



INTERNATIONAL CIVIL AVIATION ORGANIZATION  
ORGANISATION DE L'AVIATION CIVILE INTERNATIONALE  
ORGANIZACIÓN DE AVIACIÓN CIVIL INTERNACIONAL  
МЕЖДУНАРОДНАЯ ОРГАНИЗАЦИЯ ГРАЖДАНСКОЙ АВИАЦИИ  
منظمة الطيران المدني الدولي  
国际民用航空组织

CAR/DCA/1  
IP/04  
APPENDIX A

999 UNIVERSITY STREET, MONTREAL, QUEBEC, CANADA H3C 5H7

Tel.: (514) 954-8219  
Fax: (514) 954-6077

Internet: icaohq@icao.org  
Sitatex: YULCAYA

Telex: 05-24513  
Cables: ICAO MONTREAL

## URGENT

Ref.: LE 4/64-02/55

6 June 2002

**Subject:** Assistance in the field of aviation war risk insurance – Establishment of a global scheme

**Action required:** Reply by 19 July 2002 – See paragraph 5 below

Sir/Madam,

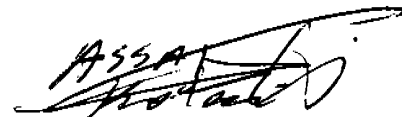
1. I have the honour to refer to State letter LE 4/64-02/30 dated 18 March 2002 concerning certain developments in the field of aviation insurance following the tragic events of 11 September 2001.
2. I wish to inform you that the ICAO Council, on 27 May 2002 during the fourth meeting of its 166th Session, **approved** in principle the recommendation of the Special Group on Aviation War Risk Insurance, taking into account C-WP/11794, **to establish a global aviation war risk insurance scheme**, in line with ICAO Assembly Resolution A33-20: *Coordinated Approach in Providing Assistance in the Field of Aviation War Risk Insurance* (see Attachment A).
3. The global scheme is envisaged to provide third-party aviation war risk insurance coverage for airline operators and other parties involved in civil aviation, through a non-profit insurance entity to be set up, backed by State guarantees. The objectives of the global scheme are:
  - to allow air transport operations to continue under reasonable conditions;
  - to spread the aviation war risk and related risks (including hijacking, sabotage and other unlawful interference) amongst the parties including all participating States involved; and
  - to provide adequate insurance coverage in the short- and medium-term while allowing the private insurance markets to come back gradually into this market.

More specifically, this global scheme would be offered at an affordable price, would provide coverage which meets regulatory requirements and, save certain exceptions, would not be cancellable. It would also offer safeguards against potential future disruption of air transport services and foresees adequate oversight over the insurance entity (see Report of the Special Group on Aviation War Risk Insurance, Second Meeting, Montreal, 28-30 January 2002 (SGWI/2 Report) on the ICAO public website, at [www.icao.int](http://www.icao.int); see also at the same address a related set of Questions and Answers (CGWI/1-WP/1 Revised)).

4. The commencement of the global scheme, the participation in which is voluntary, will be subject to the signature of a participation agreement by a sufficient number of Contracting States, the sum of whose ICAO contribution rates should amount to at least 51% as indicated in Assembly Resolution A33-26: *Assessments to the General Fund for 2002, 2003 and 2004* (the Assembly Resolution being used as the basis for determining the provision of guarantees to the global scheme). A draft Participation Agreement, which is subject to finalization, is set out in **Attachment B**, and the final text thereof will be provided in due course following approval by the Council.

5. Therefore, the Council requested me to invite all Contracting States to participate in the above global scheme and to seek **expressions of intent to participate, to be received by 19 July 2002**. I would therefore be grateful if you could advise me by 19 July 2002 at the latest whether your State intends to participate. I am attaching relevant information relating thereto (**Attachments C, D and E refer**).

Accept, Sir/Madam, the assurances of my highest consideration.



Assad Kotaite  
President of the Council

**Enclosures:**

- A — Assembly Resolution A33-20
- B — Draft Participation Agreement
- C — C-WP/11794 (without Appendix)
- D — C-DEC 166/4
- E — Questions and Answers on the Establishment of a Global Scheme

**ASSEMBLY RESOLUTION A33-20**

**Resolution A33-20**

**Coordinated Approach in Providing Assistance in the Field of Aviation War Risk Insurance**

*Whereas* Article 44 of the *Convention on International Civil Aviation* refers to the objective of ensuring safe, regular, efficient and economical air transport;

*Whereas* the tragic events of 11 September 2001 have affected the operations of airline operators around the world;

*Whereas* insurance coverage for airline operators and for other service providers in the area of war risk insurance is presently no longer fully available on the global insurance markets;

*Whereas* by State letter dated 21 September 2001, ICAO has appealed to all its Contracting States to take such measures as necessary to ensure that aviation and air transport services are not disrupted and to support the airline operators and, as required, the other parties, by providing a commitment to cover the risks left open by the above developments, until such time as the insurance markets stabilize;

*Whereas* many Contracting States around the world have acted upon this appeal and have provided assistance to the airline operators and the other parties;

*Whereas* the measure adopted by Contracting States in providing assistance to the airline operators and the other parties are mostly short-term measures which differ from one another;

*Whereas* therefore it is desirable to develop a coordinated approach in the short- and medium-term providing assistance to airline operators and the other parties in the field of aviation war risk insurance;

*The Assembly:*

1. *Urges* Contracting States to work together to develop a more enduring and coordinated approach to the important problem of providing assistance to airline operators and to other service providers in the field of aviation war risk insurance;
2. *Directs* the Council to urgently establish a Special Group to consider the issues referred to in the preceding paragraph and to report back to the Council with recommendations as soon as possible; and
3. *Invites* the Council and the Secretary General to take any other measures considered necessary or desirable.

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**DRAFT PARTICIPATION AGREEMENT  
FOR THE GLOBAL SCHEME  
REGARDING THE PROVISION OF AVIATION WAR RISK INSURANCE**

*Whereas* the Insurance Entity (hereinafter the “IE”) has been established for the sole purpose of providing insurance cover on prescribed terms for certain war and allied perils related liability risks faced by airline operators and other commercial entities which provide aviation related services in order to complement insurance cover which has been withdrawn or reduced by the commercial insurance market following the events of 11 September 2001;

*Whereas* the framework by which the above insurance arrangements are to be put into effect is set out in a related agreement between IE and Original Insureds (hereinafter the “Insurance Cover Agreement”);

*Whereas* the States parties hereto (hereinafter the “Participating States”) undertake to guarantee the obligations of the IE in respect of its exposure under the above-mentioned Insurance Cover Agreement and to the extent as prescribed herein;

*Whereas* the International Civil Aviation Organization (ICAO) has offered its good offices in accordance with Article 44 of the *Convention on International Civil Aviation* (Chicago, 1944) and pursuant to ICAO Assembly Resolution A33-20;

*Whereas* consequently the present Participation Agreement has been developed in order to define the rights and obligations of the parties involved;

**IT IS AGREED AS FOLLOWS:**

**1. DEFINITIONS**

1.1 For the purpose of this Agreement, the following expressions shall have the following meaning:

*Anniversary Date* means the twelfth calendar month anniversary of the Commencement Date and each twelfth calendar month anniversary of each Anniversary Date thereafter;

*Aviation War Risk Cover* means war and allied perils insurance cover for losses and damages to third parties as set out in Extended Coverage Endorsement AVN52C, and where permitted under Article 4.3, to passengers;

*Commencement Date* means the date this Agreement enters into force as provided for in Article 9;

*Council* means the Council of the International Civil Aviation Organization;

*Excess Point* means (a) U.S.\$ 50 million aggregate for those Original Insureds whose primary aviation insurance policies are subject to Extended Coverage Endorsement AVN52D or AVN52F, as the case may be, or (b) a lesser amount as stipulated under the primary aviation insurance policies for those Original Insureds subject to Extended Coverage Endorsement AVN52E or AVN52G, as the case may be, or, in accordance with Article 4.2, an increased amount;

*Insured Event* means an event giving rise to a claim in respect of Insured Risks for the purposes of the Insurance Cover Agreement;

*Insured Risks* means the risks insured under the Insurance Cover Agreement;

*Original Insureds* means the parties specified in Article 5.1 a) and c) which have entered into Insurance Cover Agreements and those automatically covered as contemplated in Article 5.1 b);

*Scheme* means the overall mechanism whereby the Participating States have agreed to provide guarantees to the IE for provision of war risk insurance for Original Insureds, on the terms and subject to the conditions set out in this Agreement;

*Secretary General of ICAO* means the Secretary General of the International Civil Aviation Organization or the officer(s) designated by that person to act on his/her behalf with regard to this Agreement;

*Total incurred losses* means all paid losses plus the estimated value of all outstanding losses as established by professional loss adjusters/lawyers appointed by the IE; and

*Working Day* means a day on which banks are open for general banking business in the State where the IE is legally situated.

