



WORKING PAPER

LEGAL COMMITTEE – 38th SESSION

(Virtual meeting, 22 to 25 March 2022)

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

**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 Chairperson¹ of the WG-RRSD)

1. BACKGROUND

1.1 At its 37th Session (Montréal, 4 to 7 September 2018), the Legal Committee considered LC/37-WP/3-2, *Review of the Rules for the Settlement of Differences*, presented by the Secretariat, and decided to include “Review of the ICAO Rules for the Settlement of Differences” as a new Item 2 to its Work Programme. In doing so, the Committee further decided to establish a Working Group to carry out the review, whose members would be nominated by the Chairperson of the Committee in consultation with the President of the Council.

**2. ESTABLISHMENT, MEETINGS AND METHODOLOGY
OF THE WG-RRSD**

2.1 The Working Group for the Review of the ICAO Rules for the Settlement of Differences (WG-RRSD) was established in May 2019, following a State letter (IND/19/3) dated 22 March 2019 seeking the nomination of experts. In line with discussions in the Legal Committee, State letter IND/19/3 informed that the WG-RRSD will assist the Committee in revising the ICAO *Rules for the Settlement of Differences* (Doc 7782/2) (the Rules), taking into account comparable documentation that is in use for similar purposes elsewhere in the United Nations system as well as international governmental organizations, and in particular the Rules of Court of the International Court of Justice. The State letter further mentioned that the WG-RRSD should also take into account the development of new and innovative mechanisms to facilitate the settlement of differences in a timely, expeditious and transparent fashion. As a deliverable, it was expected that the WG-RRSD would prepare a revised draft set of Rules for consideration by the Legal Committee.

2.2 Experts from 22 Member States (Argentina, Australia, Brazil, Cameroon, Canada, China, Finland, France, The Gambia, Indonesia, Japan, Kenya, Kuwait, The Netherlands, Nigeria, Qatar, Russian Federation, Saudi Arabia, Singapore, United Arab Emirates, United Kingdom and United States) as well as one international organization (the African Civil Aviation Commission) participated in one or more of the meetings of the WG-RRSD.

¹ Mr. Terry Olson, France.

2.3 During the First Meeting of the Group, I was honoured to be elected as the Chairperson of the Working Group. At the same meeting, the Delegate from Indonesia, Ambassador Abdul Kadir Jailani, was elected as the Vice-Chairperson. During its Fourth Meeting, the Group was informed that Ambassador Jailani had been assigned to other responsibilities by his government and would no longer participate in the work of the Group. At its Fifth Meeting, the Group elected the Delegate from Canada, Mr. John Thachet as the Vice-Chairperson.

2.4 Furthermore, during its First Meeting, the Working Group agreed unanimously to recommend to the Chairperson of the Legal Committee to appoint the Delegate from Singapore, Mr. David Low, as Rapporteur to serve until the next Session of the Legal Committee and to carry out in the intervening period a study to assist the Working Group in carrying out its work for consideration at the next and subsequent meetings.

2.5 The WG-RRSD has met six times: First Meeting, Montréal, 7 to 9 May 2019; Second Meeting, Montréal, 12 to 14 November 2019; Third Meeting, Virtual, 1 to 3 December 2020; Fourth Meeting, Virtual, 6 to 8 April 2021; Fifth Meeting, Virtual, 5 to 7 October 2021; and Sixth Meeting, Virtual, 11 to 13 January 2022.

2.6 In order to undertake its work adequately, the WG-RRSD took into consideration the results of benchmarking studies and research conducted by the Secretariat to identify relevant practises amongst international jurisdictions or other international adjudicating bodies. The Group also paid a high level of attention to the ICJ Judgments on the Appeal Relating to the Jurisdiction of the ICAO Council of 14 July 2020, which were delivered between its Second and Third meetings.

