Agenda Item 2: Consideration of the General Work Programme of the Legal Committee

Processes and procedures for States to fulfil their obligations under Article 12 of the Chicago Convention

2:1 The Committee considered LC/40-WP/2-5, *Processes and Procedures for States to fulfil their Obligations under Article 12 of the Chicago Convention*, presented by the Chairperson of the Article 12 Task Force (A12 TF) [1] and which contained in its Appendix the Report of the A12 TF. Many delegations expressed their appreciation to the A12 TF for the preparation of its Report, commending the substantial work undertaken in addressing this complex and long-standing issue. The Committee endorsed the Report of the A12 TF, noting that it would provide States with a useful, consolidated reference on Article 12 and its implementation.

2:2 One delegation emphasised that reference to "rules and regulations relating to the flight and maneuver of aircraft" in Article 12 of the Chicago Convention relates to the Standards set out in Annex 2 – *Rules of the Air* to the Chicago Convention, unless the Council designates other Rules of the Air; and that the term "prosecution" can include administrative, civil or compliance-based measures and not only criminal proceedings.

2:3 With reference to the illustration on the *Categorization of Airspace under UNCLOS and the Chicago Convention* appearing in Appendix D of the Report of the A12 TF, and its application to Exclusive Economic Zone (EEZ), one delegation highlighted the need to clarify where such a zone begins. Another delegation clarified that the term "high seas" as used in Article 12 of the Chicago Convention refers to waters beyond the territorial waters and differs from its use in the *United Nations Convention on the Law of the Sea* (Montego Bay, 1982) (UNCLOS).

2:4 As for the proposed web-based tool for the purpose of exchanging information in the context of Article 12 of the Chicago Convention, a number of delegations were of the view that ICAO was best placed to host such a tool and that it should be launched as soon as possible. Some delegations stressed the need for the responsible use of data collected through the tool, while another delegation stressed that the tool should remain facilitative and non-binding.

2:5 One delegation stressed the fact that the use of the tool should not replace due process within the national legal framework. In response, the Chairperson indicated that the tool only aims to facilitate communication and follow-up between States.

2:6 The Committee endorsed the recommendations set out in LC/40-WP/2-5, including that the Report of the A12 TF be made available to States, International Organizations, and relevant aviation stakeholders, as informative and practical guidance.

2:7 The Committee also took note of the information contained in LC/40-WP/2-12, *Processes and Procedures for States to Fulfil their Obligations Under Article 12 of the Chicago Convention*, presented by the Latin American Association of Air and Space Law (ALADA). Some delegations highlighted the proposal in LC/40-WP2-12 for the future use of the tool to enhance safety and prevent deviations from the rules and regulations relating to the flight and maneuver of aircraft. The same proposal is also reflected in working paper LC/40-WP2-5, paragraph 4.1 d), among the recommendations endorsed by many delegations.

[1] Dr. Jonathan Aleck (Australia).

International carriage by air and data protection law

2:8 The Secretariat presented LC/40-WP/2-2 (Revision No. 1), which reported on the work undertaken by the Secretariat and the SSG-DPL, including the legal survey on data protection laws in international air carriage. The key conclusions on the outcome of the legal survey on data protection laws in international air carriage and recommended action identified by the SSG-DPL was appended to the working paper. A large number of delegations that took the floor expressed support for the paper and appreciation for the work undertaken. One delegation that took the floor questioned the practicality of developing non-binding guidance material, noting that protection of personal data extends beyond international civil aviation and that State sovereignty must be respected. The Committee noted the progress made on this item of the General Work Programme and supported the recommended actions, including the development of non-binding guidance material, while acknowledging that the regulation of data protection falls within the sovereign competence of each State's national legal framework.

2:9 With reference to the working paper LC/40-WP/2-8, presented by IATA, the Committee noted the international air transport-specific considerations and recommendations presented in the paper and expressed support for taking them into account, as appropriate, in the development of guidance material by the SSG-DPL. One delegation expressed the view that there is a need to develop a platform by ICAO, accessible to all Member States, to facilitate the compilation of information on laws, regulations and best practices from States. The Secretariat clarified that the SSG-DPL would consider the suggestion for a digital platform as part of its assessment and determine the appropriate way forward.

