursue a dialogue with all of the stakeholders under the supervision of the ICAO MID Regional Office. H.E. Al Subaey also expressed thanks to the Council. He then gave the floor to Mr. Abdulrahman Al Hammadi, the Director of Air Safety Department, QCAA, and Mr. Ahmed Al Eshaq, the Director of the Air Navigation Department, QCAA, to further elaborate on C-WP/14776 Restricted, including by means of a PowerPoint presentation.

Comments by Mr. Al Hammadi (Qatar) on C-WP/14776 Restricted

28. Mr. Al Hammadi underscored that although C-WP/14776 Restricted only referred to the three alleged "serious safety incidents" mentioned in the United Arab Emirates letter dated 28 March 2018 requesting the Council's consideration thereof under Article 54 n) of the Convention, the general principles cited in Qatar's paper applied to all five cases. He emphasized that in each case Qatari military aircraft had been operating within Bahrain FIR but outside Bahrain's territorial airspace on training routes that they had been using for some time. There had been no interception of the UAE-registered civil aircraft and no risk of collision.

29. Mr. Al Hammadi noted that in its paper and PowerPoint presentation the United Arab Emirates had stated that Qatar had failed to observe Article 3 d) of the *Convention on International Civil Aviation*, by which Contracting States undertake, when issuing regulations for their State aircraft, that they will have due regard for the safety of navigation of civil aircraft. He drew attention to paragraph 2.3 of Qatar's paper, in which it was pointed out that the Qatari military aircraft were operating well within the guidance given to them by Qatar to ensure due regard for the safety of international civil aviation, and that they had fully functional and operational transponders, which were turned on and used at all times. Mr. Al Hammadi further noted that the United Arab Emirates had acknowledged that State aircraft were outside of the scope of the said Convention, subject to the requirement that they be operated with due regard to the safety of navigation of civil aircraft. He highlighted that ICAO Circular 330-AN/189 (*Civil/Military Cooperation in Air Traffic Management*) clearly indicated that it was for individual States to regulate the operation of military aircraft, which generated a wide diversity of military regulations. At the same time, States were aware of the limitation of ICAO Annexes, SARPs, Procedures for Air Navigation Services (PANS) and Regional Supplementary Procedures (SUPPs) as they relate to military aircraft and their services. Circular 330-AN/189 emphasized that Article 3 of the Convention specifically exempted State aircraft from compliance with Articles of the Convention. Indeed, the United Arab Emirates had acknowledged that military aircraft did not always file civil flight plans and military authorities did not always coordinate the activities of their aircraft in international airspace. Circular 330-AN/189 stressed that the right to access all airspace within the remits of the operational needs was a

crucial requirement to enable the military, customs and police to perform the security, defence, and law enforcement mission mandated by their State and by international agreement. It was therefore a fundamental requirement that each State be able to train its military flight crews and operate its state aircraft effectively.

30. Mr. Al Hammadi then highlighted: Section 4 of its paper on a series of military intrusions into Qatar's sovereign airspace over the last six months, against which Qatar had vigorously protested as they had had the potential to affect the safety of civil aviation; and Qatar's Memorandum in Appendix A thereto, which set forth a comprehensive analysis of the legal authorities listed by the United Arab Emirates in its paper, which Qatar had concluded did not support its allegations. Qatar also pointed out in the Memorandum that while many States required their state aircraft to follow the ICAO Rules of the Air in Annex 2 when practicable, as a matter of policy, for state aircraft they were merely recommendations intended to protect the safety of civil aircraft and their occupants. However, a military pilot flying under the principle of "due regard" must be aware of the other air traffic in the area and should thus note the identification of nearby civil aircraft.

31. Mr. Al Hammadi drew attention to the executive summary of C-WP/14776 Restricted, in which Qatar invited the Council to take the following proposed action:

- a) consider the possible causes of both sets of events impartially and neutrally, with the aim of identifying measures that could prevent recurrence and without allocation of blame;
- b) urge all Member States to give their fullest cooperation to ICAO's pending revision of its primary civil/military cooperation and coordination guidance documents and to assist ICAO's MID Regional Office in its implementation of the new and forward-looking regional regulatory regime;
- c) commend the Secretariat for their exceptional efforts to resolve safety issues and facilitate coordination; and
- d) urge States in the region not to permit this Article 54 n) agenda item to delay or distract from the pending Article 84 procedure.

32. In then making some observations on the United Arab Emirates' paper (C-WP/14777 Restricted), Mr. Al Hammadi recalled that Annex 13 – *Aircraft Accident and Incident Investigation* defined the term "incident" as "An occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation.", and the term "serious incident" as "An incident involving circumstances indicating that there was a high probability of an accident and associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards that aircraft with the intention of flight until such time as all such persons have disembarked ...". He questioned why the United Arab Emirates had not conducted an Annex 13 investigation into each of the said five cases if they had met the said definition of "serious incident". Mr. Al Hammadi indicated that if that State had conducted such Annex 13 investigations, then it should have immediately notified ICAO, as well as the other States concerned, including the State of Design, the State of Manufacture, and the State of Occurrence. Underscoring, however, that there had not been any such Annex 13 investigation by the United Arab Emirates, he further questioned why the said five cases had been brought before the Council for consideration under Article 54 n) of the Convention if they had not been deemed sufficiently "serious" to warrant such an investigation.

33. Mr. Al Hammadi recalled that Standard 3.1 of Annex 13 stated that "The sole objective of

the investigation of an accident or incident shall be the prevention of accidents and incidents. It is not the purpose of this activity to apportion blame or liability.”. He emphasized that even if the United Arab Emirates’ Technical Safety Analyses were not Annex 13 investigations, they should have followed the letter and the spirit of that fundamental Standard. Averring that that had not been the case, Mr. Al Hammadi indicated that the mind-set of the author of those Technical Safety Analyses i.e. the UAE’s GCAA had been clear from the beginning: to determine any violations committed by Qatar. He highlighted, in this context: the references made to violations in Section 4 of C-WP/14777 Restricted (p. 3-4); and the title and text of Section C (*Violations committed by State of Qatar*) of the first Technical Safety Analysis (p. 6-7). Noting that the language used in paragraphs 4.2 and 4.3 of the United Arab Emirates’ said paper was that used in criminal investigations in some States (e.g. “Count 1” and “Count 2”), Mr. Al Hammadi enquired whether the Council was sitting today as a court of law to determine any criminal liability on the part of Qatar when none of the steps required under Annex 13 had been taken and no judicial fairness had been afforded to Qatar, such as being informed of the institution of the investigation or Technical Safety Analysis of the said five cases involving UAE-registered civil aircraft and Qatari military aircraft.

34. Drawing attention to the second Technical Safety Analysis, Mr. Al Hammadi averred that the reference made to the Tokyo Convention in paragraph c) on p. 58 was irrelevant as the Convention only applied to offences and certain other acts committed on board aircraft. He underscored that that Convention had never been intended to, and did not, regulate all situations where a State may “interfere” with or even intercept a foreign aircraft in flight, whether over its national territory or the high seas. Mr. Al Hammadi indicated that if the author of the so-called Technical Safety Analyses really meant what was stated in paragraph c), namely, that Article 4 of the Tokyo Convention “only permits interception by a State whose territory is actually being overflown by the foreign aircraft”, then each and every State which had promulgated an Air Defence Identification Zone – and there were Representatives of several such States in attendance – should be very alarmed. He maintained that the Tokyo Convention did not carry such a limitation as stated by the United Arab Emirates.

35. Mr. Al Hammadi averred that the arguments presented by the United Arab Emirates to support its allegation that Qatar had violated Article 28 (*Air navigation facilities and standard systems*) of the *Convention on International Civil Aviation* were also convoluted and difficult to comprehend in the best of circumstances. He underscored that Article 28 was not an absolute undertaking in effect, where many States would be in breach thereof, including many small developing countries; rather, the undertaking was for each State “so far as it may find it practicable”. Noting that the airspace in question had been under the control of Bahrain, Qatar’s designated ATS provider, at the relevant time, Mr. Al Hammadi emphasized that if there had been breaches of Article 28, then Bahrain was culpable therefor.

PowerPoint presentation relating to C-WP/14776 Restricted

36. Mr. Al Eshaq (Qatar) then gave a PowerPoint presentation (including video recordings) in which he elaborated on: the impact of the air blockade on Qatar; Qatar’s commitment to safety; the principle of “due regard”; Qatar’s concerns; recent ICAO initiatives; and Qatar’s conclusions. He recalled that before the air blockade had been imposed on Qatar on 5 June 2017 by Bahrain, Egypt, Saudi Arabia and the United Arab Emirates, Qatar-registered aircraft had been able to overfly the territorial airspace of the said four blockading States and to land at or depart from their airports, and to overfly the high seas, without any restrictions. After that date, however, many restrictions had been imposed on Qatar: aircraft registered in that State were limited to five entries into Doha, including the two contingency routes which had been developed and established by ICAO. Mr. Al Eshaq took this opportunity to thank the ICAORD, MID Office (Cairo) for his assistance in coordinating with Qatar and the other States concerned to achieve those contingency routes, which facilitated Qatari air traffic but still did not meet its requirements.

37. Impact of the air blockade on Qatar: Mr. Al Eshaq invited the Council to recall the uncoordinated and unilateral actions taken in peacetime by the said four blockading States, even in the absence of threat from Qatar. He emphasized that Qatar-registered aircraft were still being denied the right to overfly the territorial airspace of the blockading States and to land at or depart from their airports. In addition, the many restrictions were having an impact on Qatar Airways in terms of total flight additional hours, estimated additional distance, and estimated additional CO₂ emissions due to the contingency routes being flown as a result of the air blockade.

38. Qatar's commitment to safety: In reply to the United Arab Emirates' allegations in C-WP/14777 Restricted, Qatar, as a party to the *Convention on International Civil Aviation*, declared that it was committed to the safety of aircraft in the Gulf region. Referring to action paragraph a) of that paper, Mr. Al Eshaq indicated that through a non-convincing set of arguments the United Arab Emirates had tried to demonstrate that Qatar did not comply with its obligations under the said Convention and its associated Annexes 2, 11 and 15. Qatar hereby reassured the international community that at no point had it endangered, or would endanger, the safety of civilian flights and that at no point had Qatari military aircraft attempted to intercept civilian flights. Recalling the comments made by Mr. Al Dossari (United Arab Emirates) during his PowerPoint presentation, Mr. Al Eshaq maintained that Qatar's military authorities had coordinated with the Bahrain ACC and advised the latter that Qatari military aircraft were proceeding to the North for their tactical missions. He underscored that Qatari military aircraft were fully aware of their responsibility under Article 3 d) of the Convention and automatically applied the principle of due regard for the safety of navigation of civil aircraft.

39. Referring to action paragraph d) of C-WP/14777 Restricted, in which the United Arab Emirates invited the Council to urge Qatar to promptly comply in good faith with its obligations under the Convention, Article 3 d), in conjunction with Annexes 2, 11 and 15, Mr. Al Eshaq reiterated that Qatar, as a party to the Convention, was committed to the safety of aircraft in the Gulf region and that in compliance with the Convention and associated SARPs had ensured that at no point had Qatari military aircraft attempted to intercept a civil aircraft registered in the United Arab Emirates or in any of the other blockading States.

40. Principle of "due regard": Although there was no guidance material from the ICAO MID Regional Office (Cairo) concerning the application of the said principle of "due regard", Qatar had taken proactive measures to apply the interim guidance provided by the ICAO European and North Atlantic (EUR/NAT) Regional Office (Paris) (EUR Doc 032). Qatari military aircraft had met the "due regard" requisites in EUR Doc 032 during its said operations and at no time had they deliberately infringed upon the safety of civil air traffic. They had operated in visual meteorological conditions (VMC) and had maintained their transponders on and fully operational at all times.

41. Qatar's concerns: Qatar was concerned that the invocation of Article 54 n) of the Convention by the United Arab Emirates might delay or distract from the Council's consideration of Qatar's two Applications under Article 84 of the Convention. Civil/military coordination constituted a risk area for the Gulf region which had been worsened by the unilateral blockade imposed on Qatar. Before the blockade, such incidents had not occurred as there had been mutual understanding and proper coordination between the neighbouring FIRs.

42. Referring to action paragraph a) of C-WP/14777 Restricted, in which the United Arab Emirates invited the Council to note the five serious safety incidents reported in its paper, Mr. Al Eshaq emphasized that in its so-called Technical Safety Analyses the UAE GCAA had classified only one of the three alleged incidents invoked in the UAE's letter dated 28 March 2018 as Class A (Risk of collision), with the other two having been classified as Class C (No risk of collision) [cf. ICAO Doc 4444,

Procedures for Air Navigation Services – Air Traffic Management (PANS-ATM)].

43. While Qatar was also concerned about five recent incidents in which UAE military aircraft had violated Qatari territorial airspace, it had not found it necessary to bring them before the Council for consideration under Article 54 n) of the Convention. The first such violation had occurred on 27 December 2017, when a UAE military aircraft (UAF812) had been operating in Qatar's airspace. Doha ATC had asked Bahrain ATC to direct the aircraft out of Qatar's airspace but Bahrain ATC had not done so. Consequently, Qatari military aircraft had taken action to re-direct it out of Qatar's airspace until it had started to head North towards Bahrain. The second Qatari airspace violation had occurred on the same day, on the same route, with the same destination but with a different UAE military aircraft (UAF1211). No flight plan had been submitted to Qatar in either case.

44. The third airspace violation had occurred on 14 January 2018, when a UAE military helicopter (UAF1211) had been flying in-bound to the United Arab Emirates. Without obtaining the approval of, and properly coordinating with, Doha ATC, Bahrain ATC had altered the helicopter's heading so that it had taken a different route, one which had brought it into Qatar's territorial airspace.

45. The fourth airspace violation had taken place on 25 February 2018, when a UAE military aircraft (UAF1214) had deviated from its filed flight plan and flown towards Qatar's airspace. Although Bahrain and Saudi Arabia had been consulted, neither had passed any type of air traffic information to Qatar. Furthermore, the United Arab Emirates had indicated to Qatar that it was not aware of the situation.

46. The fifth Qatari airspace violation had occurred on 4 March 2018, when a UAE military aircraft (UAF812) had departed from the United Arab Emirates heading North West. It had flown south of Doha, then had altered its heading and entered Qatar's airspace, penetrating a restricted area up to FL270. After having unsuccessfully tried all civil channels of communication to re-direct the UAE military aircraft out of its airspace, including through Bahrain ATC, Qatar had dispatched its military aircraft to do so. Mr. Al Eshaq underscored that whenever a foreign aircraft was observed entering Qatar's airspace without having submitted a flight plan in advance, it raised the suspicions of the Qatari military, which would launch a fighter jet for identification purposes. Maintaining that the Qatari military could not be blamed for taking such action, he emphasized that Annex 11 – *Air Traffic Services* accorded the right to identify unknown air traffic.

47. Recent ICAO initiatives: Mr. Al Eshaq highlighted that during the ICAO missions to Qatar and Bahrain (10-12 April 2018) agreement had been reached on measures to enhance communications between the Parties. Affirming that since that time there had been much improvement in communications, he underscored that as Bahrain had agreed, relevant flight plans were being forwarded automatically to a Qatari military aeronautical fixed telecommunication network (AFTN) address.

48. Mr. Al Eshaq emphasized that at the Fourth Air Traffic Management (ATM) Contingency Coordination Meeting (Amman, Jordan, 28 April 2018) there had been good coordination and cooperation between Qatar and the blockading States, as well as with ICAO, which had worked very hard to have Qatar's requirements finally agreed by all the States concerned. He thanked the latter for having agreed: to increase the maximum number of flights of Qatar-registered aircraft using temporary route T665 from 70 to 80 per day; and to establish a new additional contingency route for Qatar-registered aircraft from Tehran FIR, via Bahrain FIR, inbound to Doha, the expected trial date of which was 29 May 2018.

49. Qatar's conclusions: Qatar was fully aware of its obligations as a party to the *Convention on International Civil Aviation* and as such it would never deliberately endanger the safety of civilian traffic operating on established ATS routes. The principle of "due regard" was always automatically

applied by Qatari military aircraft in conformity with Article 3 d) of the Convention. Qatar believed that the issues raised by the United Arab Emirates in C-WP/14777 Restricted were operational in nature and should have been addressed directly between the Parties concerned or within the framework of the ICAO MID Office regional mechanism through a regional coordinated process. Qatar recommended that the ICAO MID Office promote civil/military coordination in the Gulf region through: seminars/workshops so as to eliminate any future misunderstandings; and develop appropriate guidance material, drawing inspiration from initiatives such as the EUR/NAT region guidelines.

50. Mr. Al Eshaq then presented video recordings of the five alleged serious safety incidents referred to by the United Arab Emirates in C-WP/14777 Restricted and the accompanying PowerPoint presentation. He confirmed that there had been effective coordination, at the technical level, between Qatar (Doha Approach) and Bahrain (ACC), and indicated that the relevant data could be provided to the Council if it so desired.

Comments by Mr. Al-Kaabi (Bahrain) regarding C-WP/14776 Restricted and accompanying PowerPoint presentation

51. Taking the floor at the invitation of the President of the Council, Mr. Al-Kaabi underscored that the Bahrain FIR had had a successful and uninterrupted record of safe and efficient management and operation since its establishment some 70 years ago, which continued to the present day. He then made a number of observations on Qatar's paper (C-WP/14776 Restricted) and PowerPoint presentation, as follows: Mr. Al-Kaabi considered that it was positive that Qatar had confirmed that there had been proper coordination between neighbouring FIRs before the airspace closures (cf. Slide 8) and that there had been effective coordination at the technical level between Bahrain ACC and Doha Approach. He underscored that what had changed was that during the first four months of 2018 there had been Qatari military aircraft operating in Class C airspace without ATC clearance or authorization.

52. Averring that the snapshot that the Council had seen from Qatar's video recordings did not convey the right picture, Mr. Al-Kaabi emphasized that the latter was obtained only if the radar images were taken one by one. In taking, as an example, the fifth incident on 22 April 2018 involving scheduled Etihad Flight ETD88N, he indicated that when it had departed, two Qatari military aircraft had been chasing an Emirates Air Force aircraft which had been flying over international waters and had been close to entering the UAE FIR, more than 48 NM Northeast of Qatar's coast. The Bahrain ATCO had pointed out the position of ETD88N to the Doha ATCO and requested that the latter ensure that the Qatari military aircraft would steer clear of ETD88N. That had not been done, however. The Bahrain ATCO had passed the traffic information to the pilot of ETD88N and had kept monitoring the situation closely. When he had noticed that the Qatari military aircraft and ETD88N were on a conflicting course, he had asked the Doha ATCO what he was doing with regard to the latter civil aircraft. The Doha ATCO had responded that he was very busy and therefore only climbed the Qatari military aircraft after the TCAS RA on ETD88N had been triggered, ordering its pilot to descend to avoid collision. It had been a near-miss.

53. Mr. Al-Kaabi affirmed that the principle of due regard for the safety of navigation of civil aircraft had not been respected by the Qatari military aircraft in the five incidents referred to in C-WP/14777 Restricted. He underscored that although his State, as manager of the Bahrain FIR, handled more than 600 000 aircraft movements per year, only UAE-registered civil aircraft had been targeted in the first four months of 2018. In querying why that had been the case, Mr. Al-Kaabi averred that the incidents would not have occurred had it been true that the Qatari military aircraft had been on a routine mission to a published training area, on a known route and with effective coordination. He also contended that if it had been an ad hoc incident that had arisen as the Qatari military had not known the flight plan of the UAE-registered civil aircraft involved, then it would be expected that such incidents would have

happened to other operators as well. Mr. Al-Kaabi consequently considered that the activities of the Qatari military aircraft had been planned and specifically and deliberately targeted at the UAE-registered civil aircraft. He underscored that despite the large size of the Bahrain FIR, there were no problems at all: the procedures and the coordination were working fine. With regard to Doha Approach, Mr. Al-Kaabi emphasized that at the technical level Qatar's civil aircraft operated by Qatar Airways were facilitated like other States' civil aircraft. There were no issues at all. It was only Qatari military aircraft that did not adhere to the principle of due regard for the safety of navigation of civil aircraft and that operated in Class C airspace without ATC clearance or authorization.

54. Mr. Al-Kaabi then showed proof that the flight plans of the five UAE-registered civil aircraft had all been transmitted to Doha ATC well before the said incidents had occurred. With regard to the first incident on 26 March 2018, he noted that at the specific request of Doha ATC, Bahrain ATC had radar vectored the UAE-registered civil helicopter (A6AWF). Although the helicopter had been more than 38 NM from Qatar's coast, close to the border of the Tehran FIR, Qatar's military had "hot scrambled" two fighter jets to intercept the helicopter and not merely to identify that aircraft and turn it back. The two Qatari fighter jets had continued circling the helicopter for nearly ten minutes and in fact had entered the terminal area of Bahrain International Airport before heading back to their base. Mr. Al-Kaabi underscored that the said Qatari fighter jets had thus violated the terminal area of Bahrain International Airport.

55. In concluding, Mr. Al-Kaabi indicated that he did not see a problem with the coordination at the technical level. The coordination was there and had been working well for many years. There had never been a problem before January 2018. It had only started in the first four months of 2018 because the Qatari military aircraft did not respect the rules of the air. Mr. Al-Kaabi considered that the situation could be very successfully resolved, with no recurrence of the incidents which put at risk the safety of civil aircraft, if the Qatari military: adhered to Annex 2; operated with due regard to the safety of navigation of civil aircraft; and coordinated if they, like other States, wished to conduct military exercises.

56. Mr. Al-Kaabi reiterated that Bahrain, as the repository of the facts and evidence for all incidents occurring within its FIR, could supply the Council with evidence pertaining to the said five incidents involving Qatari military aircraft and UAE-registered civil aircraft if it so desired.

Oral report by the Secretary General

(available on the Council's secure website)

57. In then presenting her oral report on the current status of ICAO coordination with States relating to the high seas airspace concerns in the Gulf region, the Secretary General recalled that the last update, given to the Council on 12 March 2018 (213/7), had reported the results of the Third ATM Contingency Coordination Meeting (ACCM/3, Cairo, Egypt, 5-6 September 2017). She highlighted that since that time important progress had been made by all parties, namely Bahrain, Egypt, Iran (Islamic Republic of), Oman, Qatar, Saudi Arabia and the United Arab Emirates, and that in the spirit of close collaboration the Fourth ATM Contingency Coordination Meeting (ACCM/4) had been held in Amman, Jordan, on 28 April 2018. The meeting had been attended by Directors of ATM and technical experts from Bahrain, Iran (the Islamic Republic of), Qatar, the United Arab Emirates and the International Air Transport Association (IATA), with subsequent coordination carried out with Oman. The ACCM/4 meeting, in discussing the challenges facing the ATS providers concerned in the implementation of the ICAO Middle East (MID) Region ATM Contingency Plan, had agreed on a set of measures to improve the utilization of existing and temporary routes and procedures, deemed necessary for safety, capacity and efficiency. All Parties had reiterated their commitment to ensure the safety of air transport across the ICAO MID region and to continue their full support for the efforts of ICAO in this regard.

58. As part of her oral report, the Secretary General also provided the following brief status of the use of the routes and other measures, as well as enhancements agreed to at the ACCM/4 meeting:

- a trial for a new route emanating from within the Tehran FIR via Bahrain controlled airspace, inbound to Doha, had been supported by Bahrain, Iran (the Islamic Republic of) and Qatar with a tentative commencement date of 29 May 2018. The new route would be conditional on Qatar reducing the upper limit of the restricted area over Qatar territorial waters (OTR53), from flight level (FL) 145 to 10 000 feet and additional flight levels being available for use by Bahrain ACC;
- temporary route T665, inbound to Doha via Emirates FIR over the high seas had originally been established for Qatar-registered aircraft departing from Oman airports, effectively seven flights per day only. This had been progressively increased to a maximum of 70 flights on a single day, inbound to Doha from Africa and western Asia through Muscat and Emirates FIRs. Subject to safety risk assessments, the States concerned had agreed to increase this maximum to 80 flights, to be chosen from a list of 100 call signs and also to reduce longitudinal separation from 20 NM to 10 NM. An additional flight level allocation (FL380) and other measures to facilitate rerouting via position ULDUN would also be assessed;
- temporary route T800, outbound from Doha via Bahrain and Tehran FIRs had continued to be heavily utilized by Qatar-registered aircraft destined to the East and to Africa;
- Bahrain and Qatar had agreed to initiate coordination for the implementation of ground-ground on-line data interchange (OLDI) between Bahrain ACC and Doha Radar; and
- preliminary agreement for a new route from the Kuwait/Iraq border to Jordan had been reached, recognizing that further coordination with other States would be necessary.

59. With regard to the second bullet above, the Secretary General underscored that it had been agreed to extend the use of one route to accommodate additional traffic numbers, meaning that additional arrival airports had been incorporated into the list of permissible flights that were allowed to use the temporary route T665, providing greater flexibility and efficiencies.

60. The Secretary General noted that between 27 December 2017 and today, ICAO had received reports, largely via correspondence from the States concerned, of alleged Qatar military aircraft “interceptions” or manoeuvring in close proximity to civil aircraft over the high seas adjacent to the airspace of Qatar. Airborne collision avoidance resolution advisories (ACAS RAs) had reportedly been triggered on three such occasions, of which two had related to civil aircraft. ICAO had also been advised of alleged violations of Qatar’s territorial airspace committed by State aircraft from other States flying over the territory of Qatar without authorization.

61. In response to these reports, and to enhance the communications between the Parties, ICAO had followed up with correspondence with the States concerned, as well as with direct discussions with senior State officials during ICAO missions to Qatar (10-11 April 2018) and Bahrain (12 April 2018) led by the ICAO Regional Director, MID Office (Cairo) and the Chief, Airspace Management and Optimization Section (C/AMO). She emphasized that the mission to Qatar had been successful in a number of areas, including highlighting the importance of civil/military cooperation and the effective application of the principle of due regard to the safety of navigation of civil aircraft. The mission to Bahrain had gained agreement from that State to forward automatically relevant flight plans to a Qatari military AFTN address, which had commenced on 12 April 2018. The installation of a direct (hot) line between Qatari military authorities and the Bahrain ACC supervisor, to be used in case urgent information was required, had also been agreed. Other mitigations continued to be progressed. The Secretary General highlighted that since 26 March 2018 only one report had been received by ICAO of

aircraft manoeuvring in close proximity to civil aircraft.

62. The Secretary General indicated that while no plan to schedule a further meeting had been discussed at the ACCM/4 meeting, the Contingency Coordination Team (consisting of the Member States/ATS providers concerned, airspace users and ICAO) continued to be very active on a day-to-day basis, monitoring progress and providing the necessary real-time coordination and reaction to the evolving traffic trends and events. Through this mechanism, and via the normal communication channels, the ICAO MID Regional Office in Cairo and ICAO Headquarters in Montréal were maintaining close coordination with all Member States concerned to identify and implement optimum technical solutions for enhanced safety and more efficient operations in the airspace across the MID region.

Discussion

63. During the ensuing discussion, all Representatives who took the floor voiced appreciation for the participation of representatives of the United Arab Emirates, Qatar and Bahrain in the present Council meeting, as well as for the detailed documentation presented and the clarifications provided. They also expressed gratitude for the excellent work done thus far by the Secretariat, both at ICAO Headquarters and at the MID Regional Office (Cairo), in establishing contingency arrangements to facilitate the flow of air traffic over the high seas in the Gulf region and in fostering understanding and coordination among the Parties.

64. In refuting all of Qatar's efforts to mix political and technical issues in its paper (C-WP/14776 Restricted) and PowerPoint presentation, the Representative of Saudi Arabia expressed a reservation regarding its use therein of the term "blockade", averring that if there were a blockade on Qatar then it would not have been possible for the Qatari Delegation to travel to Montréal to attend the present Council meeting. Emphasizing that ICAO was a technical organization and that it was the Council's role to adopt technical decisions, he enquired as to the criteria used by the Secretariat to determine if the said five occurrences were "incidents" or "serious incidents". In view of the Council's responsibility to ensure the safety of passengers and crew on board civil aircraft, the Representative of Saudi Arabia supported the United Arab Emirates' paper (C-WP/14777 Restricted) and the actions proposed in its executive summary.

65. Noting that ICAO material regarding accident and incident investigations was principally found in Annex 13 of the *Convention on International Civil Aviation*, the Director, Air Navigation Bureau (D/ANB) indicated that the term "incident" was defined in Chapter 1 thereof as "An occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation.". The associated Note indicated that "The types of incidents which are of main interest to the International Civil Aviation Organization for accident prevention studies are listed in Attachment C.". Attachment C contained a list of examples of what were categorized as "serious incidents", with the term "serious incident" being defined in Chapter 1 as "An incident involving circumstances indicating that there was a high probability of an accident and associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards that aircraft with the intention of flight until such time as all such persons have disembarked ...". In emphasizing that the said list of examples in Attachment C was not exhaustive and only served as guidance to the definition of "serious incident", D/ANB noted that one example could be an incident involving a TCAS RA.

66. In underscoring that under Annex 13 investigations into aircraft accidents/incidents were the responsibility of States, D/ANB indicated that they were generally undertaken by the State of Occurrence. However, in the case of incidents over the high seas, it was frequently the State of the Operator which undertook the investigation. He emphasized that the sole objective of any such investigation was the prevention of future accidents and incidents and not the apportionment of blame or

liability.

67. The Alternate Representative of the United States expressed appreciation for the expedited convening of the present Council meeting, as well as for the Secretary General's oral report and the recent ICAO missions to the Gulf region. He underscored that the United States was increasingly concerned by the situation in that region, both with respect to the airspace restrictions in what was a crowded environment and with respect to the unwillingness of the Parties to the Gulf rift to negotiate directly on this matter and on other issues. The United States stressed its concerns about the risks to aviation safety arising from the regional dispute. It commended ICAO for diligently working to ensure a safe environment for civil aviation in the Gulf region over the past year, including the establishment of contingency routes in international airspace in that region and ongoing efforts to closely monitor their implementation. The United States supported the establishment of those contingency routes, in part to mitigate the challenges resulting from the airspace restrictions imposed on Qatar on 5 June 2017 by Bahrain, Egypt, Saudi Arabia and the United Arab Emirates. Furthermore, the United States thanked ICAO for its immediate and proactive steps to find solutions to identified safety issues, especially in light of ICAO's important role with respect to facilitating the safety and security of international civil aviation in the Gulf region.

68. The Alternate Representative of the United States noted that ICAO's primary concern was to ensure the safe operation of civil aviation in that region and that commercial aircraft were not subject to unsafe conditions due to the ongoing rift between the Gulf States. Unfortunately, in view of the presentations given earlier in the Council meeting, it was necessary to acknowledge that ICAO was still facing a situation where aviation safety was compromised by a lack of communication and an unwillingness to come together to solve regional differences. The United States had raised the same concern in previous Council sessions and noted that the Parties to the dispute still had not taken steps to resolve their differences. All Parties were aware that the United States had aviation assets in the Gulf region and all Parties had brought allegations of wrong-doing to its attention previously. Prior reports had included the above-mentioned specific incidents, as well as other alleged military aircraft incursions into sovereign airspace and unauthorized transit of military aircraft. On some occasions, the United States had even investigated the reported allegations and shared its findings with both sides. The Alternate Representative of the United States noted, however, that allegations or assertions by any of the Parties involved might be an inappropriate drain on American resources in the Gulf region. His State also did not consider that it was a prudent use of the Council's time to debate the facts of individual aircraft incidents. Instead, the United States wished to draw the Council's attention to its understanding of the more alarming underlying problem, namely, the breakdown of ATC communication, especially as it related to the bifurcated nature of control of the territorial airspace over Qatar. The United States was aware of reports that regional ATCOs were not sharing flight information or responding to enquiries for information in a timely manner. In addition, it noted the recent findings of Secretariat officials, who had reported that there was no contact between Bahrain ATC and Qatari military aircraft or ATCOs. If true, that situation was unsafe and unacceptable. The United States called on all sides to open needed communication channels as advised by Secretariat officials to immediately prioritize the safe operation of air traffic over political disputes and to make a commitment to utilize that critical communications mechanism.

69. The United States also noted that Qatar had modified the upper limits of a military training area in such a way as to potentially pose a traffic conflict with established civilian airways. It urged both sides to exercise caution with alterations to airspace that could lead to safety concerns. The United States further called upon the President of the Council to immediately invite the Parties to meet and have discussions, whether under the auspices of the President's Office or the Secretariat, to find ways to restart or facilitate regular communications between the aviation authorities of those States and to address specific incidents and underlying factors.

70. The United States requested that an update on those talks be given no later than the end of the current Council session, 29 June 2018. If reports of unsafe operations continued, it would be willing to discuss other actions, including reviewing whether having Bahrain in control of Qatari territorial airspace remained prudent in light of the circumstances. Given the importance which the United States placed on upholding the principles of the international civil aviation system, including those enshrined in the *Convention on International Civil Aviation* and the *International Air Services Transit Agreement*, it was critical that the disputing nations enter into discussions now to resolve their differences. In addition to the stated safety concerns, it was ICAO's interest, as well as the international community's interest, to ensure that the free flow of civil aviation resumed in the Gulf region. The lack of direct communication and coordination to resolve these questions set a negative precedent for the global aviation community and undermined ICAO's efforts to maintain a safe and open aviation system.

71. The Representative of Egypt reiterated the concerns expressed by the United Arab Emirates regarding the threats which the manoeuvres by the Qatari military aircraft posed to the safety of not only the civil flight operations of the flag carriers of Gulf States but of all international flight operations of civil aircraft in the Gulf region. He averred that efforts to involve ICAO and the Council in political issues which were outside their mandate under the Convention were merely attempts to take their focus away from that main issue. The Representative of Egypt endorsed the comments made by the Representative of Saudi Arabia in that regard, and joined the latter in expressing a reservation regarding Qatar's use of the term "blockade" in its paper and PowerPoint presentation. In underscoring that no incidents or serious incidents had occurred in the 70-year operation of the Bahrain FIR until recently, he indicated that there must have a new development which had led to the five incidents highlighted by the United Arab Emirates in its paper (C-WP/14777 Restricted). The Representative of Egypt recalled, in this regard, that it had been stated that Qatar operated its military aircraft without coordination with Bahrain, the manager of the said FIR. As Egypt's paramount concern was the safety of the passengers and crew on board civil aircraft, regardless of their nationality, he supported the United Arab Emirates' paper and urged the Council to take the actions proposed in its executive summary.

72. Reiterating that the situation in the Gulf region was cause for great concern, the Representative of the Russian Federation emphasized that the said five incidents constituted a threat to the safety of civil aircraft. Recalling that Preambular Clause 3 of the *Convention on International Civil Aviation* indicated that international civil aviation was to be developed in a safe and orderly manner, he underscored the consequent need for the Council to invite the Parties to engage in negotiations in a spirit of friendship to resolve the situation in order to protect the lives of the passengers and crew on board aircraft.

73. The Representative of France observed that the facts presented in the two papers and PowerPoint presentations were worrying. He underscored, however, that it was difficult for the Council to do an independent indepth analysis of the voluminous technical documentation provided in the very short period of time available. The Representative of France remarked that it was probably for that same reason that the Secretary General had not presented any conclusions thereon in her oral report. He indicated that what was certain was that the existing cooperation between the civil ATC services and the military in the Gulf region had deteriorated. Cautioning that the situation could become dangerous for all civil aviation flights in that region, the Representative of France called upon all of the Parties to demonstrate the highest degree of responsibility in that regard. While noting, with satisfaction, that some progress had been achieved, with ICAO's assistance, he underscored the need for it to be confirmed and above all, increased. The Representative of France invited the Secretary General and the President of the Council to continue their efforts to that end. He stressed that the Council should remain seized of this matter and be fully informed of the situation in the Gulf region.

74. The Representative of Saudi Arabia suggested that the Secretary General, in coordination with the ICAO MID Regional Office (Cairo) and Bahrain, as manager of the FIR in which the alleged incidents had occurred, submit a report to the Council setting forth in detail the facts and explaining the various technical elements of those events.

75. In clarifying that Annex 13 only required that copies of the preliminary and final reports of serious aircraft accident/incidents be provided to ICAO by the State that had conducted the investigation, D/ANB underscored that such reports were utilized by the Organization for statistical purposes and the dissemination of lessons learned and not for investigative purposes.

76. The Representative of Australia highlighted that his Government welcomed the Secretariat's efforts over the last year relating to the implementation and coordination of airspace measures in the Gulf region. Noting that it did not propose today to address individual incidents or seek to determine any facts related thereto, he indicated that as the Government of Australia considered that the safety and security of civil aviation must at all times remain paramount, it urged all States involved to comply with the letter and the spirit of the *Convention on International Civil Aviation*, in particular, Article 3 and Article 3 bis, as well as applicable rules of the air, relevant ICAO Annexes, guidelines and procedures, including Doc 9554-AN/932 (*Manual Concerning Safety Measures relating to Military Activities Potentially Hazardous to Civil Aircraft Operations*). In keeping with its key principles of giving due regard to the safety of navigation of civil aircraft and the appropriate communication and coordination, the Government of Australia also encouraged all States involved to ensure that the necessary communication, coordination and cooperation took place at all times in the interests of the safety and security of civil aviation. It also encouraged the ICAO MID Regional Office to continue its work and to facilitate meaningful discussions between all States involved, taking whatever steps might be required to ensure that those important discussions could take place.

77. The Representative of the United Kingdom emphasized that the safety of civil aviation was the primary concern of all Member States. He noted that the matter at hand was complicated by the particularly sensitive political situation in the Gulf region and the difficult diplomatic relations between the Parties which negatively impacted communications. Agreeing with the Alternate Representative of the United States, the Representative of France and others that the lack of communication, especially among regional ATCOs, was deeply concerning, the Representative of the United Kingdom stressed that any interruption in ATC services was unacceptable and that every effort should be made to prevent that from happening. He reiterated the importance of communication and coordination and the need to ensure that the safety of civil aviation was not compromised in any way.

78. In welcoming the herculean efforts of the Secretariat at ICAO Headquarters and the MID Regional Office (Cairo) in addressing the matter at hand, which had borne fruit, the Representative of the United Kingdom underscored that they should pursue them. He encouraged the Secretary General and the President of the Council to continue to closely monitor the situation and to keep the Council informed over the next few weeks in the hope that some further progress would be made.

79. The Representative of Algeria recalled that the previous day, 16 May 2018, had marked the first celebration of the *International Day of Living Together in Peace*, which had been adopted unanimously by the United Nations General Assembly (UNGA) in Resolution A/RES/72/130 on 8 December 2017, on his State's initiative. Noting that today, 17 May 2018, marked the first day of Ramadan 2018, a sacred month for Muslims, he availed himself of this opportunity to encourage a rapid resolution of the misunderstanding between the Parties, which were brother countries.

80. The Representative of Algeria recalled that the Council had underscored from the very beginning that aviation safety in the Gulf region was of paramount importance. He noted, however, that

while it had been regularly informed by the Secretariat at ICAO Headquarters and the MID Regional Office that there were no safety issues in that region, it was clear from the papers presented by the United Arab Emirates and Qatar that there was a serious lack of communication, coordination, and exchange of information between the ATCs concerned, which seriously compromised aviation safety in the said region and consequently increased the risk of an aircraft incident or worse. Leaving aside the political aspects of the matter at hand, which he hoped would be successfully resolved as soon as possible even though they were outside the Council's mandate, the Representative of Algeria expressed the hope that the aviation safety technical actors concerned, in particular, the ATCs, would cooperate, coordinate their actions and exchange necessary information in accordance with the rules and procedures established to ensure flight safety in the Gulf region. He emphasized the need for the ICAO MID Regional Office (Cairo) to fully play its role and ensure the fulfillment of its mission in that region.

81. Indicating that it was sad to see that the political situation continued among States in the Gulf region which should be brothers in every respect, the Representative of Turkey expressed the hope that the holy Ramadan would alleviate their problems and enable a happy ending. He noted, however, that the Council was only considering the technical issues relating to the request made by the United Arab Emirates under Article 54 n) of the Convention. The Representative of Turkey commended the actions taken by ICAO and its MID Regional Office from the beginning of the political crisis, particularly the development and establishment of the contingency routes to mitigate the situation in the Gulf region. He considered that all of the Parties should agree that civil aviation in that region had reasonably improved as a result of those actions. The Representative of Turkey concurred with previous speakers on the need for better communication and coordination in the field of civil aviation as revealed by the papers presented by the United Arab Emirates and Qatar. He emphasized that it was very important that even in the midst of a political crisis the civil aviation authorities concerned put aside their differences in order to have better cooperation and coordination on technical issues. The Representative of Turkey agreed with other Representatives that the safety of civil aviation should not in any way be compromised. Noting that claims and counter-claims had been made by the Parties, he sought the views of the Secretariat and the MID Regional Office as to whether any serious incident had occurred which had actually compromised the safety of civil aviation. The Representative of Turkey wondered why a State in the midst of a volatile political situation would, as alleged, endanger the safety of civil aviation and harm that State's reputation as such an action would definitely cause severe reaction from the international community. His conclusion was that if communication and coordination between the Parties could be enhanced with the assistance of the MID Regional Office, then it would be possible for them to overcome the present difficulties and ensure the safety of civil aviation in the Gulf region.

82. In clarifying that the Secretariat could not independently validate any of the material contained in an investigation report and that it was thus not in a position to make an independent assessment of the actual severity of a given incident, D/ANB indicated that it relied upon the State which conducted the investigation, which was able to verify the information, to determine the severity of an incident and whether an accident, rather than an incident, had occurred. The Secretariat considered that it was the State's responsibility to make that determination. As a safety professional, D/ANB underscored that ICAO's entire construct of Annex requirements i.e. SARPs and guidance material was designed to provide a series of protections against the multiple risks that were inherent in aviation, and that any reduction in their capacity caused by a failure to follow any of the SARPs and procedures weakened the safety net. He emphasized that whether that might result in a serious incident was always subject to the sequence of events that occurred when there was a reduced margin for error.

83. H.E. Al Suwaidi (United Arab Emirates) confirmed that the purpose of the present Council meeting was not to consider issues relating to Qatar's two Applications under Article 84 of the Convention but rather the issues relating to his State's request under Article 54 n) thereof, namely, the five serious safety incidents referred to in its paper (C-WP/14777 Restricted). He echoed the reservation

expressed by the Representatives of Saudi Arabia and Egypt regarding Qatar's use of the term "blockade" in its paper and PowerPoint presentation. In wondering what error had been committed by the United Arab Emirates which had led to the said five incidents, H.E. Al Suwaidi maintained that it had not violated any provision of the Convention or any relevant Annex thereto. He emphasized that the United Arab Emirates had always welcomed any meetings with Qatar to discuss technical coordination relating to international civil aviation.

84. Referring to the point raised regarding the distinction between an "incident" and a "serious incident", H.E. Al Suwaidi indicated that the United Arab Emirates, as both the State of the Operator and the State of Registry, had decided to conduct Technical Safety Analyses of the reported occurrences to establish their severity and to identify areas for improvement for the safety of international civil aviation. Two Technical Safety Analyses covering the first four incidents had been submitted to the ICAO MID Regional Office and were appended to C-WP/14777 Restricted. Upon completion, the Technical Safety Analysis of the fifth incident of 22 April 2018 would also be submitted to the MID Regional Office. In concluding, H.E. Al Suwaidi confirmed that the United Arab Emirates' sole desire was to prevent a recurrence of this type of safety incident.

85. The Representative of Japan expressed appreciation to the United Arab Emirates for having brought its serious safety concerns to the Council's attention and to Qatar for having made its position thereon clear. He underscored that Japan supported the safety-focused, rule-based, and fact-finding discussion in the Council. Japan could never bear any situation where serious concerns were raised by Member States and other aviation stakeholders, including all crews and passengers, and considered that they should be addressed immediately. Japan thus attached great importance to the points raised during the present discussion, in particular, the need for effective ATC communication and face-to-face communication to resolve the noted differences in the spirit of safety rule compliance, for the benefit of all Member States. In that regard, Japan noted, with appreciation, the ongoing efforts by the MID Regional Office and ICAO Headquarters with the Secretary General's oversight. In particular, Japan supported the suggestion by the Alternate Representative of the United States on the way forward for effective dialogue among the Parties in the near future.

86. In line with some of the comments made by previous speakers, the Representative of Mexico suggested that in its decision the Council should, inter alia: note with concern the incidents that had occurred in the Gulf region in view of their implications for the safety of civil aviation and the lives of passengers and crew on board aircraft; once again invite the States concerned to enter into constructive negotiations and establish effective communication and coordination, including improved civil/military cooperation; remind the States in the Gulf region of the importance of complying in good faith with the provisions of the *Convention on International Civil Aviation* and its Annexes; request the Secretariat to review, in cooperation with the Parties, the relevant information in order to identify measures with which to preserve the safety of civil flight operations; and request the Secretariat to closely monitor the progress achieved and to keep the Council informed thereof. Noting that he and other Representatives had not had the opportunity to review the information in depth with the appropriate expert assistance, the Representative of Mexico underscored that the Council could entrust the Secretariat with that task.

87. The Representative of Spain commended the Secretariat at ICAO Headquarters and at the MID Regional Office (Cairo) for having made every effort not only to find alternative solutions for the airspace in the Gulf region but also to facilitate understanding among the Parties. Underscoring that the airspace in that region was congested in normal circumstances and that the current growth in air traffic was considerable and expected to continue, he stressed the need for all concerned to be extremely careful as the traffic density complicated all of the scenarios. Noting that a number of speakers had referred to the *Convention on International Civil Aviation*, the Representative of Spain recalled its Preamble, which began as follows: "Whereas the future development of international civil aviation can greatly help to

create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security;”. He emphasized that the Council was trying to avoid that very situation, where the management of international civil aviation could generate a conflict.

88. The Representative of Spain noted that the paper and PowerPoint presentation by the United Arab Emirates and the intervention by the Observer from Bahrain had shed light on a number of shortfalls which, in the words of the Alternate Representative of the United States, were alarming and which related to communication between civil aviation authorities (civil/civil) and between civil aviation and military authorities (civil/military). Averring that it was an unusual situation, he indicated that the Council had hoped, and continued to hope, that the Parties would resolve the situation among themselves in a frank and open dialogue. However, the reality was that, regardless of whether the occurrences had been classified as “serious incidents” or “incidents”, there had been STCAs and TCAS RAs, which, as D/ANB had indicated, were among a raft of safety protections which, if not upheld, could lead to undesirable consequences. It was thus necessary to take all possible measures to prevent that from happening. The Representative of Spain underscored that civil/military coordination was essential not only in each State’s sovereign airspace but also in the airspace over the high seas. He emphasized that every effort should be made to avoid situations that could heighten the risk level as it was a threat not only to passengers flying within the Gulf region but also to passengers transiting that region, who were of various nationalities.

89. The Representative of Spain noted that all agreed that there was a need to enhance communication and coordination between the Parties, which should be at the technical level, with the involvement of the Secretariat at ICAO Headquarters and the MID Regional Office (Cairo). Averring that it might entail more than implementing ICAO provisions, he concurred with the Alternative Representative of the United States and the Representatives of France and the United Kingdom that the President of the Council should activate mechanisms to ensure effective communication and coordination between the Parties. Furthermore, if necessary, the Secretariat could review the existing ICAO provisions on civil/military coordination, particularly in the airspace over the high seas.

90. The Representative of Uruguay recalled that in his work *Martín Fierro* the renowned Argentinian poet José Hernández had stated “Los hermanos sean unidos porque esa es la ley primera;” (roughly translated as “Brothers must be united as that is the first law”). In that same spirit, he highlighted the following relevant elements of the informal consultations held with the Delegations of the United Arab Emirates and Qatar on 15 May 2018 and of the current discussion, which went beyond the existing major differences, not so much in the facts but in how each Party perceived the facts, and which offered scope for the Parties to move forward together: the Parties were all committed to upholding the safety of civil aviation and the principle of “due regard”; it was important to keep this matter at an operational level and not to politicize it, and to focus on safety improvements; all Parties recognized that there was a lack of communication and coordination, particularly starting in 2018; perhaps most importantly, all Parties placed their trust in ICAO, the President of the Council, the Secretary General, the Secretariat as a whole i.e. at ICAO Headquarters and at the MID Regional Office (Cairo) in addressing this situation; and it was important to take into account the context, as highlighted by the Alternate Representative of the United States and the Representative of Spain, namely, that it was congested airspace where any mistake could be fatal, which compelled all concerned to be as careful as possible. The Representative of Uruguay indicated that these were some of the elements that should be borne in mind as efforts were made to enhance coordination, cooperation, communication and dialogue as much as possible in the Gulf region.

91. Reiterating the paramount importance of ensuring the safety of international civil aviation, the Representative of Canada emphasized the need to respect the applicable rules of the air and

procedures. He urged the Parties involved to take steps to de-escalate the situation in the Gulf region to avoid placing passengers at risk.

92. Noting the safety concerns expressed by both the United Arab Emirates and Qatar in their papers and PowerPoint presentations, the Representative of the United Republic of Tanzania emphasized that no safety breach could be allowed as that would jeopardize the lives of passengers. In echoing the concerns voiced by previous speakers regarding effective communication and coordination between the Parties, he underscored that the President of the Council, the Secretary General and D/ANB could serve as good facilitators. Emphasizing that the solution to the problem lay in the hands of the Parties, the Representative of the United Republic of Tanzania encouraged them to use all possible means to solve it.

93. The Representative of Singapore highlighted that while his State recognized the right of each country to engage in military activities, it also considered that the safety and efficiency of civil aviation must not be compromised. Accordingly, military activities should be done with “due regard”, in a safe and orderly manner, in accordance with ICAO’s rules of the air and procedures, as well as guidelines and principles. As laid out in ICAO’s provisions and in international best practices, there should be close cooperation between the military and the civil ATC authority in controlled airspace. Singapore urged all Parties involved to work together, and with the ICAO Secretariat at Headquarters and/or the MID Regional Office (Cairo), in constructive dialogue to look into the said incidents and to agree on practical, technical arrangements to ensure the future safe and efficient operation of civil aircraft in the Gulf region.

94. H.E. Al Subaey (Qatar) noted that he would have liked the Observer from Bahrain to comment on the follow-up to the incidents shown in Qatar’s video recordings which had formed part of its PowerPoint, presentation, given that Bahrain was his State’s designated ATS provider over 24 000 ft. Reiterating that Qatar was committed to upholding all safety measures for both the civil aviation and military sectors, and respected the principle of “due regard” for the safety of navigation of civil aircraft, he underscored that it stood ready to cooperate, coordinate and enter into dialogue in any way possible with the United Arab Emirates. H.E. Al Subaey thanked H.E. Al Suwaidi (United Arab Emirates) for having indicated that his State welcomed any meeting with Qatar to discuss technical coordination relating to international civil aviation.

95. Reiterating that the safety of international civil aviation could not be compromised under any circumstances, the Representative of Nigeria recalled Preambular Clause 3 of the *Convention on International Civil Aviation*, which referred to international civil aviation being developed “in a safe and orderly manner”. Noting that in their presentations all Parties had committed to ensuring the safety of international civil aviation, he called upon them to enter into dialogue with a view to de-escalating the situation in the Gulf region which, if left unchecked, would have undesirable consequences. The Representative of Nigeria agreed with previous speakers that there was a need for communication, cooperation and coordination between all of the ATCs within the congested airspace in the Gulf region and to improve civil/military coordination.

96. The Representative of Cabo Verde noted from the papers and PowerPoint presentations by the United Arab Emirates and Qatar that as a result of the current differences between the Gulf States there had been a deterioration in their coordination, cooperation, communication, and information exchange systems that were essential to protect aviation safety and that, as a consequence, the latter might be put at risk. Joining other Representatives in committing to ensure aviation safety, he reiterated the need to avoid, at any cost, any situation that might jeopardize it. The Representative of Cabo Verde invited all Parties to work together, under the aegis of ICAO, to improve and consolidate their said systems for the sake of aviation safety, especially in the Gulf region. He also urged ICAO to redouble its efforts to monitor the implementation of the Gulf States’ commitments to ensure aviation safety.

97. The Representative of Ecuador noted that the conflict in the Gulf region was a great cause for concern that had a global dimension. He underscored, however, that during the present meeting H.E. Al Subaey (Qatar) and H.E. Al Suwaidi (United Arab Emirates) had both expressed their States' political will to enter into dialogue with one another with a view to finding solutions to the matter at hand on the basis of harmony and transparency. The Representative of Ecuador urged Qatar and the United Arab Emirates to avail themselves of the ongoing efforts of the Secretariat to ensure aviation safety in the Gulf region. Stressing the need for those States to avoid any situation that might jeopardize aviation safety, the Representative of Ecuador emphasized that they should focus on the three C's cited by the Representative of Uruguay, namely: communication, which was vital; coordination, which included harmonious procedures for civil/military coordination; and cooperation and understanding.

98. The Representative of Ecuador also urged the Secretariat at ICAO Headquarters and the MID Regional Office (Cairo) to continue their said commendable efforts and advocated that a meeting be held promptly with a view to fostering understanding among the Parties in keeping with the spirit of the *Convention on International Civil Aviation*, and not to apportioning blame or responsibility. In applauding the leadership role played by the President of the Council in addressing the matter at hand, the Representative of Ecuador encouraged him to continue to pursue high-level dialogue among the Parties on the Council's behalf in order to find a harmonious and peaceful solution.

99. Referring to the comment made by H.E. Al Subaey (Qatar), Mr. Al-Kaabi (Bahrain) noted that he had already made a number of observations on Qatar's paper (C-WP/14776 Restricted) and accompanying PowerPoint presentation and had answered the key points raised with regard thereto (cf. paragraphs 51-56 above). He had confirmed that the flight plans for the five UAE-registered civil aircraft involved in the incidents referred to in C-WP/14777 Restricted had been transmitted to Doha ATC. Mr. Al-Kaabi had also indicated that he considered that the said activities of the Qatari military aircraft had been planned and specifically and deliberately targeted at the said UAE-registered civil aircraft. He now assured the Council that the diplomatic and political situation in the Gulf region had nothing to do with the day-to-day cooperation and coordination between Bahrain ACC, as Qatar's designated ATS provider, and the neighbouring units, including Doha Approach. Noting that the problem was very specific, Mr. Al-Kaabi emphasized that in order to solve it was necessary to identify the root cause, which was that the Qatari military aircraft did not adhere to the principle of due regard for the safety of navigation of civil aircraft or even to the instructions from their own ATC. He underscored that regardless of what actions Bahrain took as Qatar's designated ATS provider, it had no control over Qatari military aircraft which were "hot scrambled", which violated airspace, which were not in communication with Bahrain ATC, and which started climbing and conducting other manoeuvres without the necessary ATC clearance or authorization. Averring that this was an issue for Qatar itself to resolve internally, Mr. Al-Kaabi expressed confidence that once it had been resolved, the situation in the Bahrain FIR would revert to how it had been prior to January 2018, when civil flight operations had been performed safely and efficiently in full accord with ICAO Standards.

100. H.E. Al Subaey (Qatar) reaffirmed his State's commitment to respect the principle of aviation safety for both the civil aviation and military sectors. Recalling that Bahrain managed the FIR in which the alleged incidents involving UAE-registered civil aircraft and Qatari military aircraft had occurred, he expressed the hope that it would provide the relevant information through the ICAO MID Regional Office (Cairo). Highlighting that Qatar was prepared to host a seminar on civil/military cooperation, H.E. Al Subaey invited the Secretariat to explore, with the Qatari authorities, the possibility of holding such a seminar with a view to enhancing civil/military cooperation.

101. H.E. Al Suwaidi (United Arab Emirates) completely agreed with Mr. Al-Kaabi (Bahrain) on the importance of identifying the root cause of the five incidents in order to understand them.

Reiterating that the flight plans of the five UAE-registered civil aircraft involved in those incidents had been transmitted to Doha ATC, he emphasized that it was thus not a problem of providing information to Qatar but rather of internal cooperation between Qatar's civil aviation and military sectors. In that regard, H.E. Al Suwaidi agreed with the Alternate Representative of the United States and the Representative of Spain that there was a need to cooperate and coordinate and improve information-sharing between the States. He therefore proposed that in its decision the Council call upon Member States to engage in internal coordination between their civil aviation and military authorities so as to enhance aviation safety.

102. As the Director General, GCAA of the United Arab Emirates, H.E. Al Suwaidi then enquired whether H.E. Al Subaey (Qatar), the Chairman, QCAA, could guarantee that there would be no recurrence of the said safety incidents once mechanisms for ensuring effective communication and coordination were in place.

103. Reiterating that only one report had been received by the Organization of military aircraft manoeuvring in close proximity to civil aircraft after the said successful ICAO missions to Qatar and Bahrain in April 2018, the Secretary General emphasized that the situation in the Gulf region was now improved. She noted, however, that it was the desire of both the Council and ICAO as a whole that efforts continue to ensure the safety of civil flight operations. The Secretary General therefore instructed the ICAO MID Regional Office (Cairo) and ANB: to continue working closely with the Member States in that region and to facilitate their dialogue; and to ensure the effective implementation of the agreed mechanism involving the Contingency Coordination Team (cf. paragraph 62 above). In urging Member States in the region to support its effective implementation, she indicated that their cooperation in that regard would be most appreciated.

104. Reaffirming the Secretariat's commitment to work closely with Member States in the region to support and assist them in enhancing the safety of international civil aviation, including through the effective implementation of the said mechanism, the Secretary General underscored that building on the cooperation which they had already offered would enable the Secretariat to deliver the desired results and to report accordingly to the Council.

105. In then informing the Council of the ongoing revision of the ICAO guidance materials on civil/military cooperation, namely, Circular 330-AN/189 (*Civil/Military Cooperation in Air Traffic Management*) and Doc 9554-AN/932 (*Manual Concerning Safety Measures relating to Military Activities Potentially Hazardous to Civil Aircraft Operations*), the Secretary General requested ANB, together with the Air Navigation Commission (ANC), to accelerate that process as a priority so as to enable an earlier delivery of the updated guidance materials, which would assist not only the Gulf region but all the regions of the world in enhancing civil/military cooperation and coordination.

106. The Secretary General reiterated her appreciation to Member States in the Gulf region for their full cooperation. In addition, she commended the MID Regional Office and ANB for their cooperative efforts to address the situation in the Gulf region.

107. Note was taken of: the additional information provided during the introduction of C-WP/14777 Restricted and C-WP/14776 Restricted and the related PowerPoint presentations; the above comments made during the discussion by Council Representatives and the representatives of the three Parties, including the reservations expressed by the Representatives of Saudi Arabia, Egypt and the United Arab Emirates regarding the use of the term "blockade" by Qatar; and the clarifications provided in response by D/ANB, all of which were recorded for these summary minutes of the meeting. It was noted that as part of this process Bahrain could submit to the Secretariat a paper setting forth more details

on the said five incidents, that State being the manager of the FIR concerned and Qatar's designated ATS provider.¹

108. The President of the Council observed, from the comments made by Representatives non-Parties to the Article 54 n) matter under consideration, that it was important to ensure better communication and coordination between all ATS providers, civil aviation operators and civil aviation administrations (CAAs) in the Gulf region and, even more importantly, to ensure better civil/military coordination, both at the national level and among the Parties. Aircraft incidents constituted a danger to the safety of international civil aviation and it was necessary to take all possible action to prevent them through better communication, coordination, and consultation, without apportioning any blame or liability, the sole objective being to prevent future such occurrences. At the end of the day, it was necessary to find a way to address those issues.

109. In taking the action then proposed by the President in light of its deliberations, the Council:

- a) expressed appreciation for, and noted, C-WP/14777 Restricted presented by the United Arab Emirates and C-WP/14776 Restricted presented by Qatar, as well as the Secretary General's oral report on the current status of ICAO coordination with States relating to the high seas airspace concerns in the Gulf region;
- b) expressed appreciation for the work done thus far by the Secretariat at ICAO Headquarters and particularly at the MID Regional Office (Cairo), in close coordination with the relevant Member States, to establish contingency arrangements to facilitate the flow of traffic in the Gulf region, and also to enhance civil/military coordination and effective application of the principle of due regard for the safety of navigation of civil aircraft embodied in Article 3 d) of the *Convention on International Civil Aviation*;
- c) expressed concern over the recent escalation of the situation in the Gulf region, in particular the possible impact of military aircraft activities on civil flight operations;
- d) stressed the need to ensure effective communication and coordination not only between the ATS providers, civil aviation operators and national CAAs of the Member States in the Gulf region but also with their military;
- e) encouraged all three Parties to continue their collaboration in that regard, and welcomed the commitment expressed by their representatives at the present meeting to continue consultations, including under the aegis, and through the platform, of ICAO, to ensure the promotion of effective coordination between all concerned Member States and to preserve and improve the safety of international civil aviation in the Gulf region;
- f) called upon all ICAO Member States to implement both the letter and the spirit of the *Convention on International Civil Aviation* and to continue to collaborate, in

¹ A written statement by Bahrain on this Agenda item was subsequently submitted to the President of the Council under cover of a letter Ref. 325/2018 dated 24 May 2018 from the Minister of Transportation and Telecommunications of Bahrain, communicated to the President in an e-mail of the same date from the Undersecretary for Civil Aviation Affairs of Bahrain. At Bahrain's request, the written statement was circulated to all Council Members as an official document in an e-mail from the President of the Council dated 28 May 2018.

particular, to promote the safety, security, efficiency, and sustainability of international civil aviation;

- g) urged all ICAO Member States, consistent with their obligation under the *Convention on International Civil Aviation*, to ensure that their military operations are conducted in conformity with, and with due regard to, the relevant ICAO provisions on civil/military coordination, and to this end to take all necessary measures to assure the safety, security, and efficiency of civil flight operations at all times;
- h) requested the Secretary General, the Secretariat at ICAO Headquarters and particularly at the MID Regional Office (Cairo), to continue their ongoing efforts to facilitate coordination among the Parties, including the enhancement of their civil/military coordination;
- i) noted that, as requested by a number of Representatives, the President would gladly continue to offer his good offices to also facilitate the ongoing dialogue and discussions in that regard; and
- j) expressed appreciation to the Parties for the spirit of close collaboration, compromise and consensus which they had demonstrated during the present meeting and urged them to continue to demonstrate that spirit and to dialogue and find ways and means to completely de-escalate the situation.

110. On behalf of the Council, the President thanked the distinguished representatives of the United Arab Emirates, Qatar and Bahrain and their Delegations for their participation in the present Council Meeting.

111. For his own part, and with due regard to the secular nature of ICAO, the President of the Council wished the Parties “Ramadan Kareem” (Happy Ramadan), and asked that, in the spirit of Ramadan, they promptly find a solution to the matter at hand.

112. The meeting adjourned at 1330 hours.

COUNCIL — 214TH SESSION

SUMMARY MINUTES OF THE SECOND MEETING

(THE COUNCIL CHAMBER, MONDAY, 11 JUNE 2018, AT 1430 HOURS)

OPEN MEETING

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

PRESENT:

Algeria	— Mr. A.D. Mesroua	Kenya	— Ms. M.B. Awori
Argentina	— Mr. G.E. Ainchil	Malaysia	— Mr. K.A. Ismail
Australia	— Mr. S. Lucas	Mexico	— Mr. D. Méndez Mayora
Brazil	— Mr. O. Vieira (Alt.)	Nigeria	— Mr. M.S. Nuhu
Cabo Verde	— Mr. C. Monteiro	Panama	— Mr. G.S. Oller
Canada	— Mr. M. Pagé	Republic of Korea	— Mr. Y.J. Lee
China	— Mr. Shengjun Yang	Russian Federation	— Mr. S. Gudkov
Colombia	— Mr. A. Muñoz Gómez	Saudi Arabia	— Mr. S.A.R. Hashem
Congo	— Mr. R.M. Ondzotto	Singapore	— Mr. T.C. Ng
Cuba	— Mrs. M. Crespo Frasquiere	South Africa	— Mr. M.D.T. Peege
Ecuador	— Mr. I. Arellano	Spain	— Mr. V.M. Aguado
Egypt	— Mr. A. Khedr	Sweden	— Ms. H. Jansson Saxe
France	— Mr. P. Bertoux	Turkey	— Mr. A.R. Çolak
Germany	— Mr. U. Schwierczinski	United Arab Emirates	— Miss A. Alhameli
India	— Mr. A. Shekhar	United Kingdom	— Mr. D.T. Lloyd
Ireland	— Ms. N. O'Brien	United Republic of Tanzania	— Mr. R.W. Bokango
Italy	— Mr. M.R. Rusconi	United States	— Mr. T.L. Carter
Japan	— Mr. S. Matsui	Uruguay	— Mr. M. Vidal

ALSO PRESENT:

Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. C. Fernández (Alt.)	— Argentina
Mr. R.F. Pecoraro (Alt.)	— Brazil
Mr. D. Tavares Taufner (Alt.)	— Brazil
Mr. M.G. Correia Pontes (Alt.)	— Brazil
Mr. Chunyu Ding (Alt.)	— China
Mr. M. Millefert (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mrs. D. Valle Álvarez (Alt.)	— Mexico
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. M.S. Habib (Alt.)	— Saudi Arabia
Mr. S. Vuokila (Alt.)	— Sweden
Mr. Ö. Doğrukol (Alt.)	— Turkey
Mr. M. Salem (Alt.)	— United Arab Emirates
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mrs. M.A. González (Alt.)	— Uruguay
Mr. F. de Medina (Alt.)	— Uruguay

SECRETARIAT:

Mrs. J. Yan	— C/OSG
Ms. I. Sosina	— SA/PRES
Mr. B. Djibo	— D/ATB
Mr. S. Creamer	— D/ANB
Mr. V. Smith	— D/ADB
Mr. J. Huang	— D/LEB
Mr. J. Vargas	— D/TCB
Mr. J. Wan	— DD/IAS
Mr. H. Gourdji	— H/SPCP
Mr. S. Lefoyer	— DD/ASF
Miss L. Lim	— A/C/FIN
Mr. M. Fox	— C/PRC
Ms. S. Brand	— C/RPM
Mr. A. Opolot	— LO
Mrs. J. Zorbas	— JF
Mrs. P. Romano	— H/ASV-ARU
Miss S. Black	— Précis-writer

Representatives to ICAO

Cameroon

Chile

Ethiopia

Ghana

Honduras

Indonesia

Iran (Islamic Republic of)

Lebanon

Peru

Senegal

Airports Council International (ACI)

European Union (EU)

Welcome to the new Director, Technical Cooperation Bureau (D/TCB)

1. On behalf of the Council, the President extended a warm welcome to Mr. Jorge Vargas, who was attending a meeting of the Council for the first time in his capacity as D/TCB.

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

Schedule for consideration of items during the 214th Session

2. The Council noted the meeting schedule for the 214th Session as set forth in the President's memorandum PRES OBA/2752 Revision No. 2 dated 11 May 2018, on the understanding: that additional meetings might be convened during the fourth week (25-29 June 2018) to enable the Council to complete its deliberations on the items listed in its sessional Work Programme (cf. C-WP/14713 Revision No. 1 and Addendum & Corrigendum No. 1); and that as the Civil Air Navigation Services Organisation (CANSO), a major industry stakeholder, was unable to participate in the State of the Industry informal briefing to be held on 12 June 2018 at 1430 hours, it would instead provide a briefing to Representatives during the upcoming Council Off-site Strategy Meeting (COSM2018) (Estérel, Québec, 21-22 June 2018).

3. The Council also noted the schedule for the consideration of items during the 214th Session as set forth in the President's memorandum PRES OBA/2768 dated 5 June 2018. In so doing, it agreed to the President's request to waive Rule 26 b) i) of the *Rules of Procedure for the Council* (Doc 7559), according to which working papers containing proposals for adopting or amending the Annexes under Article 90 of the Convention shall be distributed to Representatives at least 10 working days before the meeting in which they are to be considered, in order to enable the Council to commence its consideration, at its Sixth Meeting on 18 June 2018 at 1430 hours, of C-WP/14765, whereby the Air Navigation Commission (ANC) presented a proposal for a new Volume IV – *Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)* to Annex 16 – *Environmental Protection*, in conjunction with related working papers and oral reports.

Subject No. 17.1: Joint Financing Agreement with Iceland

Subject No. 17.5: Joint Financing Agreement with Denmark

Recommendations of the Joint Support Committee related to items under the Danish and Icelandic Joint Financing Agreements reviewed during the 214th Session

4. The Council considered this subject on the basis of C-WP/14739, in which the JSC provided an overview of the items under the Danish and Icelandic Joint Financing Agreements that it had considered during the current session and presented its recommendations.

5. Responding to a point raised by the Representative of Mexico regarding the second paragraph of the executive summary of the paper, the Chairperson of the JSC, the Representative of Spain, Mr. V.M. Aguado, clarified that the provider States, Denmark and Iceland, in coordination with the users, had proposed undertaking an analysis of the possibility and practicability of levying user charges in Danish Kroner (DKK) and Icelandic Kronur (ISK) instead of in United Kingdom Pounds (GBP) as those two currencies were used by the service providers to defray expenditures (cf. executive summary and paragraph 4.1 of JS-WP/2064). It was thus a question of the said provider States conducting a feasibility study to determine if the use of those two currencies would simplify and facilitate the process. The Chairperson of the JSC emphasized that that matter was unrelated to the allocation of costs to Contracting Governments and users under the Danish and Icelandic Joint Financing Agreements.

6. The Representative of South Africa prefaced his comments on the paper by congratulating Ethiopian Airlines for having further connected Africa and the United States through the addition, as of 2 June 2018, of three flights per week from Addis Ababa Bole International Airport to Chicago O'Hare International Airport, the world's busiest airport. He also expressed appreciation for the very informative informal briefing on aviation safety policy in Japan which the Japan Civil Aviation Bureau (JCAB) had given to the Council on 8 June 2018. In addition, the Representative of South Africa congratulated and commended Singapore Airlines, which would make aviation history when it launched, in October 2018, the world's longest commercial flight, a near-19 hour non-stop flight from Singapore Changi Airport to Newark Liberty International Airport (New Jersey, United States).

7. Highlighting that on 8 June 2018 his State had been elected as a non-permanent Member of the United Nations Security Council for 2019-2020, the Representative of South Africa recalled that on that occasion President Cyril Ramaphosa had reaffirmed South Africa's "commitment to the peaceful resolution of global disputes and the advancement of inclusive development in accordance with the United Nations Charter and international law."

8. In then drawing attention to paragraph 2.9 of C-WP/14739, the Representative of South Africa queried why the envisaged new space-based Automatic Dependent Surveillance–Broadcast (ADS-B) global aviation surveillance system to be provided by Aireon was considered to be of "great value". Noting, from that same paragraph, the comments made by the Icelandic service provider, Isavia, that there was a steady increase in activity in altitudes above commercial jet levels and that high altitude balloons, airships, satellite launch vehicles and the increased use of drones may increasingly infringe on civilian air traffic in future, he sought information regarding the interaction between ICAO and the United Nations Office for Outer Space Affairs (UNOOSA) regarding high altitude operations, including space debris, following the Third ICAO/UNOOSA Aerospace Symposium (Vienna, 29-31 August 2017). In further noting therefrom that air navigation service providers (ANSPs), among others, needed to take a more active role in establishing Standards and Recommended Practices (SARPs) in the said areas highlighted by Isavia, the Representative of South Africa enquired when the ANSPs would start doing so.

9. In also congratulating Singapore Airlines, the Representative of France expressed pleasure that it would utilize an Airbus A350-900ULR, an ultra-long range version of the fuel-efficient twin engine A350 jet, for its planned near-19 hour non-stop flight from Singapore Changi Airport to Newark Liberty International Airport.

10. Observing that the questions raised by the Representative of South Africa were very pertinent inasmuch as they related to the Committee's earlier discussion, the Chairperson of the JSC expressed the hope that the two strategic issues of space-based ADS-B and high altitude operations would be discussed at the forthcoming Thirteenth Air Navigation Conference (AN-Conf/13) (Montréal, 9-19 October 2018). He emphasized that a space-based ADS-B global aviation surveillance system would be of the utmost importance, not only in the North Atlantic but worldwide, particularly for: air navigation in oceanic airspace and remote continental airspace where there currently was no surveillance coverage; and aircraft tracking and preventing the loss of aircraft. The Chairperson of the JSC recalled, in this regard, that four years had elapsed since the mysterious disappearance, on 8 March 2014, of Malaysia Airlines Flight 370 while flying from Kuala Lumpur to Beijing.

11. The President of the Council noted that the JSC had organized an informal briefing for the Council and the Air Navigation Commission (ANC) on 30 April 2018 at which the Director, Air Navigation Bureau (D/ANB) had given a PowerPoint presentation introducing space-based ADS-B and the Chief Executive Officer of Aireon and his team had given a PowerPoint presentation providing updated information on their envisaged space-based ADS-B global aviation surveillance system.

12. D/ANB highlighted that further information on how space-based ADS-B and high altitude operations, including the interaction between ICAO and UNOOSA, would be addressed at AN-Conf/13 would be provided during the upcoming presentation on the Conference to be jointly given by him and the President of the ANC.

13. With regard to a suitable governance structure for the envisaged space-based ADS-B global aviation surveillance system, D/ANB indicated that it was too early to have a clear understanding of what might be required beyond the normal oversight that individual regulatory authorities would provide. In noting, however, that there were ongoing discussions not only with Aireon but also with INMARSAT, Iridium and other stakeholders regarding regional and global oversight requirements for related communications, navigation and surveillance infrastructure, he indicated that the matter would be brought to the attention of the ANC and the Council at the appropriate time.

14. The above comments and clarifications were noted.

15. In then taking the actions recommended by the JSC in paragraph 3.1 of C-WP/14739, as amended by the President in light of the discussion, the Council:

- a) approved the proposal by Iceland to renew the Keflavik and North East Iceland radar systems and to renew the upper-air station in Keflavik as described in paragraph 2 of JS-WP/2062;
- b) approved the incorporation of the proposed capital expenditure therefor (ISK 239 151 000, equivalent to approximately USD 2 410 000), subject to audit, as shown in paragraph 2.1 of JS-WP/2062;
- c) welcomed the proposal by Denmark and Iceland, in coordination with the users, for a future analysis of the possibility and practicability of levying user charges in Danish Kroner (DKK) and Icelandic Kronur (ISK), the currencies used by the service providers for expenditures, instead of in United Kingdom Pounds (GBP) (cf. executive summary and paragraph 4.1 of JS-WP/2064), and requested to be briefed whenever the JSC had additional information in that regard;
- d) with reference to an earlier decision (cf. C-DEC 213/1, paragraph 11), expressed content with the current allocation of costs to Contracting Governments and users under the Danish and Icelandic Joint Financing Agreements (cf. executive summary of JS-WP/2067) and consequently decided, at the present time, not to have a review thereof undertaken; and
- e) requested the Secretary General to inform the Governments of Denmark and Iceland and other Contracting Governments to the Danish and Icelandic Joint Financing Agreement of the above actions, as appropriate.

Subject No. 24.3: Action on Assembly resolutions and decisions

**Mid-triennial review of implementation of resolutions and decisions of the
39th Session of the Assembly – *Economic development of air transport***

16. The Council had for consideration: information paper C-WP/14744, whereby the Secretary General presented a mid-triennial report on the progress made, as at April 2018, in the implementation of resolutions and decisions of the 39th Session of the Assembly (A39) relating to the

economic development of air transport, which it had reviewed previously (210/6); and an oral report thereon by the Air Transport Committee (ATC), which had considered the paper at its First Meeting of the current session on 3 May 2018.

ATC oral report

17. In presenting the ATC's oral report, the Chairperson, the Representative of Saudi Arabia, Mr. A.R. Hashem, noted that during the Committee's deliberations, some Members had requested the Secretariat to prioritize the work related to consumer protection and the harmonization of ICAO's long-term traffic forecasts with ones produced by other industry groups. Several other Members had stressed the need to develop a possible global air transport plan as a strategic document, and to enhance guidance on financing of quality aviation infrastructure, including mechanisms to support operational improvements as described in the Aviation System Block Upgrades (ASBUs). Clarifications and explanations provided by the Secretariat to the queries and comments had been duly noted.

18. In connection with the work of the Air Transport Regulation Panel (ATRP), the Committee had noted that the Fifteenth Meeting of the Air Transport Regulation Panel (ATRP) had been postponed from 22-24 August 2018 to 9-11 April 2019 considering the progress of the examination and development of international agreements by its Working Group. In accordance with the decision made by the Committee during the 213th Session (AT-SD/213-2 refers), the work of the ATRP should aim at implementing Assembly Resolution A39-15 (*Consolidated statement of continuing ICAO policies in the air transport field*), especially Operative Clause 11 of Appendix A, Section I (cf. Doc 10075, p. III-4), with focus on the development of a convention on foreign investment in airlines and an international agreement to facilitate further liberalization of air cargo services.

19. The Representative of Kenya had extended an invitation to all Members and Delegations to attend the ICAO Air Services Negotiation Event (ICAN2018) taking place in Nairobi, Kenya from 10 to 14 December 2018.

Discussion

20. In the absence of comments, the Council noted the ATC's oral report and expressed appreciation to the Representative of Kenya for the invitation she had extended, on behalf of her Government, to all Members and Delegations to attend ICAN2018 (Nairobi, 10-14 December 2018) (cf. State letter EC 2/16.20 – 18/59 dated 24 May 2018).

21. The Council then endorsed the actions carried out to date to implement the A39 resolutions and decisions relating to the economic development of air transport as set forth in the Appendix to C-WP/14744.

Subject No. 42: Technical cooperation

Report on Technical Cooperation Programme Development for 2017 and Update of Administrative and Operational Services Cost (AOSC) Income and Expenditures for 2018

22. The Council considered this subject on the basis of: information paper C-WP/14746, in which the Secretary General reported on the financial and operational performance results, with audited financial figures, of the Technical Cooperation Programme for the year ending 31 December 2017, and on the revised 2018 Programme forecast and AOSC budgetary estimates, including a summary of the projected income and expenditures; and a joint oral report thereon by the Technical Cooperation

Committee (TCC) and the Finance Committee (FIC), which had reviewed the paper in a joint meeting on 1 May 2018.

TCC/FIC oral report

23. In presenting the joint TCC/FIC oral report, the Chairperson of the TCC, the Representative of the United Republic of Tanzania, Mr. R.W. Bokango, noted that the two Committees had been informed that, in 2017, 133 States and 9 organizations had benefitted from the services of ICAO's Technical Cooperation Bureau (TCB). It had been recalled that detailed information on individual projects was provided in the *Annual Report of the Council*.

24. Considering the strength of the AOSC Fund's recent results, the Committees had reiterated their views that a reduction of the overhead rates levied on technical cooperation projects might be warranted. Members had been assured, however, that the AOSC positive results in the last six years had been achieved while maintaining the administrative fees at a minimum, in combination with additional income from other sources.

25. In comparing 2017 results against the projections for 2018, the Committees had paid specific attention to the seemingly inconsistent relationship between Programme implementation volume and AOSC Fund results, in that the higher implementation in 2018 and estimated lower expenditures were not expected to result in a higher income and, consequently, a higher surplus for the year. In this respect, the Secretary of the TCC had clarified that that was due to the fact that the relationship between implementation volume and income was not linear: firstly, because the ratio between capacity building and procurement activities varied in proportion to the total Programme volume; and, secondly, because of the different administrative fees applied to those activities, as the overhead charged to equipment purchases was not based on a fixed rate, but on a sliding scale.

26. Specific attention had also been given to the discrepancy in implementation volume between the geographical regions, as the Americas and Africa regions continued to show higher implementation results than the Asia and Pacific, Europe and the Middle East regions. It had been recognized that, ultimately, the Programme volume in each region was directly dependent on the States' priorities regarding their Civil Aviation Programmes and their necessity to avail themselves of the services that TCB provided. The Members had, however, been reassured of TCB's continued efforts to promote its services equally to all regions. It had nevertheless been requested by the Committees that the Regional Offices be encouraged to fully exercise their enhanced role in further contributing to TCB's outreach.

27. Particular concerns had been raised regarding the relatively small amount received from extra-budgetary sources in support of technical assistance and IPAV projects implemented through TCB. It had been recalled that the Council had agreed (212/8) to the Secretary General's proposal that 50 per cent of the yearly transfer to the TCB Efficiency and Effectiveness Fund not exceeding CAD 125 000 a year be earmarked for the ICAO Programme for Aviation Volunteers (IPAV) Fund and/or technical assistance projects. In this respect, the Committees had recommended that the purpose of the IPAV be conveyed to States and serve as one of ICAO's *No Country Left Behind* (NCLB) vehicles in bridging the gap.

28. In conclusion, and based on the above deliberations, the Committees had invited the Council to request the Secretary General to:

- a) increase the Regional Offices' participation in promoting the services of TCB and identifying potential projects; and

- b) emphasize the importance of, and plan of action for, the IPAV as part of the *No Country Left Behind* (NCLB) initiative.

Discussion

29. In then speaking in his capacity as Council Member, the Representative of the United Republic of Tanzania raised two additional issues for the Council's consideration. The first issue related to amplifying the involvement of the Regional Offices in technical cooperation projects, while the second issue related to the future review of reports on technical assistance by the TCC or some other Committee.

30. With regard to the first issue, the Representative of the United Republic of Tanzania recalled that in its discussions the Council had placed emphasis on strengthening the Regional Offices as they were in close proximity to Member States and were familiar with the challenges being faced in their respective regions. He underscored that Regional Offices were also in a better position to monitor the implementation of technical cooperation projects than TCB at ICAO Headquarters, whose Officers needed to travel to the various regions in order to do so. The Representative of the United Republic of Tanzania thus suggested that the Regional Offices assist TCB and ICAO as a whole in monitoring the implementation of technical cooperation projects in their respective regions in order to enhance the efficiency and effectiveness of the projects' implementation. He stressed that this could also lead to a reduction in TCB's travel costs and that the resultant savings could be used to enhance the Regional Offices.

31. With respect to the second issue, the Representative of the United Republic of Tanzania recalled that TCB was responsible for carrying out not only technical cooperation projects but also certain technical assistance projects. He noted, however, that whereas reports on technical cooperation projects were referred to the TCC for review and subsequent report to the Council, reports on technical assistance projects were not referred to any Committee for review prior to consideration by the Council. In emphasizing the need for a common modality for reporting on technical cooperation and technical assistance projects to the Council, the Representative of the United Republic of Tanzania suggested that reports on technical assistance projects be referred to the TCC or some other Committee for prior review. He underscored that that process would serve to expedite the Council's deliberations.

32. The Representative of Nigeria expressed strong support for increasing the Regional Offices' participation in promoting TCB's services and identifying potential projects, as proposed by the TCC and FIC, and for enhancing the Regional Offices' role in the implementation of technical cooperation projects in their respective regions as proposed by the Representative of the United Republic of Tanzania, for the reasons clearly identified by the Committees in their joint oral report and by the said Representative.

33. The Representative of the United Arab Emirates endorsed the TCC/FIC oral report. In also endorsing the additional comments made by the Representative of the United Republic of Tanzania, she affirmed that his first proposal was justifiable as it would increase the efficiency and effectiveness of the implementation of technical cooperation projects in addition to enabling cost-savings in terms of TCB's travel expenditures. The Representative of the United Arab Emirates suggested that a holistic review be undertaken of the current process for monitoring the implementation of technical cooperation projects, as well as of the resources available in the Regional Offices to assist in such monitoring. Indicating that it was her understanding that there were already Regional Technical Officers responsible for implementation of ICAO's Technical Cooperation Programme in general, she emphasized that it would be very helpful to clarify what their role might be in assisting in the monitoring of the implementation of technical cooperation projects. Noting that there were frequent discussions in the TCC

and the Council regarding the perceived disparity between the various geographical regions in terms of the implementation volume of technical cooperation projects, the Representative of the United Arab Emirates underscored that having the Regional Offices assist in the monitoring of the projects' implementation would serve to promote TCB's services and the identification of potential projects.

34. The Representative of the United Arab Emirates emphasized that, following her suggested holistic review, the resultant process for monitoring the implementation of technical cooperation projects in the regions should be linked to TCB's online platform to enable the Council to follow up on the projects' implementation, as well as on the recipient States' level of satisfaction therewith.

35. In voicing support for the TCC/FIC oral report, the Representative of South Africa also fully endorsed the interventions by the Representatives of the United Republic of Tanzania, Nigeria and the United Arab Emirates, especially with regard to the Committees' proposal to increase the Regional Offices' participation in promoting TCB's services and identifying potential projects. Reiterating his key concern regarding the magnitude of the overall travel budget for the Secretariat at ICAO Headquarters, he affirmed that empowering the Regional Offices to assist in the monitoring of technical cooperation projects in their respective regions would lead to a reduction in TCB's travel costs and thus to a more efficient use of the Organization's financial resources. In expressing appreciation to the Secretary General for the leadership which she had demonstrated in updating the ROM, the Representative of South Africa remarked that it was a good start and underscored the need to continue efforts in that regard.

36. The Representative of Cuba fully supported the TCC/FIC oral report. Reiterating her wholehearted support for the Council's earlier decision (212/8) that 50 per cent of the yearly transfer to the TCB Efficiency and Effectiveness Fund not exceeding CAD 125 000 a year be earmarked for the IPAV Fund and/or technical assistance projects, she suggested that reports be presented to the Council at least once a year on the use of such funds. While commending the proposal by the Representative of the United Republic of Tanzania that Regional Offices assist TCB and ICAO as a whole in the monitoring of technical cooperation projects in their respective regions, the Representative of Cuba also suggested that it be referred to the TCC for a holistic analysis of the pros and cons vis-à-vis TCB and the Regional Offices, and for subsequent report to the Council during its next (215th) session.

37. The Representative of Panama joined previous speakers in fully supporting the said proposal by the Representative of the United Republic of Tanzania. In underscoring the need to strengthen ICAO's Regional Offices, he recalled that, over twenty years ago, when he had been responsible for the development and implementation of technical cooperation projects in Panama, he had always gone through the South American Regional Office (Lima) (SAM). Although the SAM Office had lacked resources, including technological resources, it had effectively coordinated with TCB at ICAO Headquarters and with him regarding Panama's said projects.

