



## International Civil Aviation Organization

### DRAFT MINUTES

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### COUNCIL — 200TH SESSION

#### SUMMARY MINUTES OF THE THIRD MEETING

(THE COUNCIL CHAMBER, WEDNESDAY, 20 NOVEMBER 2013, AT 1030 HOURS)

#### OPEN MEETING

President of the Council: Mr. Roberto Kobeh González

\*President-Elect of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Mr. Raymond Benjamin, Secretary General

#### PRESENT:

Argentina	— Dr. N. Luongo (Alt.)	Malaysia	— Mr. Y.-H. Lim
Australia	— Ms. K. Macaulay	Mexico	— Mr. D. Méndez Mayora
Bolivia (Plurinational State of)	— Mr. J.G. Soruco	Nicaragua	— Mrs. E. A. Aráuz Betanco
Brazil	— Mr. P. de Moraes Jardim (Alt.)	Nigeria	— Mr. P.O. Alawani (Alt.)
Burkina Faso	— Mr. M. Dieguimde	Norway	— Mr. K.M. Skaar
Cameroon	— Mr. E. Zoa Etundi	Poland	— Ms. M. Polkowska
Canada	— Mr. M. Allen	Portugal	— Mrs. M.H. Faleiro T. de Almeida
Chile	— Mr. W.H. Celedón	Republic of Korea	— Mr. Choi, D.
China	— Mr. Tao Ma	Russian Federation	— Mr. A.A. Novgorodov
Dominican Republic	— Mr. C.A. Veras Rosario	Saudi Arabia	— Mr. T.M.B. Kabli
Egypt	— Mr. A. Mahmoud	Singapore	— Mr. T.C. Ng
France	— Mr. O. Caron	South Africa	— Mr. L. Mabaso
Germany	— Mr. U. Schwierczinski	Spain	— Mr. V.M. Aguado
India	— Mr. P.N. Sukul	United Arab Emirates	— Miss A. Al Hamili
Italy	— Mr. A. Bardaro (Alt.)	United Kingdom	— Mr. M. Rodmell
Japan	— Mr. T. Koda	United Republic of Tanzania	— Mr. R.W. Bokango
Kenya	— Mr. H.K. Kioko	United States	— Mr. D. Woerth
Libya	— Mr. M. Sayeh Eltayf	Venezuela (Bolivarian Republic of)	— Mr. D.A. Blanco Carrero

#### ALSO PRESENT:

Mr. M. Deslisle (Alt.)	— Canada
Mr. Chunyu Ding (Alt.)	— China
Ms. M. Furuhata (Alt.)	— Japan
Mrs. D. Valle Álvarez (Alt.)	— Mexico
Mr. Hwang, S.-Y. (Alt.)	— Republic of Korea
Mr. Kang, M. (Alt.)	— Republic of Korea
Mr. A. Almoghraby (Alt.)	— Saudi Arabia
Mr. R.A. Al Kaabi (Alt.)	— United Arab Emirates
Mr. J.L. Novak (Alt.)	— United States

#### SECRETARIAT:

Mr. D. Azema	— DC/OSG
Ms. N. Graham	— D/ANB
Mr. B. Djibo	— D/ATB
Mr. R. Bhalla	— C/FIN
Mr. J. Marriott	— C/AVSEC
Mr. O. Myard	— C/EAO
Mr. A. Quiroz	— C/ASA
Mr. S. Berti	— C/SFP
Mr. B. Verhaegen	— SELO
Mr. I. Fuller	— Ethics Officer
Ms. H. Jackson	— EAO
Mr. J. Thaker	— SFP
Ms. O. Bondareva	— LEB
Miss S. Black	— Précis-writer

\*Part-time

Representatives to ICAO

Afghanistan  
Colombia  
Ecuador  
Ethiopia  
Greece  
Iran (Islamic Republic of)  
Lebanon  
Morocco  
Mozambique  
Turkey

European Union (EU)

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

**Organization and Agenda for the  
Twenty-fifth Meeting of the Aviation Security Panel (AVSECP/25)**

1. The Council considered this subject on the basis of: C-WP/14066, in which the Secretary General presented a proposal to convene AVSECP/25 at ICAO Headquarters in Montréal from 17 to 21 March 2014, as well as a draft Agenda; and an oral report thereon by the Committee on Unlawful Interference (UIC), which had considered the paper during its First Meeting of the current session on 16 October 2013.

2. At the request of a Committee Member, additional information had been provided during that meeting to justify the convening of AVSECP/25 in 2014. The Secretariat had recalled the recommendations of the High-level Conference on Aviation Security (HLCAS) and the 38th Session of the Assembly, and had drawn attention to the technical tasks to be carried out by the Panel, notably as indicated in Agenda Item 3: *Consideration of reports from working groups of the Aviation Security Panel*.

3. It had been noted that some of the policy priorities identified by the Assembly were not clearly reflected in the draft Agenda, including outcomes-based and risk-based approaches, and the development of best practices related to the screening of liquids, aerosols and gels (LAGs). Accordingly, the Committee had supported the proposals to amend Agenda Item 3 to include the aforementioned priorities.

4. Furthermore, given the need to enhance the transparency of the Panel's work priorities, the Committee had supported a proposal to attach the Panel's Work Programme to future Agendas of the AVSECP, including milestones associated with each task.

5. The UIC recommended that the Council approve the convening of AVSECP/25 as proposed in C-WP/14066, including the draft Agenda contained in the Appendix thereto, as modified in accordance with the Committee's suggestions.

6. In the absence of comments, the Council took the action proposed in the executive summary of C-WP/14066, as recommended by the UIC, and:

- a) agreed to the convening of the Twenty-fifth Meeting of the Aviation Security Panel (AVSECP/25) at ICAO Headquarters in Montréal from 17 to 21 March 2014; and
- b) approved the draft Agenda for AVSECP/25 presented in the Appendix to the paper, subject to Agenda Item 3: *Consideration of reports from working groups of the Aviation Security Panel* being modified as proposed by the UIC to include reference to policy priorities identified by the recent 38th Session of the Assembly but not clearly reflected therein, namely, outcomes-based and risk-based approaches, and the development of best practices related to the screening of LAGs.

