



## ASSEMBLY — 40TH SESSION

### LEGAL COMMISSION

#### Agenda Item 38: 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 4.3, 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>	Doc 10114, Report of the 37th Session of the Legal Committee Doc 7669-LC/139/6, <i>Legal Committee, Constitution, Procedure for Approval of Draft Conventions, Rules of Procedure</i> C-DEC 217/3 C-DEC 215/5

## 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 LEB includes the provision of legal advice and assistance, generally and in support of ICAO's Strategic Objectives, to the President of the Council and the Secretary General, other ICAO Bureaux, Regional Offices and to ICAO Member States; procedural guidance and secretariat assistance as regards dispute settlements before the Council, 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; discharge of depositary functions in relation to certain international agreements; 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; coordination of representation of the Secretary General in other litigation in which ICAO may be involved in foreign jurisdictions; cooperation on legal matters with the United Nations and other organizations; and other related functions of a legal nature.

2.2 LEB continued to provide secretariat services to the Working Group on Governance and Efficiency (WGGE). The WGGE addressed various policy and governance issues of the organization in areas such as the ICAO Ethics Framework, Directives of the Committee on Environment Protection and the role and status of Rotation Groups. Secretariat support is also provided to the Relations with the Host State Committee (RHCC). Formal negotiations started in 2015 between ICAO and the government of Quebec, with a view to updating the 1994 *Understanding Between the Government of Quebec and the International Civil Aviation Organization concerning the exemptions and courtesy privileges extended to the Organization, to its Officials, to Member States and to Members of a Representation to the Organization*. Following a series of rounds of discussions, the negotiated text was approved by the Council in December 2017, and the Secretary General signed the new Understanding on behalf of ICAO during a ceremony of signature organized at ICAO Headquarters on 26 June 2018. The new Understanding is now pending the approval of the Government of Québec. Substantive support is further provided to the Committee on Cooperation with External Parties (CCEP).

## 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 39th Session of the Assembly established the following General Work Programme of the Legal Committee with the subjects listed in the order of priority:

- 1) Study of legal issues relating to remotely piloted aircraft;
- 2) Consideration of guidance on conflicts of interest;
- 3) Acts or offences of concern to the international aviation community and not covered by existing air law instruments;

- 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) Determination of the status of an aircraft – civil/State;
- 6) Promotion of the ratification of international air law instruments;
- 7) Safety aspects of economic liberalization and Article 83 *bis*; and
- 8) Implementation of Article 21 of the Chicago Convention.

#### 4. **37TH SESSION OF THE LEGAL COMMITTEE (4-7 SEPTEMBER 2018)**

4.1 As regards the items of the Work Programme which were current at the time of the opening of the Committee, the following deliberations and decisions occurred:

4.1.1 The Committee considered States' responses to the 2016 questionnaire (State letter LE 4/63 – 16/77) concerning national legislation and relevant international legal issues related to Remotely Piloted Aircraft Systems (RPAS). The Committee concluded that legal aspects of RPAS operations merited continued consideration and established a Working Group to address international legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation. The Working Group will discuss international legal issues relating to unmanned (pilotless) aircraft operations and integration into civil aviation and, in coordination with ANB and LEB, identify items for consideration by the Legal Committee and/or possible solutions for legal issues within the framework of the Organization's on-going work. Working Group meetings will be scheduled to coincide with meetings of the RPAS Panel (RPASP), so as to promote alignment and synergy with the Organization's on-going technical and legal work. Accordingly, the Committee reworded the item while retaining its priority.

4.1.2 Pursuant to Assembly Resolution A39-8 which established the future work of the Organization on the topic of conflicts of interest in civil aviation, the Secretariat developed a compilation of ICAO provisions (ICAO Guidance on Conflicts of Interest in Civil Aviation) which was presented to the 37th Session of the Legal Committee. The compilation consists of ICAO provisions on conflicts of interest concerning aviation safety, security and accident and incident investigation, as well as air transport policy that are contained in ICAO Annexes 13, 17 and 19 and over a dozen ICAO manuals. This compilation will be made available in a permanent form in all ICAO working languages as requested by the Legal Committee.