38. Emphasizing that TCB's work was of particular importance for SARPs implementation, the Representative of Colombia underscored the need to seek D/TCB's views regarding the process for monitoring the implementation of technical cooperation projects. In agreeing that Regional Offices should play a greater role in that regard, he supported the suggestion made by the Representative of the United Arab Emirates that a holistic review be undertaken of the current monitoring process, as well as of the resources available in the Regional Offices to assist therein. Noting that, in some cases, there had been an increase in the TCB travel costs that were included in the overall cost of technical cooperation projects, the Representative of Colombia stressed the importance of using the recipient States' funds for the projects themselves and of streamlining the monitoring process. He therefore agreed with the Representative of Cuba that the proposal made by the Representative of the United Republic of Tanzania should be referred to the TCC for in-depth consideration and subsequent report to the Council.

39. In thanking the Representative of the United Republic of Tanzania for his said proposal, which he supported, the Representative of Uruguay emphasized that it was in line with the Council's often repeated view that the Regional Offices' role in the implementation of ICAO's Global Plans and the Council's decisions should be enhanced. Affirming that the proposal deserved careful consideration, he also agreed that it should be discussed in-depth by the TCC. The Representative of Uruguay underscored that the new D/TCB would have a very important role to play in the proposed holistic review of the issue of the Regional Offices assisting in the monitoring of technical cooperation projects in their respective regions and of the resources required therefor.

40. The Representative of Ecuador voiced support for the interventions by the Representatives of the United Republic of Tanzania, the United Arab Emirates and South Africa. While agreeing with the Representative of Panama on the need to strengthen the Regional Offices, he stressed that that did not mean that the latter should function independently of ICAO Headquarters. In concurring with the Representatives of Cuba and Uruguay that the proposal made by the Representative of the United Republic of Tanzania should be referred to the TCC for in-depth consideration, he underscored the need to take into account the substantive differences between technical assistance and technical cooperation, as reflected in their Council-approved definitions, and that some Regional Offices had Technical Officers whose functions related to technical assistance and not to technical cooperation.

41. In then drawing attention to paragraph 1.1.1 of Appendix A to the paper relating to technical cooperation project achievements realized in 2017 under the Strategic Objective Safety, the Representative of Ecuador emphasized that descriptions of the achievements in the Caribbean and South American (CAR/SAM) region were too vague and should be more specific. He cited, as examples: sub-paragraph h) "Continued assistance to five States with the provision of expertise in airport certification, ..."; and sub-paragraph j) "Continued assistance to four States in the recruitment of national professionals ...". In also underscoring that such technical cooperation activities should not be carried out in isolation but rather in an integrated manner under an overarching monitoring process, the Representative of Ecuador stressed the need for TCB to take a more holistic approach in planning and implementing technical cooperation projects.

42. Referring to sub-paragraph g) "Delivery of training to 187 participants from 11 States in the Latin American Aviation Regulations (LARs)", the Representative of Ecuador indicated that it was his understanding that there was not a single legislative corpus called LARs; rather, there were harmonized aviation regulations which Latin American States could choose to incorporate into their respective national regulations. He requested that this be taken into account in future reports on Technical Cooperation Programme developments.

43. In lending his support to the proposal made by the Representative of the United Republic of Tanzania, the Representative of Saudi Arabia agreed that it should be referred to the TCC for in-depth consideration. He expressed the hope that the new D/TCB would also holistically review the proposal and present his views thereon to the said Committee at its first meeting of the next session.

44. With regard to the proposal by the TCC and FIC to increase the Regional Offices' participation in promoting the services of TCB and identifying potential projects, the Secretary General recalled that the updated *Regional Office Manual* (ROM) established a procedure between Headquarters and the Regional Offices, as well as between the various Bureaus and Offices at Headquarters vis-à-vis the Regional Offices, to provide quality assurance at the time of development and implementation of technical assistance and technical cooperation projects. She affirmed that with that mechanism now being in place the quality of such projects would be further enhanced.

45. Comments and suggestions made during the discussion were noted, as were the clarifications provided.

46. The Council noted the information provided in C-WP/14746, as well as the TCC/FIC oral report. In taking the action recommended by the two Committees, as amended by the President in light of the discussion, the Council:

- a) requested the Secretary General to increase the Regional Offices' participation in promoting the services of TCB and in identifying potential civil aviation-related projects for TCB implementation;
- b) requested D/TCB to: holistically review the issue of the Regional Offices assisting TCB and ICAO as a whole in monitoring the implementation of technical cooperation projects in their respective regions, and the resources required therefor; determine whether that issue was properly addressed in the updated ROM; and in cooperation and consultation with the Secretary General and under her guidance, report on the outcome of that analysis to the Council, through the TCC, as soon as it was completed, during the next (215th) session, if possible; and
- c) requested the Secretary General to emphasize the importance of, and the plan of action for, the ICAO Programme for Aviation Volunteers (IPAV) as part of ICAO's *No Country Left Behind* (NCLB) initiative.

Subject No. 42.1.1: Technical Assistance Programme

Report on the ICAO Technical Assistance Programme

47. The Council considered the above subject on the basis of: information paper C-WP/14747, whereby the Secretary General presented a consolidated report for the year 2017 on the ICAO Technical Assistance Programme in the fields of aviation safety, air navigation capacity and efficiency, security and facilitation, economic development of air transport and environmental protection, particularly those implementation projects that were supported by the financial contributions to the ICAO Voluntary Funds, contributions in-kind, as well as activities funded by the Regular Programme Budget; and a joint oral report thereon by the ATC and the Committee on Unlawful Interference (UIC), which had reviewed the paper in a joint meeting on 17 May 2018.

ATC/UIC oral report

48. In presenting the joint ATC/UIC oral report, the Chairperson of the UIC, the Representative of France, Mr. P. Bertoux, noted that the Secretariat had provided the Committees with a report on ICAO's Technical Assistance Programme for 2017, which included the types of assistance provided to the Member States and the use of voluntary contributions to fund operations and assistance activities.

49. The Committees had expressed unanimous satisfaction with the consolidated report presented in C-WP/14747 and had noted the importance of underlining the information contained therein when considering the Organization's Regular Programme Budget and Work Programme for the next triennium.

Discussion

50. The Representative of Spain affirmed that C-WP/14747 was important as it consolidated the information on the ICAO Technical Assistance Programme for 2017 in one paper and gave a clear indication of the sources of funding, which should be taken into consideration during the upcoming discussions of the Regular Programme Budget for 2020, 2021 and 2022. He noted that the amount of voluntary contributions that had been used to fund technical assistance activities during 2017, CAD 11 392 000, was almost as much as the amount of Regular Programme Budget funds used therefor, CAD 13 914 000. Recalling the Council's earlier decision (212/8) that 50 per cent of the TCB Efficiency and Effectiveness Fund pursuant to C-DEC 1557, not exceeding CAD 125 000 a year, be earmarked for the IPAV Fund and/or technical assistance projects (cf. C-WP/14555; 210/6), the Representative of Spain underscored that the first Table contained in Appendix A to the paper did not indicate the amount of such funds, if any, that had been used to finance technical assistance projects in 2017. He further emphasized that it would be useful to include in Appendix A the overall balance for each Voluntary Fund instead of only indicating the total amount of voluntary contributions to each Voluntary Fund received in a given year.

51. Referring to the second Table in Appendix A, which indicated the technical assistance budget under the Regular Programme Budget by Bureau/Regional Office, the Representative of Spain observed that technical assistance provided in 2017 by the Air Navigation Bureau (ANB), under the responsibility of D/ANB, relating to the Strategic Objectives *Safety* and *Air Navigation Capacity and Efficiency* had amounted to CAD 3 218 000, and that technical assistance provided by the Air Transport Bureau (ATB) under the responsibility of D/ATB, relating to the Strategic Objectives *Security and Facilitation*, *Economic Development of Air Transport* and *Environmental Protection* had amounted to CAD 2 324 000, with the Regional Offices having provided technical assistance, under the responsibility of their respective Regional Directors, relating to all Strategic Objectives in the amount of CAD 8 371 000. He stressed that in implementing the decision taken by the Council under the previous item on ICAO's Technical Cooperation Programme, it was necessary to take into consideration how ICAO's technical cooperation and technical assistance activities dovetailed, as well as how the Organization's Voluntary Funds could be managed in a harmonious way and who was responsible for their management.

52. In highlighting that only CAD 13 914 000 of the total 2017 Regular Programme Budget allocations for technical assistance of CAD 14 957 000 had been expended, the Representative of Spain enquired why the balance, CAD 1 043 000, had not been spent on technical assistance activities. The Secretary General indicated that she would provide clarification to the Representative after the meeting, following consultation with the Finance Branch (FIN) and Strategic Planning, Coordination and Partnership Office (SPCP).

53. Drawing attention to paragraph 3.6.2 of the paper, the Representative of the United Republic of Tanzania enquired why no contributions had been made to the Voluntary Air Transport Fund (TRAF) since the first and only contribution thereto, made in 2014 by the Government of the Dominican Republic (USD 3 000). Noting that some other ICAO Voluntary Funds were also dormant, he also queried whether there was any plan to address the situation.

54. The Secretary General indicated that it was her understanding that the TRAF had been promoted in a similar manner to the Organization's other Voluntary Funds. However, as no contributions had been made to the TRAF since 2014, she considered that it might be necessary for the Secretariat to increase its efforts and to approach States with specific projects which they might wish to fund under the TRAF.

55. Recalling that for the last couple of years his State had provided USD 800 000 in yearly voluntary contributions to the AVSEC Fund and had received a report on how those contributions had been expended, the Representative of the United States highlighted that some had been used to fund Aviation Security Implementation Plan (ASIP) activities in six African States (Cameroon, Chad, the Democratic Republic of the Congo, Gabon, Guinea and Malawi), which he considered to be very beneficial. He underscored, however, that as indicated in the 2017 report provided to the United States, USD 600 000 of its voluntary contribution of USD 800 000 for that year had been used to pay the salaries of certain AVSEC staff as there had apparently not been sufficient funds therefor in the Regular Programme Budget for the current triennium. The Representative of the United States noted, from Appendix B, paragraph 3, of C-WP/14747, that five aviation security-related positions at ICAO Headquarters (four Professional and one General Service) and three aviation security-related Professional positions at the ICAO Regional Offices were funded through voluntary contributions. Averring that that was a significant number of positions, he expressed the hope that the requisite voluntary contributions would continue to be received by the Organization and indicated that the United States would continue to do its best to provide some. The Representative of the United States enquired whether the said eight positions were included in the Regular Programme Budget and whether there were other positions throughout the Secretariat that were funded purely through voluntary contributions.

56. The Secretary General clarified that approximately half of the Organization's resources dedicated to aviation security came from voluntary contributions in the form of both financial resources and human resources (secondes). In noting that the progressive integration of aviation security activities into the Regular Programme Budget which had commenced in 2000 was still ongoing, she underscored that it was consequently very important for ICAO to continue to receive voluntary contributions to the AVSEC Fund, such as those received from the Government of the United States. The Secretary General indicated that in addition to the said eight aviation security-related positions at ICAO Headquarters and the Regional Offices that were funded through voluntary contributions, some facilitation-related positions, such as those related to the Machine Readable Travel Documents (MRTD) and the Advance Passenger Information system (API), were mainly funded through the Ancillary Revenue Generation Fund (ARGF) and not through the Regular Programme Budget. She emphasized the need to carefully consider the matter and to identify the Organization's core functions for the coming years with a view to securing funding for the related positions in the Regular Programme Budget for 2020, 2021 and 2022.

57. Agreeing, the Representative of the United States stressed that ICAO would not wish to lose the said aviation security-related positions currently funded through voluntary contributions given that aviation security was becoming increasingly important worldwide.

58. Referring to the issue raised by the Representative of the United Republic of Tanzania under the previous item, the Secretary General clarified that in order to facilitate the Council's deliberations, there would, in future, be: a single report consolidating all of the Organization's technical assistance activities and major projects carried out in the various fields under the respective Strategic Objectives; and a separate results-driven report on voluntary contributions that would be aligned with the *ICAO Resource Mobilization Policy*. The Council agreed to leave it to the President to decide on the appropriate Committee to which each of those reports should be referred for consideration and report to the Council.

59. Note was taken of the comments and suggestions made during the discussion, as well as of the clarifications provided.

60. Having completed its consideration of this subject, the Council noted information paper C-WP/14747. In also noting the ATC/UIC oral report thereon, the Council joined the Committees in expressing unanimous satisfaction with the consolidated report presented in C-WP/14747 and noted the

importance of taking into account the information on the ICAO Technical Assistance Programme contained therein when considering the Regular Programme Budget and Work Programme for the next triennium.

Subject No. 24.3: Action on Assembly resolutions and decisions

**Mid-triennial review of implementation of resolutions and decisions of the
39th Session of the Assembly – *Security and Facilitation***

61. The Council considered: information paper C-WP/14741, whereby the Secretary General presented a mid-triennial report on the progress made, as at April 2018, in the implementation of A39 resolutions and decisions relating to security and facilitation, which it had reviewed previously (210/6); and a joint oral report thereon by the ATC and the UIC, which had considered the paper at a joint meeting on 17 May 2018.

ATC/UIC oral report

62. In presenting the joint ATC/UIC oral report, the Chairperson of the UIC, the Representative of France, Mr. P. Bertoux, indicated that the Committees had noted with satisfaction the status of action items as indicated in C-WP/14741.

Discussion

63. In the absence of comments, the Council noted the joint ATC/UIC oral report and endorsed the actions carried out to date to implement the A39 security- and facilitation-related resolutions and decisions as set forth in the Appendix to C-WP/14741.

Subject No. 52.1: Universal Security Audit Programme

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

64. The Council had for consideration: information paper C-WP/14761, whereby the Secretary General provided updated information on the overall implementation of the USAP-CMA since the 211th Session (cf. C-WP/14594), including on the auditing of Standards introduced or revised under Amendment 16 to Annex 17 – *Security*, which would become applicable on 16 November 2018 and, pursuant to its earlier request (211/4), information on the evolution of the effective implementation (EI) of the eight critical elements (CEs) of a State's aviation security oversight system over time; and an oral report thereon by the UIC, which had reviewed the paper at its First Meeting of the current session on 17 May 2018.

UIC oral report

65. In presenting the UIC's oral report, the Chairperson, the Representative of France, Mr. P. Bertoux, indicated that the Committee had noted the report on the USAP-CMA's overall implementation contained in the said paper.

Discussion

66. In the absence of comments, the Council noted information paper C-WP/14761, as well as the UIC's oral report thereon.

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

Convening of a second High-level Conference on Aviation Security (HLCAS/2)

67. The Council considered: C-WP/14743, in which the Secretary General presented a proposal to convene a two-day second High-level Conference on Aviation Security (HLCAS/2), as well as an Agenda which, further to its request (213/8), had been developed with the assistance of the Aviation Security Panel (AVSECP) and included specific deliverables and concrete outcomes for each Agenda item; and an oral report thereon by the UIC, which had reviewed the paper at its First Meeting of the current session on 17 May 2018.

UIC oral report

68. In presenting the UIC's oral report, the Chairperson, the Representative of France, Mr. P. Bertoux, indicated that during its review of the draft HLCAS/2 Agenda presented in the Appendix to C-WP/14743 the Committee had endorsed the proposed Agenda items with some minor changes, including suggestions to the language versions. A revised Agenda in the English language which incorporated some minor changes suggested by the Committee was attached to the oral report (available on the Council's secure website at <https://portal.icao.int/council/Pages/meeting.aspx?session=214>).

69. As requested by the UIC, the Secretariat had provided an explanation on cooperation between ICAO and other United Nations (UN) organizations in the area of counter-terrorism. Fighting terrorism was part of global action coordinated by the UN. ICAO had an important role to play in that as it provided counter-terrorism tools that were used by its Member States. That included certain provisions in Annex 9 – *Facilitation* dealing with traveller identity and border control that would facilitate the passage of legitimate passengers.

70. Regarding the issue of cybersecurity, the UIC had been informed that AN-Conf/13 (Montréal, 9-19 October 2018) would focus on ensuring that System Wide Information Management (SWIM) systems were implemented, while HLCAS/2 would focus on ICAO's cybersecurity strategy for civil aviation. The Committee had been assured that the said two events would complement each other, and that cybersecurity as a whole would be handled in a consistent manner.

71. The UIC had agreed to recommend that the Council approve the convening of HLCAS/2 in Montréal from 29 to 30 November 2018, and the revised Agenda attached to the oral report, taking into account the comments made by the Committee.

Discussion

72. Welcoming the proposed revised Agenda for HLCAS/2, the Representative of the United Kingdom underscored that the Conference offered a good opportunity to highlight the good work done by ICAO in the aviation security field in the run-up to the 40th Session of the Assembly in September/October 2019. In observing that the Agenda rightly placed importance on the Global Aviation Security Plan (GASeP) (cf. Agenda Item 3), he underscored the need to maintain the momentum with regard to the Plan's effective implementation. Noting that there were other aviation security risks that

should also be highlighted, the Representative of the United Kingdom indicated that the Agenda also rightly placed emphasis on cybersecurity (cf. Agenda Item 2.4), an issue that was also being considered by the ANC. He stressed the need to ensure that more global action was taken to combat the insider threat (cf. Agenda item 1.2) and that the security culture was improved in all States and relevant organizations (cf. Agenda item 2.1).

73. With regard to the USAP-CMA, considered by the Council under the previous item, the Representative of the United Kingdom remarked that the HLCAS/2 would also provide the opportunity to discuss, alongside the GASep, how more focus could be placed not only on the establishment by States of the necessary legal framework and organizational structures but also on their operational compliance with ICAO's aviation security-related Standards and Recommended Practices (SARPs). He underscored that that would also build momentum in the lead-up to the next Assembly, which would offer the opportunity to showcase the significant progress made in the aviation security field during the current triennium as a result of ICAO's leadership and States' strongly united efforts.

74. Voicing appreciation for the good efforts made by the Secretariat and the AVSECP to consolidate the HLCAS/2 Agenda and to make it more substantive through the identification of specific deliverables and outcomes, the Representative of Spain affirmed that the work of the Conference would be facilitated as a result. In reiterating the importance of taking into consideration the issue of facilitation when addressing aviation security-related matters, he cited, as an example, the Council's adoption of Annex 9 Standard 9.5 relating to the establishment of an API system, which was essential to combatting terrorism and which was the result of an initiative undertaken in the area of facilitation and not aviation security. The Representative of Spain was thus pleased to note that there was at least one Agenda item relating to facilitation, Agenda item 4.2: *Security-related provisions of Annex 9 (Facilitation)*. In then referring to Agenda item 4, paragraph e) "*national and international initiatives to support UN counter-terrorism efforts*", the Representative of Spain suggested that it be amended to reflect that it related to initiatives in the aviation field.

75. Noting, with satisfaction, that the issue of cybersecurity would be addressed at both AN-Conf/13 and HLCAS/2, the Representative of Spain requested that the Council be informed prior to AN-Conf/13 how the envisaged complementary work thereon would be carried out at those two events.

76. The Representative of South Africa endorsed the Representative of Spain's intervention.

77. In response to the point raised regarding Agenda item 4, paragraph e), the Secretary General suggested, and the Council agreed, that it be amended to read: "*national and international initiatives **on aviation security and facilitation** to support UN counter-terrorism efforts*" (new text appears in bold).

78. To a query by the Representative of South Africa relating to Agenda item 2, paragraph c) and the emerging issue of chemical, biological and radiological (CBR) attacks, the Deputy Director, Aviation Security and Facilitation (DD/ASF) clarified that such attacks could be carried out against the public at airports and on board aircraft. He underscored that Annex 17 (*Security*) already contained a number of measures to address that threat of CBR attacks, and that the *Aviation Security Manual* (Doc 8973 Restricted) was in the process of being updated by both security and safety experts to also address it.

79. The Representative of South Africa suggested that, prior to HLCAS/2, the Council be informed, through an informal briefing or some other means, of the potential usage of CBR agents against airports and aircraft and the involvement of ICAO's Aviation Medicine Section (MED) in addressing that threat in a holistic manner.

80. It was noted, in this regard, that the Secretary General would provide Representatives with a briefing note on the emerging issue of CBR attacks at airports and on board aircraft which would explain the concerns and outline the measures being taken to holistically address the CBR threat.

81. The comments and suggestions made during the discussion were noted, as were clarifications provided.

82. In then noting the UIC's oral report, the Council took the actions recommended by the Committee and:

- a) agreed that HLCAS/2 be held at ICAO Headquarters in Montréal from 29-30 November 2018, immediately following the Second Global Aviation Security Symposium 2018 (AVSEC2018) (Montréal, 27-28 November 2018);
- b) noted that the Conference would meet as one body and agreed that translation and interpretation services be provided in all six ICAO languages; and
- c) approved the revised Agenda for HLCAS/2 in the English language attached to the UIC's oral report, subject to the amendment recorded in paragraph 77 above and on the understanding that the other language versions of the Agenda would be aligned therewith.

**Report on the progress achieved in relation to developing the
strategy on cybersecurity and the Trust Framework**

83. The Council had for consideration: information paper C-WP/14762, in which the Secretary General reported on the outcomes of the first two meetings of the Secretariat Study Group on Cybersecurity (SSGC) held in Montréal on 29 August 2017 and 10 January 2018, as well as on relevant outcomes of the Twenty-Ninth Meeting of the AVSECP, outlined ICAO work towards the development of a Trust Framework, and set forth conclusions; and an oral report thereon by the UIC, which had reviewed the paper at its First Meeting of the current session on 17 May 2018.

UIC oral report

84. In presenting the UIC's oral report, the Chairperson, the Representative of France, Mr. P. Bertoux, indicated that the Committee had taken note of the information provided by the Secretariat regarding the ICAO Europe, Middle East and Africa (EMEA) Cybersecurity in Civil Aviation Summit that had been held in Bucharest from 7-9 May 2018, gratefully acknowledging Romania for hosting such a high-level forum. While a report on the Summit had been still under preparation, the Secretariat had provided some highlights of the meeting, which had focused on translating applicable cybersecurity-related resolutions such as the Dubai Declaration on Cybersecurity of 2017 into actions.

85. The UIC had also been informed that following the Summit the SSGC had met in Bucharest from 9-10 May 2018, which had allowed a constructive exchange of information and views between its Members, as well as the accomplishment of much work.

86. An informal briefing on the Trust Framework had been provided to Council Representatives during the previous session on 13 March 2018, and the UIC had received a short update thereon. Subsequent updates on the Trust Framework would be integrated in the reports to be submitted to the Committee every session.

87. In expressing unanimous satisfaction with the report presented, the UIC had agreed to a suggestion of a Committee Member that future updates should also outline the next steps to be taken with regard to the Strategy on Cybersecurity and Trust Framework. In that context, it had been recalled that the UIC had earlier considered C-WP/14742 Restricted [*Review of the Report of the Twenty-Ninth Meeting of the Aviation Security Panel (AVSECP/29)*], when it had discussed on the way forward regarding the creation of a Cyber Panel, including a feasibility study on the subject to be presented by the Secretariat in due course to the Committee and the Council, while not impeding the completion of the SSGC's work.

Discussion

88. The Representative of Spain indicated that it was his understanding that the said future updates would be provided not only to the UIC but also to other relevant bodies, notably the ANC, since the Strategy on Cybersecurity and Trust Framework had elements relating not only to aviation security but also to airworthiness, inter alia. He was pleased to note that once the Strategy on Cybersecurity had been clearly defined the Council would be able to take a decision regarding the creation of a Cyber Panel. The Representative of Spain remarked, in this context, that although he was, at present, satisfied with the existing structure, namely the SSGC, he considered that it was preliminary in nature and could be formalized as a Cyber Panel whenever the Council deemed that to be opportune. He would be following that matter with interest.

89. Having completed its consideration of this subject, the Council noted information paper C-WP/14762, as well as the UIC's oral report thereon.

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

**Report on the performance of revenue-generating activities in 2017,
with audited financial figures of the Ancillary Revenue Generation Fund (ARGF)**

90. The Council considered this subject on the basis of: information paper C-WP/14750, in which the Secretary General reported on the financial and operational results, with audited financial figures, of the ARGF for 2017, which showed a net surplus of CAD 2 305 000, and set forth a detailed breakdown of the ARGF's actual expenses and information on human resources, including posts and consultants funded by the ARGF; and an oral report thereon by the FIC, which had reviewed the paper at its Second Meeting of the current session on 15 May 2018.

FIC oral report

91. In presenting the FIC's oral report, the Vice-Chairperson, the Representative of China, Mr. Shengjun Yang, indicated that the Committee had noted, with satisfaction, that a net surplus of CAD 2 305 000 had been recorded in 2017, and that that surplus had been supported by: a) a favourable exchange rate; b) the implementation of the Business Plan; and c) strict cost control measures by the Secretariat.

92. During the FIC's deliberations, it had been clarified: that the revenue generated by the favourable exchange rate between the American and Canadian dollars had been roughly equivalent to the

CAD 2 305 000 net ARGF surplus; and that that net surplus was over and above the ARGF contributions to the Regular Programme Budget. The current surplus would be focused on addressing investments and capacity building for future revenue streams.

93. The Secretariat had provided an update on the work being undertaken to address declining print publications revenues, which were expected to continue and could substantially increase if ICAO publications were provided for free to the public under open access policies. The Secretariat had advised that, pursuant to the decision of the 39th Session of the Assembly, a review of options for addressing free ICAO publications would be presented at the next (215th) session of the Council.

94. FIC Members had discussed reporting requirements for the ARGF surplus. It had been highlighted that further discussion on the ARGF and other funding sources would take place during the Budget deliberations in the next session.

Discussion

95. Responding to a query by the Representative of Spain, the Director, Bureau of Administration and Services (D/ADB) indicated that the issue of the possible uses of the ARGF net surplus for 2017 (CAD 2 305 000) was still under discussion by the Revenue Generation Governance Board (RGGB) and that the Council would be informed in due course of any proposals in that regard.

96. The Representative of Mexico suggested that the said ARGF net surplus for 2017 be placed in a reserve so that it could be considered during the upcoming discussions of the draft Regular Programme Budget for the 2020-2021-2022 triennium.

97. Observing, from paragraph 2.4 f) and Appendix A of the paper, that the 2017 ARGF budgeted target for new ICAO products had been missed by some 50 per cent, the Representative of Canada sought clarification.

98. Recalling that the Secretariat had launched a few new ICAO saleable publications in 2017, the Chief, Revenue and Product Management Section (C/RPM) indicated that one of the reasons why the said ARGF budgeted target for new products had not been met was the time lag between the introduction of the said new publications into the market and their uptake, which was always difficult to anticipate. She underscored that there had been some very positive ARGF results in 2018 arising from the sale of some of the new publications, as well as from the convening of some ICAO workshops.

99. The above comments and suggestion were noted, as were the clarifications provided.

100. Completing its consideration of this subject, the Council noted information paper C-WP/14750, as well as the FIC's oral report thereon.

Subject No. 11.3: Sales, pricing and agency arrangements

Subject No. 20.3: Production, distribution and sale of ICAO publications

Report on publications for 2017

101. The Council had for consideration: information paper C-WP/14755, in which the Secretary General reported on the status of the publications programme for 2017, including translation for deliberative bodies, meetings and programme activities, saleable publications, distribution, printing, and electronic publishing; and an oral report thereon by the FIC, which had reviewed the paper at its Second Meeting of the current session on 15 May 2018.

FIC oral report

102. In presenting the FIC's oral report, the Vice-Chairperson, the Representative of China, Mr. Shengjun Yang, indicated that the said Report highlighted, inter alia: that translation demand and output continued to exceed capacity; that Programme Support activities had increased significantly; that revenue from the sales of publications had increased moderately; and that the new Dangerous Goods Agreement with the International Air Transport Association (IATA) had led to a significant increase in royalties.

103. FIC Members had noted, with satisfaction, that translation activities had been redistributed to focus on Programme Support activities. The Secretariat had confirmed that Programme Support was emphasized for translation activities, as had been requested by the Council, and that that trend would continue going forward.

104. The Committee had also noted that the Secretariat would submit, at the 215th Session of the Council, a report on the analysis of the proposal presented by Canada in A39-WP/369 for the provision of free web access to ICAO documents, as requested by the 39th Session of the Assembly (cf. A39-WP/501 Revision No. 1, paragraph 28.14).

Discussion

105. Referring to Canada's above-mentioned proposal, the Representative of Mexico cautioned against giving a blank cheque for free web access to ICAO documents and emphasized the need to ensure that such access was granted exclusively to Member States' Civil Aviation Authorities (CAAs) unless there was a compelling reason to also grant it to another competent entity due to the subject matter.

106. Recalling that Canada had proposed providing access free of charge to ICAO's safety-related SARPs and associated documents [e.g. Global Aviation Safety Plan (GASP), Global Air Navigation Plan (GANP), manuals and circulars] with a view to enhancing States' understanding and implementation of the said SARPs, the Representative of Colombia averred that such free access should thus not be restricted to CAAs and should instead also be granted to relevant non-profit organizations. He underscored, however, that it would be necessary for the Secretariat to seek opportunities for additional revenue generation in order to compensate for any loss of revenue arising therefrom, as it had done when the Council had previously decided (206/6) to provide Member States with free access to up to 25 electronic copies of the five top-selling ICAO publications.

107. Note was taken of these suggestions.

108. Having completed its consideration of this subject, the Council noted information paper C-WP/14755, as well as the FIC's oral report thereon.

Subject No. 4: Appointment of the Secretary General**Secretary General's end-of-term report to the Council**

109. Tabled next for the Council's consideration was information paper C-WP/14751, whereby the Secretary General, pursuant to the reporting expectations in her Charter Letter from the President of the Council, on behalf of the Council (cf. PRES OBA/2399 dated 2 April 2015 and C-WP/14312 – Response from the Secretary General to the Charter Letter), presented her comprehensive end-of-term report, which served as a state-of-affairs document. The report highlighted the significant progress made during the past three years and the successful 39th Session of the Assembly, and

elaborated on challenges to be addressed in the future. It was complemented with an update of the Corporate Risk Register, a programmatic status report, and the rolling Council decisions for action (CDFA) status report, all of which were available in the Corporate Management and Reporting Tool (CMRT).

110. In introducing the paper, the Secretary General underscored that safety had been and always would be ICAO's *raison d'être*. Much had been done over the past three years to improve upon the ICAO Global Plans as an important tool to facilitate implementation of ICAO SARPs. The GASP and the GANP had been endorsed by the 39th Session of the Assembly. Work had been progressed to improve those Plans and the next iterations thereof were well advanced. The new versions of the GASP and the GANP would take a more holistic approach towards the aviation systems as they would provide a roadmap to increase air navigation capacity and efficiency to accommodate rapid growth yet, at the same time, mitigate the risks associated with the operation of more aircraft within a fixed amount of airspace.

111. The Secretary General highlighted that the GAsEP, the first of its kind, had been successfully developed by the Secretariat in concert with both Member States and aviation industry, and had been approved by the Council in November 2017 (212/7). The Secretariat was actively seeking the inputs of Member States through GAsEP regional conferences and those inputs would figure prominently in the consideration of the GAsEP during the upcoming High-level Conference on Aviation Security (HLCAS/2).

112. The Secretary General recalled that in September 2016 she had briefed the United Nations Security Council on policy developments and cooperation initiatives to mitigate terrorist threats to international civil aviation. She had stressed the importance of aviation security and the synergies gained when political will was strengthened, emphasizing ICAO's role and leadership in that field. Those efforts had culminated with the adoption by the United Nations Security Council of Resolution 2309 in September 2016, its first resolution to broadly address international civil aviation security.

113. The Secretary General remarked that sustainable growth of civil aviation required environmentally sound strategies. She underscored that intense negotiations over the past years, and ICAO's efforts to facilitate policy and technical discussions, and undertake outreach activities, had culminated in the landmark agreement on the Global Market-based Measure Scheme during the 39th Session of the Assembly. To date, marked progress had been made on each element of the basket of measures for environmental protection, along with the adoption of the first-ever CO₂ emissions certification Standard for airplanes.

114. The Secretary General emphasized that the draft CORSIA SARPs and implementation elements, while developed within a very short and tight timeframe, had still resulted in the successful submission to the Council, which it would be considering during the current session.

115. The Secretary General noted that the Organization had continued to facilitate liberalization and modernization of the regulatory framework for international air transport, in line with the long-term vision for international air transport liberalization adopted by the Council in 2015. A work plan had been established to carry out those tasks.

116. The Secretary General underscored that the establishment of the Strategic Planning, Coordination and Partnership Office (SPCP) in 2017 was serving to better support strategic planning and focus coordinated efforts in the Headquarters and Regional Offices, as well as to build partnerships and mobilize resources needed to implement improvements in the global aviation systems. Recognizing that technical assistance was a major component of ICAO's *No Country Left Behind* (NCLB) initiative, she had established an internal coordination mechanism designed to avoid duplication of efforts within the

Organization and enhance the efficient delivery, quality, and effectiveness of assistance activities. The coordination of technical assistance and technical cooperation activities had also been strengthened between Headquarters and the Regional Offices by clearly identifying the existing roles and responsibilities, through rewriting the ROM.

117. The Secretary General noted that the Regional Offices had been strengthened as a result of the allocation of 15 new posts to the Offices. However, in building ICAO's regional presence, it had been critical to not only build the number of staff in the regions, but also to complement that measure with closer collaboration between Headquarters and the Regional Offices in their work with Member States. ICAO's enhanced implementation support, along with other functions, had improved the Organization's ability to better meet the needs of its Member States.

118. During the past three years, ICAO had had to respond to several emerging issues that were of concern to its Member States. The rapid expansion of new technology in aviation, such as drone operations and remotely-piloted aircraft systems, was a growing challenge for existing civil aviation operations. In accordance with the decision of the 39th Session of the Assembly, ICAO had expanded its Work Programme to include all unmanned aircraft, including drones. ICAO was developing guidance material that was intended to support the regulators in developing and implementing national regulations and procedures in respect of drone operations. Cybersecurity was another emerging issue. The Secretariat had established a senior management group chaired by the Secretary General to address cross-cutting safety and security issues, including cybersecurity and resilience. The Secretariat continued its work on the development of a strategy on cybersecurity ahead of the 40th Session of the Assembly.

119. The Secretary General emphasized that improving the efficiency of ICAO using a results-based management approach had been one of her focus areas. Immediately after taking office, she had initiated a results-based management budget planning process and the first "Business Plan" of its kind supported by corporate performance management. The Business Plan included yearly Operating Plans for all Headquarters Bureaus and Offices, as well as the Regional Offices. The CMRT had become operational in 2017 and had been designed as an integrated tool to track both internal performance, as well as the progress of the Organization in achieving the Strategic Objectives and Supporting Implementation Strategies. The CMRT had become an essential tool for the Secretariat to manage the Operating Plans, as well as to a means to meet the expectations of the Council for transparent and accountable reporting.

120. With the intention of improving effectiveness and efficiency, the Secretary General had embarked on the path of automation and innovation within the Organization where possible. She was committed to taking a data-driven approach to all aspects of the work of ICAO by building a capacity to analyze increasingly large and complex data. Enhancing capabilities to use high quality aviation data was critical for States' decision-making and operational improvement and to measure and predict, to the extent possible, the various aspects of civil aviation development.

121. As she had stated in her response to the Charter Letter from the President of the Council, on behalf of the Council, dated 2 April 2015 (cf. PRES OBA/2399 and C-WP/14312), the Secretary General was committed to continuously improving the effectiveness and quality of the deliverables of technical cooperation projects guided by the principles of transparency, relevance, and key performance indicators (KPIs) for enhanced efficiency. She had also initiated the development of a Business Process Management System (BPMS) that would use modern information technologies to streamline the process of project development and implementation of technical cooperation projects. The BPMS would facilitate greater stakeholder engagement and improve transparency. It was expected to be operational by the end of 2018.

122. The Secretary General underscored that while ICAO had made significant progress in the areas highlighted above, it also faced challenges to address in the future. With the doubling of air traffic by 2030 and the growing complexities in the use of airspace with the emergence of new technologies, ICAO would need to continue enhancing efficiency and effectiveness to support its Member States with the timely development of appropriate Standards and guidance material. At the same time, the Organization would need to strengthen its role in implementation support to its Member States in the safety and security fields and it would need to do so within the constrained resources of ICAO.

123. As the Secretary General embarked on her next three-year term, she recognized the impressive work of the Secretariat in cooperation with the Council during her first term. She viewed this work as a joint endeavour in the service of the betterment of international civil aviation and the world. The Secretary General looked forward to working with the Council and its President to ensure that aviation met the vision of the Chicago Convention and the expectations of ICAO Member States through its contributions to global well-being. She affirmed that it was an honour for her to have this opportunity to continue leading the ICAO Secretariat and working with the Council. She looked forward to their continual cooperation and partnership.

124. It was understood that a copy of the Secretary General's introduction of C-WP/14751 would be circulated to Representatives and posted on the Council's secure website.

Discussion

125. Expressing appreciation for the Secretary General's comprehensive and detailed presentation of C-WP/14751, the Representative of Japan indicated that the latter was the basis for his State's cooperation with the entire ICAO Secretariat for the remainder of the Secretary General's first term. Noting that it was stated in paragraph 2.3 of the report that ICAO's mission to the Democratic People's Republic of Korea (DPRK) (Pyongyang, 7-10 May 2018) had "enhanced the safety of flight operations in the region", he indicated that it was difficult for him, and for his State, to acknowledge that that was the case without a detailed explanation, given the Council's past deliberations and decisions regarding the issue of the DPRK's unannounced missile launches over or near international air routes and its disregard of fundamental requirements.

126. The Secretary General clarified that detailed information regarding the said mission undertaken by D/ANB and the ICAO Regional Director, Asia and Pacific Office (Bangkok) (ICAORD, APAC) would be provided in the oral report which she would present to the Council, later in the current session, on the ongoing developments to address risks posed by the said unannounced missile launches by the DPRK, as well as the response by ICAO to the Council's earlier decision (212/1) regarding the significant concern to the safety of international civil aviation which they had caused, and future steps. In underscoring that the mission had been very successful, she noted that a range of aviation safety and air navigation issues had been discussed with the Director General, Deputy Director General and other senior officials of the DPRK General Administration of Civil Aviation (GACA) and that some agreements had been reached which would enhance the safety of flight operations in the region.

127. In thanking the Secretary General for her excellent detailed end-of-term report, the Representative of Nigeria enquired as to the number of partnerships between ICAO and external parties which had been developed by the SPCP since its establishment (209/7) and sought information regarding other activities undertaken by the SPCP which contributed towards the improvement of the Organization.

128. The Head, SPCP (H/SPCP) noted that his Office, in coordination with the ICAO Regional Offices, was working very closely with multiple UN entities to further expand their cooperation and their partnerships with ICAO, including in the area of resource mobilization. He underscored that, since the

establishment of SPCP in 2017, five new partnerships between ICAO and external parties had been concluded, all of which related to the funding of ICAO technical assistance projects. H/SPCP also highlighted his Office's work with the World Bank through the latter's Sustainable Mobility for All (Sum4All) initiative, whereby a consortium of transport stakeholders were acting collectively to implement the UN Sustainable Development Goals (SDGs) and transform the transport sector.

129. Supplementing H/SPCP's intervention, the Secretary General recalled that SPCP comprised two Sections: the Strategic Planning and Regional Affairs Coordination Section (PRC), which was responsible for strategic planning and the coordination between Headquarters and the Regional Offices and for ensuring that the corporate performance management and Business Plan were duly implemented across the Secretariat; and the Partnerships and Resource Mobilization Section (PRM), which was responsible for developing and fostering partnerships, as well as for advocating with Member States, the UN system, international and regional organizations, financial institutions, the donor community and the private sector the benefits of aviation and the need to invest in aviation development (cf. C-WP/14541, paragraph 2.2.3; 209/7).

130. The Secretary General stressed the key role played by the PRM/SPCP in gaining synergies and efficiencies through enhanced coordination with all Bureaus and Regional Offices in the development of partnerships between ICAO and external parties. She highlighted, in this context, the following agreements:

- the Agreement on Economic and Technical Cooperation between ICAO and the Government of China, signed at Beijing on 15 May 2017, wherein the latter pledged to give a grant of USD 4 million to the Organization for projects relating to the safety, security and the sustainable development of air transport in support of ICAO's NCLB initiative; the first phase thereof related to the development and delivery of a Civil Aviation Authority Senior and Middle Managers Training Course (CAA SMMTC);
- the Supplementary Arrangement (Annex 2) to the Memorandum of Understanding between ICAO and the Government of Singapore dated 9 February 2014 on the ICAO-Singapore Aviation Academy (SAA) Directors General of Civil Aviation (DGCAs) Programme on Aviation Security, signed at Singapore on 12 July 2017;
- the Technical Arrangement between ICAO and the United Kingdom Civil Aviation Authority on training programmes for aviation personnel from developing countries, signed in Montréal on 14 December 2017; and
- the Agreement between ICAO and the Government of France relating to the modalities of cooperation in the field of civil aviation, signed at Montréal on 9 January 2018.

131. In addition, the Secretary General highlighted the voluntary contributions made by the European Union (EU) and Sweden to ICAO's Environment Fund in 2017.

132. The Secretary General also underscored the key role played by the PRC/SPCP: in enhancing not only strategic planning but also the coordination between Headquarters and the Regional Offices for the conduct of ICAO programme activities based on the ROM, which had been recently updated under the SPCP's leadership; and in developing and operationalizing the CMRT.

133. The Secretary General affirmed that since she had, with the Council's approval, established the SPCP, it had met her expectations, and those of the Council, in terms of the synergies and efficiencies gained to make ICAO more strategic, coordinated and efficient in delivering services to its Member States. In emphasizing that it was very important to further develop the said culture of coordination and harmonization vis-à-vis the Organization's programme activities in order to function as

One ICAO in serving Member States, she underscored that the SPCP would continue to play a key role in that regard.

134. The Representative of Mexico expressed gratitude for the Secretary's General detailed end-of-term report and explanations. While noting, with satisfaction, from paragraph 2.28 of the report, that ICAO had successfully sensitized donors, in both the public and private sectors, to invest more in civil aviation and to support ICAO programme activities for Member States' implementation of ICAO SARPs, and that the Secretary General had promoted such investment at many pivotal international forums, he suggested that in future reports such achievements be documented to enable the Council to determine how the situation was evolving.

135. Noting that paragraph 2.29 indicated that ICAO had strengthened its partnerships with UN agencies with the goal of promoting the importance of aviation as an economic enabler, the Representative of Mexico further suggested that to improve the effectiveness of both current and future partnerships, a formal procedure be established whereby the Secretariat would provide justification for the type of partnership, and set forth its objectives, deliverables, and key performance indicators for measuring progress. He underscored that such a procedure would also enable the Council to determine how well each partnership was functioning and whether it was actually contributing to ICAO's work.

136. With regard to paragraph 2.28, the Secretary General stressed that it was essential for ICAO to promote civil aviation on the world stage in order to enhance political awareness of its importance to Member States' socio-economic development, as well as political will to take the necessary action. Noting that such political awareness and political will had been enhanced over the past three years, she indicated that a report thereon could be provided to the Council in due course.

137. With respect to paragraph 2.29, the Secretary General recalled that the Council had previously discussed, on a couple of occasions, the provision of assistance to Pacific Island States and Caribbean States, which were considered to be among the Small Island Developing States (SIDS) referred to therein. She underscored that SPCP cooperated closely with the Asia and Pacific Regional Office (Bangkok) (APAC) and the North American, Central American and Caribbean Regional Office (Mexico City) (NACC), respectively, in order to mobilize the political will of those SIDS with a view to ensuring that they had appropriate investment in their aviation infrastructure, as well as in their human resources, and thus enhancing the lifelines for their economic development and social progress. The Secretary General believed that ICAO's actions were very much appreciated by the SIDS concerned, as well as by the UN as a whole, which viewed ICAO's leadership in actively establishing partnerships with SIDS as providing substantial support to the UN's *2030 Agenda for Sustainable Development* in terms of assisting those States to further their socio-economic development using civil aviation as a tool. She indicated that, if the Council so required, more detailed information thereon could be provided in due course in order for the Council to further enhance ICAO's related programme activities.

138. The Representative of South Africa emphasized the need to keep on board the comments made by the Representatives of Nigeria and Mexico and to at least provide regular updates, especially in terms of ICAO's outreach activities. To a point then raised by the Representative regarding the upcoming Fourth ICAO World Aviation Forum (IWAF2018), the Secretary General clarified that she had discussed the Government of Brazil's offer to host IWAF2018 in Fortaleza with the President of the Council and he had agreed, in coordination with the Government of Brazil, that the first three days of the Committee phase of the Council's 215th Session be used for that event i.e. 17-19 September 2018.

139. In reassuring the Representative of South Africa that no Committee meetings would be held on 17-19 September 2018, the President of the Council emphasized that they would be scheduled in such a way as to ensure that the work of the various Committees would be completed and that the

invitation from the Government of Brazil to attend IWAF2018 would be honoured.

140. The above comments and suggestions were noted, as were the clarifications provided.

141. Completing its consideration of this subject, the Council noted the information provided in C-WP/14751, as supplemented during the discussion. On behalf of the Council, the President expressed appreciation for the good work done by the Secretary General and her team during her first term in office and emphasized that the Council would continue to collaborate with the Secretary General in the future, as she commenced her second term on 1 August 2018.

Any other business

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

Appointment of a new Member on the Air Navigation Commission (ANC)

142. It was noted that, in the absence of comments by 20 March 2018 to the President of the Council's e-mail dated 13 March 2018, Mr. Satoshi Oshima, nominated by the Government of Japan, had been appointed as a new Member on the ANC, succeeding Mr. Hajime Yoshimura with effect from 26 March 2018.

Subject No. 50: Questions relating to the environment

**Appointment of new Members on the
Committee on Aviation Environmental Protection (CAEP)**

143. It was noted that, in the absence of comments by 14 March 2018 and 23 May 2018 to his e-mails dated 2 March 2018 and 4 May 2018, respectively, the President, on behalf of the Council, had approved the nominations of: Mr. Robert Mauri as the new CAEP Member from France, replacing Ms. Aline Pillan with effect from 15 March 2018; and Mr. Indranil Chakraborty as the new CAEP Member from India, replacing Mr. Lalit Gupta with effect from 24 May 2018.

**ICAO Seminar on the Carbon Offsetting and Reduction Scheme for International Aviation
(CORSA) (Montréal, Canada, 2-3 July 2018)**

144. It was noted that, in the absence of comments by 23 March 2018 to his e-mail dated 19 March 2018, the President, on behalf of the Council, had approved the invitation of the organizations listed therein to the ICAO Seminar on CORSA.

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

**Request from the European Union (EU) to participate as Observer
in closed meetings of the Council**

145. It was noted that, in the absence of comments by 6 April 2018 to the President of the Council's e-mail dated 28 March 2018, Mr. Klaus Winkler, Head of Office, Office of the European Union in Montréal, had been invited, in accordance with Rule 32 a) of the *Rules of Procedure for the Council*

(Doc 7559), to participate as Observer on behalf of the EU during the 214th Session of the Council's consideration, in closed session, of all items related to aviation security.

**Request from Airports Council International (ACI) to participate as Observer
in closed meetings of the Council**

146. It was noted that, in the absence of comments by 24 April 2018 to the President of the Council's e-mail dated 17 April 2018, Mr. Michael Rossell, Deputy Director General, External Affairs, ACI, had been invited, in accordance with Rule 32 a) of the *Rules of Procedure for the Council* (Doc 7559), to participate as Observer on behalf of ACI during the 214th Session of the Council's consideration, in closed session, of items related to aviation safety, security, and environmental protection.

**Request from the Civil Air Navigation Services Organisation (CANSO) to participate as Observer
in closed meetings of the Council**

147. It was noted that, in the absence of comments by 24 April 2018 to the President of the Council's e-mail dated 17 April 2018, Mr. Nico Voorbach, CANSO Director, ICAO and Industry Affairs, had been invited, in accordance with Rule 32 a) of the *Rules of Procedure for the Council* (Doc 7559), to participate as Observer on behalf of CANSO during the 214th Session of the Council's consideration, in closed session, of items related to air traffic management (ATM)-, safety- and security-related matters, as appropriate.

148. The meeting adjourned at 1730 hours.

COUNCIL — 214TH SESSION

SUMMARY MINUTES OF THE THIRD MEETING

(THE COUNCIL CHAMBER, WEDNESDAY, 13 JUNE 2018, AT 1000 HOURS)

OPEN MEETING

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

PRESENT:

Algeria	— Mr. A.D. Mesroua	Kenya	— Ms. M.B. Awori
Argentina	— Mr. G.E. Ainchil	Malaysia	— Mr. K.A. Ismail
Australia	— Mr. S. Lucas	Mexico	— Mr. D. Méndez Mayora
Brazil	— Mr. O. Vieira (Alt.)	Nigeria	— Mr. M.S. Nuhu
Cabo Verde	— Mr. C. Monteiro	Panama	— Mr. G.S. Oller
Canada	— Mr. M. Pagé	Republic of Korea	— Mr. Y.J. Lee
China	— Mr. Shengjun Yang	Russian Federation	— Mr. S. Gudkov
Colombia	— Mr. A. Muñoz Gómez	Saudi Arabia	— Mr. S.A.R. Hashem
Congo	— Mr. R.M. Ondzotto	Singapore	— Mr. T.C. Ng
Cuba	— Mrs. M. Crespo Frasquieri	South Africa	— Mr. M.D.T. Peege
Ecuador	— Mr. I. Arellano	Spain	— Mr. V.M. Aguado
Egypt	— Mr. A. Khedr	Sweden	— Ms. H. Jansson Saxe
France	— Mr. P. Bertoux	Turkey	— Mr. A.R. Çolak
Germany	— Mr. U. Schwierczinski	United Arab Emirates	— Mr. M.A.B. Salem (Alt.)
India	— Mr. A. Shekhar	United Kingdom	— Mr. D.T. Lloyd
Ireland	— Ms. N. O'Brien	United Republic of Tanzania	— Mr. R.W. Bokango
Italy	— Mr. M.R. Rusconi	United States	— Mr. T.L. Carter
Japan	— Mr. S. Matsui	Uruguay	— Mr. M. Vidal

ALSO PRESENT:

Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. C. Fernández (Alt.)	— Argentina
Mr. R.F. Pecoraro (Alt.)	— Brazil
Mr. D. Tavares Taufner (Alt.)	— Brazil
Mr. M.G. Correia Pontes (Alt.)	— Brazil
Mr. Chunyu Ding (Alt.)	— China
Mr. M. Millefert (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mrs. D. Valle Álvarez (Alt.)	— Mexico
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. M.S. Habib (Alt.)	— Saudi Arabia
Mr. S. Vuokila (Alt.)	— Sweden
Mr. Ö. Dođrukol (Alt.)	— Turkey
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mr. S. Kotis (Alt.)	— United States
Mrs. M.A. González (Alt.)	— Uruguay
Mr. F. de Medina (Alt.)	— Uruguay

SECRETARIAT:

Mrs. J. Yan	— C/OSG
Ms. I. Sosina	— SA/PRES
Mr. S. Creamer	— D/ANB
Mr. V. Smith	— D/ADB
Mr. J. Huang	— D/LEB
Mr. J. Vargas	— D/TCB
Mr. M. Belayneh	— DD/TCB
Mr. J. Wan	— DD/IAS
Mr. H. Gourджи	— H/SPCP
Mr. T. Efendioglu	— C/EAO
Miss L. Lim	— A/C/FIN
Ms. A. Andrade	— C/BSS
Mr. A. Opolot	— LO
Mrs. P. Romano	— H/ASV-ARU
Miss S. Black	— Précis-writer

Mr. A. Buscema, President of Corte dei Conti and External Auditor of ICAO

Mr. G. Coppola, President of the Audit Chamber for European and International Affairs, Corte dei Conti

Mr. C. Mancinelli, Counsellor, Corte dei Conti

Mr. S. Penati, Senior Auditor, Corte dei Conti

Representatives to ICAO

Cameroon

Chile

Ethiopia

Ghana

Honduras

Indonesia

Iran (Islamic Republic of)

Lebanon

Peru

Senegal

Airports Council International (ACI)

European Union (EU)

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

Subject No. 18.8.1: Regular Programme funds

Subject No. 24.2: Assembly agenda and documentation

Financial Statements and Report of the External Auditor for the financial year 2017

1. On behalf of the Council, the President extended a warm welcome to Mr. Angelo Buscema, the President of Corte dei Conti and External Auditor of ICAO, and Mr. Giovanni Coppola, President of the Audit Chamber for European and International Affairs at Corte dei Conti, who was accompanied by two members of his team, Mr. Carlo Mancinelli, Counsellor, and Mr. Stefano Penati, Senior Auditor.

2. In presenting the greetings of the Corte dei Conti, Mr. Buscema expressed pleasure at having this opportunity to deliver his audit report in person to the Council. Mr. Coppola voiced gratitude for the President's warm welcome.

3. The Council then proceeded with the consideration of the above subject on the basis of: **C-WP/14748** (with Addenda Nos. 1 and 2) presented by the Secretary General; and an oral report thereon by the Finance Committee (FIC). It was noted that following the issuance of the oral report, the last sentence of paragraph 3 thereof had been amended to reflect that the audit plan of the External Auditor should be submitted to the attention of the Council, in line with Financial Regulation 13.5, rather than submitted for its approval.

4. As requested by the Council (211/3), **C-WP/14748** contained, in an Annex, a tabular Plan of Action with timelines for the implementation of the External Auditor's recommendations and suggestions that had been accepted by the Secretary General, which had also been incorporated into the Corporate Management & Reporting Tool (CMRT). As the Annex was solely for the information of the Council it would not be presented to the Assembly. **Addendum No. 1** to the paper contained the Reports by the Secretary General (Presentation and Statement on Internal Control), the Opinion of the External Auditor (Audit Certificate), and the Financial Statements and Tables for the financial year 2017. **Addendum No. 2** contained the Report of the External Auditor on the audit of the said Financial Statements, which included the Secretary General's comments in response thereto, and the External Auditor's two special reports. The first special report was an analysis of the cybersecurity framework at ICAO, which focused on the assessment of the findings and results of the internal audit of cyber security management at ICAO conducted by the Evaluation and Internal Audit Office (EAO). The second one was a performance audit report on the efficiency and effectiveness of the procedures on interactions with external parties, the cornerstones of which were two EAO evaluation reports, EVA/2015/1 – *Report on the Evaluation of External Stakeholder Perspectives on ICAO* and EVA/2017/1 – *Report on the Evaluation of ICAO Partnerships with Organizations and Agencies of the United Nations System*. The Addenda comprised parts of the related document to be submitted to the Assembly.

5. It was noted that Corte dei Conti had given an unqualified opinion on ICAO's Financial Statements for 2017. While the audit report reiterated an Emphasis of Matter relating to a negative net asset financial position (-CAD 65.7 million), which was mainly due to the impact of CAD 146.7 million in actuarial liabilities relating to long-term employee benefits, notably the After Service Health Insurance (ASHI) actuarial liabilities, Corte dei Conti had not modified its said opinion in respect of that matter as it had been assured by ICAO Management that the latter was undertaking measures to address the situation and would monitor their effectiveness.

FIC oral report

6. In presenting the FIC's oral report on its review of C-WP/14748 (and Addenda Nos. 1 and 2) during its Third Meeting of the current session 11 June 2018, the Vice-Chairperson, the Representative of China, Mr. Shengjun Yang, noted that representatives of Corte dei Conti had provided the Committee with a short presentation highlighting the External Auditor's three reports, consisting of (1) the audit of the ICAO Financial Statements for the financial year 2017; (2) the special report on the analysis of the cybersecurity framework at ICAO; and (3) the performance audit report on the efficiency and effectiveness of the procedures on interactions with external parties. They had informed the FIC that the External Auditor had issued an unqualified opinion on the said ICAO Financial Statements. In their presentation, the representatives of Corte dei Conti had explained the difference between the External Auditor's "recommendations" and "suggestions" and had provided some statistics on the status of the recommendations and suggestions issued since 2014. In addition, the representatives of Corte dei Conti had explained that an Emphasis of Matter had been included in the External Auditor's Report again this year, without, however, modifying the audit opinion, to draw the attention to the negative net asset on the Statement of Financial Position, due to the CAD 146.7 million in actuarial liabilities relating to long-term employee benefits recorded in the said financial position. Measures were being undertaken by ICAO Management and Corte dei Conti had been assured that the effectiveness of those measures would be monitored.

7. FIC Members had asked several questions, particularly with regard to the two special reports. The representatives of Corte dei Conti had provided further clarifications and responses, including with regard to the follow-up process for the External Auditor's recommendations and suggestions. In addition, the Secretariat had responded to questions on the recruitment status of the new Chief Information Security Officer and on the analysis of the cybersecurity framework at ICAO. It had been reported that the said analysis had been suggested by the Chairperson of the Evaluation and Audit Advisory Committee (EAAC) to the External Auditor for incorporation in the latter's audit plan for 2017. That suggestion had been accepted by the External Auditor and his 2017 audit plan had been amended accordingly. It had been clarified that the audit plan of the External Auditor should be submitted to the attention of the Council, in line with Financial Regulation 13.5.

8. The FIC Members had noted, with satisfaction, the External Auditor's unqualified opinion on the Financial Statements of the Organization for the financial year 2017 and the important amount of work performed by the Finance Branch (FIN) on this subject.

9. Following the explanations and clarifications given by the representatives of Corte dei Conti and the Secretariat, the FIC invited the Council to consider and recommend the financial reports listed in the executive summary of C-WP/14748 to the next Assembly for approval, including the attached draft Assembly working paper, and to note the Secretary General's Plan of Action to implement the External Auditor's recommendations and suggestions presented in the Annex to C-WP/14748.

Discussion

10. The Representative of Japan, as Chairperson of the Committee on Cooperation with External Parties (CCEP), shared the following observations of the CCEP on the External Auditor's said performance audit report on the efficiency and effectiveness of the procedures on interactions with external parties (cf. C-WP/14748, Addendum No. 2, Annex II) to facilitate the Council's review thereof:

11. First of all, the CCEP welcomed the conclusion by the External Auditor in paragraph III of the executive summary of the said report, which noted, at the outset, that "ICAO is committed to ensure the efficiency and effectiveness of the process management when ICAO interacts with external

parties”, and that the External Auditor also appreciated “the continued efforts by Council and Management for enhancing the process”.

12. In the performance audit report, four recommendations and one suggestion were presented to the Council, and it was the CCEP’s understanding that they were designed to add value to the current procedural process under the revised *Policy on ICAO Interactions with External Parties* and to improve the Committee’s role. In that connection, the CCEP wished to refer to the decision taken by the Council at the Third Meeting of its 213th Session on 2 March 2018 (C-DEC 213/3) as the most recent procedural and operational development of the said ICAO Policy. The essential elements of C-DEC 213/3 were mentioned in paragraph 43 of the External Auditor’s performance audit report, although probably due to the coverage of this audit period until the end of February 2018, the said Council decision was not specifically included therein.

13. The CCEP assured the External Auditor that the Committee had been doing, and would continue to do, its best to fulfill its responsibility to review requests for new agreements between ICAO and external parties as the guardian of the Organization’s integrity, compliance and reputation through the full implementation of the said revised Policy and also the recommendations approved by the Council. The CCEP was also serving as the co-facilitator with the Secretariat for the effective and efficient process management without unwarranted time pressure, taking into account the impact assessment to be provided from the Legal Affairs and External Relations Bureau (LEB) engagement for each case.

14. The CCEP wished to make the following comments on some specific points raised in the External Auditor’s recommendations and suggestion arising from his performance audit of the efficiency and effectiveness of the procedures on interactions with external parties:

15. Firstly, in terms of the need for a holistic approach suggested in the External Auditor’s Recommendation No. 2 to avoid potential conflicts of interest and enhance transparency and managerial accountability, for example by creating an independent office to monitor the appropriateness of the agreements proposed by external parties: the CCEP was of the view that in order to address those concerns and also protect ICAO’s external presentation and interests from financial and reputational risks, it was very important for the time being for the CCEP to keep building on the right review and routing in the right way with the Secretariat under the current Policy, without overstretching anyone or without unwarranted time pressure in the process.

16. However, the CCEP shared the External Auditor’s view regarding the importance of some kind of agreement monitoring function of the Organization to check and see whether each agreement really had an updated value to extend or renew. The Chairperson was not implying at all that the CCEP qualified for that role, in connection with Suggestion No.1 of the performance audit report; rather, more realistically, for the stable implementation of the current Policy, the Committee expected LEB to continue to provide advice to the CCEP through its work with the originating Bureaus/Offices. That was essential to ensure “quality assurance” for the CCEP’s reports to the President and/or the Secretary General for informed decisions regarding the signature of the proposed agreements. For that purpose, the CCEP relied on the oversight of the Secretary General to prioritize such knowledge-sharing and management in-house.

17. Secondly, the CCEP’s attention had been drawn by the reference made in all four recommendations to comprehensive internal guidance in the form of a partnership framework for procedures on beneficial engagement with industry stakeholders, United Nations (UN) entities and other external parties. The Committee underscored that whatever framework might be developed by the Strategic Planning, Coordination and Partnerships Office (SPCP), it should be consistent with the revised *Policy on ICAO Interactions with External Parties*.

18. Finally, while mostly appreciating the Secretary General's comments on the External Auditor's said four recommendations and one suggestion in the sense that they reflected a good understanding of their significance and operational implication for the said revised Policy and subsequent decisions, the CCEP, as co-facilitator of the Policy's proper implementation and monitoring, had one procedural request to the Secretariat: that whenever externally presenting its opinion on areas of potential improvement to the Policy, such as the scope of review and exemptions described in the Secretary General's comments on Recommendation No.1, the Secretariat first bring its opinion to the CCEP's attention. If deemed necessary, the Secretariat's opinion might thereafter be discussed in the Council. For example, the CCEP was reviewing a proposal by the Secretariat to make an Exhibitor Sponsorship agreement template an additional exemption from the Committee's case-by-case review for further efficiency under the revised Policy. That said, the CCEP would continue to work with the Secretariat to implement the revised Policy as expected, and to make it work even better.

19. In concluding, the Chairperson of the CCEP expressed the hope that the Committee's observations, which he had summarized above, would contribute to the Council's discussion of the performance audit report on the efficiency and effectiveness of the procedures on interactions with external parties, and also to continued collaboration with the Secretariat to achieve the common goal.

20. Expressing appreciation for the CCEP's valuable observations, Mr. Mancinelli indicated that Corte dei Conti partially agreed with them, in the sense that as External Auditor it could not intervene directly in the management of ICAO. He noted that the performance audit report raised three main points: enhancing the cooperation between the CCEP and the Secretariat through the independent monitoring of the process for the review and approval of proposed agreements with external parties; ensuring an effective and efficient role for the CCEP in that process; and affording all Council Members the possibility of having full information on the agreements between ICAO and external parties. Mr. Mancinelli highlighted that the External Auditor's recommendations and suggestion were aimed at: ensuring that the said process was constantly monitored; ensuring the independence of ICAO and avoiding potential conflicts of interest in the preparation and signature of proposed agreements with external parties; and ensuring that each such agreement provided ICAO with the best solution and added value to the Organization's mission. In indicating that Corte dei Conti would monitor the implementation of the External Auditor's said recommendations and suggestion, he emphasized that if it could further help ICAO improve the process for the review and approval of proposed agreements with external parties, it would do so to the best of its ability.

21. In welcoming the External Auditor's observations, recommendations and suggestion, the Secretary General recalled that during the performance audit the Secretariat had shared its views and concerns regarding the process with Corte dei Conti. The Secretariat had also indicated that it might have a conflict of interest given its role in that process. Noting that the ultimate goal of the External Auditor's work was to improve the efficiency and effectiveness of the Organization as a whole, she underscored that the Secretariat desired the further enhancement of the said process in order to maximize its efficiency and effectiveness and that it would cooperate with all relevant bodies to that end, and to implement the revised *Policy on ICAO Interactions with External Parties*.

22. The President of the Council observed that, apart from auditing ICAO's Financial Statements, the work of the External Auditor involved conducting performance audits of ICAO and its various processes, which formed part of the protection system for the Organization. He took note of the comment made by the Chairperson of the CCEP that perhaps the Committee could have been involved more in the final review of Corte dei Conti's said four recommendations and one suggestion arising from its performance audit of the efficiency and effectiveness of the procedures on interactions with external parties. The President proposed, as action by the Council, that the Council note the observations made by

the Chairperson of the CCEP and the Secretary General and request the CCEP to look into the said recommendations and determine, based on lessons learned, whether there was any comment that it wished to bring forward in its next report to the Council, including any proposal for a consequential amendment to the recently-revised *ICAO Policy on Interactions with External Parties* and/or associated procedures.

23. Affirming that it was the Secretariat that was the auditee, the Secretary General indicated that the review of the said recommendations should consequently not include a Council component in order to avoid any conflicts of interest in accordance with international auditing principles and standards. She sought the External Auditor's confirmation in that regard.

24. Clarifying that he was not saying that the Council was the auditee, the President noted that the performance audit report made many references to the implementation of the *ICAO Policy on Interactions with External Parties* and to the process whereby the CCEP reviewed and approved proposed agreements. Averring that there was nothing wrong with consultation, he indicated that it was his understanding that the External Auditor had held meetings with the CCEP Chairperson and Members before reaching his conclusions and formulating his said recommendations. The President thus maintained that there was no conflict of interest in having the CCEP look into the latter.

25. Mr. Mancinelli confirmed that it was the Secretariat that was the auditee. He noted, however, that in analyzing the *ICAO Policy on Interactions with External Parties* which had created the CCEP it had been necessary for the External Auditor to speak with the Committee's Chairperson and Members as they were part of the process for the review and approval of proposed agreements. Mr. Mancinelli underscored, in this regard, that the External Auditor always contacted all parties involved in carrying out his work. In also confirming that the performance audit's recommendations and suggestion were for implementation by the Secretariat, he indicated that it was for that reason that the External Auditor had not consulted the CCEP thereon. Noting that the External Auditor had observed that in the ICAO Corporate Risk Register there was no mention of any risk related to interactions with external parties and potential conflicts of interest (cf. paragraph 45), Mr. Mancinelli stressed that the fact that he had recommended and suggested some measures to mitigate such risks did not mean that the CCEP should be involved in their implementation. Re-emphasizing that that fell within the remit of the Secretariat as the audited entity, he underscored that the CCEP, whose Chairperson and Members were all Council Representatives, could monitor, as the Council, the way in which they were implemented. Mr. Mancinelli reiterated that such implementation involved a dialogue between the External Auditor and the Secretariat as the auditee.

26. Maintaining that there was no conflict of interest, the President emphasized that the CCEP had a role to play in advising the Council regarding possible amendments to the *ICAO Policy on Interactions with External Parties* and/or associated procedures, which was the crux of the Committee's observations. He reiterated that the implementation of the performance audit's recommendations might necessitate a review by the CCEP of the said Policy and/or associated procedures. The President noted that although the CCEP was not the audited entity the External Auditor had nevertheless spoken with its Chairperson and Members.

27. In elaborating on the approach taken by Corte dei Conti in conducting the performance audit, Mr. Coppola indicated that all of the Policy framework had been taken into account as that was the environment in which the various actors were engaged according to their respective roles. The External Auditor considered that the environment had been built by the Council and developed by the Secretariat and was being monitored by the CCEP. His recommendations were aimed at building a better system for interactions between ICAO and external parties.

28. The Representative of Spain expressed appreciation for the work done by the External Auditor and his team and for their presence during the Council's consideration of C-WP/14748. He also voiced support for the oral report of the FIC, of which he was a Member. The Representative of Spain agreed with the President that there was no problem with the External Auditor consulting relevant bodies within ICAO in formulating his audit recommendations. Recalling that the Secretary General had highlighted that the ultimate goal of the External Auditor's work was to improve the efficiency and effectiveness of the Organization as a whole, he emphasized that ICAO comprised more than the Secretariat and that it was thus entirely legitimate for the External Auditor to consult whichever ICAO bodies he considered necessary, including, in the present case, the CCEP.

29. While noting that the External Auditor's said recommendations were directed at the Secretariat as they fell within the scope of the latter's responsibilities, the Representative of Spain considered that there was no problem with the External Auditor directing his recommendations in future to the Council for action, as he deemed necessary. Referring to paragraph 3 of the FIC's oral report, he sought clarification regarding the last sentence, which had been amended to reflect that the External Auditor's audit plan should be submitted to the attention of the Council, in line with Financial Regulation 13.5, rather than submitted for its approval. The Representative of Spain also enquired as to the areas that would be covered under the 2018 audit plan. He remarked that there was still time to consider which areas should be audited by the External Auditor in 2019.

30. The Acting Chief of the Finance Branch (A/C/FIN) clarified that following the issuance of the FIC's oral report the last sentence of paragraph 3 thereof had been amended in order to be in conformity with Financial Regulation 13.5, which stipulated that "The External Auditor shall be completely independent and solely responsible for the conduct of the audit of all the Organization's accounts and Funds.". Consequently the External Auditor's audit plan should be submitted to the attention of the Council and not submitted for the Council's approval.

31. Mr. Mancinelli emphasized that as Corte dei Conti was a supreme audit institution, the External Auditor was independent in his choice of audit plan and the latter's owner and thus could not accept that it be submitted to the Council for its approval. The External Auditor was, however, prepared to submit his audit plan to the attention of the Council. Mr. Mancinelli further underscored that the Council could always suggest relevant topics for an audit. He noted that the External Auditor always transmitted his audit plan first to the Secretary General since the Secretariat was the audited entity. Thereafter, he transmitted it to the EAAC, as his predecessors from the Cour des comptes had done. It had been the External Auditor's understanding that the EAAC, as an advisory body to the Council, would transmit and explain his annual audit plans to the Council. It was not known, however, if the EAAC had actually done so. Regardless, the External Auditor was ready to submit his audit plan to the Council's attention.

32. Recalling that, pursuant to ICAO's requirements, the External Auditor had until 15 January of each year to deliver his audit plan for that year to the Organization, Mr. Mancinelli emphasized that the External Auditor had always met that deadline. He noted that while the main part of the annual audit plan related to the audit of ICAO's Financial Statements and the certification of the Organization's accounts, it also included two performance audits, the subjects of which were determined by the External Auditor taking into consideration the findings of, for example, his financial audits and/or his audits of the Regional Offices, as well as his discussions with ICAO Management. The subjects were always agreed with the Secretary General since the Secretariat was the auditee and were always communicated to the EAAC

33. Underscoring that the External Auditor had always selected very important subjects for his performance audits, Mr. Mancinelli highlighted: that as part of his 2016 audit plan he had conducted

performance audits relating to i) the efficiency and effectiveness of the recruitment process at the Bureau of Administration and Services/Human Resources (ADB/HR) [excluding the recruitment of Technical Cooperation Bureau (TCB) field personnel]; and ii) the effective and efficient coordination between TCB and the ICAO Regional Offices for the implementation of Part 5 (Technical Cooperation and Technical Assistance) of the *Regional Office Manual* (ROM), which had focused on the North American, Central American and Caribbean Office (NACC) (Mexico City) (cf. Addenda Nos. 1 and 2 to C-WP/14601; 211/3); and that as part of his 2015 audit plan he had conducted performance audits relating to i) the development of effective actions to reduce ICAO's ASHI actuarial liabilities; and ii) the measurement of Regional Office performance (cf. Addenda Nos. 1 and 2 to C-WP/14468; 208/11).

34. While taking note of the Representative of Spain's comment on directing appropriate audit recommendations to the Council for action if so needed, Mr. Mancinelli disagreed therewith. He observed that the Council was the first interlocutor to receive the External Auditor's annual reports as the External Auditor had been appointed by the Council (and confirmed by the Assembly). Underscoring, however, that the External Auditor could not make recommendations to the Council, Mr. Mancinelli clarified that whenever he considered that there was a particular matter that should be brought to the Council's attention he included a paragraph thereon in his annual report.

35. With a view to avoiding a repetition of the discussions that had taken place in the FIC regarding the relationship between the EAAC and the External Auditor, the President of the Council suggested that as part of its decision the Council request that, to ensure effective communication and governance, a copy of any information that was circulated between Corte dei Conti and the EAAC be sent to the Council, in particular with regard to any suggestions by EAAC for the inclusion of additional elements in the External Auditor's audit plan. In underscoring the need to facilitate interactions between the External Auditor and the EAAC as the latter was an external advisory body to the Council, he stressed that communication and consultation were always essential in preventing future difficulties.

36. The Representative of the United Kingdom, also a FIC Member, expressed concern over the distinction being made between the Council and the Secretariat, which had also occurred during the Council's recent discussion of a number of other issues. He underscored the need to bear in mind that they were part of one and the same organization.

37. Responding to a question then raised by the Representative, Mr. Mancinelli clarified that while the subject of the external audit was the Organization, that should be taken to mean its administration and management in line with Financial Regulation 13.5. The auditee was thus the Secretariat as it was the administrative/managerial part of ICAO. He emphasized that the Council was the governing body to whom the External Auditor reported. While in accordance with international auditing standards the External Auditor could not audit the Council or the policies, rules or decisions which it adopted, he could audit the implementation of those policies, rules or decisions to determine if they were being applied as efficiently and effectively as possible and bring any shortcomings to the Council's attention.

38. Mr. Penati highlighted, in this context, the International Standard on Assurance Engagements (ISAE) 3000, according to which the work of the External Auditor did not question the intention and the decision of the legislature but examined whether any shortcomings of the laws and regulations or their implementation had prevented a specific audit objective from being achieved. He recalled that ICAO Financial Regulation 13.4 stipulated that the external audit "shall be conducted in conformity with generally accepted common auditing standards". Mr. Penati reiterated that although the External Auditor could not direct recommendations to the Council in and of itself, he could draw the latter's attention to any shortcomings in the implementation of its policies, rules or decisions. He underscored that ultimately it was the Council's decision whether or not to review and correct the affected

policies, rules or decisions in order to address any identified risk. Mr. Penati emphasized that in general the External Auditor directed his recommendations and suggestions to the Secretariat.

39. The President of the Council observed that it was now clear that the External Auditor could not audit the Council or the policies, rules or decisions which it adopted. The External Auditor could, however, audit the implementation of those policies, rules or decisions and bring any shortcomings to the Council's attention. The Council would consider them and decide whether or not to take corrective action to mitigate any risk identified by the External Auditor. The President underscored that it might be in the Council's interest to do so given that the purpose of the External Auditor's work was to protect the Organization from financial and reputational risks. In reiterating the importance of consultation and communication, he underscored the need for the Council to look at, and approve, any recommended changes.

40. Mr. Coppola noted that if the External Auditor were given a special mandate he could, as part of his work, give particular consideration to the effective resilience of certain ICAO rules and whether they had the required flexibility and effectiveness and make practical recommendations for a new logic/design of the rules that could be more efficient.

41. The President of the Council stressed that it would be for the Council to decide whether or not to give the External Auditor such a special mandate. Further to a point then made by the Representative of Saudi Arabia, the President indicated that issues raised regarding the terms of reference of the External Auditor would be taken into consideration by the Council during its future discussions on the selection and mandate of the External Auditor for the financial years 2020, 2021 and 2022.

42. Note was taken of the statement made by the Representative of Japan as Chairperson of the CCEP, as well as of the comments made by other Representatives, the President of the Council and the Secretary General and the clarifications provided by the representatives of Corte dei Conti.

43. In also noting the FIC's oral report, the Council took the action recommended by the Committee as amended by the President in light of the discussion and:

- a) noted with satisfaction the External Auditor's unqualified opinion on the Organization's Financial Statements for the financial year 2017;
- b) noted the Secretary General's Plan of Action to implement the External Auditor's recommendations and suggestions as set forth in the Annex to C-WP/14748 for the Council's information, on which it would follow up;
- c) approved, for submission to the next ordinary session (40th) of the Assembly in 2019: the financial reports for the year ended 31 December 2017 as presented in Addenda Nos. 1 and 2 to C-WP/14748; the draft Assembly working paper contained in that paper, subject to action paragraph a) thereof being amended to read "note the Auditor's Report relating to the 2017 accounts, *in particular, the Auditor's unqualified opinion;*" (new text appears in italics); and the related draft Assembly Resolution appended to the Assembly working paper;
- d) noted that, to ensure effective communication and governance, any suggestions by EAAC for the inclusion of additional elements with regard to the External Auditor's audit plan would be circulated to the Council; and

- e) with regard to the performance audit report on the efficiency and effectiveness of the procedures on interactions with external parties and the related observations made by the Chairperson of the CCEP and the Secretary General, which it had noted, requested that the report's recommendations and Secretariat's comments thereon be looked into by the CCEP and that it be determined, based on lessons learned, whether there was any comment to be brought forward to the Council, including any proposal for a consequential amendment to the recently-revised *ICAO Policy on Interactions with External Parties* and/or associated procedures.

44. The President of the Council and the Secretary General thanked Mr. Buscema, Mr. Coppola and their colleagues for the valuable external audit work that they were doing on behalf of ICAO.

Subject No. 18.1: Annual Budget

**Subject No. 18.2: Transfers from one Major Programme of the Budget to another
Financial year 2017 – Report on the carry-over**

45. The Council commenced its consideration of this subject on the basis of: information paper C-WP/14749, in which the Secretary General reported on the status of authorized appropriation of the Regular Budget for the financial year 2017; and an oral report thereon by the FIC.

FIC oral report

46. In presenting the FIC's oral report on its review of C-WP/14749 during its Third Meeting of the current session on 11 June 2018, the Vice-Chairperson, the Representative of China, Mr. Shengjun Yang, noted that the Secretariat had provided a detailed explanation of the Table contained in the Appendix to the paper setting forth the statement of appropriations by Strategic Objective and Supporting Implementation Strategies for the year ending 31 December 2017 and had addressed all of the questions raised by Committee Members.

47. Although voicing appreciation for the decrease in the carry-over amount as compared to prior years, several FIC Members had expressed concern about the transfer of appropriations from Strategic Objectives to Supporting Implementation Strategies. It had been explained that, as some activities presented under Supporting Implementation Strategies were considered urgent and important yet were not budgeted for, those activities in fact supported and benefited all of the Programmes of the Strategic Objectives. Comments had been made regarding the usage of the unobligated appropriations for mission-critical activities and the Secretariat had pointed out that some of those unbudgeted activities were a result of post-Assembly initiatives and therefore savings within the Regular Programme Budget were required for funding. The Secretariat had also agreed to the request that future working papers on this subject include amounts by item for the mission-critical and deferred activities to be funded by the carry-over.

48. The FIC had noted that: the carry-over statement for the financial year 2017 had been audited; the transfer of appropriations between Strategic Objectives and Supporting Implementation Strategies and the carry-over of appropriations of CAD 7 535 000 fell within the authority of the Secretary General pursuant to Financial Regulations 5.9 and 5.6; and as C-WP/14749 was an information paper, no action was required by the Council.

Discussion

49. With reference to the said Table appended to the paper, the Representative of the United States observed that ICAO frequently requested significant voluntary contributions from States with which to finance its activities that were either not funded or not fully funded under the Organization's Regular Programme Budget. Highlighting that for the last couple of years the United States had provided USD 800 000 in voluntary contributions to the AVSEC Fund and requested a report on how those contributions were expended, he noted that some had been used to fund Aviation Security Implementation Plan (ASIP) activities in six African States (Cameroon, Chad, the Democratic Republic of the Congo, Gabon, Guinea and Malawi). However, according to the 2017 report provided to the United States, USD 600 000 of its voluntary contribution of USD 800 000 for that year had been used to pay the salaries of certain AVSEC staff as there had apparently not been sufficient funds therefor in the Regular Programme Budget for the current triennium. The Representative of the United States recalled, in this regard, from the Council's earlier consideration (214/2) of C-WP/14747 (*Report on the ICAO Technical Assistance Programme*), that five aviation security-related positions at ICAO Headquarters (four Professional and one General Service) and three aviation security-related Professional positions at the ICAO Regional Offices were funded by voluntary contributions. He was therefore puzzled that in 2017 some CAD 1 501 000 had been transferred from the Security Objective *Security and Facilitation* to other Strategic Objectives and/or Supporting Implementation Strategies as reflected in the said Table. The Representative of the United States nevertheless considered that the rest of the Secretary General's report on the carry-over for the financial year 2017 was excellent.

50. In agreeing with the Secretary General's earlier comment that one of her key objectives was to deliver more services to ICAO Member States, the Representative of the United States emphasized that he would dialogue with the Secretariat to ensure that the majority of his States' voluntary contributions to the AVSEC Fund were used to the maximum effect to assist States rather than to fund the salaries of AVSEC staff when it seemed to his State that there were sufficient funds therefor in the Regular Programme Budget.

51. Recalling that she had been involved in the preparation of the Regular Programme Budget for the last three triennia, A/C/FIN clarified that staff-related costs were absorbed therein to the maximum extent possible, particularly for the Organization's core functions. She observed, however, that there was an ever increasing number of activities and programmes that were required to be delivered, which in turn led to an ever increasing demand for resources with which to fund them. A/C/FIN underscored that as a consequence the Secretariat had no choice but to use voluntary contributions to cover any such new required activities and programmes that were not funded under the Regular Programme Budget for the current triennium.

52. A/C/FIN further emphasized although the costs of certain unfunded posts could potentially be transferred to the Regular Programme Budget if budgetary savings were carried over, EAO had indicated that the Secretariat should not engage in the practice of transferring costs to the Regular Programme Budget for posts that were not budgeted under the Regular Programme Budget. She noted that this issue could be considered during the Council's forthcoming discussions of the draft Regular Programme Budget for 2020, 2021 and 2022.

53. The Secretary General concurred with the Representative of the United States that more of the voluntary contributions received by ICAO should be used to serve its Member States. She reiterated that expenditures had arisen during the current triennium for activities and programmes for which funding had not been secured during the 39th Session of the Assembly in 2016 and for which additional resources were thus required. The Secretary General emphasized that there would be increased transparency in the draft Regular Programme Budget for the next triennium, with there being a clear

indication of those activities and programmes which were core and thus required budgetary allocations and those which were not, and of the challenges. She stressed that both the said Regular Programme Budget and the use of voluntary funds would be made more transparent to all ICAO Member States.

54. The President of the Council highlighted that the Government of the United States could choose to channel its aviation security-related voluntary contributions not only through ASIPs but also through the Comprehensive Regional Implementation Plan for Aviation Security and Facilitation in Africa (AFI SECFAL Plan).

55. Indicating that his Government would also consider the said AFI SECFAL Plan option, the Representative of the United States noted that in the past it had allowed the Secretariat to determine the allocation of its aviation security-related voluntary contributions, with the result that a large portion thereof had been used to fund the salaries of AVSEC staff. He reiterated that he would dialogue with the Secretariat to ensure that the majority of the United States' said voluntary contributions were used to the maximum effect to assist ICAO Member States.

56. In fully endorsing the comments made by the Representative of the United States, the Representative of the United Arab Emirates observed that there was always a debate regarding the allocation of voluntary contributions to fund staff salaries versus ICAO's unfunded activities and programmes. She emphasized the need for a clear indication of the allocation of all voluntary contributions received by the Organization. Agreeing with the President of the Council that aviation security-related voluntary contributions could be channeled through the AFI SECFAL Plan, she emphasized that its funding was currently well-below the five-year budget estimates of approximately USD 5.6 million and that additional resources were needed to respond to emerging threats and to fund activities, including those required to align with the recently-approved Global Aviation Security Plan (GASeP). Noting that the Council would be considering, later in the current session, the *Declaration and Framework for a Plan of Action for Development of Aviation Infrastructure in Africa*, adopted at the Third ICAO World Aviation Forum (IWAF2017) (Abuja, Nigeria, 20-22 November 2017) within the framework of the Lomé Plan of Action (2017-2019) of the African Union (AU) (cf. C-WP/14745), the Representative of the United Arab Emirates underscored that those documents identified a number of specific projects, several of which fell under the AFI SECFAL Plan. She highlighted that her Government intended to fund some of the envisaged aviation infrastructure projects in Africa under the said Declaration and Framework.

57. With reference to the point raised regarding the use of voluntary contributions to fund certain staff positions, the Representative of the United Arab Emirates recalled Recommendation 5/5 of the last Council Off-site Strategy Meeting (COSM2017) (Bromont, Québec, 20-21 September 2017) that the Secretariat commission a study to evaluate whether the existing ICAO structure was appropriate to meet the new challenges and future expectations of ICAO's Member States and stakeholders, and that the results of the study should be fashioned in a manner to support the formulation of the next triennial Business Plan and the Council's subsequent deliberations on the triennial Budget (cf. C-WP/14653, Appendix; 212/8). Expressing concern that the current organizational structure was "top-heavy" and inefficient, she underscored that by identifying the said new challenges and future expectations the study would help avoid the addition of more "top-heavy" positions. Noting that the upcoming COSM2018 (Estérel, Québec, 21-22 June 2018), whose theme was *Aviation of the Future*, would further enable the identification of the new and emerging issues that ICAO would need to address, the Representative of the United Arab Emirates emphasized that the results of the Council's deliberations at that meeting should be taken into consideration during its future discussion of the structure of the Secretariat, which should be built on the basis of both the current and future needs of ICAO.

58. The President of the Council remarked that there was a requirement for more than just “top-heavy” positions in ICAO in order to meet those needs.

59. Noting that the carry-over from the Regular Budget for both the financial year 2016 and the financial year 2017 were quite high, approximately 7.7 per cent and 6.3 per cent of the approved appropriations, respectively, the Representative of Canada stressed the need to reduce the carry-over in future to a certain constant level and enquired as to the establishment of a target for the carry-over.

60. Due to a power outage, the Council agreed to resume discussion of this subject at its next meeting on 15 June 2018, at which time A/C/FIN would respond to the question raised by the Representative of Canada. All comments and suggestions made were noted, as were the clarifications provided.

