



**WORKING PAPER**

**ASSEMBLY — 39TH SESSION**

**EXECUTIVE COMMITTEE**

**Agenda Item 12: Proposal to amend Article 50 a) of the Chicago Convention so as to increase the membership of the Council**

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

(Presented by the Council of ICAO)

**EXECUTIVE SUMMARY**

At the ninth Meeting of its 206th Session, on 20 November 2015, the Council considered a proposal made by Portugal and Saudi Arabia to amend Article 50 a) of the *Convention on International Civil Aviation* to increase the number of ICAO Council seats from 36 to 39 (C-WP/14345). The Council agreed, in principle, that the size of the Council should be increased. At the thirteenth meeting of its 207th Session on 11 March 2016, the Council decided to recommend to the Assembly that the membership of the Council be increased from 36 to 40 members.

**Action:** The Assembly is invited to consider the proposal together with the Council's comments and recommendations thereon, and to approve the two draft Resolutions setting out an amendment to Article 50 a) of the Convention increasing the membership of the Council to 40 (Appendix E), and urging Contracting States to ratify such amendment, so that it can come into force as soon as possible (Appendix F).

<i>Strategic Objectives:</i>	All Strategic Objectives and all Supporting Implementation Strategies.
<i>Financial implications:</i>	Some additional resources will be expended delivering services to additional Member State delegations.
<i>References:</i>	C-WP/14345 C-DEC 206/9 C-DEC 207/13 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 10022, <i>Assembly Resolutions in Force (as of 4 October 2013)</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 ninth Meeting of the 206th Session of the Council, Portugal and Saudi Arabia presented C-WP/14345, entitled: *Proposal to Increase the Size of the Council from 36 to 39 seats by Amending Article 50 a) of the Convention*, and as indicated in the summary of the Council's decision (C-DEC 206/9), the Council "... agreed, in principle, that the size of the Council be increased in view of the increased membership of ICAO, the expansion and increasing importance of international air transport for the national economies in many countries, and the need to ensure adequate representation of ICAO Member States thereon".

1.2 In C-WP/14345, Portugal and Saudi Arabia stated: "Since the entry into force of the *Convention on International Civil Aviation* on 4 April 1947, the size of the Council of ICAO has been increased four times in accordance with the ever increasing membership. The last increase was decided 25 years ago in October 1990, when the ICAO membership stood at 162 States. Since that time, the size, structure and importance of international air transport for the national economies has significantly changed, and civil aviation has become a major driver of economic development and tourism for many countries. As a result, more States than before are prepared to take an active role in decisions affecting the global air transport system as well as their national economies. It is advisable for the Organization to bring on board significant new players to enable broad consensus on future challenges. Given that the ICAO membership now stands at 191 States, in order to ensure adequate representation of the member States it would be desirable and useful to increase the size of the Council from 36 to 39 seats." Additionally, C-WP/14345 also stated that the growth of civil aviation has led to creation of new sub-regions and hubs not represented in the Council, and that forecasts for 2030 show that air transport will continue to grow and so States concerned will play a greater role in the contribution to the provision of facilities for international civil air navigation. It was also noted that ICAO Council with 36 seats is one of the smallest governing bodies in the UN System, and that the financial impact of increasing Council seats from 36 to 39 would be insignificant. Excerpts from C-WP/14345 setting forth the full justification offered by the presenting States' for expanding the Council are attached hereto as **Appendix A**.

1.3 Fifty-two States were represented at the Chicago Conference in 1944 and 38 States signed the Convention on International Civil Aviation (Chicago Convention) creating ICAO and establishing the Council with a membership of 21. The Chicago Convention entered into force on 4 April 1947 with ICAO having 26 Member States; in 2016, the number of Member States of the Organization has grown to 191. 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. Historical background information regarding the successive amendments to Article 50 a) of the Convention adopted by the ICAO Assembly is contained in **Appendix B**.

## 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; and
- 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 Portugal and Saudi Arabia was formally presented in C-WP/14345.

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 SA 39/1 – 15/86, *Invitation to attend the 39th Session of the Assembly, Montréal, 27 September to 7 October 2016*, dated 11 December 2015, including Item 12: *Proposal to amend Article 50 a) of the Chicago Convention so as to increase the membership of the Council*.

### **3. COUNCIL DELIBERATIONS AND DECISIONS AT ITS 206TH AND 207TH SESSIONS**

3.1 As stated previously, the Council considered C-WP/14345 at the ninth Meeting of its 206th Session. It was recalled that the 38th Session of the Assembly (Montréal, 24 September – 4 October 2013) had considered an earlier proposal by Saudi Arabia to increase the size of the Council from 36 to 39 but had noted that there was no marked support for the proposal at that time, although there was some support for reconsidering it in the future (cf. A38-WPs/17, /381, and /416).

3.2 The view was expressed that certain regions were under-represented on the Council. Support was further expressed for “greater regional representation” and ensuring that the envisaged new Council seats would be fairly distributed in accordance with the principle of equitable geographical representation (EGR). It was proffered that the Council should express the view to the Assembly that the latter make every effort to abide by the principle of EGR in electing States to fill the additional Council seats; however, it was also noted that specific regional representation was not referred to in Article 50 a) of the Chicago Convention, and that recommendations to the Assembly on the expansion of the Council needed to be entirely consistent with Article 50 a).

3.3 In this regard, it was stated that the growth of international air transport and its forecasted continued growth necessitated broader representation on the Council. The increasing growth of air transport in each region was emphasized, as well as the point that the proposal to expand the Council at least partially stemmed from the reality that international air transport was continuously growing, necessitating a greater number of Council seats.

3.4 The point was made that regional rotation groups were a valid mechanism to afford States greater opportunity to participate in the Council, and in reiterating the importance of regional rotation groups, it was further noted that if additional Council seats were eventually filled by States that were part of such groups, then over time a larger number of States would be able to join the Council.

3.5 It was stated that enlarging the Council would enable it to contribute even more efficiently and effectively to ICAO. It was also stated that there was a need to strike a balance between any proposed expansion and efficiency.

3.6 The Council “...agreed, in principle, that the size of the Council be increased in view of the increased membership of ICAO, the expansion and increasing importance of international air transport for the national economies in many countries, and the need to ensure adequate representation of ICAO Member States thereon.” The Council further encouraged States to ratify the amendment to the Chicago Convention as soon as possible following its envisaged adoption by the Assembly in order for its membership to be increased as early as feasible. The record of the decision the Council on C-WP/14345 (paragraphs 8 to 17 of C-DEC 206/9) is contained in **Appendix C**.

