



ASSEMBLY — 36TH SESSION

LEGAL COMMISSION

Agenda Item 47: 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 in the Work Programme of the Legal Committee, including the prioritizations of items, as well as information regarding the programme of legal meetings for 2008, 2009 and 2010.

Action: The Assembly is invited to consider the programme of future work of the Organization in the legal field and to endorse the Work Programme of the Legal Committee approved by the Council as set out in paragraph 4.5.

<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

1.1 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. Information regarding planned legal meetings is provided for information purposes.

2. WORK PROGRAMME OF THE LEGAL BUREAU

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 Contracting 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 in the ICAO 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 Administrative Tribunal; representation of the Secretary General in other litigation in which ICAO may be involved, including cooperation with the Attorney General of Canada in respect of litigation in Canada involving ICAO's immunities; cooperation on legal matters with the United Nations and other organizations; and other related functions of a legal nature.

2.2 The Legal Bureau 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 The Legal Bureau 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.

2.4 Since the last session of the Assembly, the Legal Bureau conducted an ICAO Regional Legal Seminar for States to which the Asia and Pacific Office is accredited. The Seminar was held in Seoul from 8 to 12 May 2006 and was hosted by the Government of the Republic of Korea.

3. LEGAL MATTERS IN THE COUNCIL

3.1 In the ordinary course, the Council deals with various matters in the legal field, as they might arise from time to time. Under the Constitution of the Legal Committee, the Council has the function of approving the General Work Programme of the Committee which is determined by the Committee. Also, under paragraph 5 of the Constitution of the Legal Committee, the Council decides on the date, place and provisional agenda of the sessions of the Legal Committee which are convened by the Council. According to the *Procedure for Approval of Draft Conventions on International Air Law* (Assembly Resolution A31-15, Appendix B), the Council, when receiving a draft Convention in final form from the Legal Committee, takes such action as it deems fit, including the circulation of the draft

Convention to States and, in doing so, may add its comments on the draft Convention; the Council also convenes a Diplomatic Conference for approval of the draft Convention.

3.2 In the period following the last session of the Assembly, the Council decided to establish the Council Special Group on Legal Aspects of Emissions Charges (CSG-LAEC) to address legal questions relating to emission charges. The meeting of the Council Special Group was held in ICAO Headquarters from 6 to 9 September 2005 and was attended by 41 delegates from 19 Contracting States, the Chairman of the Legal Committee, Mr. Gilles Lauzon, as *ex-officio* member, two observers from two Contracting States and four observers from three international organizations. The Special Group completed its work and presented its key conclusions to the Council.

3.3 Secretarial support was provided to the Council Special Group on the Modernization of the Rome Convention of 1952, which continued its work and held its sixth meeting at ICAO Headquarters from 26 to 29 June 2007.

4. WORK PROGRAMME OF THE LEGAL COMMITTEE

4.1 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.

4.2 The 35th Session of the Assembly decided upon the following General Work Programme of the Legal Committee with the subjects listed in order of priority:

- 1) Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), of the establishment of a legal framework;
- 2) Consideration of the modernization of the *Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface*, signed at Rome on 7 October 1952;
- 3) Acts or offences of concern to the international aviation community and not covered by existing air law instruments;
- 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.

4.3 On 29 November 2005, the Council decided to change the order of priority of the first three items on the Work Programme. On account of the fact that work had been progressing with regard to the modernization of the 1952 Rome Convention, item 2) was assigned priority number 1), and the sequence of priority between hitherto items 1) and 3) was changed so that the item dealing with CNS/ATM systems was placed as new item 3), while the item dealing with acts and offences of concern was assigned priority number 2).

4.4 In order to better reflect the work that was being done in relation to item 1) of the General Work Programme, the Council, on 6 December 2006, decided to amend the said item to read, “Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks”.

4.5 As a consequence of these decisions, the General Work Programme approved by the Council is presently established 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), 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.

4.6 Additional information on items 1) and 2) of the Work Programme is presented to the Assembly separately in Working Papers A36-WP/11, LE/3 and A36-WP/12, LE/4, respectively. The Appendix hereto provides details on items 3), 4), 5) and 6).