4.1.3 The Task Force on Legal Aspects of Unruly Passengers completed its work to update ICAO Circular 288 (Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers), following the adoption of the Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Montréal Protocol of 2014) pursuant to the resolution of the Diplomatic Conference and further to Assembly Resolution A39-11. A draft Manual updating Circular 288, together with a report of the work of the Task Force over the course of four meetings, were presented to the Legal Committee. The Committee agreed with the recommendations of the Task Force that: the guidance material updating ICAO Circular 288 be in the form of a manual (to be published in 2019); the Organization establish a repository of States' criminal legislation on unruly and disruptive passenger offences (with the links to Member States' relevant websites); a survey be conducted by the Secretariat enquiring from Member States as to what administrative sanctions or comparable regimes they have established to deal with unruly and disruptive passengers; and that the Organization review the approach on use of the terms "unruly" and "disruptive", with a view to alignment among ICAO publications. A separate working paper

is being presented to the Assembly proposing amendments to Resolution A39-11 *inter alia* to reflect the completion of the work resulting in the publication of Doc 10117.

4.1.4 As regards item *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*, the Committee noted that no substantive work on the issue had been carried out over the last decade. Nevertheless, in view of modalities such as satellite based navigation and global flight tracking it was considered appropriate to retain the item with an amended title, also taking into account the 13th Air Navigation Conference in 2018 which reviewed the status of existing and future technologies enabling the global air navigation system.

4.1.5 In its consideration of the item *Determination of the status of an aircraft – civil/State* the Legal Committee took note of the responses to the 2016 questionnaire (State Letter LE 4/50 – 16/86) relating to practical problems States are facing due to the classification of “Civil/State aircraft”. On the basis of the survey, the Committee decided to: a) note the continued relevance of the opinions and recommendations in the 1993 Secretariat Study on Civil/State Aircraft relative to the issue of the determination of the status an aircraft as civil/State, which would be made available to States in a more accessible way; b) recommend to the Council that States be encouraged to cooperate with each other to address operational issues related to civil/State aircraft status and/or share best practices whether through direct consultations or the utilization of appropriate ICAO forums or regional groups; and c) remove the item “Determination of the status of an aircraft – Civil/State” from the General Work Programme of the Legal Committee.

4.1.6 As regards the item of *Promotion of the ratification of international air law instruments*, it should be recalled that the Assembly adopted two resolutions (A39-4 and A39-6) approving amendments to Articles 50 (a) and 56, respectively, of the Chicago Convention. The Assembly also adopted Resolutions A39-5 and A39-7 recommending to all Contracting States that they ratify most urgently these amendments, as well as directing the Secretary General to bring these Resolutions to the attention of the Contracting States as soon as possible. Accordingly, a State letter was issued on 20 January 2017 encouraging States to ratify these Protocols.

4.1.6.1 Additionally, the 39th Session of the Assembly adopted Assembly Resolution A39-11, Appendix C, by which Contracting States that have not done so, were urged to ratify, *inter alia*, the Montreal Convention of 1999, the Cape Town instruments of 2001, the 2010 Beijing Convention and Beijing Protocol and the Montréal Protocol of 2014 as soon as possible. The importance of achieving a universal regime to govern airline liability to passengers and shippers on international flights by adhering to the Montreal Convention of 1999, and the importance of broadening and strengthening the global aviation security regime to meet new and emerging threats by ratifying the Beijing instruments, were also expressly recognized by the Assembly in Resolutions A39-9 and A39-10 respectively. For this purpose, two State letters were issued on 2 March 2017 encouraging States to ratify these instruments.