Promotion of the ratification of international air law instruments

2:10 The Secretariat presented LC/40-WP/2-1 which reported on activities related to items 4 and 5 of the General Work Programme of the Legal Committee, during and since the 42nd Session of the Assembly. The paper highlighted the importance of item 4 especially in light of the Assembly's affirmation that ratification contributes significantly to the advancement of the rule of law consistent with the new Strategic Goal: The International Civil Aviation Convention and other Treaties, Laws and Regulations address all Challenges. The paper further described the prioritization of eight key treaties, namely the 2016 Protocols Amending Articles 50(a) and 56 of the Chicago Convention, the Montreal Convention 1999, the Beijing instruments 2010, the Montréal Protocol 2014 and the Protocols on the Final Paragraphs regarding the Arabic and Chinese Language Texts of the Chicago Convention. The Committee was informed of the convening of activities with respect to ratification of international air law treaties and their success and of future activities.

2:11 ALADA presented LC/40-WP/2-10 which proposed the introduction of preparatory working arrangements to complement activities aimed at promoting ratification and facilitating the participation of States in international air law instruments.

2:12 All the delegations who took the floor expressed support and appreciation for the Secretariat's ongoing efforts to promote the ratification of international air law instruments, with some delegations emphasizing ratification as vital for international civil aviation and expressing concern that a lack of ratification gives rise to a patchwork of treaty application. A few delegations noted the challenges which arise at the domestic level in advancing ratification, particularly with respect to competing legislative priorities and the length of time needed for the ratification process. Various delegations suggested that more targeted assistance from ICAO would be beneficial to States by exploring different legislative approaches and by providing model legislation, especially with respect to small island Member States. One delegation averred that guidance on the procedure for becoming party to a treaty should be more nuanced as some States are constrained in their legal systems from "ratification", and instead will 'accede', 'accept' or 'approve' a treaty.

2:13 Noting its hosting of the inaugural air law treaty workshop in 2023, one delegation proposed that States who have ratified a large number of the air law treaties mentioned in LC/40-WP/2-1 should consider sharing their expertise with States who require assistance with their ratification processes. Another delegation urged States to consider hosting international air law treaty workshops, citing its own valuable experience of doing so earlier this year.

2:14 Several delegations reported that their States were in the process of ratifying one or more of the key treaties mentioned in LC/40-WP-2-1. One delegation reiterated its longstanding position regarding the Montréal Protocol 2014, citing the impediment to its ratification given, among other things, its provisions on in-flight security officers. Another delegation emphasized its recently revised Civil Aviation Law which aligns with relevant international air law treaties, in particular the Montreal Convention 1999 and the harmonization of the liability regime.

2:15 With regard to LC/40-WP/2-10 presented by ALADA, the Committee noted the paper and its impetus to explore the introduction of preparatory working arrangements or consultations to complement existing activities aimed at promoting ratification and facilitating the participation of States in international air law instruments.

2:16 In summing up, the Chairperson cited the appreciation expressed by delegations for the work carried out by the Legal Affairs and External Relations Bureau (LEB), particularly its continuous and productive contributions aimed at promoting the ratification of international air law treaties. She remarked on the Committee's support of the efforts by States to host treaty-ratification workshops, legal seminars, and international air law courses in their respective regions and urging of the continued application of these efforts, including the future activities outlined in paragraph 5 of LC/40-WP/2-1. The Chairperson noted several delegations' emphasis that the ratification of international civil aviation treaties remains essential to ensuring regulatory harmonization, legal certainty, and the effective implementation of obligations arising from the Chicago Convention and related instruments. However, persistent challenges remain with the domestication and accommodation of these treaties within national legal systems, including institutional constraints, the complexity of domestic legislative procedures, and the need for improved coordination among governmental entities. In this context, she reiterated the delegations' underscoring the importance of enhancing cooperation and promoting capacity-building activities and technical events as key mechanisms to support States in overcoming these challenges.

Acts or offences of concern to the international aviation community, including cyber threats, that may not be adequately covered by existing air law instruments

2:17 The Committee noted paragraph 4 of LC/40-WP/2-1, and the ongoing work of ICAO with respect to Item 5 of the General Work Programme of the Legal Committee entitled "Acts or offences of concern to the international aviation community, including cyber threats, that may not be adequately covered by existing air law instruments". The Committee was apprised of the fact that a legal survey to assess the application of international treaty provisions in national legal framework on cyberthreats to aviation security will be launched soon.

2:18 The Committee also considered LC/40-WP/2-7, presented by South Africa, which highlighted challenges concerning attribution, jurisdiction, enforcement, liability and compensation in relation to cyber incidents affecting civil aviation and called for continued assessment of the international legal framework and noted LC/40-WP/2-13, presented by ALADA, which emphasized the interpretation and effective implementation of existing instruments and the examination of jurisdiction and international cooperation.

