



法律委员会 — 第 38 届会议

(2022 年 3 月 22 至 25 日，虚拟会议)

议程项目 2：审议法律委员会总体工作方案

国际民航组织《解决分歧规则》审查工作组（WG-RRSD）的工作进展报告

(由 WG-RRSD 主席¹提交)

1. 背景

1.1 法律委员会在其第 37 届会议（2018 年 9 月 4 日至 7 日，蒙特利尔）上，审议了秘书处提交的 LC/37-WP/3-2 号文件“审查《解决分歧规则》”，并决定将“审查国际民航组织《解决分歧规则》”作为新的项目 2 纳入其工作计划。同时委员会还决定成立一个工作组来进行审查，其成员将由委员会主席与理事会主席协商后提名。

2. WG-RRSD 的设立、会议及其方法

2.1 在 2019 年 3 月 22 日的国家级信件（IND/19/3）征求专家提名后，2019 年 5 月成立了国际民航组织《解决分歧规则》审查工作组（WG-RRSD）。根据法律委员会的讨论，IND/19/3 号国家级信件通知指出，WG-RRSD 将协助委员会修订国际民航组织《解决分歧规则》（Doc 7782/2 号文件）（《规则》），同时虑及在联合国系统其他机构以及国际政府间机构在用的用于类似目的的可比文件，尤其是国际法院的《法院规则》。该国家级信件进一步提及，WG-RRSD 还应考虑制定新的和创新性机制，以便于以及时、迅速和透明的方式解决分歧。作为一项可交付成果，预计 WG-RRSD 将编写一套经修订的《规则》草案，供法律委员会审议。

2.2 来自 22 个成员国（阿根廷、澳大利亚、巴西、喀麦隆、加拿大、中国、芬兰、法国、冈比亚、印度尼西亚、日本、肯尼亚、科威特、荷兰、尼日利亚、卡塔尔、俄罗斯联邦、沙特阿拉伯、新加坡、阿拉伯联合酋长国、英国和美国）以及一个国际组织（非洲民用航空委员会）的专家参加了 WG-RRSD 的一次或多次会议。

2.3 在工作组第一次会议上，我荣幸地当选为工作组主席。在同一次会议上，印度尼西亚代表 Abdul Kadir Jailani 大使当选为副主席。工作组在第四次会议上获悉，印尼政府已指派 Jailani 大使担任其他职务，他不再参与工作组的工作。工作组在第五次会议上选举了加拿大代表 John Thachet 先生担任副主席。

¹ 法国的 Terry Olson 先生

2.4 此外，工作组在第一次会议上一致同意建议法律委员会主席任命新加坡代表 David Low 先生担任报告员，任期至法律委员会下届会议，并在此期间开展一项用以协助工作组工作的研究，以供下一次会议及以后的会议审议。

2.5 WG-RRSD 已召开六次会议。第一次会议于 2019 年 5 月 7 日至 9 日在蒙特利尔举行；第二次会议于 2019 年 11 月 12 日至 14 日在蒙特利尔举行；第三次会议于 2020 年 12 月 1 日至 3 日以虚拟形式举行；第四次会议于 2021 年 4 月 6 日至 8 日以虚拟形式举行；第五次会议于 2021 年 10 月 5 日至 7 日以虚拟形式举行；第六次会议于 2022 年 1 月 11 日至 13 日以虚拟形式举行。

2.6 为了充分开展工作，WG-RRSD 考虑了秘书处进行的基准研究和调查的结果，以确定国际司法管辖区或其他国际裁决机构的相关做法。工作组还高度关注国际法院对 2020 年 7 月 14 日关于国际民航组织理事会管辖权的上诉的判决，这些判决是在工作组第二次和第三次会议之间作出的。

3. WG-RRSD 所讨论的领域现况和对《规则》的拟议修订草案

3.1 本文件的附录 A 载有两个表格，其中列出并阐述了主席认为 WG-RRSD 在其会议期间原则上达成高度一致的领域。第一个表格包括可能对《规则》进行修订的领域，涵盖以下方面：要求提供当事方代理人的电子邮件地址；使用性别中性的语言；要求诉状和信函以纸质和电子格式这两种形式发送；明确提及将可受理性增列为初步反对意见的一个理由；澄清关于初步反对意见所允许的诉状；澄清提出初步反对意见并不妨碍继续协商；澄清何为 60 天的上诉通知时限；诉状的语文和翻译；程序指示；以及虚拟诉讼。第二个表格列出了 WG-RRSD 认为不需要对《规则》进行修订的领域，这些领域包括：当事方可以援引的证据类型；对于干预的要求；现有的对每一方单一代理人的提及；以及时限。

3.2 本文件的附录 B 包含一个表格，列出并阐述了同样是主席认为需要 WG-RRSD 进一步审议的领域。这些领域包括：《规则》的范围；关于事先协商不成功的声明的现有要求；理事会是否以及如何可在制定其裁决理由方面得到协助，包括可能通过使用外部专家协助；是否以及何时应公开诉讼记录；临时措施；以及为理事会裁决案例之目的而对《国际民用航空公约》第五十二条中“过半数”一词的解释。

