



SGWI-RG/1

# International Civil Aviation Organization

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## **REVIEW GROUP OF THE SPECIAL GROUP ON AVIATION WAR RISK INSURANCE**

Montreal, 30 April and 1 May 2003

<b>REPORT</b>
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*The material in this report has not been considered by the Council. The views expressed herein do not necessarily represent the views of the Organization.*

## **LETTER OF TRANSMITTAL**

To: President of the Council

From: Chairman, Review Group of the Special Group on Aviation War Risk Insurance (SGWI-RG)

I have the honour to submit herewith the Report of the meeting of the Review Group of the Special Group on Aviation War Risk Insurance (SGWI-RG/1), held in Montreal on 30 April and 1 May 2003.

Siew Huay Tan

Montreal, 1 May 2003

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## **TERMS OF REFERENCE**

1. On 13 March 2003, the Council of ICAO agreed to convene without delay a sub-group (“review group”) of the Special Group on Aviation War Risk Insurance (SGWI), with the following terms of reference:

- 1) to review the proposed global aviation war risk insurance scheme in light of the conditions of participation set by certain States; and
- 2) to make any necessary adjustments thereto for further refinement of the revised draft Participation Agreement.

2. For its work, the Review Group should take into account:

- a) Assembly Resolution A33-20;
- b) State letters LE 4/64-02/55, LE 4/64-02/72, LE 4/64-02/100 and LE 4/64-03/36 dated 6 June, 12 July, 6 November 2002 and 28 March 2003, respectively;
- c) any other relevant documents; and
- d) the action taken by States and by the industry in relation to this matter.

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## REPORT OF THE REVIEW GROUP OF THE SPECIAL GROUP ON AVIATION WAR RISK INSURANCE (SGWI-RG)

### 1. Place and Duration

1.1 The meeting of the Review Group was held at the Headquarters of the International Civil Aviation Organization in Montreal on 30 April and 1 May 2003.

### 2. Opening Address

2.1 The **President of the Council, Dr. Assad Kotaite**, opened the meeting by extending a warm welcome to all delegations and observers attending this meeting.

2.2 He introduced the historical background of the subject “assistance in the field of aviation war risk insurance”, which had been triggered by the uncertainties in the insurance market in the aftermath of the tragic events of 11 September 2001. He recalled in particular that the Special Group on Aviation War Risk Insurance (SGWI) had recommended the establishment of an appropriate international mechanism under the auspices of ICAO for the provision of aviation war risk insurance by a non-profit entity with multilateral government backing for the initial years, which had been reviewed by the Council Study Group on Aviation War Risk Insurance (CGWI) and approved in principle by the Council on 27 May 2002. This proposal, subsequently referred to as “Globaltime”, was conveyed to Contracting States through State letter dated 6 June 2002, inviting them to express their intent to participate therein.

2.3 He noted that as further decided by the Council, an informal group of experts was established on 7 June 2002 to assist the Secretariat in the review of a draft Participation Agreement, and that at two additional meetings in January 2003, the CGWI examined a refined version of this draft and agreed on the revised text as reproduced in the Appendices to WP/3.

2.4 He recalled that on 13 March 2003, the ICAO Council decided to approve in principle the revised draft Participation Agreement and to further extend the time-limit for replies from Contracting States to 16 May 2003, to also allow for consideration of the evolving situation in the private market. The Council additionally agreed to convene this Group tasked to review the proposed aviation war risk insurance scheme in light of the conditions set by certain States, and to make any necessary adjustments thereto for further refinement of the revised draft Participation Agreement.

2.5 In this context, he further recalled that the implementation of Globaltime would depend upon the participation by a sufficient number of Contracting States, the sum of whose contribution rates should amount to at least 51% as indicated in Assembly Resolution A33-26. He noted in this regard that, as of 30 April 2003, 62 States corresponding to 45.95%<sup>1</sup> of ICAO contribution rates had expressed an intention to participate, a number of which expressions had been made subject to certain conditions. He also made reference to the positions of the United States and Japan, of which he had been informed during his respective visits to them. The United States’ authorities were further evaluating Globaltime and its modalities. The Japanese authorities had difficulty agreeing to participate in Globaltime, mainly due to the quantum of Japan’s guarantee share

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<sup>1</sup> Based on contribution rates for the year 2003.

(14.58%<sup>2</sup>), and the basis on which that share was computed. He finally informed the Group that the outcome of its deliberations would be expected to be reported to the 169th Session of the Council, probably in the first week of June 2003.

2.6 The Director of the Legal Bureau, Dr. Ludwig Weber, also welcomed the participants to the meeting and presented the Secretariat on behalf of the Secretary General. He reviewed the updated figures on intended participation of States in Globaltime, based on replies from States to the ICAO State letters, as listed in IP/3. He then emphasized that the Group had been mainly tasked by the Council to review Globaltime in light of the conditions raised by certain States and the developments in the market. As the revised draft Participation Agreement had been approved in principle by the Council, such review should not lead to drastic changes to the proposal for Globaltime but only to such refinements as might be necessary in light of the conditions raised by States and of the market developments. He also indicated that the question of domicile and most suitable form of the Insurance Entity had been pursued by the Secretariat, including with valuable information from the industry.

