



COUNCIL — 199TH SESSION

SUMMARY MINUTES OF THE THIRTEENTH MEETING

(THE COUNCIL CHAMBER, WEDNESDAY, 4 SEPTEMBER 2013, AT 1000 HOURS)

OPEN MEETING

President of the Council: Mr. Roberto Kobeh González

Secretary: Mr. Raymond Benjamin, Secretary General

PRESENT:

Argentina	— Dr. N. Luongo (Alt.)	Malaysia	— Mr. Y.-H. Lim
Australia	— Ms. K. Macaulay	Mexico	— Mr. D. Méndez Mayora
Belgium	— Mr. G. Robert	Morocco	— Mr. A. Boulmane
Brazil	— Mr. J. Taunay	Nigeria	— Mr. P.O. Alawani (Alt.)
Burkina Faso	— Mr. M. Dieguimde	Paraguay	— Mrs. A. Torres de Rodríguez
Cameroon	— Mr. E. Zoa Etundi	Peru	— Mrs. D.E. Sotomayor Yalán
Canada	— Mr. M. Allen	Republic of Korea	— Mr. Choi, D.
China	— Mr. Tao Ma	Russian Federation	— Mr. A.A. Novgorodov
Colombia	— Mr. A. Muñoz Gómez	Saudi Arabia	— Mr. T.M.B. Kabli
Cuba	— Mr. J.F. Castillo de la Paz	Singapore	— Mr. T.-C. Ng
Denmark	— Mr. K. Skaar (Alt.)	Slovenia	— Mr. K. Ferjan (Alt.)
Egypt	— Mr. A. Mahmoud	South Africa	— Mr. L. Mabaso
France	— Mr. O. Caron	Spain	— Mr. V.M. Aguado
Germany	— Mr. U. Schwierczinski	Swaziland	— Mr. D. Litchfield
Guatemala	— Mr. H.A. Rosales Salaverría	Uganda	— Mr. J. Twijuke
India	— Mr. P.N. Sukul	United Arab Emirates	— Miss A. AL Hamili
Italy	— Mr. E. Padula	United Kingdom	— Mr. M. Rodmell
Japan	— Mr. T. Koda	United States	— Mr. D. Woerth

ALSO PRESENT:

Mr. A. Tiede (ANC)	— Australia
Ms. H. Faleiro de Almeida (Alt.)	— Belgium
Mr. J.C.F. da Silva (Alt.)	— Brazil
Mr. A. Rebouças (Alt.)	— Brazil
Mr. R. Oliveira de Carvalho (Alt.)	— Brazil
Mr. M. Delisle (Alt.)	— Canada
Mr. R. Geirhovd (Alt.)	— Denmark
Mr. P. Pape (Alt.)	— France
Ms. M. Furuhashi (Alt.)	— Japan
Mr. H. Yoshimura (ANC)	— Japan
Mr. J. Lazo Escalante (Alt.)	— Peru
Mr. Hwang, S.-Y. (Alt.)	— Republic of Korea
Mr. Kang, M. (Alt.)	— Republic of Korea
Mr. D.V. Subbotin (Alt.)	— Russian Federation
Ms. N. Malikova (Adviser)	— Russian Federation
Ms. M. Polkowska (Alt.)	— Slovenia
Mr. R.A. Al Kaabi (Alt.)	— United Arab Emirates
Mr. D. Behrens (ANC)	— United States

SECRETARIAT:

Mr. D. Azema	— DC/OSG
Mr. B. Djibo	— D/ATB
Mr. J. Begin	— PO/SP
Mrs. J. Hupe	— C/ENV
Mr. T. Tanaka	— ENV
Ms. S. Brand	— ENV
Miss S. Black	— Précis-writer

Representatives to ICAO

Chile
Dominican Republic
Ethiopia
Greece
Iran (Islamic Republic of)
Lebanon
Turkey
Uruguay
Venezuela (Bolivarian
Republic of)

Welcome to a new Representative on the Council

1. The President of the Council extended a warm welcome to Mr. Olivier Caron, the newly-appointed Representative of France.

Subject No. 24.2: Assembly Agenda and documentation

Subject No. 50: Questions relating to the environment

2. The Council had for consideration C-WP/14053 [with Blue rider (Chinese and Spanish only)] presented by the Secretary General, to which was attached a draft Assembly working paper setting forth proposed revisions to Assembly Resolution A37-19 (*Consolidated statement of continuing ICAO policies and practices related to environmental protection – Climate change*). The appended draft Assembly Resolution reflected progress made since the 37th Session of the Assembly in key areas of work on international aviation and climate change, including global aspirational goals, technological and operational measures, sustainable alternative fuels for aviation, market-based measures (MBMs), States' action plans for CO₂ emissions reduction activities, and assistance to States. It also took into account the outcome of the informal consultations with Council Representatives undertaken during the summer recess by the President of the Council and the Secretary General pursuant to the Council's earlier decision (199/11) with a view to reaching convergence of views on unresolved issues.

3. On behalf of the Secretary General, as well as on his own behalf, the President of the Council thanked each and every Representative for their engagement, cooperation, support and flexibility during the informal consultations. That dialogue had facilitated the bridging of important gaps and had provided a sense of where the majority of views were heading on this vital subject. While the resultant text of the draft Assembly Resolution was not perfect, it constituted the best compromise that they had been able to achieve in bridging different views and expectations. The upcoming Assembly needed, and expected, from the Council a basis for its discussions and negotiations on the issue of international aviation and climate change, one that already reflected a level of compromise which was acceptable to most. Representatives now had the opportunity to define the future of international aviation in terms of all of the Organization's Strategic Objectives rather than letting others define it for them.

4. In the course of the ensuing discussion, all Representatives who took the floor commended the President of the Council and the Secretary General for the progress made under their aegis.

5. The Representative of Mexico emphasized that it was absolutely necessary for the Member States comprising this important multilateral forum to act in a harmonized manner, and in accordance with their respective capacities and circumstances, to reduce CO₂ emissions in order to achieve the goal of preventing an increase in the global average temperature in excess of 2° C above pre-industrial levels. His State recognized that to promote the sustainable growth of civil aviation it was necessary to take a comprehensive approach encompassing, in the first instance, technological developments, operational improvements and sustainable alternative fuels for aviation. Mexico agreed with those who considered that while MBMs were important to reduce aviation emissions, they were complementary to the other initiatives to attain the Organization's goals.

