



## ASSEMBLY — 38TH SESSION

### EXECUTIVE COMMITTEE

#### Agenda Item 21: Proposal to amend Article 50 a) of the Chicago Convention so as to increase the membership of the Council to 39

#### PROPOSAL TO AMEND ARTICLE 50 a) OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION SO AS TO INCREASE THE MEMBERSHIP OF THE COUNCIL TO 39

(Presented by the Council of ICAO)

#### EXECUTIVE SUMMARY

At the 9th Meeting of its 198th Session, on 8 March 2013, the Council considered the proposal made by Saudi Arabia during the 37th Session of the Assembly to amend Article 50 a) of the Chicago Convention to increase the number of ICAO Council seats from 36 to 39 (C-WP/13971). The Council decided not to recommend an increase in the membership of the Council from 36 to 39. Historical background information regarding successive amendments to Article 50 a) of the *Convention on International Civil Aviation* (Chicago Convention) adopted by the ICAO Assembly is contained in the Appendix.

**Action:** The Assembly is invited to consider the proposal by Saudi Arabia together with the Council's comments and recommendations thereon.

<i>Strategic Objectives:</i>	Supporting Implementation Strategies – Programme Support – Legal Services and External Relations; Administration Governing Bodies – Assembly and Council Secretariat.
<i>Financial implications:</i>	Some additional resources will be expended delivering services to three more Member State delegations.
<i>References:</i>	A37-WP/333 C-WP/13971 C-DEC 198/9 Doc 7300, <i>Convention on International Civil Aviation</i> Doc 7600, <i>Standing Rules of Procedure of the Assembly of the International Civil Aviation Organization</i> Doc 9958, <i>Assembly Resolutions in Force (as of 8 October 2010)</i> Doc 9982, A37-Min P/1-9, <i>Minutes of the Plenary Meetings of the 37th Session of the Assembly</i>

## 1. BACKGROUND

1.1 At the 37th Session of the Assembly, Saudi Arabia presented A37-WP/333, entitled: *Increasing ICAO Seats to 39*, and as indicated in the minutes (Doc 9982, A37-Min.P/6) "... the Plenary took the action proposed in the executive summary and referred to the Council the proposal by Saudi Arabia to amend Article 50 a) of the Chicago Convention so as to increase the size of the membership of the Council from 36 to 39, to be handled in accordance with Operative Clause 8 of Assembly Resolution A4-3 and the procedure established in Rule 10 d) of the *Standing Rules of Procedure of the Assembly of the International Civil Aviation Organization* (Doc 7600; hereafter Standing Rules of Procedure of the Assembly)".

1.2 In its paper, Saudi Arabia stated: "In view of the ongoing developments in the aviation industry worldwide and the emergence of new regional groups, which were not present 50 years ago, as well as the changes that several parts of the world have seen, the need to have larger representation of the interests of such regions in the Council is increasing." Saudi Arabia referred in particular to "the growing traffic in certain regions of the world and the emergence of new sub-regions that are not represented in the Council," and stated further that the "increase in demand for air navigation services in the world's regions, as well the establishment of new airports and the expansion of the existing ones represent strong justification to ask for an increase of the membership of the Council."

1.3 Fifty-two States were represented at the Chicago Conference in 1944 and 38 States signed the Convention on International Civil Aviation creating ICAO and establishing the Council membership of 21. The Chicago Convention entered into force on 4 April 1947 and, from 26 at the time of entry into force of the treaty, the number of Member States of the Organization has grown to 191 in 2012. During this same period, the number of Member States on the Council increased from 21 to 36 by four successive Amendments to the Convention, in 1961, 1971, 1974, and 1990, respectively. The last of these was adopted by the Assembly during its 28th (Extraordinary) Session on 26 October 1990 and entered into force on 28 November 2002.

## 2. PROCEDURAL REQUIREMENTS RELATING TO AMENDMENTS TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

2.1 Amendments to the Convention are governed by Article 94 of the Convention, by Rule 10 d) of the Standing Rules of Procedure of the Assembly and by Assembly Resolution A4-3.

