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## **VERSLAG VAN DRIE VIDEOCONFERENTIES**

Vastgesteld 9 maart 2016

Verbatim report of the videoconferences held by the standing committee on Foreign Affairs of the House of Representatives of the Netherlands, on Thursday 28 January 2016 in the Tilanuskamer room of the premises of the House of Representatives in The Hague.

Start 18.00 hours.

Chair: Mr Fred Teeven MP

Present are the members of the House of Representatives Mr Han ten Broeke, Mr Harry van Bommel, Mr Pieter Omtzigt, Mr Michiel Servaes, Mr Sjoerd Sjoerdsma and Mr Fred Teeven,

as well as Mr Theo van Toor, clerk of the standing committee on Foreign Affairs.

## Videoconference 1

The expert heard is **Mr David McMillan, (former) Chairman of the Task Force on Risks to Civil Aviation arising from Conflict Zones (TF RCZ), International Civil Aviation Organization (ICAO).**

The **Chairman**: [speaks Dutch] Welkom bij de videoconferenties. Deze zullen duren van 18.00 uur tot uiterlijk 21.00 uur vanavond. De videoconferenties zijn een vervolg op de rondetafelgesprekken van afgelopen vrijdag en dienen ter voorbereiding op het plenaire debat met het kabinet over het rapport van de Onderzoeksraad Voor Veiligheid over de ramp met de MH17 en over de kabinetsreactie hierop. Deze videoconferentieruimte heeft geen publieke tribune, maar de gesprekken worden live gestreamd via de website van de Tweede Kamer. Er zal ook een verslag van deze gesprekken worden gemaakt.

Vanavond spreken wij achtereenvolgens met de heer David McMillan, voormalig Chairman Task Force on Risks to Civil Aviation arising from Conflict Zones van de International Civil Aviation Organization (ICAO).

Om 19.00 uur spreken wij met de heer Jo Sultana, Director Network Manager van Eurocontrol.

Vanaf 20.00 zullen wij spreken met bestuursleden van de International Air Transport Association (IATA).

Voor wie meeluistert: de gesprekken zullen vanavond worden gevoerd in het Engels. [continues in English] A warm welcome to you, Mr McMillan. You are joining us from Brighton in the United Kingdom. We appreciate it very much that you are taking the time to speak with Members of our Parliament about the report of the Dutch Safety Board on the MH17 crash and especially about the measures to prevent another disaster for civil aviation flying over conflict zones.

Mr McMillan, may I now invite you to give a short introduction on your topic to the Members of our Parliament?

Mr **McMillan**: Thank you very much. I am very happy to be able to help you in your work. It is obviously a very important subject for your country but indeed for civil aviation in general.

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My role in this affair was to chair a task force on the risks to civil aviation arising from conflict zones. That was in the final quarter of 2014. I was invited by the then Secretary General of ICAO, Mr Benjamin, to make myself available. I was elected to lead the task force at the first meeting that year. I suppose you know how ICAO works. It was a group of interested nations who had things to say about the conflict zone problem. It was of course driven by the tragic loss of the MH17 over Ukraine. I think the view of ICAO, industry partners and a number of member states was that it had brought to the attention of the world a new set of threats and a new set of challenges for global civil aviation.

The task force was composed of those countries most particularly concerned.

Clearly, the Netherlands was an active participant in the work, as was Australia, a country also very deeply affected by the incident. We also had the major aviation nations: the United States, China, the United Kingdom, France and Germany. But in particular we also had of course Ukraine and the Russian Federation.

As you can imagine, this is a delicate task to go through. We had to be clear from the beginning that, although the work was initiated by this tragic loss, we were talking about a very general set of circumstances. What would the situation be and how would the world system cope with these new threats to be dealt with?

In short, the group eventually took the view that the existing framework for managing international civil aviation is fit for the purpose and capable of rising to the new type of challenge and threat which we had seen. That means that states continue to have the responsibility to ensure the safety of operations in their sovereign airspace and in the airspace which is delegated to them by another country. It also means in particular that airspace users, airlines, have the ultimate responsibility to decide where they fly. So the first conclusion was that the system could be capable of dealing with these things, but there was also a very strong consensus that there was significant room for improvement in the system, to reinforce it, to enhance the operation of the civil aviation system in the face of these new challenges. In order to try and make those improvements and changes, the task force developed a work programme, which was to be passed on to ICAO to take forward and which was to be passed on to the member states of ICAO to take forward and which was to be passed on also to the industry -- the airlines, the air navigation service providers -- to take forward, as well as the regulators in each country.

The objective of this work programme was to make sure that there were robust arrangements in place to identify, to assess and to share information about risks to civil aircraft from activities in conflict zones and also to respond to those risks.

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Importantly, these arrangements should apply and relevant information should be available to ensure the safety of passengers and crew on civil aircraft, irrespective of which airline they are travelling on or which cities they are travelling to.

Those are the broad conclusions. We can talk, if you would like, about some of the specific recommendations which were made. From my quick reading of the work of your investigation body and the recommendations which they have made and from the letter which your ministers have addressed to you I see a lot of similarities in the recommendations that were made about how to improve the situation, about how to ensure that airlines have adequate information on which to base risk assessments and about the need for those risk assessments to be conducted in a proper and robust manner. So there are many similarities, but there are one or two small differences of opinion as well.

The **Chairman**: Thank you very much, Mr McMillan. I will now give the floor to the members of the House of Representatives to ask some short and precise questions.

Mr **Van Bommel** (SP): Mr McMillan, thank you for joining us. You are one of the leading figures when it comes to safety in aviation and information about conflict zones. In April last year ICAO launched a website providing information about conflict zones for both airlines and travelers. This information is available to anyone. What is your assessment of the function of this website? As far as I can see, very little information is provided. I wonder if it is your impression that all information that is available has been handed over to the people in charge of this website.

Mr **McMillan**: It is clear that the website is still a work in progress. It is good that the website has been established. I think it is potentially a very valuable tool in order to share information among the member states, with industry parties and indeed, to a certain extent, with the general public as well. It is clearly the case that not all information which is available has been placed on that website. I cannot say that my current activities include spending every minute of every day looking at the website, but it is clear that the information which is on the website is only a beginning of what is possible or what I would suggest is necessary.

Let me give you a little background into why it might be difficult. There is more than one entity that can place information on the website. There is the state which has the misfortune of having a conflict taking place in its territory. I think some of those states are not very well organised and not very well equipped. Perhaps they do not see the

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importance of putting information on the website. That is I think something which can be addressed by the United Nations Organization in one way or another. But please remember that some of these states have little authority over elements or parts of their territory and there are other organizations which have sway there. Those organizations are not normally of the type that put information on websites.

The second group of people who can put information on websites are states which are not at stake with the conflict, but which have access to detailed information either derived from operational reports from aviation partners or derived through diplomatic channels, or thirdly, and perhaps most crucially, derived through intelligence channels. We discovered quite early on in the work of the task force that there is a great reluctance on the part of most states to share intelligence information with the general public and the industry. If they are going to do that, it seems likely that they will do it in a more private and confidential manner, rather than on a website. What the task force was asking, was not to have the intelligence information placed on the website, but the consequences which have been drawn from that information, so that these could be shared with all parties. As things stand at the moment, there are airlines which come from countries which have well developed systematic intelligence gathering capabilities. There are groups of countries which share intelligence between themselves. For those countries and the carriers from those countries there is generally a system which is reasonably satisfactory, to make sure that airlines have access to that information. But carriers from other countries do not have that privilege. We were hoping to try and find a mechanism whereby states would be more willing than they had previously been to share that information and, failing that, to devise a system of information sharing between airlines themselves, which would fill the gaps which were perhaps left by states' reluctance. That was a rather long answer, but I hope it gives you some idea of the issues.

**Mr Sjoerdsma (D66):** Many thanks for your introduction and the answer to the first question. I would like to ask you about the Russian radar data that have not been supplied to the Dutch Safety Board. The Russians claim that they did not have to store or archive the radar data that also covered Ukraine. Is that against ICAO guidelines?

**Mr McMillan:** I am not sure I know the details of what our friends from Russia have been suggesting. Radar data is normally gathered by the air navigation service provider which has responsibility for the piece of airspace in question. In the case of

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the Ukraine that would be the Ukrainian operator UkSATSE, which is a state owned entity providing navigation services over the Ukraine. That is a civil military organization. They have access to radar sources from their own radars and also from the military radar in the Ukraine. My understanding of how things normally happen is that the radar data would be kept for a period of time. I do not think that there are very specific guidelines in ICAO, but you need to check that with a more technical expert than myself. Clearly, if there is an incident in the air space you take very great care of retaining the radar data you have, because it is necessary for purposes of investigation and analysis. So you would expect that to be carried on for as long as it is required.

Mr **Omtzigt** (CDA): Thank you for that clear explanation. You advised us to turn to a specific expert at ICAO. We would like to hear the name of an expert whom we could ask this very specific question. The Dutch Safety Board did not receive data, neither from Russia, nor from Ukraine. Ukraine had said that all primary data was ...

Mr **McMillan**: ... inoperable?

