



INTERNATIONAL CIVIL AVIATION ORGANIZATION

A35-WP/84  
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## ASSEMBLY — 35TH SESSION

### LEGAL COMMISSION

#### Agenda Item 37: Work Programme of the Organization in the legal field

#### WORK PROGRAMME OF THE ORGANIZATION IN THE LEGAL FIELD

##### SUMMARY

This paper sets forth proposals for the work of the Organization in the legal field for the period 2005-2006-2007.

Action by the Assembly is in paragraph 6.

#### 1. WORK PROGRAMME OF THE LEGAL BUREAU

1.1 The continuing functions of the Secretariat in the legal field are indicated in the programme budget of the Organization for 2005-2006-2007. This includes the provision of legal advice and assistance to the Secretary General, other ICAO Bureaux, Regional Offices and to ICAO Contracting States; research, legal advice and services, including preparation of documentation, for the Council and its subordinate bodies, the Assembly, the Legal Committee, Diplomatic Conferences and other meetings; legal input in the ICAO CNS/ATM activities; discharge of functions in relation to international agreements of which ICAO is the depositary; registration of aeronautical agreements and arrangements; collection of national laws and regulations relating to civil aviation; preparation of various reports, e.g. material for the United Nations Juridical Yearbook; representation of the Secretary General in appeals coming before the Advisory Joint Appeals Board and the United Nations Administrative Tribunal; representation of the Secretary General in other litigation, in which ICAO may be involved; cooperation on legal matters with the United Nations and other organizations; establishment of an ICAO legal database; and other related functions of legal nature.

1.2 The Legal Bureau provides services and advice to the Council in relation to the settlement of civil aviation disputes under Article 84 of the Chicago Convention and certain matters referred to the Council under Article 54 (n).

(6 pages)

1.3 The Legal Bureau cooperates with the United Nations and other organizations in the preparation of draft conventions and studies of existing instruments which might have implications for international civil aviation. The Bureau monitors the deliberations and decisions of the United Nations and other international organizations on matters related to air law or otherwise of interest to the Organization.

## 2. LEGAL MATTERS IN THE COUNCIL

2.1 In the ordinary course, the Council deals with various matters in the legal field, as they might arise from time to time. Under the Constitution of the Legal Committee, the Council has the function of approving the General Work Programme of the Committee which is determined by the Committee. Also, under paragraph 5 of the Constitution of the Legal Committee, the Council decides on the date, place and provisional agenda of the sessions of the Legal Committee which are convened by the Council. According to the *Procedure for Approval of Draft Conventions on International Air Law* (Assembly Resolution A31-15, Appendix B), the Council, when receiving a draft Convention in final form from the Legal Committee, takes such action as it deems fit, including the circulation of the draft Convention to States and, in doing so, may add its comments on the draft Convention; the Council also convenes a Diplomatic Conference for approval of the draft Convention.

## 3. WORK PROGRAMME OF THE LEGAL COMMITTEE

3.1 In accordance with Rule 8 of the Rules of Procedure (Doc 7669-LC/139/5), the Legal Committee establishes and maintains, subject to approval of the Council, a general programme of work which includes subjects proposed by the Committee itself; in addition, it is to include any subjects proposed by the Assembly or the Council.

3.2 The 34th Session (Extraordinary) of the Assembly left unchanged the General Work Programme of the Legal Committee decided upon by the 33rd Session of the Assembly, which had established the following programme with the subjects listed in order of priority:

- 1) Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), of the establishment of a legal framework;
- 2) Acts or offences of concern to the international aviation community and not covered by existing air law instruments;
- 3) International interests in mobile equipment (aircraft equipment);
- 4) Consideration of the modernization of the *Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface* signed at Rome on 7 October 1952;
- 5) Review of the question of the ratification of international air law instruments; and
- 6) *United Nations Convention on the Law of the Sea* – Implications, if any, for the application of the Chicago Convention, its Annexes and other international air law instruments.

3.3 At the tenth meeting of its 167th Session, on 25 November 2002, the Council decided to retain the item “International interests in mobile equipment (aircraft equipment)” on the Work Programme while lowering its priority from No. 3 to No. 4 and raising the item “Consideration of the modernization of the *Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface*, signed at Rome on 7 October 1952” from priority No. 4 to No. 3. The 32nd Session of the Legal Committee (Montreal, 15-21 March 2004) had as its main item for consideration “Consideration of the modernization of the *Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface*, signed at Rome on 7 October 1952”; the Committee made no change to its Work Programme as amended by the Council on 25 November 2002.

3.4 As a result, the Work Programme approved by the Council contains the following subjects in the order of priority indicated:

- 1) Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), of the establishment of a legal framework;
- 2) Acts or offences of concern to the international aviation community and not covered by existing air law instruments;
- 3) Consideration of the modernization of the *Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface*, signed at Rome on 7 October 1952;
- 4) International interests in mobile equipment (aircraft equipment);
- 5) Review of the question of the ratification of international air law instruments; and
- 6) *United Nations Convention on the Law of the Sea* – Implications, if any, for the application of the Chicago Convention, its Annexes and other international air law instruments.

3.5 Additional information on Items 1, 3 and 4 of the Work Programme is presented separately to the Assembly in Working Papers A35-WP/75, A35-WP/18, A35-WP/16 respectively. The Appendix hereto provides details on Items Nos. 2, 5 and 6.