7. In addition, the Council agreed to the UIC's proposal that the Panel's Work Programme, including milestones associated with each task, be attached to the Agendas for future AVSECP meetings in order to enhance the transparency of the Panel's work priorities.

**Subject No. 15.4: Facilitation****Adoption of Amendment 24 to Annex 9 — *Facilitation***

8. The Council had for consideration: C-WP/14064 (with Corrigendum No. 1), in which the Secretary General reported on comments received on the proposal to amend Annex 9 — *Facilitation* circulated to States and relevant international organizations under cover of State letter EC 6/3-13/14 dated 28 February 2013, and the Secretariat's corresponding recommendations, and presented resultant Amendment 24 for adoption by the Council; and a related oral report by the Air Transport Committee (ATC), which had reviewed the paper during its First Meeting of the current session on 23 October 2013.

9. The ATC had decided that the cargo-related amendments proposed by the Seventh Meeting of the Facilitation Panel (FALP/7) should be referred back to the Panel for further consideration, in consultation with the Aviation Security Panel (AVSECP).

10. The Committee had agreed that Amendment 24 to Annex 9, including the revised definition of Interactive API (iAPI) found in C-WP/14064, Corrigendum No. 1, should be recommended to the Council for adoption.

11. The ATC recommended that the Council endorse the action presented in the executive summary of the paper.

12. Responding to a query by the Representative of Australia, the President of the Council confirmed that new Section I. *Human remains* to Chapter 4. *Entry and departure of cargo and other articles* of Annex 9 and associated new Appendix 14. *Laissez-passer for human remains* were part of the cargo-related amendments that would be referred back to the FALP if the Council so agreed.

13. The Representative of France recalled that, in its reply to State letter EC 6/3-13/14 dated 28 February 2013, his State had expressed its disagreement, with comments, with respect to the proposal to upgrade Recommended Practice 5.4 of Annex 9 to a Standard and the proposals to amend Standards 6.44 and 6.45. France was not in favour of elevating Recommended Practice 5.4 to a Standard as that would be incompatible with the requirements arising from European and national regulations, whereby inadmissible persons were to be taken back under the responsibility of the aircraft operator and removed without delay. It therefore sought information regarding the process and the rationale which had led to the retention of the proposed amendment.

14. France had also expressed an unfavourable opinion regarding the proposal to amend Standard 6.44, which would introduce an information obligation that could be difficult to implement and that would not necessarily be effective.

15. Furthermore, France was not in favour of the proposal to amend Standard 6.45, which would create an obligation to provide specific staff training. Aside from escort agents trained to maintain order on board aircraft or to restrain uncooperative individuals at the request of the pilot-in-command, border control officers did not receive any training that specifically related to the proposal, since that was not their main job.

16. In offering clarifications, the Chief of the Aviation Security Branch (C/AVSEC) assured the Representative of France that the proposal to upgrade Recommended Practice 5.4 to a Standard had been made through the normal Standard development process. It had originated with a joint State/industry/ICAO group and had been submitted to FALP/7 in the form presented in Appendix C to C-WP/14064. FALP/7 had accepted the advice that it be recommended to the Council as an amendment to Annex 9. Thereafter, the proposal had been subjected to the regular consultation process. As very few

comments thereon had been received, the Secretariat had accordingly judged that the consensus was to move forward with the proposal to elevate Recommended Practice 5.4 to a Standard.

17. In noting the differences in practice that France had established regarding proposed amended Standards 6.44 and 6.45, C/AVSEC invited that State, and all other Member States, to file with ICAO any differences that they might have to Annex 9 Standards.

18. The Representative of Poland wished to make a general comment concerning the terms “passengers with disabilities” and “passengers requiring special assistance” which were currently used in Annex 9 but which would be modified under proposed Amendment 24. She indicated that, while Amendment 24 followed the *Convention on the rights of persons with disabilities* adopted by the United Nations General Assembly on 13 December 2006, upon close scrutiny, the latter, in many aspects, had no application to airline passengers needing assistance and was incompatible with the objective of providing such assistance to them. In a few instances, Amendment 24 was much broader in scope, and in other instances, much stricter, than the said Convention. The Representative of Poland noted, as an example, that whereas, under the Convention, airline passengers with olfactory disorders, such as anosmia (the loss of the sense of smell) and dysosmia (when things smelled differently than they should), and agnosia (the loss of the ability to interpret sensations, including the sense of taste) would be considered to be persons with disabilities and would accordingly be provided with assistance, airline passengers with a broken leg would not be, and could therefore be refused assistance. The Representative of Poland further noted that certain States required that airline passengers claiming a disability provide documents confirming their disability, documents which certainly were not the same in each State. She emphasized that, while the Polish Delegation was always in favour of the harmonization of the language used in the various international instruments, it considered that, in this particular case, the term which had been used previously in Annex 9 for many years, “passengers requiring special assistance”, should be left untouched; otherwise, the resultant text could be used by lawyers who were trying to sue airlines for not following either the *UN Convention on the rights of persons with disabilities* or common sense.

19. The Representative of Norway recalled that a request made earlier by his State that a definition of the term “service animals” be included in proposed Amendment 24 had not been accepted by the FALP’s Working Group on Persons with Disabilities in view of the differences in what States accepted as service animals. Noting, however, that a definition of that term had been included in the *Manual on Access to Air Transport by Persons with Disabilities* (Doc 9984) developed by the Working Group, he enquired whether it had subsequently been incorporated into the Annex 9 amendment proposal.

20. Referring to the comments made by the Representative of France regarding the proposal to upgrade Recommended Practice 5.4 to a Standard, the Representative of the United Kingdom acknowledged that the latter was an attempt to encourage more dialogue between airlines and governments. It aimed to strike a very difficult balance between the desirable outcome of ensuring that airlines were consulted on matters which affected them directly, such as the removal of inadmissible passengers, and on the other hand, the right of States to take very swift action in order to deal with the arrival of inadmissible passengers. He noted that the United Kingdom’s removal directions did direct airlines to remove an inadmissible person on a specific flight and date. The Representative of the United Kingdom underscored that his State had a standing difference to Recommended Practice 5.4 which would equally apply to the upgraded Standard 5.4. In apologizing that it had not been included in his State’s written comments on the Annex 9 amendment proposal, he stressed that the United Kingdom did not oppose the proposed upgrade of Recommended Practice 5.4 on that basis and would continue to work to try to resolve the conflicting objectives that were exemplified by that upgraded Standard 5.4.