Mr **Omtzigt** (CDA): We think it was inoperable, because we found press statements that the data had been destroyed in an attack, but what they formally said to the DSB was that the cause had been maintenance. So we would like to hear from you the name of a technical expert who could tell us what the guidelines are and whether Ukraine should have communicated this to ICAO or anyone else.

Mr **McMillan**: I think the person inside ICAO that is best equipped to get the answer for you is the director of the Air Navigation Bureau. The current director is Mr Stephen Creamer, who is an American national. He was not in the post at the time of this incident, but he will know what the guidelines, the normal practices and the rules are. He is by profession himself an air traffic controller.

Mr **Omtzigt** (CDA): You said that many things ICAO finds are the same as what the DSB finds, but there are also a few differences. Could you elaborate on where ICAO differs from the DSB report?

Mr **McMillan**: The recommendations of the task force for ICAO to consider were slightly different from those of the report. The report has a tendency to require things

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to happen in other member states, in the sense that it says: this must be the case, there should be binding guidelines introduced to make things happen. As you know, ICAO, like most United Nations organizations, is an organization which works by consensus. It is actually quite difficult unless there is unanimity to have an absolute law, an absolute rule that something A or something B should happen. The way in which we were able to make progress in the taskforce was to talk about having improved guidelines made available. However, we have to have some better assurance that the guidelines and the recommended practices which ICAO has, are actually implemented by the states. This is I think where we do come together with the recommendations of your report. We said that the two audit programmes that ICAO has, which is the security audit programme and the safety audit programme, should be amended to try and make sure that the member states of ICAO were implementing the new recommendations on how they should handle conflict zone issues. My understanding is that this recommendation was accepted at a safety conference of ICAO in February 2015. I very much hope that the work to put that into place is actively underway in ICAO. My understanding is however that this issue of unanimity has in fact made detailed progress to build on some of these matters.

**Mr Ten Broeke** (VVD): I have a follow-up question about the primary data that you might be able to answer. We are looking forward, of course, to receiving a written answer to some of our questions from you colleague, Mr Creamer, but maybe you can answer this question. If we assume that both Ukraine and Russia acted under their own legislation as well as under the guidelines of ICAO, it was necessary for them to keep primary radar data, especially after an incident like this. Would it be possible for us to put them in default? Is there a procedure on the basis of which we can lodge an official complaint against these two countries? How would you handle that? How would that affect their willingness to commit to the recommendations we just discussed?

**Mr McMillan**: Almost every country in the world with a mature civil aviation system adopts the ICAO guidelines, sometimes as primary legislation in their own territory. In the case of the European Union they are implemented in EU-legislation. Sometimes they find themselves translated into regulatory texts, issued by their civil aviation authorities. I think that in most countries, whether it is under civil aviation legislation or even under the normal criminal law, it would be a criminal offence if relevant evidence, such as radar data, which was available following an incident, were

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deliberately withheld or destructed. I am very delighted to tell you that I was a lawyer. I think you would find that this would be the case in almost all countries.

The second part of your question was -- I reformulate it a little -- can we hold the Ukraine or Russia to account in some way in ICAO? There are processes by which you can ask the ICAO secretariat to conduct an investigation, to make recommendations under a safety audit and to draw attention to a failing in a particular member state. It is possible to try and make progress in that way. As I just explained to you, in an organization which works by consensus it is sometimes difficult to reach very pointed conclusions about an incident and about what has happened. I speak as a former diplomat, you may hear. I think therefore that perhaps a more profitable avenue is either to seek to use domestic Dutch legislation, which might be brought to bear on the parties concerned, or to use diplomatic channels to try and bring them to account. None of these things will be easy, but at the very least I would imagine you would be able to have people held to account in the court of public opinion.

**Mr Ten Broeke (VVD):** Do you have a formal procedure in place to lodge a complaint against one of your members?

**Mr McMillan:** I was chairman of the task force in ICAO. I am not a staff member of ICAO. I have never had that happy responsibility. You have to seek advice from Mr Creamer, I suggest, when you speak to him. There are procedures in the ICAO rules, which allow one state to actively draw the attention of the ICAO council to another state, with which they have a problem.

**Mr Van Bommel (SP):** One of my colleagues asked you whether there are rules for countries to retain radar data. You were not aware of any rule telling countries how long to keep these data, but you assumed that it would be wise or logical for countries to do so after an incident. I fully agree that this would be logical. On the other hand, countries or authorities that have something to hide, might not want to retain this information, because others might get access to it. Does ICAO have any instruments to force countries to collaborate with ICAO in handing over data or to give ICAO the opportunity to seize information like this?

**Mr McMillan:** The relevant section of the ICAO work plan you want to look at is the guidelines and the recommendations on how accident investigations should be carried out. The trick of that is in the word which I used. They are guidelines. They



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are not hard law. They are, if you like, soft law, which is in many cases translated into hard law by national legislation, but ICAO is not like some kind of international tribunal, where you can have somebody brought to court and tried for what they have done. That is not the way in which an organization which operates by consensus normally works. Nonetheless, it would be possible, with imagination, determination and some time, to find processes in ICAO under which you could interrogate the activities and behaviour of individuals or states and have attention drawn to them. Then the Secretary General or the President of the Council could send a letter to the authorities, asking to account for themselves and explain how they would behave in the future. I am sure that all that is imaginable, but it is not like going in front of the High Court in London.

Mr **Sjoerdsma** (D66): We just had a conversation with the former director of EASA, Mr Ky. He explained the situation in Crimea, where there were two different air control organizations, one Ukrainian and one Russian. This led to the closing down of flight paths. Ukraine tried to re-open them, because there was a loss of income. Ukraine, EUROCONTROL and ICAO declared these flight paths to be safe, but the only institution which did not declare them safe, was EASA. Could you tell us a little bit about why at the time ICAO declared those flight paths to be safe?

Mr **McMillan**: I had not been aware that they had done that. The situation that prevails over the Crimea is very difficult, but it is not unique. Look at other parts of Europe, even within the European Union. There is a situation in Cyprus, where there are two conflicting air traffic organizations operating in the same piece of airspace. There have been occasions when aircraft received instructions from one or the other air traffic organization. In a situation such as you describe I think the aircraft operators need to conduct their own risk assessment as to whether or not they have the risk appetite to fly in that piece of airspace. The formal situation in the Crimea is that the ICAO rule, no doubt challenged by Russia, is that that piece of airspace remains in the sovereign state of the Ukraine. They are the people who have the right to provide air navigation services in that territory.

Mr **Ten Broeke** (VVD): Looking ahead and looking at the recommendations made by the Dutch Safety Board one gets the impression that we are looking for more responsibility for everyone in the security chain, be it organizations like yours, airlines or national states. I would like to have your opinion on what is possible for a

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supranational body like yours or EASA in terms of real legal competences, not only the right to make recommendations, but to close down airspaces in situations where the state authorities have little or no control over their airspace.

Mr **McMillan**: EASA, the European Union, member states of the European Union and any state in the world have sovereignty as regards their airspace. It is possible for the Netherlands to decide it is going to close its airspace. It is possible for the Netherlands to close a portion of its airspace. It is open to the Netherlands to seek to forbid entry to its airspace by any aircraft. That is true for the Ukraine, for Russia and for any country. That is where the legal authority lies with regard to the airspace. In some parts of the world -- and Europe is an excellent example -- there are regional arrangements whereby you can have a regional piece of legislation, a regional ruling, put in place. EASA, as part of the rule-making procedure which exists in the European Union, can make hard laws, which need to be obeyed by operators: air navigation service providers, airlines or airports. EUROCONTROL, the organization which I used to lead, has the ability to make recommendations, but it is also an intergovernmental organization. It is very difficult for EUROCONTROL to make hard law. It makes recommendations and guidelines. It puts in place best practice formulations, which people are invited to follow. The same is very much the case for ICAO. ICAO has existed since the end of the Second World War. It is an organization which has facilitated the growth of international air transport, by setting in place a series of rules relating to aircraft standards, noise standards, airworthiness; a whole series of activities. These are given legal effect by ICAO's members. In most cases ICAO itself does not have the legal power to acquire or to do thing. What it does have is the technical authority and the competence to make recommendations which people ignore at their peril. If you in the Netherlands believe that another member state of ICAO is not following ICAO standards and recommended practices adequately, it is open to you to say to your air carriers: you should not fly to the airspace of that country. Actions like that very quickly cause most countries which have issues, to put things right, so that they can see aviation flowing again through their territory and to their territory. The EU has a blacklist of operators who do not meet European Union safety standards and which are banned from serving the European Union. When I was director general of civil aviation in the United Kingdom, my own country told airlines at one period of time "you should not fly over, for example, Pakistan". States can do things to offer safe passage to their airlines and to

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their citizens. But we do operate in a world where sovereignty rests with sovereign nations.

Mr **Omtzigt** (CDA): You gave us some very interesting answers so far. I would like to talk about a slightly different topic. What formal or informal work follows from the DSB report at ICAO? Is it simply put into the archive or is someone reading it and thinking: hey, the Dutch Safety Board says it did not get the information, but did not lodge a formal complaint? Or: hey, information, like radar data, is missing. Is anyone at ICAO assessing the report, whether the research has been carried out well and is anyone taking action on anything that is missing?

