



LC/33-WP/8-2
1/5/08

LEGAL COMMITTEE – 33RD SESSION

(Montréal, 21 April – 2 May 2008)

Agenda Item 8: Report on work done at the Session

DRAFT REPORT ON THE WORK OF THE LEGAL COMMITTEE DURING ITS 33RD SESSION

The attached material comprises the draft Report of the Legal Committee on
Agenda Item 4.

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

4:1 The Secretariat presented LC/33-WP/4-1, “Acts or offences of concern to the international aviation community and not covered by existing air law instruments”, which reported the progress of the work relating to aviation security conventions, including the recent work of the Special Sub-Committee. The Chairman of the Sub-Committee took this opportunity to thank the members of the Sub-Committee and the Secretariat for their cooperation. He informed the meeting that the Council would decide in the near future whether the third meeting of the Sub-Committee would be convened. Based on this report and the support expressed at the meeting, the Committee **decided** to maintain the Special Sub-Committee for further work on this item.

4:2 The Committee then considered Item No. 3 of its General Work Programme “Consideration, with regard to CNS/ATM systems, including global navigation satellite system (GNSS) and the regional multinational organism, of the establishment of a legal framework”. The Committee **noted** LC/33-WP/4-2, presented by the Secretary, and LC/33-WP/4-8, presented by EUROCONTROL. It also **noted** a statement by a delegation underlining the need to provide technical assistance to developing countries.

4:3 The Committee **noted without comments** working paper LC/33-WP/4-3 (International interests in mobile equipment (aircraft equipment)).

4:4 The Committee next **noted** LC/33-WP/4-4 (*Review of the question of the ratification of international air law instruments*) presented by the Secretariat, which provided information on Item No. 5 on the General Work Programme of the Committee.

4:5 The Committee then considered Item No. 6 on its Work Programme, namely, “*United Nations Convention on the Law of the Sea – Implications, if any, for the application of the Chicago Convention, its Annexes and other international air law instruments*” on the basis of LC/33-WP/4-5, presented by the Secretariat, and LC/33-WP/4-7, presented by Indonesia (*Proposal to Amend Article 2 of the Chicago Convention*).

4:6 LC/33-WP/4-5 was **noted** by the Committee.

4:7 LC/33-WP/4-7 states, *inter alia*, that taking into consideration the *United Nations Convention on the Law of the Sea* (UNCLOS) (1982), there is a need to amend Article 2 of the Chicago Convention to “reflect current developments of laws on territory, including the complete and exclusive sovereignty of States in the air now including the air above the land areas, internal waters, archipelagic waters, territorial waters which its breath is 12 nautical miles from the baselines.” LC/33-WP/4-7 was supported by one other delegation.

4:8 Background information on the past work in ICAO on this subject was provided by the Secretary. This included a Secretariat Study and a Rapporteur’s Report, and consideration by past sessions of the Legal Committee.

4:9 One delegation noted that there had already been an ICAO Secretariat Study on this subject which concluded that there was no need for a textual amendment of Article 2 of the Chicago Convention. The sovereignty of States over their archipelagic waters was restricted by virtue of Article 53 of UNCLOS which provides right of archipelagic sea lanes passage to other States; all foreign ships and aircraft enjoy the

right of such passage in the designated sea lanes and air routes. If consideration was to be given to amending Article 2, other issues should also be taken into account, as Article 2 contains some outdated language.

4:10 Another delegation stated that archipelagic States exercised rights over these areas but only within certain conditions. A distinction should be drawn between archipelagic waters and territorial waters; in the former but not the latter, certain rights were granted to foreign vessels. It would be difficult to amend Article 2 of the Chicago Convention to state that archipelagic waters is territory within the meaning of the Article. Further legal debate was needed on this issue.

4:11 Two delegations suggested to refer the matter to the Council for further consideration.

4:12 One delegation wondered about the practical benefits of an Article 2 amendment.

4:13 One delegation stated that the Secretariat Study in 1984 read the provisions of the two conventions in a way to achieve a harmonious outcome consistent with modern practice. This delegation was not clear that there were practical or operational problems being revised. It was also agreed that the matter should be referred to the Council, perhaps in the context of work currently underway in relation to the reform of ICAO. However, the question of amending Article 2 was not one to be taken lightly; it would take many years to be adopted and come into force, and a cost/benefit analysis should be applied.

4:14 The Chairman concluded that the solution was perhaps not a simple transposition of Article 2 provisions to archipelagic waters and was more nuanced. The Committee **agreed** that the Secretary should bring the issue to the Council to obtain the latter's views.

4:15 The Secretary presented working paper LC/33-WP/4-6 which, in accordance with a decision of the Council, was submitted to the Committee for a study by a Sub-Committee on how to improve relevant ICAO provisions and guidance material in order to facilitate greater usage of Article 83 *bis* of the Chicago Convention. The Council had taken this decision during its 175th Session in considering paragraphs 2.2.3.1 and 2.3.4.3 of the Report on the Study on the Safety and Security Aspects of Economic Liberalization conducted by the Secretariat contained in C-WP/12480. Also at the request of the Council, the Legal Bureau had reviewed the guidance contained in *Circular 295* to determine if there were any aspects which should be referred to the Legal Committee for study. No such aspects had been identified. The Council itself had mentioned in C-DEC 176/12 that it was likely that the low number of agreements under Article 83 *bis* registered with ICAO was not attributable to legal aspects of the Article but rather to difficulties encountered by States in their bilateral negotiations.

4:16 One delegate commented that his State had not entered into one single agreement under Article 83 *bis* and that this had not been due to any legal problems arising from such Article, but rather for reasons of technical or political nature.

4:17 The Committee, in adopting the action proposed, **concluded** that no legal aspects pertaining to Article 83 *bis* and relating to issues raised in paragraphs 2.2.3.1 and 2.3.4.3 of the Study on the Safety and Security Aspects of Economic Liberalization could be identified for further study by a Sub-Committee.