## **2. PURPOSE**

2.1 The purpose of this Agreement is for the Participating States to guarantee certain obligations of the IE, and to establish the proration, limits, and payment mechanisms related thereto and to provide for the obligations of the IE towards the Participating States.

## **3. ELIGIBILITY FOR PARTICIPATION**

3.1 This Agreement is open for signature by all Contracting States of ICAO.

3.2 The undersigned Participating State shall be deemed to be bound by the terms and the conditions of this Agreement on the date of its signing thereof.

3.3 The undersigned Participating State hereby covenants with the IE and all other Participating States so that it is hereby, and will continue to be, bound by the provisions of this Agreement, as amended from time to time, as provided herein.

#### 4. SCOPE OF COVERAGE

4.1 IE shall provide Aviation War Risk Cover in excess of U.S.\$ 50 million per insured up to U.S.\$ 1.5 billion. For operators who have cover under AVN52D and AVN52F, the Scheme limit shall be U.S.\$1.5 billion for any one insured, any one occurrence, any one aircraft. This limit shall apply in addition to the primary passenger and third-party limits currently provided by the commercial markets. A lower limit of U.S.\$500 million shall apply for those operators who have cover under AVN52E and AVN52G.

4.2 IE shall endeavour to facilitate maximum market participation in providing Aviation War Risk Cover to the aviation industry. Accordingly, subject to IE's assessment in consultation with the Council of ICAO, based on professional advice, of market capacity, continuity and the impact of the premium costs to the policy holders, IE shall progressively increase the Excess Point under the Scheme.

4.3 Notwithstanding Article 4.1, if Original Insureds lose their Aviation War Risk Cover under their primary aviation insurance policies due to cancellation by the commercial aviation insurance market of the primary third party war risk insurance cover up to the Excess point or their passenger war risk insurance cover, IE covenants that IE's Aviation War Risk Cover shall automatically extend to include such cancelled covers. In the case of extended passenger cover, the limits of cover specified in Article 4.1 shall increase to U.S.\$ 2 billion and up to U.S.\$ 750 million respectively.

4.4 For Original Insureds who have purchased in the commercial markets policies covering limits above the Excess Point and are unable to cancel these policies, the Aviation War Risk Cover provided by IE may apply in excess of such higher limits until the policies expire. Consideration shall be given by IE to reducing the premium rate levels for such Original Insureds until then.

#### 5. ORIGINAL INSUREDS

5.1 For as long as the undersigned Participating State continues to be a party to this Agreement, Aviation War Risk Cover will be available for the following parties (the "Original Insureds"):

- a) any air carrier or other aircraft operator, including business operators and cargo carriers, and any service provider registered in the undersigned Participating State, and any owned or controlled subsidiary, affiliate or subsidiary thereof as covered under their primary insurance, subject to the conclusion of an Insurance Cover Agreement;
- b) any other person or entity that such carrier or operator or service provider may be contractually required to name as an additional insured under its primary aviation insurance policy, including, but not limited to, lessors, financiers and manufacturers, shall be automatically included hereunder as additional insured and the Insurance Cover Agreement shall automatically incorporate all related contractual requirements; and
- c) any lessors, financiers and manufacturers registered in the undersigned Participating State who purchase their own primary insurance shall, in addition to any contractual protection described above, be entitled to purchase their own policy under this Scheme by signing an Insurance Cover Agreement as well, subject to the undersigned Participating State complying with all necessary instruments of participation.

5.2 The Scheme shall only provide Aviation War Risk Cover for Insured Risks and only to those parties identified in this Article who shall remain Original Insureds only for so long as they perform all their obligations under the Insurance Cover Agreement and their Participating States continue to be parties to this Agreement.

## 6. OBLIGATIONS OF THE INSURANCE ENTITY

6.1 IE undertakes to build up reserves out of the premiums paid by Original Insureds and investment income earned on those premiums. IE shall meet any claims through funds accumulated from premiums and possibly other financial mechanisms, while Participating States shall be guarantors of last resort only.

6.2 If, as a result of claims from the Original Insureds, IE requires funds to be advanced from the Participating States' guarantees to meet claim obligations, IE shall repay these monies through increased premiums, or by any other appropriate means as approved by the Board.

6.3 Additionally after two years following the Commencement Date, in the event IE has accumulated sufficient premium reserves, it shall be required to consider taking advantage of any then available reinsurance cover available at reasonable cost as determined by the Board.

6.4 IE shall ensure that there is in force at all times for its directors, officers and employees liability insurance in relation to their position as directors, officers and employees of IE; it shall purchase and maintain insurance at a reasonable cost indemnifying IE and its directors, officers and employees against liability which it or they may incur as a consequence of any error or omission on behalf of any of them in the course of the operation of the business or the conduct of the affairs of IE;

## 7. OBLIGATIONS OF PARTICIPATING STATES

7.1 In consideration of IE agreeing to provide non-cancellable Aviation War Risk Cover in accordance with the Insurance Cover Agreement, except in case of non-payment of premium and policy fee, the undersigned Participating State agrees to provide a guarantee to IE for the purpose of being able to meet claims arising from all policies of aviation war and related perils (including sabotage, terrorism, hijack etc.) liability (including passenger liability if applicable) issued by IE to Original Insureds located or domiciled in the territory of the undersigned Participating State or any other Participating State party to this Agreement.

7.2 The Participating States' guarantee hereunder is several, not joint, and limited to their individual share in accordance with Schedule 1 attached to this Agreement (ICAO contribution rates as per ICAO Assembly Resolution A33-26: *Assessment to the General Fund for 2002, 2003 and 2004*) in respect of 100% of all losses for insured events occurring during their participation, provided always that IE has first obtained the written consent from the Board to the settlement of such losses or judgement has been obtained from a court of competent jurisdiction and any subsisting rights of appeal have been exhausted. The Participating States shall follow the settlements of IE including without prejudice settlements but excluding *ex gratia* payments.

7.3 Without prejudice to the generality of the above, the undersigned Participating State shall pay amounts due from it within 20 working days from the IE's call under the guarantee in the case of the IE having consented to a settlement, or lesser period as required by any court decision rendered, as referred to in Article 7.2 above. Such payments shall be remitted to IE in cleared funds or shall be drawn down by any letter of credit provided by a Participating State for this purpose.

7.4 Each Participating State's maximum liability under the Scheme shall be capped. It is established that the total cap, if all ICAO Contracting States participate in the Scheme, shall be U.S.\$15 billion, this figure to decrease in proportion to the ratio of Participating States. The maximum exposure of each Participating State shall be its ICAO contribution percentage of U.S.\$15 billion as at the Commencement Date and remain unchanged. If the amount of participation is less than 100% then the amount of U.S.\$15 billion for the Scheme's cap shall be proportionally reduced so that each actual Participating State's loss threshold amount remains constant.

7.5 Without prejudice to the generality of the above, in calculating the amounts due to IE under this Agreement from time to time, account shall be taken of, and the Participating States shall be entitled to take credit for, all other amounts receivable by IE including, without limitation, premiums, return premiums, salvages, subrogation, reinsurances, claim refunds or other monies which may be applied in reducing the amount of any claim or liability arising from the Insurance Cover Agreement.

## **8. DURATION OF STATES' PARTICIPATION**

8.1 Subject to the conditions in this Article, this Agreement shall initially remain in force for sixty (60) months from the Commencement Date.

8.2 Any Participating State may withdraw from this Agreement subject to a 12-month notice of cancellation to IE on an anniversary Commencement Date, not to be given before the second anniversary Commencement Date. That withdrawal does not limit its liability hereunder attributable to the period prior to the effective date of that withdrawal.

8.3 A review by Participating States of this Agreement shall be held at the fifth anniversary Commencement Date, with option to cancel or suspend the Scheme 90 days thereafter.

8.4 Notwithstanding the above, a review of this Agreement by the Participating States may be held at any time in the event the total of the incurred losses is close to reaching the loss threshold amount as certified by IE, with the option to cancel or suspend the Scheme 90 days thereafter.

8.5 In the event of any cancellation or suspension notice given by one or more Participating States, the other Participating States shall be notified promptly by IE. Should any such cancellation or suspension notice be effected by Participating States whose participation under the Scheme totals more than 25% of the total guarantee, the other Participating States shall be entitled to review their participation.

## **9. COMMENCEMENT**

9.1 This Agreement and its Schedules which form an integral part thereof shall enter into force once a number of ICAO Contracting States sign this Agreement, the sum of whose ICAO contribution rates amount to at least 51% in accordance with the ICAO contribution rates as indicated in the attached Schedule 1. For subsequent Participating States, this Agreement shall enter into force on the date of its signature.



9.2 The Participating States shall advise the Secretary General of ICAO of their decision to participate in the Scheme in accordance with the model notice in Schedule 2. The IE shall obtain from the Secretary General necessary confirmation of States participation. The Secretary General shall also notify all other Participating States accordingly.

