



INTERNATIONAL CIVIL AVIATION ORGANIZATION

A35-WP/282
AD/20
2/10/04

ASSEMBLY — 35TH SESSION
ADMINISTRATIVE COMMISSION

**DRAFT TEXT FOR THE REPORT ON AGENDA ITEMS 7, 8, 40.1, 40.2, 41.1,
41.2, 41.3 AND 41.4**

The attached material on Agenda Items 7, 8, 40.1, 40.2, 41.1, 41.2, 41.3 and 41.4 is submitted for consideration by the Administrative Commission.

Agenda Item 7: Annual Reports of the Council to the Assembly for 2001, 2002 and 2003

7:1 Certain parts of the Annual Reports of the Council to the Assembly for 2001, 2002 and 2003 were referred to the Commission, by the Plenary, for consideration and recommendation.

7:2 At its second meeting, the Commission noted the content and presentation of Chapter X (The Organization) of the Annual Reports, Documents 9786, 9814 and 9826 and Supplement. The Commission recommends to the Plenary that these parts of the Annual Reports be approved.

Agenda Item 8: Programme Budget for 2005, 2006 and 2007

8:1 Certain parts of the Programme Budget for 2005-2007 were referred to the Commission, by the Plenary, for consideration and recommendation.

8:2 At its second meeting, the Commission noted the contents of Major Programmes I (General Policy and Direction), VI (Administrative Support), and VII (Finance, External Relations/Public Information and Programmes Evaluation, Audit and Management Review) of the Programme Budget for 2005-2007, which were referred to the Budget Working Group.

Agenda Item 40: Apportionment of expenses of ICAO among Contracting States
40.1: Confirmation of Council action in assessing the contributions to the General Fund and determining advances to the Working Capital Fund of States which have adhered to the Convention

40.1:1 At its second meeting, the Commission considered A35-WP/22, AD/4 and endorsed the action taken by the Council in determining the rates of assessment for Saint Kitts and Nevis, which became an ICAO Contracting State subsequent to the 33rd Session of the Assembly.

40.1:2 Draft Resolution 40.1/1 is recommended for adoption.

**RESOLUTION FRAMED BY THE ADMINISTRATIVE COMMISSION
AND RECOMMENDED FOR ADOPTION BY THE ASSEMBLY**

Resolution 40.1/1

Confirmation of Council action in assessing the contributions to the General Fund and determining advances to the Working Capital Fund of States which have adhered to the Convention

The Assembly:

1. *Notes that:*
 - a) Financial Regulations 6.9 and 7.5 provide that the Council shall, if the Assembly is not in session, determine the assessment of contributions and the advance to the Working Capital Fund of a new Contracting State, subject to approval or adjustment at the next session of the Assembly; and
 - b) the Council has acted accordingly in respect of the State which became a member of the International Civil Aviation Organization after the 33rd Session of the Assembly, and assessable, as indicated below;
2. *Confirms* the action of the Council in assessing the contribution and the advance to the Working Capital Fund of the following State at the percentage rate indicated, such assessment rate to apply from the assessable date indicated:

Name of New Contracting State	Date of Membership	Date from which Assessable	Assessment Rate
Saint Kitts and Nevis	20 June 2002	1 July 2002	0.06%

Agenda Item 40: Apportionment of expenses of ICAO among Contracting States
40.2: Arrears of contributions of the former Socialist Federal Republic of Yugoslavia

40.2:1 At its second meeting, the Commission examined A35-WP/23, AD/5, which provides a summary of actions taken to date with respect to the arrears of contributions of the former Socialist Federal Republic of Yugoslavia, and notes that the disposition of the contributions in arrears is being held pending the determination of succession issues at the United Nations.

40.2:2 The Assembly is invited to note A35-WP/23, AD/5, and the status of the arrears of contributions of the former Socialist Federal Republic of Yugoslavia, and that the succession issues at the United Nations remain unresolved.