21. In thanking the Representative of Poland for her comments regarding the harmonization of the terminology used in ICAO documents dealing with the rights of persons with disabilities with that used in broader and more focused international instruments, C/AVSEC underscored that it was an evolving process. In highlighting that the proposed Amendment 24 to Annex 9 complemented the said

recently-published *Manual on Access to Air Transport by Persons with Disabilities* (Doc 9984), he affirmed that, together, those new steps represented a significant advancement in providing persons with disabilities much enhanced accessibility to air transport. Noting that the FALP would keep the Annex 9 provisions relating to persons with disabilities under review, C/AVSEC did not doubt that it would make recommendations for further enhancements in future.

22. Responding to the question raised by the Representative of Norway, C/AVSEC underscored that the challenge of inserting a definition into an Annex was often much more difficult than the challenge of inserting one into guidance material. Noting that a definition of the term “service animals” had been introduced into Doc 9984 to help promote the implementation of relevant Annex 9 Standards and Recommended Practices (SARPs), he indicated that perhaps at a later date, as the Annex evolved, further consideration could be given to including the definition therein.

23. In providing additional clarification, a Technical Officer, Facilitation from the Aviation Security and Facilitation Policy Section (SFP) recalled that the Working Group on Persons with Disabilities had, over a period of two years, developed the said Manual, as well as related Annex 9 SARPs, which had subsequently been approved by the Panel. While the Working Group had discussed at length the possible inclusion in Annex 9 of a definition of the term “service animals”, it had agreed that it was not the appropriate time to do so and that the matter could be further discussed in the FALP in the future.

24. With reference to the comment made by the Representative of Poland regarding the possible retention of the term “passengers requiring special assistance”, the Technical Officer, Facilitation noted that that term was currently only used in the title of Section H of Chapter 8. *Other facilitation provisions* of existing Annex 9. The said Working Group and FALP had agreed that the title should be amended to reflect the text of the provisions, in which the term “persons with disabilities” was used.

25. In observing that the issue of persons with disabilities was of concern to many institutions, the Director of the Air Transport Bureau (D/ATB) indicated that efforts were made on a daily basis to coordinate with relevant organizations, including those which were members of the United Nations System Chief Executives Board for Coordination. He noted, as an example, that the following day his Bureau would receive a delegation to discuss the issue of passengers with disabilities and determine how to not only better communicate, but also better address that issue on a practical level. D/ATB would be very pleased to receive any guidance as to what action should be taken in that regard.

26. The Council agreed with the Secretariat that it was premature to incorporate the cargo-related amendments recommended by FALP/7 into Amendment 24. It consequently decided that, as recommended by the Secretariat and the ATC, those amendments be referred back to the FALP for further consideration, in consultation with the AVSECP.

27. In addition, the Council agreed that the definition of the term “Interactive API (iAPI)” contained in Section A. *Definitions* of Appendix C to C-WP/14064 be replaced by the revised definition proposed by the Seventh API Contact Committee Meeting as set forth in Corrigendum No. 1 to the paper and reproduced below:

“Interactive API (iAPI) is an electronic system that transmits, during check-in, API data elements collected by the aircraft operator to public authorities who, within existing business processing times for passenger check-in, return to the operator a response message for each passenger and/or crew member.”

28. In then taking the action recommended by the ATC, the Council, by 35 votes in favour, none against and one abstention, adopted, as Amendment 24 to Annex 9, the amendment contained in Appendix C to C-WP/14064, subject to the inclusion of the above revised definition of the term “Interactive API (iAPI)”. The Council approved, as part of Amendment 24, the Notes set forth in Appendix C to the

paper, as well as the Resolution of Adoption contained in Appendix D, which would be updated to include the appropriate dates of adoption, effectiveness, notification and applicability.

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

**Request of the World Customs Organization (WCO) for inclusion in the *List of international organizations that may be invited to attend suitable ICAO meetings***

29. This subject was documented for the Council's consideration in C-WP/14085, presented by the President of the Council

30. In supporting the inclusion of the WCO in the *List of international organizations that may be invited to attend suitable ICAO meetings* (as observer), the Representative of Japan recalled that when the current Japanese Secretary General of the WCO, Mr. K. Mikuriya, had visited ICAO Headquarters for the 38th Session of the Assembly in September/October 2013, he had told him, with passion, to strive for a closer relationship between ICAO and the WCO. Given the past profound relationship between the two organizations, it was evident that the WCO's inclusion in the said List was extremely logical and a matter of course. The Representative of Japan considered that ICAO and the WCO, as well as the International Maritime Organization (IMO), should exchange views and strategies more frequently and work more closely, especially in order to streamline and strengthen cargo supply chain security more reliably and effectively. He affirmed that such efforts would also contribute to the strong interests of industries and support economic development.

31. Endorsing these comments, the Representative of the United Kingdom recalled that he had previously been involved in work relating to cargo security in which the WCO had had a close role. Noting that he had mistakenly assumed that the WCO was already included in the *List of international organizations that may be invited to attend suitable ICAO meetings*, he indicated that the case for its inclusion was self-evident. The Representative of the United Kingdom averred that the worst action that ICAO could take, as an organization, would be to establish requirements relating to aviation security, or any other field, which cut across, contradicted or duplicated the requirements of other organizations, such as customs agencies, and thereby place an additional burden on the aviation industry. He therefore very much supported the proposal to include the WCO in the said List.

32. The Representatives of Argentina, Mexico, Saudi Arabia, the Dominican Republic, Kenya and Libya also endorsed the proposal, for the reasons set forth in the paper and cited by the Representatives of Japan and the United Kingdom. In so doing, the Representative of Mexico affirmed that the WCO's inclusion in the *List of international organizations that may be invited to attend suitable ICAO meetings* would enhance the synergy and cooperation between the two organizations.

33. Underscoring that the aviation industry could not easily operate without cooperating with customs agencies, the Representative of Kenya indicated that he would therefore welcome the WCO being one of those organizations that would work closely with ICAO going forward.