3. STATUS OF AREAS DISCUSSED BY THE WG-RRSD AND PROPOSED DRAFT REVISIONS TO THE RULES

3.1 **Appendix A** to this paper sets out two tables listing and describing those areas where, from the Chairperson's viewpoint, the WG-RRSD has reached a high level of agreement, in principle, during its meetings. The first table comprises areas for possible revision to the Rules which cover the following areas: 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. The second table lists areas where the WG-RRSD considered no revisions to the Rules were necessary. Those areas cover: 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.

3.2 **Appendix B** to this paper contains a table listing and describing those areas which, again from the Chairperson's viewpoint, need further consideration by the WG-RRSD. These cover: 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 outside 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 *Convention on International Civil Aviation* for the purposes of the Council taking a decision in cases.

3.3 Reflecting the status of the above-mentioned areas discussed by the WG-RRSD, **Appendix C** to this paper contains proposed draft revisions to the Rules which have been prepared by the

Rapporteur, Mr. David Low, and the Secretariat. The revisions are those discussed at the last (Sixth) meeting of the Working Group in January 2022. Additional proposals for amendments made during that meeting will be considered by the Rapporteur and the Secretariat in preparing a new round of draft revisions for discussion by the Working Group at its Seventh Meeting, planned for later in 2022.

4. **ACTION BY THE COMMITTEE**

4.1 The Legal Committee is invited to consider this working paper and the Appendices thereto and take any action it deems necessary.

APPENDIX A

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

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

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

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

Table 1 – Possible Revisions to the ICAO Rules

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

<u>Table 1 – Possible Revisions to the ICAO Rules</u>		
	Provision in the ICAO Rules and issue	Status
		Rules, and temporarily designated as “Article 36”, for the time being. Its precise placement within the Rules can be discussed at a later juncture.

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

APPENDIX B

Areas deserving further consideration by the Working Group

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

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

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

APPENDIX C

Proposed Draft Revisions to the ICAO Rules²

RULES FOR THE SETTLEMENT OF DIFFERENCES

Approved by the Council on 9 April 1957,
~~and~~ amended on 10 November 1975* and on XX month 202X*

CHAPTER I

SCOPE OF RULES

Article 1

(1) The Rules of Parts I and III shall govern the settlement of the following disagreements between Contracting States which may be referred to the Council:

(a) Any disagreement between two or more Contracting States relating to the interpretation or application of the Convention on International Civil Aviation (hereinafter called “the Convention”) and its Annexes (Articles 84 to 88 of the Convention);

(b) Any disagreement between two or more Contracting States relating to the interpretation or application of the International Air Services Transit Agreement and of the International Air Transport Agreement (hereinafter respectively called “Transit Agreement” and “Transport Agreement”) (Article II, Section 2 of the Transit Agreement; Article IV, Section 3 of the Transport Agreement); ~~and~~

(c) Any other disagreement concerning international civil aviation between Contracting States to the Convention, which, pursuant to a treaty between the States concerned has been referred to the Council for a decision.

(2) The Rules of Parts II and III shall govern the consideration of any complaint regarding an action taken by a State party to the Transit Agreement and under that Agreement, which another State party to the same Agreement deems to cause injustice or hardship to it (Article II, Section 1), or regarding a similar action under the Transport Agreement (Article IV, Section 2).

² Proposed draft revisions considered during the Sixth Meeting of the WG-RRSD (Virtual, 11 – January 2022) are presented in red font and grey highlight.

* Amendment of Article 29 approved by the Council on 10 November 1975.

* Amendments to Articles XX, ... approved by the Council on XX Month 202X.

Part I

CHAPTER II

DISAGREEMENTS

Article 2

Application and Memorial

(1) Any Contracting State submitting a disagreement to the Council for settlement (hereinafter referred to as “the applicant”) shall file an application to which shall be attached a memorial containing:

(a) The name of the applicant and the name of any Contracting State with which the disagreement exists (the latter hereinafter referred to as “the respondent”);

(b) The name of an agent authorized to act for the applicant in the proceedings, together with ~~his the~~ address of the agent, at the seat of the Organization, including an email address, to which all communications relating to the case, including notice of the date of any meeting, should be sent;

(c) A statement of relevant facts;

(d) Supporting data related to the facts;

(e) A statement of law;

(f) The relief desired by action of Council on the specific points submitted;

(g) A statement that ~~negotiations to settle~~ the disagreement ~~had taken place between the parties but were not successful~~ cannot be settled by negotiation.

