



WORKING PAPER

LEGAL COMMITTEE – 36TH SESSION

(Montréal, 30 November – 3 December 2015)

Agenda Item 2: Consideration of the General Work Programme of the Legal Committee

STATE/CIVIL AIRCRAFT DEFINITION AND ITS IMPACT ON AVIATION

(Presented by Poland, Bulgaria, The Czech Republic, Cyprus, Greece,
Lithuania, Romania, Slovakia, Slovenia and Hungary)

1. PROBLEMS AND DIFFICULTIES ENCOUNTERED IN THE APPLICATION OF ARTICLE 3 SECTION (A) AND (B) OF THE CHICAGO CONVENTION

1.1 The problems and difficulties encountered in the application of Article 3 Section (a) and (b) were described in 1993 in the ICAO Secretariat Study on Civil/State aircraft, which started the following basic statements:

- a) applicable legal regime;
- b) insurance coverage;
- c) application of civil or military laws; and
- d) aircraft used by international organizations, and under the Red Cross Convention.

A number of detailed issues, and two cases were discussed in the Study.

1.2 The absence of clear and generally accepted international rules affects the order and safety of International Aviation Operations.

1.3 Having no doubts as to the basic criteria for determination of the aircraft status set forth in Article 3(b), the authors of the Study observe, however, difficulties and uncertainties arising in the proper qualification of aircraft used for unusual purposes and in particular:

- a) when the aircraft is not used in military, customs or police services but is used in other governmental services, when the aircraft is not used in military, customs or police services but is used in other governmental services;
- b) when an otherwise civil aircraft with civil crew is used for military purposes;

- c) when an aircraft is chartered, either in whole or in part, to carry military, customs or police personnel and/or cargo, is used in part for carriage of persons or cargo for remuneration; and
- d) when an aircraft which could otherwise be considered a state aircraft (possibly with a military crew) is used to carry passengers, cargo or mail for remuneration.

1.4 Having considered the relevant problems the study presents possible ways of approaching the matter:

- a) amendment of the Convention;
- b) adopting an official ICAO interpretation; and
- c) possible amendments to annexes of the convention and PANS-RAC documents.

1.5 In conclusion, the Secretariat Study having in mind the uncertainties of application of Article 3(b) suggests the adoption of an interpretation thereof, and consideration of amending the ICAO Model Flight Plan Form, the PANS-RAC and certain annexes.

1.6 The ICAO Council noted the Secretariat Study and instructed the Secretary to transmit it to Contracting States and organizations concerned for comments, if any, and to present the matter to the Legal Committee – without, however, requesting inclusion of the subject in the LC working plan.

1.7 During the last decade the definition of Civil/State aircraft, and Civil/State flights has incidentally appeared in other ICAO works on certain detailed questions without however, trying to propose solutions for the problems regarding the distinction between Civil/State aircraft and Civil/State flights. Doc 4444, ATM/501 (fifteenth edition 2007) contains information on proper flight indicators including HEAD (a flight with Head of State status) and STATE (for a flight engaged in military, customs or police services). Yet, the rules for determination of the aircraft status for flights serving unusual purposes are still not clear enough.

1.8 In 2012 the definition of state aircraft and state flights was also considered by the Council on the basis of the Study presented by the Secretary of the Air Transport Committee. The Study addressed "cost-recovery concerns" only, but endorsed a general opinion that there is no need, at this time, to develop a more elaborated study on these definitions.

1.9 Starting with the Secretariat Study from 1993, followed by other incidental ICAO works and documents, the Contracting States have already been provided with a basic valuable guidance regarding solutions of legal (and practical) problems encountered with the distinction between Civil/State aircraft and – in particular – Civil/State flights. Yet, some important questions seem to remain unanswered.

1.10 The definition of Civil/State aircrafts or Civil/State flight is of basic importance not only within the Chicago system, but also may have some relevance in the context of the Tokyo / Hague / Montreal / Beijing system of Aviation criminal law (taking apart the conventions of private Air Law), in confrontation with state Aviation regime subject to national regulations.

1.11 Having in mind the ICAO objectives and in particular Article 44 (4) of the Chicago Convention concerning the promotion of flight safety in International Air Navigation, one has to state that there are three (3) specific objectives related to the Civil/State aircraft or possible unusual (mixed) character of aircraft or flights operated in International Air Navigation:

- a) The first objective relates to the definition of Civil/State aircraft;
- a) The second objective relates to establishing more precise criteria for qualification of civil, state or mixed character of aircraft and flights operated for unusual purposes; and
- b) The third objective is to ensure the recognition of the relevant rules by the International Aviation community for determining the aircraft status for each flight or flight series (who is competent to take such decision, how such determination has to be identified and notified to the parties concerned if flight planning rules are not sufficient).

1.12 Another set of problems relates to the determination of applicable Civil/State (military) law governing Air Navigation, Air traffic rules, Air traffic control, Aircraft technical operation, accident investigation, civil liability and insurance. A tendency has to be noted in national legislations and in certain international organizations (including NATO and European Union) to apply civil aviation regulations and safety standards when military aircraft is used for carriage of non-military passengers. Similar treatment could be adopted for flights serving double (state and civil) purposes.

2. CONCLUSION

2.1 The solution of all these problems would need an enormous amount of work for updating and completing the relevant studies of the ICAO Secretariat or other ICAO bodies aiming at adoption of appropriate documents. In previous studies reference was made to alternative action through amending the Convention, adopting official ICAO interpretation, amending annexes and other ICAO documents. One might also envisage extending the ICAO Council regulatory power on certain issues of common (civil and military) concern. Having in mind the importance of the above objectives and the ICAO responsibility for promoting safety of International Aviation, the ICAO Legal Committee might be interested in expressing its views on a way forward.

3. ACTION BY THE LEGAL COMMITTEE

3.1 The ICAO Legal Committee is invited to express its opinion on the possibility of achieving the above described objectives without amending the Convention.