Mr **McMillan**: I think this is a question specifically to the secretariat of ICAO. The way in which the system works is that the states impacted by an accident who then lead the investigation, make recommendations. If recommendations are addressed to ICAO, ICAO will act on the recommendation which is addressed to it. If the recommendation is made to an engine manufacturer, an air navigation service provider or an airline, they are expected to take the action which is recommended or to say why they are not willing to do so perhaps. That is also a possible solution. There is, however, not a normal process whereby ICAO will troll through every air accident report and ensure that action has been taken. That is something that has been devolved to the countries themselves. Having said all that, I am pretty sure that given the high profile and the particular nature of this accident, the ICAO secretariat will be looking very carefully indeed at the report of your accident investigation organization and see whether or not there are lessons there which are of a more general application.

Mr **Van Bommel** (SP): You used the word sovereignty. Of course we all believe in sovereign states. We just discussed the issue of aviation safety with the director of the European Aviation Safety Agency. He more or less suggested that his organization would prefer to have the right to prohibit that the air space of certain countries, conflict zones, is being used. Would you be in favour of giving this possibility to a European institution or would you suggest that this lies uniquely in the hands of sovereign states?

Mr **McMillan**: I am not sure that my opinion counts for very much, but I am very happy to give it to you. When I was running EUROCONTROL I used to say that the

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word sovereignty would never be used in our council meetings, because it is a terrible impediment to making progress on a regional or local basis on many occasions. I think there is much to be said for trying to have the commonest level of approach that you can to issues of safety and security. I think the particular issue that you will encounter in going down the direction that my friend Patrick Ky seems to have been advocating is the one that I identified earlier on in this conversation. If a European system is to be truly effective you would have to secure the agreement of all the member states concerned to pull all the information they have available to them across Europe in an undiluted form so that all the carriers who would benefit from having access to that information would have it. We tried to take some of that action when I was running the task force for ICAO. I think that it is fair to say that we had many warm words, but not much by way of hard delivery. I think that is the problem. In a situation where you do not have a common pool of information the people best able to exercise a risk assessment are the people who have the information. At the moment that is not EASA. Maybe it should be.

**Mr Omtzigt (CDA):** In an answer to Mr Ten Broeke you said that if the Dutch government would want to pursue it, the secretary general of ICAO could write a letter to the authorities of Ukraine or the Russian Federation to ask for an explanation. What would be the way to start such a procedure? Would that be a formal request from the Dutch government? How should we go about that to make sure that every avenue is being taken to find out whether we can still get the radar data and an interview with the air traffic controller? The DSB admitted it had not interviewed the air traffic controller who was on duty when the MH17 accident happened.

**Mr McMillan:** The first protocol is bilateral I would say. Your foreign minister, your embassy in Kiev should make representations there and your embassy in Moscow should make representations there. It is of course open to you to seek to involve, on an issue of this kind, the president of the ICAO council. It is more of a diplomatic issue than a technical issue. You may see whether the president of the council, who is Dr Aliu from Nigeria, would be willing to involve himself in such a matter. I do not think that there is any particular process. It is just a matter of diplomatic common sense.

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Mr **Omtzigt** (CDA): Is it up to the government, the DSB or Parliament in a normal procedure?

Mr **McMillan**: In an normal procedure that would be the government.

Mr **Ten Broeke** (VVD): On the issue of some form of supranational oversight for various organizations, ranging from EUROCONTROL to ICAO, you stated that because of the sovereignty issue it is very hard to get to the stage of making hard law, unless there is a regional consensus about it. In what particular case could a recommendation by ICAO, if not met by states, have any consequences for the members who do not follow that recommendation, apart from: if something goes wrong, everybody who did not follow the recommendation will look bad?

Mr **McMillan**: It is quite hard to answer that question. If you think of the recommended practices, the so-called Annexes to the Chicago Convention that ICAO has developed over the years, it is open to any state to say: I am going to abide by this, but I want to enter what is called a difference. This difference explains the ways in which actually I am not going to implement it. I am going to do it in a different way. There is no consequence to that. This is something which states are allowed to do. I think you will find that ICAO is an extremely useful framework for trying to develop a common understanding of how the system should operate. It is a very good organization for developing recommended practices and for developing guidelines on how things should be done. But at the end of the day it is not an organization which can bring into place binding laws. Those are done as I already described earlier. How do you bring to book a rogue state that does not abide the law? You have to take action on a bilateral basis or you have to build an international coalition of likeminded states, that would together take action to require, oblige or whatever verb you want to use, the state in question to behave better in the future or to accept that it did something wrong in the past. I know that it is not a very satisfactory situation that I am describing, but I am afraid that this is pretty much where we are.

Mr **Ten Broeke** (VVD): It was a very clear answer. Would it be fair to say that ICAO is a useful platform for creating common understanding, but not for dispute settlement? For instance in the case of the radar data, ICAO is maybe not the best institution to solve that dispute.

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Mr **McMillan**: Yes and no. In strict legal terms: no it is not a good organization to arbitrate a dispute. But the council of ICAO, the body which sits in Montreal permanently, and its President, or occasionally the Secretary General, have the ability to go in and broker arrangements between states, not in the same way as on very political issues, where the UN Secretary General might go in and try and broker an arrangement between states. Certainly in the past there have been great figures in ICAO, for instance Dr Assad Kotaite, who was president of the council for twenty years or so, who was very willing to involve himself in specific instances, trying to resolve issues on the South China Sea. It has happened in the past and if there is a desire and a wish on the part of your country to have that activity launched, why not ask for it?

Mr **Van Bommel** (SP): Thank you, Mr McMillan, for your information. The core of the debate in the Netherlands is whether or not the national authorities should have the possibility to prohibit Dutch airlines to fly over a certain country or a certain conflict zone. Would you say that the general rule is that countries have this possibility to prohibit their national airlines to fly over a certain country?

Mr **McMillan**: It depends on the national legislation. I am sure that KLM for example operates under a licence which is issued by your regulator. It is surely possible to have a condition in that license which would give the state the ability to do so. Certainly in the United Kingdom, the country which I have most experience with, we never found it necessary to issue an instruction to an airline not to fly in a particular place, but we have certainly in the past offered guidance, in a very serious way, that airlines should not do so. To my knowledge that guidance has always been complied with.

The **Chairman**: Thank you very much, Mr McMillan. On behalf of the Dutch parliament I thank you for taking time to answer all our questions. I think your participation was very helpful. From this side of the table we wish you a very good evening.

## **Videoconference 2**

The expert heard is **Mr Joe Sultana, Director Network Manager, EUROCONTROL**

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The **Chairman**: Welcome, Mr Sultana, Director Network Manager within EUROCONTROL. Thank you for being prepared to inform the members of our parliament of the position of EUROCONTROL in matters of airspace safety. To start with, I would ask you to give us a short introduction of a few minutes. We have received and read the written note you sent us.

Let us start with your introduction, following which the members will ask you their questions.

Mr **Sultana**: Thank you and good evening to all. As I wrote in my short note, I am the Director Network Manager within EUROCONTROL. My background is that I come from Malta and have been working at EUROCONTROL for the last 24 years, since 2,5 years in my present position of Director Network Manager.

The Network Manager has responsibilities in looking at the operation of the European system as a whole. It works in partnership with the service providers, including the Dutch service providers, looking at each part of the airspace, how it is functioning and how we can improve the performance to aircraft operators using the European system. That is done on a day-to-day basis. I have an operational unit working 24/7, all day long, to deal with flow and capacity management. It also deals with delays and tries to mitigate them. At any time we have an overview of what is happening across the European system.

Specifically in the context of the tragic MH17-incident: it is part of our process that we have at our disposal the flight plans of flights. We check those flight plans against publicized Notices to Airmen (NOTAMs) containing information about airspace closures et cetera. In this case for example, we have received the flight plan, we distribute that flight plan to all the air traffic control centres who need it to follow up that flight and for the air traffic control of that flight. Distribution occurs after we have checked the flight plan against information on airspace closures in force at the time. In the attachment to what I have sent to you, you found an example of what we do. Sorry, I want to go one step back first. I talked about the performance of the network. A major disruption or a crisis certainly has a big impact on the performance of the network. So as Network Manager, we have a role in acting whenever a major disruption occurs and in mitigating its impact. Once the disruption is over, we try to recover the aviation system as quickly as possible. If there is a crisis situation, we have a coordinating role as part of the European Aviation Crisis Coordination Centre which was set up after the volcanic ash crisis that occurred about four years ago. I

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am the chairman of the European Aviation Crisis Coordination Centre, which comes in action when there is a crisis.

The other point I want to make in the context of the MH17 is that, given the role we have both as EUROCONTROL and specifically as Network Manager, I represented EUROCONTROL in the ICAO Conflict Zone Task Force, which was set up immediately after MH17. I took part in the work of that task force, which was chaired by Mr David McMillan, who had previously been Director General of EUROCONTROL.

I am now available to respond to your questions.