(2) The Application and Memorial, as well as all other supporting documents, shall be transmitted to the Secretary General in both paper and electronic formats.

CHAPTER III

ACTION UPON RECEIPT OF APPLICATIONS

Article 3

Action by Secretary General

(1) Upon receipt of an application, the Secretary General shall:

(a) Verify that it complies in form with the requirements of Article 2, and, if necessary, require the applicant to supply any deficiencies appearing therein;

(b) Immediately thereafter notify all parties to the instrument the interpretation or application of which is in question, as well as all Members of the Council, that the application has been received;

(c) Forward copies of the application and of the supporting documentation to the respondent, with an invitation to file a counter-memorial within a time-limit fixed by the Council.

(2) Copies of all subsequent pleadings or other documents submitted by a party to the Council shall similarly be forwarded by the Secretary General to the other party or parties in the case.

(3) All correspondence addressed to the agents of the parties, the Members of the Council, as well as all parties to the instrument the interpretation or application of which is in question, shall be transmitted in both paper and electronic formats. Transmission by electronic means to the agents of the parties shall only be made to the email address designated by an agent for that purpose.

Article 4

Counter-memorial

(1) The counter-memorial shall contain:

(a) The name of an agent authorized to act for the respondent in the proceedings, together with his the address of the agent, at the seat of the Organization, including an email address, to which all communications relating to the case, including notice of the date of any meeting, should be sent;

(b) Answer to points raised in the applicant's memorial under Article 2 (c) to (g) ;

(c) Any additional facts and supporting data;

(d) Statement of law.

(2) In the counter-memorial there may be presented a counter-claim directly connected with the subject matter of the application provided it comes within the jurisdiction of the Council. The Council shall, after hearing the parties, direct whether or not the question thus presented shall be joined to the original proceedings.

(3) The Counter-Memorial, as well as all other supporting documents, shall be transmitted to the Secretary General in both paper and electronic formats.

Article 5

Preliminary objection and action thereon

(1) If the respondent questions the jurisdiction of the Council to handle the matter presented by the applicant, or the admissibility of the application, the respondent shall file a preliminary objection setting out the basis of the objection.

(2) Such preliminary objection shall be filed in a special pleading at the latest before the expiry of the time-limit set for delivery of the counter-memorial.

(3) Upon a preliminary objection being filed, the proceedings on the merits shall be suspended and, with respect to the time-limit fixed under Article 3 (1)(c), time shall cease to run from the moment the preliminary objection is filed until the objection is decided by the Council. The applicant may file a written statement of the applicant's observations and submissions on the preliminary objection within the time-limit fixed by the Council. Thereafter, unless otherwise decided by the Council, any further proceedings relating to the preliminary objections shall be oral.

(4) If a preliminary objection has been filed, the Council, after hearing the parties, shall decide the question as a preliminary issue before any further steps are taken under these Rules to determine the merits of the application.

Article 6

Action of Council on procedure

(1) Upon the filing of the counter-memorial by the respondent, the Council shall decide whether at this stage the parties should be invited to enter into direct negotiations as provided in Article 14.

(2) If it is decided not to invite direct negotiations at this stage, without prejudice to a later invitation as provided in Article 14, the Council shall decide which procedure under these Rules is applicable. Unless the Council decides to undertake the preliminary examination of the matter itself, it shall appoint a Committee (hereinafter referred to as "the Committee") of five individuals who shall be Representatives on the Council of Member States not concerned in the disagreement, and shall designate one of them as ChairmanChairperson.

(3) The decisions under (2), in cases where negotiations are invited, may be postponed until the parties have either refused to enter into negotiations or reported that the negotiations have failed to solve the dispute.

