

INTERNATIONAL CIVIL AVIATION ORGANIZATION

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ASSEMBLY — 32ND SESSION

LEGAL COMMISSION

Agenda Item 34: Work Programme of the Organization in the legal field

WORK PROGRAMME OF THE ORGANIZATION IN THE LEGAL FIELD

SUMMARY

This paper sets forth proposals for the work of the Organization in the legal field for the period 1999-2000-2001.

Action of the Assembly is in paragraph 5.1.

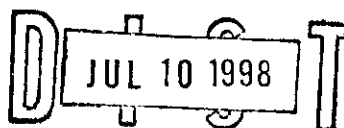
1. WORK PROGRAMME OF THE LEGAL BUREAU

1.1 The continuing functions of the Secretariat in the legal field are indicated in the programme budget of the Organization for 1999-2000-2001. This includes the provision of legal advice and assistance to the Council, the Secretary General, other ICAO Bureaux, Regional Offices, and to ICAO Member States; research, legal advice and services, including preparation of documentation, for the Council and its subordinate bodies, the Assembly, the Legal Committee, Diplomatic Conferences and other meetings; legal input in the ICAO CNS/ATM activities; discharge of functions in relation to international agreements of which ICAO is the depositary; registration of aeronautical agreements and arrangements; collection of national laws and regulations relating to civil aviation; preparation of various reports, e.g. material for the United Nations Juridical Yearbook; representation of the Secretary General in appeals coming before the Advisory Joint Appeals Board and the United Nations Administrative Tribunal; representation of the Secretary General in other litigation in which ICAO may be involved; establishment of an ICAO legal database; and other related functions of legal nature.

1.2 The Legal Bureau co-operates with the United Nations and other organizations in the preparation of draft conventions and studies of existing instruments which might have implications for international civil aviation. The Bureau monitors the deliberations and decisions of the United Nations and other international organizations on matters related to air law or otherwise of interest to the Organization.

2. LEGAL MATTERS IN THE COUNCIL

2.1 In the ordinary course, the Council deals with various matters in the legal field, as they might arise from time to time. Under paragraph 5 of the Constitution of the Legal Committee, the Council has the function of approving the General Work Programme of the Committee which is determined by the



Committee. Also, under paragraph 5 of the Constitution of the Legal Committee, the Council decides on the date, place and provisional agenda of the sessions of the Legal Committee which are convened by the Council. According to the procedure for approval of draft conventions (Assembly Resolution A31-15, Appendix B), the Council, when receiving a draft convention in final form from the Legal Committee, takes such action as it deems fit, including the circulation of the draft to States and, in doing so, may add its comments on the draft convention; the Council also convenes a Diplomatic Conference for approval of the draft convention.

3. WORK PROGRAMME OF THE LEGAL COMMITTEE

3.1 In accordance with Rule 8 of the Rules of Procedure (Doc 7669-LC/139/4), the Legal Committee establishes and maintains, subject to approval of the Council, a general programme of work which includes subjects proposed by the Committee itself; in addition, it is to include any subjects proposed by the Assembly or the Council.

3.2 The 31st Session of the Assembly endorsed the General Work Programme of the Legal Committee as amended by the Council on 2 June 1995, which included the items listed below in their order of priority:

- 1) Consideration, with regard to global navigation satellite systems (GNSS), of the establishment of a legal framework;
- 2) Review of the question of the ratification of international air law instruments;
- 3) Liability rules which might be applicable to air traffic services (ATS) providers as well as to other potentially liable parties - liability of air traffic control agencies; and
- 4) 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.

3.3 On 15 November 1995, during its 146th Session, the Council amended the second item in the Work Programme to read: *"The modernization of the 'Warsaw System' and review of the question of ratification of international air law instruments"*.

3.4 At the sixth meeting of its 148th Session on 3 June 1996, the Council decided to include the item *"Acts or offences of concern to the international aviation community and not covered by existing air law instruments"* in the General Work Programme.