4.1.6.2 The President of the Council and the Secretary General continued to promote ratification of international air law instruments during their visits to Member States and meetings with high-level government officials. The Legal Affairs and External Relations Bureau (LEB) facilitated a legal seminar for Africa organized by the Eastern and Southern Africa ICAO Regional Office, to promote the Beijing instruments of 2010 and the Montréal Protocol of 2014. The Montreal Convention of 1999, the Cape Town instruments of 2001 and the Protocols amending Articles 50 (a) and 56 of the Chicago Convention were also covered at the legal seminar. This seminar, held on 27 and 28 November 2017, was attended by 54 participants from 21 African States and two regional safety organizations. LEB also organized a legal seminar in the Asia-Pacific Region hosted by the Government of the Republic of Korea, Ministry of Land, Infrastructure and Transport, to promote, *inter alia*, the above-mentioned

instruments. The seminar was held on 24 and 25 May 2018 and was attended by almost 600 participants from over 30 States

4.1.6.3 On 28 November 2017, the conditions for the entry into force of the Beijing Protocol of 2010 were fulfilled by the deposit with ICAO of the 22nd instrument of ratification by the Government of the Republic of Uganda. The Protocol entered into force on 1 January 2018. Further, on 31 May 2018, the conditions for the entry into force of the Beijing Convention of 2010 were also fulfilled by the deposit with ICAO of the 22nd instrument of ratification by the Government of the Republic of Turkey. The Convention entered into force on 1 July 2018.

4.1.6.4 On 19 October 2017 and on 14 March 2019, Tuvalu and the Commonwealth of Dominica, deposited, respectively, with the Government of the United States their notifications of adherence to the Chicago Convention. These adherences took effect for Tuvalu on 18 November 2017 and for Dominica on 13 April 2019, bringing the number of ICAO Member States to 193.

4.1.6.5 The ICAO Treaty Collection available on the ICAO public website (<https://www.icao.int/Secretariat/Legal/Pages/TreatyCollection.aspx>) provides 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 depositary actions are promptly reflected in a chronological record in the Treaty Collection. In order to further promote ratification of air law instruments, a treaty event is scheduled to take place during the Assembly.

4.1.6.6 As the number of depositary actions has increased in recent years, LEB is contemplating streamlining the depositary process in order to allow for efficiency gains.

4.1.7 As regards the item *Safety Aspects of economic liberalization and Article 83 bis*, the Committee noted that an advance English version of the *ICAO Manual on the Implementation of Article 83 bis* (Doc 10059) was published in June 2017, with all language versions being formally published in March 2018. The Committee was informed of the work that had taken place on the five recommendations of the Article 83 bis Task Force, as accepted by the Council at its 207th Session. Pursuant to the first two recommendations a Secretariat team has commenced work on the establishment of an interactive web-based registration and publication system for Article 83 bis and other aeronautical agreements. The proposed main features of the system were presented to the Council at its 216th Session in February 2019 and work started immediately thereafter on the design phase of the system

4.1.7.1 A proposal for amendments to Annex 6 to the Convention responded to the third and fourth recommendations to include a Standard requiring a certified true copy in paper or electronic format of the Article 83 bis Agreement Summary to be carried on board aircraft while the agreement is in force and that the Agreement Summary be provided at the time of registration of Article 83 bis agreements, as well as adding the definition for the State of the principal location of a general aviation operator. The Air Navigation Commission proposed the amendments at its 209th Session with an applicability date of 5 November 2020. For remotely piloted aircraft systems, consideration will be given to introducing similar Standards for the Agreement Summary in the new Annex 6 Part IV, anticipated for March 2022.

4.1.7.2 In line with the final recommendation, a State Letter was issued to the ICAO Contracting States not parties to Article 83 bis in July 2016, urging those States to ratify the Protocol as soon as possible. A repository of responses is available in the LEB Treaty Collection page of the ICAO website.

4.1.7.3 The main legal tasks under this item having been completed the Committee decided to remove it from the Work Programme, although this would not prejudice the Committee and Member States from being informed of developments on the new registration and publication system.

4.1.8 The Item “Implementation of Article 21 of the Chicago Convention” was added to the Work Programme of the Legal Committee by the Assembly during its 39th Session. The Assembly called upon Member States to apply Article 21 of the Chicago Convention by taking the necessary internal measures to be able to supply information related to the ownership of aircraft they have registered. The Assembly also requested the Council to conduct a study on the compliance of data provided by Member States either to other Member States or to ICAO with the Article 21 requirement on ownership.