## 10. POOL

10.1 IE shall collect premiums from each Original Insured to build a pool to meet claims arising out of the Insurance Cover Agreement.

10.2 In the event of a major loss and payout under an Insurance Cover Agreement, and should it be determined that this may materially reduce the premium reserves, the IE may adjust upwards the premiums payable under the Insurance Cover Agreements upon a 30-day notice.

10.3 Subject to the preceding paragraph 10.2, the premium charges under the Insurance Cover Agreement shall be maintained at approximately the same levels as established in the first year, for a period up to five years from the Commencement Date.

## 11. BOOKS AND RECORDS

11.1 IE shall prepare and maintain full and proper accounts, books and records which record in all material aspects all transactions, matters and things relating to this Agreement.

11.2 Such accounts, books and records shall be open to the inspection of and audit by ICAO, or its duly authorized representative, on behalf of Participating States at any time, both during the currency of this Agreement and following the expiry of this period for as long as there is any exposure or liability (whether actual or potential) under the Insurance Cover Agreement or under this Agreement, and in any case for as long as such accounts, books and records are required to be maintained by any statutory or regulatory requirements. IE shall instruct its employees and/or its agents to give all information and explanations to ICAO, or its duly authorized representatives, in relation to the above.

## 12. REPORTING

12.1 On or before (*date to be inserted*), each year or more frequently if required, the Board of IE shall submit a report to the Participating States on its activities during the preceding year and on other relevant issues.

12.2 Such report shall also be transmitted to the Council of ICAO.

**13. AMENDMENTS**

13.1 This Agreement may be amended only by an instrument in writing signed by duly authorised representatives of IE and all Participating States.

**14. ACCESSIONS AND WITHDRAWALS**

14.1 This Agreement shall be open for signature by the designated administrative entity of any ICAO Contracting State referred to in Article 3 above. The participation shall be confirmed to the Secretary General of ICAO in accordance with Schedule 2.

**15. NO ASSIGNMENT AND SUB-CONTRACTING**

15.1 This Agreement and each and every covenant, term and condition of this Agreement shall be binding upon and operate to the benefit of IE and the Participating States only and such rights shall not be assignable, directly or indirectly, by IE or any Participating State.

**16. TERMINATION**

16.1 IE may cease operations pursuant to paragraphs 3 to 5 of Article 8 above. IE may also cease operations following the entry into force of an international convention or agreement limiting third-party war risk liability or if the market returns to provide full cover at reasonable cost and reasonable notice of cancellation. In the case of such cessation of operations, the IE shall notify all participating States of the termination of this Agreement, to become effective 30 days thereafter.

16.2 In the event IE ceases to operate in accordance with a decision by the Board, the latter shall be responsible for taking appropriate steps in consultation with the Council of ICAO relating to the termination of this Agreement and the winding up of operations, including as regards the distribution of the accumulated capital/premiums.

16.3 Participating States shall remain liable after termination in accordance with their individual share for all amounts to be paid to IE in respect of all Insured Events occurring prior to the effective termination. For the avoidance of doubt, IE shall be entitled to the remittance of cleared funds or the drawing down of any letter of credit from a former Participating State in relation to such an Insured Event and the Participating State shall be obliged to pay the amount demanded despite the prior termination of this Agreement.

**17. WARRANTY OF CAPACITY AND POWER AND WAIVER OF SOVEREIGN IMMUNITIES AND PRIVILEGES**

17.1 Each Participating State hereby irrevocably warrants that its agent representing the designated administrative entity referred to in Article 14 has full powers to execute this Agreement by attaching evidence to that effect.

17.2 Each Participating State irrevocably agrees that this Agreement is and will be treated for all purposes as a commercial agreement.

17.3 Each Participating State irrevocably agrees that it will not in any proceedings whatsoever arising out of this Agreement raise any defence to any claim made against it invoking any lack of power or authority to execute the Agreement or out of any legal or constitutional impediment to performance of this Agreement.

17.4 In connection with proceedings relating to the application, interpretation, validity or enforcement of the guarantee provided to IE under Article 7 of this Agreement, each Participating State irrevocably waives any immunity or other benefit that it may otherwise be able to claim in any jurisdiction and before any court, tribunal or other juridical body or before any executive body involved in the execution of judgements:

- a) protecting the Participating State from the initiation or continuation of any such proceedings;
- b) giving the Participating State any procedural advantage in any such proceedings; and/or
- c) protecting any of its assets from attachment or execution (whether before or after any judgement or award) or from any other legal process, whether such immunity or other benefit has to be claimed or not.

## 18. ARBITRATION CLAUSE

18.1 Any dispute or difference arising out of or in connection with this Agreement which cannot be settled by negotiation within 30 days shall be referred to and decided by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC).

18.2 The arbitral tribunal ("the Tribunal") shall consist of three arbitrators. Each party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third arbitrator, who shall also act as Chairman of the Tribunal.

18.3 Within 45 days after the Tribunal has been constituted, the Claimant shall deliver to the Respondent a Statement of Case. Within 45 days of receipt of the Claimant's Statement of Case, the Respondent shall deliver to the Claimant his Statement of Defence.

18.4 The arbitration shall be conducted in the [ ] language in [ ].

18.5 Any Award of the Tribunal shall be final and binding upon the parties.

18.6 Each party irrevocably submits to the jurisdiction selected for the purpose of enforcing any Award.

**19. NOTICES AND LANGUAGE**

19.1 Any notice to be given under this Agreement shall be in the [ ] language and in writing delivered personally or sent by first class pre-paid recorded delivery (air mail if overseas) or by facsimile to the party due to receive such notice at the address (or, as the case may be, sent to the fax number) appearing in this Agreement or at such other address or fax number as it may have notified to the other party in accordance with this clause and shall be marked for the attention of the person specified below or such other person as it may have notified to the other party in accordance with this clause.

**Notices to IE:**

Name:

Title:

Fax No.:

Full address:

**Notice to Participating State:**

Name:

Title:

Fax No.:

Full address:

**Notice to ICAO:**

Name: Mr. R. C. Costa Pereira

Title: Secretary General

Fax No.: 1 (514) 954 - 6077

Full address: 999 University Street

Montreal, Quebec

Canada H3C 5H7

19.2 Any notice delivered personally shall be deemed to be received when it is delivered and any notice sent by pre-paid recorded delivery post shall be deemed (in the absence of evidence of earlier receipt) to be received two days after posting (five days if sent by air mail) and in proving the time of despatch it shall be sufficient to show that the envelope containing such notice as properly addressed, stamped and posted. A notice sent by fax shall be deemed to have been delivered when the fax is received by the machine to which it is being sent, provided that where, in the case of delivery by hand or transmission by fax, such delivery or transmission occurs after 17:00 hours on a Working Day or on a day which is not a Working Day service shall be deemed to occur at 9:00 hours a.m. on the next following Working Day.

**20. GOVERNING LAW AND JURISDICTION**

20.1 This Agreement shall be governed in all respects by the law under this Agreement and the general principles of law.

**21. COUNTERPARTS**

21.1 This Agreement may be executed in any number of separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

For and on behalf of IE:

For and on behalf of (Participating State):

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(title)

\_\_\_\_\_  
(title)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(place, date)

\_\_\_\_\_  
(place, date)

**Attachments:**

- Schedule 1 (A33-26)
- Schedule 2 (Notice of Signature)

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## SCHEDULE 1

**A33-26: Assessments to the General Fund for 2002, 2003 and 2004**

*The Assembly resolves* that the amounts to be assessed on Contracting States for 2002, 2003 and 2004 pursuant to Article 61, Chapter XII of the Convention, shall be determined in accordance with the scales set out below:

	<u>2002</u>	<u>2003</u>	<u>2004</u>
	%	%	%
Afghanistan/Afganistán/Афганистан	0.06	0.06	0.06
Albania/Albanie/Албания	0.06	0.06	0.06
Algeria/Algérie/Argelia/Алжир	0.07	0.07	0.07
Andorra/Andorre/Андорра	0.06	0.06	0.06
Angola/Ангола	0.06	0.06	0.06
Antigua and Barbuda/Antigua-et-Barbuda/ Antigua y Barbuda/Антигуа и Барбуда	0.06	0.06	0.06
Argentina/Argentine/Аргентина	0.72	0.79	0.86
Armenia/Arménie/Армения	0.06	0.06	0.06
Australia/Australie/Австралия	1.66	1.64	1.62
Austria/Autriche/Австрия	0.77	0.76	0.75
Azerbaijan/Azerbaïdjan/Azerbaïyan/Азербайджан	0.06	0.06	0.06
Bahamas/Багамские Острова	0.06	0.06	0.06
Bahrain/Bahreïn/Bahreïn/Бахрейн	0.06	0.06	0.06
Bangladesh/Бангладеш	0.07	0.07	0.06
Barbados/Barbade/Барбадос	0.06	0.06	0.06
Belarus/Bélarus/Belarús/Беларусь	0.06	0.06	0.06
Belgium/Belgique/Bélgica/Бельгия	0.95	0.93	0.92
Belize/Belice/Белиз	0.06	0.06	0.06
Benin/Bénin/Бенин	0.06	0.06	0.06
Bhutan/Bhoutan/Bhután/Бутан	0.06	0.06	0.06
Bolivia/Bolivie/Боливия	0.06	0.06	0.06
Bosnia and Herzegovina/Bosnie-Herzégovine/Bosnia y Herzegovina/ Босния и Герцеговина	0.06	0.06	0.06