3.3 为反映 WG-RRSD 讨论的上述领域的状况，本文件附录 C 载有报告员 David Low 先生和秘书处编写的《规则》拟议修改草案。这些修订是工作组在 2022 年 1 月的最后一次（第六次）会议上所讨论的修订。关于那次会议期间提出的其他修订提案，报告员和秘书处在编写新一轮的修订草案时将会予以考虑，供计划于 2022 年晚些时候举行的工作组第七次会议讨论。

4. 委员会的行动

4.1 请法律委员会审议本工作文件及其附录，并采取其认为必要的任何行动。

—————

APPENDIX A**Areas where the Working Group has reached a high level of agreement**

<u>Table 1 – Possible Revisions to the ICAO Rules</u>		
	Provision in the ICAO Rules and issue	Status
1.	<p>(New) Article 2(1)(b) (formerly Article 2(b)) – Electronic address of Agent for applicant</p> <p>Whether as well as having an address at the seat of the Organization (as required under the Rule), additional practical solutions could be found for maintaining communications relating to the case.</p>	<p>There was broad consensus among the Group on the need to maintain the requirement for the agents to have an address at the seat of the Organization. No objections were raised to a drafting proposal requiring the agent for the applicant to also provide an email address. The intention is to provide for a high level of certainty while allowing flexibility for the Rules to keep pace with evolving means of communication.</p> <p>A drafting proposal is shown in APPENDIX C.</p>
2.	<p>Articles 2 (1) (b), 4 (1) (a), 6 (2), 13 (1), 27 (2) – Gender Neutrality</p> <p>Replace references to “Chairman” and masculine pronouns with a gender-neutral alternative.</p>	<p>The principle of gender neutrality is reflected throughout the text of all the linguistic versions of the Rules.</p> <p>Drafting proposals are shown in APPENDIX C.</p>
3.	<p>(New) Article 2 (2) – Paper and electronic formats for Memorial and supporting documents</p> <p>Whether to permit both paper and electronic means for transmission of the Application and Memorial to the Secretary General.</p>	<p>No objections were raised to a drafting proposal requiring the transmission of the Application and Memorial in both paper and electronic formats, which is intended to provide for a high level of certainty while allowing flexibility for the Rules to keep pace with evolving means of communication.</p> <p>A drafting proposal is shown in APPENDIX C.</p>
4.	<p>(New) Article (3) (3) – Paper and electronic formats for correspondence</p> <p>Whether to permit both paper and electronic means for correspondence related to the case.</p>	<p>No objections were raised to a drafting proposal requiring correspondence related to the case to be transmitted in both paper and electronic formats, which is intended to provide for a high level of certainty while allowing flexibility for the Rules to keep pace with evolving means of communication.</p> <p>A drafting proposal is shown in APPENDIX C.</p>

Table 1 – Possible Revisions to the ICAO Rules

	Provision in the ICAO Rules and issue	Status
5.	Article 4 (1) (a) – Electronic address of Agent for respondent Whether as well as having an address at the seat of the Organization (as required under the Rule), additional practical solutions could be found for maintaining communications relating to the case.	<p>No objections were raised to a drafting proposal requiring the agent for the respondent to provide both an address at the seat of the Organization and an email address, which is intended to provide for a high level of certainty while allowing flexibility for the Rules to keep pace with evolving means of communication.</p> <p>A drafting proposal is shown in APPENDIX C.</p>
6.	(New) Article 4 (3) – Paper and electronic formats for Counter-Memorial and supporting documents Whether to permit both paper and electronic means for transmission of the Counter-Memorial to the Secretary General.	<p>No objections were raised to a drafting proposal requiring the transmission of the Counter-Memorial in both paper and electronic formats, which is intended to provide for a high level of certainty while allowing flexibility for the Rules to keep pace with evolving means of communication.</p> <p>A drafting proposal is shown in APPENDIX C.</p>
7.	Article 5 (1) – Ground for Preliminary Objection Whether the current ground for preliminary objection, which is to question the jurisdiction of the Council to handle the matter, should be expanded.	<p>All the Delegations that took the floor, bar one, supported the idea of expanding the reference to the grounds for preliminary objection in the Rules, to expressly include admissibility. The necessity of aligning the Rules as closely as possible with the ICJ Judgments on the Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Chicago Convention of 14 July 2020, was underscored by the Chairperson (i.e. by clarifying the Rules to expressly mention admissibility as a ground of preliminary objection).</p> <p>A drafting proposal is shown in APPENDIX C.</p>
8.	Article 5 (3) – Pleadings and further proceedings with regard to Preliminary Objection The current Rules are silent on the possibility for the applicant to file a written pleading in response to the respondent's	<p>The Delegations that spoke, noting that it was in line with the practice of other international adjudicating bodies, including the ICJ, expressed support for the drafting proposal which clarifies that the applicant may file a written pleading in response to the preliminary objection, and which further clarifies that no further written pleadings are permitted unless the Council decides otherwise.</p>

