



**COUNCIL — 196TH SESSION**

**SUMMARY MINUTES OF THE FIFTH MEETING**

**(THE COUNCIL CHAMBER, WEDNESDAY, 20 JUNE 2012, AT 1000 HOURS)**

**OPEN MEETING**

President of the Council: Mr. Roberto Kobeh González

Acting Secretary: Mr. Denys Wibaux, Director, Legal Affairs and External Relations Bureau

**PRESENT:**

Argentina	— Mr. J. Gelso	Malaysia	— Mr. Y.-H. Lim
Australia	— Ms. K. Macaulay	Mexico	— Mr. D. Méndez Mayora
Belgium	— Mr. G. Robert	Morocco	— Mr. A. Boulmane
Brazil	— Mr. J. Taunay	Nigeria	— Dr. O.B. Aliu
Burkina Faso	— Mr. M. Dieguimde	Paraguay	— Mrs. A. Torres de Rodríguez
Cameroon	— Mr. E. Zoa Etundi	Peru	— Mrs. L. Trindade de Buitrón
Canada	— Mr. M. Allen	Republic of Korea	— Mr. Choi, D.
China	— Mr. Tao Ma	Russian Federation	— Mr. A.A. Novgorodov
Colombia	— Mrs. G. Rueda de Higuera	Saudi Arabia	— Mr. T.M.B. Kabli
Cuba	— Mr. J.F. Castillo de la Paz	Singapore	— Mr. T.-C. Ng
Denmark	— Mr. K.L. Larsen	Slovenia	— Mr. A. Krapež
Egypt	— Mr. M.T. Elzanaty	South Africa	— Mr. L. Mabaso
France	— Mr. M. Wachenheim	Spain	— Mr. V.M. Aguado
Germany	— Mr. U. Schwierczinski	Swaziland	— Mr. D. Litchfield
Guatemala	— Mr. H.A. Rosales Salaverria	Uganda	— Mr. J. Twijuke
India	— Mr. A. Mishra	United Arab Emirates	— Mr. R.A. Al Kaabi (Alt.)
Italy	— Mr. A Bardaro (Alt.)	United Kingdom	— Mr. P. Fleming (Alt.)
Japan	— Mr. T. Koda	United States	— Mr. D. Woerth

**ALSO PRESENT:**

Mr. J.C.F. Silva (Alt.)	— Brazil
Mr. A. Rebouças (Alt.)	— Brazil
Mr. R. Carvalho (Alt.)	— Brazil
Mr. P. Pape (Alt.)	— France
Mrs. D. Valle Álvarez (Alt.)	— Mexico
Mr. Bae, J. (Alt.)	— Republic of Korea
Mr. Hwang, S.-Y. (Alt.)	— Republic of Korea
Mr. J.L. Novak (Alt.)	— United States

**SECRETARIAT:**

Mr. D. Azema	— DC/OSG
*Ms. N. Graham	— D/ANB
*Dr. Fang Liu	— D/ADB
*Mr. B. Djibo	— D/ATB
*Mr. R. Bhalla	— C/FIN
Mr. J.V. Augustin	— DD/LEB
*Mrs. N. Teyssier	— C/EAP
*Mr. J. Huang	— SLO
*Mr. F. Letullier	— COS
*Mrs. D. Cooper	— PO/PW
Miss S. Black	— Précis-writer

\*Part-time

---

---

---

**Subject No. 16:           Legal work of the Organization**  
**Subject No. 16.3:       International air law conventions**

**Report of the Special Sub-Committee of the Legal Committee to review the Tokyo Convention**

14.           Tabled for the Council's consideration was C-WP/13836, in which the Secretary General presented the results of the meeting of the Special Sub-Committee of the Legal Committee for the Modernization of the Tokyo Convention Including the Issue of Unruly Passengers held in Montréal from 22 to 25 May 2012; and, in light of the unanimous view that another meeting should be held, preferably within the current year, proposed the convening of a second meeting for five working days during the fourth quarter of 2012.