3.5 The 30th Session of the Legal Committee (Montreal, 28 April - 9 May 1997) had as its main item for consideration *"The Modernization of the 'Warsaw System'"*; the Committee made no change to its Work Programme as amended by the Council on 3 June 1996.

3.6 When the Council considered the Report of the 30th Session of the Legal Committee, on 6 June 1997 during its 151st Session, it decided that the subject *"The Modernization of the 'Warsaw System'"* should be maintained in the General Work Programme of the Legal Committee. On 3 June 1998, during its 154th Session, the Council decided to convene a Diplomatic Conference for the adoption of the said draft instrument, to be held from 10-29 May 1999.

3.7 The Council also decided on 6 June 1997 to give priority No. 5 to the item “*Acts or offences of concern to the international aviation community and not covered by existing air law instruments*” and to establish a Secretariat Study Group for this item.

3.8 On 1 December 1997, the Council decided to include in the General Work Programme of the Legal Committee the subject “*International interests in mobile equipment (aircraft equipment)*” as Item No. 6. It is envisaged that the elaboration and finalization of draft instrument on **International Interests in Mobile Equipment** will be undertaken in co-operation with the International Institute for the Unification of Private Law (Unidroit).

3.9 A list of the subjects in the Legal Committee’s work programme is set out in their order of priority in the **Appendix** hereto, which also provides certain additional information on each subject.

4. LEGAL MEETINGS

4.1 For budgetary and planning purposes during the period 1999, 2000 and 2001, the convening of the following legal meetings has been assumed:

- 1999: a session of the Legal Sub-Committee and a Diplomatic Conference;
- 2000: a panel meeting or a session of the Legal Sub-Committee; and a session of the Legal Committee or a Diplomatic Conference;
- 2001: a session of the Legal Committee or a Diplomatic Conference or both.

4.2 Furthermore, the possibility has been provided for a regional legal seminar or workshop to be held each year.

5. ACTION OF THE ASSEMBLY

5.1 The Assembly is invited to consider the programme of future work of the Organization in the legal field and to indicate any views, and take decisions, with respect to this subject.

APPENDIX

GENERAL WORK PROGRAMME OF THE LEGAL COMMITTEE

1. **Consideration, with regard to global navigation satellite systems (GNSS), of the establishment of a legal framework**

The 28th Session of the Legal Committee included in its General Work Programme with priority No. 5 the subject: "*Desirability of a legal framework with regard to global navigation satellite systems (GNSS)*"; on 17 June 1992, during its 136th Session, the Council amended this subject to read: "*Consideration, with regard to Global Navigation Satellite Systems (GNSS), of the establishment of a legal framework*"; and gave it the highest priority.

The 29th Session of the Legal Committee was of the view that there was a need for a legal framework for the implementation of the GNSS and that a two-stage approach should be followed, namely the development of a legal framework for the implementation of the existing systems and the elaboration of a more complete and lasting legal framework for the future. The Committee recommended that the future work on the long-term GNSS should be entrusted to a panel of legal and technical experts to be set up by the Council. The Council made arrangements regarding the existing GNSS systems by exchanging letters respectively with the United States on 14 and 27 October 1994 and with the Russian Federation on 4 June and 29 July 1996. The Council also established on 6 December 1995 the Panel of Experts on the Establishment of the Legal Framework with Regard to GNSS (LTEP) which has held three meetings the results of which were reported to the Council at its 151st, 152nd and 153rd Sessions. More detailed information on the work of LTEP is found in A32-WP/24.

2. **The modernization of the "Warsaw System" and review of the question of the ratification of international air law instruments**

Following the decision by the 31st Assembly that the Council should continue its efforts to modernize the "Warsaw System" as expeditiously as possible, the Council, on 15 November 1995, decided to amend the second item of the General Work Programme of the Legal Committee to read "*The modernization of the 'Warsaw System' and review of the question of the ratification of international air law instruments*".