6. The Representative of Mexico had received some suggestions from his Government to make the draft Assembly Resolution text clearer and more precise and was aware that some other Representatives had similar, substantial suggestions to make. Nevertheless, he considered that the draft Assembly Resolution constituted a well-balanced package and he did not intend to re-open the discussion with any suggested amendments that would hinder the process. The Representative of Mexico underscored that the proposed draft Assembly Resolution not only recognized the balance achieved by ICAO Member States on the important issue of international aviation and climate change, but also invited them and other interested parties to agree to a process whereby more studies would be conducted and more information would be collected so as to enable the 39th Session of the Assembly in 2016 to take a more informed

decision regarding the feasibility of a global MBM scheme and other issues. He therefore suggested that the draft Assembly Resolution, in its current form, be submitted to the 38th Session of the Assembly for consideration, together with an aide-mémoire highlighting the suggestions and concerns which some Representatives might still have. This would give Delegates attending the Assembly the opportunity to consider all suggested improvements to the draft Assembly Resolution and to achieve a consensus thereon. The Representative of Mexico stressed that the action taken by the Council during the present meeting would not in any way preclude the possibility of amending the draft Assembly Resolution during the Assembly to address any concerns.

7. The Representative of Belgium observed that clear progress had been made with regard to the various pillars of the draft Assembly Resolution, whether States' action plans, assistance to States, operational and technological measures, sustainable alternative fuels for aviation or MBMs. Progress in all of those areas was necessary to enable the sustainable growth of air transport and the attainment of not only ICAO's goals but also those of the air transport industry. Referring to the paragraphs of the draft Assembly Resolution relating to MBMs, the Representative of Belgium emphasized that the proposed text was very far from his State's starting position. He noted, as an example, that Belgium had always defended the possibility of States applying MBMs to flights departing from their territories. Aware that that was a very controversial position, his State and the other European States had listened to their negotiating partners and, in a constructive spirit, had, in November 2012, "stopped the clock" on applying the European Union Emissions Trading Scheme (EU ETS) to international aviation in order to give ICAO a chance to reach a compromise.

8. Despite the considerable gap from its starting position, and in the same constructive spirit of seeking a compromise, Belgium was prepared to support the presentation of the current text of the draft Assembly Resolution to the Assembly for further consideration. The Representative of Belgium underscored that it constituted a very delicately-balanced global package. Although his State had problems with a number of its provisions, it was convinced that the Council needed to submit a clean text for the Assembly's consideration, even if it were not perfect. Recalling that the Council's inability to reach agreement on a draft Assembly Resolution on international aviation and climate change to present to the previous Assembly in 2010 had clearly not facilitated that Assembly's deliberations, the Representative of Belgium indicated that that was the reason why Belgium was now prepared to support the delicate compromise which the draft Assembly Resolution represented. Such action was necessary for the credibility of the Council and of ICAO as a whole.

9. The Representative of Colombia indicated that his State could agree to a global package which took into account: i) the sustainable development of air transport; ii) the special circumstances and respective capabilities (SCRC) of States; and iii) the need to avoid market distortions. Colombia supported measures designed to protect the environment, in particular, those that led to an actual reduction of aviation emissions, such as operational and technological measures and the use of aviation biofuels. It considered that economic measures, i.e. MBMs, were complementary and transitory measures with which to achieve the global aspirational goals. Colombia also believed that SCRC was important, and that the Resolution should be more specific about financial assistance, technology transfer and all other forms of assistance which would mitigate the effects of aviation emissions.

10. Colombia had a number of concrete proposals to amend the draft Assembly Resolution. With regard to Preambular Clause 23, it suggested that the word "potential" be deleted so as to read "*Recognizing* the desirability of a global MBM scheme in terms of providing an additional means of promoting achievement of the aspirational global goal referred to in paragraph 6;".

11. Colombia proposed that paragraph 6 be amended to indicate that the aspirational goal should be at least carbon neutral growth (CNG), as follows: "*Also resolves* that, without any attribution of specific obligations to individual States, ICAO and its Member States with relevant organizations will work together to strive to achieve a collective medium term global aspirational goal of becoming at least carbon

neutral from 2020 onwards, taking into account: the special circumstances and respective capabilities of States, in particular developing countries; the maturity of aviation markets; the sustainable growth of the international aviation industry; that emissions may increase due to the expected growth in international air traffic until lower emitting technologies and fuels and other mitigating measures are developed and deployed; and that higher reductions of GHG emissions will be necessary to stabilize and then reduce aviation's absolute emissions contribution to climate change;"

12. Colombia also suggested that paragraph XX quinquies be amended to read as follows, based on the regional consensus reached at the meeting of the Executive Committee of the Latin American Civil Aviation Commission (LACAC) in Panama City in August 2013: "*Further resolves* that the majority percentage of the revenues generated by a global MBM scheme shall be used by ICAO to be re-invested in the aviation industry's activities to mitigate its impact on climate change in developing countries, and that a percentage shall be invested in reducing the vulnerability and strengthening capacities of developing countries that are particularly vulnerable to the impacts of climate change. In any case, internationally accepted flexibility mechanisms should be prioritized, in particular the Clean Development Mechanism (CDM);"

13. Colombia further proposed that paragraph 21 bis be amended to read: "*Requests* that ICAO and its Member States express a clear concern, through the UNFCCC process, on the disproportionate use of international aviation as a potential source for the mobilization of revenue for climate finance;"

14. Colombia also suggested that a new sub-paragraph be added to paragraph 23, as follows: "a) provide financial support, when in a position to do so, to developing Member States, to support them in their endeavours to increase fuel efficiency, mitigate GHG emissions and adapt to climate change impacts on their aviation industry, contributing through their supported measures to the achievement of the global aspirational goals referred to in paragraphs 4 and 6 above;"

15. In addition, Colombia considered that the Annex should be amended to include the following two new principles: "p) MBMs should take into account the special circumstances and respective capabilities of States, in particular developing States; and"; "q) MBMs should be transitory and complementary (gap filler) to the other measures to address aviation's CO₂."

16. Thus while in general Colombia considered that the current text of the draft Assembly Resolution was sufficiently good to present to the Assembly, it would wish the global aspirational goals to be more ambitious and for the said two new principles to be reflected in the Annex thereto.

17. Averring that ICAO could not ignore the universal problem of climate change and that it should strive to reduce aviation emissions' impacts on the environment, the Representative of Peru underscored that the draft Assembly Resolution served as a good basis for achieving that goal. She noted, however, that the introduction therein of the concept of MBMs raised some questions as not everyone was convinced of the appropriateness of such measures. Nonetheless, MBMs existed and ICAO could not ignore them; on the contrary, it was necessary to try to deal with them in an orderly manner so that they would contribute to the attainment of the Organization's goals. As Peru was open to considering possible MBMs at a global level, it considered that the draft Assembly Resolution was a good starting point for shedding light on the implementation of MBMs in the aviation sector. It was of paramount importance, however, that ICAO did not lose sight of the ultimate goal, namely, the reduction of emissions in the international civil aviation sector.

18. The Representative of Peru observed that the draft Assembly Resolution contained a number of essential elements which would be discussed in due course during the review of each provision. She nevertheless wished to point out now that if MBMs were to be included therein, then a paragraph should be added to the Annex reading along the following lines: "MBMs are complementary and

temporary economic measures which can only be effective as part of a package of options which includes other technological and operational solutions and whose application would be discontinued in the event that aviation's environmental goals and obligations were fulfilled, either through MBMs or other measures." The Representative of Peru also stressed that SCRC should only apply to developing States. She strongly believed that the Council would be able to reach consensus on the text of a draft Assembly Resolution to present to the forthcoming Assembly.

