



A37-WP/328  
LE/15  
30/9/10

**ASSEMBLY — 37TH SESSION**  
**LEGAL COMMISSION**

**DRAFT TEXT FOR THE REPORT**  
**ON**  
**AGENDA ITEMS 55, 56, 57, 58 AND 61**

The attached material on Agenda Items 55, 56, 57, 58 and 61 is submitted for consideration by the Legal Commission.

**Agenda Item 55: Annual Reports of the Council to the Assembly for 2007, 2008 and 2009**

55.1 The Commission **noted** the Chapter on the Rule of Law of the Annual Reports of the Council to the Assembly for the years 2007 (Doc 9898), 2008 (Doc 9916) and 2009 (Doc 9921) as well as the Supplement for the first half of the year 2010 (Doc 9921 – Supplement), which had been referred to it by the Plenary.

**Agenda Item 56: Budgets for 2011, 2012 and 2013**

56.1 The Commission **noted** the Budget for the Legal services and External Relations services for 2011, 2012 and 2013 set out at page 96 of the Draft Budget of the Organization as proposed in A37-WP/43.

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**Agenda Item 57: International interests in mobile equipment (aircraft equipment)**

57.1 This Item was considered on the basis of A37-WP/44 presented by the Council, which provided a progress report since the 36th Session of the Assembly on the work related to the Council's supervision, in its capacity as Supervisory Authority, of the International Registry. In particular, reference was made to the Council's issuance of two reports during 2008 and 2010 to the Parties to the Cape Town instruments concerning the discharge of its functions as Supervisory Authority, its appointment/reappointment of 12 members to the Commission of Experts of the Supervisory Authority of the International Registry (CESAIR) during 2009, its approval of innovations to the Registry as recommended by CESAIR during 2007, 2008 and 2009 and reflected as amendments to the *Regulations and Procedures for the International Registry*, and its decision to reappoint the Registrar for a second five-year term commencing March 2011. The Secretary provided an update to paragraph 2.4 of the working paper noting that, as of 1 September 2010, there were 33 Parties to the Cape Town instruments.

57.2 One delegation expressed its strong support for the Cape Town Convention and Protocol noting its government's active role in their development and its appreciation of the registration and search services offered by the International Registry. However, this delegation shared its concerns in respect of two matters. First, it considered it essential that the operation of the Registry be made available in all official languages of ICAO in order to maximize its usefulness to participants. Second, it considered that the Registrar was still not able to meet the requirements of the Cape Town Convention and Protocol in terms of insurance coverage or financial guarantee although it had increased its coverage to U.S.\$ 70 Million. This delegation was of the view that it was still far from the Protocol level estimated at U.S.\$ 200 Million. This delegation, while hoping to ratify the Cape Town instruments soon, urged the Assembly to note its position on the insurance and language matters.

57.3 The Secretary informed that documents approved by the Council in its capacity as Supervisory Authority, such as the Regulations and Procedures, are produced in all official languages of ICAO; however the Registry continues to operate in English given the technical challenges involved. The Secretary also informed that the Secretariat is consulting with an Ad Hoc Group on the Registrar's contract renewal regarding insurance and other matters. This Ad Hoc Group is composed of some members of CESAIR.

57.4 Another delegation, whose expert participates as a member of CESAIR and the Ad Hoc Group, noted that insurance coverage was affected by the amount available in the insurance market. This delegation also noted that the Registry could benefit from additional protection offered by a decreased insurance deductible given that there have been no claims against the Registry since it commenced operation.

57.5 In summarizing the discussion, the Chairman concluded that the Commission **noted** the updated information in A37-WP/44 together with the comments from the floor.

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**Agenda Item 58: Progress report on the item “Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks”**

58.1 This item was considered on the basis of A37-WP/31 Revised, presented by the Council, and A37-WP/118, presented by Canada, Singapore, South Africa and the United Kingdom.

58.2 A37-WP 31 Revised provided the Assembly with a progress report on the work carried out on this item since the last session of the Assembly. In particular, information was provided regarding the adoption by a Diplomatic Conference in 2009 of the texts of two instruments, namely:

- a) the *Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft* (commonly referred to as “the Unlawful Interference Compensation Convention”) (Doc No. 9920); and
- b) the *Convention on Compensation for Damage Caused by Aircraft to Third Parties* (commonly referred to as “the General Risks Convention”) (Doc No. 9919).