15.           In his introduction of the paper, the Director of the Legal Affairs and External Relations Bureau (D/LEB) indicated that such a meeting could take place in the first week of December 2012. He also reiterated his expressions of appreciation to the Chair of the First Meeting of the Special Sub-Committee, Ms. S. Tan (Singapore), and the Rapporteur, Mr. A. Piera (United Arab Emirates), for their excellent work and to their respective States for having supported them. During the ensuing discussion, Representatives commended the efforts of the Secretariat, the Rapporteur and the Special Sub-Committee.

16.           The Representatives of Mexico, Argentina, Japan, France, the Republic of Korea, Australia, Malaysia, Saudi Arabia, South Africa, the Russian Federation, Spain, Paraguay, the United Kingdom, Morocco, Uganda and Slovenia endorsed the proposed convening of a second meeting.

17.           While supporting the said proposal, the Representative of Mexico indicated that perhaps he should have agreed only in principle to holding the meeting in the fourth quarter of 2012 in light of the need to collect additional information and data, to undertake consultations within Members' own States and with outside parties and to further study the issues which had been identified during the First Meeting. He considered that the Council should give guidance to the Special Sub-Committee so that it could achieve the best results during its next meeting. Observing that the Tokyo Convention was one of the most successful international air law instruments concluded under the auspices of ICAO, the Representative of Mexico emphasized that the Special Sub-Committee should carefully consider the advantages of amending it versus the advantages of supplementing it or having another mechanism with which to address the risks posed by unruly passengers. He underscored that the aim was to have an instrument that would be universally acceptable and easily ratified by States. The Representative of Mexico stressed that the Special Sub-Committee needed reliable data on the frequency of incidents involving unruly passengers in States

and regions so as to be better able to identify the associated risks, problems and severity of the acts, which could be considered as either criminal or minor offences. He noted that as criminal offences, such acts might be covered by other international instruments and therefore might not give rise to jurisdictional problems. As minor offences, however, such acts might pose more problems in terms of the exercise of the jurisdiction of the State of landing. Further work thereon was required. The Representative of Mexico underscored that it was important to give detailed consideration to the powers and related immunity of the aircraft commander and other crew members, including in-flight security officers (IFSOs), who should be afforded protection in bilateral agreements. In his opinion, the Special Sub-Committee needed to focus its work more on unruly passengers, pursuant to the mandate that it had been given by the Council. The Representatives of Argentina, Italy, Australia, Paraguay and Uganda agreed.

18. In also supporting the other comments made by the Representative of Mexico, the Representative of Argentina emphasized the need for the Tokyo Convention to be revised in order to cover incidents involving unruly passengers.

19. Indicating that he was a Member of the Special Sub-Committee, the Representative of Italy underscored that whereas the Council had requested (194/5) the Chair of the Legal Committee to establish a Sub-Committee “to review the Tokyo Convention, with particular reference to the issue of unruly passengers”, the name of the Special Sub-Committee referred to the modernization of the Tokyo Convention including the issue of unruly passengers, which was slightly different. The work of the Special Sub-Committee had covered all of the issues raised in Section 8 of the Rapporteur’s Report. Noting that unruly passengers were those who did not respect the rules of good order and discipline on board aircraft and/or who did not obey the directives of the aircraft personnel, the Representative of Italy observed that such behaviour was classified as minor offences in criminal treaties. He recalled that some Members who worked in their State’s Ministry of Justice had even proposed that such minor offences be excluded from the provisions of a modernized Tokyo Convention, which was contrary to the purpose of the work which the Council had entrusted to the Special Sub-Committee. In reiterating the need for the latter to focus primarily on the issue of unruly passengers, the Representative of Italy underscored that an incident of unruly behaviour occurred on one flight out of four each day, as reported by the airline industry. He stressed the need for innovative solutions, including the insertion of sanctions and fines in the contracts of carriage between airlines and passengers.

20. The Representative of Italy supported extending jurisdiction to the State of landing, the inclusion of a list of offences to ensure uniform treatment of unruly passengers, the powers and immunity of the aircraft commander and other crew members and at least a mention of IFSOs, who were already included in Annex 17 – *Security*. He stressed that the IFSOs’ competencies and tasks should never interfere with or undermine the prerogative of the aircraft commander.