19. The Representative of the United States affirmed that the draft Resolution was the progressive Resolution and package deal that his State had desired from the outset. Recalling that the United States had placed particular emphasis on the importance of a global MBM scheme as a long-term goal, he underscored that that remained its paramount objective. Although agreeing that the current text was not perfect, the United States was prepared to accept it, for a number of reasons. One was that there was no time left for the Council to refine it. The Council had had three years in which to develop the draft Assembly Resolution and had established the High-level Group on International Aviation and Climate Change (HGCC) to that end. Now only three weeks remained before the opening of the Assembly. Furthermore, serious objections would be raised if any amendments were now made to the draft Assembly Resolution as all Representatives had had the text reviewed by their capitals and prepared their positions for this meeting. While noting that if there had been more time in which to review the draft Assembly Resolution his State might also have suggested some amendments thereto, the Representative of the United States maintained that the good should not be the enemy of the perfect. He emphasized that the United States Delegation to the Assembly would participate vigorously in the Executive Committee and work with every State and region in order to enhance the draft Assembly Resolution.

20. In welcoming the progress made by the President of the Council and the Secretary General in bringing the different points of view closer together, the Representative of France underscored that it had required much effort, in particular on the part of his Delegation. That effort showed that there was a common will to move forward towards a shared goal in 2020 and an even more ambitious goal for 2050. It also demonstrated the need to establish the bases for collaborative and fruitful work over the next triennium. The Representative of France therefore welcomed the multi-pronged approach taken by the President of the Council and the Secretary General whereby States' proposed road maps for progress were grouped together in a coordinated strategy which combined technological innovations, operational measures, MBMs, sustainable alternative fuels for aviation, incentives for States to develop their own action plans and the assistance required to that end, and the tools and metrics to gauge progress. For all of these reasons, France was in favour of the draft Assembly Resolution. While it was not perfect, it was a good starting point for actively implementing the proposed coordinated strategy.

21. Concurring that the draft Assembly Resolution represented a significant step forward, the Representative of the United Arab Emirates expressed pleasure that it highlighted the need to take a decision regarding the establishment of a global MBM scheme at the 39th Session of the Assembly in 2016. She was also pleased to note that it encompassed a large number of guiding principles which addressed the needs and specific circumstances of developing States. Her State nonetheless had many reservations regarding the text of the draft Assembly Resolution. Regardless, the United Arab Emirates considered that the latter should be presented to the upcoming Assembly without being amended by the Council as that would compromise all of the progress which had been made thus far.

22. The Representative of Singapore emphasized that his State truly appreciated the flexibility and spirit of compromise shown by many Representatives during the informal consultations, which had enabled a substantial amount of progress to be made. Recalling that Singapore had submitted some suggested amendments to the draft Assembly Resolution, such as those contained in his e-mail of 21 August 2013, he observed that many of them had been taken into account. Underscoring that no draft text was ever perfect, and maintaining that the current text was the best that could be achieved at this point in time, the Representative of Singapore indicated that his State was likewise prepared to support it in the form presented, for further deliberation by the Assembly.

23. Speaking in his capacity as the coordinator for the African Group, the Representative of Cameroon noted that African States had actively participated in the ongoing consultations on MBMs for the reduction of CO₂ emissions from air transport and would continue to support the process with the hope that ICAO would eventually find an acceptable compromise, or better still, consensus on this important subject. They wished to express their appreciation for the tremendous efforts of the President of the Council and the Secretary General in dealing with this complex matter. African States supported the continuing work on the development of a global MBM scheme for application beyond 2020, but appreciated that much more work remained to be done to reach an agreement on such a global scheme. It appeared, however, that some States might wish to develop and implement MBMs prior to 2020, which necessitated a framework to facilitate and harmonize implementation of such MBMs. African States also believed that, further to ongoing consultations and continuing efforts of the Council of ICAO, a mechanism shall be found to ensure harmonized implementation of MBMs in order to avoid adverse impacts on the air transport industry.

24. African States were optimistic that the ongoing open-minded discussions and consultations would ultimately yield a widely-acceptable global MBM scheme. They urged that, in designing this mechanism, appropriate attention be paid to the issue of the SCRC of developing States in accordance with the principles of the *United Nations Framework Convention on Climate Change* (UNFCCC). The issues relating to the treatment of SCRC remained a great concern to developing States, and in particular to African States. The global MBM scheme or framework had to effectively and specifically address the SCRC of developing States.

25. African States' preference was to retain the *de minimis* goals as contained in Assembly Resolution A37-19. Nevertheless, in a spirit of compromise and progress towards consensus on this rather intricate matter, they remained open to other possible options to adequately address the concerns of developing States, which should be as simple and as specific as the *de minimis* option.

26. In the same spirit, African States had decided to limit their views to the proposed paragraph 14 ter, although they had concerns regarding other provisions, such as paragraphs 14, 14 bis, 14 quater, XX, XX bis, XX ter, XX quater and XX quinquies. They proposed the following text for paragraph 14 ter, which had been distributed to Representatives earlier in the meeting:

“*Resolves* that States or groups of States that wish to implement new MBMs as described in paragraph 14 bis above should grant exemptions for application of MBMs on routes to and from developing States whose share of international civil aviation activities is below the threshold of 1% of total revenue ton kilometers of international civil aviation activities, until the global scheme is decided;”.

27. African States were prepared to live with the other provisions as long as paragraph 14 ter was adopted as proposed.

28. In conclusion, African States reiterated their strong support for ICAO's leadership role, not only in promoting the sustainable development of air transport but also as a forum in which matters affecting international civil aviation were determined. They therefore urged that unilateral actions on such critical matters be avoided.

29. The Representative of Japan fully recognized that each Representative had an opinion regarding the draft Assembly Resolution and that some Representatives might have some concerns about, or even objections to, the current text. He stressed the need to bear in mind that it constituted a delicate balance of the views expressed during the informal consultations, one that was a result of careful deliberations on the part of the President of the Council and the Secretary General. The Representative of Japan therefore considered that it would form a good basis for discussion at the upcoming Assembly. Referring to the proposed paragraph 14 ter, he affirmed that the existing text was sufficient to take into

account the stated position of the African States. The Representative of Japan therefore agreed with previous speakers that the draft Assembly Resolution should be submitted to the Assembly in its present form.

