



A37-WP/342  
LE/16  
2/10/10

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

**DRAFT TEXT FOR THE REPORT**  
**ON**  
**AGENDA ITEMS 59, 60 AND 62**

The attached material on Agenda Items 59, 60 and 62 is submitted for consideration by the Legal Commission.

**Agenda Item 59: Acts or offences of concern to the international aviation community and not covered by existing air law instruments**

59.1 The Secretary provided an oral report concerning the Diplomatic Conference on Aviation Security, which was held in Beijing, China, from 30 August to 10 September 2010. Seventy-six States and four international organizations participated in the Conference. The Conference adopted the *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* (Beijing Convention) and the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft* (Beijing Protocol). These treaties criminalize, *inter alia*, the act of using civil aircraft as a weapon, and of using dangerous materials to attack aircraft or other targets on the ground. The unlawful transport of biological, chemical and nuclear weapons and their related material has been made punishable. Moreover, the criminal liability of directors and organizers of an offence under the treaties is specifically covered. Making a threat to commit an offence under the treaties may also trigger criminal liability, when the circumstances indicate that the threat is credible. Each of the two treaties requires 22 ratifications to bring it into force. As of 1 October 2010, the Convention had been signed by 20 States and the Protocol by 21 States.

59.2 A37-WP/290, presented by Argentina, Australia, Canada, China, Czech Republic, France, Mexico, Nigeria, South Africa, Uganda, United Kingdom and the United States of America, proposed in the Attachment a draft Assembly resolution to urge all ICAO Member States to sign and ratify the Beijing Convention and Protocol.

59.3 One delegation, supported by three, mentioned that the Beijing treaties were not adopted by consensus but by votes. In particular, the so-called “military exclusion clause” had generated a division among States, which may affect the acceptance of the instruments. It was emphasized that States should be allowed to make a reservation on this clause.

59.4 The majority of the delegations which took the floor expressed the view that the two new treaties broaden and strengthen the global civil aviation counter-terrorism framework. Their universal adoption would significantly advance cooperation in the prevention of unlawful acts relating to civil aviation.

59.5 In summary, the Chairman underlined the broad consensus that the legal framework on aviation security needs to be strengthened in order to address the new and emerging threats. The new treaties did not prohibit States to make reservations on a particular clause when signing, ratifying or acceding. The Commission then **agreed** to recommend to the Plenary the adoption of the following resolution:

**Resolution 59.1: Promotion of the Beijing Convention and the Beijing Protocol of 2010**

*Recalling* its Resolution A36-26, Appendix C, relating to the ratification of instruments which have been developed and adopted under the auspices of the Organization;

*Recognizing* the importance of broadening and strengthening the global aviation security regime to meet new and emerging threats;

*The Assembly:*

1. *Urges* all States to support and encourage the universal adoption of the *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* (Beijing Convention of 2010) and the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft* (Beijing Protocol of 2010);
2. *Urges* all States to sign and ratify the Beijing Convention and Beijing Protocol of 2010 as soon as possible; and
3. *Directs* the Secretary General to provide assistance, as appropriate, with the ratification process if so requested by a Member State.

---

**Agenda Item 60: Work Programme of the Organization in the legal field**

60.1 The Commission considered this item on the basis of A37-WP/33, presented by the Council, A37-WP/77, Addendum No. 1 and Addendum No. 2, presented by Argentina, Brazil, Canada, Germany, Singapore, South Africa, Tanzania and the United States of America, A37-WP/80, presented by the United States of America, A37-WP/229, presented by Colombia, A37-WP/233, presented by the Republic of Korea, and A37-WP/281 Revised and Corrigendum No. 1, presented by the Air Crash Victims Families Group, the Flight Safety Foundation and La Asociación Latino Americana de Derecho Aeronáutico y Espacial (ALADA).

60.2 A37-WP/33 provided information to the Assembly regarding the ongoing work of the Secretariat in the legal field and an overview of the developments and relevant decisions taken by the Council since the previous session of the Assembly in relation to the items on the Work Programme of the Legal Committee, including the prioritization of items. One delegation and one observer welcomed the re-activation of the Secretariat Study Group on Unruly Passengers, mentioning in particular the need to address the jurisdictional issues involving the State of landing in relation to serious offences committed by unruly passengers.

60.3 A37-WP/77 contained a proposal for the adoption of a Resolution urging all States to ratify as soon as possible the Montreal Convention of 1999 and directing the Secretary General of ICAO to provide assistance, as appropriate, with the ratification process if so requested by a State. In its presentation, the Delegation of the United States of America recalled the benefits contained in the Convention for the travelling public and highlighted the need to strive for the universal acceptance of the Convention, given the confusing patchwork of co-existing legal regimes at present.

60.4 In its presentation, on behalf of the co-sponsors of A37-WP/281, the Air Crash Victims Families Group similarly highlighted the need to further promote the ratification of the Montreal Convention of 1999, remarking that it was unacceptable that in relation to the same accident the applicable rules regarding the compensation of victims could differ.

