



International Civil Aviation Organization

**WORKING PAPER**

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**ASSEMBLY — 41ST SESSION**

**LEGAL COMMISSION**

**Agenda Item 41: Work Programme of the Organization in the legal field**

**WORK PROGRAMME OF THE ORGANIZATION IN THE LEGAL FIELD**

(Presented by the Council of ICAO)

**EXECUTIVE SUMMARY**

This working paper reports on the on-going work of the Secretariat in the legal field and legal matters before the Council. It also presents an overview of developments and relevant decisions taken since the last Assembly with respect to items on the Work Programme of the Legal Committee, including the prioritization of items.

**Action:** The Assembly is invited to consider the programme of future work of the Organization in the legal field and to decide the Work Programme of the Legal Committee as set out in paragraph 4.3, including the prioritization of items.

<i>Strategic Objectives:</i>	Supporting Implementation Strategies – Programme Support – Legal Services and External Relations
<i>Financial implications:</i>	The ICAO activities referred to in this paper are expected to be undertaken within the resources available in the 2023-2025 Regular Budget and/or from extra-budgetary contributions as guided by the ICAO Business Plan 2023-2025.
<i>References:</i>	C-WP/15402 C-DEC 223/2 Doc 7669, <i>Legal Committee, Constitution, Procedure for Approval of Draft Conventions, Rules of Procedure</i>

## 1. INTRODUCTION

1.1 Each regular session the Assembly is informed of the on-going work of the Organization in the legal field and provided with an account of the relevant decisions taken subsequent to the previous session of the Assembly in relation to the items on the Work Programme of the Legal Committee.

## 2. ONGOING ACTIVITIES IN THE LEGAL FIELD OF THE LEGAL AFFAIRS AND EXTERNAL RELATIONS BUREAU (LEB)

2.1 The continuing functions of LEB include the provision of legal advice and assistance, generally and in support of ICAO's Strategic Objectives, to the President of the Council and the Secretary General, other ICAO Bureaus and Offices, Regional Offices and to ICAO Member States; procedural guidance and secretariat assistance as regards dispute settlements before the Council; research, legal advice and services, including preparation of documentation, for the Council and its subordinate bodies, the Assembly, the Legal Committee, Diplomatic Conferences and other meetings; discharge of depositary functions in relation to certain international agreements; registration of aeronautical agreements and arrangements; collection of national laws and regulations relating to civil aviation; preparation of various reports, e.g. material for the United Nations Juridical Yearbook; coordination of representation of the Secretary General in other litigation in which ICAO may be involved in foreign jurisdictions; cooperation on legal matters with the United Nations and other organizations; and other related functions of a legal nature.

2.2 LEB continued to provide secretariat services to the Working Group on Governance and Efficiency (WGGE) until January 2021 when the role was successfully transitioned to the Strategic Planning, Coordination and Partnership (SPCP). Secretariat support is also provided to the Relations with the Host State Committee (RHCC). LEB drafted and coordinated the publication of amendments to the Rules of Procedure for the Council (Doc 7559/11), the Rules of Procedure for Standing Committees of the Council (Doc 8146/7), the Rules of Procedure for the Legal Committee (Doc 7669/7), Annex IV of the ICAO Service Code (Doc 7350/9), the Directives for Panels of the Air Transport Committee and the Aviation Security Committee (Doc 9482/3) and to the ICAO Financial Regulations (Doc 7515/16), ensuring the use of gender neutral language and modernization of certain aspects in line with the reconstituted Committee structure and their Terms of Reference, as well as with the Ethics Framework. Substantive support is further provided to the Committee on Cooperation with External Parties (CCEP).

2.3 Pursuant to a United Nations Appeals Tribunal shift in jurisprudence, ICAO established a new Appeals Board, replacing the former Advisory Joint Appeals Board, which heard its first appeal earlier this year. In addition to drafting the Rules of Procedure of this new body, LEB continues to represent the Secretary General in proceedings before the Appeals Board and the United Nations Appeals Tribunal and acts as Registrar to the Board.