30. While the Representative of India was broadly in agreement with most of the draft Assembly Resolution, he had difficulty with the one controversial issue, MBMs. He expressed disappointment that: the views which he had agreed to earlier during the Council's discussion of C-WP/14030 (199/11) relating to paragraph 14 and the engagement in constructive bilateral and/or multilateral consultations and negotiations with other States to reach an agreement on the implementation of MBMs now appeared in strike-out; and other views had been added which disturbed the balance and which, in his opinion, went against the grain of the draft Assembly Resolution's intention, particularly the movement towards global MBMs. It appeared to the Representative of India that paragraph 14 and its sub-paragraphs, in particular paragraph 14 bis, reflected a clear intent on the part of the EU to recommence the application of its ETS to international aviation. In his view, the last part of paragraph 14 bis ("and would fully cover all emissions from flights which both depart and arrive at airports in that State or group of States") clearly restarted the clock. The Representative of India could not agree with that wording and therefore wished paragraph 14 bis to be deleted from the draft Assembly Resolution.

31. The Representative of India agreed that there should be consensus in the Council regarding the draft Assembly Resolution as he considered that the Council left too much to the Assembly and its Executive Committee. He was unsure that the Executive Committee's membership would be such that it would be able to reach a conclusion on that issue; in the negative, the issue would end up being addressed politically between States outside of ICAO, as had been the case thus far. The Representative of India thus favoured working towards a consensus in the Council. He pointed out, however, that if it were the intention of the EU to have an airspace approach, which he understood to be the case from the comments made by the Representative of Belgium, then its technical and economic feasibility needed to be established. No work thereon had been done with the kind of framework that that been injected into the last draft of the Assembly Resolution.

32. In explaining why he had difficulty with paragraph 14 bis and wanted it to be excluded from the draft Assembly Resolution, the Representative of India reiterated that it clearly showed the way towards another ETS, a scheme which had been a constant source of acrimony. He questioned whether the airspace approach for landing and departing flights would help achieve the aspirational goals as it was only a very truncated scheme whose administrative feasibility needed to be established. The Representative of India underscored that the studies carried out by the air transport industry showed that the latter would have to pay \$9 billion in the case of a global MBM scheme. That would have to be reconciled with the collections which were already being made under existing MBMs. Furthermore, a clear assurance would have to be given in the draft Assembly Resolution that such MBMs would be replaced by the envisaged global MBM scheme when the latter came into force.

33. In turning to the legal aspects of paragraph 14 bis, the Representative of India questioned how the possibility of overflights being encompassed by any scheme could be excluded. He noted that if his State created and implemented a scheme, then it would be difficult to exclude overflights therefrom purely because legally it was considered that an airspace and sovereignty over airspace could not exclude overflights. In enquiring as to what the sovereignty of airspace over a group of States was, the Representative of India underscored that there had been no definition of a group of States having sovereignty either in the United Nations (UN) or in the Chicago Convention or indeed in any reference in the ICAO Assembly. He was at a loss to understand as to how sovereignty could extend over a group of States. In stressing the need to examine that issue very carefully from the legal point of view, the Representative of India queried whether an air force of one State could exercise sovereignty over another if it belonged to the same group of States. Expressing doubt, he reiterated the need to look at the concept of sovereignty of airspace when a group of States was involved.

34. Noting that paragraph 14 bis also provided a legal umbrella for retaliatory schemes, the Representative of India questioned whether that was good for the world and for the air transport industry. He reiterated that mutual consent was necessary for the implementation of MBMs if retaliation was to be avoided. The Representative of India underscored that the patchwork of MBMs that would be created as a result of paragraph 14 bis would be a nightmare for the air transport industry. Unfortunately, it would endure and would make it very difficult for ICAO to discuss and implement a global MBM scheme. Once a MBM was put in place, efforts towards the establishment a global MBM scheme would diminish. The Representative of India averred that paragraphs 14 bis and 18 were completely at cross purposes.

35. In then commenting on *de minimis*, the Representative of India emphasized that there needed to be a study on what any *de minimis* threshold should be. It seemed to his State that a 1 per cent threshold left every player, barring a handful, out of the scheme. It therefore considered that any scheme implemented along those lines would be meaningless. *De minimis* therefore should apply not only to developing States but among the developing States to selected developing States. If States such as India or China were excluded from a *de minimis* threshold, then so be it. India therefore favoured a restriction of application of *de minimis* to only those in need and only those selected developing States which might feel the need for it to apply to them.

36. Agreeing with the Representative of Cameroon that SCRC should only apply to developing States, the Representative of India expressed grave concern about applying it to fast growing airlines and new entrants in the air transport industry. He noted that, with the current tax regimes and the airport charges regimes to which airlines were subjected, any fast growing airline or new entrant would already have the necessary capital and would thus not need to be under the SCRC category.

37. In conclusion, the Representative of India voiced concern that anything controversial leaving the present Council meeting would be subject to a far greater and unmanageable degree of controversy in the Assembly. The Council was already aware of that reality, having experienced it at the last Assembly. He therefore requested that this matter be reconsidered. Paragraph 14 bis should be excluded from the draft Assembly Resolution and SCRC should be applied to specially selected developing States.

38. Voicing support for the draft Assembly Resolution, the Representative of Italy emphasized that its compromise text represented a delicate but reasonable balance. While it was not exactly the text that Italy and its European partners had wished for – they had more ambitious goals regarding MBMs – his State considered that it was the best way forward. The Representative of Italy reiterated that it was necessary to present a draft Assembly Resolution to the Assembly to facilitate its work on the issue of international aviation and climate change, which was a crucial one for the future of international civil aviation. As his State considered the draft Assembly Resolution to be a package, it preferred submitting it to the Assembly in its current form. Recalling the comments made by the Representative of India regarding the last phrase of paragraph 14 bis, the Representative of Italy clarified that it referred only to the flights inside a region of a group of States. His worries were therefore unfounded.

39. The Representative of Nigeria reiterated that his State considered that consensus could only be achieved through compromise, and that consensus only achieved its aim when there was a win-win situation. He noted, in this context, that while African States preferred the retention of paragraph 15 of Assembly Resolution A37-19 relating to a *de minimis* threshold for MBMs, in a spirit of compromise they had proposed a new text for paragraph 14 ter of the draft Assembly Resolution. That replacement text was also supported by the Representative of India. While the African States had other concerns, in that same spirit of compromise they would support presenting the draft Assembly Resolution to the upcoming Assembly once the proposed paragraph 14 ter were incorporated therein.

40. The Representative of Brazil agreed with practically all of the comments made by the Representative of India. In light of the draft Assembly Resolution's shortcomings, Brazil considered that all of its contents should remain open for discussion by the Assembly with a view to achieving a

consensus solution. That was especially clear with regard to paragraph 14 in its entirety and paragraph 18. In Brazil's opinion, paragraph 14 as a whole opened the way to questionable regional MBM schemes and multilateral legitimacy. It also had the potential to drive positions farther apart on such controversial issues as geographical scope and the obligatory nature of unilateral MBM schemes. Although Brazil had earlier proposed improvements to the whole of paragraph 14, it believed that the latter was not very harmonious and that there remained significant inconsistencies. For that reason, Brazil suggested that paragraph 14 in its entirety be deleted from the draft Assembly Resolution.

