



International Civil Aviation Organization

LEGAL COMMITTEE

38TH SESSION

Virtual, 22 to 25 March 2022

DRAFT REPORT

1. Place and Duration

1.1 The 38th Session of the Legal Committee was held in the virtual format from 0800 to 1100 hours Montreal time each day from 22 to 25 March 2022. The Chairperson of the Legal Committee, Ms. Siew Huay Tan (Singapore), presided over the Session.

2. Opening Addresses

2.1 The meeting was declared open by **the Chairperson of the Legal Committee, Ms. Siew Huay Tan. The President of the Council, Mr. Salvatore Sciacchitano**, welcomed all delegates and observers and appreciated the wide participation from States and observer organizations, which he considered as a testimony to the important role of this Committee in the Organization. Highlighting that this year marks the 75th anniversary of the Legal Committee, he emphasized its significant contribution, since its inception, to the development and codification of international air law and the support it provides to ICAO Member States and international organizations in the implementation of international air law instruments and ICAO Standards and Recommended Practices. He commended the delegates, as legal representatives of their Governments, on their efforts and contribution to the work carried out over the recent years on items of the Committee's Work Programme, notwithstanding the COVID-19 situation, and expressed his confidence that the same diligence would lead to a successful 38th Session of the Legal Committee.

2.2 Referring to the first subject in the General Work Programme of the Legal Committee – *Study of international legal aspects relating to remotely piloted aircraft*, the President expressed his satisfaction with the arrangements which had been put in place by establishing a Secretariat Study Group, as an alternative to the Working Group which had been recommended by the 37th Session of the Committee and that could not materialize due to budgetary constraints.

2.3 In relation to the second subject on the Committee's General Work Programme – *Review of the ICAO Rules for the Settlement of Differences*, the President observed that the Working Group had achieved significant progress in its work and stressed that the modernization of these Rules was necessary in order to ensure that the Council can discharge swiftly and effectively the dispute settlement functions entrusted to it by the Chicago Convention and by certain other international air law instruments.

2.4 In regard to the fourth subject in the General Work Programme of the Committee – *Consideration of the adequacy of international air law instruments in addressing cyber threats and other acts of offences of concern to the international aviation community*, the President indicated that, due to the organizational changes surrounding the Secretariat Study Group on Cybersecurity and its dissolution in favor of the new Cybersecurity Panel, a final update on the work of the Research Subgroup of Legal Aspects would be presented by the Secretariat to the consideration of the Committee.

2.5 With respect to the *Promotion of the ratification of international air law instruments*, the President urged all Delegations to recommend to their respective relevant authorities to expedite the ratification process of international air law instruments adopted under the auspices of ICAO, mentioning in particular, the two Protocols amending Articles 50(a) and 56 Chicago Convention which provide for an increase in the sizes of the ICAO Council and the Air Navigation Commission, respectively.

2.6 The President expressed his confidence that the Legal Committee would demonstrate great efficiency in accomplishing all tasks on its Agenda for this Session despite the conversion to a virtual format for the meeting. He stated that ICAO Member States and the Council had high expectations on the results of this Session, and indicated that the Council would consider such results and decide on the future course

of work, and that the Committee's activities would also be reported to the upcoming 41st Session of the Assembly.

2.7 In concluding, the President underscored that the Chairperson of the Legal Committee is not only the first woman to preside over the Committee, but is also the first person to chair a meeting of the Committee in a virtual format. The President thanked her for her dedication and strong leadership, and wished her and all participants every success.

2.8 **The Secretary General of ICAO, Mr. Juan Carlos Salazar**, joined the President of the Council in welcoming all Delegations and Observers to this Session of the Legal Committee. He said that, as a lawyer himself, he was keenly aware of the important work that falls on the shoulders of the Committee, the important role of lawyers in matters which come under his responsibilities as Secretary General of ICAO and the importance of the rule of law.

2.9 The Secretary General expressed appreciation for the commitment of the participants to progressing the important matters on the Agenda of the Committee at this Session, which will support ICAO and the aviation sector at this crucial point. He also expressed his confidence that, in spite of the necessary virtual format of the meeting, all necessary measures had been put in place to lead to a successful 38th Session of the Legal Committee.

2.10 The Secretary General introduced the Secretary of the Legal Committee, Mr. Michael Gill, Director, Legal Affairs and External Relations Bureau, and the Deputy Secretaries, and invited Mr. Michael Gill to introduce the rest of the officers serving this Session of the Committee.

2.11 Before giving the floor to the Secretary, the Chairperson invited the participants to observe a minute of silence to remember the 132 people who perished in the China Eastern Airlines Flight 5735 accident in China on 21 March 2022.

2.12 **The Secretary of the Legal Committee, Mr. Michael Gill**, joined the President of the Council and the Secretary General of ICAO in welcoming all Delegations to this virtual Session of the Legal Committee, and introduced the Legal Affairs and External Relations Officers serving as Assistant Secretaries.

2.13 The Secretary of the Legal Committee also shared the confidence of the President and of the Secretary General that the conditions were in place for a productive and enjoyable meeting of the Committee in the virtual format.

3. **Agenda and Working Arrangements**

3.1 The Committee agreed with the provisional agenda shown in LC/38-WP/1-1. The agenda of the Session as adopted can be found at **Appendix A** to this Report.

3.2 The Secretary of the Committee, Mr. Michael Gill presented LC/37-WP/1-2, Note on Documentation and Working Arrangements.