#### 4. LEGAL MEETINGS

4.1 For budgetary and planning purposes during the period 2005, 2006 and 2007, the following legal meetings are envisaged:

2005: a Diplomatic Conference; and a session of the Sub-Committee of the Legal Committee;

2006: a session of the Legal Committee; and

2007: a regional legal seminar.

4.2 To reduce costs, no regional legal seminars are planned for 2005 and 2006.

5. **FINANCIAL IMPACT OF THE PROPOSED ACTION**

5.1 The proposed work set out in this working paper would be undertaken within the resources available under the draft Programme Budget (Legal) for the triennium 2005-2006-2007.

6. **ACTION OF THE ASSEMBLY**

6.1 The Assembly is invited to consider the programme of future work of the Organization in the legal field and to indicate any views, and take decisions, with respect to this subject.

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## APPENDIX

Item No. 2: **Acts or offences of concern to the international aviation community and not covered by existing air law instruments**

With respect to this item, the 33rd Session of the Assembly adopted Resolution A33-4: *Adoption of national legislation on certain offences committed on board civil aircraft (unruly/disruptive passengers)*. At the same time, it decided to endorse the recommendation of the Council that the advisability of an international instrument (e.g. a protocol to the Tokyo Convention of 1963) be further considered and to request the Council to report to the next ordinary session of the Assembly. To facilitate the implementation of Resolution A33-4, ICAO Circular 288, LE/1 – *Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers*, was circulated to States through State letter LE 4/59-02/49 dated 28 June 2002. At the seventh meeting of its 164th Session on 30 November 2002, the Council decided to ascertain to what extent Contracting States had taken action to incorporate the model legislation into their national laws, and the requirements of such national laws in relation to those of the said model legislation, before convening another meeting of the Secretariat Study Group. To this end, a survey was conducted by the issuance of two State letters, to which a total of 76 replies were received as of 4 November 2003.

Most Contracting States replying to the State letters indicated that they were aware of the issue of unruly/disruptive passengers and that they took action to address it. Eighteen Contracting States, representing approximately **24 per cent** of the total replies and approximately **10 per cent** of the total Contracting States of ICAO, indicated that they had incorporated, in whole or in part, the model legislation recommended by Resolution A33-4 into their national laws. Thirty Contracting States, representing approximately **39 per cent** of the total replies, indicated that they are in the process of studying or implementing the Resolution. Some States indicated difficulties with the direct “transplant” of the text of the ICAO model legislation into their respective national law, since this would call into question the coherence of their respective legal system. With respect to the jurisdictional clause in Section 4 of the model legislation, some replies also indicated a cautious attitude in extending jurisdiction based on the place of the landing of the aircraft on board of which the offence was committed.

Based on the aforementioned survey, the Council decided on 24 November 2003 at the tenth meeting of its 170th Session to report the status of the implementation of Resolution A33-4 to the next ordinary session of the Assembly and to seek further guidance from the Assembly regarding this matter.

Item No. 5: **Review of the question of the ratification of international air law instruments**

The 31st Session of the Legal Committee (Montreal, 28 August – 8 September 2000) assigned this subject priority No. 5 in its General Work Programme. The item was retained in the Work Programme with the same priority by the 33rd Session of the Assembly (25 September – 5 October 2001), subsequent sessions of the Council, and by the 32nd Session of the Legal Committee (Montreal, 15-21 March 2004).

Since the 33rd Session of the Assembly, the Treaty Collection on the Legal Bureau’s web page of the ICAO website has been expanded. Additional complete lists of parties to air

law instruments, after verification with other depositaries, have been posted. This work is still ongoing. Furthermore, a new source of treaty-related information was added to the Treaty Collection, namely a chronological record of all depositary activity with regard to international air law instruments (“New ratifications”).

Three international air law instruments have since entered into force, most notably the Montreal Convention of 1999. With respect to the Chicago Convention, twelve of the fifteen amendments are now in force. Of the fifteen, thirteen have over one hundred parties each.

Packages to facilitate ratification by States have been developed by the Legal Bureau for amendments to the Chicago Convention and related Protocols not yet in force, as well as for certain other air law instruments. Further packages are being developed as resources permit. Packages are available upon request; selected ones are periodically sent by State letter and distributed at legal seminars. They are currently available on the ICAO website for Contracting States (at [www.icao.int/icaonet](http://www.icao.int/icaonet)). The Secretariat will continue to take administrative actions necessary to further encourage ratification, such as the development and dissemination of ratification packages, promotion of ratification at various fora such as seminars, and continued emphasis on ratification matters by the President of the Council and the Secretary General during their visits to States.

Item No. 6: ***United Nations Convention on the Law of the Sea – Implications, if any, for the application of the Chicago Convention, its Annexes and other international air law instruments***

This item has been kept in the General Work Programme for monitoring purposes and that there were no significant developments since the 33rd Session of the Assembly. During the 32nd Session of the Legal Committee (Montreal, 15-21 March 2004), one delegation contended that coastal States should benefit from a preferential right to provide air navigation services above the Exclusive Economic Zone (EEZ). This was opposed by one delegation which drew attention to the fact that, even though coastal States benefitted from certain rights in the EEZ, there was no applicable conventional or customary law which would acknowledge any priority for the provision of international air navigation services thereabove. These differing views were noted by the Legal Committee.

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