2.2 According to Resolution A4-3, an amendment of the Convention may be appropriate when any of the following tests is satisfied:

- a) when it is proved necessary by experience;
- b) when it is demonstrably desirable or useful.

2.3 As to procedure, that Resolution states that "any Contracting State wishing to propose an amendment to the Convention should submit it in writing to the Council at least six months before the opening date of the Assembly to which it is to be presented. The Council shall consider any such proposal and transmit it to the Contracting States together with its comments or recommendations thereon at least three months before the opening date of the Assembly". Here, the proposal of Saudi Arabia was formally presented in A37-WP/333.

2.4 Similarly, Rule 10 d) of the Standing Rules of Procedure of the Assembly states that "Proposals for the amendment of the Convention, together with any comments or recommendations of the

Council thereon, shall be communicated to Contracting States so as to reach them at least ninety days before the opening of the Session.”

2.5 According to Article 94 a) of the Chicago Convention, “[a]ny proposed amendment must be approved by a two-thirds vote of the Assembly and shall then come into force in respect of States which have ratified such amendment when ratified by the number of contracting States specified by the Assembly. The number so specified shall not be less than two-thirds of the total number of contracting States.” The two-third vote of the Assembly required under Article 94 a) is to be construed, in accordance with Rule 53 of the Standing Rules of Procedure of the Assembly, as two-thirds of the total number of Contracting States to the Chicago Convention represented at the Assembly and qualified to vote at the time the vote is taken; for the purpose of establishing this total, some exclusions are listed in paragraphs a), b) and c) of that Rule. Since the present number of Contracting States to the Chicago Convention is 191, the two-thirds of the total number of Contracting States to the Chicago Convention required for entry into force of an amendment is 128.

2.6 The Provisional Agenda of the Assembly, as approved by Council, is presented in Attachment A to State Letter A 38/1 – 12/65, *Invitation to attend the 38th Session of the Assembly, Montréal, 24 September to 4 October 2013*, dated 7 December 2012, including Item 21: *Proposal to amend Article 50 a) of the Chicago Convention so as to increase the membership of the Council to 39*.

### 3. **FINANCIAL IMPLICATIONS OF INCREASING THE SIZE OF THE MEMBERSHIP OF THE COUNCIL FROM 36 TO 39**

3.1 The financial impact to ICAO of increasing Council membership to 39 would not be overly significant for the Organization, as consistent with Resolution A4-1: Obligations of Council Member States, States, if elected to the Council, must “support full time representation at the Headquarters,” to include paying rent for office space furnished by the Organization. Nevertheless, the Secretariat would expend some additional time and resources supporting new resident delegations with telephone, information technology (IT) and other support, such as, for example, external relations, administrative (e.g., supplementary health insurance), security, and mail delivery services, etc. There would also be added costs associated with printing and distributing documents for 39 Council members, as opposed to 36.

### 4. **EXPERIENCE IN OTHER INTERNATIONAL ORGANIZATIONS**

4.1 Other specialized agencies of the United Nations have witnessed an increase in the membership of their respective governing bodies coinciding with increases in the total membership of the organizations. The tabulation below, based on publicly available information, shows a comparison between the total membership of those Organizations and the number of seats in their respective governing bodies as of 1 January 1990 and the present.

Organization	Member States			Governing Body		
	1/1/1990	Present	Change	1/1/1990	Present	Change
FAO	158	191	+33	49	49	0
IAEA	113	159	+46	35	35	0
ICAO	162	191	+29	33	36	+3
ILO	150	185	+35	56	56	0
IMO	133	170	+37	32	40	+8
ITU	166	193	+27	43	48	+5
UNESCO	158	195	+37	51	58	+7
UNIDO	151	172	+21	53	53	0
UPU	170	192	+22	39	41	+2
WHO	166	194	+28	32	34	+2
WIPO	126	185	+59	50	84	+34 <sup>1</sup>
WMO	160	191	+31	36	37	+1

4.2 It is noted that ICAO is the only organization of the Common System of the United Nations where its governing body, the ICAO Council, and most of its Committees, which are composed of members of the governing body, are in session most of the year. In 2012, the ICAO Council held 26 meetings and the Committees 29 meetings (Air Transport Committee: 3 meetings; Finance Committee: 11 meetings; Human Resource Committee: 3 meetings; Joint Support Committee: 2 meetings; Technical Cooperation Committee: 5 meetings; Unlawful Interference Committee: 5 meetings). No other organization of the United Nations System has a governing body in such a permanent pattern of sessions.

