



LEGAL COMMITTEE – 35TH SESSION

(Montréal, 6 – 15 May 2013)

Agenda Item 7: Report on work done at the Session

DRAFT REPORT ON THE WORK OF THE LEGAL COMMITTEE DURING ITS 35TH SESSION

1. The attached paragraphs 3:1 to 3:6 of the draft Report of the Legal Committee relate to Agenda Item 3.

— — — — —

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

3:1 The Secretariat introduced LC/35-WP/3-2-Revised (*Safety Aspects of Economic Liberalization and Article 83 bis*) which reported on the status, and assistance with the implementation, of Article 83 *bis* of the Chicago Convention, in particular, the development by ICAO of guidance material to assist States with implementation, the revelation under the ICAO Universal Safety Oversight Audit Programme (USOAP) that 68% of the States Parties to Article 83 *bis* have not modified their primary aviation legislation, regulations and procedures to account for transfers of duties and responsibilities as envisaged by the Article, the low number of registered Article 83 *bis* agreements with ICAO, and the raising of this item's priority by the ICAO Council to No. 3 on the General Work Programme of the Legal Committee. The Committee was invited to consider the working paper and endorse three conclusions: first, States whose constitutional systems in principle require high-level authority for signing agreements under Article 83 *bis* should consider the possibility of signing umbrella agreements to provide for delegation of authority at lower level for concluding such agreements; second, while Article 83 *bis* implementing agreements must be registered with ICAO, third states may be officially advised of any agreement by any State Party to such agreement by way of direct notification as per paragraph b) of Article 83 *bis*; and third, given ICAO's progressive establishment of its Aircraft Registration System (ARS) and Air Operator Certificate (AOC) system which should prove useful to accurately identifying the respective State of Registry and State of the Operator for specific aircraft, consideration should be given to the possible utility of an electronic interface between those systems and the database of aeronautical agreements and arrangements (DAGMAR).

3:2 The Chairman proposed to establish a **small group to deal with the safety aspects of economic liberalization and Article 83 bis** with a mandate to consider the working paper and its conclusions. The group, which would meet when the plenary and drafting groups are not in session, would report to the Committee during the second week of the Session. The Chairman named the group as follows: Canada, France, Jamaica, the Netherlands, Nigeria, Singapore, South Africa, the United States and IATA; it would be chaired by Mr. J. Thachet (Canada). The Chairman stressed that this was not a closed group and invited other delegations and observers to participate.

3:3 The Chairman of the Working Group later presented the Group's report, which is reproduced in **Appendix E**. The Report concluded that there are no legal issues per se with Article 83 *bis* or the draft agreement proposed by ICAO in its Circular 295, but that resulting legal issues may arise in the implementation of Article 83 *bis* due to a lack of understanding of some member States as to the applicability of Article 83 *bis* and the nature of leasing. The report offered the following recommendations:

- i) That the Secretariat could review ICAO Circular 295 to determine whether changes are necessary to address some key questions, such as the voluntary nature of these agreements; when these various aircraft lease and/or interchange agreements implicate Article 83 *bis*; whether agreements for transfer of aircraft from one State to another State on a short term basis involve (or necessitate) a transfer of State of Registry responsibilities under Article 83 *bis*; the legal implications for each State of entering into an Article 83 *bis* Agreement, etc.;
- ii) That a Task Force be formed with appropriate ICAO Secretariat personnel and representatives from the Legal Committee with expertise in dealing with Article 83 *bis* Agreements to assist in revising ICAO Circular 295 and also to better educate Member States on the applicability of 83 *bis* Agreements;

iii) On this issue of registration:

- a) That the registration of agreements that do not involve a transfer of State of Registry responsibilities might be addressed by educating Member States as to the application of Article 83 *bis* and the purpose and effect of registering these agreements with ICAO; *and*
- b) With respect to delays in registration, that—subject to availability of resources—ICAO consider the option of developing a web based registry where Member States can input information and upload agreements themselves electronically rather than sending the agreement to ICAO to complete the registration process;
- iv) That when regional conferences are held, ICAO consider including Article 83 *bis* as an agenda item and promote the relevance of these agreements to Member States.

3:4 Following this presentation, the Chairman opened the floor to questions, of which there were none; whereupon the Chairman called for the Committee to voice any opposition to the recommendations made by the Working Group in its report. As to recommendation i), there was no objection and it was deemed adopted by the Committee. In the ensuing discussion of recommendation ii), one delegation proposed that the Legal Committee draft a model Article 83 *bis* agreement to assist States with implementation. The Chairman noted that ICAO Circular 295 contained a model agreement and that the need to update that model agreement would be part of the Secretariat's review of the Circular pursuant to recommendation i). A second delegation questioned whether Article 83 *bis* agreements were required to be "treaty-level" agreements. The Chairman pointed out that Article 83 *bis* referred to the word "agreement", and that such an arrangement is an exchange of rights and obligations between States and how this was accomplished was a matter of national law. Recommendation ii) was adopted by the Committee.

3:5 The Chairman next called for the Committee to voice any opposition to recommendations iii) and iv) and, noting no objections, declared them adopted. One delegation then took the floor and proposed that the Secretariat offer a programme on Article 83 *bis* during the upcoming 38th Session of the Assembly, subject to the availability of resources and its feasibility, in light of the limited time available to plan such an event. A second delegation requested that Recommendation iv) assumed that a regional conference had already been scheduled and called upon the Secretariat to schedule a legal seminar at the regional level. The Secretary invited delegates to urge their States to host regional conferences, noting that the Legal Affairs and External Relations Bureau (LEB) did not have the budget to finance these events. The Chairman also intervened and lauded LEB support for a recent conference in Warsaw that was funded by the CAA of Poland. Finally, one delegation requested that the recommendations of the Working Group be amended to include the development of a draft model clause for the delegation of Article 83 *bis* authority for use in bilateral air transport/air service agreements. Here again, the Chairman noted this proposal would be considered as part of the Secretariat's review of ICAO Circular 295 pursuant to recommendation i).

3:6 Next, the Secretary presented LC/35-WP/3-1, *Consideration of other Items on the General Work Programme of the Legal Committee* describing recent progress made on the items on the General Work Programme of the Legal Committee. The Committee had no comments.