CHAPTER IV

PROCEEDINGS

Article 7

Written proceedings

(1) The additional pleadings which may be filed by the parties shall consist of:

- Reply to be filed by the applicant,
- Rejoinder to be filed by the respondent.

(2) The pleadings shall be filed with the Secretary General within time-limits fixed.

(3) There shall be annexed to every pleading, copies or originals of all the relevant documents which the party filing the pleading may wish to have considered.

(4) After the filing of the last pleading, save in the case of the submission of written evidence pursuant to Article 9 or of observations in writing pursuant to Article 19 (5), no further documents may be submitted by any party except with the consent of the other party or by permission of the Council granted after hearing the parties.

(5) The Reply and the Rejoinder, as well as all other supporting documents, shall be transmitted to the Secretary General in both paper and electronic formats.

Article 8

Investigations by Council

(1) The Council may at any time, but after hearing the parties, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an enquiry, ~~or~~ giving an expert opinion, or assisting the Council in arriving at its decisions on preliminary objections, [provisional measures] or the merits. In such cases it shall define the subject of enquiry, ~~or~~ expert opinion, or assistance and prescribe the procedure to be followed.

(2) A report incorporating the results of the investigation, together with the record of the enquiry and any expert opinion, shall be submitted to the Council in such form, if any, as the Council may have prescribed, and shall be communicated to the parties.

Article 9

Evidence

If the parties should desire to produce evidence in addition to any evidence produced with the pleadings, such evidence, including testimony of witnesses and experts, shall be submitted in writing, within a time-limit fixed by the Council, but on special application the Council may agree to receive oral testimony. The Council may also request the parties to call witnesses or experts to give testimony before it at an oral hearing.

Article 10

Declaration by witnesses and experts

(1) The testimony of a witness shall be verified by the following declaration:

“I solemnly declare upon my honour and conscience that my testimony contains the truth, the whole truth and nothing but the truth.”

(2) The statement of an expert shall be verified by the following declaration:

“I solemnly declare upon my honour and conscience that my statement is in accordance with my sincere belief.”

Article 11

Questions

At the oral hearing, any Member of the Council not a party to the dispute may put questions, through the President, to the agents of the parties or to any counsel or advocate appearing for them. Such questions, if any, may be answered immediately or at a later date to be fixed by the Council.

Article 12

Arguments

(1) Upon completion of the evidence, and after a reasonable period for preparation by the parties, they may present arguments to the Council within time-limits fixed by it.

(2) The final arguments shall be in writing, but oral arguments may be admitted at the discretion of the Council.

Article 13

Procedure before the Committee

(1) If under Article 6 of the present Rules a Committee has been appointed, it shall, on behalf of the Council, receive and examine all documents submitted in accordance with these Rules and, in its discretion, hear evidence or oral arguments, and generally deal with the case with a view to action being taken by the Council under Article 15. The procedures governing the examination of the case by the Committee shall be those prescribed for the Council when it examines the matter itself. While the Committee has charge of the proceedings, the functions of the President of the Council under these Rules shall be exercised by the ~~Chairman~~Chairperson of the Committee.

(2) Thereafter the Committee shall, without undue delay, present to the Council a report which shall be a part of the record of the proceedings. The report shall include a summary of the evidence and other matters on record and the findings of facts and the recommendations of the Committee.

(3) The Council shall cause a copy of the report of the Committee to be delivered to each party in the case and each of the parties may, within a time-limit fixed by the Council, submit to the Council its written observations on the said report or, if permitted by the Council, its oral observations.

(4) When considering the report of the Committee, the Council may make such further enquiries as it may think fit or obtain additional evidence.

Article 14

Negotiations during proceedings

(1) The Council may, at any time during the proceedings and prior to the meeting which the decision is rendered as provided in Article 15 (4), invite the parties to the dispute to engage in direct

negotiations, if the Council deems that the possibilities of settling the dispute or narrowing the issues through negotiations have not been exhausted.