2.4 LEB is providing legal support to the Fact-Finding Investigation Team (FFIT) established to investigate the event involving Ryanair flight FR 4978 in Belarus airspace on 23 May 2021. The Council, while expressing the need to understand whether there had been any breach of international aviation law by any Member State, had instructed that the fact-finding investigation present the available facts and relevant international air law instruments (C-DEC 223/2 refers). The FFIT presented an investigation report to the Council on 31 January 2022 which decided that work continue to establish the missing facts. Further work is proceeding in light of the additional information that has become available from ongoing criminal investigations by certain States.

### 3. WORK PROGRAMME OF THE LEGAL COMMITTEE

3.1 In accordance with Rule 8 of its Rules of Procedure, the Legal Committee establishes and maintains, subject to approval of the Council, a general programme of work which includes subjects proposed by the Committee itself; in addition, it is to include any subjects proposed by the Assembly or the Council.

3.2 The 40th Session of the Assembly established the following General Work Programme of the Legal Committee with the subjects listed in the order of priority:

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

### 4. 38TH SESSION OF THE LEGAL COMMITTEE (22-25 MARCH 2022)

4.1 As regards the items of the Work Programme which were current at the time of the opening of the 38th Session of the Legal Committee, the following deliberations and decisions occurred:

4.1.1 With respect to the item *International legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation*, it was noted that the Working Group to address this issue established by the 37th Session of the Legal Committee was on-hold due to the budgetary constraints faced by the Organization and the proposal for a Secretariat group was widely supported at the 40th Session of the Assembly. The *Secretariat Study Group on Legal Issues related to Pilotless Aircraft* (SSG-LIPA) was established in February 2020 to provide an interface between the Organization's legal and technical work on pilotless aircraft. Two Subgroups were further established during the first meeting of SSG-LIPA and started their work thereafter.

4.1.2 As regards the revision of the *ICAO Rules for the Settlement of Differences* (Doc 7782/2) (the Rules), the Chairperson of the Working Group for the Review of the ICAO Rules for the Settlement of Differences (WG-RRSD) presented a progress report to the 38th Session of the Legal Committee. The progress report highlighted possible revisions to the Rules and their status within the Working Group: areas with a high level of agreement, as well as areas requiring further consideration by the WG-RRSD. The Committee noted the significant progress made by the WG-RRSD and indicated its intent to review this item at its next Session.

4.1.3 The item “*Processes and procedures for States to fulfil their obligations under Article 12 of the Chicago Convention*” was added to the Work Programme of the Legal Committee by the Assembly during its 40th Session. The Article 12 Task Force was established to study this issue, and the first meeting was held in November 2021. A report of the work carried out under this item will be presented to the Legal Committee at its next Session.

4.1.4 With respect to the item *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 noted that over the past two years, the Secretariat has monitored events and responded to inquiries relating to the Montréal Protocol of 2014 and the *Manual on the Legal Aspects of Unruly and Disruptive Passengers* (Doc 10117), with regard to their application to the implementation and enforcement of COVID-19 public health and safety measures on board aircraft. This included input to the work of the Council Aviation Recovery Task Force (CART). The CART Report highlighted actions that States may take, including reviewing their national legislation, to ensure that unruly and disruptive behaviours relative to COVID-19 measures are properly covered.

4.1.5 A separate report of the Research Subgroup on Legal Aspects (RSGLEG) Study on the applicability of international air law instruments to cyber threats against civil aviation was presented to the Committee. The report introduced the cybersecurity work in ICAO proceeding from Assembly Resolution A40-10: *Addressing Cybersecurity in Civil Aviation* and the work on legal aspects of the cyber threats conducted by the RSGLEG, under the Secretariat Study Group on Cybersecurity (SSGC). While noting that the work of the RSGLEG had concluded with the dissolution of the SSGC following the establishment of the ICAO Cybersecurity Panel (CYSECP), LEB will evaluate the best way to provide the necessary support to the future work under this item of the Work Programme.

4.1.6 As regards the item *Consideration of guidance on conflicts of interest*, the Committee appreciated the publication in all ICAO languages of the compilation of ICAO provisions on conflicts of interest, an important issue that needs to be addressed by States with effective measures. The Committee decided to retain this item on its Work Programme, noting that the Secretariat would undertake any necessary further work required to update this compilation, which may be considered a living document.

