



International Civil Aviation Organization

LC/35-WP/3-1
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WORKING PAPER

LEGAL COMMITTEE – 35TH SESSION

(Montréal, 6 – 15 May 2013)

Agenda Item 3: Consideration of other items on the General Work Programme of the Legal Committee

CONSIDERATION OF OTHER ITEMS ON THE GENERAL WORK PROGRAMME OF THE LEGAL COMMITTEE

(Presented by the Secretariat)

1. INTRODUCTION

1.1 This working paper reports on developments regarding the items of the Work Programme other than *Acts or offences of concern to the international aviation community and not covered by existing air law instruments* and *Safety aspects of economic liberalization and Article 83 bis*, which are both the subject of separate working papers (see LC/35-WP/2-2 and LC/35-WP/3-2 respectively).

2. COMPENSATION FOR DAMAGE CAUSED BY AIRCRAFT TO THIRD PARTIES ARISING FROM ACTS OF UNLAWFUL INTERFERENCE OR FROM GENERAL RISKS

2.1 The International Conference on Air Law held under the auspices of ICAO from 20 April to 2 May 2009 adopted the *Convention on Compensation for Damage Caused by Aircraft to Third Parties* (General Risks Convention) and the *Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft* (Unlawful Interference Compensation Convention).

2.2 To date, the General Risks Convention has been signed by 12 States and acceded to by one; and the Unlawful Interference Convention has been signed by 10 States and acceded to by one. Both instruments require 35 ratifications in order to enter into force, the latter with some additional qualifications attached.

2.3 The Preparatory Commission for the Establishment of the International Civil Aviation Compensation Fund (PCIF), tasked with the development of arrangements to facilitate that the Fund to be established pursuant to the Unlawful Interference Compensation Convention would be operational by the time the Convention enters into force, held its fifth meeting in Ottawa (27-30 June 2011) and finalized its work on a number of issues, including the draft regulations of the Fund; regulation on the period and amount of initial contributions to the Fund; guidelines on drop-down; guidelines on investment and financial governance arrangements; guidelines on compensation and arrangements with insurers on claims handling; and rules of procedure for the Conference of Parties.

3. CONSIDERATION, WITH REGARD TO CNS/ATM SYSTEMS INCLUDING GLOBAL NAVIGATION SATELLITE SYSTEMS (GNSS), AND THE REGIONAL MULTINATIONAL ORGANISMS, OF THE ESTABLISHMENT OF A LEGAL FRAMEWORK

3.1 A Diplomatic Conference was held in Brasilia, Brazil from 7 to 9 December 2009, convened by ICAO. Eight South American States participated in the Diplomatic Conference. The Conference developed the text of the Constituent Convention for the implementation of the South American Air Navigation and Safety Organization. The said Convention was signed by four States; it requires five ratifications to enter into force. The implementation of this International Organization is destined to strengthen, at the regional level, the implementation, management and consolidation of multinational systems related to air navigation and safety, in particular CNS/ATM. The Legal Affairs and External Relations Bureau provided guidelines for the development of the Diplomatic Conference, supported discussions regarding the legal policies of the Organization, and provided tools for the preparation of legal instruments drafted during the Conference.

3.2 In addition, the International Institute for the Unification of Private Law (UNIDROIT) has been studying a possible future instrument on third party liability for global navigation satellite system (GNSS) services. The Secretariat continues to observe and to monitor, as necessary, these activities.

4. INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT (AIRCRAFT EQUIPMENT)

4.1 The Council, in its capacity as the Supervisory Authority of the International Registry, continues to monitor the operation of the Registry to ensure that it functions efficiently in accordance with Article 17 of the *Convention on International Interests in Mobile Equipment*, signed at Cape Town on 16 November 2001 (Cape Town Convention). Pursuant to Article 17 (2) (j) of the Cape Town Convention, the second report of the Council concerning the discharge of its obligations as the Supervisory Authority was sent on 1 April 2010 to the Parties to the Cape Town Convention and to the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*, signed at Cape Town on 16 November 2001.

4.2 As the first and second three-year terms of appointment of members to the Commission of Experts of the Supervisory Authority of the International Registry (CESAIR) came to an end during, respectively, July 2009 and July 2012, the Council, pursuant to Article XVII (4) of the Cape Town Protocol, and further to nominations/re-nominations received from Parties and Signatory States to the Cape Town Convention and Protocol, appointed/re-appointed members to the Commission for the second and third terms. CESAIR is currently composed of 15 experts nominated by Brazil, Canada, China, France, Ireland, Malta, Nigeria, Pakistan, Senegal, Singapore, South Africa, Switzerland, United Arab Emirates, United Kingdom and the United States.