41. Brazil considered that paragraph 18 on the development of a global MBM scheme presented a level of ambition which was incompatible with the current state of discussions in ICAO. Although it was prepared to support a possible consensus for considering a potential global MBM scheme, Brazil was of the view that it was premature as currently there was insufficient information available on the potential social, economic and environmental impacts of such measures, in particular, on developing States. While the process for collecting information on potential MBM impacts had been dealt with by the Council in recent years, it was still not possible to achieve the necessary level of maturity to draw satisfactory conclusions. Therefore further in-depth studies should be done before a definitive decision was taken regarding the relevance and appropriateness of a global MBM scheme. It was also important to bear in mind that any ICAO decision on this matter should not prejudge the viability of a possible new global mitigation mechanism under the UNFCCC's jurisdiction, such as, for example, a possible cap-and-trade global scheme. It was also important to leave the door open for future consideration of MBM proposals that might be submitted by the parties, in addition to the issues which had already been identified by the ICAO Secretariat.

42. Observing that another important shortcoming of the draft Assembly Resolution was that it did not adequately address the principle of common but differentiated responsibilities (CBDR), the Representative of Brazil emphasized that the time had come to make it clear that that principle was different from the concept of SCRC because it reflected the historic responsibilities of developed States for the increase in global average temperatures regardless of those States' levels of emissions or economic development. He stressed that, in the context of climate change, the special circumstances of developed States could not be considered. The Representative of Brazil noted that while the majority of emerging States had accepted the euphemism of SCRC in the name of consensus and to accommodate the concerns of certain States, it was not reasonable to distort the concept and essence of CBDR.

43. Brazil believed that the principles of non-discrimination and CBDR were not incompatible; on the contrary, they were mutually supportive. The full application of CBDR by means of the transfer of financial resources, technology and capacity-building from developed States to developing States in the interest of mitigation was essential for promoting the effectiveness of technical and operational measures to reduce aviation emissions, which would serve to strengthen, and not weaken, the principle of non-discrimination. It was not possible to consider global measures without guaranteeing the means for their effective implementation by developing States. Brazil was in favour of explicitly mentioning CBDR in the draft Assembly Resolution to be presented to the 38th Session of the Assembly.

44. The Representative of Brazil noted that there were other provisions of the draft Assembly Resolution which his State would wish to improve, such as the one relating to the controversial medium-term global aspirational goal of CNG from 2020, and the ones relating to States' action plans, which seemed to make the latter obligatory, which was unacceptable. In conclusion, he reiterated the need for the entire contents of the draft Assembly Resolution to be open for discussion by the Assembly.

45. The Representative of Malaysia indicated that his State supported the draft Assembly Resolution in general, in the interest of promoting convergent views on MBMs. While the text was not perfect, it agreed that it constituted a good way forward. In particular, Malaysia supported paragraph 6, whereby all Member States would work together to strive to achieve a collective medium term global aspirational goal of CNG from 2020, taking into account the SCRC of States, in particular, developing

States. It had no objection to extending the SCRC to developed States, subject to the conditions stipulated in that paragraph.

46. Referring to paragraph 14 *ter*, the Representative of Malaysia noted that his State considered, on the basis of analyses, that a *de minimis* threshold for MBMs could result in market distortion and reduce the effectiveness of such measures. However, the African States' proposed exemption for the application of MBMs on routes to and from developing States whose share of international civil aviation activities was below the threshold of 1 per cent of revenue ton kilometers of international civil aviation activities until the global MBM scheme was decided was acceptable to Malaysia, to a certain extent. The Representative of Malaysia underscored that his State supported the draft Assembly Resolution as it represented a balanced approach and looked forward to a decision by the Assembly to mitigate the challenges posed by the CO₂ emissions of international civil aviation.

47. The Representative of China noted that his State hoped that a relevant Resolution that was acceptable to all could be crafted at the upcoming Assembly and had made efforts to that end. While China could accept most of the contents of the current text, it still disagreed with certain elements thereof. The Representative of China cited, in this context, paragraph 14 *bis*, which introduced the concept of "groups of States". His State considered that that concept did not have any legal basis: it was not recognized in the Chicago Convention and groups of States were not considered to be legal entities under international law. Clarification was therefore sought as to the definition of the said concept. China disagreed with paragraph 14 *bis* as it would enable States or groups of States to implement MBMs without obtaining the consent of the other States concerned. This would encourage an increasing number of States to apply their own MBMs. The resultant proliferation and multiplicity of MBMs would only give rise to confusion and place an economic burden on the air transport industry, thus running counter to ICAO's purposes.

48. Underscoring that his State also had concerns about paragraph 18, the Representative of China indicated that it considered that conditions were still not ripe for establishing a global MBM scheme. The language used ("Decides to develop a global MBM scheme ...") therefore needed to be revised. Furthermore, paragraph XX should be amended to clearly reflect that an MBM should take into account the SCRC of only developing States. The Representative of China hoped that the said elements could be revised before the draft Assembly Resolution was submitted to the forthcoming Assembly for further discussion.

49. The Representative of Cuba noted that the draft Assembly Resolution was a good one which the majority of Representatives could support. It was only on the issue of MBMs that agreement could not be reached. In that regard, Cuba's position was the same as that of India, Brazil and China, *inter alia*. Its views were based on a comparison between the draft Assembly Resolution and Assembly Resolution A37-19, which revealed that there had been some backpedalling with respect to developing States and the operation of air transport in those States. The Representative of Cuba averred that the draft Assembly Resolution did not take into account the draft text considered previously by the Council (cf. C-WP/14030, Appendix C; 199/11). Instead, it proposed a strategy whose consequences for States, in particular, developing States, had not yet been determined. Cuba considered that the paragraphs on MBMs ignored the essential issue that brought all States together, namely, the safe and sustainable development of air transport. They focused only on the monetary benefits.

50. The Representative of Cuba observed, in this context, that all vestiges of more ambitious actions to be taken prior to 2020 by certain States on the basis of their historic responsibilities for polluting the environment had been eliminated from paragraph 6 of the draft Assembly Resolution and the scope of SCRC, which was intended to cover developing States, had been extended to all States.

51. The Representative of Cuba further noted that in paragraph 14, MBMs had been recognized as preliminary to the development by ICAO of a global MBM scheme, even prior to the latter's

envisaged implementation date of 2020. Moreover, paragraph 14 bis represented acceptance of the application of the EU ETS to international aviation, the potential negative effects of which had been amply demonstrated in the Council in November 2011 (cf. C-WP/s13761 and /13790; 194/2). This would mean that in the event ICAO established such a global MBM scheme, there would already be a patchwork of national and/or regional MBMs, many of them put in place as retaliatory measures. The air transport industry would thus be confronted with insurmountable barriers which would hamper its development, which was precisely what ICAO was trying to avoid.