3.3 The working papers considered by the Committee are listed by agenda items in **Appendix B** to this Report.

3.4 The action taken by the Committee in respect of each item is reported on separately in the Report. The material is arranged according to the numerical sequence of the agenda items considered by the Committee.

4. **Meetings**

4.1 The Committee held XX meetings, all of which were held in open sessions.

4.2 The Secretary of the Committee was Mr. Michael Gill, Director of the Legal Affairs and External Relations Bureau. Mr. Chunyu Ding, Deputy Director, Legal Affairs and External Relations Bureau, Mr. Benoît Verhaegen, Senior External Relations and Legal Officer and Mr. Arie Jakob, Senior Legal Officer were Deputy Secretaries. Mr. Christopher Petras, Mr. Andrew Opolot, Ms. Marla Weinstein, Ms. Diana Brookes, Ms. Perela Bavand, Mr. Mathieu Vaugeois, Ms. Ao Lei, Mr. Silvério Espinola and Mr. Pier-Oliver Turcot, were Assistant Secretaries. Other officials of the Organization also provided services to the Committee.

5. **Representation of States and International Organizations**

5.1 Xx Member States and xx international organizations were represented by xx representatives and observers at this Session of the Legal Committee. The names of the representatives and observers appear in **Appendix C** to this Report.

6. **Records of Proceedings**

6.1 The Committee decided that in application of Rule 45 of its Rules of Procedure, the minutes of the 38h Session need not be prepared.

Agenda Item 2: Consideration of the General Work Programme of the Legal Committee**International legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation**

2:1 The Chairperson opened discussion of WP/2 and invited participants to comment on item one, “International legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation”. One delegation took the floor and voiced support for the work undertaken by the Secretariat Study Group on Legal Issues related to Pilotless Aircraft (SSG-LIPA) and, underlining that pilotless aircraft transport, including the transport of passengers, was the future, highlighted the need for a common legal framework for unmanned (pilotless) aircraft operations among States. The Chairperson thanked the Dominican Republic for the information submitted in LC/38-IP/1 (Spanish only).

Processes and procedures for States to fulfil their obligations under Article 12 of the Chicago Convention

2:2 The Secretariat introduced paragraph 3 of LC/38-WP/2, providing background information on the establishment of the Article 12 Task Force (A12 TF) as well as on the outcome of its First Meeting that was held virtually on 23 November 2021. The Chairperson of the A12 TF noted that the working paper described well the progress made by the Task Force so far and expressed confidence that the future work by the Task force will lead to a successful outcome. The Chairperson of the A12 TF also took the opportunity to thank all the experts contributing to the A12 TF work, as well as the Secretariat for its support.

2:3 One delegation conveyed its appreciation for the work undertaken so far by the Task Force. Another delegation highlighted the importance of this subject for its State and its expectation that the work of the A12 TF should result in a great product in due time.

2:4 The Chairperson noted the comments made by the delegations and that a report of the work carried out under this item will be presented to the Legal Committee at its next Session. The Chairperson thanked the Dominican Republic for the information submitted in LC/38-IP/2 (Spanish only).

Acts or offences of concern to the international aviation community, including cyber threats, that may not be adequately covered by existing air law instruments

2:5 The Secretariat introduced paragraph 4 of LC/38-WP/2 which presented an overview of the work relating to the Item no. 4 of the General Work Programme. It was highlighted that the key task undertaken with respect to this item was the publication, in June 2019, of the *Manual on the Legal Aspects of Unruly and Disruptive Passengers* (Doc 10117), following a report by the Task Force on Legal Aspects of Unruly Passengers to the 37th Session of the Legal Committee. The Manual updates ICAO Circular 288 – *Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers*, as a result of the adoption of the Montréal Protocol 2014. The Committee was also informed that over the past two years, the Secretariat has monitored events and responded to inquiries relating to the Montréal Protocol 2014 and the above-mentioned Manual, with regard to their application to the implementation and enforcement of COVID-19 public health and safety measures on board aircraft. This included input to the work of the Council Aviation Recovery Task Force (CART). The CART Report highlighted actions that States may take, including reviewing their national legislation, to ensure that unruly and disruptive behaviour relative to COVID-19 measures is properly covered.

2:6 The Chairperson acknowledged with appreciation the work undertaken by the Task Force and the Secretariat to complete the publication of the Manual and noted the subsequent input provided for the CART. In this regard, the Chairperson noted that there had been an increase in unruly and disruptive behaviour incidents involving non-compliance by some passengers with public health measures including the wearing of mask while on board. She expressed appreciation for crew members who diligently carried out their tasks despite the difficulties faced in dealing with unruly passengers who fail to respect such measures. The Chairperson also expressed confidence that several States will become party to the Montréal Protocol 2014 in the near future.

Consideration of guidance on conflicts of interest

2:7 With reference to paragraph 5.1 of LC/38-WP/2, the Chairperson expressed the Committee's appreciation of the good work accomplished by the Secretariat in publishing in all ICAO working languages the compilation of ICAO provisions on conflicts of interest, an important issue that needs to be addressed by States with effective measures. It was understood that the Secretariat would undertake further work as required to update this compilation, which may be considered a living document. The Chairperson thanked the Dominican Republic for the information submitted in LC/38-IP/3 (Spanish only).