(2) If the parties accept the invitation to negotiate, the Council may set a time-limit for the completion of such negotiations, during which other proceedings on the merits shall be suspended.

(3) Subject to the consent of the parties concerned, the Council may render any assistance likely to further the negotiations, including the designation of an individual or a group of individuals to act as conciliator during the negotiations.

(4) Any solution agreed through negotiations shall be recorded by Council. If no solution is found the parties shall so report to Council and the suspended proceedings shall be resumed.

Article 15

Decision

(1) After hearing arguments, or after consideration of the report of the Committee, as the case may be, the Council shall render its decision.

(2) The decision of the Council shall be in writing and shall contain:

- (i) the date on which it is delivered;
- (ii) a list of the Members of the Council participating;
- (iii) the names of the parties and of their agents;
- (iv) a summary of the proceedings;
- (v) the conclusions of the Council together with its reasons for reaching them;
- (vi) its decision, if any, in regard to costs;
- (vii) a statement of the voting in Council showing whether the conclusions were unanimous or by a majority vote, and if by a majority, giving the number of Members of the Council who voted in favour of the conclusions and the number of those who voted against or abstained.

(3) Any Member of the Council who voted against the majority opinion may have its views recorded in the form of a dissenting opinion which shall be attached to the decision of Council.

(4) The decision of the Council shall be rendered at a meeting of the Council called for that purpose which shall be held as soon as practicable after the close of the proceedings.

(5) No Member of the Council shall vote in the consideration by the Council of any dispute to which it is a party.

Article 16

Default of appearance or in defending

(1) If one of the parties does not appear before the Council or the Committee, if any, set up under Article 6, or fails to defend its case, the other party may call upon the Council to decide in favour of its claim.

(2) The Council must, before doing so, satisfy itself not only that it has jurisdiction in the matter but also that the claim is well founded in fact and law.

Article 17

Discontinuance

(1) If in the course of the proceedings the applicant informs the Council in writing that it is not going on with the proceedings, and if, at the date on which this communication is received by the Secretary General, the respondent has not yet taken any step in the proceedings, the Council, or its President if the Council is not in session, will officially record the discontinuance of the proceedings, and the Secretary General shall inform the respondent accordingly.

(2) If, at the time when the notice of discontinuance is received, the respondent has already taken some step in the proceedings, the Council, or its President if the Council is not sitting, shall fix a time-limit within which the respondent must state whether it objects to the discontinuance of the proceedings. If no objection is so made, acquiescence will be presumed and the Council, or its President if the Council is not sitting, will officially record the discontinuance of the proceedings. If objection is made, the proceedings shall continue.

Article 18

Notification and appeal

(1) The decision of the Council shall be notified forthwith to all parties concerned and shall be published. A copy of the decision shall also be communicated to all States previously notified under Article 3 (1) (b).

(2) Decisions rendered on cases submitted under Article 1 (1) (a) and (b) are subject to appeal pursuant to Article 84 of the Convention. The submission of Any any such appeal shall be notified to the Council through the Secretary General within sixty days of receipt of notification of the decision of the Council.

Article 19

Intervention

(1) Any State which is a party to the particular instrument, the interpretation or application of which has been made the subject of a dispute under these Rules, and which is directly affected by the

dispute, has the right to intervene in the proceedings, but if it uses this right it shall undertake that the decision of the Council will be equally binding upon it.

(2) Any State which desires to intervene in a disagreement shall forthwith file a declaration to that effect with the Secretary General.

(3) Such declaration shall be communicated to the parties to the instrument concerned. If within a month of the ~~despatch~~ dispatch of this communication, any objection has been notified to the Secretary General with respect to the admissibility of an intervention under paragraph (1) of this Article, the decision shall rest with the Council.

(4) If no objection has been notified within the above-mentioned period or if the Council decides in favour of the admissibility of an intervention, as the case may be, the Secretary General shall take the necessary steps to make the documents of the case available to the intervening party who may file a memorial within a time-limit to be fixed by the Council, in no event later than the date fixed for the filing of the last pleading referred to in Article 7 (4).