4.1.7 As regards the item *Promotion of the ratification of international air law instruments*, the Committee noted the report on the status of ratifications of international air law instruments adopted under the auspices of ICAO and the ongoing efforts to expedite such ratifications. States were reminded of the coming into force of the Montréal Protocol of 2014 on 1 January 2020. States were encouraged to ratify, in particular, the 2016 Protocols amending, respectively, Articles 50 (a) and 56 of the Chicago Convention, which each require 128 ratifications to come into force.

4.1.8 The Committee, noting the adoption of Amendment 7 to Annex 7, which included the Model Certificate of De-registration of Aircraft, decided to change the priority of the item *Implementation of Article 21 of the Chicago Convention* in its Work Programme. The Article 21 Task Force would therefore remain available to respond to any concerns which may be raised by other instances of the Organization.

4.1.9 As regards item *Study of international legal issues relating to global satellite systems and services supporting international air navigation services*, the Committee noted that no substantive work on the issue has been carried out. Nevertheless, it was considered appropriate to retain the item on the Work Programme in view of addressing any concerns which may be raised by States.

4.2 The Legal Committee considered further updates on items in relation to which the Commission is invited to refer to **Appendix A**. Information on other topics of legal interest is set out in **Appendix B**.

4.3 As a result of the above-mentioned considerations, the Committee unanimously endorsed, that the work programme be established as follows:

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

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## APPENDIX A

### A. STATUS OF ITEMS IN THE WORK PROGRAMME OF THE LEGAL COMMITTEE

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

1.1 Further to the proposal of the 40th Session of the Assembly for a Secretariat group to provide an interface between the Organization's legal and technical work on pilotless aircraft, the Secretariat Study Group on Legal Issues related to Pilotless Aircraft (SSG-LIPA) was established in February 2020. The first meeting of the SSG-LIPA, held on 10 August 2021, decided on the establishment of two Subgroups: the Subgroup on Compliance with the Chicago Convention (SSG-LIPA-CCSG) and the Subgroup on Liability & Security (SSG-LIPA-LSSG).

1.2 The composition of the two Subgroups was finalized at the second virtual meeting of the SSG-LIPA on 15 September 2021 and, thereafter, four virtual meetings of the SSG-LIPA-CCSG were held over the course of October-November 2021, wherein productive exchanges among group members, as well as with members of the Secretariat took place on issues relative to the application of the Chicago Convention and its Annexes to pilotless aircraft, which will continue. The first virtual meeting of the SSG-LIPA-LSSG is expected to take place in the second half of 2022, and the progress of the work of the two Subgroups will be reported to the next meeting of the whole of the SSG-LIPA, which is expected to take place before the end 2022.

#### 2. Review of the ICAO Rules for the Settlement of Differences

2.1 The Working Group for the Review of the ICAO Rules for the Settlement of Differences (WG-RRSD) has met six times between May 2019 and January 2022. In order to undertake its work adequately, the WG-RRSD took into consideration the results of benchmarking studies and research conducted by the Secretariat to identify relevant practises amongst international jurisdictions or other international adjudicating bodies. The Group also paid a high level of attention to the International Court of Justice (ICJ) Judgments on the Appeal Relating to the Jurisdiction of the ICAO Council of 14 July 2020, which were delivered between its Second and Third meetings.

2.2 At the 38th Session of the Legal Committee, the Chairperson of the WG-RRSD presented a progress report on the work being carried out by the Working Group, which highlighted two categories of areas for the review of the rules, namely, those enjoying a high level of agreement in principle within the Group, and those requiring further consideration. Reflecting the status of the above-mentioned areas discussed by the WG-RRSD, the progress report also contained a set of proposed draft revisions to the Rules, which was prepared by the Rapporteur of the Group and the Secretariat. The Chairperson of the Committee concluded that interventions by delegations had supported the continuation of the work by the Group.

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

3.1 In order to advance the work on this item introduced by the 40th Session of the Assembly, a Task Force charged with studying the implementation of Article 12 of the Chicago Convention by States and identifying the means and mechanisms for the Member States to support and enhance their implementation was established. The first meeting of the Task Force, held in November 2021, was attended by 31 experts from 17 Member States and 4 experts from two international organizations. The meeting elected Ms. Susanna Metsalämpi (Finland) and Dr. Jonathan Aleck (Australia) as the Chairperson and Vice-Chairperson

respectively of the Task Force. The meeting received presentations from the experts on the national experiences and practices of their States regarding the implementation of flight rules and regulations pursuant to Article 12. Additional meetings of the Article 12 Task Force will be scheduled.