Promotion of the ratification of international air law instruments

2:8 The Secretariat introduced paragraph 6 of LC/38-WP/2, which contained a progress report of the work relating to Item no. 6 of the General Work Programme, "Promotion of the ratification of international air law instruments". The number of ratifications recorded in the Appendix to the paper was updated to 43, respectively, for the Beijing Convention and Beijing Protocol of 2010, 36 for the Montréal Protocol 2014 (which came into force after LC/37 on 1 January 2020), and 70, respectively, for the 2016 Protocols amending Articles 50(a) and 56 of the Chicago Convention. The Secretariat stressed the importance of ratifying the 2016 Protocols, which each required 128 ratifications to come into force. The Committee was informed on the convening and success of the inaugural ICAO Treaty Event at the 40th Session of the ICAO Assembly, with a second such Event planned for the 41st Session in September. The working paper also highlighted the inauguration, during May 2019, of the Civil Aviation Legal Advisers Forum (CALAF) in Singapore, which serves as a platform for exchanges among legal advisers, including on air law treaty ratification. The Civil Aviation Legal Advisers Exchange (CALEx) has been providing a very useful virtual platform for such exchanges in the face of the restrictions on meeting in person during this COVID-19 pandemic.

2:9 A number of delegations who took the floor strongly supported and encouraged ratification of the 2016 Protocols amending Articles 50(a) and 56 of the Chicago Convention, as the increase in the size of the Council from 36 to 40 members, and of the Air Navigation Commission from 19 to 21 members, would make for a more inclusive geographical representation, especially given the evolution of the air transport sector. Several delegations informed the Legal Committee that they were in the process of ratification, with one delegation referencing a letter circulated within its region that was intended to assist member States with ratification of these Protocols. Other delegations stressed the importance of ratifying the 2010 Beijing instruments, especially given cybersecurity concerns, with one delegation referencing Assembly Resolution A40-10: *Addressing Cybersecurity in Civil Aviation*.

2:10 In summing up, the Chairperson highlighted the Committee's support for ratification of international air law instruments and their contribution to the harmonization of international aviation rules.

Implementation of Article 21 of the Chicago Convention

2:11 The Chairperson invited the Chairperson of the Article 21 Task Force to comment on the “Implementation of Article 21 of the Chicago Convention”. The Task Force Chairperson noted that the recent activity of the group on this item was very limited because the matter had in fact been passed to the Secretariat for action, but noted with pleasure the amendment to Annex 7 that had been adopted by the Council and expressed her hope that the Secretariat would continue to collaborate with and take into account the work of the Task Force.

2:12 The Chairperson of the Task Force expressed her appreciation of the Secretariat which developed the proposed amendment to improve the process, and hoped that various elements brought forward in the Task Force regarding models for registration systems will be kept for consideration. The Chairperson of the Legal Committee further acknowledged the excellent inter-Bureau cooperation within the Secretariat, i.e. the Legal Bureau and the Air Navigation Bureau, which led to the successful adoption of the amendment to Annex 7 by the Council

Study of international legal issues relating to global satellite systems and services supporting international air navigation services

2:13 The Legal Committee noted the information contained in paragraphs 8.1 and 8.2 of LC/38-WP/2.

Progress Report on the work of the working group for the review of the ICAO Rules for the Settlement of Differences

2:14 At the invitation of the Chairperson of the Committee, the Chairperson of the Working Group for the Review of the ICAO Rules for the Settlement of Differences (the Group), Mr. T Olson (France), introduced LC/38-WP/2-1 in his capacity as Chairperson of the Group. He emphasized the fact that the members of the Group had not been provided an opportunity to examine the content of his report. In his view, the progress report was faithful to the state of the work undertaken so far by of the Group. He also outlined that the work of the Group was not complete and would resume either at the end of the year or in early 2023. He mentioned that it had been an honour to have been elected as Chairperson of the Group and thanked, for their effective support in the work, Ambassador A. K. Jailani (Indonesia) who previously served as Vice-Chairperson of the Group as well as Mr. J. Thachet (Canada) who is currently serving in that capacity. He also recalled that, during its First Meeting, the Group appointed Mr. D. Low (Singapore) as Rapporteur to serve until the next Session of the Legal Committee. Moreover, taking into consideration the excellent work undertaken by Mr. Low, he asked the Chairperson of the Committee whether she would consider seeking the consent of the Committee in order for Mr. Low to continue to serve under that capacity until the next meeting of the Committee. He also highlighted that the Group had met six times between May 2019 and January 2022. While the first two meetings were held in-person, the other four meetings took place virtually, given the international health crisis. He also thanked the members of the Group who had participated in the meetings of the Group as well as the Rapporteur and the Secretariat for supporting the work.

2:15 The Chairperson of the Group explained that Appendix A to the working paper contains two appendices listing the areas in which the Group had reached a high level of agreement

in principle, during its meetings. He mentioned that those areas were divided into two separate lists, that is to say one containing those areas for possible revision to the ICAO *Rules for the Settlement of Differences* (Doc 7782/2) (the Rules) as well as those where the Group considered that no revisions to the Rules were necessary. He also explained that some other areas considered for the modernization of the Rules, although being the subject of in-depth discussions, continued to evolve and required further consideration by the Group. In this regard, he outlined that Appendix B to the working paper listed and described those issues and that they will be subject to further consideration by the Group during its next meetings. Moreover, he mentioned that Appendix C to the working paper contained the latest round of proposed draft revisions to the Rules, prepared by the Rapporteur and the Secretariat and considered by the Group at its last meeting in January 2022. He also emphasized that any amended set of Rules would not apply to any pending disputes being considered by the Council, rather only to future disputes that will be presented after an amended set of Rules are approved.