2:19 A number of delegations also emphasized the importance of the Beijing Convention and Beijing Protocol 2010 in addressing cyber threats against international civil aviation and urged their ratification.

2:20 Many delegations supported the continuation of the work relating to assessing the applicability of existing international air law instruments to cyber threats against international civil aviation. One delegation suggested that the analysis should take account of the *United Nations Convention against Cybercrime* (2024) and the *Budapest Convention on Cybercrime* (2001). The delegation highlighted, among other things, the need for coordination with the relevant technical bodies, avoidance of duplication of work, respect for States' domestic legal frameworks and implementation capacities, and the protection of sensitive operational and cybersecurity information. Another delegation noted that any additional international legal measures should be informed by the results of the assessment.

2:21 Some delegations expressed reservations that the proposed scope of work set out in LC/40-WP/2-7 appeared to fall beyond the mandate and expertise of the Legal Committee. Another delegation did not support further work by the Committee to assess additions to the international legal framework, considering that existing international law is adequate to address cyber threats.

2:22 One observer underscored the importance of cybersecurity to airlines, while noting that the liability and compensation issues raised in paragraph 2.9 of LC/40-WP/2-7 fell outside the scope of the item under discussion. Another observer highlighted the protection of operational data and potential implications for flight crew.

2:23 Recalling Assembly Resolution A42-19, the Secretariat clarified that the issues raised could be addressed through ongoing ICAO work on cybersecurity and the planned States' survey as well as by achieving broader adherence to the Beijing Convention and Beijing Protocol 2010.

2:24 The Committee supported continued assessment of the international legal framework in relation to cyber threats against civil aviation and also highlighted the desirability of continuing to promote the ratification and effective implementation of applicable international air law instruments, including the Beijing Convention and Beijing Protocol 2010.

International legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation

2:25 The Secretariat presented LC/40-WP/2-4 on the work of the Study Group on Legal Issues related to Pilotless Aircraft (SSG-LIPA), and its subgroups, including the legal analysis of selected provisions of the Chicago Convention contained in the Appendix to the paper. The Committee welcomed the progress achieved and expressed strong support for the continuation of the work. Considering the work of the SSG-LIPA, several delegations reiterated the need for the urgent development of an interim framework to address pilotless aircraft operations over the high seas that fall outside the scope of Annex 6, Part IV. A few delegations emphasized the importance of the work of the newly formed Terminology Subgroup in addressing inconsistencies in terminology and supporting the ongoing technical work by promoting consistency.

2:26 With regard to LC/40-WP/2-9, presented by the Dominican Republic, the Committee noted the information provided on legal issues relating to UAS and AAM. The Committee noted that several of the matters raised are already being addressed, or are planned to be addressed, within the work programme of SSG-LIPA and other relevant ICAO bodies and encouraged continued coordination among the relevant bodies to ensure a consistent legal approach.

2:27 With regard to LC/40-WP/2-11, presented by ALADA, the Committee noted that the issues raised concerning the applicability of international liability instruments to pilotless aircraft operations may be considered within the ongoing work programme of the SSG-LIPA Liability and Security Subgroup.

Legal review of the analysis completed by the Air Transport Regulation Panel of the Application of Article 15 of the Chicago Convention

2:28 On behalf of the Chairperson[2] of the Secretariat Study Group on Article 15 (SSG-A15), the Vice-Chairperson[3] of the SSG-A15 presented LC/40-WP/2-6. It was recalled that during its 42nd Session (Montréal, 23 September to 3 October 2025), the Assembly had added a new item to the General Work Programme of the Legal Committee titled "Legal review of the analysis completed by the Air Transport Regulation Panel (ATRP) on the application of Article 15 of the Chicago Convention". Under this new Item, the Committee was tasked to undertake, with a target completion date of 2026, a legal review of the analysis completed by the ATRP, comprising the following three draft documents: i) Draft Guidance Material on Article 15 of the Chicago Convention; ii) Draft State Letter to Contracting States clarifying obligations under Article 15; and iii) Draft Process for the ICAO Council to review representations by interested Contracting States concerning charges imposed by other States for the use of airports and other facilities. It was explained that to facilitate the work, the SSG-A15 had been established in January 2026, comprising legal experts nominated by invited Contracting States, representatives of one International Organization and relevant ICAO Panels. The SSG-A15 held a series of virtual meetings between March and July 2026 during which it examined the ATRP draft documents with a view to ensuring their consistency with Article 15 of the Chicago Convention. It was further explained that LC/40-WP/2-6 contained the report of the deliberations, conclusions and recommendations of SSG-A15 to which were appended revised and annotated versions of the ATRP draft documents reflecting the revisions proposed by the SSG-A15 further to the legal review.

