



WORKING PAPER

LEGAL COMMITTEE – 37th SESSION

(Montréal, 4 to 7 September 2018)

Agenda Item 3 : Review of the General Work Programme of the Legal Committee

REVIEW OF THE RULES FOR THE SETTLEMENT OF DIFFERENCES

(Presented by the Secretariat)

1. INTRODUCTION

1.1 At the tenth meeting of its 211th Session held on 23 June 2017, the Council requested the Secretariat to review the *Rules for the Settlement of Differences* (Doc 7782/2) (the “ICAO Rules”), with the aim of determining whether the said Rules need to be revised and updated taking into account relevant developments that had occurred since the publication of the document. The Council further requested that this review should also take into account comparable documentation that is in use for similar purposes elsewhere in the United Nations system as well as international governmental organizations, and in particular the *Rules of Court* of the International Court of Justice (the “ICJ Rules”). In undertaking this review, the Secretariat was specifically requested to advise on whether it would be necessary for this issue to be referred to the Legal Committee for consideration.

1.2 Following some preliminary work on the subject, the Secretariat advised the President of the Council that it was necessary for the issue to be referred to the Legal Committee, and that arrangements will be made to bring the matter to the attention of the Legal Committee for consideration during its 37th Session. As the item is currently not included in the General Work Programme of the Legal Committee, it is hereby presented under Agenda Item 3 in order for the Committee to determine whether or not it should be included in its General Work Programme.

2. HISTORICAL BACKGROUND

2.1 The judicial function of the Council is set out in Article 84 of the *Convention on International Civil Aviation* (Doc 7300/9) (the “Chicago Convention”), which provides that “[i]f any disagreement between two or more contracting States relating to the interpretation or application of this Convention and its Annexes cannot be settled by negotiation, it shall, on the application of any State concerned in the disagreement, be decided by the Council...”. Similarly, Article II, Section 2, of the *International Air Services Transit Agreement* (Doc 7500) (the “Transit Agreement”) and Article IV, Section 3, of the *International Air Transport Agreement* (Chicago, 1944 – the “Transport Agreement”) provide that “[i]f any disagreement between two or more contracting States relating to the interpretation or application of this Agreement cannot be settled by negotiation, the provisions of Chapter XVIII of the above-mentioned Convention [i.e., the Chicago Convention] shall be applicable in the same manner as provided therein with reference to any disagreement relating to the interpretation or application of the above-mentioned Convention”.

2.2 In 1952, the Council had its first opportunity to exercise its judicial function when India filed an Application against Pakistan under Article 84 of the Chicago Convention. At the time, the *Rules Governing the Settlement of Differences between Contracting States*, which were initially approved by the Interim Council of the Provisional International Civil Aviation Organization on 10 September 1946 were in effect. As these Rules predated the establishment of ICAO and had not since been reissued as ICAO Rules, the Council decided, at the fourth meeting of its 16th Session held on 21 May 1952, to establish a Working Group for the revision of the said *Rules Governing the Settlement of Disagreements, Differences and Disputes between Contracting States*.

2.3 After the Working Group proposed a draft set of rules, the Council decided, at the eighth meeting of its 19th Session held on 21 May 1953, to circulate the draft rules to all Contracting States, with a view to their adoption at its October 1953 Session.

2.4 At the sixteenth meeting of its 23rd Session held on 6 December 1954, the Council decided to refer the draft rules to be finalized by a group of legal experts nominated by the Chairman of the Legal Committee in consultation with the President of the Council. It was agreed that these experts should be nominated from among the members of the Committee, but that the group should not be a sub-committee of the Legal Committee, and would report directly to the Council.

2.5 At the tenth meeting of its 30th Session held on 9 April 1957, the Council decided, at the recommendation of the Group of Experts, to adopt the Rules and directed that they should be circulated to Contracting States for their information.

2.6 The ICAO Rules approved by the Council in 1957 were drafted in close alignment with the 1946 ICJ Rules. Since then, the ICJ has adopted a thoroughly revised set of *Rules of Court* which came into force on 1 July 1978, with subsequent amendments which entered into force in 2001 and 2005.

2.7 The ICAO Rules have only been amended once in 1975 to include Russian as a working language.

3. **NEED TO MODERNIZE THE CURRENT ICAO RULES**

3.1 Throughout ICAO's history, a total of nine cases have been presented to the Council for the settlement of differences between contracting States pursuant to Article 84 of the Chicago Convention. The first six cases were filed between 1952 and 2000 whereas the last three were filed in 2016 and 2017, and are currently still pending before the Council.

3.2 **Alignment of the ICAO Rules with the current ICJ Rules**

3.2.1 In view of the fact that the ICJ Rules have been amended several times since 1957, a question may be raised whether the ICAO Rules should be realigned with the current ICJ Rules. For example, with respect to the issue of preliminary objections, Article 5 (1) of the ICAO Rules provides that: “[i]f the respondent questions the jurisdiction of the Council to handle the matter presented by the applicant, he shall file a preliminary objection setting out the basis of the objection.” Article 79 (1) of the ICJ Rules, on the other hand, provides that “[a]ny objection by the respondent to the jurisdiction of the Court or to the admissibility of the application, or other objection the decision upon which is requested before any further proceedings on the merits, shall be made in writing as soon as possible...”. It could be observed that while the ICJ Rules mention “jurisdiction”, “admissibility” and “other objection” as grounds for preliminary objections, the ICAO Rules do not mention “admissibility” or “other objection”.

3.3 **Miscellaneous Provisions**

3.3.1 A modernization of the current ICAO Rules may include a review of some miscellaneous provisions in order to recognize other ICAO working languages (Arabic and Chinese) as well as electronic communications and submissions such as through emails. Currently, the ICAO Rules require the Parties to provide the address of their agents at the seat of the Organization to which all communications relating to the case, including notice of any meeting, should be sent.

4. **ACTION BY THE COMMITTEE**

4.1 The Legal Committee is invited to consider this working paper and take any action it deems necessary.

— END —