5. LEGAL MEETINGS

5.1 For budgetary and planning purposes during the period 2008, 2009 and 2010, the following meetings have been envisaged:

- two Diplomatic Conferences;
- a session of the Legal Committee; and
- a regional legal seminar.

5.2 The Council will review the programme of meetings at its 182nd Session in November/December 2007, including the issue of the convening of a session of the Legal Committee in 2008.

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APPENDIX

NOTE: Additional information on items 1) and 2) of the Work Programme is presented to the Assembly separately in Working Papers A36-WP/11, LE/3 and A36-WP/12, LE/4, respectively. This Appendix provides details on items 3), 4), 5) and 6).

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

Assembly Resolution A35-3: *A Practical Way Forward on Legal and Institutional Aspects of Communications, Navigation, Surveillance/Air Traffic Management (CNS/ATM) Systems* invites, *inter alia*, the Member States to consider using regional organizations to develop mechanisms necessary to address any legal or institutional issues that could inhibit the implementation of CNS/ATM in the region, while ensuring that such mechanisms will be consistent with the Chicago Convention, and public international law. In line with this resolution, some regions continued their study on their respective initiatives, and the ICAO Secretariat monitored the development in this respect.

Item No. 4: **International interests in mobile equipment (aircraft equipment)**

In June 2005, the Council, during its 175th Session, confirmed its decision to accept the role of Supervisory Authority of the International Registry to which it had been invited by the Cape Town Diplomatic Conference of 2001 under its Resolution No. 2. The Council assumed this role on 1 March 2006 when the Cape Town Convention and Protocol of 2001 entered into force and the International Registry, which had been established by the Preparatory Commission for the International Registry acting as Provisional Supervisory Authority, entered into operation.

During its 176th session, in November 2005, the Council decided, pursuant to Article XVII of the Cape Town Protocol and Resolution No. 2 of the Cape Town Diplomatic Conference of 2001, to establish a Commission of Experts comprising not more than 15 members nominated by Contracting and Signatory States to the Cape Town Convention and Protocol, to assist the Council in the performance of its functions of Supervisory Authority of the International Registry. The Commission, currently composed of eight Experts, held its first meeting at ICAO Headquarters in November 2006.

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 35th Session of the Assembly, the following international air law instruments have entered into force: the Protocol of amendment to the Chicago Convention increasing the size of the Air Navigation Commission from 15 to 19 members (1989), on 18 April 2005; the Cape Town Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters specific to Aircraft Equipment (2001), on 1 March 2006; and the second amendment to the Technical Annex to the Convention on the Marking of Plastic Explosives (1991), on 19 December 2005. As a result, new editions of Doc 7300 — *Convention on International Civil Aviation* and Doc 9571 — *Convention on the Marking of Plastic Explosives for the Purpose of Detection*, incorporating these amendments, have been produced, which should facilitate ratification and implementation of these Conventions.

With respect to the Chicago Convention, thirteen of the fifteen amendments are now in force and have over one hundred parties each.

The Treaty Collection on the ICAO website is continuously updated after each depositary action. This collection, accessed through the ICAO-NET (www.icao.int/icaonet), has direct links to the texts of air law treaties. Also available on the ICAO-NET are proceedings of the international air law conferences which adopted these treaties.

Administrative packages intended to facilitate ratification of air law instruments by States were updated as necessary. These packages are available on the ICAO-NET or upon request; selected ones are periodically sent by State letters and distributed at legal seminars. The Secretariat will continue to take administrative actions necessary to further encourage ratification, such as the development and dissemination of ratification packages and promotion of ratification at various fora such as seminars. 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.

Item No. 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***

This subject has been kept as Item No. 6 in the General Work Programme for monitoring purposes, so as to enable the Legal Committee to commence any required work without delay, if need be. There were no significant developments since the 35th Session of the Assembly. This item has been further monitored by the Secretariat, which contributes to the yearly UN Secretary-General's report on "Oceans and the law of the sea" to the General Assembly.

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