Any other business

61. The Council agreed to the President’s request to waive Rule 26 b) ii) of the *Rules of Procedure for the Council* (Doc 7559), according to which working papers shall be distributed to Representatives at least 5 working days before the meeting in which they are to be considered, in order to enable the consideration of C-WP/14760 (*ANC Work Programme for the 209th Session*) at its Fifth Meeting on 18 June 2018, in conjunction with other air navigation-related working papers and oral reports.

62. The meeting adjourned at 1145 hours.

COUNCIL — 214TH SESSION

SUMMARY MINUTES OF THE FOURTH MEETING

(THE COUNCIL CHAMBER, FRIDAY, 15 JUNE 2018, AT 1000 HOURS)

OPEN MEETING

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

PRESENT:

Algeria	— Mr. A.D. Mesroua	Kenya	— Ms. M.B. Awori
Argentina	— Mr. G.E. Ainchil	Malaysia	— Mr. Y.H. Lim (Alt.)
Australia	— Mr. S. Lucas	Mexico	— Mr. D. Méndez Mayora
Brazil	— Mr. O. Vieira (Alt.)	Nigeria	— Mr. M.S. Nuhu
Cabo Verde	— Mr. C. Monteiro	Panama	— Mr. G.S. Oller
Canada	— Mr. M. Pagé	Republic of Korea	— Mr. Y.J. Lee
China	— Mr. Shengjun Yang	Russian Federation	— Mr. S. Gudkov
Colombia	— Mr. A. Muñoz Gómez	Saudi Arabia	— Mr. S.A.R. Hashem
Cuba	— Mrs. M. Crespo Frasier	Singapore	— Mr. T.C. Ng
Ecuador	— Mr. I. Arellano	South Africa	— Mr. M.D.T. Peege
Egypt	— Mr. A. Khedr	Spain	— Mr. V.M. Aguado
France	— Mr. P. Bertoux	Sweden	— Ms. H. Jansson Saxe
Germany	— Mr. U. Schwierczinski	Turkey	— Mr. A.R. Çolak
India	— Mr. A. Shekhar	United Arab Emirates	— Miss A. Alhameli
Ireland	— Ms. N. O'Brien	United Kingdom	— Mr. D.T. Lloyd
Italy	— Mr. M.R. Rusconi	United Republic of Tanzania	— Mr. R.W. Bokango
Japan	— Mr. S. Matsui	United States	— Mr. T.L. Carter
		Uruguay	— Mr. M. Vidal

ALSO PRESENT:

Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. C. Fernández (Alt.)	— Argentina
Mr. R.F. Pecoraro (Alt.)	— Brazil
Mr. D. Tavares Taufner (Alt.)	— Brazil
Mr. M.G. Correia Pontes (Alt.)	— Brazil
Mr. P. Langlais (Alt.)	— Canada
Mr. Chunyu Ding (Alt.)	— China
Mr. M. Millefert (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mrs. D. Valle Álvarez (Alt.)	— Mexico
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. M.S. Habib (Alt.)	— Saudi Arabia
Mr. S. Vuokila (Alt.)	— Sweden
Mr. Ö. Doğrukol (Alt.)	— Turkey
Mr. M. Salem (Alt.)	— United Arab Emirates
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mr. S. Kotis (Alt.)	— United States
Mrs. M.A. González (Alt.)	— Uruguay
Mr. F. de Medina (Alt.)	— Uruguay

SECRETARIAT:

Mrs. J. Yan	— C/OSG
Ms. I. Sosina	— SA/PRES
Mr. B. Djibo	— D/ATB
Mr. S. Creamer	— D/ANB
Mr. V. Smith	— D/ADB
Mr. J. Huang	— D/LEB
Mr. M. Belayneh	— DD/TCB
Mr. H. Gourджи	— H/SPCP
Miss L. Lim	— A/C/FIN
Mr. M. Fox	— C/PRC
Mrs. L. Comeau-Stuart	— Advisor, POD
Ms. K. Balram	— C/SEA
Ms. S. Rose	— C/POD
Mr. A. Opolot	— LO
Ms. G. Newton	— RCP
Mrs. P. Romano	— ASV-ARU
Mr. A. Larcos	— C/ACS
Ms. D. Cooper	— Précis-writer

Representatives to ICAO

Bolivia (Plurinational State of)

Cameroon

Chile

Cyprus

Ethiopia

Ghana

Greece

Honduras

Iran (Islamic Republic of)

Lebanon

Paraguay

Peru

Senegal

Airports Council International (ACI)

Civil Air Navigation Services Organization (CANSO)

European Union (EU)

Celebration of Eid El-Fitr

1. On the occasion of Eid-al-Fitr and the end of the Islamic holy month of Ramadan, the President of the Council wished everyone a happy Eid Mubarak with best wishes to Representatives and their families.

Subject No. 18.1: Annual budget

Subject No. 18.2: Transfers from one Major Programme of the budget to another

Financial year 2017 – Report on the carry-over

2. The Council resumed consideration (214/3) of this item on the basis of Information Paper C-WP/14749 which provided the status of authorized appropriation of the Regular Budget for the financial year 2017. The Council also had for consideration an oral report thereon from the Finance Committee.

3. In response to a question by the Representative of Canada on the established 7.5 per cent target for carry-over from the Regular Programme budget, Acting Chief Finance (A/C/FIN) explained it was ascertained from the baseline of the Corporate Key Performance Indicators (CKPIs) and could not be exceeded during the triennium. Nevertheless, the Representative of Canada considered the target to be very conservative and requested that the Council be provided with a comparison of targets from other UN agencies of similar size to ICAO. In this regard, the President of the Council observed that the other agencies had an annual rather than a triennial budget, which was a factor that should be borne in mind. Nevertheless, he agreed that the comments from Canada should be taken into account during the next triennium review of the CKPIs.

4. In line with the concerns raised by the Representative of the United States at the previous meeting, the Representative of Nigeria queried the cost breakdown of the voluntary contribution for aviation security (AVSEC) programmes and how these funds had been expended in the six African countries. Specifically, he sought more information on how the funding was being utilized given the last progress report by the Chairperson of the Comprehensive Regional Implementation Plan for Aviation Security and Facilitation in Africa (AFI SECFAL Plan) Steering Committee, which had highlighted the need for project implementation resources. He also took the opportunity to thank the United States and other donors for their continuous support for such programmes in Africa.

5. Indicating she would provide an overview of AVSEC funding and shortage of resources later in the session, the Secretary General clarified that the detailed information on the use of the United States voluntary contributions to AVSEC were posted on the Council website. In this respect, the Representative of the United States indicated he would follow-up to ensure the majority of the voluntary contribution provided from his country was indeed used for AVSEC programmes as specified. He also undertook to look into the AFI SECFAL programmes.

6. In reference to the table in the appendix to C-WP/14749, the Representative of Spain highlighted the need for vigilance in the transfer of appropriations from the Strategic Objectives to Supporting Implementation Strategies. He expressed concern that funds allocated to the former were being transferred to the latter. While appreciating this point, the Secretary General explained the savings from the strategic objectives pertained to the delayed recruitment process for regional office posts and that a large portion of the carry-over funds had been directed towards the unbudgeted cybersecurity activities and improvements in language services thereby lending support to all the strategic objectives of the Organization through enhanced efficiency and effectiveness.

7. The Representative of Mexico suggested that in the next review of the carry-over funds, an additional table be provided in the working paper detailing the use of funds between the strategic objectives and programme support. In this regard, the Secretary General indicated that the issue had been discussed by the Finance Committee (FIC) and that the Secretariat had agreed to provide this information in the next report.

8. Following consideration, the Council:

- a) noted that the amount earmarked to be carried over each year is currently set at a ceiling of 7.5 per cent of the Regular Programme budget, and in this regard, proposed that this target amount would be reviewed in the next discussions of the corporate key performance indicators (CKPIs);
- b) requested that future working papers on this item should include amounts by item for the mission-critical and deferred activities to be funded by the carry-over; and
- c) reiterated that funds from the carry-over of savings should as a general principle be prioritized for activities related to the Strategic Objectives instead of activities related to the Supporting Strategies, and that any transfer of appropriations from the former to the latter should include the activities undertaken with the transferred funds.

Subject No. 24: Sessions of the Assembly

Draft Provisional Agenda for the 40th Session of the ICAO Assembly (2019); site and date; and invitation to the observers

9. The Council considered this item on the basis of Information Paper C-WP/14740, which presented the provisional agenda for the 40th Session of the ICAO Assembly. The Council also had for consideration an oral report thereon from the Working Group on Governance and Efficiency (WGGE).

10. The WGGE had noted, with regard to the Executive Committee's Agenda Items X9 – *Multilingualism at ICAO*, X10 – *Increasing the efficiency and effectiveness of ICAO* and X16 – *ICAO Civil Aviation Training and Capacity Building* (Appendix A refers), the clarification provided by the Secretariat that these items were cross-cutting in nature and policy-related and therefore inappropriate for consideration by the Administrative Commission; and in relation to the emerging issue regarding outer space, requested the Secretariat to continue monitoring developments vis-à-vis the regulatory aspects thereof and to inform the Council accordingly.

11. With regard to the dates proposed for the 40th Session of the Assembly, the WGGE had noted the United Nations General Assembly was scheduled to commence on 17 September 2019, and as the overlapping proposed dates could present challenges for high-level State officials attending both events, had suggested the alternative dates of 24 September to 4 October 2019 or 17 September to 27 September 2019.

12. WGGE had agreed to the proposed list of observers to be invited to attend the 40th Session of the ICAO Assembly as listed in Appendices B and C, and given that environmental issues would feature significantly in the upcoming Assembly, had recommended that the Secretariat of the Convention on Biological Diversity also be invited. To further invitees suggested by the Representatives of South Africa and the United Republic of Tanzania, the President of the Council proposed that in keeping with past practice, the authority to finalize the definitive list of organizations to be invited, be delegated to him.

13. The Representative of China supported the option of the Assembly taking place from Tuesday, 17 September to Friday, 27 September 2019 whereas the Representatives of Turkey and Saudi Arabia supported the option of Tuesday, 24 September to Friday, 4 October 2019; and in response to a query by the Representative of Saudi Arabia as to whether the proposed dates had been coordinated with other Montreal-based UN agencies to avoid logistical issues, the President of the Council pointed out that ICAO was accorded precedence and the other agencies would set their dates accordingly. The critical point was coordination between the ICAO Assembly and the UN General Assembly; and to these points, the Representative of Canada indicated he would coordinate with Montreal International and the City of Montreal to confirm whether any other major event was taking place at the same time as the ICAO Assembly.

14. In support of the President's comments, the Representative of France expressed the need to determine the dates to guarantee the best participation; and the Representative of Ecuador underscored the need for adequate logistical capacity in Headquarters to support participants. In this regard the President of the Council noted that priority in seating arrangements should be given to State delegations.

15. The Secretary General recalled the challenges faced at past Assemblies to accommodate all the regional organizations requesting coordination meeting space and she encouraged the Delegation of Canada to lend support in finding solutions to accommodate these requests. On the same point, the Representative of Nigeria suggested that some delegations may be able to assist in providing their existing office space to accommodate the meeting space requirements of regional organizations.

16. The President of the Council pointed out that as the Assembly took decisions on very difficult issues, coordination amongst States was helpful to reach consensus and he suggested that allocating meeting space for this purpose be prioritized, and the Secretary General concurred.

17. To a comment by the Representative of South Africa regarding the need to avoid ARGF objectives being a consideration in meeting room logistics, the Secretary General explained that while she recognised this concern, it was also important to note that ARGF activities played an important role in supporting programme activities.

18. Following consideration, the Council:

- a) agreed that the items listed in the draft provisional agenda, as contained in Appendix A to C-WP/14740, should be referred to the Air Navigation Commission, Air Transport, Finance, Unlawful Interference, Technical Cooperation, and Human Resources Committees, as appropriate, for consideration; and
- b) decided that the 40th Session of the Assembly, should be convened from Tuesday, 24 September to Friday, 4 October 2019 and further agreed that in principle, ordinary sessions of the Assembly should be held, as far as practicable, in the final week of September and first week of October, unless there are extraordinary reasons for not doing so.

19. In addition, the Council agreed that invitations to attend the Assembly as observers be extended to the following:

- a) non-Member States of ICAO which are members of the United Nations or a Specialized Agency or the International Atomic Energy Agency, as indicated in Appendix B to the paper, and those that may become members of those organizations in the interval before the Assembly, it being clear that any non-Member State which

adhered to the Chicago Convention before the opening of the Assembly or during the Session would be able to participate as a Member State;

- b) international organizations reproduced in Appendix B to C-WP/14740 and those that may be added to the list in the interval before the Assembly;
- c) Regional Safety Oversight Organizations (RSOOs) and Regional Development Banks as indicated in Appendix C to the paper; and
- d) Palestine, in accordance with Assembly Resolution A22-6.

20. In relation to organizations listed in Appendices B and C (sub-paragraph b) and c) above), the Council delegated the authority to the President to approve the inclusion of any additional organizations, on the understanding that the amended final list of invitees would be circulated to Representatives for their information.

21. In addition, the Council took the opportunity to recall that a number of capacity issues had been encountered at the ICAO Headquarters building during the 39th Session (2016), especially pertaining to the availability and adequacy of meeting rooms in the ICAO Headquarters building. In this regard, the Council requested the Secretariat to ensure that priority would be given to accommodating the needs of Member States and regional aviation groupings for meeting room space in the ICAO Headquarters building so that consultative efforts during the course of the Assembly session could be facilitated.

22. It was also recalled that the Delegation of Canada would work closely with the Secretariat during the preparatory phase leading up to the 40th Session in order to address the capacity issues and to ensure that all logistical requirements could be met for the session of the Assembly (C-DEC 212/9 refers), and that in addition, in light of the dates that had now been fixed for the session (cf. paragraph 18 b) above), the Delegation would seek to coordinate with the City of Montreal and other relevant authorities in relation to other major conferences and events taking place at the same time as the ICAO Assembly so as to minimize the impact on delegations vis-à-vis demand for hotel accommodation as well as other requirements.

Subject No. 24.3: Action on assembly resolutions and decisions

Mid-triennial review of implementation of resolutions and decisions of the 39th Session of the Assembly —*Policy and administrative subjects*

23. The Council considered this item on the basis of Information Paper C-WP/14752, which presented a mid-triennial report on the progress made, as at April 2018, in the implementation of resolutions and decisions of the 39th Session of the Assembly relating to policy and administrative subjects, which the Council considered during its 210th Session. The Council also had for consideration a joint oral report from the Finance and Technical Cooperation Committees, as well as oral reports from the Human Resources Committee and the Working Group on Governance and Efficiency (WGGE).

24. During her introduction of C-WP/14572, the Secretary General highlighted the introduction of the Corporate Management and Reporting Tool (CMRT), which could facilitate the creation of a single reporting mechanism for planning and reporting progress on implementation of Assembly resolutions. The active tracking capabilities of the CMRT could also provide the means for early identification of constraints for the Organization to implement the mandates of the Assembly. To

improve the efficiency of this process and to provide a more holistic review of the work programme of the Organization, the Secretariat recommended that Council consider the use of a single report for each initial and mid-triennial report for future Assemblies in combination with the active tracking capabilities of the CMRT. This would allow for a holistic review by the Council of the overall work programme of the Organization.

25. The FIC and TCC, during their first joint meeting of the current session, had considered the updated information presented in Appendices B and D to C-WP/14752 on actions taken by the Finance Branch (FIN) and the Technical Cooperation Bureau (TCB), respectively, to implement the resolutions and decisions of the 39th Session of the Assembly.

26. In regard to Appendix B, the two committees had been satisfied with the progress reported in addressing the resolutions and decisions of the 39th Session of the Assembly. In regard to Appendix C, two items of concern were highlighted. The TCC recognized that more could be accomplished by the Secretariat regarding resource mobilization, particularly with the Strategic Planning, Coordination and Partnerships Office (SPCP); strengthening of the Regional Offices efforts to promote TCB services and the ICAO Programme for Aviation Volunteers (IPAV) with civil aviation authorities in the regions of accreditation; and to identify potential projects for TCB implementation. The Committees had therefore recommended to the Council that further action be taken by SPCP and the Regional Offices in regard to resource mobilization and outreach activities in support of TCB.

27. During its consideration of the paper at its First Meeting of the current session on 14 May 2018, the HRC had noted with appreciation the progress made by the Secretariat in the areas of the ICAO Gender Equality Programme and on human resources management since the 39th Session of the Assembly, as presented in Appendix C of C-WP/14752.

28. The WGGE, at its First Meeting of the current session on 10 May 2018, had considered the updated information presented in Appendix E of C-WP/14752, and had taken note of the proposal by the Secretariat to improve efficiency in reviewing progress made in the implementation of resolutions and decisions of the Assembly with a single report for each initial and mid-triennial review of resolutions and decisions. During the related discussion, certain challenges in using and accessing the information on the CMRT system were voiced. In response, the Secretariat had indicated it would further improve the user-friendliness of the CMRT system and had offered to conduct further training and familiarization courses as well as one-on-one guidance sessions to individual Council Members as required.

29. On the basis of the above, the WGGE had supported the suggestion to utilize a single report for each initial and mid-triennial report for future Assemblies and had recommended that the Council request the Secretariat to submit a proposal for consideration at a later session.

30. Referring to paragraph 6 of the FIC/TCC oral report on the SPCP enhanced role in securing the necessary funds for technical cooperation and technical assistance projects, the Representative of Mexico sought clarification as funds for technical cooperation were provided by States seeking to build capacity of their facilities. Therefore, the reference in the oral report should have been only to technical assistance projects, to which the President of the Council concurred.

31. To a query by the Representative of the United Arab Emirates on who was responsible for work being carried out on the CMRT, C/PRC clarified the functionality of CMRT to support an ongoing tracking mechanism for Assembly resolutions and decisions had been raised in the WGGE while the IPSG had been tasked with the overall review of its functionality and user-friendliness. He also indicated that the Assembly resolutions, decisions and declaration were already provided for in the CMRT and work was underway to incorporate the active tracking functions.

32. The President of the Council requested the first level demonstration be made to the IPSPG in order that any updates could be made prior to review of the system by the Council.
33. Following consideration the Council:
- a) noted with appreciation the progress made by the Secretariat in the implementation of actions derived from Assembly Resolutions adopted at the 39th Session;
 - b) acknowledged that more could be accomplished by the Secretariat in terms of resource mobilization and outreach activities, particularly by the Strategic Planning, Coordination and Partnerships Office (SPCO), and requested that as far as practicable, accelerated efforts be undertaken in this regard;
 - c) welcomed the increased reporting efficiencies gained from the introduction of the ICAO Corporate Management and Reporting Tool (CMRT), especially in enabling users to access information on the implementation of Assembly Resolutions as well as Council decisions, and noted that the Secretariat had undertaken to explore options to further improve the user-friendliness of the CMRT; and
 - d) decided that in the future the working paper presented to the Council on this item, for both the initial and subsequent mid-triennial review, should be compiled as one single document in which information should be provided on the implementation of all resolutions and decisions adopted by Assembly sessions, such that this new one consolidated format would better facilitate the ability of the Council to gain an overall view of all the actions taken pursuant to the adoption of resolutions and decisions.

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

Report of the results of the survey on needs and expectations of ICAO Member States

34. The Council considered this item on the basis of C-WP/14753, which presented the results of a survey of Member States to gauge the extent to which ICAO strategic objectives, programmes and activities were perceived to be meeting the current and projected future needs and expectations of the Member States. The Council also had for consideration an oral report thereon from the Implementation, Strategy and Planning Group (ISPG).
35. The IPSPG, at its first meeting during the current session had reviewed C-WP/14753 and had noted the overall response rate of the Member States, and had requested a breakdown of responses by region which would be beneficial to better identify where follow-up action could be undertaken.
36. Among the issues discussed were: the importance of sending the survey to the proper respondent; the merits of an on-line only survey versus a hardcopy survey option; the objective of this survey; and the feasibility and value of combining this survey with the Global Aviation Training and the Technical Cooperation Bureau surveys.
37. The ISPG had noted that the Secretariat would take follow-up action based on the survey responses to: a) explore avenues to better communicate the existence and content of all ICAO websites; b) ensure that the recently established Quality Assurance Mechanism is fully implemented for all Technical Assistance and Cooperation Projects; c) study potential causes for the significant drop in

demand for Management/Leadership training requested by Member States; and d) increase its direct dialogue with States as a means to ascertain if ICAO's activities are commensurate with the needs and expectations of States.

38. The ISPG Chairperson (Representative of the United Arab Emirates) highlighted the concern of the many surveys across the bureaux and related costs. The feasibility of a single provider offering different surveys needed to be addressed given the increased costs versus the low response rate from States.

39. In the event that a feasibility study were carried out, the Representative of Spain observed a consolidated survey would be useful given the different issues addressed on various entities and that it would be appropriate to report to States on the necessary follow-up action. As well, it was very important to rationalize the information provided on the various ICAO websites with the logical approach of one website for the public and one intranet site providing easy access to historical documents. In this regard, the Representatives of Mexico and Panama underscored the need to improve the search function in providing easy access to historical documentation; and the Representative of Malaysia also echoed support, highlighting the electronic copy of C-WP/14765 on the adoption of Annex 16, Volume IV had only been posted following distribution of the paper copy.

40. The Director of Administration (D/ADB) indicated the ICT web manager coordinated the number of websites as well as their content while technical input was provided from across the Secretariat. The Secretary General added that every regional office and bureau had its own webpage with a link to the ICAO public website and that efforts were underway to digitalize all documentation to create one data depository with improved access to meeting documentation such as that for the forthcoming AN-Conf/13.

41. The President of the Council underscored the need for access to historical documents given ICAO was a knowledge-based organization and he suggested the Secretary General consider tasking SPCP to review the coordination of information uploaded to the websites.

42. Finding the sources of information on the ICAO-NET and Council websites to be extremely helpful and reliable, the Representative of the United Kingdom felt there was no need for a major overhaul as the work done thus far was very good. He also queried whether a similar report or survey was undertaken by industry stakeholders on relations with ICAO linked to industry demands. It would be useful to know how well ICAO was meeting the expectations of industry.

43. In echoing support for the availability of all documentation on the ICAO website, the Representative of South Africa sought clarification on the potential causes for the significant drop in demand for management/leadership training by Member States, specifically related to the Next Generation of Aviation Professionals (NGAP) and the challenges faced by aviation in terms of shortages, as well as assistance provided to States, and related ICAO initiatives.

44. C/PRC clarified that question no. 6 of the survey highlighted the type of assistance requested by Member States on the assistance received in any form from ICAO, the Regional Oversight Organization or COSCAPS while question no. 7 focussed on assistance received by CAAs in the last three years and for what purpose. Based on State responses, there was statistical analysis in five categories: acquisition of technology infrastructure, resolving a significant safety concern, security concern, regional capacity building through TCB, COSCAP or CAPSCA and improving effective implementation of the critical elements. Question no. 12 on the success or lack thereof of ICAO initiatives, projects or technical assistance was presented in Appendix A of the working paper; and the

rate of unsuccessful initiatives as requested by States that were conducted by ICAO was very low. However, it called attention to further work by the Secretariat in studying the issue.

45. In this regard, the President of the Council indicated that ICAO's target should ensure all Member States were satisfied with the assistance provided by the Organization. Although there was a drop in demand for management and leadership training, there was an increase in more technically oriented training courses which was a very positive sign and could serve NGAP. However, the drop in management training was a concern that required further study, there was also a need to focus on management and leadership training for middle management professionals.

46. To these points, the Secretary General informed that the GAT Office would shortly launch a new training package in safety and security, funded by the Government of China, which was dedicated to developing countries. As to the surveys conducted by the Secretariat, it was important to encourage Council and Member States feedback to improve the survey design.

47. Considering the cost of the surveys, the Representative of Kenya felt that emphasis should be placed on the design of future surveys. It was very important to derive maximum benefits through a cost-benefit analysis.

48. To this point and those of the Representative of the United Kingdom, the Chairperson of the ISPG indicated the need to actively review the comments of industry stakeholders and in this regard one of the tasks at the forthcoming Council off-site meeting would be to identify future entities.

49. Following consideration, the Council noted that the Secretariat:

- a) would explore avenues to better communicate the existence and content of all ICAO websites;
- b) should ensure that the recently established Quality Assurance Mechanism was fully implemented for technical assistance and cooperation projects;
- c) intended to undertake a review to explore potential causes for the significant decline in demand for management/leadership training requested by Member States; and
- d) would increase direct dialogue with Member States in order to ascertain the extent to which ICAO activities are commensurate with the needs and expectations of Member States.

50. In addition, the Council:

- a) noted the overall satisfaction level expressed by Member States in respect of the relevance of assistance received from ICAO, including the extent and level of assistance provided;
- b) noted the increase in Member States asking for and receiving ICAO assistance from Headquarters and at the regional level (ICAO Regional Offices, RSOOs and COSCAPs);
- c) requested the Secretariat to conduct a review to compare the benefits/viability of conducting one consolidated survey on a triennial basis, as opposed to having different

surveys corresponding to various activities, in order to reduce the burden on Member States and improve the cost-efficiency of such surveys;

- d) requested the Secretariat to relate future surveys to the strategic objectives, corporate key performance indicators (CKPIs) , and business plans;
- e) noted the importance of the Regional Directors' roles in communicating with Members States and establishing action plans to increase the response rate to the surveys;
- f) requested the Secretariat to ensure future surveys and reviews are designed to have follow-up actions dependent on the responses and ensure that the results and subsequent actions are communicated to Member States;
- g) further requested that the information obtained and results of the survey outlined in C-WP/14753, as well as related actions taken by the Secretariat, be disseminated to Member States; and
- h) further requested that the Secretariat undertake a similar review exercise that targeted aviation industry stakeholders with the objective, inter alia, of ascertaining the extent to which ICAO was meeting industry expectations.

51. Separately, the Council also requested that a review be carried out of the website platform, including the format and content of the website, in order to ensure that there is up-to-date availability as well as ease of accessibility of all current documentation. In addition, the Council requested that the Secretariat explore the digitization of historical documentation that is not currently available from the website so that this could also be uploaded and be made accessible to users.

Subject No. 7: Organization and personnel

Status of the ICAO Workforce for 2017

52. The Council considered this item on the basis of C-WP/14754, which presented the annual report on the composition of the ICAO workforce as at 31 December 2017. The Council also had for consideration an oral report thereon from the Human Resources Committee (HRC).

53. In his presentation, the Chairperson of the HRC (Representative of Ecuador), indicated that the HRC had noted the information provided on distribution of different types of personnel; equitable geographic representation (EGR) and gender; staff movements and appointments; demographic data; and Professional posts forecasted to become vacant in the next three years.

54. The HRC had noted with appreciation enhancements made to the paper by standardizing the presentation of data, by including comparative tables to assist with trend analysis, expanding data on vacant posts and forecasting future vacancies. The Committee had congratulated the Secretariat on the significant reduction in the number of posts re-advertised during 2017, compared to 2016, indicating that it would be useful to be kept up to date on forthcoming vacancies in order to assist in communication and outreach efforts.

55. In response to a query on the increased use of secondments and consultancies, the Secretariat had explained they had provided a flexible, short-term solution to meet the needs required by the ICAO Business Plan not financed by the Regular Programme Budget.

56. In response to a query on how EGR could be improved, the Secretariat had clarified that every possible measure was being taken through outreach to obtain a wide pool of applicants to enable the selection of unrepresented and under-represented States as well as women. However, according to Staff Regulation 4.1 of the ICAO Service Code, the paramount consideration in selection was securing the highest standards of efficiency, competence and integrity, with due consideration being paid to EGR and gender parity.

57. Further to a query on the nomenclature used for the occupational groupings reflected in Appendix B of C-WP/14754, it had been agreed that the Secretariat would review the relevance of the groupings for the ICAO work environment including the possibility of removing Appendix B from future reports.

58. The President of the Council observed that in regard to Appendix B, the information was not captured as expected, and that the Secretariat should review the classification of the occupational groupings in Appendix B to make them more relevant to the ICAO work environment.

59. The Representative of Mexico fully agreed with the need to restructure Appendix B to better realize and prioritize the distribution of human resources throughout the Organization. He suggested there was a need for indicators in each category, albeit aspirational for certain categories such as gender, there was also a need for certain targets that would allow for review of progress in meeting the Assembly's instructions.

60. The Representative of Spain concurred on the need to give clarification to the information in Appendix B. In regard to the reduction in the number of re-advertised posts, he queried the reason why the position of Chief of Finance had been re-advertised for the third time especially given that the Council will shortly be required to turn its attention to the next triennium budget for the Organization. Referring to paragraph 2.10 on page 3, on the 95 personnel seconded in 2017, he also observed that this represented a 50 per cent increase over two years, which was of concern and something that needed to be carefully monitored. With regard to the 95 seconded personnel, the Representative requested to be provided with a regional distribution breakdown.

61. In regard to the D-1 Chief Finance post, D/ADB indicated that a suitable candidate had not been found in the first two rounds, which was why the post had been re-advertised again but he assured the Council that the Secretariat was being proactive in seeking potential suitable candidates from all areas and not just from within the UN system. In regard to the seconded personnel, the Director, referred the Council to paragraph 2.11, which provided information on the regional distribution of these staff members. In addition, Table A.3 on page A-3 of Appendix A provided a breakdown over the years 2015, 2016 and 2017 by region for all seconded posts.

62. The Representative of Nigeria queried whether it was correct to state that there were a lack of suitable candidates for the Chief of Finance position since he recalled that during the previous recruitment process, a short list of suitable candidates had in fact been presented to the HRC and all the candidates on the short-list had been found to be qualified. The Representative expressed concern at the costs to the Organization as a result of undertaking the external assessment of the candidates once again for such senior level positions.

63. D/ADB explained that sometimes although suitable candidates are identified and placed on the short-list, the candidate might for any number of reasons, not accept the position or withdraw. Therefore, it was a matter of candidates both accepting and being available for the position.

64. The Representative of the United Kingdom also expressed difficulty in understanding the reason why such an important position in the Organization could not be filled. He queried whether the Organization was being too stringent in its recruitment processes and if this was something that should be

reviewed by the HRC rather than re-advertising the same job application. Noting the role appeared to be handled in an acting capacity, he wondered whether there could be a prospect for promotion from within the Organization given the costs of the recruitment process to the Organization. The Representative also underscored the crucial nature of the position particularly given the need for budget planning in preparation for the forthcoming Assembly.

65. In this regard, the Secretary General also gave assurances to the Council that all efforts were being made to encourage suitable candidates to apply for the C/FIN post in the third round of advertising of the post. She stressed that this was an important post in the Secretariat that needed to be filled by the most suitable candidate.

66. In regard to the 50 per cent increase in secondees over the past two years, the Representative of the United States queried the increase in annual expenditures of consultants and contractors given that 6.2 per cent of staff positions were annually left vacant for budget purposes.

67. The Representatives of South Africa and Kenya also queried whether there was a correlation between the vacant posts and the high number of consultants. The Representative of South Africa also specifically queried the perception that some staff who had separated had since returned to work as consultants.

68. D/ADB confirmed that there had been substantial growth in the consultancy areas in recent years, including in his own Bureau due to needs in ICT as well as other functional requirements. However, if posts, which were fixed in a triennium, were not available yet the needs and operations of the Organization expanded within that triennium, the Organization was obliged to fill that need through a more flexible workforce, which was one of the factors that had led to an increase in consultancies.

69. The Secretary General further elaborated that consultancy contracts were funded not only by the regular budget but by extra-budgetary sources of funding through ARGF activities as well and confirmed that consultancies were used to respond in a pro-active manner to expanding activities throughout the triennium.

70. In regard to the selection process for the C/FIN position, the Representative of India queried whether the rationale for the lack of selection of shortlisted candidates had been recorded somewhere and if so, whether the HRC or Council could be provided with this information. In response, D/ADB confirmed that every part of the recruitment process is documented and is available.

71. In keeping with question raised by the Representatives of Nigeria, the United Kingdom and India, the Representative of Malaysia queried the number of the increase in vacant professional positions from 26 in 2015, 33 in 2016 to 40 in 2017.

72. D/ADB explained that posts were not being kept vacant as a budgetary mechanism. He noted that it was important to recall that there was a 6.2 per cent budgeted vacancy rate. In addition, other factors led to the fluctuation in the vacancy rate such as the mandatory age of separation, recruitment issues in the regional offices and the normal rate of attrition. In terms of former employees returning to ICAO as consultants, D/ADB confirmed that it depended on whether the person had the expertise; there was no correlation between consultancies and vacancies. In relation to the issue of costs involved, the Director explained that for the recruitment process for D-1s and D-2s, the Assessment Centre cost was \$35 000 in addition to costs in time and resources for Secretariat staff in the Human Resources area.

73. By way of supplementary information, the Secretary General explained that the costs involved in recruitment were two-sided. One cost was identifiable and related to the recruitment process including the assessment centre. However, there was another side to the costs if a post was not filled and this related to the cost to the Secretariat and the additional costs to the Organization of continuing to have a post that was not filled. The Secretary General assured the Council that every effort is always made to

find the most suitable candidate for the Organization and to mitigate the potential risk of not filling senior posts.

74. In response to a query by the Representative of Japan on measures being taken to mitigate under-representation as well as a balance in gender equality, including the possibility of undertaking outreach recruitment missions, D/ADB indicated that when Member States sought clarification of the recruitment process he advised them on the process that applied equally to all Member States and of the need to select the best suitable candidate taking into account EGR and the gender policy.

75. Following consideration, the Council:

- a) requested the Secretariat to review the nomenclature used for the occupational groupings reflected in Appendix B of C-WP/14754, taking into account the relevance of the groupings in the context of the ICAO work environment;
- b) further requested the Secretariat review the possibility of incorporating indicators and targets into future reports in order to enable the Council to more effectively track progress achieved in different categories pertaining to, inter alia, equitable geographical representation (EGR) and gender balance;
- c) noted the increased use of seconded personnel and consultants in the Secretariat, compared to previous years, and in this regard, requested that further information be provided in future reports to reflect the regional distribution of these staff categories;
- d) noted with concern the re-advertisement of vacancy notices for certain senior management posts in the Secretariat and requested the Secretariat to ensure that qualified candidates are encouraged to submit applications for consideration during the recruitment phase; and
- e) requested that the Secretariat continue to explore options to improve the overall content, style and presentation of this annual report to the Council.

Subject No. 7: Organization and personnel

Review of ICAO recruitment process to improve gender equality

76. The Council considered this item on the basis of an oral report presented by the Human Resources Committee (HRC).

77. The Chairperson of the HRC (Representative of Ecuador) highlighted the committee had considered a presentation by the Secretariat that drew attention to the progress made in the implementation of the ICAO Gender Equality Programme, including ongoing outreach efforts for recruitment, strengthening of partnerships with other international organization dealing with aviation activities and collaboration on major events to highlight the role of women in aviation.

78. With regard to major events on gender, it had been noted that the first ever Global Aviation Gender Summit would be held in South Africa from 8 to 10 August 2018 and was aimed at bringing together senior leaders in private and public organizations to assess the state of women in aviation and the challenges they faced.

79. The Committee had also acknowledged that increasing gender representation at ICAO was not a single-pronged approach, and that there were many facets to addressing this issue. Strengthening industry awareness globally, developing partnerships and female applicants in aviation would assist ICAO in attracting more female applicants in aviation. It was also important to note that this could not be done along; sustained efforts by Member States were needed to increase the number of women in the global aviation sector and the pool of female applicants to ICAO posts.

80. The HRC had also noted with satisfaction the progress made by the Secretariat in the areas of gender activities, outreach and partnerships.

81. The Representative of South Africa indicated there was much interest in the summit which was open to all participants. He took the opportunity to encourage all Council Representatives to attend this event.

82. In thanking the HRC for its report and South Africa for hosting the summit, the Representative of Kenya called on the need for affirmative action in the recruitment of qualified women to ICAO positions especially at the D-1 and D-2 level. The Representative of Nigeria supported these sentiments as did the Representative of Mexico who proposed that Ambassador Marta de Rosas, the former Representative of Mexico to ICAO, be included on the speaker list at the summit.

83. The Representative of the United Arab Emirates also voiced support for the comments by the Representative of Kenya. While acknowledging the work being done by the Secretariat, there needed to be affirmative action in selecting competent female candidates to senior level positions of the Organization, as was the case in the past when ICAO had three women in Director roles.

84. The Representative of South Africa supported the interventions by the Representatives of Kenya and the United Arab Emirates as did the Representatives of Argentina, Panama and Sweden, and the Representative of Colombia suggested the term parity or equity be used rather than equality.

85. The Representative of Canada pointed out that all Council Representatives had a role to play in developing programmes in a more affirmative way by alerting their organizations to vacant posts and to participate in activities to promote women in aviation.

86. The Representative of Saudi Arabia also indicated his State's strong support to strengthen the role of women in ICAO. At the same time however, he considered competencies to be the decisive consideration in any given recruitment process.

87. In thanking the Council members for their comments and advice, the Secretary General considered the goals for the Organization on gender equality and parity could be achieved through the gender equality programme and key performance indicators. In this regard, she believed that the first ever gender aviation summit being held in cooperation with South Africa would enhance awareness and promote this very important programme not only for ICAO but also for the aviation global sector. She welcomed the close cooperation with the Council to ensure this endeavour was being carried out in accordance with the principles of recruitment, particularly competency; and that qualified female candidates be encouraged to submit their applications to senior positions, particularly technical positions given the low female application rate to those positions.

88. Following consideration, the Council:

- a) welcomed that the first ever *Global Aviation Gender Summit* would be held in Cape Town, South Africa, from 8 to 10 August 2018;
- b) recalled Assembly Resolution A39-30 "*ICAO Gender Equality Programme promoting the participation of women in the global aviation sector*", and in this

context, reiterated the need for more female representation on the ICAO Council as well as an improved gender balance at the senior management level of the Secretariat, especially at the D-1 and D-2 levels;

- c) requested that in order to promote gender equality in the Secretariat, further consideration should be given in the future to other possible options such as the adoption of specifically targeted affirmative action;
- d) noted that currently in compiling a short-list of qualified candidates for the filling of a vacant post, the essential work experience and educational requirements must be met, but that once a short-list has been compiled, the other criteria of equitable geographical representation and gender are taken into account in determining a final selection, and in this regard, the HRC should undertake a review of the applicable criteria and to determine if other measures should be incorporated into the recruitment and selection process to enhance gender equality in the organization; and
- e) finally, noted that the next progress report on the ICAO Gender Equality Programme would be presented to the Council at its 216th Session.

Any other business

Dinner Dance hosted by Nordic Delegation

89. Representatives were reminded that the Nordic dinner would be taking place in the evening at the Windsor Ballrooms commencing at 1900 hours.

Barbecue hosted by Delegation of Nigeria

90. Representatives were reminded of the barbecue hosted by the Delegation of Nigeria, which would be taking place on Saturday, 16 June 2018.

91. The meeting adjourned at 1300 hours.

COUNCIL — 214TH SESSION

SUMMARY MINUTES OF THE FIFTH MEETING

(THE COUNCIL CHAMBER, MONDAY, 18 JUNE 2018, AT 1000 HOURS)

OPEN MEETING

President of the Council: Dr. Olumuyiwa Benard Aliu

Acting Secretary: Mr. Boubacar Djibo, Director, Air Transport Bureau (D/ATB)

PRESENT:

Algeria	— Mr. A.D. Mesroua	Malaysia	— Mr. K.A. Ismail
Argentina	— Mr. G.E. Ainchil	Mexico	— Mr. D. Méndez Mayora
Australia	— Mr. S. Lucas	Nigeria	— Mr. M.S. Nuhu
Brazil	— Mr. O. Vieira (Alt.)	Panama	— Mr. G.S. Oller
Cabo Verde	— Mr. C. Monteiro	Republic of Korea	— Mr. Y.J. Lee
Canada	— Mr. M. Pagé	Russian Federation	— Mr. S. Gudkov
China	— Mr. Shengjun Yang	Saudi Arabia	— Mr. S.A.R. Hashem
Cuba	— Mrs. M. Crespo Frasier	Singapore	— Mr. T.C. Ng
Ecuador	— Mr. I. Arellano	South Africa	— Mr. M.D.T. Peege
Egypt	— Mr. A. Khedr	Spain	— Mr. V.M. Aguado
France	— Mr. P. Bertoux	Sweden	— Ms. H. Jansson Saxe
Germany	— Mr. U. Schwierczinski	Turkey	— Mr. A.R. Çolak
India	— Mr. A. Shekhar	United Arab Emirates	— Miss A. Alhameli
Ireland	— Ms. N. O'Brien	United Kingdom	— Mr. D.T. Lloyd
Italy	— Mr. M.R. Rusconi	United Republic of Tanzania	— Mr. R.W. Bokango
Japan	— Mr. S. Matsui	United States	— Mr. T.L. Carter
Kenya	— Ms. M.B. Awori	Uruguay	— Mr. M. Vidal

ALSO PRESENT:

Mr. C. Hurley	— President, ANC
Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. C. Fernández (Alt.)	— Argentina
Mr. R.F. Pecoraro (Alt.)	— Brazil
Mr. D. Tavares Taufner (Alt.)	— Brazil
Mr. H. Gonzales (Alt.)	— Brazil
Mr. M.G.C. Pontes (Alt.)	— Brazil
Mr. Chunyu Ding (Alt.)	— China
Mr. M. Millefert (Alt.)	— France
Mr. E. Risse (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mrs. D. Valle Álvarez (Alt.)	— Mexico
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. M.S. Habib (Alt.)	— Saudi Arabia
Mr. S. Vuokila (Alt.)	— Sweden
Mr. Ö. Dođrukol (Alt.)	— Turkey
Mr. M. Salem (Alt.)	— United Arab Emirates
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mrs. M.A. González (Alt.)	— Uruguay
Mr. F. de Medina (Alt.)	— Uruguay

SECRETARIAT:

Mrs. J. Yan	— C/OSG
Ms. I. Sosina	— SA/PRES
*Mr. S. Creamer	— D/ANB
*Mr. J. Vargas	— D/TCB
*Mrs. J. Hupe	— DD/ENV
*Mr. C. Radu	— DD/SAF
*Mr. D. Guindon	— DD/MO
*Mr. T. Tanaka	— C/CC
*Mr. N. Rallo	— C/OAS
*Ms. J. Blumenkron	— OAS
Miss S. Black	— Précis-writer

*Part-time

Representatives to ICAO

Chile
Cyprus
Ethiopia
Greece
Honduras
Indonesia
Iran (Islamic Republic of)
Lebanon
Peru

European Union (EU)

Subject No. 14.4.1: Divisional-type air navigation meetings

Safety Week – Presentation on the Thirteenth Air Navigation Conference (AN-Conf/13) (2018)

1. Further to the Council's earlier request (213/4), the Director, Air Navigation Bureau (D/ANB) and the President of the ANC presented a joint oral report on preparations for AN-Conf/13 (Montréal, 9-19 October 2018), whose theme was *From Development to Implementation*. It was delivered by means of a PowerPoint presentation, which is available on the Council's secure website at <https://portal.icao.int/council/Pages/meeting.aspx?session=214>. In view of the envisaged high-level discussion of a broad range of items relating not only to air navigation capacity and efficiency but also flight safety, the Conference was being promoted at the level of Directors General of Civil Aviation (DGCAs) and not solely at the level of air navigation service providers (ANSPs) and their regulators.

Oral report by D/ANB

2. In providing background information, D/ANB recalled that the state of aviation was strong and that the aviation industry was growing exponentially in the traditional commercial scheduled air service. That growth, which was forecasted to continue to the point where global air traffic would double from current volumes by 2030, would put tremendous pressure on air transport systems, and the air traffic volume in various airspaces around the world would be constrained at certain choke points in a way that would require considerable innovations to be applied. At the Conference, participants would be discussing one of the pressures on air transport systems which required optimization, namely, reductions in aviation CO₂ emissions while global air traffic was rapidly increasing. The challenges associated with automating decision-making to make that possible meant that it was necessary for ICAO to provide policies and structures that protected those automated systems going forward.

3. D/ANB noted that AN-Conf/13 had been scheduled to take place at ICAO Headquarters from 9-19 October 2018 as requested by the ANC and approved by the Council (cf. C-WP/14661; 212/5). The first State letter that had been issued in that regard (State letter ST 14/1-17/54 dated 28 April 2017) had provided a proposal for the need, Agenda, date, organization, site, and languages for the Conference. Building on the feedback received in response thereto, a second State letter (State letter ST 14/1-17/120 dated 15 December 2017) had been issued inviting all Member States and selected international organizations to participate, and providing further detailed information regarding the Conference, including the Agenda items.

4. D/ANB highlighted that there would be two Committees working in parallel during the first week of AN-Conf/13, which would then report back to the Plenary at the end of the second week of the Conference. The Air Navigation Committee (Committee A) would discuss topics primarily relating to air navigation capacity, efficiency, and other key performance areas. Just as importantly, the Aviation Safety Committee (Committee B) would be focused on flight safety and many of the principles and methods necessary to safely oversee the rapid transformation that was expected. With that in mind, the theme of the Conference was *From development to implementation*, which encompassed not only the need to consider implementation before developing SARPs but also the importance of considering implementation and operational issues in the development of technology, operational concepts, and associated roadmaps. The theme emphasized the importance of concepts for global use with a global market for aerospace products, including the development of implementation plans regionally, and the implementation of performance improvements locally based on specific operational requirements in a cost-effective manner. It addressed all aspects of international air traffic flows with a view to enhancing the overall air navigation system in all key performance areas, facilitating air traffic management by trajectory and supporting a performance-based approach to implementation of operational improvements

and basic services.

5. D/ANB noted that AN-Conf/13 was designed to be a forum for detailed technical discussions which were expected to lead to agreement on a set of high-level recommendations in different key performance areas of the air navigation system that would be reviewed by the ANC and then submitted for approval to the Council for subsequent endorsement by the 40th Session of the Assembly in 2019. He underscored that the Conference's in-depth technical discussions would lead to a more efficient and effective decision-making process during the Assembly as the latter would be able to focus primarily on strategic issues which would be supported by sound technical advice from AN-Conf/13. D/ANB further emphasized that the Council would have the opportunity to consider the Conference's recommendations in concert with the Organization's draft Business Plan and Regular Programme Budget for the next (2020-2021-2022) triennium. He also highlighted the important role of the ANC in both formulating the Secretariat working papers that would set the scene for the AN-Conf/13 Agenda items, and later reviewing the Conference's technical recommendations and the Organization's work programme to address them for subsequent submission to, and approval by, the Council.

6. D/ANB then gave the floor to the President of the ANC to provide an overview of the Conference's technical Agenda.

Oral report by the President of the ANC

7. In reflecting on how ICAO had reached this point, and perhaps more importantly, on why, the President of the ANC invited Representatives to imagine that ICAO's technical work programme was a story, maybe not high literature, but a popular and important story in aviation circles. The current Annexes, PANS, and guidance material were all the prequels to today's story, a well-established and necessary background for what was to come on the work programme. The Second Global Air Navigation Industry Symposium (GANIS/2) and the First Safety and Air Navigation Implementation Symposium (SANIS/1) in December 2017 had given States and the aviation industry a foretaste of what might be coming along in the story. ICAO had listened attentively to the feedback received. While there had not been any formal outcomes or conclusions as GANIS/2 and SANIS/1 had been Category 4 meetings (Seminars and Symposia), there had been enough there for the Secretariat and the ANC to work together to start writing the introduction to the next chapters.

8. Emphasizing that that was what AN-Conf/13 was all about – writing the next chapters – the President of the ANC indicated that it was hoped that States and the aviation industry would have a good read of the Secretariat working papers and find the proposed storylines interesting and worthwhile. They would then be asked to provide the proposed conclusions to the chapters presented. Getting that feedback, opening the lines of communication was what was needed at the beginning of each of those new chapters so that there would be a successful implementation by all stakeholders. As such, disseminating the Secretariat working papers for States and the aviation industry to engage with, and for them to provide the proposed conclusions to each chapter, was what it was all about, so that at AN-Conf/13 participants could consider which storylines were worth prioritizing and how best to progress that work, and, following a review of the Conference's recommendations by the ANC, the Council could make decisions as appropriate so as to best prepare for the 40th Session of the Assembly.

9. In reiterating that both the Commission and ANB had worked together in formulating the Secretariat working papers for AN-Conf/13, the President of the ANC noted that there was at least one for each Agenda item. Each such working paper aimed to define the problem, provide a brief historical background on any related Secretariat initiative, and suggest actions and conclusions for the Conference, concluding the proposed storylines. In noting that some of those working papers were already available

publicly on the ICAO AN-Conf/13 website, the President of the ANC could only advocate that the remainder be posted thereon as soon as possible.

Agenda items to be considered by Committee A

10. **Agenda item 1: Air navigation global strategy** – The intended outcomes of this Agenda item would focus on gathering perspectives on the draft revision of the Global Air Navigation Plan (GANP), as well as on key concepts such as revisions to the Aviation System Block Upgrades (ASBUs), which were first presented at AN-Conf/12 in 2012, and the Basic Building Blocks (BBBs), which had been a clear request from both States and the aviation industry in the intervening years. A big part of the GANP was related to technology, which was why there was a shift to a performance-based approach to technology selection, as well as to having clear performance-based requirements. The investment in new technology and revised processes and procedures would be a challenge without a positive business case. As those two topics would be part of the new edition of the GANP, States, the aviation industry, and other relevant stakeholders would be invited to provide their perspectives during AN-Conf/13. Overall, the four sub-agenda items would provide a clear insight on how to shape the next edition of the GANP, which would be presented to the Council for approval during its 217th Session in May/June 2019 for subsequent endorsement by the 40th Session of the Assembly.

11. **Agenda item 2: Enabling the global air navigation system** – This Agenda item dove down further into the specific topics related to air navigation, such as aerodromes, Global Navigation Satellite System (GNSS) evolution, integrated Communications, Navigation and Surveillance (CNS) and spectrum strategy, and the future provision of aeronautical meteorological service. It provided information about current and future ICAO initiatives, and aimed to raise awareness of related issues, as well as to obtain validation as to whether ICAO was concentrating on the areas to enable the global air navigation system.

12. **Agenda item 3: Enhancing the global air navigation system** – This Agenda item addressed topics such as System-wide Information Management (SWIM), Flight and Flow Information for a Collaborative Environment (FF-ICE) and Trajectory-based Operations (TBO). Those concepts had been in existence since the ASBUs were first introduced. ICAO was now seeking feedback and clarity on how far and how fast to move forward with those concepts, keeping in mind that any challenges that had been faced by States and the aviation industry. Continuing the theme of enhancing the global air navigation system, the Agenda item went further and also tackled issues such as Air Traffic Flow Management (ATFM) and civil/military cooperation and collaboration. Recalling that good feedback had been received during GANIS/2 and SANIS/1 regarding the latter issue, where both the attitude and enthusiasm of States vis-à-vis civil/military cooperation and collaboration had been noted, the President of the ANC indicated that since no decisions had been taken at those Category 4 meetings, ICAO would seek to validate that level of enthusiasm at AN-Conf/13. He underscored that for each of topics addressed under Agenda item 3 the Conference would be provided with information on current and future ICAO initiatives. Expected issues and concerns would be discussed with a view to obtaining support from States and other relevant stakeholders. In averring that all of the said planning and coordination would be for naught if ICAO did not also plan for implementation, the President of the ANC underscored that that had been the focus of attention for the President of the Council and the Secretary General, as well as for the Commission, in support of the Organization's *No Country Left Behind* (NCLB) initiative. It was also the focus of attention of the next Agenda item.

13. **Agenda item 4: Implementing the global air navigation system and the role of planning and implementation regional groups (PIRGs)** – This Agenda item would highlight the economic benefits which States and other stakeholders could derive from aviation and from keeping their air navigation infrastructures up-to-date in order to meet current and future demands, which marked a

fundamental change to ICAO's traditional message of "safety for safety's sake". Referring to sub-item 4.2, the President of the ANC underscored that if States were comfortable with the concept of implementing a set of minimum requirements for the provision of air navigation services, then that concept would be incorporated in the next edition of the GANP and thereafter included in audits conducted under ICAO's Universal Safety Oversight Audit Programme Continuous Monitoring Approach (USOAP CMA).

14. In recalling that sub-item 4.3 had been added to the Agenda in light of the Council's long-standing call for implementation support and planning for the ASBUs, the President of the ANC noted that ICAO would present initial ideas to the Conference in order to receive participants' feedback and validation, which would enable them to be modified as appropriate and presented to the Council in the future. He emphasized that the Secretariat and the ANC considered that this consultation process through the Conference would give them a very clear path forward for ASBUs implementation. Referring to sub-item 4.4 on implementing search and rescue (SAR) processes and procedures, the President of the ANC indicated that information would be provided on the progress of work since the disappearance of Malaysia Airlines Flight MH 370 on 8 March 2014 while flying from Kuala Lumpur to Beijing. ICAO would seek the Conference's endorsement of the work that had been done, the work currently underway and future work in the areas of SAR and the Global Aviation Distress and Safety System (GADSS).

15. **Agenda item 5: Emerging issues** – This forward-looking Agenda item would showcase future and evolving topics for air navigation, such as operations above Flight Level 600 or higher airspace operations, and operations below 1000 feet, such as those of unmanned aircraft systems (UAS) and unmanned aircraft systems traffic management (UTM) (cf. sub-items 5.1 and 5.2). Underscoring that ICAO was still a long way off from being ready to develop any related SARPs, the President of the ANC indicated that during the Conference guidance would be sought on how much effort it considered ICAO should put in those areas, with it being highlighted that in ICAO's current budgetary environment, increasing efforts in those areas would mean reducing or perhaps even stopping work that was currently underway in other areas. In short, the Conference would be asked which chapter to prioritize in ICAO's story line.

16. Observing that the same was true for Remotely Piloted Aircraft System (RPAS) (cf. sub-item 5.3), although ICAO was much further down the track in terms of developing related SARPs, the President of the ANC indicated that further direction would be sought from the Conference. He underscored that although the RPAS Panel had not, by definition, considered autonomous UAS, that issue would be considered under sub-item 5.3 as some hybrid operations were forecast. However, it would mainly be addressed under sub-item 5.5. In noting that under sub-item 5.4 on cyber resilience the Conference would be asked if it wished ICAO to develop a global Trust Framework to enable secure digital communications in the SWIM environment, the President of the ANC indicated that it would provide the Council with a clear indication as to whether that item needed to be incorporated into the Organization's Regular Programme Budget for the next triennium budget.

17. The President of the ANC further noted that sub-item 5.5 was a catch-all for those items that could be seen on the horizon but which might not necessarily be ready for primetime yet, such as drones, and supersonic and commercial space operations. It would also include any other emerging issues that were presented by States and the aviation industry to the Conference as they completed the story for ICAO.

Agenda items to be considered by Committee B

18. **Agenda item 6: Operational safety issues** – Under this Agenda item the updated draft of the GASP would be discussed with the objective of endorsement by the 40th Session of the Assembly. The new concept of the Global Aviation Safety Oversight System (GASOS) would also be discussed, with the perspectives of all stakeholders being sought. The President of the ANC indicated that, following

the adoption of Amendment 1 to Annex 19, another main topic for discussion would be the implementation of safety management. The last topic would revolve around USOAP CMA, as well as the work done by the Group of Experts for a Universal Safety Oversight Audit Programme Continuous Monitoring Approach (USOAP CMA) Structured Review (GEUSR), a report on which would be presented to the Council for consideration later in the current meeting (cf. C-WP/14757).

19. **Agenda item 7: Operational safety risks** – In noting that sub-item 7.1 related to the facilitation of data-driven decision-making in support of safety intelligence to support safety risk management, the President of the ANC indicated that ICAO looked forward to receiving feedback from States and the aviation industry. Under sub-item 7.3 on global and regional implementation strategies, ICAO's initiative to strengthen the linkage between the GASP and the GANP to achieve an integrated implementation approach would be discussed, as would the roles of the PIRGs and RASGs in the regions–.

20. **Agenda item 8: Emerging safety issues** – Similar to Agenda item 5, this Agenda item was forward-looking but was focused primarily on safety.

21. In concluding his presentation on the technical preparations for AN-Conf/13, the President of the ANC thanked the Secretariat for its close cooperation with the Commission in developing the body of work which would be presented at the Conference. He also expressed appreciation to the Chairperson of the ANC Working Group of the Whole for Strategic Review and Planning, Mr. I. Pacheco, as well as the Chairperson of the Ad Hoc Working Group that had been established to plan AN-Conf/13, Mr. M. Fernando. The President of the ANC likewise thanked the Chairpersons of all the Commission Groups who had devoted numerous hours in both formal and informal meetings to reach this point. He then gave the floor back to D/ANB to provide information on the administrative arrangements for the Conference.

Oral report by D/ANB (continued)

Administrative information

22. **Conference schedule** – In noting that the Conference would start right after the public holiday for the Canadian Thanksgiving on Tuesday, 9 October 2018 and would continue until Friday, 19 October 2018, D/ANB underscored that it would include working on Saturday, 13 October 2018. Remarking that the Conference schedule was very similar to the schedule for Assemblies, he indicated that on the first day the Conference would open with a meeting of the Plenary, following which it would be divided into the said two Committees which would work in parallel for the remainder of the first week. While Committee B's meetings would end on Saturday, 13 October 2018, Committee A's meetings would continue during the second week. The Conference would end with a meeting of the Plenary on the last day, Friday, 19 October 2018. The organizational plan for AN-Conf/13 was set forth in WP/2. D/ANB emphasized the strong linkage between the work of the two Committees.

23. **Translation and interpretation** – There would be translation and interpretation in all official ICAO languages at AN-Conf/13. As had become ICAO's tradition, the Conference would be a paperless event, with all of the working papers and information papers being posted on the ICAO AN-Conf/13 website. D/ANB highlighted that although the website was up and running, its link for online registration would only become operational the first week of July 2018. He noted, in this regard, that a new process was being implemented to streamline and facilitate the confirmation of accreditation, at which time a reminder would be transmitted to the participant regarding AN-Conf/13 and the availability of Conference documentation. D/ANB noted that to-date, 15 of the 30 Secretariat working papers had been posted on the said website in all six languages and 3 had been posted in English only, with the other language versions to be posted as they became available. He emphasized that non-simultaneous

publication was being done in order to accelerate the process to the maximum extent possible.

24. **Documentation timelines** – States’ working papers were to be submitted before 14 August 2018 to allow for translation by ICAO and publication in the Organization’s six official languages. If States’ working papers were submitted between 14 August and 14 September 2018, then they would be published in the language(s) in which they were submitted. International organizations’ working papers and information papers submitted by 14 September 2018 would be published in the language(s) in which they were submitted. No documents submitted after 14 September 2018 would be processed by ICAO. Further details regarding documentation were provided in State letter ST 14/1- 17/120 dated 15 December 2017, as well as on the ICAO AN-Conf/13 website.

25. **Official designations** – The President of the Council, the Secretary General and the President of the ANC would be in attendance, with D/ANB serving as the Secretary of the Conference. The Chairperson and Vice-Chairperson of the Conference would be elected on the first day, as would the Chairperson and Vice-Chairperson of each of the two Committees.

26. **Methodology of the Conference discussions** – For each Agenda item the Committee Chairperson would invite the Secretariat working paper(s) to be introduced, with the recommendations, as well as any related working papers presented by States. Following discussion, the Committee Chairperson would conclude on the Agenda item and identify the recommendations to go forward. All draft conclusions and recommendations would subsequently be reviewed by the Committee. The Committee Chairperson would thereafter present the Committee’s report containing its final conclusions and recommendations to the Plenary for adoption. The complete AN-Conf/13 Report would subsequently be submitted by the Chairperson of the Conference to the Council, through the ANC.

27. **Promotion and execution of the Conference** – While most of the information on Conference would be available through the ICAO AN-Conf/13 website, ANB would work with the Communications Unit (COM) to promote the Conference’s various activities on social media. Furthermore, discussions were underway to live stream the Conference, as had been done for GANIS/2 and SANIS/1, which would enable the AN-Conf/13 proceedings to become an historical record which would be publicly available for access after the Conference.

28. **Exhibitions and sponsorships** – Resident Delegations and the aviation industry had already been offered opportunities to host hospitality events during the Conference. There would also be an exhibition, as well as SkyTalks, whereby industry representatives would give presentations on topics of interest to Conference participants, as had been done during the last Assembly. The hospitality events and the exhibition would be carried out on a cost-recovery basis and did not aim to sponsor the entire Conference.

29. **Logistics** – Between 1 200 and 1 500 Conference participants were expected, with most attending during the first week when both Committees would be meeting. The Plenary meeting would take place in the Assembly Hall, following which the latter would be divided into two rooms for Committee A and Committee B. There was a plan for a video link in the Roberto Kobeh Conference Room 3 on the first floor, as had been done for previous events. It was expected that there would be a media/Press event during the first day.

Discussion

30. The Representative of France recalled that at the last Assembly ICAO had been the victim of its own success in the areas of air navigation capacity and efficiency and flight safety, as a record number of working papers thereon had been submitted and subsequently formally presented by States to the Technical Commission, which had left very little time for substantive discussion thereon. He

affirmed that the considerable amount of preparatory work that was being done for AN-Conf/13 would be most useful and would avoid a recurrence of that problem. Noting, however, that it was somewhat paradoxical that such extensive planning was being done for the Conference, the Representative of France queried what work would remain to be done at the next Assembly in the said areas.

31. D/ANB clarified that the objective was to provide the Assembly with complete proposals for the new editions of the GASP and the GANP, and comprehensive reporting on monitoring and oversight activities, as well as complete proposals for the draft ICAO Business Plan and draft Regular Programme Budget for the 2020-2021-2022 triennium that would make it possible to achieve the goals. The Secretariat did not wish the Assembly to generate new work to be done for which provision had not already been made in the said Budget. Consequently, it had sequenced the work of AN-Conf/13, the ANC and the Council in such a way as to allow the Assembly to evaluate the policy proposals and the Organization's work programme together, as a complete package. D/ANB recalled that the draft Provisional Agenda for A40, to which the Council had given preliminary consideration during its previous meeting, contained four Agenda items for the Technical Commission (cf. C-WP/14740, Appendix A; 214/4). He noted that during its next (215th) session the Council would review the revised draft Provisional Agenda for the Assembly, which incorporated the comments of the ANC and the subordinate bodies to which various Agenda items had been referred during its preliminary consideration.

32. The President of the Council underscored that having the bulk of the air navigation-related work done during AN-Conf/13 provided, to the extent possible, a level of certainty to the ICAO Business Plan and Regular Programme Budget for the next triennium. He emphasized, however, that given the dynamic nature of the aviation industry, it could well be that new emerging issues could arise during the one year interval between AN-Conf/13 in October 2018 and the Assembly in September/October 2019 that would need to be discussed at A40.

33. The Representative of Spain commended the joint oral report, as well as the preparations made for AN-Conf/13, including its Agenda. Recalling that previous Air Navigation Conferences had been milestones in the history of ICAO, he expressed the hope that the same would be true for AN-Conf/13. The Representative of Spain indicated that while he had no difficulty in understanding the intended outcomes of the Conference's discussions on issues such as GNSS, SWIM and TBO, it was unclear to him what the intended outcomes were for the issues of ATFM, civil/military cooperation and collaboration, a space-based Automatic Dependent Surveillance–Broadcast (ADS-B) global aviation surveillance system, and the role of PIRGS. In requesting further information thereon, he also sought clarification regarding the SIMS and the use of safety information which ICAO received from States, including their air operators and from accident investigation reports. In addition, the Representative of Spain asked for more information regarding the side-event on accident victims and their families that would be held at ICAO Headquarters on 16 October 2018.

34. Responding to the point raised regarding the SIMs, the President of the ANC noted that the Commission had established the Ad Hoc Working Group on Data for Implementation to consider issues relating to the safety information feedback mechanism with a view to facilitating data-driven decision-making in support of safety risk management.

35. Replying to the other points raised by the Representative of Spain, D/ANB indicated that, from the Secretariat's perspective, most of the ICAO SARPs were already in place for the envisaged ATFM and civil/military activities. With regard to Agenda item 4 on implementing the global air navigation system and the role of PIRGs, he noted that the Conference was expected to discuss how to encourage the development of implementation strategies that could be undertaken regionally and in States, with full alignment occurring among the regions and States. The responsibility of ICAO Headquarters in that regard would be to assist the regional activities in aligning with the existing SARPs and to use any feedback received to develop any necessary updates to further enhance those provisions.

36. In clarifying that the SARPs for the envisaged space-based ASD-B global aviation surveillance system were almost finalized, D/ANB indicated that it was tentatively planned that they would become effective in the November 2020 timeframe, with there being some early adoption of those provisions in the North Atlantic region. It was expected that the said SARPs would advance principally with operational procedures emanating from the relevant regional group and would be adopted through amendments to the related regional Air Navigation Plan (ANP).

37. In then elaborating on the said side-event, a link to which was contained in the AN-Conf/13 website, D/ANB highlighted that its theme was *Ensuring Accident Victims and their Families are Treated the Same the World Over* (cf. A39-WPs/247 and /528; C-WP/14661; C-DEC 212/5, paragraph 6). He noted that during that special session States' legislation, regulations and/or policies would be presented, together with lessons learned and experience gained in implementing the new provisions in Annex 9 – *Facilitation* relating to the treatment of aircraft accident victims and their families. In emphasizing that there was a separate online registration process for the side-event, D/ANB indicated that an Agenda for the latter would be published on its website in the near future. An announcement of the Conference room in which the side-event would be held would also be made soon.

38. In stressing that the success of any Conference was dependent not only on the quality of the papers presented for consideration but also on the quality of the dialogue that they generated, the Representative of the United Kingdom urged that the AN-Conf/13 papers be published as soon as practicably possible so as to allow sufficient time for in-depth study by States and international organizations in advance of the Conference.

39. To a question posed by the Representative regarding the live streaming of the Conference's proceedings, D/ANB indicated that although ICAO had the technical capacity for live streaming, as well as some practice in providing it for previous events, it was necessary to have a discussion among the Conference and Committee Officers before taking a final decision regarding the provision of live streaming at AN-Conf/13.

40. Responding to a query by the Representative of South Africa regarding ASBUs, D/ANB noted that the latter were complicated as there were multiple stakeholder dependencies on the successful design, certification, approval, and implementation of each of the ASBU modules. While that complexity had raised questions over the course of the last eight years since the ASBUs were originally developed, the Secretariat considered that it was making real progress in differentiating between the policy and market requirements and the benefits so that the latter could be defined and described in layperson terms to decision-makers. D/ANB highlighted that the GANP now included a section that set out the methodology for decision-makers to look at ASBUs and understand their benefits within a specific airspace or market environment. He further noted that the transition of the ASBU catalogue from a paper document to a web-based document was ongoing and would be fully live by A40, with input received from AN-Conf/13 helping the Secretariat to design that tool. D/ANB underscored that it would complement the electronic versions of the regional ANPs which had been implemented by each of the PIRGs around the world to some degree. Although their implementation was not complete, the understanding of how to use the electronic versions of the regional ANPs was progressing in each of the regions.

41. To an additional question posed by the Representative of South Africa, D/ANB observed that the occurrence of missing flight plans in the African region was an ongoing deficiency that had been noted in successive reports of the Africa-Indian Ocean Planning and Implementation Regional Group (APIRG), including in the Report of the Twenty-first APIRG Meeting (Nairobi, 9-11 October 2017), which outlined the work of the States and their ANSPs to identify the main causes of missing flight plans in the region and to implement solutions. The APIRG/21 Report revealed that there had been substantial

progress in addressing that problem, with the number of missing flight plans in the African region having decreased by approximately 30 percent from 2016 to 2017. Noting that that progress had continued, with the number of missing flight plans being even lower for 2018, D/ANB underscored that the regional process was working as it was intended to. He emphasized that the Secretariat at ICAO Headquarters was in dialogue with the APIRG and the European Air Navigation Planning Group (EANPG) to make sure that the ongoing diagnostic work to determine the main causes of the missing flight plans in the African region was done in a coordinated manner with all stakeholders.

42. While expressing appreciation for this clarification, the Representative of South Africa stressed that it was not only an African issue and that other regions were also facing the problem of missing flight plans.

43. Although agreeing that the said problem was encountered periodically in all regions, D/ANB emphasized that it was quite small in scope. While there were occasionally missing flight plans that had to be collected, there were robust redundant procedures that were in place among ANSPs, air traffic controllers (ATCOs), and the operational personnel to recover from the lack of pre-coordinated information through appropriate hand-off and transfer processes between ATC facilities. D/ANB underscored that while a missing flight plan posed a significant problem for the ATCO at the time, it was not necessarily indicative of a systemic problem. The Secretariat was nevertheless investigating the problem, in concert with APIRG, EANPG and all stakeholders. D/ANB underscored that the said significant decrease in the number of missing flight plans in the African region in 2017 demonstrated that the training and emphasis placed on appropriate procedures was having the desired effect of ensuring the proper transmission of flight plans.

44. Note was taken of the detailed information provided by D/ANB and the President of the ANC in their joint oral report on preparations for AN-Conf/13. Comments made during the discussion were noted, as were clarifications provided.

45. The President of the Council highlighted that any new emerging issues relating to air navigation capacity and efficiency and flight safety identified during the upcoming Council Off-site Strategy Meeting (COSM2018) (Estérel, Québec, 21-22 June 2018), whose theme was *Aviation of the Future*, would be brought to the attention of Conference Delegates to acquaint them with those challenges, in addition to those to be discussed under Agenda items 5.5 and 8.2.

46. Recalling that the theme of COSM2017 (Bromont, Québec, 20-21 September 2017) had been *Enhancing Implementation of Global Plans*, and that the related theme of the subsequent ICAO World Aviation Forum 2017 (IWAF2017) (Abuja, Nigeria, 20-22 November 2017) had been *Financing the Development of Aviation Infrastructure*, with the lessons learned from the latter being taken into account at the forthcoming IWAF2018 (Fortaleza, Brazil, 17-19 September 2018), whose similar theme was *Promoting Investment for Aviation Development*, the President of the Council underscored that AN-Conf/13 would present an opportunity for the Secretariat to provide Delegates with information on the following issues, by means of workshops and/or toolkits: the issue of a gap analysis vis-à-vis the technical requirements arising from the ASBUs and BBBs and a complementary cost/benefit analysis to facilitate the decision-making process towards the definition of an optimum solution, which would be discussed by Committee A under Agenda item 1.4; and the issue of guidance material developed by ICAO on the implementation of safety management, such as the development of essential safety management competencies e.g. Government Safety Inspector – Human Resources Toolkit, which would be discussed by Committee B under Agenda item 6.2. He affirmed that such information conveying ICAO's perspective would be very useful to Delegates given the Conference's theme, *From Development to Implementation*, as would the information to be provided by industry representatives through the said exhibition and SkyTalks. Member States' DGCA's and other aviation stakeholders were encouraged to attend AN-Conf/13.

Subject No. 14.5: Safety oversight**Report of the Group of Experts for a Universal Safety Oversight Audit Programme
Continuous Monitoring Approach (USOAP CMA) Structured Review (GEUSR)**

47. On behalf of the Council, the President extended a warm welcome to Mr. D. Guindon, the newly-appointed Deputy Director, Monitoring and Oversight (DD/MO). The President of the ANC likewise welcomed Mr. Guindon on board on behalf of the Commission.

48. The Council then commenced its consideration of: C-WP/14757 (with accompanying PowerPoint presentation), in which the Secretary General reported on the work undertaken by the GEUSR in conducting a structured and independent review of the USOAP CMA methodology, processes and tools, and presented the Group's 37 recommendations for the enhancement of the USOAP CMA, as well as its observations regarding areas of improvement that fell outside of the scope of its mandate; and an oral report thereon by the ANC.

PowerPoint presentation by DD/MO

(available on the Council's secure website at

<https://portal.icao.int/council/Pages/meeting.aspx?session=214>)

49. In introducing the work undertaken by the GEUSR, DD/MO recalled that the ICAO Secretariat had established that group of experts in March 2017 with the aim of identifying adjustments to the USOAP CMA with a view to further strengthening it, taking into consideration the evolving safety strategy of ICAO and States' progress in implementing Annex 19 – *Safety Management*, in particular States' Safety Programme (SSP) requirements. The GEUSR Terms of Reference (ToRs) were contained in Appendix A to C-WP/14757. Eleven Members nominated by Australia, Brazil, Cabo Verde, the Dominican Republic, Egypt, Finland, Singapore, South Africa, Switzerland, the United States and the European Aviation Safety Agency (EASA) had supported the Group's work. The GEUSR had been chaired by Mr. Alan Foo of Singapore.

50. The GEUSR had held three meetings and five teleconferences, had exchanged correspondence, and had launched a high-level survey to develop the recommendations presented in Appendix B to the paper. During the First Meeting in April 2017, the GEUSR had reviewed the USOAP CMA adherence to Assembly Resolutions A32-11 (*Establishment of an ICAO Universal Safety Oversight Audit Programme*) and A37-5 [*The Universal Safety Oversight Audit Programme (USOAP) Continuous Monitoring Approach*] and had developed a work programme comprising 14 items. The GEUSR Members had developed draft recommendations to cover the work programme, which had been presented during the Second Meeting in September 2017. In preparation for the Third Meeting, a high-level survey had been launched to obtain Member States' feedback on the GEUSR's work. All questions had received the support of a large majority of respondents, and all feedback had been analyzed and used as an important means to further improve the GEUSR recommendations. Throughout this work the ANC had provided guidance to the GEUSR during briefings conducted after each face-to-face meeting of the Group. During the Third Meeting in February 2018, the GEUSR had finalized all recommendations as contained in Appendix B to the paper, as well as a set of observations as contained in Appendix C thereto.

51. The GEUSR had developed 37 recommendations on functional improvements to deliver a greater benefit for the enhancement of the USOAP CMA. The recommendations were consolidated in six groups, as follows:

Group A: Structured revision of the PQs, which contained recommendations for such a review, mostly to reduce the total number of Protocol Questions (PQs) and to exclude PQs not directly related to State safety oversight and investigation capabilities;

Group B: Priority Protocol Questions, which contained recommendations to identify within the PQs a subset of priority PQs which had a higher impact on the capability of States to identify and resolve safety issues;

Group C: Types and prioritization of USOAP CMA activities, which contained recommendations on new types of USOAP CMA activities and on their prioritization with a view to improving the currency of Effective Implementation (EI) scores and to enhancing the efficiency and prioritization of USOAP CMA activities;

Group D: Presentation of State indicators, which contained recommendations to improve the presentation of State indicators, in particular to provide better visibility of the State safety oversight system to key decision-makers in the States;

Group E: Training and guidance, which contained recommendations to enhance the training and guidance provided to support National Continuous Monitoring Coordinators (NCMCs) and teams in fulfilling their roles; and

Group F: Tools enhancement (OLF), which contained recommendations to enhance the USOAP CMA Online Framework (OLF) function.

52. In addition, the GEUSR had identified some possible improvements on matters outside of the scope of the GEUSR's mandate and had issued them as observations. They related to, inter alia: assistance to States for the initial development of the Corrective Action Plan (CAP) and for performing PQ self-assessments; continued assistance to States that had avoided or resolved Significant Safety Concerns (SSCs) without capacity building; enhancement of guidance material to determine significant differences; and improvements to iSTARS applications.

53. In then elaborating on the milestones that the work of the GEUSR would go through in the lead-up to the 40th Session of the Assembly in September/October 2019, DD/MO noted that recently the ANC had reviewed C-WP/14757, and had also considered and improved the draft AN-Conf/13 working paper under Agenda item 6.3 of Committee B relating to the evolution of the USOAP CMA, which contained a hyperlink to the GEUSR recommendations which would be updated based on the outcome of the present Council Meeting (cf. AN-WP/9261 Revision No. 1 and DP No. 1).

54. Drawing attention to the executive summary of C-WP/14757, DD/MO indicated that the Council was invited to: agree to the proposed recommendations of the GEUSR, as shown in Appendix B to the paper; note the observations made by the GEUSR, as shown in Appendix C; request the Secretary General to present an update of the evolution of the USOAP CMA to AN-Conf/13; request the Secretary General to take into account the financial and human resources of the USOAP CMA needed to implement the GEUSR recommendations and sustain the evolution of the USOAP CMA in the development of ICAO's draft Regular Programme Budget for 2020-2021-2022; and request the Secretary General to present a progress report on the evolution of the USOAP CMA to the 40th Session of the ICAO Assembly. DD/MO emphasized that following the direction of the Council on the steps ahead would allow ICAO to begin implementation of the GEUSR recommendations in 2020, immediately after A40.

ANC oral report

55. In presenting the Commission's oral report, the President of the ANC indicated that

during the Fourth Meeting of its 208th Session on 9 May 2018, the ANC had reviewed C-WP/14757 concurrently with above-mentioned AN-WP/9261 Revision No. 1 and DP No. 1, which presented for the ANC's approval the draft AN-Conf/13 working paper under Agenda item 6.3 of Committee B relating to the evolution of the USOAP CMA.

56. The Commission had received a briefing by the Secretariat on the GEUSR's methodology, work and recommendations. It had been recalled that the Chairperson of the GEUSR had provided informal briefings to the ANC after each meeting of the GEUSR and had received guidance from the ANC which had been shared with the whole Group. It had also been recalled that the GEUSR had launched a high-level survey on its draft recommendations sent to all States through their NCMCs. All feedback and guidance received by the GEUSR had contributed to the development of a total of 37 GEUSR recommendations, consolidated in six groups, as well as a few observations addressing possible improvements on matters outside of the scope of the GEUSR's mandate, such as assistance to States in developing CAPs and performing PQ self-assessments. The ANC had highlighted the considerable work performed by the GEUSR, as well as the support provided by the Secretariat, and had acknowledged that the GEUSR recommendations would yield functional improvements for the enhancement of the USOAP CMA.

57. With respect to the recommended structured revision of the USOAP CMA PQs aiming to reduce the administrative burden on States and ICAO by decreasing the number of PQs, the Commission had advised caution when conducting such a review as it could result in some areas being unaddressed. The ANC had also highlighted that one of the GEUSR recommendations was to exclude, from the USOAP CMA, those PQs which were not related to safety oversight or accident investigation capabilities of States, and that that would prevent addressing aspects that were multidisciplinary in nature (e.g. cybersecurity). The Secretariat had indicated that the recommendation was to remove PQs which were not supported by safety-related Standards. The GEUSR did not recommend excluding PQs supported by Standards in multiple Annexes provided that included safety-related Annexes.

58. With respect to the GEUSR observations, the Commission had noted the benefits that their implementation could provide to other ICAO initiatives and had encouraged the Council to request the Secretariat to consider them as part of general improvements.

59. Following its discussion of C-WP/14757, the ANC had approved, in principle, AN-WP/9261 Revision No. 1, with the understanding that modifications to the draft AN-Conf/13 working paper might be required following the Council's consideration of the GEUSR recommendations.

Discussion

60. While having no objections to C-WP/14757, the Representative of Mexico suggested that action paragraph e) be amended by deleting the words "request the Secretary General to present" and by revising the remaining text to read along the following lines: "agree that a progress report on the evolution of the USOAP CMA be presented by the Council to the 40th Session of the Assembly in 2019".

61. The Representative of Spain had no difficulty accepting that suggested amendment to action paragraph e). In commending the excellent work done by the GEUSR, he noted that it had conducted a comprehensive review of the USOAP CMA methodology, processes and tools and had presented a number of recommendations to improve the Programme, which was essential for ensuring the safety of international civil aviation. In general, the Representative of Spain agreed to most of the GEUSR recommendations. However, based on the note of caution recommended in the ANC's oral report (cf. paragraph 57 above), he disagreed with those GEUSR Recommendations in Group A relating to the removal from the USOAP CMA of certain PQs not directly related to safety oversight or accident investigation due to the loss of relevant information that the implementation of such recommendations

would imply (cf. Appendix B to the paper). In particular, the Representative of Spain disagreed with Recommendation 2 that ICAO establish a policy to exclude from the USOAP CMA PQs that referenced only Annex 9 – *Facilitation*, Annex 16 – *Environmental Protection* or Annex 17 – *Security*. He underscored that, while in theory it would be beneficial to reduce and limit the total number of PQs, in reality it was of greater importance to obtain all relevant information during USOAP CMA audit activities. The Representative of Spain stressed the need to be extremely cautious in removing from the USOAP CMA certain PQs not directly related to safety oversight or accident investigation.

62. The Representative of Spain then suggested that the Council, in its decision regarding C-WP/14757, note that the ANC had approved, in principle, the draft AN-Conf/13 working paper on the evolution of the USOAP CMA (AN-WP/9261 Revision No. 1 and DP No. 1), on the understanding that the ANC would make any modifications necessary in light of the Council decision regarding the GEUSR's recommendations and observations and inform the Council accordingly.

63. The above statement by the Representative of Spain was noted for the records.

64. D/ANB indicated that he could certainly understand the points raised by the Representative of Spain, particularly with regard to the potential loss of relevant information due to the reduction in the total number of PQs, which was a general risk. He emphasized that DD/MO and his staff would conduct a very careful analysis of that risk as they carried out the structured revision of the PQs recommended by the GEUSR. Recalling the comments made earlier by the President of the ANC with regard to the Safety Information Monitoring System (cf. paragraph 34 above), D/ANB underscored that the SIMS complemented the USOAP CMA and allowed for some level of intelligence gathering which enabled the effective consolidation of some PQs as recommended by the GEUSR. With respect to the auditing of environmental protection- and facilitation-related Standards, he underscored that it was ultimately for the Council, as the governing body, to decide on the scope of the USOAP CMA taking into account the GEUSR recommendations and the ANC's advice.

65. The President of the ANC noted that, while the Commission appreciated that sampling was a solid way in which to manage risks at a time of limited resources, it was of the view that relevant data was necessary going forward to enable evidence-based and risk-informed decision-making. The Commission had therefore advised caution when conducting the recommended structured review of the PQs as it considered that in seeking to limit, for valid reasons, the data collected through USOAP CMA audit activities there was a potential risk to optimal decision-making.

66. In welcoming the report, the Representative of Australia noted, with significant appreciation, the work done by the GEUSR under the leadership of Mr. Foo (Singapore), who had been ably and thoroughly assisted by the Secretariat. He underscored that Australia strongly supported all of the GEUSR recommendations as they would help enhance the integrity and effectiveness of the USOAP CMA and had the potential to do that while also reducing the burden on States and the long-term burden on ICAO. The Representative of Australia emphasized that there would be implications arising from the GEUSR recommendations for the Organization's Business Plan and Regular Programme Budget for the next (2020-2021-2022) triennium that the Council would need to consider during its forthcoming discussions relating thereto. Noting, however, that the GEUSR's structured review of the USOAP CMA methodology, processes and tools had demonstrated that continuing to work as is also had implications for ICAO's Business Plan and Regular Programme Budget, he underscored that the Organization could take this opportunity to improve the work that it did as it moved into the next triennium.

67. While noting the ANC's advice that caution be exerted in decreasing the total number of USOAP CMA PQs, the Representative of Australia emphasized the need to distinguish between cross-cutting issues that had a safety element, such as cybersecurity, and non-safety-related issues that were best assessed via one of the other compliance assessment tools that were now available to ICAO,

including the Universal Security Audit Programme – Continuous Monitoring Approach (USAP-CMA) and Compliance Checklists. He stressed the importance of focusing on auditing Standards, as well as on having the right PQs and not merely viewing more PQs as necessarily being better.

68. Observing, from the report, that there were some parallels between the GEUSR recommendations and the discussions and recommendations of the Secretariat Study Group currently conducting a review of the USAP CMA, the Representative of Australia encouraged that the lessons learned from the GEUSR's review of the USOAP CMA be shared with the latter.

69. In noting that there had been 110 State replies to the GEUSR's survey on its work, which was one of the highest response rates to an ICAO survey in a long time, the Representative of Australia emphasized that the Council should take note of the States' strong message of support for some of the directions taken in the GEUSR recommendations. He looked forward to the implementation of those recommendations, which were in response to the mandate given by the 39th Session of the Assembly.

70. The Representative of Cuba commended the excellent work done by the GEUSR, as well as by the ANC and the Secretariat. While she had no objections to the GEUSR recommendations, she understood the point raised by the Representative of Spain and considered that it should be taken into account by the Secretariat in conducting the envisaged structured revision of the PQs. In expressing support for Group A Recommendation 5 that PQs whose requirements extended beyond ICAO Standards be identified and removed, including those based solely on guidance material or Recommended Practice, the Representative of Cuba enquired as to when the PQs would be revised.

71. The Chief, Safety and Air Navigation Oversight Audit Section (C/OAS) clarified that the PQs would next be revised after the 40th Session of the Assembly in September/October 2019, for applicability starting in 2021. He underscored that in the meantime, the current PQs would continue to apply.

72. Referring to the intervention by the Representative of Australia, the President of the Council queried whether there was any coordination between the GEUSR and the Secretariat Study Group which was conducting a review of the USAP CMA. Observing that many of the GEUSR recommendations related to the training of States' NCMCs and the use of the OLF, he also enquired if there were any regarding the training of USOAP CMA auditors and increasing the timeliness of CMA audit activities. The President recalled that some States had complained about the long period of time it took to have ICAO validate the improvements they had made to their safety oversight systems in response to their audit findings. He indicated that one possible reason for the said delays could be an insufficient number of auditors.

73. C/OAS clarified that the GEUSR had not coordinated its work with the Secretariat Study Group conducting a review of the USAP CMA as that was outside of the scope of its mandate. The GEUSR had, however, received briefings on the activities of the Global Aviation Safety Plan Study Group (GASP-SG) and the Global Aviation Safety Oversight System Study Group (GASOS-SG), as indicated in paragraph 2.3 of the report.