34. The Representative of Libya stressed that it was important that WCO participate in suitable ICAO meetings in view of the direct link between customs procedures and aviation safety and security.

35. Emphasizing that the relationship between ICAO and the WCO had intensified over the last three years, as indicated in the paper, the Secretary General noted that, in the spirit mentioned by the Representative of Japan, the two organizations were increasingly engaging in common activities and would continue to do so. He highlighted, in this context, that following the very successful first ICAO-WCO Joint Conference on Enhancing Air Cargo Security and Facilitation (Singapore, 5-6 July 2012), a second such

ICAO-WCO Joint Conference would be held in Manama, Bahrain, from 16 to 17 April 2014, the theme of which was "Collaborative solutions to future challenges".

36. Having concluded its review of C-WP/14085, the Council agreed that the World Customs Organization (WCO) be included in the *List of international organizations that may be invited to attend suitable ICAO meetings* (as observer). It was understood that a revised list reflecting this change would be posted on the Council website and the ICAO-NET.

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

**Work Programme of the Evaluation and Internal Audit Office (EAO) for the year 2014**

37. This subject was documented for the Council's consideration in information paper C-WP/14071, presented by the Secretary General.

38. Reiterating some comments and suggestions that he had made in the Finance Committee (FIC) and the Human Resources Committee (HRC), the Representative of India enquired whether internal audit reports were accessible to the Council. In the affirmative, he requested that they be made available to Representatives; in the negative, he sought clarification as to why EAO's annual Work Programme was presented to the Council. The Representative of India recalled, in this regard, that requests which he had made in March 2013 to access internal audit reports relating to travel were still pending in November 2013.

39. In then raising the issue of the role of the Ethics Officer and his accountability to the Council, the Representative of India emphasized the need for an oversight mechanism for the work of the Ethics Officer. He averred that currently there was no such mechanism within the Council, whether it be a few Representatives selected for that purpose or reporting to the FIC.

40. Drawing attention to paragraph 2.2 a) and b) of the paper, the Representative of India repeated his suggestion that the envisaged internal audits of the procurement of goods and services for ICAO Headquarters' needs and project management [without the qualification that it be based on a sample of projects with an information technology (IT) component] be entrusted to the External Auditor rather than to EAO. In underscoring that a specific timeframe should be set for the presentation of the External Auditor's report to the Council, he indicated that it should be coordinated through EAO.

41. Responding to the first point raised by the Representative of India, the Chief of EAO (C/EAO) clarified that for the last two years internal audit reports had been fully and freely accessible to Council Members upon request. They had only to contact him to arrange an appointment to read the reports in EAO.

42. In emphasizing that there was full coordination between his Office and the External Auditor, C/EAO indicated that they shared their work programmes. Underscoring that they tried to avoid any duplication of effort, he noted that the External Auditor's main focus was on the Organization's financial statements, including inventories. If EAO were to conduct an audit on such financial statements, it would not necessarily be on the accounting but rather on the budget procedures, in order to ensure compliance therewith.

43. Referring to the question raised by the Representative of India regarding the role of the Ethics Officer and his activities, the Secretary General indicated that although he appointed the Ethics Officer, the latter was fully independent. In maintaining that the Council did exercise an oversight role over the activities of the Ethics Officer, he recalled that the latter had presented to Representatives his first annual report, for 2012 (C-WP/13934; 198/8), which set forth, in Appendix A, the issues raised with him by subject area, and in Appendix B, investigation activities undertaken under the *ICAO Framework on Ethics*. The Ethics Officers would continue to provide, in future annual reports, factual information on the number

of complaints made and the follow-up action taken, when justified. Such reports would not, however, contain confidential information concerning specific cases. The Secretary General and the Ethics Officer would be pleased to provide the Representative of India with any additional detailed information that he might require.

44. To a query by the Representative of the United States, the President of the Council and the Secretary General both confirmed that EAO's envisaged audit of goods and services for ICAO Headquarters' needs (financial and compliance audit) referred to in paragraph 2.2 a) of the paper would cover small firms with discrete services.

45. The Representative of Norway recalled that the Technical Co-operation Committee (TCC), in its report on the Management Plan for the Technical Co-operation Programme for the period 2014-2016 considered earlier by the Council (C-WP/14060; 200/2), had indicated that discussions were currently taking place with EAO on the feasibility of incorporating into its Work Programme, at a minimum, one or two technical cooperation project evaluations per year. He had encouraged EAO to do so, starting with its 2014 Work Programme. However, the latter only contained one TCB project evaluation, that of project KAZ/12/801 (Strengthening of Kazakhstan's Civil Aviation Capacity).

46. In indicating that his comment had been noted by the Secretary General, the President of the Council emphasized that the number of annual TCB project evaluations was dependent upon the capacity of EAO to conduct them.

47. The Representative of Spain underscored that while EAO's Work Programme was an internal matter, it was always important for the Council to be cognizant thereof so that it could make suggestions for the inclusion of items of interest. Noting that the Council usually requested the External Auditor, and not the Internal Auditor, to perform audits, he sought clarification as to who would conduct the said audit of the procurement of goods and services for ICAO Headquarters' needs.

48. Maintaining that it had never been the intention to have the External Auditor conduct the audit, the Secretary General indicated that it would be undertaken by EAO. Responding to an additional query by the Representative of Spain regarding the two evaluations to be conducted by EAO in 2014, he noted that the said evaluation of TCB project KAZ/12/801 was very important as it related to the rectification of one of Kazakhstan's Significant Safety Concerns (SSCs), an issue discussed during the Council's earlier consideration, in closed session, of the progress report of the Monitoring and Assistance Review Board (MARB) (C-WP/14063 Restricted). It was one of the few such technical cooperation projects being carried out in that region.

49. C/EAO then offered clarifications regarding the envisaged evaluation of external stakeholder perspectives on ICAO to obtain their views on the effectiveness and relevance of ICAO's key strategic areas of work. In noting that it would be an in-house evaluation done on the basis of an online survey, he indicated that the stakeholders would be ICAO's external customers, such as airlines, airports and the aviation industry. A very specific survey would be developed through an evaluation reference group comprising staff members and Council Representatives. Once agreement had been reached on the survey, it would be made available online and interested external stakeholders would be invited to complete it.