Table 1 – Possible Revisions to the ICAO Rules

	Provision in the ICAO Rules and issue	Status
	statement of preliminary objection. Also, the Rules do not specify how many rounds of pleadings are permitted.	A drafting proposal is shown in APPENDIX C.
9.	Article 5 (4) – Negotiations during the Preliminary Objection stage The Council is required to decide on a preliminary objection before any further steps are taken under the Rules. This raises the issue whether the filing of a preliminary objection prevents negotiations from continuing under Article 14 of the Rules.	No Delegation raised any objection to the proposal, which makes clear that raising a preliminary objection only implies that the ICAO Council shall decide that question before determining the merits of the application and does not prevent negotiations from continuing. The Chairperson noted that the proposal clarifies the interaction between Articles 5(4) and 14 of the Rules with respect to negotiations. A drafting proposal is shown in APPENDIX C.
10.	(New) Article 7 (5) – Paper and electronic formats for Reply, Rejoinder, and supporting documents Whether to permit both paper and electronic means for transmission of the Reply and Rejoinder to the Secretary General.	No objections were raised to a drafting proposal requiring the transmission of the Reply and Rejoinder in both paper and electronic formats, which is intended to provide for a high level of certainty while allowing flexibility for the Rules to keep pace with evolving means of communication. A drafting proposal is shown in APPENDIX C.
11.	Article 18 (2) – Notification of Appeals Whether the 60-day time limit for notification of appeals only applies to notification of an intention to appeal or to notification of the actual appeal after it has been filed.	A wide majority of Delegations who took the floor supported the view that the 60-day period concerns notification of an actual appeal, while the other Delegations were of the view that such provision only deals with the notification of a mere intention to lodge an appeal later. As the provision remains unclear, an amendment, in line with the majority view, has been drafted to clarify the interpretation given to the 60-day period. A drafting proposal is shown in APPENDIX C.
12.	Article 19 (3) – Dispatch Whether the spelling of the word “despatch” should be updated to reflect modern English.	Replacing the word “despatch” with “dispatch” in order to reflect modern English. A drafting proposal is shown in APPENDIX C.

Table 1 – Possible Revisions to the ICAO Rules

	Provision in the ICAO Rules and issue	Status
13.	<p>Article 29 – Languages and translation</p> <p>Currently the Rules refer to the “four working languages” of the organization.</p> <p>Whether clarification should be provided as to the scope of the current provision for translation of oral or written submissions into each of the other working languages under arrangements made by the Secretary General.</p>	<p>All Delegations that took the floor supported updating the Rules to refer to all six ICAO working languages. The drafting proposal introduces generic language to refer to any of the working languages of the Organization.</p> <p>A majority of the Delegations who took the floor supported the current practice that translations of pleadings in each of the other working languages are provided by the Secretariat, although translations are not made of supporting documentation in appendices to the pleadings. The Chairperson noted the need for an appropriate balance between access to documents in the ICAO languages and the financial implications for the Organization.</p> <p>A drafting proposal is shown in APPENDIX C.</p>
14.	<p>(New) Article 35 – Practice Directions</p> <p>Unlike several other international adjudicating bodies, there are no practice directions or guidelines for procedural matters to accompany the Rules.</p>	<p>All Delegations that took the floor supported the draft provision on practice directions or guidelines, with the exception of one Delegation which reserved its position.</p> <p>A drafting proposal, is shown in APPENDIX C.</p> <p>The draft new Article has been placed at the end of the Rules, and temporarily designated as “Article 35”, for the time being. Its precise placement within the Rules can discussed at a later juncture.</p>
15.	<p>(New) Article 36 – Virtual Proceedings</p> <p>The Rules do not contain any specific provision on the conduct of proceedings under the Rules by the Council through virtual means, while the rules of procedure of other international adjudicating bodies contain such a provision.</p>	<p>All Delegations that took the floor, bar one, supported the revision of the Rules in order to provide for virtual proceedings.</p> <p>While some Delegations favored a reference to the parties being consulted on the organization of virtual proceedings, others proposed that the parties’ agreement on or approval of the organization of such virtual proceedings must be obtained. In this regard, new drafting suggestions will be for consideration at a future meeting of the Group.</p> <p>The drafting proposal discussed at the Sixth Meeting of the Group is shown in APPENDIX C.</p>

Table 1 – Possible Revisions to the ICAO Rules

	Provision in the ICAO Rules and issue	Status
		The draft new Article has been placed at the end of the Rules, and temporarily designated as “Article 36”, for the time being. Its precise placement within the Rules can be discussed at a later juncture.

Table 2 – No revisions to the ICAO rules are necessary

	Provision in the ICAO Rules and issue	Status
1.	Article 9 – Evidence Whether the current provision should be expanded in order to clarify the types of evidence that may be adduced by the parties in proceedings before the Council.	The Group discussed and concluded that there were no reasons for modifying Article 9.
2.	Article 19 – Intervention and the requirement of prior negotiations Whether the requirement of prior negotiation applies to a State wishing to intervene in a pending dispute.	Given the the absence of any interventions on this issue, the Chairperson concluded that the Group had agreed that this provision did not require amendment.
3.	Article 27 (1) – Agents Whether a State should be permitted, if it so wishes, to designate more than one agent.	Given the the absence of any interventions on this issue, the Chairperson concluded that the Group had agreed that this provision did not require amendment.
4.	Article 28 – Time-limits Whether the Rules should be revised in order to introduce fixed time limits	There is within the Group a reasonably high level of agreement that no strict time limits should be set in the Rules, and therefore that the current provisions in the Rules are satisfactory. Nevertheless, a good number of Delegations felt that while flexibility within the Rules was desirable, parties to the dispute would benefit from having a clear view on how their cases would proceed. In this regard, most Delegations were open to exploring the idea of developing practice directions or guidance for the Council when fixing time limits.