2:16 In highlighting the great cooperation among the Group, as well as the invaluable leadership of its Chairperson, the Rapporteur was invited by the Chairperson of the Committee to make a presentation on the items contained in the tables presented in Appendices A and B to the working paper. The Rapporteur provided background information on the first table of Appendix A which covered the following subjects: requiring an email address for the agents of the parties; use of gender-neutral language; requiring pleadings and correspondence to be transmitted in both paper and electronic formats; expressly mentioning admissibility as a ground for preliminary objection; clarifying the pleadings permitted on a preliminary objection; clarifying that filing a preliminary objection does not prevent negotiations continuing; clarifying what the 60 day time-limit for notification of an appeal refers to; the languages and translation of pleadings; practice directions; and virtual proceedings. Furthermore, he also provided information concerning the second table of Appendix A which listed areas where the WG-RRSD considered no revisions to the Rules were necessary. These covered: the types of evidence which may be adduced by the parties; the requirements for intervention; the existing reference to a single agent per party; and time-limits. Finally, he introduced the items contained in Appendix B of the working paper which covered: the scope of the Rules; the existing requirement of a statement regarding prior unsuccessful negotiations; whether and how the Council may be assisted in formulating the reasons for its decisions, including potentially through the use of expert assistance; whether and when the record of proceedings should be made public; provisional measures; and interpretation of the term “majority” in Article 52 of the Chicago Convention for the purposes of the Council taking a decision in cases.

2:17 The Chairperson of the Group commended the presentation made by the Rapporteur and highlighted that the proposed revisions to the Rules may be divided into four main categories, that was to say those provisions concerning institutional aspects (e.g. reflecting the number of ICAO’s working languages); those allowing for the Rules to cope with modern technology (e.g. electronic communications, virtual meetings); those needing legal clarification (e.g. confidentiality of the proceedings); as well as those which were more complex but that should contribute to increasing the efficiency of the Council (e.g. the introduction of provisional measures).

2:18 Many delegations expressed their appreciation for the work carried out by the members of the Group, the Chairperson, the Vice-Chairpersons, the Rapporteur and the Secretariat

and supported the modernization of the Rules, so that the dispute settlement function of the Council can function effectively. Moreover, several delegations mentioned that they were looking forward to the Group meeting again with a view to submitting proposals for an amended set of Rules at the next Session of the Legal Committee.

2:19 One delegation pointed out that any revision to the Rules should aim at improving the dispute settlement mechanism under Article 84 of the Chicago Convention. Two delegations emphasized that it was important that the Rules contribute to the effective resolution of disputes in a transparent manner. Another delegation underscored that any revised Rules should allow the Council to perform its dispute settlement function in a simplified manner. Two delegations expressed support for the draft amendments to the Rules set out in the first table of Appendix A, and one delegation expressed its support for the second table of Appendix A to the working paper as well, which contained the areas which the Group considered that no amendment to the Rules were necessary. Another delegation suggested an amendment to Article 18 (2) of the Rules with respect to the time-limit for the filing of an appeal, in order to align it with the text of Article 84 of the Chicago Convention, and insert a requirement for the notification of the appeal to be made in writing.

2:20 The drafting proposal for Article 1 (1) (c) of the Rules concerning the expansion of the scope of the Rules to include other disputes that can be heard by the Council was raised by one delegation which enquired whether the words “pursuant to a treaty between the States concerned” meant pursuant to an existing treaty that did not specifically provided for dispute settlement by the Council under Article 84. In response, the Chairperson of the Group outlined that the proposal was for the Rules to be applicable to disputes arising from a treaty which expressly designated the Council as the dispute settlement fora. This notwithstanding, he acknowledged that the drafting proposal was not clear with respect to existing treaties which do not contain any express provision and asked the Rapporteur, as well as the Secretariat, to refine the drafting proposal for consideration by the Group at a subsequent meeting. As concerns the pre-negotiation requirement, one delegation enquired whether Article 2 (g) of the Rules needed to mirror the text that was found in Article 84 of the Chicago Convention. In its view, the current provision gave the impression that there was no room for further negotiations between the Parties and opined that a lighter formulation of that provision could be introduced so that it would be aligned with Article 14 of the Rules. In response, the Chairperson of the Group explained that the issue at stake was not the negotiations between the Parties once a case was before the Council but rather the negotiations between the parties before a case was presented to the Council. In this regard, he mentioned that the objective of the drafting proposal was to align the existing wording of the provision with Article 84 of the Chicago Convention, so that it could cover situations in which negotiations were not fruitful. The Chairperson of the Group also mentioned that this point would be taken into consideration by the Group in its future work.

2:21 One delegation enquired whether the group had considered entrusting the Council with any mediation function, so that it could assist the parties in reaching a settlement within the shortest possible time-frame. In response, the Secretary of the Committee mentioned that Article 6 of the Rules already provided that the Council can invite the parties to a dispute to enter into direct negotiations after the filing of the counter-memorial. He also made reference to Article 14

of the Rules concerning the negotiations during the proceedings. Furthermore, he mentioned that in a number of previous instances, the Council had in the past invited its President to provide his good offices to assist the parties in settling their dispute. He also mentioned that, if the parties so agree, there is nothing to prevent the President providing such good offices to the parties to a dispute.

2:22 One delegation emphasized the need for the Group to continue its work since it did not agree with several of its drafting proposals. The delegation also mentioned that any work of the Group that was undertaken in a virtual formal should be considered informal.

2:23 The question of the nature of the ICAO Council was raised by one delegation which expressed the view, supported by two other delegations, that the Council was a political and not a judicial body. Although an appeal from the Council would be to a judicial body; the Council was not such a body. It was recalled by those delegations that representatives on the Council were not all legal experts; some came from the diplomatic or aviation worlds. One delegation was of the view that there was a distinction between a judicial body and a body having judicial functions, and that the Chicago Convention did not give the Council such judicial functions. A number of other delegations, however, expressed the view that when acting under Chapter XVIII of the Chicago Convention, the Council was performing a judicial function, it followed that the Council was a judicial body when performing dispute settlement functions.