## 5. COUNCIL DECISION AT ITS 198TH SESSION

5.1 At its first meeting of the 198th Session of the Council on 12 February 2013, the Council Working Group on Governance and Efficiency (WGGE) reviewed C-WP/13971 – *Proposal to amend Article 50 a) of the Chicago Convention so as to increase the membership of the Council to 39*.

5.2 The Working Group noted the need and growing desire by many States to be represented on the Council but observed that increasing membership may not be the most appropriate means to address this matter. Concern was expressed that the proposal would have an impact of the efficiency of the work of the Council and would require an amendment to the Chicago Convention. It would be necessary also to decide on a split of the additional seats between the three parts. Furthermore, there would be no guarantee that the States and regional groupings that are seeking additional representation would be elected to the Council. The Working Group noted that the Council is elected by the Assembly and should be working on behalf of all Member States and represent their interests. The Working Group urged Council Representatives, in the course of their deliberations, to be mindful of the need, in the spirit of the Chicago Convention, to take into account the interests of other States in their regional groupings and all other Members States. The Working Group therefore advised that the Council decide not to recommend an increase in the membership of the Council.

5.3 The Council endorsed the comments and recommendations of the WGGE and decided not to recommend an increase in the membership of the Council from 36 to 39.

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<sup>1</sup> The World Intellectual Property Organization (WIPO) Coordination Committee is uniquely comprised of the 42 ordinary members of the Executive Committee of the Paris Union, which are elected by the Assembly of the Paris Union; the 40 ordinary members of the Executive Committee of the Berne Union, which are elected by the Assembly of the Berne Union; Switzerland; and two ad hoc members designated by the WIPO Conference.

## APPENDIX

### HISTORICAL BACKGROUND ON PAST AMENDMENTS TO ARTICLE 50 a)

#### 1. **AMENDMENT TO ARTICLE 50 a) BY THE 13TH (EXTRAORDINARY) SESSION OF THE ASSEMBLY (MONTREAL, 19-21 JUNE 1961)**

1.1 In March 1960, the Council examined a Secretariat paper on the desirability of an increase in the size of the Council pursuant to Resolution A12-2 which directed the Council to consider whether an increase in the size of the Council was desirable and, if so, what number would be appropriate. The Council recommended an increase in its membership to 27. The matter was considered by the 13th (Extraordinary) Session of the Assembly and the principal arguments advanced in favour of an enlargement of the Council were, inter alia:

- a) the considerable increase in the membership of ICAO (eighty-four) in contrast to the number of States represented at the Chicago Conference (fifty-two);
- b) an increase in size would be conducive to better geographical representation, particularly of regions that had not so far been adequately represented in the Council; and
- c) all the specialized agencies in relationship with the United Nations, except ICAO, had increased the membership of their executive bodies.

1.2 As a result of its deliberations, the Extraordinary Session of the Assembly decided to increase the membership of the Council from 21 to 27 and Resolution A13-1 was adopted accordingly. At that time, ICAO membership was 87 and, when the Amendment entered into force on 17 July 1962, ICAO had 98 Member States.