Agenda Item 41: Financial Questions
41.1: Financial aspects of the question of contributions in arrears
41.2: Incentive schemes for settlement of long-outstanding arrears

41.1:1 At its second meeting, the Commission considered A35-WP/21, EX/5, AD/3, Revision No. 1, and Addenda Nos. 1 and 2, which provide information on the status of contributions in arrears as at 17 September 2004 and the Contracting States that had their voting privileges suspended. The working paper had previously been considered by the Executive Committee at its first meeting, after which the parts relating to the measures in dealing with contributions in arrears was referred to the Commission.

41.1:2 In the presentation to the Administrative Commission, the members were asked to review:

- a) the changes approved by the Council to Financial Regulations 6.5 and 6.7, to refer to payments under terms of agreements and to redefine the due date of contributions, as presented in Appendix C;
- b) the draft Resolution in Appendix E, which consolidates Assembly Resolutions A21-10 and A31-26 and contains substantive changes to the conditions for suspension of voting privileges for Group A States, and introduces new measures to encourage States to pay their contributions promptly; and
- c) the draft Resolution in Appendix F, wherein the Council is recommending a change to the method of allocating receipts of long-outstanding arrears to the incentive scheme referred to in Resolving Clause 3 of Assembly Resolution 32-27.

41.1:3 The Commission, having considered the working paper, recommends the draft Resolutions contained in Appendices D, E, and F of the working paper and reproduced below, for adoption by the Assembly.

**RESOLUTIONS FRAMED BY THE ADMINISTRATIVE COMMISSION
AND RECOMMENDED FOR ADOPTION BY THE ASSEMBLY**

Resolution 41.1/1

Amendment to the Financial Regulations

Whereas the Council has reported to the Assembly on its experience in applying Financial Regulations 6.5 and 6.7; and

Whereas the Council has noted the need to revise Financial Regulations 6.5 and 6.7 for the sake of clarity.

The Assembly:

1. *Resolves* that the amendments set out below are confirmed:

Financial Regulation 6.5

6.5 Except as otherwise provided in these Regulations or where the Assembly otherwise determines:

- a) contributions, payments under terms of agreements for settlement of arrears, and advances to the Working Capital Fund, shall be considered as due and payable in full upon the expiry of thirty days from the date that the notification from the Secretary General is dispatched under Regulations 6.4 b) and 7.4 b), or as of the first day of the financial year to which they relate, whichever is the later; and
- b) as of 1 January of the following financial year, any unpaid balance of such contributions, payments under terms of agreements for settlement of arrears, and advances to the Working Capital Fund, shall be considered to be one year in arrears.

Financial Regulation 6.7

6.7 Payments by Contracting States, including those of Contracting States with agreements for settlement of arrears, shall be credited first to advances due to the Working Capital Fund and any balance applied against outstanding amounts relating to agreements and contributions, beginning with the earliest.

Resolution 41.1/2 (Consolidation of A21-10 and A31-26)

Discharge by Contracting States of financial obligations to the Organization and action to be taken in case of their failure to do so

Whereas Article 62 of the Convention on International Civil Aviation provides that the Assembly may suspend the voting power in the Assembly and in the Council of any Contracting State that fails to discharge, within a reasonable period, its financial obligations to the Organization;

The Assembly:

Considering that Article 6.5 of the ICAO Financial Regulations provides that contributions from Contracting States shall be considered due and payable in full as of the first day of the financial year to which they relate;

Noting that in recent years the accumulation of contributions in arrears has increased considerably and has constituted, together with the delays in payment of current year contributions, an obstacle to the implementation of the work programme and created serious cash flow difficulties;

Urges that all Contracting States in arrears make suitable arrangements for liquidating their arrears;

Urges all Contracting States and in particular, the States elected to the Council, to take all necessary measures to pay their contributions on time;

Resolves that, with effect from 1 January 2005:

1. all Contracting States should recognize the necessity to pay their contributions at the beginning of the year in which they fall due, in order to avoid the need for the Organization to draw on the Working Capital Fund to make good the shortfall;
2. the Secretary General be directed to dispatch to all Contracting States , at least three times in the year, schedules showing the current amounts due for the current year and up to 31 December of the previous year;
3. the Council be authorized to discuss and conclude arrangements with Contracting States, whose contributions are in arrears for three or more years, for the settlement of accumulated arrears to the Organization, any such settlements or arrangements to be reported to the next session of the Assembly;
4. all Contracting States which are three years or more in arrears in the payment of their contributions should:
 - a) effect without delay payment of the amounts outstanding with respect to advances to the Working Capital Fund, the current year contribution, and partial settlement of their arrears in the amount of no less than \$ 2 000, such minimum amount to be increased proportionately in cases of States which are assessed at more than the minimum contribution of the ICAO scale;
 - b) conclude within six months of the date of the payment referred to in sub-paragraph a) above, if they have not already done so, an agreement with the Organization for the settlement of the balance of their arrears, such agreement to provide for the payment annually, in full, of their current contributions and the balance of the arrears in instalments over a period of no more than ten years, which period may, at the discretion of the Council, be extended, to a maximum of twenty years in respect of special cases i.e. those Contracting States that are classified as Least Developed Countries by the United Nations;
5. the Council should further intensify the current policy of inviting Contracting States in arrears to make settlement proposals for the liquidation of long outstanding arrears of contributions in accordance with the provisions of Resolving Clause 4 above, taking full account of the economic position of the States concerned including the possibility of accepting other currencies in accordance with the provisions of Article 6.6 of the Financial Regulations, to the extent that the Secretary General can use these currencies;
6. the voting power in the Assembly and the Council be suspended for those Contracting States in arrears for an amount equal to or in excess of the total assessments for the three preceding financial years and of those Contracting States not in compliance with agreements entered into in accordance with Resolving Clause 4 b) above, such suspension to be revoked immediately upon the settlement of outstanding amounts due under agreements; and
7. the voting power of a Contracting State suspended under Resolving Clause 6 may also be restored by action of the Assembly or the Council provided:

- a) it has already concluded with the Council an agreement that provides for the settlement of its outstanding obligations and for the payment of current contributions and has complied with the terms of that agreement; or
 - b) the Assembly is satisfied that the State's willingness to reach an equitable settlement of its financial obligations to the Organization has been demonstrated;
8. any State whose voting power has been suspended by the Assembly under Article 62 of the Convention may have it restored by the Council under the conditions stipulated in Resolving Clause 7 a) above, provided that a willingness on its part to reach an equitable settlement of its financial obligations to the Organization has been demonstrated;
9. the following additional measures be applied to those Contracting States whose voting rights have been suspended under Article 62 of the Convention:
- a) lose eligibility to host meetings, conferences, workshops and seminars which are funded, in whole or in part, by the Regular Programme;
 - b) receive only the same free documentation as that provided to non-Contracting States, including those available in electronic media, and any other documents that are essential for safety, regularity or efficiency of international air navigation;
 - c) Nationals or Representatives lose eligibility for nomination to elected offices;
 - d) for purposes of recruitment to posts in the Secretariat, if all other circumstances are equal, candidates from States in arrears would be considered as having the status of candidates from a State that has already achieved the desired level of representation (under equal geographical representation principles), even if it has not achieved that level; and
 - e) lose the right to participate in the ICAO Familiarization course.
10. only those States that have no outstanding annual assessed contributions except for the current year's assessment will be eligible for election to the Council, Committees, and bodies;
11. this Resolution supersedes Assembly Resolutions A21-10 and A31-26.

Resolution 41.2/1 (To supersede A33-27)

Incentives for the settlement of long-outstanding arrears

The Assembly,

Recalling the concern expressed by previous Assemblies at the increase in the contributions in arrears;

Reiterating the necessity of all Contracting States to pay their contributions on the date on which they fall due;

Noting that a number of States have had their voting power suspended in the Assembly and the Council in accordance with Assembly Resolution [];

Reaffirming the extreme importance of participation by all States in the activities of the Organization;

Noting that the cash surplus had traditionally been distributed to those Contracting States that have paid their contributions for the financial years for which the surpluses had been determined; and