74. C/OAS further explained that while the GEUSR Group E recommendations on training and guidance were intended primarily to support States, they would also directly support the USOAP CMA auditors. He noted that there was no specific GEUSR recommendation on auditor training as that issue had not been identified in any State CAP. C/OAS emphasized that the issue of increasing the timeliness of USOAP CMA audit activities was at the core of a number of GEUSR recommendations, particularly the Group A and Group B recommendations relating to lessening the burden on States through the reduction in the total number of PQs and through PQ prioritization, and Group C recommendations relating to the addition of new types of audit activities and the prioritization of

activities. He cited, as examples, conducting two audit activities back-to-back instead of a single audit activity, and the creation of new types of audit activities that were more cost-effective both for the validation of progress made by States in rectifying their identified safety-related deficiencies and for audits to verify the sustainability of States' improvements to the safety oversight systems.

75. Comments and suggestions made during the discussion were noted, as were the clarifications provided.

76. In noting the ANC's oral report, the Council joined the Commission in expressing appreciation for the comprehensive work done by the GEUSR. The Council then took the action proposed in the executive summary of C-WP/14757, as amended by the President in light of the views expressed by the ANC and Representatives, and:

- a) agreed to the GEUSR's recommendations as set forth in Appendix B to the paper, while noting the comments of caution made regarding the need to avoid the loss of pertinent information when reducing the total number of USOAP CMA PQs during the envisaged PQ rationalization process;
- b) noted the GEUSR's observations addressing possible enhancements of matters outside the scope of its mandate as set forth in Appendix C to the paper and requested the Secretariat to take them into consideration as part of general improvements to ICAO activities;
- c) noted that the ANC had approved, in principle, the draft AN-Conf/13 working paper on the evolution of the USOAP CMA (AN-WP/9261 Revision No. 1 and DP No. 1), on the understanding that it would make any modifications necessary in light of the Council's above decision regarding the GEUSR's recommendations and observations and inform the Council accordingly;
- d) requested the Secretary General to take into account the financial and human resources needed to implement the GEUSR recommendations and observations and sustain the evolution of the USOAP CMA in the development of the draft Regular Programme Budget of the Organization for 2020-2021-2022;
- e) agreed that a progress report on the evolution of the USOAP CMA be presented to the 40th Session of the Assembly in 2019; and
- f) requested that the lessons learned from the GEUSR's review of the USOAP CMA be shared with the Secretariat Study Group currently conducting a review of the Universal Security Audit Programme – Continuous Monitoring Approach (USAP-CMA).

77. With regard to paragraph 76 a) above, the Council suggested that in due course the ANC review whether pertinent information was still being received following the reduction in the total number of USOAP CMA PQs through the said rationalization process, taking into account, inter alia, that a set of priority PQs was to be identified pursuant to GEUSR Recommendation 8.

Subject No. 24.3: Action on Assembly resolutions and decisions**Mid-triennial review of implementation of resolutions and decisions of the 39th Session of the Assembly – *Safety and Air navigation capacity and efficiency***

78. The Council had for consideration: information paper C-WP/14759, in which the Secretary General presented a mid-triennial report on the progress made, as at April 2018, in the implementation of resolutions and decisions of the 39th Session of the Assembly relating to safety, as well as air navigation capacity and efficiency, which it had reviewed previously (210/6); and an oral report thereon by the ANC.

ANC oral report

79. In presenting the Commission's oral report, the President of the ANC indicated that during its review of C-WP/14759 at the Fourth Meeting of its 208th Session on 9 May 2018 the Commission had made the following observations:

80. With regard to safety management (cf. A39-WP/512, paragraphs 33.20 – 33.24; p. A-9), the ANC had highlighted the good work of the Safety Management Panel (SMP) and had encouraged increased involvement of the Panel and other stakeholders in implementation activities. The Commission had also noted that the Safety Information Monitoring System (SIMS) facilitated the sharing and exchange of safety information in the context of safety management.

81. With respect to the enhanced implementation of international aviation provisions (cf. A39-WP/514, paragraph 35.2; p. A-22), the ANC had noted that that was in the context of the work of the Standards Roundtable with the aim of bringing to the ANC a package of performance-based Standards for review and approval.

82. With regard to extended timeframes for SARPs response (cf. A39-WP/515, paragraph 36.2; p. A-28), the ANC had recalled the ongoing process and trials on the project-based methodology for SARPs development, which considered not only extending the period for State consultation on proposed SARPs up to six months but also a possible expanded gap between effective and applicability dates for adopted SARPs. The Commission had emphasized the need for more input from different actors during the Standards-making process.

83. The Commission had invited the Council to note its observations on the implementation of the said A39 resolutions and decisions relating to safety and air navigation capacity and efficiency as set forth in the Appendix to C-WP/14759.

Discussion

84. Noting that the Secretariat would present a working paper on emerging issues to AN-Conf/13 (cf. A39-WP/512, paragraph 33.2, p. A-3), the Representative of South Africa reiterated the need for the Council to be apprised of the various Secretariat working papers to be submitted to the Conference.

85. The President of the ANC indicated that the Commission had noted the importance of publishing the AN-Conf/13 working papers on the Conference's website as soon as possible. It was his understanding that the Secretariat's basic working papers on each Agenda item had started to be posted thereon from 30 May 2018.

86. D/ANB noted that, in accordance with the *Directives to Divisional-type Air Navigation*

Meetings and Rules of Procedure for their Conduct (Doc 8143-AN/873/3), the ANC reviewed and approved the Secretariat's working papers for AN-Conf/13 under delegated authority from the Council. As indicated during the oral report on preparations for the Conference given earlier in the meeting, 15 of the 30 Secretariat working papers had been published on the AN-Conf/13 website in all six languages and 3 had been published in English only, with the other language versions to be posted as they became available. D/ANB reiterated that non-simultaneous publication was being done in order to accelerate the process to the maximum extent possible. He stressed that all of the AN-Conf/13 recommendations would be presented through the ANC to the Council for approval, prior to being presented to the 40th Session of the Assembly in September/October 2019 for endorsement.

87. Referring to the ANC's comments regarding extended timeframes for SARPs response (cf. A39-WP/515, paragraph 36.2; p. A-28), the President of the Council indicated that although he understood the need to expand the time between the effective and applicability dates of adopted SARPs, it was unclear to him what the rationale was for extending the time for State consultation on proposed SARPs from 90 days to 180 days.

88. In noting that the Commission was still in the early stages of its consideration of that issue, the President of the ANC underscored that as it looked towards greater SARP implementation, it was seeking ways to increase, first of all, the participation of all States and aviation stakeholders in the SARP development process. He recalled, in this context, that the ANC had assigned its First Vice-President, Ms. K. Riensema, the role and responsibility of leading the Commission's efforts to improve communications with internal and external aviation stakeholders, and its Second Vice-President, Mr. Tai Feng, the role and responsibility of ensuring the delivery of widely implementable SARPs (cf. C-MIN 213/4, paragraph 4). The President of the ANC emphasized that, in line with the Secretariat's initiative on Programmes Coordination and Implementation (PCI), the ANC was looking to engage with States in a more comprehensive manner, realizing that responses to draft Annex amendment proposals containing new and/or revised SARPs were typically received from only 40 to 60 States. For that reason, the Commission was considering extending the time for State consultation on proposed SARPs from 90 days to 180 days. The ANC looked forward to receiving feedback from States on whether such an extension of the consultation period would be useful to them both prior to, and during, AN-Conf/13.

89. In expressing doubt whether the said extension of the State consultation period would result in a significant increase in State responses to draft Annex amendment proposals, the President of the Council indicated that it was his understanding that the relatively low response rate was not due to an insufficient amount of time in which to reply but rather to other reasons. He cited, as examples, the lack of technical expertise within some national civil aviation administrations to comment on the proposed new and/or revised SARPs, and the lack of financial resources to engage personnel dedicated to responding to such State letters in coordination with relevant national agencies. Noting that the ANC was still reviewing the matter, the President of the Council underscored the need for the Commission to focus on the reasons for the said relatively low response rate to draft Annex amendment proposals.

90. In the absence of further comments, the Council noted the ANC's oral report, as well as the comments made and clarifications provided during the discussion. Taking into account the ANC's above-mentioned observations, the Council endorsed the actions carried out to date to implement the said A39 resolutions and decisions relating to safety and air navigation capacity and efficiency as set forth in the Appendix to C-WP/14759.

Subject No. 13: Work programmes of Council and its subsidiary bodies**ANC Work Programme for the 209th Session**

91. The Council reviewed C-WP/14760, whereby the ANC presented the proposed Work Programme for its 209th Session for approval and its planned items for its 210th and 211th Sessions for information purposes.

92. Observing that during the next session the ANC would be presenting a report to the Council on the selection of space weather information service providers (cf. Appendix A, Item No. 20905), the Representative of Spain sought information on the current status of the Commission's work on that item, which had both technical and non-technical aspects.

93. Underscoring that the Commission was in the preliminary stages of its review of the said item, the President of the ANC indicated that it had received the Report of the Third Meeting of the Meteorology Panel (MET/3) on the proposed selection process for space weather information service providers, as well as the candidatures of an individual State and groups of States (consortia) to serve as global and/or regional providers received in response to State letter 10/1-IND/17/11 dated 9 June 2017. The item had been considered informally in the ANC Working Group of the Whole for Strategic Review and Planning (AN-WP/SRP), as well as in Commission Group 4 (CG-4), and would be considered formally by the ANC at its next meeting on 19 June 2018 (208-9). The President of the ANC highlighted that at present the selection criteria for space weather information service providers had not yet been narrowed down and it had not yet been determined how such criteria would apply to the said candidates. In agreeing that the item was not solely technical in nature, he indicated that it risked becoming political in nature at the time of the Council's selection of the global and regional space weather information service providers based on their compliance with all requirements as assessed by the World Meteorological Organization (WMO).

94. Noting that an informal briefing on the Global Aeronautical Distress and Safety System (GADSS) would be given during the ANC's upcoming session, the Representative of South Africa suggested that relevant information also be provided on any related issues pertaining to COSPAS-SARSAT. He also drew attention to the need for an update on the disappearance of Malaysia Airlines Flight MH 370 on 8 March 2014 while flying from Kuala Lumpur to Beijing.

95. Note was taken of the comments and suggestion made during the discussion, and of the clarifications provided.

96. Having completed its consideration of this subject, the Council approved the ANC's Work Programme for its 209th Session as set forth in Appendix A to C-WP/14760.

Subject No. 24.3: Action on Assembly resolutions and decisions**Mid-triennial review of implementation of resolutions and decisions of the 39th Session of the Assembly – *Environmental protection***

97. Tabled next for consideration was information paper C-WP/14763, whereby the Secretary General presented a mid-triennial report on the progress made, as at April 2018, in the implementation of A39 resolutions and decisions relating to environmental protection, which it had reviewed previously (210/6).

98. In introducing the paper, the Acting Secretary General, the Director, Air Transport Bureau (D/ATB) emphasized that a significant amount of work has been undertaken at different levels by both the Secretariat and various ICAO bodies, including technical work by the Committee on Aviation

Environmental Protection (CAEP), and work conducted in cooperation with other UN bodies and international organizations. He highlighted that the implementation of actions requested by the Assembly was on target, and that work continued with a view to the development of deliverables for presentation at the 40th Session of the Assembly in September/October 2019.

99. The Representative of South Africa repeated a point which he had raised during the State of the Industry informal briefing on 12 June 2018 regarding the need to showcase and thus promote awareness of ICAO's achievements in addressing the impact of aircraft noise and emissions. Referring to the action to implement Assembly Resolution A39-1, Appendix A – General, paragraph 3 on the impact of aircraft (p. A-1), he emphasized that the target date of February 2019 for the update of the environmental trends on noise, local air quality and global climate was too distant, given that the Assembly Resolution had been adopted in October 2016.

100. Drawing attention to the action to implement Assembly Resolution A39-1, Appendix B, paragraph 11 on operational measures (p. A-3), the Representative of South Africa underscored that the target date of February 2022 for the elaboration of guidance material on “Operational Opportunities to Reduce Aircraft Noise” was likewise too distant, especially in view of the fact that many of the older, noisier aircraft such as the MD-11, the BAC-111, the Airbus A300 and the Trident were no longer in operation and others such as the Boeing 737-100 and -200 were seldom flown. He highlighted, in his opinion, that noise abatement take-offs were no longer necessary with the new generation of aircraft. The Representative of South Africa reiterated the need to showcase the Organization's achievements, especially in preparation for the next Assembly.

101. In endorsing these comments, the Representative of Ecuador underscored the need to also inform the Council as to the work being done by ICAO to address the impact of aircraft noise and emissions worldwide, in particular, to obtain a higher level of State adherence and compliance with relevant ICAO policies and SARPs.

102. Noting, from the *Financial implications* section of the executive summary of the paper, that the activities referred to therein would be undertaken “subject to the resources available in the 2017-2019 Regular Programme and/or from extra-budgetary contributions”, the Representative of Malaysia enquired: as to the amount of available resources; whether they would be sufficient to implement all of the activities listed in the Appendix to the paper, including the activities to address the impact of aircraft noise and emissions and to implement CORSIA; and, in the negative, what the consequences would be.

103. The Acting Secretary General clarified that the said language used to describe the financial implications of the listed activities was standard text that was regularly used in reports on ICAO's various activities in view of the multiplicity of funding sources e.g. the Regular Programme Budget, the Ancillary Revenue Generation Fund (ARGF) and voluntary contributions. He indicated that information would be provided to Representatives after the meeting on the resources available in the 2017-2019 Regular Programme Budget and/or from extra-budgetary contributions to fund the listed activities and on the consequences if there were insufficient funds therefor. The Acting Secretary General highlighted, in this context, that CORSIA-related activities were not funded under the Regular Programme Budget for the current triennium regardless of the fact that they were being undertaken in response to Assembly Resolution A39-2.

104. The Representative of India observed that many of the CORSIA-related activities set forth in the Appendix to the paper pertained to the reduction of CO₂ aviation emissions and that despite the fact that it was mid-way through the triennium very few of them had been completed. In emphasizing that almost all of the said activities were listed as “ongoing” or had distant target dates for implementation, such as February 2019, he enquired whether the projection that they would be completed prior to the next Assembly in September/October 2019 was realistic given the available resources.

105. The Deputy Director, Environment (DD/ENV) clarified that many of the activities listed in the Appendix as “ongoing” were tasks that the Council had approved under the work programme of the CAEP, of which she was the Secretary. She emphasized that although there were currently very limited resources in the Secretariat, there were more than 600 internationally-recognized experts participating in the CAEP’s work. Consequently, it was expected that many, but not all, of the said “ongoing” tasks would be completed by the end of the current CAEP cycle and presented to the Eleventh Meeting of the CAEP (CAEP/11) (Montréal, 4-15 February 2019) and thereafter to the Council and the next Assembly. In particular, it was anticipated that work on updating Annex 16 SARPs on noise and emissions, including work on the development of a new non-volatile Particulate Matter (nvPM) Standard, would be considered during the CAEP/11 Meeting.

106. Responding to the comments made by the Representatives of South Africa and Ecuador, DD/ENV indicated that the Secretariat would explore ways to further showcase and thus promote awareness of ICAO’s achievements in addressing the impact of aircraft noise and emissions and would present proposals to the Council in due course. She cited, as an example, featuring an article in the *ICAO Journal* on the new technologies to reduce the impact of aircraft noise and emissions on the environment. DD/ENV highlighted that the next edition of the triennial *ICAO Environmental Report* would be issued in 2019 prior to A40 and would set forth the significant progress made over the last three years in key areas of ICAO’s environmental protection activities such as aircraft noise, local air quality, climate change, aircraft end-of-life and recycling, and climate change adaptation.

107. Referring to the intervention by the Representative of India, the President of the Council suggested that there be an informal briefing by the Secretariat on the reductions in CO₂ emissions from international aviation achieved over the triennium through efforts by States and relevant organizations to achieve ICAO’s goal of a global annual average fuel efficiency improvement of 2 per cent per year, as well as through the implementation of the various elements of the basket of measures. He indicated that such an informal briefing could be given in conjunction with the envisaged A40 working paper on civil aviation and the environment and related working papers to be presented for the Council’s approval prior to submission to the Assembly.

108. Voicing support for this proposal, the Representative of Ecuador suggested that during the informal briefing the Secretariat also report on those ICAO documents which remained to be updated prior to the Assembly, such as Doc 10031 – *Guidance on Environmental Assessment of Proposed Air Traffic Management Operational Changes* and Doc 9184 – *Airport Planning Manual, Part 2 – Land Use and Environmental Management*.

109. In welcoming the progress achieved in implementing the A39 resolutions and decisions relating to environmental protection, the Representative of Sweden underscored the importance of the Council continuing to closely monitor their implementation.

110. The Representative of Spain also expressed appreciation for all of the work done by the Secretariat to implement the A39 Assembly resolutions and decisions. In voicing support for the interventions by the Representatives of South Africa and Ecuador, he noted that the only complete report he had seen on CO₂ aviation emissions reductions by States and industry had been the one published by the Air Transport Action Group (ATAG). The Representative of Spain therefore suggested that ICAO publish, on a regular basis, a report highlighting the progress being made in aviation emissions reductions as a result of implementing the various elements of the basket of measures.

111. Responding to the question raised by the Representative of Ecuador, DD/ENV underscored that two main ICAO publications relating to aircraft noise had recently been thoroughly reviewed and updated: Circular 351 – *Community Engagement for Aviation Environmental Management*;

and Doc 9184 – *Airport Planning Manual, Part 2 – Land Use and Environmental Management*. In emphasizing the need to bear in mind that States were also informed of ICAO’s achievements in that and other environmental areas through workshops, she cited the *Seminar on Green Airports* (Montréal, 29-30 November 2017), during which the said two publications had been highlighted and information on the latest technological, operational and policy advancements had been provided.

112. DD/ENV highlighted that although significant progress had been made in addressing aircraft noise, largely due to the deployment of new and/or improved aircraft equipment, that had not fully translated into an enhancement in the level of noise in communities in the vicinity of airports as there had also been a tremendous growth in air traffic. In emphasizing that noise perception in such communities involved not only the noise level but also its frequency and the time of day at which it occurred, she noted that there was more annoyance over noise generated by aircraft operating at night than during the day. DD/ENV underscored that if adequate measures were not taken by local communities to protect the areas around airports then there would be more urban development encroaching on the airports’ boundaries and thus an increased level of noise perception. In noting that detailed information on this issue was contained in Circular 351 and Doc 9184, Part 2, she invited Representatives to also consult the Environmental Protection homepage on the ICAO website, which had been updated in order to make that and other environment-related information available to States and other aviation stakeholders.

113. While observing that the list of ICAO’s activities to implement the A39 resolutions and decisions relating to environmental protection contained in the Appendix to the paper was very comprehensive, the Representative of France stressed the need to make use of such information in formulating the Organization’s related policies. Recalling the discussion that had taken place at the recent CAEP Steering Group Meeting (Singapore, 4-8 June 2018) on the possible development of an ICAO Global Aviation Environmental Plan (GAEP), he emphasized that such a strategy document would constitute a great step forward for the Organization as it would enhance the visibility of ICAO’s work in the field of environmental protection.

114. Referring to Assembly Resolution A39-2, paragraph 18 b) (p. A-10), the Representative of France stressed the importance of addressing the issue of aircraft end-of-life and aircraft recycling. Noting that the general public was often shocked to see the carcasses of old aircraft that were no longer in operation left on the edges of airports’ boundaries, he underscored that ICAO should urge the aviation industry to do more to address that issue. The Representative of France enquired as to the Secretariat’s vision of how that matter should be dealt with going forward.

115. Endorsing the Representative of France’s intervention regarding aircraft end-of-life and aircraft recycling, the Representative of South Africa queried whether the Secretariat had followed up on his earlier recommendation that it consider the actions being taken by India and its maritime sector to address the International Maritime Organization (IMO) issue of ship end-of-life and ship recycling and determine how they could be applied to the aviation sector.

116. In responding, DD/ENV highlighted that the Aircraft Fleet Recycling Association (AFRA) had contributed to the work being undertaken by the CAEP, in coordination with the Secretariat, to address the issue of aircraft end-of-life and aircraft recycling. She recalled that, at its last meeting, the CAEP Steering Group had agreed that while the CAEP had made progress in that regard, it was a multidisciplinary issue that was beyond the remit of the CAEP alone and that the Council should consider setting up a multidisciplinary group in ICAO in order to cover all of the various aspects involved (legal, safety, environment, etc.). DD/ENV noted that an oral report on the results of the CAEP Steering Group’s said meeting in June 2018 would be presented to the Council at its next meeting (214/6).

117. DD/ENV emphasized that the source of the said problem of old out-of-service aircraft being left on the edges of airports’ boundaries, which had also been raised previously by the CAEP

Members from South Africa and the United Arab Emirates, was not solely environmental in nature. Indicating that it was often due to unresolved legal issues, she underscored that the envisaged ICAO multidisciplinary group would be beneficial as it would examine the issue of aircraft end-of-life and recycling holistically and provide States with the recommendations they needed.

118. DD/ENV also stressed that a GAEP would contribute to the holistic view of ICAO's aviation environmental work called for by the Representatives of South Africa and Ecuador.

119. Recalling that at the recent CAEP Steering Group Meeting the draft report of the Independent Experts Integrated Technology Goals Assessment and Review for Engines and Aircraft had been presented, DD/ENV highlighted that it was the first time that the issues of aircraft noise and emissions had been jointly addressed in a single report. She underscored that the conclusion of that work at the CAEP/11 Meeting would allow all technology reviews and goals on aircraft noise and CO₂ and NO_x emissions to have the same mid-term (2027) and long-term (2037) dates, and that that information could, in turn, be reflected in the said GAEP in order to provide a vision of the current status, the goal and the measures that could be taken to reach it.

120. Drawing attention to the actions to implement Assembly Resolution A39-1, Appendix F, paragraph 4 (p. A-4), the President of the Council sought information regarding the ICAO-UN HABITAT study on synergies between airports and cities. He enquired, in particular, as to: who the senior partner was in the study, ICAO or UN HABITAT; the study's outcomes and how they were intended to be used i.e whether they were only to be taken into consideration by the ICAO and UN HABITAT Secretariats or whether they were to be disseminated to States; and the role of UN HABITAT, notably whether it had undertaken the joint study as a regulatory body or had done so solely for promotional purposes.

121. DD/ENV indicated that an external consultant had been engaged to undertake that part of the study relating to airports.

122. The Acting Secretary General further clarified that the report on that study, entitled *Promoting Synergy between Cities and Airports for Sustainable Development*, was undergoing a final review by the ICAO Secretariat [ATB/ENV, the Strategic Planning, Coordination and Partnerships Office (SPCP) and the Nairobi Regional Office] and the UN HABITAT Secretariat, following which it would be submitted for approval to the ICAO Secretary General and the Executive Director of UN HABITAT. Recalling that worldwide air traffic was projected to double by 2030 and that world urban population was expected to nearly double by 2050, he emphasized that as a consequence airports would become increasingly integrated into cities. Noting that the key challenge would be to determine how best to integrate them in terms of mobility, socio-economic benefits and the environment, the Acting Secretary General underscored that the said report provided a collaborative framework to foster joint ICAO-UN HABITAT activities with a view to promoting synergy between airports and urban development.

123. The President of the Council expressed the hope that, in due course, the Council would be informed of the study's outcomes and their intended use.

124. Comments made and clarifications provided during the discussion were noted. It was understood that: a paper would be presented to the Council proposing ways to showcase and thus promote awareness of ICAO's achievements in addressing the impact of aircraft noise and emissions; and information would be provided to Representatives after the meeting on the resources available in the 2017-2019 Regular Programme Budget and/or from extra-budgetary contributions to fund the activities referred to in the Appendix to the paper and on the consequences if there were insufficient funds therefor. Further to its earlier decision [cf. C-DEC 213/7, paragraph 4 h)], the Council requested that the Secretariat give an informal briefing on the reductions in CO₂ emissions from international aviation

achieved over the triennium through efforts by States and relevant organizations to achieve ICAO's goal of a global annual average fuel efficiency improvement of 2 per cent per year, as well as through the implementation of the various elements in the basket of measures. Such an informal briefing could be given in conjunction with the envisaged A40 working paper on civil aviation and the environment and related working papers to be presented for the Council's approval prior to submission to the Assembly.

125. The Council then endorsed the actions carried out to date to implement the said A39 resolutions and decisions relating to environmental protection as set forth in the Appendix to C-WP/14763.

Subject No. 50: Questions relating to the environment

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

126. The Council then considered information paper C-WP/14764, in which the Secretary General reported on recent developments relating to: States' Action Plans to reduce aviation CO₂ emissions; the continued provision of assistance to States under the ICAO-European Union (EU) capacity building and assistance project and the ICAO-United Nations Development Programme (UNDP)-Global Environment Facility (GEF) capacity building project; and cooperation with other UN bodies and international organizations involved in policy making in that field, including the ongoing discussions under the United Nations Framework Convention on Climate Change (UNFCCC), the World Health Organization (WHO) and the International Maritime Organization (IMO).

127. In introducing the paper, the Acting Secretary General, D/ATB, indicated that he was pleased to report that to date, 107 States, representing almost 92 per cent of international traffic, had voluntarily submitted Action Plans to reduce aviation CO₂ emissions. That successful result demonstrated the high level of interest and engagement of ICAO Member States in that initiative, as well as the impact of ICAO's environmental assistance and capacity-building activities.

128. In noting that ICAO continued its cooperation with the EU under the framework of the ICAO-EU capacity building and assistance project, the Acting Secretary General highlighted that, as part of the project, ICAO had recently launched the results of two feasibility studies funded thereunder relating to the use of sustainable aviation fuels in Kenya and the use of renewable energy in Trinidad and Tobago. In addition, a fourth Capacity Building Seminar for the beneficiary States of the Caribbean Region under the ICAO-EU project would be held in the Dominican Republic from 12-13 July 2018. Furthermore, two solar-at-gate pilot projects were being implemented in Cameroon and Kenya as part of the mitigation measures to reduce CO₂ emissions from international aviation. The inauguration of the solar project in Kenya was planned for December 2018.

129. With regard to the ICAO-UNDP-GEF capacity building project, the Acting Secretary General was pleased to inform the Council that it had successfully reached the final phase and that ICAO had recently inaugurated the pilot solar-to-gate project at two international airports in Jamaica and had organized two Capacity Building Seminars on Low Emissions Aviation Measures in the Caribbean and Asia and Pacific regions. In noting that ICAO was currently exploring means to replicate that pilot project in other Caribbean and Pacific Small Island Developing States (SIDs), he indicated that strong interest therein had been expressed by all SIDs during the two seminars.

130. The Acting Secretary General emphasized that the said two assistance projects (ICAO-EU and ICAO-UNDP-GEF) were concrete examples of the implementation of ICAO's *No Country Left Behind* (NCLB) initiative in the field of environmental protection. He noted that the paper also included information on cooperation with other UN bodies, including the UNFCCC, WHO, and IMO.

131. Referring to Section 3.3 of the paper, the Representative of France highlighted the importance of the IMO's recent approval of a long-term goal for the 50 per cent reduction of GHG emissions from international shipping by 2050 and the consequent importance of ICAO's implementation of its Carbon Offsetting and Reduction Scheme for International Aviation (CORSA). He noted that whereas for a long time ICAO had proudly proclaimed that it was the only industrial sector to have adopted a concrete strategy for CO₂ emissions reductions, that was no longer the case, which, in a certain way, was a positive development. In emphasizing that if ICAO wished to maintain its leadership role in that regard then it would need to assume its responsibilities, the Representative of France underscored that the Council's forthcoming discussions on CORSA would be extremely important in that regard.

132. The Representative of Spain sought further information regarding the levels of ambition of the IMO's GHG emissions reduction strategy and whether the latter would lead to a complete phase-out of such emissions from international shipping. He also enquired as to when ICAO would define a long-term aspirational goal to reduce aviation CO₂ emissions.

133. In observing that whereas the heading of Section 3 referred to cooperation with other UN bodies the text of paragraphs 3.3.1-3.3.3 did not mention any cooperation between ICAO and the IMO with regard to emissions reductions, the Representative of Canada queried whether any discussions had taken place between the two organizations on that subject. Noting that he had learned of the IMO's said strategy from a third party, he underscored that he would have preferred to have been informed by ICAO beforehand as inevitably there would be comparisons between the actions being taken by ICAO and those being taken by the IMO with regard to emissions reductions in their respective sectors.

134. The Representative of India also sought information regarding the level of cooperation between ICAO and the IMO in that area. Drawing attention to paragraph 3.1.1, in which it was indicated that the UNFCCC process would continue to discuss the establishment of a new market mechanism and cooperative approaches referred to in Article 6 of the Paris Agreement, he enquired how the ICAO Secretariat would dovetail the internationally transferrable mitigation outcomes (ITMOs) being developed for that mechanism with the emissions units that had been developed by the CAEP for CORSA.

135. DD/ENV clarified that the relationship between ICAO and the IMO was based, in part, on the fact that they were both involved in the issue of bunker fuels under the UNFCCC's 1997 Kyoto Protocol, Article 2.2 of which called for developed countries to pursue limitation or reduction of emissions of GHG from "aviation bunker fuels" (international aviation) and "maritime bunker fuels" (international shipping) working through ICAO and the IMO, respectively. ICAO and the IMO reported together, on a regular basis, to the UNFCCC's Subsidiary Body on Scientific and Technological Advice (SBSTA) on the progress being made in their respective efforts to address emissions from international aviation and international shipping in coordination with their Member States. In noting that the two organizations regularly exchanged information with each other on the progress that they were each making in their efforts to limit or reduce aviation and maritime emissions, respectively, DD/ENV underscored that ICAO was frequently invited by the IMO to explain the measures it was taking to achieve the aviation sector's global aspirational goal of carbon neutral growth (CNG) from 2020.

136. In concurring with the Representative of France that the IMO had taken a very good forward-looking decision when it had approved a long-term goal for the 50 per cent reduction of GHG emissions from international shipping by 2050, DD/ENV noted that it had agreed on an initial IMO strategy which set forth a vision to reduce and phase out such emissions as soon as possible in this century. In particular, under the initial strategy's identified "levels of ambition", it was envisaged that such GHG emissions should peak as soon as possible, and that at the same time efforts would be pursued towards their complete phase out. The initial strategy also included guiding principles, as well as candidate short-term, mid-term and long-term further measures with possible means of implementation,

which would be revised by 2023 with a view to the development of a comprehensive IMO strategy on the reduction of GHG emissions from ships (cf. C-WP/14764, paragraphs 3.3.1 and 3.3.2).

137. DD/ENV recalled, in this context, the decisions taken by the 38th Session of the ICAO Assembly in 2013 not to move forward with a long-term aspirational goal to reduce aviation CO₂ emissions in light of the need for more information on how it could be achieved and to instead establish the said mid-term aspirational goal of CNG from 2020 to be achieved through the implementation of the basket of measures.

138. DD/ENV noted that although the aviation sector was not bound by the 2°C and 1.5°C temperature goals of the UNFCCC's 2015 Paris Agreement, the *ICAO Environmental Report 2019* that would be presented at the time of the 40th Session of the ICAO Assembly would set forth the actions being taken by the Organization and its Member States to address CO₂ emissions from international aviation, which would contribute to the achievement of those goals, complementing the action being taken by Member States to address their domestic CO₂ aviation emissions.

139. In urging caution in comparing the actions being taken by ICAO and the IMO to address, respectively, international aviation emissions and international maritime emissions, DD/ENV emphasized that the technologies and operational measures that were available to the aviation and maritime sectors were very different. She underscored that the Council's envisaged adoption, during the current session, of the first edition of Annex 16, Volume IV – *Carbon Offsetting and Reduction Scheme for International Aviation (CORSA)* (cf. C-WP/14765, Appendix C) would demonstrate to the international community that ICAO was committed to achieving its said mid-term goal of CNG from 2020.

140. Referring to the second question posed by the Representative of India, DD/ENV underscored that in its said progress reports to the UNFCCC'S SBSTA ICAO regularly provided information on CORSA and the development of its various components, including emissions unit criteria (EUC). She noted, however, that there had not been much progress at the UNFCCC with regard to a new market mechanism and that consequently there was no clarity on how the UNFCCC would proceed with the ITMOs under Article 6 of the Paris Agreement. As the debate on that issue at the last UNFCCC session (Bonn, Germany, 30 April-10 May 2018) had been inconclusive, it would continue to be discussed at the Bangkok Climate Change Conference (4-9 September 2018), an additional meeting that was being convened for that purpose, and at the Katowice Climate Change Conference (3-14 December 2018) (COP24). ICAO would continue to closely monitor the UNFCCC's deliberations regarding the new market mechanism and the ITMOs.

141. Note was taken of the comments made and the clarifications provided during the discussion.

142. Having completed its consideration of this subject, the Council noted information paper C-WP/14764.

143. It was recalled that the Representative of Kenya had invited all Council Representatives attending the ICAO Air Services Negotiation Event (ICAN2018) (Nairobi, Kenya, 10-14 December 2018) to participate in the inauguration of the solar-at-gate project in Mombasa developed under the said ICAO-EU project on a date to be confirmed by the host State.

Any other business

Council working papers presented for information

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

- C-WP/14772 – *Financial situation of the Organization and level of the Working Capital Fund (WCF)* – circulated under cover of PRES OBA/2782 dated 11 June 2018 with a deadline of 18 June 2018 for comments; and
- C-WP/14774 – *Report of the JIU entitled “Review of air travel policies in the United Nations system: Achieving efficiency gains and cost savings and enhancing harmonization”* (JIU/REP/2017/3) – circulated, under cover of PRES OBA/2786 dated 11 June 2018 with a deadline of 15 June 2018 for comments.

145. It was noted that further to a request received from the Representative of Spain, albeit after the 15 June 2018 deadline for comments, the President had decided to table for discussion, later in the current session, C-WP/14773 – *Report of the Joint Inspection Unit (JIU) for 2017 and Programme of Work for 2018*, which had also been circulated under cover of PRES OBA/2786 dated 11 June 2018 (cf. C-WP/14713 Revision No. 1, Appendix A, item 41).

Subject No. 16: Legal work of the Organization
Appointment of Members to the Commission of Experts of the
Supervisory Authority of the International Registry (CESAIR)

146. It was noted that, in the absence of comments by 4 June 2018 to his memorandum PRES OBA/2775 dated 28 May 2018, and pursuant to Rule 2 d) of the *Rules of Procedure for the Commission of Experts of the Supervisory Authority of the International Registry* (Doc 9893), the President, on behalf of the Council, had appointed, effective 2 July 2018, the eleven nominees to the CESAIR listed therein proposed by Brazil, Canada, China, France, Ireland, Nigeria, the Russian Federation, Singapore, the United Arab Emirates, the United Kingdom and the United States in response to State letter LE 3/41.2-IND/18/3 dated 13 March 2018.

Eighth Meeting of CESAIR

147. It was noted that, in the absence of comments by 11 June 2018 to his memorandum PRES OBA/2777 dated 4 June 2018, and pursuant to Rule 4 a) of the *Rules of Procedure for the Commission of Experts of the Supervisory Authority of the International Registry* (Doc 9893), the President, on behalf of the Council, had decided to convene the Eighth Meeting of the CESAIR at ICAO Headquarters in Montréal from 29 to 31 August 2018. The meeting would be conducted in the working languages of ICAO, as required, and would be financed by the International Registry, the Secretariat having confirmed that the funds were available therefor.

148. Noting that he had been trying to enhance the efficiency and effectiveness of the Council in addressing the items on its sessional Work Programme (C-WP/14713 Revision No. 1), the President of the Council underscored that it was not helpful when the relevant documents were not available on time. He emphasized that it was clearly specified in Rule 26 b) of the *Rules of Procedure for the Council* (Doc 7559/10) that: working papers containing proposals for adopting or amending the Annexes under Article 90 of the Convention were to be distributed at least 10 working days before the meeting at which they would be considered; other working papers were to be distributed at least 5 working days before the meeting; and reports from Standing Commissions or Committees of the Council or reports of other bodies established under Rule 17 were to be distributed at least 48 hours before the meeting.

149. The President of the Council recalled that on several occasions during the current session it had been necessary for the Council to waive Rule 26 b) to enable it to consider C-WP/14765 on CORSIA-related SARPs (214/2), as well as C-WP/14760 on the ANC's Work Programme for its 209th Session (214/3). Furthermore, in most cases the Council had been taking oral reports that had only been distributed 24 hours before the meeting and not 48 hours as stipulated in Rule 26 b). Stressing that it was not possible for the Council to effectively do its work if oral reports by Committees, the ANC and other bodies were issued on the same day as it was to consider the items, the President of the Council reminded the Secretariat that the oral reports were reports of the Chairpersons/President of the ANC and not their own reports, regardless of the fact that the Secretariat prepared and submitted the draft oral reports to the Chairpersons/President of the ANC for approval in consultation with their Members to ensure accuracy and completeness.

150. The President of the Council highlighted the need for the Secretariat, in processing oral reports to the Council by Committees, the ANC and other bodies, to factor in the time required by the Chairpersons/President of the ANC to consult with their Members thereon in order to ensure the timely issuance of the oral reports and thus enhance the Council's efficiency and effectiveness in addressing the items on its Work Programme. This was noted.

151. The meeting adjourned at 1300 hours.

COUNCIL — 214TH SESSION

SUMMARY MINUTES OF THE SIXTH MEETING

(THE COUNCIL CHAMBER, MONDAY, 18 JUNE 2018, AT 1430 HOURS)

OPEN MEETING

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

PRESENT:

- | | | | |
|------------|--------------------------|-----------------------------|-------------------------|
| Algeria | — Mr. A.D. Mesroua | Kenya | — Ms. M.B. Awori |
| Argentina | — Mr. G.E. Ainchil | Malaysia | — Mr. K.A. Ismail |
| Australia | — Mr. S. Lucas | Mexico | — Mr. D. Méndez Mayora |
| Brazil | — Mr. O. Vieira (Alt.) | Nigeria | — Mr. M.S. Nuhu |
| Cabo Verde | — Mr. C. Monteiro | Panama | — Mr. G.S. Oller |
| Canada | — Mr. M. Pagé | Republic of Korea | — Mr. Y.J. Lee |
| China | — Mr. Shengjun Yang | Russian Federation | — Mr. S. Gudkov |
| Colombia | — Mr. A. Muñoz Gómez | Saudi Arabia | — Mr. M.S. Habib (Alt.) |
| Cuba | — Mrs. M. Crespo Frasier | Singapore | — Mr. T.C. Ng |
| Ecuador | — Mr. I. Arellano | South Africa | — Mr. M.D.T. Peege |
| Egypt | — Mr. A. Khedr | Spain | — Mr. V.M. Aguado |
| France | — Mr. P. Bertoux | Sweden | — Ms. H. Jansson Saxe |
| Germany | — Mr. U. Schwierczinski | Turkey | — Mr. A.R. Çolak |
| India | — Mr. A. Shekhar | United Arab Emirates | — Miss A. Alhameli |
| Ireland | — Ms. N. O'Brien | United Kingdom | — Mr. D.T. Lloyd |
| Italy | — Mr. M.R. Rusconi | United Republic of Tanzania | — Mr. V. Banda (Alt.) |
| Japan | — Mr. S. Matsui | United States | — Mr. T.L. Carter |
| | | Uruguay | — Mr. M. Vidal |

ALSO PRESENT:

- | | |
|--------------------------------|------------------------|
| Mr. C. Hurley | — President, ANC |
| Mrs. M.F. Loguzzo (Alt.) | — Argentina |
| Mr. C. Fernández (Alt.) | — Argentina |
| Mr. R.F. Pecoraro (Alt.) | — Brazil |
| Mr. D. Tavares Taufner (Alt.) | — Brazil |
| Mr. M.G. Correia Pontes (Alt.) | — Brazil |
| Mr. G. do Prado Lima (Alt.) | — Brazil |
| Mr. Chunyu Ding (Alt.) | — China |
| Mr. M. Millefert (Alt.) | — France |
| Mr. N. Naoumi (Alt.) | — Germany |
| Mr. M. Usami (Alt.) | — Japan |
| Mrs. D. Valle Álvarez (Alt.) | — Mexico |
| Mr. K. Lee (Alt.) | — Republic of Korea |
| Mr. D. Subbotin (Alt.) | — Russian Federation |
| Mr. S. Vuokila (Alt.) | — Sweden |
| Mr. Ö. Doğrukol (Alt.) | — Turkey |
| Mr. M. Salem (Alt.) | — United Arab Emirates |
| Mrs. K.L. Riensema (Alt.) | — United Kingdom |
| Mrs. M.A. González (Alt.) | — Uruguay |
| Mr. F. de Medina (Alt.) | — Uruguay |

SECRETARIAT:

- | | |
|------------------|-----------------|
| Mrs. J. Yan | — C/OSG |
| Ms. I. Sosina | — SA/PRES |
| Mr. B. Djibo | — D/ATB |
| Mr. S. Creamer | — D/ANB |
| Mr. J. Huang | — D/LEB |
| Mrs. J. Hupe | — DD/ENV |
| Mr. T. Tanaka | — C/CC |
| Mr. N. Dickson | — C/ES |
| Mr. A. Opolot | — LO |
| Mr. M. Caballero | — CC |
| Mr. A. Larcos | — C/ACS |
| Miss V. Muraca | — Précis-writer |

Representatives to ICAO

Bolivia (Plurinational State of)

Chile

Cyprus

Ethiopia

Ghana

Greece

Honduras

Indonesia

Iran (Islamic Republic of)

Lebanon

Paraguay

Peru

European Union (EU)

International Air Transport Association (IATA)

Subject No. 50: Questions relating to the environment

**Comments from States and International Organizations on the proposed CORSIA
Implementation Elements**

**Report of the ANC — Adoption of Annex 16, Volume IV
Report of AGC — Report on the work of the Advisory Group on CORSIA
Report of the Secretary General — Results of the Committee on Aviation Environmental
Protection (CAEP) Steering Group (SG) Meeting
Update on the work on a Global Market-based Measure Scheme (CORSIA)**

1. The Council agreed to consider these items in conjunction, on the basis of C-WP/14690 and Addendum No.1 (Comments from States and International Organizations on the proposed CORSIA Implementation Elements), C-WP/14765 (Report of the ANC — Adoption of Annex 16, Volume IV) and C-WP/14756 (Update on the work on a Global Market-based Measure Scheme (CORSIA)). The Council also had for consideration two oral reports on the work of the Advisory Group on CORSIA, and the results of the ICAO Committee on Aviation Environmental Protection (CAEP), respectively.
2. The working paper C-WP/14690 and Addendum No. 1 were presented by the Secretary General and provided an overview of the comments received by States and international organizations on the CORSIA implementation elements, as contained in Attachment C to State letter AN 1/17.14 – 17/129. It was noted that a total of 105 replies to the State letter had been received, with 101 replies from States, including 33 Member States represented on the Council. There were also four replies received from international organizations. Of the total 105 replies received, 40 provided comments on the CORSIA implementation elements.
3. It was also noted that the replies received from States and international organizations focussed on the legal status of the CORSIA implementation elements, CORSIA sustainable aviation fuels and CORSIA eligible emissions units. The Secretary General recalled that the Council Advisory Group on CORSIA (AGC) had considered C-WP/14690 in May 2018, and that its recommendations to the Council, including the next steps related to sustainable aviation fuels and eligible emissions units, were reflected in the AGC oral report.
4. The President of the Air Navigation Commission (P/ANC) subsequently introduced C-WP/14765, which presented a proposal by the ANC for the First Edition of Annex 16 – *Environmental Protection, Volume IV – Carbon Offsetting and Reduction Scheme for International Aviation* (CORSIA). The proposed First Edition of Annex 16, Volume IV concerned the introduction of new Standards and Recommended Practices (SARPs), which addressed the implementation of CORSIA.
5. Several issues raised during the Commission’s consideration of the First Edition of Annex 16, Volume IV were highlighted by P/ANC, regarding the recommendation to make ICAO documents relevant to the implementation of CORSIA available free of charge; the need for the Council to consider the development of methodologies and procedures for the CORSIA periodic reviews as soon as practicable, and in advance of the first review to be undertaken in 2022; the scope of reporting from States to ICAO in cases of error correction of Emissions Reports; and the definition of sustainable aviation fuels in the proposed SARPs. P/ANC noted that the Commission had also reflected on the significant prevalence of “conditional comments” received, whereby States and international organizations had predicated their comments to the Standards and Recommended Practices (SARPs) not as proposed by the State letter, but rather with respect to the anticipated direction of the State letter review process. He cautioned that should this practice become a trend, it could conceivably render the final review process for other SARPs more difficult in the future.

6. It was noted that having examined the technical circumstances associated with the implementation of the First Edition, the ANC considered that the following dates would be suitable for the implementation of these provisions: an effective date of October 2018; and a proposed applicability date of 1 January 2019. Additional issues raised by the Commission concerned the conditional comments received and the need to avoid setting a precedent for the final review process for other SARPs.

7. The oral report on the work of the AGC was then presented by the Chairperson of the Advisory Group on CORSIA (Representative of Mexico). An overview of the work of the AGC was provided, including that two small groups had been created under the AGC to consider specific issues on sustainable aviation fuels within the context of the First Edition of Annex 16, Volume IV, and eligible emissions units as described in paragraph 4.2.1 of Annex 16, Volume IV, respectively.

8. The small group on sustainable aviation fuel had developed two options for the definition of sustainable aviation fuels under CORSIA, as contained in paragraph 2.10 of the oral report, and which required a Council decision. At the same time, the small group on eligible emissions units developed text on this subject for inclusion in the Council decision, as provided in paragraph 2.13 of the oral report.

9. On the legal status of the CORSIA implementation elements, it was clarified during the meetings of the AGC that while Annex 16, Volume IV did not contain the term “mandatory” per se, it was understood that the implementation elements referred to therein were essential for the implementation of the CORSIA SARPs.

10. Regarding the procedure for the periodic review of CORSIA, the AGC recognized the need for the Council to establish review procedures as quickly as possible, before the first review in 2022. It was also reported that on the basis of the CAEP Steering Group Summaries of Decisions and Discussion (CAEP-SG/20183-SD/1-2 and SD1-3), the AGC agreed to recommend that the Council approve the 2018 version of the ICAO CORSIA CO₂ Emissions and Reporting Tool (CERT) and its technical methodologies, as well as the ICAO CORSIA Central Registry (CCR) functionalities.

11. The members of the AGC supported the Secretariat’s capacity-building plan for CORSIA implementation and noted the importance of establishing “buddy partnerships” among Member States to provide assistance to implement CORSIA, in particular, in terms of the development and approval of emissions monitoring plans and the establishment of national and/or regional regulatory frameworks. The members of the AGC also emphasized the need for a coordinated approach in undertaking this global capacity-building initiative under ICAO, and any other bilateral or multilateral partnerships.

12. C-WP/14756 was then presented by the Secretary General, which provided an update on the ICAO preparatory activities for the implementation of CORSIA, including the status of the review process for the proposed First Edition of Annex 16, Volume IV and its related guidance material, the proposed CORSIA implementation elements, the work undertaken to develop the ICAO CORSIA CERT and CCR, and the plan for the upcoming CORSIA outreach and capacity-building activities, and the results of those activities that had been completed thus far.

13. The Deputy Director, Environment (DD/ENV), in her capacity as the Secretary of the ICAO Committee on Aviation Environmental Protection (CAEP), subsequently presented the oral report on the Results of the CAEP Steering Group (SG) Meeting, held from 4 to 8 June 2018, in Singapore. It was noted that the CAEP SG meeting discussions had focussed on CORSIA implementation; development of a non-volatile particulate matter (nvPM) Standard; development of environmental supersonic Standards (aircraft and engine); initiatives on airports and operations; preparation of the ICAO Environmental Trends; the concept for the development of an ICAO Global Aviation Environmental Plan (GAEP); and discussion on future CAEP work items. DD/ENV also announced that to mark the occasion

of World Environment Day on 5 June 2018, a new e-publication, the “Eco-Airport Toolkit E-collection”, had been launched.

14. Referring to the oral report on the results of the CAEP SG meeting, the Representative of Spain requested further information on the work of the independent expert panel conducting the CAEP Integrated Technology Goals Assessment and Review for Engines and Aircraft, as well as on the work to be carried out by CAEP on the supersonic noise and emissions Standards. Moreover, on aircraft-end-of-life and recycling, further clarification was sought regarding the CAEP recommendation to create a multidisciplinary group in ICAO to cover all the various aspects of this subject (e.g. legal, safety, environment), in terms of whether it was to be a permanent body, or an ad hoc task force. He concluded by welcoming the proposal for the development of a Global Aviation Environmental Plan (GAEP) but reminded that the timeline for this work would need to be carefully considered in light of the forthcoming 40th Session of the ICAO Assembly in 2019.

15. The Representative of France indicated that his delegation supported the recommendations of the CAEP on supersonic standards as well as the gradual approach that had been selected in this regard. On the topic of aircraft end-of-life and aircraft recycling, in reiterating the importance of the work to be conducted by CAEP on this issue, the Representative suggested that an informal briefing of the Council be organized once the CAEP technical work on the subject had matured. Regarding the proposed GAEP, he also supported the creation of such a plan, and requested further clarification on the timeframe for its development.

16. In also referring to the proposed GAEP, the Representative of Australia asked for additional details as to the origin of the work item on the GAEP, and the anticipated process for its development, including the process of consultation with the relevant ICAO governing bodies, as well as with Member States. He added that it would be important to understand the origin and planned process for the GAEP, to ensure that the already limited resources of States and the ICAO Secretariat were used efficiently.

17. Noting the substantial amount of work being pursued by the Organization on a range of environmental issues beyond market-based measures and CORSIA, the Representative of the United Kingdom supported the idea of the proposed GAEP, as it would serve to showcase all aspects of the work on environment. At the same time, he echoed the comments of the Representative of Australia regarding the need to ensure the appropriate involvement of the ICAO governing bodies.

18. In response to the question raised by the Representative of Spain regarding the CAEP independent expert panel, DD/ENV clarified that similar reviews had been conducted by the CAEP in the past in the areas of noise, operations and emissions, whereby experts nominated by CAEP Members and Observers were to develop mid- and long-term technological goals. In light of the interdependencies highlighted by the previous reviews for the CAEP/11 cycle (2016 to 2019), it was agreed that an integrated assessment would be undertaken by the independent experts. The report reflecting the findings of the independent experts and the technology goals for the mid- and long-terms would be presented to CAEP/11 for recommendation, and to the Council thereafter.

19. DD/ENV also responded to the queries raised on supersonics, noting that the key concern to be addressed in this regard was how to resolve the issue of sonic boom from a technological perspective, while balancing public acceptability of the re-introduction of supersonic aircraft, in line with ICAO Assembly Resolution A39-1 (“*Consolidated statement of continuing ICAO policies and practices related to environmental protection – General provisions, noise and local air quality*”). In terms of the timeline, she noted that a review of the status of new supersonic technologies was underway, and a meeting would be organized in the latter half of 2018 to conduct a preliminary assessment of the results of

the review. Subsequently, a report to CAEP/11 would be prepared on the possibility of new or updated noise and emissions Standards for supersonic aircraft.

20. With respect to the establishment of a multidisciplinary group within ICAO to consider interdisciplinary issues relating to aircraft-end-of-life and recycling, DD/ENV proposed that in addition to the work already being undertaken by CAEP to develop environmental guidelines and best practices for aircraft end-of-life and recycling, it would be important to coordinate with the technical experts across the Organization to better understand cross-cutting issues, and how the matter of aircraft end-of-life and recycling is being addressed outside of a purely environment focus. She suggested that one option was that a scoping study could be initiated to determine how best to address the issue, with the results to be presented to the Council for further consideration.

21. Turning to the questions raised on the GAEP, DD/ENV explained that the concept of the GAEP was tied into the work being undertaken by CAEP on the environmental benefits resulting from the Aviation System Block Upgrades (ASBU) implementation for inclusion in the Global Air Navigation Plan, and in light of the capacity-building and assistance programmes on environment that had been initiated. Moreover, it was noted that the scope of the work on environment had also expanded to include a greater focus not solely on standard-setting, but also on implementation of programmes as well, covering a full spectrum of environmental issues. Thus, the GAEP could provide an opportunity to consolidate the work on environment into a single global plan. It was intended that the CAEP/11 meeting would further develop a proposal for the GAEP to be presented to the ICAO governing bodies, and for further consultation with Member States and relevant international organizations.

22. The Representative of South Africa asked for clarification to better understand the term “induced land-use change” (ILUC), as contained in the oral report. He also requested further details on the creation of the proposed Fuels Advisory Body (FAB), as well as the composition of the independent expert panel. The Representative also sought additional background information regarding the consideration by CAEP to retire the Smoke Number Standard contained in Annex 16, Volume II. He also questioned the lack of data on supersonics, and requested further clarification in this regard. On the topic of aircraft end-of-life and aircraft recycling, it was suggested that lessons could be learned from the experience of India in the field of maritime recycling, and that best practices may be applicable to the aviation sector as well. The Representative concluded in asking for additional information on the work being undertaken on ASBUs.

23. Answering the questions raised by the Representative of South Africa, DD/ENV described ILUC as a change in the use or management of land which results from direct land use change, which itself refers to a change in the use or management of land and which may generate CO₂ emissions indirectly. Turning to the Fuels Advisory Body (FAB), she explained that in the context of the discussion regarding sustainability criteria and the eligibility of sustainability certification schemes (SCS) under CORSIA, the FAB could be established by the Council as a technical advisory group to support its deliberations and decision-making on eligible SCS.

24. Regarding the possible retirement of the Smoke Number Standard in Annex 16, Volume II, DD/ENV noted that this Standard had been incorporated into the Annex in the 1970s to measure the visibility of aircraft emissions, i.e. the smoke itself.

25. Returning to the subject of the independent expert panel that is undertaking an integrated technology goals assessment and review for engines and aircraft as part of its remit under CAEP, DD/ENV explained that the independent expert review process is a well-established practice in CAEP, and that all CAEP Members and Observers are granted the opportunity to nominate suitable experts to the panel. She added that these experts may be from the State authority, industry, or from academia, and are selected on the basis of their technical expertise and professional profiles.

26. DD/ENV also supplemented the explanation provided previously with respect to the CAEP work on supersonics, adding that the data available to CAEP to conduct its analyses was outdated and based on the design of supersonic aircraft which are no longer operational. As such, CAEP is exploring alternative datasets to enable the development of a possible Standard against which future supersonic aircraft may be certified.

27. On aircraft end-of-life and recycling, DD/ENV welcomed the suggestion regarding learning from the experience of India with recycling in the maritime sector and noted that ICAO had been coordinating with the International Maritime Organization (IMO) to exchange lessons learned and best practices. However, she reminded the Council that the maritime and aviation sectors each face specific circumstances and challenges with recycling that may not allow for a direct comparison.

28. On the progress made regarding the implementation of ASBUs and the CAEP analysis of the associated environmental benefits, DD/ENV noted that this work was ongoing and would support the efforts of ANB in this regard.

29. The Representative of India expanded on the experience of India with ship recycling and expressed his willingness to share any specific information that might be useful to the Secretariat. He also indicated his interest in the development of the proposed GAEP and looked forward to future updates to the Council on the progress of the Plan. Regarding the suggestion for CAEP to use a bottom-up approach to undertake a study on a long-term aspirational goal for international aviation emissions, the Representative wished to better understand the context of the discussions, and whether the proposal was raised in consideration of a long-term sectoral aspirational goal being established under the United Nations Framework Convention on Climate Change (UNFCCC) or another body.

30. Echoing the sentiments expressed on a long-term aspirational goal by the Representative of India, the Representative of China reminded that CAEP should remain cognizant of the emissions reduction measures already being undertaken by Member States, and that efforts should be made to avoid imposing any additional burden for environmental initiatives, in particular with respect to developing States. In addition, echoing the points raised by several Representatives on the proposed GAEP, he emphasized that the Plan needed to be better contextualized in terms of the work programme and that further research was required before a decision could be made regarding the development of the GAEP.

31. Referring to paragraph 2.2 of the oral report on the results of the CAEP SG meeting on the technical aspects and implementation timeline for CORSIA, the Representative of Ecuador raised the issue of the availability of the CO₂ Estimation Models (CEMs) and the ICAO CORSIA CERT, vis-à-vis the development of the “CORSIA Default Life Cycle Emissions Values,” and the “CORSIA Methodology for Calculating Actual Life Cycle Emissions Values”. Specifically, he questioned whether this material being developed related to the ICAO CORSIA CERT.

32. In following-up to the discussion on ILUC and land use, the Representative of Colombia highlighted that in the context of sustainable fuels, the aim is to protect forested land and to promote reforestation, while disincentivizing deforestation and land-use change that could generate emissions, which will be of significant benefit to those Member States with forests and that have implemented reforestation and afforestation policies. At the same time, the Representative expressed concern regarding the limited availability of CAEP technical material, particularly with respect to the CAEP working groups, and emphasized the need to improve access to this information to facilitate decision-making and to enhance transparency in the work of CAEP. As an example, he cited that quantitative data related to the environmental benefits to be accrued through ASBU implementation was not readily available and neither was the percentage of reductions that had resulted from the adoption of new SARPs on CO₂ emissions.

33. Recalling operative clauses 2, 7 and 21 of Assembly Resolution A39-3, the Representative of Colombia also noted that these called upon the Council to continue to monitor and account for emissions reductions resulting from progress on all elements in the basket of measures, and in this context, access to the relevant technical data and information shared through the CAEP process was fundamental. Without greater openness in the process moving forward, the Representative posited that CORSIA could potentially need to be restructured to better ensure transparency and that the views across all regions were considered.

34. In response to the queries raised on the long-term aspirational goals, DD/ENV recalled that this work was mandated by the 39th Session of the ICAO Assembly and in this regard, she noted that the progress made on this work had been previously reported to Council under C-WP/14763, *Mid-triennial review of implementation of resolutions and decisions of the 39th Session of the Assembly – Environmental Protection*. Regarding CEMs, she confirmed that the necessary CEM algorithms, which represent aircraft types within CERT, were complete and ready. In terms of the two forthcoming documents “CORSIA Default Life Cycle Emissions Values”, and the “CORSIA Methodology for Calculating Actual Life Cycle Emissions Values”, which will be used to calculate and request the benefit from the use of CORSIA eligible fuels, DD/ENV explained that these were both still under development. However, she pointed out that these two documents would not actually be required by States until 2023, as per Annex 16, Volume IV.

35. Regarding the calculation of emissions reductions across all elements of the basket of measures, DD/ENV indicated that this quantitative data is available through the environmental trends generated by CAEP, and which are presented to the Council and the Assembly. To date, the trends include the reductions related to noise, local air quality, and in terms of CO₂ emissions, these are divided further to demonstrate the reductions resulting from technology and operations, as well as alternative fuels. The introduction of CORSIA will provide even greater granularity in the data on emissions reduction. In this regard, DD/ENV added that Council Representatives would be granted access to the relevant CAEP materials and documentation upon request. While understanding the potential inconvenience this created for both the Council and the Secretariat, it was recalled that this policy had been instituted to minimize the possible breach of confidential information on ongoing CAEP work, which had occurred on several occasions in the past. She reminded that this process will be among the items reviewed by the Working Group on Governance and Efficiency (WGGE) in the context of their consideration of the CAEP terms of reference, structure and working methods during the 215th Session. She concluded in reiterating that it was the Council that has the authority to decide to refer any new work items that may arise to the CAEP, and that a State would therefore need to bring their request to Council for consideration and such referral.

36. The Representative of India requested further precision by the Secretariat regarding the reference to a long-term global aspirational goal in the Assembly Resolution. In addition, in light of the response provided by the Secretariat on the working methods of CAEP and the requirement for greater openness, the Representative shared his concerns over whether CAEP was the appropriate body to deal with CORSIA.

37. Returning to the point raised on the need to account for emissions reductions from all elements of the basket of measures, the Representative of Colombia reiterated that not enough had been done by CAEP to determine how these reductions can best be measured. A key practical aspect of CORSIA is the ability to determine the reductions achieved by the sector to be able to offset them accordingly; thus, quantitative data is required. He stressed that in addition to the availability of data, an appropriate methodology is also needed to be able to assess it, and in light of consultations with the Secretariat and the industry, he expressed doubt whether such a methodology to calculate emissions reductions had yet been determined.

38. On the availability of information related to the work of CAEP and the process for introducing new items to the CAEP work programme, the Representative of Colombia recalled a recent occasion where he had asked a question on the eligibility of emissions units generated by REDD+ projects under CORSIA to a panel of experts during the ICAO Seminar on Carbon Markets (February 2018), and had received a clear reply that indeed, such units would be eligible. Recounting that the Secretariat's subsequent intervention stated that such units were in fact ineligible under CORSIA, the Representative took issue with this position, emphasizing that the role of the Secretariat was to note and support its Members States' views, and not to contravene the opinions of technical experts and States' needs or to impose its own policy preferences.

39. The Representative also reminded that the CAEP had been tasked by the Council to review the issue of additionality and double-counting as presented in C-WP/14688 during the 212th Session, and informed that ultimately their expert was unable to present the necessary material to CAEP due to insufficient notice provided from CAEP to allow the expert to be available. In light of the foregoing, he urged that the Council be granted access to the information from CAEP and its working groups to be able to facilitate better understanding of and participation in the CAEP process, and that CAEP should review the means for measuring the emissions reductions resulting from CORSIA not simply for fuel, but with respect to technological and operational improvements that can contribute to a two per cent emissions reduction per year.

40. The Representative of China expressed concern on the establishment of the Fuels Advisory Body (FAB) and reiterated that China had consistently opposed the establishment of a fuel standard by ICAO. He emphasized that China did not believe ICAO should implement any certification for the fuel, as this could potentially be perceived as violating the sovereignty of its Member States and encroach on their domestic affairs.

41. Clarifying the reference to the use of the term "long-term aspirational goal", DD/ENV explained that operative clause 2 of Assembly Resolution A39-2 ("*Consolidated statement of continuing ICAO policies and practices related to environmental protection – Climate change*"), clearly referred to this goal, and recalled that additional details elaborating the term were also available in C-WP/14763.

42. She also recalled that the Council had decided during the 213th Session (C-DEC 213/7, paragraph 4 g) refers) on the need for the Secretariat to continue to monitor the implementation of all elements of the basket of measures to better understand the contribution of each element to the emissions reductions goals. In this regard, while noting that this work was underway in CAEP, she clarified that to be able to assess the contribution of CORSIA to emissions reductions, CORSIA would need to be implemented first. Then data could be generated and analysed, and a comparison could be done across the measures to assess their contributions to the emissions reductions goals.

43. With a view to alleviate concerns over the establishment of the FAB, DD/ENV stressed that the discussions by CAEP on the possible creation of such an advisory body were predicated on whether the Council deemed such an advisory body necessary. The FAB would only be created to support the Council in its consideration of suitable SCS that would certify the sustainability of fuels under CORSIA. If the Council determines this kind of technical support is not required, then the FAB would not be established.

44. Further to the information provided by DD/ENV on the establishment of the proposed Fuels Advisory Body (FAB), the President of the Council indicated that in his understanding, the information provided on the FAB represented an effort by the CAEP to be transparent on the discussion held during the CAEP SG meeting. He reiterated that no decision would be taken with respect to the FAB

at this stage, as any such decision would be contingent upon other considerations and decisions yet to be taken by the Council.

45. The Representative of South Africa noted the work being undertaken by CAEP with respect to airports and operations and wished to have clarification on how this work relates to Annex 14 – *Aerodromes*. Regarding the governance of CAEP, the Representative reiterated that CAEP was a technical body reporting to the Council, and that as such, could not submit material to the 40th Assembly without agreement by the Council to do so. Thus, in terms of the timeline for the preparation of the proposed GAEP, this document will need to be considered by the Council first and agreed to be transmitted to the Assembly accordingly.

46. Agreeing with the comments made by the Representative of China on the FAB, the Representative of Saudi Arabia added that while his delegation neither supported or opposed the FAB per se, what was of some concern was that there was no mandate for the FAB to be created, and that this subject includes aspects that are beyond civil aviation and environmental protection. The Representative also expressed caution regarding the mid-term aspirational goals, such as carbon neutral growth from 2020, recalling that several States had filed reservations to the relevant operative clause of the Assembly Resolution since there appeared to be little scientific or technical evidence to support this. Consequently, it would be hard to make the transition to a long-term aspirational goal, understanding the caveats associated to even the mid-term goals.

47. Reminding that the Council had been tasked by the 39th Session of the ICAO Assembly to develop SARPs for CORSIA MRV and emissions units criteria, as well as the associated guidance material, and that the said SARPs would have an applicability date of 1 January 2019, the Representative of the Republic of Korea urged that the SARPs be established by the end of the current 214th Session. Noting that the Republic of Korea wished to see the SARPs adopted by the end of the Session, and bearing in mind the need to take into account the concerns raised by Member States regarding the lack of regional representation in CAEP, the lack of reflection of each Member States' specific circumstances, sustainable fuel and emissions units criteria, the Representative proposed including text in the Council decision stating that the above concerns would be addressed in subsequent discussions.

48. The President of the Council noted that issues relating to the ICAO CORSIA CERT and its technical methodologies, the ICAO CCR functionalities, and the next steps related to sustainability criteria and eligible emissions units criteria, would be considered further when the Council discussed the AGC Oral Report, which also covered these issues, including potential guidance to CAEP. He also reiterated that with respect to the possible formation of the FAB, no decision was required by the Council at this stage, as any such decision would be dependent on consequential decisions that the Council might take. With respect to the multidisciplinary group, the President proposed that the Secretariat be requested to coordinate a policy response that involved input from all relevant Bureaux, including environment, safety, and legal, with a view to presenting a holistic proposal on the scope of future work for consideration by the Council. It was recalled that the WGGE had been tasked to review the terms of reference, structure and working methods of CAEP, and that the outcome of this review should be reported to the Council during the 215th Session. The President also took note of the comments and concerns that had been expressed on the work being undertaken on a long-term aspirational goal for international aviation emissions vis-à-vis the Assembly Resolution A39-2 and the need to appropriately monitor and account for the emissions reductions resulting from all elements of the basket of measures.

49. The Representative of Japan stressed that it was necessary to consolidate the Council's efforts to adopt the SARPs and the views raised during the deliberations thereon, for the benefit of ICAO Member States and the relevant stakeholders. Turning to C-WP/14765, the Representative sought clarification on how the proposal presented by his delegation to amend the CORSIA SARPs, as circulated to all delegations by e-mail, would henceforth be progressed. As a reminder on the content of this

proposal, he undertook to re-circulate the proposal by e-mail for consideration during the next meeting on this item.

50. Turning to the AGC oral report, the Representative of India expressed concern over the lack of clarity on the legal status of the CORSIA implementation elements, opining that paragraph 2.4 of the AGC oral report did not seem to accurately reflect the legal opinion provided by the Director, Legal and External Affairs Bureau (D/LEB) on this issue. Specifically, whereas paragraph 2.4 concludes in suggesting that a reference in a Standard to other documents did not mean that these reference documents have the same “conditional” binding force of a Standard, D/LEB had advised Council Representatives that from a strict legal perspective the “Technical Instructions” did not have the same conditional binding force of a Standard, in line with Article 37 of the *Convention on International Civil Aviation*. The Representative suggested that this view of D/LEB on the issue of the legal nature of the implementation elements should be formally presented to Council so as to be taken into account when finalizing a decision on this item.

51. While recognizing the concerns of the Representative of India on the legal status of the CORSIA implementation elements, the President of the Council observed that paragraph 2.6 of the AGC oral report provided the final recommendation of the AGC on the subject of the legal status of the implementation elements, which summarized the conclusions drawn by the AGC following lengthy deliberations on the issue.

52. In considering C-WP/14765, the Representative of Cuba inquired on two specific technical aspects of the SARPs contained in the First Edition of Annex 16, Volume IV. First, on the rationale provided by the Commission to exclude a definition of “fuel burn” in the CORSIA SARPs due to the lack of definition for “fuel used”, the Representative requested further information. She also noted that the terms “fuel burn” and “fuel used” are used interchangeably in the calculations for fuel burn set out in Appendix 2 of the proposed Annex 16, Volume IV, and questioned whether these terms could be considered to have the same definition.

53. Turning to the AGC oral report, the Representative of Cuba welcomed the development of the CERT, and indicated her in-principle support of the tool. However, she requested confirmation that the tool would cover all aircraft types and models in use, identifying the Tupolev 204 and Ilyushin 96 aircraft types, specifically. In addition, while acknowledging the value of the CERT for States and noting that the CERT was limited to a specific volume of fuel for the purposes of emission calculation and verification, she asked whether the CERT would eventually be able to be used for any volume of fuel.

54. Responding to the technical questions of the Representative of Cuba, DD/ENV informed that “fuel burn” had not been defined in the SARPs because the aim was to make the new Standard on CORSIA compatible with existing reporting procedures and fuel monitoring methods. Annex 16, Volume IV therefore reflects the five possible fuel use monitoring methods already in use by aeroplane operators, which are equivalent and compatible. As a result, a specific definition of “fuel used” was not required as it was already commonly used in the context of these methodologies. Similarly, on whether CERT will eventually be able to be used for larger fuel volumes, DD/ENV confirmed that this could be considered, insofar as a need was identified by Member States to add this functionality. She highlighted that following the adoption of Annex 16, Volume IV, as the Secretariat embarks on its capacity-building and training programme for Member States on the MRV aspects of CORSIA, States will have the opportunity to better describe their needs to ICAO that would facilitate their emissions reporting. DD/ENV also confirmed that the Tupolev 204 and Ilyushin 96 aircraft types were covered by the CERT.

55. By way of supplementary information, P/ANC agreed with the preceding detailed explanation provided by DD/ENV on the definition of “fuel burn”. He added that the ANC was satisfied

with the validation that the five fuel use monitoring methods contained in Annex 16, Volume IV were equivalent.

56. With respect to the legal status of the CORSIA implementation elements, while the Representative of India noted the text of paragraph 2.6 of the AGC oral report, he expressed concern that there remained uncertainty surrounding the legal status of the CORSIA implementation elements. The Representative cautioned that any uncertainty by Member States might lead to different interpretations of the “mandatory” nature of the implementation elements. In response, the President of the Council observed that the term “mandatory” did not appear anywhere in Annex 16, Volume IV with respect to the implementation elements. On this basis therefore, he was not sure why the concern indicated by India remained on this point. He recalled that this subject had been comprehensively discussed by the AGC, and referred to paragraph 2.4 of the oral report, which reaffirmed that the ICAO documents referenced in Annex 16, Volume IV are essential for the implementation of CORSIA.

57. The Representative of China fully supported the intervention made by the Representative of India and agreed with the suggestion to reflect the legal opinion of D/LEB in the summary of this meeting. He also requested to indicate that the Council note the issues raised by the Council Representatives with regard to the legal status of the ICAO documents referred to in Annex 16, Volume IV, and recommended that the comments made by the Representative of India be taken into account when the Council took a decision on this item.

58. On the question on whether the term “mandatory” was used in Annex 16, Volume IV, DD/ENV confirmed that it was not. However, she did note that in receiving the comments from States in response to State letter AN 1/17.14 – 17/129, several States had used the term “mandatory” in their replies. The Representative of Germany also commented in this regard, recalling that there had been a discussion on whether the implementation elements should be considered as part of the CORSIA SARPs, and in the context of which it was decided that they should remain separate. The uncertainty over the legal status of the implementation elements, and whether they were to be considered “mandatory”, arose from this decision. The President of the Council indicated that he was satisfied by the explanation provided by DD/ENV and the additional information from the Representative of Germany. He reconfirmed that the implementation elements were not part of the SARPs, that the mandatory nature of the Standard itself is not in question, and that the term “mandatory” did not exist in Annex 16, Volume IV.

59. The Representative of the Russian Federation supported the Representatives of China and India, and proposed removing the term “Standard” altogether, to avoid any misunderstanding. In response, the President of the Council reiterated the point that regardless of whether the implementation elements are mandatory or not, the Standards and Recommended Practices as contained in the Annexes to the Convention represent standalone documentation.

60. Further to the explanation provided by the Representative of Germany, the Representative of Turkey recalled that when this exercise had initially begun in coordination with LEB, the implementation elements had been referred to under a different title. This terminology was then revised and the term “essential” was employed to describe the nature of the implementation elements vis-à-vis the SARPs. Only once the replies from member States to State letter AN 1/17.14 – 17/129 had been received, did the term “mandatory” appear in reference to the implementation elements. The Representative highlighted that no matter how the implementation elements are described, be it “essential”, “integrated part”, or “mandatory”, they need to be defined correctly because the implementation of these elements in a harmonious and consistent manner by all was essential for the successful implementation of CORSIA.

61. Regarding outreach and capacity-building activities for CORSIA, the Representative of South Africa recommended that the Secretariat’s plan to provide direct and tailored assistance to Member

States for CORSIA implementation across the regions needed further enhancement, especially in light of the challenges related to capacity-building and assistance. The President of the Council, noting that this question on the capacity-building and assistance plan for CORSIA had also been raised by other Representatives, requested that the Secretariat circulate an information note to the Council on the proposed CORSIA assistance and capacity-building plan to facilitate the deliberations on this issue. Moreover, the President acknowledged that this information would also supplement the implementation task list for CORSIA as contained in Appendix A to C-WP/14765 and which already identified the preparatory actions and timeline for CORSIA implementation.

62. The Representative of the United Kingdom expressed support for the point made by the President of the Council in relation to the legal status of the CORSIA implementation elements. He agreed that the crux of the issue was that the CORSIA implementation elements be implemented in a uniform and effective manner, and advised against quoting the advice of D/LEB in the decision to be taken by the Council. The Representative cautioned that doing so could create a situation where advice from separate Directors of Legal Bureau might be in conflict. The Representative also agreed that effective capacity-building and outreach would be essential in the successful implementation of CORSIA, since having a robust assistance strategy in place will be fundamental to help implementation by Member States.

63. On the subject of capacity-building and assistance to States in support of CORSIA implementation, the Secretary General recalled that the Secretariat had presented the AGC with a plan for the proposed CORSIA assistance activities. She noted that the planned activities were concrete, but informed that the resources to undertake these activities were not provided for in the regular budget. While the appropriate budgetary resources are being examined for the next budget cycle, the Secretary General invited Member States to consider supporting the Secretariat capacity-building and outreach activities through voluntary contributions.

64. The Representative of Spain supported the President's proposal for the Secretariat to circulate an information note on the planned capacity-building and outreach activities for CORSIA. He suggested that while the plan may need to be better formatted and packaged compared to what was initially submitted to the AGC, it would be useful to also reflect this information in the decision to be taken by the Council.

65. Referring to the technical questions posed by the Representative of Cuba and endorsing her statement, further clarification was sought by the Representative of Ecuador on whether the ANC had reviewed the issue related to the definition of "fuel burn", as he was unclear on the rationale to not include this definition in the SARPs. Without defining this term clearly, aviation authorities may have different interpretations of fuel burn, which could impact the implementation of the SARPs, as well as the ability to use the CERT and CCR.

66. Speaking on the subject of the AGC oral report, the Representative of Ecuador pointed out that because insufficient time had been given to be able to fully consider the recommendations of the AGC, he could not at present confirm his delegation's support thereof. For example, with respect to definitions related to aviation fuels in Annex 16, Volume IV, there was a lack of clarity on the options proposed, as well as on several other AGC recommendations to the Council. In addition, on the two options for the definition of aviation fuel, noting the divergent views expressed within the AGC in this regard, the Representative requested an explanation of the substance of the difference between the options, to be better positioned to make a decision.

67. On the issues raised by the Representative of Ecuador, the President of the Council recalled that it had been agreed to separate the technical aspects of Annex 16, Volume IV, from those

aspects requiring a political decision, and that procedurally, these were referred to the ANC and AGC, respectively. Specifically, on the definition of “fuel burn”, the President noted the previous explanation provided by DD/ENV and P/ANC in response to the question of the Representative of Cuba, which had sufficiently addressed the issue from a technical perspective. At this stage, he suggested that it would not be helpful to request the ANC to develop a definition for “fuel burn” since it was not technically required in the SARPs.

68. At the same time, the President acknowledged that the AGC had clearly identified those issues where a majority consensus had been reached, whereas on those items for which no such consensus could be achieved, the AGC had developed possible options to be decided by the Council. In this regard, the President explained that although the Secretariat could potentially provide clarification on the two options proposed for the definition of aviation fuels under CORSIA, these options reflected the outcome of AGC small group discussions and negotiations. While the President noted that any decision on the two options would be deferred to the next meeting of the current session, he encouraged further discussion to continue in the meantime between Representatives so as to better understand the differences between the options and implications of each.

69. Returning to his concerns on the perceived lack of a clear resolution on the question of the legal status of the CORSIA implementation elements, the Representative of India stressed that legal difficulties were potentially being created given the legal opinion of the previous Director of the Legal Bureau, which suggested that the implementation elements were essential to the implementation of CORSIA, and which apparently differed from the opinion of the current Director of the Legal Bureau. He questioned whether the term “essential” was sufficiently clear to allow for a common understanding by Member States, and that if there were any doubts as to the meaning of “essential”, this could lead to an uneven application of the CORSIA SARPs and the implementation elements. He added that this lack of clarity could affect the decision on whether to file a difference to the implementation elements, as referred to in Annex 16, Volume IV, and more generally, whether the implementation elements were to be considered optional when applying the CORSIA SARPs. The Representative recalled that different Directors of LEB had rendered the opinion that other documents should not be referenced in the SARPs as a SARP is a standalone document, and suggested that D/LEB might be called on to provide further confirmation in this regard.

70. The President of the Council reminded the Council that ICAO is a continuum, and as such, the opinions provided by Directors of the Legal Bureau should not be debated in terms of the opinions of one Director versus another, at different points in time. On the legal status of the implementation elements, the President of the Council reiterated that this issue had been discussed at length by the AGC, and that a recommendation had been made to the Council accordingly in the AGC oral report. In terms of referencing other documents in ICAO SARPs, the President recognized that there was precedent for this practice in other Annexes, and cited the PANS-ATM and the Technical Instructions for Annex 18 – *The Safe Transport of Dangerous Goods by Air*, as examples.

71. The Representative of Colombia expressed his support for the preceding intervention of the President, adding that as another example, Doc 9303 is referenced in Annex 9 – *Facilitation*. He also suggested that in an effort to avoid such a discussion in the future, that if not currently available, policies and standards on SARPs be developed, so that the work could move forward on the basis of a single set of common procedures.

72. The Representative of the Russian Federation expressed concern that the comparison between Annex 18 and Annex 16 was inappropriate, given that Annex 18 dealt with issues affecting safety, whereas CORSIA dealt with market-based measures, which in his view were of a lesser priority. In response, the President of the Council clarified that Annex 18 had been cited merely as an example and that the comment should not have been seen as a comparison to Annex 16.

73. Given time constraints, the Council was unable to conclude final consideration of these items. Accordingly, it was agreed that the Council would resume consideration of the remaining items, namely C-WP/14765, C-WP/14756 and the AGC Oral Report at the next meeting of the Council on Wednesday, 20 June (C-MIN 214/7 refers).

74. In order to facilitate ongoing consideration of the issues arising, the Secretariat was requested to circulate an information note to the Council that provided more detailed information on the planned outreach and capacity-building activities to be undertaken by the Secretariat in order to support Member States efforts in CORSIA implementation.

75. The meeting was adjourned at 1715 hours.

COUNCIL — 214TH SESSION

SUMMARY MINUTES OF THE SEVENTH MEETING

(THE COUNCIL CHAMBER, WEDNESDAY, 20 JUNE 2018, AT 1000 HOURS)

CLOSED MEETING

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

PRESENT:

Algeria	— Mr. A.D. Mesroua	Kenya	— Ms. M.B. Awori
Argentina	— Mr. G.E. Ainchil	Malaysia	— Mr. K.A. Ismail
Australia	— Mr. S. Lucas	Mexico	— Mr. D. Méndez Mayora
Brazil	— Mr. O. Vieira (Alt.)	Nigeria	— Mr. M.S. Nuhu
Cabo Verde	— Mr. C. Monteiro	Panama	— Mr. G.S. Oller
Canada	— Mr. M. Pagé	Republic of Korea	— Mr. Y.J. Lee
China	— Mr. Shengjun Yang	Russian Federation	— Mr. S. Gudkov
Colombia	— Mr. A. Muñoz Gómez	Saudi Arabia	— Mr. S.A.R. Hashem
Congo	— Mr. R.M. Ondzotto	Singapore	— Mr. T.C. Ng
Cuba	— Mrs. M. Crespo Frasquiere	South Africa	— Mr. M.D.T. Peege
Ecuador	— Mr. I. Arellano	Spain	— Mr. V.M. Aguado
Egypt	— Mr. A. Khedr	Sweden	— Ms. H. Jansson Saxe
France	— Mr. P. Bertoux	Turkey	— Mr. A.R. Çolak
Germany	— Mr. U. Schwierczinski	United Arab Emirates	— Miss A. Alhameli
India	— Mr. A. Shekhar	United Kingdom	— Mr. D.T. Lloyd
Ireland	— Ms. N. O'Brien	United Republic of Tanzania	— Mr. R.W. Bokango
Italy	— Mr. M.R. Rusconi	United States	— Mr. T.L. Carter
Japan	— Mr. S. Matsui	Uruguay	— Mr. M. Vidal

ALSO PRESENT:

Mr. C. Hurley	— President, ANC
Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. C. Fernández (Alt.)	— Argentina
Mr. R.F. Pecoraro (Alt.)	— Brazil
Mr. D. Tavares Taufner (Alt.)	— Brazil
Mr. H. Gonzales (Alt.)	— Brazil
Mr. G. do Prado Lima (Alt.)	— Brazil
Mr. Chunyu Ding (Alt.)	— China
Mr. M. Millefert (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mrs. D. Valle Álvarez (Alt.)	— Mexico
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. M.S. Habib (Alt.)	— Saudi Arabia
Mr. S. Vuokila (Alt.)	— Sweden
Mr. Ö. Dođrukol (Alt.)	— Turkey
Mr. M. Salem (Alt.)	— United Arab Emirates
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mr. S. Kotis (Alt.)	— United States
Mrs. M.A. González (Alt.)	— Uruguay
Mr. F. de Medina (Alt.)	— Uruguay

SECRETARIAT:

Mrs. J. Yan	— C/OSG
Ms. I. Sosina	— SA/PRES
Mr. B. Djibo	— D/ATB
Mr. S. Creamer	— D/ANB
Mr. S. Lefoyer	— DD/ASF
Mr. C. Dalton	— C/AMO
Mr. B. Verhaegen	— SELO
Mr. J. Lamosa	— C/ASA
Mr. A. Djojonegoro	— ASP
Mr. Y. Nyampong	— LEB
Mr. A. Larcos	— C/ACS
Miss S. Black	— Précis-writer

Representatives to ICAO

Bolivia (Plurinational State of)

Cameroon

Chile

Cyprus

Ethiopia

Ghana

Greece

Honduras

Indonesia

Iran (Islamic Republic of)

Lebanon

Paraguay

Peru

Senegal

European Union (EU)

Subject No. 14: Subjects relating to air navigation
Subject No. 24.3 Action on Assembly resolutions and decisions

Update on developments to address risks posed by unannounced missile launches

1. This subject was considered on the basis of the following oral report by the Secretary General, which had been circulated to Representatives beforehand and posted on the Council's secure website:

2. "This oral report presents an update on the ongoing developments as well as the response by the Organization to the decision taken by the ICAO Council at its 212th Session (C-DEC 212/1) on 6 October 2017, on the significant concern to the safety of international civil aviation caused by the missile launches of the Democratic People's Republic of Korea (DPRK).

3. "It is recalled that the ICAO Council received its last update during the 213th Session (C-DEC 213/8) on 14 March 2018, which included inter alia: only one ballistic launch on 29 November 2017 that had occurred since the meeting of the ICAO Council (C-DEC 212/1) on 6 October 2017, and a noticeable easing of tensions in the region; details of an action plan developed by the ICAO Secretariat to address the issue; and the results of the two side-meetings between senior officials of ICAO and DPRK during the First Asia Pacific Ministerial Conference on Civil Aviation (Beijing, 31 January to 1 February 2018). The ICAO Council was also informed that the DPRK General Administration of Civil Aviation (GACA) had accepted a proposal by ICAO for a meeting in Pyongyang for consultations.

4. "Since this last update, no further launches of missiles have been reported and the proposed meeting between GACA, DPRK and ICAO took place in Pyongyang from 7 to 10 May 2018. The ICAO delegation included the Director, Air Navigation Bureau (D/ANB) and RD Bangkok. The DPRK delegation comprised the Director General Rim Kwang Ung, the Deputy Director General Ri Yong Son and senior officials from major GACA departments, including international organizations, flight safety standards, aviation security and air traffic management. The meeting addressed a range of aviation safety and air navigation issues.

