



A38-WP/391
LE/12
27/9/13

ASSEMBLY — 38TH SESSION
LEGAL COMMISSION

DRAFT TEXT FOR THE REPORT
ON
AGENDA ITEMS 47 & 48

The attached material on Agenda Items 47 and 48 are submitted for consideration by the Legal Commission.

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

47.1 The Commission considered this item on the basis of A38-WP/62, presented by the Council; A38-WP/114, presented by Canada, Singapore, South Africa and the United States; A38-WP/170, presented by the United Arab Emirates, the Air Crash Victims Families Group (ACVFG) and the International Air Transport Association (IATA); A38-WP/262 Revision No. 3 and A38-WP/340, both presented by the Republic of Korea; and A38-WP/358 and Corrigendum No. 1, presented by the Latin American Association of Air and Space Law (ALADA).

47.2 A38-WP/62 provided information to the Assembly regarding the on-going work of the Organization in the legal field and an overview of the developments and relevant decisions taken by the Council and the Legal Committee since the previous session of the Assembly in relation to the items on the Work Programme of the Legal Committee, including the prioritization of items.

47.3 The delegate of the Republic of Korea presented A38-WP/262, proposing that ICAO organize a study group similar to the Unmanned Aircraft System Study Group (UASSG), to examine and conduct legal research on liability issues related to Remotely Piloted Aircraft (RPA). ICAO was further asked to establish a data collection and sharing system for RPA accidents and incidents and associated liability.

47.4 Several delegations expressed their support for A38-WP/262, indicating that they shared the Republic of Korea's concern over the need for research into civil liability issues related to RPA.

47.5 However, one delegation dissented, noting that with respect to the issue of liability in particular, A38-WP/262 did not adequately establish the need for new law relative to RPA, especially in light of the fact that conventions already adopted though not yet in force – notably the two Conventions adopted by ICAO in 2009 to replace the 1952 Rome Convention on surface damage caused by aircraft (the Unlawful Interference Compensation Convention and the General Risks Convention) – already address the liability concerns raised in the paper.

47.6 The concerns raised by this delegation were shared by a number of other delegations who together questioned the creation of a study group as either unnecessary or premature. One of these delegations suggested that additional research could be done and Member States surveyed to conclusively determine whether in fact adequate law already exists. Another delegation seconded this approach, noting that although A38-WP/262 showed that there may be outstanding issues relating to RPA registration and insurance, further preliminary research was needed to establish the need for and possible program of a prospective study group.

47.7 The remainder of the delegations generally agreed with the proposal for additional research to be undertaken before the establishment of a study group. Additionally, it was understood that technical aspects of RPA accident and incidents and the resulting data collection and sharing would be handled through existing systems under the management of the ICAO Air Navigation Bureau.

47.8 On these bases, the agreement of the Commission coalesced around the proposal of the Chairperson to refer the matter of legal issues related to RPA to the Legal Committee for further study, with due consideration for the limited resources of the Organization, particularly given that third-party

liability regimes already exist. The Commission further agreed that this topic should be added as a new item on the Work Programme of the Legal Committee.

47.9 The Chairman of the Legal Committee stated to the Legal Commission that in order to facilitate the work of the Commission, the Chairman and Vice-Chairs of the Legal Committee had held a meeting to discuss the future work of the Committee. Recognizing the budgetary and other resource constraints of the organization, it was proposed to explore and mobilize other available resources to promote the work programme of the Organization in the legal field. He underlined the importance of harmonizing the legal work with the other work of the Organization, through the close coordination of the Legal Committee with other bodies of the Organization. He noted that there were many vital issues in the civil aviation community, such as those relating to safety, security, environment and the economics of air transport. The Legal Committee was not limited to the drafting of conventions, but should serve as an intellectual resource for the transformation of the collective political will of the Member States into reality.

47.10 A number of delegations supported the statement of the Chairman of the Legal Committee and emphasized the need to assist the Secretariat. For instance, Member States may consider initiating the study, investigation or survey of certain legal issues of common interest, organizing regional legal seminars, workshops or conferences, and/or providing personnel on secondment.