### 3. Attendance

3.1 The meeting was attended by 14 participants, including 8 delegates from 7 Contracting States and 6 observers from 2 Contracting States and 4 organizations. The names of the participants appear in **Appendix 1**.

### 4. Agenda of the Meeting

4.1 The provisional agenda as set out in **Appendix 2** was approved by the Group.

### 5. Officers

5.1 Ms. Siew Huay Tan (Singapore) was elected Chairman of the Special Group and Mr. P. Smith (United Kingdom) was elected Vice-Chairman. The Secretary of the meeting was Mr. Benoît Verhaegen, Legal Officer, and the Deputy Secretary was Mr. Toshiyuki Onuma, Junior Professional Officer, Legal Bureau.

### 6. Language and Documentation

6.1 The discussions of the meeting were held in English. A list of the documentation prepared or made available for the meeting in English appears in **Appendix 3**.

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<sup>2</sup> Based on contribution rate for the year 2002.

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## EXECUTIVE SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

The following points summarize the key conclusions and recommendations of the Review Group meeting:

### A. Conclusions

The Review Group of the SGWI met on 30 April and 1 May 2003 in Montreal. Its task was to review the ICAO Global Scheme on Aviation War Risk Insurance (“Globaltime”) in the light of the conditions that certain States had expressed concerning their intended participation and to make any necessary adjustments for further refinement to the revised draft Participation Agreement accordingly.

1. Informed by a presentation of the LMBC, the Group briefly reviewed the **state of the aviation insurance market**. Withdrawal of most government guarantees at end October 2002 has not appreciably increased market capacity. Unlimited per occurrence/per aircraft third-party war risks liability cover is available only up to U.S.\$ 150 million and for airlines only. The highest limit available to most airlines is still U.S.\$ 1 billion in the aggregate. For selected major airlines, non-cancellable cover of U.S.\$ 1 billion per occurrence subject to an aggregate of U.S.\$ 2 billion is available in the commercial market on conditions similar to those of Globaltime, up to 31 October 2003. Other aviation entities (including the airports and other service providers) still face 7- or 30-day cancellation notice.

2. **Premium rates** for excess third-party war risks liability cover have dropped, but the minimum for most airlines is still about U.S.\$ 0.75 per passenger. The estimated total premiums collected since September 2001 is about U.S.\$ 1 billion with no losses. There is serious concern, however, that SARS could negatively affect future earnings and add to capital providers’ concerns about falling premium levels and their on-going participation in the market generally.

3. Commercial recovery post September 2001 is limited. The **cover** now available is only just adequate to satisfy lessors and the minimum insurance requirements of some States. The insurers’ view is that if another event on a scale similar to that of 11 September 2001 occurs, it is highly probable that war risk insurance will cease to be offered, even in the long term, other than for much higher premium and with significantly reduced coverage, if at all. Governmental risk warnings around the world, and recently particularly in Europe, about the possibility of a terrorist attack on aviation make this a very real problem. Having reviewed the information provided, the Group concluded that the commercial market remains fragile and a market failure could still occur. Hence, an alternative insurance mechanism such as Globaltime is still needed.

4. With respect to **Government actions**, the Group noted that, as at 29 April 2003, replies on participation in Globaltime had been received from 92 ICAO Contracting States. Sixty-two (62) States representing 45.95%<sup>1</sup> had replied affirmatively or favourably. However, the replies of States representing 35.02% are conditional. The conditions need to be resolved for the target percentage of 51% to be reached. Twelve (12) States representing 2.54% had replied negatively and one State with an ICAO contribution rate of 14.36 % had replied “no” in relation to the conditions proposed. Seventeen (17) States advised that they would inform ICAO later about their position. A number of States are still providing government guarantees or indemnities. Most are in excess of commercial cover of U.S.\$ 50 million or U.S.\$ 150 million and a few are in excess of U.S.\$ 1 billion. One State provides cover from ground up for hull, passenger and crew war risks in addition to third-party liability war risks at a very low cost. Some others provide cover without charge.

### B. Recommendations

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<sup>1</sup> Percentages are based on ICAO contribution rates for 2003.

In line with its task, the Group dealt mainly with reviewing Globaltime in the light of the various States' conditions. There was considerable discussion over the conditions concerning the Excess Point, premiums, the allocation of Government guarantees and the duration of Globaltime.