Mr **Servaes** (PvdA): Thank you for your introduction, Mr Sultana, and for the information you provided to us. I would like to start with a factual question. In the statement issued by EUROCONTROL on the 18th of July, the day after the downing of MH17, your organization stated that EUROCONTROL did not have the means nor the mandate to take decisions on the situation in Ukraine. Could you elaborate a little bit on that? Where are the borders of your means and mandate, both geographically and materially? What is it that you can do in a country such as Ukraine?

Mr **Sultana**: From a geographical area point of view, the Ukrainian airspace is part of an airspace for which EUROCONTROL is responsible. Ukraine is a member state of EUROCONTROL and its airspace is part of our operation and falls under the Network Manager. From a geographical area point of view, we are involved and we address also that aspect. When we mentioned the means, we meant the ability to access information based on which we could make a judgement as to whether the airspace was safe to fly in or not. I think that is what we meant with the means at the time.

The second point about the mandate is that, even if we had that information, we would not have had the mandate to close that airspace. Closing an airspace is the prerogative of the state involved, in the case before us Ukraine, unless we are talking about airspace over the high seas, in which case it would be an ICAO-responsibility, because ICAO is responsible for the airspace over the high seas.

So I think that was what was meant at the time by means: information that we had access to and any information we had received which somehow could have made us act differently from how we did. The second point would have been a mandate to do something, such as closing the airspace. This does not mean that, if we would have had information that we considered of impact to the safety of flights, we would not



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have informed the authority of the state concerned. If such information had been in our possession, we would have shared it.

Mr **Servaes** (PvdA): I have just one short follow-up question. What sort of information did you miss, would you say in hindsight? There has been a lot of debate in this country about whether certain information was available. Did you do your own evaluation? Was there information lacking from your system? Or was your analysis not correct of the information that was available?

Mr **Sultana**: I think the issue was the information available to us. The only information we had, was the information known to the public. We knew from the news that there was a conflict zone, that there was conflict in the region, in the eastern part of Ukraine. That is what we got from the news on tv. We had no possibility to verify that. We are not part of a system gathering intelligence information, we do not receive intelligence information that would give us more precise information on for example the types of weapons present in a certain area or other. We do not have that information and we have no means, within our current structure, to get a hold of that type of information.

Mr **Omtzigt** (CDA): In December 2014, The Sunday Times reported that a number of experts from EUROCONTROL, days before the downing of MH17, had had talks with the Ukrainian air traffic control, in which they asked and warned about dangers, since it had been public knowledge -- you just said so -- that almost 20 planes had been shot down. These flew a bit lower than commercial traffic, but there was obviously a war going on in the airspace over Eastern Ukraine. What was the nature of these talks and how did the Ukrainian side respond at that time to the worries that were expressed by EUROCONTROL?

Mr **Sultana**: We have also seen these press reports, but I have no knowledge of such a contact between any EUROCONTROL expert and the Ukrainian authorities. At EUROCONTROL senior level, we have no knowledge of such a contact either. So I cannot give you more information about whether or not this encounter took place and if so, what was exchanged. Following the said press report, we tried to look at who from among our staff, in their daily contacts, would have had this meeting, if there was such a meeting, but we have not been able to identify anyone who would have had such a meeting. I am responsible for the Network Manager and for my

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experts, but I do not have any information on this. I was also a bit surprised by this report, because as I mentioned, we do not have access to information other than the information we had from public media, that would have indicated that there was conflict.

Mr **Omtzigt** (CDA): In the Dutch Safety Board report it is stated that the primary radar was under maintenance. Yet if we look at the publicity, quite a few radar stations in the east of Ukraine have been destroyed. Was Ukraine under an obligation to report it to EUROCONTROL if primary or secondary radar was not working? Did Ukraine report to EUROCONTROL, in the months of May, June and July 2014, anything about problems with its radar surveillance which could obviously impact air traffic control?

Mr **Sultana**: It is procedure that EUROCONTROL, our unit, be informed about issues concerning any infrastructure or equipment -- that would include radar -- which has an impact on the provision of air traffic control, in particular on whether or not they can handle the amount of traffic that is expected in their airspace. That information is required by EUROCONTROL, by our unit. Not only in the context of MH17, but also in a normal day-to-day situation, the air traffic service provider declares to us the number of aircraft they can handle in a certain hour. It is then our obligation to make sure that the number of aircraft flying into that airspace remains within these limits. If these capacity limits, for whatever reasons, change -- one of the main reasons for such a change would be a radar outage, because a radar outage certainly means that they can handle less aircraft than they normally do -- then that information needs to be given to us.

I have no information that during those months there was any degradation of the radar system that would have been enough for the Ukrainian authorities to decrease the number of aircraft that they could handle from an air traffic control perspective.

Mr **Omtzigt** (CDA): Is there public access to the information given in the notifications that Ukraine sent to EUROCONTROL on the availability of radar data? Would you be able to send the public information on that to the Dutch parliament, so that we know what they publicly stated?

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Mr **Sultana**: Yes, we are in a position to indicate for the months you request whether we have received any declaration of a degradation of service, and we can make that information available to you.

Mr **Ten Broeke** (VVD): Thank you for that, sir. Let me continue on what your role could be with consideration to the recommendations of the Dutch Safety Board. Mr McMillan, your predecessor to whom we talked earlier, explained to us that EUROCONTROL is an ideal platform to make recommendations and to deal with best practices, but that it is essentially an intergovernmental organization that is not capable of making hard law. You yourself said that you are looking into flight plans and NOTAMs. We will be happy to receive the ones over the three months' period that you just described. These are of interest to us. You also said that you look at all the information in the public domain. What more could we expect? What more could we submit to EUROCONTROL in order to increase security over airspaces that are not fully under the control of the authorities, even when the authorities think they might still be in control?

Mr **Sultana**: I think the biggest role that we can play is in receiving risk assessments that any state may have of its own airspace or of other airspaces, which would help the airlines that will eventually have to fly according to a certain flight plan over these airspaces to make the best assessment possible and make the right decision based on the known risks. What we do and what we did three months after the incident, in November 2014, is that we started issuing a publication entitled Airspace Closing and Warning Summary. I sent it to you in the attachment of my contribution prior to this video conference. That is an example of what we started issuing in November 2014. The intention is to gather all the information available, issued by any relevant authority, for any airspace in Europe and the adjoining airspace where we see a lot of flights from or to Europe going in or coming out of. The intention is to first of all put it all together. It is true that ICAO has introduced this web space where states put their information, but that web space is not really populated enough at this point to give sufficient guidance to the airspace users who have to plan their operations on a daily basis. So basically what we have done is put together all the NOTAMs for all the airspaces in Europe and the surrounding airspace which would have an impact. We depict them and advise airspace users on which routes they can use and which routes they cannot, as a result of these NOTAMs. So we play a role in collecting and passing on the operational advice to airspace users, which route is possible, under

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which level, what alternatives there are et cetera. That is after the event, that is once the NOTAM has been published.

What we would like to do next, is become active beforehand, as soon as a risk assessment has been made, nationally. I think we are the ideal operational unit for that. To implement this requires an operational unit, because this is a live situation. Things can change from one minute to another and you cannot wait until the next day to update this closure or warning picture. So we have the operational unit to take on board any risk assessment and to share it with the airlines and with any other interested party.

We would certainly not -- and I think that this is one of the issues that has prevented this from happening -- want to know the intelligence sources which lead to the assessment. I think it would be important for airspace users to know that a state has received or issued information about an airspace which is relevant maybe to its national carrier and should be relevant to all carriers. Having received the risk assessment, making sure that it is seen by others who need it also to make or complement their own assessment, and even just taking it into account is an important contribution that I think we can add. It is something that was certainly not present in July 2014.

**Mr Van Bommel** (SP): You said that your organization does not have a mandate to close the airspace above countries, but you can urge national governments to close their airspace. At the time MH17 was downed, we already knew that there were some 20 aircraft shot by whatever party. That knowledge must have been available to you and to your organization. At the time, the Ukrainian government had closed its airspace up to 9,700 meters only. Was the information on the aircraft shot at not enough to urge the Ukrainian government to close its airspace entirely?

**Mr Sultana**: For us to make such a recommendation and to give such an advice -- I think the word you used was to "urge" a state -- we would have needed to have more information that the state, any state, had at the time about the situation over Ukraine, for example. We do not feel that we had more information than was public knowledge at the time, but that would have been needed for any state or any airline to have judged things differently based on a further recommendation from us. The policy we had, was: how can we help in this? Do we have more information that is not available to others? If that is the case, we would certainly make that information available. It is our obligation to do that. If we considered that additional information as a sound

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basis for a recommendation, then I think we would make such a recommendation. But making such a recommendation based on information coming from the news, from a television reporter, who not even gives it directly to us, but we just happened to see it ... we do not feel that this is adding to the information that a state would have and it would not be given enough credibility for it to make any change in the decision-making process.

**Mr Van Bommel (SP):** But in the case of Ukraine, it would be against the interest of the country itself if the government closed the airspace entirely, because in doing so, the Ukrainian government would admit that it did not have full control over the airspace above its own country. Ukraine would admit that it did not have the full sovereignty over its own country. Therefore your organization might step in and take that responsibility.