2:29 Several delegations expressed appreciation for the work undertaken by the SSG-A15 noting that although the SSG-A15 had a relatively short period of time at its disposal to complete the legal review as requested by the Assembly, this had not adversely affected the depth, rigour and quality of the legal review.

2:30 One delegation expressed strong objections to the conclusions and recommendations of the SSG-A15 as reflected in LC/40-WP/2-6. In that delegation's view, the SSG-A15's conclusions suggested that the granting by a State to a foreign air carrier of rights to operate transit flights through its territory, subject to that foreign air carrier concluding a commercial agreement involving certain financial obligations with a national air carrier of that State, constituted a violation of Article 15 of the Chicago Convention. That delegation felt that such an interpretation of Article 15 was unjustifiably broad and inconsistent with the general rules of treaty interpretation set out in Article 31 of the 1969 Vienna Convention on the Law of Treaties. In that regard, the delegation stated that inasmuch as Article 15 prohibited a State from imposing fees, dues or other charges for the right of transit through its territory, commercial agreements concluded by air carriers in connection with the exercise of first freedom of the air rights are, in substance, aimed at the redistribution of revenues between air carriers and, therefore, do not constitute payment of any charges to the State, much less dues or taxes. Additionally, the delegation noted that while Article 15 concerned charges imposed by the State, commercial agreements concluded by air carriers in connection with the granting of transit-flight rights through the territory of a State involved the performance by one air carrier of financial or contractual obligations towards its counterparty, namely another air carrier, which is a commercial organization and an independent economic entity, and not a State. The delegation proposed

[2] Ms. Lena-Maria Gaese (Germany).
[3] Ms. Maria Makalla Memba (Tanzania).

that the interpretation of Article 15, like any other international treaty, should be carried out first and foremost by its parties, namely the States themselves, rather than by the SSG-A15, in whose work at delegation was not invited to participate. Considering the foregoing, the delegation urged the Committee to refrain from adopting the recommendations of the SSG-A15 at this stage or, alternatively, only to endorse the recommendations in an amended format without reference to the above-mentioned interpretation of Article 15.

2:31 One delegation, supported by other delegations, considered that the SSG-A15's suggestion that cost-relatedness stemmed from Article 15 and therefore applied to airport charges exceeded the scope of Article 15 and raised broader issues. In supporting that view, one observer noted that the originating request from the Assembly to the Legal Committee related to the application of Article 15 in the context of airspace access issues. The observer noted that *ICAO's Policies on Charges for Airports and Air Navigation Services* (Doc 9082) is a comprehensive document reflecting decades of careful balancing between users, providers, and States including principles related to cost recovery. In that observer's view cost relatedness is fundamentally an economic principle which should not be transformed into a legal obligation under Article 15. Its interpretation and implications for user charges should require formal opinions from the Airport Economics Panel and Air Navigation Services Economics Panel (AEP-ANSEP).

2:32 Several delegations clarified that cost-relatedness did not equate to cost recovery.

2:33 One delegation supported by a few others proposed editorial amendments to the revised draft material to ensure consistency with Article 5 of the Chicago Convention. As an additional proposal for amending the revised draft material, one delegation highlighted that with regard to uniform conditions, comparisons should be between national and foreign aircraft rather than between aircraft of any other Contracting State. It also expressed the view that the SSG-A15's deletion of the word "scheduled" from paragraph 2 of chapter 3 of the ATRP draft guidance material could diminish the importance of Article 5.

2:34 A few delegations expressed the view that, in order to ensure legal clarity, further refinements could be made to the ATRP draft documents and that, considering ICAO's "No Country Left Behind" principle, additional time should be allowed for the examination of all salient issues requiring the Committee's consideration, prior to the finalization of the SSG-A15's work noting that this would ensure broader involvement of States that had not participated in the legal review.

2:35 One delegation highlighted the need to separate the Council's review process under Article 15 from its dispute resolution function under Article 84 of the Chicago Convention, noting that the absence of such separation would create parallel legal avenues for States. The delegation proposed that a clause providing for a partially sequential mechanism be included, in order to prevent a State from relying on the review process under Article 15 when the same matter was already pending before the Council under Article 84.