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Botswana/Ботсвана	0.06	0.06	0.06
Brazil/Brésil/Brasil/Бразилия	1.64	1.80	1.98
Brunei Darussalam/Brunéi Darussalam/Бруней-Даруссалам	0.06	0.06	0.06
Bulgaria/Bulgarie/Болгария	0.06	0.06	0.06
Burkina Faso/Буркина-Фасо	0.06	0.06	0.06
Burundi/Бурунди	0.06	0.06	0.06
Cambodia/Cambodge/Camboya/Камбоджа	0.06	0.06	0.06
Cameroon/Cameroun/Camerún/Камерун	0.06	0.06	0.06
Canada/Canadá/Канада	2.30	2.26	2.24
Cape Verde/Cap-Vert/Cabo Verde/Кабо-Верде	0.06	0.06	0.06
Central African Republic/République centrafricaine/ República Centroafricana/ Центральноафриканская Ресдублика	0.06	0.06	0.06
Chad/Tchad/Чад	0.06	0.06	0.06
Chile/Chili/Чили	0.29	0.29	0.29
China/Chine/Китай	1.25	1.38	1.52
Colombia/Colombie/Колумбия	0.21	0.25	0.24
Comoros/Comores/Comoras/Коморские Острова	0.06	0.06	0.06
Congo/Конго	0.06	0.06	0.06
Cook Islands/Iles Cook/Islas Cook/Острова Кука	0.06	0.06	0.06
Costa Rica/Коста-Рика	0.06	0.06	0.06
Côte d'Ivoire/Кот-д'Ивуар	0.06	0.06	0.06
Croatia/Croatie/Croacia/Хорватия	0.06	0.06	0.06
Cuba/Куба	0.06	0.06	0.06
Cyprus/Chypre/Chipre/Кипр	0.06	0.06	0.06
Czech Republic/République tchèque/República Checa/ Чешская Республика	0.17	0.16	0.16
Democratic People's Republic of Korea/République populaire démocratique de Corée/República Popular Democrática de Corea/ Корейская Народно-Демократическая Республика	0.06	0.06	0.06
Democratic Republic of the Congo/République démocratique du Congo/República Democrática del Congo/ Демократическая Республика Конго	0.06	0.06	0.06
Denmark/Danemark/Dinamarca/Дания	0.57	0.56	0.55
Djibouti/Джибути	0.06	0.06	0.06
Dominican Republic/République dominicaine/ República Dominicana/Доминиканская Республика	0.06	0.06	0.06

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Ecuador/Équateur/Эквадор	0.06	0.06	0.06
Egypt/Égypte/Egipto/Египет	0.17	0.17	0.17
El Salvador/Сальвадор	0.06	0.06	0.06
Equatorial Guinea/Guinée équatoriale/ Guinea Ecuatorial/Экваториальная Гвинея	0.06	0.06	0.06
Eritrea/Érythrée/Эритрея	0.06	0.06	0.06
Estonia/Estonie/Эстония	0.06	0.06	0.06
Ethiopia/Éthiopie/Etiopía/Эфиопия	0.06	0.06	0.06
Fiji/Fidji/Фиджи	0.06	0.06	0.06
Finland/Finlande/Finlandia/ФинлВндия	0.44	0.43	0.43
France/Francia/Франция	5.40	5.32	5.27
Gabon/Gabón/Габон	0.06	0.06	0.06
Gambia/Gambie/Гамбия	0.06	0.06	0.06
Georgia/Géorgie/Грузия	0.06	0.06	0.06
Germany/Allemagne/Alemania/Германия	7.74	7.63	7.55
Ghana/Гана	0.06	0.06	0.06
Greece/Grèce/Grecia/Греция	0.41	0.45	0.44
Grenada/Grenade/Granada/Гренада	0.06	0.06	0.06
Guatemala/Гватемала	0.06	0.06	0.06
Guinea/Guinée/Гвинея	0.06	0.06	0.06
Guinea-Bissau/Guinée-Bissau/Гвинея-Бисау	0.06	0.06	0.06
Guyana/Гайана	0.06	0.06	0.06
Haiti/Haïti/Haití/Гаити	0.06	0.06	0.06
Honduras/Гондурас	0.06	0.06	0.06
Hungary/Hongrie/Hungría/Венгрия	0.12	0.12	0.12
Iceland/Islande/Islandia/Исландия	0.06	0.06	0.06
India/Inde/Индия	0.40	0.40	0.39
Indonesia/Indonésie/Индонезия	0.25	0.25	0.24
Iran, Islamic Republic of/Iran, République islamique d'/ Irán, República Islámica del/Иран, Исламская Республика	0.23	0.24	0.24
Iraq/Ирак	0.10	0.09	0.09
Ireland/Irlande/Irlanda/Ирландия	0.28	0.28	0.28
Israel/Israël/Израиль	0.48	0.47	0.47
Italy/Italie/Italia/Италия	3.78	3.73	3.69



	<u>2002</u>	<u>2003</u>	<u>2004</u>
Jamaica/Jamaïque/Ямайка	0.06	0.06	0.06
Japan/Japon/Japón/Япония	14.58	14.36	14.22
Jordan/Jordanie/Jordania/Иордания	0.06	0.06	0.06
Kazakhstan/Kazajstán/Казахстан	0.06	0.06	0.06
Kenya/Кения	0.06	0.06	0.06
Kiribati/Кирибати	0.06	0.06	0.06
Kuwait/Koweït/Кувейт	0.17	0.17	0.17
Kyrgyzstan/Kirghizistan/Kirguistán/Кыргызстан	0.06	0.06	0.06
Lao People's Democratic Republic/République démocratique populaire lao/República Democrática Popular Lao/ Лаосская Народно-Демократическая Республика	0.06	0.06	0.06
Latvia/Lettonie/Letonia/Латвия	0.06	0.06	0.06
Lebanon/Liban/Líbano/Ливан	0.06	0.06	0.06
Lesotho/Лесото	0.06	0.06	0.06
Liberia/Libéria/Либерия	0.06	0.06	0.06
Libyan Arab Jamahiriya/Jamahiriya arabe libyenne/ Jamahiriya Árabe Libia/Ливийская Арабская Джамахирия	0.06	0.06	0.06
Lithuania/Lituanie/Lituania/Литва	0.06	0.06	0.06
Luxembourg/Luxemburgo/Люксембург	0.13	0.20	0.24
Madagascar/Мадагаскар	0.06	0.06	0.06
Malawi/Малави	0.06	0.06	0.06
Malaysia/Malaisie/Malasia/Малайзия	0.54	0.54	0.54
Maldives/Maldivas/Мальдивы	0.06	0.06	0.06
Mali/Mali/Мали	0.06	0.06	0.06
Malta/Malte/Мальта	0.06	0.06	0.06
Marshall Islands/Iles Marshall/Islas Marshall/ Маршалловы Острова	0.06	0.06	0.06
Mauritania/Mauritanie/Мавритания	0.06	0.06	0.06
Mauritius/Maurice/Mauricio/Маврикий	0.06	0.06	0.06
Mexico/Mexique/México/Мексика	0.92	0.93	0.92
Micronesia, Federated States of/Micronésie, États fédérés de/ Micronesia, Estados Federados de/ Федеративные Штаты Микронезии	0.06	0.06	0.06
Monaco/Mónaco/Монако	0.06	0.06	0.06
Mongolia/Mongolie/Монголия	0.06	0.06	0.06
Morocco/Maroc/Marruecos/Марокко	0.10	0.10	0.10
Mozambique/Мозамбик	0.06	0.06	0.06
Myanmar/Мьянма	0.06	0.06	0.06