50. The Representative of Singapore affirmed that it was an excellent idea to have EAO conduct not only internal audits but also evaluations. Recalling that the possibility of evaluating the ICAO Regional Offices as a whole had been raised previously, he suggested that consideration be given thereto as the Regional Offices constituted a large and important area on which the Council had thus far not focused its attention. The Representative of Singapore observed, in this context, that only financial and performance audits of the Nairobi and Lima Regional Offices were included in EAO's Work Programme.

51. Underscoring that it would be very ambitious for EAO to evaluate all of the Regional Offices, C/EAQ indicated that, for the time being, it was planned to only audit the Nairobi and Lima Regional Offices in 2014. Those audits would nonetheless necessitate a substantial amount of work: they constituted 25 per cent of EAO's Work Programme, in line with the percentage of the Organization's Budget which was allocated to the ICAO Regional Offices. C/EAQ noted that, in general, internal audits focused on financial, compliance and performance aspects to determine if objectives were properly achieved through economy, efficiency and effectiveness. While evaluations had a few elements in common with internal audits, their purpose was slightly different and more focus was placed on the impacts of the programme/project being evaluated. Although it would be possible to combine an internal audit and an evaluation, it would be difficult to carry out the resultant audit/evaluation. C/EAQ therefore preferred to focus on the audit of the said Regional Offices for the time being.

52. Drawing attention to paragraph 2.2 b) and c) of the paper, the Representative of the Russian Federation enquired whether the specialized knowledge required to conduct the envisaged IT audit of project management was available in-house or whether it would be necessary to recruit an external consultant to perform the audit. Noting that a financial and compliance audit of the SAFE Fund would also be carried out, he enquired whether it would cover the web-based mechanism that was to have been established to allow the Council to monitor the performance of the SAFE. The Representative of the Russian Federation underscored that although the SAFE Fund's Terms of Reference stipulated that the SAFE restricted website was to provide information about projects and their progress [cf. State letter SMM 1/1-12/47 Confidential dated 24 August 2012, Attachment A, paragraph 5.2 a)], it was still not possible for Council Representatives to perform searches on the said website for required information.

53. Observing that his Office did not have the necessary resources to conduct the project management audit, C/EAQ underscored that since it could only afford to carry out one IT audit per year, there was no justification for having a full-time staff member to conduct such audits. The said audit would therefore be outsourced, just as IT audits had been systematically outsourced in the past. C/EAQ would take the comment made by the Representative of the Russian Federation into account when defining the scope of the audit of the SAFE Fund and determine if it was compatible with the desired objectives.

54. Noting, from paragraph 2.1 of the paper, that IT audits consisted of "a review of IT systems to evaluate and test the existence and operation of controls within the system; the accuracy of data processing; and the adequacy of data and systems security", the Representative of Malaysia enquired whether they also covered the life cycles of IT systems as the latter had an impact on effectiveness and cost-efficiency.

55. C/EAQ underscored that the said definition of IT audits was a generic one which covered the full scope of such audits. He recalled that the work programme for IT audits had been established on the basis of a review undertaken by Deloitte three years ago, in which 25 high IT risks had been identified. EAO had subsequently prioritized those risks. For each topic, his Office consulted with staff in the Information and Communication Technology Section (ICT) and more generally with the users of IT systems to determine whether or not their expectations were being met. EAO then defined the scope of the IT audit accordingly.

56. Notwithstanding the continued calls of the Evaluation and Audit Advisory Committee (EAAC) for EAO resources, the Representative of Australia found it heartening that the Secretary General had responded very positively and that EAO now had a satisfactory level of resources. Of course, all would like more. She underscored the EAO's 2014 Work Programme was quite ambitious and comprehensive, notwithstanding any of the refinements thereto that might occur as a result of the present discussion or the prevailing circumstances as the year progressed. Referring to the query by the Representative of Singapore regarding an evaluation of the Regional Offices as a whole, the Representative of Australia considered that it might actually be a sensible transition to start, in the first instance, with some internal audits of individual Regional Offices. The goal was to determine whether

those Regional Offices were complying with the current set of directions, regulations and practices that ICAO expected them to undertake and carry out. She emphasized that the results of those internal audits, in and of themselves, might well inform a more general evaluation of Regional Offices as a whole. The Representative of Australia therefore was of the view that this might be a logical way to progress to the suggested evaluation of Regional Offices as a whole.

57. Recalling that the SAFE Fund had only recently been established by the Council, in May 2010 (190/6), the Representative of Mexico averred that it was premature to conduct a financial and compliance audit thereof. He observed that there were other Voluntary Funds which had been in existence for a longer period of time and which had not yet been the subject of an internal audit — not that he was suggesting that they should be.

58. In affirming the importance of auditing the SAFE Fund, the Secretary General noted that it was his responsibility to fund technical assistance projects for the enhancement of aviation safety and security through the Regular Budget and /or such Voluntary Funds. Thus even if the SAFE Fund had only been created recently — and recent was a relative notion — it was necessary for him to know how it was functioning, i.e. the number of voluntary contributions made, their use, and the prospects for future use. As he had not wished to overburden EAO, the Secretary General had requested that the Security Fund, the Environment Fund and all other Voluntary Funds which fell under his responsibility be reviewed, rather than audited, so that he would be in a position to inform the Council that the voluntary contributions received had been put to good use.

59. The Representative of the Russian Federation recalled, in this context, that the Assembly, in Operative Clause 3 of Resolution A37-16 [The Safety Fund (SAFE)], had requested “that the Council support the smooth functioning of the SAFE through consistent monitoring of progress made by the SAFE in funding safety-related projects;”.

60. The various comments made by Representatives were noted for consideration by EAO in its future activities.

61. Having concluded its consideration of information paper C-WP/14071, the Council noted EAO’s work programme for the year 2014 as set forth therein.

#### **Annual Report of the Evaluation and Audit Advisory Committee (EAAC)**

62. The Council had for consideration: information paper C-WP/14072, in which the Chairperson of the Evaluation and Audit Advisory Committee (EAAC), Mr. Jonathan Moor, presented the EAAC’s second annual report covering the period 2012-2013; and an oral report thereon by the Finance Committee (FIC), which had reviewed the report at its First Meeting of the current session on 25 October 2013.