3.2 During its 38th Session, the Legal Committee noted that a report of the work carried out under this item will be presented for its consideration at its next Session.

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

4.1 Further to the adoption of Resolution A40-28, Appendix E, by the 40th Session of the Assembly, which reflects the work completed by the Task Force on Legal Aspects of Unruly Passengers in updating relevant guidance material, the Secretariat supported the work of the Council Aviation Recovery Task Force (CART) in reviewing the *Manual on the Legal Aspects of Unruly and Disruptive Passengers* (Doc 10117) with regard to its application to the implementation and enforcement of COVID-19 measures on board aircraft. The subsequent CART Report highlighted actions that can be taken by Member States to manage unruly and disruptive behaviour, including training, public awareness and the review of their national legislation to ensure that unruly and disruptive behaviour relative to COVID-19 measures is properly covered.

4.2 The Secretariat continues to monitor events and respond to inquiries relating to the Montréal Protocol of 2014 and Doc 10117, with regard to their application to the implementation and enforcement of COVID-19 public health and safety measures on board aircraft. In this regard, more than 10 Member States have become party to the Montréal Protocol of 2014 since the outbreak of COVID-19 and the introduction of the public health and safety measures.

4.3 With regard to the adequacy of existing air law instruments in covering cyber threats, the Secretariat presented a final update on the work of the Research Subgroup on Legal Aspects (RSGLEG) of the Secretariat Study Group on Cybersecurity (SSGC) to the 38th Session of the Legal Committee. The Legal Committee was apprised of the fact that the SSGC and its working groups, including the RSGLEG, would be dissolved in favour of the new ICAO cybersecurity governance structure, consisting of a Cybersecurity Panel (CYSECP). While the work of the RSGLEG did not conclude on finalizing the study on the review of international air law instruments and their applicability to cyber threats against civil aviation, the group decided that the Secretariat would present a report based on the discussions of the draft study that took place among experts in the RSGLEG and the SSGC.

4.4 The Committee noted the excellent work carried out by the RSGLEG between November 2018 and January 2022 and expressed its appreciation for the participation of experts from all fields which underscored the cross-cutting aspect of this item. As the ICAO cybersecurity governance structure was evolving and the RSGLEG would be dissolved, there was wide support for keeping this item on the Work Programme of the Legal Committee, and the continuation of the work on the consideration of the adequacy of existing air law instruments in addressing cyber threats to civil aviation to be carried out by LEB. With due regard to the Secretariat resources already being strained, it was decided that the Director, LEB would consult with the Chairperson of the Legal Committee on the best way forward to provide the necessary support to the future work under this item. The Committee further noted the enhancements brought by the 2010 Beijing Convention and Protocol to the prosecution of cyber attacks and expressed the need to continue promoting their ratification by all States.

## 5. Consideration of guidance on conflicts of interest

5.1 Pursuant to Assembly Resolution A39-8, which established the future work of the Organization on the topic of conflicts of interest in civil aviation, the Secretariat developed a compilation of ICAO provisions (ICAO Guidance on Conflicts of Interest in Civil Aviation) which was presented to the 37th Session of the Legal Committee. The compilation consists of ICAO provisions on conflicts of interest (COI) concerning aviation safety, security and accident and incident investigation, as well as air transport policy that are contained in ICAO Annexes 13, 17 and 19 and over a dozen ICAO manuals, and is available in a permanent form since July 2019 in all ICAO working languages. The Secretariat will undertake further reviews and updates of the compilation with a view to incorporate any changes to related Annex provisions and guidance material that may have occurred since 2019.

## 6. Promotion of the ratification of international air law instruments

6.1 The 38th Session of the Legal Committee was updated on the status of ratifications of international air law instruments adopted under the auspices of ICAO and the ongoing efforts to expedite such ratifications. It was recalled that the 40th Session of the Assembly adopted Assembly Resolution A40-28, Appendix C, by which Contracting States that have not done so, were urged to ratify Amendments to the Chicago Convention, which are not yet in force, including the amendments to Articles 50 (a) and 56. A State letter was issued on 21 May 2021 (SL-LE 3/1.20, LE 3/1.21 – 21/38), in which States were reminded to ratify these Protocols. The Committee was further informed on the convening and success of the inaugural ICAO Treaty Event at the 40th Session of the Assembly, with a second such Event planned for the 41st Session in September 2022, and on the inauguration, in May 2019, of the Civil Aviation Legal Advisers Forum (CALAF) in Singapore.

