

Agenda Item 2: Consideration of the General Work Programme of the Legal Committee**Final Report of the Working Group for the Review of the ICAO Rules for the Settlement of Differences (WG-RRSD)**

2:1 The Chairperson of the Working Group for the Review of the ICAO Rules for the Settlement of Differences (WG-RRSD)¹ presented LC/39-WP/2-2. This Working Paper contained, in its Annex, the Final Report of the WG-RRSD summarizing the deliberations held by the WG-RRSD during its eight meetings, along with the proposed draft revisions to the *Rules for the Settlement of Differences* (Doc 7782/2) (the “Rules”) set out in its Appendix A, and a list of subjects that could potentially be addressed by the Council through practice directions set out in its Appendix B. The Chairperson of the WG-RRSD explained that the Group held eight meetings between May 2019 and September 2023 and that, while some meetings were held in-person, others were held virtually due to the COVID-19 pandemic. It was further explained that, since the Rules were adopted in 1957, some of its provisions had become outdated. The Chairperson of the WG-RRSD also mentioned that the WG-RRSD had approached its work in a pragmatic and efficient manner to ensure a practical outcome. In so doing, the WG-RRSD tried to avoid theoretical discussions about the nature of the dispute settlement functions of the Council under Article 84, that is to say whether the Council holds judicial or quasi-judicial functions, and focused instead on how the Rules could be revised in a manner which would facilitate the settlement of differences under Article 84 in a timely, expeditious and transparent manner. In addition, it was highlighted that any revisions to the Rules adopted by the Council will only be applicable to future cases and not to the cases currently pending before it.

2:2 The Legal Committee noted LC/39-WP/2-7 presented by the United Arab Emirates, which presented comments on certain revisions to the Rules contained in Appendix A to LC/39-WP/2-2. In particular, this paper commented on the provisions concerning the scope of the Rules (Article 1(3) of the draft Rules), prior negotiations (Article 84 of the Chicago Convention and Article 2(1)(g) of the draft Rules) as well as provisional measures (Article 34 of the draft Rules).

2:3 One delegation expressed appreciation for the work undertaken by the WG-RRSD and mentioned that although the work of the Group began in 2019, it was premature at this stage for the Legal Committee to consider the WG-RRSD’s proposed revisions to the Rules. In that delegation’s view, the WG-RRSD had not yet completed its work, and the delegation therefore proposed that the Legal Committee extend the mandate of the WG-RRSD for it to continue its deliberations. In support of this view, the delegation noted that four new matters have been presented to the Council for the settlement of disputes since the WG-RRSD began its work. In addition, the delegation added that since the Eighth Meeting of the WG-RRSD held in September 2023, an informal meeting of the Council was held at which several new issues pertaining to the Rules were raised. In the view of that delegation, this was an indication that the WG-RRSD had not exhausted the areas for possible revision of the Rules.

2:4 Another delegation commended the work accomplished by the WG-RRSD and stressed that the work was generally of high quality. The delegation also stated that, although the Legal Committee may not agree on all of the proposed revisions, it was of utmost importance to find a way forward and not to postpone any revisions to the Rules on which the Legal Committee can reach agreement or consensus.

2:5 In response, the Chairperson of the Committee recalled the President of the Council’s opening statement at the beginning of the 39th Session in which he had mentioned that the Council was looking forward to receiving the outcomes of the work of the Legal Committee on the rules review and

1 Mr. Terry Olson (France).

invited the Chairperson of the WG-RRSD to proceed with a presentation of the proposed revisions considered by the WG-RRSD. The Chairperson of the Committee then proposed that the Committee deliberate on the WG-RRSD's proposals in the order presented in Appendix A of LC/39-WP/2-2 except that the proposals relating to Article 1, Article 34, and the issue of majority, which would be taken at the end. The Committee accepted this proposal.

2:6 The outcome of the Committee's decision on each of the WG-RRSD's proposed revisions are set out in turn. References to the provisions are those used in the version of the proposed revised Rules set out in Appendix A to the Final Report of the WG-RRSD.

2:7 **Article 2(1)(b):** The Committee accepted the proposed revision to Article 2(1)(b) of the Rules without any further discussion.

2:8 **Article 2(1)(g):** One delegation observed that the drafting proposal aligns the provision with the text of Article 84 of the Chicago Convention. That delegation also stated that the fact that an applicant has filed an application for the settlement of a disagreement does not prevent the parties from continuing to negotiate. Another delegation presented an alternative drafting proposal as follows:

“A Statement that the Applicant has made reasonable attempts to settle the disagreement through negotiation and the other party has either frustrated the attempt or refused to negotiate to the extent that it became clear that the disagreement cannot be settled by negotiation”.