60.5 In the consideration of the two working papers, numerous delegations, among which one spoke on behalf of the European Union States and other ECAC Members, as well as one observer supported the idea of enhancing the efforts to urge States to ratify the Montreal Convention of 1999. Several delegations regarded it as timely to seek a universal application. Several delegations remarked that the current situation was unsatisfactory as it was difficult at times to determine which liability regime applied in a given case. In response to the observation by one delegation that there already existed a resolution addressing the Montreal Convention, one delegation remarked that the proposed resolution was slightly broader in scope insofar as it encouraged universal adoption. The Commission consequently **agreed** to invite the Assembly to adopt the proposed Resolution hereunder:

**Resolution 60.1: Promotion of the Montreal Convention of 1999**

*Recalling* its Resolution A36-26, Appendix C, relating to the ratification of instruments which have been developed and adopted under the auspices of the Organization;

*Recognizing* the importance of achieving a universal regime to govern airline liability to passengers and shippers on international flights;

*Recognizing* the desirability of an equitable, fair and convenient system that allows full compensation for losses;

The Assembly:

1. *Urges* all States to support and encourage the universal adoption 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);

1. *Urges* all States that have not done so to become Parties to the Montreal Convention of 1999 as soon as possible; and

2. *Directs* the Secretary General to provide assistance, as appropriate, with the ratification process if so requested by a State.

60.6 A37-WP/80 contained a proposal to add the topic “Consideration of Guidance on Conflicts of Interest” to the Work Programme of the Legal Committee. In elaborating on the proposal, the Delegation of the United States expressed the view that reasonably consistent rules across the sector to establish and preserve a clear separation between civil aviation authorities and the activities that they oversee were desirable. Providing the example that in one State it might be necessary for the Director General of Civil Aviation (DGCA) to completely divest himself or herself of any kind of financial interest in the industry whereas in another the DGCA may be able to retain the position as an airline pilot, the absence of guidance left these matters to be governed by widely diverging national laws. The delegation suggested considering the conflicts of interest situations in three distinct areas: 1) financial interests in regulated entities; 2) the movement from individuals from positions in government to industry and vice versa; and 3) the practice of designating or seconding personnel to carry out oversight functions on behalf of the Civil Aviation Authority. It was therefore appropriate for the Legal Committee to study this matter further and to develop recommendations, if necessary and appropriate, for ICAO to promulgate guidance material, if needed.

60.7 Two delegations regarded the existing ICAO guidance material as sufficient and saw no need for further action by the Legal Committee. One of these delegations referred the Commission to existing material contained in Part A of the Safety Oversight Audit Manual (Doc 9735). It was further noted that Part 3 of Doc 8335, *Manual of Procedures for Operations Inspection, Certification and Continued Surveillance*, also contained some guidance material. Another delegation, although not opposing to the objectives the proposal sought to achieve, suggested to have the matter first considered in the Air Navigation Commission. A large number of delegations which intervened on this matter saw merit in what had been proposed. Several of these delegations remarked that it was imperative though to limit the study to the development of potential guidance material, as the matter was not susceptible to being addressed in ICAO Standards and Recommended Practices (SARPs) or in a convention. One of these delegations proposed to send out a questionnaire to elicit the elements to be studied.

60.8 In concluding the discussion on this point, the Chairman noted the strong support for the conduct of a study which had been expressed. The Commission thereafter **agreed** to add the item “Consideration of Guidance on Conflicts of Interest” on the Work Programme of the Legal Committee.

60.9 A proposal for the development of a model legislation to assist States in the implementation of SARPs to be added to the Work Programme was orally put forward by one delegation. While appreciating that for some States the implementation of SARPs remained a challenge, a number of delegations noted that the proposal had not been presented in advance and remarked that they were thus not in a position to consider the matter at this stage.

60.10 The Commission further considered A37-WP/229, presented by Colombia. The working paper contained a proposal to harmonize the criteria which governed the allocation of responsibilities between airport operators, aeronautical authorities and other parties in regard to damage caused by wildlife strikes. The majority of delegations who intervened on this matter saw no legal lacuna which needed to be addressed as both the Montreal Convention of 1999 and third-party liability instruments such as the 2009 General Risk Compensation Convention provided for the possibility of recourse actions. In addition, the insurance market provided adequate protection for such risks.

60.11 A37-WP/233, containing the offer by the Republic of Korea to host a Regional Legal Seminar in 2012 to address legal matters of interest in the Asia-Pacific Region was noted by the Commission with appreciation.

60.12 Subject to the addition of the new item dealing with conflicts of interest, the Commission **confirmed** the Work Programme of the Legal Committee as set out in paragraph 3.4 of A37-WP/33.

**Agenda Item 62: Other issues to be considered by the Legal Commission**

62.1 The Commission **noted** A37-WP/95 (Information Paper).

— END —