



WORKING PAPER

LEGAL COMMITTEE – 33RD SESSION

(Montréal, 21 April – 2 May 2008)

Agenda Item 4: Consideration of other items on the General Work Programme of the Legal Committee

ACTS OR OFFENCES OF CONCERN TO THE INTERNATIONAL AVIATION COMMUNITY AND NOT COVERED BY EXISTING AIR LAW INSTRUMENTS

(Presented by the Secretariat)

1. INTRODUCTION

1.1 Assembly Resolution A33-1 directs the Council and the Secretary General to act urgently to address the new and emerging threats to civil aviation, in particular to review the adequacy of the existing ICAO aviation security conventions. This subject is considered under Item 2 of the General Work Programme of the Legal Committee: “Acts or offences of concern to the international aviation community and not covered by existing air law instruments”. The present working paper briefly reports on the work in this respect for information of the Legal Committee. A full report will be presented in due course by the Special Sub-Committee established for this subject.

2. PREVIOUS WORK RELATING TO THE NEW AND EMERGING THREATS

2.1 Pursuant to Resolution A33-1, the ICAO Secretariat completed a study on legal measures to cover the new and emerging threats, which was made available to the 35th Session of the Assembly under cover of A35-WP/88. The study drew a preliminary conclusion that, while the existing five aviation security conventions have been widely accepted by States as useful legal instruments for combating unlawful interference against civil aviation, they should be updated in several instances to respond to new and emerging threats such as use of aircraft as weapons, and chemical, biological and radioactive attacks. Furthermore, the existing instruments focus on the persons actually committing the punishable acts, mainly on board an aircraft or at an airport, without specific provisions addressing the issue of persons organizing and directing the commission of the offences. In March 2005, a questionnaire was circulated among ICAO Member States with a view to ascertaining the need to review and possibly amend the existing aviation security conventions. An overwhelming majority of the responding States considered that there would be a need to amend existing international air law instruments or to adopt a new instrument to cover the new and emerging threats to civil aviation.

2.2 Based on the study of the Secretariat and the survey by the questionnaire, the Council agreed at the twelfth meeting of its 176th Session on 29 November 2005 that a Secretariat Study Group be established to assist the Secretariat in preparing an international legal instrument to cover the new and emerging threats to civil aviation. After three meetings, the Group reached the consensus that certain issues could be addressed through amendments to some of the existing ICAO aviation security conventions (the Conventions). These issues include criminalization of certain acts, incorporation of

certain provisions commonly found in the more recent counter-terrorism conventions concluded in the UN system, and clarification of certain terms in the existing instruments.

2.3 The Study Group identified the following six acts which could be criminalized through treaty provisions:

- a) use of civil aircraft as a weapon;
- b) use of civil aircraft to unlawfully spread biological, chemical and nuclear substances;
- c) attacks against civil aviation using biological, chemical and nuclear substances;
- d) acts of organizing or directing offences specified in the Conventions;
- e) wilful contributions to an offence specified in the Conventions; and
- f) a credible threat to commit an offence specified in the Conventions.

2.4 The Study Group also recommended the incorporation of certain provisions commonly found in the more recent counter-terrorism conventions concluded in the UN system. These provisions include: a military exclusion clause, a fair treatment clause, additional jurisdictional clauses, a political offence exclusion clause and a non-discrimination clause.

2.5 The Study Group also noted that the term “air navigation facilities” in one of the Conventions may need clarification, in order to ensure explicit coverage of satellite signals, computer-generated data and other non-tangible systems used for air navigation.

2.6 These issues have been discussed in more detail in Assembly working paper A36-WP/12.

3. WORK OF THE SPECIAL SUB-COMMITTEE

3.1 Based on the final report on the work of the Study Group, the Council decided at the tenth meeting of its 180th Session on 7 March 2007 to convene the Special Sub-Committee of the Legal Committee at Montréal in July 2007. Acting under Rule 12 b) of the Rules of Procedure of the Legal Committee, the Chairman of the Legal Committee, Mr. G. Lauzon, Q.C. (Canada), established a special Sub-Committee and decided to appoint legal experts of the following States to serve as members of the Sub-Committee: Argentina, Australia, Brazil, Canada, China, Egypt, Finland, France, Germany, India, Italy, Japan, Jordan, Lebanon, Mexico, Nigeria, Russian Federation, Senegal, Singapore, South Africa, Switzerland, United Arab Emirates, United Kingdom and United States. In accordance with Rule 17, the Chairman of the Legal Committee appointed Ms. J. Atwell (Australia) as Rapporteur.

3.2 The Sub-Committee held its first meeting from 3 to 6 July 2007 and its second meeting from 19 to 21 February 2008, under the chairmanship of Mr. T. Olson (France). Based on the report of the Rapporteur, the Sub-Committee prepared two draft texts to amend respectively the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970 (The Hague Convention) and the *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*, signed at Montreal on 23 September 1971 (Montreal Convention). These draft texts cover the issues identified in sub-paragraphs 2.3, 2.4 and 2.5 above.

3.3 Upon the request of the Council, the Sub-Committee also discussed at its second meeting the issue relating to unlawful transport by air of particularly dangerous goods and fugitives. Regarding the offence of unlawful transport of dangerous goods, there was a general view in the Sub-Committee that the matter should be considered following the precedent of the International Maritime Organization. The results of the work of the Sub-Committee will be submitted to the Council, and the Council will determine what is the next course of action.

4. **ACTION BY THE COMMITTEE**

4.1 The Committee is invited to:

- a) note this information paper; and
- b) maintain the Special Sub-Committee for further work on this item.

— END —