4.3 CESAIR held its third and fourth meetings at ICAO headquarters in Montréal in December 2008 and December 2009, respectively. In both meetings CESAIR reviewed, inter alia, proposals for amendments to the *Regulations and Procedures for the International Registry* (Doc 9864) and made recommendations thereon which were endorsed by the Council. CESAIR held its fifth meeting in Montréal in December 2012 in order to brief CESAIR members and to have preliminary discussions on numerous and significant amendments to Doc 9864 which will be formally proposed to CESAIR at its sixth meeting to be held during April 2013 from which recommendations will be made to the Council during its 199th Session in May 2013.

4.4 Pursuant to Article 17 (2) (b) of the Cape Town Convention and Article XVII (5) of the Cape Town Protocol, and further to the Council's decision of 30 October 2009 (C-DEC 188/6) to re-appoint the Registrar of the International Registry (Aviareto Ltd.) for a second five-year term, the Secretary General signed the new contract with the Registrar, effective 27 June 2011 to 29 February 2016. The contract was prepared with the assistance of the Ad Hoc Group on Contract Renewal which was established by CESAIR at its fourth meeting during December 2009.

4.5 Pursuant to Article 62 (2) (c) of the Cape Town Convention and Article XXXVII (2) (c) of the Cape Town Protocol, the Council regularly receives information from the Depositary on ratifications, declarations, denunciations and designations of entry points. As at 1 February 2013, there were 49 Parties to the Cape Town Convention and Protocol.

5. REVIEW OF THE QUESTION OF THE RATIFICATION OF INTERNATIONAL AIR LAW INSTRUMENTS

5.1 The 33rd Session of the Legal Committee (Montréal, 21 April – 2 May 2008) assigned this subject priority No. 5 in its General Work Programme. The item was retained in the Work Programme with the same priority by the 37th Session of the Assembly (28 September – 8 October 2010) and is currently item No. 6 of the Work Programme, pursuant to the decision of the Council on 2 November 2012 to re-prioritize another item.

5.2 Since the 34th Session of the Legal Committee (Montreal, 9-17 September 2009) there have been important developments in the treaty area.

5.3 A Diplomatic Conference in Beijing, convened under the auspices of ICAO, from 30 August to 10 September 2010, adopted the *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* (Beijing, 2010) (Beijing Convention); and the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft* (Beijing, 2010) (Beijing Protocol). ICAO is their depositary. As of the date of the writing of this paper, the Beijing Convention had been signed by 26 States, ratified by 3 and acceded to by 1; and the Beijing Protocol had been signed by 28 States, ratified by 3, and acceded to by 1. To assist States in becoming parties to these treaties, administrative packages have been developed and transmitted by a State letter and placed in the Treaty collection on the ICAO website.

5.4 The Treaty Collection on the ICAO public website has been maintained, providing information such as current lists of parties to multilateral air law treaties; the status of individual States with regard to multilateral air law treaties; a composite table illustrating the status of treaties and status of States vis-à-vis treaties; administrative packages to assist states in becoming parties to treaties; assembly resolutions related to ratification matters; and current information and recommendations on ratification matters. All depositary actions are promptly reflected in a chronological record on the website.

5.5 There is continued emphasis on ratification matters by the President of the Council and the Secretary General and other ICAO officials during their visits to States. In this context, it is worth noting that pursuant to Assembly Resolution A37-22, Appendix C, ICAO Member States which so far have not done so were urged to ratify in particular the Montreal Convention of 1999, the Cape Town instruments of 2001, the two Montreal Conventions of 2009 and the 2010 Beijing Convention and Beijing Protocol as soon as possible. The importance of broadening and strengthening the global aviation security regime by ratifying the two Beijing instruments and the importance of universal adoption of the Montreal Convention were expressly recognized by the Assembly in Assembly Resolutions A37-23 and A37-24 respectively. LEB provides briefs for these missions, indicating the instruments remaining to be ratified and specifying their priority. LEB promotes ratification at legal seminars, during personal deposits by State officials, Assembly sessions and other ICAO meetings.

6. CONSIDERATION OF GUIDANCE ON CONFLICTS OF INTEREST

6.1 This item was introduced to the Work Programme on the basis of a proposal contained in a working paper presented to the Assembly (A37-WP/80) which invited the Assembly to add the topic “Consideration of Guidance on Conflicts of Interest” to the Work Programme of the Legal Committee. The said working paper expressed the view that reasonably consistent rules across the sector to establish and preserve a clear separation between civil aviation authorities and the activities that they oversee were desirable. In the given context, it was suggested to consider the conflicts of interest situations in three distinct areas: 1) financial interests in regulated entities; 2) the movement of individuals from positions in government to industry and vice versa; and 3) the practice of designating or seconding personnel to carry out oversight functions on behalf of the Civil Aviation Authority. The consideration of these elements was deemed appropriate with a view to fostering the objective, disinterested exercise of regulatory responsibilities. The Legal Committee was invited to develop recommendations, if necessary and appropriate, for guidance material to be adopted by the Organization.

6.2 LEB will initiate a study on this item during the last quarter of 2013. States will be requested to complete a survey on the treatment of conflicts of interest in their respective jurisdictions. Further steps, including the convening of a special study group, will be considered depending on the results of the survey.

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