**Mr Sultana:** I can understand the point you make in the sense that it is possible that a state would have other interests than only the safety of flights in the airspace for which it makes such a decision. But as an intergovernmental organization, EUROCONTROL does not have the mandate to take over that decision-making responsibility for that airspace, on the assumption that a state might not be giving safety the top priority, if I can paraphrase a bit the scenario that you have. I can maybe give an example of what happened a few weeks later. There were some rockets landing close to Tel Aviv International Airport. There were immediate reactions by a number of states, banning their flights on the register from landing in Tel Aviv. The Israeli authorities went public with a safety assessment, which identified the threat, identified what they were doing against that threat and said that they did not feel that there was a threat to aircraft landing in Tel Aviv. Now you can say that they did that for their self-interest, because of the economic impact, but I do think that they did it correctly in the sense that the safety risk assessment they made, which justified the assessment and showed why they maintained that their airspace and their airport were safe, was made available through EUROCONTROL to all the states. Each state can then make its own assessment on whether or not to ban its aircraft from flying to Tel Aviv. As a consequence of that, after two or three days, the states which had banned their aircraft from landing there, reversed their decision and issued new safety information which allowed for their aircraft to fly and land there. I put it in this context to show you that the states in question have that responsibility. There are instances when, if you have additional information, action can be taken.

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The state concerned would have to justify that or not, and the justification would allow the states and the airspace users to make their final decision to operate.

Mr **Servaes** (PvdA): We have been discussing this with several representatives of international organizations. You very clearly describe that your organization has certain limitations, because it is governmental and because you do not have access to information from intelligence agencies. Prior to this video conference, we spoke with the Director of EASA, Mr Ky from France, and he said that his organization does have some supranational aspects, because some of the things they are doing are based on EU-law. He said that they can use certain EU-regulations to distribute and share information among the member states, from intelligence agencies of these member states. Would you support this claim? Does that mean that EASA would be best suited to organize a better network of information that could prevent such events in the future?

Mr **Sultana**: Certainly Mr Ky as Executive Director of EASA has responsibilities in relation to safety. Today their limit is that they identify a safety risk, they issue a Safety Information Bulletin, which provides the advice of EASA in the context of that airspace and flying there. I think they do not go further today, because the European legislation does not allow them to go further today. But this is something that can certainly be changed. We know this, because we have discussed it with EASA and with the European Commission. There are efforts to have an informal group develop a harmonized risk assessment methodology, in the sense that when a state has done a risk assessment based on sources that it cannot reveal, for whatever security reasons, there would at least be an understanding that they have used a methodology which has been adopted by all EU member states as common methodology.

The ability of the EU and of EASA in particular, but also of the European Commission, to force a state to get other states to agree on sharing security or confidential information, is something that I consider beyond EASA. That is a political matter, the states would really have to agree on that. We know that at the moment, states are willing to share the outcome of their risk assessments, but there still is reluctance to share the information which is then fed into a European risk assessment. That is as far as we understand the situation.

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Mr **Servaes** (PvdA): What exactly is necessary in terms of EU-legislation? What new legislation should be developed on harmonizing these issues in order to place EASA in an even better position?

Mr **Sultana**: I do not think that I have the right legal or political background to answer this question. The important thing is that any risk assessment any state makes, needs to be shared. That is for sure. Because at the end of the day, it is not really that critical where the state in question got the information. It is important that the information is assessed correctly and then shared. I do not think that it requires a huge political change to get the states to share their information, but I do think that the sharing of such information is the key. It is important that it is not just any risk assessment or any assessment that is made, even about third countries. It is important that information is shared, because that is the basis for assessing an airspace in a situation of conflict where, as was rightly indicated in the report, the state does not have the capability, the expertise or the desire -- for internal or for political reasons -- to make an objective safety risk assessment. So I think the most critical part is the obligation for states to share their information.

Mr **Omtzigt** (CDA): The DSB had a little bit of information about which airlines chose to fly and which chose not to fly over Eastern Ukraine. Can you elaborate a bit further on the research that we believe has been done by EUROCONTROL on which airlines did use, say in the first half of July 2014, the Eastern Ukrainian airspace, including everything from Crimea to Poland, and which airlines, by their behaviour, chose to fly around it?

Mr **Sultana**: The change which happened in the flight paths took place not in July, but in March, April, when the airspace over Crimea was closed due to the fact that the air traffic centre managed by the Ukrainian authorities had to close and was taken over by Russian troops or Russian separatists or whatever. I do not want to go into exact details on that one. At that point, the Black Sea airspace, the flight routes over Crimea, were closed, because there was a safety concern that two competing air traffic services would be active in the same airspace. At that time we saw some airlines deciding to go further south, from Romania and Bulgaria into Turkey, and vice versa for planes coming the other way. We also saw airlines going north, over mainland Ukraine, including Eastern Ukraine.

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We saw -- I can only give an expert view -- that the main choice that was made was driven by aviation-related conditions such as, obviously depending on the destination, which route is shorter or less penalizing. It was based on the weather, especially the winds, which have a significant impact on the duration of the flight. It was clear that the aircraft had to move away from their preferred path, which was over Crimea. Some moved north, some moved south.

We also read reports, after the incident with MH17, of a number of airlines saying that they had made their decision in March, April based on security information. I cannot judge that. They did not give that information to us between April and July, and they did not give us a reason for their choice to fly north over Eastern Ukraine or south over Turkey.

Looking at the data -- obviously we have seen which flights have flown when over the airspace in April, May, June and July -- we saw only one or two airlines that had all their flights avoid Crimea by going south. Many of the airlines split their operations. Some of them had a majority of flights going south, but a few kept going over Eastern Ukraine. There were only one or two airlines that really stopped flying over Crimea and over Eastern Ukraine and went south. At the time, we did not question that airline. This occurred over a certain period of time and as I said, they did not indicate to us that they were avoiding the airspace over Eastern Ukraine for security reasons.

Mr **Omtzigt** (CDA): To be very clear: which two airlines are you talking about?

Mr **Sultana**: The one I can remember is Qantas. Qantas moved south. I do not know the details by heart, but I can provide that information to you. I think we have provided to the investigation authorities information on all the flights which flew then. My recollection is that it concerned one or two airlines, one of them being Qantas.

The **Chairman**: And the other one?

Mr **Sultana**: I do not have that information now.

Mr **Omtzigt** (CDA): We would be most grateful if you could provide that information to us, if it is public.

Mr **Sultana**: Okay.



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**Mr Ten Broeke (VVD):** Since you do not question the choices that the airlines make, I would like to go into questioning the air authorities of Ukraine. Crimea was closed because of the risk that was posed by two competing air traffic controls. Eastern Ukraine however did not lead to the same decision, although they had at least two competing parties -- I would not even call them armies -- that already resulted at the time in 3,000 people dead on the ground and 20 planes having been shot down. How would you reflect on that, in hindsight? Given the public information that you had and that we all had, how do you reflect on the decision of the Ukrainian authorities not to shut down the airspace over Eastern Ukraine?

**Mr Sultana:** The situations over the Eastern Ukraine, Crimea and the Black Sea were completely different. In the Crimea instance, we had reports from pilots that the Russian authorities were calling them on the frequency, saying: I am the authority in charge now, you have to obey me; I am the air traffic organization dealing with your flight. As soon as we received this information from pilots, we took action to speak to the Ukrainians. We also spoke to ICAO, because the flight paths involved pass over the Black Sea, which is high seas airspace and falls under ICAO. So ICAO had the responsibility for that airspace, because at the end of the day, it is their airspace and their responsibility to decide who has the authority to provide air traffic services there. So in that case we had detailed information that came directly to us, both from the airlines and also from the Ukrainian authorities, to be fair towards the Ukrainian authorities. They were telling us: we have received reports from pilots also that there is an interference. At that point we issued the advice to the Ukrainian authorities and to airlines, informing them of what the situation was and advising them that the said situation might be unsafe for air traffic. On the part of the Eastern Ukraine, the information we had was no different from what was public knowledge through the news media.

**Mr Ten Broeke (VVD):** I would like you to probe a little bit into the second part of my question. You will understand why. As my colleague Mr Omtzigt pointed out earlier, it was stated in the press, be it anonymously by people who appear to be part of your organization, that there was criticism from people working for EUROCONTROL about the decision, or rather the lack of a decision, from the side of the Ukrainians. We all have the idea that maybe this whole tragedy might simply have occurred because nobody in their right mind would assume that a passenger airplane would ever be targeted. That is, however, not what we are trying to find out here. What we are trying

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to find out here, is -- given that the risks were clear and known to the public and given that a decision had been taken over Crimea -- why it is that no similar decision was taken for the airspace over Eastern Ukraine.

The **Chairman**: Mr Sultana, may I ask you for a short answer?

Mr **Sultana**: I think with hindsight, the risk that such a thing could happen was miscalculated. Either the probability of it happening or, certainly, the probability and the means for it to happen were misrepresented and I think the Dutch Safety Board report makes it clear that the fact that this could happen was maybe seen as remote because it had never happened before. That may have been the determining factor why it was not given the right risk level, a level which, had it been given, would have triggered further actions. So yes, in hindsight it is clear that everybody has to learn their lesson from the fact that it has happened and make sure that next time we also look at this possibility.