5. "The main outcomes of the meeting were as follows:

- a) **DPRK ballistic missile launches.** ICAO was informed that the national nuclear arms programme of DPRK was complete and that there would be no more launches of intercontinental ballistic missiles (ICBM). GACA would continue to enhance cooperation and communication between the military and civil aviation authorities in accordance with the relevant requirements contained in Annex 11 – *Air Traffic Services* and Annex 15 – *Aeronautical Information Services*. GACA requested the 'removal of the C-DEC 212/1 pertaining to the launching of ballistic missiles', and explained the rationale for the request. In response, ICAO indicated that GACA may submit a working paper to the Council, confirming formally its commitment to adherence with ICAO requirements;
- b) **establishment of an East Asia and North Pacific Air Traffic Management (ATM) Contingency Coordination Team (CCT) by APAC RO.** ICAO was informed of the designated GACA focal point for participation in the CCT that will serve as a mechanism for the voluntary exchange of information in order to facilitate State responses that support the continuation of a safe and orderly flow of international air traffic;

- c) **establishment of new air traffic services (ATS) routes in East/West Sea in the Pyongyang Flight Information Region (FIR).** ICAO informed GACA that necessary coordination had been initiated with the State concerned, the Republic of Korea (ROK). GACA, noting the considerable improvement of relations between DPRK and ROK, expressed its belief in the possibility of a bilateral solution for the establishment of new ATS routes. GACA requested ICAO's continued support in addressing this proposal in a timely manner;
- d) **Universal Safety Oversight Audit Programme – Continuous Monitoring Approach (USOAP-CMA) activities in DPRK.** Regarding ICAO's proposal to include DPRK in the 'tentative schedule of USOAP-CMA audits for 2019', GACA supported, in principle, the proposal for a USOAP-CMA audit of DPRK, but stated that further internal discussion would be required. ICAO offered to dispatch a Combined Action Team (CAT) technical assistance mission to DPRK to follow up with their corrective action plans to resolve the findings from the previous audit;
- e) **Memorandum of Understanding (MoU) for the Universal Security Audit Programme – Continuous Monitoring Approach (USAP-CMA).** With respect to the MoU for USAP-CMA presented during the meeting for DPRK's signature, GACA advised that an internal review of the MoU would be required and the signed copy would be sent to ICAO Headquarters in due course;
- f) **Technical assistance projects.** Concerning GACA's request for language proficiency training of pilots and air traffic controllers, ICAO recommended that a needs analysis be conducted first, based on which an appropriate action plan could be developed and implemented. GACA was invited to submit a formal request to APAC RO for assistance from ICAO for the completion of such a needs analysis. APAC RO also offered to deliver a civil and military cooperation workshop intended for senior management from both civil aviation and military authorities. GACA responded that it would send a letter to APAC RO to propose hosting the workshop in DPRK;
- g) **APAC Directors General of Civil Aviation (DGCA) Conference in DPRK.** GACA offered to host the DGCA Conference in Pyongyang. ICAO responded that it would cooperate with GACA for necessary coordination and arrangements if a formal request is received; and
- h) **suspended commercial aviation services.** GACA explained the importance of reopening suspended services based on aviation safety. ICAO noted that despite safety impacts caused by the suspended services, GACA needed to provide additional information to ICAO for a case to be made to the United Nations (UN) to support the reinstatement of the suspended services. GACA would provide an impact analysis paper, which addresses the aviation safety aspects for items identified in the suspended services.

6. “In parallel with the above-mentioned activities, ICAO maintained coordination with the UN in an effort to ensure that any technical assistance to DPRK rendered by ICAO would not be in violation of UN Security Council Resolution 2397 adopted on 22 December 2017.

7. “ICAO will continue to communicate with DPRK to follow-up with the discussions of the meeting and the Council will continue to be informed on significant developments.”.

Discussion

8. The Council welcomed the Secretary General’s oral report and expressed appreciation in general on the developments.

9. The Representative of Japan voiced gratitude for the Secretary General’s comprehensive oral report, as well as for the progressive efforts being made by her and her team, including D/ANB and the ICAO Regional Director, Asia and Pacific Office (Bangkok) (ICAORD, APAC) and the positive developments arising from ICAO’s follow-up actions based on the Council’s previous decisions. He also expressed appreciation for the continued cooperation of the President of the Council, including the external communication by Electronic Bulletin 2018/17 dated 6 April 2018 on this matter.

10. With regard to events happening outside of ICAO, the Representative of Japan noted that his State was among those which had witnessed the very positive step forward towards complete denuclearization of DPRK by watching the recent Singapore summit on 12 June 2018 between the President of the United States and the leader of the DPRK, as well as the prior meetings on 27 April 2018 and 26 May 2018 between the leaders of the DPRK and the Republic of Korea. He wished to welcome DPRK to fully participate in ICAO activities in the various areas of civil aviation as a Member State, in particular in the APAC region, in the spirit of ICAO’s *No Country Left Behind* (NCLB) initiative. The Representative of Japan indicated that to substantiate that welcoming path, the Council should note that the international community was currently still asking DPRK to take actions as expected to follow the requirements in relevant UN Security Council Resolutions, such as complete, verifiable and irreversible dismantlement of ballistic missiles, and also the Council’s decisions to ensure aviation safety.

11. The Representative of Japan indicated that, to that end, in ICAO his State wholeheartedly requested DPRK to express, in the Council, its official commitment to conformity with SARPS requirements. The Council was responsible for checking and seeing if it was demonstrated through specific actions. He emphasized that while withdrawal of the Council’s decision of 6 October 2017 (C-DEC 212/1) requested by DPRK was impossible, it would become arguable if those conditions were met.

12. The Representative of Japan then sought technical clarifications to the following questions:

- a) Since the said May 2018 meeting in Pyongyang between GACA, DPRK and ICAO, had there been any contact thus far with DPRK to discuss any of the topics in the oral report?
- b) Is DPRK, GACA indicating a possibility of coming to ICAO Headquarters, in any case?
- c) Is DPRK currently ready and able, or not, to issue a NOTAM as normal to notify relevant Member States’ authorities and ICAO of any potential danger to civil aviation in advance, not limited to military activities?

- d) The Representative of Japan underscored that when DPRK formalized its commitment to adhere to ICAO's requirements, then that commitment needed to come with no more missile launches, regardless of their range from the perspective of aviation safety as even the short-range missiles endangered civil aircraft in reality. He asked if there was any indication by DPRK, GACA in that regard during the said May 2018 meeting in Pyongyang.
- e) Regarding the new ATS routes proposal, as a matter of procedure, is it correct that the proposal is supposed to be coordinated with the Republic of Korea for the Incheon FIR and formally submitted to ICAO by those two Member States? The Representative of Japan was interested to know the status of the review of the proposal by the Republic of Korea as his Civil Aviation Authority would also need to be consulted for regional coordination if ICAO started a formal review. In any case, Japan suggested that ICAO should proceed discreetly, looking into progress in safety action by DPRK.

13. With regard to paragraph 6 of the above oral report, the Representative of Japan thanked the Secretary General for having pointed out the need for the provision of any ICAO technical assistance to DPRK to be consistent with the ongoing sanctions under relevant United Nations Security Council Resolutions restricting certain transactions and the flow of certain people, goods and services. Japan considered that it was important for ICAO and donors to be very clear about such premise and to be assured of consistency before continuing projects or other activities with DPRK, such as those foreseen in paragraph 4 c), f) and h) above.

14. In enquiring whether the Secretariat had consulted the UN Sanctions Committee and received advice yet, the Representative of Japan, in any case, requested the Secretary General to inform ICAO Member States of the outcome of any analysis undertaken in that regard sooner rather than later, and suggested that the relevant information be included in an updated report to the Council during its next (215th) session. He underscored that Japan continued to work with ICAO and other Member States in order to make further progress in this matter.

15. Responding in the affirmative to the first question, D/ANB underscored that there was ongoing dialogue between the APAC Regional Office and the DPRK, GACA regarding the development of a potential work programme to provide the civil/military cooperation training workshop in Pyongyang at some future date. Furthermore, there had been contact by the GACA during the last week, when it had notified ICAO that it was preparing to send the Secretariat a copy of the USAP-CMA MoU which it had signed [cf. paragraph 4 e) above]. The electronic version thereof had subsequently been received by ICAO on 19 June 2018 and the paper version was in transmittal. D/ANB indicated that it was expected that dialogue with the GACA would continue on the work programme elements set forth in the Secretary General's oral report [cf. paragraph 5 a) - h) above]. He emphasized that the APAC Regional Office was the first point of contact for the GACA with regard to all of those elements, with ANB working closely with the said Regional Office in order to assist with any necessary clarifications.

16. In also replying in the affirmative to the Representative of Japan's second question, D/ANB noted that the GACA had expressed its desire to be able to participate in the upcoming Thirteenth Air Navigation Conference (AN-Conf/13) (Montréal, 9-19 October 2018). The Secretariat would determine if that could be brought forward successfully with the normal Conference registration process, taking into account the need to be consistent with the ongoing sanctions under the relevant UN Security Council resolutions.

17. With regard to the third question on the GACA's ability to issue a NOTAM, D/ANB indicated that although he and ICAORD, APAC had not done a detailed technical assessment of the GACA's technical capabilities during their said three-day mission, they had received unequivocal assurances from the GACA that: it was willing to produce NOTAMs on any activity potentially hazardous to international civil aviation arising from training or disaster response or any other type of activity that would require a danger or prohibited area; and it would comply with the relevant requirements of Annex 11 – *Air Traffic Services* and Annex 15 – *Aeronautical Information Services* in that regard. D/ANB emphasized that although the Secretariat had not seen any NOTAMs issued by DPRK since the ICAO mission in May 2018, it had also not seen any hazardous activities by DPRK that would require that type of NOTAM. He recalled that as part of ICAO's activities DPRK had been asked to participate in the East Asia and North Pacific ATM CCT and to provide ICAO with a Focal Point for coordination whenever issues arose that required coordination among the States in the region. D/ANB noted that during the said mission, the GACA had informed ICAO of the designation of its Focal Point, namely, the Deputy Director, Air Traffic Management Bureau (ATMB), who was already known in the APAC Regional Office, having been in contact with the latter and having travelled to Bangkok in the past to participate in some of the regional meetings. He would be ICAO's first point of contact for contingency issues, such as the detection of a hazard to international civil aviation that had not been previously published.

18. Referring to the fourth question by the Representative of Japan, D/ANB indicated that during the said ICAO mission to Pyongyang the GACA had committed to not undertake any activities hazardous to international civil aviation.

19. Responding to the fifth question, D/ANB indicated that the proposed new ATS routes to be connected between the Pyongyang FIR and the Incheon FIR had been presented in February 2018 in a letter from DPRK, GACA to the APAC Regional Office through the normal regional planning process. The APAC Regional Office had submitted those route proposals to the Republic of Korea for evaluation prior to further action being taken. It was expected that it would also be necessary to coordinate with China as one of the proposed routes would require an increasing amount of traffic transiting through China into the Pyongyang FIR and then subsequently into the Republic of Korea in the Incheon FIR. D/ANB underscored that in the event that the Republic of Korea found the route proposals to be suitable and it reached an agreement thereon with DPRK, then their joint proposal would be circulated to all States in the APAC region for approval through the normal regional planning process. D/ANB emphasized that his Bureau and the APAC Regional Office were working with the UN Sanctions Committee in New York City through ICAO's Legal Affairs and External Relations Bureau (LEB) to ascertain the steps possible within the constraints of the sanctions process, as well as with those Member States which had imposed sanctions on DPRK which might have an impact on international civil aviation to make sure that they were implemented in a manner that was consistent with both the sanctions' objectives and ICAO's safety and air navigation capacity and efficiency objectives. D/ANB stressed that it was necessary to strike such a balance in order for all parties to appreciate what the needs were.

20. Reiterating that ICAO was working in close coordination with the UN Sanctions Committee, the Secretary General indicated that, based on the guidance received from the latter, the Organization would address the safety and technical issues where the Director General of GACA, in his letter dated 19 February 2018, had requested ICAO's assistance to identify solutions.

21. In expressing support for the intervention by the Representative of Japan, the Representative of Saudi Arabia underscored that his State shared Japan's concerns.

22. The Representative of Spain likewise supported the Representative of Japan's statement. Voicing appreciation for the Secretary General's very detailed oral report, and for D/ANB's clarifications,

he affirmed that a significant step forward had been made by ICAO in regularizing international civil aviation in the region. While noting that all of the outcomes of the May 2018 meeting with DPRK, GACA cited therein were of high interest, the Representative of Spain indicated that those relating to the USOAP CMA and USAP-CMA audits of DPRK were of particular interest. He recalled, in this regard, that the GACA had supported, in principle, the proposal for a USOAP CMA audit in 2019 and had just submitted electronically a signed copy of the USAP-CMA MoU.

23. Underscoring that the proposed new ATS routes were also of key interest, the Representative of Spain recalled that during his recent flight through the region he had observed that there was a considerable re-routing of air traffic to avoid transit through DPRK airspace, which increased flight time and consequently, aviation emissions. He considered that the said new routes would undoubtedly improve air traffic in the region. In concluding, the Representative of Spain encouraged ICAO to continue its work on each of the outcomes cited in the oral report [cf. paragraph 5 a) – h) above] and reiterated the need for all measures taken by ICAO to be consistent with the ongoing sanctions under the relevant UN Security Council Resolutions as highlighted by the Representative of Japan.

24. The Representative of the Republic of Korea expressed high appreciation for all of the efforts made by the Secretary General, D/ANB, ICAORD, APAC and other members of the ICAO Secretariat following the Council's decision of 6 October 2017 (C-DEC 212/1) regarding DPRK's missile launches over or near international air routes without advance notification. He recalled that upon DPRK's unpredicted and unannounced missile launches the President of the Council had urged DPRK to comply with the relevant ICAO SARPs contained in Annex 11 – *Air Traffic Services* and Annex 15 – *Aeronautical Information Services*. The Representative of the Republic of Korea emphasized that the efforts of the past had fruitfully led to talks of denuclearization and that the said ICAO mission to DPRK in May 2018 had enhanced aviation safety in the East Asian and Northern Pacific regions. Recalling that during that mission D/ANB and ICAORD, APAC had been informed of DPRK's commitment to cease launches of ICBMs and to participate in the East Asia and North Pacific ATM CCT, he underscored that they each constituted a positive step forward for global aviation safety. The Representative of the Republic of Korea requested that ICAO, with the support of the APAC Regional Office in Bangkok, continue to strengthen DPRK's engagement by communicating and consorting with the latter until DPRK could be integrated as a responsible member of the international aviation family.

25. In also voicing support for the Representative of Japan's intervention, the Representative of the United Arab Emirates expressed the hope that there would be a political solution to the present crisis. Emphasizing, however, that ICAO's priority was ensuring the safety of international civil aviation and the travelling public, she requested the Secretariat and the APAC Regional Office to follow-up on this matter.

26. Congratulating D/ANB and ICAORD, APAC for their very courageous mission to Pyongyang in May 2018, the Representative of the United States noted that their commendable work had made a few headlines in the media, thus raising ICAO's profile in a very positive way. He underscored, however, that despite recent developments, including the Singapore summit on 12 June 2018 between the President of the United States and the leader of the DPRK, it was necessary for the Council to recognize that DPRK was still in violation of its international obligations and still posed a threat to the world with its unlawful nuclear and ballistic missile programmes. The Representative of the United States stressed that all relevant UN Security Council resolutions and sanctions remained in place and that all UN Member States were still obligated to enforce them. Emphasizing that it had been possible to reach the current level of cooperation with DPRK due to international pressure and isolation of that State, he called on every member of the international community to maintain pressure on DPRK until it completely denuclearized. Affirming that this was a truly historic opportunity, the Representative of the United States underscored that the international community must not let it pass.

27. The Council noted the comments made and clarifications provided in response.
28. In then taking the action proposed by the President in light of the discussion, the Council:
- a) noted, with appreciation, the Secretary General's oral report on this subject, in particular, the details of the mission undertaken by D/ANB and ICAORD, APAC in May 2018 to the Democratic People's Republic of Korea to meet with GACA senior officials in Pyongyang, and its positive outcomes; and
 - b) requested that the Secretariat: continue its constructive engagement and communication with the Democratic People's Republic of Korea; follow-up on the implementation of the outcomes of the said May 2018 meeting; and, as appropriate, advise the Council of any additional developments in that regard.

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

**Review of the Report of the Twenty-ninth Meeting of the Aviation Security Panel (AVSECP/29)
(Montréal, 19-23 March 2018)**

29. The outcomes of the AVSECP/29 Meeting were considered by the Council on the basis of: C-WP/14742 Restricted, in which the Secretary General presented the Panel's recommendations regarding the various Agenda items; and oral reports thereon by the Committee on Unlawful Interference (UIC) and the Air Navigation Commission (ANC). The Secretariat agreed with all of the AVSECP's recommendations.

UIC oral report

30. In presenting the UIC's oral report on its review of C-WP/14742 Restricted during its First Meeting of the current session on 17 May 2018, the Chairperson, the Representative of France, Mr. P. Bertoux, indicated that the Committee had expressed its satisfaction with the work accomplished by the Panel, and had supported its recommendations. In particular, the UIC had welcomed the ongoing coordination between security and safety on a growing number of cross-cutting areas, including the threat posed by chemical, biological and radiological (CBR) weapons. In that regard, the Committee had noted that the recently-developed guidance material on CBR was being reviewed by other ICAO technical panels. Furthermore, the Secretariat had informed the Committee that, despite not being directly addressed in this year's Panel report, collaboration and consultation on matters related to remotely-piloted aircraft systems (RPAS) was well-established between the AVSEC Panel and the RPAS Panel.

31. Seeking clarification on the way forward regarding the creation of a Cyber Panel, the UIC had agreed that the Secretariat carry out a feasibility study on the subject while not impeding the completion of the work of the Secretariat Study Group on Cybersecurity (SSGC). The Committee had also acknowledged the effective coordination between the Air Transport Bureau (ATB) and the Air Navigation Bureau (ANB) on cybersecurity matters, as evidenced by the successful *ICAO Europe, Middle East and Africa (EMEA) Cybersecurity in Civil Aviation Summit* (Bucharest, Romania, 7-9 May 2018).

32. In discussing the threat posed by insiders, a Committee Member had raised the possibility of expediting the amendment to Annex 17 – *Security SARPs* to address such a threat. The Secretariat had

provided some insight regarding the amendment process and had highlighted the lack of consensus of the AVSECP on that very subject at the time. The Panel would therefore continue its work and propose a draft Amendment 17 to Annex 17 at its Thirtieth Meeting, which would include strengthened provisions on persons other than passengers.

33. With regard to the AVSECP/29 discussion and recommendation on the USAP-CMA MoU, a UIC Member had noted that the current flexibility available to modify the MoU was sufficient to address the concerns of his State. However, considering that the MoU was intended to be a continuing agreement, with the maturing of the USAP-CMA and its future evolution through the work of the Secretariat Study Group (SSG) on the USAP-CMA, there would be a need to revisit the template MoU in the future. The Secretariat had assured the Committee that that would be done in consultation with the SSG on the USAP-CMA, the AVSECP and the UIC.

34. When addressing the overall format of the AVSECP Report to the ICAO Council, the UIC had asked that, in the future, all recommendations clearly identify what needed to be done and which entity was responsible for carrying out the work. The Secretariat had agreed to work with the Panel Members to that end, and provide the UIC and the Council with clearer and actionable recommendations.

35. In conclusion, the UIC had recommended that the Council agree to the recommendations in the executive summary of C-WP/14742 Restricted, taking into account the Committee's comments.

ANC oral report

36. The President of the ANC, Mr. C. Hurley, then presented the following oral report on the Commission's review of the AVSECP/29 Report at the Eighth Meeting of its 208th Session on 12 June 2018.

37. The Report of the AVSECP/29 Meeting outlined the discussions and presented the recommendations of the Panel for each of the six Agenda items. On several of the items discussed in the Report, the ANC had emphasized the need to ensure proper coordination between the AVSECP and relevant ANC panels so that any proposed measure was developed considering both security and safety aspects.

38. The Commission, when tasking its panels to develop measures to mitigate threats to civil aviation safety, took into account that the AVSECP focused mainly on security threats. The ANC recognized that those provisions might have an impact on the threat from a security perspective or conversely, that mitigations developed by the AVSECP might have an impact on safety controls. It was crucial, therefore, that adequate coordination was maintained via appropriate mechanisms.

39. Under Agenda Item 1 (*Developments in aviation security since AVSECP/28*), regarding CBR attacks, the Commission had noted the increased threat that such attacks could present and had supported the coordination with relevant ANC panels for, and the involvement of safety experts in, the development of CBR-threat technical documents and guidance material, which was particularly important when such new guidance material might require consequential updates to Annexes and documents maintained by those panels. The Commission had also noted the extensive work being carried out with respect to insider threats and cybersecurity by the AVSECP and in particular by its Working Group on Threat and Risk (WGTR).

40. The Commission had supported the Secretariat Study Group on Cybersecurity (SSGC) in developing a comprehensive framework, recognizing the integration role that the SSGC could play, and had recommended that that work be prioritized and achievements communicated without delay.

41. The Commission had also expressed concern about the imposition of unilateral security measures on foreign aircraft operators without prior engagement of, and consultation with, the State(s) concerned.
42. Concluding Agenda Item 1, the ANC had noted the recommendation for airport-based non-AVSEC personnel to undergo security awareness training.
43. Under Agenda Item 2 [*Global Aviation Security Plan (GASeP)*], the Commission had recognized the importance of the GASeP, which would complement the Global Aviation Safety Plan (GASP) and the Global Air Navigation Plan (GANP) and had supported the convening of the Second High-level Conference on Aviation Security (HLCAS/2) (Montréal, 29-30 November 2018).
44. Under Agenda Item 3 (*Work Programme of the Panel and its Working Groups*), the Commission had supported the publication of the Risk Context Statement (RCS) in all ICAO languages, including its new annexes on insider threats and cybersecurity. Recalling the ANC's support regarding CBR-threats guidance material, the Commission had also supported making the updated guidance material available as soon as practicable.
45. Also under Agenda Item 3, the ANC had supported the work to review the applicability of Annex 17 – *Security* regard to SARPs on international air cargo transported by autonomous freighters. It had also supported the notion of States assessing specific risks posed by insider threats to their system and organizations and the continued development of guidance material on the phase-out of non-approved consignors.
46. The ANC had noted, without further comment, Agenda Item 4 (*Universal Security Audit Programme*); Agenda Item 5 (*Implementation Support and Development – Security Programme*); and Agenda Item 6 (*Other business*).

Discussion

47. The Representative of Spain fully endorsed the UIC's oral report, in particular paragraph 3 thereof relating to the creation of a Cyber Panel. He indicated that although there was the Secretariat Study Group on Cybersecurity (SSGC), it was necessary to establish a more formal structure by transforming it into a Cyber Panel for the sake of transparency vis-à-vis States. In thus supporting the conduct of a feasibility study on the subject by the Secretariat, the Representative of Spain encouraged the latter to report thereon to the Council in due course. He also endorsed the UIC's request set forth in paragraph 6 of its oral report that in the future, all recommendations contained in official AVSECP Reports clearly identify what needed to be done and which entity was responsible for carrying out the work.
48. In likewise supporting the ANC's oral report, the Representative of Spain enquired as to the appropriate mechanisms by which coordination would be maintained between the AVSECP and relevant panels of the ANC as referred to in paragraphs 2 and 3 thereof.
49. The President of the ANC noted that the Commission had realized that currently there were some difficulties in effecting such coordination given the silos present in the Organization and thus looked forward to a future where there would be enhanced coordination.

50. The Secretary General assured the Council that such coordination on cross-cutting issues was maintained via the existing mechanisms, in particular, via the Secretariat Senior Management Group on Common Safety and Security Issues which she chaired and which comprised the Director, Air Navigation Bureau (D/ANB), the Director, Air Transport Bureau (D/ATB), the Director, Legal Affairs and External Relations Bureau (D/LEB), the Deputy Director, Aviation Safety (DD/SAF) and the Deputy Director, Aviation Security and Facilitation (DD/ASF).

51. DD/ASF highlighted, in this regard, that the Group Members liaised with the various Secretariat units responsible for safety and security regarding the common issues to be addressed, as identified by the Group and, as appropriate, submitted papers to the relevant panels to ensure that their experts were duly consulted on all pertinent issues.

52. Referring to paragraph 4 of the ANC's oral report regarding CBR attacks, the Representative of South Africa enquired as to how well-equipped ICAO was to address that issue and underscored that it should coordinate its actions with the World Health Organization (WHO) if it did not already do so. In then drawing attention to AVSECP/29 Recommendation 1.1 j), he suggested that in addition to States, industry and the Secretariat, the Dangerous Goods Panel (DGP) should be involved in carrying out the recommendations of the Task Force on Improvised Explosive Devices (IEDs) concealed in personal items (TFIEDs).

53. With regard to AVSECP/29 Recommendation 3.1 j), the Representative of South Africa indicated that it would have been preferable to use the term commonly used in ICAO, "insider threat", instead of referring to "risks posed by insiders". While noting, from AVSECP/29 Recommendation 3.1 k), that efforts were being made by the European Union and its Member States to mitigate the specific vulnerabilities of aviation to attacks involving the use of insiders, he recalled that during the Panel meeting a number of other States had raised objections regarding the inclusion of provisions to address the issue of insider threats in a draft amendment to Annex 17. Emphasizing that the insider threat was one of the key security challenges facing the international aviation community and stressing the need to tackle it through the implementation of a comprehensive global approach, the Representative of South Africa encouraged the Secretariat to consult with the said States in order to understand the nature of their objections and identify a harmonized way forward.

54. Responding to the point raised regarding AVSECP/29 Recommendation 3.1 j), DD/ASF indicated that although the term used in Annex 17 was "insider threat", it was not necessarily the term used in the Report on the Panel's discussions and recommendations. With reference to the point raised in connection with AVSECP/29 Recommendation 3.1 k) and the insider threat, he underscored that the Secretariat had already met with the States concerned and knew the reasons why they had objected to the systematic screening measures of all non-passengers proposed during the AVSECP/29 meeting to address that issue. Noting that the Secretariat was making every effort to promote discussions among States with a view to reaching agreement on the measures that needed to be taken, DD/ASF indicated that it was organizing meetings so that the relevant experts could seek a solution within a reasonable timeframe. He stressed, however, that the Secretariat could not force States to take any decisions which went against their views on that or any other issue. If the States' positions on measures to address the issue of insider threats seemed to be irreconcilable, then it was for them to continue to work towards a solution.

55. Indicating that it was regrettable that the AVSECP/29 had been unable to make more progress on that issue of insider threats, the Representative of the United Kingdom suggested that it would be worthwhile for the Council, together with the Secretariat, to explore at a future Council Off-site Strategy Meeting (COSM) a specific procedure for expediting matters of particular urgency in the field of aviation security

56. Having concluded its consideration of this subject, the Council noted the UIC's and the ANC's oral reports, as well as the comments made and the clarifications provided in response.

57. In then taking the action proposed in the executive summary of C-WP/14742 Restricted, as amended by the President in light of the UIC's and the ANC's oral reports and the discussion, the Council:

- a) endorsed the AVSECP/29 Meeting recommendations contained in Appendix A to the paper, on the understanding that the Secretariat would work in collaboration with the various working groups to ensure their effective implementation;
- b) endorsed the AVSECP/29 Report (Yellow Cover) (Restricted);
- c) reiterated the UIC's request that, in future, all recommendations contained in official AVSECP Reports be clearer and actionable i.e. clearly identifying what needed to be done and which entity was responsible for carrying out the work (Council, Secretariat, other relevant bodies);
- d) noted that a number of cross-cutting issues required coordination between the aviation security and safety arms of the Organization, including remotely-piloted aircraft systems (RPAS), cybersecurity, and the CBR threat, and that such coordination would be maintained via the existing mechanisms, in particular, via the Secretariat Senior Management Group on Common Safety and Security Issues chaired by the Secretary General and comprising D/ANB, D/ATB, D/LEB, DD/SAF and DD/ASF;
- e) with regard to AVSECP/29 Recommendation 1.1 m), supported the conduct by the Secretariat of a feasibility study on the potential transformation of the Secretariat Study Group on Cybersecurity (SSGC) into a Cyber Panel, with the proviso that it not impede the development and implementation of an ICAO strategy on cybersecurity;
- f) highlighted the importance of progressing the issue of insider threats with a view to reaching consensus thereon as soon as possible and thus expediting the amendment of related Annex 17 SARPs;
- g) shared the concern expressed by the ANC regarding the imposition of unilateral security measures on foreign aircraft operators without prior engagement of, and consultation with, the State(s) involved; and
- h) agreed with the ANC's view on the need to make the updated CBR-threats guidance material available as soon as practicable.

58. It was noted that ICAO would participate in the inaugural United Nations High-level Conference of Heads of Counter-Terrorism Agencies of Member States (New York, 28-29 June 2018), whose theme was *Strengthening international cooperation to combat the evolving threat of terrorism*, and would host a side-event on 28 June 2018 on the implementation of the GASeP.

59. The Council reconvened in open session at 1110 hours to consider the remaining items on its order of business.

COUNCIL — 214TH SESSION

SUMMARY MINUTES OF THE SEVENTH MEETING

(THE COUNCIL CHAMBER, WEDNESDAY, 20 JUNE 2018, AT 1110 HOURS)

OPEN MEETING

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

PRESENT:

- | | | | |
|------------|-----------------------------|-----------------------------|------------------------|
| Algeria | — Mr. A.D. Mesroua | Kenya | — Ms. M.B. Awori |
| Argentina | — Mr. G.E. Ainchil | Malaysia | — Mr. K.A. Ismail |
| Australia | — Mr. S. Lucas | Mexico | — Mr. D. Méndez Mayora |
| Brazil | — Mr. O. Vieira (Alt.) | Nigeria | — Mr. M.S. Nuhu |
| Cabo Verde | — Mr. C. Monteiro | Panama | — Mr. G.S. Oller |
| Canada | — Mr. M. Pagé | Republic of Korea | — Mr. Y.J. Lee |
| China | — Mr. Shengjun Yang | Russian Federation | — Mr. S. Gudkov |
| Colombia | — Mr. A. Muñoz Gómez | Saudi Arabia | — Mr. S.A.R. Hashem |
| Congo | — Mr. R.M. Ondzotto | Singapore | — Mr. T.C. Ng |
| Cuba | — Mrs. M. Crespo Frasquieri | South Africa | — Mr. M.D.T. Peege |
| Ecuador | — Mr. I. Arellano | Spain | — Mr. V.M. Aguado |
| Egypt | — Mr. A. Khedr | Sweden | — Ms. H. Jansson Saxe |
| France | — Mr. P. Bertoux | Turkey | — Mr. A.R. Çolak |
| Germany | — Mr. U. Schwierczinski | United Arab Emirates | — Miss A. Alhameli |
| India | — Mr. A. Shekhar | United Kingdom | — Mr. D.T. Lloyd |
| Ireland | — Ms. N. O'Brien | United Republic of Tanzania | — Mr. R.W. Bokango |
| Italy | — Mr. M.R. Rusconi | United States | — Mr. T.L. Carter |
| Japan | — Mr. S. Matsui | Uruguay | — Mr. M. Vidal |

ALSO PRESENT:

- | | |
|-------------------------------|------------------------|
| Mr. C. Hurley | — President, ANC |
| Mrs. M.F. Loguzzo (Alt.) | — Argentina |
| Mr. C. Fernández (Alt.) | — Argentina |
| Mr. R.F. Pecoraro (Alt.) | — Brazil |
| Mr. D. Tavares Taufner (Alt.) | — Brazil |
| Mr. H. Gonzales (Alt.) | — Brazil |
| Mr. G. do Prado Lima (Alt.) | — Brazil |
| Mr. Chunyu Ding (Alt.) | — China |
| Mr. M. Millefert (Alt.) | — France |
| Mr. N. Naoumi (Alt.) | — Germany |
| Mr. M. Usami (Alt.) | — Japan |
| Mrs. D. Valle Álvarez (Alt.) | — Mexico |
| Mr. K. Lee (Alt.) | — Republic of Korea |
| Mr. D. Subbotin (Alt.) | — Russian Federation |
| Mr. M.S. Habib (Alt.) | — Saudi Arabia |
| Mr. S. Vuokila (Alt.) | — Sweden |
| Mr. Ö. Doğrukol (Alt.) | — Turkey |
| Mr. M. Salem (Alt.) | — United Arab Emirates |
| Mrs. K.L. Riensema (Alt.) | — United Kingdom |
| Mr. S. Kotis (Alt.) | — United States |
| Mrs. M.A. González (Alt.) | — Uruguay |
| Mr. F. de Medina (Alt.) | — Uruguay |

SECRETARIAT:

- | | |
|-----------------|-----------------|
| Mrs. J. Yan | — C/OSG |
| Ms. I. Sosina | — SA/PRES |
| Mr. B. Djibo | — D/ATB |
| Mr. J. Huang | — D/LEB |
| Mrs. J. Hupe | — DD/ENV |
| Mr. T. Hasegawa | — DD/ECD |
| Mr. T. Tanaka | — C/CC |
| Mr. N. Dickson | — C/ES |
| Mr. A. Opolot | — LO |
| Mr. A. Larcos | — C/ACS |
| Miss S. Black | — Précis-writer |

Representatives to ICAO

Bolivia (Plurinational State of)

Cameroon

Chile

Cyprus

Ethiopia

Ghana

Greece

Honduras

Indonesia

Iran (Islamic Republic of)

Lebanon

Paraguay

Peru

Senegal

European Union (EU)

Subject No. 14.4.2: Regional air navigation meetings

**Consolidated Report on Planning and Implementation Regional Groups (PIRGs)
and Regional Aviation Safety Groups (RASGs)**

1. The Council considered this subject on the basis of: C-WP/14758, presented by the President of the ANC and the Director, Air Navigation Bureau (D/ANB); and an oral report thereon by the Implementation Strategy and Planning Group (ISPG). The paper contained a consolidated annual report on the progress and outcomes of PIRGs and RASGs activities, as well as progress made in the regional implementation of the Global Air Navigation Plan (GANP) and the Global Aviation Safety Plan (GASP) covering the period from April 2017 to March 2018. The information was summarized by regional group and included matters being coordinated between the PIRGs and RASGs in each region (cf. Appendix A). A list of common challenges faced by regions and corresponding actions by ICAO Headquarters/Regional Offices and by the Council to address them was contained in Appendix B to the paper, whose format had been revised to include the additional items previously requested by the Council (211/5). The level and categories of participation in PIRG and RASG meetings from 2011-2017 was set forth in Appendix C. The paper complemented the information contained in the *Annual Report to Council on Regional Offices' Activities during 2017 and Operating Plans for 2018* (cf. C-WP/14704; 213/3).

ISPG oral report

2. In presenting the ISPG's oral report on its review of C-WP/14758 during its Second Meeting of the current session on 13 June 2018, the Chairperson, the Representative of the United Arab Emirates, Miss A. Alhameli, recalled that the Group had been specifically requested by the President of the Council to review the status of recommendations regarding the work undertaken to revise the Terms of Reference (TOR) of the PIRGs and RASGs.

3. D/ANB had briefed the ISPG on the process and actions taken to date, noting that the task was the result of a Council Decision (C-DEC 210/4) which had requested better alignment, a project-based methodology, more efficiency and effectiveness, and a revised TOR for the PIRGs and RASGs.

4. D/ANB had highlighted the establishment of a Focus Group consisting of the Deputy Director, Safety (DD/SAF) as the lead, Regional Directors, Deputy Regional Directors and ANB Chief, Programmes Coordination and Implementation (PCI), to review the PIRGs' and RASGs' TOR, as well as to streamline the reporting mechanisms to Council in relation to the key performance indicators (KPIs) established in the GANP and the GASP to increase efficiency and effectiveness.

5. The direction taken by the Focus Group was performance-based, with a concentration on consistent and harmonized reporting on KPIs from the said Global Plans, prioritized by each region. That approach had been taken to address the specific needs of each region while taking into account global priorities. Based on that, the TOR and modalities needed to be defined as per the organization of existing mechanisms in the regions.

6. D/ANB had informed the ISPG that the revised reporting structure/TOR and functions and participation of the PIRGs and RASGs would be proposed to the Council in the Spring 2019, during its 216th Session, after consideration and input from the Air Navigation Commission (ANC) in January 2019 during its 210th Session.

7. The ISPG had noted the work undertaken to date, commenting that both PIRGs and RASGs faced challenges and required a global solution approach, while recognizing that differences did exist among regions. It had also requested information on missing flight plans and had discussed the challenges of implementing Aviation System Block Upgrades (ASBUs), which were part and parcel of

the challenges faced by PIRGs and RASGS.

8. The ISPG had highlighted the need to ensure that the resources required to implement the actions to address the common challenges faced by regions listed in Appendix B to C-WP/14758 were taken into consideration in the next triennial Regular Programme Budget. The Group had observed that the PIRGs' and RASGs' TOR had both technical and policy implications.

9. The ISPG had agreed that:

- a) the ANC should be directed to progress this matter in accordance with the proposed schedule outlined by the Secretariat;
- b) the ISPG should be engaged in the development of the PIRGs' and RASGs' revised TOR;
- c) in future, ANC representatives should attend ISPG meetings on this subject;
- d) an informal briefing should be provided to the ISPG on the revised reporting structure/TOR and functions of the PIRGs and RASGs, by the end of 2018; and
- e) the ISPG should review the subsequent Report to Council on the proposed revised TOR of the PIRGs and the RASGs prior to formal consideration by the Council, to provide the Group's suggestions and comments.

Discussion

10. The Representative of South Africa emphasized that the action which the Council was invited to take in action paragraph a) in the executive summary of the paper, "note the progress and outcomes of the PIRG and RASG activities listed in Appendices A and B", was not in line with paragraph 1.1 of the paper, which referred to "regional safety and air navigation concerns". Underscoring that the PIRGs and the RASGs faced some big challenges that needed to be addressed, he cited, as an example, implementation of the elements of the ASBUs, referred to in paragraph 1.7. Noting that the ASBUs would be discussed at the Thirteenth Air Navigation Conference (AN-Conf/13) (Montréal, 9-19 October 2018), the Representative of South Africa reiterated the need to enhance States' understanding of the ASBU concept and modules and of the implementation actions required. In citing the issue of missing flight plans as another major challenge being encountered by the PIRGs and RASGs, he underscored that the loss or non-existence of flight plans could contribute to serious ATS incidents.

11. Observing that the procedure for identifying important issues for the various regions had improved, the Representative of Spain remarked that Appendix B to the paper provided a clear picture of the common challenges they faced. In agreeing to action paragraph c), whereby the Council would take action, as required, on the items identified in Appendix B, he emphasized that such action would serve as a reference during the Council's upcoming discussions of the Organization's Business Plan and Regular Programme Budget for the next (2020-2021-2022) triennium.

12. Drawing attention to p. B-3 and the issue of PIRG/RASG Sub-group participation, the Representative of Spain averred that the recommended Council action, a review of the PIRGs' and RASGs' TOR, would be insufficient to address the structural problem of enhancing participation by States in the PIRGs and RASGs and their Sub-groups. While he agreed that the TOR needed to be reviewed and revised, he emphasized that it was also necessary to identify actions to be taken at the State level and to secure States' commitment to ensuring participation by officials from their Civil Aviation Administrations (CAAs).

13. The Representative of Spain indicated that while he supported the actions recommended by the ISPG in general, he favoured recommendation e), whereby the ISPG would review the report to the Council on the proposed revised TOR for the PIRGs and RASGs prior to the Council's formal consideration thereof, over recommendation b), whereby the ISPG would be engaged in the development of the revised TOR.

14. The Representative of Cuba commended the work of the Secretariat in consolidating, in a single paper and in a clear manner, the progress and outcomes of PIRGs and RASGs activities, as well as progress made in the regional implementation of the GANP and the GASP. She also voiced appreciation for the work of the ANC in reviewing the various PIRGs' and RASGs' reports, and for the oral report of the ISPG. While noting that the Caribbean/South American Regional Planning and Implementation Group (GREPECAS) had not met in 2017 and that the Report on its Eighteenth Meeting (Punta Cana, Dominican Republic, 9-14 April 2018) had not been reviewed by the ANC during the reporting period (April 2017 to March 2018) (cf. paragraph 2.2 of C-WP/14758), the Representative of Cuba emphasized that that should not preclude the inclusion of the CAR/SAM region in Appendix B under all relevant common challenges faced by regions. She highlighted, in this regard, that the CAR/SAM region was only listed under the first common challenge relating to insufficient progress in civil/military coordination, whereas it also encountered some of the other common challenges listed in Appendix B.

15. Concurring, the President of the Council indicated that although the ANC had not reviewed the Report on the GREPECAS/18 Meeting, it could be deduced from the Reports on previous GREPECAS Meetings that the CAR/SAM region did face some of the other common challenges listed in Appendix B. He stressed that in future the Secretariat and the ANC should always take the CAR/SAM region into consideration when identifying common regional challenges.

16. In also commending the paper, the Representative of Singapore voiced appreciation not only to the Secretariat and the ANC but also to the Regional Directors for their work in that regard. He emphasized that although there was an obvious need to examine cross-cutting issues and, to the extent possible, to have a standard way of reporting thereon, it was important to bear in mind that every region was unique when reviewing and revising the PIRGs' and RASGs' TOR. Recalling the point raised by the Representative of South Africa regarding missing flight plans, the Representative of Singapore indicated that while that problem might not arise in all of the regions, it did occur in some. He underscored that it was thus necessary, in revising the said TOR, to avoid a "one size fits all" solution and to maintain flexibility so that the regional groups could address not only common challenges but also their respective specific regional challenges.

17. Noting, from p. B-3, that ASBU implementation was a common challenge for the AFI, MID and APAC regions, the Representative of Singapore underscored that every State, every sub-region and every region was different and that it was consequently necessary to consider which ASBU module(s) and which Basic Building Block(s) (BBBs) were of relevance to each of them. He highlighted that although his region, APAC, was fast-growing as a whole, there were some sub-regions which would only require ASBU Block 1 Module and not the other modules.

18. In fully agreeing, the President of the Council observed that unfortunately many States lacked the technical expertise to determine which solutions would meet their aviation needs. There was thus a tendency for States, often on the basis of consultants' proposals, to over-equip, wasting their limited funds on aviation infrastructure that was not commensurate with their current volume of air traffic and the level of predicted traffic growth. As a result, their basic aviation requirements often went unmet. In reiterating the need for States to do a gap analysis, the President of the Council highlighted that ICAO could play a role as it could provide the requisite technical expertise, whether from the Regional Offices or from ICAO Headquarters [Technical Cooperation Bureau (TCB)] to support States in their decision-making process. He noted that this issue was expected to be discussed during AN-Conf/13. In

underscoring that the challenge was always to ensure harmonization and interoperability, the President of the Council stressed the need to find a way to balance all of those issues.

19. While concurring that each region was unique, the President of the Council emphasized that it was necessary to develop a generic TOR for the PIRGs and RASGs that could be expanded and adapted by the regional groups as required to maintain flexibility, since their work programmes and work flows might not necessarily be the same. This would enable the regional groups to address not only common challenges but also their respective specific regional challenges, such as missing flight plans.

20. Responding to the point raised by the Representative of Spain regarding participation in PIRG and RASG meetings, D/ANB clarified that the revision of the regional groups' TOR was not the only method by which the Secretariat would seek to enhance the level of participation in their meetings. The Secretariat would also review the participation to ensure a balance between civil aviation authorities, service providers and other stakeholders. It was also necessary to align the work programmes of the regional groups in such a way that they were of relevance to stakeholders and that the former were fully aware of the challenges.

21. D/ANB recalled that whenever he had discussed the possible merger of the PIRG and RASG into one group with stakeholders around the world they had expressed concerns as they considered that it was best for aviation professionals having the same field of expertise to work together in the relevant regional group. In noting that it was mainly air navigation service (ANS) providers and not civil aviation authorities who participated in PIRG meetings, he indicated that their primary focus was on air navigation capacity and efficiency, whereas the primary focus of participants in RASG meetings was on safety. D/ANB highlighted that DD/SAF, as lead of the said Focus Group, had proposed working with the Regional Directors and the PIRGs and RASGs to integrate the regional groups' respective work programmes in such a way that they would interact dynamically and ultimately produce a common regional report. Thus a safety concern would be referred where necessary to the relevant RASG for resolution and a capacity and/or efficiency problem would be referred to the relevant PIRG for resolution. In emphasizing the need to strike the right balance in the way in which the PIRG and RASG meetings were structured, D/ANB noted that the Secretariat was working with the regional groups to identify their individual specificities in how they interacted with other bodies in performing their work.

22. D/ANB indicated that the Focus Group's review of the PIRGs' and RASGs' reporting structure/TOR, functions and participation would address many of the said issues. He further noted that the Secretariat was working with the Regional Directors to explore ways in which to engage stakeholders more effectively in the regional groups' work. D/ANB underscored that each PIRG and RASG was resolving regional problems. Regional problems and solutions identified with global applicability were then shared effectively through relevant ICAO bodies and with the other PIRGs and RASGs around the world.

23. Recalling that two years ago she had requested ANB to consider how to enhance efficiency and effectiveness in the areas of air navigation and flight safety, not only within that Bureau but in every region and thus globally, the Secretary General expressed pleasure that DD/SAF, as lead of the Focus Group, had developed the said proposal to integrate the regional groups' respective work programmes. In addition, she voiced appreciation for the Council's support of the Focus Group's ongoing review of the PIRGs' and RASGs' reporting structure/TOR, functions and participation. Indicating that she was also pleased that the European and North Atlantic Office (EUR/NAT) (Paris) had pioneered the practice of holding back-to-back PIRG/RASG meetings, the Secretary General underscored that with ANB's support and guidance the other Regional Offices were also now working in that direction. She emphasized that the experience gained in the various regions would assist the Focus Group in its said review of the PIRGs' and RASGs' TOR.

24. Recalling the comments made by the Representative of Spain, the Representative of Mexico noted that the level of participation by States in the PIRGs and RASGs and their Sub-groups was a longstanding concern. Averring that insufficient progress had been made to address that problem, he suggested that the Secretariat review and revise the Organization's communication strategy in coordination with the Regional Offices to ensure participation by States' competent authorities in PIRG/RASG meetings with a view to enhancing all of the regional groups' decision-making. Referring to the ISPG's recommendations, the Representative of Mexico indicated that he was unsure whether there would be any advantage to be derived from the ISPG's engagement in the development of the revised TOR [cf. recommendation b)]. It was important, however, that the ISPG review the report to the Council on the proposed revised TOR, pursuant to recommendation e).

25. In endorsing the intervention by the Representative of Mexico in support of the comments made by the Representative of Spain, the Representative of Cuba reiterated the need for concerted efforts to address the structural problem of the level of State participation in PIRG/RASG meetings. Underscoring that the issue at hand was not the number of State participants but rather the hierarchical level of State participation, she emphasized that often participants were not from States' CAAs and thus were not authorized to take decisions at the PIRG/RASG meetings.

26. Referring to the issue of missing flight plans, the Representative of Cuba highlighted that GREPECAS did not refer to the loss of flight plans as it was unlikely that flight plans were not submitted for scheduled flights. She recalled that an in-depth GREPECAS study of flight plans that were submitted but rejected by the automated systems of the relevant ATS units had identified two main causes for their rejection: the rejection was not notified to the originator, who therefore did not amend any errors in the flight plan and re-send it, and the receiving ATS unit lacked the means to make the necessary changes to the flight plan to resolve the problem; and many operators did not adhere to the ICAO model flight plan form set forth in Appendix 2 to the *Procedures for Air Navigation Services – Air Traffic Management* (PANS-ATM, Doc 4444). Noting that the matter had been discussed at the recent GREPECAS/18 Meeting, the Representative of Cuba reiterated the need for operators to adhere to the said ICAO model flight plan form, as well as for automated systems of ATS units to be standardized. She also emphasized the importance of providing capacity building to all personnel in charge of flight plan generation and management.

27. The Representative of South Africa voiced support for the interventions by the Representatives of Mexico and Cuba, in particular, the former's suggestion that the Organization's communication strategy be reviewed and revised by the Secretariat in coordination with the Regional Offices to ensure participation by States' competent authorities in PIRG/RASG meetings. In reiterating that missing flight plans was not solely an African problem, he emphasized that it was a global problem which required a global solution.

28. In then drawing attention to Section 4 of the paper on RASGs, the Representative of South Africa noted that although the ANC had noted the accomplishments achieved in 2017 by the RASG-MID and the RASG-EUR, it had not noted any accomplishments achieved in 2017 by the RASG-AFI. Instead, the ANC had noted that the accident rate for the AFI region was lower than the global rate in 2008-2015 but lower in 2016. Affirming that the AFI region had accomplished much in 2017, the Representative of South Africa queried why it was not reflected in Section 4 and emphasized that no region must be left behind.

29. The comments made and clarifications provided during the discussion were noted.

30. Observing that there had been extensive discussion on the issue of participation by Member States in the PIRGs and RASGs and their Sub-groups, the President recalled that the Council had previously requested the Secretariat to take a number of actions to address the situation, in addition to

undertaking the said review of the PIRGs' and RASGs' TOR (cf. C-WP/14563; C-DEC 210/4). In underscoring the need for the Secretariat to intensify those actions, he indicated that if the latter did not resolve the problem, then the Secretariat should report accordingly to the Council so that other solutions could be sought. The President of the Council reiterated the need to develop a generic TOR for the PIRGs and RASGs that could be expanded and adapted as required to maintain flexibility of the work, thus enabling the regional groups to address not only common challenges but also their respective specific regional challenges.

31. The President of the Council further emphasized that participants at PIRG/RASG meetings should have the capacity to report on the Groups' discussions to their respective States for policy decisions and actions. He noted, however, that unfortunately, due to increased privatization and corporatization and the consequent separation of the service providers from the regulators, participants, especially in PIRG meetings, were from ANS providers and not from CAAs. Consequently, the meetings' discussions did not lead to firm policy decisions at the State CAA level. Reiterating the importance of solving that problem, the President underscored the need to ensure coordination, at the national level, between ANS providers in the field and State CAAs which set policy and regulated the latter's activities.

32. In then taking the action indicated in the executive summary of C-WP/14758, the Council:

- a) noted the progress and outcomes of the PIRG and RASG activities listed in Appendix A to the paper, as well as the identified common challenges faced by regions listed in Appendix B;
- b) approved the recommended Council actions indicated in Appendix B to address those common challenges; and
- c) noted the progress made in the regional implementation of the GANP and the GASP during the reporting period.

33. In also noting the ISPG oral report, the Council took the action recommended by the Group, as amended by the President in light of the discussion and:

- a) directed the ANC to progress the revision of the reporting structure/TOR, functions and participation of the PIRGs and RASGs in accordance with the schedule, whereby a proposal thereon would be presented to the Council in the Spring 2019, during its 216th Session, after consideration and input from the ANC in January 2019 during its 210th Session;
- b) requested that the ISPG be consulted in the development of the PIRGs' and RASGs' revised TOR;
- c) agreed that, in future, the President of the ANC and/or his representative(s) should attend ISPG meetings on this subject;
- d) endorsed the ISPG's request that an informal briefing be provided to the Group on the revised reporting structure/TOR and functions of the PIRGs and RASGs, by the end of 2018, it being understood that all interested Council Representatives were welcome to attend; and
- e) noted that the President of the Council would forward the subsequent Report to the Council on the proposed revised TOR of the PIRGs and the RASGs to the ISPG for review and comments/suggestions prior to formal consideration thereof by the Council.

Subject No. 14.4: Air navigation meetings
Subject No. 15: Subjects relating to air transport
Subject No. 42: Technical cooperation

**Declaration and Framework for a Plan of Action
for Development of Aviation Infrastructure in Africa**

34. This subject was considered on the basis of: C-WP/14745, whereby the Secretary General, further to its earlier request (213/1), presented a summary of the main elements of the *Declaration and Framework for a Plan of Action for Development of Aviation Infrastructure in Africa*, adopted at the Third World Aviation Forum (IWAF2017) (Abuja, Nigeria, 20-22 November 2017) within the framework of the Lomé Plan of Action (2017-2019) of the African Union (AU), as well as ICAO's follow-up actions to implement the Declaration in cooperation with various partners; and an oral report thereon by the ISPG.

ISPG oral report

35. In presenting the ISPG's oral report on its review of C-WP/14745 during its Second Meeting of the current session on 13 June 2018, the Chairperson, the Representative of the United Arab Emirates, Miss A. Alhameli, recalled that at the outset the Group had noted that IWAF2017 had been the first IWAF to be held outside of ICAO Headquarters in Montréal, with there having been more than 500 high-level participants from governments, development banks and international organizations, including Ministers responsible for civil aviation, transportation, planning and infrastructure development.

36. Concerning paragraph 3.1 of the paper, the ISPG had agreed, in principle, that the implementation of ICAO's actions under the Declaration be supported within the context of the existing agreements with the AU, the African Union Commission (AUC), the African Development Bank (AfDB), the New Partnership for Africa's Development (NEPAD) Planning and Coordination Agency (NPCA), the African Civil Aviation Commission (AFCAC), and the African Airlines Association (AFRAA).

37. In that regard, the ISPG had agreed that the ICAO Comprehensive Regional Implementation Plan for Aviation Safety in Africa (AFI Plan) already covered a majority of aviation infrastructure projects, which should be developed commensurate with the level of predicted traffic growth and based on the GANP and the GASP. Some projects falling under the ICAO Comprehensive Regional Implementation Plan for Aviation Security and Facilitation in Africa (AFI SECFAL Plan) and the Human Resources Development Fund (HRDF) could also be implemented in coordination with the AFI Plan. The ISPG had therefore recommended that regular follow-up and progress reviews should be conducted under the auspices of the AFI Plan as a specifically identifiable and ongoing programme of ICAO with the development of specific metrics and targets for the implementation of the Declaration, rather than the creation of a new reporting framework.

38. The Secretariat had clarified that within the *Framework for a Plan of Action for Development of Aviation Infrastructure in Africa* ICAO was assigned to lead the five activities and actions listed in paragraphs 2.4 and 3.2 of the paper. The ISPG had understood that those five activities and actions would be implemented with the support of voluntary contributions, financial and in-kind, and in close cooperation with other organizations and States in the specific time frame indicated in the Plan of Action. Considering the limited availability of the Regular Programme Budget, a suggestion had been made to approach regional entities and organizations through the AFI Plan platform in order to raise funds required to proceed with those five activities and actions. The Group had noted that the AfDB, NEPAD and the Programme for Infrastructure Development in Africa (PIDA) had included regional aviation infrastructure projects in their portfolios and had expressed their willingness to participate in, and finance, those projects in the African continent.

39. While recognizing the limited capability of ICAO to directly mobilize financial resources for the development and modernization of quality aviation infrastructure *per se*, several ISPG Members had reiterated that the role of ICAO's Technical Cooperation and Technical Assistance Programmes could not be overemphasized to assist States in monitoring and carrying out aviation infrastructure projects. During the Group's deliberations on that issue, the importance of providing technical advice for States and financial institutions through ICAO's Technical Cooperation and Assistance Programmes had been highlighted for optimum use of financial resources and to ensure technical compliance and enhance access to capacity building for the identification, formulation, analysis, implementation and evaluation of aviation infrastructure projects.

40. Recalling the Council's earlier decision (213/1), the Secretariat had been requested to actively use lessons learned from the organization of the "Africa Day" during IWAF2017 (i.e. a series of sessions dedicated to address financing the development of quality aviation infrastructure in Africa) for the preparation of the regional sessions dedicated to the Latin America and Caribbean region at the Fourth ICAO World Aviation Forum (IWAF2018), which was scheduled to take place from 17-19 September 2018 in Fortaleza, Brazil.

41. Based on the discussion, the ISPG had recommended that the Council take note of the follow-up actions as described in paragraph 3 of C-WP/14745 and provide the following strategic direction for those follow-up actions as per paragraph 2.4 for the Secretariat:

- f) ICAO's activities and actions under the *Declaration and Framework for a Plan of Action for Development of Aviation Infrastructure in Africa* be implemented under existing arrangements, especially under the AFI Plan as a specific identifiable programme with timelines;
- g) specific metrics and targets related to ICAO activities and actions for the implementation of the Declaration should be developed in the AFI Plan in consultation with relevant stakeholders;
- h) the implementation status of ICAO activities and actions under the Declaration, including the five listed in paragraph 2.4 of the paper and the five follow-up actions listed in paragraph 3.2 thereof, should be reported to the Council on a regular basis as part of the AFI Plan Report;
- i) the role of ICAO's Technical Cooperation and Technical Assistance Programmes should be explored and reported to the Council, focusing on the provision of technical advice for quality control of the aviation infrastructure projects; and
- j) the lessons learned from IWAF2017 should be taken into account to further improve the format and organization of the sessions dedicated to the Latin America and Caribbean region at IWAF2018.

Discussion

42. The Representative of Mexico expressed full support for C-WP/14745, as well as for the ISPG's oral report. He recalled that at IWAF2017, whose theme had been *Financing the Development of Aviation Infrastructure*, the point had frequently been made that the problem encountered by States in realizing their aviation infrastructure projects was not necessarily a lack of funding but rather a lack of capacity to conduct the necessary feasibility studies and to prepare robust business cases with which to attract financing for their projects. Noting that that same point was reflected in the last sentence of paragraph 6 of the ISPG's oral report (cf. paragraph 39 above), the Representative of Mexico emphasized that although it was not necessarily a function of ICAO, it was important that the Organization facilitate

States' access to capacity building, through the competent agencies, for the identification, formulation, analysis, implementation and evaluation of aviation infrastructure projects. He underscored that that could be done not only in Africa but also in many other parts of the world.

43. In affirming the importance of the *Declaration and Framework for a Plan of Action for Development of Aviation Infrastructure in Africa*, the Representative of Spain expressed appreciation for all the work done by the ISPG and voiced support for the Group's five recommended actions, which constituted the strategic direction on this issue that the Council was invited to provide in the executive summary of C-WP/14745. He suggested, as additional strategic direction, the four main components of the said Framework referred to in paragraph 2.4 of the paper: aviation infrastructure programmes/projects; funding and financing; capacity building (soft infrastructure); and enabling institutional, legal and regulatory frameworks. With regard to the first component, the Representative of Spain emphasized that aviation infrastructure encompassed not only airport facilities but also air navigation systems. He cited, as an example of the latter, the aviation infrastructure needs of African States towards a Single Sky, referred to in paragraph 2.3 of the paper.

44. The Representative of Spain noted that once a project was clearly identified, then it was necessary to obtain funding and financing (second component), build capacity (third component), and establish the institutional, legal and regulatory frameworks (fourth component). Observing that the latter component was often overlooked, he stressed that regardless of the number of projects, the amount of funding received to develop and implement them, and the amount of capacity building provided to train personnel, the projects would not be sustainable without the institutional, legal and regulatory frameworks to support them.

45. The Representatives of South Africa and Congo voiced support for the ISPG's oral report. In response to a query by the Representative of Congo, the President of the Council clarified that the Group recommended that ICAO's activities under the said *Declaration and Framework for a Plan of Action for Development of Aviation Infrastructure in Africa* be implemented under existing arrangements and reported to the Council on a regular basis as part of the AFI Plan Report, thus avoiding the creation of a new reporting framework.

46. The Representative of Nigeria thanked the Secretariat, in particular the Director, Air Transport Bureau (D/ATB) and his hardworking staff, for making the said Declaration and Framework for a Plan of Action a reality. He fully supported the ISPG's oral report, as well as the comments made by the Representatives of Mexico and Spain. In underscoring that the Declaration and Framework for a Plan for Action offered ICAO a great opportunity to assist a continental/regional effort to develop the aviation infrastructure in Africa, the Representative of Nigeria emphasized that the Organization must participate therein by giving African States guidelines in tandem with its Global Plans, especially the GANP and the GASP.

47. In likewise expressing appreciation to the Secretariat for its work relating to the Declaration and Framework for a Plan of Action, adopted at IWAF2017, the Representative of Kenya thanked the Government of Nigeria for having hosted that successful event. She also voiced appreciation for the ISPG's oral report, which she supported. Drawing attention to paragraph 2.4 of the paper on the said Framework, the Representative of Kenya indicated that she agreed with the five activities and actions for which ICAO was the lead agency, as listed in sub-paragraphs a)-e). However, with regard to sub-paragraph b) on improving financial support to the implementation of the AFI Plan, the AFI SECFAL Plan and the HRDF, she stressed that it was important not only to increase the financial support but also to enhance the visibility of how the funds were utilized.

48. The Representative of the United Arab Emirates highlighted that the issue raised by the President during the Council's consideration of the previous item on PIRGs and RASGs (cf. paragraph 18

above) and the issue now raised by the Representative of Mexico were addressed in paragraph 8 d) of the ISPG's oral report, in which the Group recommended that the role of ICAO's Technical Cooperation and Technical Assistance Programmes should be look explored and reverted to the Council, focusing on the provision of technical advice for quality control of the aviation infrastructure projects. She suggested that the Council direct the Technical Cooperation Bureau (TCB) to take that recommended action. The Representative of the United Arab Emirates underscored that it was also necessary to review the structure of TCB in that regard. She noted that such technical advice would aim to ensure that a State's aviation infrastructure project was in compliance with relevant ICAO SARPs, in alignment with the Organization's Global Plans, and was consistent with the State's national aviation priorities as established by its regulatory body. The Representative of the United Arab Emirates considered that a plan for an aviation infrastructure project should start with the State's national aviation priorities and regulatory framework and be developed with a view to bringing the State up to at least the minimum level of effective implementation of ICAO's safety- and security-related SARPs and to enhancing its aviation operations.

49. The Representative of Cabo Verde expressed gratitude for all the work done by D/ATB and his team with regard to the development of the said Declaration and Framework for a Plan of Action, and voiced support for C-WP/14745, as well as for the ISPG's oral report. He also endorsed the intervention by the Representative of the United Arab Emirates.

50. The Representative of Japan voiced appreciation to the Secretariat and the ISPG for their work, in particular, for refocusing attention on the importance of developing aviation infrastructure. Noting that he had participated in IWAF2017, he recalled that one of the important take-aways from that event was the need for planning and implementation of aviation infrastructure projects with ownership i.e. accountability, and proactive and practical interactions with stakeholders and investors. In that context, the Representative of Japan supported the interventions made by all of the previous speakers. He stressed that a follow-up was necessary to mainstream the issue of aviation infrastructure development in each national government, both at the level of the Head of Government/Ministers and at the level of the CAA, and to enable interactions among all stakeholders at the regional level and the global level, which would raise, and enhance, the awareness of all possible players and investors of opportunities to finance important and necessary aviation infrastructure programmes/projects.

51. The Council noted the ISPG's oral report, as well as comments made and clarifications provided during the discussion.

52. It further noted that the Declaration called on ICAO, the AUC, the AfDB, the NEPAD NPCA, the United Nations Economic Commission for Africa (UNECA), AFCAC, African Regional Economic Communities (RECs), AFRAA, international assistance partners, donor communities, as well as financial institutions, consistent with their respective mandates, to: provide technical expertise, resources and support for the implementation of the actions listed in paragraph 2.2 of C-WP/14745; engage in a resource mobilization campaign; determine the aviation infrastructure needs of African States towards a Single Sky; and prepare and incorporate an aviation infrastructure development plan in the PIDA Work Plan for Africa, as well as coordinate its implementation.

53. In taking the action proposed by the President in light of the ISPG's oral report and the discussion, the Council:

- a) noted the five follow-up actions to implement the *Declaration for Development of Aviation Infrastructure in Africa* being taken by ICAO at both Headquarters and the Regional Offices concerned [Eastern and Southern African Office (Nairobi) (ESAF) and Western and Central African Office (Dakar) (WACAF)], subject to the availability of funds, as described in paragraph 3.2 of C-WP/14745; and

b) as recommended by the ISPG, provided the following strategic direction for those follow-up actions:

- i) ICAO's activities and actions under the *Declaration and Framework for a Plan of Action for Development of Aviation Infrastructure in Africa* be implemented under existing arrangements, especially under the ICAO Comprehensive Regional Implementation Plan for Aviation Safety in Africa (AFI Plan) as a specific identifiable programme with timelines, accordingly, the terms of reference and scope of the AFI Plan are to be reviewed as appropriate;
- ii) specific metrics and targets related to ICAO activities and actions for the implementation of the Declaration should be developed in the AFI Plan in consultation with relevant stakeholders;
- iii) the implementation status of ICAO activities and actions under the Declaration, including the five listed in paragraph 2.4 of the paper and the five follow-up actions listed in paragraph 3.2 thereof, should be reported to the Council on a regular basis as part of the AFI Plan Report;
- iv) the role of ICAO's Technical Cooperation and Technical Assistance Programmes should be explored and reported to the Council, focusing on the provision of technical advice on the aviation infrastructure projects and on their quality control so as to ensure alignment with the Global Plans, as well as on the provision of institutional capacity building;
- v) there should be enhanced accountability vis-à-vis the utilization of funds for such projects implemented under ICAO's Technical Cooperation and Technical Assistance Programmes; and
- vi) the lessons learned from ICAO World Aviation Forum 2017 (IWAF2017) (Abuja, Nigeria, 20-22 November 2017) should be taken into account to further improve the format and organization of the sessions dedicated to the Latin America and Caribbean region at the forthcoming IWAF2018 (Fortaleza, Brazil, 17-19 September 2018), and subsequent regional editions of the event.

Subject No. 50: Questions relating to the environment

**Report on the work of the Advisory Group on CORSIA (AGC)
Update on the work on a Global Market-based Measure Scheme (CORSIA)**

54. The Council resumed (214/6) its concurrent consideration of the above two subjects, documented in an oral report by the AGC and C-WP/14756 presented by the Secretary General.

55. It was noted that, pursuant to the request made by the Council at its previous meeting (214/6), the Director, Air Transport Bureau (D/ATB) had circulated to Representatives by e-mail on 19 June 2018 an *Information Note on the Capacity-building Plan for CORSIA Implementation*.

56. The President of the Council drew attention to Sections 3 and 4 of the AGC's oral report and to the Group's corresponding recommendations set forth in paragraph 5.1 c), d) and e), as well as to related action paragraphs a) - d) in the executive summary of C-WP/14756, all of which related to the approval of the 2018 version of the ICAO CORSIA CO₂ Estimation and Reporting Tool (CERT) and its technical methodologies and the functionalities of the CORSIA Central Registry (CCR), endorsement of CORSIA-related outreach and capacity building activities, and related communications with States.

57. The President proposed that the Council take the actions recommended by the AGC in paragraph 5.1 c) and d) of its oral report and: approve: the 2018 version of the ICAO CORSIA CERT and its technical methodologies as contained in the document *Design, Development and Validation of the CERT*; and the functionalities of the CCR, taking into account the progress being made thereon by the Committee on Aviation Environmental Protection (CAEP), as described in Sections 2.1 and 2.2 of C-WP/14756, respectively, and in Section 3 of the AGC oral report.

58. The President also proposed that the Council take the following actions based on the AGC's recommendations set forth in paragraph 5.1 e) of its oral report and: i) endorse the Secretariat plan for the CORSIA-related outreach and capacity building activities, as described in Section 3 of C-WP/14756 and Section 4 of the AGC oral report, and supplemented by the *Information Note on the Capacity-building Plan for CORSIA Implementation* circulated to Representatives under cover of an e-mail from D/ATB dated 19 June 2018 further to their request (214/6), on the understanding that the plan continued to evolve and that the Secretariat would launch its ACT-CORSIA (Assistance, Capacity-building and Training for CORSIA) Programme during the upcoming ICAO Seminar on CORSIA (Montréal, 2-3 July 2018); and ii) emphasize the need for a coordinated approach to undertake the global capacity building initiative under ICAO as described in C-WP/14756, and that any bilateral or multilateral partnerships among States should be informed and coordinated with ICAO, so that the global progress of such coordinated efforts would be monitored.

59. The President further proposed, with regard to paragraph 4.1 of the AGC's oral report, that the Council encourage the establishment of "buddy partnerships" among States themselves to help each other to prepare for CORSIA implementation, in particular with regard to the development and approval of Emissions Monitoring Plans, and the establishment of national and/or regional regulatory frameworks and noted that the Secretariat had been developing a "sample framework" to facilitate the regulatory process of States.

60. In addition, with regard to action paragraphs c) and d) in the executive summary of C-WP/14756, the President proposed that the Council: encourage States to nominate CORSIA Focal Points as soon as possible in response to State letter ENV 6/6-18/1 dated 4 January 2018; and encourage States to contribute additional resources through voluntary funding and/or other in-kind contributions in response to State letter ENV 1/1.1-18/60 dated 11 May 2018, to facilitate the implementation of the said Secretariat plan for the CORSIA-related outreach and capacity building.

61. The Representative of France voiced support for the AGC's recommendations contained in paragraph 5.1 c), d) and e) of its oral report.

62. While the Representative of Spain did not have any difficulties with regard to the intent or the substance of the ICAO CORSIA CERT and the CCR, he had a question regarding the process for the Council's approval of the CERT. He underscored that, while the AGC recommended, in paragraph 5.1 c) of its oral report, that the Council approve the 2018 version of the CERT and its technical methodologies, that version would be updated in future to provide additional functionalities and features. Noting, from paragraph 2.2 of the oral report on the results of the recent CAEP Steering Group (SG) Meeting (Singapore, 4-8 June 2018), that the CERT technical methodologies were contained in the *Summary of Discussions and Decisions of the First (1-3) Meeting of the Steering Group* (CAEP-SG/20183-SD/1-3), the Representative of Spain emphasized that he would have preferred to have them also included in C-WP/14756. In enquiring whether the said technical methodologies were contained in the 2018 version of the CERT, he indicated that, in the affirmative, it would not be necessary for the Council to make specific reference thereto in approving the CERT; and in the negative, it would be necessary to clarify where the technical methodologies were set forth.

63. Referring to the AGC's recommendation set forth in paragraph 5.1 d) of its oral report, the Representative of Spain averred that the term "functionalities" of the CCR was vague and suggested that it be replaced with either the term "technical functionalities" used in paragraph 2.1 of the oral report on the results of the CAEP SG Meeting, or the term "functional requirements", so as to clarify what the Council was approving.

64. The Representative of India noted that, while he agreed to the President's proposed actions by the Council, he had a few caveats. In endorsing the intervention by the Representative of Spain, he reiterated that the technical methodologies of the ICAO CORSIA CERT and the functionalities of the CCR were not visible to the Council. Emphasizing that greater clarity on those issues was needed before the Council could formally approve them, he suggested that the Council only approve *in principle* the 2018 version of the ICAO CORSIA CERT and its technical methodologies and the functional requirements of the CCR.

65. The President of the Council supported this suggestion. To a question then raised by the Representative of India, he underscored that as the Council had already endorsed the overall plan for providing capacity building and assistance for CORSIA implementation (209/3) and had subsequently requested the Secretariat to make every effort in accommodating specific requests from States for targeted assistance (213/7), it was not necessary for it to approve the Secretariat's plan for CORSIA-related outreach and capacity building activities as contained in C-WP/14756. The President of the Council recalled that the AGC recommended, in paragraph 5.1 e) of its oral report, that the Council *endorse* the Secretariat's plan.

66. The President of the Council highlighted that further outreach and capacity building activities had been undertaken by the Secretariat since the issuance of C-WP/14756, as reflected in the said *Information Note on the Capacity-building Plan for CORSIA Implementation*, and that the Secretariat's plan continued to evolve, which should be commended and supported. He noted that the issue of outreach and capacity building would also have to be addressed when the Council considered, later in the session (214/9 and /10), the ANC's proposal for the first edition of Annex 16 – *Environmental Protection*, Volume IV, which introduced new Standards and Recommended Practices (SARPs) relating to CORSIA implementation (cf. C-WP/14765). The President of the Council emphasized that, although additional resources were required for the said outreach and capacity building activities, no provision was made therefor in the Regular Programme Budget for the current triennium. It was for that reason that in action paragraph d) in the executive summary of C-WP/14756 the Council was invited to encourage States to contribute additional resources through voluntary funding and/or other in-kind contributions in response to State letter ENV 1/1.1-18/60 dated 11 May 2018. The President noted that the resource requirements for CORSIA implementation, including outreach and capacity building activities, would be discussed during the Council's consideration of the draft Regular Programme for the next (2020-2021-2022) triennium.

67. The Representative of Ecuador indicated that he had no difficulty approving, in principle, the 2018 version of the ICAO CORSIA CERT and its technical methodologies and the functional requirements of the CCR, and endorsing the Secretariat plan for the CORSIA-related outreach and capacity building activities, as supplemented by the said *Information Note on the Capacity-building Plan for CORSIA Implementation*. To a query by the Representative, the President of the Council clarified that the Council would consider the recommendations made by the AGC in paragraph 5.1 a) and b) of its oral report on definitions related to aviation fuels in Annex 16, Volume IV, and eligible emissions units later in the session (214/9 and /10).

68. The Representative of China queried whether it would be the CAEP that would develop and maintain the ICAO CORSIA CERT and the CCR or some other entity. In addition, he encouraged developed countries to provide developing countries, upon request, with Monitoring, Reporting and

Verification (MRV) technology, financial assistance and capacity building to facilitate CORSIA implementation.

69. The Representatives of Saudi Arabia and Turkey voiced support for the actions proposed by the President of the Council, as well as for the interventions by the Representatives of Spain and India. To a suggestion by the Representative of Saudi Arabia that paragraph 2.15 of the AGC's oral report on the periodic review of CORSIA be reflected in the Council's decision for the present meeting, the President indicated that the Council would consider that issue later in the session (214/9 and /10).

70. Referring to his earlier intervention, the Representative of Spain expressed support for the use of the term "functional requirements" of the CCR and reiterated his request for clarification as to what exactly the Council was approving with regard to the ICAO CORSIA CERT.

71. DD/ENV explained that it had not been possible to include in C-WP/14756 the ICAO CORSIA CERT technical methodologies and the CCR functionalities as contained in, respectively, the *Summary of Discussions and Decisions of the First (1-3) Meeting of the Steering Group* (CAEP-SG/20183-SD/1-3) and the *Summary of Discussions and Decisions of the First (1-2) Meeting of the Steering Group* (CAEP-SG/20183-SD/1-2) since that paper had been issued prior to the CAEP SG Meeting (Singapore, 4-8 June 2018). It was for that reason that there were two footnotes on p. 3 of C-WP/14756 indicating that the CAEP's recommendations on the CERT and its technical methodologies and on the CCR functionalities would be made available on the Council secure website following the conclusion of the 2018 CAEP SG Meeting. DD/ENV emphasized that immediately following the CAEP's approval on the first day of its SG Meeting, the said recommendations had been made available on the Council secure website and Council Representatives had been informed accordingly. In addition, the CAEP's said recommendations had been distributed to Council Representatives by e-mail on 13 June 2018.

72. DD/ENV further clarified that while CAEP-SG/20183-SD/1-3 contained the ICAO CORSIA CERT technical methodologies, it did not contain the CERT itself as the latter was an electronic tool in the form of an Excel spreadsheet. The CERT was, however, available to Representatives on the Council secure portal, together with documentation for the 2018 CAEP SG Meeting. She recalled that a demonstration of the CERT had recently been given to the AGC.

73. DD/ENV noted that the Council was invited to approve the CCR functionalities as an initial step in the Secretariat's procurement process, as indicated in Section 2.2 of C-WP/14756. She underscored that once the Secretariat received proposals from potential suppliers of the CCR based on those functionalities, it would be in a better position to determine how the functionalities would work in practice.

74. The President of the Council requested that the Secretariat re-circulate to Representatives certain material related to the ICAO CORSIA CERT, including the technical methodologies, and the CCR, which was also available on the Council's secure website. In encouraging Representatives to make greater use of documents made available to them in electronic form, he emphasized that it was not always necessary for the Secretariat to provide them with printed copies of relevant documents.

75. The Representative of India suggested that, as the CERT and the CCR were dynamic in nature, the proposed Council actions be amended to refer to approval, in principle, of the *concept* of the CERT and the CCR, with no reference being made to their respective technical methodologies and functional requirements.

76. The Representative of the Russian Federation voiced appreciation for the substantial amount of work done the Secretariat, the CAEP and the AGC. He questioned, however, how the Council

could approve the ICAO CORSIA CERT and the CCR without having first seen those CORSIA Implementation Elements and adopted the CORSIA-related SARPs.

77. Note was taken of the comments made and the clarifications provided.

78. The Council then took the action proposed by the President, as amended in light of the discussion, and:

- a) on the basis of the AGC's recommendations set forth in paragraph 5.1 c) and d) of its oral report, approved, in principle: the 2018 version of the ICAO CORSIA CO₂ Estimation and Reporting Tool (CERT) and its technical methodologies as contained in the document *Design, Development and Validation of the CERT*; and the functional requirements of the CORSIA Central Registry (CCR), taking into account the progress being made thereon by the CAEP, as described in Sections 2.1 and 2.2 of C-WP/14756, respectively, and in Section 3 of the AGC oral report;
- b) on the basis of the AGC's recommendation set forth in paragraph 5.1 e) of its oral report:
 - a) endorsed the Secretariat plan for the CORSIA-related outreach and capacity building activities, as described in Section 3 of C-WP/14756 and Section 4 of the AGC oral report, and supplemented by the *Information Note on the Capacity-building Plan for CORSIA Implementation* circulated to Representatives under cover of an e-mail from D/ATB dated 19 June 2018 further to their request (214/6), on the understanding that the plan continued to evolve and that the Secretariat would launch its ACT-CORSIA (Assistance, Capacity-building and Training for CORSIA) Programme during the upcoming ICAO Seminar on CORSIA (Montréal, 2-3 July 2018); and
 - ii) emphasized the need for a coordinated approach to undertake the global capacity building initiative under ICAO as described in C-WP/14756, and that any bilateral or multilateral partnerships among States should be informed and coordinated with ICAO, so that the global progress of such coordinated efforts would be monitored;
- c) with regard to paragraph 4.1 of the AGC's oral report, encouraged the establishment of "buddy partnerships" among States themselves to help each other to prepare for CORSIA implementation, in particular with regard to the development and approval of Emissions Monitoring Plans, and the establishment of national and/or regional regulatory frameworks and noted that the Secretariat had been developing a "sample framework" to facilitate the regulatory process of States;
- d) encouraged States to nominate CORSIA Focal Points as soon as possible in response to State letter ENV 6/6-18/1 dated 4 January 2018; and
- e) encouraged States to contribute additional resources through voluntary funding and/or other in-kind contributions in response to State letter ENV 1/1.1-18/60 dated 11 May 2018, to facilitate the implementation of the said Secretariat plan for the CORSIA-related outreach and capacity building.

79. It was noted that States could be encouraged to take the action indicated in paragraphs 78 c), d) and e) above by means of an additional State letter(s), as well as during the missions

to States undertaken by the President of the Council and the Secretary General and during the forthcoming ICAO Seminar on CORSIA (Montréal, 2-3 July 2018).

80. The Representative of the Russian Federation expressed disagreement with the Council's above-mentioned approval, in principle, of the ICAO CERT and the CCR without having first seen those CORSIA Implementation Elements and adopted the CORSIA-related SARPs. This was noted for the record.

81. The Council adjourned at 1310 hours.

COUNCIL — 214TH SESSION

SUMMARY MINUTES OF THE EIGHTH MEETING

(THE COUNCIL CHAMBER, TUESDAY, 26 JUNE 2018, AT 1430 HOURS)

CLOSED MEETING

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

PRESENT:

Algeria	— Mr. A.D. Mesroua	Mexico	— Mr. D. Méndez Mayora
Argentina	— Mr. G.E. Ainchil	Nigeria	— Mr. M.S. Nuhu
Australia	— Mr. S. Lucas	Panama	— Mr. G.S. Oller
Brazil	— Mr. O. Vieira (Alt.)	Republic of Korea	— Mr. Y.J. Lee
Cabo Verde	— Mr. C. Monteiro	Russian Federation	— Mr. S. Gudkov
Canada	— Mr. M. Pagé	Saudi Arabia	— H.E. Dr. N.B.M. Al-Amudi, Minister of Transport and Chairman, GACA
China	— Mr. Shengjun Yang	Singapore	— Mr. T.C. Ng
Colombia	— Mr. A. Muñoz Gómez	South Africa	— Mr. M.D.T. Peege
Congo	— Mr. R.M. Ondzotto	Spain	— Mr. V.M. Aguado
Cuba	— Mrs. M. Crespo Frasier	Sweden	— Ms. H. Jansson Saxe
Ecuador	— Mr. I. Arellano	Turkey	— Mr. A.R. Çolak
Egypt	— H.E. H. EL-Adawy, President, CAA	United Arab Emirates	— H.E. S.B.S. Al Mansoori, Minister of Economy and Chairman, GCAA
France	— Mr. P. Bertoux	United Kingdom	— Mr. D.T. Lloyd
Germany	— Mr. U. Schwierczinski	United Republic of Tanzania	— Mr. R.W. Bokango
India	— Mr. A. Shekhar	United States	— Mr. T.L. Carter
Ireland	— Ms. N. O'Brien	Uruguay	— Mr. M. Vidal
Italy	— Mr. M.R. Rusconi		
Japan	— Mr. S. Matsui		
Kenya	— Ms. M.B. Awori		
Malaysia	— Mr. K.A. Ismail		

ALSO PRESENT:

Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. C. Fernández (Alt.)	— Argentina
H.E. K.B.A. Mohammed, Minister of Transportation and Telecommunications (Obs.)	— Bahrain
Mr. M.T. Al Kaabi (Obs.)	— Bahrain
Mr. S.M. Hassan (Obs.)	— Bahrain
Mr. D. Krishan (Adv.)	— Bahrain
Mr. G. Petrochilos (Adv.)	— Bahrain
Ms. A. Keene (Adv.)	— Bahrain
Mr. R.F. Pecoraro (Alt.)	— Brazil
Mr. D. Tavares Taufner (Alt.)	— Brazil
Mr. H. Gonzales (Alt.)	— Brazil
Mr. Chunyu Ding (Alt.)	— China
H.E. A. Salama (Alt.)	— Egypt
Mr. A. Khedr (Rep.)	— Egypt
Mrs. S. El Mowafi (Alt.)	— Egypt
Mrs. Y.H.M. Elbedewy (Alt.)	— Egypt
Mr. M. Millefert (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mrs. D. Valle Álvarez (Alt.)	— Mexico

SECRETARIAT:

Mrs. J. Yan	— C/OSG
Ms. I. Sosina	— SA/PRES
Mr. J. Huang	— D/LEB
Mr. Y. Nyampong	— LEB
Mrs. D. Brookes	— LEB
Mr. M. Vaugeois	— LEB
Mr. A. Larcos	— C/ACS
Miss S. Black	— Précis-writer

ALSO PRESENT: Cont'd

H.E. J.B.S. AlSulaiti, Minister of Transport and Communications (Obs.)	— Qatar	H.E. S.M. Al Suwaidi (Alt.)	— United Arab Emirates
H.E. A.N. AlSubaey (Obs.)	— Qatar	H.E. M.S.H. Al Shehhi (Alt.)	— United Arab Emirates
H.E. F.M. Kafood (Obs.)	— Qatar	H.E. F. Al Raqbani (Alt.)	— United Arab Emirates
H.E. Y.S. Laram (Obs.)	— Qatar	Miss A. Alhameli (Rep.)	— United Arab Emirates
Mr. E.A. Al-Malki (Obs.)	— Rep.of Qatar to ICAO	Mr. M. Salem (Alt.)	— United Arab Emirates
Mr. M.A. AlHajri (Obs.)	— Qatar	Mr. M. Al Shamsi (Alt.)	— United Arab Emirates
Mr. T.A. Almalki (Obs.)	— Qatar	Dr. L. Weber (Alt.)	— United Arab Emirates
Mr. E.A. Mindney (Obs.)	— Qatar	Mrs. L. Coquard-Patry (Alt.)	— United Arab Emirates
Mr. A. Altamimi (Obs.)	— Qatar	Mrs. S. Aminian (Alt.)	— United Arab Emirates
Mr. J. Augustin (Obs.)	— Qatar	Mrs. S. Kirwin (Alt.)	— United Arab Emirates
Mr. K. Lee (Alt.)	— Republic of Korea	Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mr. D.S. Ha (Alt.)	— Republic of Korea	Mr. S. Kotis (Alt.)	— United States
Mr. D. Subbotin (Alt.)	— Russian Federation	Mr. J.M. Padilla (Alt.)	— United States
H.E. A.M. Altamimi (Alt.)	— Saudi Arabia	Mrs. M.A. González (Alt.)	— Uruguay
H.E.H.E. W.M.A. Alidrissi (Adv.)	— Saudi Arabia	Mr. F. de Medina (Alt.)	— Uruguay
Mr. S.A.R. Hashem (Rep.)	— Saudi Arabia		
Mr. M.S. Habib (Alt.)	— Saudi Arabia		
Mr. N.B.B. Alsudairy (Obs.)	— Saudi Arabia		
Mr. D.L.Q. Ming (Adv.)	— Singapore		
Mr. L.C. Yong (Adv.)	— Singapore		
Mr. S. Vuokila (Alt.)	— Sweden		
Mr. Ö. Dođrukol (Alt.)	— Turkey		

Representatives to ICAO

Bolivia (Plurinational State of)
 Chile
 Cyprus
 Ethiopia
 Greece
 Honduras
 Indonesia
 Iran (Islamic Republic of)
 Lebanon
 Paraguay
 Peru
 Qatar
 Senegal
 Sudan

Subject No. 16: Legal work of the Organization
Subject No. 26: Settlement of disputes between Contracting States

Settlement of Differences: The State of Qatar and the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia and the United Arab Emirates (2017) – Application (A) (relating to the interpretation and application of the Chicago Convention and its Annexes): Preliminary Objection Stage

Settlement of Differences: The State of Qatar and the Arab Republic of Egypt, the Kingdom of Bahrain and the United Arab Emirates (2017) – Application (B) (relating to the interpretation and application of the International Air Services Transit Agreement): Preliminary Objection Stage

1. On behalf of the Council, the President extended a warm welcome to the following high-level Government Officials who were duly accredited to represent their respective Member States as their Authorized Agents: H.E. Kamal Bin Ahmed Mohammed, Minister of Transportation and Telecommunications of Bahrain, H.E. Hany EL-Adawy, President of the Civil Aviation Authority of Egypt, H.E. Jassem Bin Saif AlSulaiti, Minister of Transport and Communications of Qatar, H.E. Dr. Nabeel bin Mohamed Al-Amudi, Minister of Transport and Chairman of the Board of the General Authority of Civil Aviation of Saudi Arabia, and H.E. Sultan Bin Saeed Al Mansoori, Minister of Economy and Chairman of the Board of the General Civil Aviation Authority of the United Arab Emirates. In addition, he welcomed all other officials from the said five Member States who were also in attendance. The Secretary General joined in this welcome.