52. Cuba was of the view that MBMs did not reduce aviation emissions. Moreover, they had the potential to inhibit the development of air transport by increasing competition on those routes where MBMs were not applied. Furthermore, MBMs were environmentally irresponsible and were aimed solely at generating revenue; consequently, they limited the progress of developing States. Cuba recognized the need for ICAO to take the lead in this process and to propose a policy to the Assembly. However, given the way the draft Assembly Resolution was drafted, in particular paragraphs 6, 14, 14 bis, 18 and XX, it was not in a position to agree that the current text be presented to the Assembly and thereby be part of such a large historical mistake. The Representative of Cuba reiterated that any Council decision to submit the draft Assembly Resolution to the Assembly should state the major concerns of some Representatives regarding its potential negative effects on developing States.

53. While considering that a balance had been struck in the draft Assembly Resolution, the Representative of Paraguay averred that there were nevertheless certain elements which needed to be revised to ensure that the desired delicate balance was properly reflected and to avoid the possibility of misinterpretation. She expressed concern that paragraph 14 bis could be interpreted as allowing the unilateral application of MBMs, which was not the intention. Such an interpretation could discourage efforts to attain the global aspirational goals and at the same time increase the work for the next Council, which would be tasked with developing a global MBM scheme. It was necessary to be clear about the real intention of such a global scheme. It should not be only for 2020 and should not be based solely on MBMs. It should also be open to another mechanism or mechanisms which could be studied and which could serve as elements for future work. The Representative of Paraguay suggested that the last part of paragraph 14 bis be amended to that effect. She supported the rest of the draft Assembly Resolution in general.

54. In reiterating the importance of ascertaining where the Organization was headed and what it was trying to achieve, the Representative of the Russian Federation voiced support for the positions expressed by the Representatives of India, Brazil and Cuba, in particular. He noted that while he could agree to some paragraphs of the draft Assembly Resolution, some others were controversial and gave rise to concerns, especially paragraph 14. In endorsing the African States' proposed paragraph 14 ter, the Representative of the Russian Federation stressed the need to support developing States and to make it technologically feasible for them to achieve the global aspirational goals. Sharing the concern expressed by the Representative of Brazil regarding the principle of CBDR, the Representative of the Russian Federation underscored the need for further discussions thereon. He emphasized that the issue of SCRC should be considered in conjunction with that principle of CBDR. The Representative of the Russian Federation also shared his concern that the global aspirational goals should provide incentives and not be viewed as obstacles which could only be resolved by artificial means. Recalling that the importance of fair competition had been repeatedly highlighted during the recent Sixth Worldwide Air Transport Conference (ATConf/6), he stressed that the provisions of the referred draft Assembly Resolution should not lead to market distortion.

55. The Representative of the Russian Federation had a large number of proposals that he could make to enhance the draft Assembly Resolution. While some of his concerns had been addressed, paragraph 14 still posed a problem for him. He stated, in this regard, that the text of the corresponding paragraph in Assembly Resolution A37-19 ("... and to engage in constructive bilateral and/or multilateral consultations and negotiations with other States to reach an agreement;") shall be retained. While similar text is reflected in paragraph 14 quater of the draft Assembly Resolution, he emphasized that its meaning

had been changed. It was necessary to indicate that while it was the sovereign right of States to apply whatever MBM they wished, if they wanted to apply it to other States then it had to be done on the basis of mutual consent. Agreeing with the Representative of India that the last phrase of paragraph 14 bis will open the door to the EU ETS, the Representative of the Russian Federation agreed that it should be deleted and that the remaining text has to be redrafted to clarify that while States could exert their sovereign right and apply MBMs, it would have to be on the basis of agreement with those States which wished to participate therein. He further suggested that Article 18 could also be enhanced in order to reach a compromise.

56. Sharing the concerns voiced that MBMs will not be temporary in nature, the Representative of the Russian Federation emphasized that provisions on MBMs of the draft Assembly Resolution did not give hope that the “light at the end of the tunnel” would be seen. He thus agreed with the Representative of Cuba that this issue should be studied in greater depth. The Representative of the Russian Federation raised the possibility of developing a more robust approach than that of MBMs, one that would meet the Organization’s Strategic Objectives, particularly those relating to environmental protection and the sustainable development of air transport.

57. In conclusion, the Representative of the Russian Federation stressed the importance of the Council continuing its work during the coming triennium to study the practicability of introducing a global MBM and to study its possible impacts in-depth so as to ascertain if that will be the right direction to go in. If, after such further study, the Council came to the conclusion that it was a reasonable approach, then it would support the development of a global MBM scheme set forth in the draft Assembly Resolution.

58. The Representative of Germany observed that the Council was at a junction where it had to show and exercise continued leadership on the issue of aviation emissions and on how best to deal with the latter in order to reach its goal of CNG. The Council had to continue to make progress. He recalled, in this regard, that the President of the Council had repeatedly stated, during the informal consultations, that it was necessary for Representatives to leave their known positions and to look and go forward. Many Representatives had moved quite significantly from what had previously been considered totally locked-in positions in order to make joint progress.

59. The Representative of Germany considered that the draft Assembly Resolution was carefully balanced. By its very nature, it was also very fragile. It was like a house of cards: once one card was removed, there was a risk that the whole building would collapse. While he, like other Representatives, had a number of difficulties with certain provisions and would certainly have wished to see some changes to the draft Assembly Resolution, he agreed that it was a good package. In therefore supporting it, the Representative of Germany underscored that it could be further discussed at the Assembly and amended, if necessary.

60. The Representative of Saudi Arabia endorsed the comments made by the Representatives of India, China, Cuba, Brazil, the Russian Federation and Cameroon. While he broadly agreed with the text of the draft Assembly Resolution, he had reservations regarding MBMs since paragraph 14 bis, unlike the corresponding provision of Assembly Resolution A37-19, did not encourage States to negotiate with a view to reaching an agreement on the implementation of such measures. Drawing attention to paragraph 18, the Representative of Saudi Arabia underscored that a global MBM scheme could not be developed until its feasibility had been studied and established. In highlighting the importance of the guiding principles for the design and implementation of MBMs set forth in the Annex, he stressed that they should also be studied before being included in the draft Assembly Resolution. The Representative of Saudi Arabia also underscored that reference should be made therein to the CBDR of developed and developing States and to the need for consistency between the measures adopted by a State to resolve the issue of CBDR within the UNFCCC and the measures it adopted to resolve that issue within the framework of ICAO.

61. The Representative of the Republic of Korea supported the current text of the draft Assembly Resolution in principle. Referring to paragraph 14 ter, he noted that paragraph 15 of Assembly Resolution A37-19 had been moved to that paragraph while maintaining its original meaning. If that change, which was a result of compromise, was approved by all the other Representatives, then he would also accept paragraph 14 ter. His State could not, however, fully comprehend how a threshold of 1 per cent could be justified and not one of 0.9 per cent. The Representative of the Republic of Korea doubted if any scientific or economic rationale existed to justify that 1 per cent criterion. He also emphasized that studies carried out by experts on *de minimis* had clearly pointed out that the 1 per cent threshold would effect market distortions.