1. A number of States preferred to set the **Excess Point** (the amount that the insureds would be required to buy from the market) at more than U.S.\$ 50 million or at U.S.\$ 1 billion and **premiums** at above U.S.\$ 0.50 per passenger or even above the current market premiums to ensure non-distortion of the market, maximization of available market cover and minimization of government exposure. The industry highlighted that an Excess Point of U.S.\$ 1 billion or above would have to be at a reduced premium rate below U.S.\$ 0.50 per passenger. Failing that, the airlines would not participate in Globaltime as it would be too expensive. Noting that there were sufficient safeguards in the Participation Agreement and that market conditions could change, **the Group agreed that the Excess Point and premium amounts should not be fixed, but should be left to be determined by the Board of the Insurance Entity ("IE")**. On this basis, the Group did not make any recommendation about amending the draft Participation Agreement on the Excess Point and the premium, which currently presents the amount for the Excess Point in square brackets.

2. On the **allocation of government guarantees**, Japan's concern that its 14.36% share was out of proportion to its risk exposure was noted. Japan suggested that each government's share might be based upon standards such as flight volume (e.g. passengers carried). Proposals to cap Japan's percentage at 10% were seriously considered. One proposal was to redistribute Japan's share above the 10% cap as this would not result in a major increase in other States' guarantee shares. Another proposal was not to redistribute the remaining 4.36% as Globaltime did not require full 100% contribution of all States. As Japan's and other States' responses to these proposals would have to be taken into account, **the Group decided not to make a recommendation regarding the proposed cap, nor to recommend using allocation possibilities other than the contribution rates as per Assembly Resolution A33-26**.

3. Certain States preferred that Globaltime **terminate at 3 years** with no possibility of extension to ensure that it would not compete with the commercial market. It was noted, however, that termination at 3 years would be practicable only if there were no or no substantial claims in the interim. If there were substantial claims, there would be a clear need for Globaltime to continue should market failure persist or if there were a need for the IE to build up the pool to pay the claims or to repay Participating States. **The Group recommends two points of time for reviewing States' exit from Globaltime, namely at 3 and 5 years**. The review at the 3-year point should be made by the ICAO Council and the IE. The review at the 5-year point would be made by all the participating States. **The Group recommends that the draft Participation Agreement be amended accordingly**.

4. **The Group also recommends insertion of wording into the draft Participation Agreement to make it clear that Globaltime/the IE would be operated on a not-for-profit basis** in order to give assurance that it was not intended to compete with the market. The Group found that the other conditions could be accommodated with no significant change to the structure or effectiveness of Globaltime. The corresponding changes to the draft Participation Agreement set out in SGWI-RG/1-WP/3 were also found agreeable and are recommended accordingly.



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5. The Group envisaged that, once the 51% threshold of intentions to participate is reached (as confirmed by the ICAO Council), the IE would be established and signatures of the Participation Agreement sought from States. **The Group recommends that, thereafter, subject to participation by States representing at least 51% of ICAO contribution rates, Globaltime be retained on a contingency basis. Accordingly, it is recommended that Globaltime be activated only when there is further failure of the commercial market as determined by the ICAO Council, in which event the IE shall commence its operations, which commencement may need to occur at short notice.** This approach was seen as not only effectively addressing the issue of the Excess Point (as market failure will determine the starting point of Globaltime's insurance coverage), but also as meeting the concerns regarding interference with the commercial insurance market or market distortion and state aid issues.

6. Further to the above recommendations on the conditions of States, the Group also made the following recommendations:

- a) **that the establishment of Globaltime be on a basis that would make it viable and also supportable by industry;**
- b) **that the Council take note of the actions of the largest ICAO funding contributor on war risk insurance and, in particular, the expansion and extension of its FAA program pursuant to legislation passed by Congress;**
- c) **that work on the international instrument to limit liability for third-party damage arising from war risks proceed as speedily as possible; and**
- d) **that the Council consider harmonization and standardization of the minimum insurance requirements of States for their operators.**

7. The Group also suggested that the Council consider sending a further State letter to all States setting out for information the revisions made to Globaltime and to the draft Participation Agreement, which may encourage States which had given conditional replies to reconsider their positions on Globaltime more favourably in the light of these revisions.

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**Agenda Item 1: Review of the Situation of Aviation War Risk Insurance**

1.1 At the beginning of the meeting, the Review Group reviewed the **state of the aviation insurance market**. A presentation was given by the observer from the London Market Insurance Brokers Committee (LMBC) on the recent developments in aviation war risk insurance, as reflected in IP/2. The presentation called the Group's attention particularly to the fact that withdrawal of most government guarantees at the end of October 2002 had not appreciably increased capacity and that the majority of the market was still providing only U.S.\$ 50 million aggregate third-party war risk liability cover subject to 7-day cancellation notice. Unlimited per occurrence/per aircraft third-party war risk liability cover is available only up to U.S.\$ 150 million and for airlines only. The highest limit available to most airlines is still U.S.\$ 1 billion in the aggregate. For selected major airlines, non-cancellable cover of U.S.\$ 1 billion per occurrence subject to an aggregate of U.S.\$ 2 billion is available under a "commercial version" of Globaltime up to 31 October 2003. Other aviation entities (including airports and other service providers) still face 7- or 30-day cancellation notice. The market for the excess third-party war risk liability cover up to U.S.\$ 1 billion is small, being basically restricted to four players, of which one provides 50% to 60% of the capacity.