Regarding the first part of this item, namely the **modernization of the "Warsaw System"**, the Council decided that a Secretariat Study Group be established. Upon consideration of the Study Group's recommendations concerning the elaboration of a new draft instrument, the Council on 14 March 1996 decided to refer this matter to the Legal Committee. On 19 September 1996, the Acting Chairman of the Legal Committee appointed a Rapporteur (Mr. V. Poonoosamy, Mauritius) to carry out a study on the subject and to revise a draft instrument prepared by the Legal Bureau assisted by the Study Group at its second meeting. The 30th Session of the Legal Committee (Montreal, 28 April - 9 May 1997) reviewed the draft instrument and approved the text of a Draft Convention for the Unification of Certain Rules for International Carriage by Air. The draft was transmitted to States for comments by State letter dated 27 June 1997. Taking into account that the draft instrument approved by the Legal Committee had not entirely resolved a number of elements, the Council decided on 26 November 1997 to establish a Special Group on the Modernization and Consolidation of the "Warsaw System" to further advance the work. The Special Group

met from 14 to 18 April 1998. Taking into account the comments received from States, as well as further recommendations developed by the Secretariat Study Group at two more meetings, it approved a revised text for consideration by the Council during its 154th Session. The Council, on 3 June 1998, decided to convene a Diplomatic Conference for the adoption of the said draft Convention, to be held from 10-29 May 1999 in Montreal unless an invitation were received from a Contracting State to host the Conference, in which case such invitation would be submitted to the Council for consideration.

On the matter of the **ratification of international air law instruments**, the 31st Session of the Assembly requested the Council to explore ways and means to expedite their ratification. On 5 June 1996, the Council referred to the Legal Committee for consideration certain proposals aimed at accelerating the rate of ratification and entry into force of international air law instruments, other than amendments to the Chicago Convention. The 30th Session of the Legal Committee duly considered this matter. On 12 November 1996, the Council examined specific legal options to accelerate the application of amendments to the Chicago Convention, and decided that the matter should be documented for consideration by this Session of the Assembly. Further information on this subject is contained in A32-WP/10.

3. **Liability rules which might be applicable to air traffic services (ATS) providers as well as to other potentially liable parties – Liability of air traffic control agencies**

The question of **liability of air traffic control agencies** has been on the General Work Programme of the Legal Committee since 1960 and was studied by two Legal Sub-Committees in 1964 and 1965. Thereafter, a questionnaire was sent to States and international organizations and in 1981 a Panel of Experts studied and analyzed their answers. To implement certain decisions of the 25th Session of the Legal Committee and of the 24th Session of the Assembly, the Council requested the Secretariat to undertake a study of the item. The study was presented to the Council during its 111th Session in March 1984, and was circulated to States and international organizations for comments. Subsequently, the Chairman of the Legal Committee appointed a Rapporteur, Dr. H. Perucchi (Argentina), who presented his Report in August 1985.

The 28th Session of the Legal Committee included the subject "*Liability rules which might be applicable to air traffic services (ATS) providers as well as to other potentially liable parties*" in its Work Programme.

The Council, on 25 February 1994 at its 141st Session, decided that these two items would be combined into a single item. During its consideration of this subject, the 29th Session of the Legal Committee (4-15 July 1994) noted the report of the Rapporteur on the subject, "*Liability of Air Traffic Control Agencies*", and concluded that this subject was related to the main item on its agenda, namely, "*Consideration, with regard to global navigation satellite systems (GNSS), of the establishment of a legal framework*"; the Committee noted that the Rapporteur's report needed some further updating to cover the elements arising out of the CNS/ATM concept. The 29th and 30th Sessions of the Legal Committee, in view of other priorities and time constraints, did not specifically address the issue of "*Liability rules which might be applicable to air traffic services (ATS) providers as well as to other potentially liable parties*".