63. During the FIC’s First Meeting, the Chairperson of the EAAC, had introduced the EAAC said report and highlighted the following issues:

- the EAAC provided independent advice to the Council on ICAO’s internal controls and assurance mechanisms; however, possibly due to the fact that Members’ travel costs were not reimbursed by the Organization, it had been difficult to maintain a quorum and so the EAAC had only met twice in 2013; and

- the EAAC had noted good progress in several areas. For example, the financial statements had been produced on time and the External Auditor had given an unqualified audit opinion thereon; the resources of the Evaluation and Internal Audit Office (EAO) had increased; an evaluation report on results-based management had recently been completed; and there had been good progress in reducing the number of outstanding audit recommendations. However, there was still a lot more to be done, in particular: to improve internal controls; to develop the assurance framework; and to embed risk management across the Organization on a consistent and timely basis.

64. In response to FIC Members' questions on internal controls and on how to embed risk management across the Organization, the Chairperson of the EAAC had explained that:

- regarding internal control, there were three elements which needed to be in place (the "three lines of defence"): firstly, managers were responsible for ensuring that basic controls were operating; secondly, there needed to be appropriate accountability and governance arrangements; and thirdly, there needed to be mechanisms to provide independent assurance that controls were working effectively. The Council was part of the Organization's governance framework (the second line of defence), whereas independent assurance (the third line of defence) was provided by the External Auditor, the Internal Auditor and the Joint Inspection Unit (JIU).
- regarding risk management, processes needed to be simple, with clearly assigned accountabilities and a mechanism for escalating risks to a more senior level. The Chairperson of the EAAC had suggested that the Council could review the top twenty risks each session to assess whether sufficient work was being done to mitigate them.

65. The Chairperson of the EAAC had also reminded FIC Members that at the next (201st) session they would be discussing the appointment of EAAC Members for the next term of three years (2014 to 2017), and that it would be important to look beyond Directors General of Civil Aviation (DCGAs) to find the accounting and audit skills required.

66. FIC Members had thanked the Chairperson of the EAAC for the report and for the work carried out by the EAAC. A request had been made by one FIC Member, and endorsed by others, that Mr. Moor be allowed to continue on the EAAC for a further term, since it would be very important to maintain continuity. Some Members of the FIC had also agreed that the EAAC could be strengthened by the reimbursement of Members' travel expenses, which could be possible if the number of Members were reduced and when resources for that purpose were identified, within or outside the Regular Programme.

67. The President of the Council recalled that the Council had decided (192/8) that the Advisory Group on Evaluation and Audit (AGEA) be reconstituted and renamed EAAC in order to more accurately reflect its purpose, tasks and duties, its status with regard to the Internal and External Auditors and its relationship with the Council. The Terms of Reference of the EAAC specified that Members could serve for no more than two three-year terms. The question had thus arisen whether Mr. Moor, who had already served one three-year term on the AGEA and one three-year term on the EAAC, was eligible for re-appointment for a second three-year term on the latter Committee. The Acting Director of the Legal Affairs and External Relations Bureau (A/D/LEB) had been consulted and had given his opinion that Mr. Moor, as well as Mr. Peter Maertens, another EAAC Member who had previously served one term on the AGEA, were eligible for re-appointment for a second term on the EAAC. This should be taken into account when the Council considered, during the 202nd Session in June 2014, the appointment of EAAC Members for the period September 2014 to August 2017. It was envisaged that a State letter would be issued inviting all Member States to nominate candidates to serve, in a personal capacity, on the EAAC. The President of the Council would thereafter recommend candidates for membership on the EAAC to the Council for its approval.

68. The President of the Council noted that the Council's decision (192/8) that EAAC Members would not receive remuneration from ICAO for their services meant that their travel costs would not be reimbursed by the Organization. Instead, they were to be defrayed by the nominating States or the Members' employers (cf. State letter 04/8-11/16 dated 18 March 2011). The possible reimbursement of such travel costs by ICAO had, however, been raised again by some FIC Members, as indicated in the Committee's oral report. Given the current financial situation, it was a sensitive issue that required careful consideration.

69. The Secretary General observed that most, if not all, organizations in the United Nations (UN) common system, defrayed the travel costs [airfares and daily subsistence allowances (DSAs)] of audit committee members. In underscoring that a decision by the Council to reimburse the travel costs of EAAC Members would place an additional, unforeseen burden on ICAO's Budget, he noted that the estimated cost to the Organization would be USD 100 000 per year. There was an element of uncertainty, however, as the travel costs were dependent upon the number of EAAC Members travelling to Committee meetings and on their countries of origin, which could make a significant difference in the total amount of travel costs to be reimbursed. While the Secretary General would be in a position to reimburse such travel costs during 2014, he would be unable to do so in 2015 and 2016 unless he reduced other expenses.

70. In noting, from paragraph 5.1 of the paper, that a risk management system was not yet fully embedded throughout the whole Organization, an issue which had also been raised by the FIC in its oral report, the Representative of Venezuela (Bolivarian Republic of) queried how serious a situation that was for ICAO. He further enquired as to the actions the Secretary General had taken, or planned to take, in the short-, medium- and long-term to address it. In highlighting the importance of the suggestions contained in paragraph 6 of the paper to alleviate the difficulties faced by the EAAC in fulfilling its functions, the Representative of Venezuela (Bolivarian Republic of) stressed the need to find ways and means to remedy those difficulties. He expressed support for the FIC's oral report.

71. The Representative of Spain noted that EAAC's difficulties in maintaining a quorum, and thus in convening meetings, could be due to many reasons, including financial reasons. Averring that they could also be attributable to constraints on Members' time, he suggested that the size of the EAAC be decreased from 7 Members to a lower number which would still be sufficient to perform the Committee's work.