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Namibia/Namibie/Намибия	0.06	0.06	0.06
Nauru/Науру	0.06	0.06	0.06
Nepal/Népal/Непал	0.06	0.06	0.06
Netherlands, Kingdom of the/Pays-Bas, Royaume des/ Países Bajos, Reino de los/Нидерландов, Королевство	1.97	1.94	1.92
New Zealand/Nouvelle-Zélande/Nueva Zelandia/Новая Зеландия	0.37	0.36	0.36
Nicaragua/Никарагуа	0.06	6	6
Niger/Niger/Нигер	0.06	6	0.06
Nigeria/Nigeria/Нигерия	0.06	0.06	0.06
Norway/Norvège/Noruega/Норвегия	0.51	0.50	0.50
Oman/Omán/Оман	0.08	0.08	0.08
Pakistan/Pakistán/Пакистан	0.16	0.16	0.16
Palau/Palaos/Палау	0.06	0.06	0.06
Panama/Panamá/Панама	0.06	0.06	0.06
Papua New Guinea/Papouasie-Nouvelle-Guinée/ Papua Nueva Guinea/Папуа-Новая Гвинея	0.06	0.06	0.06
Paraguay/Парагвай	0.06	0.06	0.06
Peru/Pérou/Perú/Перу	0.10	0.09	0.09
Philippines/Filipinas/Филиппины	0.17	0.17	0.17
Poland/Pologne/Polonia/Польша	0.26	0.31	0.31
Portugal/Португалия	0.41	0.40	0.40
Qatar/Катар	0.06	0.06	0.06
Republic of Korea/République de Corée/República de Corea/ Корейская Нар.-Демокр.Республ.	1.99	2.19	2.36
Republic of Moldova/République de Moldova/República de Moldova/ Республика Молдова	0.06	0.06	0.06
Romania/Roumanie/Rumania/Румыния	0.07	0.07	0.06
Russian Federation/Fédération de Russie/Federación de Rusia/ Российская Федерация	0.84	0.83	0.82
Rwanda/Руанда	0.06	0.06	0.06

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Saint Lucia/Sainte-Lucie/Santa Lucía/Сент-Люсия	0.06	0.06	0.06
Saint Vincent and the Grenadines/Saint-Vincent-et-les Grenadines/ San Vicente y las Granadinas/Сент-Винсент и Гренадины	0.06	0.06	0.06
Samoa/Самоа	0.06	0.06	0.06
San Marino/Saint-Marin/Сан-Марино	0.06	0.06	0.06
Sao Tome and Principe/Sao Tomé-et-Principe/ Santo Tomé y Príncipe/Сан-Томе и Принсипи	0.06	0.06	0.06
Saudi Arabia/Arabie saoudite/Arabia Saudita/Саудовская Аравия	0.63	0.62	0.61
Senegal/Sénégal/Сенегал	0.06	0.06	0.06
Seychelles/Сейшельские Острова	0.06	0.06	0.06
Sierra Leone/Sierra Leona/Сьерра-Леоне	0.06	0.06	0.06
Singapore/Singapour/Singapur/Сингапур	1.10	1.15	1.14
Slovakia/Slovaquie/Eslovaquia/Словакия	0.06	0.06	0.06
Slovenia/Slovénie/Eslovenia/Словения	0.06	0.06	0.06
Solomon Islands/Iles Salomon/Islas Salomón/Соломоновы Острова	0.06	0.06	0.06
Somalia/Somalie/Сомали	0.06	0.06	0.06
South Africa/Afrique du Sud/Sudáfrica/Южная Африка	0.52	0.53	0.53
Spain/Espagne/España/Испания	2.04	2.01	1.99
Sri Lanka/Шри-Ланка	0.06	0.06	0.06
Sudan/Soudan/Sudán/Судан	0.06	0.06	0.06
Suriname/Суринам	0.06	0.06	0.06
Swaziland/Swazilandia/Свазиленд	0.06	0.06	0.06
Sweden/Suède/Suecia/Швеция	0.78	0.77	0.76
Switzerland/Suisse/Suiza/Швейцария	1.25	1.23	1.22
Syrian Arab Republic/République arabe syrienne/ Republica Árabe Siria/Сирийская Арабская Республика	0.07	0.07	0.07
Tajikistan/Tadjikistan/Tayikistán/Таджикистан	0.06	0.06	0.06
Thailand/Thaïlande/Tailandia/Таиланд	0.58	0.58	0.57
The former Yugoslav Republic of Macedonia/L'ex-République yougoslave de Macédonie/La ex República Yugoslava de Macedonia/Бывшая югославская Республика Македония	0.06	0.06	0.06
Togo/Togo	0.06	0.06	0.06
Tonga/Тонга	0.06	0.06	0.06
Trinidad and Tobago/Trinité-et-Tobago/ Trinidad y Tabago/Тринидад и Тобаго	0.06	0.06	0.06
Tunisia/Tunisie/Túnez/Тунис	0.06	0.06	0.06
Turkey/Turquie/Turquía/Турция	0.45	0.44	0.44
Turkmenistan/Turkménistan/Turkmenistán/Туркменистан	0.06	0.06	0.06

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Uganda/Ouganda/Уганда	0.06	0.06	0.06
Ukraine/Ucrania/Украина	0.06	0.06	0.06
United Arab Emirates/Émirats arabes unis/ Emiratos Árabes Unidos/Объединенные Арабские Эмираты	0.35	0.36	0.36
United Kingdom/Royaume-Uni/Reino Unido/ Соединенное Королевство	5.39	5.31	5.26
United Republic of Tanzania/République-Unie de Tanzanie/ Republica Unida de Tanzania/ Объединенная Республика Танзания	0.06	0.06	0.06
United States/États-Unis/Estados Unidos/ Соединенные Штаты Америки	25.00	25.00	25.00
Uruguay/Уругвай	0.06	0.06	0.06
Uzbekistan/Ouzbékistan/Uzbekistán/Узбекистан	0.06	0.06	0.06
Vanuatu/Вануату	0.06	6	6
Venezuela/Венесуэла	0.20	0.19	19
Viet Nam/Вьетнам	0.06	0.06	0.06
Yemen/Yémen/Йемен	0.06	0.06	0.06
Yugoslavia/Yougoslavie/Югославия	0.06	0.06	0.06
Zambia/Zambie/Замбия	0.06	0.06	0.06
Zimbabwe/Зимбабве	<u>0.06</u>	<u>0.06</u>	<u>0.06</u>
	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>

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**SCHEDULE 2**  
**MODEL**  
**NOTICE OF SIGNATURE**  
**OF**  
**PARTICIPATION AGREEMENT**  
**FOR THE GLOBAL SCHEME**  
**REGARDING THE PROVISION OF AVIATION WAR RISK INSURANCE**

The \_\_\_\_\_  
(name of administrative entity designated by State in accordance with Article 14 of the Agreement)

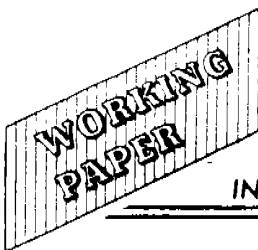
hereby gives the Secretary General of the International Civil Aviation Organization (ICAO) notice of signature  
for \_\_\_\_\_  
(name of State)

on \_\_\_\_\_ (date) \_\_\_\_\_ of the PARTICIPATION AGREEMENT FOR THE GLOBAL SCHEME  
REGARDING THE PROVISION OF AVIATION WAR RISK INSURANCE (Attachment [...] to  
ICAO State letter LE [.....], dated [...] 2002), in accordance with Article 14 of the Agreement.

Done at \_\_\_\_\_ on \_\_\_\_\_  
(place) (date)

\_\_\_\_\_  
Signature of authorized agent of designated administrative entity  
(in accordance with Article 17 of the Agreement)

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C-WP/11794  
22/5/02

INTERNATIONAL CIVIL AVIATION ORGANIZATION

## COUNCIL — 166TH SESSION

Subject No. 24.3: Action on assembly resolutions and decisions

## ASSISTANCE IN THE FIELD OF AVIATION WAR RISK INSURANCE

(Presented by the Secretary General)

## SUMMARY

This paper reports to the Council on the results of the two meetings of the Council Study Group on Aviation War Risk Insurance (CGWI) and presents its conclusions and recommendations.

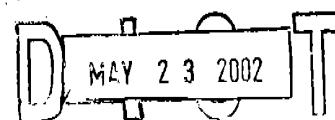
Action by the Council is in paragraph 4.

## REFERENCES

C-WP/11744	State letter LE 4/64-02/30
C-DEC 165/6	dated 18 March 2002
PRES AK/806	State letter LE 4/64-01/128
PRES AK/810	dated 14 December 2001
Report SGWI/2	State letter EC 2/6-01/101
Report SGWI/1	dated 25 October 2001
Assembly Resolution A33-20	State letter EC 2/6-01/94
( <i>Assembly Resolutions in Force as of 5 October 2001</i> ) (Doc 9790)	dated 21 September 2001

## 1. INTRODUCTION

1.1 In line with ICAO Assembly Resolution A33-20: *Coordinated Approach in Providing Assistance in the Field of Aviation War Risk Insurance*, the Special Group on Aviation War Risk Insurance (SGWI) developed recommendations which were considered by the ICAO Council on 4 March 2002 during the sixth meeting of its 165th Session. Such recommendations include the establishment of an appropriate international mechanism under the auspices of ICAO (hereinafter "the global scheme") whereby coverage in the field of aviation war risk insurance would be provided by a non-profit entity which would have multilateral government backing for the initial years (see SGWI/2 Report).