4.1.8.1 Pursuant to the foregoing, the Secretary General, by State Letter LM2/22-17/87, dated 29 June 2017, launched an online survey on the implementation of Article 21 of the Chicago Convention and requested States to complete the survey by 25 August 2017. A total of 59 States provided responses to the survey which were collated and analyzed by the Secretariat.

4.1.8.2 The Secretary General also established a Task Force on the Implementation of Article 21 (A21TF). The A21TF, chaired by Ms. S. Metsälampi (Finland), met two times in Montréal, in September 2017 and April 2018 to deliberate on the subject and also consider the outcomes of the survey. In its recommendations to the 37th Session of the Legal Committee, the Task Force endorsed the ongoing work of the Secretariat to develop an Aircraft Registration Network (ARN) as a possible long-term solution to assist member States to fulfil their obligations under Article 21. To this end, the Task Force established an Aircraft Registration Network Sub-Group (ARNSG) to assist the Secretariat in the development of the said ARN platform. The Task Force also endorsed a Model Certificate of De-registration of aircraft to be included in Annex 7 – Aircraft Registration and Nationality Marks.

4.1.8.3 The 37th Session of the Legal Committee endorsed the recommendations of the A21TF in principle, underlining the need for further work on the Model Certificate of De-registration to be carried out collaboratively with other relevant bodies in ICAO, such as the Cross-Border Transferability (XBT) Task Force and the Airworthiness Panel.

4.2 The Legal Committee also approved the inclusion of two additional items in relation to which the Commission is invited to refer to **Appendix A**. Information on other topics of legal interest is presented in **Appendix B**.

4.3 The Work Programme, including the prioritization of items, was last considered by the Council at the fifth meeting of its 215th Session in September 2018. On this occasion, the Council emphasized the need to ensure that the Legal Committee worked in concert with other relevant ICAO groups in order to avoid duplication of efforts or divergence, particularly as regards the issue of unmanned aircraft systems (UAS). The Council also noted the decision of the Committee not to include, at the present time, a new item on legal aspects of commercial space flights, which would not, however, pre-empt further consideration of this topic at the Committee’s next session. At the third meeting of its 217th Session, the Council invited the Legal Commission, as regards item 8 of the work programme, to broaden the scope of legal study beyond GNSS to include other global space-based systems and services supporting international air navigation services (see also A40-WP/9, LE/1 paragraph 5.1. The Council otherwise endorsed the Work Programme as established by the Committee, which stands as follows:

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. Consideration of guidance on conflicts of interest;
4. Consideration of the adequacy of existing international air law instruments in addressing cyber threats against civil aviation;
5. Acts or offences of concern to the international aviation community and not covered by existing air law instruments;
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 navigation satellite systems (GNSS).

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## APPENDIX A

### A. STATUS OF ITEMS IN THE WORK PROGRAMME OF THE LEGAL COMMITTEE

#### 1. Review of the ICAO Rules for the Settlement of Differences

1.1 At the request of the Council, this item was added to the Work Programme of the Legal Committee during its 37th Session and was accorded priority No. 2. The Legal Committee established a Working Group to undertake the work on the item and authorized its Chair to nominate the members of said Working Group in consultation with the President of the Council. 23 States were nominated to form the Working Group, and a first meeting of the Group was held at ICAO Headquarters in Montreal from 7 to 9 May 2019. During the first meeting, the Group identified and explored several potential areas for the review of the Rules. The Group agreed to hold a second meeting in the last quarter of 2019 to continue its deliberations on the item.

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

2.1 Following the inclusion in the Legal Committee's work programme of the item "consideration of the adequacy of existing international air law instruments in addressing cyber threats against civil aviation", LEB participated at the first meeting of the Secretariat Study Group on Cybersecurity (SSGC) - Research Sub Group on Legal Aspects (RSGLEG) on 22 November 2018 and assisted the RSGLEG to develop its scope of work, conduct a preliminary analysis of replies from 62 States and 2 territories responding to a survey on applicable domestic legal provisions on cybersecurity and agree on a methodology to conduct further analysis of the responses. LEB also presented the air law treaties applicable to cyberattacks against civil aviation, with the conclusion that the ratification of the 2010 Beijing instruments is a step forward in creating an appropriate legal framework to address cyber threats.