APPENDIX B**Areas deserving further consideration by the Working Group**

	Provision in the ICAO Rules and issue	Status
1.	<p>Article 1 – Scope of the Rules</p> <p>Whether the Rules should be expanded to apply to disagreements beyond the interpretation and application of the Chicago Convention, the Annexes, the Transit Agreement and the Transport Agreement, so as to apply to disagreements pursuant to other international air law instruments that entrust the Council with dispute settlement functions.</p>	<p>Some Delegations expressed support for expanding the scope of the Rules to include a catch-all provision referring to other disagreements concerning international civil aviation between Contracting States to the Chicago Convention, which have been referred to the Council pursuant to a treaty between States. However, other Delegations were of the view that the Scope of the Rules should remain as is.</p> <p>The drafting proposal discussed at the Sixth Meeting of the Group is shown in APPENDIX C.</p> <p>Additional drafting suggestions to further clarify the scope of the revision were made at the Sixth Meeting, and will be for consideration at a future meeting of the Group.</p> <p>Whether Article 1 should be amended to cover air law treaties where the Council can render “recommendations” was also raised as deserving further consideration.</p>
2.	<p>Article 2 (g) – Prior unsuccessful negotiations</p> <p>Whether the requirement that the memorial of an Applicant shall contain a statement that negotiations to settle the disagreement had taken place between the parties but were not successful, is in line with the related wording of Article 84 of the Chicago Convention.</p>	<p>There was a high level of agreement within the Group that the wording of Article 2 (g) is too narrow and should be expanded, with a view to ensuring that it is in line with Article 84 of the Chicago Convention. However, differing views were expressed on the drafting proposal presented to the Sixth Meeting of the Group, with the majority of Delegations that spoke supporting the amendment, while some others were of the view that the text of Article 2 (g) should remain as is.</p> <p>The drafting proposal discussed at the Sixth Meeting of the Group is shown in APPENDIX C.</p>
3.	<p>Article 8 (1) – Enquiry or Expert Opinion</p> <p>Whether in rendering a decision under Article 15, the Council could be assisted through advice by “any individual, body, bureau, commission or other organization that it may select with the task of carrying out</p>	<p>A majority of Delegations that took the floor supported the amendment of Article 8 (1) to expressly clarify that the Council, if it so wished, may seek outside expertise to assist it at arriving at its decisions taken in accordance with Article 15 of the Rules. A minority of Delegations were of the view that such an amendment to Article 8 (1) was not necessary.</p> <p>The drafting proposal discussed at the Sixth Meeting is shown in APPENDIX C.</p>

	Provision in the ICAO Rules and issue	Status
	an enquiry or giving an expert opinion” under the terms of Article 8 (1).	There was some interest in the Group on establishing a list of experts on the understanding that it should have limited impact on ICAO budget and the use of experts would remain flexible. However, at this stage, a number of Delegations are of the view that the existing provisions of the Rules provide enough flexibility to the Council in this respect.
4.	Article 15 (2) (v) – Reasons for the Council’s Decision For the purpose of rendering a decision under Article 15, whether the Council could, if it so wished, seek assistance in formulating the reasons for its decisions.	<p>Some Delegations drew attention to the ICJ Judgments on the Appeal Relating to the Jurisdiction of the ICAO Council of 14 July 2020, which emphasized that the Court will be best positioned to act on any future appeal if the decision of the Council contains the reasons of law and fact that led to its conclusions.</p> <p>Although no Delegation expressed the view that it would not be desirable for the Council to give reasons, there was a difference of view as to whether Article 15 (2) (v) warrants amendment. Some Delegations saw an important connection between this issue and the proposed amendment to Article 8 (1) of the Rules (see APPENDIX C).</p> <p>No drafting proposal has been prepared thus far pending further discussions amongst the Group on this issue.</p>
5.	Article 30 of the Rules read together with Rule 37 and Appendix F of the Rules of Procedure for the Council – Confidentiality While Article 30 (3) of the Rules provides that the “record of the proceedings shall, unless otherwise ordered by the Council, be open to the public”, the <i>Rules of Procedure for the Council</i> provide that Council meetings pertaining to disputes between Contracting States should be held in closed session and related documents should be marked as “Restricted”.	<p>While a group of Delegations supported keeping the proceedings confidential and only making public the final Council decision, several Delegations favored making the record of the proceedings public in the interests of transparency, although subject to certain exceptions. Some acknowledged that while the case is under consideration, the documents should not be made available to the public. A number of comments on the draft proposal to include an element of temporality were made at the Sixth Meeting of the Group, including the suggestion of only opening the record of the proceedings after the Council’s decision on the merits has been rendered.</p> <p>The drafting proposal discussed at the Sixth Meeting is shown in APPENDIX C.</p> <p>Although the Group’s mandate does not include making proposals for amending the <i>Rules of Procedure for the Council</i>, it was noted that there are some inconsistencies on this issue between the <i>Rules of Procedure for the Council</i> and the <i>Rules for the Settlement of Differences</i>.</p>