2. The Parties and the Council agreed to the proposal by the President for the concurrent presentation and consideration of the two above-mentioned items, on the understanding that the Council would take separate decisions thereon given that Application (A) and Application (B) related to two different international air law instruments, namely, the Chicago Convention and the International Air Services Transit Agreement (Transit Agreement), and that there were different Respondents thereto. The items were considered on the basis of two working papers presented by the Secretary General, C-WP/14778 Restricted (with Addendum No. 1) and C-WP/14779 Restricted (with Addendum No. 1), respectively, and the following memoranda issued by the Secretary General to Council Representatives:

- memorandum **SG 2411/18 (with Blue rider)** dated 23 March 2018, which transmitted the Respondents' Statements of preliminary objections with respect to Application (A) and Application (B);
- memorandum **SG 2416/18 (with Blue rider)** dated 8 May 2018, which transmitted the Applicant's Responses to the said Statements of preliminary objections; and
- memorandum **SG 2420/18** dated 13 June 2018, which transmitted the Respondents' Rejoinders to the Applicant's Responses to their Statements of preliminary objections.

Introduction of C-WP/14778 Restricted (with Addendum No. 1) – Application (A)

3. The Secretary General introduced C-WP/14778 Restricted (with Addendum No. 1), which provided an overview of the procedure applicable to **Application (A)** – the disagreement between Qatar, as Applicant, on the one hand and Bahrain, Egypt, Saudi Arabia and the United Arab Emirates, as Respondents, on the other hand, during the preliminary objection stage.

4. In the executive summary of C-WP/14778 Restricted, the Council was invited to hear the arguments of the Parties relating to the preliminary objection and to take a decision on the matter in line with the procedure set forth in Article 5 of the *Rules for the Settlement of Differences* (Doc 7782/2),

paragraph (4) of which specified that “If a preliminary objection has been filed, the Council, after hearing the Parties, shall decide the question as a preliminary issue before any further steps are taken under these Rules.”.

Introduction of C-WP/14779 Restricted (with Addendum No. 1) – Application (B)

5. The Secretary General then introduced C-WP/14779 Restricted (with Addendum No. 1), which provided an overview of the procedure applicable to **Application (B)** – the disagreement between Qatar, as Applicant, on the one hand and Bahrain, Egypt and the United Arab Emirates, as Respondents, on the other hand, during the preliminary objection stage. The action by the Council proposed in the executive summary of C-WP/14779 Restricted was identical to that proposed in the executive summary of C-WP/14778 Restricted.

6. The President of the Council recalled that, for the two cases before it, the Council was sitting as a judicial body under Article 84 of the Chicago Convention, taking its decisions on the basis of the submission of written documents by the Parties, as well as on the basis of oral arguments. The Council’s consideration was limited to the Respondents’ two Statements of preliminary objections with respect to Application (A) and Application (B), the Applicant’s respective Responses thereto, and the Respondents’ respective Rejoinders, and would not address the merits of the cases. The *Rules for the Settlement of Differences* (Doc 7782/2) and the *Rules of Procedure for the Council* (Doc 7559/10) would be used.

Presentation by the Respondents’ Authorized Agents of their oral arguments with respect to Application (A) and Application (B)

7. At the invitation of the President of the Council, and on behalf of Bahrain, Egypt, Saudi Arabia and the United Arab Emirates, H.E. Dr. Nabeel bin Mohamed Al-Amudi (Saudi Arabia) presented the preliminary objection filed by the Respondents in response to Qatar’s **Application (A)** under Article 84 of the Chicago Convention. Before he began, H.E. Al-Amudi reiterated the Respondents’ utmost respect for ICAO, the Council, and the international rules and principles governing civil aviation. He emphasized that safety had been, and continued to be, the Respondents’ top priority. In noting that the Respondents, the Secretariat, and the ICAO Middle East Regional Office (MID) (Cairo), among others, had worked diligently to ensure that contingency arrangements were in place in the Gulf region, and that such arrangements ensured the safe operation of civil aircraft, H.E. Al-Amudi indicated that that task had been accomplished.

8. H.E. Al-Amudi underscored that, as one of the Council Members had astutely recognized and stated during the Extraordinary Session of the Council convened on 31 July 2017 pursuant to the request made by Qatar under Article 54n) of the Chicago Convention, the aviation component of the situation in the Gulf region was but one part of a complex environment. ICAO’s role, within that environment, was to administer an international aviation system that delivered safe, secure and efficient air navigation for all Member States. He observed that that role had been fulfilled.

9. In emphasizing that the Respondents had not chosen to bring this dispute before the Council today, H.E. Al-Amudi stressed that, as previously notified to the President of the Council and the Secretary General, the procedures set for the present hearing were contrary to the Respondents’ requests, the *Rules for the Settlement of Differences* (Doc 7782/2), and the fundamental rules of due process. He cited two notable examples, as follows: firstly, the Respondents’ preliminary objections needed 19 positive votes to carry the day, but the Rules only required a simple majority of the Council Members entitled to vote; and secondly, the Respondents had not been provided with sufficient or equal time to adequately present their case. Their right to be heard had thus been compromised.

10. H.E. Al-Amudi highlighted that during the present meeting it fell on the Council to recognize that the real issue of this dispute did not concern international civil aviation but rather the Applicant's breaches of its international obligations, which had left the Respondents with no effective option other than to exercise their sovereign right to implement measures to protect their national security interests.

11. Underscoring the importance of the dispute's context, H.E. Al-Amudi recalled the 2013 and 2014 timeframe, when the Gulf Cooperation Council States, including Qatar, had agreed to a series of collective obligations known as the Riyadh Agreements. He noted that although Egypt was not a signatory thereto, under their terms, and in particular, as expressly stated in Article 4 of the November 2014 Agreement, Egypt was a beneficiary of those Agreements. H.E. Al-Amudi further noted that, under the signature of its Emir, Qatar had committed to stop funding, harboring, and supporting persons and organizations engaging in terrorist or extremist activities, and to desist from interfering in the internal affairs of neighbouring States. He emphasized that the Riyadh Agreements reinforced the Applicant's international law obligations, as set forth in the *Charter of the United Nations* (UN), the *International Convention for the Suppression of the Financing of Terrorism*, relevant binding United Nations Security Council Resolutions, and the customary international law principle of non-interference in the internal affairs of other States.

12. Recalling that the Respondents had asked the Applicant, time and again, to halt these practices, in line with its commitments, H.E. Al-Amudi underscored that, time and again, the Applicant had failed to do so. He indicated that in June 2017, after assessing that all other options had been exhausted, the Respondents had determined that the only way to address these grave threats to their national security was to terminate diplomatic and consular relations with the Applicant, and to institute a basket of lawful counter-measures, including the said airspace restrictions. He stressed that unless and until the Applicant fulfilled its obligations under the Riyadh Agreements, the Respondents would consider it a grave national security threat, and would continue the basket of counter-measures necessary to counter that threat.

13. In affirming that the Respondents did not implement such counter-measures to punish the Applicant, H.E. Al-Amudi underscored that their purpose was rather to induce the Applicant to bring its actions into compliance with its fundamental obligations. He emphasized that when the Applicant fully complied with its international obligations, as reinforced in the Riyadh Agreements, then the said counter-measures would be lifted, and that as long as the Applicant continued to breach its obligations, the counter-measures would remain.

14. Noting that some Council Representatives might be asking themselves why the Respondents were talking about terrorism in an Organization established to deal with international civil aviation, H.E. Kamal Bin Ahmed Mohammed (Bahrain) emphasized that that was exactly the point of first ground of their **preliminary objection with respect to Qatar's Application (A)**, which rested on the fact that the present dispute between Qatar, as Applicant, and the Respondents would require the Council to determine issues that fell outside the latter's jurisdiction. Noting that the Applicant had all but conceded that point, he recalled that it had promised to present a "robust defence" against the allegations of its funding and support of terrorism and to show why the Respondents' counter-measures were unlawful were the case to get to the merits. The Council would then have to determine those issues. H.E. Mohammed underscored, however, that the Council's jurisdiction under Article 84 of the Chicago Convention was limited to "any disagreement ... relating to the interpretation or application" of the Chicago Convention. In emphasizing that that provision clearly limited the types of matters that the Contracting States to the Convention intended the Council to hear, he underscored that the exercise of jurisdiction over matters unrelated to civil aviation was outside the latter's mandate. H.E. Mohammed stressed that by asking the Council to ignore that principle, the Applicant was in fact asking the Council to act far beyond the scope of its authority, which was not appropriate.

15. Noting that the Parties apparently agreed on the content and applicability of the customary international law principle on counter-measures in this case, H.E. Mohammed emphasized that the obligations in the Chicago Convention could not be viewed in isolation of those rules. The Respondents maintained that the Applicant's breaches of its international law obligations created a situation where they had no choice but to impose lawful counter-measures to induce the Applicant to change its behaviour.

16. H.E. Mohammed recalled that the International Court of Justice (ICJ) had held in the *Hungary/Slovakia* case that an injured State could take counter-measures against a State which had breached its obligations. Under international law, five conditions had to be met for the counter-measures to be considered lawful, the first of which was that the counter-measure must be adopted in reaction to a previous internationally wrongful act and directed against the wrong-doing State. He affirmed that such was the case here.

17. H.E. Mohammed underscored that the Respondents maintained that their said airspace restrictions were lawful counter-measures, and were permitted under international law. He indicated that Council Members would know from their own experience that States had, in the past, been compelled to restrict their airspace in the face of illegal conduct by other States. They had done so bilaterally or collectively, and on various legal grounds, including by way of counter-measures. H.E. Mohammed cited, as examples, a European Union (EU) flight ban at the time of the Kosovo crisis; the flight bans on Libyan outbound flights in 2015; similar bans on North Korean flights; and bans on South African flights as a reaction to the continuation of apartheid policies in the 1980's. He noted that although the list of examples was much longer, the salient point was clear, and it had never been suggested by the States involved, and rightly so, that any of those broader disputes could be characterized as an aviation matter and resolved by the Council.

18. H.E. Mohammed emphasized that despite the Applicant's allegations, the Respondents were not asking the Council to decide those issues now; rather, at this stage, the Council had only to decide whether it could properly exercise jurisdiction over the merits, as it related to the real issue in the case. However, the Respondents did ask the Council to make a decision on its jurisdiction at this phase of the case. They submitted that their preliminary objection had an exclusively preliminary character. Deciding on the objection now would not require the Council to rule on the merits of the real issue in dispute, but simply require it to decide whether it had jurisdiction at all. H.E. Mohammed underscored that in keeping with ICAO's *Rules for the Settlement of Differences* (Doc 7782/2), as well as the practice of the ICJ, the objection should be resolved at the preliminary stage, if at all possible.

19. H.E. Mohammed noted that in order to rule on the legality of the Respondents' said airspace measures at large, the Council would first have to determine if the Applicant had in fact violated the Riyadh Agreements, the *Convention of the Organization of the Islamic Conference on Combatting International Terrorism*, the *Arab Convention for the Suppression of Terrorism*, the *International Convention for the Suppression of the Financing of Terrorism*, numerous United Nations Security Council Resolutions, and the customary international law principle of non-interference. To state the obvious, such matters were outside the mandate of the Council. Recalling that the Council had not once ruled on an Article 84 case in its history, H.E. Mohammed underscored that to do so on a matter involving national security and counter-terrorism would be unprecedented.

20. H.E. Mohammed stressed that it was impossible to rule on the legality of the Respondents' said airspace measures without dealing with the larger dispute at hand, a dispute in which the real issue was the Applicant's illegal actions. In indicating that for that reason the Council should rule in favour of the Respondents' preliminary objection, he reiterated that the real and principal issue in this dispute was not civil aviation. Recalling that the Council itself had reviewed and confirmed that the contingency

arrangements in the Gulf region agreed in 2017 ensured the safe operation of civil aircraft, H.E. Mohammed maintained that the larger dispute at issue that the Applicant sought to bring before the Council did not belong in ICAO.

21. H.E. Sultan Bin Saeed Al Mansoori (United Arab Emirates) then presented the second ground of the Respondents' **preliminary objection with respect to Qatar's Application (A)**. Recalling that Article 84 of the Chicago Convention provided that only disagreements which "cannot be settled by negotiation" may be submitted to the Council, he indicated that that meant that an Applicant, in the present case, Qatar, must show that it had attempted negotiations about the dispute *before* submitting a case to the Council. The text of Article 84 was quite clear.

22. H.E. Al Mansoori also brought to the Council Members' attention Article 2(g) of the *Rules for the Settlement of Differences* (Doc 7782/2), which provided that the Applicant's Memorial must contain "A statement that negotiations to settle the disagreement had taken place between the parties but were not successful." He noted that the Respondents' submissions cited numerous precedents where the ICJ had dealt with that issue, including the 2011 case *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)* (cf. Preliminary Objections, Judgment, ICJ Reports 2011, p. 70, paragraph 160). H.E. Al Mansoori underscored that where a treaty, such as the Chicago Convention, explicitly called for negotiations before a dispute may be brought, that requirement operated as a precondition that the Applicant must satisfy before filing an Application with the Council. Towards that end, it was notable that many of the exhibits the Applicant had provided to support its attempt at negotiations had come after it had filed its Application (A) and Memorial.

23. H.E. Al Mansoori affirmed that the Applicant had made no attempt to negotiate the real dispute with the Respondents, and had not even attempted to fulfil the said Article 2(g) requirement when filing its Application (A). He noted that, in fact, the Applicant conceded on page 7 of its Memorial (A) that it had not attempted to enter into negotiations in relation to the matters it now raised before the Council, taking the position instead that the severance of diplomatic relations had made negotiations "futile."

24. Indicating that the Applicant appeared to have realized, belatedly, that that argument did not satisfy the precondition to negotiate, H.E. Al Mansoori highlighted that in its Response, the Applicant had fundamentally changed its position, and now asserted that it had in fact attempted negotiations. It was notable, however, that despite exhibiting dozens of media reports containing the Applicant's supposed official statements, the Applicant had only illustrated that it had made vague public statements to third party States about its willingness to negotiate. However, the Applicant had not proved that it had demonstrated that willingness to the Respondents and the Applicant had never made a formal request to initiate negotiations. H.E. Al Mansoori maintained that the issuance of empty statements regarding the Applicant's "willingness" to negotiate was insufficient.

25. H.E. Al Mansoori emphasized that, as the Party asserting jurisdiction, the burden fell on the Applicant to demonstrate that it had satisfied the requirement of negotiations by making an attempt to negotiate, consistent with the ICJ Judgment in the said case *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*. The Applicant had failed to do so, however.

26. This led H.E. Al Mansoori to bring to the Council's attention to another clear contradiction in the Applicant's submission. He noted that the first ground of the Respondents' preliminary objection with respect to Qatar's Application (A) rested on the fact that the real issue of this dispute fell outside of international civil aviation. The Applicant disagreed with them in that regard. However, at the same time, the Applicant's response in relation to the question of whether it had fulfilled

the precondition of negotiations was to point to vague statements relating to the larger dispute at hand. H.E. Al Mansoori reiterated that, indeed, none of the exhibits that the Applicant had pointed to as evidence of its attempts at negotiations touched on the Respondents' airspace restrictions.

27. H.E. Al Mansoori queried why, if the real issue of the dispute was the Respondents' airspace restrictions, did the evidence that the Applicant relied upon as supposedly demonstrating its attempts at negotiation of those airspace restrictions contain statements *only* as to the larger dispute. He underscored that if the real issue of the dispute was indeed the said airspace restrictions, as the Applicant would have the Council believe, then the Applicant had failed to fulfil the requirement of negotiations under Article 84 of the Chicago Convention.

28. H.E. Al Mansoori observed that the Applicant had further attempted to confuse the issue by referring to discussions held in entirely unrelated fora, for example, to proceedings before the World Trade Organization (WTO), which related to a different dispute. He underscored that, consistent with the views expressed by the ICJ in the said case *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, such discussions did not satisfy the requirement of prior negotiations because they did not relate to what the Applicant claimed was the subject of its Application (A) before ICAO.

29. H.E. Al Mansoori noted that the Applicant had also asserted that the proceedings of the the Extraordinary Session of the Council on 31 July 2017, held pursuant to Article 54 n) of the Chicago Convention, were evidence that there had been negotiations between the Parties within the framework of ICAO. He emphasized that, as the Council Members well knew, those Article 54 n) proceedings had been rightfully confined to discussions regarding the safety of civil aviation in the context of the contingency arrangements in the Gulf region. H.E. Al Mansoori affirmed that such discussions could not, under any characterization, constitute an attempt by the Applicant to negotiate for purposes of satisfying the requirement of prior negotiations under Article 84 of the Chicago Convention. He noted that while the Applicant had also pointed to letters that it had submitted to the President of the ICAO Council and the ICAO Secretary General, arguing that it had indeed attempted negotiations, none of the letters it had referred to included any request to the Respondents to negotiate on the said airspace restrictions. Indeed, those letters had not even been addressed to the Respondents.

30. H.E. Al Mansoori indicated that, in these circumstances, the Respondents respectfully submitted that the Council should conclude that the Applicant had failed to fulfil the precondition of negotiations required by Article 84 of the Chicago Convention and, further, that it had failed to comply with Article 2(g) of the *Rules for the Settlement of Differences (Doc 7782/2)*. As a consequence, the Respondents respectfully submitted that the Council should decline to proceed with this matter further.

31. H.E. Al Mansoori underscored that even if the Applicant were to affirm today its willingness to undertake negotiations with the Respondents, it would be too late for the present case. Maintaining that any such request for negotiations had to occur before the Application was filed with ICAO, he reiterated that the law on that question was crystal-clear.

32. H.E. Al Mansoori indicated that, for all of the foregoing reasons, the Respondents respectfully requested that the Council accept and uphold their preliminary objection with respect to Qatar's Application (A) and therefore decide: i) that it lacked jurisdiction to adjudicate the claims raised by Qatar's Application (A); or ii) in the alternative, that Qatar's claims were inadmissible.

33. On behalf of Bahrain, Egypt and the United Arab Emirates, H.E. Hany EL-Adawy (Egypt) addressed the preliminary objection filed by them, as Respondents, in response to Qatar's **Application (B)** under Article II, Section 2 of the Transit Agreement. He prefaced his remarks with an affirmation of the Respondents' utmost respect for ICAO, the Council, and the international rules and principles governing

civil aviation and their commitment to cooperating with all parties, including Qatar, under the auspices of ICAO, to ensure the safe and secure operation of civil aviation.

34. H.E. EL-Adawy underscored that the grounds for the preliminary objection explained earlier in respect of the Chicago Convention applied with equal force to the Transit Agreement. He reiterated that the first ground of the preliminary objection rested on the fact that the real issue of this dispute, the Applicant's illegal actions, fell outside the scope of ICAO's mandate, and that the second ground of the preliminary objection rested on the fact that the Applicant had not satisfied the precondition to make a genuine attempt at negotiations.

35. H.E. EL-Adawy took this opportunity to re-emphasize that the central issue in the current crisis was the Applicant's ongoing support for extremism and terrorism and its continued interference in the internal affairs of other States. He reiterated that the Applicant's policies represented a threat not only to the security and stability of Arab States, but also to many other countries.

36. In noting that at this stage the Council was only called upon to decide whether it could properly exercise jurisdiction over the merits of the case, as they pertained to the real issue, H.E. EL-Adawy reiterated that if the Council were to accept jurisdiction and proceed to the merits of the case, then it would be acting inconsistently with international law and contrary to the expectations of States, because it would be required to pass judgment on issues outside its jurisdiction.

37. H.E. EL-Adawy underscored that the Applicant had overstated the breadth of the Council's jurisdiction when it claimed in its Response that "the Council has never refused jurisdiction in any case brought before it.". He emphasized that the Council had only rejected preliminary objections challenging its ability to hear a disagreement on three occasions, and that it had never issued a final decision on the merits. H.E. EL-Adawy noted, by contrast, that since the founding of ICAO, the Council had never asserted jurisdiction over a counter-measures defence. He indicated that the Respondents respectfully submitted that ICAO should not be involved in setting this dangerous precedent today and accordingly respectfully requested the Council to uphold their preliminary objection with respect to Qatar's Application (B) on the grounds that: i) the Council lacked jurisdiction to adjudicate the claims raised by Qatar's Application (B); or ii) in the alternative, that Qatar's claims were inadmissible.

Presentation by the Applicant's Authorized Agent of its oral arguments in response to the Respondents' oral arguments

38. H.E. Jassem Bin Saif AlSulaiti (Qatar) prefaced his presentation with an expression of Qatar's gratitude to ICAO for its efforts and service to ensure the safety and security of international civil aviation, and for assuming its responsibilities by convening the present Council meeting to consider Qatar's requests regarding the aviation restrictions imposed on it by Saudi Arabia, the United Arab Emirates, Bahrain and Egypt on 5 June 2017.

39. H.E. AlSulaiti underscored that the purpose of the meeting was to discuss the Respondents' preliminary objections and not the merits of the claims made by Qatar in its Application (A) and Application (B) and their corresponding Memorials filed with ICAO on 30 October 2017. He emphasized that the current hearing was simply to discuss the jurisdiction of the Council, which was set out in Article 84 of the Chicago Convention and Article II, Section 2 of the Transit Agreement. Under those agreements, the jurisdictional clause was simple: the Council had jurisdiction to decide the case if there was any disagreement relating to the interpretation or application of the Chicago Convention or the Transit Agreement which could not be settled by negotiation. There was nothing under those agreements or in the *Rules for the Settlement of Differences* (Doc 7782/2) which set any other limits on, or otherwise circumscribed, the assumption of jurisdiction by the Council. The Council was simply being asked to undertake a function with which it had been constitutionally mandated.

40. H.E. AlSulaiti recalled that, on 5 June 2017, without any previous warning and without any effort to negotiate with Qatar, the said four States, acting in concert and in coordination, had taken what Qatar considered to be a series of brutal and unprecedented measures against it, which included the prevention of Qatari-registered civil aircraft from transiting their airspace and from landing for non-traffic purposes. He asserted that those actions explicitly violated a number of provisions of the Chicago Convention and the Transit Agreement as set out in Qatar's Application (A) and Application (B) and their corresponding Memorials, which had been filed with ICAO on 30 October 2017.

41. H.E. AlSulaiti noted that by letter dated 19 March 2018, the Respondents had presented to ICAO their Statements of preliminary objections to Qatar's Application (A) and Application (B). Qatar had responded on 30 April 2018. The Respondents subsequently had filed so-called "Rejoinders" on 12 June 2018. Before proceeding further, H.E. AlSulaiti wished to place on record that Qatar believed that it had been procedurally and substantively prejudiced by virtue of the fact that the Respondents had been permitted to file the so-called "Rejoinders" under Article 7(1) of the *Rules for the Settlement of Differences* (Doc 7782/2). As stated in Qatar's e-mail of 25 May 2018 to Council Delegations, Qatar was equivalent to the defendant for the purposes of consideration of the Respondents' Statements of preliminary objections, yet the said Rules had been interpreted to allow the Respondents to file Rejoinders, which were the last written pleadings permitted following the filing of the Counter-memorials. The Respondents' Counter-memorials had not yet been submitted, however.

42. H.E. AlSulaiti noted that since the Parties were making a single presentation for both of the said Applications for convenience and to save time, references in his current presentation to certain excerpts or texts were to Qatar's Application (A), the Respondents' Statement of preliminary objections (A), Qatar's Response (A) and the Respondents' so-called "Rejoinder" (A). He indicated that they were to be taken as cross-read with the comparable provisions in the pleadings for Application (B).

43. H.E. AlSulaiti emphasized that essentially, the crux of the Respondents' arguments was that the Council did not have jurisdiction, or alternatively, that Qatar's claims were inadmissible. He indicated that, at times, the Respondents confused the two concepts in their Statement of preliminary objections. They claimed that their actions constituted lawful counter-measures, and that that would require the Council to determine issues forming part of a wider dispute between the Parties. The Respondents stated that there was a body of law outside of the Chicago Convention which afforded them a dispositive defence to the claims of Qatar. The basis of the alleged lack of jurisdiction essentially boiled down to an allegation that "While the Council has considerable expertise in the technical aspects of aviation enshrined in the Chicago Convention, it is not well-suited or well-equipped to handle disputes of a wider nature ..." (cf. Statement of preliminary objections, executive summary, paragraph 4). Additionally, the Respondents claimed that Qatar had failed to meet the condition of negotiation.

44. H.E. AlSulaiti underscored that although the Respondents claimed that, in determining the issues raised by Qatar under the Chicago Convention or the Transit Agreement, the Council was prevented or circumscribed from considering any issues falling outside of the Convention or Agreement, they did not explain or explain satisfactorily why that should be so. He highlighted that most legal disputes arose in a wider context and that their determination could also take into account other issues relevant to the determination of the legal question placed before the tribunal. In adjudicating issues, tribunals, even those with subject matter jurisdictional clauses like the Council, were not placed in blinkers.

45. H.E. AlSulaiti affirmed that, as Qatar had pointed out in its Response to the said Statement of preliminary objections, the Council had jurisdiction as long as the question for decision related to the interpretation or application of the Chicago Convention or the Transit Agreement and could not be settled by negotiations.

46. H.E. AlSulaiti underscored that, as Qatar has shown in its said Responses, the *Rules for the Settlement of Differences* (Doc 7782/2) did not permit the Council to consider issues of *admissibility* at the preliminary objection stage. Article 5(1) of the Rules, adopted by the Council to govern its consideration of disputes under Article 84 of the Chicago Convention and Article II, Section 2 of the Transit Agreement, quite clearly only allowed a preliminary objection to be filed as to jurisdiction.

47. H.E. AlSulaiti averred that the reference made in paragraph 15 of the Respondents' "Rejoinder" to Article 36(6) of the *Statute of the International Court of Justice* (ICJ) was intended to divert the Council's attention from the central issue. The Article simply stated that in the event of a dispute as to whether the Court had jurisdiction, the matter shall be settled by the decision of the Court itself. It had nothing to do with admissibility.

48. H.E. AlSulaiti noted that it was quite remarkable how the Respondents attempted to explain away the recent decision of the Council in the case *Settlement of Differences: Brazil and United States (2016)*. He emphasized that if Brazil had not wished to make the point that the Council should not address issues of admissibility at the preliminary objection stage, then that had been Brazil's prerogative. Qatar now raised the matter. H.E. AlSulaiti underscored that contrary to what had been alleged by the Respondents, there was no confirmation by the Council that it could have ruled on admissibility at that stage. In fact, for the Council, the matter to be decided at the preliminary objection stage was only jurisdiction, which was why the Council had not even discussed the arguments on extinctive prescription in the said case. He maintained that it was the Respondents who were wrong in law on that point.

49. H.E. AlSulaiti recalled that in paragraph 24 of the "Rejoinder", the Respondents stated that Qatar presumably intended to invite the Council to join the Respondents' preliminary objections to the merits in both Applications. Underscoring that the Respondents' presumption was wrong, he highlighted that in paragraph 214 of its Response, Qatar invited the Council to declare that it had no competence at the preliminary objection stage to consider the claims, arguments and submissions of the Respondents on admissibility.

50. H.E. AlSulaiti observed that the statement made by the Respondents in paragraph 26 of their Rejoinder that Article 5(4) of the *Rules for the Settlement of Differences* (Doc 7782/2) did not give the Council the option of joining preliminary objections to the merits was correct. He emphasized, however, that under Article 5(1) of the Rules, preliminary objections were to be on issues of jurisdiction, not issues of admissibility.

51. H.E. AlSulaiti averred that, given Qatar's arguments, it was disingenuous and trickery for the Respondents to claim, as they did in paragraph 14 of their Rejoinder, that Qatar did not dispute a Respondent's right to file an objection on grounds of admissibility under ICAO's Rules. Qatar's response was that although such an objection could be presented, the Council could not consider it at this stage.

52. H.E. AlSulaiti indicated that, as had been pointed out in paragraph 17 of Qatar's Response, although the ICJ could rule on admissibility at the preliminary objection stage, the ICJ had indicated in its Judgment in the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* that under its Rules, where the Court found that an objection did not possess an exclusively preliminary character, it would be dealt with at the merits stage (cf. Preliminary Objections, Judgment, ICJ Reports 2008)

53. H.E. AlSulaiti underscored that the Respondents' claim that the real issue before the Council was something different from their actions which were not in conformity with the Chicago Convention and the Transit Agreement was wrong and misleading. He averred that the Respondents had not understood or had ignored the case law. H.E. AlSulaiti stressed that the object of Qatar's claim, or the

real issue for the Council to determine, was whether or not the Respondents had violated the Chicago Convention and the Transit Agreement, and to declare that accordingly. He emphasized that, as Qatar had pointed out in paragraph 34 of its Response, the fact that a legal dispute had wider underlying elements did not mean that such a dispute fell outside the jurisdiction of the Council or was inadmissible. H.E. AlSulaiti recalled that many of the cases under Article 84 of the Chicago Convention or the Transit Agreement previously referred to the Council had had wider underlying political issues or other non-aviation problems, and that in no case had the Council since its inception declined jurisdiction over it.

54. H.E. AlSulaiti highlighted that, as stated by the ICJ in its Judgment in the *United States Diplomatic and Consular Staff in Tehran* case, no provision of its Statute or Rules contemplated that the Court should decline to take cognizance of one aspect of a dispute merely because that dispute had other aspects, however important (cf. ICJ Reports 1980).

55. H.E. AlSulaiti emphasized that, although the Respondents would like the Council to believe otherwise, there was no provision in the Chicago Convention or the Transit Agreement which stipulated that the Council should decline jurisdiction over a disagreement on their interpretation or application merely because there were other aspects to the dispute before the Council, or that the decision could or must take into account elements which did not fall completely within the parameters of civil aviation. He underscored that the violation of the Chicago Convention and the Transit Agreement was not a marginal or incidental matter before the Council.

56. H.E. AlSulaiti averred that the reference made by the Respondents in their Statement of preliminary objections and paragraph 42 of their Rejoinder to the *Chagos Islands* arbitration case did not help them. They had helpfully pointed out that the Tribunal had stated that where a dispute concerned the interpretation or application of the Convention, the jurisdiction of a court or tribunal extended to making such findings of fact or ancillary determinations of law as were necessary to resolve the dispute presented to it. H.E. AlSulaiti emphasized that that was exactly what Qatar was requesting the Council to do.

57. H.E. AlSulaiti underscored that the assertion made by the Respondents in paragraph 44 of their Rejoinder that bodies such as the Council may not encroach upon the jurisdiction which other bodies may have over the real dispute, which was related to the so-called “principle of specialty”, was wrong in law and unsubstantiated. He indicated that as Qatar had addressed that issue in paragraphs 49 to 65 of its Response to show that that principle espoused by the Respondents could not apply to prevent the Council from assuming jurisdiction, he would not repeat the arguments here in the Council. H.E. AlSulaiti indicated that it would mean that no other Specialized Agency or other body would have jurisdiction to consider a matter as long as there was some connection, incidental or otherwise, with the functions of another organization. The net result would be a complete denial everywhere of the justiciability of Qatar’s grievances. It would also render invalid the constitutional mandate under the Chicago Convention and the Transit Agreement to settle differences or disagreements relating to their interpretation and application.

58. H.E. AlSulaiti averred that the point which the Respondents tried to make about the use of the words “political issues” was, in the main, one of pure semantics. Noting that the words “wider issues”, “wider disputes”, “political issues”, “broader issues”, “wider underlying elements”, “broader questions”, “other aspects” and so on were all used, he underscored that, fundamentally, whatever terminology was used, the law was still the same.

59. H.E. AlSulaiti observed that all of the Respondents’ arguments as to why the Council could not answer the legal question put to it boiled down to one thing. In the Statement of preliminary objections, executive summary, paragraph 3, the Respondents claimed that resolution of Qatar’s claims would require the Council to determine issues forming part of the wider dispute between the Parties. They stated that the Council would have to determine, amongst other things, whether Qatar had breached its relevant counter-terrorism obligations under international law. In paragraph 4, they alleged that the

Council did not have jurisdiction to adjudicate issues as to whether Qatar had breached its other obligations under international law. In particular, the Respondents stated in paragraph 58 of their Rejoinder: "Such a factual and legal assessment requires considerable expertise on technical and legal matters. The Council has considerable specialist expertise in the technical aspects of aviation enshrined in the Chicago Convention. But it is not well-suited or equipped to handle disputes about violation of sovereignty, breach of the principle of non-intervention, subversion and terrorism". More or less the same statement was repeated in the Respondents' Statement of preliminary objections, executive summary, paragraph 4, and paragraph 69; and in their Rejoinder, executive summary, paragraph 5.

60. H.E. AlSulaiti stressed that while it was clear that most of the Respondents' arguments boiled down to the rationale that the Council was not well-suited or well-equipped to answer the legal question put to it or to assume its legal mandate, that was not a valid argument in law or in fact. Yet that was what the Respondents were, in effect, having as the conclusion of their reasoning and arguments.

61. In emphasizing that Qatar had the utmost respect for the Council, H.E. AlSulaiti indicated that although it might or might not agree with every decision of the Council, it had confidence in the ability of the Council and the Representatives to answer the legal questions put to them. He recalled that the Group of Experts established to draft Rules for the Settlement of Differences in the 1950's had been of the view that: "If Council decides to hear a case arising under Article 84 [of the Chicago Convention] which presents problems of legal complexity or requires special knowledge of economic or air transport matters on the part of the Council, it is open for each State member of the Council to designate, temporarily, a legal, economic or other expert as Representative of that State on Council during the period or on the occasions where the contemplated case under Article 84 is being dealt with."

62. Further, as to the supposed difficulty the Council Representatives would face if the Respondents would put forward a defence that they had instituted lawful counter-measures, Qatar believed that, based on the documents which the Respondents had unfortunately produced as exhibits and the statements they had made in their Statements of preliminary objections and Rejoinders, the matter would be one of the easiest for the Council to decide at that session when it would examine the merits of the two cases.

63. H.E. AlSulaiti underscored that, whether or not Council Representatives believed that statement, the fact was that the assessment could only be made after the Respondents' Counter-memorial was presented, which may or may not contain a claim from the Respondents that their actions were lawful counter-measures, and after Qatar replied to whatever defence was put forward by the Respondents. In emphasizing that the Council could not make that assessment now, he noted that that was what the ICJ had been guarding against in its 1972 Judgment regarding the *Appeal relating to the jurisdiction of the ICAO Council (India v. Pakistan)*.

64. H.E. AlSulaiti recalled that in that ICJ case India had alleged then that flights of Pakistani aircraft over India was governed by a Special Regime in force between the two States, which was completely outside of the Chicago Convention and the Transit Agreement, and also that India had become entitled under international law or international treaty law outside of those two agreements, to terminate or suspend them. In its Judgment, the ICJ had decided that as long as there was "a dispute of such a character as to amount to a 'disagreement ... relating to the interpretation or application' of the Chicago Convention or of the related Transit Agreement ... then *prima facie* the Council is competent. Nor could the Council be deprived of jurisdiction merely because considerations that are claimed to lie outside the Treaties may be involved, if, irrespective of this, issues concerning the interpretation or application of these instruments are nevertheless in question." (cf. ICJ Reports 1972, p. 61, paragraph 27). The Court had gone on to state that "The fact that a defence on the merits is cast in a particular form, cannot affect the competence of the tribunal or other organ concerned, – otherwise parties would be in a position themselves to control that competence, which would be inadmissible." (cf. ICJ Reports 1972, p. 61,

paragraph 27). Thus the competence or jurisdiction of the Council must depend on the character of the dispute submitted to it and on the issues raised, not on those defences on the merits or other considerations, which would become relevant only after the jurisdictional issues had been settled.

65. H.E. AlSulaiti emphasized that although the Respondents had tried to explain away the importance of that ICJ Judgment, they could not hide from the plain, clear wording of the Court. They could not claim that the Council had no jurisdiction because they intended to raise a defence of counter-measures at the stage of the merits. They could not bring forward a defence, any defence, on the merits so as to deny jurisdiction. The Council had not seen the Respondents' Counter-memorial and Qatar's reply, and it could not assume that it had no jurisdiction because of issues which might be in there.

66. Further, all those arguments of the Respondents went to admissibility, not jurisdiction, and should be dismissed at this stage.

67. The Respondents kept claiming that the actions they had taken were lawful counter-measures. They were not.

68. On the issue of the negotiations, Qatar had made it clear that the threshold to establish jurisdiction was quite low.

69. H.E. AlSulaiti underscored that compromissory clauses such as, or similar to, Article 84 of the Chicago Convention or Article II, Section 2 of the Transit Agreement were not uncommon. Qatar believed, and reiterated, that the question as to the date when the condition of negotiation must be fulfilled was not definitively settled in law, as prior to the *Racial Discrimination* case, there had been a long string of cases, going back to 1924 right through to 2008, to the effect that any initially unmet condition, including for jurisdiction, may be fulfilled at the time the Court rules, as otherwise the Applicant would be entitled to initiate fresh proceedings, which would not be in the interests of sound administration of justice. The one case that went against the grain was the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)* case, which had a strong dissenting opinion by five judges (cf. Preliminary Objections, Judgment, ICJ Reports 2011, p. 70, paragraph 160).

70. Recalling that Qatar had mentioned in its said Response that none of its efforts to negotiate with the Respondents had been fruitful, H.E. AlSulaiti indicated that the core issue before the Council was Qatar's request that it determine whether the Respondents had violated the provisions of the Chicago Convention and the Transit Agreement. In so doing, the Council was free, as the Respondents had pointed out in paragraph 42 of their Rejoinder, to make such findings of fact or ancillary determination of law as were necessary to resolve the dispute presented to it. For example, if the Respondents would keep their promise to defend their actions by saying that their counter-measures were valid, then the Council was not prevented from considering elements which would go to a determination of the question. Nor was it an argument in law or in fact to say that the Council was ill-suited or ill-equipped to do so.

71. H.E. AlSulaiti underscored that the issue of negotiations in the two cases now under consideration must be considered in the context that the Respondents had broken off diplomatic relations with Qatar at the same time as they had instituted the said measures. They had acted then, and had continued to act, in concert and in coordination with each other. The Respondents had refused to negotiate with Qatar, instead presenting non-negotiable demands and principles, which if accepted, would render Qatar no longer a sovereign nation. H.E. AlSulaiti averred that it was therefore self-serving for the Respondents to claim that Qatar did not negotiate the aviation aspects with them, when in fact all the other coercive measures had been taken jointly as one package.

72. H.E. AlSulaiti emphasized that Qatar had nevertheless presented evidence that it had negotiated or attempted to negotiate with the Respondents, through the mechanism of ICAO, the very subject matter of the violations of the Chicago Convention and the Transit Agreement. Qatar was seeking to work with the Respondents through ICAO to find a solution to the measures which they had taken. He recalled that when Qatar had taken the matter to the Council under Article 54 n) of the Chicago Convention, the Respondents had asked the Council to recognize that the Parties were cooperating and to encourage them to cooperate further. H.E. AlSulaiti noted that the United Arab Emirates had indicated that the ICAO MID Regional Office had coordinated multiple meetings to review the contingency measures in the Gulf region and to discuss additional proposals. Numerous Representatives had spoken of the need for the Parties to “*continue*” to cooperate, or negotiate, or dialogue, or discuss. The Council had encouraged all Parties to continue their collaboration. Contrary to the Respondents’ assertion, in carrying out those negotiations through the mechanism of ICAO, Qatar did not have to indicate that they were under Article 84 of the Chicago Convention. Discussions and negotiations on the Respondents’ aviation restrictions had taken place in ICAO. If the other Parties had not responded then in a manner to negotiate in good faith and to resolve the aviation measures taken against Qatar, Qatar could not be faulted for that.

73. H.E. AlSulaiti noted that the multiple ICAO meetings held in the Gulf region had also been to seek solutions to mitigate the effects of the coercive measures taken by the Respondents by preventing Qatari-registered aircraft from overflying their airspaces.

74. With regard to the WTO, H.E. AlSulaiti recalled that although Qatar had written to three of the Respondents in Application (A) and to two of the Respondents in Application (B) requesting consultations on the prohibition of Qatari-registered aircraft from accessing their airspaces and landing at their airports, the answer from the three States had been a flat “no”. So within another multilateral framework Qatar had sought unsuccessfully to engage the Respondents on the subject matter of the specific dispute before the Council today.

75. H.E. AlSulaiti recalled that under international jurisprudence, it was not necessary for Qatar to have referred specifically to the Chicago Convention or the Transit Agreement, as long as the negotiations related to the subject matter of those Agreements.

76. With respect to the use of good offices of the Emir of Kuwait and certain other States, H.E. AlSulaiti noted that despite the expressions of willingness by Qatar to negotiate a solution, the only reaction on the part of the four Respondents had been to issue non-negotiable demands, some of which would be an affront to the sovereignty of any State.

77. H.E. AlSulaiti highlighted that among the demands which the Respondents stated were non-negotiable were to: immediately shut down the Turkish military base; shut down Al Jazeera and its affiliate stations; align Qatar’s military, political, social and economic policies with the Gulf and Arab countries; shut down all news outlets funded directly and indirectly by Qatar; respond within 10 days of the list being submitted to Qatar, or the list would become invalid; and consent to monthly compliance audits in the first year, quarterly audits in the second year and annual audits in the following 10 years.

78. H.E. AlSulaiti emphasized that Qatar had made clear that it was open to negotiations and had attempted negotiations, that it would not negotiate on items which would derogate from its sovereignty, but was open to discuss all other issues in accordance with international law.

79. H.E. AlSulaiti indicated that Qatar had noted with particular interest the statement in paragraph 137 of the Respondents “Rejoinder” that Qatar had not made any genuine attempt to negotiate through other channels, such as via Kuwait and the United States. He considered that that was quite an astonishing assertion, which utterly ignored the evidence produced by Qatar in its various exhibits attached to its Response. H.E. AlSulaiti recalled that the then US Secretary of State Rex Tillerson had

said on 19 October 2017 that “It is up to the leadership of the quartet when they want to engage with Qatar because Qatar has been very clear – they’re ready to engage.”.

80. H.E. AlSulaiti stressed that under these circumstances, it was clear that negotiations were futile and the Parties were deadlocked.

81. H.E. AlSulaiti underscored that Qatar clearly had met the requirement for negotiations under Article 84 of the Chicago Convention and Article II, Section 2 of the Transit Agreement. He reiterated that Qatar had been subjected to a brutal campaign from the four States, targeting its civil aviation and aiming to cause direct and premeditated damage to Qatar and its airlines. The campaign was still going on for a year. The Respondents refused to allow Qatari-registered aircraft to fly over or land in their territories, in violation of numerous provisions of the Chicago Convention and the Transit Agreement. They acted with complete impunity.

82. H.E. AlSulaiti recalled that the drafters of the Chicago Convention had given the Council a noble and sacred function to decide upon disagreements between States relating to the interpretation or application of those two instruments. That duty became even more important to protect Member States from aggressive and arbitrary actions by other Member States. The Council was elected by all of the Member States of ICAO to work for the global good of civil aviation. That was the vision of the creators of this Organization.

83. H.E. AlSulaiti recalled Article 4 of the Chicago Convention, which indicated that each Contracting State agreed not to use civil aviation for any purpose inconsistent with the aims of the Convention. He underscored that ICAO contracting States looked to the Council Members to preserve the integrity of the Chicago Convention and the Transit Agreement, and to set an example to the other Contracting States, not to violate themselves those treaties.

84. In concluding, H.E. AlSulaiti indicated that Qatar respectfully requested the Council to accept its submissions at paragraphs 214 and 215 of its Response, including to reject the preliminary objection of the Respondents in both Application (A) and Application (B).

85. After a brief recess to enable consultations, the Respondents and the Applicant presented the following rebuttals to each other’s oral arguments, all of which were duly noted and recorded for the minutes of the meeting.

Respondents’ rebuttal

86. Speaking on behalf of the four Respondents on this very important matter which raised novel issues for the Council, Mr. Georgios Petrochilos (Legal Advisor, Bahrain Delegation) noted that the latter had heard arguments from the Applicant on a number of points. Rather than reiterating the Respondents’ procedural concerns at this stage, he focused only on three of the Applicant’s points. He started with its argument, or perhaps lack of argument, on what was the real issue in dispute. As the Council would have seen, in the pleadings, the term “real issue in dispute” was a legal term of art. Mr. Petrochilos noted that there were three main propositions, the first of which was that it was within the power of the Council to address and assess objectively the object of the dispute. Affirming that that was indeed a responsibility of the Council, he underscored that it was a responsibility that went hand-in-hand with the power of the Council to determine the existence and the scope of its jurisdiction. The second proposition – and it followed from the first one like the night follows the day – was that in so doing the Council was not bound by the characterizations made by the Parties, and in particular, by the characterizations that were made by one Party, in the present case, the Applicant. The third proposition

was that the object of the dispute consisted of the issues that arose objectively from the pleadings of both sides.

87. In now applying that test to the facts of the cases, Mr. Petrochilos indicated that when one looked at Qatar's Applications one saw an attempt – and Council had heard it today– to frame the dispute as one under ICAO international treaties. Even so, it was hard to keep up that pretense in the pleadings, and so the Applicant had had to admit, as in fact it did, that the Respondents had adopted a set of measures which included the severance of diplomatic and consular relations with the Applicant and various other restrictions placed on the latter. Mr. Petrochilos recalled that the Applicant called those measures “actions”, in the plural, and that it admitted that they had several “aspects”. He noted that the position was then made clearer in the Respondents' pleadings, which described the main measures, although very briefly. The pleadings also referred to the stated position of the Respondents from the outset of the measures that the latter were being adopted as lawful counter-measures. Those had been taken, as the Council had heard, in the face of the Applicant's multiple grave and persistent breaches of international obligations essential to the security of the Respondents and the region. Mr. Petrochilos underscored that the Applicant did not dispute that counter-measures were what the Respondents intended to take, nor that the Respondents were entitled to bring that defence and have it determined before any court or tribunal that had proper jurisdiction to adjudicate the real dispute. Indeed, the Applicant conceded in its Response, and had stated the same thing during the present meeting, that in order for the Council to decide on the merits of the case the Council would need to determine “on the facts and in law whether the Respondents have met the conditions for lawful counter-measures”. Mr. Petrochilos underscored that that would require the Council to conduct a forensic factual enquiry, in proper judicial fashion, into the Applicant's illegal activities. He respectfully submitted that that left the Council in a place clearly outside the Chicago Convention and the Transit Agreement.

88. In elaborating thereon, Mr. Petrochilos indicated that, on the merits of the case the Council would first have to determine whether the Applicant had breached or had not breached a number of international obligations that, as it admitted, had, in the main, nothing whatever to do with civil aviation. He queried how the Council was to assess the long list of the Applicant's grave misdeeds which the Respondents said were not related to civil aviation, the Chicago Convention, or to the Transit Agreement, and what legal standard the Council would apply. Mr. Petrochilos noted that, while the Council would then have to determine whether the four Respondent States were entitled to react to the Applicant's breaches by taking a set of counter-measures to induce it to come back to the fold of legality, the Chicago Convention and the Transit Agreement could not help the Council answer that question. He underscored that it was crucial to understand that this forensic and legal examination would come before the Applicant's complaints under the Chicago Convention and Transit Agreement. Why was that? because – and this was uncontroversial between the Parties – counter-measures precluded any question of unlawfulness at the threshold. Mr. Petrochilos emphasized that the Council would not get anywhere near the Chicago Convention or the Transit Agreement, which were the texts that granted it jurisdiction, until it had fully considered and decided a host of other issues on which the Chicago Convention and the Transit Agreement had nothing whatever to say. He averred that one was unable to see how the Council might uphold its jurisdiction in those circumstances. Mr. Petrochilos reiterated that this was not a civil aviation dispute but rather a dispute about fundamentally different and broader duties of international law. He underscored that those duties were neither ancillary, as the Applicant had said, nor incidental issues on any possible view, but rather “the core of the dispute”, to quote the *Chagos Islands* ICJ decision.

89. Turning to the second point, the Applicant's argument about the preliminary nature of the Respondents' objections, or otherwise, Mr. Petrochilos recalled that the *Rules for the Settlement of Differences* (Doc 7782/2), at Article 5(1), characterized a preliminary objection as a question as to “the jurisdiction of the Council to handle the matter presented by the Applicant.”. Thus a preliminary objection might concern either, firstly, whether the Council had jurisdiction at all to consider the Application, or secondly, whether the Council should, in the circumstances of the case, exercise a

jurisdiction that it had. Mr. Petrochilos noted that the first type of objection was one of jurisdiction, while the other type of objection could perhaps, in legal theory, be called one of admissibility. He averred that those distinctions did not matter for the Council's purposes as both of those types of objection were covered by the wording of Article 5(1). They were points as to the jurisdiction of the Council to handle the dispute, whether it had jurisdiction or whether it should exercise it. Mr. Petrochilos indicated that, in any event, there was not much daylight between the two types of objection because both, if successful, precluded the consideration of the substance of the dispute. They operated at the threshold.

90. Mr. Petrochilos highlighted that Article 5(4) of the said Rules provided that where preliminary objections had been lodged, as in the present case, the Council *shall* decide the question as a preliminary matter. Recalling that the ICJ had held "that in principle a Party raising preliminary objections is entitled to have them resolved preliminarily", he underscored that all the said Rules were doing was expressing a general procedural principle. Mr. Petrochilos underscored that the Council had always resolved preliminary objections that it had characterized as going to its jurisdiction in a preliminary decision and had never joined them to the merits of the dispute for consideration later. The only circumstances in which the Council had joined preliminary objections to the merits was where the objection did not possess "an exclusively preliminary character", which might mean either that the Council did not have enough information to properly evaluate the objection at that stage or that it was impossible to rule on the preliminary objection separately on its own without prejudging the merits. Mr. Petrochilos stressed that at present the Council was not in either one of these territories. The Respondents were not asking the Council to validate the lawfulness of the measures they had taken, nor were they asking the Council to condemn the Applicant for its severely unlawful conduct. They were simply asking the Council to recognize the real object of the dispute between the Parties and to recognize and declare on that basis that it did not possess jurisdiction to consider the substance of this dispute.

91. The last point that Mr. Petrochilos wished to make on this issue of the Respondents' primary position was that both of their preliminary objections went to the Council's jurisdiction i.e. to the issue of whether the Contracting States, including the four Respondent States, had or had not consented to have this dispute adjudicated by the Council. In the interest of time, he picked that point up only by reference to Article 84 of the Chicago Convention, in which the Contracting States had consented to the Council's jurisdiction to adjudicate disputes which firstly related to "the interpretation or application of this Convention". It was thus necessary for Council Members to satisfy themselves that the real dispute that was objectively before them was about the interpretation or application of the Chicago Convention. Secondly, it was necessary for them to satisfy themselves that this was a dispute that could not be settled by negotiation. Those were jurisdictional requirements enshrined in Article 84 of the Convention.

92. Turning to the requirement of exhaustion of negotiations before an Applicant may commence proceedings, Mr. Petrochilos re-emphasized that Qatar had not fulfilled that precondition. He noted that Article 84 of the Chicago Convention and Article II of Section 2 of the Transit Agreement were formal: they required that the dispute must be one that could not be settled by negotiations. At the risk of stating the obvious, Mr. Petrochilos underscored that that was not an option at the Applicant's discretion, nor was it a mere formality. He recalled that the ICJ, which was the appeal body in respect of the Council's decisions, required an Applicant to make at least "a genuine attempt to resolve the disagreement through negotiations and that attempt and these negotiations must take place prior to the filing of an Application". Mr. Petrochilos underscored that an Applicant which commenced legal proceedings first and only thereafter sought to start negotiations fell afoul of that jurisdictional requirement. He noted that there were good policy reasons why the Respondents asked the Council to enforce that precondition, as follows: firstly, that unless the Parties had tried to negotiate and had clearly stated their positions in a formal and appropriate way, the contours of the dispute were not known and it was not possible to see the pathology that had developed in this case. The Council was able to assess the nature and the scope of the dispute only through the exchange of pleadings between the Parties, which the Respondents considered was neither appropriate nor helpful. The second policy reason was that if the

Council were to accept jurisdiction on the basis that one can start proceedings first and only then pick up the phone perhaps or send a formal diplomatic correspondence, more importantly and more appropriately, then there would be no motivation for Applicant States to do that which was required of them by the Chicago Convention, and that was not a policy to be encouraged. Thirdly, it was necessary to always bear in mind that judicial resolution was the mechanism of last resort, and that negotiation was the primary method of resolution in international relations. Mr. Petrochilos recalled that the Applicant represented to the Council in its Application (A) and Application (B) that it had not sought to negotiate. It stated in section (g) thereof that “The Respondents did not permit any opportunity to negotiate the aviation aspects ...”. Then the Applicant had had to prove that assertion. He noted that that kind of assertion, which was one that went to futility, was a very demanding one which required one, at the very least, to try to commence negotiations. Mr. Petrochilos underscored that when the Respondents had put the Applicant to that point in their pleadings, the latter had changed tack, presumably because it had not been able to sustain its allegation anymore. The Applicant had therefore stated that it had invited negotiations after all.

93. In making two points on that allegation, Mr. Petrochilos averred that as 11 of the statements relied upon by the Applicant during the present meeting post-dated its said Applications, the Council could ignore them. He highlighted that all of the remaining statements were addressed to third parties, for political consumption in the view of the Respondents: they had not been made in the formal fashion of formal correspondence on specific issues. Mr. Petrochilos further emphasized that, in fact, not even in that irregular fashion adopted by the Applicant had the latter even once formulated a specific invitation to negotiate specific complaints that it now claimed to have under the Chicago Convention and the Transit Agreement, and yet the Applicant had admitted in its own Applications that the negotiations would have to concern civil aviation specifically. He underscored that an invitation to negotiations would have been a very straightforward thing to do for any State that resorted to the Council with a genuine complaint within the ICAO system. Any State would know how to do it. That the Applicant had instead expended its energies on vague political statements addressed to third parties showed that it had no intention to have a genuine negotiation on specific legal rights and obligations.

94. Before closing, Mr. Petrochilos noted that he was authorized to represent to the Council one important factual point: the four Respondent States had heard today for the first time, if they had understood correctly, that the Applicant had invited all of them to negotiate. So far as ICAO-related complaints were concerned, he was authorized to place on record on behalf of the said Respondents that that was incorrect. It had never happened. Unless he could be of further help to the Council under the control of the Respondents’ Authorized Agents, that concluded Mr. Petrochilos’ intervention.

95. Returning to the point raised regarding the safety of civil aviation, H.E. Al Mansoori (United Arab Emirates) recalled that the Council, at its said Extraordinary Session on 31 July 2017, had successfully addressed the issue of contingency arrangements in the Gulf region. In emphasizing that the Applicant’s airports and airspace remained open, he noted that: Qatar Airways alone currently had over 100 aircraft in operation flying to more than 150 destinations worldwide; Qatari-registered aircraft continued to fly in and out of Doha every day; contingency routes had been established through the Respondents’ FIRs; and, in addition, landing and overflight options remained available for safety or emergency purposes. H.E. Al Mansoori indicated that it was very regrettable that the Applicant was exploiting ICAO, a very important technical organization, for its political and media campaign purposes.

Applicant’s surrebuttal

96. H.E. AlSulaiti (Qatar) reiterated that Qatar’s sole intention in submitting its Application (A) and Application (B) and their corresponding Memorials to ICAO had been to raise purely technical issues relating to the interpretation and application of the Chicago Convention and the Transit Agreement and not any political issues. He then gave the floor to Mr. John Augustin (Observer, Qatar Delegation).

97. Enquiring whether the Respondents' Legal Advisor had given an additional presentation or a rebuttal, Mr. Augustin noted that whereas his rebuttal was supposed to have addressed issues raised by the Applicant in its oral arguments, his comments had gone well beyond that into a fresh presentation. He underscored that the Applicant had neither been afforded such an opportunity to give an additional presentation nor been prepared to give one, although the Respondents had apparently been prepared to do so.

98. In then commencing his surrebuttal, Mr. Augustin highlighted that approximately one-third of the Respondents' comments had had to do with issues which absolutely went to the merits of the two cases and whether the Applicant supported terrorism or terrorism financing. He pointed out that whereas in the past when the Council has considered similar matters it had drawn a curtain on discussions which touched on the merits of the case, some ten minutes had been spent by the Respondents in commenting on the Applicant's alleged support for terrorism or terrorism financing, which had nothing to do with the matter currently before the Council.

99. In emphasizing that the Applicant had a completely different view from the Respondents on the issue of admissibility of its claims and the *Rules for the Settlement of Differences* (Doc 7782/2), Mr. Augustin indicated that it was completely unable to understand the logic of the Respondents' reasoning with regard to Article 5(1) of the Rules, which clearly stated "If the Respondent questions the jurisdiction of the Council to handle the matter presented by the Applicant, he shall file a preliminary objection setting out the basis of the objection." The Respondents accepted that there was a difference between jurisdiction and admissibility. However, Article 5(1) referred to the jurisdiction of the Council and not to the admissibility of a case. Mr. Augustin emphasized that ICAO's *Rules for the Settlement of Differences* (Doc 7782/2) were different from the ICJ's Rules in that regard.

100. Mr. Augustin highlighted that a completely new philosophy had been presented by the Respondents, namely, that of the "real issue" in the case. He noted that although Qatar's Application (A) and Application (B) and their corresponding Memorials related purely to the interpretation and application of the Chicago Convention and the Transit Agreement, for some reason the Respondents considered that the Council lacked the jurisdiction to hear and resolve the claims raised therein. Mr. Augustin further indicated that the Respondents had avoided the substantive issue of the *Appeal relating to the jurisdiction of the ICAO Council (India v. Pakistan)* on which the ICJ had rendered its Judgment on 18 August 1972, referred to earlier by H.E. AlSulaiti (cf. paragraphs 69 and 70 above). In that Appeal India had claimed that there were issues outside the Chicago Convention and the Transit Agreement which prevented the Council from examining the merits of the case, the same argument being used by the Respondents in the present two cases. He repeated the ICJ's decision that as long as there was "a dispute of such a character as to amount to a 'disagreement ... relating to the interpretation or application' of the Chicago Convention or of the related Transit Agreement ... then *prima facie* the Council is competent. Nor could the Council be deprived of jurisdiction merely because considerations that are claimed to lie outside the Treaties may be involved, if, irrespective of this, issues concerning the interpretation or application of these instruments are nevertheless in question." (cf. ICJ Reports 1972, p. 61, paragraph 27).

101. Recalling that the Respondents had indicated that they might have a defence on the merits, Mr. Augustin enquired whether that was a promise that they would bring forward the issue of their counter-measures. Noting that neither the Respondents' defence on the merits nor the Applicant's reply had been seen by the Council, he underscored that as a consequence the latter could not make a determination that it lacked jurisdiction to hear and resolve the claims raised in Qatar's Application (A) and Application (B). Mr. Augustin quoted, in this regard, the ICJ's Judgment in the said Appeal relating to the jurisdiction of the ICAO Council (*India v. Pakistan*) "The fact that a defence on the merits is cast in a particular form, cannot affect the competence of the tribunal or other organ concerned, – otherwise

parties would be in a position themselves to control that competence, which would be inadmissible.” (cf. ICJ Reports 1972, p. 61, paragraph 27). Averring that that was the very core of the Respondents’ arguments, he asserted that they wanted, at this stage, to control the competence of the Council for a defence on the merits which no one had seen and to which the Applicant had not replied.

102. Mr. Augustin reiterated that if the Respondents were to put forward a defence that they had instituted lawful counter-measures, then the Applicant considered, on the basis of the evidence referred to earlier, that the matter would be one of the easiest for the Council to decide at that session when it would examine the merits of the two cases. The Respondents, on the other hand, had indicated that it would be extremely difficult as the Council’s hands were tied and it was incapable of handling the matter. The point was that the Council could not make a determination that it had no jurisdiction until it had seen the Respondents’ defence on the merits and the Applicant’s response, which was exactly what the said *Appeal relating to the jurisdiction of the ICAO Council (India v. Pakistan)* had been trying to avoid.

103. Mr. Augustin then referred to the Respondents’ argument, presented in their Statement of preliminary objections, executive summary, paragraph 4, that “While the Council has considerable expertise in the technical aspects of aviation enshrined in the Chicago Convention, it is not well-suited or well-equipped to handle disputes of a wider nature ... including issues regarding terrorism and other matters related thereto.”. He recalled that that argument was repeated in paragraph 69 of the said Statement (“The Council, comprised of aviation specialists, has considerable expertise in the technical aspects of aviation enshrined in the Chicago Convention, but is not well-suited or well-equipped to handle disputes about interference, violation of sovereignty, subversion and terrorism.”), as well as in the Respondents’ Rejoinder, executive summary, paragraph 5 (“The Council is not well-suited or equipped to handle disputes of this nature, nor is it competent to do so.”) and paragraph 58 (“Such a factual and legal assessment requires considerable expertise on technical and legal matters. The Council has considerable specialist expertise in the technical aspects of aviation enshrined in the Chicago Convention. But is not well-suited or equipped to handle disputes about violation of sovereignty, breach of the principle of non-intervention, subversion and terrorism.”).

104. Mr. Augustin indicated that he would very much like to see the Respondents go before a proper tribunal or court of law such as the ICJ and claim that it was not well-suited or well-equipped to discuss issues which went to the merits of a case, whatever the type of issue. He averred that it was a novel legal argument and that it had no basis in fact or in law. Recalling the oral arguments presented earlier by H.E. AlSulaiti (cf. paragraph 67 above), Mr. Augustin reiterated that the Group of Experts established to draft Rules for the Settlement of Differences in the 1950’s had been of the view that: “If Council decides to hear a case arising under Article 84 [of the Chicago Convention] which presents problems of legal complexity or requires special knowledge of economic or air transport matters on the part of the Council, it is open for each State member of the Council to designate, temporarily, a legal, economic or other expert as Representative of that State on Council during the period or on the occasions where the contemplated case under Article 84 is being dealt with.”. Affirming that each Council Member State was free to designate temporarily whomever it wished to listen to a particular case, Mr. Augustin stressed that it could not be said that the Council was ill-equipped or ill-suited and that the case should therefore be dismissed upfront at the preliminary objection stage.

105. All of the preceding oral arguments were duly noted and recorded for the minutes of the meeting. In the absence of any direct questions to the Authorized Agents or Legal Advisors of the Applicant and the Respondents by Council Members non-Parties to the disagreements, the Council proceeded to its deliberations on the items.

Deliberations

106. Taking into account the Council's recent experience with the *Settlement of Differences: Brazil and United States (2016)* (cf. C-DECs 211/9 and 211/10), and the views of the many Council Representatives who had been consulted prior to the present meeting, the Representative of Mexico, in his capacity as Dean of the Council, proposed that the Council proceed directly to a vote by secret ballot in order to take a decision on each of the Respondents' preliminary objections with respect to Application (A) and Application (B), pursuant to Article 50 of the *Rules of Procedure for the Council* (Doc 7559/10).

107. This proposal was seconded by the Representative of Singapore, in his capacity as First Vice-President of the Council, as constituting the most efficient way forward.

108. The Council agreed to the said proposal. Under Article 52 of the Chicago Convention, decisions by the Council required approval by a majority of its Members. In line with the consistent practice of the Council in applying that provision in previous cases, since the Council comprised 36 Members, acceptance of the Respondents' preliminary objections in both Application (A) and Application (B) required 19 positive votes.

109. It was highlighted: that Egypt, Saudi Arabia and the United Arab Emirates were not entitled to vote under Application (A) and that Egypt and the United Arab Emirates were not entitled to vote under Application (B) in accordance with Article 84 of the Chicago Convention and Article 15 (5) of the *Rules for the Settlement of Differences* (Doc 7782/2), which specified that "No Member of the Council shall vote in the consideration by the Council of any dispute to which it is a Party"; that pursuant to Article 66 b) of the Chicago Convention only those Council Member States parties to the Transit Agreement were eligible to vote under Application (B)²; and that following the completion of each secret ballot, a staff member from LEB would assist in the tallying of all of the votes cast for the purpose of ensuring its accuracy.

110. A request made by H.E. Al-Amudi (Saudi Arabia) on behalf of the Respondents for an open ballot for the sake of transparency in the process given that the Council was currently acting as an adjudicator was declined by the Council on the basis of Rule 50 of the *Rules of Procedure for the Council* (Doc 7559/10), which stipulated that "Unless opposed by a majority of the Members of the Council, the vote shall be taken by secret ballot if a request to that effect is supported, if made by a Member of the Council, by one other Member, and, if made by the President, by two Members".

111. In seeking clarification regarding the voting majority required, H.E. Al Mansoori (United Arab Emirates) noted that, pursuant to Article 84 of the Chicago Convention, 33 Council Members were eligible to vote on the Respondents' preliminary objection relating to Application (A). In his view, that meant that 17 positive votes constituted a majority. In further noting that in accordance with Article 66 b) of the Chicago Convention 25 Council Members were eligible to vote on the Respondents' preliminary objection relating to Application (B), he indicated that in his opinion 13 positive votes constituted a majority.

112. Reiterating that Article 52 of the Chicago Convention stipulated that "Decisions by the Council shall require approval by a majority of its Members.", the Director, Legal Affairs and External Relations Bureau (D/LEB) noted that his Bureau had examined the historical records of previous ICAO

² List of Council Member States parties to the Transit Agreement:

Algeria, Argentina, Australia, China (Hong Kong Special Administrative Region and Macao Special Administrative Region), Congo, Cuba, Ecuador, Egypt, France, Germany, India, Ireland, Italy, Japan, Malaysia, Mexico, Nigeria, Panama, Republic of Korea, Singapore, South Africa, Spain, Sweden, Turkey, United Arab Emirates, United Kingdom and the United States.

proceedings under Article 84 of the Chicago Convention relating to the settlement of disputes and that it had been the consistent and unanimous practice of the Council to require approval of its decisions by a majority of its Members, which currently stood at 19.

113. H.E. Al-Amudi (Saudi Arabia) wished to place on record his objection to the statement that 19 votes would constitute the voting majority required under Article 52 of the Chicago Convention. Indicating that it was the Respondents' understanding that a review of the *Rules for the Settlement of Differences* (Doc 7782/2) would be undertaken in September 2018, he underscored that they considered that it was contrary to due process to conduct such a review of the rules whereby the Council adjudicated the settlement of differences while such momentous and critical decisions by the Council on Qatar's Application (A) and Application (B) were pending.

114. In clarifying that when the Council was sitting as a court, as at present, it was not the role of LEB to provide its interpretation of relevant rules, D/LEB underscored that earlier he had merely read the text of Article 52 of the Chicago Convention and recited to the Council the factual historical records of previous Council decisions, no more, no less.

115. In providing factual information in response to a query by the President of the Council, D/LEB recalled that at the Tenth Meeting of its 211th Session on 23 June 2017 the Council had requested the Secretariat to review the *Rules for the Settlement of Differences* (Doc 7782/2) with the aim of determining whether they needed to be revised and updated taking into account relevant developments that had occurred since the publication of that document (cf. C-DEC 211/10, paragraph 45). The Secretariat had subsequently reported that it was necessary to consult the Legal Committee thereon during its upcoming 37th Session (Montréal, 4-7 September 2018). D/LEB further clarified that while Article 33 of the said Rules stipulated that the latter "may, at any time, be amended by the Council", it also stipulated that "No amendment shall apply to a pending case except with the agreement of the parties".

116. H.E. Al Mansoori (United Arab Emirates) also wished to place on record his objection to the voting majority required (19) for the Council's acceptance of the Respondents' preliminary objections with respect to Qatar's Application (A) and Application (B). In protesting against the voting majority required (19), he noted that Article 52 of the Chicago Convention did not provide for a qualified majority and instead provided that decisions by the Council "shall require approval by a majority of its Members". H.E. Al Mansoori further noted that Article 84 of the Chicago Convention and Article 15(5) of the *Rules of Settlement of Differences* (Doc 7782/2) both provided that "No Member of the Council shall vote in the consideration by the Council of any dispute to which it is a party.". He affirmed that Article 52 of the Chicago Convention, read together with Article 84 thereof, should be interpreted as meaning that the majority required was of all Council Members entitled to vote. Accordingly, as there were 33 Council Members entitled to vote on the preliminary objection with respect to Application (A), 17 positive votes would constitute a majority. Furthermore, as there were 25 Council Members entitled to vote on the preliminary objection with respect to Application (B), 13 votes would constitute a majority. H.E. Al Mansoori averred that any other reading of the rules would defeat their purpose and also defy the principle of treaty interpretation, fairness and equal treatment of the Parties. He therefore felt compelled to clearly express his disagreement with the voting majority required (19).

117. In supporting the above intervention by H.E. Al Mansoori, H.E. EL-Adawy (Egypt) requested that his objection to the said voting majority required be also placed on record. He enquired how that requirement would be applied in the case of a dispute regarding the interpretation or application of a Convention to which there were fewer than 19 parties and thus fewer than 19 States, in particular, Council Member States, eligible to vote

118. A request then made by H.E. Al Mansoori (United Arab Emirates) that the Council reconsider the above-mentioned majority of 19 positive votes in the current Council for the approval of its

decisions on the Respondents' preliminary objections with respect to both Application (A) and Application (B) was declined in the absence of any desire on the part of the Council to determine what constituted the voting majority other than the relevant provisions of the Chicago Convention read by D/LEB.

119. The above-mentioned requests and statements were noted for the record.

120. The Council then proceeded to the holding of a secret ballot on the Respondents' preliminary objection with respect to Application (A) and on their preliminary objection with respect to Application (B). In response to questions by the Representatives of the United States and South Africa, D/LEB clarified that: a "Yes" vote was a vote in favour and meant acceptance of the Respondents' preliminary objection; a "No" vote was a vote against and meant disagreement with the said preliminary objection; and "Abstain" meant that there was no vote, neither for nor against the preliminary objection.

121. H.E. Mohammed (Bahrain) recalled that the Respondents had two preliminary objections each to Qatar's Application (A) and Application (B). As explained by Mr. Petrochilos (Legal Advisor, Bahrain Delegation), the first preliminary objection was that the real issue in dispute was not an issue of the interpretation or application of the Chicago Convention or the Transit Agreement. The second preliminary objection was that the dispute was not one which cannot be settled by negotiation as was required by the jurisdictional clauses of those two treaties. As accepting either one of those preliminary objections had the effect of disposing of the case here and now, Mr. Petrochilos suggested that the appropriate wording of the question for the secret ballot for each Application would be "Do you accept either one of the two preliminary objections formulated by the Respondents in respect of each of the Applications?".

122. The President of the Council observed that both of the Respondents' said preliminary objections related to the jurisdiction of the Council. At his request, D/LEB read the text of Article 5(1) of the *Rules for the Settlement of Differences* (Doc 7782/2), which stipulated that "If the Respondent questions the jurisdiction of the Council to handle the matter presented by the Applicant, he shall file a preliminary objection setting out the basis of the objection."

123. The President of the Council noted that in essence for each of Qatar's Application (A) and Application (B) the Respondents had a preliminary objection for which they provided two justifications. He took the point made by Mr. Petrochilos that the voting on each preliminary objection applied to both of the justifications provided therefor.

*Secret ballot on the Respondents' Preliminary Objection – Application (A)
(relating to the interpretation and application of the Chicago Convention and its Annexes)*

124. The result of the secret ballot on the question "Do you accept the preliminary objection?", in which 33 votes were cast by the Council Members eligible to vote, was as follows:

In favour	4 votes
Against	23 votes
Abstentions	6 votes

There were no invalid ballots or blank votes.

125. Based on this result, the President declared that the preliminary objection filed by the Respondents with respect to Application (A) was not accepted by the Council.

*Secret ballot on the Respondents' Preliminary Objection – Application (B)
(relating to the interpretation and application of the Transit Agreement)*

126. The result of the secret ballot on the question “Do you accept the preliminary objection?”, in which 25 votes were cast by the Council Members eligible to vote, was as follows:

In favour	2 votes
Against	18 votes
Abstentions	5 votes

There were no invalid ballots or blank votes.

127. Based on the above result, the President declared that the preliminary objection filed by the Respondents with respect to Application (B) was not accepted by the Council.

Closing statements

128. H.E. AlSulaiti (Qatar), as Applicant, expressed appreciation to the Council for having been afforded the opportunity to participate in the present meeting and to present its views regarding the Respondents' preliminary objections with respect to Qatar's Application (A) and Application (B).

129. Speaking on behalf of the Respondents, H.E. Al-Amudi (Saudi Arabia) reiterated their utmost respect for ICAO and the Council and reaffirmed their unwavering commitment to the rules and principles of the Chicago Convention and the Strategic Objectives and principles of ICAO. He re-emphasized that the cases brought before the Council during the present meeting involved: the Applicant's multiple and persistent breaches of international law, obligations that did not relate to civil aviation; and the sovereign right of the Respondents under international law to take lawful counter-measures to induce the Applicant to comply with its international obligations and to protect against a national security threat. Underscoring that the Respondents regretted that the Council had decided that ICAO had jurisdiction to hear the Applicant's complaints, H.E. Al-Amudi reiterated that they believed that the rules applied today were contrary to the fundamental rules of due process. In particular, they considered that the super majority voting requirement was not in line with the plain meaning of the Chicago Convention.

130. Repeating that the Respondents had not chosen to bring this dispute before the Council, H.E. Al-Amudi indicated that they respectfully submitted that ICAO's role did not extend to consideration of a dispute where the real issue involved national security and international instruments outside of civil aviation. He underscored that while the Respondents had the utmost respect for the Council, they were compelled to exercise their right under Article 84 of the Chicago Convention to appeal the Council's decisions to the ICJ and would file their applications with the Court in this regard immediately following the receipt of the Council's approved decisions. The Respondents continued to take the view that the dispute that the Applicant had brought before the Council fell outside the scope of matters that the ICAO Council could adjudicate upon under Article 84 of the Chicago Convention and Article II, Section 2, of the Transit Agreement. By cause of the Respondents' impending appeal, the dispute was now moving to the ICJ. H.E. Al-Amudi emphasized, however, that as the Respondents had expressed before and as they now again expressed, their four States were committed to continuing to work with all Parties, including Qatar, under the auspices of ICAO to ensure the safe operation of air traffic. He stressed that the safety of civil aviation had been, and remained, the Respondents' top priority. In concluding, H.E. Al-Amudi thanked the President and the Council for their efforts in this matter and their commitment to the Strategic Objectives of this esteemed Organization.

131. The above statements were noted and recorded for the summary minutes of the meeting.

132. On behalf of the Council, the President expressed appreciation to the high-level Government officials from Bahrain, Egypt, Qatar, Saudi Arabia and the United Arab Emirates and the members of their Delegations for having participated in the present meeting. He stressed that, regardless of the Council's decisions regarding the Respondents' preliminary objections with respect to Application (A) and Application (B), it was important that as Member States of the same Organization, ICAO, they continue to communicate, consult and collaborate for the further development of international civil aviation. The President expressed the hope that all ICAO Member States would continue to move forward in that spirit.

133. It was noted that, on the basis of the above proceedings, the Secretariat would prepare and circulate the draft text of the Council's decisions at the preliminary objection stage of the *Settlement of Differences: The State of Qatar and the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia and the United Arab Emirates (2017) – Application (A)*, and the *Settlement of Differences: The State of Qatar and the Arab Republic of Egypt, the Kingdom of Bahrain and the United Arab Emirates (2017) – Application (B)*, which would be tabled for the Council's consideration and approval at its Eleventh Meeting (214/11) on Friday, 29 June 2018.

134. It was further noted that the time-balance of seven calendar days remaining for the Respondents to file their Counter-memorial with ICAO shall begin to run from the date of receipt by the Respondents of the Council's approved decisions regarding their preliminary objections with respect to Application (A) and Application (B). However, the Respondents had indicated their intention to exercise their right under Article 84 of the Chicago Convention and to immediately thereafter file appeals of the Council's said decisions with the ICJ, in which case, pursuant to Article 86 thereof, the said decisions of the Council would be suspended until the appeals were decided by the ICJ.

135. The meeting adjourned at 1810 hours.

COUNCIL — 214TH SESSION

SUMMARY MINUTES OF THE NINTH MEETING

(THE COUNCIL CHAMBER, WEDNESDAY, 27 JUNE 2018, AT 1000 HOURS)

OPEN MEETING

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

PRESENT:

Algeria	— Mr. A.D. Mesroua	Kenya	— Ms. M.B. Awori
Argentina	— Mr. G.E. Ainchil	Malaysia	— Mr. K.A. Ismail
Australia	— Mr. S. Lucas	Mexico	— Mr. D. Méndez Mayora
Brazil	— Mr. O. Vieira (Alt.)	Nigeria	— Mr. M.S. Nuhu
Cabo Verde	— Mr. C. Monteiro	Panama	— Mr. G.S. Oller
Canada	— Mr. M. Pagé	Republic of Korea	— Mr. Y.J. Lee
China	— Mr. Chunyu Ding (Alt.)	Russian Federation	— Mr. S. Gudkov
Colombia	— Mr. A. Muñoz Gómez	Saudi Arabia	— Mr. M.S. Habib (Alt.)
Congo	— Mr. R.M. Ondzotto	Singapore	— Mr. T.C. Ng
Cuba	— Mrs. M. Crespo Frasier	South Africa	— Mr. M.D.T. Peege
Ecuador	— Mr. I. Arellano	Spain	— Mr. V.M. Aguado
France	— Mr. P. Bertoux	Sweden	— Ms. H. Jansson Saxe
Germany	— Mr. U. Schwierczinski	Turkey	— Mr. A.R. Çolak
India	— Mr. A. Shekhar	United Arab Emirates	— Mr. M. Salem (Alt.)
Ireland	— Ms. N. O'Brien	United Kingdom	— Mr. D.T. Lloyd
Italy	— Mr. M.R. Rusconi	United Republic of Tanzania	— Mr. R.W. Bokango
Japan	— Mr. S. Matsui	United States	— Mr. T.L. Carter
		Uruguay	— Mr. M. Vidal

ALSO PRESENT:

Mr. C. Hurley	— President, ANC
Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. C. Fernández (Alt.)	— Argentina
Mr. R.F. Pecoraro (Alt.)	— Brazil
Mr. D. Tavares Taufner (Alt.)	— Brazil
Mr. G. do Prado Lima (Alt.)	— Brazil
Mr. M. Millefert (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mrs. D. Valle Álvarez (Alt.)	— Mexico
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. S. Vuokila (Alt.)	— Sweden
Mr. Ö. Doğrukol (Alt.)	— Turkey
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mrs. M.A. González (Alt.)	— Uruguay
Mr. F. de Medina	— Uruguay

SECRETARIAT:

Mrs. J. Yan	— C/OSG
Ms. I. Sosina	— SA/PRES
Mr. B. Djibo	— D/ATB
Mr. S. Creamer	— D/ANB
Mr. J. Huang	— D/LEB
Mrs. J. Hupe	— DD/ENV
Mr. Tanaka	— C/CC
Mr. N. Dickson	— C/ES
Mr. A. Opolot	— LO
Mr. M. Caballero	— CC
Mr. A. Larcos	— C/ACS
Miss V. Muraca	— Précis-writer

Representatives to ICAO

Bolivia (Plurinational State of)

Chile

Cyprus

Greece

Honduras

Indonesia

Iran (Islamic Republic of)

Lebanon

Paraguay

Peru

Senegal

Sudan

Airports Council International (ACI)

Civil Air Navigation Services Organization (CANSO)

European Union (EU)

International Air Transport Association (IATA)

Subject No. 50: Questions relating to the environment

**Comments from States and International Organizations on the proposed CORSIA
Implementation Elements**

**Report of AGC — Report on the work of the Advisory Group on CORSIA
Update on the work on a Global Market-based Measure Scheme (CORSIA)
Report of the ANC — Adoption of Annex 16, Volume IV**

1. The Council resumed (214/6) its consideration of these four items on the basis of the following working papers relating to the implementation of the Carbon Offsetting and Reduction Scheme for international Aviation (CORSIA): C-WP/14690 and Addendum No.1 (Comments from States and International Organizations on the proposed CORSIA Implementation Elements), C-WP/14765 (Report of the ANC — Adoption of Annex 16, Volume IV), C-WP/14756 (Update on the work on a Global Market-based Measure Scheme (CORSIA), and the Oral Reports on the work of the Advisory Group on CORSIA.

2. In resuming consideration of these items, the President of the Council recalled that at the previous meeting (C214/7), the Council had agreed, in principle to the 2018 version of the ICAO CORSIA CO₂ Emissions and Reporting Tool (CERT) and the ICAO CORSIA Central Registry (CCR), as well as the ICAO capacity-building and training plan to support Member States in their implementation of CORSIA. The President also recalled the clarifications that had been provided by the Secretariat on the ICAO CORSIA CERT and its technical methodologies as contained in the document *Design, Development and Validation of the CERT*, as well as the functional requirements of the ICAO CCR, as described in sections 2.1 and 2.2 of C-WP/14756, section 3 of the Report on the work of the Advisory Group on CORSIA (AGC), and Section 2 of the CAEP Oral Report. In this connection, the Council had endorsed the Secretariat plan for CORSIA capacity-building and outreach activities.

3. Welcoming the progress that had been made in the discussions on CORSIA implementation and the significant amount material that had been considered, the Representative of Ecuador, speaking on behalf of the Member States of the Group of Latin America and Caribbean Countries (GRULAC), presented the following draft decision for consideration by the Council as a means of finding common ground and building consensus toward a final decision on CORSIA. The draft decision presented by the Representative called on the Council:

4.
 - a) to support the approval of the CERT tool, the CORSIA Central Registry (CCR), supplemented by the capacity-building action plan proposed by the Secretariat;
 - b) to adopt Volume IV of Annex 16 supporting the option 1 proposed by the AGC pertaining to definitions of sustainable aviation fuels;
 - c) that Implementation Elements proposed for approval of the Council are to be distributed at least four weeks in advance so as to facilitate proper consultation with capitals;
 - d) that selected Implementation Elements (i.e. Emissions Unit Criteria and Fuel Sustainability Criteria) would be consulted with all Member States;
 - e) that documents corresponding to the Implementation Elements would be approved in Council by a two-third majority;

- f) to support paragraph 2.10 as contained in the AGC report (recommending that the CAEP formulate proposals by the end of the pilot phase so as to strengthen the sustainability criteria);
- g) to support paragraph 2.13 of the AGC report relating to eligibility criteria to be considered during the 215th Session, and addressing operative clause 21 of Assembly Resolution A39-3, indicating a sense of urgency;
- h) to request a regional balanced membership of the proposed Technical Advisory Body (TAB);
- i) to review the composition and procedures applicable to the CAEP, reconsidering its structure and terms of reference so as to integrate a more regional diverse composition and providing transparency;
- j) to support the proposal of Japan, which proposed that in implementing Recommendation 1.1.2 of Annex 16, Volume IV, Part II, Chapter 1, the identification of a State to which a certain aerodrome is attributed to, based on the ICAO *Manual on Location Indicators* (Doc 7910), does not prejudice the territorial sovereignty of each State; and
- k) to highlight that in addition to CORSIA, ICAO had achieved major progress in all the other elements of the basket of CO₂ mitigation measures, which is indispensable to achieving the necessary emissions reductions in line with the global aspirational goals.

5. In concluding his intervention, the Representative of Ecuador underscored that the GRULAC recognizes that a decision on CORSIA is of global importance and would serve to provide a vision for the future in terms of reducing aviation emissions and addressing the impact of aviation on the environment.

6. The President of the Council welcomed the statement made by the Representative of Ecuador and the constructive contribution it represented in seeking to facilitate a consensus decision on the issues. The President also recalled that the basket of measures aim to address aviation emissions and that significant results have already been achieved across these measures, including the adoption of certification standards for aircraft CO₂ emissions, approval of the Global Air Navigation Plan (GANP) and the Aviation System Block Upgrades (ASBU), as well as the adoption of the ICAO 2050 Vision for Sustainable Aviation Fuels, which have led to enhanced operational efficiencies, reduced emissions, and have promoted long-term policies that will address aviation's environmental impact.

7. The Representative of France expressed his support for the recommendations a) and b) of the AGC Oral Report; the text suggested in paragraphs 2.10 and 2.13 for inclusion in the relevant Council decision; and option 1 for the definitions related to aviation fuels in Annex 16, Volume IV. The Representative noted that the results of the testing on the emissions units criteria (EUC) being conducted by the ICAO CAEP, will serve to facilitate the Council's decision-making in this regard during the 215th Session. In terms of the structure of the proposed Technical Advisory Body (TAB), he underscored the importance that if this were proceeded with, it would be necessary to ensure that it was a properly representative body.

8. Thanking the Representative of Ecuador for his intervention, the Representative of France agreed that a decision on (EUC) and sustainability criteria was needed, and acknowledged that broad consultation with Member States would be an important aspect of the Council's consideration of these elements. At the same time, referring to the proposal for approval to occur via a qualified majority of two-thirds of Council Representatives, he cautioned that this qualification should be on an exceptional

and limited basis only, so as not to set a precedent for future discussions. The Representative also indicated his support for the proposal of Japan.

9. Finally, the Representative concluded in recalling that ICAO Member States and the aviation industry had clearly indicated that the CORSIA-related Standards and Recommended Practices were required immediately, in order for CORSIA to be applicable by 1 January 2019. The package presented for consideration, and which had been amended in light of the consultation with States and the Council's own deliberations, was appropriately balanced, and its adoption would represent a valuable step toward ensuring the environmental sustainability of the future of air transport.

10. Welcoming the draft decision of the Representative of Ecuador as a positive roadmap to build a common understanding and to open the way for the successful implementation of CORSIA, the Representative of Saudi Arabia expressed his support for the Representative of Ecuador's proposal. At the same time, and referring to the intervention of the Representative of India during the previous meeting (*cf.* 214/6) regarding the legal status of the implementation elements, the Representative of Saudi Arabia reiterated the need to clarify this issue, as any doubt could lead to disharmony in the implementation of CORSIA across Member States.