2.2 The RSGLEG agreed to continue to study whether and in what form, new international instruments to address cybersecurity need to be developed and to refer its conclusions to the Legal Committee. The SSGC, subsequently at its fifth meeting held on 23 November 2018, agreed to include actions on legislation and regulations and work to promote the ratification of the Beijing instruments as part of the Cybersecurity Strategy

2.3 The RSGLEG at its second meeting held in Tel Aviv on 19-20 March 2019 received technical briefings from State and industry experts on the nature of cyber threats, during which certain issues requiring legal analysis were identified. It was also agreed that the outcomes of the review of international instruments when completed would be reported by the Secretariat to the 38th ICAO Legal Committee in 2020.

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## APPENDIX B

### B. OTHER TOPICS OF LEGAL INTEREST

#### 1. Civil Aviation Legal Advisers Forum (CALAF)

1.1 The inaugural Civil Aviation Legal Advisers Forum (CALAF 2019) held in Singapore on 16 and 17 May 2019 was attended by participants from 40 States and one regional organization. The Forum covered diverse topics in relation to major global events and emerging issues with impact on implementation and development of air law. The participants called for the Forum to be held periodically as a platform for legal counsels from civil aviation administrations to share with counterparts in other States and ICAO their knowledge and experiences on topical issues in the legal field.

#### 2. International interests in mobile equipment (aircraft equipment)

2.1 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).

2.2 In July 2017, the Council approved the Fourth Report of the Supervisory Authority to the Contracting States to the Cape Town Convention and 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 (Aircraft Protocol). The Report was issued on 30 August 2017 by State Letter LE 3/41.2-IND/17/14. On 27 June 2018, at the tenth meeting of its 214th Session, the Council approved the reappointment of Aviareto Limited as the Registrar of the International Registry for a fourth term commencing 1 March 2021.

2.3 As the fourth term of appointment of the Commission of Experts of the Supervisory Authority of the International Registry (CESAIR) members came to an end in July 2018, the Council, pursuant to Article XVII (4) of the Aircraft Protocol, and further to nominations/re-nominations received from the Contracting and Signatory States to the Cape Town Convention and Aircraft Protocol, appointed/re-appointed members to the Commission for the fifth term. CESAIR is currently composed of 15 experts nominated by Brazil, Canada, China, France, Ireland, Kenya, Kuwait, Mexico, Nigeria, Russian Federation, Singapore, South Africa, United Arab Emirates, United Kingdom and United States. CESAIR held its eighth meeting in Montréal from 29 to 31 August 2018 during which the Commission considered amendments proposed by the Registrar to *the Regulations and Procedures for the International Registry* (Doc 9864). Recommendations for amendments were made by CESAIR to, and subsequently approved by, the Council at the sixth meeting of its 216th Session, on 1 March 2019. Also at its eighth meeting, CESAIR elected Ms. Y. Yang (China) as its Chair and re-elected Ms. S.H. Tan (Singapore) as its Vice-Chair for the ensuing triennium. As at 1 April 2019, there were 76 Parties to the Cape Town Convention and Aircraft Protocol.

#### 3. International Air Law Course

3.1 The ICAO International Air Law Course was launched in 2017 with the objective to enable personnel of Civil Aviation Administrations, airports and air navigation service providers of Member States with or without legal knowledge, as well as government officials with responsibilities for civil aviation policy, legislation and enforcement, to support their organization in the implementation of international air law. Since its launch, the course developed by the ICAO's Global Aviation Training

(GAT) Office in coordination with the Legal Affairs and External Relations Bureau, has been delivered in all ICAO regions and attended by more than 180 participants. The course is lauded for its great value in providing information to participants on various aspects of international air law, including international air law treaties. This initiative responds to A39-11 which calls for promoting the teaching of air law in the States. During 2019, the course will be translated to other ICAO languages in order to increase its reach and effectiveness.

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