	Provision in the ICAO Rules and issue	Status
6.	<p>(New) Article 34 – Provisional Measures</p> <p>Currently there are no provisions in the Rules that enable the Council to order or issue provisional measures.</p>	<p>Discussions showed a clear lack of consensus, with some Delegations supporting the new draft Article 34 providing for Provisional Measures, while others opposed it and one indicated reservations.</p> <p>A drafting proposal is shown in APPENDIX C.</p> <p>The draft new Article has been placed at the end of the Rules, and temporarily designated as “Article 34”, for the time being. Its precise placement within the Rules can be discussed at a later juncture.</p>
7.	<p>Article 52 of the Chicago Convention – Interpretation of the term “majority”</p> <p>Given that under Article 84 no member of the Council shall vote in a dispute to which it is a party, whether to maintain the current interpretation that a majority of Members of the Council required under Article 52 for a decision under Article 84 is the majority of the total number of Members of the Council (“absolute majority”); or whether Article 52 could be interpreted as a “qualified majority”, that is, a majority of the number of Members of the Council eligible to vote in a particular case.</p>	<p>There was strong support for the view that, in some cases, the “qualified majority” interpretation would be desirable in order to enable the Council to discharge its dispute settlement functions. The reasons cited included to forestall future situations where the Council is rendered incapable of taking a decision due to a large number of Council Members being parties to the same dispute, and being thus ineligible to vote. Such a situation, which doesn’t seem theoretical, would be contrary to the Council’s dispute settlement functions if it were prevented from rendering a decision on the basis of the operation of the majority rule.</p> <p>However, some additional elements for consideration were also raised, including the longstanding practice of the Council to apply the “absolute majority” interpretation, the same language in Article 84 applying to the International Air Services Transit Agreement, and the International Air Transport Agreement, and that although the ICJ had the opportunity to comment on the issue of the interpretation of “majority” on two separate occasions, it had not pronounced itself on the matter.</p> <p>No drafting proposal has been prepared thus far pending further discussions amongst the Group on this issue.</p> <p>One widely supported option was to propose that an interpretation of Article 52 of the Chicago Convention by the Assembly be sought, which would allow for the discussion of the matter by all ICAO Member States.</p>

附录 C

对国际民航组织《规则》²的拟议修订草案

解 决 分 歧 规 则

经理事会于一九五七年四月九日批准，
并于一九七五年十一月十日修订*和 202X 年 X 月 X 日修订**

第 一 章 本 规 则 的 适 用 范 围

第 一 条

一、本规则第一部分和第三部分的规定适用于缔约国可能提交理事会解决的下列不同意见：

（1）两个或两个以上缔约国关于对国际民用航空公约（以下称“公约”）及其附件的解释或适用方面的任何不同意见（公约第八十四——八十八条）；

（2）两个或两个以上缔约国关于对国际航班过境协定和国际航空运输协定（以下分别称“过境协定”和“运输协定”）的解释或适用方面的任何不同意见（过境协定第二条第二款；运输协定第四条第三款）。和

（3）根据有关国家之间的条约已提交理事会裁决的公约缔约国之间关于国际民用航空的任何其他不同意见。

二、第二、三部分的规定适用于对过境协定一缔约国认为该协定另一缔约国依该协定所采取的行动对其造成不公正或困难而提出申诉的处理（第二条第一款）；或者适用于对因根据运输协定采取类似行动而提出申诉的处理（第四条第二款）。

² 在WG-RRSD第六次会议（2022年1月11日，虚拟会议）上审议的拟议修订草案以红色字体和灰色亮影显示。

* 理事会于一九七五年十一月十日批准对第二十九条的修订。

** 理事会于202X年X月X日批准的对第XX条、……的修订。

第 一 部 分

第 二 章

不 同 意 见

第 二 条

申请和申诉状

一、任何向理事会提出解决不同意见的缔约国（以下称“申请人”）须提交申请书，申请书须附有备忘录申诉状，其内容为：

- （1） 申请人名称和与之有不同意见的缔约国名称（后者以下称“应诉人”）；
- （2） 申请人授权代为诉讼的代理人名称，以及其代理人在国际民航组织总部的地址（包括电子邮件地址）；所有有关此案的信函，包括会议日期的通知，均应送往该地址；
- （3） 有关事实的说明；
- （4） 证明这些事实的资料；
- （5） 法律说明；
- （6） 对提出的具体问题，希望理事会采取什么办法解决；
- （7） 说明双方为解决此不同意见已进行协商，但未达成协议无法通过协商解决。

二、申请和申诉状以及所有其他辅助文件须以纸质和电子形式送交秘书长。

第 三 章

收 到 申 请 后 的 行 动

第 三 条

秘书长的行动

一、秘书长收到申请后须：

- （1） 核实该申请格式符合第二条规定要求；如有必要，要求申请人补充其申请中不足部分；

(2) 随后立即通知在解释或适用方面有争议的文书的各参加方以及理事会各成员国，说明申请已经收到；

(3) 将申请和附件副本送达应诉人，并请其在理事会指定的时限内提交辩诉备忘录状。

二、秘书长还须将一方随后递交给理事会的所有诉状或其他文件副本发送此案对方。

三、发给当事方代理人、理事会各成员国以及在解释或适用方面有争议的文书的各当事方的所有信函，均须以纸质和电子形式传送。以电子方式向当事方代理人发送的信函，须只发送到代理人为此目的指定的电子邮件地址。