1.2 It was also pointed out that the premium rates had dropped from U.S.\$ 1.85 per passenger at the highest level to the minimum price of U.S.\$ 0.75 per passenger for major airlines, but this amount was still higher than that prior to 11 September 2001. The estimated total premiums collected since September 2001 is about U.S.\$ 1 billion with no losses. There is serious concern, however, that SARS could negatively affect future earnings and add to capital providers' concerns about falling premium levels and their on-going participation in the market generally.

1.3 Commercial recovery post September 2001 is limited. The cover now available is only just adequate to satisfy lessors and the minimum insurance requirements of some States. The insurers' view is that if another event on a scale similar to that of 11 September 2001 occurs, it is highly probable that war risk insurance will cease to be offered in the long term other than for much higher premium and with significantly reduced coverage, if at all. Governmental risk warnings around the world and recently particularly in Europe about the possibility of a terrorist attack on aviation make this a very real problem. Having reviewed the information provided, the RG concluded that the commercial market remains fragile and a market failure could still occur. Hence, an alternative insurance mechanism such as Globaltime is still needed.

1.4 Given the importance of the U.S. market and its related governmental action, the main features of the FAA program were also explained by the LMBC observer, with a few additional clarifications offered by the Delegation of the United States. The program, which had been in effect since 24 September 2001 with an initial duration of six months, had been extended to 31 August 2004 with provision to go to 31 December 2004. It provides third-party war risk liability cover up to twice the limit available before 11 September 2001 (up to U.S.\$ 3.5 billion per occurrence and per aircraft), with a total premiums cap of U.S.\$ 140 million per year (including hull war and passenger risks) and a liability limit up to U.S.\$ 100 million for third-party damages arising from acts of terrorism. The U.S. Congress is considering extending this program to 2005 or even 2007. Given the situation of the market, the observer also recommended changes to the nature of Globaltime, along the lines of the FAA program on a reinsurance basis, pending the entry into force of a convention limiting third-party liability for war risks which he advocated should be given priority.

1.5 The Group thereafter turned to IP/1, presented by the International Air Transport Association (IATA) observer, which stressed that any third-party war risk solution should be accessible, affordable and non-cancellable, and should recognise the inherent role of governments. Those views were supported by the observer of the International Coordinating Council of Aerospace Industries Associations (ICCAIA), in relation

to lessors and manufacturers. It was further noted by the IATA observer that the availability of commercial third-party war risk liability insurance covers on conditions similar to Globaltime, namely, non-cancellation and a drop-down feature reflecting a relative improvement in the above-mentioned market situation was certainly due, to a large extent, to the efforts to foster Globaltime. He also noted that the recent war in Iraq did not cause noticeable interferences to the market, despite the fact that it remained fragile and virtually dominated by one main provider, because the insurers enjoyed significantly greater premium revenues without carrying large war risk liabilities, given their U.S.\$ 50 million limits, that excess cover was non-cancellable and the airlines at greatest risk were covered by their government. This observer also supported the LMBC recommendations.

1.6 The IATA observer expressed concern about the purported introduction by the European Community of high minimum insurance requirements up to SDR 600 million, which may not be readily available from the current market. It was clarified by the observer of the European Commission (EC) that this amount would relate not only to third party war risk liability but would include all third-party liability, and that such maximum figure could be modified in view of availability in the commercial market. This observer added that, taking into account that the Globaltime proposal had indeed fostered the return of the market which justified that this effort should persist, the presence of only one main player in the market remained a serious concern and an early revision of the Rome Convention of 1952 or the development of another international convention to limit third-party liability especially for war risks would be very pertinent in this respect. In this connection, the Group felt that the work for the modernization of the Rome Convention of 1952, or the development of another international instrument, should be expedited and enhanced as a long-term solution.

1.7 Based on these presentations and further exchanges of views, the Chairman offered a summary which was agreed to by the Group: the majority of the market still only provided U.S.\$ 50 million aggregate third-party war risk cover, subject to 7-day cancellation notice; the market for the excess third-party war risk cover up to U.S.\$ 1 billion, with features close to Globaltime, was small and possibly under virtual monopoly; the premiums had dropped and the cover had improved thanks to the development of Globaltime; the market was still fragile, while the extent may be arguable and different views may exist in this regard; and therefore Globaltime was still needed and deserved further consideration towards possible adjustments.

