



International Civil Aviation Organization

WORKING PAPER

A38-WP/62

LE/2

31/7/13

ASSEMBLY — 38TH SESSION

LEGAL COMMISSION

Agenda Item 47: Work Programme of the Organization in the legal field

WORK PROGRAMME OF THE ORGANIZATION IN THE LEGAL FIELD

(Presented by the Council of ICAO)

EXECUTIVE SUMMARY

This working paper reports on the on-going work of the Secretariat in the legal field and legal matters before the Council. It also presents an overview of developments and relevant decisions taken since the last Assembly with respect to items on the Work Programme of the Legal Committee, including the prioritization of items.

Action: The Assembly is invited to consider the programme of future work of the Organization in the legal field and to decide the Work Programme of the Legal Committee as set out in paragraph 3.5, including the prioritization of items.

<i>Strategic Objectives:</i>	Supporting Implementation Strategies – Programme Support – Legal Services and External Relations
<i>Financial implications:</i>	As provided by the Regular Budget.
<i>References:</i>	C-WP/13886 C-DEC 197/3 Cir 295, <i>Guidance on the Implementation of Article 83 bis of the Convention on International Civil Aviation</i> Doc 7669, <i>Legal Committee, Constitution, Procedure for Approval of Draft Conventions, Rules of Procedure</i> Doc 10014-LC/35, <i>Report of the 35th Session of the Legal Committee</i>

1. INTRODUCTION

1.1 Each regular session the Assembly is informed of the on-going work of the Secretariat in the legal field and provided with an account of the relevant decisions taken subsequent to the previous session of the Assembly in relation to the items on the Work Programme of the Legal Committee.

2. ONGOING ACTIVITIES IN THE LEGAL FIELD OF THE LEGAL AFFAIRS AND EXTERNAL RELATIONS BUREAU (LEB)

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

2.2 LEB has been working closely with the Air Navigation Bureau (ANB) to address numerous legal issues arising out of ICAO's effort to develop Standards and Recommended Practices (SARPs), Procedures for Air Navigation Services (PANS), and guidance material related to remotely-piloted aircraft (RPA) and associated systems.

2.3 The Working Group on Governance and Efficiency (WGGE) was constituted during the 195th Session of the Council in March 2012 following the merger of the former working groups on governance and efficiency (the WGOG and the WGOE). LEB provides secretariat support to the WGGE. The WGGE addressed matters such as: the establishment of a Sub-Office in the Asia and Pacific region; various aspects of language services including the demand and quality of services for translation and interpretation; proposals to amend the Chicago Convention relating to an increase in membership of the Council and review of the number and frequency of Assembly and Council sessions; and a proposed mechanism for consultation with host States on privileges and immunities and courtesy services.

2.4 LEB assisted in the negotiations with Canada on a text for a new Supplementary Agreement which will take effect on 1 December 2016, for a duration of 20 years. It will supersede the 1999 Supplementary Agreement, which will remain in force until 30 November 2016.

2.5 LEB provided secretariat and legal advisory support in the course of consideration by the Council of the establishment of the Regional Sub-Office (RSO) in the Asia and Pacific region and the selection of a host state for the RSO. Following the selection of Beijing as the location of the RSO, LEB led the negotiations of the Host State Agreement between ICAO and China.

2.6 LEB has participated on behalf of ICAO on a United Nations Framework Convention on Climate Change (UNFCCC) Secretariat panel of experts to share experience on the design of treaties across various treaty regimes that could assist in the development of a new international instrument on climate change under the UNFCCC.

2.7 LEB continued its participation in the World Tourism Organization (UNWTO) Working Group on the protection of tourists/consumers and travel organizers. The Group is in the process of considering a proposed draft Convention on the protection of tourists and tourism service providers. LEB provided technical comments and drafting proposals regarding the draft instrument under development, primarily with a view to avoiding any potential for overlap with existing air law instruments adopted under the auspices of ICAO. LEB also provided legal support to the recently held Sixth Worldwide Air Transport Conference (ATConf/6, Montréal, 18-22 March 2013), which considered, inter alia, the issue of consumer protection.