21. Recalling that he had attended the First Meeting, the Representative of Japan noted that, thanks to the tremendous efforts made by the Rapporteur, it had been possible for the Special Sub-Committee to discuss all of the important issues. While it had been considered premature to take any decisions, many Members had believed that the Tokyo Convention was generally not in need of a complete overhaul. The Representative of Japan shared that view. In fully supporting the convening of a second meeting, he requested that related documentation be made available more in advance of that meeting so that there would be sufficient time in which to study it.

22. In endorsing these comments, the Representative of the Russian Federation asked that the exact dates of the second meeting be publicized as soon as possible and that all papers be made available as expeditiously as possible and not less than two weeks prior to the meeting. The Representatives of Malaysia and Uganda reiterated these requests.

23. In noting that the phenomenon of unruly passengers was of great concern, the Representative of France underscored that passengers' disruptive behaviour might not only affect flight safety but also necessitate flight diversions and consequently have a financial impact on airlines. While it was thus necessary to modernize the Tokyo Convention's framework to combat that phenomenon more effectively, it was too early to decide on the way in which that should be done in order to achieve global harmonization in the treatment of unruly passengers. Expressing satisfaction with the conduct of the First Meeting, the Representative of France spoke in favour of the Special Sub-Committee pursuing its preliminary work during a second meeting, in particular, of its: considering the way in which to reach a consensus on expanding the jurisdictional competence of States concerned to pursue the perpetrators of criminal acts in certain cases; establishing a list of internationally-recognized offences; and progressing on the issue of the immunity of aircraft personnel. Averring that the latter issue was an extremely difficult one, he stressed that it should be studied in greater depth.

24. The Representative of the Republic of Korea observed that, although everyone was like-minded in the desire to address the issue of unruly passengers, by legal as well as by other means, there were still outstanding details, such as jurisdiction and immunity, that required further consideration, as could be seen in the report. While agreeing with the report's evaluation that the discussion of the revision of the Tokyo Convention was still in the preliminary stage, he was nonetheless pleased with the progress made at the First Meeting.

25. In echoing the need for a cautious approach to revising the Tokyo Convention, the Representative of Australia indicated that she appreciated the fact that there were divided views at this point on whether it required an overhaul. Recalling that Australia was a Member of the Special Sub-Committee, she noted that it had become evident during the sharing of States' experiences that it was quite advanced in the treatment of unruly passengers. The Representative of Australia emphasized her State would be happy and willing to sharing information on its treatment of such passengers in order to facilitate discussions at the next meeting.

26. Underscoring that the amendment of the Tokyo Convention was overdue, the Representative of Malaysia noted that the aviation security environment had evolved since it had been adopted some fifty years ago. Noting that the increase in incidents involving unruly passengers had caused concern for the safety and security of flights, as well as of passengers, he emphasized that serious consideration should be given to the following in amending the said Convention: expanding jurisdiction to the State of landing, establishing a list of punishable acts and the powers of the aircraft commander. Recalling that the purpose and the intent of the Tokyo Convention had been to create a uniform law applicable to offences committed on board aircraft, the Representative of Malaysia stressed that that could not be achieved if the State of landing were not recognized as competent to exercise jurisdiction in addition to the State of Registry of the aircraft. Averring that the Tokyo Convention lacked a proper extradition arrangement that would enable the effective prosecution of an offender, he underscored that failure to provide such a mechanism would become a major impediment to its implementation.

27. In emphasizing the need to be careful in establishing a list of acts to be considered as offences, the Representative of Malaysia cautioned that such a list could become overly exhaustive. Recalling that the Tokyo Convention encouraged the aircraft commander to act before the would-be offender acted, he indicated that it should be interpreted as empowering the aircraft commander to make a split-second decision to protect the passengers and crew from potential threats of unruly passengers. Listing the acts as offences might cause airlines to modify their security policies to avoid liability and such modified policies might, in turn, discourage the aircraft commander from taking swift action based on the information received from the cabin crew. It would therefore be useful to discuss the aircraft commander's authority to maintain good order and discipline on board aircraft, as in the case of *Eid v. Alaska Airlines* cited in the Rapporteur's Report. The Representative of Malaysia therefore urged the Special Sub-Committee, at its next meeting, to consider whether establishing an exhaustive list of offences would

limit the good judgement of the aircraft commander to act and to consider the definition of the term “in flight” given in the draft new instrument prepared by the Rapporteur, which differed from that given in the Tokyo Convention.