1.8 Following the discussion on this agenda item, the Secretariat presented IP/3 indicating the status of replies from Contracting States as to their intention to participate in Globaltime. The Group noted that, as at 29 April 2003, replies on participation in Globaltime had been received from 92 ICAO member States. Sixty-two (62) States representing 45.95%<sup>1</sup> had replied affirmatively or favourably. However, the replies of States representing 35.02% are conditional. The conditions need to be resolved for the target percentage of 51% to be reached. Twelve (12) States representing 2.54% had replied negatively and one State with an ICAO contribution rate of 14.36 % had replied “no” to Globaltime as proposed. Seventeen (17) States advised that they would inform ICAO later about their position.

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<sup>1</sup> Percentages are based on ICAO contribution rates for 2003.

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1.9 Information was also provided by the Secretariat on actions taken by governments at national level. It appeared that many governmental schemes had lapsed at the end of 2002, as the market was gradually recovering, even though a certain number of them remained in effect, including: Australia, Brazil, Canada, China, Czech Republic, Japan, Mexico, Singapore, South Korea, Turkey and United States. Those States represented in the Group provided more detailed information on their respective national schemes. Most are in excess of commercial cover of U.S.\$ 50 million or U.S.\$ 150 million and a few are in excess of U.S.\$ 1 billion. One State provides cover from ground up for hull, passenger and crew war risks in addition to third-party liability war risks at a very low cost. Some others provide cover without charge. It was particularly noted that, while these States continued providing supportive measures, all the States of the European Community had terminated their support.

1.10 As regards the long term, the Group was informed by the Secretariat that the Secretariat Study Group on the Modernization of the Rome Convention had had substantial discussions on the subject of third-party aviation war and terrorism risks during its second meeting on 24 and 25 April 2003, which will be continued during its third meeting to be held in September 2003. The Chairman concluded on this point that the development of an international instrument was a long-term objective and that the maintenance of a stimulus on the still fragile market supported the idea that the concept of Globaltime as devised was appropriate.

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**Agenda Item 2: Review of Globaltime**

2.1 The Secretariat introduced WP/3, which presented the conditions of participation in Globaltime as set by certain States, and the Delegation of the United Kingdom presented WP/4.

2.2 As regards paragraph 2.1 of WP/3 (**Scope of Coverage**), the Group noted that the revised Article 4.2 of the draft Participation Agreement provided for a stricter obligation on the part of the Insurance Entity to adapt itself to market developments and for a more flexible review of the Excess Point so as not to unnecessarily restrict the market. While one delegation and one observer suggested that some standards should be introduced to trigger the automatic review of the Excess Point by the Board of the Insurance Entity, the Group eventually concluded that it would not be possible to predict future situations of the market. Furthermore, this suggestion would also be inconsistent with the original concept of the proposal, which required flexibility of the Board in its management decisions.

2.3 As regards the Excess Point presently set in Article 1.1 of the draft Agreement at U.S.\$ 50 million and placed in square brackets, it was pointed out by several delegations and observers that if Globaltime would be operated on a contingency basis, i.e. activated only in the event of market failure, as proposed in WP/4 presented by the Delegation of the United Kingdom, the present consideration of the appropriate level for an Excess Point might not be relevant since very restricted or even no market coverage would then be available. One delegation which concurred with this view, confirmed that the condition for its government to participate in Globaltime would be fully satisfied if Globaltime would be operative on a contingency basis, regardless of the fact that the adoption of an Excess Point higher than U.S.\$ 50 million was stated by its government as a condition for its participation. Another delegation also clarified that the provision by Globaltime of a cover in excess of just U.S.\$ 50 million would result in a distortion of the market in view of the fact that its national airlines had already obtained from the commercial market a cover in excess of up to U.S.\$ 1 billion; this situation had prompted its government to suggest that cover by Globaltime be from U.S.\$ 1 billion to U.S.\$ 2 billion. On the other hand, one delegation considered that the proposed upper limit of coverage of U.S.\$ 1.5 billion was equivalent to that of U.S.\$ 2 billion prior to 11 September 2001, which also covered all hull and passenger war risk. Finally, the Group decided that it would re-visit this issue in conjunction with paragraph 2.5 of WP/3 (**Premiums**) because the level of premiums would affect the appropriate limit of coverage, and *vice-versa*.

2.4 The Group then examined paragraph 2.2 of WP/3 (**Limitation of Participating States' Exposure**) and agreed that revised Articles 6.1 and 6.2 of the draft Participation Agreement should be accepted as meeting satisfactorily the referenced concerns, by establishing the possibility for the Insurance Entity to obtain borrowings from credit institutions, and its obligation to repay any advanced monies to Participating States with interest.

2.5 Concerning paragraph 2.3 of WP/3 (**Allocation of Guarantees among Participating States**), two different alternatives were introduced by two delegations. One delegation (Japan) was concerned that its 14.36% guarantee share was out of proportion to its risk exposure. The delegation suggested that each government's guarantee share might be based upon standards such as flight volume (e.g. number of passengers carried), which in its view would reflect risks of war or terrorism more appropriately. Another delegation recalled WP/5 of SGWI/2, which called for the consideration of cargo volume and historical background of each State with no ICAO contribution rate limit of 25%. However, the majority of the Group considered that risks could not be determined as proposed, taking into account that there is no place or region which could be considered as risk-free, or permanently at lower risk, from being targeted for terrorism or for initiating or carrying out preparatory terrorism actions.