#### 2. **AMENDMENT TO ARTICLE 50 a) BY THE 17TH (A) (EXTRAORDINARY) SESSION OF THE ASSEMBLY (NEW YORK, 11-12 MARCH 1971)**

2.1 In November 1970 the Council, when preparing the Provisional Agenda for the 18th Session of the Assembly (Vienna, June/July 1971) considered, on the basis of a proposal made by one State (Yugoslavia), whether it was desirable to add an item to the Provisional Agenda aimed at enlarging the size of the Council. On 2 February 1971, the Council decided to recommend to the Assembly that the size of the Council should be increased from 27 to 30 members. In view of the fact that it was not deemed desirable to discuss an increase in the size of the Council at an Assembly Session where the election of the Council was to take place, the Council decided to convene an Extraordinary Session of the Assembly; on 3 February 1971, the Council adopted a Resolution to that effect which, inter alia, recommended that the Assembly suspend Rule 10 d) of the Standing Rules of Procedure of the Assembly.

2.2 The proposed amendment to Article 50 a) was considered during the 17th (A) (Extraordinary) Session of the Assembly, and the prevailing opinion was that the increased ICAO membership should be reflected in an increase of the members of the Council and due regard should be paid to equitable geographical representation.

2.3 As a result of its deliberations, the Extraordinary Session of the Assembly decided to increase the size of the Council from 27 to 30 and Resolution A17-A-1 was adopted accordingly. At that time, ICAO membership was 120, and when the Amendment entered into force on 16 January 1973, ICAO then had 125 Member States.

**3. AMENDMENT TO ARTICLE 50 a) BY THE 21ST  
SESSION OF THE ASSEMBLY (MONTRÉAL,  
24 SEPTEMBER TO 15 OCTOBER 1974)**

3.1 In March 1974, one State (Belgium) presented a proposal for the amendment of Article 50 a) to increase the membership of the Council from 30 to 33. The view was expressed in the proposal that the growing challenge of technical progress and the universal character attained by ICAO, resulting in a desire on the part of more States to participate in the Council's responsibilities, militated in favour of the expansion of the Council.

3.2 In May 1974, the Council noted the proposal of Belgium and decided not to make any comments in transmitting it to Member States. The matter was considered during the 21st Session of the Assembly and, in support of the proposal, the following reasons were advanced:

- a) the necessity of giving developing States better representation on the Council;
- b) the necessity of assuring the Council of the participation of States, small and large, that were concerned with the major problems of air transport and air navigation and keeping their technical and financial support; and
- c) the necessity of having the increase correspond as closely as possible to the real need to preserve the efficiency of the Council.

3.3 As a result of its deliberations, the Assembly decided to increase the size of the Council from 30 to 33 and Resolution A21-2 was adopted accordingly; at that time, the ICAO membership was 129. The Amendment entered into force on 15 February 1980 and ICAO then had 156 member States.

**4. AMENDMENT TO ARTICLE 50 a) BY THE 28TH  
(EXTRAORDINARY) SESSION OF THE ASSEMBLY  
(MONTRÉAL, 22-26 OCTOBER 1990)**

4.1 On 27 July 1989, a letter dated 7 July 1989 was received from the Government of Côte d'Ivoire requesting the inclusion in the Provisional Agenda of the 27th Session of the Assembly of an item concerning an increase in the Member States of the Council from 33 to 36.

4.2 The proposal of Côte d'Ivoire was considered during the 27th Session of the Assembly in 1989. In WP/193, presented by forty States, the view was expressed that the growing challenge offered by technological innovations and changing commercial strategies in international air transport and the consequent desire of a number of States, particularly developing States, to assume their responsibilities by participating in the work of the Council, favoured the increase in the size of that body from 33 to at least 36.

4.3 In view of Resolution A4-3, Resolving Clause 8, regarding the submission of a proposal for amending the Convention, the Assembly agreed to refer to the Council the question of increase in the number of members of the Council, in order that the Council should study the matter with a view to convening an Extraordinary Session of the Assembly in 1990 to consider this question.

4.4 On 25 October 1990, during the 28th (Extraordinary) Session of the Assembly, Resolution A28-1 was adopted, approving the proposed amendment to Article 50 a) of the Chicago Convention providing for three additional seats in the Council, and, accordingly, the membership of the Council was increased from 33 to 36.

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