The **Chairman**: Thank you Mr Sultana. To conclude, Mr Van Bommel has another question for you. We have six minutes left.

Mr **Van Bommel** (SP): My question is related to information that could have been known to EUROCONTROL, while not being public knowledge. It is about the disturbance of communication between authorities related to using the airspace above Ukraine, especially Eastern Ukraine. It is said that these disturbances in communication were known to organizations such as yours. Is it a fact that you were aware, at the time or in the days before the incident happened, that there was such disturbance, due to the separatists, in the communication between important airspace authorities and organizations such as yours?

Mr **Sultana**: No. I have promised to provide to you any information that we have received in April, May, June and July of 2014 on for example radar outages that might have had an impact. We have had no information that the air traffic services and the ability of Ukraine to provide a safe service was degraded in the months or weeks before the incident. We will make available all the information we have received. I can tell you that there was no information that in our opinion indicated that there was a degradation in the service they could provide. I also think that the issue was not that a reduction in service would have caused the downing of MH17. The

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issue was, as stated in the report, the misassessment of the risk that an aircraft flying at 33,000 feet or whatever the flight level was, would be shot down. It was not assessed that there was such a high risk that this could happen.

Mr **Van Bommel** (SP): Okay, but still: a lack of information about disturbance of communication could have been -- in this case it was not, but it could have been -- part of your risk assessment, had you known about it.

Mr **Sultana**: If we had known, yes, then we would have used that information in our general assessment, such as we did in the example I previously gave you on the Crimea-incident, when there were communication issues among competing authorities trying to make air traffic control theirs.

The **Chairman**: Thank you. Mr Omtzigt has a last remark for you.

Mr **Omtzigt** (CDA): We look forward to receiving the information. It would be very helpful if you could make that available to us before next Wednesday evening, because we have a debate planned on Thursday.

The **Chairman**: Our assistants will keep in touch with you and we hope you can try to let us have the information within four, five days.

Mr **Sultana**: We will do our best.

The **Chairman**: Thank you. On behalf of the Dutch parliament I would like to thank you for taking the time to answer the questions of our committee members. Your participation was very helpful. Have a nice evening. Goodbye.

### **Videoconference 3**

The experts heard are:

- **Mr Nick Careen, Senior Vice President, Airport, Passenger, Cargo and Security Division (APCS) of the International Air Transport Association (IATA);**
  - **Mr Gilberto Lopez Meyer, Senior Vice President of Safety, Operations and Infrastructure, IATA**
- who are supported by:**

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- **Ms Carolina Ramirez Taborda, Global Director, Aviation Security and Facilitation, IATA**
- **Mr Jeff Shane, General Counsel, IATA**
- **Mr Mike Comber, Director, Member and External Relations with ICAO, IATA and**
- **Mr Russell Vieco, Head, Aviation Security, IATA**

The **Chairman**: I wish the representatives of IATA a warm welcome, who join us from Montreal. Good afternoon to you at the other side of the ocean. There is a six hours time difference between you and us. We appreciate that you give us the opportunity to speak with you about the safety of civil flights over conflict zones and the recommendations in this field made by the Dutch Safety Board. I would like to invite Mr Careen or Mr Lopez Meyer to make a brief statement in advance.

Mr **Careen**: Thank you very much Mr chairman. Good evening distinguished members of the House of Representatives. We will make sure that we give you the best possible answers from the IATA perspective as you continue your review. On behalf of IATA's director general Tony Tyler we thank you for the opportunity to appear before you to discuss the International Air Transport Association's response to the recommendations of the Dutch Safety Board on the important topic of how we can best ensure safety and security of civil flights over conflict zones.

The men and women of IATA share the shock, sadness, and anger expressed by the Dutch people and so many around the world following the events of the 17th of July 2014 and the shooting down of Malaysia Airlines flight 17 (MH17) en route from Amsterdam to Kuala Lumpur.

Airlines do not put their customers and employees in harm's way. The airline industry depends on states to ensure that the airspace over their respective territories is safe and secure or, if not, that airlines are well informed of the actual risks.

In this case, as the Dutch Safety Board found in its excellent report, from April until 17 July, no state prohibited operations through Ukrainian airspace or explicitly warned of particular threats in the airspace in the eastern part of Ukraine as a result of the conflict. With national intelligence services watching and photographing developments on the Russian-Ukraine border and keeping a close eye on hostilities within Ukrainian territory, it is reasonable to think that the availability of sophisticated anti-aircraft weaponry within Ukraine had been known, or at least suspected. In fact, shortly after the downing of MH17, media reported that intelligence agencies had this

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critical information. That raises a fundamental question: why was the civil aviation community left oblivious to the presence of anti-aircraft weaponry and the grave threat to civil aircraft it represented?

In answering this question, we cannot avoid the conclusion that the loss of MH17 was, in the largest sense, the consequence of institutional failure.

Within days of the tragedy, IATA, in partnership with the Civil Air Navigation Services Organisation (CANSO) and Airports Council International (ACI) called on the International Civil Aviation Organization (ICAO) to set up a task force to find ways to ensure that civil aircraft -- instruments of peace -- are never targeted by weapons of war. The task force was convened quickly and produced a report that contained important recommendations.

Among the most important was a call to reinforce the obligation on states to monitor the safety of airspace they control and to issue warnings or notices to close airspace where there is significant risk. Not surprisingly, this was one of the principal recommendations of the Dutch Safety Board as well. IATA and the airline industry wholeheartedly concur in this recommendation and urge the Dutch government to use the diplomatic resources at its disposal to drive the international community toward the establishment of unequivocal obligations in this regard.

On 13 January 2016, IATA submitted its response to the Dutch Safety Board's findings and recommendations. IATA fully supports the efforts of the Dutch Safety Board to understand the root causes behind the downing of MH17 and to ensure they are not repeated, most importantly by ensuring that states strengthen the mechanisms for monitoring and maintaining the safety of their airspace. IATA and its members continue to work tirelessly to safeguard the customers, employees and aircraft from harm throughout the nearly 100,000 flights undertaken by airlines every day across the world. Operators and regulators alike know that risk can never be entirely eliminated. The objective must be to reduce risk to the lowest attainable level. Thus, airlines have developed proven approaches to effective risk mitigation. Moreover, airlines have cultivated effective information sharing partnerships between themselves and made significant investments to develop mechanisms and methodologies to evaluate and exchange threat information across communities of interest.

Additionally, all 260 IATA Members and approximately 140 non-IATA airlines hold IATA Operational Safety Audit (IOSA) registration. IOSA is an important, proactive and robust mechanism which includes an assessment of airlines' Security Management Systems (SeMS). IOSA compliance is also documented through a

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publicly accessible registry and has been updated to include conflict zone risk management practices as part of its assessment. Helping airlines assess potential dangers is the responsibility of governments around the globe. There can be no walls between government and industry when it comes to sharing critical information to keep our passengers and crews safe and secure. If an agency of government has information which relates to the safety of international aviation, it must find a way to share that information so that airline operators can use it.

The **chairman**: Please forgive me for interrupting you, Mr Careen, but we have already received your introductory note, but please go on.

Mr **Careen**: Well, Mr chairman, given the fact that you had the information and that you all have the ability to read it, I will in the interest of time go on to the conclusion. The conclusion is that the aviation industry attaches the highest priority to safeguarding our customers and colleagues from harm as we transport them around the world. Safety and security are and always will be our top priorities. But we cannot overstate the importance of a single over-arching principle. Maintaining and monitoring the safety and security of the airspace through which airlines fly are the responsibilities of the states which, pursuant to the very first article of the Chicago Convention, have complete and exclusive sovereignty of the airspace above their territory. Simply put, the devastating loss of life on 17 July 2014 was attributable to an utter failure of states to discharge these fundamental obligations.

The Dutch Safety Board has rightly called for a clarification and reinforcement of these obligations in international law. IATA and the airline industry wholeheartedly support that recommendation. States have an obligation to restrict airspace that is not safe. If states will attach the appropriate measure of importance to these obligations, we can be confident that commercial aviation henceforth will be fully protected from the dangers attributable to hostilities.

We thank you for the opportunity and look forward to your questions.

Mr **Van Bommel** (SP): Thank you very much Mr Careen. You referred to the recommendation to reinforce the obligation on states to monitor the safety of airspace they control and to issue warnings and close their airspace in case of a significant risk. In a hearing we had earlier it was explained that in some cases national states may have obvious reasons not to close their own airspace. This is part of the debate on Ukraine. Ukraine may have had an interest in not closing its

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airspace in parts where it might have been necessary to close it. Should states have the possibility to forbid their national airlines to fly over certain regions where the state considers it to be too dangerous to fly?

Mr **Careen**: Each individual state has its ability to enforce its own regulations on its airlines. If it is determined, from a security standpoint, by an individual state that that is the case, I would support that of course.

Mr **Van Bommel** (SP): Would you also support the idea that all national states should have the possibility to forbid this? In the Netherlands this is not the case.

Mr **Careen**: Yes we would.

Mr **Lopez Meyer**: They have the possibility and they can do that. Every single state can close its airspace if it believes that this is necessary to do so.

Mr **Van Bommel** (SP): That is not what I meant. I am not talking about closing our own airspace, but about the possibility to forbid Dutch airlines to fly over Ukraine in this specific case.