58.3 The paper highlighted in its Appendix the most important provisions of each Convention and mentioned that the instruments have to date been signed by 7 and 9 States, respectively. The paper also provided information regarding the ongoing work of the Preparatory Commission for the establishment of the International Fund, the latter having been established in accordance with Resolution No.2 adopted by the Diplomatic Conference. In addition to inviting the Assembly to note the information, the working paper urged States to ratify the two Conventions, pursuant to a decision of the Council taken during its 190th Session.

58.4 One delegation expressed its scepticism with regard to the invitation urging States to ratify the instruments. In the view of this delegation, the Unlawful Interference Compensation Convention in particular had considerable shortcomings. The delegation regarded the contemplated fund system as neither effective nor feasible and viewed the concept of the unbreakable cap as not enhancing the level of protection of victims. Given the low number of signatures to date and the high threshold required for the instruments to enter into force, it had doubts that the instruments would ever come into force and it saw itself consequently not in a position to endorse urging States to ratify the instruments. This sentiment was shared by another delegation.

58.5 A37-WP/118, presented by the Delegation of Canada on behalf of the other co-sponsors, provided the Assembly with information regarding the ongoing work of the Preparatory Commission for the establishment of the International Civil Aviation Compensation Fund. Expressing the sentiment that the views conveyed by the two delegations who spoke earlier represented a minority view, the delegation mentioned that it was highly committed to developing pragmatic solutions to difficult problems. The delegation stated that the spirit of forward thinking has been carried over into the Preparatory Commission which was tasked in effect to anticipate decisions that will have to be taken by the Conference of the Parties (COP) to the Unlawful Interference Compensation Convention. To this end, the Preparatory Commission had already devised Rules of Procedures for the COP and was actively engaged in addressing the more complex issues of the Regulations of the International Fund dealing,

*inter alia*, with the structure of the fund. Efforts are also ongoing in relation to the development of Guidelines for Compensation, the aspect of initial contributions to the Fund, Guidelines on Investment and financial governance arrangements as well as General Guidelines on Assistance in Case of Events in States non-Parties. The delegation further reported that an important note is being developed by the Preparatory Commission which outlines the principal legal options for rapidly putting into force the benefits of the Convention on an interim basis in the event of a crisis before the entry into force of the Convention. The delegation concluded by inviting interested States with experts enjoying the relevant expertise to join in the work of the Preparatory Commission as Observers.

58.6 The need to support the work of the Preparatory Commission was highlighted by several delegations. These delegations expressed their support for the proposed action items contained in both working papers. One of these delegations remarked that while it appreciated the concerns expressed by others, the mechanism of the Fund ought to be regarded as achieving a balance between victims' and airlines' needs.

58.7 In summarizing the discussion, the Chairman concluded that the working papers did not introduce novel issues. Insofar as the expressed reservations by some States were concerned, the Chairman stated that it was necessary to move forward the process beyond the positions which had already been expressed during the Diplomatic Conference. The Commission was thus to note the progress which has been made and to urge States to join the work of the Preparatory Commission and bring about the entry into force of the instruments.

**Agenda Item 61: Consolidated statement of continuing ICAO policies in the legal field**

61.1 The Legal Commission considered this item on the basis of A37-WP/3 Revised, presented by the Council, and A37-WP/243, presented by the Bolivarian Republic of Venezuela.

61.2 A37-WP/3 Revised contained a proposal for an editorially updated resolution to replace the existing consolidated statement, found in Resolution A36-26. The Secretary of the Commission pointed out that the paper concerned itself only with editorial issues, and that no policy matters were to be addressed, in line with the principles governing this task. As pointed out by one delegation, it was understood that it would be necessary to insert in the 8th Clause of Appendix C which begins with “Urges all Contracting States” the short names of the recently adopted Beijing instruments on aviation security.

61.3 A37-WP/243 contained a proposal for an amendment to the Model Legislation on Certain Offences Committed on Board Civil Aircraft contained in Appendix E of the consolidated statement. The proposal called for the introduction of a Note in Sections 1, 2 and 3 of the model legislation to take into account the existing national legislation in Venezuela which distinguished between misdemeanours and offences. The proposal also called for additional text to be inserted in Section 4 dealing with jurisdiction.

61.4 The Commission **agreed**, subject to the editorial amendments to be made in the 8th Clause of Appendix C, to recommend for adoption the proposed updated resolution contained in Attachment A to A37-WP/3 Revised.