2:24 A good number of delegations supported the proposal for a clarification in the Rules to provide expressly for the Council to be able to seek outside expertise to assist in arriving at its decisions (Article 8 of the Rules). Another delegation was of the view that this proposal was problematic and could not support it, as the persons providing the expertise might influence the Council and the Council should take its decisions based on its own competencies. One delegation mentioned the proposal it had made in the Group that the Council could be equipped with a pool of legal experts, which would assist the Council in taking decisions in dispute settlement cases.

2:25 Attention was drawn by several delegations 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 better positioned in future to act on an appeal if the decision of the Council contains the reasons of law and fact that led to its conclusions. One delegation supported the requirement for the Council to give reasons (Article 15 (2) (v) of the Rules), given that when carrying out functions in dispute settlement cases it was a judicial body. One delegation expressed the view that even if it were not a judicial body, the Council had to provide reasons for its decisions. A few delegations remarked that the Council would need to have the assistance of legal experts in order for it to be able to develop legal reasons for its decisions; there was therefore a connection between the requirement for legal reasons and the proposal for express provision for the Council having access to experts for the purpose of arriving at its decisions.

2:26 One delegation expressed the view that the consideration of the nature of the Council as a judicial body or not impacted on other provisions of the Rules that the Group had been considering, for example those on provisional measures (new Article 34 of the Rules), which were only appropriate for a judicial body. Several delegations expressed support for the inclusion of provisional measures in the Rules. While one delegation could not support inclusion and drew attention to the lack of consensus in the Group on the matter. The question of whether provisional

measures would be made public was raised by another delegation; the risk would be that the provisional measures could be seen by the public as the final decision, which might result in unintended consequences or consequential damage to either of the parties.

2:27 As concerns the proposal to provide for virtual hearings in exceptional circumstances (new Article 36), the view was expressed by one delegation that virtual hearings, even in exceptional circumstances, can pose technical challenges for some States, particularly those in the developing world. It was suggested that such challenges needed to be addressed in the proposal for virtual hearings. Another delegation supported the need for further work to be done on this question. The Chairperson of the Committee commented that in dispute settlement cases the number of parties participating would be known, and so technical difficulties could be identified and addressed more easily.

2:28 The proposal that an interpretation of the term “majority” in Article 52 of the Chicago Convention be sought from the Assembly was supported by one delegation, as in its view it cannot be interpreted to allow for qualified majority voting in the Council in settlement of dispute cases. In this regard, the delegation made reference to Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties.

2:29 On the invitation of the Chairperson of the Committee, the Chairperson of the Group made some concluding remarks. As concerns virtual hearings, the Chairperson of the Group recalled that the Group had acknowledged that this should not become the norm; rather there may be exceptional circumstances when they would be useful and necessary. An example was the current pandemic situation. It would be essential for all of the parties to have equitable access to the Council to express their arguments. The Group would need to consider making improvements to the drafting of the new provision. The Chairperson of the Group recognised that majority voting was a delicate issue. If no member State of the Council was involved in the dispute, there was no difficulty. However, if a large number of Council members were involved there could be difficulties. With respect to express provision for the Council to use outside legal experts, the Chairperson of the Group acknowledged there were those in favour and those against, and recognized that the term “expert” was not entirely satisfactory. Accordingly, the Group would further consider this matter. The Chairperson of the Group had been interested to hear several delegations speak on the nature of Article 84 of the Chicago Convention and whether the Council was a political body or a judicial body. In his view, the question was rather whether the Council carried out legal functions and Article 84 itself answered that in the positive. The philosophical question of the role of the Council cannot be answered; rather the role of the Group was to propose revisions to the Rules that enable the Council to carry out that dispute settlement function.

2:30 The Chairperson of the Committee concluded that interventions by delegations had supported the continuation of the work by the Group. In recalling that dispute resolution was at the heart of the rule of law, the Chairperson of the Committee noted that international civil aviation required a robust process for the resolution of disputes and the drafters of the Chicago Convention had been wise enough to provide for it. It was very important that the Rules were revised to strengthen that function. The Chairperson of the Committee commended the Group for its work under the able leadership of the Chairperson of the Group, and concluded that the Committee agreed that the continuation of Mr. D. Low (Singapore) as Rapporteur will be beneficial to the

Group.

2:31 The Secretary of the Committee responded to a question concerning the format of the next meeting of the Group, by referencing that with the need for inclusiveness in mind, the strong support of Canada as the host State, and given the preference of the Council, the next Session of the Assembly, will be in person with a hybrid element. This provided a good indication that, subject to the general evolution of the global COVID-19 pandemic, the next meeting of the Group, which is anticipated for late 2022 or early 2023, would be held in person. Two delegations indicated their preference for such an in person meeting.

Consideration of the adequacy of existing international air law instruments in addressing cyber threats against civil aviation

2:32 The Secretariat presented LC/38-WP/2-2, to which was appended a report of the Research Subgroup on Legal Aspects (RSGLEG) Study on the applicability of international air law instruments to cyber threats against civil aviation and a list of States Parties to the 2010 Beijing Convention and Protocol. The paper introduced the cybersecurity work in ICAO proceeding from Assembly Resolution A40-10: *Addressing Cybersecurity in Civil Aviation* and the work on legal aspects of the cyber threats conducted by the RSGLEG, under the Secretariat Study Group on Cybersecurity (SSGC) following the 37th Session of the Legal Committee. The Secretariat highlighted that since its inception on 22 November 2018, the membership of the RSGLEG had been expanded to include legal experts from 15 States and four international organizations ensuring wide geographical representation with diverse legal systems.