Wishing to encourage States to liquidate their arrears and at the same time provide incentives for doing so;

Resolves that:

1. the distribution of cash surpluses be restricted to Contracting States that, at the date of the distribution of the surpluses, have paid their contributions for the financial years for which the surpluses had been determined and that the entitlement to the surpluses be terminated for States which have outstanding contributions for the years concerned, except for those States with agreements and which have complied with the terms of their agreements;

2. Contracting States with arrears of three full years or more and which either have existing agreements or enter into agreements for settlement of long outstanding arrears, and which have complied with the terms of their agreements, shall have their share of cash surplus distributed even though they have not paid the assessments for the financial years for which the surpluses had been determined;

3. with effect from 1 January 2005, only that portion of a payment from a Contracting State that is in excess of the sum of the three preceding years' assessments and all instalments due under agreements entered into under Resolving Clause 4 of Assembly Resolution [] shall be retained in a separate account to finance expenditure on aviation security activities, and new and unforeseen projects related to aviation safety, and/or to the enhancement of the efficient delivery of ICAO programmes, such action to be under the control of the Council and reported to the next ordinary session of the Assembly;

4. the Council be requested to closely monitor the question of outstanding contributions, the effects of the incentive schemes on payment of arrears by States, and report to the next ordinary session of the Assembly on the results of their efforts including other measures to be considered; and

5. this Resolution supersedes Assembly Resolution A33-27.

Agenda Item 41: Financial Questions
41.2: Incentive schemes for settlement of long-outstanding arrears

41.2:1 At its second meeting, the Commission noted A35-WP/25, AD/7, which reports to the Assembly on the action taken pursuant to Assembly Resolution A34-1 with respect to the distribution of funds in the special account wherein receipts of long-outstanding arrears are retained in accordance with Resolving Clause 3 of Assembly Resolution A33-27.

41.2:2 The Assembly is invited to note A35-WP/25, AD/7.

Agenda Item 41: Financial Questions
41.3: Report on the Working Capital Fund

41.3:1 At its second meeting, the Administrative Commission examined A35-WP/26, AD/8, which reports on the adequacy of the level of the Working Capital Fund, the financial position of the Organization, and the financial trends affecting the necessary level of that Fund. The Commission considered the recommendation to maintain the level of the Working Capital Fund at \$ 6.0 million and to grant authority to the Council to review and to increase the level of the Working Capital Fund, to a maximum of \$ 8.0 million, if and when an urgent need arises during the next triennium.

41.3:2 The Commission was informed that the Working Capital Fund had not been used since 1994, and that the accumulated cash surplus has been used in the past to overcome serious delays in receipt of contributions. However, because the accumulated surplus would be distributed or used by the end of 2004, the cash disposition of the Organization is expected to deteriorate in the next triennium. The Commission was asked to note the trend in assessment receipts and expenditure and that the financial experience of the past few years had shown that ICAO needed to have a buffer of funds available to cover expenditures because of delays in receipt of contributions from Contracting States. The continued avoidance by some Contracting States of their financial obligations could therefore necessitate an increase in the level of the Working Capital Fund, and would negatively impact all Contracting States. Because ICAO's budgetary cycle is relatively long, namely three years, and the cash flow remains uncertain, there would be a need for sufficient Working Capital Fund upon which to draw to meet fixed and unavoidable cash commitments such as salary payments.

41.3:3 Regarding the borrowing authority of \$ 3.0 million, the United States questioned the continuation of the authority for borrowing in the next triennium, and requested that the report of the proceedings note that domestic legislation prohibits the United States from paying interest on external borrowing incurred by international organizations.

41.3:4 After due consideration, the Commission agreed to recommend adoption of the following Resolution.