6.2 Details on LEB's participation and/or facilitation of several other events aimed at, inter alia, promoting ratification of international air law treaties, were shared with the Committee. At the invitation of the Civil Aviation Authority of Portugal, LEB delivered a course in Lisbon from 13 to 15 January 2020. It also organized a legal seminar in Banjul hosted by the Gambia on 24-25 February 2020 and participated on 29 September 2020 in an online workshop organized by the United Nations Office on Drugs and Crime (UNODC) on Emerging Threats and Critical Infrastructure Protection. LEB assisted the Global Aviation Training Office (GAT) with the development and delivery of the ICAO International Air Law Course, which promotes, inter alia, the ratification of international air law instruments. The Course, which has benefited over 700 participants since 2018, has been delivered in-person at ICAO Headquarters and in the Regions as well as through virtual means. Subsequent to the 38th Session of the Legal Committee, an ICAO legal seminar hosted by the Government of the Republic of Korea, Ministry of Land, Infrastructure and Transport and facilitated by LEB was held in Seoul from 12 to 14 April 2022. The seminar enabled over 900 participants representing 114 States to exchange knowledge and experiences on new and emerging issues affecting civil aviation and encouraged the wider ratification and implementation of related international air law instruments by States.

6.3 The ICAO Treaty Collection available on the ICAO public website (<https://www.icao.int/Secretariat/Legal/Pages/TreatyCollection.aspx>) provides information, including 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 reflected as soon as possible in a chronological record on the ICAO public website.

**7. Implementation of Article 21 of the Chicago Convention**

7.1 During its 37th Session, the Legal Committee endorsed in principle the recommendations of the Task Force on the Implementation of Article 21 of the Chicago Convention (A21TF) to include a Model Certificate of De-registration of Aircraft in Annex 7 – Aircraft Registration and Nationality Marks. In this regard, the Secretariat submitted the model certificate of deregistration of aircraft proposed by the A21TF to the Cross-border Transferability Task Force (XBT-TF). The Council, during its 225th Session, considered the proposed model certificate of deregistration of aircraft and adopted Amendment 7 to Annex 7.

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## APPENDIX B

### B. OTHER TOPICS OF LEGAL INTEREST

#### 1. International interests in mobile equipment (aircraft equipment)

1.1 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 2001 *Convention on International Interests in Mobile Equipment* (Cape Town Convention).

1.2 At its 223rd Session, the Council approved changes to the *Regulations and Procedures for the International Registry* (Doc 9864). These changes, which were recommended by the Commission of Experts of the Supervisory Authority of the International Registry (CESAIR) at its 10th meeting (13 to 15 April 2021), were subsequently published in the 9<sup>th</sup> edition of the *Regulations and Procedures for the International Registry*. The Council further approved an expedited procedure to consider and decide on new business activity submissions by the Registrar of the International Registry of Mobile Assets (Aircraft Equipment), Aviareto Limited.

1.3 As the 3-year term for membership of CESAIR terminated on 1 July 2021, the Council appointed fifteen members nominated by Australia, Brazil, Cameroon, Canada, China, France, Ireland, Jordan, Kuwait, Russian Federation, Singapore, United Arab Emirates, United Kingdom, United Republic of Tanzania and the United States. The 3rd edition of the Rules of Procedure for CESAIR (Doc 9893), which was published in December 2021, incorporated gender-neutral language. This was intended specifically to take into account the Council's Declaration on Improving Gender Representation in ICAO's Governing and Technical Bodies (C-DEC 222/7).

1.4 The Council issued the fifth report of the Supervisory Authority of the International Registry by State letter LE 3/41.2-IND/20/7, dated 13 October 2020, covering the period 1 January 2017 to 31 December 2019. This is in accordance with Article 17 (2) (j) of the Cape Town Convention which requires the Supervisory Authority to report periodically to the Contracting States to the Convention and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment* (Aircraft Protocol).