第 四 条

辩诉备忘录状

一、辩诉备忘录状须包括：

(1) 应诉人授权代为进行诉讼的代理人名称以及该代理人在国际民航组织总部的地址（包括电子邮件地址）；所有有关此案的信函，包括会议日期的通知，均应送往该地址；

(2) 对申请人按照第二条第（3）至（7）款的规定提出的申诉状中各点的答辩；

(3) 附加事实和辅助资料；

(4) 法律说明。

二、辩诉状中可提出与申请主题直接有关的反诉，但此反诉需属于理事会的管辖范围。理事会在听取各方意见之后须指出所提反诉是否须与原审同时审理。

三、辩诉状以及所有其他辅助文件须以纸质和电子形式送交秘书长。

第 五 条

初步反对意见以及对此而采取的行动

一、如果应诉人对理事会处理申请人所提问题的管辖权或申请的可受理性提出问题，则应诉人须提出初步反对意见阐明其反对的依据。

二、此初步反对意见须作为特殊的陈述，最迟在规定提交辩诉状时限截止前递交。

三、一旦递交初步反对意见，关于实体问题的诉讼须暂停。至于第三条第一款（3）指定的时限从递交初步反对意见之时起至理事会对初步反对意见作出裁定为止不计算在内。申请人可在理事会规定的时限内提交一份书面声明，说明申请人对初步反对意见的看法和提交的材料。此后，除非理事会另有决定，与初步反对意见有关的任何进一步诉讼都须是口头进行的。

四、一经递交初步反对意见，理事会在听取各方意见后，须在根据本规则采取进一步行动确定申请的实体问题前将该问题作为初步争点予以裁定。

第 六 条

理事会对程序的行动

一、应诉人一旦递交辩诉状，理事会须决定在此阶段是否应邀请各方进行第十四条中所规定的直接协商。

二、理事会如果决定在此阶段不提出直接协商的邀请，则须裁定本规则中的哪一程序适用，但此举不得妨碍其按第十四条的规定以后提出邀请。除非理事会决定自行对此问题进行预审，否则须任命一个由五名理事会中与此不同意见无关的成员国代表组成的委员会（以下称“委员会”），并指定其中一人为委员会主席。

三、如果提出协商邀请，根据第二款做出的决定可予以推迟，直到各方拒绝协商或报告协商未能解决争端时为止。

第 四 章 诉 讼 程 序

第 七 条

书面诉讼

一、各方可能提出的附加诉状须包括：

——申请人递交的答辩状，

——应诉人递交的第二答辩状。

二、此类诉状须在指定时限内送交秘书长。

三、所有诉状须附有诉讼提交诉状方希望考虑的相关文件的原件或副本。

四、除按第九条的规定提交书面证据或按第十九条第五款的规定提交书面意见外，任一方在递交最终的诉状后，除非得到另一方同意或理事会在听取各方意见后许可，不得再提交其他文件。

五、答辩状和第二答辩状以及所有其他辅助文件均须以纸质和电子形式送交秘书长。

第 八 条

理事会的调查

一、理事会在听取各方意见后可随时委托其选择的任何个人、机构、局、委员会或其他组织承担查询、或提供专家意见或协助理事会就初步反对意见、[临时措施]或实体问题作出裁决的任务。在此情况下，理事会须划定查询、或专家意见或协助的主题并规定需遵循的程序。

二、含有调查结果以及查询和专家意见记录的任何报告须以理事会规定的格式提交理事会，并发给各方。

第 九 条

证据

如果各方希望除诉状中所提供的证据外提出任何证据，此类证据，包括证人和专家的证词，均须以书面形式并在理事会指定的时限内提出。但经专门申请，理事会可同意接受口头证词。理事会还可要求各方传唤证人或专家在口头听证时出席作证。

第 十 条

证人和专家宣誓：

一、证人的证词须由下列宣誓确证：

“我以个人名誉和良心郑重宣誓，我所做之证词均为事实，全部属实，绝无虚言。”

二、专家的陈述须由下列宣誓确证：

“我以个人名誉和良心郑重宣誓，我的陈述符合我真诚的信仰。”

第 十 一 条

问题

在口头听证会上，非争端方的理事会成员可通过主席向各方代理人或代其出席的法律顾问或律师提出问题。如提出此类问题，可立即回答；亦可在理事会规定的以后日期回答。

第 十 二 条

辩词

一、作证完毕，各方经过适当时期的准备之后，可在理事会指定的时限内将辩词提交理事会。

二、最终辩词需以书面形式提出，但理事会可自行决定接受口头辩词。

第 十 三 条

委员会工作程序

一、如根据本规则第六条任命一个委员会，该委员会须代表理事会接受并审查按本规则之规定提交的全部文件，自行决定听取证词或口头辩词，且对此案进行一般性审理以期达到理事会根据第十五条作出裁决的目的。委员会审查此案的程序与理事会审查此事所规定的程序相同。委员会负责诉讼期间，其主席须行使理事会主席根据本规则所具有的职能。