3.7 At the thirteenth meeting of its 207th Session on 11 March 2016, the Council decided, by consensus, to recommend to the Assembly that the membership of the Council be increased from 36 to 40 members. The record of the decision of the Council is contained in **Appendix D**.

3.8 Two draft Assembly resolutions approving the amendment to Article 50 and urging its ratification are contained in **Appendices E** and **F**, respectively. Subject to the envisaged adoption by the Assembly of those resolutions, a draft Protocol of Amendment to Article 50 of the Convention is set out in **Appendix G**.

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## APPENDIX A

### **EXCERPTS FROM COUNCIL WORKING PAPER C-WP/14345: PROPOSAL TO INCREASE THE SIZE OF THE COUNCIL FROM 36 TO 39 SEATS BY AMENDING ARTICLE 50 a) OF THE CONVENTION**

1. The justifications offered by Portugal and Saudi Arabia in C-WP/14345 for increasing the size of the Council are as follows:

#### **“1. INTRODUCTION**

1.1 The Convention on International Civil Aviation (hereinafter ‘the Convention’) entered into force on 4 April 1947 with initially 26 States Parties. Since then, the number of Member States of the Organization has grown to 191 and the size of the Council was increased from 21 to 36 seats in four successive steps in 1961, 1971, 1974, and 1990, respectively. The last of these increases was adopted by the Assembly on 26 October 1990 during its 28th (Extraordinary) Session, which entered into force on 28 November 2002.

1.2 At the 37th Session of the Assembly in 2010, Saudi Arabia presented a working paper entitled: Increasing ICAO Council Seats to 39 (A37-WP/333 refers), which advocated an increase to 39 seats and 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’. It stated 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.’

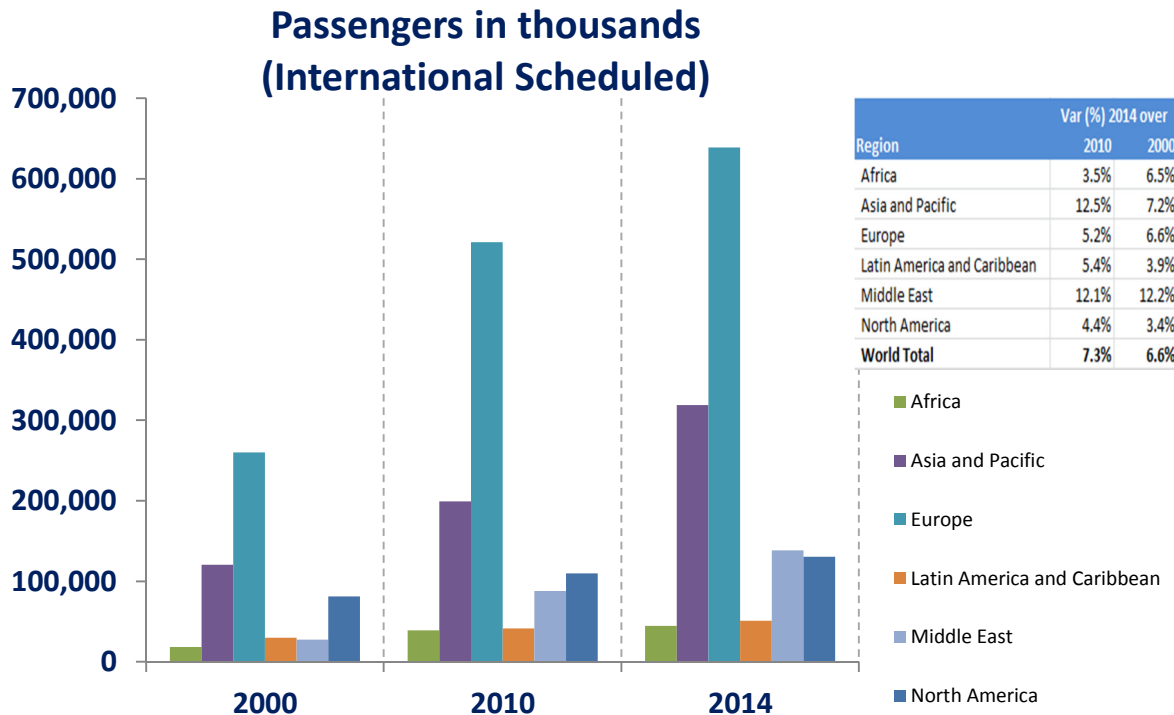
1.3 The Plenary referred the proposal to the Council, which discussed it during its 198th Session on the basis of C-WP/13971 and decided not to recommend at this time an increase in the membership of the Council (C-DEC 198/9 refers). It was considered that the increase would have an impact on the efficiency of the work of the Council and it would be necessary to decide on a split of the additional seats between the three groups. Consequently, the following 38th Assembly noted that there was no marked support for the proposal to increase membership in the Council at that time, although there was some support for reconsidering it in the future (A38-WP/17, A38-WP/381 and A38-WP/416 refer).

#### **2. DEVELOPMENTS SINCE 1990**

2.1 The last increase of the seats of the Council was decided 25 years ago in October 1990, when the ICAO membership stood at 162 States. At that time, the proposal to increase the seats of the Council from 33 to 36 was presented by forty developing States from Africa, making the point that a number of States, particularly developing States, had a desire to assume their responsibilities by participating in the work of the Council in view of the growing challenge

offered by technological innovations and changing commercial strategies in international air transport (A29-WP/193 refers).

2.2 Since 1990, the size, structure and importance of international air transport for the national economies of ICAO Member States has significantly changed. Liberalized bilateral agreements, in particular Open Skies agreements, have been implemented since 1992 and have opened up a large number of new routes and new gateways, have increased connectivity worldwide, and have spurred air transport growth. Low cost Carriers (LCC's) have been established in many countries during the same period and are carrying a rapidly increasing part of domestic and international traffic. International civil aviation has become a major driver of economic development and tourism for many countries. Similarly, the technological implications of civil aviation development play an increasingly important role for States and their national economies.