**RESOLUTION FRAMED BY THE ADMINISTRATIVE COMMISSION
AND RECOMMENDED FOR ADOPTION BY THE ASSEMBLY**

Resolution 41.3/1

Working Capital Fund

The Assembly:

1. *Notes that:*

- a) in accordance with Resolution A33-28, the Council has reported upon, and the Assembly has considered, the adequacy of the level of the Working Capital Fund and the related borrowing authority;
- b) in recent years, the accumulation of contributions in arrears has constituted, together with the delays in payment of current year contributions, a growing obstacle to the implementation of the work programme while creating financial uncertainty;
- c) the relatively long budgetary cycle of ICAO, namely three years, has a bearing on the determination of the prudent level of the Working Capital Fund and borrowing authority, as only the Assembly can levy assessments on Contracting States;
- d) given the number of permanent staff in ICAO, there is an irreducible minimum which the Organization has to pay out each month to meet the staff costs. This amount is not amenable to short term reduction through adjusting the work programme, since permanent staff remain in post and have to be paid in any event;
- e) on average, by September of each year, the cumulative receipt of assessments was short of estimated disbursement by an average of 17.7 per cent;
- f) based on past trends, the average annual cash flow shortfall accumulated by the end of September and November could range between \$ 7.5 million and \$ 11.3 million;
- g) experience has shown that payments are not made at the beginning of the year when contributions are due and that ICAO cannot rely on contributions being paid even by the end of the year to which they relate and that such unacceptable avoidance of their financial obligations under the Convention by some Contracting States is leading to a grave financial crisis within the Organization that could impact all Contracting States;
- h) as long as the cash flow remains uncertain, ICAO would need the Working Capital Fund as a buffer on which it could draw to meet its unavoidable cash commitments; and
- i) the Council reviewed the level of the Working Capital Fund in November 2003 and determined that the need for the increase in the level from \$ 6.0 million to \$ 8.0 million was not urgent and immediate for the year 2004.

2. *Resolves that:*

- a) the level of the Working Capital Fund remain at \$ 6.0 million;
- b) the Council shall review the level of the Working Capital Fund each year, and no later than November 2004, 2005, 2006 and 2007, to determine if an increase is urgently needed during that year or for the following year;
- c) if the Council determines that it is warranted, the level of the Working Capital Fund shall be established at a level no higher than \$ 8.0 million, subject to increases resulting from advances paid by new States becoming members of the Organization after approval of the scales. Such adjustment to the Working Capital Fund will be based on the scales of assessment in effect for the year for which the increase in the level of the Working Capital Fund is approved;
- d) the Secretary General be authorized, with the prior approval of the Finance Committee of the Council, to finance regular and supplementary appropriations that cannot be financed from the General Fund and the Working Capital Fund, by borrowing externally amounts needed to meet immediate obligations of the Organization, and that the Secretary General be required to repay such amounts as rapidly as possible; the outstanding total of such indebtedness of the Organization at no time to exceed \$ 3.0 million during the triennium;
- e) the Council shall report to the next ordinary session of the Assembly:
 - i) on the adequacy of the level of the Working Capital Fund in the light of experience during 2004, 2005 and 2006;
 - ii) whether the financial position of the General Fund and the Working Capital Fund would indicate the need for assessing Contracting States for cash deficits caused by arrears of contributions;
 - iii) on the appropriateness of the level of the borrowing authority; and
- f) Resolution A33-28 is no longer effective and is hereby superseded.

3. *Urges:*

- a) all Contracting States to pay their assessments as early as possible in the year in which they fall due in order to lessen the likelihood of the Organization having to draw on the Working Capital Fund and resort to external borrowing; and
- b) the Contracting States in arrears to meet their obligations to the Organization as promptly as possible, as called for by Resolution [].

Agenda Item 41: Financial Questions
41.4: Distribution of cash surplus

41.4:1 At its second meeting, the Administrative Commission examined A35-WP/27, AD/9, dealing with the subject of distribution of cash surplus.

41.4:2 The Commission was informed that the Organization had a cash deficit of U.S. \$ 232 000 as at 31 December 2003, and that, accordingly, there was no surplus available for distribution. The Commission was also advised that the Council was not recommending to assess the amount of the deficit to Contracting States as the cash deficit is not considered significant and could be reduced in the future.

41.4:3 The Assembly is invited to note A35-WP/27, AD/9.

— END —