2.8.1 Another delegation expressed support for the drafting proposal contained in the Final Report of the WG-RRSD, and mentioned that the first part of the alternative drafting proposal constituted an attempt to interpret the obligation to negotiate as set out in the provision. The delegation noted that the use of the word “reasonable” in that context differed from the Judgments of the International Court of Justice (ICJ) rendered on 14 July 2020, in which the Court stated that a “genuine” attempt should be made in order to satisfy the pre-condition of negotiation.

2.8.2 The Chairperson of the Committee stressed that there are other provisions in the Rules concerning negotiations and that even after an application and memorial have been received, negotiations can take place among the parties. In this connection, she recommended that the Legal Committee accepts the drafting proposal put forward by the WG-RRSD. Since no delegation took the floor, the proposal as originally drafted by the WG-RRSD was considered accepted by the Committee.

2:9 **Article 2(2):** One delegation stressed the importance for this provision to be included in the Rules given that, in this day and age, communications are mostly transmitted electronically. The Committee accepted the proposed revision to Article 2(2) of the Rules.

2:10 **Articles 3(3), 4(1), 4(3), 6 and 7(5):** The Committee accepted the proposed revision to Articles 3(3), 4(1), 4(3), 6 and 7(5) of the Rules without any discussion.

2:11 **Article 5(1):** One delegation that supported the proposed revision enquired whether the

2 Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar), Judgment, I.C.J. Reports 2020, p. 81 and the Appeal relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and United Arab Emirates v. Qatar), Judgment, I.C.J. Reports 2020, p. 172.

reference to “admissibility” or “jurisdiction” should come first in the provision. In response, the Chairperson of the WG-RRSD pointed out that before settling a question pertaining to admissibility, the Council should first satisfy itself that it has jurisdiction over a matter and that, in his view, “jurisdiction” should therefore appear before “admissibility”. In the absence of further comment, the Chairperson of the Committee concluded that the Committee had accepted the drafting proposal with respect to Article 5(1).

2:12 **Article 5(3):** One delegation stressed that the drafting proposal does not reflect the current practice of the Council which allows the applicant to file written comments in response to a statement of preliminary objection and the respondent to file a rejoinder thereafter. The delegation further submitted that, at the preliminary objection stage, it could be considered that both parties have each filed two rounds of pleadings given that the Council has before it the application and memorial filed by an applicant. The delegation therefore proposed instead that the current practice of the Council be reflected in the drafting proposal. Another delegation was of the view that this provision does not require any amendment and stressed the need for the Rules to be as closely aligned with Article 84 of the *Convention on International Civil Aviation* (Chicago, 1944 – the “Chicago Convention”). One delegation stated that additional submissions at the preliminary objection stage should not be made orally given that this could allow one party to “ambush” the other party with arguments or material that it had not previously provided. It added that both parties should have equal opportunities to present their submissions. Another delegation stressed the need to avoid discretion in the filing of pleadings. The delegation made reference to the current practice under the Rules and stressed that it would be ideal to allow for a reply and a rejoinder to be filed.

2.12.1 The Secretariat confirmed that the current practice of the Council is to allow an applicant to file written comments in response to a Statement of preliminary objection and the respondent to file a rejoinder thereafter. However, this results in an unequal number of pleadings with respect to the preliminary objection being filed by the parties. It was explained that the drafting proposal ensures that an equal number of pleadings are filed by both parties in respect of the preliminary objection, while at the same time giving the discretion to the Council to allow the parties to file additional submissions if warranted. The Rapporteur added that a preliminary objection can be considered as a separate set of proceedings and that in making the drafting proposal, the WG-RRSD did not consider the filing of the application and memorial to be a round of pleadings in relation to the preliminary objection. He explained that the drafting proposal aimed to ensure providing a balance for both an applicant and a respondent to file the same number of written pleadings in relation to a preliminary objection, adding that the drafting proposal would also allow the Council to deal more expeditiously with cases.

2.12.2 The Chairperson of the Committee reiterated that, although the default position under the Rules (if the proposed revisions were to be adopted) would be to have one round of pleadings at the preliminary objection stage, the Council would retain the discretion to allow additional submissions if needed. She observed that a majority of the delegations took the view that the drafting proposal strikes a fair balance, and therefore considered it adopted by the Committee.

2:13 **Article 5(4):** The Committee accepted the proposed revision to Article 5(4) of the Rules without any discussion.