Note: Air Traffic of Russian Federation is allocated to Europe. It constitutes 6.8% of international scheduled air traffic.  
Source: Table 4 of ICAO Annual Report of the Council

**Table 1 – International Scheduled Air Traffic by Region**

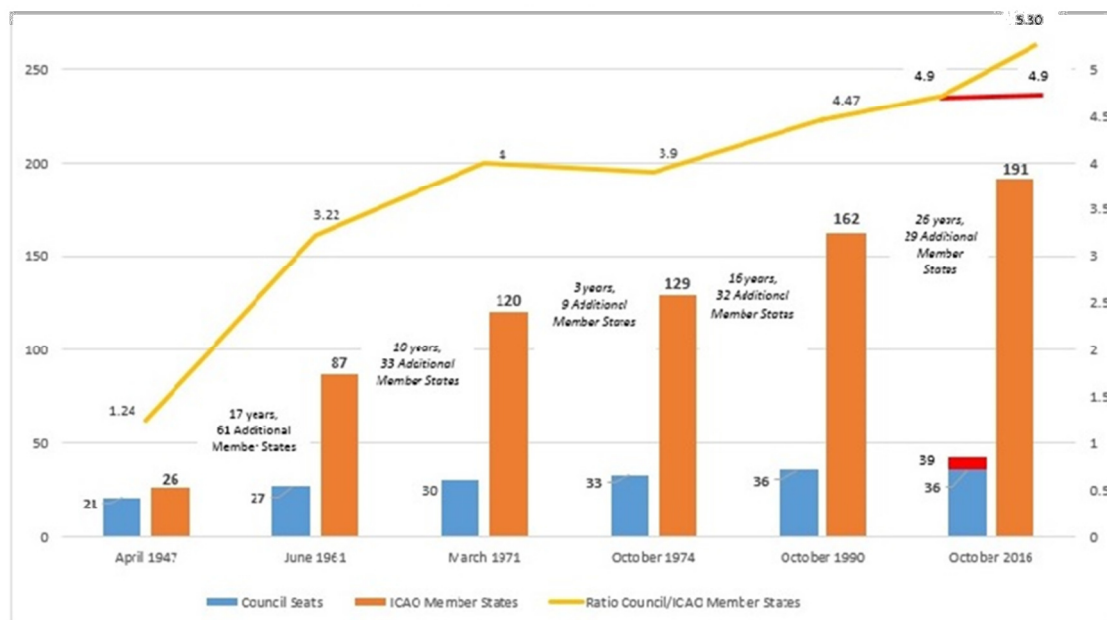
2.3 Civil aviation has a significant multiplier effect on the economy, generating some US\$ 539 billion of GDP worldwide directly. It is estimated that 8.4 million people work directly in the air transport industry, with a further 48 million people employed in related tourism

industries. There is also a significant multiplier effect: Every 100 US\$ of air transport revenue produces an estimated 325 US\$ in additional demand in related tourism or other industries<sup>1</sup>.

2.4 As a result, more States than before are prepared to take an active role in decisions affecting the global air transport system and also directly affecting their national economies, and wish to assume their responsibility by participating in the work of the Council.

## 2.5 PRESENT SITUATION IN ICAO

Since the last increase of Council seats decided in 1990, an additional 29 Member States have joined the Organization, representing a 17.9 % increase in ICAO membership. An increase of the Council by 3 additional seats from 36 to 39 would represent a mere 8.3 % increase of Council membership.

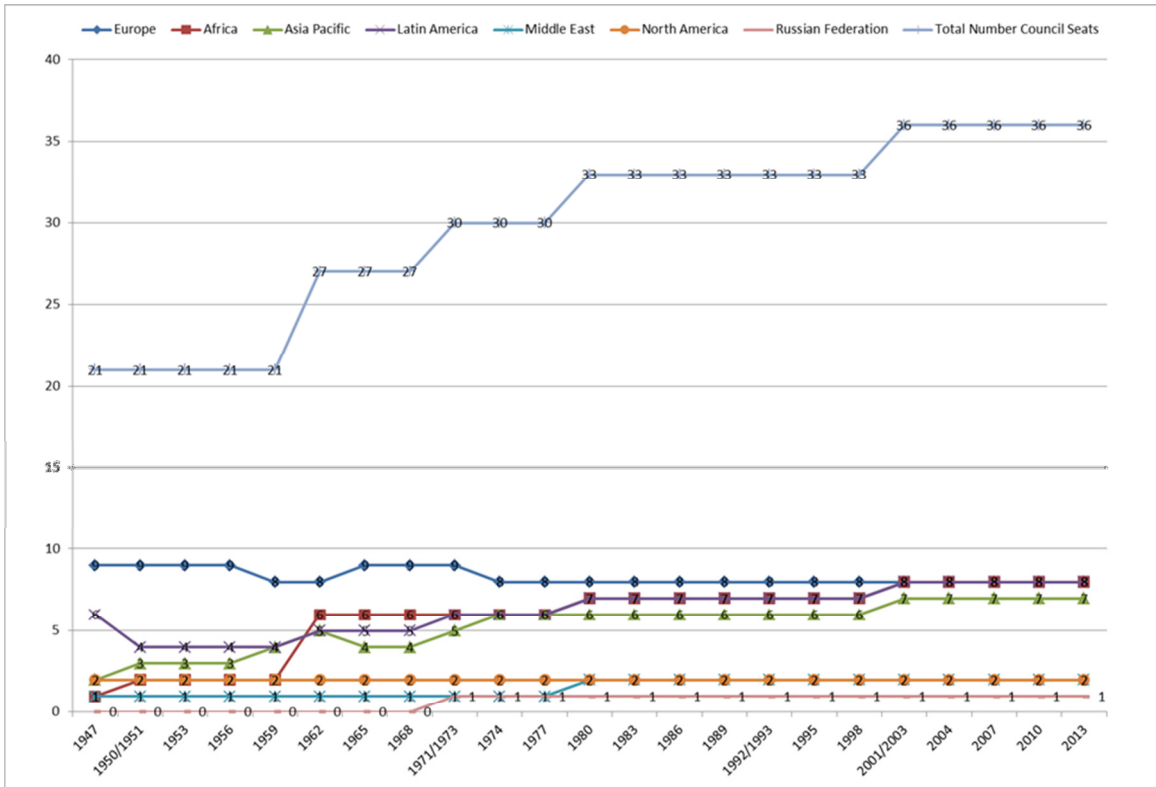


**Table 2. Council Size Statistics**

2.6 Article 50 b) of the Convention establishes the principle of ‘adequate representation’ of Member States in the Council. It lists the three groups of States with regard to which this principle should apply, including States of chief importance in air transport (group 1), States which make largest contribution to the provision of facilities for international civil air navigation (group 2) and ‘the States not otherwise included whose designation will insure that all the major geographic areas of the world are represented on the Council.’ (group 3) Clearly, the principle of adequate representation is a general principle which calls for review from time to time by the two

<sup>1</sup> UNWTO: *Tourism and Air Transport Policies*, 20th Session of UNWTO General Assembly – Background Paper for the General Debate; ICAO Circular 292-AT/124, *Economic Contribution of Civil Aviation* (2005).

governing bodies of ICAO to ensure that the Council, in terms of its size, composition and membership, will adequately represent the total membership of ICAO.