1.5 As at 20 April 2022, there were 81 Parties to the Cape Town Convention and Aircraft Protocol.

#### 2. Trusted Communication Facility

2.1 The Council, at the eighth meeting of its 221st Session, acting in its capacity as Supervisory Authority of the International Registry, approved a proposal by Aviareto Limited, the Registrar of the International Registry, to develop and operate the trusted communication facility for COVID-19 recovery, for a two-year interim period. The Council's consideration of the proposal was based on a recommendation by the ninth meeting of CESAIR, held on 29 and 30 June 2020.

2.2 This proposal, made in cooperation with the Aviation Working Group, stemmed from the Council's declaration to support Member States in their COVID-19 response measures as appropriate and Recommendation 10 of the CART Report. The facility will provide a secure vehicle for the electronic transmission of information and documents between Civil Aviation Authorities (CAAs), and such authorities and industry, through the use of a digital signature issued by Aviareto, employing its highest-

level cyber security standards, with a view to preparing to bring aircraft back into service. The facility will therefore address the challenges posed by the manual execution and/or physical presentation of original wet-ink type documents (such as proof of airworthiness requirements). The facility is expected to be operational in May 2022.

### **3. Establishment of the ICAO Website of Aeronautical Agreements and Arrangements (WAGMAR)**

3.1 On 30 September 2020, the ICAO Website of Aeronautical Agreements and Arrangements (WAGMAR), the new web-based system for the registration and publication of aeronautical agreements and arrangements, became operational. The new system replaces the ICAO Database of Aeronautical Agreements and Arrangements (DAGMAR). Necessary amendments to the *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements* (Doc 6685), allowing for online registration, were approved by the Council at its 219th Session. The Secretariat supports States and their nominated focal points in effecting registrations through the new system and continues to provide registration services for agreements and arrangements submitted in hard copy to the Secretary General of ICAO.

### **4. International Air Law Course**

4.1 The ICAO International Air Law Course was launched in 2017 with the objective to enable personnel of Civil Aviation Administrations, airports and air navigation service providers of Member States with or without legal knowledge, as well as government officials with responsibilities for civil aviation policy, legislation and enforcement, to support their organization in the implementation of international air law. Since its launch, the course developed by the ICAO's Global Aviation Training (GAT) Office in coordination with the Legal Affairs and External Relations Bureau, has been delivered in all ICAO regions and attended by more than 700 participants. The course is lauded for its great value in providing information to participants on various aspects of international air law, including international air law treaties. This initiative responds to Resolution A40-28, Appendix D, which calls for promoting the teaching of air law in the States. The course is currently delivered in the English, French and Spanish languages, in virtual and in-person formats.

### **5. Civil Aviation Legal Advisers Exchange (CALEx)**

5.1 While the COVID-19 pandemic prevented the organization of annual meetings of the Civil Aviation Legal Advisers' Forum (CALAF), a number of civil aviation legal advisers successfully continued to meet through informal virtual Civil Aviation Legal Advisers Exchange (CALEx) events coordinated by the Chairperson together with the Vice-Chairpersons of the ICAO Legal Committee. These events focused on COVID-19, aviation medicine and other issues of interest, including safety information protection, unruly and disruptive passengers and Brexit issues. These events began in May 2020 and were supported by the ICAO Secretariat as well as IFALPA, IFATCA, IATA and ITF who contributed presentations. These CALEx events support the training and development of legal advisers with a view to enhancing their competencies, capabilities and capacities so as to enable them to strengthen their support for their respective Organizations and States and to carry out their roles and responsibilities effectively, responding to Assembly Resolution A40-28, Appendix G, which invites Member States to encourage and facilitate the participation and contribution of their legal advisers to the Forum.

## 6. Legal support on guidelines for virtual meetings of the governing bodies

6.1 Following the selection of a technological solution and related arrangements to conduct virtual meetings of the Council and subsidiary bodies during the COVID-19 pandemic, the Secretariat established and reviewed related procedural guidelines to support the meetings of the Council and its Committees using this technological solution. In April 2020, the Guidelines for virtual meetings of the Council of ICAO, covering key procedural aspects such as attendance, languages, deliberations and decision-making, were adopted and approved for use during virtual meetings of the Council and its Committees. In January 2021, the Council adopted Appendix A to the Guidelines, providing the procedures for the conduct of votes by means of secret ballot during virtual sessions of the Council. The Guidelines, supporting the application of the Rules of Procedure for the Council (Doc 7559) and the Rules of Procedure for Standing Committees of the Council (Doc 8146) in virtual settings, were successfully implemented in the 220th to the 225th Sessions of the Council, including the use of the secret ballot voting procedure for the appointment of the new Secretary General and the President of the Air Navigation Commission.