11. With respect to the definition of aviation fuel to be included in Annex 16, Volume IV, the Representative thanked the Chairperson of the AGC, as well as the members of the AGC small group established on the subject for their work, and reaffirmed his support for Option 2, as described in the AGC Oral Report. He explained that under Option 1, "CORSIA sustainable aviation fuel" is not subject to the specification that the fuel be "drop-in", whereas "CORSIA lower carbon aviation fuel" is. Moreover, he noted that whereas Option 2 was feedstock agnostic, Option 1 differentiated fuel sustainability according to the source of the fuel such as on whether it was renewable or waste-derived aviation fuel. Using the example of hydrogen, the Representative explained that according to this understanding, hydrogen extracted from fossil fuel would not be considered a sustainable aviation fuel under Option 1. However, for hydrogen derived from biological sources, it would be considered sustainable. Thus, the same fuel, hydrogen, would be considered sustainable or not, based on how it had been produced, which represents an additional gap in this approach, especially keeping in mind that research has suggested that second generation biofuels are not as sustainable as had been envisaged. He also reminded the Council that the current context for assessing the sustainability of fuels under CORSIA was under the already approved two sustainability criteria (*cf.* C-DEC 212/7).

12. Emphasizing the commitment of the Russian Federation to environmental protection, reducing emissions, combating climate change and reducing the harmful impact of civil aviation on the environment, the Representative of the Russian Federation expressed that his delegation remained convinced that the solution to these issues should be implemented in a comprehensive manner, taking into account the full calculation of all costs and emissions, under the provisions of the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, and that the accumulated funds should go to the development of the aviation industry and the introduction of advanced technologies, therein. By reflecting only one stage of the aircraft life cycle, aircraft operation, from the whole, could be misleading and would distort the real picture.

13. On the definition of aviation fuel, the Representative of Spain confirmed his support to Option 1 of the AGC Oral Report, noting that both options were the product of significant discussions within the AGC small group, as well as the AGC itself, and added his appreciation for the views expressed by the Representative of Saudi Arabia, and their active and constructive engagement in this work. While the Representative also expressed his general support for the proposal of the Representative of Ecuador, he agreed with the Representative of France that the decision on the EUC and sustainability criteria by qualified majority should be on an exceptional basis only. Moreover, he underscored that

CORSIA is the fourth measure of the basket of measures, and urged that the decision to adopt the First Edition of Annex 16, Volume IV on CORSIA be taken accordingly. The Representative concluded in reaffirming his support for the amendments introduced to Annex 16, Volume IV by the Air Navigation Commission (ANC), the AGC Oral Report and the consensus text put forward by the Representative of Ecuador as well as the proposal of Japan.

14. The Representative of Malaysia thanked the Representative of Ecuador for his proposal on behalf of GRULAC, and reiterated that Malaysia remains committed to the implementation of CORSIA, including through the voluntary participation of Malaysia in the pilot phase of CORSIA from 2019, and in its support for the adoption of Annex 16, Volume IV. However, on the remaining CORSIA implementation elements, he requested that they be discussed in a transparent and open manner, in consultation with ICAO Member States. In this regard, the Representative sought clarification on how the Secretariat had addressed comments from States on the draft First Edition of Annex 16, Volume IV, and how the Secretariat response to these comments had been communicated to those States. Referencing the response of Malaysia to State letter AN 1/17.14 – 17/129, the Representative emphasized the concern over requesting States to commit in principle to adopt the CORSIA SARPs, without the implementation elements being finalized, and which are considered essential to the implementation of CORSIA. He also shared the concerns raised by the Representative of Saudi Arabia on the definition of aviation fuel and on the ongoing uncertainty over the legal status of the CORSIA implementation elements.

15. With respect to the issue of transparency and broad consultation on the outstanding implementation elements, responding to the comments of the Representative of Spain in particular, the President of the Council clarified that the qualified majority vote option that had been proposed by the Representative of Ecuador would apply only to the decision on EUC and the sustainability criteria.

16. While the Representative of Canada expressed a preference for the status quo in terms of the CORSIA package, in the spirit of compromise, on the definition of aviation fuel to be incorporated into Annex 16, Volume IV, he confirmed that Canada accepted option 1 of the AGC Oral Report, and agreed with the points raised by the Representative of France, including support for the proposal of Japan with respect to Doc 7910. Regarding the proposal of the Representative of Ecuador, he questioned whether there was a need to change the Council voting procedures to a qualified majority in the case of the decision to be taken on EUC and the CORSIA sustainability criteria, and noted his preference would be to maintain the voting procedures unchanged.

17. The Representative of Turkey was appreciative of the proposal presented by the Representative of Ecuador. In this connection, the Representative expressed his willingness to accept the proposal insofar as it would be supported by the majority of the Council, with the caveat that the qualified majority would be on an exceptional basis only. He also voiced his support for the proposal of Japan regarding Doc 7910 and airport attribution, as well as the concern raised by the Representative of Saudi Arabia concerning the legal status of the implementation elements and the need to meaningfully address this issue to avoid any uncertainty in the future. Regarding the First Edition of Annex 16, Volume IV, the Representative was in support of its adoption, reflecting Option 1 of the AGC Oral Report, and in respect to the implementation elements, the Representative shared the views of Spain and France. He concluded in reminding the Council that all of the opinions, whether for or against, expressed by Representatives during these deliberations should be taken into account, especially in exploring ways to introduce future improvements. In this regard, the President of the Council agreed with the Representative of Turkey and highlighted that consensus is built precisely by taking into account all of the views raised, and to reflect to the extent possible, a compromise among them.

18. With respect to Annex 16, Volume IV, the Alternate Representative of the United Arab Emirates fully supported the adoption of the First Edition, including the proposal of Japan. He also voiced his support for the proposal of Ecuador. Regarding the definition of aviation fuels to be included in Annex

16, Volume IV, he noted while that his delegation shared the concerns as expressed by the Representative of Saudi Arabia and also preferred Option 2 of the AGC Oral Report, in an effort to reach a compromise, the UAE would be willing to accept Option 1. However, he requested clarification on why the term “drop-in” was used for “CORSA sustainable aviation fuel” and not for “CORSA eligible fuel”.

19. Voicing his support for the intervention of the Representatives of the Russian Federation, Malaysia and Saudi Arabia, the Representative of India noted that his delegation shared several of the concerns raised by these Representatives. He recalled that during the 212th Session, while the Council had decided to circulate the CORSA SARPs and the implementation elements to Member States as two separate documents, this decision did not constitute an agreement of the text of these documents. To the contrary, his understanding had been that the Council would further consider these documents in light of the feedback received from States. Highlighting that several States had provided extensive comments in particular on aspects related to the sustainability criteria and EUC, including paragraph 4.2.1 Annex 16, Volume IV, and that these comments did not appear to have been deliberated upon by the AGC, the Representative expressed concern on the process of amending the SARPs and implementation elements, as had been produced by the ICAO CAEP, which he considered was not geographically or politically well-balanced.

20. In addition, the Representative noted that the legal status of the implementation elements remained in question, such that by Annex 16, Volume IV referencing outside documents, a legal quagmire appeared to have been created. While he understood that the opinion rendered by the Director, Legal and External Affairs Bureau (D/LEB) stated that any documents referred to in SARPs do not have the binding force of the standard, he was of the view that this specific issue had not been adequately addressed by the Council. In the absence of any further clarification on the legal status of the implementation elements, the Representative of India stated this his delegation would thus assume that anything contained in the implementation elements would therefore be of an optional nature only.

21. Moreover, pointing to the work that remains to be done on EUC and the sustainability criteria, and given the lack of clarity on how the emissions units generated under the UNFCCC are to be treated under CORSA, particularly with reference to operative clause 21 of Assembly Resolution A39-3, the Representative raised concerns over the adoption of Annex 16, Volume IV, given that two critical implementation elements, EUC and the sustainability criteria, referenced in the Standard were not yet available. He also reiterated that in his view, more work on the CORSA package was required to better account for the different views expressed, otherwise adopting Annex 16, Volume IV at present would be akin to signing a blank cheque.

22. Agreeing with the need for compromise in adopting a decision, the Representative of India voiced his appreciation for the proposed way forward suggested by the Representative of Ecuador. With respect to the suggestion for a qualified majority however, the Representative questioned the legal implications of this proposal given that the voting procedure for the Council vis-à-vis the adoption of SARPs, or other non-SARP decisions, was already clearly established by the *Convention on International Civil Aviation*. Furthermore, he asked for clarification on whether the qualified majority would be in place for further revisions to the EUC and sustainability criteria, or if it was only applicable for the approval of the first iteration of the relevant documents. Similarly, should the documents be approved by a two-thirds majority, which is the same threshold for the adoption of SARPs, the Representative questioned whether differences would need to be filed to said documents. He also requested clarification on whether the work on EUC and the sustainability criteria would be carried out under the current ICAO CAEP structure, or whether this work would begin only following the potential reorganization of ICAO CAEP.

23. With a view to addressing the concerns raised by the Representative of India, the President of the Council reminded Representatives that as had been agreed by the Council, the comments

received from States on the CORSIA implementation elements and Annex 16, Volume IV were considered by the AGC and the ANC, respectively. He highlighted that in a number of instances, Annex 16, Volume IV had been revised in line with the feedback from States, and further to the deliberations by the Council, the Commission and the AGC, including on the definition of aviation fuel.

24. On the remaining work on EUC and the sustainability criteria, the President clarified that these elements, following the Council review, would be circulated to Member States for consultation. Subsequently, these elements would be reconsidered by the Council in light of the comments received by States, for final approval, subject to a qualified majority vote. He had also taken note that several Representatives had requested that this process would be in place on an exceptional basis only for the initial documents.

25. The Representative of Ecuador agreed with the clarifications provided by the President. The Representative reiterated that his statement and draft proposal had been presented on behalf of the GRULAC and had been developed after extensive consultations amongst the States in the region as well as more broadly. He recognized that the concerns that had been expressed during the ensuing discussion were not unfamiliar, but that the proposal aimed to provide greater certainty in terms of the way forward, and to better ensure transparency in that all views from States would be considered.

26. While expressing gratitude to the Representative of Ecuador for his proposal, and to all the Representatives for their contributions to the deliberations, the Representative of China remained seriously concerned over the CORSIA package. In terms of the First Edition of Annex 16, Volume IV, monitoring, reporting and verification (MRV), the Representative requested that ICAO enacts the appropriate Standards for States to implement and comply with. In terms of EUC and the sustainability certification of aviation fuel, he also requested that States be empowered to nationally determine which EUC or fuel could be used under CORSIA to claim credits, in line with their specific circumstances and respective capabilities, and while referencing internationally recognized guidance and/or methodologies, such as those published by ICAO. The Representative reiterated that his delegation remained receptive to working with all parties to reach consensus. In turn, the Representative stated that neither the First Edition of Annex 16, Volume IV on CORSIA, nor its associated implementation elements, could currently be accepted, and that his delegation could not agree to paragraphs 5.1 a) and b) of the AGC Oral Report. The Representative of China also echoed the comments made by the Representative of India, cautioning against issuing blank cheques or empty promises on these issues.

27. In addition, with regard to the proposal for the EUC and sustainability criteria implementation elements be adopted by the Council in consultation with Member States and subject to a qualified majority, the Representative of China requested legal advice be sought on how this would interplay with Articles 52 and 90 of the Chicago Convention.

28. In response, in providing clarification on Articles 52 and 90 of the Chicago Convention, the Director, Legal and External Affairs Bureau (D/LEB) explained that Article 52 stipulates the general provision that a decision by the Council shall require approval by a majority of its members. Meanwhile, Article 90 specifically addresses the adoption of Annexes to the Convention, and mandates that such a decision by the Council would require a two-thirds majority approval. Thus, whenever there is a special provision requiring a qualified majority, the Convention is explicit; otherwise, when the Convention is not explicit, the general provision expressed in Article 52 is applicable. In the context of the current discussion on a two-thirds qualified majority, D/LEB noted he had not found any other instance in the Chicago Convention, other than for the adoption of Annexes, that requires a two-thirds majority Council decision. Conversely, while he highlighted that the Convention does not expressly prohibit the Council from voluntarily increasing the majority required for a decision, it is unclear whether any two-third majority decision would be equivalent to the procedure prescribed for the adoption of SARPs in Article 90, thereby enhancing such a decision to the level of SARPs.

29. With respect to the concerns expressed regarding referencing outside material in an Annex, D/LEB reiterated the recommendation that LEB had made on previous occasions in that references to outside material in an Annex should be made in the Notes, rather than in the Standard itself. However, in practical terms, D/LEB highlighted that there were several means to reference outside material in the Annexes, including for instance, the Annex 18 and the *Technical Instructions for the Safe Transport of Dangerous Goods* (Doc 9284), which make reference to outside material, as well as Annex 9 – *Facilitation*, which references outside specifications. He further recalled that on a previous occasion, LEB had rendered an opinion in May 2017 stating that the CORSIA implementation elements were not considered specifications as such. To summarize, D/LEB noted that examples of Annexes referencing outside material are not uncommon, but highlighted each case merits specific consideration. Notwithstanding these recommendations, D/LEB reminded Representatives that it was always within the purview of the Council to make a final decision one way or the other on the adoption of any Annex.

30. The President of the Council underscored that States are consulted on every SARP, and that the ICAO governing bodies are tasked with ensuring that SARPs proposed for adoption are consistent with the previous experience of rulemaking in the Organization. In this regard, the President of the Air Navigation Commission (P/ANC) confirmed that the proposed First Edition of Annex 16, Volume IV, as contained in C-WP/14765, is consistent with the best practices and procedures for standard-setting in the Organization. While he acknowledged that certain aspects of the proposal were more challenging than others in terms of review and that those aspects may not have been consulted with States in light of the discussions emanating from the Commission, the AGC and the Council, P/ANC informed that the proposal for the new Volume was a technically-sound piece of work. The Deputy Director, Environment (DD/ENV) also confirmed that the proposed First Edition of Annex 16, Volume IV had been unanimously agreed, without reservations, by the ICAO CAEP at its Steering Group Meeting in September 2017, before it was submitted to the Council and the relevant deliberative bodies.

31. The Representative of Sweden, while having preferred the definition of aviation fuel as originally proposed in Annex 16, Volume IV, accepted option 1 as described in the AGC Oral Report, and emphasized that fossil fuel-derived aviation fuel should not be regarded as sustainable aviation fuel. The Representative also agreed to the inclusion of the proposed Council decision text contained in paragraphs 2.10 and 2.13 of the AGC Oral Report, as well as the proposal of Japan. Regarding the proposal of the Representative of Ecuador, she saw it to be a reasonable way forward, and having noted the explanations provided regarding the procedure for the approval of the EUC and the sustainable criteria, was in agreement.

32. Given the work that still needed to be done on the implementation elements, and that further consultation with Member States was required in this regard, the Representative of Algeria indicated that at this stage, he could not accept the current version of Annex 16, Volume IV. In addition, while expressing his support for the interventions of the Representatives of India and China, the Representative also supported the Representative of Saudi Arabia in preferring option 2 for the definition of aviation fuel, as proposed in the AGC Oral Report. He thanked the Representative of Ecuador for providing a suggested way forward, and welcomed the proposal as a basis for future discussions that might lead to consensus.

33. The Representative of South Africa voiced his agreement with the proposal made by the Representative of Ecuador on behalf of the GRULAC Member States, in particular with respect to the need for the membership of the TAB to be geographically balanced, and for the structure and terms of reference of the CAEP to be reviewed to better reflect regional diversity and improve transparency.

34. Voicing his support for the comments made by the Representatives of Malaysia and Turkey, the Representative of South Africa also emphasized the point that the opinions expressed by all Member States should be taken into account, especially with respect to capacity-building and outreach and in line with the ICAO *No Country Left Behind* initiative. He also supported the views expressed by the Representatives of China, Saudi Arabia, and the Russian Federation on the issue of the legal status of the CORSIA implementation elements, as well as shared the concern over approving the Annex 16, Volume IV, while several key elements, namely EUC and the sustainability criteria, remained outstanding. In an effort to address these concerns and move forward with the adoption of Annex 16, Volume IV, the Representative suggested that one means to do so would be to ensure that there were appropriate safeguards built in to the process. With these safeguards in place, the Council would be in a better position to be able to adopt Annex 16, Volume IV.

35. Regarding the Representative of South Africa's comment on the need for safeguards, the President of the Council highlighted that the proposal put forward by the Representative of Ecuador already appeared to incorporate a number of safeguards. In particular, he noted that the recommendation that documents be distributed to the Council four weeks prior to their consideration to facilitate proper review and coordination; that the EUC and sustainability criteria be circulated to ICAO Member States for consultation; that the final decision to approve the EUC and sustainability criteria be subject to a two-thirds majority; and that the membership of the TAB, as well as the composition of the ICAO CAEP, ensure equitable geographical representation, were all safeguards to ensure that any concerns of States were addressed, and that the process related to the work on CORSIA was transparent.

36. Recalling the proposal that he had circulated on emissions units during the 212th Session of the Council, the Representative of Colombia reiterated that this proposal recommended that CORSIA be centred on addressing the environmental impact of aviation, and to avoid it becoming an economic measure, which could be possible should the verification of the costs demonstrate that there was an excess of five per cent in total. Acknowledging the concerns raised by several Representatives regarding the current version of CORSIA being considered for adoption, the Representative encouraged further work to reach a consensus decision, which could bring the aviation community together. He noted that although some questions persisted on the implementation of CORSIA and on certain elements of the package, he expressed satisfaction with the current draft of Annex 16, Volume IV, and with the results of the discussions in this regard. Moving forward, the Representative urged that the discussions in CAEP be more inclusive amongst Member States, that there be improved access to information and that there be greater transparency in the CAEP process, with a view to ensure that there is accountability for the work on CORSIA. The Representative concluded in supporting the proposal of the Representative of Ecuador.

37. The Representative of the United Republic of Tanzania reaffirmed his support for the development and implementation of CORSIA, and supported the proposal of the Representative of Ecuador on behalf of GRULAC as valuable platform from which to build consensus. In particular, he welcomed the proposal for Council decisions on relevant implementation elements be subject to a qualified majority, and that this material would need to be made available four weeks in advance of the Council's consideration, noting that these implementation elements would need to be clearly defined. He also echoed the sentiments expressed on the need for the TAB to have a geographically balanced membership, and this same principle should be kept in mind in the discussions on the CAEP structure and working methods.

38. With respect to capacity-building for CORSIA, the Representative also noted that the plan circulated by the Secretariat currently covered 90 Member States. He sought additional clarity on whether this plan would eventually be expanded beyond these initial 90 Member States, particularly as new States may decide to voluntarily join CORSIA in the future.

39. Turning to C-WP/14765, the Representative welcomed the embedded applicability dates in the proposed First Edition of Annex 16, Volume IV. While noting that this information was provided in Appendix A to C-WP/14765, the Representative recommended that these embedded applicability dates be clearly identified in the State letter notifying Member States of the adoption of the First Edition of Annex 16, Volume IV, since this will provide States with a timeline for implementation and will allow them to prioritize actions accordingly. Doing so might also allow for flexibility to further develop those implementation elements that are not yet required for the implementation of CORSIA.

40. Expressing his full support for the proposal presented by the Representative of Ecuador, the Representative of Nigeria appreciated that the proposal had included specific safeguards to address the concerns of Member States in a manner that would facilitate consensus. Regarding the definition of aviation fuel, the Representative stated his preference for Option 2 as contained in the AGC Oral Report, and also supported the proposal of Japan. The Representative also expressed himself to be in agreement with the recommendation regarding the embedded applicability dates as raised by the Representative of the United Republic of Tanzania. Finally, the Representative expressed support for the intervention of Turkey, stressing that the views of all stakeholders need to be taken into consideration, especially the opinions of those that diverge from the consensus, as a means to build compromise towards a balanced decision.

41. The Representative of the United Kingdom supported the statement made by the Representative of France. He also stressed the strong support of the United Kingdom for Option 1 for the definition of aviation fuel under CORSIA, as contained in the AGC Oral Report. Although the status quo had been preferable, Option 1 was well-balanced amongst the different views expressed. The Representative expressed his support for the proposal of Japan.

42. Recognizing that climate change poses a serious threat for the States, especially those in the Asia and Pacific region, the Representative of Australia affirmed the strong support of his government for CORSIA. As such, he was of the view that the proposed Annex 16, Volume IV was consistent with other Annexes, and supported the adoption of the package, including Option 1 of the AGC Oral Report for the definition of aviation fuel, as well as the proposal made by Japan. Although the Representative welcomed the proposal made by the Representative of Ecuador, he expressed the need for caution in relation to establishing any new requirements for a qualified majority to approve the implementation elements. He noted that it would be important to clearly define the terms that are being agreed to in any decision in this regard.

43. Voicing his support for the preceding interventions, the Representative of Singapore confirmed his support for the adoption of the First Edition of Annex 16, Volume IV. With respect to the definition of aviation fuel, the Representative indicated that his preferred definition is in Option 2, as it does not introduce new terminology into the CORSIA lexicon that could generate questions or lead to misunderstanding. However, in the spirit of compromise, he indicated that Singapore could accept Option 1, if this was the consensus view.

44. Regarding the proposal put forth by the Representative of Ecuador on behalf of the Member States of GRULAC concerning the process for approval of the implementation elements, the Representative of Singapore had no objection to the suggestion for a qualified majority decision, nor to the need for the relevant materials to be available four weeks prior to the Council's consideration. However, he underscored that it would be critical that the process leading up to the circulation of the implementation elements, whether it be the EUC or sustainability criteria elements, be as transparent and inclusive as possible, to enable all States an opportunity to share their views, and that the Council should be kept abreast of any developments. Instituting such a safeguard could ensure that the work on CORSIA

remains accessible and equitable to all Member States, and which together with the other safeguards highlighted in the ensuing discussion, could help to allay any concerns that States might have.

45. Finally, on the legal status of the implementation elements, the Representative of Singapore indicated that he did not foresee a problem with references to outside material in Annex 16, Volume IV, and highlighted that this practice in other Annexes had appeared to work well.

46. The Representative of the United States supported the need for there to be a sound legal basis underpinning the CORSIA package, and that standard-setting process for this First Edition of Annex 16, Volume IV was consistent with the relevant ICAO procedures. The Representative was also supportive of the proposal made by the Representative of Ecuador on behalf of the GRULAC Member States, and endorsed the recommendation that the documents pertaining to the implementation elements be circulated to the Council a minimum of four weeks prior to its consideration. However, on this point, the Representative questioned the need for these documents to be sent to Member States via a State letter for consultation, as this could produce delays in taking key decisions by the Council. Moreover, in terms of which implementation elements would be subject to the four weeks advance notice, and the provision of a two-thirds qualified majority, the Representative indicated that his understanding of this option was that these would be exceptional procedures applicable only to the list of eligible emission unit programmes and sustainable fuels certification schemes.

47. Regarding the final point of the Representative of Ecuador's proposal on the review of the composition of CAEP and its working methods, while the Representative of the United States was supportive of the recommendation, he highlighted that in terms of the review to be undertaken by WGGE on the subject as agreed by the Council, these points as raised by Ecuador and other States were among a number of many considerations that may be given by the WGGE to be taken into account during their review process.

48. In response, the President of the Council noted that further reflection would be needed in terms of the State letter to be sent to Member States regarding the implementation elements, and that potentially this could be done in the same manner as it had been when the CORSIA implementation elements had been circulated initially. He also noted the reference made by the United States to the list of eligible emission unit programmes and sustainable fuels certification schemes as also being subject to the four weeks advance notice and qualified majority voting, and suggested that this proposal could also be examined further.

49. The Representative of Japan stressed the importance of adopting the First Edition of Annex 16, Volume IV in the current session, which would represent not only a valuable achievement for ICAO, but also an essential component for States and operators to be able to implement CORSIA on time. The Representative concluded in expressing his appreciation to the Representatives for their support to the proposal of Japan regarding the inclusion of a reference in the decision pertaining to the attribution of airports, as per Doc 7910.

50. It was noted by the Representative of Italy that in replying to State letter AN 1/17.14-17/129, Italy had supported the original drafting of the proposed First Edition of Annex 16, Volume IV. While the original proposal has been revised and changed in light of the State consultations and the ICAO deliberative process, the Representative was of the view that these comments, additional proposals and the concerns raised, were positive contributions, that were key to achieving a better final result. In this regard, and in the spirit of compromise, the Representative of Italy reaffirmed his support for Option 1 of the AGC Oral Report on the definition of aviation fuel. He emphasized the important tasks to be undertaken by the CAEP, as reflected in paragraph 2.13 of the AGC Oral Report, and agreed that it should be captured as such in the Council decision to be taken.

51. The Representative of Italy also considered the proposal of the Representative of Ecuador on behalf of the GRULAC Member States to be a constructive platform from which a consensus could be reached. He was in complete agreement with the need to guarantee constructive consultations and transparency in the work on CORSIA, as well as balanced geographic representation in the relevant bodies. The Representative also supported the recommendation that the Council decision on the implementation elements be subject to a two-thirds majority vote. He also expressed himself to be in support of the decision incorporating a reference to the proposal of Japan.

52. The Representative of Germany noted that his delegation had been a strong supporter of CORSIA and the related SARPs, since the outset. While Germany had preferred more stringent requirements for the SARPs, and noting that the original proposal circulated to Member States for consultation in State letter AN 1/17.14 – 17/129 already reflected a compromise which had been supported by a majority of States, the Representative of Germany recognized that this process of compromise and discussion had been invaluable in arriving at a final consensus. The Representative fully accepted the proposal of the Representative of Ecuador on behalf of the Member States of GRULAC, including the recommendation to adopt the First Edition of Annex 16, Volume IV, with Option 1 of the AGC Oral Report as the definition for aviation fuel. Echoing the point raised by the Representative of Sweden, the Representative stressed that Option 2 was not viable as fossil-fuel derived aviation fuel should not be considered sustainable. He also supported the proposal of Japan regarding Doc 7910.

53. As a representative of a small island State, the Representative of Cuba reiterated the commitment of Cuba to the climate change initiatives of the United Nations system, and in particular, of the UNFCCC. Although she expressed some concern at the short period of time that had been allotted to conduct the work on CORSIA, and which potentially jeopardized the transparency and inclusiveness of the process, she indicated that in moving forward, greater efforts should be made to ensure a more equitable geographic balance in the work. Despite these concerns, the Representative supported nonetheless the adoption of the First Edition of Annex 16, Volume IV. Finally, the Representative indicated that she had taken note of the intervention from India, and in this regard, she requested that further clarification be provided by the Secretariat.

54. The Alternate Representative of Brazil reaffirmed the ongoing support of his delegation to CORSIA, and the contributions it had made to the development of the Scheme. In order to be able to successfully implement CORSIA, greater transparency in the process was needed on the decision-making process, in particular with respect to the interdependencies between Annex 16, Volume IV and the implementation elements. In this regard, he reiterated that legal and procedural issues remained uncertain, as was the linkage between CORSIA and the UNFCCC, which for Brazil, is paramount. On the UNFCCC, he underscored that the units generated by the UNFCCC mechanisms should have environmental integrity and are recognized under multilaterally agreed routes; the eligibility of these units under CORSIA will be essential to achieving the emissions reduction goals under the Scheme. Having expressed his concerns, and while acknowledging that his delegation may not be in complete agreement with all aspects of the CORSIA package, in the spirit of compromise, and with a view to reaching consensus, Brazil supported the proposal of the Representative of Ecuador, on behalf of the GRULAC Member States, as the basis for a way forward.

55. Indicating her agreement with the interventions of both Sweden and the United Kingdom, the Representative of Ireland noted that while her delegation had preferred the original text of the draft Annex 16, Volume IV, she had in a spirit of compromise nevertheless agreed to the proposed Option 1 for the definition of aviation fuel under CORSIA as set out in paragraph 2.8 of the AGC Oral Report. The Representative also expressed her support for the proposal put forward by the Representative of Ecuador on behalf of the GRULAC, with the minor caveats noted by the Representative of France. Additionally, she supported the proposal that had been presented by Japan.

56. The Representative of Congo voiced his support for the interventions of Nigeria and the United Republic of Tanzania, as well as for the proposal of the Representative of Ecuador, together with the clarifications put forth by the Representative of France. Confirming that he supported Option 1 for the definition of aviation fuels as contained in the AGC Oral Report, at the same time, the Representative was sympathetic to the concerns raised by some States in moving forward with the adoption of the CORSIA SARPs when key elements of the CORSIA package had yet to be finalized.

57. Noting that the position of Uruguay was well-reflected in the proposal by the Representative of Ecuador, the Representative of Uruguay highlighted that one of the aims of the draft proposal had been to provide safeguards and guarantees that the future work under CORSIA would follow a process whereby all States have the opportunity to contribute and voice their concerns, as may be necessary. In turn, this would facilitate the review and decision-making process by the Council.

58. The Representative of Mexico was in agreement with the recommendations contained in the AGC Oral Report, as enhanced by the proposal of the Representative of Ecuador. In response to the concerns expressed that consultation with Member States on the implementation elements would create delays in key decisions of the Council, the Representative of Mexico sought to reassure that there would be sufficient time to allow the Council to undertake an in-depth review of the relevant materials, and to provide for possible feedback received from States.

59. Thereafter, speaking in his capacity as Chairperson of the AGC, the Representative of Mexico expressed his gratitude to the ANC and P/ANC for the extraordinary work they had done, especially in regard in the consideration and finalization of Annex 16, Volume IV. Regarding paragraph 2.16 of the AGC Oral Report, and the points raised on the need for safeguards, the Representative recommended that procedures be established for the periodic review process, and that doing so could assuage some of the concerns of some States.

60. In building upon the comments made by a number of Representatives on the need for better geographic representation in the composition of the CAEP, the Representative of Cabo Verde agreed that the Committee should be restructured to better represent the interests of States. The Representative was in favour of adopting the CORSIA package, and fully supported the proposal made by the Representative of Ecuador on behalf of the GRULAC States.

61. The Representative of Panama associated himself with the intervention made by the Representative of Saudi Arabia, in particular with respect to the use of hydrogen fuel as an alternative aviation fuel.

62. In expressing his gratitude for the work of all parties involved in the process, the Representative of Turkey especially singled out the ANC for their outstanding work, as well as DD/ENV for her guardianship and commitment to the development of this CORSIA package of materials. Regarding the points made by D/LEB, the Representative noted that the opinions rendered by the Legal Bureau of the Secretariat had always been consistent and have provided valuable guidance to the Council in its decision-making. At the same time, he was of the view that regardless of this good advice, the Council was the only body empowered to make a decision on the SARPs. Moreover, on the issue of referencing outside documents within an Annex, insofar as doing so was not in contravention of the Convention or Resolutions of the ICAO Assembly, it was within the purview of the Council to decide on the appropriate references within the Annex, including on an exceptional basis, insofar as there was clarity on the issue. The Representative concluded in commending the President of the Council for the guidance he had provided throughout the deliberations on CORSIA.

63. The President of the Council welcomed the intervention of the Representative of Turkey, and highlighted that given the pace of the development of new SARPs, it will be important to establish partnerships with other standard-making organizations, and as required, to incorporate or reference the work these organizations may have already undertaken in the Annexes so that all Member States may benefit from it. He reminded the Council that the objective of establishing SARPs, policies and procedures as well as guidance material for States and the industry, was to ensure global harmonization and interoperability of the aviation system, without which the aviation sector could not function.

64. Reiterating the points he had made in his earlier intervention concerning the legal status of the implementation elements, and the explanation provided by D/LEB as well as by the President of the Council, the Representative of India, using the example of paragraph 4.2.1 of Annex 16, Volume IV, sought further clarification on whether the two ICAO documents entitled “CORSA Eligible Emissions Units”, and “CORSA Emissions Unit Eligibility Criteria”, referenced in paragraph 4.2.1 had been imbued with the same legal status as the SARPs, by virtue of being referenced therein. If so, he questioned whether States would then be required to notify a difference in this regard.

65. With reference to the suggestion made by the Representative of Singapore on the way forward, the Representative of India underscored the need for a more inclusive process of decision-making for those items related to CORSA. While he recognized that the Chairperson of the AGC had provided opportunities for non-AGC members to contribute to the discussions, in addressing politically sensitive issues as in the case of the CORSA implementation elements, the Representative suggested that membership of the AGC be expanded to allow for greater participation and wider consultation. The Representative of India also took the opportunity to support the proposal of Japan.

66. In response, D/LEB addressed the questions raised by the Representative of India, and by extension the Representative of Cuba, on the legal status of those documents referenced in the proposed Annex 16, Volume IB, in reiterating the understanding that those documents would not be conditionally binding, as is the case for SARPs. As such, differences would not need to be filed as those documents do not have the status of being conditionally binding.

67. The Representative of Kenya supported the adoption of Annex 16, Volume IV, and in particular endorsed the safeguards provided for in the proposal of the Representative of Ecuador. She also noted the support of her delegation for the proposal of Japan, and in reference to the AGC Oral Report, stated a preference for Option 2 for the definition of aviation fuel under CORSA. The Representative further agreed with the comments of the Representative of the United Republic of Tanzania regarding the embedded applicability dates.

68. Acknowledging the growing consensus toward a decision on the CORSA package, and bearing in mind the review process to be undertaken by WGGE on the working methods of the ICAO CAEP, the Representative of Argentina stressed the need for the Council to take a decision during the current 214th Session on suitable guidelines for the CAEP in terms of ensuring the Council’s access to relevant information and materials related to CORSA, pending the results of the WGGE review.

69. The Representative of Saudi Arabia expressed his support for the proposal of Japan, as well as for the intervention made by the Representative of Colombia, noting that the latter had raised significant issues related to the implementation of CORSA. Recalling the comments made with respect to paragraph 2.15 of the AGC Oral Report on the periodic review of CORSA, the Representative also indicated that he had previously requested that this paragraph be transferred to paragraph 5, containing the AGC recommendations, with a specific framework in terms of the time period.

70. Given the discussions on the definition of aviation fuel under CORSIA, and the differences expressed in this regard with respect to the preference for Options 1 or 2 of the AGC Oral Report, in an effort to build a broader consensus the President of the Council proposed to delete the term “drop-in” from the definition of “CORSIA lower carbon aviation fuel”, under Option 1. The Representatives of the United Arab Emirates and Nigeria were in favour of the change proposed. The Representative of Saudi Arabia thanked the President for his proposal, but indicated that at this stage he was not yet in a position to support Option 1 since it still did not sufficiently address the concerns raised regarding the assessment of fuel sustainability in relation to the source of said light fuel.

71. At the President of the Council's suggestion and taking into account the time constraints, the Council agreed to suspend further deliberations on this subject until the next meeting of the Council in the afternoon, while noting that upon their return, a decision would need to be taken on the outstanding items. In the interim and in advance of the afternoon meeting, the Council:

- a) emphasized that ICAO had achieved major progress in all the other elements of the basket of CO₂ mitigation measures including adoption of certification standards for aircraft CO₂ emissions, approval of the Global Air Navigation Plan (GANP) which had led to enhanced air navigation efficiencies and reduced emissions, as well as adoption of long term vision and policies for the greater use of sustainable aviation fuels;
- b) recalled that while the Council had considered a variety of different market-based mechanisms, it had ultimately and progressively settled on a carbon offsetting scheme (CORSIA) as being the most advantageous option following substantial analysis of the pros and cons;
- c) further recalled that in order to avoid the proliferation of charges and taxes applied in some national or regional jurisdictions, the Council had agreed that the implementation of a global market-based measure was far preferable to the patchwork of separate regional mechanisms and welcomed the consensus that had since coalesced around the need for a global approach through CORSIA;
- d) reaffirmed that the *Convention on International Civil Aviation* (Chicago Convention) assigns responsibility for the adoption of Standards and Recommended Practices (SARPs) to the ICAO Council and that in this connection, the latter relies on technical advice that it obtains from subsidiary bodies, such as in this instance, the ANC, CAEP, and the AGC;
- e) reiterated that the Secretariat plan of outreach and capacity-building activities will be crucial in ensuring a successful outcome by supporting Member States especially vis-à-vis the implementation of monitoring, reporting and verification (MRV) provisions of the SARPs to be adopted;
- f) further reiterated that the ongoing work in relation to the eligibility of aviation fuels and emissions units should be as consultative a process as possible; and
- g) recalled that the Working Group on Governance and Efficiency (WGGE) is undertaking a review of the terms of reference, structure, membership, as well as working methods of the CAEP, and in this regard, noted that pending the outcome of this review it was important to ensure that Member States had access to all necessary documentation.

Any other business

Supplementary items

72. Pursuant to a request from the Chairperson of the Human Resources Committee (Representative of Ecuador), the Council agreed to consider two supplementary items (age limit for secondees and request for exceptional extension of consultants working on a joint ICAO-EU project) at its final meeting of this session on Friday, 29 June 2018 (C-MIN 214/12 refers).

73. The meeting adjourned at 1315 hours.

COUNCIL — 214TH SESSION

SUMMARY MINUTES OF THE TENTH MEETING

(THE COUNCIL CHAMBER, WEDNESDAY, 27 JUNE 2018, AT 1430 HOURS)

OPEN MEETING

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

PRESENT:

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| Algeria | — Mr. A.D. Mesroua | Kenya | — Ms. M.B. Awori |
| Argentina | — Mr. G.E. Ainchil | Malaysia | — Mr. K.A. Ismail |
| Australia | — Mr. S. Lucas | Mexico | — Mr. D. Méndez Mayora |
| Brazil | — Mr. O. Vieira (Alt.) | Nigeria | — Mr. M.S. Nuhu |
| Cabo Verde | — Mr. C. Monteiro | Panama | — Mr. G.S. Oller |
| Canada | — Mr. M. Pagé | Republic of Korea | — Mr. Y.J. Lee |
| China | — Mr. Chunyu Ding (Alt.) | Russian Federation | — Mr. S. Gudkov |
| Colombia | — Mr. A. Muñoz Gómez | Saudi Arabia | — Mr. S.A.R. Hashem |
| Congo | — Mr. R.M. Ondzotto | Singapore | — Mr. T.C. Ng |
| Cuba | — Mrs. M. Crespo Frasquieri | Spain | — Mr. V.M. Aguado |
| Ecuador | — Mr. I. Arellano | Sweden | — Ms. H. Jansson Saxe |
| France | — Mr. P. Bertoux | Turkey | — Mr. A.R. Çolak |
| Germany | — Mr. U. Schwierczinski | United Arab Emirates | — Mr. M. Salem (Alt.) |
| India | — Mr. A. Shekhar | United Kingdom | — Mr. D.T. Lloyd |
| Ireland | — Ms. N. O'Brien | United Republic of Tanzania | — Mr. R.W. Bokango |
| Italy | — Mr. M.R. Rusconi | United States | — Mr. T.L. Carter |
| Japan | — Mr. S. Matsui | Uruguay | — Mr. M. Vidal |

ALSO PRESENT:

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|---------------------------------|----------------------|
| Mr. C. Hurley | — President, ANC |
| Mrs. M.F. Loguzzo (Alt.) | — Argentina |
| Mr. C. Fernández (Alt.) | — Argentina |
| Mr. R.F. Pecoraro (Alt.) | — Brazil |
| Mr. D. Tavares Taufner (Alt.) | — Brazil |
| Mr. M.G. Correira Pontes (Alt.) | — Brazil |
| Mr. H. Gonzales (Alt.) | — Brazil |
| Mr. M. Millefert (Alt.) | — France |
| Mr. N. Naoumi (Alt.) | — Germany |
| Mr. M. Usami (Alt.) | — Japan |
| Mrs. D. Valle Álvarez (Alt.) | — Mexico |
| Mr. K. Lee (Alt.) | — Republic of Korea |
| Mr. D. Subbotin (Alt.) | — Russian Federation |
| Mr. M.S. Habib (Alt.) | — Saudi Arabia |
| Mr. S. Vuokila (Alt.) | — Sweden |
| Mr. Ö. Dođrukol (Alt.) | — Turkey |
| Mr. I.C. Şahinkaya (Alt.) | — Turkey |
| Mrs. K.L. Riensema (Alt.) | — United Kingdom |
| Mrs. M.A. González (Alt.) | — Uruguay |
| Mr. F. de Medina (Alt.) | — Uruguay |

SECRETARIAT:

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| Mrs. J. Yan | — C/OSG |
| Ms. I. Sosina | — SA/PRES |
| Mr. B. Djibo | — D/ATB |
| Mr. S. Creamer | — D/ANB |
| Mr. V. Smith | — D/ADB |
| Mr. J. Huang | — D/LEB |
| Mr. P. Molinari | — C/PRO |
| Mr. B. Verhaegen | — SELO |
| Mr. A. Opolot | — LO |
| Ms. M. Weinstein | — LO |
| Ms. O. Bondareva | — LO |
| Mrs. P. Romano | — H/ASV-ARU |
| Mr. Y. Nyampong | — LO |
| Mrs. D. Brookes | — LEB |
| Mr. M. Vaugeois | — LEB |
| Mr. A. Larcos | — C/ACS |
| Miss A. Tyo | — Précis-writer |

Mr. J. Klang, Chairperson, CESAIR

Representatives to ICAO

Bolivia (Plurinational State of)

Chile

Cyprus

Greece

Honduras

Indonesia

Iran (Islamic Republic of)

Lebanon

Paraguay

Peru

Senegal

Airports Council International (ACI)

Civil Air Navigation Services Organization (CANSO)

European Union (EU)

International Air Transport Association (IATA)

Subject No. 50: Questions relating to the Environment

**Comments from States and international organizations on the proposed
CORSA implementation elements
Report on the work of the Advisory Group on CORSA
Update on the work on a global market-based measure scheme
Adoption of Annex 16, Volume IV**

1. The Council resumed consideration of the above-mentioned environmental items, which had been subject of deliberations during the Sixth, Seventh and Ninth meetings of the 214th Session (C214/6, C214/7 and C214/9).
2. The Representative of Saudi Arabia was pleased to announce his State's support for the proposals brought forth in the earlier deliberations, in particular, its support for the amendment of the definitions proposed at the previous meeting, this being that the definitions of "Conventional aviation fuel" and "Aviation alternative fuel" be replaced by new definitions for "CORSA sustainable aviation fuel", "CORSA lower carbon aviation fuel" and "CORSA eligible fuel" (C214/9).
3. In accordance with the procedures established under Article 90 of the Convention on International Civil Aviation, the Council then proceeded to vote to adopt the first edition of Annex 16, Volume IV – *Carbon Offsetting and Reduction Scheme for International Aviation* (CORSA), as contained in Appendix C to C-WP/14765.
4. In consideration of these items, the Council:
 - a) adopted with 30 votes in favour, 1 against and 3 abstentions (and 2 Representatives being absent), the first edition of Annex 16, Volume IV – *Carbon Offsetting and Reduction Scheme for International Aviation* (CORSA), as contained in Appendix C to C-WP/14765, with the following revisions to the definitions in the proposed Annex 16, Volume IV, and requested the Secretariat to incorporate any consequential editorial changes arising from the revised definitions to other provisions of the proposed Annex 16, Volume IV and CORSA Implementation Elements:

~~*Conventional aviation fuel.* A petroleum-based drop-in aviation fuel.~~

~~*Aviation alternative fuel.* A non-petroleum-based drop-in aviation fuel.~~

~~*CORSA S-sustainable aviation fuel.* A renewable or waste-derived aviation An aviation alternative-fuel that meets the CORSA Sustainability Criteria under this Volume.~~

~~*CORSA lower carbon aviation fuel.* A fossil-based aviation fuel that meets the CORSA Sustainability Criteria under this Volume.~~

~~*CORSA eligible fuel.* A CORSA sustainable aviation fuel or a CORSA lower carbon aviation fuel, which an operator may use to reduce their offsetting requirements.~~
 - b) approved, as part of Annex 16, Volume IV, the notes and attachments as contained in Appendix C to C-WP/14765;
 - c) approved the Resolution of Adoption as contained in Appendix D to C-WP/14765;

- d) approved as part of the new first edition, the Foreword of Annex 16, Volume IV as contained in Appendix E to C-WP/14765;
- e) agreed that the embedded applicability dates in Annex 16, Volume IV should clearly be communicated to Member States in the State letter on the adoption of the first edition of Annex 16, Volume IV;
- f) with regard to paragraph 5 of C-WP/14765,
 - i) requested the Secretary General to ensure that ICAO documentation relevant to the CORSIA would be available free of charge;
 - ii) agreed that additional guidance material related to error corrections to annual CO₂ emissions reports should be developed by CAEP during its CAEP/12 cycle for inclusion in the *Environmental Technical Manual* (ETM); and
 - iii) recognized the need to consider the development of methodologies and procedures for the CORSIA periodic review as soon as practicable in advance of the first review in 2022;
- g) noted that in implementing Recommendation 1.1.2, Annex 16, Volume IV, Part II, Chapter 1, the identification of a State to which a certain aerodrome is attributed to, based on the *ICAO Manual on Location Indicators* (Doc 7910), does not prejudice the territorial sovereignty of each State;
- h) requested CAEP to continuously assess emerging and future technologies and processes leading to the production of CORSIA eligible fuels, and in this regard, further requested CAEP to develop further proposals, at the latest by the end of the pilot phase, on strengthened Sustainability Criteria, including on Themes 1 and 2, specifically applicable to CORSIA eligible fuels;
- i) further requested CAEP to report the results of informal testing of some programmes against the emissions units criteria, with recommendations to the Council on the establishment of a Technical Advisory Body (TAB), including on its structure, terms of reference and process of work, taking into account the need for balanced geographical representation in its membership, for consideration, along with recommendations from Member States, at the 215th Session of the Council, which is scheduled in November 2018;
- j) recognized that a decision on the emissions units criteria (EUC) would need to be taken as a matter of urgency by the Council;
- k) further recognized that consideration of how to give full effect to operative clause 21 of Assembly Resolution A39-3 (“*Consolidated statement of continuing ICAO policies and practices related to environmental protection – Global Market-based Measure (MBM) Scheme*”) and also how to ensure the eligibility of units from a range of programmes, would be given as a matter of urgency by the Council;
- l) decided that the ICAO documents that reflect the CORSIA Implementation Elements related to the eligibility of aviation fuels and emissions units, when finalized, would be made available to the Council at least four weeks prior to the Council’s consideration, while emphasizing the need for the Council to be kept informed of the progress in a transparent, inclusive and consultative

manner, and in this regard, further decided that these CORSIA Implementation Elements would be subject to consultation with Member States, and that on an exceptional basis, the approval of these CORSIA Implementation Elements would be based on a majority of at least two-thirds of support by Representatives on the Council, on the understanding that this requirement should not set a precedent for future approvals;

- m) affirmed its approval of: the 2018 version of the ICAO CORSIA CO₂ Estimation and Reporting Tool (CERT); CERT technical methodologies as contained in the document “*Design, Development and Validation of the CERT*”; and the functional requirements of the CORSIA Central Registry (CCR), as described in Sections 2.1 and 2.2 of C-WP/14756, Section 3 of the AGC oral report, and Section 2 of CAEP oral report;
- n) requested that the Secretariat plan for the CORSIA-related outreach and capacity-building activities should be extended to all Member States that need to implement the monitoring, reporting and verification (MRV) provisions of the Annex 16, Volume IV, regardless of their participation in the CORSIA offsetting requirements and in this regard, called upon all Member States to provide the necessary support to the Secretariat in undertaking outreach and capacity-building efforts;
- o) recalled its decision to task the Working Group on Governance and Efficiency (WGGE) to undertake a review of the CAEP terms of reference, structure, membership and working methods (paragraph 35 d) of C-DEC 213/6 refers), and while noting that pursuant to this decision the WGGE had recently constituted a subgroup to assist in this review process, requested the WGGE to consider the need for regional representation of CAEP membership, among other issues;
- p) requested the Secretariat to provide the Council Representatives with the full access to the CAEP secure website, and to facilitate the information to and participation of Member States in CAEP-related meetings;
- q) further requested the Secretariat, with support from CAEP, to continue to monitor the implementation of all elements of the basket of measures to account for the contribution of each element in the basket of measures in meeting emissions reductions; and
- r) further requested the Secretariat to enhance communication efforts to the public in relation to the adoption of Annex 16, Volume IV as well as other achievements in other parts of the basket of measures.

5. The Secretary General congratulated the Council for its decision and expressed her appreciation to the Secretariat and in particular the Deputy Director, Environment Branch and her team, under the leadership of the Director of the Air Transport Bureau for their tireless hard work in assisting the Advisory Group of CORSIA (AGC), the Council, the Air Navigation Commission (ANC), and in cooperation with the Air Navigation Bureau (ANB), to reach this historic agreement. The Secretary General assured the Council that the Secretariat would continue to work with Member States and the aviation industry to implement this decision.

6. Stressing the importance of the capacity-building element of the CORSIA, the Secretary General also advised that a seminar was scheduled to take place from 2 to 3 July 2018 at ICAO Headquarters, during which Member States would be invited to express an interest in providing expertise to assist the Secretariat in the delivery of seminars and workshops on capacity-building exercises. In addition, as had been outlined in State letter ENV 1/1.1-18/60 dated 11 May 2018, the Organization was

very much looking forward to support for capacity-building initiatives by Member States through voluntary financial and in-kind contributions as well as in aligning their bilateral activities for capacity-building with those of the ICAO Secretariat.

7. The Representative of Colombia welcomed the decision that the Council had just taken in adopting the CORSIA SARPs and Implementation Elements. He wondered however whether it might not have been preferable to have stated in sub-paragraph q) above “to monitor the implementation of all elements of the basket of measures to *quantify and better* account for the contribution....”.

8. The Representative of China addressed the Council to declare his delegation’s reservation to Annex 16, Volume IV, which comprised several items. First, China reiterated its reservation to the principle of carbon neutral growth from 2020 as appeared in Assembly resolutions A39-2 and A39-3 (“*Consolidated statement of continuing ICAO policies and practices related to environmental protection – Climate change*” and “*Consolidated statement of continuing ICAO policies and practices related to environmental protection – Global Market-based Measure (MBM) Scheme*”), respectively. In doing so, the Representative expressed the view that ICAO did not possess the right to establish mandatory Emissions Unit Criteria (EUC).

9. Second, the Delegation of China noted that since the 39th Session of the Assembly, ICAO had undertaken considerable work on the development of CORSIA Standards and Recommended Practices (SARPs) and the Implementation Elements of the CORSIA but the related working processes and mechanism had lacked transparency and representativeness. Experts from developing countries such as China had participated in the relevant processes but their comments and suggestions had not been given due consideration. Developing countries such as China had always expressed serious concerns on this initiative and had proposed corrective actions which also had not been allotted due consideration. The Representative of China asserted that this had left his delegation perplexed and in this connection, he expressed his delegation’s regret at this outcome.

10. Third, it was the view of the Delegation of the China that much of the content of the implementation documents and CORSIA SARPs had exceeded the relevant mandate given by Resolution A39-3 and the Convention on International Civil Aviation. For example, the differences among States, particularly developing States, with regard to their domestic policies, capacity-building and economic structures had been disregarded. The content in question related to all parties’ interests but had not adhered to the principles of consensus driven by Member States. Since a large number of documents referencing the SARPs had yet to be developed, it was felt this represented empty promises and also constituted a dangerous precedent in the ICAO decision-making process.

11. Fourth, in view of the above, China would not accept nor implement the Annex 16, Volume IV, SARPs and the Implementation Elements referenced within, which were being adopted by the Council in the current session. The Council was also reminded to take note of the legal opinion, issued by the Legal Affairs and External Relations Bureau, with regard to the legal status of SARPs and the relevant documents.

12. Fifth, China reiterated that it had never made any decision or commitment to participate in CORSIA, and China did not require any other party to make such commitment or decision on its behalf. As a result, the Delegation of China demanded that ICAO immediately correct the impression that it had been giving to the effect that China was among the States that would participate in CORSIA starting from 2021. In this regard, the Representative specifically requested that ICAO correct the statement on its official website that gave this impression as well as in all the related documentation.

13. Sixth, China would continue to promote its domestic green and low-carbon civil aviation development and promote aviation sustainable development by adopting all measures including MBM. China would strive to reference relevant standards and methodologies that would not be lower than the ICAO relevant Standards when certifying EUC and sustainable aviation fuel. China also expressed its willingness to conduct pragmatic cooperation with all parties on the basis of equal consultation and mutual respect. In concluding, the Representative of China advised that his State would be filing its differences to the Annex 16, Volume IV, SARPs in accordance with Article 38 of the Convention on International Civil Aviation.

14. The Representatives of France, Nigeria, Saudi Arabia and United States each expressed their appreciation to the President of the Council for his leadership and to the Secretariat, and in particular the Deputy Director, Environment Branch, and her staff, for their strenuous efforts to expeditiously finalize the first edition of Annex 16, Volume IV within a tight timeframe. Acknowledging the historic significance of the occasion, the Representatives also declared their appreciation to the President of the ANC, the Chairperson of the AGC, former Council Representatives as well as the staff of their respective administrations for their tireless work in this regard.

15. The President of the Council also took the opportunity to reiterate that much work remained to be undertaken, noting the range of items reflected in the Implementation Task List contained in Appendix A to C-WP/14765, including in relation to the issuance of supporting documentation and in capacity-building activities to support Member States. This was duly acknowledged by the Council.

Subject No. 16: Legal work of the organization

International interests in mobile equipment

16. The Secretary General introduced working paper C-WP/14766, which invited the Council in its role as Supervisory Authority of the international registry to approve the reappointment of the Registrar, Aviareto Ltd., for a fourth five-year term commencing 1 March 2021, or to approve the initiation of the tendering process for the appointment of the Registrar, and to delegate the authority to the Secretariat either to negotiate a new contract with Aviareto or to carry out a tendering process and to negotiate a contract with the successful tenderer.

17. In her introductory remarks, the Secretary General noted the history of the selection and the reappointment of the current Registrar and the factors for the Council's consideration in deciding on the Registrar's reappointment or appointment. These included that customer satisfaction surveys of the Registrar had been conducted since 2007, and its score had risen over the years to a rating of 8.45 out of 10. The results of ICAO's audit in November 2017 of Aviareto and its operation of the Registry had concluded that the governing processes and controls evaluated were adequate, appropriate, and effective to provide reasonable assurance that risks to the achievement of operational objectives were being effectively managed, and the Registrar had expressed its desire to be reappointed for a fourth term.

18. It was further noted that the Commission of Experts of the Supervisory Authority of the International Registry (CESAIR) supported the Registrar's reappointment. Should the Council decide on reappointment, consultation related thereto would commence 18 months prior to termination of the contract which would be by 28 August 2019. The working paper set out the timelines and costs associated with the Council decision to put the operation of the Registry to a tendering process, and in accordance with the contract, ICAO would give notice of the decision to the Registrar by 28 August 2018. A transfer to a new Registrar would be a complex operation which would need to be carried out with the highest

levels of risk control and risk management. A risk could also be associated with a change in jurisdiction as the Irish Commercial Court had been efficient in the hearing of commercial claims in ten cases to date all relating to invalid or obsolete registrations on the Registry which were discharged by the Registrar.

19. The Chairperson of the Commission of Experts of the Supervisory Authority of the International Registrar (CESAIR), Mr. Jeffrey Klang, was then invited to present to the Council the recommendations and views on behalf of the CESAIR on the reappointment of the Registrar of the International Registry.

20. The Chairperson of the CESAIR (Mr. Jeffrey Klang) expressed his gratitude for the opportunity to speak on behalf of the Commission with respect to the reappointment of the Registrar. As had been mentioned by the Secretary General in her introductory remarks, the CESAIR members had been asked for their recommendation as to whether Aviareto should be reappointed as the Registrar. It was significant that within two weeks of the request for feedback by the Secretariat ten of the 13 CESAIR members had responded and industry had also responded, all in the affirmative recommending that Aviareto Ltd. be reappointed as the Registrar for a fourth term. Among the reasons cited for this recommendation were the excellent job done by Aviareto over the years, the outcome of the ICAO audit, the good work in managing the Registry well, the timely changes to improve its operations so as to meet users' requirements while still keeping the fees low, and the very high score in the customer survey. Over the years, CESAIR had consistently recommended the reappointment of the Registrar not only for the reasons already cited but because of the efficiency of the Registry and the consequent trust in it expressed by the industry.

21. The Chairperson of the CESAIR reminded the Council that ensuring the efficiency of the Registry was the primary responsibility of the Supervisory Authority in accordance with Article 17 of the Convention on International Interests in Mobile Equipment (the Cape Town Convention). The Supervisory Authority engaged with industry through CESAIR, with both the Aviation Working Group (AWG) and the International Air Transport Association (IATA) as observers. The AWG was particularly active at CESAIR meetings given that its members represented a very high percentage of the users of the international registry. It had been forthright in its support of the reappointment of Aviareto citing in particular Aviareto having done a superlative job being in close working proximity to AWG and industry; Aviareto's understanding of how best to integrate the treaty requirements, transactional practice and the uses of information technology; and their deep understanding of the regulations in addressing cybersecurity with the highest priority. Industry had also cautioned against the high risk of moving to another Registrar.

22. The Chairperson of the CESAIR also informed the Council that he had been involved with issues related to the Cape Town Convention and the international registry since their inception. He had served as the Chairman of the Draft Regulations Working Group established by the Cape Town Convention's Preparatory Commission for the international registry and had been a member of the CESAIR since its establishment in 2006, most currently in the capacity of Chairman since February 2013. Having attended all seven meetings of the CESAIR wherein the Commission had been consulted on proposals for amendments to the regulations and procedures on which it made recommendations to the Supervisory Authority, he had observed that the Registrar had consistently presented such proposals to effectively address practical issues and the needs of the user community. He, along with other long-time CESAIR members, had witnessed the international registry, an entirely online registry, continuously evolve over the 12 years of its existence to meet both the growth and activity levels and technological advances. As the technology environment was constantly evolving, the Registrar had invested development resources to ensure the infrastructure and technology for the registry system had multiple layers of security and this in line with industry best practices. These actions were in keeping with the

Convention's requirement that the Registrar use the best practices in current use in the field of electronic registry design and operation including those related to back-up and system security in networking.

23. In addition to obtaining and maintaining three ISO Standards, Aviareto performed extremely well in the ICAO audit. Positive findings included sound risk management and procedures, high awareness of the impact of potential risk and a continuous emphasis on improving controls and taking appropriate and mitigating actions, well-documented crisis management and disaster recovery procedures, and proactive and strong management of third-party vendors.

24. In order that the Registry remain practical and aligned to the needs of the users, the Registrar needed to remain connected to both users and industry, listening to their concerns and engaging in discussions with them. In so doing the Registrar had over the years earned the trust and confidence of industry globally. The main forum for industry and user engagement was the International Registry Advisory Board (IRAB) composed of many world-leading experts in the fields of aviation finance, international commercial law, and aircraft manufacturing and leasing. Feedback from the IRAB resulted in proposals by the Registrar to the Supervisory Authority for changes to the regulations and procedures as well as for technical changes to the international registry website. CESAIR had also taken into account the very high score of the annual user survey in recommending to reappoint Aviareto as the Registrar. The survey results highlighted in particular the strong scores with regard to the reliability of technical aspects of the Registry, the technical knowledge of registry officials regarding the Registry and the area of information in cybersecurity. The Chairperson of the CESAIR concluded by outlining that for reasons of value to the industry and users, high marks in performance, and a consistent focus on continuous improvement, it strongly recommended that Aviareto be reappointed for a fourth five-year term commencing 1 March 2021.

25. The President of the Council conveyed the appreciation of the Council to the Chairperson of the CESAIR and to all its members for the work done on behalf of the Supervisory Authority.

26. The Council was reminded that the decision to be rendered under C-WP/14766 was two pronged. First, the Council, in its role as Supervisory Authority, was invited to either a) approve the reappointment of the current Registrar for a fourth term, commencing 1 March 2021, or b) approve the initiation of a tendering process for the appointment of the Registrar; and thereafter under c) delegate authority to the Secretariat, either to negotiate and conclude a new contract with the current Registrar, or to carry out a tendering process and to negotiate a contract with the successful contractor.

27. Thanking the Secretariat for the working paper and the Chairperson of the CESAIR for his presentation, the Representative of Saudi Arabia was of the view that the contract for the Registrar did not appear to be subject to an open bidding process. He requested the Secretariat to clarify, should the Council decide to renew Aviareto as Registrar, whether this decision would, from a legal standpoint, extend beyond the procurement procedures applied in the Organization.

28. The Chief, Procurement Section advised that it was not felt the process as proposed went against the Organization's procedures on the awarding of contracts. The appointment of the Registrar was not seen as a standard procurement wherein ICAO would normally procure for itself appointments of two years' duration plus two years' renewable. When the Organization procured other items similar to the Registrar's contract, such as in the case of the Public Key Directory, these were viewed through a different optic from standard procurements, with regard to the availability, reliability, and consistency of the service under consideration. There existed the possibility to act on a sole source procurement and with renewal based on a variety of reasons such as compatibility, familiarization, or where it was believed as

part of the Organization's rules that carrying out an official public tender would not give rise to any superior conditions.

29. In response to a query about the past experience of renegotiation of contracts, given that this was not the first time Aviareto might be reappointed, the Director, Legal Affairs and External Relations Bureau (D/LEB) advised that should the Council approve in principle the reappointment, delegation of authority would be sought for the Secretariat to negotiate a new contract, as outlined in item c) of the Executive Summary of C-WP/14766. The terms and conditions of the contract evolved with each reappointment, and renegotiation was a lengthy process undertaken with a view to improve the work of the Registrar as well as its relationship with ICAO as the Supervisory Authority. The initial contract had been for the establishment and operation of the international registry. The second contract had related strictly to the operation of the international registry. Through experience, each successive contract had built in additional clauses on the operation of the registry, on cybersecurity, and on forward-looking changes.

30. The Chairperson of the CESAIR added that this issue had been considered at the time of drafting of the Cape Town Convention and the Aircraft Protocol, and it had been envisaged that another tendering process would only be necessary if problems had been encountered with the Registry or if the Registrar was not living up to its obligations. In drafting the legal instruments, it had always been envisaged that the incumbent would be reappointed if the operation of the system was satisfactory.

31. The Representative of Mexico noted the favourable opinions expressed with regard to the operation of the Registry and the potential economies to be enjoyed from not entering into a formal tendering process. Given this situation and positive past experience he was prepared to support the renewal of Aviareto as the service provider and support items a) and c) of the Executive Summary of C-WP/14766. Nevertheless, two issues needed to be underscored: the first was that the Secretariat had advised that the Organization would not face any legal risk by opting for reappointment of Aviareto, and second was to emphasize the importance of being attentive to increasing cybersecurity risks, and as part of the renegotiation, ISO certification of the Registrar should be sought.

32. The Representative of Spain observed that it was clear that the Registry provided much added value for the licensing and transfer of aeronautical assets. He therefore expressed no difficulty in supporting the reappointment of the current service provider under items a) and c) of the Executive Summary, based on the positive feedback from clients and on the progressive improvements to the system outlined in the working paper and presentations. He was of the view that in these circumstances a change of Registrar would probably be negative and therefore while supporting the reappointment of Aviareto he echoed the comment that issues of cybersecurity as well as issues of quality would need to be addressed in the negotiation of the new contract. Attention also needed to be given to technological changes as some disruptive technologies could provide alternatives to a centralized registry.

33. The Representative of Ireland confirmed her State's support of the reappointment of the Registrar for a fourth term as set out in action item a) of C-WP/14766, and that Ireland remained committed to the application of and promotion of the benefits of the Cape Town Convention and the Aircraft Protocol. The record of Aviareto and the effective operation of the Registry from its inception in 2006 had been exemplary as evidenced by the high ratings received by the users of the Registry and the annual survey and the favourable audit report received following ICAO's most recent audit. Aviareto had demonstrated a strong commitment to ensuring the security of the data it handled, and the continued investment in software development demonstrated that the company had been responsive to ICAO's direction and had delivered required improvements while bringing new innovations forward arising from close industry engagement. Aviareto maintained a strong relationship with all industry clients and its

location in Ireland, the global hub for aircraft leasing, allowed for easier access to leading lessors and specialists in legal and financial expertise. In addition, the Irish Court system's familiarity with the legal framework surrounding the Cape Town Convention and the Aircraft Protocol also ensured effective and efficient handling of cases brought before it. Ireland welcomed that the CESAIR had strongly indicated its support for the reappointment of Aviareto, a view also held by the industry group, AWG, which additionally highlighted the risks associated with the transfer to a new Registrar. As the continuity of high standards of service provision was of paramount importance to this dynamic industry, Ireland reiterated its strong support for the reappointment of Aviareto as Registrar.

34. Emphasizing that he had no objections to the current Registrar continuing in the role and no dissatisfaction with the performance of the Registrar, the Representative of Australia expressed nevertheless some concern at the process outlined in C-WP/14766 in that it did not appear to have any plan for any market testing of the contract but instead moved directly to reappointment of the incumbent. It would have been expected that under normal procedures, even if stakeholders expressed satisfaction with the contractor, a greater degree of attention would be paid to ensuring a good procurement process. This raised a number of questions, the first being that while the benefits of continuity and the risk of change had been duly noted, reappointment of the same provider without market testing required a high degree of satisfaction for the Council as the Supervisory Authority that there existed no better deal to be secured for the Registrar. Therefore, he requested additional explanation as to why the Secretariat and the CESAIR believed that there existed no better deal that might come to light via market testing.

35. Secondly, while noting approvingly that the fees had not increased since 2006, which pointed to efficiencies of operation, the Representative of Australia was interested to learn what was expected of the future for fees post-reappointment of the current Registrar. Thirdly, he noted that the delegation of authority in item c) in the Executive Summary to the Secretariat was quite significant, and he sought further detail on the terms which the Secretariat anticipated might be pursued in any renegotiation of the contract and whether the same contract would be renewed or new terms would be being sought in any negotiation if the Council were to give that authority to the Secretariat.

36. The President of the Council then queried whether a Council decision to reappoint the Registrar might constrain the Secretariat's ability to negotiate a better contract.

37. D/LEB advised with regard to the issue of market testing that the reappointment of the Registrar differed from a general procurement exercise. The Registry could be described as a quasi-public authority, providing services seen as equivalent to being the international counterpart of a national authority in the registration of property rights. It took a long period of time to build up this network under the close supervision of the Council, and the complexity of establishing a credible, sustainable and operationally efficient body made this a unique situation. ICAO's Procurement Code outlined the criteria for provision from a sole source, and this particular entity possessed all the basic elements of a sole source provider. Regarding the delegation of authority to the Secretariat to enter into negotiations, this had been the general practice of ICAO. The procurement was approved and the negotiations followed. The Organization had significant latitude in the negotiation. The Council maintained a supervisory authority power. Therefore, it could act as an authority to dictate the terms and conditions that, as the Supervisory Authority, it wished to impose upon the Registry. That power was assigned by the Cape Town Convention and was a powerful tool to ensure the Registrar's compliance with any requirements that the Council deemed necessary.

38. On the subject of fees, while they had not risen since 2006, it could not be completely ruled out that they could increase in the future as a result of inflation or other criteria. This being said, there was no negotiation with respect to fees. Because the Registry ran as a cost-recovery system, the fees

were contingent on the revenues of the Registrar and on its ability to operate. As long as the user fees adequately covered the cost of operations as well as the ability to make changes and perform continuous improvements in all the areas vital to ICAO as the Supervisory Authority, the fees had not changed and would not change. In fact, the Registrar was under an obligation to approach the Supervisory Authority in order to alter the fees.

39. C/PRO reiterated that the reappointment of the Registrar was not equivalent to the procurement of a simple commodity. The infrastructure that Aviareto had built in terms of being a quasi-public authority was not easy to quantify. This being said, nothing prevented ICAO from inviting a company like Aviareto to negotiate some of the terms of its contract, should the Organization not be satisfied with the existing terms. However, in order to embark on negotiations, a benchmark or a clear definition of the Organization's expectations was needed. Otherwise, the Organization would be blindly entering into negotiations.

40. Recalling that at the outset of the process, a number of countries had bid to establish and operate the international registry, Ireland had at that time qualified and Aviareto had since run the registry successfully, the Representative of Kenya expressed the view that what should inform the Council's decision in renewing the contract was Aviareto's performance, the positive audit outcome, its cost-effectiveness and affordability. Looking at paragraph 3.3.4 of C-WP/14766 on the matter of the risks involved in the transfer of responsibilities to a new registry, she believed this issue should not inform the Council's decision in renewing this contract because ICAO should have in place measures that would allow the Registry to move seamlessly to another contractor if need be. Therefore, she queried if such measures were in place and whether any move to appoint a new Registrar would be restricted because of the high risk. She opined that this issue needed to be examined at this time since preliminary discussions about a future space protocol had already taken place, and she wondered if the current Registrar would evolve the Registry to include space assets.

41. D/LEB advised that at the time of negotiation of the Cape Town Convention and Aircraft Protocol, the preparatory work recorded by the Legal Committee clearly stated that the provision concerning the changing of the Registrar or Registry had been drafted in order to facilitate a legally admissible change of Registrar should the incumbent not be discharging its functions satisfactorily. The drafters of the Convention had already presumed that if the Registry functioned satisfactorily the presumption was to reappoint the incumbent Registrar. A series of contractual clauses guaranteed that if the Council decided to appoint a different Registrar certain assets, especially certain intellectual property rights and the data protections, would need to be transferred as a right of the Contracting States of the Cape Town Convention.

42. In providing supplementary information in response to the questions raised, the Legal Officer, Legal Affairs and External Relations Bureau (LO/LEB) advised that given the public function of the international registry, under Article 17 of the Cape Town Convention an obligation was imposed on the Supervisory Authority to ensure that any rights required for the continued effective operation of the international registry in the event of a change of Registrar would vest in or be assignable to the new Registrar. This was reflected in the contract between ICAO and Aviareto whereby the Registrar expressly recognized the importance of the continued effective operation of the Registry, and in the event of a change of Registrar, the Registrar acknowledged that any rights required for the uninterrupted operation of the international registry not already vested in ICAO would vest in or be assignable to the new Registrar or to ICAO as the case may be. Under the Cape Town Convention ownership of the data and archives of the Registry rested with ICAO and with the Supervisory Authority, and all assets of the international registry were immune from seizure. The other item was that the Registrar must ensure the portability of all software developed for the Registry. ICAO had a license in perpetuity to the source code

of all the bespoke software developed by the subcontractor, SITA, which undertook the main development of software, and ICAO had the right to sub-license that software should it continue to use it.

43. With regard to the space protocol, D/LEB reminded that said protocol had not yet come into force. Of the three protocols associated with the Cape Town Convention, the Aircraft Protocol was by far the most successful, thanks to the sponsorship of ICAO. When the time would come to implement the space protocol nothing would prevent Aviareto, with its software system and should it so choose, from modelling a registry on the other types of registry but this would be Aviareto's decision.

44. The Representatives of Cabo Verde, Canada, Ecuador, Panama, Singapore, Turkey, United Kingdom, and United States expressed their support for reappointment of the current Registrar in accordance with item a) of the Executive Summary.

45. The Representative of Saudi Arabia reiterated his discomfort with the action proposed under item a) of the Executive Summary as he believed reappointment of the current Registrar did not leave the Secretariat sufficient leeway for negotiation. Following from this, he suggested that item c) be modified to indicate that the Council could delegate or permit the Secretariat to negotiate in order to reappoint for a fourth term the current Registrar. If there were no concrete improvements coming from the negotiations, then a new tendering process would be raised, and new negotiations undertaken in order to conclude a new contract. Additionally, he preferred the use of the term competition rather than a call to tender.

46. The President of the Council, in addressing the concerns expressed by the Representative of Saudi Arabia, proposed that should challenges arise in the negotiation process, the Council be apprised of this in time to enable sufficient time to proceed to a competitive tendering process and to negotiate a contract to a successful contractor. This would allow flexibility in negotiation while informing the Council of any challenges in sufficient time.

47. Addressing the timelines required for notification and negotiations, LO/LEB explained that should the decision be made to adopt item b) of the Executive Summary and initiating the tendering processing, Aviareto would need to be informed of this decision by 28 August 2018 because of a requirement that the Registrar be given 30 months' notice of a decision to go to tender. Under the renegotiation of the current contract as envisioned under item a) of the Executive Summary, Aviareto would receive 18 months' notice to renegotiate. If negotiations commenced in September 2019, and in the unlikely event that there would be an insurmountable challenge, it was unclear that there would be sufficient time remaining to go through a tendering process. The timelines were provided for in terms of advising the Registrar about a tender process. That being said, notwithstanding these timelines if the Organization was dissatisfied with the negotiations, it did have certain powers by virtue of its role as Supervisory Authority. If the process were to go to tender there existed a year's leeway to extend the contract if need be. So while there was some play in fact, in theory Aviareto should be advised of the Organization's intentions by August 2018.

48. There being no further interventions on this item, the Council:

- a) approved the reappointment of Aviareto Ltd. as the Registrar for a fourth term; and
- b) delegated authority to the Secretariat to negotiate and conclude a new contract with the current Registrar, while ensuring that a number of issues raised by the Council would be taken into account in negotiating the contract, including, inter alia, ongoing attention being paid to the

cybersecurity threat, strategies to mitigate threats, and overall quality management of the Registry, on the understanding that should the Secretariat encounter any challenges in the negotiation process, the Council should be apprised of these within a sufficient timeframe so as to consider alternative options including the feasibility of conducting a late competitive tender process.

Subject No. 16: Legal work of the organization

Subject No. 24.3: Action on assembly resolutions and decisions

Mid-triennial review of implementation of resolutions and decisions of the 39th Session of the Assembly – Legal subjects

49. The Council considered this item on the basis of Information Paper, C-WP/14775, which presented a mid-triennial report on the progress made, as at April 2018, in the implementation of resolutions and decisions of the 39th Session of the Assembly relating to legal subjects, which the Council considered during its 210th Session.

50. The Secretary General in her presentation of C-WP/14775 outlined each item contained in the Appendix to the working paper. Under the first item, “Conflicts of interest in civil aviation” stemming from Resolution A39-8, ICAO provisions on conflict of interests contained in various Annexes and ICAO documents had been identified and compiled. Further work on this item was to be reported to the 37th Session of the Legal Committee.

51. The second item, “Promotion of the Montreal Convention of 1999” stemming from Resolution A39-9, had been actioned by way of a State letter issued on 2 March 2017 urging ratification. Since the conclusion of the 39th Session of the Assembly, eight additional States had become party, six shy of the States which had ratified the 1955 The Hague Protocol. The Council’s attention was drawn to the deposit on 4 June 2018 by Ghana of an instrument of accession to the Montreal Convention of 1999.

52. The third item, “Promotion of the Beijing instruments of 2010” stemming from Resolution A39-10, had also been actioned by way of a State letter issued on 2 March 2017 urging ratification. The Beijing Protocol had come into force on 1 January 2018, while the Beijing Convention would be entering into force on 1 July 2018 further to the deposit on 31 May 2018 by Turkey of an instrument of ratification. Up-to-date lists of parties for all instruments appeared on the ICAO websites.

53. The fourth item, “Consolidated Statement of Continuing ICAO Policies in the Legal Field” stemmed from Resolution A39-11. In this regard, a State letter urging ratification of the amendments to the Chicago Convention regarding the respective increase of the membership in the Council and the Air Navigation Commission was issued on 20 January 2017. In addition, the Task Force on legal aspects of unruly passengers held its last meeting in February 2018 during which it considered the model legislation and the latest draft of the relevant guidance material.

54. The fifth item, “Implementation of Article 21 of the Chicago Convention”, was actioned by the issuance of two State letters in June 2017: one transmitting a survey on the implementation of Article 21 and the other establishing a Task Force on the Implementation of Article 21 of the Chicago Convention. Two meetings of the task force had been held, and a report on its work would be presented to the 37th Session of the Legal Committee.

55. The final item, “Review of the Application of ICAO Treaties relating to Conflict Zones” was pending reconsideration by the Council when the work programme in other areas would be completed during the fourth quarter of 2019.

56. On the final item, the Representative of Kenya requested clarification as to which treaties fell under the ICAO treaties relating to conflict zones.

57. D/LEB explained that the item did not refer to any specific treaties. He elaborated that this item had not been officially listed in the general work programme of the Legal Committee, but arose due to the downing of Malaysia Airlines flight MH17 in the Ukraine, subsequent to which there had been an initiative to review whether current treaties would apply or would need to be updated in case of this kind of event in a conflict zone. In the meantime, a task force had been convened by the Council, and work conducted through the different ICAO bureaus. The group tasked with examining the legal aspects of the issue came to the conclusion that for the time being there was no need to amend the Chicago Convention or any other treaty. There was a need, however, to wait for the concurrent work being undertaken by other bureaus or other expert groups. Pending receipt of the results of that work, this item had been categorized as being for future consideration.

58. There being no further discussion on this item, the Council noted the information contained in C-WP/14775.

Subject No. 16: Legal work of the organization

Subject No. 26: Settlement of disputes between Contracting States

**Progress report on negotiations regarding Settlement of Differences:
Brazil and the United States (2016)**

59. The Council considered this item on the basis of an oral report from the Secretary General. It was noted that following the 213th Session, the two parties involved (Brazil and the United States), had planned to hold a second session in Brasilia in late January 2018, but the meeting had to be postponed as the United States delegation had been unable to travel at that time due to unrelated events. The Parties had therefore rescheduled their meeting for late March 2018, in Brasilia.

60. The Parties had recently informed the President of the Council that a second substantive meeting between representatives from the United States and Brazil took place in March in Brasilia and was very productive, and that they hoped to hold a subsequent meeting in Washington, DC, in early July 2018. Given that both Parties were prepared to continue the negotiation process with the good offices of the President of the Council as conciliator, it was suggested that the Council be further updated on the status of the negotiations during the 215th Session.

61. The Council noted the information presented by the Secretary General in her oral report. In doing so, the Council welcomed the fact that the substantive meeting between representatives from the United States and Brazil that had taken place in March 2018 in Brasilia, Brazil, had been productive, and that a subsequent meeting was scheduled to take place in Washington DC, United States in July 2018.

Subject No. 32.1: Headquarters premises

Progress achieved by the Committee on Relations with the Host Country

62. The Council considered this item on the basis of an oral report from the Chairperson of the Committee on Relations with the Host Country (RHCC).

63. The Chairperson of the RHCC (Representative of Italy) reported that on 9 May 2018, at its fifteenth meeting of the 214th Session of the Council, the RHCC had considered RHC-WP/13 entitled *Review of Pending Issues* which had been introduced by the Secretariat. Regarding its first issue, New Understanding with Quebec, a major development had taken place since that meeting with the signature on 26 June 2018 by the Secretary General on behalf of ICAO and by the Minister for International Relations and la Francophonie of Quebec of the New Understanding between Quebec and ICAO on the same text that the Council had endorsed during its 212th Session. The next step would be the ratification of the agreement, and the Chairperson underlined that the new document marked a number of important improvements and steps forward in different fields compared to the previous version.

64. For the subsequent issues addressed in RHC-WP/13, the RHCC noted that there were no developments to report on Item 2 – “Canadian electronic Travel Authorization (eTA)”, and Item 3 – “Labour market integration for family members of representatives”. The Secretariat had recalled that itineraries of holders of diplomatic and official acceptances who return to Canada by air should be notified to the Legal Affairs and External Relations Bureau for further communication to the pertinent Canadian authorities, in order to avoid unnecessary difficulties upon boarding.

65. Regarding Item 4, the Secretariat informed the Committee on further developments concerning arrangements between ICAO and the Royal Bank of Canada (RBC), with a view to ensuring that members of national delegations would benefit from a special package, similar to the ‘VIP’ package available to the members of the ICAO Staff Association. Some progress was made in this regard, namely confirming: i) a 30 CAD rebate on the Visa Classic Commercial Card; ii) requests for such credit cards could be made directly at ICAO, as per new arrangements between RBC and the Finance Branch; iii) preferential rates (being the same as for RBC staff) for foreign exchange conversions; and iv) a dedicated “ICAO Desk” to be opened at the Square-Victoria Branch of RBC, in addition to the “ICAO Desk” at the bank’s Place Ville-Marie Branch.

66. Under “Other Business”, the Secretariat updated the RHCC on a new additional privilege granted by the Host State to the ICAO diplomatic community, i.e. exemption from, and reimbursement of, the Canadian goods and services tax (GST) and the Quebec sales tax (QST) on purchases made by diplomats and entitled family members during the period between their actual arrival in Canada and official entry into functions. Subject to prior notification of arrival, a grace period of two weeks would now be allowed before official entry into functions, on the same basis as the grace period provided after the end of the official functions.

67. Still under “Other Business”, in view of the substantial outstanding rental fees and fees for other facilities due to ICAO by a few resident delegations, the President of the Council had highlighted Resolution A4-1: *Obligations of Council Member States* (C-DEC 213/9). Reference was further made by the Secretariat to Article 63 of the Chicago Convention: *Expenses of delegations and other representatives*. Since then, despite some progress made with one delegation, pending dues were still amounting in total to more than 800 000 dollars. The RHCC decided to remain seized of the matter, as necessary through addition of this topic in the list of pending issues, and acknowledged that the Finance Branch would send reminder letters to the delegations concerned.

68. The Representative of Turkey requested elaboration on the improvements that were made in the New Understanding signed between Quebec and ICAO, whether the issue of access to the Quebec

health system had been raised, and when the new arrangements with RBC referred to in the oral report would be implemented. He also wished to know when the New Understanding between Quebec and ICAO would enter into force.

69. The Senior External Relations and Legal Officer, Legal Affairs and External Relations Bureau, advised that the New Understanding with Quebec had been negotiated over three years. The Council through the RHCC had been apprised regularly of developments on this subject. A final working paper, RHC-WP/10 *Review of Pending Issues – New Understanding with Québec*, which outlined all the improvements, had been presented to the Committee for its consideration. That working paper had been submitted for final review by the Council which had approved it formally (C-DEC 212/8 refers). This being said, the Secretariat was available to meet at any time with the Delegation of Turkey to go through the details of it. With regard to the entry into force, the signature had taken effect, and the next step was the ratification of the New Understanding by the National Assembly of Quebec. Provincial parliamentary elections were scheduled for October 2018, and the ratification of the agreement would take place after the election with the formation of a new government. It was estimated that ratification could take place in the summer of 2019, and the decree of implementation could be issued at the latest in the autumn of 2019. This timeline had been confirmed by ICAO's Quebec counterparts in the negotiations.

70. It was also confirmed that new clauses on health were part of the new Understanding. The Council's attention was drawn to paragraph 2.3 of RHC-WP/10 which contained information about the additional clauses concerning health, in particular the fact that in the previous Understanding there had been no clause or reference to the premium regime being accessible to delegations. There had been reference only to the health system as accessible by staff. Under the new Understanding access to the system by the delegations had been formalized. Another improvement was that the health system to the premium regime of delegations would now be accessible to all duly accredited persons of the household of diplomats accredited to ICAO. In the past it was not fully in parallel with the accreditations issued by the federal government. In the new Understanding, Quebec ensured that the health system provided by the Régie de l'assurance maladie du Québec (RAMQ) would cover every family member duly accredited with the federal government. It was difficult to negotiate the quality of health services in terms of privileges and immunities, since it had been explained by the Quebec representatives that the system had to abide by a principle of equity of access. Therefore, in order to mitigate delays in services, ICAO and the accredited diplomatic community benefited from ICAO's own medical clinic.

71. With regard to dealings with RBC, it was confirmed that the Organization was currently in negotiations for a special banking package for the delegations. Negotiations were advancing well, but the Representatives were requested to be cognizant that not every staff member of RBC was currently aware of the ongoing talks between ICAO and the bank. The contact information for the dedicated "ICAO Desk" was indicated in the *ICAO Yellow Book: Information for Members of National Delegations regarding their arrival and residence in Canada*. The Secretariat had asked that RBC favourably consider opening a new "ICAO Desk" in its Square-Victoria Branch and, as indicated in the oral report, a dedicated "ICAO Desk" was to be opened at that branch of RBC in addition to existing the "ICAO Desk" in the Place Ville-Marie Branch. Training was currently underway at the Square-Victoria Branch, and once the staff had been properly trained this would be confirmed by the bank. The Secretariat would further inform the Council through the RHCC and all delegations directly of the official opening of the Square-Victoria "ICAO Desk".

72. In response to the question pertaining to the provision of medical services, the Director, Bureau of Administration and Services informed the Council that a review of the ICAO medical centre was currently underway involving a multitude of issues including the nursing coverage and various issues

to do with medication. Upon completion of the review, he would be pleased to respond to any further questions on the provision of services as he recognized this was an important subject.

73. In concluding this item, the Council noted the information that was presented by the Chairperson of the RHCC. In doing so, the Council welcomed the fact that the new Understanding between the Government of Quebec and ICAO had been signed at an official ceremony at ICAO Headquarters on Tuesday, 26 June 2018. It was noted that the next step in the process will require ratification of the Understanding by the Parliament of Quebec but it was understood that due to the forthcoming election cycle in the province later in 2018, the ratification of the Understanding would most likely not occur until the summer of 2019.

74. In relation to ongoing issues associated with arrangements between ICAO and the Royal Bank of Canada (RBC), the Council noted that discussions to extend a VIP banking package to members of national delegations was currently being negotiated and that further information in this regard would hopefully be conveyed in due course. The Council also noted that RBC was intending to shortly open a dedicated “ICAO Desk” at its Square-Victoria Branch, which would operate in addition to the existing “ICAO Desk” at the Place Ville-Marie Branch.

Any other business

Settlement of Differences – C-WP/14778 and C-WP/14779

75. Further to the consideration of these items during its Eighth Meeting on Tuesday, 26 June 2018, it was noted that an advance English language version of the draft resolution agreed to by the Council would shortly be circulated to Representatives with a view to adoption at the Eleventh Meeting, which was scheduled on Friday, 29 June 2018. It was understood that the other language versions of the resolution would also be issued in due course.

Appointment of a Member on the Air Navigation Commission

76. In the absence of comments by 18 June 2018 to the email from the President of the Council dated 11 June 2018, Mr. Padhraic Kelleher, nominated by the Government of the United Kingdom, has been appointed as Alternate to Mrs. Kirsten Riensema on the ANC from 1 July to 31 August 2018 and as Member to succeed Mrs. Riensema with effect from 1 September 2018.