Source: A38-WP/2-P/2

**Table 3. Total number of seats on the Council**

2.7 The last increase was decided 25 years ago in October 1990, when the ICAO membership stood at 162 States. Since then, 29 additional States have joined the Organization, and the size, structure and importance of international air transport for the national economies has significantly grown with some marked differences between the regions. A number of new players with significant air transport activities and related services have emerged. From the viewpoint of ICAO, it would be advisable to bring them on board in order to be able to reach broad consensus in the Council on future issues and challenges.

2.8 Nevertheless, increasing the size of the Council should be viewed as an exceptional remedy used in order to ensure adequate representation on that body. To this end, new representation on the Council through rotation groups is encouraged.

2.9 ICAO is not the only UN specialized agency which has experienced a significant increase in its membership during the period mentioned, as shown in para. 3 below.

### 3. COMPARISON WITH OTHER UN ORGANIZATIONS

3.1 With reference to the successive increases mentioned in 1.1 above, other specialized agencies of the United Nations have witnessed a similar growth in the membership of their

respective governing bodies in line with growth in the total membership of the organizations. The tabulation which was set out in C-WP/13971 is reproduced hereafter which shows a useful comparison between the total membership of those Organizations and the number of seats in their respective governing bodies from January 1990 to January 2013:

Organization	Member States			Governing Body		
	1/1/1990	1/1/2013	Change	1/1/1990	1/1/2013	Change
FAO	158	191	+33	49	49	0
IAEA	113	158	+45	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	174	+23	53	53	0
UPU	170	192	+22	39	40	+1
WHO	166	194	+28	32	34	+2
WIPO	126	185	+59	50	83	+33 <sup>2</sup>
WMO	160	190	+30	36	37	+1

**Table 4. Comparison with other UN Organizations**

3.2 It is noted that all of the UN Specialized Agencies witnessed a strong increase in membership during this 23 year period, and that all but four also increased the size of their governing body. The middle column on the right hand side shows the size of the governing bodies in all the UN Specialized Agencies, while the right hand column reflects the respective increase of seats since 1990.

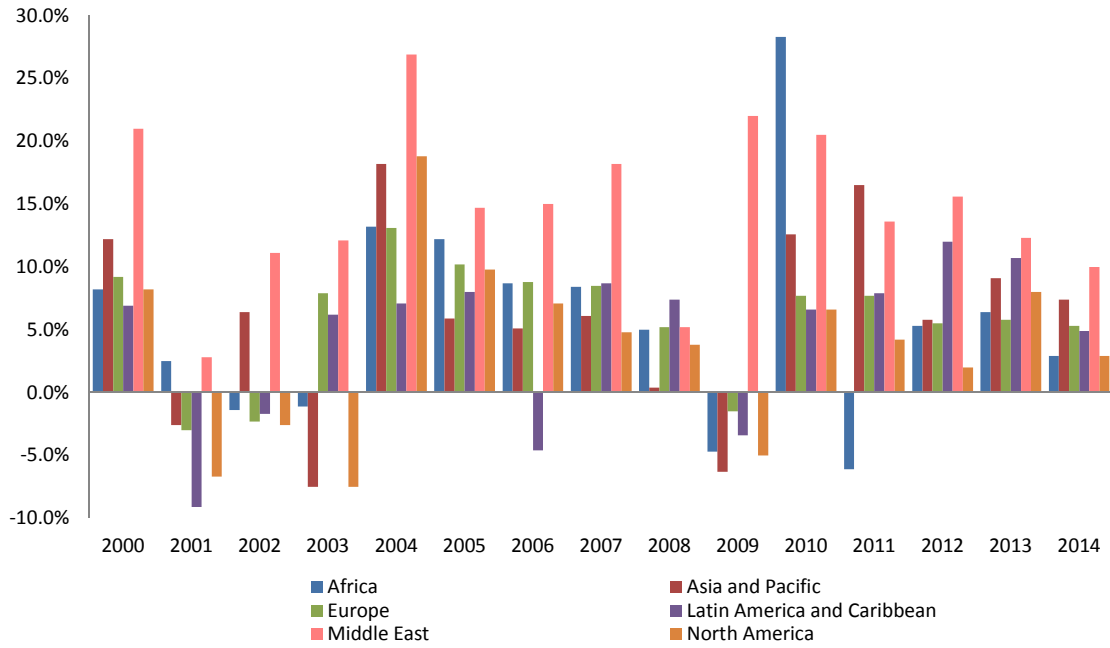
3.3 It demonstrates that the ICAO Council with 36 seats is one of the smallest governing bodies in the UN System, only WHO with 34 seats and IAEA with 35 seats having a smaller council. It should be noted also that ICAO is the only organization of the Common System of the United Nations with a resident Council.