(5) Any such memorial shall be communicated to the other parties to the disagreement who shall send to the Secretary General their observations in writing within a time-limit to be fixed by the Council. The memorial and observations may be discussed by the parties in the course of the subsequent proceedings in which the intervening party shall take part.

Article 20

Dismissal of proceedings

(1) (a) If at any time before a decision is reached the parties conclude an agreement for the settlement of the dispute, or agree to discontinue the proceedings, they shall so inform the Council in writing. The Council shall then officially record the conclusion of the settlement or the discontinuance of the proceedings.

(b) In the event that the original parties to a dispute conclude such an agreement, the Council shall terminate the proceedings notwithstanding the fact that additional parties have intervened. This provision does not affect the right of an intervening party to file an application on its own behalf respecting the subject matter of the original dispute.

(2) In case the termination of the proceedings is pursuant to a settlement between the parties, the terms of the settlement shall be transmitted to the President of the Council and he shall communicate such terms to all States previously notified under Article 3 (1) (b).

Part II

CHAPTER V COMPLAINTS

Article 21

Form of request

Any Contracting State submitting a complaint to the Council regarding a situation defined in Article 1 (2) of these Rules shall file a request to which shall be attached a memorial containing the same particulars as in the case of an application submitted under Article 2.

Article 22

Action upon receipt of requests

Articles 3 (1) (a) and (c), 4 and 5 of Chapter III of Part I (*Action upon receipt of Applications*) shall apply correspondingly to a request submitted under the preceding Article.

Article 23

Appointment of Committee

(1) Upon the filing of the counter-memorial the Council shall meet and formally decide whether the matter falls under the category of complaints under the provisions listed in Article 1 (2).

(2) The Council shall, if the answer under (1) is in the affirmative, appoint a Committee composed as the Committee described in Article 6 (2) of these Rules.

Article 24

Proceedings before Committee

(1) The Committee shall thereupon inquire into the matter on behalf of the Council and shall call the States concerned into consultation.

(2) The Committee shall arrange the procedures for the consultation as far as possible in agreement with the parties, and on an informal basis in accordance with the circumstances of each case. It may request additional information and summon representatives of the parties to meet with the Committee at the seat of the Organization or in any other place.

Article 25

Report of Committee

(1) The Committee shall report to Council on the outcome of the consultation held as expeditiously as possible.

(2) If the consultation has failed to resolve the difficulty the report may include proposed findings and recommendations to the States concerned.

Article 26

Council Action

- (1) After receiving the report of the Committee the Council shall consider it.
- (2) If a settlement has been reached through consultation the terms of the settlement shall be recorded and communicated to all States notified of the proceedings.
- (3) If consultation has failed to resolve the difficulty the Council may make appropriate findings and recommendations to the States concerned. Article 15 shall apply, *mutatis mutandis*, in this case.

Part III

CHAPTER VI

GENERAL PROVISIONS

Article 27

Agents

- (1) A State which becomes a party to the proceedings on disagreements or complaints under these Rules shall name an agent authorized to represent it and to act for it in the proceedings, provided that a Representative on the Council of any Member State shall not be nominated as an agent.
- (2) The agent may have the assistance of counsel or advocates. The name of any assisting counsel or advocate shall be communicated to the Council in advance of any meeting where he such assisting counsel or advocate will be present.
- (3) The agents shall be invited to attend any meeting convened to discuss the case.

Article 28

Procedural measures

- (1) The Council shall determine the time-limits to be applied, and other procedural questions related to the proceedings. Any time-limit fixed pursuant to these Rules shall be so fixed as to avoid any possible delays and to ensure fair treatment of the party or parties concerned.
- (2) The Council may at any time extend any time-limit that has been fixed under these Rules, either at the request of any of the parties or at its own discretion. It may also in special circumstances and after hearing objections from any party, decide that any step taken after the expiration of a time-limit shall be considered as valid.
- (3) In respect of fixing or extending a time-limit under these Rules, the President of the Council shall act on behalf of the Council when it is not in session.