2.8 Further to the first Air Law Conference jointly sponsored by ICAO and the Central Europe Rotation Group (CERG) in Bucharest in 2010, Romania hosted the second ICAO/CERG Air Law Conference from 4 to 5 April 2011. The third ICAO/CERG Air Law Conference was hosted by Poland in Warsaw from 5 to 6 September 2012. From 4 to 5 April 2011, the Central American Corporation for Air Navigation Services (COCESNA) hosted an ICAO legal seminar in Tegucigalpa, Honduras. From 24 to 25 April 2012, the Republic of Korea for the third time hosted an ICAO Legal Seminar in the Asia-Pacific Region.

3. WORK PROGRAMME OF THE LEGAL COMMITTEE

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

3.2 The 37th Session of the Assembly established the following General Work Programme of the Legal Committee with the subjects listed in the order of priority:

- 1) Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks;
- 2) Acts or offences of concern to the international aviation community and not covered by existing air law instruments;
- 3) Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), and the regional multinational organisms, of the establishment of a legal framework;
- 4) International interests in mobile equipment (aircraft equipment);
- 5) Review of the question of the ratification of international air law instruments;
- 6) Safety aspects of economic liberalization and Article 83 *bis*; and

7) Consideration of Guidance on Conflicts of Interest.

3.3 The Work Programme, including the prioritization of items, was last considered by the Council as its third meeting of its 197th Session in November 2012. On this occasion, the Council decided to raise the priority of the item “Safety aspects of economic liberalization and Article 83 *bis*” from priority No. 6 to No. 3.

3.4 Subsequently, during the 35th Session of the Legal Committee (6-15 May 2013), item No. 7 of the Work Programme was moved up in priority to item No. 5 and previous items No. 5 and 6 reduced in priority accordingly.

3.5 As a consequence, the Work Programme currently stands as follows:

- 1) Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks;
- 2) Acts or offences of concern to the international aviation community and not covered by existing air law instruments;
- 3) Safety aspects of economic liberalization and Article 83 *bis*;
- 4) Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), and the regional multinational organisms, of the establishment of a legal framework;
- 5) Consideration of Guidance on Conflicts of Interest;
- 6) International interests in mobile equipment (aircraft equipment); and
- 7) Review of the question of the ratification of international air law instruments.

Information on the status of items on the Work Programme is found in the **Appendix** hereto.

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APPENDIX

STATUS OF ITEMS IN THE WORK PROGRAMME

1. **Compensation for Damage Caused by Aircraft to Third Parties Arising from Acts of Unlawful Interference or from General Risks**

1.1 The International Conference on Air Law held under the auspices of ICAO from 20 April to 2 May 2009 adopted the *Convention on Compensation for Damage Caused by Aircraft to Third Parties* (General Risks Convention) and the *Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft* (Unlawful Interference Compensation Convention).

1.2 The General Risks Convention has been signed by 13 States and acceded to by one; and the Unlawful Interference Convention has been signed by 11 States and acceded to by one. Both instruments require 35 ratifications in order to enter into force, the latter with some additional qualifications attached.

1.3 The Preparatory Commission for the Establishment of the International Civil Aviation Compensation Fund (PCIF), tasked with the development of arrangements to facilitate that the Fund to be established pursuant to the Unlawful Interference Compensation Convention would be operational by the time the Convention enters into force, held its fifth meeting in Ottawa (27-30 June 2011) and finalized its work on a number of issues, including the draft regulations of the Fund; regulation on the period and amount of initial contributions to the Fund; guidelines on drop-down; guidelines on investment and financial governance arrangements; guidelines on compensation and arrangements with insurers on claims handling; and rules of procedure for the Conference of Parties.

2. **Acts or Offences of concern to the international aviation community and not covered by existing air law instruments**

2.1 The Assembly is invited to note that substantive information on this item of the Work Programme is presented to the Assembly separately in working paper A38-WP/49.

3. **Safety aspects of economic liberalization and Article 83 bis**

3.1 *Status and registrations* – One hundred sixty-three (163) States are parties to the Protocol of amendment to the Chicago Convention relating to Article 83 *bis*. A continuously updated list of parties to Article 83 *bis* may be found on the ICAO website as part of the LEB Treaty Collection. The database of aeronautical agreements and arrangements (DAGMAR), also available via the LEB page on the ICAO website, features essential information on registered agreements.

3.2 *Assistance to States* – In order to provide assistance to Member States, detailed guidance material was issued by the Secretariat in 2003 through ICAO Circular 295 – *Guidance on the Implementation of Article 83 bis of the Convention on International Civil Aviation*. In line with such guidance, LEB further provides support and advice to ANB, mainly in the framework of the safety oversight audits with respect to the related audit protocol questions.