72. In recalling that the EAAC had been established at a time when the Council had been concerned about governance and the relationship between the External and Internal Auditors, the Representative of Spain underscored that the situation had subsequently improved. While the EAAC had done a considerable amount of work and had contributed to the good governance of ICAO, he suggested that the FIC evaluate the EAAC's mission, reassess its work plan and review its relevancy to the Council. An opportune time for such an evaluation would be when the process for reappointing the EAAC Members was initiated. The Representative of Spain noted, in this regard, that whereas the EAAC achieved its first goal, "Evaluate the effectiveness, quality and performance of the audit and evaluation functions", very well, its third goal, "Evaluate the integrity of the financial systems and the annual financial statements", was one that should be carried out by the External Auditor.

73. The Representative of Spain then drew attention to paragraph 5.1.2 of the paper on the review by the EAAC of the Annual Report of the Ethics Officer (C-WP/13934). Noting that the EAAC had concluded that there was a lack of trust between staff and managers, the Representative of Spain supported the Committee's proposal that the Secretary General be requested to report back to the Council on actions taken to address the findings of the ethics survey if the latter had not already done so.

74. A request then made by the Representatives of Singapore and Burkina Faso that the Council be provided with a list of the top twenty risks facing the Organization referred to in the FIC's oral report was noted.

75. Recalling that his Branch was responsible for risk management, the Chief of the Finance Branch (C/FIN) indicated that there were risk registers for specific Bureaux and specific risk areas. FIN crystallized them into 10 large risk areas at the corporate level. That risk register was updated twice a year, at the start of the year and mid-year, with the results being posted on the Council website. The difficulties faced in embedding risk management across the Organization were two-fold: there were inadequate resources therefore in the Regular Budget; and the Council and the Assembly had not earmarked any funds for risk mitigation. Thus whenever a risk was identified, existing funds were used to take mitigation action.

76. C/FIN noted that it was proposed that the Organization's financial statements, starting with those for the financial year 2013, contain an internal control statement signed by the Secretary General. The basis for such a statement would be a questionnaire that Section Chiefs and Bureau Directors would be required to complete that listed all of the respective control activities necessary to mitigate risks. He emphasized that the questionnaire was one way of instilling a culture of risk awareness in the Organization as it rendered it necessary for the Section Chiefs and Bureau Directors to indicate the specific actions that they would take to mitigate the identified risks. C/FIN underscored that, if the said proposal were accepted, then ICAO would be one of the first UN Specialized Agencies to introduce a full internal control statement in its financial statements.

77. Affirming that ICAO could be proud of the work being done to implement internal controls, the Representative of the United States recalled that the Chairperson of the EAAC had made clear, during his presentation of the Committee's report to the FIC, that the Organization's internal control mechanisms were constantly improving. He had used the analogy of the first, second and third lines of defence, as cited in the FIC's oral report. The Representative of the United States underscored that good internal controls resulted in increased efficiency and transparency and the elimination of redundancies, and thus effective good governance. He maintained that internal controls were not an additional burden on management but rather a way to ensure that best practices became embedded in the way in which the Organization's work was performed. Noting that audits would continue to be conducted, the Representative of the United States emphasized that the more confidence that the Council had in the first line of defence (managers ensuring that basic controls are operating), the less time it would spend discussing such matters. Encouraged by the current trajectory, he welcomed the proposal to include internal control statements in ICAO financial statements and thus get ahead of the curve i.e. the UN average relating to the implementation of internal controls.

78. In endorsing these comments, the Representative of Burkina Faso suggested that there be an informal briefing on the micro- and macro-management of ICAO so that the Council would have a better understanding of the existing mechanisms. This, in turn, would enable the Council to better focus on its functions, as set forth in Articles 54 and 55 of the Chicago Convention, and the Organization as a whole to move forward in a more efficient manner. The Representative of the Russian Federation strongly supported this proposal.

79. In taking the action then proposed by the President of the Council in light of the FIC's oral report and the views expressed during the discussion, the Council requested the FIC and the Working Group on Governance and Efficiency (WGGE): to assess the value added by the EAAC's work through a review of the results achieved; and to review the EAAC's relevance, continuity, composition and size and the availability of resources for the reimbursement of Members' travel costs, and advise the Council thereon during its next (201st) session. This work would be coordinated by the Secretary General with the Chairpersons of the FIC and the WGGE and relevant Secretariat staff.

## Any other business

### Council working papers presented for information

80. As the President of the Council had not received any requests to have the following information papers tabled for consideration, it was considered that the Council had noted the information provided therein:

- **C-WP/14081 and Blue rider (Chinese only)** – *Report of the Joint Inspection Unit (JIU) for 2012 and Programme of Work for 2013* – circulated under cover of PRES RK/2240 dated 1 November 2013, with a deadline of 15 November 2013 for comments; and
- **C-WP/14083 – Report of the JIU entitled “Lump-Sum Payments in Lieu of Entitlements”** – circulated under cover of PRES RK/2240 dated 1 November 2013, with a deadline of 15 November 2013 for comments.

81. The Council agreed to a request received in response to PRES RK/2240 dated 1 November 2013 to refer the two information papers listed below to the Human Resources Committee (HRC) for consideration during the next (201st) session. The draft work programme of the HRC contained in Appendix G to C-WP/14076 was amended accordingly.

- **C-WP/14082 – Report of the JIU entitled “Review of Individual Consultancies in the United Nations System”**; and
- **C-WP/14084 – Report of the JIU entitled “Staff Recruitment in United Nations System Organizations: A Comparative Analysis and Benchmarking Framework: Overview”**.

### Informal briefing on reports provided to the Council

82. It was noted that an informal briefing would take place during the Committee phase of the next (201st) session in January 2014 on the reports currently provided to the Council, either in writing, or posted on the Council website on a monthly basis. The Secretary General would present his suggestions for the continuation/discontinuation of some of the reports for the Council's consideration. Representatives would thus have the opportunity to discuss the micro- and macro-management of ICAO, an issue raised earlier by the Representative of Burkina Faso during the Council's consideration of the Annual Report of the Evaluation and Audit Advisory Committee (EAAC) (C-WP/14072) (cf. paragraph 78 above).