#### 4. GROWTH OF THE WORLD AIR TRANSPORT AND DEVELOPMENT OF THE AIR NAVIGATION FACILITIES

4.1 Air transport services have grown very rapidly in many States and regions:

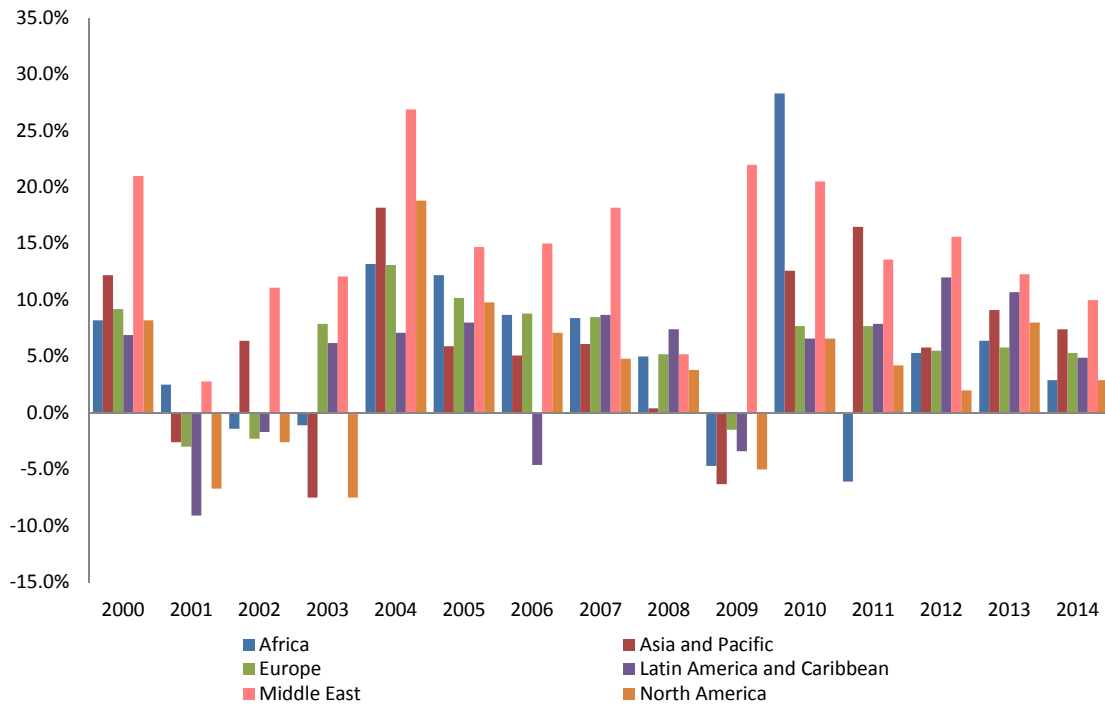
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<sup>2</sup> The World Intellectual Property Organization (WIPO) Coordination Committee is uniquely comprised of the 41 ordinary members of the Executive Committee of the Paris Union, which are elected by the Assembly of the Paris Union; the 39 ordinary 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.



Source: Annual Report of the Council (years 2000 to 2014)

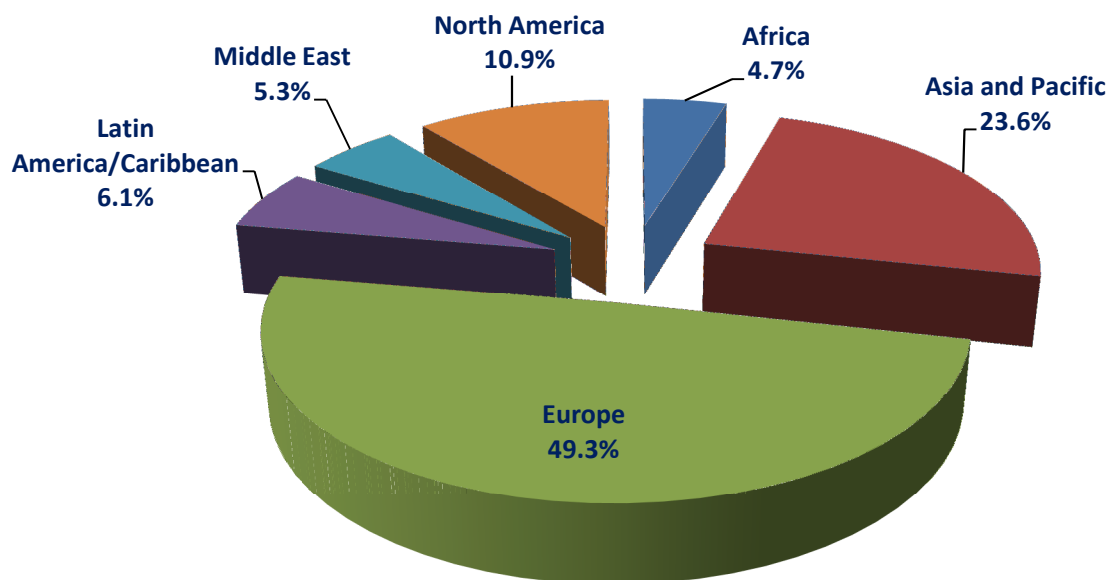
**Table 5. The International RPK Growth since 2000**



Source: Annual Report of the Council (years 2000 to 2014)