Article 29

Languages

(1) A party may make its submissions, written or oral, in any of the ~~four~~ working languages of the Organization and, ~~at the request of any of the other parties,~~ these shall be translated and/or interpreted into each of the other languages under arrangements to be made by the Secretary General. Unless otherwise decided by the Secretary General, supporting documents appended to written pleadings filed by the parties shall not be translated by the Organization. Any such supporting documents that are not submitted in one of the working languages of the Organization shall be translated into one of those languages by the party submitting it.

(2) The Council may at the request of any party authorize another language to be used by that party, in which case the necessary arrangements for translation and/or interpretation shall be made by the party concerned.

(23) The text of the decision of the Council in case of a disagreement, or its findings and recommendations in case of a complaint, shall be rendered in the ~~four~~ working languages, and each of such texts shall be of equal authenticity unless all the parties agree that any of the texts shall be considered as the authentic one.

Article 30

Records and publicity

(1) The Secretary General shall keep a full record of the proceedings.

(2) A verbatim transcript shall be made of any oral testimony and any oral arguments and incorporated into the record of the proceedings.

(3) The record of the proceedings shall, unless otherwise ordered by the Council, be open to the public after the Council has rendered its decision on any preliminary objection, [any provisional measures,] or the merits. The Council may open to the public any part of the record previously ordered to be withheld from the public.

Article 31

Costs

(1) Unless otherwise decided by the Council, each party shall bear its own costs.

(2) All other costs may be assessed to the parties in proportions fixed by the Council.

Article 32

Suspension of the Rules

Subject to agreement of the parties, any of these Rules may be varied or their application suspended when, in the opinion of the Council, such action would lead to a more expeditious or effective disposition of the case.

*Article 33**Amendments to the Rules*

The present Rules may, at any time, be amended by the Council. No amendment shall apply to a pending case except with the agreement of the parties.

Article 34Provisional Measures

- (1) Pending and without prejudice to the Council's final decision on the dispute as provided in Article 15 (4), the Council shall have the power to indicate, if it considers that circumstances so require, and after hearing the parties in the case, any provisional measures which are to be taken to preserve the rights and interests of any party in the case, or in the interests of the safety or security of international civil aviation.
- (2) A written request for the indication of provisional measures may be made by a party in the case at any time during the proceedings and prior to the meeting which the decision of the Council is rendered as provided in Article 15 (4).
- (3) A request for provisional measures by a party in the case shall specify the reasons for the request, the possible consequences if it is not granted, and the measures requested.
- (4) The Council may also indicate, after hearing the parties in the case, provisional measures on its own initiative, or indicate provisional measures other than those specified in a request by a party to the case.
- (5) The Council shall consider the request for provisional measures forthwith for the purpose of rendering a decision on the request, as a matter of urgency. If the Council is not in session when the request for provisional measures is made, an extraordinary or special session of the Council shall be convened to consider the request as soon as practicable, in accordance with the *Rules of Procedure for the Council*.
- (6) The Council may at any time, at the request of a party in the case or on its own initiative, revoke or modify any decision concerning provisional measures if, in its opinion, some change in the situation justifies such revocation or modification. Any application by a party proposing such a revocation or modification shall specify the change in the situation considered to be relevant. Before taking any decision under this paragraph, the Council shall afford the parties an opportunity of presenting their observations on the subject.
- (7) The Council may request information from the parties in the case on any matter connected with the implementation of any provisional measures it has indicated.

Article 35

Practice Directions

The Council may adopt practice directions or guidelines regarding procedural matters, which shall not involve any amendment to these Rules. In the event of any inconsistency, these Rules shall prevail.

Article 36

Virtual proceedings

The Council may decide, as an exceptional measure, for public health, security or other compelling reasons, to hold any part of the proceedings under these Rules in a virtual format. The parties shall be consulted on the organization of such virtual proceedings.

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