Mr **Careen**: In some cases that already exists. National authorities have the ability to prohibit airlines from flying into another country's airspace. And back to your original question: yes we do support that.

Mr **Ten Broeke** (VVD): Thank you for having this videoconference with us tonight. I would like to go through one or two of the recommendations you made in your letter. On page two it says that additionally IATA has urged the United Nations to define new obligations on states with regard to design, manufacture and deployment of modern anti-aircraft weaponry and incorporate them into international law. I would like to know how you see that. You continue on page 3 by saying that it is essential that states have an affirmative legal obligation to control more effectively the deployment of weaponry capable of destroying commercial aircraft. Do you mean that this has to be laid down in legislation? If so, which kind of legislation should that be? How can we make states comply with this legislation?

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Mr **Shane**: Thank you for the question. We had a precedent for this in 1982 and 1983 when Korean Airlines flight 007 was shot down by the Soviet Union at the time. The international community came together and realized that there was no obligation contained in the Chicago Convention that prevented states from destroying civilian airliners. Very quickly the community came together and developed article 3bis of the Chicago Convention. It took a while before the article became part of the Convention, but it did. In this case we discovered that not only states have access to this weaponry, but non-state actors too. Most likely, that was the situation in Ukraine. Under the circumstances before us it occurred to IATA that there should be, therefore, clearer and stricter obligations on states to manage this weaponry -- the deployment, the design, the sale, the manufacture of it and so forth -- in such a way that there be greater control of its whereabouts. States should diminish the risk that non-state actors would have access to the sophisticated weaponry that was used in this case. IATA proposed an amendment to the Chicago Convention or to any other appropriate treaty to ICAO. The Secretary-General of ICAO felt it was not strictly within ICAO's bailiwick and therefore referred the request to the UN Secretary General in New York. The UN Secretary-General referred the request to an agency within the UN family responsible for arms control and that is the last we heard about it. We have not seen any further action on that. We continue to believe that, as part of the improvement of the legal framework governing this entire subject matter, obligations of that sort would be entirely appropriate.

Mr **Ten Broeke** (VVD): Could we please receive more detailed information than just a little paragraph at the bottom of page two about what you have actually proposed to the Secretary-General? Where are these proposals now in the UN?

Mr **Shane**: The answer is yes. We will certainly forward to you the language that we submitted. Unfortunately, I do not think we can explain to you precisely where it is in the United Nations. We know from a letter that the Secretary-General sent to the head of the arms control unit within the United Nations that the request was referred there, but there is no further contact.

Mr **Omtzigt** (CDA): Thank you for the very clear answer to my colleague's question. That helps us in finding out what we could do in the political domain. You also stated that in the middle of January you wrote a response to the Dutch Safety Board report. Is that a public response or a private one? In your letter you very clearly stated that



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you had three differences of opinion with the Dutch Safety Board. The most interesting one is the third one to me, namely the proposal that IATA establish a platform for the exchange of information developed by airlines about the safety of the airspace over conflict zones. Can you elaborate a bit more on these differences? Why do you think that the proposals made by the DSB are not good enough? How could they be made better in your view?

**Mr Careen:** The difference with respect to the sharing of information is our belief that the ICAO registry, which has been formulated for the exchange of information directly related to conflict zones, is this solution that we have proposed. There is information sharing amongst our members, amongst the aviation community. There are a number of different sources. We recommend the registry that has been established to be the main source. We would like to see the efforts focused in that regard, in order to make that as robust, as accurate and as timely as possible, to allow our airlines to be able to make the educated decisions they require with respect to risk assessments and their overflight plans.

**Mr Omtzigt (CDA):** My first question was if your reply to the DSB report is a public reply or a reply to the Dutch Safety Board.

**Mr Careen:** I believe it is a public report.<sup>1</sup>

**Mr Shane:** As far as we know, yes.

**Mr Careen:** There is no intent for it to be a private reply, so I would think it is a public reply.

**Mr Omtzigt (CDA):** We are interested in receiving it, so we can understand the issues you have.

**Mr Careen:** We will send it.

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<sup>1</sup> Please see attached letters from Dutch Safety Board to IATA Director General Tony Tyler: *Publication on Investigation into Malaysia Airlines Flight MH-17*, noting IATA's response would be published on the safety board's website.

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Mr **Omtzigt** (CDA): We have held hearings in the Dutch Parliament. One of the critiques we have heard on ICAO is that it obviously is a United Nations organization and thus has to work by consensus. The information on the information exchange website could be incomplete. If you have to give the nation concerned the right to reply, it would take days if not weeks before adequate information is available, which may be too late. Is that a problem in your eyes, or not? Is the present ICAO website working or are improvements possible?

Mr **Careen**: We believe it is working, but it is our firm position that there is still much room for improvement. You are absolutely right with respect to your comments on consensus and the way ICAO works. I think that we can all spend the rest of the afternoon talking about that and how that is formulated. Having said that, we believe that the registry does work. We believe that there is a lot of room for improvement and we also believe that the way it has been in the past with respect to sharing information does not mean that this is the way it has to be in going forward. With greater emphasis and support from the Dutch government, while ensuring that within the United Nations we have better definitions of the conflict zones, a demand for improvement of the functioning of the registry would work in our favour to improve where we are today.

Mr **Lopez Meyer**: The ICAO repository is working. This is the best tool we have at this moment. There is definitely always room for improvement. The repository depends on the quality and timely information it receives from the states. But we believe that it is a very useful tool that was set up in a short period of time. But we must continue to improve it.

Mr **Servaes** (PvdA): Thank you for all the information you gave us so far. You described the loss of the MH17 as the consequence of an institutional failure. You describe how states should improve their functioning and their cooperation as well. There is only a short paragraph on the organizations that you represent yourself, namely the airlines. You said the airlines have developed proven approaches to effective risk mitigations. At least in the Netherlands it is the legal responsibility of the airlines themselves to make the decision whether or not to operate a certain flight. In this case it was Malaysian Airlines or KLM, as far as they were involved. To what extent do you see institutional failure within your own community of airlines, or is everything perfectly organized there?

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Mr **Careen**: Being the safest mode of transportation in the world, it speaks volumes to the fact that every single one of our members and all airlines in the world have as their basic and number one tenet safe and secure flights. I mention the implementation of safety management systems, security management systems and robust risk assessment tools that are applied across the industry. Is there room to improve? Absolutely. But as we mentioned numerous times and as was indicated in the Dutch Safety Board report, the fundamental flaw here is lack of information. We firmly believe, as an industry, that had the correct information been provided to us, these types of events can and will be avoided in the future.

Mr **Van Bommel** (SP): At national level airlines depend on the information they get. There is a huge difference between countries when it comes to their information and intelligence position and to working together with services in other countries. The Netherlands has a very small intelligence community as compared to other countries, such as the United States, the United Kingdom or France. Would you say that Dutch airlines have a position as regards intelligence that is strong enough to take the decision to fly over conflict zones?

Mr **Careen**: It is hard for me to speak on behalf of the Dutch airlines themselves or to say how the intelligence community functions within your country. But having said that, it goes back to our recommendation with respect to using the registry as it is intended. If the registry was robust and continued to be improved upon, that would benefit the entire airline community on the planet, because all would have access to that information, regardless of the size of the country or the robustness of their intelligence community.

Mr **Ten Broeke** (VVD): Let us not be naïve about it: intelligence communities do not work that way. They do not simply share intelligence. It depends for example on the military engagement around the world. This makes some intelligence services more knowledgeable than others. They do not simply share information. We can ask for that, but I would like to get more practical ideas from you on how to do that.

Mr **Vieco**: In a previous life I had some experience dealing with counterparts within the Dutch government, so I have some familiarity, particularly from the intelligence side, as to whether there is information sharing. I can say that there is a better

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information flow between Dutch authorities and their aviation counterparts than between these and other parts of the world. I think that speaks to a systemic issue. There is a difference in quality and communication between intelligence communities and their civil aviation counterparts. The key to all of this is facilitating a system that allows information to flow from the intelligence community down to the operator level, so that it is useful. Intelligence is not useful if it is not actionable in some way, shape or form. In the case of this industry, whether it be conflict-related to overflight or other threat matters, such as IEDs or bad actors, airlines need that information to be able to make well-informed risk assessments.

The process flow for getting that information from the intelligence community down to the operator is something that the governments broadly need to explore. Some do it well, some can always do it better and some do it not at all. I think that that is the real issue. It is fundamental to make sure that the operators have the information they need to make the best risk assessment possible. What you certainly found in this instance, is that pieces of information were missing. Relying on open source information is not enough in the case of operators. You need that validation and qualification by individual states, to assess that information and make that determination. We are not specifically talking about the sources, methods and/or scope of how that information was collected. We are talking about airline-level information to make airlines aware that there is a threat or a particular issue. We are not talking about the types of details that are classified, we are talking about things that can be actionable on the part of the industry to make well-informed assessments.

**Mr Ten Broeke** (VVD): Would you recommend that you are to share with us best practices, not per se with the United States, but maybe also with other countries where there is a legal obligation? Would you also recommend a legal obligation for security and intelligence services to specifically look into the dangers of airspace, being threatened not just by rogue states, but also by rogue elements, thus non-state actors?