## 7. Review of the Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991 (MEX Convention)

7.1 The Council at its 221st Session requested the Secretariat to assess the relevance of the MEX Convention taking into account the advice of the International Explosives Technical Commission (IETC). The need for review has arisen in light of the impact of new and emerging explosives detection technologies. The IETC review which commenced at its Ninth Session in May 2021 is supported by ATB, with LEB providing legal input.

## 8. Settlement of Differences

### 8.1 *Brazil and the United States (2016)*

8.1.1 The Council was provided with progress reports on the status of the negotiations between the Parties. It was informed that the Parties had continued to make progress toward resolving the dispute that had been temporarily stalled by the international public health crisis. In view of the establishment of the Task Force related to obligations under Article 12 of the Chicago Convention, the Parties expressed their willingness to continue their discussion to conclude negotiations as soon as possible.

### 8.2 *Qatar and Bahrain, Egypt, Saudi Arabia and the United Arab Emirates (2017) – Application (A); and Qatar and Bahrain, Egypt and the United Arab Emirates (2017) – Application (B)*

8.2.1 On 14 July 2020, the International Court of Justice rendered two Judgements rejecting the appeals instituted by the Respondents (Bahrain, Egypt, Saudi Arabia and the United Arab Emirates) against the Council Decisions of 29 June 2018 with respect to the preliminary objections filed by the Respondents in the respective cases: Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar); and Appeal Relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and United Arab Emirates v. Qatar). Both Judgements also affirmed the jurisdiction of the Council to entertain the two Applications, namely Application (A) and Application (B), submitted by the Applicant (Qatar) on 30 October 2017.

8.2.2 On 4 August 2020, the Respondents in both Application (A) and Application (B) jointly submitted their respective Counter-memorials. Subsequently, on 8 September 2020, the Applicant filed its

Replies in both matters. This was followed by the filing of Rejoinders by the Respondents on 14 October 2020. At the third meeting of its 222nd Session, the Council agreed to suspend the proceedings in both Application (A) and Application (B) on the merits, pursuant to the request of the Applicant and in view of terms of settlement already agreed in the Al Ula Declaration between the Parties.

8.2.3 Following a request made by the Applicant on 31 May 2021 and further to a decision of the Council of 16 July 2021, the President of the Council officially recorded the discontinuance of the proceedings against the Arab Republic of Egypt in both Application (A) and Application (B) in accordance with Article 17 (2) of the *Rules for the Settlement of Differences* (Doc 7782/2) (the Rules). Moreover, following a request made by the Applicant on 4 January 2022, and further to a decision of the Council of 9 March 2022 (C-DEC 225/9), the Council recorded the discontinuance of the proceedings against the Kingdom of Saudi Arabia in Application (A) in accordance with Article 17 (2) of the Rules.

### 8.3 *Australia and the Netherlands and the Russian Federation (2022)*

8.3.1 By Note Verbale dated 14 March 2022, delivered on the same date, the Delegation of Australia to the International Civil Aviation Organization (ICAO) and the Delegation of the Kingdom of the Netherlands to ICAO presented to the Organization a joint Application and its corresponding Memorial for the settlement of a disagreement. The Application was submitted under the terms of “Article 84 of the *Convention on International Civil Aviation* (‘Chicago Convention’), related Annexes, and the *Rules for the Settlement of Differences* (Doc 7782/2) (‘Rules’), and it names the Russian Federation as Respondent. The Application and its corresponding Memorial relate to the “interpretation and application of the Chicago Convention” following “the downing of Flight MH17 by a Buk-TELAR surface-to-air missile over the east of Ukraine on 17 July 2014”, which the Applicants submit is “legally attributable to the Russian Federation and constitutes a breach of Article 3bis of the Chicago Convention”. Acting under Article 28 (3) of the Rules, the President of the Council decided on 21 March 2022 to grant a twelve-week time-limit for the filing of a Counter-memorial by the Respondent (i.e., 13 June 2022).

— END —