



ASSEMBLY — 37TH SESSION

LEGAL COMMISSION

Agenda Item 60: 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 paper provides information on the ongoing work of the Secretariat in the legal field and legal matters in the Council. The Assembly is presented with 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 prioritizations of items.

Action: The Assembly is invited to consider and confirm the Work Programme of the Legal Committee approved by the Council as set out in paragraph 3.4.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective F, as it pertains to developments in the context of the preparation of international air law instruments, measures to encourage their ratification as well as updated information regarding depositary activity .
<i>Financial implications:</i>	No additional resources required.
<i>References:</i>	Doc 7669, <i>Legal Committee</i> (Constitution — Procedure for Approval of Draft Conventions — Rules of Procedure)

1. INTRODUCTION

Each regular session of the Assembly is informed of the ongoing work of the Secretariat 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 the Secretariat in the legal field includes the provision of legal advice and assistance to the Secretary General, other ICAO Bureaux, Regional Offices and to ICAO Member States; 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; legal input for ICAO's CNS/ATM activities; discharge of functions in relation to international agreements of which ICAO is the depositary; 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; representation of the Secretary General in appeals coming before the Advisory Joint Appeals Board and the United Nations Appeals Tribunal; representation of the Secretary General in other litigation in which ICAO may be involved; cooperation on legal matters with the United Nations and other organizations; and other related functions of a legal nature. In this context, the Organization concluded at the end of 2009 an agreement with the United Nations on the access for ICAO staff to the newly created United Nations Appeals Tribunal, the successor entity to the United Nations Administrative Tribunal, as a second-level appeals instance for ICAO staff.

2.2 LEB provides services and advice to the Council in relation to the settlement of civil aviation disputes under Article 84 of the Chicago Convention and certain matters referred to the Council under Article 54 (n).

2.3 LEB cooperates with the United Nations and other organizations in the preparation of draft conventions and studies of existing instruments which might have implications for international civil aviation. The Bureau monitors the deliberations and decisions of the United Nations and other international organizations on matters related to air law or otherwise of interest to the Organization. As such, LEB continued to represent ICAO at the United Nations Counter-Terrorism Implementation Task Force (CTITF). CTITF was established by the UN Secretary-General in July 2005 to ensure overall coordination and coherence in the counter-terrorism efforts of the United Nations system.

2.4 Secretariat support was provided by LEB to the Council Working Group on Governance (Policy) – WGOG, which addressed issues in relation to future sessions of the Assembly, the participation of observers and the election of officers in the Legal Committee, review of international governance (Chicago Convention), the allocation of seats on the Council and election of officers of the Assembly, the update of the ICAO Repertory Guide and the categorization of ICAO meetings. Secretariat support was further provided to the sub-group on observers of the Council Working Group on Efficiency (WGOE) regarding the status of observers in Council.

2.5 Since the last session of the Assembly, LEB has conducted several ICAO Regional Legal Seminars: in Lima from 29 to 31 October 2007, in Cairo from 18 to 19 February 2009 and in Paris from 25-26 March 2009. Another Legal Seminar was held from 30 March to 2 April 2009 in Incheon, hosted by the Government of the Republic of Korea. The Government of Romania, in cooperation with ICAO, organized an air law conference “New challenges and threats in civil aviation” in Bucharest from 3 to 4 May 2010. Members States to which the ICAO European and North Atlantic Office is accredited were invited to participate in the Conference. From 12 to 13 May 2010, a regional legal seminar was organized by ICAO in its Asia and Pacific Office in Bangkok for the preparation of the Diplomatic Conference to be held in Beijing.

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 36th Session of the Assembly decided upon the following General Work Programme of the Legal Committee with the subjects listed in the order of priority:

- 1) Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks;
- 2) Acts or offences of concern to the international aviation community and not covered by existing air law instruments;
- 3) Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS) and the regional multinational organisms, of the establishment of a legal framework;
- 4) International interests in mobile equipment (aircraft equipment);
- 5) Review of the question of the ratification of international air law instruments; and
- 6) *United Nations Convention on the Law of the Sea* – Implications, if any, for the application of the Chicago Convention, its Annexes and other international air law instruments.

3.3 At the sixth meeting of its 184th Session, on 23 June 2008, the Council decided to delete from the Work Programme the item “*United Nations Convention on the Law of the Sea* – Implications, if any, for the application of the Chicago Convention, its Annexes and other international air law instruments” and to add, as new Item 6), the subject of “Safety aspects of economic liberalization and Article 83 *bis*”.

3.4 Consequently, the General Work Programme stands as follows:

- 1) Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks;
- 2) Acts or offences of concern to the international aviation community and not covered by existing air law instruments;

- 3) Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), and the regional multinational organisms, of the establishment of a legal framework;
- 4) International interests in mobile equipment (aircraft equipment);
- 5) Review of the question of the ratification of international air law instruments; and
- 6) Safety aspects of economic liberalization and Article 83 *bis*.

3.5 Substantive information on Items 1) and 4) of the Work Programme is presented to the Assembly separately in working papers A37-WP/31 and A37-WP/44, respectively. The Appendix to this working paper provides details on Items 2), 3), 5) and 6).

APPENDIX

Note: Additional information on Items 1) and 4) of the Work Programme is presented to the Assembly separately in working papers A37-WP/31 and A37-WP/44. This Appendix provides details on Items 2, 3), 5) and 6).