**Mr Vieco**: From my perspective, the issue is a broad one. It is not narrowed to matters of conflicts zones. It is a holistic threat perspective. Jeff and I spent time in the US government and have taken the experience from 9/11 where you saw compartmentalized information clearly not helping anyone in that situation. You also saw a resulting transformation of the US government to facilitate the information flow

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between actors within the US government, but also from governmental actors to the private and public partnerships that exist today. States look to these types of forms, for one example. There are other examples, but you have to be able to have some mechanism in place to be able to share information within the government structure, so that the Interior knows what the Transport Ministry is doing and vice versa relevant to the threat, as well as to transmit that information in an actionable way to operators, so that the folks who are on the ground have awareness of the types of threats that are out there and can put mitigations in place in order to affect them.

Mr **Careen**: Let me answer the question with respect to the best demonstrated practices. We can take that offline and discuss it and reach back to you with some further details.

The **Chairman**: Is it possible for you to provide us with this information before next Wednesday? I ask you this because we will have a debate with the government.

Mr **Careen**: Yes.

Mr **Omtzigt** (CDA): Do you have a specific view on code sharing between airlines? In the MH17 case, the flight also had a number of other codes, like KL4107. A number of passengers did not buy their tickets from Malaysian Airlines, but they bought tickets that were issued by KLM and two other airlines. Garuda Indonesia was one of them. Do you have guidelines about the minimum security information sharing that should be done, or are you OK with the present situation that code sharing only means that you look at the standard of each other's food and the handling of the passengers?

Mr **Careen**: I cannot answer that question clearly enough to be of any value to you. The sharing of information with respect to PNR and API-information is clear and in force. I am not aware of there being an issue that a code share would get in the way of the sharing of that PNR-information. But Jeff may have a little bit more to add in that regard.

Mr **Shane**: From the perspective of regulators a code share relationship is increasingly supposed to be predicated on a thoroughgoing knowledge of the code share partners. If an airline is selling a ticket, knowing that the passenger is going to

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be flying on another carrier at some point during the journey, it is the obligation -- in many cases a legal obligation -- of that airline to ensure that the carrier who will be doing the flight complies with all of the applicable safety and security regulations under whatever government regulations it is flying. I know that in the United States airlines are required to actually conduct an inspection of their code share partners. So it is not merely a commercial relationship. It is in itself a safety and security relationship.

Mr **Omtzigt** (CDA): Could you elaborate a bit more on the security inspection American airlines have to conduct? It appears that no such inspection took place in this particular relationship.

Mr **Shane**: I cannot really elaborate on that. It is my impression -- it is nothing more than that, I confess, because I have not really analyzed this issue -- that airlines are required to deal with airlines who are compliant with all the regulations that apply. To the extent that security regulations are being visited on airlines around the world by their government regulators, it is reasonable to think that security will be covered by that. I appreciate that that is not a factual answer. It is an impressionistic answer.

Mr **Omtzigt** (CDA): KLM and Air France are fully integrated. The French state has been very clear about where airlines cannot fly. It is a limited list, including Syria, Iraq and Libya. It is quite a long list. However, the same list does not apply to KLM. Nevertheless they are code share partners for all their flights. Do you have a view on whether they should be integrated when it comes to security issues, or whether they should handle these separately? When you buy an Air France ticket and happen to board an Air France plane, you are pretty sure that you will never fly over certain areas, but if you board a KLM plane, which happens quite often, you may find yourself flying over that area.

Mr **Shane**: It is a conundrum, to be sure. At the end of the day each state is supposed to be regulating its own carriers. In order for France to start regulating KLM flights, notwithstanding the commercial integration, would be an exercise of an extraterritorial authority. The Dutch government might very well ask: why are you regulating our national carrier, integration notwithstanding? I do not think we have a very clear answer to that question. It is one for governments to consult about and to form a view on how to harmonize relations and regulations more effectively.

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Mr **Careen**: I am not entirely familiar with how Air France and KLM have integrated. We know they have, from a commercial standpoint and from an operational standpoint as well. If they are still operating under two separate operating certificates et cetera it is feasible that one could have one view and the other could have a different view, using risk assessments within their own organization and the information available to them. But we are not in a position to comment on how that is facilitated. It is a question left for KLM operators and the operations team at both airlines to respond.

Mr **Servaes** (PvdA): I would like to come back to the legal obligation of national states to share information with the airlines. I suspect that that will be part of our debate in parliament. It is somewhat vaguely laid down in the current legislation. That can possibly be improved. I do see one risk there, however. The stronger you make the role and the responsibility of the state, the easier it will be for airlines to become lazy, so to say. We now know that KLM has a desk of some 50 people who are fulltime working on risk assessment and safety and security issues. But smaller airlines do not have this capacity probably. Is this something that you share? Is there something we can do to prevent airlines from scaling down on their own risk assessment capacities?

Mr **Careen**: That is a very interesting question. The airlines are not that lazy, especially with respect to the safety and security of flights. I would see zero risk in that regard, because while we are speaking specifically about conflict zones, risk assessments are done on a minute-by-minute daily basis in the operational world of an airline. They are focused on many things beyond just conflict zones. It could be weather, it could be winds, it could be mechanically related challenges. There could be a number of things entailed, encompassed and embedded in the decision making process in an airline. That is something that has been ongoing for the last couple of decades and it is very, very robust. Most recently I have been involved in similar operational control myself. I would see very little concern that airlines would pull back on their risk assessment abilities, based on more information being made available to them. I would say it is the contrary. Better decisions will be made and ultimately the best scenario for our customers would prevail.

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**Mr Van Bommel (SP):** It may not be your concern, because they are not your customers, but the passengers are the group that we left out of the debate. How do you see the position of the passengers when it comes to getting information about the risks that are being taken by the airlines they fly and by the governments that provide information to the airlines? At the end of the day it is the customer who has to take the decision whether or not to board the plane. What would be your ideas about how to provide more information to passengers?

**Mr Careen:** It is our position that the IOSA registry provides the best framework for our customers to be able to evaluate the industry as a whole. We have very robust risk assessment plans, very robust safety management systems and very robust security management systems, all of which are part of our IOSA audit registry and the IOSA protocols. We suggest our customers take confidence in the fact that these registers are public domain. Having said that, each individual airline has their own methods of communicating with the customers. The vast majority of them already have information available on their websites, through SMS and through other means to be able to indicate all sorts of operational challenges for the day, be it something as severe as this or something that may be considered less severe, like a winter storm about to take place in a certain location. With the combination of all that I believe that the information is available for our customers, to be able to utilize and to make that assessment on the risk being taken within the industry.

**Mr Ten Broeke (VVD):** The ICAO treaty contains a couple of annexes that would allow for a system to be introduced which I would call a sort of licensing system or quality management system for those airlines that have risk management systems in place. My colleague just referred to KLM for example, where 50 people are working on this. But there are also low-fare carriers that employ nobody to do this. What is your opinion about the introduction of a differentiated licensing system on the basis of which airlines are granted a quality certificate that could also relate to allowing them certain slots or not, if they have security management systems in place?

**Mr Comber:** I would not say ICAO is in the job of giving a seal of some kind to a specific airline. ICAO actually produces the standards, which as you mentioned are part of the Annexes, which are Annexes to the Chicago Convention. Within these standards certain systems could be created that would generate the same result you are looking for, which is the obligation of an airline or a state to comply with certain



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rules. We are strong promoters of ICAO developing standards on security management systems. Our input to that has gone into one of the groups that help ICAO generate these standards. These groups, which are called panels, are composed of states and the industry too. These are people who get together to generate proposals for new standards. The Netherlands is part of this. The Netherlands is also part of the ICAO Council, through the ABIS Group. You do have a voice there and this is an entry point to produce a standard that eventually will become a state regulation and meet the needs that you just spoke about.

Mr **Ten Broeke** (VVD): Do I understand that you have proposed something in those working groups that now requires an answer from states like the Netherlands or a position to be taken? If so, can we have that proposal? Can you send that to us?

Mr **Comber**: Yes, we could send material on what we have proposed in the past. The way these groups work is that the states and the industry work together in those groups. Obviously, the group reaches a conclusion and provides advice that eventually reaches the Council of ICAO for adoption.

The **Chairman**: On behalf of the Dutch parliament I would like to thank you for the time you took for answering the questions from the committee members. Your answers are very helpful for the forming of our opinion. I wish you a good afternoon at the other side of the ocean. We are going into the night, but you still have a day to go.

[continues in Dutch] De inbreng in deze videoconferentie zullen wij gebruiken in de vergaderingen van het parlement met het kabinet op 4 februari en 1 maart 2016. Er is nog informatie opgevraagd bij onze gesprekspartners. Wij zullen proberen die binnen tien dagen te produceren en te verstrekken aan de leden van het parlement. Ik dank de leden, degenen die hebben geluisterd en degenen die hebben toegekeken. Ook veel dank aan degenen die dit technisch allemaal mogelijk hebben gemaakt en alle anderen die hier aanwezig zijn.

Closing 19.50 hours.