Approval by the Air Navigation Commission, acting under delegated authority, of Amendment 2 to the Procedures for Air Navigation Services – Aerodromes (PANS-Aerodromes, Doc 9981)

77. Pursuant to the President of the Council’s Memorandum PRES OBA/2767 dated 11 June 2018, the Amendment 2 to the PANS-Aerodromes, Doc 9981 has been approved by the President on behalf of the Council.

Approval by the Air Navigation Commission, acting under delegated authority, of Amendment 33 to the Procedures for Air Navigation Services - ICAO Abbreviations and Codes (PANS-ABC Doc 8400)

78. Pursuant to the President of the Council’s Memorandum PRES OBA/2774 dated 12 June 2018, the Amendment 33 to the PANS-ABC, Doc 8400 has been approved by the President on behalf of the Council.

Nomination to the Commission of Experts of the Supervisory Authority of the International Registry (CESAIR)

79. In the absence of comments by 19 June 2018 to the President of the Council's memorandum PRES OBA/2788 dated 12 June 2018, and further to PRES OBA/2775 dated 28 May 2018, an additional member, from Kenya, has been appointed to the Commission.

80. The meeting adjourned at 1650 hours.

COUNCIL — 214TH SESSION

SUMMARY MINUTES OF THE ELEVENTH MEETING

(THE COUNCIL CHAMBER, FRIDAY, 29 JUNE 2018, AT 1000 HOURS)

OPEN MEETING

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

PRESENT:

Algeria	— Mr. A.D. Mesroua	Kenya	— Ms. M.B. Awori
Argentina	— Mr. G.E. Ainchil	Malaysia	— Mr. K.A. Ismail
Australia	— Mr. S. Lucas	Mexico	— Mr. D. Méndez Mayora
Brazil	— Mr. O. Vieira (Alt.)	Nigeria	— Mr. M.S. Nuhu
Cabo Verde	— Mr. C. Monteiro	Panama	— Mr. G.S. Oller
Canada	— Mr. M. Pagé	Republic of Korea	— Mr. Y.J. Lee
China	— Mr. Shengjun Yang	Russian Federation	— Mr. S. Gudkov
Colombia	— Mr. A. Muñoz Gómez	Saudi Arabia	— Mr. S.A.R. Hashem
Congo	— Mr. R.M. Ondzotto	Singapore	— Mr. T.C. Ng
Cuba	— Mrs. M. Crespo Frasquieri	Spain	— Mr. V.M. Aguado
Ecuador	— Mr. I. Arellano	Sweden	— Ms. H. Jansson Saxe
Egypt	— Mr. A. Khedr	Turkey	— Mr. A.R. Çolak
France	— Mr. P. Bertoux	United Arab Emirates	— Miss A. Alhameli
Germany	— Mr. U. Schwierczinski	United Kingdom	— Mr. D.T. Lloyd
India	— Mr. A. Shekhar	United Republic of Tanzania	— Mr. R.W. Bokango
Ireland	— Ms. N. O'Brien	United States	— Mr. T.L. Carter
Italy	— Mr. M.R. Rusconi	Uruguay	— Mr. M. Vidal
Japan	— Mr. S. Matsui		

ALSO PRESENT:

Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. C. Fernández (Alt.)	— Argentina
Mr. R.F. Pecoraro (Alt.)	— Brazil
Mr. D. Tavares Taufner (Alt.)	— Brazil
Mr. H. Gonzales (Alt.)	— Brazil
Mr. M.G. Correia Pontes (Alt.)	— Brazil
Mr. P. Langlais (Alt.)	— Canada
Mr. Chunyu Ding (Alt.)	— China
Mr. M. Millefert (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mrs. D. Valle Álvarez (Alt.)	— Mexico
Mr. E.A. Al-Malki (Obs.)	— Rep. of Qatar to ICAO
Mr. J. Augustin (Obs.)	— Qatar
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. M.S. Habib (Alt.)	— Saudi Arabia
Mr. S. Vuokila (Alt.)	— Sweden
Mr. Ö. Dođrukol (Alt.)	— Turkey
Mr. M. Salem (Alt.)	— United Arab Emirates
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mr. S. Kotis (Alt.)	— United States
Mrs. M.A. González (Alt.)	— Uruguay
Mr. F. de Medina (Alt.)	— Uruguay

SECRETARIAT:

Mrs. J. Yan	— C/OSG
Ms. I. Sosina	— SA/PRES
Mr. B. Djibo	— D/ATB
Mr. S. Creamer	— D/ANB
Mr. V. Smith	— D/ADB
Mr. J. Huang	— D/LEB
Mr. B. Verhaegen	— SELO
Mrs. L. Comeau-Stuart	— Advisor, POD
Ms. K. Balram	— C/SEA
Mr. S. Jossai	— C/RCP
Ms. S. Rose	— C/POD
Mr. A. Opolot	— LO
Mr. Y. Nyampong	— LO
Mr. M. Vaugeois	— LEB
Mr. A. Larcos	— C/ACS
Miss Y. Que	— Précis-writer

Representatives to ICAO

Bolivia (Plurinational State of)
Cameroon
Chile
Cyprus
Equatorial Guinea
Greece
Honduras
Indonesia
Iran (Islamic Republic of)
Lebanon
Paraguay
Peru
Qatar
Sudan

European Union (EU)

Subject No. 16: Legal Work of the Organization
Subject No. 26: Settlement of Disputes Between Contracting States

Settlement of Differences: The State of Qatar and the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia and the United Arab Emirates (2017) — Application (A) (relating to the interpretation and application of the Chicago Convention and its Annexes): Preliminary Objection Stage

Settlement of Differences: The State of Qatar and the Arab Republic of Egypt, the Kingdom of Bahrain and the United Arab Emirates (2017) — Application (B) (relating to the interpretation and application of the International Air Services Transit Agreement): Preliminary Objection Stage

1. The Council resumed consideration of these items, which had been discussed at the Eighth Meeting of the current session on Tuesday, 26 June 2018. In doing so, it was recalled that at the conclusion of the Eighth Meeting, it had been indicated that the Secretariat would prepare and circulate the draft text of the Council decisions on the preliminary objections in these matters, pertaining to both Application A and Application B, so that the decisions could be considered and approved at this, the Eleventh Meeting of the 214th Session. In this connection, it was noted that the English language version of the draft text of the decisions had been circulated in the afternoon of Wednesday, 27 June 2018.

2. At the invitation of the President of the Council, the Director of the Legal Affairs and External Relations Bureau (D/LEB) introduced the draft Council decisions in both Application A and Application B that had been circulated on 27 June 2018.

3. In response to questions from both the Representatives of Saudi Arabia and Egypt, D/LEB indicated that any inaccuracies related to the names of participants at the meeting would be corrected in the final updated text.

4. The Council then considered each of the draft decisions paragraph by paragraph and approved the text of the said decisions as follows:

“DECISION

**OF THE COUNCIL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION
ON THE PRELIMINARY OBJECTION IN THE MATTER: THE STATE OF QATAR AND
THE ARAB REPUBLIC OF EGYPT, THE KINGDOM OF BAHRAIN, THE KINGDOM OF
SAUDI ARABIA AND THE UNITED ARAB EMIRATES (2017) – APPLICATION (A)**

THE COUNCIL,

ACTING under Article 84 of the *Convention on International Civil Aviation* (Chicago Convention) and the *Rules for the Settlement of Differences*;

COMPOSED of the following Representatives entitled to vote: Mr. A.D. Mesroua (Algeria), Mr. G.E. Ainchil (Argentina), Mr. S. Lucas (Australia), Mr. O. Vieira (Alt.) (Brazil), Mr. C. Monteiro (Cabo Verde), Mr. M. Pagé (Canada), Mr. S. Yang (China), Mr. A. Muñoz Gómez (Colombia), Mr. R.M. Ondzotto (Congo), Mrs. M. Crespo Frasieri (Cuba), Mr. I. Arellano (Ecuador), Mr. P. Bertoux (France), Mr. U. Schwierczinski (Germany), Mr. A. Shekhar (India), Mrs. N. O'Brien

(Ireland), Mr. M.R. Rusconi (Italy), Mr. S. Matsui (Japan), Ms. M.B. Awori (Kenya), Mr. K.A. Ismail (Malaysia), Mr. D. Méndez Mayora (Mexico), Mr. M.S. Nuhu (Nigeria), Mr. G.S. Oller (Panama), Mr. Y.J. Lee (Republic of Korea), Mr. S. Gudkov (Russian Federation), Mr. T.C. Ng (Singapore), Mr. M.D.T. Peege (South Africa), Mr. V.M. Aguado (Spain), Ms. H. Jansson Saxe (Sweden), Mr. A.R. Çolak (Turkey), Mr. D.T. Lloyd (United Kingdom), Mr. R.W. Bokango (United Republic of Tanzania), Mr. T.L. Carter (United States), Mr. M. Vidal (Uruguay).

THE PARTIES being: the **State of Qatar** (Applicant), represented by H.E. Jassem Bin Saif AlSulaiti, Authorized Agent, assisted by Mr. Essa Abdulla Al-Malki (Rep.), H.E. Abdulla Nasser AlSubaey, H.E. Fahad Mohammed Kafood, H.E. Yousef Sultan Laram, Mr. Mohammed Abdulla AlHajri, Mr. Talal Abdulla Almalki, Mr. Essa Ahmed Mindney, Mr. Abdulla Altamimi, Mr. John Augustin on one hand; and the Respondents: the **Arab Republic of Egypt** represented by H.E. Hany EL-Adawy, Authorized Agent, assisted by H.E. Amal Salama, Mrs. Lamia Mohamed Galal, Mrs. Yara Hussein Mokhtar Elbedewy, Mrs. Salwa El Mowafi, the **Kingdom of Bahrain** represented by H.E. Kamal Bin Ahmed Mohammed, Authorized Agent, assisted by Mr. Mohammed Thamer Al Kaabi, Mr. Salim Mohammed Hassan, Mr. Devashish Krishan, Mr. Georgios Petropoulos, Mr. Motou Mida, Ms. Emilia Kean, the **Kingdom of Saudi Arabia** represented by H.E. Dr. Nabeel bin Mohamed Al-Amudi, Authorized Agent, assisted by H.E. Abdulhakim M. Altamimi, Mr. Naif Bin Bandir Alsudairy, H.E. Wael M. Almadani Alidrissi, and the **United Arab Emirates** represented by H.E. Sultan Bin Saeed Al Mansoori, Authorized Agent, assisted by H.E. Mohammed Saif Helal Al Sehhi (Alt.), Mr. Mohamed Al Shamsi, Dr. Ludwig Weber, Mr. Alan Yanovich, Mrs. Laura Coquard-Party, Mrs. Shiva Aminian, Mrs. Sarah Kirwin on the other hand;

CONSIDERING that an Application and Memorial by the Applicant under Article 84 of the Chicago Convention was filed on 30 October 2017; that a Statement of preliminary objections was filed by the Respondents on 19 March 2018; that a Response to the Statement of preliminary objections was filed by the Applicant on 1 May 2018; and that a Rejoinder was filed by the Respondents on 12 June 2018;

HAVING HEARD the Parties in the above matter on the preliminary objection and having held its deliberations at the eighth meeting of its 214th Session on 26 June 2018;

HAVING CONSIDERED the preliminary objection of the Respondents, namely that the Council lacks jurisdiction to resolve the claims raised by the Applicant in Application (A); or in the alternative, that the Applicant's claims are inadmissible;

CONSIDERING that the question before the Council was whether to accept the preliminary objection of the Respondents;

BEARING IN MIND Article 52 of the Chicago Convention which provides that decisions by the Council shall require approval by a majority of its Members and the consistent practice of the Council in applying this provision in previous cases;

HAVING DECLINED a request by one of the Respondents to reconsider the above-mentioned majority of 19 Members required in the current Council for the approval of its decisions;

DECIDES that the preliminary objection of the Respondents is not accepted.

The above Decision, on the question whether to accept the preliminary objection of the Respondents, was taken by a secret ballot with 4 Members voting in favor, 23 Members voting against, and 6 Members abstaining.

The time-balance of 7 days remaining for the Respondents to file their Counter-memorials shall begin to run from the date of receipt by the Respondents of this Decision of the Council.

Rendered on 29 June 2018 in Montréal.

DECISION

**OF THE COUNCIL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION
ON THE PRELIMINARY OBJECTION IN THE MATTER: THE STATE OF QATAR
AND THE ARAB REPUBLIC OF EGYPT, THE KINGDOM OF BAHRAIN
AND THE UNITED ARAB EMIRATES (2017) – APPLICATION (B)**

THE COUNCIL,

ACTING under Article 84 of the *Convention on International Civil Aviation* (Chicago Convention) and the *Rules for the Settlement of Differences*;

COMPOSED of the following Representatives entitled to vote: Mr. A.D. Mesroua (Algeria), Mr. G.E. Ainchil (Argentina), Mr. S. Lucas (Australia), Mr. S. Yang (China), Mr. R.M. Ondzotto (Congo), Mrs. M. Crespo Frasieri (Cuba), Mr. I. Arellano (Ecuador), Mr. P. Bertoux (France), Mr. U. Schwierczinski (Germany), Mr. A. Shekhar (India), Mrs. N. O'Brien (Ireland), Mr. M.R. Rusconi (Italy), Mr. S. Matsui (Japan), Mr. K.A. Ismail (Malaysia), Mr. D. Méndez Mayora (Mexico), Mr. M.S. Nuhu (Nigeria), Mr. G.S. Oller (Panama), Mr. Y.J. Lee (Republic of Korea), Mr. T.C. Ng (Singapore), Mr. M.D.T. Peege (South Africa), Mr. V.M. Aguado (Spain), Ms. H. Jansson Saxe (Sweden), Mr. A.R. Çolak (Turkey), Mr. D.T. Lloyd (United Kingdom), Mr. T.L. Carter (United States).

THE PARTIES being: the **State of Qatar** (Applicant), represented by H.E. Jassem Bin Saif AlSulaiti, Authorized Agent, assisted by Mr. Essa Abdulla Al-Malki (Rep.), H.E. Abdulla Nasser AlSubaey, H.E. Fahad Mohammed Kafood, H.E. Yousef Sultan Laram, Mr. Mohammed Abdulla AlHajri, Mr. Talal Abdulla Almalki, Mr. Essa Ahmed Mindney, Mr. Abdulla Altamimi, Mr. John Augustin on one hand; and the Respondents: the **Arab Republic of Egypt** represented by H.E. Hany EL-Adawy, Authorized Agent, assisted by H.E. Amal Salama, Mrs. Lamia Mohamed Galal, Mrs Yara Hussein Mokhtar Elbedewy, Mrs. Salwa El Mowafi, the **Kingdom of Bahrain** represented by H.E. Kamal Bin Ahmed Mohammed, Authorized Agent, assisted by Mr. Mohammed Thamer Al Kaabi, Mr. Salim Mohammed Hassan, Mr. Devashish Krishan, Mr. Georgios Petropoulos, Mr. Motou Mida, Ms Emilia Kean, and the **United Arab Emirates** represented by H.E. Sultan Bin Saeed Al Mansoori, Authorized Agent, assisted by H.E. Mohammed Saif Helal Al Sehhi (Alt.), Mr. Mohamed Al Shamsi, Dr. Ludwig Weber, Mr. Alan Yanovich, Mrs. Laura Coquard-Party, Mrs. Shiva Aminian, Mrs. Sarah Kirwin on the other hand;

CONSIDERING that an Application and Memorial by the Applicant under Article II, Section 2 of the *International Air Services Transit Agreement* was filed on 30 October 2017; that a Statement of preliminary objections was filed by the Respondents on 19 March 2018; that a Response to the Statement of preliminary objections was filed by the Applicant on 1 May 2018; and that a Rejoinder was filed by the Respondents on 12 June 2018;

HAVING HEARD the Parties in the above matter on the preliminary objection and having held its deliberations at the eighth meeting of its 214th Session on 26 June 2018;

HAVING CONSIDERED the preliminary objection of the Respondents, namely that the Council lacks jurisdiction to resolve the claims raised by the Applicant in Application (B); or in the alternative, that the Applicant's claims are inadmissible;

CONSIDERING that the question before the Council was whether to accept the preliminary objection of the Respondents;

BEARING IN MIND Article 52 of the Chicago Convention which provides that decisions by the Council shall require approval by a majority of its Members and the consistent practice of the Council in applying this provision in previous cases;

HAVING DECLINED a request by one of the Respondents to reconsider the above-mentioned majority of 19 Members required in the current Council for the approval of its decisions;

DECIDES that the preliminary objection of the Respondents is not accepted.

The above Decision, on the question whether to accept the preliminary objection of the Respondents, was taken by a secret ballot with 2 Members voting in favor, 18 Members voting against, and 5 Members abstaining.

The time-balance of 7 days remaining for the Respondents to file their Counter-memorials shall begin to run from the date of receipt by the Respondents of this Decision of the Council.

Rendered on 29 June 2018 in Montréal.”

5. The Council, having thus completed its consideration of this part of the proceedings, continued its meeting.

6. The Representative of Egypt raised a question whether the seven-day time balance for the filing of counter-memorials by the Respondents would stop if notification of appeal was sent to ICAO. In response, D/LEB clarified that when the Council was sitting as a court under Article 84 of the Chicago Convention, he was not in a position to render a legal opinion to replace the function of the Council. As the proceedings had been completed and the Council was no longer sitting as a court, he was at liberty to provide an opinion in response to the queries raised. Based on that understanding, D/LEB stated that the seven-day time balance for the Respondents to file their counter-memorials would start upon their receipt of certified copies of the Council decisions; that as per practice, an e-mail message would be sent first, followed by hard copies of the decisions.

7. The Representative of Egypt sought further clarification as to the letters that would be issued to the Respondents notifying the decisions adopted. Specifically, the Representative expressly stated that the start and end dates of the seven-day time balance referred to in the decisions for the Respondents to file their counter-memorials should be clearly indicated, including whether this time

period related to seven calendar days or seven business days. In response, D/LEB confirmed that the time period related to the filing of a counter-memorials referred to seven calendar days. In this regard, the President of the Council expressed the hope that the information conveyed to the parties would clearly indicate the exact dates to be taken in relation to the start and finish of the seven-day time balance period for the filing of counter-memorials.

8. The Representative of Egypt then took the opportunity to inform the Council that the Respondents intended to give formal notification today of their intention to file an appeal with the International Court of Justice (ICJ) in The Hague. In this connection, the Representative wondered whether this notification would of itself be sufficient to put on hold the seven-day period for the filing of the counter-memorials.

9. In response, D/LEB indicated that within the time-frame established under Article 84 of the Chicago Convention, the timing of when to file an appeal was entirely at the discretion of the Respondents. According to Article 84, any such appeal shall be notified to the Council within sixty days of receipt of notification of the decision of the Council. This means that the appeal must already be filed with the ICJ before it is notified to the Council. If the Respondents submitted a notice today indicating that they had already appealed to the ICJ then, in accordance with Article 86 of the Chicago Convention, this would have the effect of suspending the decision of the Council until the appeal is decided by the ICJ.

10. In thanking D/LEB for his explanation, the Representative of Egypt then confirmed that the four Respondents would notify ICAO today that they would file appeals against the decision of the Council in both cases to the ICJ.

11. The President of the Council observed that it would be necessary for the Respondents to submit two separate notifications since there were two different applications. The President also sought clarification on who should be responsible for submitting the notifications; the agent or the representative. In response, D/LEB clarified that since the Council was acting under the *Rules for the Settlement of Differences*, it was always advisable for any such notifications to be submitted by the officially designated agents of the Respondents.

12. The Representative of Egypt then reiterated that the agents representing the four Respondents of Bahrain, Egypt, Saudi Arabia and the United Arab Emirates, would file their notification today with the Secretary General and that the Legal Bureau would be copied on this communication. In this regard, the Representative sought confirmation that the time balance of seven-days referred to in the decisions would be suspended given the intention to lodge appeals with the ICJ.

13. In response to a query of the President of the Council as to whether the Council had any discretion with regard to the time balance of seven days for the filing of counter-memorials by the Respondents, D/LEB referred to Rule 28 of the *Rules for the Settlement of Differences*, by which the Council could at any time decide to extend a time-limit that had been set under this rule, either at the request of any of the parties or at the Council's own discretion. The Council could also in special circumstances and after hearing the objections of any party, decide that any step taken after the expiration of a time-limit shall be considered as valid.

14. The President of the Council expressed some uncertainty as to whether the Council was considered to be sitting as a court each time it acted under Rule 28 to fix or extend time-limits and so he sought further clarification in this regard. In response, D/LEB explained that any action that the Council took in accordance with the *Rules for the Settlement of Differences* should be seen as the Council acting in its capacity as a court pursuant to Article 84 of the Chicago Convention. This included any communication that was conveyed by the Council to relevant parties.

15. The President of the Council then proposed, and it was agreed, to temporarily suspend the proceedings of the Council deliberations on this item so as to enable further informal consultations to take place and which would help to clarify any outstanding questions that remained.

16. Prior to the temporary adjournment, Mr. John Augustin (Observer, Qatar Delegation) drew attention to a number of issues that he observed might need to be taken into consideration. Firstly, in relation to the proposal to suspend the proceedings of the Council, he noted that it would need to be clear how long this suspension would be since this would have a bearing on how the Council could proceed. Secondly, he wished to express support for the legal interpretation provided by D/LEB in his earlier intervention in relation to the filing of an appeal to the ICJ. In this connection, he noted that Article 84 of the Chicago Convention states that a decision of the Council may be appealed to the ICJ and that “any such appeal shall be notified to the Council”. This meant that after an appeal had been filed with the ICJ, the Council should then be notified. Sequentially, this meant that the submission of further pleadings to ICAO is stopped but significantly there was no time limit on when the parties might file their appeals with the ICJ. Effectively, this meant that, for example, in five years’ time, everything could be on hold, including further proceedings in ICAO because the appeals had not been filed with the ICJ. Therefore, the logical interpretation of the Chicago Convention was that a party should notify ICAO after it had filed an appeal and until this is done, the sequence of the pleadings remains the same, meaning counter-memorial, reply, and in this case, rejoinder.

17. Mr. Augustin also drew attention to Article 5 (3) of the *Rules for the Settlement of Differences*, in which it was stated that with respect to the time-limit fixed for the filing of the counter-memorial, time shall cease to run from the moment a preliminary objection is filed until the objection is decided by the Council. The key dates in the timeline was when the objection is filed and when it is decided.

18. Finally, Mr. Augustin noted that any further discussion concerning the timelines referred to in Article 28 of the *Rules for the Settlement of Differences*, should take into account that the Respondents in this case had already been provided with ample time to prepare counter-memorials. He recalled that they had been given an extension of six weeks beyond the original twelve weeks and yet no counter-memorial had ever been forthcoming. Instead, all that had been submitted was a preliminary objection. This should be taken into account in the context of further discussions regarding extensions provided for under Article 28.

19. The Representative of Saudi Arabia expressed his objection to Mr. Augustin’s intervention. The Representative noted that the President had sought for, and the Council had agreed to a temporary suspension of the proceedings of the Council. In those circumstances, he viewed the preceding intervention on behalf of Qatar as inconsiderate.

20. The Council then proceeded to hold a ten-minute recess pending further informal consultations on this item.

21. At the resumption of the Council deliberations, the President of the Council indicated that the Council was hereafter sitting as a court. Referring to the penultimate paragraph of the two decisions related to the time balance and having consulted with the two relevant parties, the President proposed, and the Council noted, that in light of the information that had been provided to the Council about the impending notification today by the Respondents of their intention to file an appeal at the ICJ and with respect to the time balance of seven days from the date of receipt by the Respondents of this decision of the Council, this Council decision was expected to be communicated to the Respondents the following

Tuesday, 3 July 2018. Accordingly, it was agreed by the Council that the commencement of the running of the said time-balance of 7 days for the filing of counter-memorials by the Respondents shall be suspended for a period of 5 days from the date of receipt by the Respondents of the decisions of the Council. Taking into account the expectation that the decisions will be received by the Parties on or before 3 July 2018, the suspension for 5 days will end on 8 July 2018, and the said time-balance of 7 days shall now run from 9 July 2018 until 16 July 2018, as 15 July 2018 falls on a non-business day.

22. In expressing agreement with the proposal, Mr. Augustin (Observer, Qatar Delegation) requested that the minutes indicate that this proposal was reached through mutual agreement between the relevant parties and not through an imposition by the Council. The President of the Council commented that it was important for the Council to note in its records that all relevant parties had agreed to the proposal.

23. The Representatives of Saudi Arabia, the United Arab Emirates and Egypt all expressed support for the proposal.

24. In accordance with the foregoing, the approved decisions of the Council in both Application (A) and Application (B) reproduced at paragraph 4 above were amended with the insertion of the following new paragraph immediately after the penultimate paragraph as follows:

“By mutual agreement between the Parties, the commencement of the running of the said time-balance of 7 days shall be suspended for a period of 5 days from the date of receipt by the Respondents of this Decision of the Council. Taking into account the expectation that this Decision will be received by the Parties on or before 3 July 2018, the suspension for 5 days will end on 8 July 2018, and the said time-balance of 7 days shall now run from 9 July 2018 until 16 July 2018, as 15 July 2018 falls on a non-business day.”

25. Following consideration, the Council adopted the decisions as amended, which are reproduced as Appendix A (Application A refers) and Appendix B (Application B refers) to this C-MIN. It was also agreed that certain editorial amendments and corrections to the spelling of names of the parties present, would be reflected in an updated final text that was adopted as part of the decision at this meeting.

26. In adopting these decisions, the Council noted the stated intention of the Respondents to file appeals with the ICJ.

Subject No. 10: ICAO Relations with the United Nations, the specialized agencies and other international organizations

Report of the Joint Inspection Unit (JIU) for 2017 and Programme of Work for 2018

27. The Council considered this item on the basis of Information Paper C-WP/14773, which provided an account of the activities of the Joint Inspection Unit (JIU) in 2017 and an outline of the topics to be reviewed in 2018.

28. The Representative of Spain sought further information on item A.440 on a proposed review of the management and administration in ICAO (C-WP/14773, Appendix A refers), and how this related to the proposed restructure of the Secretariat, which was reflected in the Work Programme for the 215th Session (C-WP/14771, Appendix A refers).

29. In response and in the absence of the Chief of the Evaluation and Audit Office (EAO),

the Secretary General explained that the restructure of the Secretariat was being undertaken in response to a Council decision (C-DEC 212-8 refers), in which the Secretariat was requested to review its structure. She further explained that the JIU had proposed a review well before the time at which the Council had requested a paper on the restructure of the Secretariat, so on this basis there was no correlation between the two items. The Secretary General also explained that the timelines for the two items were also unrelated. The paper on the restructure of the Secretariat was included in the Council's work programme for the 215th session, whereas the JIU report was not expected until early next year.

30. In the absence of any further interventions, the Council concluded its consideration of this item.

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

Subject No. 7: Organization and personnel

Subject No. 7.4: Conditions of service

Report of the Working Group on Governance and Efficiency (WGGE) review of the ICAO Framework on Ethics

31. The Council considered this item on the basis of an oral report from the Working Group on Governance and Efficiency (WGGE), which outlined recommendations on enhancing the independence, competence and resourcing of the ethics functions in ICAO, along with proposed amendments to *The ICAO Service Code*, including the ICAO Framework on Ethics as contained in Annex I thereof, as well as to the terms of reference of the Evaluation and Audit Advisory Committee (EAAC).

32. The Council recalled that pursuant to its consideration of the review of the terms of reference of the EAAC during the Ninth Meeting of the 210th Session, it had decided (C-DEC 210/9 refers) to task the WGGE with considering whether consequent amendments would be necessary to the ICAO Framework on Ethics. Since the WGGE had constituted a Sub-group on the ICAO Ethics Framework (SEF) to consider these matters, it was further recalled that an interim report with preliminary recommendations from the SEF had been presented at the 213th Session (C-DEC 213/9 refers), following which the Council requested the WGGE to present a report with final recommendations on this item for consideration by the Council at this current session.

33. The oral report presented by the Representative of Argentina was commended by Representatives of the Council, as were the efforts and hard work undertaken by the SEF in progressing this item. In his comments, the President of the Council recalled that in the context of revising the terms of reference of the EAAC during the 210th Session, the Council had decided to task the WGGE with reviewing the Framework on Ethics and to consider resultant amendments to *The ICAO Service Code*. Given that three sessions had already elapsed since that decision, he had urged the Chairperson of the WGGE to make every effort to present a report at this current 214th Session. In the circumstances, he thanked in particular the Representative of Argentina for stepping in and finalizing an oral report as Interim Chairperson of the WGGE, in the absence of the Chairperson (Representative of South Africa).

34. While acknowledging that the WGGE had accomplished a great deal, the Representative of Saudi Arabia expressed concern that the options presented in the oral report were not fully in line with the recommendations of the Joint Inspection Unit (JIU). In particular, he pointed out that according to the practices elsewhere in the United Nations system, the duties of the Ethics Officer should not include responsibility for dealing with misconduct cases. As for the proposal for the establishment of an Investigations Committee, he agreed that this was an acceptable compromise. While concurring with the separation of the ethics function from the investigations function, he also suggested there was a need to separate the investigation of cases of misconduct from those of retaliation. The Representative agreed

with the need for special procedures to be established to handle allegations of misconduct against the Secretary General since these should not be investigated by the Ethics Officer. In essence however, his primary concern was that more work was required on this item, especially in aligning the options with the recommendations of the JIU, so on this basis the Representative proposed that the item be deferred until the next session of the Council.

35. In response to the intervention of Saudi Arabia, the President of the Council opined that as the governing body, it was the Council that provided oversight of the Organization and as such it was important that this issue not be further delayed.

36. Concerning the JIU, the Representative of Mexico recalled that even as the Organization had over the years tried to align itself with JIU recommendations, it had in some instances not followed those recommendations. For his part, he expressed support for the oral report of the WGGE, including the proposal to create the post of Chief Investigator, which he considered should be recruited as soon as practicable, and if necessary, in the interim on a fee-for-service basis.

37. Regarding the third member of the Investigations Committee, the Representative's preferred option was for this individual to be someone from elsewhere within the United Nations system. However, in the event that the third member of the Committee was someone from the Legal Bureau, he queried if this individual could be fire-walled or given immunity to participate in the proposed Investigations Committee. Finally, the Representative was of the view that the proposals from the WGGE should be accepted on a preliminary or trial basis for a period of one year, after which the Council would be able to review the item again and make any necessary adjustments. He also indicated that it would be necessary for any amendments to the Service Code to be consulted with the Human Resources Committee (HRC) but without altering the substance of the proposals presented by the WGGE.

38. The composition of the proposed Investigations Committee and specifically who should be the third member of the body aside from the Ethics Officer and the Chief, Investigator, was the focus of many interventions by Representatives and drew many comments. In this connection, the Representative of Nigeria endorsed a proposal that the Representative of Ireland had made during the meeting of the WGGE in that the third member of the Committee be an external party unrelated to ICAO so as to ensure impartiality of the proceedings. This concept was also supported by the Representative of the United Kingdom. On the other hand, the Representative of India queried how an external individual could be expected to dovetail into the work of the Committee given the nature of the meetings and the work involved. In the latter's view, the issue of impartiality could still be addressed by selecting someone suitable from within the Secretariat as the third member of the Committee, such as someone from the Legal Bureau or the Chief, Evaluation and Audit Office (C/EAO).

39. Numerous Representatives supported the adoption of a one-year trial period for the interim arrangements to apply in implementing the proposals, following which the Council could review the item again and make the necessary adjustments, if any, to the arrangements. Those in favour of this view included the Representatives of Mexico, Nigeria and the United Kingdom. The latter also urged that every effort be made for the recruitment of the Chief, Investigator, to be fast-tracked as far as practicable.

40. Concurring with the necessity for changes to be adopted to the ICAO Framework on Ethics as soon as possible, the Representative of the United States described the oral report as a good compromise and urged the Council to go forward based on the recommendations that it had presented. Responding to the earlier intervention of Saudi Arabia, he drew attention to the document, *Ethics and the United Nations System*, which outlined the tasks and duties of an Ethics Officer. The Representative agreed that it was important to conform with the recommendations of the JIU, and in this regard he noted that the latter had emphasized the importance of ensuring that the executive head of any organization should be removed from the decision-making process in determining whether or not an investigation into

allegations of misconduct should be initiated. This was one reason why he viewed the recommendations of the WGGE as important to be implemented as soon as possible. The Representative also informed the Council that conformance with JIU recommendations was something that was an extremely high priority to his government.

41. The Representative of the Russian Federation opined that the issue and the implications of certain recommendations presented by the WGGE appeared to him to have not been fully thought through. In the circumstances, he supported the proposal of the Representative of Saudi Arabia for this item to be deferred so that more work could be carried out in finalizing outstanding issues.

42. Expressing full support for the recommendations contained in the oral report of the WGGE, the Representative of Spain in particular noted that the implementation of a one-year trial period would afford the Council the opportunity to revisit this item. The Representative noted though that the establishment of a new post of Chief, Investigator carried certain financial implications and in this connection, he wondered what the potential budget impact would be of this decision. The Representative agreed that EAAC should be excluded from any roles in the investigations process in cases of misconduct involving the Secretary General, the Ethics Officer or the Chief Investigator, since its role was entirely separate.

43. Drawing attention to the fact that the oral report from the WGGE had been distributed only at around 0900 hours earlier this morning, the Representative of China wondered whether in the circumstances it was reasonable to now expect the Council to adequately debate the recommendations that it contained. The Representative was also concerned to note that consensus appeared to be lacking in relation to several issues referred to in the oral report. Accordingly, the Representative supported the proposal of the Representative of Saudi Arabia to defer this item to the next session and for the Council to request the WGGE to continue discussions in order to resolve the pending issues.

44. In expressing support for the spirit of the reform proposals aimed at strengthening the ethics framework, the Representative of France expressed support for the creation of an Investigations Committee but indicated that clarity was needed with regard to the third member of the Committee otherwise there would be confusion on this point. He agreed that it was important for the Secretary General to be detached from the decision-making process in determining whether or not to initiate an investigation but that it was also important to separate the ethics role from the investigation function. He also pointed to the potential confusion and overlap due to the increasing number of entities within the Secretariat that would now hold an oversight function, including the Ethics Officer as well as EAO.

45. In relation to the issue on term limits, the Representative of France supported the introduction of seven year non-renewable terms for both the Ethics Officer and Chief, Investigator but with the proviso that this be applied to the next appointee. He also stressed the need to uphold existing procedures, including for consultations to take place with both the Human Resources Committee (HRC) as well as the Staff Advisory Committee before any changes were made to the Service Code.

46. Addressing the suggestion that more time was needed to consider certain outstanding issues, the President of the Council recalled that the WGGE had now been discussing this particular item for a number of sessions in order to reach consensus. Given that context, he doubted that allocating more time to the WGGE would resolve the outstanding issues. It had to be recognized that consensus was not always possible despite everyone's best efforts but at the same time, the debate should not be allowed to continue indefinitely. Sometimes consensus was not possible but that in itself should not prevent the Council from taking a decision. Citing the recent adoption by the Council of the SARPs for CORSIA as an example, the President observed that sometimes the Council needed to take a decision and move forward in order to advance the work programme in an effective and efficient manner.

47. While agreeing with the President that much work had already been carried out on this item, the Representative of India nevertheless remarked that it was not necessarily correct to state that the WGGE had spent several sessions debating the issues. He recalled that the outcome of the SEF had only just been presented to the WGGE while the oral report had itself been issued only this morning. While agreeing with the recommendation to establish an Investigations Committee, the Representative stressed that there were important aspects of this proposal that remained unresolved especially with regard to who the third member of the Committee would be. In this connection, he reiterated that it would be preferable for this individual to be internal from within the existing Secretariat structure, such as someone from the Legal Bureau or C/EAO. From a practical point of view, he also favoured the separation of the ethics and the investigation functions as well as the separation of the handling of general misconduct and of retaliation cases. The Representative stated that this separation would also enable the Ethics Officer to deal with other issues such as education and ethics awareness, which represent important elements of her function.

48. Pending finalization of these issues, the Representative of India suggested that the current system should continue and that thereafter, the new system could be put in place. He cautioned against moving too quickly on such an important item. In the meantime, it was also important to keep in mind that any proposed changes to the Service Code should be consulted with both the Human Resources Committee (HRC) as well as with the Staff Advisory Committee.

49. In his preliminary summary on this item, the President of the Council noted that in the oral report of the WGGE, it was clear that a majority of members had supported the recommendation that the proposed Investigations Committee be comprised of three individuals: the Ethics Officer, the Chief Investigator, and the third member to be drawn internally from the Legal Bureau or externally from another entity of the United Nations system. Regardless of which option was chosen however, the President indicated that the third member of the Committee should not be the Chief, EAO since this role was separate and therefore should be excluded from the investigations process.

50. In relation to the issue of how allegations are to be investigated, the President noted that it was important for staff to know who to go to. In this connection, the President suggested that the focal point for the receipt of any allegations of misconduct should continue to be the Ethics Officer who would thereafter consult with the Investigations Committee on the conduct of any investigations that might be required to deal with the allegations.

51. In relation to the issue of the terms of the Ethics Officer and the Chief, Investigator, the President noted that the majority of the members of the WGGE supported the introduction of seven-year non-renewable terms for these posts and for this to become applicable as from the future recruitment for both positions. Likewise, in relation to the issue of the applicability of the Ethics Framework, the President observed that the predominant view of a majority of the members of the WGGE had been to support the principle that while the Ethics Framework should apply to all personnel, special procedures should be set in place to process any allegations of misconduct involving the Secretary General.

52. Finally, the President noted that a clear majority of members of the WGGE were in favour of the proposal that the recommendations being presented to the Council should be adopted for a trial period of one year and that at the conclusion of this trial period, a report should be presented to the Council outlining lessons learned.

53. In response to the Representative of India who urged that there be clarity as to who the third member of the Investigations Committee would be as well as in regard to the details of the process by which a preliminary assessment and investigation was to be conducted on the receipt of allegations of misconduct and by whom, the President of the Council noted that these points had been discussed by the members of the WGGE and he had taken these points into consideration when presenting his summary

based on the oral report of the WGGE.

54. The Representative of Turkey commended the WGGE for the efficiency of the manner with which the group had undertaken the process especially given the late issuance of some important documents for review. While supporting the President's summary, he also recalled related discussions that had occurred at the WGGE, including the need for the Council to consider the budget as quickly as possible in order to finalize funding for the new post of Chief, Investigator. At the same time, the Representative noted that some issues on this item appeared to remain unresolved but in this regard, he concurred with the Representative of the United States in expressing the hope that these issues could be resolved in due course.

55. In expressing appreciation to the Representative of Argentina for stepping in as interim Chairperson of the WGGE to finalize the oral report as well as to the Representative of Sweden for her strenuous efforts to reach consensus on this item as Chairperson of the SEF, the Representative of Australia indicated that he was in agreement with the preliminary summary that the President had presented in his earlier intervention.

56. The Secretary General expressed her appreciation to the WGGE and the SEF for all the efforts undertaken on this item. However, she noted that despite these best efforts, it was apparent that some issues remained unresolved. In particular, she stressed the importance of ensuring that a proper mechanism was in place for giving due consideration to any subsequent revisions of the Service Code. In this regard, the Secretary General also drew attention to a rule in the Service Code, providing for consultations to take place with the Staff Advisory Committee whenever proposed amendments to the Service Code were being considered.

57. The Representative of Japan observed that any decision taken by the Council at this meeting would be reviewed by the Council again at the end of the one-year trial period. Referring also to the recent off-site strategy meeting, he reminded the Council of the agreement for Representatives to be proactive in moving forward the future work of the Organization. In this spirit, he affirmed that it was important for the Council to agree a decision and to take a first step on this issue.

58. In noting the extensive level of consultation that had already taken place on this item, the Representative of Canada indicated that in relation to the third member of the Investigations Committee, he favoured that this be someone from the Legal Bureau designated from within the Organization who would be more likely to meet confidentiality as well as cost-benefit requirements. For the same reasons he was opposed to the third member of the Committee being someone from elsewhere in the United Nations system. On the option to consult with the Staff Association as to any changes to the Service Code, he indicated that in his view, this consultation should not involve anything substantial but rather that the Staff Association could just be informed of any changes instead. The Representative also stressed that it was important to implement these decisions as soon as possible.

59. The Representative of Ecuador expressed his appreciation to the WGGE and in general terms supported the oral report that had been presented. However, he cautioned that the decisions on this item would require amendments to the Service Code, which needed to be carefully considered and there had been insufficient attention paid to this point. In this connection, it was also important for both the Human Resources Committee as well as the Staff Advisory Committee to be consulted on any proposed changes to the Service Code. Regarding the proposed Investigations Committee, the Representative supported the establishment of this new body and indicated that in relation to the third member of the Committee, his preference was that this should be a senior officer from the Legal Bureau or possibly C/EAO.

60. In relation to the allocation of responsibilities, the Representative stressed that it was

important for this to be properly clarified before the Council took any decision. It needed to be clear how allegations were to be processed and investigated and who would have responsibility. For his part, he expressed the view that allegations of retaliation should be handled by the Ethics Officer while allegations related to general misconduct should be handled by the Chief Investigator.

61. Agreeing that there remained a number of unresolved issues, the Representative of Egypt wondered what would be the best course of action in attempting to resolve these and if the item should again be deferred to the next session. It was essential that there be clarity on all the outstanding issues before any decisions were taken by the Council especially vis-à-vis any proposed amendments to the Service Code.

62. In observing that the WGGE and the SEF had already spent a great deal of time discussing this item, the Representative of Malaysia noted that despite these extensive efforts, it was clear from the oral report that a number of issues remained unresolved and on this basis he wondered whether the item should again be deferred until the next session. At the same time, he viewed the suggestion for a one-year trial period for any new arrangements as helpful since it would allow the Council the opportunity to revisit the item. The Representative also expressed support for the view that had been proffered in other preceding interventions that the Staff Advisory Committee should be consulted on any proposed amendments to the Service Code.

63. The President of the Council noted that a number of Representatives had expressed the view that the item should be deferred to the next session but he indicated that he wanted the Council to take a decision during the current session.

64. In noting the extensive work that had already been undertaken on this item, the Representative of Kenya indicated that despite some unresolved issues, it was important nonetheless for the Council to now move forward on this item. She accepted that there were dissenting views on some issues such as the composition of the proposed Investigations Committee but this as well as other points should not prevent the implementation of the new Framework on Ethics. She stressed that there should be no further delays especially since in her view this would probably not help to resolve the outstanding issues. The Representative did agree however that any proposed amendments to the Service Code should be consulted with the Staff Advisory Committee.

65. In indicating support for the earlier intervention of the United States, the Representative of Germany expressed the view that the oral report of the WGGE represented a good compromise and as such, it was important for the Council to move forward and make a decision on this item. In particular, he noted that the adoption of the recommendation of a one-year trial period was important in that it afforded the opportunity for the Council to revisit any outstanding issues when it again considered the item at the end of that trial period.

66. The Representative of the Republic of Korea agreed with a number of previous interventions in expressing the view that the Secretariat should be consulted in relation to any proposed amendments to the Service Code. The Representative also echoed the sentiments expressed in earlier interventions in that given the lack of time to properly consider all the issues, further consideration by the Council of the Ethics item should be deferred until the next session.

67. In noting that a number of issues remained unresolved, the Representative of Uruguay wondered whether it might not be better to allocate more time to discussions to help try and bridge the gaps on the points of divergence. In the circumstances, he wondered whether the Council might not benefit from agreeing to a *procédure d'approbation tacite* (silence procedure), which might facilitate the decision-making process and help reach consensus.

68. The Representative of Colombia stated that it was important for the Council to move forward on this item and take a decision at this meeting.

69. The Representative of the United Arab Emirates raised the issue of the constant changes to the rules and the difficulty that arose in attempting to keep track of these. In this connection, she called for a mechanism to be established that would enable Representative to better track changes and revisions. In doing so, the Council would then be in a better position to recall and understand the changes being made, such as in the Rules of Procedures or the policies.

70. The Representative of Sweden endorsed the sentiments of the preceding intervention from Kenya. She underscored the need for the Organization to have a robust ethics framework in place and in this regard it was important for the Council to now move forward on this item.

71. In relation to the third member of the proposed Investigations Committee, the Representative of Singapore indicated that his preference was for this to be someone from the Legal Bureau. In relation to the process by which allegations and investigation were to be processed, he associated himself with the earlier intervention of India in stressing the need for clarity on this point. For his part, the Representative stated that while the Ethics Officer should continue to be the focal point for the receipt of all allegations, there should be a two-track process thereafter by which one dealt with allegations of general misconduct and the other dealt with issues of retaliation. This meant that potentially there could be parallel investigations taking place at the same time. It was important to have clarity on this aspect of the new process in order to allay the concerns of those who had expressed the view that the item be deferred until the next session.

72. Citing the unresolved differences on this item that seemed apparent to him, the Representative of Algeria suggested that it would be better for the decision on this item to be deferred to the next session.

73. In contrast, the Representative of Nigeria supported the view that the Council should move forward on this item and in this connection he expressed support for the preceding interventions of the Representatives of Kenya, Germany and Sweden.

74. The Representative of Mexico stressed that in relation to the recruitment for the new post of Chief Investigator, it was important that current staff members of the Secretariat should be ruled ineligible for recruitment to this post. In relation to the third member of the proposed Investigations Committee, he expressed the view that this should be someone from the Legal Bureau and for this individual to have immunity for their role on the Committee. The Representative agreed with other interventions in stating that it was important to consult with the Staff Advisory Committee on any changes to the Service Code but that this should not necessarily delay the Council from taking a decision.

75. Noting that the majority of Representatives had supported his preliminary summary, the President of the Council took the opportunity to further clarify some of the outstanding issues. On the position of the Chief Investigator, he explained that the individual could be hired as a permanent staff, which would take more time or someone could be recruited externally on a fee-for-service basis but the difference was just a question of semantics. According to his understanding, many positions are created and the individuals recruited are either as permanent, a secondee or a consultant. This was a regular occurrence subject to funding but in his view this was not a significant issue.

76. Regarding the third member of the proposed Investigations Committee, the President had noted that some Representatives suggested this should be someone from the Legal Bureau while others had indicated a preference for someone external from elsewhere in the United Nations system. If the individual was from the Legal Bureau then it was important to ensure that this individual had all the

necessary support to carry out this function. There is a related issue on whether there are sufficient resources available within the Legal Bureau or whether the individual was obtained externally and how this was paid for but this was all a question of resources. Therefore, subject to the availability of resources, both options were acceptable.

77. In relation to the issue of the processing of allegations, the President indicated that the consensus appeared to be that the Ethics Officer would continue to be the focal point to receive and review all allegations but that thereafter, the Investigations Committee would decide on whether or not an investigation was warranted.

78. Referring to the recommendation regarding a Chief Investigator, the Secretary General stressed the importance of ensuring clarity on this point. She recalled that the SEF had recommended that the person to be recruited should be a professional investigator; competencies that did not currently exist in the Secretariat. Her recollection of the majority view was that this professional investigator should have the responsibility for investigating allegations of general misconduct so it was important that there be clarity on this aspect of the post. In response, the President of the Council recalled that the Secretary General had already briefed him about this concern but that regardless of the exact duties of the role itself, the post of Chief Investigator still needed to be established. In this connection, he suggested that the person recruited could either be permanent or recruited externally on a fee-for-service basis but that either way, it would need to be a professionally qualified investigator. In the interim, someone could be hired and if extra resources were required, this could be addressed in the next budget to include an allocation for this permanent position.

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

- a) agreed to the establishment of a new position in the Secretariat with the title of “Chief Investigator”, to be filled as soon as possible, and on the understanding that the post would be included in the budget for the next triennium;
- b) requested that the finalization of the job description and details related to the issuance of the vacancy notice for the position of Chief Investigator, be undertaken in consultation with the Human Resources Committee (HRC);
- c) approved the establishment of an Investigations Committee that would have the authority to initiate an investigation and that the Investigations Committee would be comprised of three individuals, with the first two being the Ethics Officer as well as the Chief Investigator, to be recruited or in the interim, whose functions may be performed by a qualified person, hired on a temporary basis or as a consultant, while the third would be either a Professional-level officer from the Legal Affairs and External Relations Bureau (LEB) who should be firewalled from LEB when undertaking this function or an externally engaged officer from another entity of the United Nations system, on the understanding that the final decisions in this regard would take into account resourcing implications and that the Chief EAO will play no role in this process;
- d) agreed that the ethics function would be distinct from the investigation function with both office holders reporting separately to the Secretary General and with each office-holder being recruited for a single non-renewable seven-year fixed term contract to take effect as from future recruitment against both positions;
- e) further agreed that while the Ethics Officer would continue to be the focal point to receive and undertake preliminary review and evaluation of all allegations of general

misconduct and retaliation, the said Investigations Committee will decide based on majority on how to process the different nature of allegations and whether or not to initiate an investigation;

- f) noted that while all personnel of the Organization would be subject to the new ethics framework, special procedures and arrangements should be adopted to handle allegations of misconduct in the exercise of executive functions involving the Secretary General;
- g) further noted that the Evaluation and Audit Advisory Committee (EAAC) would be excluded from any role in the investigation process in cases of misconduct involving the Secretary General, the Ethics Officer or the Chief Investigator, and that accordingly, with regards to ethics matters, the EAAC would maintain the current oversight and advisory function to the Council;
- h) requested the WGGE to complete, through its sub group, a review (“clean-up of the language”) of the implications of these decisions vis-à-vis the distributed flimsy on the SEF proposed amendment of the current texts contained in *The ICAO Service Code*, including the ICAO Framework on Ethics contained in Annex I, as well as to the terms of reference of the EAAC, with the outcome submitted to the President and circulated to Representatives; and
- i) agreed that these new arrangements be operated for a trial period of one year and requested that a progress report on the implementation of these decisions be provided at the 215th Session of the Council.

80. The meeting was then adjourned at 1320 hours. In doing so, the Council agreed to reconvene again at 1430 hours in order to complete consideration of the remaining items on the Order of Business for this session.

APPENDIX A

**DECISION OF THE COUNCIL
OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION
ON THE PRELIMINARY OBJECTION IN THE MATTER: THE STATE OF QATAR AND
THE ARAB REPUBLIC OF EGYPT, THE KINGDOM OF BAHRAIN, THE KINGDOM OF
SAUDI ARABIA AND THE UNITED ARAB EMIRATES (2017) – APPLICATION (A)**

THE COUNCIL,

ACTING under Article 84 of the *Convention on International Civil Aviation* (Chicago Convention) and the *Rules for the Settlement of Differences*;

COMPOSED of the following Representatives entitled to vote: Mr. A.D. Mesroua (Algeria), Mr. G.E. Ainchil (Argentina), Mr. S. Lucas (Australia), Mr. O. Vieira (Alt.) (Brazil), Mr. C. Monteiro (Cabo Verde), Mr. M. Pagé (Canada), Mr. S. Yang (China), Mr. A. Muñoz Gómez (Colombia), Mr. R.M. Ondzotto (Congo), Mrs. M. Crespo Frasquieri (Cuba), Mr. I. Arellano (Ecuador), Mr. P. Bertoux (France), Mr. U. Schwierczinski (Germany), Mr. A. Shekhar (India), Mrs. N. O'Brien (Ireland), Mr. M.R. Rusconi (Italy), Mr. S. Matsui (Japan), Ms. M.B. Awori (Kenya), Mr. K.A. Ismail (Malaysia), Mr. D. Méndez Mayora (Mexico), Mr. M.S. Nuhu (Nigeria), Mr. G.S. Oller (Panama), Mr. Y.J. Lee (Republic of Korea), Mr. S. Gudkov (Russian Federation), Mr. T.C. Ng (Singapore), Mr. M.D.T. Peege (South Africa), Mr. V.M. Aguado (Spain), Ms. H. Jansson Saxe (Sweden), Mr. A.R. Çolak (Turkey), Mr. D.T. Lloyd (United Kingdom), Mr. R.W. Bokango (United Republic of Tanzania), Mr. T.L. Carter (United States), Mr. M. Vidal (Uruguay).

THE PARTIES being: the **State of Qatar** (Applicant), represented by H.E. Jassem Bin Saif AlSulaiti, Authorized Agent, assisted by Mr. Essa Abdulla Al-Malki (Rep.), H.E. Abdulla Nasser AlSubaey, H.E. Fahad Mohammed Kafood, H.E. Yousef Sultan Laram, Mr. Mohammed Abdulla AlHajri, Mr. Talal Abdulla Almalki, Mr. Essa Ahmed Mindney, Mr. Abdulla Altamimi, Mr. John Augustin on one hand; and the Respondents: the **Arab Republic of Egypt** represented by H.E. Hany EL-Adawy, Authorized Agent, assisted by H.E. Amal Salama, Mrs. Salwa El Mowafi, Mrs. Yara Hussein Mokhtar Elbedewy, the **Kingdom of Bahrain** represented by H.E. Kamal Bin Ahmed Mohammed, Authorized Agent, assisted by Mr. Mohammed Thamer Al Kaabi, Mr. Salim Mohammed Hassan, Mr. Devashish Krishan, Mr. Georgios Petropoulos, Ms. Amelia Keene, the **Kingdom of Saudi Arabia** represented by H.E. Dr. Nabeel bin Mohamed Al-Amudi, Authorized Agent, assisted by H.E. Abdulhakim M. Altamimi, Mr. Naif Bin Bandir Alsudairy, H.E. Wael M. Almadani Alidrissi, and the **United Arab Emirates** represented by H.E. Sultan Bin Saeed Al Mansoori, Authorized Agent, assisted by H.E. Saif Mohammed Al Suwaidi, H.E. Mohammed Saif Helal Al Shehhi, H.E. Mr. Fahad Al Raqbani, Mr. Mohamed Al Shamsi, Dr. Ludwig Weber, Mrs. Laura Coquard-Patry, Mrs. Shiva Aminian, Mrs. Sarah Kirwin on the other hand;

CONSIDERING that an Application and Memorial by the Applicant under Article 84 of the Chicago Convention was filed on 30 October 2017; that a Statement of preliminary objections was filed by the Respondents on 19 March 2018; that a Response to the Statement of preliminary objections was filed by the Applicant on 1 May 2018; and that a Rejoinder was filed by the Respondents on 12 June 2018;

HAVING HEARD the Parties in the above matter on the preliminary objection and having held its deliberations at the eighth meeting of its 214th Session on 26 June 2018;

HAVING CONSIDERED the preliminary objection of the Respondents, namely that the Council lacks jurisdiction to resolve the claims raised by the Applicant in Application (A); or in the alternative, that the Applicant's claims are inadmissible;

CONSIDERING that the question before the Council was whether to accept the preliminary objection of the Respondents;

BEARING IN MIND Article 52 of the Chicago Convention which provides that decisions by the Council shall require approval by a majority of its Members and the consistent practice of the Council in applying this provision in previous cases;

HAVING DECLINED a request by one of the Respondents to reconsider the above-mentioned majority of 19 Members required in the current Council for the approval of its decisions;

DECIDES that the preliminary objection of the Respondents is not accepted.

The above Decision, on the question whether to accept the preliminary objection of the Respondents, was taken by a secret ballot with 4 Members voting in favour, 23 Members voting against, and 6 Members abstaining.

The time-balance of 7 days remaining for the Respondents to file their Counter-memorials shall begin to run from the date of receipt by the Respondents of this Decision of the Council.

By mutual agreement between the Parties, the commencement of the running of the said time-balance of 7 days shall be suspended for a period of 5 days from the date of receipt by the Respondents of this Decision of the Council. Taking into account the expectation that this Decision will be received by the Parties on or before 3 July 2018, the suspension for 5 days will end on 8 July 2018, and the said time-balance of 7 days shall now run from 9 July 2018 until 16 July 2018, as 15 July 2018 falls on a non-business day.

Rendered on 29 June 2018 in Montréal.

APPENDIX B

**DECISION OF THE COUNCIL
OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION
ON THE PRELIMINARY OBJECTION IN THE MATTER: THE STATE OF QATAR
AND THE ARAB REPUBLIC OF EGYPT, THE KINGDOM OF BAHRAIN
AND THE UNITED ARAB EMIRATES (2017) – APPLICATION (B)**

THE COUNCIL,

ACTING under Article 84 of the *Convention on International Civil Aviation* (Chicago Convention) and the *Rules for the Settlement of Differences*;

COMPOSED of the following Representatives entitled to vote: Mr. A.D. Mesroua (Algeria), Mr. G.E. Ainchil (Argentina), Mr. S. Lucas (Australia), Mr. S. Yang (China), Mr. R.M. Ondzotto (Congo), Mrs. M. Crespo Frasquiere (Cuba), Mr. I. Arellano (Ecuador), Mr. P. Bertoux (France), Mr. U. Schwierczinski (Germany), Mr. A. Shekhar (India), Mrs. N. O'Brien (Ireland), Mr. M.R. Rusconi (Italy), Mr. S. Matsui (Japan), Mr. K.A. Ismail (Malaysia), Mr. D. Méndez Mayora (Mexico), Mr. M.S. Nuhu (Nigeria), Mr. G.S. Oller (Panama), Mr. Y.J. Lee (Republic of Korea), Mr. T.C. Ng (Singapore), Mr. M.D.T. Peege (South Africa), Mr. V.M. Aguado (Spain), Ms. H. Jansson Saxe (Sweden), Mr. A.R. Çolak (Turkey), Mr. D.T. Lloyd (United Kingdom), Mr. T.L. Carter (United States).

THE PARTIES being: the **State of Qatar** (Applicant), represented by H.E. Jassem Bin Saif AlSulaiti, Authorized Agent, assisted by Mr. Essa Abdulla Al-Malki (Rep.), H.E. Abdulla Nasser AlSubaey, H.E. Fahad Mohammed Kafood, H.E. Yousef Sultan Laram, Mr. Mohammed Abdulla AlHajri, Mr. Talal Abdulla Almalki, Mr. Essa Ahmed Mindney, Mr. Abdulla Altamimi, Mr. John Augustin on one hand; and the Respondents: the **Arab Republic of Egypt** represented by H.E. Hany EL-Adawy, Authorized Agent, assisted by H.E. Amal Salama, Mrs. Salwa El Mowafi, Mrs. Yara Hussein Mokhtar Elbedewy, the **Kingdom of Bahrain** represented by H.E. Kamal Bin Ahmed Mohammed, Authorized Agent, assisted by Mr. Mohammed Thamer Al Kaabi, Mr. Salim Mohammed Hassan, Mr. Devashish Krishan, Mr. Georgios Petropoulos, Ms. Amelia Keene, and the **United Arab Emirates** represented by H.E. Sultan Bin Saeed Al Mansoori, Authorized Agent, assisted by H.E. Saif Mohammed Al Suwaidi, H.E. Mohammed Saif Helal Al Shehhi, H.E. Mr. Fahad Al Raqbani, Mr. Mohamed Al Shamsi, Dr. Ludwig Weber, Mrs. Laura Coquard-Patry, Mrs. Shiva Aminian, Mrs. Sarah Kirwin on the other hand;

CONSIDERING that an Application and Memorial by the Applicant under Article II, Section 2 of the *International Air Services Transit Agreement* was filed on 30 October 2017; that a Statement of preliminary objections was filed by the Respondents on 19 March 2018; that a Response to the Statement of preliminary objections was filed by the Applicant on 1 May 2018; and that a Rejoinder was filed by the Respondents on 12 June 2018;

HAVING HEARD the Parties in the above matter on the preliminary objection and having held its deliberations at the eighth meeting of its 214th Session on 26 June 2018;

HAVING CONSIDERED the preliminary objection of the Respondents, namely that the Council lacks jurisdiction to resolve the claims raised by the Applicant in Application (B); or in the alternative, that the Applicant's claims are inadmissible;

CONSIDERING that the question before the Council was whether to accept the preliminary objection of the Respondents;

BEARING IN MIND Article 52 of the Chicago Convention which provides that decisions by the Council shall require approval by a majority of its Members and the consistent practice of the Council in applying this provision in previous cases;

HAVING DECLINED a request by one of the Respondents to reconsider the above-mentioned majority of 19 Members required in the current Council for the approval of its decisions;

DECIDES that the preliminary objection of the Respondents is not accepted.

The above Decision, on the question whether to accept the preliminary objection of the Respondents, was taken by a secret ballot with 2 Members voting in favour, 18 Members voting against, and 5 Members abstaining.

The time-balance of 7 days remaining for the Respondents to file their Counter-memorials shall begin to run from the date of receipt by the Respondents of this Decision of the Council.

By mutual agreement between the Parties, the commencement of the running of the said time-balance of 7 days shall be suspended for a period of 5 days from the date of receipt by the Respondents of this Decision of the Council. Taking into account the expectation that this Decision will be received by the Parties on or before 3 July 2018, the suspension for 5 days will end on 8 July 2018, and the said time-balance of 7 days shall now run from 9 July 2018 until 16 July 2018, as 15 July 2018 falls on a non-business day.

Rendered on 29 June 2018 in Montréal.

COUNCIL — 214TH SESSION**SUMMARY MINUTES OF THE TWELFTH MEETING****(THE COUNCIL CHAMBER, FRIDAY, 29 JUNE 2018, AT 1430 HOURS)****OPEN MEETING**

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

PRESENT:

Algeria	— Mr. A.D. Mesroua	Kenya	— Ms. M.B. Awori
Argentina	— Mr. G.E. Ainchil	Malaysia	— Mr. K.A. Ismail
Australia	— Mr. S. Lucas	Mexico	— Mr. D. Méndez Mayora
Brazil	— Mr. O. Vieira (Alt.)	Nigeria	— Mr. M.S. Nuhu
Cabo Verde	— Mr. C. Monteiro	Panama	— Mr. G.S. Oller
Canada	— Mr. M. Pagé	Republic of Korea	— Mr. Y.J. Lee
China	— Mr. Shengjun Yang	Russian Federation	— Mr. S. Gudkov
Colombia	— Mr. A. Muñoz Gómez	Saudi Arabia	— Mr. S.A.R. Hashem
Congo	— Mr. R.M. Ondzotto	Singapore	— Mr. T.C. Ng
Cuba	— Mrs. M. Crespo Frasquiere	Spain	— Mr. V.M. Aguado
Ecuador	— Mr. I. Arellano	Sweden	— Ms. H. Jansson Saxe
Egypt	— Mr. A. Khedr	Turkey	— Mr. A.R. Çolak
France	— Mr. P. Bertoux	United Arab Emirates	— Miss A. Alhameli
Germany	— Mr. U. Schwierczinski	United Kingdom	— Mr. D.T. Lloyd
India	— Mr. A. Shekhar	United Republic of Tanzania	— Mr. R.W. Bokango
Ireland	— Ms. N. O'Brien	United States	— Mr. T.L. Carter
Italy	— Mr. M.R. Rusconi	Uruguay	— Mr. M. Vidal
Japan	— Mr. S. Matsui		

ALSO PRESENT:

Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. C. Fernández (Alt.)	— Argentina
Mr. R.F. Pecoraro (Alt.)	— Brazil
Mr. D. Tavares Taufner (Alt.)	— Brazil
Mr. H. Gonzales (Alt.)	— Brazil
Mr. M.G.C. Pontes (Alt.)	— Brazil
Mr. Chunyu Ding (Alt.)	— China
Mr. M. Millefert (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mrs. D. Valle Álvarez (Alt.)	— Mexico
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
Mr. M.S. Habib (Alt.)	— Saudi Arabia
Mr. S. Vuokila (Alt.)	— Sweden
Mr. Ö. Doğrukol (Alt.)	— Turkey
Mr. M. Salem (Alt.)	— United Arab Emirates
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mr. S. Kotis (Alt.)	— United States
Mrs. M.A. González (Alt.)	— Uruguay
Mr. F. de Medina	— Uruguay

SECRETARIAT:

Mrs. J. Yan	— C/OSG
Ms. I. Sosina	— SA/PRES
Mr. B. Djibo	— D/ATB
Mr. S. Creamer	— D/ANB
Mr. V. Smith	— D/ADB
Mr. J. Huang	— D/LEB
Mrs. J. Hupe	— DD/ENV
Mr. M. Fox	— C/PRC
Mrs. L. Comeau-Stuart	— Advisor, POD
Ms. K. Balram	— C/SEA
Mr. S. Jossai	— C/RCP
Ms. S. Rose	— C/POD
Mr. A. Opolot	— LO
Mr. A. Larcos	— C/ACS
Miss Y. Que	— Précis-writer

Representatives to ICAO

Bolivia (Plurinational State of)

Cameroon

Chile

Cyprus

Equatorial Guinea

Greece

Honduras

Indonesia

Iran (Islamic Republic of)

Lebanon

Paraguay

Peru

Sudan

European Union (EU)

Subject No. 7: Organization and personnel
Subject No. 7.2: Recruitment policy

Amendment to the ICAO Service Code (Doc 7350) — Staff Regulation 4.21

1. The Council considered this item on the basis of C-WP/14780, which presented a proposal to amend Staff Regulation 4.21 to *The ICAO Service Code*, in order to harmonize and ensure consistency in respect of the practice applied for D-1 posts (other than C/EAO) by allowing the possibility of an extension, on an exceptional basis, of up to twelve months for D-1 Regional Directors after completion of the second term. The Council also had for consideration, an oral report thereon from the Human Resources Committee (HRC).

2. The oral report was presented by the Chairperson of the Human Resources Committee (Representative of Ecuador).

3. As there was no discussion by Representatives arising from this item and taking into account the recommendations of the HRC, the Council approved an amendment to Staff Regulation 4.21 to *The ICAO Service Code*, by deleting the wording “D-1 Regional Director and” from the current text, which would henceforth have the effect of harmonizing the practice for D-1 Regional Directors with D-1 staff at Headquarters.

Subject No. 7: Organization and personnel
Subject No. 7.4: Conditions of service

Age Limits for Secondees

4. The Council considered this item on the basis of an oral report from the Human Resources Committee (HRC).

5. The oral report was presented by the Chairperson of the Human Resources Committee (Representative of Ecuador). In doing so, it was recalled that the selection of secondees is governed by the ICAO Policy on Secondments, as well as by Staff Regulation 9.15 of *The ICAO Service Code*, the latter of which currently limits the age of employment to 65 years. It was noted that the application of this age limit would prevent the appointment of a proposed secondnee with the necessary technical expertise needed in order to advance the ICAO work on remotely piloted aircraft systems (RPAS).

6. Following consideration, the Council:

- a) agreed with the recommendation of the HRC that the age limit of 65 should be waived for the particular secondnee that had been proposed by the Federal Aviation Administration (FAA) of the United States to work on the RPAS project;
- b) emphasized that while it was not recommending the removal of the age limit of 65, it nonetheless requested the Secretariat to undertake a review of the implications of the age limit of 65 applying to the selection of secondees, and that a working paper on this issue be presented for consideration at the 215th Session; and

- c) further noted that the Secretariat has been indicating in State letters concerning secondment opportunities that States are encouraged to nominate female candidates for secondment opportunities and in this connection, requested the Secretariat to ensure that a reference to Assembly Resolution A39-30 (*ICAO Gender Equality Programme promoting the participation of women in the global aviation sector*), also be incorporated in the vacancy notices for all future secondment opportunities to ICAO.

Subject No. 7: Organization and personnel

Request for exceptional extension for consultants working on a joint ICAO-EU project

7. The Council considered this item on the basis of an oral report from the Human Resources Committee (HRC) and which was presented by the Chairperson (Representative of Ecuador). In doing so, it was recalled that the ICAO Policy on Consultants limits the duration of contracts for medium-term consultants to “33 months within a 36-month period”. It was noted that this limitation was adversely affecting the joint ICAO-EU project Capacity-building for CO₂ mitigation from international aviation, which had recently been extended to 30 June 2019. In this regard, the three consultants working on this project had already reached the maximum allowable duration for medium-term consultants. Therefore, in order to ensure continuity and success of the project, a further extension of the contracts for the consultants was required.

8. Responding to a query from the President of the Council, the Director of the Bureau of Administrative Services (D/ADB) clarified that the application of extension dates would be varied according to the specific consultants in question.

9. The Representative of Congo took the opportunity to inform the Council as to the nature of the project and the work being undertaken by one of the consultants who was from Cameroon.

10. Following consideration, the Council:

- a) expressed its ongoing appreciation to the European Union for funding this important project; and
- b) approved the granting of exceptional extensions to 30 June 2019 for two of the identified consultants, and to 31 January 2019 for the third identified consultant currently working on the EU project.

Subject No. 12: Programme of ICAO meetings

Programme of ICAO meetings for 2019 and tentative programme of meetings for 2020-2021

11. The Council considered this item on the basis of C-WP/14769, which presented the programme of meetings for the year 2019 and, for planning purposes, the tentative programme of meetings for the years 2020 and 2021. The Council also had for consideration an oral report thereon from the Working Group on Governance and Efficiency (WGGE) and which was presented by the Acting Chairperson (Representative of Argentina).

12. The Representative of Mexico requested that when scheduling events, the Secretariat should attempt to avoid convening parallel meetings. He indicated that on certain occasions when this had

occurred in the past, there had been a difficulty for delegations to attend two separate meetings when they were occurring at the same time. This implication for delegations and the adverse impact should therefore be borne in mind.

13. In response to a query of the Representative of Ecuador, the Director of the Air Navigation Bureau (D/ANB) explained that the listing of unspecified panels and dates outlined in pages B-3 and C-3 should at this stage be seen merely as a “place-holder” since this was a strategy for reserving these dates for as yet to be determined task forces or special panel meetings.

14. The Representative of Saudi Arabia drew attention to the absence in the working paper of a regional conference planned in Saudi Arabia at the end of March or early April, which would represent an important event in support of the Riyadh Declaration. In response, the President of the Council noted that the dates of some events may not have been fixed as yet since they were subject to ongoing consultation between the Secretariat and the Member States. Nevertheless, he appreciated the efforts of Member States to host events especially as these helped to advance specific issues at the regional level and for the global aviation community. In this connection, the President urged Representatives to ensure all events were coordinated with the Secretariat in order to avoid any overlap in the scheduling of meetings.

15. By way of supplementary information on the same issue, the Secretary General explained that certain events had not been reflected in the working paper due to the dates not having been determined by the time which the working paper had been finalized. She also reiterated the point made by the President of the Council in his intervention that it was important for Member States planning to coordinate proposed events with the Secretariat in order to avoid any conflict of scheduling.

16. Following consideration, the Council:

- a) approved the programme of meetings for 2019 presented in Appendix A of C-WP/14769, subject to the dates being adjusted for certain meetings listed, as a result of the Council’s decision earlier this session regarding the dates for the holding of the 40th Session of the Assembly (C-DEC 214/4 refers); and
- b) approved, for planning purposes, the programme of meetings for the years 2020 and 2021, as presented in Appendices B and C of C-WP/14769 respectively, taking into account consideration that the dates for the convening of certain meetings will be decided at a later date and that the schedules for 2020 and 2021 are subject to the approval of the 2020-2021-2022 Budget by the 40th Session of the Assembly.

17. In light of the preceding interventions, the Council also took the opportunity to welcome the fact that many Member States offer to host ICAO events. At the same time, it was noted that it was important for any Member State wishing to do so to engage with the Secretariat as far in advance as possible so that the consideration of all events scheduled within a particular timeframe could be proceeded within a holistic and timely manner

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

Work Programme of the Council and its Committees for the 215th Session

18. The Council considered this item on the basis of C-WP/14771, which presented the Work

Programmes of the Council and its Committees for the 215th Session. The Council also had for consideration, an oral report thereon from the Working Group on Governance and Efficiency (WGGE).

19. In presenting the oral report, the Acting Chairperson of the WGGE (Representative of Argentina) informed the Council that the WGGE had completed its review of the role and status of rotational groups as had been requested by the Council and that a report on this item would be presented at the 215th Session.

20. Referring to the item on cybersecurity, the Representative of France pointed out that it was not only the Committee on Unlawful Interference (UIC) but also the Council that had requested that there should be sessional updates on cybersecurity (C-DEC 213/8 refers). This was duly noted. Accordingly, it was agreed that an additional item concerning an Information Paper on the issue of cybersecurity activities, including trust framework, would be added to be the Work Programme of Council as well as to the Committee on Unlawful Interference (Appendices A and E respectively).

21. Responding to a query from the Representative of Spain on the report on the review of the structure of the Secretariat (C-WP/14771, Appendix A, item 4 refers), the Secretary General explained that the restructure review was being undertaken by the five Bureau Directors along with the Head of the SPCP. She had not yet been briefed on the outcome of that review but she intended to discuss this with her senior management team in early July. As to how the restructure review would dovetail with the work of Joint Inspection Unit, she indicated that these two items were unrelated and that a report from the JIU was expected either at the end of the year or early next year.

22. In response to supplementary question from the Representative of Spain concerning the issue of space weather service provision (C-WP/14771, Appendix A, item 18 refers), the Director, Air Navigation Bureau (D/ANB) explained that the Air Navigation Commission (ANC) was still finalizing its recommendations on potential options in this regard and would likely consider these at their next session in September before presenting on this issue to the Council. The Director added that a briefing could be given to Representatives to elaborate on the background of the recommendations from the Meteorology Panel, the safety impact of the meteorological and space weather phenomena necessitating the recommendations and the recommended course of action that had been reached in conjunction with the World Meteorological Organization.

23. In relation to the status of the Annex 9 audit, the Director of the Air Transport Bureau (D/ATB) informed the Council that related work was still ongoing on this item but he took note of the request of the Representative of Spain for this to be made clearer, more concise and available as soon as possible.

24. Observing that a significant number of items in Appendix A of the Work Programme would be presented directly to the Council without first being reviewed by one of the Standing Committees or ad hoc working groups, the Representative of Australia suggested that as far as possible this should be avoided and that it would always be more efficient in terms of the Council's time if items went to a committee or a working group before being presented to the Council. Concurring with this intervention, the President of the Council added that one of the considerations in this regard was to ensure that the relevant working papers were distributed early enough to enable the various committees and working groups of the Council to undertake the required review of the documentation.

25. The Representative of the United Arab Emirates reiterated the request for items in the Work Programme to be assigned to committees and working groups as early as possible so as to enable early coordination and enhance efficiency in the overall process. She also stressed the need to include and follow up on items that remained open from the preceding session. Finally, she suggested that the

schedule of meetings of the Implementation, Strategy and Planning Group (ISPG) be added to the calendar of the Committees so that all Representatives would be aware of the schedule, which would help to avoid conflicts and improve time management.

26. In response, the President of the Council explained that until now the practice had been for the schedule to reflect only the meeting times for the Standing Committees with the intention for the ISPG, WGGE and other working groups to work around the Committee schedule in coordination with the Office of the President.

27. Commenting on the timeline on the issuance of oral reports from the committees as well as the issuance of the working papers, the Secretary General clarified that the Secretariat had for the most part endeavoured to submit oral reports to be reviewed by the Chairperson of the committees within three working days from the date of consideration by the Council. She indicated that she was well aware of the rules applying to the issuance of oral reports and working papers and the Secretariat was for the most part complying with these requirements despite competing priorities.

28. In response to a query from the Representative of Japan about whether the item on the ballistic missile launches on the Korean peninsula should be included in the Work Programme of the 215th Session, the President of the Council indicated that this item could certainly be added if the Council wished to be kept informed on any developments in this regard.

29. In response to a query from the Representative of India, it was explained that IWAF 2019, would take place in an Assembly year, was being held back to back with the Assembly, while IWAF 2020 and IWAF 2021, held in non-Assembly years, were to be held in regional locations. Likewise, regarding the environment symposium mentioned on page A-9 of C-WP/14774 (Revised), D/ATB explained that this was planned as an informal briefing session on specific issues, but not directly on the Carbon Offsetting and Reduction Scheme for International Aviation (CORSA).

30. Having concluded its consideration of the proposed Work Programme, it was then agreed that an additional item providing an update on any developments to address risks posed by unannounced missile launches would be added to the Work Programme of the Council (Appendix A).

31. In relation to the Work Programme of the Human Resources Committee (Appendix G), it was also agreed that an additional item would be included for the HRC to consider the implications and feasibility of regulating post-employment activities of ICAO personnel.

32. Subject to the amendment of the Work Programme as indicated in the preceding four paragraphs, the Council approved the Work Programme of the Council and its Committee for the 215th Session.

33. It was understood that decisions taken in the course of the current (214th) session that affect the Work Programme for the 215th Session in terms of additional items, amendments to titles of items, or deferral of items, and which were not currently reflected in the Work Programme, would be incorporated in a revised version of C-WP/14771 that would be issued in due course.

34. It was also agreed that the President would be delegated the authority to determine if certain items currently listed in the Work Programme that were not currently indicated as such, should be referred to one of the standing committees or working groups of the Council for review prior to the presentation of the item at the Council.

35. In relation to the proposed informal briefings for the 215th Session, the Council agreed that these should preferably occur during the Committee phase of the session, which was scheduled from 17 September to 5 October 2018. It was further agreed that the topics for the informal briefings should be: ICAO big data applications; overview of sustainable aviation fuels development and deployment practices; update on the work on CORSIA; and the designation of provider States of space weather information.

Subject No. 6: Establishment of subsidiary bodies of the Council

Report of the Council off-site strategy meeting (COSM 2018)

36. This item was considered on the basis of an oral report from the Chairperson of the Implementation, Strategy and Planning Group (ISPG), which provided an interim report on COSM 2018, which had taken place from 21 to 22 June 2018 with the theme “Aviation of the Future”.

37. In presenting the oral report, the Chairperson of the ISPG (Representative of the United Arab Emirates), noted that COSM 2018 had highlighted the need for ICAO to be proactive in its approach to aviation of the future and that ICAO should lead in the development of regulatory frameworks to facilitate the implementation of emerging technologies related to air transport. It was also recognized that the Organization had a social responsibility to foster the development of safe, efficient, secure and sustainable civil aviation systems while seeking to strike a balance between prescriptive and performance-based regulatory approaches.

38. Future priority areas that were identified at COSM 2018, included the level of safety for commercial space flights as compared to the existing safety levels for air transport and liability issues. It was also emphasized that in undertaking work in this area, ICAO would need to find ways to increase its collaboration with other organizations as a means to advance this work within the finite resources of ICAO.

39. The Representative of Mexico suggested that new technologies, in addition to the use of big data applications and artificial intelligence, should be considered more extensively. In view of the rapid development of technology, he also warned against widening the gap in development among States and creating Standards that would leave many States behind. Concerning ICAO’s efforts to broaden strategic partnerships, he supported more Council involvement in such efforts, bearing in mind also the benefits and risks of such partnerships.

40. Addressing the State of the Industry briefing which preceded the COSM, the Representative of Colombia suggested that in the future, it might be preferable to have a simplified model with a detailed snapshot of the state of the industry as a means to convey information to the participants and not necessarily as just a forum for industry to inform ICAO on what it thinks the Organization should be doing. In response, the President of the Council recalled that prior to the presentation that had been made earlier this year, both the Secretary General and D/ATB had provided the a great deal of information on the context of the industry’s needs in the next 20 years.

41. The President also took the opportunity to note that COSM 2018 had highlighted the need for ICAO to be proactive in its approach to aviation of the future and that ICAO should lead in the development of regulatory frameworks to facilitate the implementation of emerging technologies related to air transport. It was also recognized that the Organization had a social responsibility to foster the development of safe, efficient, secure and sustainable civil aviation systems while seeking to strike a balance between prescriptive and performance-based regulatory approaches.

42. In concluding its consideration of this item, the Council noted that future priority areas that were identified at COSM 2018, included the level of safety for commercial space flights as compared to the existing safety levels for air transport and liability issues. It was also emphasized that in undertaking work in this area, ICAO would need to find ways to increase its collaboration with other organizations as a means to advance this work within the finite resources of ICAO. Finally, the importance of generating interest in aviation among youth was also underscored at COSM 2018. In this regard, the President proposed a regional and global competition on aviation related themes among adolescents that could be organized around International Civil Aviation Day activities on 7 December.

43. The Council welcomed the interim report from the ISPG and expressed its appreciation to the Chairperson and the other members of the ISPG for the efforts undertaken in collaboration with the Secretariat to organize the event. It was noted that a more comprehensive report on COSM 2018 would be presented for consideration by the Council at the 215th Session.

Subject No. 5: Election of Vice Presidents of the Council
Subject No. 6.3: Election of chairmen and members of the subsidiary bodies of the Council
Subject No. 46: Edward Warner Award

Elections by the Council

44. The Council considered this item on the basis of C-WP/14770, which concerned the election of the three Vice-Presidents of the Council, the Members and Alternates of the Joint Support, Finance, Unlawful Interference, Technical Cooperation, and Human Resources Committees, and the Chairpersons of these Committees, as well as of the Air Transport Committee. C-WP/14770 also presented information concerning the composition of the Committee on Relations with the Host Country and of the Edward Warner Award Committee.

45. The Council agreed to suspend paragraph 3 of Appendix B and that part of paragraph 2 of Appendix E of the Rules of Procedure for the Council related to the elections taking place by secret ballot unless waived by unanimous decision of the Members represented at the meeting.

46. On the nomination of the Representative of Singapore, seconded by the Representative of Panama, the Council elected the following Representatives as its Vice-Presidents for the period 2018-2019, with immediate effect pursuant to Appendix B of its Rules of Procedure:

Mr. Ulrich Schwierczinski (Germany) as First Vice-President
Mr. Iván Fernando Arellano Lascano (Ecuador) as Second Vice-President
Mr. Shinji Matsui (Japan) as Third Vice-President

47. In electing the three incoming Vice-Presidents, the Council *expressed* its appreciation by acclamation to the three out-going Vice-Presidents: Mr. Tee Chiou Ng (Singapore), Mr. Musa Shuaibu Nuhu (Nigeria), and Mr. Germinal Sarasqueta Oller (Panama)

48. Pursuant to Appendix E of the Rules of Procedure for the Council, as well as the Special Provisions of the Rules of Procedure for Standing Committees of the Council, the Council then elected the Members and Alternates of the JSC, FIC, UIC, TCC, and HRC, appearing in Appendix B of C-WP/14770, for the period 2018-2019, with immediate effect.

49. The Council noted the proposed composition of the Relations with the Host Country Committee (RHCC) for the period 2018-2019, as presented in Appendix B of C-WP/14770. In addition,

the Council noted the proposed composition of the Edward Warner Award Committee, as presented in Appendix D of C-WP/14770.

50. On the nomination of the Representative of Mexico, seconded by the Representative of Nigeria, the Council elected the following Representatives as the respective Chairpersons of its subsidiary bodies, for the period 2018-2019 with immediate effect:

Mr. Samuel Campbell Lucas (Australia) as Chairperson of the ATC
Mr. Ali Riza Çolak (Turkey) as Chairperson of the JSC
Mr. Victor M. Aguado (Spain) as Chairperson of the FIC
Mr. Martial Pagé (Canada) as Chairperson of the UIC
Mr. Raoul Maixent Ondzotto (Congo) as Chairperson of the TCC
Ms. Mercy Beatrice Awori (Kenya) as Chairperson of the HRC
Mr. Carlos Alberto B.C.L. Monteiro (Cabo Verde) as Chairperson of the RHCC

51. In electing the incoming Chairpersons of the Committees, the Council expressed its appreciation by acclamation to all the out-going Chairpersons of the Committees.

52. It was noted that the President, under authority delegated to him by the Council, was undertaking ongoing consultations with Representatives regarding the final composition of the Working Group on Governance and Efficiency (WGGE), Implementation, Strategy and Planning Group (ISPG), the Advisory Group on CORSIA (AGC) and the Committee on Cooperation with Third Parties (CCEP) and would provide the Council with updated information in this regard in due course.

53. In relation to the Air Transport Committee (ATC), in accordance with the Rules of Procedure for Standing Committees of the Council, it was recalled that the members of the ATC had been appointed by the Council on 17 October 2016 (C-DEC 209/1 refers) and would serve until the end of the term of the current Council, insofar as the States that are represented continue to be Members of the Council until the Council elects the new Committee.

Any other business

Re-appointment of the Secretary General

54. Further to the decision taken by the Council during its 213th Session to re-appoint Dr. Fang Liu for a second three-year term as Secretary General of ICAO (C-DEC 213/9 refers), the Council agreed that it was unnecessary for the Secretary General to re-take the Solemn Declaration (Oath of Office) that she had delivered upon appointment to her initial three-year term (C-DEC 205/9 refers). The Council took the opportunity to re-affirm its commitment in continuing to work with the Secretary General in the same positive spirit of collaboration that had been exemplified during her first term.

Proposal for Two-Year Cooling Off Period for former ICAO Staff Member

55. The Council took note of the intervention of the Representative of Saudi Arabia who proposed that any ICAO staff member who had separated from service should not have the right to work with another external entity on any ICAO-related project for a cooling-off period of two years. The Representative had requested that this issue be considered by the Human Resources Committee (HRC). In response, the Council agreed that this issue should be considered by the HRC and reported at the next session (*cf.* paragraph 31 above).

Term limits for Secretary General and President of the Council

56. The Council also noted an intervention from the Representative of Saudi Arabia suggesting informal consultations among Representatives take place with regard to Assembly Resolution A38-21 *Term limits for the Offices of the Secretary General and the President of the Council*.

ICAO website – CORSIA homepage

57. In response to an intervention from the Representative of China concerning the information that was currently uploaded on the CORSIA homepage of the ICAO website, it was noted that this information inadvertently gave the impression that China would be one of the participating countries in the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) as from 2021. In response, the Secretariat undertook to rectify the information in this regard.

Travel budget

58. In response to an intervention from the Representative of the United States concerning the travel related expenditures that had been incurred as a result of missions undertaken by both the Secretary General and the President of the Council, information to clarify the breakdown of the expenditures was provided by the Secretary General.

Activities during the recess

59. The Council took note of the missions to be conducted by the President of the Council, as well as by the Secretary General during the recess.

Farewell

60. The Council bade farewell to Ms. Niamh O'Brien, the Representative of Ireland, Mr. Maxime Millefert, Alternate to the Representative of France, and Mr. Samuel Kotis, Alternate to the Representative of the United States.

61. The meeting was adjourned at 1700 hours.

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