2:33 The Secretariat expressed its profound appreciation for the coordination of the group's study by the Co-Rapporteurs from Switzerland and Malta, as well as for the administration and technical expertise provided by the Air Transport Bureau. The paper underlined that the Tenth Meeting of the RSGLEG on 21 January 2022 decided to present the work of the group in a report from the Secretariat while noting that the work of the RSGLEG had concluded with the dissolution of the SSGC in favour of the new ICAO Cybersecurity Panel.

2:34 The Secretariat explained that the report in Appendix A of the paper summarized the draft study on the adequacy of international air law instruments in addressing cyber threats against civil aviation considered by the RSGLEG, including analysis of various air law instruments and their application to sample cyberattack scenarios and identifying potential gaps and conclusions.

2:35 In taking note of the excellent work carried out by the RSGLEG and the Secretariat supported by the Co-Rapporteurs, many delegations expressed their support for keeping this item on the Work Programme of the Legal Committee. As the ICAO cybersecurity governance structure was evolving and the RSGLEG would be dissolved, there was wide support for the continuation of the work on the consideration of the adequacy of existing air law instruments in addressing cyber threats to civil aviation to be carried out by Legal Affairs and External Relations Bureau. Delegations further noted the enhancements brought by the 2010 Beijing Convention and Protocol to the prosecution of cyber attacks and expressed the need to continue promoting their ratification by all States.

2:36 In referring to the gaps identified in paragraph 7.1.3 of the report presented in Appendix A to the Working Paper, one delegation expressed concerns on the issue of the differing interpretations of certain terms and the need for the Committee to address it. The Secretariat highlighted that international instruments often deliberately used broad language to leave room for interpretation from national authorities but that the desirability to harmonize key terminologies could be considered in future work. Another delegation mentioned that further considerations of the work under this item should carefully assess relevant developments from other entities in the field, such as the United Nations Group of Governmental Experts (UNGGE) on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security.

2:37 The Chairperson thanked the experts from States on the RSGLEG, the Co-Rapporteurs and the Secretariat including the Air Transport Bureau for their support in the work of the RSGLEG which underscored the cross-cutting aspect of this item as requiring experts from all fields. With due regard to the Secretariat resources already being strained, it was decided that the Director of the Legal Affairs and External Relations Bureau would consult with the Chairperson of the Legal Committee on the best way forward to provide the necessary support to the future work under this item of the Work Programme.

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

3:1 The Secretariat introduced LC/38-WP/3-1, which reported on the developments, considerations and decisions with respect of the General Work Program of the Legal Committee since the last session of the Committee (Montreal, 4-7 September 2018).

3:2 The Chairperson invited the Committee to consider the potential reprioritization of items and whether items should be removed or added. As to the latter, the Chairperson drew attention to the fact that any addition of new activities would need to take into consideration that they could only be carried out to the extent that sufficient resources were available.

3:3 In the ensuing discussion, one delegation, supported by several others, proposed that the following items be placed on the Work Programme, prioritized from highest to lowest, as follows: item 1 (Review of the ICAO Rules for the Settlement of Differences); item 2 (Processes and procedures for States to fulfil their obligations under Article 12 of the Chicago Convention); item 3 (International legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation); item 4 (Acts or offences of concern to the international aviation community, including cyber threats, that may not be adequately covered by existing air law instruments); item 5 (Promotion of the ratification of international air law instruments); item 6 (Study of international legal issues relating to global satellite systems and services supporting international air navigation services); item 7 (Consideration of guidance on conflicts of interest).

3:4 A second delegation agreed that the highest priority should be given to “Review of the ICAO Rules for the Settlement of Differences,” but proposed that “International legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation” should be elevated to the second highest priority, which proposal drew the support of a number of other delegations. The delegation further opined that the item related to “Study of international legal issues relating to global satellite systems and services supporting international air navigation services” be afforded a higher priority given its implications for aviation safety.

3:5 The Chairperson of the Working Group on the “Implementation of Article 21 of the Chicago Convention” took the floor regarding the possible removal of this item from the Work Programme and, while noting that she did not hold a strong position on its removal, she observed that significant work in this area was still ongoing within ICAO, for example, in relation to the registration of “drones”, and suggested that the item could be relegated to the lowest priority until a decision could be made about the need for her Working Group to continue its work.

3:6 One delegation also raised concern about the low priority assigned and absence of activity observed relative to the “Study of international legal issues relating to global satellite systems and services supporting international air navigation services” given the importance of the issue to developing states. Another delegation, however, observed that at its 37th Session the Legal Committee decided to maintain this item on the understanding that further decisions regarding any future work on it needed to await the Council’s directions. Although at the 40th Session of the Assembly, the Legal Commission had agreed to broaden the scope of the item to go beyond the global navigation satellite systems (GNSS) as had been requested by the Council, the Secretariat has received no concrete proposals or guidance on how to advance this item. The delegation concerned offered to meet with the Secretariat to discuss specific proposals for work to be done on this item, which offer was welcomed by the Secretariat.