2:14 **Article 8:** One delegation proposed an amendment to Article 8 of the Rules with a view to clarify that any individual, body, bureau, commission, or other organization selected by the Council with the task of carrying out an enquiry or giving an expert opinion should be independent from the parties and the Council. It was stressed that this would improve the quality, impartiality and transparency of the findings, thereby enhancing the credibility of the Council’s decision. Another delegation stated that Article 8 was a clear example of an area which deserves further consideration by the WG-RRSD, especially

in light of the issues considered by the Council in recent cases in applying Article 6 of the Rules.

2.14.1 In response, the Chairperson of the WG-RRSD explained that the WG-RRSD considered amending the provision to include a list of experts similar to the list of arbitrators maintained by the Permanent Court of Arbitration. However, following extensive deliberations, that option was not retained. It was further explained that the spirit of the discussion held in the WG-RRSD was that any outside opinion will be relevant only if it is made in an independent manner, and that in the WG-RRD's view, it could be left to the Council to determine that any individual, body, etc. so appointed under Article 8 was independent. The Chairperson of the Committee suggested that, in line with the WG-RRSD's views, Article 8 need not be revised, to which there was no objection by the Committee.

2:15 **Articles 9 to 12:** The Committee accepted that no changes to Articles 9 to 12 were necessary.

2:16 **Article 13:** The Committee accepted the proposed revision to Article 13 without any discussion.

2:17 **Articles 14 to 17:** The Committee accepted the WG-RRSD's recommendation that no changes to Articles 14 to 17 were necessary.

2:18 **Article 18:** While expressing support for the revision proposed by the WG-RRSD, one delegation questioned whether it would not be challenging for States to meet the 60-day deadline for the submission of an appeal. The delegation enquired about what would happen if a party failed to notify the Council of the submission of an appeal within the 60-day period and wondered whether this would mean that the decision of the Council would no longer be appealable. The Secretariat clarified that the Council has discretion under Article 28(2) of the Rules to decide that any step taken after the expiration of a time limit shall be considered as valid. The Chairperson further emphasized that the obligation to notify the Council of any appeal within 60 days is set out in Article 84 of the Chicago Convention, and that the proposed revision to Article 18 aims to clarify what is to be notified to the Council within that period. In response to a question from another delegation, the Secretariat provided further clarifications about the practice of the Organization in calculating the 60-day period, noting that the practice in this regard was to translate the Council's decision to all of the working languages of the Organization, before notifying the parties concerned, after which the time limit would be counted as 60 calendar days from the date of the notification of the decision. In the absence of any further comments, the Chairperson concluded that the proposed revision to Article 18 had been accepted by the Legal Committee.

2:19 **Article 19:** The Committee accepted the proposed revision to Article 19 without any discussion.

2:20 **Articles 20 – 26:** The Committee accepted that no changes to Articles 20 to 28 were necessary.

2:21 **Article 27(2):** The Committee accepted the proposed revision to Article 27(2) without discussion.

2:22 **Article 28:** The Committee accepted that Article 28 would remain unchanged without discussion.

2:23 **Article 29(1):** One delegation suggested that the first paragraph of Article 29(1) should be redrafted to replace "may" with "shall", in order to clarify that it was mandatory for the Parties to a dispute to make their submissions in one of the ICAO working languages. The delegation suggested that if its

suggested amendment was accepted, the last sentence of Article 29(1) would no longer be needed and should therefore be deleted. That delegation also questioned whether, under the proposed revisions, there was any criteria to govern the exercise of the discretion accorded to the Secretary General to determine which supporting documents submitted by a Party would be translated. In that delegation's view, the interests of justice and fairness would be best served if the option of allowing a party to request translation of supporting documents into a preferred working language was retained within Article 29(1). Another delegation expressed the view that since supporting documents submitted by a Party are an integral part of its pleadings, they should always be translated into all of the working languages in accordance with the principle of multilingualism. In supporting the above views, another delegation considered that since supporting documents constitute evidence in the proceedings, they should be translated into all working languages to avoid situations where the Parties could be ambushed with such evidence during the oral hearing and to ensure the integrity of the translation process. Two delegations expressed support for the revisions proposed by the WG-RRSD and were of the view that no further adjustment to the drafting proposal were necessary.

2.23.1 At the invitation of the Chairperson, the Rapporteur and the Chairperson of the WG-RRSD provided a revised version of Article 29(1) which took into account the views expressed by a number of delegations during the discussion. The amended text read as follows:

29(1) A party shall make its written or oral submissions, which may comprise both pleadings and supporting documents, in a working language of the Organization. The pleadings shall be translated and/or interpreted into each of the other working 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.