1.2 Noting with interest the SGWI proposal for such an international mechanism, the Council decided that certain points of this recommendation should be refined (see C-DEC 165/6). Accordingly, the Council agreed to establish the **Council Study Group on Aviation War Risk Insurance (CGWI)**, composed of 9 Members of the Council (Egypt, France, Japan, Mauritius, Mexico, Pakistan, Russian Federation, United Kingdom and the United States). The Council mandated the Group to work with the ICAO Secretariat to review the SGWI recommendation, related materials and the views expressed in Council thereon, and to present a report to the next, 166th Session of the Council. The Group held two meetings: CGWI/1 (Montreal, 16 April 2002) and CGWI/2 (Montreal, 24 April 2002). In addition to the Members, the meetings were attended by the Representatives of Cameroon and Sweden on the Council, as well as the Representative of Singapore to ICAO, as observers.

1.3 During its meetings, CGWI considered several issues regarding the setting up and operation of the international mechanism proposed by SGWI, including scope of coverage; pricing matters; impact of the mechanism on the market; terms of States' participation; institutional requirements; and ICAO's role. Such main elements are addressed in paragraph 2 below and ensuing conclusions of CGWI are in paragraph 3.

## 2. KEY POINTS OF DISCUSSION

### 2.1 Coverage

2.1.1 The Group considered this item with a view to obtaining clarification as to the scope of coverage which is envisaged under the scheme, as well as the benefits to the aviation industry in the implementation of the scheme. It was concluded that the global scheme offered third-party war risk liability insurance in the amount of up to U.S.\$ 1.5 billion per aircraft; per occurrence, per insured, over and above the cover offered by the private market of U.S.\$ 50 million at present. This figure would fully satisfy the relevant regulatory requirements of many governments and the boards of many operators for the operation of air services regarding sufficient war risk insurance.

2.1.2 The Group considered as major benefits of the global scheme the fact that the coverage would not be cancellable upon 7-day notice, and that such coverage would be accessible to the entire aviation sector, including airlines, airports, ground handlers, screening companies, aircraft manufacturers and lessors. Furthermore, participation in the scheme would be global in scope. No other national or regional scheme presently in effect or envisaged would offer the same benefits, it was concluded.

2.1.3 In principle, the insurance scheme will cover third-party war risk liability in excess of the primary limit, not covering passenger liability. However, in the event of another cancellation upon 7-day notice by the private insurance market of the U.S.\$ 50 million primary third party war risk liability coverage, including the passenger war risk cover, the scheme will "drop down" to the first dollar for the third party war risk liability and "pick-up" passenger liability also from the first dollar in which case the coverage limit would be extended to U.S.\$ 2 billion. The CGWI noted that in this instance the premium charge would be increased.

### 2.2 Pricing

2.2.1 It was noted by the Group that the scheme would be subject to double voluntary participation, i.e. voluntary participation of ICAO Contracting States as guarantors, and voluntary decision of the participating States' airline operators and other parties mentioned in paragraph 2.1.2 above to sign policies. It was therefore noted that under the global scheme no fees would be imposed but a charge would be paid by such policyholders as in any service provider/client relationship. The calculation of this charge or premium would be based on the number of transported passengers for an amount equivalent to 50 cents per passenger for coverage up to U.S.\$ 1.5 billion. This coverage would be in excess of the private market cover for up to

U.S.\$ 50 million which is presently available on the market at U.S.\$ 1.25 per passenger, including passenger liability coverage. The per-passenger based premium, namely equivalent to 50 cents per passenger, was considered attractive and affordable, compared to the U.S.\$ 1.50 excess charge per passenger presently offered by the private excess third-party market for coverage above U.S.\$ 50 million up to a maximum of U.S.\$1 billion. The Group noted in this regard that in certain instances and depending on the profile of individual airlines, this excess coverage is offered at U.S.\$ 1.00 per passenger, additional to the primary cover up to U.S.\$ 50 million at U.S.\$ 1.25.

2.2.2 There was also a reference to the possibility for a prospective national scheme in the United States ("Equitime" to be reinsured by the U.S. Government) to provide similar coverage to the U.S. airlines, including primary third-party and passenger liability at the cost of 50 cents per passenger. The proponents of Equitime appeared to assume that the private market would not charge U.S.\$ 1.25 per passenger once Equitime was operational. It was concluded that private insurers are unlikely to cancel or return the U.S.\$ 1.25 charge to U.S. carriers as insurers are now taking the position that this premium does not constitute a war risk charge *per se* but a policy charge to reflate the market. Moreover, in terms of threat exposure, it was felt that such rebate or reduction from insurers, if any, would in any case be *a fortiori* made accessible to other carriers, not only the U.S. carriers, and that such alleged premium structure could therefore not be considered as a competitive element *vis-à-vis* the global scheme. However, this position needed to be reviewed as the market position becomes clearer. Finally, it was concluded that in any case the global scheme is designed so as to easily adapt itself to any new situations in the market.

### 2.3 Impact on the market

2.3.1 The Group addressed the concerns which were expressed regarding the potential negative impact of the global scheme on the re-emergence of the commercial insurance market regarding the war risk element. The Group noted the opinion of the insurance industry that, in the absence of government support, limited coverage would likely be made available through the commercial market (currently up to U.S.\$ 50 million), but beyond this limit not at an economically viable price and not for all aviation service providers alike, although predictions remained difficult and dependent upon the absence of further losses.

2.3.2 It was also acknowledged that the scheme is intended to provide one major element which the aviation entities need but cannot obtain from the commercial market, namely cover that is not cancellable upon 7-day notice. The scheme will provide such cover while maintaining a level playing field for all insured entities. The Group considered it a meaningful measure in this respect to require the scheme to provide for a successive raising of the lower threshold of cover during the lifetime of the scheme so as to induce the market to successively raise its coverage which was considered appropriate by the representatives of the insurance industry, but conditional upon the absence of losses. Other useful measures were identified, such as to provide for incentives as set out in paragraph 5.11 of the Appendix to C-WP/11744, as well as the accommodation of other complementary market tools.

### 2.4 Participation by States

2.4.1 Under the SGWI proposal, a participating State's maximum exposure amounts to its ICAO contribution percentage share of U.S.\$ 15 billion (e.g. a State with a 3 % percentage has a maximum exposure of U.S.\$ 450 million). This should be compared to the present State guarantees, which are in many cases unlimited. As regards the formal confirmation by States of their participation in the mechanism, it was agreed that a participation agreement would be proposed for signature between the insurance entity and each ICAO Contracting State, taking into account the purpose of the undertaking and the nature of the parties. The Group acknowledged that the domestic legal procedures of certain States may require additional documents to this end.



2.4.2 However, the Group was also mindful of the need to avoid undue delays for the rapid implementation of the scheme; in this respect, it should be considered whether the procedures which led to early approval of present *ad hoc* States' guarantees could serve as a precedent. On the other hand, the Group was informed of the requirement of the industry that the participation agreement mentioned in the preceding paragraph be considered as a commercial agreement in order to render the States' guarantees enforceable and to be able to obtain the necessary funds from the private market for the initial capitalization of the entity. In this connection, it was acknowledged that the participation agreement should set forth a waiver of sovereign immunity limited to the subject of the States' guarantees for purposes of enforceability, and that an adequate dispute settlement mechanism should be available. A **draft participation agreement** which awaits finalization is presented for information in the **Appendix** to this paper. It is intended that this participation agreement once finalized will be uniformly used with respect to all participating States.

2.4.3 In view of the magnitude of the participating States' guarantees, it was confirmed by the Group that States' participation should be subject to substantive degree of control over the insurance entity, through adequate representation on the board of the latter, to be duly reflected in its statutes and to be referenced in the participation agreement.

## 2.5 Institutional Issues

2.5.1 CGWI considered the various administrative and organizational steps which would have to be taken in respect of the insurance entity. The Group noted that the first prerequisite would consist of the approval by the Council on the establishment of the insurance entity. Second, such entity would have to be formally incorporated further to the development of appropriate statutes in accordance with the applicable domestic legal and regulatory requirements. Third, the participation agreement would have to be finalized, signed by the insurance entity and proposed for signature to all ICAO Contracting States. Finally, the necessary minimum capital, by means of a standby letter of credit from capital providers, would have to be released when the States' participation will reach the minimum threshold, allowing the entity to start its operations.

2.5.2 As regards suitable locations for the entity, the Group concluded that this matter needed to be further considered in consultation with the insurance industry. Such consideration should include comparison of local regulatory requirements as to the entity's incorporation, capitalization, operation and taxation, and the location offering the most favourable conditions, taking all relevant factors into account, should be selected.