二、此后，委员会须向理事会提出报告，不得无故拖延。该报告须是诉讼记录的一部分，其中须包括证据摘要、其他事项的记录、认定事实和委员会的建议。

三、理事会须设法将委员会报告副本送达与本案有关各方。各方可在理事会指定时限内向理事会提出对该报告的书面意见，或经理事会允许提出口头意见。

四、理事会在考虑委员会的报告时，如果认为适当或为得到附加的证据，可做进一步的查询。

第 十 四 条

诉讼期间的协商

一、理事会如认为通过协商解决争端或减少分歧问题的可能性依然存在，可在根据第十五条第四款的规定做出裁决会前的诉讼期间随时请争端各方进行直接协商。

二、如果各方接受协商的邀请，理事会可规定完成协商的时限。在此时限内，关于实体问题的其他诉讼须暂停。

三、经有关各方同意，理事会可提供任何可能促进协商的协助，包括指定个人或小组担任协商调解人。

四、经协商达成的解决办法理事会须予以记录。如未达成解决办法，各方须照实向理事会报告，暂停的诉讼须予以恢复。

第十五条

裁决

一、理事会视情况须在听取辩词后或对委员会报告听理审议后做出裁决。

二、理事会裁决须以书面形式书就，且须包含：

（1）送出日期；

（2）参与的理事会成员名单；

（3）各方及其代理人名单；

（4）诉讼概要；

（5）理事会结论及其理由；

（6）如产生费用，理事会对于费用的裁决；

（7）理事会表决情况说明，表明该结论是全票通过，或是多数票通过。如系多数票通过，投赞成票的理事会成员数目和投反对票及弃权票的理事会成员数目。

三、反对多数意见的反对票之理事会成员可将其观点以不同意见的格式予以记录。此类反对意见须附于理事会的裁决后。

四、理事会须在其为此目的而召集的会议上做出裁决。该会议须在诉讼结束后视实际情况尽快召开。

五、争端一方理事会成员，在理事会审理争端时，不得参加表决。

第 十六 条

不出庭或不答辩

一、如一方在理事会或根据第六条设立的委员会审理时未出席或未能为自己辩护，另一方可要求理事会决定通过它自己的诉讼要求。

二、在此之前理事会必须确信它对此事有管辖权，并且该诉讼要求事实和法律依据充分。

第 十七 条

撤诉

一、如果申请人在诉讼期间书面通知理事会停止该项诉讼，且秘书长收到此项通知之日应诉人未采取任何诉讼行动，则理事会，或未召开理事会会议期间由其主席将撤诉要求正式记录，并由秘书长将之通知应诉人。

二、如收到撤诉通知时，应诉人已采取诉讼步骤，理事会，或理事会不举行会议期间由其主席指定一个时限，要求应诉人说明是否反对撤诉。如果应诉人没有提出反对，则被认定为默许；理事会，或理事会不开会期间由其主席将该项撤诉予以正式记录。如应诉人提出反对，诉讼须继续进行。

第 十八 条

通知和上诉

一、理事会的裁决须立即通知有关各方，并予公布。裁决副本还须送交根据第三条第一款（2）前已通知的所有成员国国家。

二、对于按照第一条第一款（1）和（2）提交的争议案做出的裁决可根据国际民航公约第八十四条提出上诉。任何此项上诉的提交须在接到理事会裁决通知后六十天内通过秘书长通知理事会。

第 十九 条

介入诉讼

一、任何具体法律文书的缔约国对文书的解释或适用发生本规则适用的争端，并且直接受该争端影响时，都有权介入诉讼。该国如使用此种权利则须承允，理事会的裁决对它具有同等约束力。

二、欲介入不同意见诉讼的国家须立即向秘书长递交一份表达其此种意向的声明。

三、该项声明须通知有关各方。如在该通知分发后一个月内，秘书长收到对根据本条第一款提出诉讼介入持反对意见的通知，则须由理事会裁定。

四、如在上述时间内没有收到持反对意见的通知，或者理事会做出同意接纳诉讼介入的裁定（视情况而定），秘书长须采取必要行动以使介入方获得本案的文件。该介入方可在理事会指定的时限内递交申诉状，但不得迟于第七条第四款中规定的提交最终诉讼文书申诉状的日期。