2.6 Another delegation then suggested that a cap of 10% be introduced with respect to Japan's guarantee share to facilitate Japan's participation in Globaltime. This proposal included redistributing Japan's

4.36% share above the 10% cap which would not result in a major increase in other States' guarantee shares. It was suggested that this proposal could be modified such that the 4.36% need not be redistributed as Globaltime did not require full 100% contribution from all States. It was noted that the increased participation level if Japan participates could have a positive effect to diminish other Participating States' financial exposure. This could be possible through the combined effect of the resulting increase in both the overall total percentage of Participating States' guarantee shares and the premium pool to meet claims if required. It was further proposed that the 10% cap could also be applied to the United States but the Delegation of the United States clarified that its ICAO contribution rate of 25% as per Assembly Resolution A33-26 was not the principal concern to its government in its evaluation of Globaltime.

2.7 In the course of an extended discussion on the merits of the proposal for a 10% cap on Japan's contribution rate, some delegations and observers expressed doubts on the practicability and as to the seemingly arbitrary nature of the proposed cap; others pointed out that ICAO contribution rates were already subject to, i.e. capped by, lower and upper limits (0.06% and 25%). In this connection, it was clarified by the Secretariat that Assembly Resolution A23-24: Apportionment of the expenses of ICAO among Contracting States (Principles to be applied in the determination of scales of assessment), which is the basis for the calculation of ICAO contribution rates, takes into consideration a Contracting State's importance in civil aviation, measured by the capacity in terms of tonne-kilometres available on each State's scheduled air services, which included both passenger and cargo services. Thus, the Group noted that the computation of the ICAO contribution rates already takes into account factors such as flight, passenger and cargo volume. It was suggested that States with concerns about the extent of their contribution rates could take these into consideration and that further information on these matters might be provided as necessary. On enquiry, the Delegation of Japan responded that it was difficult to make any positive comment on the 10% cap proposals at this meeting. As Japan's and other States' responses to these proposals would have to be taken into account, the Group decided not to make a recommendation regarding the proposed cap, nor to recommend using allocation possibilities other than the contribution rates as per Assembly Resolution A33-26.

2.8 As regards paragraph 2.4 of WP/3 (**Exit Strategy**), several observers pointed out and the Group agreed that, while it would not be a problem to limit the lifetime of Globaltime to three years in the absence of, or if there are small losses, substantial losses might lead to prohibitive post-loss adjustment of premiums and increase the participating States' exposure if Globaltime's lifetime is so restricted. There could be a clear need for Globaltime to continue if market failure persisted or if there was a need for the Insurance Entity to build up its pool to pay the claims or to repay Participating States. Therefore, while some delegations reserved the position of their governments, the Group agreed that the duration of Globaltime should be three years unless the Insurance Entity would have faced significant claims during that period. Such early termination would be subject to confirmation further to a review of the situation, including market conditions, by the ICAO Council in consultation with the Board of the Entity. The Group therefore recommends two points of time for reviewing States' exit from Globaltime at 3 and 5 years, the review at the 3-year point to be made by the ICAO Council and the Board of the Entity and the review at the 5-year point to be made by all the participating States. To this end, the drafting of appropriate amendments to Article 9.3 of the draft Agreement was left to the Secretariat.

2.9 The Group then turned to paragraph 2.5 of WP/3 (**Premiums**) which was discussed in conjunction with the question of the level of the Excess Point as referred to in paragraph 2.1 of WP/3 (see paragraph 2.3 above). One delegation and one observer expressed their concerns that leaving to the Board any decision pertaining to the determination of the Excess Point and the premiums may lead to distortion of the market. On the other hand, several other delegations and observers felt that it would not be practical to pre-determine those matters, and that the flexibility of the Board's decision should be maintained. It was also clarified by the Secretariat that some safeguards had already been built into Article 4.2 of the draft Participation Agreement as regards the modification of the Excess Point. In this connection, several observers pointed out that even if the avoidance of market distortion should be considered as paramount, the reasonableness of premium levels should also be ensured so as to allow Globaltime to be attractive and viable. Observers from the industry highlighted that an Excess Point of U.S.\$ 1 billion or above would have to be at a reduced premium rate below U.S.\$ 0.50 per passenger. Failing that, the airlines would not participate in Globaltime as it would be too expensive. In this connection, one observer also emphasised the importance of ensuring that post-loss adjustments are appropriate.