2.23.2 Several delegations expressed support for the revised proposal noting that it represented a reasonable compromise, and that it provided more clarity on which documents would be translated by the Organization. One delegation which supported the revised proposal enquired whether the proposed Article 29(1) could be split into two different provisions to separate the obligations of the parties from those of the Secretary General. In response, the Chairperson of the Committee noted that there were subsequent paragraphs in Article 29 on other aspects and hence, that it would be better not to split Article 29(1) up as suggested by the delegation. In response to another delegation's query about ensuring the completeness of the record of oral submissions, the Secretariat explained that such submissions are made during Council meetings and are duly recorded in Council Minutes and Council Decisions in accordance with the *Rules of Procedure for the Council* (Doc 7559/11). In addition, Article 30(2) of the Rules requires that a verbatim transcript shall be made of any oral testimony and any oral arguments and incorporated into the record of the proceedings.

2.23.3 Another delegation reiterated its concern about the lack of criteria for the Secretary General to exercise discretion to determine whether and which supporting documents would be translated. In response, the Chairperson of the Committee mentioned that while such criteria could potentially be addressed through practice directions (should the Committee approve the WG-RRSD's proposal to enable the Council to adopt such practice directions) the delegation's concerns would nevertheless be reflected in the record of the Session. In the absence of any further comments from delegations, the Chairperson of the Committee concluded that the proposed revision to Article 29(1) as amended by the Chairperson and the Rapporteur of the WG-RRSD had been accepted by the Committee.

2:24 **Articles 29(2) and 29(3):** The Committee accepted the proposed revisions to Articles 29(2) and 29(3) without discussion.

2:25 **Article 30(3):** One delegation suggested that it would be preferable to leave Article 30(3) in its original unamended form. That delegation considered that while openness and transparency are crucial for the settlement of differences in a fair and sustainable manner, there are circumstances where confidentiality needs to be maintained to facilitate the resolution of the dispute through negotiations. In that delegation's view, the current unamended wording of Article 30(3) gives the presumption of openness throughout the proceedings whereas the proposed revision would, to the detriment of transparency, restrict such openness until after a decision has been made on the merits. In response to a query from one delegation, the Secretariat clarified the practice of the Organization in relation to the time frame for the publication of decisions of the Council made pursuant to Article 84 of the Chicago Convention. Several delegations expressed support for the proposed revision noting that it strikes a reasonable balance between transparency and confidentiality of the proceedings. One delegation questioned whether under the proposed revision, records pertaining to a preliminary objection would remain confidential until a decision on the merits has been made. In response, the Rapporteur confirmed that this was the case, noting that the WG-RRSD had expressly considered this issue. He noted that while some members of the WG-RRSD had suggested that the records pertaining to a preliminary objection should be made public after the Council had rendered its decision on that preliminary objection, the WG-RRSD ultimately decided not to adopt such an approach, given that doing so might affect the possibility of a settlement of the dispute through negotiations, including under Article 14 of the Rules. He further clarified that the proposed revision in any event makes it clear that the Council retains the discretion to order that any part of the proceedings be opened to the public, and that the Council can therefore do so if it determined that it was necessary before a decision on the merits had been rendered. With reference to the Spanish text of the Rules, one delegation suggested that the method of transcribing the proceedings by stenographic means as set out in Article 30(2) is outdated and should be modernized. In response, the Chairperson of the Committee noted the same issue with reference to the French text of the Rules, and suggested that appropriate textual adjustments would be made by the Secretariat to address such concerns in the different language versions of the Rules. In the absence of further comments, the Chairperson of the Committee concluded that the proposed revisions to Article 30(3) had been accepted by the Committee.

2:26 **Articles 31 – 33:** The Committee accepted the proposed revisions to Articles 31 to 33 without any discussion.

2:27 **Article 35:** Several delegations expressed support for the drafting proposal. It was stressed that practice directions could assist the Council in carrying out its functions relating to the settlement of differences. A few delegations suggested the deletion of the text in brackets in A) 1 of Appendix B to LC/39-WP/2-2, *Non-exhaustive list of subjects that could potentially be addressed by practice directions issued by the Council*, that is to say "(e.g. with respect to previous professional activities)", noting that, in their view, it for the parties to decide on the qualifications of their agents. One delegation stated that in enabling the Council to adopt practice directions, it would be appropriate to also set down some basic principles of the fundamental procedural rules that would guide the Council on issues such as due process, right of defence and intake and analysis of evidence.

