



LEGAL COMMITTEE – 34TH SESSION

(Montréal, 9 – 17 September 2009)

Agenda Item 5: Report on work done at the Session

DRAFT REPORT ON THE WORK OF THE LEGAL COMMITTEE DURING ITS 34TH SESSION

The attached paragraphs 3:1 to 3:8 of the draft Report of the Legal Committee relate to Agenda Item 3.

Agenda Item 3: Consideration of Rule 31 of the Rules of Procedure of the Legal Committee

3:1 The Secretary introduced LC/34-WP/3-1 (*Legal Committee: Participation of Observers*). He noted that the ICAO Council had referred the issue of participation of observers in the Legal Committee to its Working Group on Governance (WGOG). After considering the report of the WGOG, the Council invited the Committee to consider whether to amend Rule 31 of its Rules of Procedure, which enables observers to make a motion or amendment provided that such a motion or amendment is seconded by the Representatives of two States on the Committee. LC/34-WP/3-1 stated that Rule 31 is rather unique in the ICAO framework: save for Diplomatic Conferences held under ICAO auspices, the Committee is the only ICAO body where observers benefit from such a right. The views of the WGOG and the Council were reflected in paragraphs 3.1 and 3.2 of the paper. In conclusion, the Committee was invited to consider whether to amend Rule 31 so as to prevent observers from making motions or proposing amendments, subject to the approval of the Council.

3:2 Many delegations supported the current text of Rule 31 and did not see the need to amend it. The value of the contribution of observers to the legal work of ICAO was emphasized in light of the specialized industry expertise they possessed. It was stated that observers could be governmental or non-governmental in nature and that Rule 31 simply allowed observers to make motions or propose amendments, provided that they were supported by two member States; in addition, the Legal Committee had the choice to accept or reject such motions or proposed amendments. On the matter of the uniqueness of Rule 31, it was pointed out that the focus should not be on uniformity but on effectiveness; Rule 31 was unique for good reasons. Motions or proposed amendments from observers are recorded and this enhances transparency in the work of the Committee. It was further stated that the observers performed research, undertook studies and provided fact-based inputs for the benefit of the Committee.

3:3 One delegation, supporting the retention of Rule 31, stated that there were good reasons for its existence. It stated that the Committee was one of the oldest, most prestigious and effective bodies in ICAO. Both its written and unwritten procedures had evolved to meet the challenges facing it. It was a challenge to develop mature international instruments in shorter and shorter working sessions. One of the distinguishing feature of this Committee was its openness to work with observers and to attract intellectual leaders. Rule 31 was not that generous to observers. The Legal Committee ought not to be directed to adopt a formalistic approach to its debates; it was not the way the Committee worked.

3:4 A number of delegations which favoured the text of Rule 31 nevertheless saw a need for its proper implementation as drafted.

3:5 One delegation supported the aims of the WGOG which was to deal with the behaviour of some observers during the last meetings of the Legal Committee and the Diplomatic Conference. While the contributions of observers were uncontested, at those meetings some industry observers *de facto* adopted a role reserved for States. Observers should be able to contribute during the discussions in their capacity as observers.

3:6 This delegation was supported by another which noted that Rule 31 afforded observers a privileged status compared to what obtained in other ICAO fora and other international organizations, in that it allowed them to make proposals on their own behalf. A distinction should be made between observers from inter-governmental organizations and those from non-governmental organizations (NGOs): the former defended the interest of States while the latter pursued other social and economic objectives. The Committee should distinguish between the role of observers as it ought to be and how it actually was. The role of NGOs was to bring to States making up an organization a certain number of competencies, a form of intellectual support. For a number of years, Rule 31 has been misunderstood; in this regard, the delegate referred in particular to the preparatory work leading to the adoption of two conventions in May 2009,

where NGOs sometimes behaved as if they were representatives of States. Their proper role was to advise. Rule 31 which required motions or proposals for amendments from observers to be seconded by two States should be applied with rigour. The delegation could accept to retain Rule 31 on the understanding that it would be adhered to forcefully and scrupulously.

3:7 The views of this last delegation were endorsed by another, which stressed that the Rule should also be applied in any ICAO groups set up to deal with legal issues, such as Legal Sub-Committees and Council Special Groups.

3:8 The Chairman **concluded** that, while there were expressions of concern from a few delegations, an overwhelming number saw no need to change the Rule. The important benefits and contributions provided by observers were highlighted. Those with concerns focussed on the role of observers at legal meetings and the fact that they differed from States. It would be conveyed to the Council that observers were very valuable and essential to the work of the Committee. However, their role was different from that of States. In the final analysis, motions and proposed amendments from observers could not be carried without the support of States. The Committee recommends to the Council not to change the Rule, but to take account of the sentiments of the Committee and to leave it for the Chairman of such meetings to give appropriate weight to the participation of State delegations and observers and to ensure that the difference in status was respected.