2.10 Another observer was also of the opinion that, if Globaltime had to be resorted to in case of market failure, the determination of the Excess Point and the premiums could be left to the Board. Finally, noting that there were sufficient safeguards in the Participation Agreement (see Articles 4.2 and 10) and that market conditions could change, the majority of the Group agreed that the determination of the Excess point and the level of premiums should be left to the Board's decision for the sake of flexibility, duly taking into account that the market should not be distorted while premiums should be reasonable. On this basis, the Group did not make any recommendation about amending the draft Participation Agreement on the Excess Point and the premium, which currently presents the amount for the Excess Point in square brackets. The Group also recommends insertion of wording into the draft Participation Agreement to make it clear that the Insurance Entity would be operated on a not-for-profit basis, in order to give assurance that it is not intended to compete with the market. The Group therefore recommends that the Secretariat revise the preamble and any other relevant provision of the Participation Agreement accordingly.

2.11 With respect to paragraph 2.6 of WP/3 (**Wind up**), one delegation confirmed that its government would not insist on the condition referred to in this paragraph, as long as participating States would benefit from a substantive degree of control over the Entity through adequate representation on the Board, as recalled in the paper. While one delegation suggested that the ratio of the funds to be distributed to the participating States could be pre-determined in order to give more incentive to States for participating in Globaltime, the Group considered that paragraph 16.2 of the draft Agreement offered enough safeguards to States and decided that it would not be appropriate to propose any amendment on a matter which was not seen as formally conditioning their participation. Certain delegations nevertheless indicated that they were reserving the position of their governments in this regard. The Chairman then stated that positions taken by members of the Group would not be considered as committing their respective governments in relation to Globaltime.

2.12 Concerning paragraph 2.7 of WP/3 (**Waiver of Immunity**), it was noted by the Group that the provision of a letter of credit for the guaranteed cap as set out in the new Article 17.5 of the draft Participation Agreement appeared to be an acceptable alternative to the waiver of sovereign immunity. One observer suggested that it be verified whether Article 17.5 should be revised in order to ensure that a State guarantee as covered by an irrevocable letter of credit for its full amount would be called by the Entity only at the pro rata of the State's share of actual claims faced by the Entity. It was agreed by the Group that the Secretariat would re-visit this issue in view of the suggestion made.

2.13 The Group then considered and agreed on the modification to Article 20.1 of the draft Participation Agreement as referred to in paragraph 2.8 of WP/3 (**Applicable Law**), which stipulates that the law of the domicile of the Entity shall govern the Agreement.

2.14 With respect to paragraph 2.9 of WP/3 (**Participation by other States**), the Group noted from IP/3 that neither the United States nor Japan had so far decided to join Globaltime, while the participation of larger contributing States was a condition for several States, mainly those of the European Community. The Group was informed by the EC observer that the EU Member States still had to decide whether the participation of both the United States and Japan would be a condition for them to participate in Globaltime, or whether the participation of one of them would be sufficient in this respect. The Group was also informed that, while any ultimate decision would belong to each EU Member State, EC had contacted the United States and Japan to discuss this matter. The President of the Council informed the Group on his talks with the authorities of Japan and the United States regarding Globaltime. While the question of contribution rates had not been raised by the United States, it was indeed a key issue for the Japanese authorities. The latter had been informed that any claim on the guarantee would be reimbursed by the Entity as a matter of priority. The Delegation of the United States confirmed that the United States authorities continued to study Globaltime and its modalities. The Delegation of Japan indicated that both the contribution rate of Japan and the parliamentary decision-making process in Japan were serious concerns to the Japanese government. The matter of Japan's contribution rate had been considered seriously in this Group as reflected in paragraphs 2.5 to 2.7 above. One delegation offered the view that the usefulness and necessity for Globaltime could perhaps be accorded more importance than the participation of the largest contributors. After further clarifications and exchanges of views, it was decided that this subject of participation of the largest ICAO contributors was not an issue that could be resolved by the Group.



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**Agenda Item 3: Preparation of Draft Recommendations for Consideration by the ICAO Council**

3.1 Further to the recommendations which the Group had developed as it reviewed Globaltime in the light of the various conditions set by certain States which have been recorded under Agenda Item 2, the Group proceeded to examine WP/4 previously presented by the Delegation of the United Kingdom. It was proposed in the paper that, subject to sufficient States' participation, Globaltime could be retained on a contingency basis and activated should there be a failure of the commercial market to provide cover, i.e. a withdrawal of coverage or excessive premiums rendering the cover inaccessible, further to another terrorist activity involving civil aviation. It was also proposed in the paper that the Council of ICAO would determine that such market failure would have occurred and would accordingly decide to trigger the activation of Globaltime, in light of advice from the insurance industry. With respect to the exact timing for which the activation of Globaltime would be made, one observer stated that while market failure might be a matter of interpretation, complete withdrawal of coverage by insurers, or the occurrence of 7-day notice of cancellation, would be clear examples of the timing when such activation would be needed.