Item No. 2: Acts or offences of concern to the international aviation community and not covered by existing air law instruments

Under this item, and pursuant to Assembly Resolution A33-1, the Legal Committee reviewed the adequacy of the existing ICAO aviation security conventions with a view to covering the new and emerging threats. In September 2009, the 34th Session of the Committee considered the two draft texts prepared by its Special Sub-Committee for the purpose of amending the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970, and the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montreal on 23 September 1971. The Committee agreed by consensus at this session that the draft texts, as amended by the Committee, were sufficiently mature and were ready for transmittal to the Council as final drafts for presentation to States and, ultimately, to a Diplomatic Conference. At the sixth meeting of its 188th Session, the Council agreed, in principle, to convene a Diplomatic Conference to finalize and adopt the two draft instruments. Upon an invitation by the Government of China, it was subsequently decided to hold the Diplomatic Conference in Beijing from 30 August to 10 September 2010. At the time of writing of this working paper, the preparations for the Diplomatic Conference were ongoing. The results of the Conference will be reported to the Assembly either verbally or through an addendum to this paper.

During the same session of the Legal Committee, the International Air Transport Association (IATA) noted that incidents involving disruptive and unruly passengers had continued to rise steadily since 2001. Accordingly, IATA recommended the formation of an ICAO Special Study Group to examine the emerging legal issues in this respect. The Committee supported the proposal that ICAO should address the issue of unruly/disruptive passengers. Since this issue was hitherto dealt with by a Secretariat Study Group under this item of the General Work Programme of the Legal Committee, the Council noted that the Secretariat Study Group on Unruly Passengers would be reactivated after the Diplomatic Conference in Beijing.

Item No. 3: Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), and the regional multinational organisms, of the establishment of a legal framework

A Diplomatic Conference was held in Brasilia, Brazil, from 7 to 9 December 2009, convened by ICAO. Eight South American States participated in the Diplomatic Conference. The Conference developed the text of the Constituent Convention for the implementation of the South American Air Navigation and Safety Organization. The Convention was signed at the end of the Conference by Chile, Paraguay as well as Uruguay and is open for signature by interested ICAO South American States, in the External Relations Ministry of Brazil, until 30 June 2010, and afterwards in ICAO Headquarters up to its entry into force. The establishment of this International Organization will bring benefits in relation to the regional strengthening for the implementation, management and consolidation of multinational systems related to air navigation and safety in particular CNS/ATM. LEB gave ICAO

guidelines for the development of the Diplomatic Conference, supporting the discussions regarding the legal policies of the Organization, and provided the tools for the preparation of legal instruments drafted during the Conference.

Item No. 5: Review of the question of the ratification of international air law instruments

The 31st Session of the Legal Committee (Montreal, 28 August – 8 September 2000) assigned this subject priority No. 5 in its General Work Programme. The item was retained in the Work Programme with the same priority by the 35th Session of the Assembly (28 September – 8 October 2004) and subsequent sessions of the Council.

Since the 36st Session of the Assembly, there have been important developments in the treaty area.

A diplomatic conference, convened in Montréal from 20 April to 2 May 2009, adopted the *Convention on Compensation for Damage Caused by Aircraft to Third Parties* (Montréal, 2009) (General Risks Convention); and the *Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft* (Montréal, 2009) (Unlawful Interference Compensation Convention). ICAO is their depositary. As of the date of the writing of this paper, the Conventions have been signed by 9 and 7 States, respectively. To assist States in becoming parties to these treaties, administrative packages have been developed and transmitted by a State letter and placed in the Treaty Collection on the ICAO website.

In 2009, ICAO conducted the first review of limits of liability of the *Convention for the Unification of Certain Rules for International Carriage by Air*, done at Montreal on 28 May 1999 (Montreal Convention of 1999). The revised limits became effective as of 30 December 2009 for all States parties to the Convention.

In 2008, Agreements on the Joint Financing of Certain Air Navigation Services in Greenland and in Iceland, adopted in 1956 and amended in 1982, were amended again. These amendments entered into force on 1 January 2009.

The Treaty Collection on the ICAO public website has been considerably enhanced with the following additional materials: (1) a composite table showing the status of international air law treaties and the status of individual States with regard thereto; and (2) forms providing detailed information on the status of individual States with regard to international air law treaties. Administrative packages are now also available on this website. All depositary actions are promptly reflected in the Treaty Collection. In addition, if accessed through the ICAO-NET, this collection has the texts of air law treaties.

There is continued emphasis on ratification matters by the President of the Council and the Secretary General and other ICAO officials during their visits to States. LEB provides briefs for these missions, indicating the instruments remaining to be ratified and specifying their priority. LEB promotes ratification at legal seminars, during personal deposits by State officials, Assembly sessions and other ICAO meetings.

Item No. 6: Safety aspects of economic liberalization and Article 83 bis

This subject was initially submitted for consideration by the Legal Committee as per the Council's decision in light of a Report on the *Study on the Safety and Security Aspects of Economic Liberalization* (C-WP/12480). The Secretariat consequently presented a working paper (WP/4-6) during the 33rd Session of the Legal Committee to consider the need for any study by a Sub-Committee on how to improve relevant ICAO provisions and guidance material in order to facilitate greater usage of Article 83 *bis* of the Chicago Convention. The Committee concluded that no legal aspects pertaining to Article 83 *bis* and relating to the pertinent issues raised in the above-mentioned study could be identified for further study by a Sub-Committee.

The Council subsequently decided on the addition to the General Work Programme, as new Item 6), of the subject: "Safety aspects of economic liberalization and Article 83 *bis*" (C-DEC 184/6). The Secretariat is accordingly monitoring this issue in order to eventually determine to which extent it should be further developed.

In this context, LEB is actively assisting the Air Navigation Bureau in the study of the issue of flags of convenience (C-WP/13296 – 187th Session). More particularly, it provided legal support for the establishment of the necessary framework to implement Article 21 of the Chicago Convention regarding a database of aircraft registration and ownership, as well as for an international register of Air Operator Certificates.

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