**Table 6. The International Air Traffic Movement since 2000**

4.2 This resulted in developing air navigation plans/systems/facilities in these States to cope with this rapid growth.



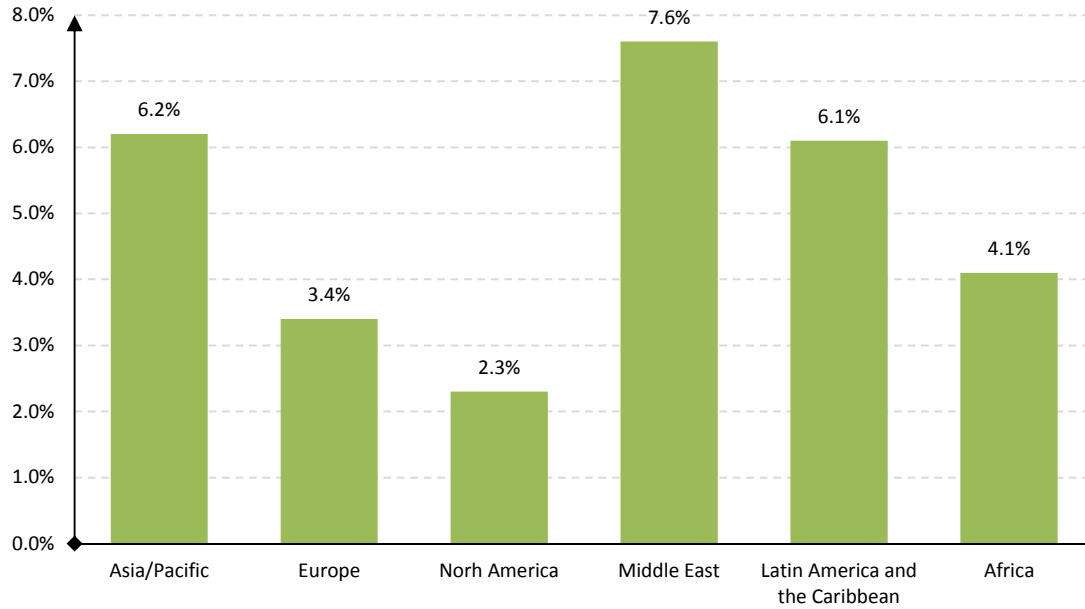
Source: ICAO FIR data and estimates

**Table 7. Traffic Coverage in FIR's of ICAO Regions  
(Scheduled international flights)**

*Notes:*

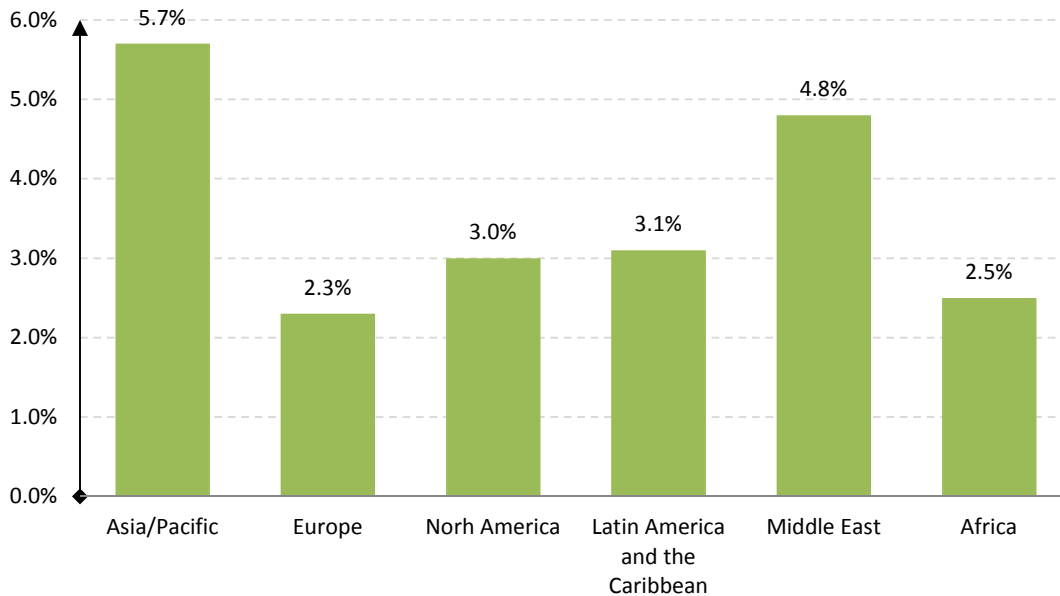
1. Data taken from operations of 2010 and plotted using the Great circle Distance.
2. Total distance of flight i.e. origin destination distance is allocated across the FIR's.
3. The coverage is for an estimated 90% of international scheduled traffic and includes overflights but excluding the 10% overflights covered by Oceanic FIR's.
4. FIR's have been mapped to the State and the Region. The regional grouping is indicated in the pie chart above.
5. The percentages of the regions is not expected to change significantly even if 2014 operations are taken in place of 2010.
6. These results were also presented to the Council in the HGCC meeting in March 2013 vide an IP and a PowerPoint presentation.
7. Air Traffic of Russian Federation is allocated to Europe. It constitutes 6.8% of international scheduled air traffic.

4.3 In addition air transport will continue growing as shown by the forecasts for 2030. The concerned States will play a greater role in the contribution to the provision of facilities for international civil air navigation. This growth has led to the creation of new sub-regions and hubs that are not represented in the Council.



Source: Annual Report of the Council (years 2000 to 2014)

**Table 8. Average Annual Growth Rate Forecast  
 (passenger traffic) 2030 vs 2010**



Source: Annual Report of the Council (years 2000 to 2014)

**Table 9. Average Annual Growth Rate Forecast  
 (passenger aircraft movements): 2030 vs 2010**

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## 6. FINANCIAL IMPLICATIONS

6.1 The financial impact of increasing Council seats from 36 to 39 would be insignificant for ICAO. The main impact will be for the three additional States elected to the Council. In the Council chamber, arrangements for three additional Council members could be accommodated without any significant changes.”

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## APPENDIX B

### 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. The Amendment entered into force on 28 November 2002 and ICAO then had 188 Member States.

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## APPENDIX C

### RECORD OF THE DECISION OF THE COUNCIL AT ITS 206TH SESSION

The proposal made by Portugal and Saudi Arabia to amend Article 50 a) of the Convention, so as to increase the size of the Council (C-WP/14345), was considered in concert with a proposal made by a number of States to amend Article 56 of the Convention, so as to increase the membership of the Air Navigation Commission (ANC) (C-WP/14348). The decisions of the Council at its 206th Session with regard to both of these proposals, set out in paragraphs 8 to 17 of C/DEC 206/9, are as follows:

“8. The Council considered these two related subjects concurrently on the basis of: C-WP/14345 presented by Portugal and Saudi Arabia, which set forth a proposal to increase the size of the Council from 36 to 39 seats by amending Article 50 a) of the *Convention on International Civil Aviation* (Chicago Convention, 1944); and C-WP/14348 presented by 15 co-sponsors [Bolivia (Plurinational State of), Burkina Faso, Cameroon, Chile, the Dominican Republic, Egypt, India, Kenya, Libya, Nicaragua, Nigeria, Saudi Arabia, the United Arab Emirates, the United Republic of Tanzania, and Venezuela (Bolivarian Republic of)], which set forth a proposal to increase the size of the Air Navigation Commission (ANC) from 19 Members to 23 by amending Article 56 of the said Chicago Convention.

9. Both papers were presented in accordance with Resolving Clause 8 of Assembly Resolution A4-3, which specified ‘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.’ It was the co-sponsors’ intention to have their proposals presented to the upcoming 39th Session of the Assembly (Montréal, 27 September–7 October 2016).

10. It was recalled, in this context, that the 38th Session of the Assembly (Montréal, 24 September–4 October 2013) had considered an earlier proposal by Saudi Arabia to increase the size of the Council from 36 to 39 but had noted that there was no marked support for the proposal at that time, although there was some support for reconsidering it in the future (cf. A38-WPs/17, /381 and /416).

11. It was further recalled that, in accordance with Resolving Clause 1 of Assembly Resolution A4-3, an amendment to the Chicago Convention ‘may be appropriate when either or both of the following tests is satisfied: i) when it is proved necessary by experience; ii) when it is demonstrably desirable or useful’. The co-sponsors of the two papers affirmed that their proposed amendments to Article 50 a) and Article 56 of the Chicago Convention satisfied those tests.

12. During the ensuing discussion, it was highlighted: that Council Representatives worked on behalf of all ICAO Member States and not solely on behalf of their own States or the States in their regional rotation groups; and that Members of the ANC, although nominated by specific States, did not represent the interests of any particular State or region but worked in the interest of the entire international civil aviation community.