3.2 As regards the necessary steps to set up Globaltime as originally intended, it was recalled by the Secretariat with reference to No. 7 of the Additional Questions and Answers (Attachment C to State letter LE 4/64-02/100 dated 6 November 2002), that a sufficient number of expressions of intent to participate should first be received from States, i.e. the sum of whose ICAO contribution rates would amount to at least 51%, before the Entity could be established. Such establishment might be organized in about 3 months. The Entity would then become operational when States representing 51% of ICAO contribution rates would have effectively signed the Participation Agreement. While it was difficult to make estimates as to the time-lag between the establishment of the Entity and the commencement of the operation, it was recalled that several States were able to grant early approval of *ad hoc* guarantees in view of post-11 September 2001 market failure. In this connection, one observer stressed the necessity for each State to take individual action to fill the gap between the time where a market failure would occur and the ensuing commencement of the Entity's operation.

3.3 Many comments were made by the delegations and observers, including the IATA observer, to support the idea that, even though Globaltime as designed might not be needed immediately, it should be available for speedy activation through an appropriate triggering mechanism. Accordingly, with reference to necessary changes to Article 8.1 of the draft Participation Agreement, the Group decided to recommend to the Council the consideration of a mechanism in the framework of ICAO to activate Globaltime speedily upon short notice in case of market failure. The Group agreed that, once the 51% threshold of intentions to participate would be attained, the Entity would be established and signatures of the Participation Agreement would be sought; then, Globaltime would be activated upon decision by the Council that a market failure had occurred and subject to the signatures of the Agreement by Contracting States representing at least 51% of ICAO contribution rates.

3.4 It was further agreed that the recommendation for consideration by the Council should also include the following points: that the establishment of Globaltime should be effected on a basis that would make it viable and also supportable by industry; that the Council take note of the actions of the ICAO largest contributor (United States) on war risk insurance and, in particular, the expansion and extension of its FAA program pursuant to legislation passed by Congress; that a long term solution concerning war risk and terrorism third-party liability limits should be delivered as quickly as possible through an international convention or instrument; and that the ICAO Council consider harmonization and standardisation of minimum insurance requirements of Contracting States for their operators.

**Agenda Item 4: Any other business**

4.1           The Group agreed to delegate to the Chairman the authority for approving the report of the meeting.

4.2           The Group also suggested that the Council consider sending a further State letter to all States setting out the revisions made to Globaltime and to the draft Participation Agreement, and inviting States which had given conditional replies to reconsider their positions on Globaltime more favourably in the light of these revisions.

4.3           Before closing the meeting, the Chairman thanked all the delegations and observers for their active participation and the candour of the discussions. The Chairman also expressed the Group's appreciation of the valuable and strong support that the Secretariat had provided which had contributed much to facilitate the discussions and the outcome of the meeting.

**APPENDIX 1**  
**LIST OF PARTICIPANTS**

**MEMBER STATES**

Australia	J. Aleck
Brazil	C. Bertoni Lacerda Rodríguez R. Fernandes Ramos
Germany	C. Kohlhase
Japan	R. Konno
Singapore	S. H. Tan
United Kingdom	P. Smith
United States	J. Rodgers

**OBSERVER STATES**

France	A. Veillard
Mexico	D. Méndez Mayora

**OBSERVER INTERNATIONAL ORGANIZATIONS**

European Commission (EC)	O. Koumartsioti
International Air Transport Association (IATA)	H. Goldberg
International Coordinating Council of Aerospace Industries Associations (ICCAIA)	J. Wool
London Market Brokers Committee – Aviation Section (LMBC)	K. Coombes

**APPENDIX 2****AGENDA OF THE MEETING****Item 1: Review of the Situation of Aviation War Risk Insurance**

The Review Group will be invited to review the action taken by States and by the industry.

**Item 2: Review of Globaltime**

The Review Group will be invited to review the proposed global aviation war risk insurance scheme in light of the conditions of participation set by certain States.

**Item 3: Preparation of Draft Recommendations for Consideration by the ICAO Council**

The Review Group will be invited to recommend any necessary adjustments to Globaltime for further refinement of the revised draft Participation Agreement.

**Item 4: Any other Business**

**APPENDIX 3****LIST OF DOCUMENTATION****WORKING PAPERS:**

<b>WP No.</b>	<b>Item No.</b>	<b>Title</b>	<b>Presented by</b>
1	—	Provisional Agenda	Secretariat
2	—	Terms of Reference	Secretariat
3	2	Conditions of Participation set by certain States	Secretariat
4	3	Proposal for the Participation Agreement to operate on a contingency basis	United Kingdom

**INFORMATION PAPERS:**

<b>IP No.</b>	<b>Item No.</b>	<b>Title</b>	<b>Presented by</b>
1	1	Comments on War Risk Insurance	IATA
2	1	Recent Developments in Aviation War and Terrorism Insurance	LMBC
3	1	Status of Expressions of Intent to Participate in a Global Aviation War Risk Insurance Scheme	Secretariat

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