3.3 **Article 21 of the Chicago Convention** – The ICAO Aircraft Registration System (ARS) went on-line in November 2011, collecting information on the registration status, ownership, and operators for aircraft habitually involved in international civil aviation; 44 States are currently furnishing data to ICAO. The ICAO Air Operator Certificate (AOC) system, which collects information on AOCs, as well as related operations specifications, was implemented in January 2013 and rolled out for live testing by an initial sampling of 11 States. Following implementation of recommendations from these tests, ICAO is planning to open the system up to all ICAO Member States by the end of the third quarter of 2013. The ARS system will eventually function seamlessly with the AOC system, providing one stop access to aircraft safety information through one single ARS/AOC system.

3.4 **Consideration of this item by the 35th Session of the Legal Committee**

3.4.1 The Legal Committee adopted the following recommendations on this subject:

- a) that the Secretariat could review ICAO Circular 295 to determine whether changes are necessary to address some key questions, such as the voluntary nature of these agreements; when these various aircraft lease and/or interchange agreements implicate Article 83 *bis*; whether agreements for transfer of aircraft from one State to another State on a short term basis involve (or necessitate) a transfer of State of registry responsibilities under Article 83 *bis*; the legal implications for each State of entering into an Article 83 *bis* Agreement, etc.;
- b) that a Task Force be formed with appropriate ICAO Secretariat personnel and representatives from the Legal Committee with expertise in dealing with Article 83 *bis* agreements to assist in revising Circular 295 and also to better educate Member States on the applicability of 83 *bis* agreements;
- c) On this issue of registration:
 - i. that the registration of agreements that do not involve a transfer of State of Registry responsibilities might be addressed by educating Member States as to the application of Article 83 *bis* and the purpose and effect of registering these agreements with ICAO; *and*
 - ii. with respect to delays in registration, that — subject to availability of resources — ICAO consider the option of developing a web-based registry where Member States can input information and upload agreements themselves electronically rather than sending the agreement to ICAO to complete the registration process;
- d) that when regional conferences are held, ICAO consider including Article 83 *bis* as an agenda item and promote the relevance of these agreements to Member States.

3.4.2 The Council, at the Eleventh Meeting of its 199th Session, endorsed the aforementioned recommendations with respect to Article 83 *bis*.

4. **Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS) and the regional multinational organisms, of the establishment of a legal framework**

4.1 There were no specific developments regarding this item which pertained to on-going work of LEB. Despite the absence of any pertinent developments, the 35th Session of the Legal Committee decided to retain the subject on the Work Programme.

5. Consideration of Guidance on Conflicts of Interest

5.1 This item was introduced to the Work Programme on the basis of a proposal contained in a working paper presented to the Assembly (A37-WP/80) which invited the Assembly to add the topic “Consideration of Guidance on Conflicts of Interest” to the Work Programme of the Legal Committee. The said working paper expressed the view that reasonably consistent rules across the sector to establish and preserve a clear separation between civil aviation authorities and the activities that they oversee were desirable. In the given context, it was suggested to consider the conflicts of interest situations in three distinct areas: 1) financial interests in regulated entities; 2) the movement of individuals from positions in government to industry and vice versa; and 3) the practice of designating or seconding personnel to carry out oversight functions on behalf of the Civil Aviation Authority. The consideration of these elements was deemed appropriate with a view to fostering the objective, disinterested exercise of regulatory responsibilities. The Legal Committee was invited to develop recommendations, if necessary and appropriate, for guidance material to be adopted by the Organization.

5.2 LEB will initiate a study on this item during the last quarter of 2013. States will be requested to complete a survey on the treatment of conflicts of interest in their respective jurisdictions. Further steps, including the convening of a special study group, will be considered depending on the results of the survey.

6. International interests in mobile equipment (aircraft equipment)

6.1 The Council, in its capacity as the Supervisory Authority of the International Registry, continues to monitor the operation of the Registry to ensure that it functions efficiently in accordance with Article 17 of the *Convention on International Interests in Mobile Equipment*, signed at Cape Town on 16 November 2001 (Cape Town Convention).