五、此类申诉状须送发有不同意见的其他各方。各方须将其意见以书面形式于理事会指定的时限内送交秘书长，并。各方可在介入方将参与的后续诉讼中对该申诉状和意见加以讨论。

第 二 十 条

诉讼的撤销

一、（1）各方如在裁决前的任何时候达成解决争端的协议，或同意中止诉讼，须将此书面通知理事会。然后，理事会须对和解结论或诉讼中止情况予以正式记录。

（2）尽管有其他方介入，如争端原始方达成此项协议，理事会须终止诉讼。此项规定不影响介入方代表自己就原争端主题提出申请的权力。

二、如因各方和解而终止诉讼，须将和解的条件转告理事会主席。理事会主席须将这些条件通告根据第三条第一款（2）原已通知的所有国家。

第 二 部 分

第 五 章 申 诉

第 二 十 一 条

申请请求格式

任何缔约国如就本规则第一条第二款中规定的情况向理事会提出申诉，须提出请求，并附有申诉状。该申诉状所包括的细节须与根据第二条提出的申请一致。

第 二十二 条

收到请求后的行动

第一部分第三章（收到申请后的行动）第三条第一款（1）和（3）、第四条和第五条须同样适用于根据前条提出的请求。

第 二十三 条

委员会的任命

一、辩诉状一旦递交，理事会须开会正式决定该事项是否属于第一条第二款中规定的申诉范围。

二、如对本条第一款作出肯定答案，理事会须任命一与本规则第六条第二款中所说委员会结构相同的委员会。

第 二十四 条

委员会的诉讼程序

一、委员会须立即代表理事会查询此事，并召集有关各国进行磋商。

二、委员会须尽量与各方取得一致意见，根据个案情况安排非正式磋商程序。委员会可要求提供补充资料，也可召集各方代表在国际民航组织总部或其他地点与委员会开会。

第 二十五 条

委员会的报告

一、委员会须尽快将磋商的结果报告理事会。

二、如磋商未能解决分歧，该报告中可写明向有关各国提出的调查结论和建议。

第 二十六 条

理事会的行动

一、理事会在收到委员会报告后须进行审议。

二、如经磋商得到解决，须记录解决的条件，并通告所有接到诉讼通知的国家。

三、如磋商未能解决分歧，理事会可向有关各国提出适当调查结论和建议。遇此情况，对第十五条略加必要修改后即适用。

第 三 部 分

第 六 章

一 般 条 款

第 二 十 七 条

代理人

一、按本规则成为不同意见或申诉诉讼方的成员国国家方须提名授权代理人为其代表并代为诉讼，但不得提名任何成员国派往理事会的代表作为代理人。

二、代理人可由法律顾问或律师协助。提供协助的法律顾问或律师出席任何会议，须将其姓名应事先通知理事会。

三、须邀请代理人参加任何为讨论此案而召集的会议。

第 二 十 八 条

程序措施

一、理事会须确定适用的时限和其他与诉讼有关的程序问题。根据本规则指定的时限须避免任何可能的延误，并确保有关一方或各方受到公平待遇。

二、理事会可随时应任何方的请求或自行决定延长根据本规则规定的时限。在特殊情况下并听取任何方的反对意见后理事会也可决定，在时限届满后采取的任何行动须被认为是有效的。

三、在按本规则指定或延长时限方面，理事会休会期间，理事会主席须代表理事会行事。

第 二 十 九 条

语文

一、一方可以国际民航组织四种工作文字中的任一种语文提交其书面或口头材料，，一在任何其他方的请求下须按照秘书长所做的安排将其这些材料笔译和/或口译译成该组织各种其他文字。除非秘书长另有决定，当事方提交的书面诉状所附的辅助文件不应由本组织翻译。任何未以本组织工作语文之一提交的此类辅助文件，须由提交该文件的一方翻译成这些语文之一。

二、理事会可应任何方的请求批准该方使用另一种文字。在此情况下，须由有关方对翻译笔译和/或口译工作做出必要的安排。

二三、理事会对不同意见做出裁决的文本，或对申诉做出结论和建议的文本须以四种工作文字书写。除非所有各方协议将其中一种文本作有效文本，各种文本须具有同等效力。

第 三十 条

记录和公布

一、秘书长须保存全套诉讼记录。

二、任何口头证词和口头辩论论词均须逐字笔录，并且归入诉讼记录。

三、除非理事会另有指示，在理事会就任何初步反对意见、[任何临时措施]或实体问题作出裁决之后，诉讼记录须对公众公开。理事会可将从前不准公开的记录的任何部分公开。

第 三十一 条

诉讼费用

一、除非理事会另有决定，各方须负担各自的费用。

二、所有其他费用可按理事会规定的比例由各方分摊。

第 三十二 条

规则的暂停使用

如果理事会认为此举措会促使该案得到更为迅速、有效的解决，经各方协议，可修改本规则的任何规定，或暂不使用这些规定。

第 三十三 条

本规则的修订

理事会可随时对本规则进行修订。除非各方同意，任何修订条款不适用于未决案件。

第三十四条

临时措施

一、在理事会按照第十五条第四款对争端作出最后裁决之前，并在不影响该裁决的情况下，理事会如果认为情况需要，并在听取案件各方意见后，有权指示需采取的任何临时措施，以保护案件中任何一方的权利和利益，或维护国际民用航空的安全或安保。

二、案件一方可在诉讼过程中的任何时候，并在理事会按照第十五条第四款作出裁决的会议之前，提出要求指示临时措施的书面请求。

三、案件一方提出的临时措施请求，须具体说明请求的理由、不批准的可能后果以及请求采取的措施。

四、理事会在听取案件各方意见后，也可主动指示临时措施，或指示案件一方请求采取的临时措施以外的临时措施。

五、理事会须作为紧急事项，立即审议临时措施的请求，以便就该请求作出决定。如果提出临时措施请求时理事会正在休会，则须根据《理事会议事规则》召开理事会特别会议或特殊会议以尽早审议该请求。

六、理事会可在任何时候应案件一方的要求或主动撤销或修改有关临时措施的任何决定，如其认为情况的某些变化证明有必要进行此类撤销或修改。一方提出的任何此类撤销或修改的申请，须具体说明被认为相关的情况变化。在根据本款作出任何决定之前，理事会须让各方有机会就该问题发表意见。

七、理事会可要求案件各方提供与实施理事会所指示的任何临时措施有关的任何事项的信息。

第三十五条

程序指示

理事会可通过有关程序事项的程序指示或指导方针，但不得涉及对本规则的任何修订。如有任何歧义，须以本《规则》为准。

第三十六条

虚拟诉讼

作为一项例外措施，理事会可出于公共卫生、安保或其他令人信服的理由，决定以虚拟形式举行本《规则》规定的任何部分的诉讼程序。须就此类虚拟诉讼的安排与各方进行协商。