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

#### Use of personal electronic devices in all phases of flight

83. Further to a request made by the Representative of Spain at the last meeting (200/2), the Director of the Air Navigation Bureau (D/ANB) gave a briefing to the Council on recent developments regarding the use of personal electronic devices in all phases of flight and intended next steps by ICAO, the text of which is reproduced below:

“On 31 October, 2013, the U.S. Federal Aviation Administration announced that it had determined that U.S. airlines could safely expand passenger use of Portable Electronic Devices (PEDs), in their “flight mode” during all phases of flight, and was immediately providing the airlines with implementation guidance. The FAA based its decision on input from a group of experts that included representatives from the airlines, manufacturers, passengers, flight and cabin crewmembers, and the mobile technology industry. The FAA is also streamlining the approval of expanded PED use by giving airlines

updated, clear guidance. This FAA tool will help airlines assess the risks of potential PED-induced avionics problems for their airplanes and specific operations. U.S. Airlines will evaluate avionics as well as changes to stowage rules and passenger announcements. Each airline will also need to revise manuals, checklists for crewmember training materials, carry-on baggage programs and passenger briefings before expanding use of PEDs. Each airline will determine how and when they will allow passengers broader use of PEDs. Please note that the use of cell phones in-flight will still be prohibited.

“By the end of November, the European Aviation Safety Agency (EASA) will also issue guidance allowing passengers to use PEDs during taxiing, take-off and landing. The move, which applies to devices such as tablets, smartphones, eReaders and MP3 players, follows the similar decision by the FAA. The changes above will be applicable to aircraft operated by European airlines. With the new guidance an airline, following its own assessment, will be able to allow passengers to use their PED in ‘Flight Mode’ during all phases of flight.

“While the Secretariat is very confident in the safety case supporting the decisions by the FAA and EASA, we also see a need for a globally harmonized approach toward the use of PEDs. It is important to note that ICAO does NOT have any Standards, Recommended Practices or Procedures that address the use of PEDs in flight. In the future, many States may wish to authorize the use of PEDs on their airlines and may need additional guidance concerning measures to allow the safe use of these devices in flight. In the absence of a globally harmonized approach, there is also a high likelihood of confusion among the international travelling public when faced with varying PED usage procedures allowed by States. This could become particularly unclear for passengers when flying international using code-share or alliance airline partners. While we have already been discussing this issue in the ICAO Cabin Safety Group, in light of the recent developments, we now see this as very much as a multi-disciplinary issue involving airworthiness, flight operations and cabin safety areas and a concern that requires a close coordination between States and industry.

“Just last week we had several informal discussions with IATA on this subject and they expressed the same concern. On Wednesday, 27 November 2013, the Secretariat has organized an informal, multidisciplinary meeting with the regulators that have already begun to authorize the use of PEDs during all phases of flight, IATA and other stakeholders. In the very near term, we will identify best practices and make them available to all Member States, likely through an Electronic Bulletin. In the mid- to long-term, we may wish to consider the need for the development of guidance material, or possibly higher level ICAO provisions, to provide uniform guidance for States and, in turn, a harmonized approach for industry and ultimately the travelling public.”

84. It was understood that, as requested by the Representative of China, the text of the briefing would be e-mailed to Representatives.

85. Thanking D/ANB for her excellent explanation, the Representative of Spain underscored that it would be very opportune, and prudent, for ICAO to share ideas with the other regulatory organizations and the aviation industry regarding the use of PEDs in all phases of flight. In endorsing the identification of best practices as the first next step, he emphasized that that would enable further exploration of this complex subject.

## Annual Reports of the Council

86. The Secretary General presented a proposal by the Communications Section (COM) to package the information contained in the *Annual Report of the Council* in an exclusively online format on the ICAO public website rather than in a printed document, commencing with the 2013 edition. He underscored that this would enable the Secretariat to make the content more dynamic on a very cost-effective basis by allowing programme summaries to conveniently link to more detailed content areas of the ICAO public website, saving the Organization printing and distributions costs which web technology

had now essentially rendered unnecessary. While the possibility of issuing the Annual Reports in an abbreviated form had been raised, the Secretary General was not suggesting that that be done as it would not give full credit to ICAO's activities.

87. The Representatives of the Russian Federation, Venezuela (Bolivarian Republic of), the United Kingdom, Norway, India, Australia, Bolivia (Plurinational State of) and Saudi Arabia endorsed the proposal. While the Representative of Mexico also supported the proposal, in principle, he wished to see the template for the envisaged Annual Report so as to have a better understanding of its nature and its contents and thus be in a position to inform his national administration on how to make optimal use of the document. The Representatives of the United Kingdom and India also wished to see the details of the proposal.

88. The Representative of Norway stressed the importance of taking advantage of the opportunities afforded by evolving technology.

89. The Representative of Bolivia (Plurinational State of) supported the proposal as it would allow greater access to detailed information through links to the ICAO public website and would reduce paper consumption, which would be beneficial for the environment and consequently, future generations.

90. While the Representative of Australia had no objection to the proposal, she considered that it gave the Council a good opportunity to rethink exactly what it was presenting fairly routinely in its Annual Reports at two levels: the information technology presentation level; and the content level. In underscoring that there was a significant distinction between preparing information for written purposes and effectively presenting it on a website, she emphasized the need to apply the principles of information-mapping. It was not simply a case of putting the written Annual Report on the ICAO public website with links to more detailed content areas. There were much more effective ways to present the information contained in the Annual Report. Affirming that the point raised regarding reducing the length of the Annual Report had some value when the intention was to present the information on the website, the Representative of Australia indicated that the Council might indeed be able to provide a shorter version of its Annual Report which readers could delve into more deeply through links to the ICAO public website and other ways. In noting, from previous Annual Reports, that there did not seem to be a very structured emphasis linking to the desired outcomes of the Organization's various activities, she emphasized that while the Annual Reports highlighted the good work done by ICAO, they were less clear on the impacts of that work.

91. Noting that the Annual Report of the Council for 2013 was 70 per cent completed, the President of the Council indicated that it would be difficult to make all of the desired modifications. He therefore recommended that the Secretary General note the comments made for consideration and, in due course, provide more information regarding, inter alia, the proposed contents of future Annual Reports and links to more detailed content areas of the ICAO public website. In further recommending that the Secretary General not try to change the contents of the 2013 Annual Report too much at this time, the President of the Council underscored that it was important that future Annual Reports be prepared taking into account the comments made during the present discussion.

92. It was agreed to proceed in this manner.

93. The Council adjourned at 1245 hours.