6.2 As the second term of appointment of the Commission of Experts of the Supervisory Authority of the International Registry (CESAIR) members came to an end during July 2012, the Council, pursuant to Article XVII (4) of the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*, signed at Cape Town on 16 November 2001 (Cape Town Protocol), and further to nominations/re-nominations received from Parties and Signatory States to the Cape Town Convention and Protocol, appointed/re-appointed members to the Commission for the third term. CESAIR is currently composed of 15 experts nominated by Brazil, Canada, China, France, Ireland, Malta, Nigeria, Pakistan, Senegal, Singapore, South Africa, Switzerland, United Arab Emirates, United Kingdom and the United States. CESAIR held its fifth and sixth meetings in Montréal during December 2012 and April 2013, respectively. During its fifth meeting, CESAIR members were briefed, and had preliminary discussions, on numerous and significant amendments to the *Regulations and Procedures for the International Registry* (Doc 9864), which were then formally proposed to CESAIR at its sixth meeting from which recommendations were made to and approved by the Council during its 199th Session in June 2013.

6.3 Pursuant to Article 17 (2) (b) of the Cape Town Convention and Article XVII (5) of the Cape Town Protocol, and further to the Council’s decision of 30 October 2009 (C-DEC 188/6) to re-appoint the Registrar of the International Registry (Aviareto Ltd.) for a second five-year term, the Secretary General signed the new contract with the Registrar, effective 27 June 2011 to 29 February 2016. The contract was prepared with the assistance of the Ad Hoc Group on Contract Renewal which was established by CESAIR at its fourth meeting during December 2009.

6.4 Pursuant to Article 62 (2) (c) of the Cape Town Convention and Article XXXVII (2) (c) of the Cape Town Protocol, the Council, in its capacity as Supervisory Authority, regularly receives information from the Depository on ratifications, declarations, denunciations and designations of entry points. As at 18 July 2013, there were 52 ratifications and accessions to the Cape Town Convention and Protocol.

7. Review of the Question of the Ratification of International Air Law Instruments

7.1 The 33rd Session of the Legal Committee (Montréal, 21 April – 2 May 2008) assigned this subject priority No. 5 in its General Work Programme. The item was retained in the Work Programme with the same priority by the 37th Session of the Assembly and is currently item No. 7 of the Work Programme.

7.2 Since the 37th Session of the Assembly, there have been important developments in the treaty area.

7.3 A Diplomatic Conference in Beijing, convened under the auspices of ICAO, from 30 August to 10 September 2010, adopted the *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* (Beijing, 2010) (Beijing Convention); and the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft* (Beijing, 2010) (Beijing Protocol). ICAO is their depository. As of the date of the writing of this paper, the Beijing Convention had been signed by 27 States, ratified by 5 and acceded to by 3; and the Beijing Protocol had been signed by 29 States, ratified by 5, and acceded to by 2. To assist States in becoming parties to these treaties, administrative packages have been developed and transmitted by a State letter and placed in the Treaty collection on the ICAO website (<http://www.icao.int/Secretariat/Legal/Pages/TreatyCollection.aspx>).

7.4 The Treaty Collection on the ICAO public website has been maintained, providing information such as current lists of parties to multilateral air law treaties; the status of individual States with regard to multilateral air law treaties; a composite table illustrating the status of treaties and status of States vis-à-vis treaties; administrative packages to assist States in becoming parties to treaties; Assembly resolutions related to ratification matters; and current information and recommendations on ratification matters. All depository actions are promptly reflected in a chronological record on the website (<http://www.icao.int/Secretariat/Legal/Pages/TreatyCollection.aspx>).

7.5 There is continued emphasis on ratification matters by the President of the Council and the Secretary General and other ICAO officials during their visits to States. In this context, it is worth noting that pursuant to Assembly Resolution A37-22, Appendix C, ICAO Member States which so far have not done so were urged to ratify in particular the Montreal Convention of 1999, the Cape Town instruments of 2001, the two Montreal Conventions of 2009 and the 2010 Beijing Convention and Beijing Protocol as soon as possible. The importance of broadening and strengthening the global aviation security regime by ratifying the two Beijing instruments and the importance of universal adoption of the Montreal Convention were expressly recognized by the Assembly in Assembly Resolutions A37-23 and A37-24 respectively. LEB provides briefs for these missions, indicating the instruments remaining to be ratified and specifying their priority. LEB promotes ratification at legal seminars, during personal deposits by State officials, Assembly sessions and other ICAO meetings.