2:36 In summarizing the discussions, the Chairperson of the Committee observed that a clear majority of States and one Observer expressed support for the legal review undertaken by the SSG-A15 of the analysis completed by the ATRP of the application of Article 15 of the Chicago Convention endorsing the conclusions and recommendations of the SSG-A15. The outcomes of SSG-A15 draw a clear distinction between the binding obligations under the Convention and ICAO policies. The Chairperson also mentioned that a majority of the delegations had expressed the view that the mandate of the Legal Committee had been properly fulfilled, while recognizing that further technical work on the draft documents could be undertaken in other fora. However, as also noted in the summary of the discussions by the Chairperson, some delegations had expressed the view that further consideration should be given to the matter within the Legal Committee.

2:37 In line with the Report from the SSG-A15, some delegations also stated that it is for the Council to decide on the need for a stand-alone procedure for the review by the Council of representations made under Article 15. Some delegations took the floor to clarify that the SSG-A15 had conducted a legal review of the procedure proposed in the draft documents and highlighted the legal principles that need to be considered if the Council should decide to have a dedicated procedure.

Review of the Role of the International Explosives Technical Commission under the *Convention on the Marking of Plastic Explosives for the Purpose of Detection*

2:38 The Committee considered the review of the role of the International Explosives Technical Commission (IETC) under the *Convention on the Marking of Plastic Explosives for the Purpose of Detection* (MEX Convention) on the basis of the Final Report of the Rapporteur and LC/40-WP/2-3, containing the report of the Friends of the Chairperson Group (FCG). The Rapporteur concluded that there were insufficient legal, institutional and evidentiary grounds at this stage to amend the MEX Convention with a view to redefine the mandate of the IETC or to terminate it and recommended maintaining the existing treaty framework. Reference was also made in this regard to Assembly Resolution A35-2 concerning the application of Article IV of the MEX Convention.

2:39 The FCG similarly considered that it would be premature to terminate or redefine the IETC and concluded that Article V of the MEX Convention did not require the Council to undertake appointments every three years, and that such appointments could be made on a needs-based basis. LC/40-WP/2-3 accordingly proposed amendments to the draft Assembly Resolution appended to the Rapporteur's Report and which was intended to clarify the Council's discretion regarding the appointment of IETC members.

2:40 The Committee commended the substantial work undertaken by the Rapporteur and the FCG and the considerable progress achieved within a short period of time. A clear majority of the delegations that took the floor supported the conclusions and recommendations contained in LC/40-WP/2-3. They considered that a practical and proportionate approach was preferable to a formal amendment of the MEX Convention and supported needs-based appointments to the IETC and the proposed Assembly Resolution as a means of providing greater clarity while preserving the existing treaty framework. They further considered that Article V prescribes the term of office of members once appointed but did not expressly require the Council to undertake a full appointment process at fixed three-year intervals. It was emphasized that the proposed Assembly Resolution would not introduce new requirements or modify the rights or obligations of States Parties under the MEX Convention but would serve to provide transparency regarding the Council's approach to the application of Article V.

2:41 A few delegations expressed a different view, arguing that Article V of the MEX Convention, read as a whole, established the IETC as a standing commission and did not provide the Council with the discretion to appoint its members only as and when required. They considered that the legally appropriate means of providing such flexibility would be by amending the MEX Convention. Those delegations questioned the legal basis for an Assembly Resolution interpreting the MEX Convention and did not favour any interpretation that would effectively amend it without following a formal amendment process.

2:42 In response, the Chairperson clarified that the proposed Assembly Resolution would not in itself amend the MEX Convention but would confirm the approach taken by the Council regarding the appointment of IETC members and promote awareness and a common understanding of that approach among States. The Chairperson also recalled that the issue before the Committee concerned the appointment of members rather than the frequency of meetings of the IETC, which had already been decided by the Council in 2011.

2:43 In summing up, the Chairperson noted that most delegations that had taken the floor favoured recommending the adoption of an Assembly Resolution concerning the application of the provisions of the MEX Convention with respect to the appointment of IETC members, while a few delegations considered that an amendment of the Convention was the appropriate way forward. The Chairperson also noted the strong objection expressed by some delegations concerning the mandate of the Assembly to interpret provisions of the MEX Convention. The Committee recommended that the Council endorse the text of the draft Assembly Resolution contained in the Appendix to LC/40-WP/2-3.