2.27.1 One delegation expressed concerns with respect to the drafting proposal, stating that in its view, it would not be appropriate for the Council to adopt practice directions. In the view of that delegation, practice directions could diverge from the Rules and could be difficult to implement. The delegation also stressed that there are substantial distinctions to be made between practice directions adopted by international dispute settlement bodies such as the ICJ and those to be adopted by the Council. In this regard, it was highlighted that the ICJ's power to adopt practice directions derives from its Statute which is an

international treaty whereas in the case of the Council, the power to adopt practice directions would not be founded upon a treaty, but upon the Rules which are also adopted under the authority of the Council. In the delegation's view, this will complicate the efficiency of the settlement of differences and introduce an element of uncertainty for States.

2.27.2 In summing up, the Chairperson concluded that, given that an overwhelming majority of delegations had expressed support, the Committee had accepted Article 35 with the text in brackets found at A) 1 of Appendix B to LC-39-WP/2-2 omitted.

2:28 **Article 36:** Several delegations expressed support for the drafting proposal as presented by the WG-RRSD. Some delegations stressed that the drafting proposal was balanced since it contained the necessary safeguards, such as the requirement to consult the parties before the Council decides to hold virtual proceedings and the requirement to have regard to the availability to the parties of the technological means for virtual proceedings. In addition, it was emphasized that the Council would be in a position to exercise its discretion to decide on a case-by-case basis whether or not to hold virtual proceedings and that the rights of the parties to present their case will not be jeopardized. One delegation stressed the importance of consulting the parties before the Council decides to conduct virtual proceedings, while another delegation emphasized that the outcomes of the consultation would need to be made known. The delegation also mentioned that in certain situations, parties may wish to resort to virtual proceedings in the absence of public health, security or other compelling reasons.

2.28.1 A few delegations expressed concern about the requirement for the Council to consult the parties before holding virtual proceedings. Some of those delegations suggested omitting the last sentence of the provision while other delegations were of the view that instead of consultations, the Council should obtain the agreement of the parties. One delegation pointed out that requiring the agreement of the parties would effectively amount to giving power to a party to veto the Council's decision to conduct virtual proceedings, and that delegation was therefore in favour of retaining the reference to consultations, as this would strike an appropriate balance.

2.28.2 One delegation stressed that a party may be in a better position than the Council to assess a situation concerning public health in its State, while another delegation indicated that the drafting proposal was not in contradiction with its domestic legislation, in particular the text concerning public health and national security.

2.28.3 The Chairperson of the Committee concluded that given that a clear majority was in favour of the drafting proposal, it had been accepted by the Committee, with the concerns raised by certain delegations included in the record of the Session.

2:29 **Article 1(3)** Several delegations did not support the proposed amendment to incorporate a new Article 1(3) in the Rules. While some of these delegations cited the unprecedented number of cases currently pending before the Council, which in their view, have raised complex legal and procedural issues, others considered that it was premature at this stage to include the provision which would have the effect of expanding the scope of the Rules. One delegation supported by several others expressed the view that until such time that the cases currently pending before the Council have been determined and lessons learnt from them, it could not support the proposed amendment, which in its view, would constitute a substantial change to the Rules. Other delegations cautioned that the proposed amendment would overburden the Council with cases involving the settlement of disagreements between States to the detriment of its other functions. One delegation considered that the amendment proposed in draft Article 1(3) was too open ended and that strict application of the Rules to disagreements arising under other international air law treaties

may not be appropriate in all circumstances. That delegation expressed a preference to omit the proposed amendment from the Rules in its entirety. Another delegation wondered whether the amendment proposed in draft Article 1(3) constituted an attempt to amend Article 84 of the Chicago Convention through other air law instruments, which would be in contravention of Article 94 of the Chicago Convention.

2.29.1 A few delegations expressed support for the proposed amendment to include Article 1(3) in the Rules. While observing that the proposed amendment would not expand the scope of the Rules given that the Council's mandate to settle disputes would already be established in the related treaties, and given the Rapporteur's earlier clarification that the Working Group was unanimous that the proposed revision was not a jurisdiction-creating provision, one delegation noted that it was prepared to suggest alternative wording to enhance the text of the draft amendment. Another delegation which supported the draft amendment questioned where States would have their aviation disputes resolved if they cannot bring them before the Council where a treaty has entrusted it with dispute settlement functions. In that delegation's view, asking States to take their aviation disputes to other international dispute settlement bodies would rather create jurisdictional problems for those bodies. Another delegation considered the draft amendment to be innovative and progressive, and intended to address legal gaps in those circumstances where the Council's dispute settlement role has already been established by treaty. That delegation suggested a re-arrangement of the provisions to swap Article 1(2) with draft Article 1(3).