13. The President of the Council observed, from the discussion, that the majority of Representatives were in favour of increasing the size of both the Council and the ANC. Only one Representative was opposed to increasing the size of both bodies, while other Representatives had supported their enlargement, with some caveats. He further noted that the majority of Representatives were also in favour of taking more time to consider the number of seats by which the size of the Council and the ANC should be increased. The President of the Council emphasized that, regardless of whether the ANC was enlarged or not, the qualifications and expertise required of Commissioners should not be diluted. In accordance with Article 56 of the Chicago Convention, individuals nominated to the ANC should have 'suitable qualifications and experience in the science and practice of aeronautics'. It was the Council's responsibility to ensure that such individuals met the established criteria before appointing them as Members of the ANC. The President of the Council underscored that all States could participate in the work of the Council and the ANC through ICAO's State letter process and attendance at the Organization's various meetings, including its high-level conferences and Divisional meetings. Furthermore, they could support the work of the ANC by taking part in its various panels and study groups.

14. The President of the Council also noted that the majority of Representatives was clearly not in favour of fast-tracking the entry into force of either proposed amendment to the Chicago Convention and considered that it was necessary to respect the latter's provisions, in particular, Article 94, according to which the number of ratifications required for the entry into force of any proposed amendment shall not be less than two-thirds of the total number of Contracting States.

15. In then taking the action proposed in the executive summaries of C-WP/14345 and C-WP/14348, as amended by the President of the Council in light of the discussion, the Council:

- a) agreed, in principle, that the size of the Council be increased in view of the increased membership of ICAO, the expansion and increasing importance of international air transport for the national economies in many countries, and the need to ensure adequate representation of ICAO Member States thereon;
- b) agreed, in principle, that the size of the ANC be increased in view of the increased membership of ICAO, and the need to draw on the expertise and experience from diverse operational skills and knowledge;
- c) agreed to further consider and define the size of the increase of the Council and the ANC at the next (207th) session;
- d) requested the Secretary General to submit, for its consideration and approval at that time: a draft Assembly working paper incorporating the comments and views of the Council on the proposal to increase the size of the Council set forth in C-WP/14345, together with a draft Protocol of Amendment relating to Article 50 a) of the Chicago Convention; and a draft Assembly working paper incorporating the comments and views of the Council on the proposal to increase the size of the ANC set forth in C-WP/14348, together with a draft Protocol of Amendment relating to Article 56 of the Chicago Convention;

- e) encouraged States to ratify the said two Protocols of Amendment as soon as possible following their envisaged adoption by the Assembly in order for the increases in the size of the Council and the ANC to be enforced as early as feasible; and
- f) requested the Secretariat to circulate to Representatives the background information it had provided orally on the historical consideration by the Organization of the issue of accelerating the entry into force of Protocols of Amendment of the Chicago Convention.

16. The Secretariat was requested to take into account, in preparing the Assembly working papers referred to in sub-paragraph d) above, that the majority of Representatives supported increasing the size of both the Council and the ANC, as well as the issues raised during the discussion regarding: equitable geographical representation on both bodies; the increasing growth in air transport in each region; giving preference to the use of regional rotation groups as a way to ensure future direct and indirect participation by many more States in the work of the Council and the ANC and thus stemming future requests to enlarge those bodies; the need to ensure efficiency in both the Council and the ANC; and logistics, including how to physically accommodate the envisaged increased number of Representatives and Commissioners in the existing Council and ANC Chambers. It was noted that the Secretariat could consult with the Delegation of Canada, the host State, regarding the latter issue.

17. Representatives and the various Council regional groups were encouraged to consult among themselves regarding the size of the increase of the Council and the ANC during the recess to facilitate discussions thereon during the upcoming session.”

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## APPENDIX D

### RECORD OF THE DECISION OF THE COUNCIL AT ITS 207th SESSION

The proposal to amend Article 50 a) of the Convention, so as to increase the size of the Council, was considered in concert with the proposal to amend Article 56 of the Convention, so as to increase the membership of the ANC. The decisions of the Council at its 207th Session with regard to both of these proposals, set out in paragraphs 14 to 21 of C/DEC 207/13, are as follows:

“14. The Council resumed (207/7 and 207/12) and completed consideration of these two items together. It was recalled that both these items were being presented in response to a request from the Council (C-DEC 206/9 refers) during which the Council agreed, in principle, that the size of both the Council and the ANC be increased, but that a determination on the respective size of the increase for the two bodies would occur during the current session.

15. It was also recalled that during the discussion on these items that took place at the Seventh Meeting of this session (207/7), the Council had agreed to defer further consideration of the items until a subsequent meeting in the current session so that additional consultations could be undertaken among Representatives with the aim of attempting to achieve a consensus position in the Council as to the respective size of the increase for both the Council and the ANC. It was further recalled that at the Twelfth Meeting of this session (207/12), Representatives had indicated that these discussions were still ongoing and that therefore, further consideration on the items should be deferred until this, the final meeting of the current session.

16. In summarizing the conclusion of the consultation process that had been undertaken among Representatives in the intervening period between meetings of the Council, the Representative of the United States informed that in an effort to preserve the principle of action by consensus at the ICAO governing bodies, agreement had been reached among Representatives to provide for an increase in the size of the Council by an additional four seats and an increase in the size of the ANC by an additional two seats, as well as a comprehensive review of procedures related to the nomination process and selection criteria of the membership of the ANC taking into account the provisions in Article 56 of the Convention and Assembly Resolution A38-13.

17. Accordingly, in relation to the draft Assembly working paper concerning a proposal to amend Article 50 a) of the *Convention on International Civil Aviation Organization* so as to increase the membership of the Council (C-WP/14358), the Council decided to recommend to the Assembly that the size of the Council be increased by four seats. The Council also approved the draft Assembly working paper attached to C-WP/14358, for transmission to Member States as documentation for the 39th Session of the Assembly. It was understood that the text of the working paper would be reviewed and updated so as to take account of the discussions that had been undertaken by the Council.

18. Likewise, in relation to the draft Assembly working paper concerning a proposal to amend Article 56 of the *Convention on International Civil Aviation Organization* so as to increase the membership of the ANC (C-WP/14359), the Council decided to recommend to the Assembly that the size of the ANC be increased by two seats. The Council also approved the draft Assembly working paper attached to C-WP/14359, for transmission to Member States as documentation for the 39th Session of the Assembly. It was understood that the text of the working paper would be reviewed and updated so as to take account of the discussions that been undertaken by the Council.

