



A40-WP/597
LE/16
28/9/19

ASSEMBLY — 40TH SESSION
LEGAL COMMISSION

DRAFT TEXT FOR THE REPORT
ON
AGENDA ITEMS 37 & 38

The attached material on Agenda Items 37 and 38 are submitted for consideration by the Legal Commission.

Agenda Item 37: Annual Reports of the Council to the Assembly for 2016, 2017 and 2018

37:1 The Commission noted the chapters of the Annual Reports of the Council to the Assembly for the years 2016, 2017 and 2018 as well as the Supplement for the first half of the year 2019 which had been referred to it by the Plenary.

Agenda Item 38: Work Programme of the Organization in the legal field

38:1 The Commission considered this item on the basis of A40-WP/78, presented by the Council, A40-WP/101, presented by Brazil and the United States and A40-WP/293 presented by IATA. The Commission noted Information Papers A40-WP/375 presented by the Republic of Korea and A40-WP/545, presented by Indonesia.

38:2 A40-WP/78 provided information to the Assembly regarding the on-going work of the Organization in the legal field and an overview of the developments and relevant decisions taken by the Council and the Legal Committee since the previous session of the Assembly in relation to the items on the General Work Programme of the Legal Committee, including the prioritization of items. The Secretariat further informed the Commission of the outcome of the review of the liability limits of the Montreal Convention of 1999 and drew the Commission's attention to the fact that the revised limits would become effective for all States Parties as of 28 December 2019. A large number of delegations expressed support for A40-WP/78 and appreciation for the work of the Legal Affairs and External Relations Bureau (LEB), as well as the work of the Legal Committee and the working groups.

38:3 The delegation of Brazil presented A40-WP/101, which was co-sponsored by the United States, concerning Article 12 of the Chicago Convention and the need for a communication mechanism and guidelines to support its implementation. Noting that the prompt notification and communication of alleged violations of aviation rules is necessary for States to fulfill their enforcement obligations under Article 12 and will enhance safety, the delegation concluded by proposing that the Legal Commission request the Council to create a legal and technical working group under the Legal Committee to study mechanisms to support the implementation of Article 12.

38:4 When the Chairperson opened the floor for discussion, the first delegation to take the floor expressed support for A40-WP/101 overall, but stated the proposal required further refinement and clarification, to include consideration of rules of the air violations over the high seas, and incorporation of the *just culture* concept. The remaining delegations taking the floor all offered support for the paper, but with the caveat that consideration of mechanisms to support implementation of Article 12 take into account the *just culture* concept. Following an intervention by the Director of LEB, which highlighted the advantages of Secretariat formed groups from both a budgetary perspective and as a means of interfacing with technical bodies working on the same or similar issues, several delegations expressed support for the creation of a Secretariat group or task force to address Article 12 implementation mechanisms.

38:5 The Commission thereafter unanimously supported the addition of the subject "Processes and Procedures for States to fulfill their obligations under Article 12" as a new Item 3 to the General Work Programme of the Legal Committee. However, in view of existing priorities funded through the 2020-2022 budget and the lack of extra budgetary resources, the Commission agreed that work on this item could proceed with the establishment of a multi-disciplinary Secretariat group or task force.

38:6 IATA presented A40-WP/293. It stated that the Montreal Convention of 1999 represented a modern and effective liability regime which delivered significant benefits for passengers and shippers. It highlighted the benefits not only for the travelling public but also for global trade through its facilitation of the use of electronic documents of carriage. IATA remarked that 14 additional States had ratified the

instrument in the period since the last Assembly and noted that 98 per cent of world traffic was now covered by the application of the instrument. It nevertheless noted that 58 ICAO Member States still remained non-States Parties and requested ICAO to provide the necessary support to enable all remaining Member States to ratify the Convention at the earliest opportunity. All States who spoke to the paper expressed their support noting the Convention's important role and broad benefits.

38:7 With respect to the item "International legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation", it was noted that the 37th Session of the Legal Committee (Montréal, 4 to 7 September 2018) concluded that legal aspects of RPAS operations merited continued consideration and established a Working Group to address international legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation. It was further noted, however, that the commencement of work by the Working Group is on-hold at this time due to the budgetary constraints faced by the Organization. While expressing understanding for the financial constraints faced by the Secretariat, several delegations expressed concern about the fact that the Legal Committee's decision to establish a Working Group to address legal aspects of pilotless aircraft had not yet been implemented.

38:8 One delegation noted that the budgetary constraints faced by the Secretariat were understandable and a valid reason for not implementing the Legal Committee's decision. The delegation called on the Commission to consider the possibility of the work on the legal aspects of pilotless aircraft being initially undertaken by a Secretariat group or task force, which could operate in a single language and thereby avoid the cost of the full interpretation and translation services required for a Legal Committee Working Group. It was proposed that such a group could thus accelerate the legal work in this area in the interim, until the budgetary issues could be resolved. The Director of LEB noted that the technical work of the Organization on pilotless aircraft was on-going with the advice and support of LEB, and that there had not yet been any appeal to ICAO from States for the development of a treaty on RPAS. He indicated the delegation's proposal for a Secretariat group was a good one and offered to proceed with the establishment of a body to interface with existing technical bodies and examine the relevant legal issues.

38:9 Among the delegations that thereafter took the floor there was broad support for the idea of forming a group under the Secretariat as a means to overcome the budgetary issues and to provide the interface between the Organization's legal and technical work on pilotless aircraft.

38:10 With regard to the item "Consideration of adequacy of existing international air law instruments in addressing cyber threats against civil aviation", one delegation inquired as to whether a technical group would address legal issues related to this topic. The Secretariat reported that LEB is supporting the work that is being undertaken by the Secretariat Study Group on Cybersecurity (SSGC), through its Research Subgroup on Legal Aspects (RSGLEG) to review international law instruments and that there is good cooperation and interface between legal and cyber experts at this group. The Secretariat also emphasized that a multi-disciplinary approach is needed to undertake this work, recalling that Assembly Resolution A39-19 calls upon States to address this issue through a cross-cutting approach involving collective expertise from various aviation disciplines. Accordingly, the study on this topic would be reviewed by an expanded membership of the RSGLEG based on geographic representation, before reporting aspects concerning international air law instruments to the Legal Committee at its next session.

38:11 The Commission thereafter accepted the proposal of the Secretariat to merge items 4 and 5 of the Work Programme of the Legal Committee to read: “Acts or offences of concern to the international aviation community that may not be adequately covered by existing air law instruments, including cyber threats”.

38:12 As regards item no. 8, the Commission agreed to broaden the scope to go beyond the global navigation satellite systems (GNSS) as had been requested by the Council.

38:13 At the conclusion of its deliberations, the Commission established the General Work Programme of the Legal Committee as follows:

- 1) International legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation;
- 2) Review of the ICAO Rules for the Settlement of Differences;
- 3) Processes and procedures for States to fulfil their obligations under Article 12 of the Chicago Convention;
- 4) Acts or offences of concern to the international aviation community that may not be adequately covered by existing air law instruments, including cyber threats;
- 5) Consideration of guidance on conflicts of interest;
- 6) Promotion of the ratification of international air law instruments;
- 7) Implementation of Article 21 of the Chicago Convention; and
- 8) Study of international legal issues relating to global satellite systems and services supporting international air navigation services.

38:14 One delegation emphasized that the priority order of items in the General Work Programme of the Legal Committee does not delineate an order of importance, but rather that the order reflects a pragmatic approach with regard to the topics for which work can be advanced in a shorter time-frame. This sentiment was shared by the members of the Commission.