2.29.2 The Chairperson of the Committee concluded the discussion by noting that an overwhelming majority of delegations did not support the proposed inclusion of sub-paragraph 3 in Article 1 of the Rules. Therefore, the Committee had agreed to delete the amendment proposed in draft Article 1(3). However, the editorial amendment consisting of the insertion of the word "and" at the end of sub-paragraph 1(a) of Article 1 was accepted by the Committee.

2:30 **Article 34:** Several delegations did not support the proposed amendment to incorporate a new Article 34 in the Rules expressly referring to the Council's power's power to indicate provisional measures. One delegation considered that the imposition by the Council of such provisional measures upon States would infringe the sovereignty of such States. Another delegation observed that in the absence of mechanisms to enforce provisional measures, empowering the Council to adopt provisional measures would undermine its dispute settlement function. One delegation supported by another delegation categorically objected to the proposed amendment on the basis that the Council is not a judicial body and that representatives on the Council are not judges. In that delegation's view, the examples provided from other international dispute settlement bodies such as the ICJ and ITLOS were not applicable to the Council given that those bodies derive their power to indicate provisional measures from their constitutive treaties. That delegation considered therefore that unless the Chicago Convention is amended to that effect, it would be inappropriate to revise the Rules to provide for the Council to indicate provisional measures. Another delegation expressed the view that as a legal threshold issue, it was not clear that the Council had jurisdiction to indicate provisional measures. In addition, the delegation stated that the absence in the proposed amendment of specific provisions on several procedural issues could make the process of indicating provisional measures difficult for the Council. Several delegations expressed serious concern about the portions of the proposed revisions referring to the Council's ability to indicate provisional measures on its own initiative. One delegation questioned whether a State which incurred financial expense to comply with provisional measures indicated by the Council could seek recourse under Article 84.

2.30.1 One delegation supported by several others expressed the view that until such time that the cases currently pending before the Council have been determined and lessons learnt from them, it could not support the proposed amendment, which in its view, would constitute a substantial change to the Rules. While many of those delegations agreed in principle that the ability of the Council to indicate provisional measures to be taken could serve as an important tool to preserve the rights and interests of the parties and

to safeguard the safety and security of international civil aviation pending final resolution of a dispute, they nevertheless felt that it was premature and inappropriate to advance the proposed Article 34 at this time. Some delegations expressed a willingness to revisit the question of provisional measures at a future time after the currently pending disputes have been concluded. A few delegations expressed support for the proposed amendment to insert Article 34 into the Rules. One of those delegations proposed a revision to the draft amendment to provide a right of reply to a request for provisional measures to the affected party. In welcoming the proposed amendment, one other delegation considered that the power to indicate provisional measures formed an inherent and integral part of the Council's dispute settlement function under Article 84 of the Chicago Convention. However, that delegation did not support the view that the Council should be enabled to indicate provisional measures on its own initiative.

2.30.2 In summarizing the discussion, the Chairperson of the Committee concluded that a small number of delegations did not support the proposed amendment. While some delegations had expressed support for the proposed amendment, they were not in favour of advancing the proposal at this stage. Some delegations considered that it was premature for the Committee to put the proposed Article 34 forward while others were of the view that the proposal should be revisited after the cases currently pending before the Council have been concluded. The Committee therefore agreed not to include draft Article 34 in the Rules at this juncture, but to nevertheless remain open to revisiting the question at a later date. The proposed Article 35 and Article 36 (together with Appendix B of LC/39-WP/2-2 except the text in brackets in paragraph A) 1) would be renumbered as Articles 34 and 35 accordingly.

2:31 **Interpretation of the term “majority” – Article 52 of the Chicago Convention:** One delegation expressed the view that it was premature for the Committee to put forward any interpretation of the term “majority” as it had not had the opportunity to take into account lessons that could be learned from the current cases before the Council pending resolution or other conclusion. This view was shared by two other delegations, one of which stated that it previously held a strong preference for the qualified majority interpretation. One delegation viewed that considering that Council Members who are party to a dispute cannot vote in the Council's consideration of that dispute, the absolute majority interpretation could lead to an absurdity and thereby run contrary to the guiding principles set out in the *Vienna Convention on the Law of Treaties*. In response to questions from some delegations, the Secretariat clarified that the current consistent practice of the Council was to apply the absolute majority interpretation. In summarizing the discussion, the Chairperson of the Committee observed that the Committee had taken note of the information provided by the WG-RRSD in its report and the long-standing practice of the Council to follow the absolute majority interpretation. The Committee therefore did not propose any amendments to the Rules to address the issue although the WG-RRSD's extensive work and observations on this point, as well as the Committee's deliberations, would still be presented to the Council for its consideration. The Committee also took note of the fact that some delegations considered that the matter could be revisited after the currently pending disputes have been determined.