3:7 As a result of the above-mentioned considerations, the Chairperson proposed, and the Committee unanimously endorsed, that the work programme be established as follows:

1. Review of the ICAO Rules for the Settlement of Differences;
2. International legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation;
3. Processes and procedures for States to fulfil their obligations under Article 12 of the Chicago Convention;
4. Acts or offences of concern to the international aviation community, including cyber threats, that may not be adequately covered by existing air law instruments;
5. Promotion of the ratification of international air law instruments;
6. Study of international legal issues relating to global satellite systems and services supporting international air navigation services;
7. Consideration of guidance on conflicts of interest; and
8. Implementation of Article 21 of the Chicago Convention.

Agenda Item 4: Amendment of the Rules of Procedure of the Legal Committee

4:1 The Secretariat introduced LC/38-WP/4-1, which presents two proposals for amendment of the Rules of Procedure of the Legal Committee. The first proposal, as set out at Section 2 of the working paper, is to amend the Rules of Procedure to use gender-neutral language pursuant to the Council's Declaration on Improving Gender Representation in ICAO's Governing and Technical Bodies adopted at the seventh meeting of its 222nd Session in March 2021. The second proposal, as set out at Section 3 of the paper, is to amend Rules 3, 14 and 15 to provide explicitly for the sessions of the Legal Committee, as well as meetings of its sub-committees and working groups, to be held in a fully virtual format as an exceptional measure.

Gender-neutral language

4:2 The Committee adopted the gender-neutral language changes to the Rules of Procedure as set out in Section 2 of the working paper by consensus.

Virtual format

4:3 A majority of the delegations who spoke expressed support for the amendments set out in Section 3 of the working paper, citing, in particular, the benefits of the Committee having the option to meet virtually. One delegation, while supporting the proposed amendments, recognized that both virtual and in-person meetings have their limitations, citing the economic and administrative difficulties for some States to attend in-person, and noting the large increase in attendance during this virtual meeting. This delegation emphasized the logic and relevance of amending the Rules to cover meetings in a virtual format, taking inspiration from the Council who has avoided paralysis in its work during the COVID-19 pandemic. Building on this, another delegation averred that the Council would consider the best interests of the legal community when deciding to convene a virtual meeting of the Committee.

4:4 Several delegations, although supporting the proposed amendments, queried how certain procedures would be conducted virtually. Matters to consider included how to ensure that the rule of only one vote per State is maintained by, for example, raising of hands or roll call pursuant to Rule 39.

4:5 Two delegations proposed to add some wording to Rules 3, 14, and 15, as follows:

Rule 3: The sessions of the Committee shall be convened at such times and places as may be directed or approved by the Council. Sessions of the Committee may, as an exceptional measure, [for compelling reasons, such as public health or security] [for public health, security, or other compelling reasons,] be convened by the Council in a virtual format.

Rule 14: Sub-Committees shall meet either in conjunction with the Committee or, subject to the approval of the Council, at other times and places as the Committee or Sub-Committee may deem fit. Meetings of Sub-Committees may, as an exceptional measure, [for compelling reasons, such as public health or security] [for public health, security, or other compelling reasons,] be convened in a virtual format, subject to the approval of the Council.

Rule 15: The Committee and Sub-Committees may create working groups. Such working groups may, as an exceptional measure, [for compelling reasons, such as public health or security] [for public health, security, or other compelling reasons,] meet in a virtual format.

4:6 A majority of delegations who spoke expressed a preference for the wording in the second set of brackets, with the Chairperson pointing out that this wording was based on a strong precedent in the form of the amendment to the Rules of Court of the International Court of Justice concerning virtual hearings.

4:7 Another delegation proposed the following amendment to Rule 15:

The Committee and Sub-Committees may create working groups. Such working groups may, as an exceptional measure, for public health, security, or other compelling reasons, meet in a virtual format. [The Chairperson of such a working group may decide that the working group will meet in a virtual format in consultation with the Chairperson of the Committee or Sub-Committee, as the case may be.]

4:8 Although most of the delegations who spoke recognized the need for virtual meetings in exceptional circumstances, some delegations recommended that the Rules remain unchanged for now and that any amendments should be adopted only in conjunction with applicable guidelines containing adequate safeguards dealing with the conduct of virtual meetings, after further study. One delegation suggested that the guidelines should be similar to those adopted by the Council for its virtual meetings. This delegation, echoed by others, emphasized the technical barriers faced by developing States and, in any case, noted that the current Rules do not prevent the Committee meeting virtually. While not opposed to such amendments, this delegation stressed that they must be adopted with safeguards in place to ensure that no States are disadvantaged by meeting in a virtual format.

4:9 A number of delegations mentioned technical barriers such as virtual connection delays and inability to hear or be heard, as well as the possibility of misunderstanding the discussion due to interpretation delays. One delegation queried whether the Council had adopted a similar rule in its Rules of Procedure and it was clarified by the Chairperson after consultation with the Secretariat, that the Council had adopted guidelines (and not amended its Rules) for the conduct of virtual meetings.

4:10 Although delegations did not all agree on the timing of adopting the proposed amendments in the working paper, most delegations agreed that appropriate guidelines should be developed for technical clarity.

4:11 In summarizing the discussion, the Chairperson pointed out that the majority of States who spoke were in favour of the proposed amendments. She noted the concerns of developing States with respect to technical difficulties, as evidenced by some shortcomings during this Session which must be taken into consideration. The Chairperson recognized that most of the States supporting the adoption of the amendments as proposed in LC/38-WP-4-1, also agreed with the changes to the Rules set out in paragraphs 4.5 and 4.7 above.