47.11 The Chairman of the Legal Committee thereafter proposed to remove from the work programme those items in relation to which the Committee had in fact already completed its work, namely item 1) "Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks", and item 6) "International interests in mobile equipment (aircraft equipment)". Taking up a proposal made by another delegation, the Chairman of the Legal Committee further suggested to modify item 7) to read "Promotion of the ratification of international air law instruments". In this context, the sentiment was expressed that the Legal Committee would provide active support to ICAO and its Legal Affairs and External Relations Bureau with regard to rendering assistance to States on matters of ratification of air law instruments. On account of the fact that the transmission of a questionnaire to States in relation to the item regarding guidance of conflicts of interest is expected to be actioned shortly, the Chairman of the Legal Committee further proposed to raise the priority of this item to number 2.

47.12 In relation to the item on the work programme dealing with a legal framework with regard to CNS/ATM systems, one observer requested that the Secretary General develop guidance material for the implementation of CNS/ATM systems. In relation to this item, one delegation expressed the view that it could be removed from the work programme in light of the material developed by ICAO over a period of ten years.

47.13 The Commission thereafter unanimously supported the re-alignment of the work programme along the proposal advanced by the Chairman of the Legal Committee. Accordingly, the Commission established the Work Programme of the Legal Committee as follows:

- 1) Acts or offences of concern to the international aviation community and not covered by existing air law instruments;
- 2) Consideration of Guidance on Conflicts of Interest;

- 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) Promotion of the ratification of international air law instruments; and
- 6) Study of legal issues relating to remotely piloted aircraft.

47.14 A38-WP/114 contained a proposal for the renewed adoption of a Resolution urging all States to ratify as soon as possible the Montreal Convention of 1999 and directing the Secretary General of ICAO to provide assistance, as appropriate, with the ratification process if so requested by a State. In its presentation, the delegation of the United States stated that there continued to be a confusing patchwork of legal regimes in place on account of the lack of universal adoption of the instrument. Recalling the benefits contained in the Convention for the travelling public and efficiencies and cost savings for airlines, the delegation expressed the need to strive to make the Montreal Convention of 1999 a universally applicable regime.

47.15 In its presentation, on behalf of the co-sponsors of A38-WP/170, the delegate of the United Arab Emirates recalled Assembly Resolution A37-24 but remarked that a large number of States have not yet ratified the Montreal Convention of 1999. He stated that in order to enjoy the benefits derived from the Convention it was necessary to eliminate the patchwork of existing parallel legal regimes. He urged all Member States that have not done so, to become parties to the Montreal Convention of 1999 as soon as possible.

47.16 A38-WP/358 and Corrigendum No. 1 also urged States that have not done so to support and encourage the universal adoption of the Montreal Convention of 1999. ALADA reiterated its offer of cooperation in the task of dissemination of the benefits of ratifying or acceding to the Montreal Convention of 1999, especially in the Latin American region.

47.17 The Commission consequently **agreed** to recommend to the Plenary the adoption of the following Resolution:

Resolution 47/1: Promotion of the Montreal Convention of 1999

Recalling its Resolution A37-24 entitled *Promotion of the Montreal Convention of 1999*;

Recalling further its Resolution A37-22, Appendix C, relating to the ratification of instruments which have been developed and adopted under the auspices of the Organization;

Recognizing the importance of achieving a universal regime to govern airline liability to passengers and shippers on international flights; and

Recognizing the desirability of an equitable, fair and convenient system that allows full compensation for losses;

The Assembly:

Urges all States to support and encourage the universal adoption of the *Convention for the Unification of Certain Rules for International Carriage by Air*, done at Montreal on 28 May 1999 (Montreal Convention of 1999);

Urges all States that have not done so to become Parties to the Montreal Convention of 1999 as soon as possible; and

Directs the Secretary General to provide assistance, as appropriate, with the ratification process if so requested by a State.

Declares that this Resolution supersedes Resolution A37-24.

A38-WP/340, containing an offer by the Republic of Korea to host a Regional Legal Seminar in 2015 to address legal matters of interest in the Asia-Pacific Region, was **noted** by the Commission with appreciation.

Agenda Item 48: Other issues to be considered by the Legal Commission

48.1 There were no other issues for consideration by the Legal Commission.