2.31.1 The Chairperson of the WG-RRSD announced to the Committee that, in his view, the mandate of the Working Group had been completed. Accordingly, he thanked the Vice Chairperson, the Rapporteur, the members of the Working Group and the members of the Secretariat for their dedicated efforts over the last five years which had culminated in a high-quality output comprising the Final Report of the WG-RRSD and the draft Rules. The Chairperson of the Committee in turn expressed profound gratitude to the Chairperson of the WG-RRSD, the Secretariat and to all those who contributed to or had some involvement in the work of the WG-RRSD, highlighting also the efforts of the late Ms. Diana Brookes, a former staff member of the Secretariat who served as Secretary to the WG-RRSD during some of its earlier meetings.

International legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation

2:32 The Secretary presented section 2 of LC/39-WP/2-1 and noted the progress made in the work of the Secretariat Study Group on Legal Issues related to Pilotless Aircraft (SSG-LIPA) and its two Subgroups. The Chairperson opened discussion of LC/39-WP/2-2 and invited participants to comment on item 2 of the General Work Programme, *International legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation*. One delegation took the floor and voiced appreciation and support for the work undertaken by the Secretariat, as well as that of SSG-LIPA and its Subgroups. Another delegate who also serves as Rapporteur of the SSG-LIPA Liability and Security Subgroup (SSG-LIPA-LSSG) intervened to express her gratitude to the Secretariat and all of the participants in the SSG-LIPA and its Subgroups.

2:33 The Chairperson next invited the Dominican Republic to introduce the LC/39-WP/2-4, which offered support to ICAO further to establishing a unified framework for liability and insurance relative to pilotless aircraft.

2:34 A good number of delegations thereafter took the floor to express appreciation for the work of the SSG-LIPA and its Subgroups and to share their respective States' experiences with the development of national regulations pertaining to pilotless aircraft, including in some cases frameworks for civil liability and insurance. A significant number of those delegations also expressed a willingness to share their knowledge and experience with other States who may be in need of assistance in this regard. In wrapping up, the Chairperson urged those delegates offering support to share their information with the Rapporteur of the SSG-LIPA Liability and Security Subgroup (SSG-LIPA-LSSG), who volunteered to assist with the dissemination of these materials.³

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

2:35 The Secretary introduced section 3 of LC/39-WP/2-1, providing background information on the progress accomplished by the Article 12 Task Force (A12 TF). The Chairperson of the A12 TF expressed appreciation to the Chairs and members of the Scoping and Tools Subgroups for their contribution to the work on this item. The Chairperson of the A12 TF also thanked the Secretariat and responding States to the survey on the application of Article 12 which enables the A12 TF to have a better understanding of the expectations of Member States of the work to be undertaken on this topic. The Committee was also informed that the next meeting of the A12 TF (planned for November 2024 in London, United Kingdom in the margins of the Third Edition of the Civil Aviation Legal Advisers Forum (CALAF/3)) would consider the progress of work by the Subgroups.

2:36 One delegation expressed its appreciation for the work carried out by the A12 TF and its Subgroups and highlighted the need for the A12 TF to meet at a timely pace with a view to fulfilling its mandate in view of the next Session of the Legal Committee. Another delegation expressed its continuous support for the work of the Task Force as a member, emphasizing that Article 12 provides an important

³ Through the online UAS Toolkit <<https://www.icao.int/safety/UA/UASToolkit/Pages/default.aspx>>, ICAO collects and shares UAS best practices, lessons learned and regulations to assist States with developing their own UAS guidance and regulations. For more information, please contact the ICAO RPAS Programme Team at RPAS@icao.int.

basis for States to enhance the safety of international civil aviation.

2:37 The Chairperson thanked all experts who contributed to the work on this item as well as the Chair of the A12 TF and Chairs of the Subgroups and reiterated the expectation that the A12 TF would complete its work preferably by the next Session of the Legal Committee.

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

2:38 The Secretary presented section 4 of LC/39-WP/2-1, updating the Committee of the work carried out under this item, including the promotion of the ratification and implementation of the treaties adopted in this field, particularly the Beijing Convention and the Beijing Protocol of 2010 and the Montreal Protocol of 2014. Regarding the continuation of the work on the adequacy of the existing international air law framework to address cyber attacks against civil aviation, the Committee noted that a legal survey would be circulated to gather information relating to the status of implementation by States of relevant provisions of international air law instruments into their domestic legislation.

