



**WORKING PAPER**

**LEGAL COMMITTEE – 33RD SESSION**

(Montréal, 21 April – 2 May 2008)

**Agenda Item 2: Report of the Secretariat**

**DEVELOPMENTS IN THE LEGAL WORK OF THE ORGANIZATION**

(Presented by the Secretariat)

**1. INTRODUCTION**

1.1 Information on items in the Work Programme of the Legal Committee is provided in LC/33-WP/3 and LC/33-WP/4 and subdivisions thereto. The purpose of this report is to inform the Committee of other relevant developments in the legal work of the Organization since the 32nd Session of the Committee.

**2. RELEVANT LEGAL DEVELOPMENTS**

**2.1 Public Key Directory (PKD)**

2.1.1 Assistance and legal support were provided in relation to the establishment of a PKD under the aegis of ICAO. In this context, a Memorandum of Understanding (MoU) regarding participation in the ICAO Public Key Directory (PKD) was developed, which came into effect on 8 March 2007. The PKD allows for the verification and authentication of e-passports worldwide.

**2.2 Environmental Protection**

2.2.1 In the environmental field, the Legal Bureau provided the Steering Group and other bodies of the Committee on Aviation Environmental Protection (CAEP) with opinions. In this matter, the Council agreed to establish the Council Special Group on Legal Aspects of Emissions Charges (CSG-LAEC) which met in September 2005. The Special Group conducted its analysis on the basis of a list of legal questions addressing emissions charges at the local level as well as at the global level, which was prepared by the CAEP Emissions Charges Task Force at a meeting convened in April 2005. The Special Group agreed on key conclusions which reflected two significantly different approaches, in particular regarding the interpretation of Article 15 of the Convention (see Report CSG-LAEC/1, Montréal, 6 – 9 September 2005).

**2.3 Safety**

2.3.1 As regards safety, the Legal Bureau was closely involved in several projects. More particularly, it supervised in 2005 the development of legal guidance in pursuance of

Assembly Resolution A35-17: *Protecting information from safety data collection and processing systems in order to improve aviation safety*. The Secretariat, seeking common trends and conceptual points in pertinent legislation provided by Contracting States, produced a draft reviewed by the Air Navigation Commission (ANC) and further approved by the Council in March 2006 as Attachment E of Annex 13 to the Chicago Convention: “*Legal guidance for the protection of information from safety data collection and processing systems*”. The objective of the guidance material, in the form of a series of principles, is to prevent the inappropriate use of information collected solely for the purpose of improving aviation safety. This is to ensure its continued availability so that proper and timely preventive actions can be taken to improve aviation safety. The protection of safety information is not intended to interfere with the proper administration of justice; national laws and regulations protecting safety information should ensure that a balance is struck between the need for protection and the need for the proper administration of justice. The guidance also recognizes as a general principle that providing protection to qualified safety information under specified conditions is a genuine part of a State’s safety responsibilities.

2.3.2 Pursuant to Assembly Resolution A35-7: *Unified strategy to resolve safety-related deficiencies*, the Legal Bureau also contributed to the development of a procedure for transparency and disclosure regarding significant compliance shortcomings with respect to safety-related SARPs. This procedure which aims at implementing Article 54 j) of the Convention was approved by the Council in 2005 (State letter AN 11/41-05/87 dated 12 August 2005). The mechanism established has two main phases. In the first phase, the ICAO Secretariat analyzes the situations which present a significant risk to civil aviation safety and submits to the Council the cases where an improvement in safety cannot be expected, because of lack of cooperation on the part of the State concerned or because that State is itself the perpetrator of or accomplice in illegal activities (forging of documents, trafficking in certificates, etc.). In the second phase, the Council proceeds to investigate the cases that have been submitted to it by the Secretariat and it may formulate recommendations or determinations with regard to the State concerned. If the State concerned does not comply with the recommendations or determinations of the Council, the Council must so inform all Contracting States.

## 2.4 Revision of Rules of Procedure

2.4.1 In December 2005, the Council established a Working Group to review the *Rules of Procedure for the Council* (Doc 7559) and the *Rules of Procedure for Standing Committees of the Council* (Doc 8146). The Legal Bureau provided Secretariat services to this Group, whose work resulted in the adoption by the Council of new editions of Docs 7559 and 8146, as well as a revised Delegation of Authority to the President of the Council.

## 3. IMMUNITIES OF ICAO

3.1 Since the last session of the Legal Committee, there have been a significant number of cases against ICAO as a defendant or co-defendant in the courts of different countries. In general, through the intervention of the Legal Bureau, ICAO has received assistance and cooperation from the authorities of the respective countries. Appropriate action has been taken on many instances to defend the privileges and immunities of ICAO on the basis of the Chicago Convention, the *Convention on the Privileges and Immunities of the Specialized Agencies*, and the relevant bilateral agreements. In one instance, a high-level court at the location of Headquarters has rejected an appeal of one former staff member of ICAO on the ground that ICAO has immunity.