4. **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**

The 29th Session of the Legal Committee noted the report of the Rapporteur (Mr. A.W.G. Kean (United Kingdom)) on this subject. However, the Committee considered that it would

be premature to remove this item from the work programme. Although no major problems had been identified, the Committee believed that it would be prudent to await the practical implementation of the United Nations Convention on the Law of the Sea by Contracting States to see whether any major problems would in fact arise which would require the attention of the Legal Committee.

The 30th Session of the Legal Committee considered developments within the International Maritime Organization (IMO) concerning the designation and approval of archipelagic sea lanes and air routes. On the basis of a detailed Secretariat paper relating specifically to the subject of archipelagic sea lanes and air routes, the Council subsequently decided during its 151st Session that it should be kept informed of any action contemplated by IMO with regard to the designation of air routes over archipelagic waters. As a further paper of the Legal Bureau indicated that such action was envisaged, the Council, during its 153rd Session, decided that ICAO should participate in the 69th Session of the IMO Maritime Safety Committee (MSC 69) in order to ensure that the approval of international air traffic services (ATS) routes remain within the sphere of jurisdiction of ICAO.

Further to the co-operative position taken by Indonesia, which had requested IMO to adopt sea lanes and air routes thereabove through its archipelagic waters, and to the participation of ICAO in MSC 69 (London, 11-20 May 1998), IMO at that meeting recognized the exclusive jurisdiction of ICAO on international ATS routes, and agreed to amend its draft rules for the designation of sea lanes and air routes through archipelagic waters accordingly.

5. Acts or offences of concern to the international aviation community and not covered by existing air law instruments

The existing international conventions relating to the offences on board aircraft serve primarily to prevent and prosecute acts of hijacking, sabotage and terrorist attacks endangering the safety of international civil aviation. However, certain lesser types of offences committed on board aircraft, such as assault, battery or alcohol-related riotous behaviour, have become a growing concern to the international aviation community because of their increasing frequency and lack of prosecution. In reviewing this matter, the Council on 3 June 1996 approved the inclusion of the subject in the General Work Programme of the Legal Committee. The 30th Session of the Legal Committee recommended to the Council that a working group be established if the Council deemed appropriate. During its 151st Session, the Council decided on 6 June 1997 that this item be given the fifth priority in the General Work Programme of the Legal Committee and that a Secretariat Study Group be established for this item.

6. International Interests in Mobile Equipment (Aircraft Equipment)

The Council, during its 152nd Session on 1 December 1997, considered the General Work Programme of the Legal Committee and decided to include therein the subject "*International Interests in Mobile Equipment (Aircraft Equipment)*" as Item 6. This subject is to be covered in co-operation with Unidroit. Unidroit has been developing a project for the elaboration of an international convention which would set forth general rules applicable to the different categories of equipment, to be supplemented by specific protocols relating to each category of equipment, including aircraft equipment. This project aims at the creation of an "international interest in mobile equipment", which is an innovative legal concept of an international security interest in mobile equipment, independent of the various kinds of analogous interests created under national laws. It also aims at the creation of an international register, where records of title and conveyances relating to the international interest are to be registered and kept up to date.

By providing for the creation of an international security interest in mobile equipment, this project, as far as it relates to aircraft, addresses issues which are not or not adequately covered by the *Convention on the International Recognition of Rights in Aircraft*, adopted at Geneva on 19 June 1948.

A preliminary draft Convention is in the course of preparation through a Unidroit Study Group in which ICAO is represented. A preliminary draft Protocol relating to aircraft equipment is also in the course of preparation through a working group (the Aircraft Protocol Group) consisting of the Secretariats of ICAO and Unidroit, in which the International Air Transport Association (IATA) and the Aviation Working Group (AWG) comprising aircraft manufacturers and banks, are also participating. When finalized by ICAO as well as by Unidroit, the draft texts of these preliminary draft instruments will then be sent to Contracting States for comment. It is envisaged to convene in early 1999 a meeting of a Sub-Committee of the ICAO Legal Committee to examine the draft texts.

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