19. In relation to the review and update of both draft Assembly working papers as indicated in the two preceding paragraphs, it was noted that this exercise would be undertaken by the Secretariat under the guidance of the President of the Council, who on behalf of the Council, would seek to ensure that the said update would provide delegates to the Assembly with an adequate summary of the points of view that had been aired in the Council in the course of the deliberations on these two items.

20. The Council requested the Working Group on Governance and Efficiency (WGGE) to undertake a comprehensive review of procedures related to the nomination process and selection criteria of the membership of the ANC, taking into account the provisions in Article 56 of the Convention, Assembly Resolution A38-13, the Council decisions on the deliberations of the increase in the size of the ANC and related issues such as the desire for every region of the world to be represented. The WGGE was requested to report to the Council at a subsequent session on the results of this review.

21. The Council noted with appreciation that the consultation process on these items had been undertaken in a positive spirit of cooperation and in this regard, the efforts of the Representative of the United States and the regional coordinators were especially commended in facilitating the agreement of a consensus position.”

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## APPENDIX E

### RESOLUTION RECOMMENDED FOR ADOPTION BY THE ASSEMBLY

RESOLUTION A39-\_\_:

**Amendment to Article 50(a) of the Convention increasing the membership of the Council to forty**

THE ASSEMBLY

HAVING MET in its thirty-ninth session, at Montreal on October 2016,

HAVING NOTED that it is the general desire of Contracting States to enlarge the membership of the Council,

HAVING CONSIDERED it proper to provide for four additional seats in the Council and, accordingly, to increase the membership from thirty-six to forty, and

HAVING CONSIDERED it necessary to amend, for the purpose aforesaid, the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944,

1. APPROVES, in accordance with the provisions of Article 94(a) of the Convention aforesaid, the following proposed amendment to the said Convention:

In Article 50(a) of the Convention the second sentence shall be amended by replacing “thirty-six” by “forty”.

2. SPECIFIES, pursuant to the provisions of the said Article 94(a) of the said Convention, one-hundred and twenty-eight as the number of Contracting States upon whose ratification the proposed amendment aforesaid shall come into force, and

3. RESOLVES that the Secretary General of the International Civil Aviation Organization draw up a Protocol, in the Arabic, Chinese, English, French, Russian and Spanish languages, each of which shall be of equal authenticity, embodying the proposed amendment above-mentioned and the matter hereinafter appearing:

- a) The Protocol shall be signed by the President of the Assembly and its Secretary General.
- b) The Protocol shall be open to ratification by any state which has ratified or adhered to the said Convention on International Civil Aviation.
- c) The instruments of ratification shall be deposited with the International Civil Aviation Organization.
- d) The Protocol shall come into force in respect of the States which have ratified it on the date on which the one-hundred and twenty-eighth instrument of ratification is so deposited.

- e) The Secretary General shall immediately notify all Contracting States to the said Convention of the date of deposit of each ratification of the Protocol.
- f) The Secretary General shall immediately notify all Contracting States to the said Convention of the date on which the Protocol comes into force.
- g) With respect to any Contracting state ratifying the Protocol after the date aforesaid, the Protocol shall come into force upon deposit of its instrument of ratification with the International Civil Aviation Organization.

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**APPENDIX F**

**RESOLUTION RECOMMENDED FOR ADOPTION BY THE ASSEMBLY**

RESOLUTION A39-\_\_:

**Ratification of the Protocol amending Article 50(a) of the Convention**

WHEREAS the Assembly has decided to amend Article 50(a) of the Convention to provide for an increase in the size of the Council; and

WHEREAS the Assembly is of the opinion that it is highly desirable that the aforesaid amendment should come into force as soon as possible;

THE ASSEMBLY

- (1) RECOMMENDS to all Contracting States that they ratify most urgently the amendment to Article 50(a) of the Convention; and
- (2) DIRECTS the Secretary General to bring this resolution to the attention of Contracting States as soon as possible.

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## APPENDIX G

### DRAFT PROTOCOL

#### Relating to an Amendment to Article 50(A) of the Convention on International Civil Aviation

Signed at Montreal, on [date]

THE ASSEMBLY OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

HAVING met in its Thirty-ninth Session at Montreal on [date];

HAVING NOTED that it is the desire of a large number of Contracting States to enlarge the membership of the Council in order to ensure better balance by means of an increased representation of Contracting States;

HAVING CONSIDERED it appropriate to increase the membership of that body from thirty-six to forty;

HAVING CONSIDERED it necessary to amend, for the purpose aforesaid, the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944;

1. Approves, in accordance with the provisions of Article 94(a) of the Convention aforesaid, the following proposed amendment to the said Convention:

"In Article 50(a) of the Convention the second sentence shall be amended by replacing 'thirty-six' by 'forty'.";

2. SPECIFIES, pursuant to the provisions of the said Article 94(a) of the said Convention, one-hundred and twenty-eight as the number of Contracting States upon whose ratification the proposed amendment aforesaid shall come into force;

3. RESOLVES that the Secretary General of the International Civil Aviation Organization draw up a Protocol, in the Arabic, Chinese, English, French, Russian and Spanish languages, each of which shall be of equal authenticity, embodying the amendment above-mentioned and the matter hereinafter appearing:

- a) The Protocol shall be signed by the President of the Assembly and its Secretary General.
- b) The Protocol shall be open to ratification by any State which has ratified or adhered to the said Convention on International Civil Aviation.
- c) The instruments of ratification shall be deposited with the International Civil Aviation Organization.

- d) The Protocol shall come into force in respect of the States which have ratified it on the date on which the one-hundred and twenty-eighth instrument of ratification is so deposited.
- e) The Secretary General shall immediately notify all Contracting States of the date of deposit of each ratification of the Protocol.
- f) The Secretary General shall immediately notify all Contracting States to the said Convention of the date on which the Protocol comes into force.
- g) With respect to any Contracting State ratifying the Protocol after the date aforesaid, the Protocol shall come into force upon deposit of its instrument of ratification with the International Civil Aviation Organization.

Consequently, pursuant to the aforesaid action of the Assembly,

This Protocol has been drawn up by the Secretary General of the Organization.

In witness whereof, the President and the Secretary General of the aforesaid Thirty-ninth Session of the Assembly of the International Civil Aviation Organization, being authorized thereto by the Assembly, sign this Protocol.

Done at Montréal on the [date] of October of the year two thousand and sixteen, in a single document in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic. This Protocol shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Secretary General of the Organization to all Contracting States to the Convention on International Civil Aviation done at Chicago on the seventh day of December 1944.

[ ]  
President of the Thirty-ninth Session  
of the Assembly

F. Liu  
Secretary General

— END —