62. The Representative of Canada noted that the current text of the draft Assembly Resolution reflected the significant progress that had been made over the summer in bringing together the many different views on the issue of MBMs. He also acknowledged the significant work done recently by the air transport industry to address that issue, and the flexibility which his European colleagues had shown with respect to the issue of geographic scope. The Representative of Canada believed that the Council could build on that progress and move towards a productive Resolution at the Assembly, one that would be in the best interest of international civil aviation activity.

63. The Representative of Argentina recalled that during the Council's earlier discussion of C-WP/14030 (199/11) the official from the Ministry of Foreign Affairs of his State attending the meeting had underscored that Argentina would not be passive but would instead work constructively to achieve consensus on a draft Assembly Resolution. His words had been repeated in each meeting in which Argentina had subsequently participated and the Representative of Argentina reiterated them here and now.

64. Noting that previous speakers had set forth their positions on various aspects of the draft Assembly Resolution, the Representative of Argentina underscored that if their suggested changes were not taken into account, then their positions would become entrenched and there would be a high cost to pay. That was a reality that all were conscious of. Recalling that his State had presented a drafting proposal, he emphasized that it would be interesting and worthwhile to examine it as it contained many elements that would facilitate the Assembly's discussions. In querying how the Council could arrive at a consensus, the Representative of Argentina suggested that the text of the draft Assembly Resolution be strengthened by having the Assembly give the Council clear instructions on how to carry out its work over the next triennium. The Representative of Argentina noted that his State would support a Council mandate to work on a global MBM scheme which would include, and respect, the principles of all international laws currently in force, notably those embodied in the Chicago Convention and the UNFCCC. That should be the priority in light of the discussion at the last Assembly. He reiterated that the Assembly was a sovereign body and that all elements of the draft Assembly Resolution would be open for discussion. Argentina thus agreed that the necessary action should be taken in order to ensure that the Council was able to proceed with its work to develop a global MBM scheme in time for the 39th Session of the Assembly in 2016, as referred to by the Representative of the Russian Federation. The Representative of Argentina assured the Council that his State was prepared to collaborate in all the work undertaken to achieve that goal.

65. The Representative of Australia noted that, as her government was presently in caretaker mode in preparation for a general election on 7 September 2013, it could not make policy commitments that might commit an incoming government. Following the election, the incoming government might need to consider further its position on the issues which were currently under discussion. Notwithstanding this caveat, Australia did recognize the work that had gone into drafting the Assembly Resolution and capturing the positions of States on the management of international aviation emissions. Her State particularly noted the significant progress made on the suite of emissions reduction work in the areas of States' action plans, technological and operational measures, emissions standards and sustainable alternative fuels, as well as in capturing the progress on consideration of MBMs. The draft Assembly

Resolution acknowledged that such a comprehensive approach to reducing emissions was necessary to promote the sustainable growth of international aviation. Australia welcomed in particular the work of the air transport industry and its agreed position in the form of the International Air Transport Association (IATA) Resolution on the implementation of the aviation “CNG2020” strategy adopted in June 2013, which provided valuable input to the Council’s discussions. While Australia recognized that there were a few matters in the draft Assembly Resolution which remained subject to divergent views, it nevertheless broadly supported its current text and expected that those outstanding matters could be resolved to the satisfaction of all parties leading up to and during the Assembly.

66. The Representative of Burkina Faso supported the position expressed by the Representative of Cameroon as coordinator for the African Group. In also endorsing the suggestion made by the Representative of Mexico, he indicated that it was the Representatives’ duty to present to the Council their concerns regarding the draft Assembly Resolution and their suggested amendments so that they could be consolidated in an aide-mémoire that would accompany the said Resolution. The aide-mémoire could then be transmitted to Representatives’ national administrations in the three weeks remaining before the opening of the Assembly. His State made a plea for understanding, as the international community called upon ICAO to arrive at a consensus on this matter. Recalling that the Council had not presented a draft Assembly Resolution to the previous Assembly in 2010, the Representative of Burkina Faso emphasized that it could not allow the same thing to happen again for the upcoming Assembly as that would be yet another failure.

67. In seeking clarification from the Secretariat as to the relative importance of the environmental dossier within the Organization’s primary mission, the Representative of Burkina Faso expressed doubt that it carried the same weight as safety and security and other tasks. He suggested that the Assembly be provided with an overview of the amount of time spent over the last three years on environmental protection, safety, security and the sustainable development of air transport. The Representative of Burkina Faso stressed that the Council could not allow itself to be distracted from ICAO’s primary mission as international civil aviation would suffer.

68. Referring to comments made that Representatives had moved significantly forward on this subject, the Representative of South Africa underscored that it had unfortunately been in a circular motion. While marathon informal meetings had taken place to broker an understanding, mainly through compromising on known positions so that a draft Assembly Resolution could be presented to the Assembly, it appeared that the anticipated breakthrough had not been realized. In voicing support for the proposed paragraph 14 ter, the Representative of South Africa recalled that the African Group had limited itself to that provision on the basis that there was some form of understanding with its negotiating partners regarding other paragraphs. It would be unfortunate if that were not the case. Underscoring that paragraph 14 ter was linked to paragraph 14 bis and paragraph 14, the Representative of South Africa emphasized that if the text proposed by the Representative of Cameroon were not incorporated into the draft Assembly Resolution, then the whole text of that Resolution would become unacceptable to the African Group, which would therefore not agree to present it to the upcoming Assembly.

69. In affirming that progress had been made, the Representative of Spain underscored that various positions had been consolidated since the Council had considered the HGCC’s draft text (cf. C-WP/14030, Appendices A and B; 199/11). Recalling the reference made by the Representative of Argentina and others to consensus, he observed that it was the golden rule of any multilateral organization. Emphasizing that it would be difficult to move forward without it, the Representative of Spain stressed the need to increase efforts to achieve consensus on the draft Assembly Resolution. Concurring that its text was not perfect and that much work remained to be done to enhance it, he indicated that he had a number of comments which he could make in that context. One such comment related to the 1 per cent threshold used in paragraph 14 ter. In sharing the concern expressed by the Representative of the Republic of Korea in that regard, the Representative of Spain underscored that his State had difficulty with the identification of that

specific percentage for a threshold. He noted that some proposed editorial changes to the Spanish version of the draft Assembly Resolution would be submitted to the Secretariat.

70. The Representative of Spain was sensitive and receptive to many of the issues raised by, inter alia, the Representatives of Brazil, China, Cuba, Peru, the Russian Federation and Argentina, issues which would need to be resolved before an overall consensus could be reached. The draft Assembly Resolution could nevertheless be presented to the Assembly. In reiterating that it constituted a well-balanced package, the Representative of Spain noted that it placed emphasis on technological and operational measures in addition to MBMs. He stressed the need to retain the development of a global MBM scheme as a priority in the draft Assembly Resolution, and to reflect that there were certain States with special needs. With all the caveats he had expressed, the Representative of Spain was prepared to support the current text of the draft Assembly Resolution, on the understanding that there would be ample opportunity at the Assembly to deliberate thereon and arrive at a consensus.

