



**Security Council**

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NOTE BY THE SECRETARY-GENERAL

The Secretary-General has the honour to transmit to the members of the Security Council the attached communication that he has received from the President of the Council of the International Civil Aviation Organization.

Annex

Letter dated 2 October 1990 from the President of the Council  
of the International Civil Aviation Organization addressed to  
the Secretary-General

Further to my letters of 7 and 13 September 1990 (S/21796 and S/21828), I am pleased to send herewith for your information the text of my memorandum PRES AK/234 to Representatives on the Council of ICAO on the situation in the Gulf area, in particular with reference to the United Nations Security Council resolution 670 (1990). This memorandum reproduces my statement in the closed meeting of the Council on 1 October 1990.

(Signed) Assad KOTAITE

Enclosure 1

Memorandum dated 2 October 1990 from the President of the Council of the International Civil Aviation Organization addressed to the representatives of the Council

To: Representatives on the Council  
From: President of the Council  
Subject: Situation in the Gulf area

On 1 October 1990, I made a statement in the closed part of the 1st Meeting of the 131st Session of the Council under "Other Business".

At the request of several Representatives, I am circulating the text of my statement for your information.

(Signed) Assad KOTAITE

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Enclosure 2

STATEMENT BY THE PRESIDENT OF THE COUNCIL ON 1 OCTOBER 1990

(Council, First Meeting of the 131st Session)

On 4 September 1990, in the closed part of the 31st Meeting of the Council's resumed 130th Session, I made a statement under "other business" on the situation in the Gulf area. At the request of several Representatives, the verbatim record of my statement was distributed for information in my memorandum PRES AK/229 of 12 September 1990. At that time, I promised to keep the Representatives informed of further developments. My statement addressed the events and actions taken by the United Nations Security Council, the air navigation and operational aspects of the situation and the action taken by ICAO to prepare appropriate contingency measures to prevent the possible disruption of the traffic flow. I also informed the Council of the request by the Government of Kuwait to notify Contracting States that 15 aircraft belonging to Kuwait Airways had been seized by Iraqi forces and States were requested to help prevent Iraq from using those aircraft. It was in full conformity with the Security Council resolution 662 of 9 August 1990 that this letter was circulated on 14 September 1990 to ICAO Contracting States since that resolution called specifically on all States and specialized agencies to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation of Kuwait by Iraq. Furthermore, I have received, on 17 September 1990, after the State Letter had been sent out, another letter from the authorities of Kuwait giving more information and technical data regarding the 15 Kuwait Airways aircraft concerned.

The new developments in the situation include, in particular, Security Council resolution 670 (1990) adopted on 25 September 1990. The text of that resolution was distributed immediately for information of the Representatives with my memorandum PRES AK/231 of 26 September 1990.

Resolution 670 (1990) directly addresses civil aviation. In adopting this resolution, the Security Council expressly acted under Chapter VII of the Charter of the United Nations and it is unconditionally binding on all Member States of the United Nations by virtue of Article 25 of the Charter. Furthermore, the resolution specifically refers to Article 103 of the Charter, emphasizing that the obligations of States under the resolution take precedence over any other obligations under international agreements or contracts - a point further emphasized in operative clause 3 of the resolution.

The essential point of resolution 670 (1990), in clause 3, is that States are obliged to deny permission to any aircraft to take off from their territory if the aircraft would carry any cargo to or from Iraq or Kuwait (except humanitarian supplies permitted under resolution 661). Furthermore, under clause 4, States are obliged to deny permission to any aircraft destined to land in Iraq or Kuwait to overfly its territory unless the aircraft lands in its territory to permit inspection to ensure that there is no cargo on board in violation of resolution 661. States are also obliged, under clause 5, to take all necessary

measures to ensure that any aircraft registered in its territory or operated by an operator who has his principal place of business or permanent residence in its territory complies with resolutions 661 and 670. Under clause 7, the resolution calls upon all States to cooperate in taking the necessary measures to ensure the effective implementation of the resolution - consistent with international law, including the Chicago Convention. The practical meaning of this provision is that any enforcement or other "necessary measures" have to refrain from the use of weapons against civil aircraft in flight; this rule is a part of general customary international law and has been only expressly recognized in a codified form in Article 3 bis of the Chicago Convention; this obligation therefore exists independent of the entry into force of the Protocol of 1984 introducing the new Article 3 bis in the Chicago Convention.

All flights must be inspected before departure or upon required landing to make sure that they do not carry cargo banned under resolution 661.

Paragraph 11 of resolution 670 affirms that the specialized agencies are required to take such measures as may be necessary to give effect to that resolution and resolution 661. This is a direct task for ICAO, in particular when read together with Article VII of the Agreement between the United Nations and ICAO (Doc 7970) of 1947, under which ICAO is obliged to "render such assistance to the Security Council as that Council may request, including assistance in carrying out decisions of the Security Council for the maintenance or restoration of international peace and security".

The request by the Security Council is formulated in general terms - "to take such measures as may be necessary" - and does not indicate any specific action. Any action to be taken by ICAO will have to be within the constitutional mandate of the Organization.

So far no proposal has been presented in the framework of ICAO for any specific measures to be taken under Security Council resolution 670 (1990); any such proposal will have to be considered as a matter of priority by the ICAO Council.

Furthermore, I wish to inform the Council that on 25 September 1990, I received a letter from the Representative of Iraq on the Council advising me that under a decree issued by the Revolutionary Command Council of the Republic of Iraq, the assets and property of the [and I quote: "former"] Government of Kuwait, including aircraft of Kuwait Airways, have become the property of the Government of Iraq; any disposition with such assets and property will be considered as an infringement of the rights and assets of the Government of Iraq. The letter requested me to advise the ICAO member States accordingly.

I have not circulated this letter to the Representatives and do not propose its circulation to member States. I believe that ICAO should strictly maintain the policy that communications from one State are not distributed to other Contracting States. The recent communication of Kuwait has been distributed to all States but that was done in conformity with resolution 662 (1990) of the Security Council which called on States and the specialized agencies to refrain from any action or

dealing that might be interpreted as an indirect recognition of the annexation of Kuwait by Iraq. In this context, it should also be noted that resolution 670 (1990) of the Security Council specifically affirms that the Decree No. 377 of the Revolutionary Command Council of Iraq of 16 September 1990 is null and void. Consequently, the circulation of the letter from the Representative of Iraq would not be consistent with the terms of resolutions 662 and 670.

Finally, I wish to inform the Council that, as I indicated in my statement of 4 September 1990, the traffic continues to proceed without disruption and the appropriate contingency arrangements have been prepared to prevent any possible disruption of the traffic; however, so far there has been no need to introduce such contingency measures. ICAO continues to closely monitor the situation from the Headquarters and through the Regional Office concerned, in close co-operation and co-ordination with the States involved and with IATA.

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