## 2.6 ICAO's role and associated costs

2.6.1 The Group took full account of the views expressed in Council regarding the envisaged global scheme and the role of the Organization. In light of the above institutional steps, the following elements were discussed. In generally acting as a facilitator, ICAO should to the extent required be involved in those aspects of the setting up and operation of the entity dealing with the guarantee to be provided by participating States, including the entity's statutes, the finalization of the participation agreement and its signature by Contracting States. Second, the participating States, through the Organization, should be represented on the board of the entity once operational. Third, the Council should receive an annual report on the activities of the entity, as provided in the statutes of the latter.

2.6.2 It is envisaged that the private parties involved in the setting up of the entity would recover their costs from the entity if and when operational. To the extent that the Organization would be involved, the same principle should also apply. For the advancement of funds, the authorization of Council should be requested, while being cognizant of the risk that such funds would not be recovered in the event the entity does not eventually become operational due to insufficient States' participation. Costs could arise from the fees for an ICAO outside counsel in relation to draft statutes, and other required connected expenses related to the finalization of the participation agreement and certain other relevant documents, which would be carried out by the Secretariat.

### 3. SUMMARY OF CONCLUSIONS

3.1 Concerning the **operators**, the Group noted that the industry is generally supportive of the scheme as it is global, covers the entire aviation sector, is offered at an affordable price, provides coverage which meets regulatory requirements and, save certain exceptions, is not cancellable.

3.2 As far as **participating States** are concerned, it was found that the global scheme as proposed would preserve in general their interests as it offers safeguards against potential future disruption of air transport services and foresees adequate oversight over the entity. As regards financial exposure, notwithstanding the potential residual risks inherent to the insurance environment, the scheme was found to have benefits in view of the spreading of the risk, the individual caps for each State and the size of the pooled funds available to meet potential claims.

### 4. ACTION BY THE COUNCIL

4.1 The Council is invited to:

- a) approve in principle the recommendation of SGWI, as refined in paragraphs 2.1 to 2.6 of this report;
- b) request the Secretary General to take action to implement the recommendation as soon as possible;
- c) request the President of the Council to send a State letter informing ICAO Contracting States accordingly and inviting them to participate in the said scheme, seeking an expression of intent to participate, to be received by 28 June 2002;
- d) subject to receipt of such expressions of intent sufficient to permit the entity to become operational, authorize the Secretary General to advance funds, if required for the purposes set-out in paragraph 2.6.2 above, such funds to be recovered from the entity if and when it is operational;
- e) subject to the incorporation of the entity, request the President of the Council to ensure representation of participating States through ICAO on the entity's board as referred to in paragraph 2.6.1 above, and in consultation with the Council to make appointment(s) accordingly; and
- f) request the Secretary General to report back to the 167th Session of the Council.

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C-DEC 166/4  
28/5/02

**COUNCIL - 166TH SESSION**

**FOURTH MEETING**

**(THE COUNCIL CHAMBER, MONDAY, 27 MAY 2002 AT 1430 HOURS)**

**SUMMARY OF DECISIONS**

**OPEN MEETING**

1. The President of the Council indicated that a Note had been received from the United States Department of State informing the Organization that the Government of Saint Kitts and Nevis had deposited an instrument of adherence to the *Convention on International Civil Aviation* on 21 May 2002. Saint Kitts and Nevis would become a Contracting State of ICAO on 20 June 2002 in accordance with Article 92 b) of the Convention, bringing the total number of Contracting States to 188. He noted that, although the name used in the instrument of adherence was Saint Christopher and Nevis, which was the name used prior to the attainment of independence from the United Kingdom in 1983, the name used by the United Nations, and therefore by ICAO, was Saint Kitts and Nevis.

**Assistance in the field of aviation war risk insurance (Subject No. 24.3)**

2. The Council had for consideration C-WP/11794 in which the Secretary General reported on the outcome of the two meetings of the Council Study Group on Aviation War Risk Insurance (CGWI), held in Montreal on 16 and 24 April 2002, respectively. Appended to the paper was the text of the draft Participation Agreement for the Global Scheme regarding the Provision of Aviation War Risk Insurance. A number of general comments were made and clarifications provided to points raised.

3. Noting the general feeling of the Council, which had been favourable to the establishment of the said Global Scheme, the President of the Council proposed action on the basis of the general comments made and paragraph 4.1 of C-WP/11794. In taking that proposed action, as amended in light of further comments, the Council:

- a) approved, in principle, the recommendation of the Special Group on Aviation War Risk Insurance (SGWI) for an international mechanism which would provide aviation war risk coverage, taking into account paragraphs 2.1 to 2.6 of C-WP/11794;
- b) requested the President of the Council to send a State letter informing ICAO Contracting States accordingly and inviting them to participate in the said Global Scheme, seeking an expression of intent to participate therein, to be received by 19 July 2002;

- c) subject to receipt of such expressions of intent sufficient to permit the insurance entity to become operational *i.e.* from a number of Contracting States, the sum of whose ICAO contribution rates set out in Assembly Resolution A33-26 (*Assessments to the General Fund for 2002, 2003 and 2004*), the Assembly Resolution being used as the basis for determining contributions to the Global Scheme, amounted to at least 51 per cent, requested the Secretary General to take action to implement the said recommendation of the SGWI as soon as possible and authorized the Secretary General to advance funds, if required for the purposes set out in paragraph 2.6.2 of C-WP/11794, such funds to be recovered from the insurance entity if and when it became operational, subject to approval by the President of the Council under delegation of authority;
- d) requested the Secretary General to establish an informal group of experts to review, with the Secretariat, the draft Participation Agreement appended to C-WP/11794 in light of comments made during the debate and those received from Contracting States in their replies to the said State letter;
- e) subject to the incorporation of the insurance entity, requested the President of the Council to seek a firm commitment from Contracting States through signature of the Participation Agreement and to ensure representation of participating States through ICAO on the insurance entity's Board as referred to in paragraph 2.6.1 of C-WP/11794 in consultation with the Council; and
- f) requested the Secretary General to present a consolidated report to the Council as early as possible in its 167<sup>th</sup> Session, namely, during its Committee phase in October 2002, on action taken, as well as on any outstanding issues, such as the location of the envisaged insurance entity (*cf.* paragraph 2.5.2 of C-WP/11794).

4. It was understood, with regard to sub-paragraphs b) and d) above, that the State letter would include information on the issues raised during the debate. The text of the draft Participation Agreement appended to C-WP/11794, as amended pursuant to a comment made by the Representative of France regarding paragraphs 18.4 and 19.1 thereof, would be transmitted with the State letter, with it being indicated that the Participation Agreement remained to be finalized and that the final text thereof would be provided in due course following approval by the Council.

5. It was further understood that the President would keep Council Representatives apprised of developments during the recess by means of a President's memorandum.

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**QUESTIONS AND ANSWERS ON THE ESTABLISHMENT OF A GLOBAL SCHEME  
IN THE FIELD OF AVIATION WAR RISK INSURANCE**

*Note.* — This document is intended to provide additional information on the proposal of the Special Group on Aviation War Risk Insurance (SGWI) for the establishment of an international mechanism (see SGWI/2 Report) through questions and answers.

**1. What are the objectives of the Global Scheme?**

The objectives of the Global Scheme are: to allow air transport operations to continue under reasonable conditions; to spread the aviation war risk and related risks (including hijacking, sabotage and other unlawful interference) amongst the parties including all participating States involved; and to provide adequate insurance coverage in the short- and medium-term while allowing the private insurance markets to come back gradually into this market.

**2. What is the Global Scheme?**

The Global Scheme is to provide U.S.\$ 1.5 billion of third-party war risk liability insurance cover for all aviation industry entities (a lower limit of U.S.\$ 500 million shall apply to small entities) of a participating State through a not-for-profit special purpose Insurance Entity backed by State guarantees. For the majority of airlines and aviation service providers, it would provide the cover to a level previously provided by commercial aviation insurers prior to cancellation of cover in September 2001. The Global Scheme would make available to all parties in the aviation industry a reasonable level of third-party war liability cover, which would be, save exceptions, non-cancellable.

**3. How will the Global Scheme work?**

It was determined that the scheme would be viable subject to participation by a sufficient number of Contracting States, the sum of whose ICAO contribution rates, as indicated in Assembly Resolution A33-26: *Assessments to the General Fund for 2002, 2003 and 2004*, should amount to at least 51%. Thereafter, when a State participates in the Global Scheme by signing a participation agreement with the Insurance Entity to be set up under the scheme, all aviation entities in that State are eligible to be covered once they have acquired the required primary third-party war risk liability insurance cover (U.S.\$ 50 million at present) from the commercial insurance market. The aviation entities will each pay a premium for this insurance that will build a pool. For airlines, the calculation of this charge or premium would be based on the number of transported passengers for an amount equivalent to 50 cents per passenger. No premiums would be paid by the Insurance Entity to participating States for their guarantee of last resort.