71. The Representative of Morocco endorsed the position expressed by the Representative of Cameroon on behalf of the African Group and the need to take into account the SCRC of developing States as reflected in the proposed paragraph 14 ter, which had been endorsed by the Representatives of India and the Russian Federation, inter alia. In supporting ICAO in its leadership role in all fields of international civil aviation, he agreed with the comments made by the Representative of Burkina Faso regarding the priority accorded to safety and security.

72. The Representative of the United Kingdom agreed with those previous speakers who considered that the text of the draft Assembly Resolution was well-balanced. Observing, however, that in some instances the text was not completely satisfactory to everyone, he emphasized that it was incumbent upon the Council to accept that fact and to take the draft Assembly Resolution forward. It had to do whatever was necessary in order to complete the task of presenting a single text to the upcoming Assembly. He supported the efforts of the President of the Council and the Secretary General in that regard.

73. Referring to the point raised by the Representative of India regarding paragraph 14 bis, the Representative of the United Kingdom reiterated that it would not undo the EU “stop the clock” legislation which restricted the EU ETS to intra-EU flights. He noted that the second part of that paragraph enabled the coverage of flights to take place within a group of States, which was completely aligned with the scope of the said legislation. The Representative of the United Kingdom emphasized that that approach also significantly reduced the administrative burden on the airlines concerned. It was thus beneficial for the air transport industry, as well as for the compromise approach being taken in the draft Assembly Resolution.

74. The Representative of Slovenia shared the views expressed by the Representatives of Mexico, Belgium, the United States, the United Arab Emirates, Singapore, the United Kingdom and others who had spoken in the same vein. Underscoring that the upcoming Assembly was an important milestone on the way to achieving ICAO’s goal of CNG, he emphasized the paramount importance of presenting for its consideration a well-balanced draft Assembly Resolution, namely, the one now under discussion. Noting that the air transport industry had publicly acknowledged ICAO’s leadership role in addressing the issue of international aviation and climate change, the Representative of Slovenia stressed the need to retain that status and to not lose the current momentum. He observed that, although the implementation of a global MBM scheme was just around the corner (2020 being the envisaged date), many Representatives wished to move at a faster pace to decrease CO₂ emissions from international aviation. The draft Assembly Resolution’s balanced text on an MBM framework was thus also of utmost use to them.

75. While recognizing that substantial efforts had been made to arrive at the current text of the draft Assembly Resolution, the Representative of Uganda noted that he still had many concerns with regard thereto and that many improvements could be made. Although it would be preferable to do so before submitting the draft Assembly Resolution to the upcoming Assembly, he did not know if that could be achieved. In this respect, the Representative of Uganda recalled the comments made by the Representative

of Cameroon on the issue, and the importance, of special consideration being given to the capacities of developing States. The Representatives of Brazil, India, China, the Russian Federation and others had also referred thereto. He stressed that it was important, not only for today but also for the future, to continue to pay particular attention to those ICAO Member States which needed support. It was essential to ensure that whatever action the Organization took in whatever field of international civil aviation was beneficial for all its Member States, i.e. that it resulted in a win-win situation for all of them; otherwise, it would be inconsistent with the Preamble of the Chicago Convention.

76. The Representative of Uganda noted that the African Group had decided not to express its views on the XX paragraphs as it considered them to be a work-in-progress for the Council, especially and as far as reference was made to the global MBM scheme in the draft Assembly Resolution. While the African Group still had concerns regarding paragraphs 14, 14 bis and 14 quarter, in a spirit of compromise and as a way forward for achieving consensus, it had decided that it could live with them, provided that its proposed paragraph 14 ter was accepted. The African Group hoped that some room would be found in the draft Assembly Resolution to address the specific needs of developing States.

77. Voicing objection to proposed paragraph 14 ter, which had not yet been reviewed by Representatives' national administrations, the Representative of the United States underscored that it was not a minor amendment; rather, it was one that might put at risk his State's support for all of paragraph 14 bis and all of paragraph 14 at the upcoming Assembly. He nevertheless wished the draft Assembly Resolution to be presented to the Assembly.

78. In understanding the position of the Representative of the United States, the Representative of the Russian Federation proposed the use of square brackets in the draft Assembly Resolution to highlight that there were differing views on certain provisions. He suggested that square brackets be placed around: proposed paragraph 14 ter; the text of paragraph 14 that appeared in strike-out; paragraph 14 bis; and the phrase “, while minimizing market distortion” in paragraph XX.

79. Observing that paragraph 14 bis was the greatest bone of contention, the Representative of Brazil supported placing at least that provision in square brackets, as did the Representatives of India, China, Saudi Arabia, Swaziland and Cuba. While considering that their position was meritorious, the Representative of Argentina expressed concern that such action could lead to many other provisions being placed in square brackets.

80. While the Representative of Belgium had difficulties with paragraph 14 ter in both its original and amended forms, he considered that it was very important to present a clean text to the Assembly. The Representatives of France, Germany, South Africa, the United Kingdom, Japan, Mexico and Italy also favoured submitting a clean text.

81. In light of the discussion, the President of the Council suggested, and it was agreed, that:

- a) a new second paragraph would be inserted in the executive summary of the draft Assembly working paper reading as follows: “While the Council decided to submit the proposal presented in the Appendix, there were still different views of some Council members on issues related to MBMs, in particular in paragraph 14 bis¹.” and C-MIN 199/13 would be added in the References column with a footnote indicating that the summary minutes of the present meeting are under preparation; and
- b) paragraph 14 ter¹ of the draft Assembly Resolution would be replaced with the following text proposed by the Representative of Cameroon as coordinator for the African Group:

“Resolves that States or groups of States that wish to implement new MBMs as described in paragraph 14 bis¹ above should grant exemptions for application of MBMs on routes to and from developing States whose share of international civil aviation activities is below the threshold of 1% of total revenue ton kilometers of international civil aviation activities, until the global scheme is decided;”

82. Subject to these changes, the Council approved the draft Assembly working paper and draft Assembly Resolution contained in C-WP/14053 as documentation for the 38th Session of the Assembly. It was understood that, in accordance with paragraph 81 a) above, the approved summary minutes of this meeting (C-MIN 199/13) reflecting Representatives’ comments, concerns and suggestions would be made available on the Assembly website as reference material for participants.

83. The President of the Council invited all Council Representatives to continue their informal consultations with one another and with him and the Secretary General on MBM-related issues in order to facilitate the Assembly’s consideration thereof. He expressed the hope that the Assembly’s discussions of this subject would be productive and flexible and show a spirit of cooperation with a view to achieving consensus on the draft Assembly Resolution on international aviation and climate change.

84. The meeting adjourned at 1300 hours.

— END —

¹ In the final version of the Assembly working paper (A38-WP/34), paragraphs 14 bis and 14 ter of the draft Assembly Resolution have been renumbered as paragraphs 17 and 18, respectively.