



## **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 material comprises the draft Report of the Legal Committee on the Organization of the Meeting.
2. Subsequent material comprising the draft Report of the Legal Committee will be issued as subdivisions of LC/35-WP/7.

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## 1. Place and Duration

1.1 The 35th Session of the Legal Committee was held at Montréal from 6 to 15 May 2013. The Acting Chairman of the Legal Committee, Mr. Michael Jennison (United States), presided over the Session.

## 2. Opening addresses

2.1 The meeting was declared open by **the Acting Chairman of the Legal Committee. The First Vice-President of the Council**, Mr. Dionisio Méndez Mayora, welcomed all delegates and observers on behalf of the Council, its President and the Secretary General. He recalled the very proud history of the Legal Committee, established in 1947 during the first Assembly, in the development and codification of international air law. He highlighted that the Legal Committee had prepared the adoption of twenty two international air law instruments, noting in particular the *Convention on Offences and Certain Other Acts Committed on Board Aircraft* signed in Tokyo in September 1963. The Tokyo Convention, to be the subject of discussions in the current session, is one of the most widely ratified international instruments ever developed under the ICAO auspices, with 185 States parties.

2.2 Even though the Tokyo Convention enjoys nearly universal acceptance, he noted that this instrument is 50 years old which may call for review of its adequacy, especially in light of the significant increase of incidents involving unruly or disruptive passengers on board aircraft. He reminded that, to address this issue, the Council established in 1997 a Secretariat Study Group on Unruly Passengers. In view of the Group's reported work, the Assembly adopted in 2001 Resolution A33-4: *Adoption of National Legislation on Certain Offences Committed on Board Civil Aircraft (Unruly/Disruptive passengers)*, setting forth model legislation. Pursuant to this Resolution, guidance material was developed on the legal aspects of unruly/disruptive passengers, in the form of ICAO Circular 288 published in 2002.

2.3 However, as incidents of unruly and disruptive behaviors continued to rise, the Secretariat Study Group on Unruly Passengers was re-activated in 2001 as per Council's decision. The Group identified a number of legal issues which needed to be addressed by the international community, and recommended that a Sub-Committee of the Legal Committee be established to prepare a draft text to modernize the Tokyo Convention. A report was produced by the Rapporteur and considered by the Special Sub-Committee which met in May and December 2012 and recommended that any amendment to the Tokyo Convention be made through a supplementary protocol, on the basis of a draft text.

2.4 The draft text prepared by the Sub-Committee for consideration by the Legal Committee contains options and brackets as issues remain to be resolved, principally: the State of the Operator and State of landing jurisdictions although it remains undetermined if such jurisdictions should be optional or mandatory; the text does not include a list of offences although proposals were made in this respect. He expressed his high expectations on the work of the Legal Committee and placed great confidence in the Legal Committee in the fulfillment of its tasks. If the draft supplementary protocol prepared by the Committee is deemed sufficiently mature, the next step would be for the Council to convene a Diplomatic Conference to finalize and adopt the text.

2.5 The **Acting Chairman of the Legal Committee** expressed his thanks to the First Vice-President for his clear, complete and concise remarks. He announced that in view of the subject under Item 3 dealing with Safety aspects of economic liberalization and Article 83 *bis*, he intended to take up on the second day of the session the related Secretariat paper LC/35-WP/3-2 and appoint a small group to deal with this question which would report to the Committee in the course of the second week.

2.6 He then referred to the principal purpose of the current session, i.e. the proposal to amend the Tokyo Convention of 1963 as unruly passengers were not a foremost consideration 50 years ago. He recognized, with reference to the development of the 2010 Beijing instruments, that acts of unruly behavior were not as consequential as acts of unlawful interference, but noted that they happen more often which required finding reasonable solutions to issues faced, with consensus and attention to ratifiability considering that the underlying treaty, the Tokyo Convention, was widely ratified.

### 3. **Agenda and Working Arrangements**

3.1 The Committee agreed with the provisional agenda shown in LC/35-WP/1-1. The agenda of the Session as adopted can be found at **Appendix A** to this Report.

3.2 The working papers considered by the Committee are listed by agenda items in **Appendix B** to this Report.

3.3 The action taken by the Committee in respect of each item is reported on separately in the Report. The material is arranged according to the numerical sequence of the agenda items considered by the Committee.

### 4. **Meetings**

4.1 The Committee held [...] meetings, all of which were held in open sessions.

4.2 The Secretary of the Committee was Mr. J.V. Augustin, Acting Director of the Legal Affairs and External Relations Bureau. Mr. B. Verhaegen, Senior External Relations and Legal Officer, and Dr. J. Huang, Senior Legal Officer were Deputy Secretaries. Dr. R. Abeyratne, Senior Legal Officer, Messrs A. Jakob, A. Opolot and C. Petras as well as Ms. M. Weinstein, Legal Officers, were Assistant Secretaries. Other officials of the Organization also provided services to the Committee.

### 5. **Representation of States and International Organizations**

5.1 [...] Member States and [...] international organizations were represented by [...] representatives and observers at this Session of the Legal Committee. The names of the representatives and observers appear in **Appendix C** to this Report.

### 6. **Records of Proceedings**

6.1 The Committee decided that in application of Rule 45 of its Rules of Procedure, the minutes of the 34th Session need not be prepared.