**4. What is the exact scope of the insurance cover to be provided? What will the Insurance Entity not cover?**

The insurance cover to be provided under the Global Scheme is a third-party war risk liability insurance. Passenger liability will not be covered but if the market issues another 7-day cancellation of the primary third-party and passenger war risk liability cover, the Insurance Entity will include the primary and passenger war risk liability cover in its policies and extend the limit to U.S.\$ 2 billion (U.S.\$ 750 million for smaller entities). Since it will entail coverage not only for third-party liability coverage but for passenger liability coverage as well, U.S.\$ 500 million are provided for this latter purpose (U.S.\$ 250 million for smaller entities).

**5. Who will the scheme cover? Who will it not cover? Why do manufacturers, financiers and lessors need to be covered?**

The scheme is to cover all aviation entities including airlines, airports, ground handlers, air navigation services, manufacturers, equipment lessors and financiers, refuellers, air taxi and general aviation operators. All these entities purchased war and terrorism insurance prior to 11 September 2001 and the scheme will return them to this position. All policyholders will pay a policy fee and premium charge, not just the airlines.

**6. When will the Global Scheme commence?**

The Insurance Entity can be formed in 8-12 weeks. The Global Scheme can commence when States representing 51% of ICAO contribution rates have confirmed their participation and each signed the participation agreement with the Insurance Entity.

**7. How long will the Global Scheme last? When will the scheme end?**

The Global Scheme has a minimum period of 3 years and can last for up to 5 years in all. If more than 25% of the total State participation gives notice to withdraw at the end of 3 years then the remaining 75% shall be automatically entitled to review their position. The scheme may also end earlier if commercial aviation insurers look to adopt a similar model, which will allow them to provide adequate levels of cover to all aviation entities at reasonable rates on a non-cancellable basis.

**8. Is it mandatory to participate?**

It is not mandatory for ICAO Contracting States to join the scheme. The scheme would be subject to double voluntary participation, i.e voluntary participation of ICAO Contracting States as guarantors, and voluntary decision of the participating States' airline operators and other entities to sign policies.

9. **Will a State have to make any payment upon joining? What are the obligations of a State that participates?**

Participating States do not have to release any up-front funds when joining. The obligation of any participating State is to provide a guarantee to the Insurance Entity when joining the Global Scheme, in the amount referred to under paragraph 10 below. Should the guarantee be called, in case the IE's accumulated reserve funds are insufficient, then a participating State must pay its share of any claim settlement when called upon by the Insurance Entity. Any call of the States' guarantee will automatically reduce their residual financial exposure as their respective caps will be decreased correspondingly.

10. **What is a State's maximum financial exposure under this scheme?**

A participating State's maximum exposure is the amount of its ICAO contribution percentage share applied to the U.S.\$ 15 billion maximum scheme 'Cap'. (This 'Cap' represents 10 occurrences of war risk losses.) For example, a State with a 3% ICAO contribution rate has a 'Cap' of U.S.\$ 450 million, which remains constant whatever the total State participation in the Global Scheme will be.

11. **When the scheme has less than 100% participation (as it will from commencement at 51% participation), how will a State's share of any potential individual claim payment, when required, be calculated?**

The participating States' guarantee of last resort is several, not joint, and limited to their individual share in accordance with their ICAO contribution rates. A State's claim settlement share will be calculated by grossing up the total contribution percentages to 100%. For example, if the total participation in the scheme is 51%, then each State's contribution percentage would be grossed up by a multiple of 1.96. Thus a State with a 3% ICAO contribution percentage would have a potential claim settlement share of 5.88%, or U.S.\$ 88.2 million on a loss of U.S.\$ 1.5 billion, its residual cap being then decreased from U.S.\$ 450 million to U.S.\$ 361.8 million.

12. **How will participating States benefit from the scheme?**

The Global Scheme ensures that the international air transportation system continues in the event of another cancellation arising from another terrorist attack whether in the aviation sector or otherwise. The Global Scheme not only makes third-party war risk liability insurance cover available to a participating State's aviation industry entities but also to those of other participating States thus increasing the likelihood that the airlines flying to and from participating States and the aviation service providers that support them are properly insured. If, as a result of claims, the Insurance Entity requires funds to be advanced from the participating States' guarantees to meet claim obligations, the entity shall repay these monies through increased premiums, or by any other appropriate means as approved by its Board. At dissolution, participating States will receive a share of the surplus funds prorated to the share of their guarantees, in recognition of the risk they agreed to bear.

13. **How will airlines, airports, other aviation service providers, financiers, manufacturers and equipment lessors benefit from the scheme?**

The benefits to airlines, aviation service providers (airports, ground handlers, caterers, air traffic services (ATS) providers, etc.), financiers, manufacturers and equipment lessors include: the Global Scheme provides cover to meet financing, regulatory and operational requirements; being non-cancellable in principle, such war risk cover ensures that the air transportation industry can continue to operate in the event of another terrorist attack; extension of cover to all aviation providers (airports, ground handlers, caterers, ATS providers, etc.) removes the need for airlines to provide indemnification for war risk liability beyond normal business practice.

14. **Will the Global Scheme be consistent with and not prevent or delay the recovery of the commercial aviation insurance market? How will the scheme ensure that there is a transition to commercial market insurance cover?**

The recovery of the commercial aviation insurance market will be dependent on the absence of further losses over the short- to medium-term. Limited coverage is available through the commercial market (now up to U.S.\$ 50 million), but beyond this limit not at an economically viable price and not for all aviation service providers alike. The scheme is also intended to provide one major element which cannot be obtained from the commercial market, i.e. a cover not cancellable upon a 7-day notice. The Global Scheme is designed to easily adapt itself to any new situations in the market: it will provide for a successive raising of the lower threshold of cover during the lifetime of the scheme, to induce the market to successively raise its coverage.

15. **Where will the Insurance Entity be located? What will be its status?**

It would be conceptually a non-profit entity. Once conditions would be met to establish the Insurance Entity, i.e. receipt by ICAO of a sufficient number of expressions of intent by States to participate in the Global Scheme, the issue of the most suitable location will be addressed, in consultation with the industry. Such consideration should include comparison of local regulatory requirements for the entity's incorporation, capitalization, operation and taxation, and the location offering the most favourable conditions, taking all relevant factors into account.

16. **How is the set up and incorporation of the Insurance Entity envisaged? How will government interests be protected on the Board? What will be ICAO's role? Who else will be on the Board?**

A steering group will look at all matters pertaining to the establishment of the scheme once there is clear indication that the level of participation by States will be equivalent to 51% ICAO contribution rates at least. ICAO would coordinate such effort, in partnership with the private industry. The participating States, through the Organization, would be represented on the board of the entity once operational. In addition, private industry (airline operators, insurance industry, aviation financiers and lessors, airports, etc.) would also be represented on the Board. The Council of ICAO would receive an annual report on the activities of the entity.



17. **How will the start-up capital for this Insurance Entity be provided? How will the expenses of incorporation, start up and operation be borne?**

Start-up capital will be borrowed from the commercial market and the costs associated with the establishment of the Insurance Entity will be recovered from the Insurance Entity once operational. Similarly, the costs associated with the start up and operations of the Insurance Entity will be disbursed from the revenues of the Insurance Entity under the direction of the Board of Directors.

18. **What role will ICAO have in the establishment of this Insurance Entity?**

In generally acting as a facilitator, ICAO would to the extent required be involved in those aspects of the set up and operation of the entity dealing with the guarantee to be provided by participating States, including the entity's statutes, the finalization of the participation agreement and its signature by Contracting States.

19. **Will States be taking on a greater risk than if they continued to provide State guarantees for their own airlines and aviation service providers?**

Currently, States providing insurance protection to their national air carriers are assuming the risks associated with their airlines in the event of another attack. By sharing the risks, the exposure of individual States is significantly reduced.

20. **How would the premium amounts be set? What will be the premium for smaller regional operators?**

Options for allocations being considered, and to be finalized by the entity once in place, include flat rate per passenger segment, flat rate per departure flight, flat rate per aircraft proportional to the maximum take-off weight, flat rate per ton/km performed and even flat rate premium. It is intended that the bulk of the premium will be obtained from large passenger airline operators.

21. **Can the premium amount increase? Is there any other fee payable?**

When there is an occurrence that is likely to lead to a substantial claim being made on the Insurance Entity, in order to properly manage the claims exposure and ensure that State guarantees need not be used, premiums can be increased with a 30-day notice. A policy fee is payable by all policyholders (private insured parties) in addition to premium charges.

22. **Will there be a "retention" amount (deductable for each policyholder)?**

It will be up to the entity's management to decide on policy for premiums, taking into consideration that deductibles are quite classical in insurance business. However, there will be a "natural" retention in excess, as the scheme will intervene only as from the excess point (U.S.\$50 million at present).