



WORKING PAPER

LEGAL COMMITTEE – 39TH SESSION

(Montréal, 25 – 28 June 2024)

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

COMMENTS ON THE DRAFT ICAO RULES FOR SETTLEMENT OF DIFFERENCES

(Presented by the United Arab Emirates)

1. INTRODUCTION

1.1 This Paper presents the comments of the United Arab Emirates on the final draft of the Rules for Settlement of Differences as submitted by the Working Group formed under the auspices of the ICAO Legal Committee.

2. DISCUSSION

Jurisdiction of the Council (Proposed addition of Article 1[3])

2.1 The Working Group had referred this item to the Legal Committee for a decision following divergent views during its sessions. We do not recommend that this amendment be approved due to the reasons that follow. The amendment extends the application of the Rules to disputes arising out of other treaties as detailed in the amendment. However, the amendment does not propose a procedure for the referrals of those disputes.

2.2 Secondly, the amendment casts a potentially wide net for treaties. It would make the Council's jurisdiction very broad, which may not be fit for purpose. It is notable that the Council has never ruled on the merits of any dispute put before it. Extending its jurisdiction would be inappropriate in this light.

Prior Negotiations (Article 84 of the Chicago Convention; Article 2(1)(g) of the Draft Rules)

2.3 There is no doubt on the importance of negotiations as a cornerstone of dispute settlement under Article 84 of the Chicago Convention. The UAE fully supports the conclusion reached by the Working Group in so far as the intended aim of the draft revision is concerned, which is to “provide clarity in situations where negotiations between the parties have not yielded satisfactory

¹ Arabic and English versions provided by the United Arab Emirates.

results or where one or more of the parties is not open to negotiations, taking into account the ICJ's decisions and reasoning in its judgments of 14 July 2020".

2.4 Further, we respect the conclusion to align the wording of Article 2 (1) (g) of the Rules with Article 84 of the Chicago Convention, which resulted in the current draft wording². However, we are of the view that this draft amendment *may* dilute the seriousness with which negotiations are pursued prior to escalating the dispute. The draft amendment may be perceived as inadvertently creating the impression that an applicant State can unilaterally decide that the dispute is of such a nature that it cannot be resolved by negotiations, without an attempt to do so.

Provisional measures – Article 34 of the Rules

2.5 We considered further, and in depth, the new provision for the indication of provisional measures by the Council. We further noted that conclusion of the Working Group, following extensive deliberations, where it was considered imperative to retain a reference to the possibility for the Council to act on its own initiative in indicating the provisional measures, so as to fulfil its role under the Convention to safeguard the safety or security of international civil aviation.

2.6 Our view at this point, however, is that provisional measures should only be indicated at the request of a party and not on the Council's own motion. Similarly, the Council should not have the power to unilaterally modify the provisional measure awarded.

2.7 We recognize that the issuing of provisional measures by the Council shall not be construed as a "decision" by the Council in the sense which may have the consequences of an appeal. However, it is expected of relevant States to comply with the measures so issued. In that regard, we seek clarity whether the "indication" of provisional measures by the Council is a "decision" attracting relevant sanctions set out in Article 87 and 88 of the Chicago Convention. For ease of reference, the relevant articles of the Chicago Convention are reproduced below:

"Article 87 Penalty for non-conformity by airline

Each contracting State undertakes not to allow the operation of an airline of a contracting State through the airspace above its territory if the Council has decided that the airline concerned is not conforming to a final decision rendered in accordance with the previous Article.

Article 88 Penalty for non-conformity by state

The Assembly shall suspend the voting power in the Assembly and in the Council of any contracting State that is found in default under the provisions of this Chapter."

²The current draft wording reads as follows: (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 (g) A statement that the disagreement cannot be settled by negotiation.

Appendix B: Non-exhaustive list of subjects that could potentially be addressed by practice directions issued by the Council

2.8 We hereby recommend that guidelines relating to requests for provisional measures be included in the list of matters for practice directions.

3. **ACTION BY THE LEGAL COMMITTEE**

3.1 The Legal Committee is invited to consider this working paper and take any action it deems necessary.

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