4:12 Accordingly, the Chairperson proposed that the Committee agree to adopt the amendments as set out in paragraphs 4.5 and 4.7, with the proviso that guidelines for virtual meetings of the Legal Committee be developed after this Session by a Secretariat group. The Chairperson requested assistance in this group from the delegations, especially those who had spoken. One delegation, in expressing support for this way forward, suggested that the draft guidelines be submitted to the next Session of the Committee. Another delegation, whilst supporting the Chairperson's proposal, suggested that since technical advances were moving quickly and the difficulties experienced by developing States should dissipate. Therefore, any guidelines should be modelled on those developed by other bodies of the Organization.

4.13 One delegation, supported by others, strongly objected to the Chairperson's summary. This delegation proposed that a link between the Rules and the guidelines would be necessary. In response, another delegation proposed an addition to the amendments in Rules 3, 14 and 15 to the effect that "best practices and guidelines available" should be taken into account.

Agenda Item 5: Election of Vice-Chairpersons of the Committee

5:1 ...

Intentionally left blank

Agenda Item 6: Date, place and agenda of the 39th Session of the Legal Committee

6:1 ...

Intentionally left blank

Agenda Item 7: Any other business

7:1 Several delegations and one observer intervened on the situation in Ukraine, to state that, in their view, the Russian Federation has acted in violation of international law, including with respect to the *Convention on International Civil Aviation* (Doc 7300/9) (the Chicago Convention) (Articles 1, 18 and 31) as well as the *Cape Town Convention on International Interest in Mobile Equipment* (Doc 9793) and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* (Doc 9794). Particular concerns were expressed about breaches of the Chicago Convention whereby according to those delegations, foreign aircraft leased by Russian airlines are being registered on the Russian registry while still registered in other States, and are being operated while their certificate of airworthiness had been revoked or suspended by their State of Registry. A number of other delegations noted that the matter was not on the agenda. The Chairperson concluded that the interventions were noted and that she took them as being raised under Item 7: Any Other Business. The Chairperson also recalled that the order of the Committee's agenda items may be modified for the better conduct of its work.

APPENDIX A**AGENDA****Item 1: Adoption of the Agenda**

Note: Rule 11 a) of the *Rules of Procedure of the Legal Committee* (Doc 7669-LC/139/6) provides: “The Committee shall fix the final agenda of the session at its first meeting.”

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

Note: The Committee will consider reports on items in its General Work Programme:

- 1) International legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation;
- 2) Review of the ICAO Rules for the Settlement of Differences;
- 3) Processes and procedures for States to fulfil their obligations under Article 12 of the Chicago Convention;
- 4) Acts or offences of concern to the international aviation community, including cyber threats, that may not be adequately covered by existing air law instruments;
- 5) Consideration of guidance on conflicts of interest;
- 6) Promotion of the ratification of international air law instruments;
- 7) Implementation of Article 21 of the Chicago Convention; and
- 8) Study of international legal issues relating to global satellite systems and services supporting international air navigation services.

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

Note: The Committee will determine its General Work Programme, with an indication of priority of items, for submission to the Council for approval.

Item 4: Amendments of the Rules of Procedure of the Legal Committee

Note: In line with the *Council Declaration on Improving Gender Representation in ICAO's Governing and Technical Bodies* (C-DEC 222/7 refers), the Committee will consider whether to amend its Rules in order to use gender-neutral language. The Committee will also consider whether to adopt a rule which explicitly provides for the conduct of its meetings remotely / through virtual means.

Item 5: Election of Vice-Chairpersons of the Committee

Note: The Committee may decide to fill any vacant office of Vice-Chairperson.

Item 6: Date, place and agenda of the 39th Session of the Legal Committee

Note: The Committee will consider the date, place and provisional agenda of its next session, in the light of the decisions it will have taken during the 38th Session.

Item 7: Any other business**Item 8: Report on work done at the Session**

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APPENDIX B**LIST OF WORKING PAPERS AND OTHER DOCUMENTS**

AGENDA ITEM	WORKING PAPER NO.	TITLE	ORIGINATOR
1	LC/38-WP/1-1	Provisional Agenda	Secretariat
1	LC/38-WP/1-2	Note on Documentation and Working Arrangements	Secretariat
2	LC/38-WP/2	Consideration of Other Items on the General Work Programme of the Legal Committee	Secretariat
2	LC/38-WP/2-1	Progress Report on the Work of the Working Group for the Review of the ICAO Rules for the Settlement of Differences (WG-RRSD)	Presented by the Chairperson ¹ of the WG-RRSD
2	LC/38-WP/2-2	Consideration of the Adequacy of Existing International Air Law Instruments in Addressing Cyber Threats Against Civil Aviation	Secretariat
2	LC/38-WP/3-1	Review of the General Work Programme of the Legal Committee	Secretariat
2	LC/38-WP/4-1	Amendment of the Rules of Procedure	Secretariat
4	LC/38-WP/5-1	Note on the Election	Secretariat
5	LC/38-WP/6-1	Date, place and agenda of the 38th Session of the Legal Committee	Secretariat
7	LC/38-WP/7-1	Privacy Laws and International Carriage by Air	IATA
7	LC/38-WP/7-2	75th Anniversary of the Legal Committee of the International Civil Aviation Organization	Secretariat

OTHER DOCUMENTATION

AGENDA ITEM	INFORMATION PAPER	TITLE	PRESENTED BY
2	LC/38-IP/1	Marco Legal de RPAS	Dominican Republic
2	LC/38-IP/2	Nota Informativa Artículo 12 Del Convenio de Chicago	Dominican Republic
2	LC/38-IP/3	Nota Informativa Artículo 12 Del Convenio de Chicago	Dominican Republic

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