



**WORKING PAPER**

**ASSEMBLY — 41ST SESSION**

**LEGAL COMMISSION**

**Agenda Item 41: Work Programme of the Organization in the Legal Field**

**CIVIL LIABILITY FOR REMOTELY PILOTED AIRCRAFT OPERATIONS (RPAS)**

(Presented by the Dominican Republic and supported by Aruba, Belize, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Uruguay and Venezuela (Bolivarian Republic of) Member States of the Latin American Civil Aviation Commission (LACAC))

**EXECUTIVE SUMMARY**

This working paper assesses the need for the international aviation community to have an international juridical regime that gives States a legally valid instrument to determine civil liability for injury or damage caused by RPAS operations, in view of the growth of such operations for purposes of recreation, aerial work such as photography and recording, aerial cartography, agriculture and agro-food, goods transport, emergency medical units, and delivery of medicines to remote locations among other commercial activities.

**Action:** The Legal Commission is invited to:

- a) request the Council of ICAO to include the matter of civil liability for RPAS operations in the work programme of the ICAO Legal Committee for its consideration and possible development of an international air law instrument.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective – <i>Programme Support, Legal Services and External Relations</i>
<i>Financial implications:</i>	N/A
<i>Reference:</i>	<i>Work programme of the Organization in the legal field</i>

<sup>1</sup> Spanish version provided by Dominican Republic.

## 1. BACKGROUND

1.1 By ratifying the *Convention on International Civil Aviation* of 1944, the Chicago Convention, contracting States commit to upholding all of the provisions therein, as well as the Standards subsequently adopted by the Council of ICAO and incorporated into the Annexes to the Convention. As the most important standard-setting treaty in international public law, the main objective of the Convention since its inception has been to secure the safe and orderly development of civil aviation on the basis of fairness and equal opportunity.

1.2 Article 8 of the Chicago Convention states: *No aircraft capable of being flown without a pilot shall be flown without a pilot over the territory of a contracting State without special authorization of that State and in accordance with the terms of such authorization. Each contracting State undertakes to ensure that the flight of such aircraft without a pilot in regions open to civil aircraft should be so controlled as to obviate danger to civil aircraft.*

1.3 In March 2015, the International Civil Aviation Organization (ICAO) held a symposium on remotely piloted aircraft and launched Doc 10019 – *Manual on Remotely Piloted Aircraft Systems* which gives technical and operational guidance to member States for the safe integration of RPAS into non-segregated airspace and at airports and aerodromes.

1.4 ICAO defines a remotely piloted aircraft system (RPAS) as an unmanned aircraft that is flown from a remote pilot station.

1.5 At its 222nd session in March 2021, the Council of ICAO adopted a number of standards and recommended practices (SARPs) concerning safety, the most important of which relate to Annex 8 – *Airworthiness*, and address certification requirements for aeroplanes and helicopters piloted remotely, in addition to the remote pilot stations (RPS) at which they are operated. The new provisions entered into effect on 12 July 2021, and will become applicable on 26 November 2026.

## 2. INTRODUCTION

2.1 RPA systems are pushing the bounds of technological innovation, and are being used more every day for many different purposes: recreation, geology, archaeology, forestry, missing person searches, healthcare, firefighting and rescue. States use RPAS to counter illegal migration and drug trafficking along their borders, and the systems are being put to rapidly diversifying commercial uses such as goods transport, agro-food, aerial photography and cartography, to name a few.

2.2 RPAS provide an economic boost to States because they drive technological innovation, as they were initially designed to do. Users of this novel vehicle gain valuable training, which enhances productivity in the community.

2.3 The increase in RPAS operations presents the challenge of keeping State airspace safe. This has prompted States to develop new standards and update existing ones, to ensure that basic rules of operation are followed in national airspace, both controlled and uncontrolled. However, because this is a work in progress, little to no attention has been given to the possibility of civil liability arising from this type of activity, and the potential remedies for damages caused to persons or property by such aircraft.

2.4 Each State has its own circumstances and requirements as regards aeronautics and the priorities and needs of RPAS operators. To address these concerns, the Dominican Republic has issued a regulation on the registration and marking of small remotely piloted aircraft (*Dominican Aviation*

*Regulation RAD 48*) which stipulates that an RPAS weighing no more than 55 lb (25 kg) must be registered with the National Aircraft Registry of the aviation authority IDAC, and be assigned a *Register Card*. This card is not a registration, but a clearly legible number plate that must be visibly affixed to the outer part of the device and on its remote control unit. The regulation governing operation of small remotely piloted aircraft systems, RAD 107, also contains aviation regulations with penalties for non-compliance.

### 3. DISCUSSION

3.1 The integration of RPAS into air space entails compliance with ICAO standards as well as the national standards adopted by States. Authorities must decide the requirements for issuing certificates and licenses validating the qualifications and specifications necessary for the crew and the aircraft to conduct operations.

3.2 States need to work to determine requirements for operations, and identify the potential benefits and outcomes including negative outcomes such as safety violations and possible penalties, a topic for further analysis. This paper focuses on the issue of civil liability for RPAS operations.

3.3 Because there is no international instrument governing RPA operator liability, each State is left to draw up its own rules for civil remedies against RPAS operators for injured third parties on the surface.

3.4 However, there is also the risk that a misguided RPA straying into controlled airspace may cause damage to another aircraft in flight. This scenario raises the following questions:

1. What is the legal framework for redress following an air accident?
2. What criteria should be used to assess civil liability if there are negotiations?
3. What criteria should be used to assess criminal liability if there are negotiations?

3.5 If an RPA collides with another aircraft flying passengers or cargo, on what legal grounds would the passengers or the owner of the cargo seek compensation? Though it would not serve as a primary legal basis for a case, the *Convention for the Unification of Certain Rules of International Carriage by Air* [*Montreal Convention of 1999*] would necessarily be referred to.

Article 17 – *Death and Injury of Passengers – Damage to Baggage* of the Montreal Convention states:

*The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.*

In the case of cargo, Article 18 of the Convention says that the carrier shall be liable for damage sustained in the event of the destruction, loss of, or damage to cargo, upon condition only that the event which caused the damage took place during carriage by air, unless the carrier can prove that the damage resulted from: (a) inherent defect, quality or vice of the cargo; (b) defective packing by a person other than the carrier, its servants or agents; (c) an act of war or armed conflict, or; (d) an act of public authority in connection with entry, exit or transit of the cargo.

3.6 At present, the Dominican Republic does not have a specific legal regime covering civil liability for RPA operations. Consequently, if such operations ever do cause damage or injury to persons on the surface, to an aircraft in flight or any other kind of damage, the regulations under general law would have to apply.

3.7 Article 1382 of the Dominican Civil Code enshrines the fundamental principle of individual civil liability as follows: “Any action by a person which causes harm to another person shall incur the obligation of the person at fault to provide redress.”

3.8 Article 1384 of the Code states, “A person is responsible for harm caused not only by his/her own actions, but also for harm caused by other persons or things in their charge”.

3.9 The Supreme Court of Justice has ruled that, for liability to be applied under Article 1384-I of the Civil Code to an individual in charge of an inanimate object, the action of the object in itself is not sufficient grounds. The action must be in some way voluntary, thus establishing a *cause/effect relationship between the object and the damage caused*.

3.10 In other words, for the purpose of establishing civil liability in respect of remotely piloted aircraft operations, three concurrent elements must be in place: action, damage, and a direct causal link between the action and the damage.

#### **4. CONCLUSION**

4.1 In conclusion, we urge ICAO to take the lead in creating an international legal framework for determining civil liability for remotely piloted aircraft operations.

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