28. Having served as a Member of a previous Sub-Committee of the Legal Committee, the Representative of South Africa averred that a better management of the current process was needed to avoid recycling the discussion which had taken place during the Special Sub-Committee’s First Meeting. Cautioning that a problem could arise with regard to the scope of the Special Sub-Committee’s mandate, he noted that it had clearly considered issues that went beyond it. The Representative of South Africa suggested that if a request were made in future for an additional meeting, then it be accompanied by a detailed work plan to address any outstanding issues and carry out any necessary studies. Referring to the comment made by the Representative of Mexico, he indicated that perhaps the Council’s approval of the proposed Second Meeting should be conditional upon the submission of papers to ensure that it would be a productive one.

29. The Representative of Spain agreed on the need to give guidance to the Special Sub-Committee as to the issues on which it should concentrate its efforts and the timeframe for the completion of its work in order to achieve an end result.

30. Responding to questions raised by the Representatives of Spain and Canada, the Director of the Legal Affairs and External Relations Bureau (D/LEB) indicated that it would be for the Council to decide, on the basis of its consideration of the report on the Special Sub-Committee’s second meeting, whether or not to convene a meeting of the Legal Committee to consider this matter. It was his personal opinion that the Special Sub-Committee would probably recommend a protocol to amend the Tokyo Convention which would have to be refined by the Legal Committee. As he did not consider that any further meetings of the Special Sub-Committee would be necessary, a meeting of the Legal Committee could take place in 2013, an Assembly year. The Council would decide, in light of its consideration of the Legal Committee’s report, whether or not to proceed to the convening of a Diplomatic Conference for the adoption of any such protocol. Such a Diplomatic Conference could conceivably take place in 2014. D/LEB noted, in this regard, that in general Diplomatic Conferences were not held in Assembly years. While a Diplomatic Conference had been held in Beijing just a few weeks prior to the 37th Session of the Assembly in 2010, that had been exceptional. In concluding, D/LEB indicated that the comments made by Representatives had been noted and would be conveyed to the Special Sub-Committee, in particular, to its Chair.

31. The Representative of the United Kingdom observed that enough views had been expressed during the discussion to form guidance for the Special Sub-Committee. Averring that the simple fact that the Tokyo Convention was almost fifty years old did not automatically mean that it needed to be revised, he indicated that a clear statement of the problems to be addressed was needed in order to focus the Special Sub-Committee’s energy and efforts. The Council had heard what those problems were. Underscoring that consideration should also be given to whether there were other means of tackling them, the Representative of the United Kingdom enquired as to the real cause of the jurisdictional problems and questioned whether yet more international law would really help, given that the Tokyo Convention was widely adhered to. He suggested that the Special Sub-Committee consider if a programme designed to assist States in securing jurisdiction would be more useful in that respect.

32. Concurring that the Council should give guidance to the Special Sub-Committee, the Representative of Morocco, who had previously taught air law courses and was familiar with the Tokyo Convention, suggested that it could be instructed to consider measures to prevent incidents involving unruly passengers and information that could be provided to passengers. Recalling that, following the entry into force of the 1999 Montréal Convention in 2003, airlines had been obliged to inform passengers about

their rights, he underscored that it would be useful to also inform them about their obligations as that might reduce incidents of unruly behaviour.

33. The Representatives of Uganda and Slovenia concurred that it was necessary to manage the process in order to effectively achieve results.

34. Summarizing the discussion, the President of the Council noted that most Representatives very clearly supported the convening of a second meeting. He emphasized that the exact dates of that meeting and the related documentation were to be communicated to the Special Sub-Committee's Members as soon as possible in order for optimal results to be achieved. To that end, Members were encouraged to undertake the requisite collection of information and data, consultations and studies in advance of the meeting.

35. In then taking the action proposed in the executive summary of C-WP/13836, the Council approved the convening of a second meeting of the Special Sub-Committee of the Legal Committee for the Modernization of the Tokyo Convention Including the Issue of Unruly Passengers for five working days during the fourth quarter of 2012, which was foreseen for the first week of December 2012.

---

---

---

---