2:39 The Committee further took note of the information introduced by the Dominican Republic in LC/39-WP/2-5, presenting the State's progress in implementing necessary amendments to domestic legislation addressing various aspects of national security relating to cybersecurity and calling upon States to take similar actions.

Promotion of the ratification of international air law instruments

2:40 The Secretary presented LC/39-WP/2-3, which contained a progress report of the work relating to item 5 of the General Work Programme, *Promotion of the Ratification of International Air Law Instruments*. The report highlighted the promotion of six key treaties namely, the Montreal Convention 1999, the 2010 Beijing Convention and Beijing Protocol, the Montréal Protocol 2014 and the 2016 Protocols of Amendment to Articles 50 (a) and 56 of the Chicago Convention, at regional meetings. The number of ratifications recorded in the Appendix to the paper was updated to 95 for the 2016 Protocols. The Secretariat stressed the importance of ratifying these Protocols which each require 128 ratifications to come into force, pointing out that a State letter will be issued later this year urging their ratification. The Committee was informed of the convening and success of the second ICAO Treaty Event at the 41st Session of the ICAO Assembly, with a third such Event planned for its 42nd Session in September 2025; of the second edition, during February 2023 in Oman, of the Civil Aviation Legal Advisers Forum (CALAF); and of other events aimed at promoting ratification of international air law treaties such as the two ICAO Legal Seminars organized by the Republic of Korea in April 2022 and April 2024. The Committee was also informed of the issuance of a State letter by ICAO in May 2024 to commemorate the tenth anniversary of the adoption of the Montréal Protocol 2014.

2:41 China introduced LC/39-WP/2-6 which summarized its processes and actions with respect to ratification of international air law instruments. The Committee endorsed China's concluding proposals which called upon Member States that have not ratified the legal instruments on international civil aviation to do so and which requested the Secretariat to raise awareness with respect to these instruments in an effort to achieve progress in ratification.

2:42 Most of the delegations and one observer who took the floor fully supported prompt ratification of the air law treaties mentioned in the working papers. Several delegations expressed appreciation for the Legal Affairs and External Relations Bureau (LEB) conducting treaty ratification

seminars and workshops in their regions, emphasizing how such events have contributed to their ratification of air law treaties, with one delegation citing, in particular, its hosting of the international air law course conducted by LEB earlier this year, and another delegation repeating its offer to organize a workshop with LEB for States in the African region. A number of delegations urged ratification of, in particular, the 2016 Protocols Amending Articles 50 (a) and 56 of the Chicago Convention, in light of the continued growth of the international aviation community and the need for an expanded representation on the Council and the Air Navigation Commission. One observer offered to other regional organizations assistance with respect to helping them advance ratification of these Protocols in their Member States. One delegation reiterated its long-standing position regarding the Montréal Protocol 2014, citing the impediment to its ratification given its concerns about certain provisions on inflight security officers and jurisdiction. Another delegation, while strongly supporting ratification of air law treaties developed under the auspices of ICAO, stressed the difficulties faced by smaller States with respect to ratification due to capacity constraints.

2:43 In summing up, the Chairperson highlighted the Committee's strong support for the Secretariat's work promoting ratification of international air law treaties and the efforts made by States to host ratification workshops, legal seminars and international air law courses in their regions. She recalled the Committee's involvement leading up to the adoption of 24 air law treaties, noting, in particular, the high level of ratification of some aviation security treaties. She further stressed the importance for States to ratify international air law treaties as emphasised by the President of the Council, in his opening remarks, on achieving the unification and harmonization of international air law. In closing, the Chairperson requested States that have ratified a number of air law treaties, to assist others in doing so.

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

2:44 The Secretary introduced section 5 of LC/39-WP/2-1. In the absence of any comments, the Committee noted the information presented by the Secretariat in that section.

Consideration of guidance on conflicts of interest

2:45 The Committee noted the information in section 6 of LC/39-WP/2-1 introduced by the Secretary, recalling that a compilation of ICAO provisions on conflicts of interest had been presented to the 37th Session of the Legal Committee (ICAO Guidance on Conflicts of Interest in Civil Aviation), and that an updated compilation was expected to be completed by 2025. The Secretary further highlighted that the delegations unanimously supported the retention of the item in the Work Programme of the Legal Committee during the 41st Session of the Assembly.

Implementation of Article 21 of the Chicago Convention

2:46 The Secretariat introduced section 7 of LC/39-WP/2-1. One delegation informed the Committee that Amendment 7 to the Annex 7 – *Aircraft Registration and Nationality Marks* has been integrated into and implemented in its domestic system. The Committee noted the information both interventions.