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ASSEMBLY — 38TH SESSION

LEGAL COMMISSION

Agenda Item 47: Work Programme of the Organization in the legal field

LEGAL FRAMEWORK ON REMOTELY PILOTED AIRCRAFT − LIABILITY MATTERS

(Presented by the Republic of Korea)

EXECUTIVE SUMMARY

This paper demonstrates the increasing need for further legal research and examination of Remotely Piloted Aircraft (RPA) − Liability matters in light of the increasing use of RPAs.

Action: The Assembly is invited to:

a) review the information and assessment presented in this paper;
b) organize a study group, as the case of Unmanned Aircraft System Study Group (UASSG), to discuss under the Legal Committee; and
c) establish a data collection and sharing system for the issues of RPA accidents and incidents and associated liability which may be led by ICAO.

Strategic Objectives:	This working paper relates to Safety, Environmental Protection and Sustainable Development of Air Transport, and Supporting Implementation Strategies – Programme Support – Legal Services and External Relations Strategic Objectives.
Financial implications:	Not applicable.
References:	Annex 13 — *Aircraft Accident and Incident Investigation* Annex 19 — *Safety Management* Doc 9859, *Safety Management Manual (SMM)* Cir 328, *Unmanned Aircraft System (UAS)*

1. INTRODUCTION

1.1 While existing Remotely Piloted Aircraft (RPA) had been predominantly manufactured for military uses, civil applications of RPAs are expected to rapidly grow into different sectors such as remote-exploration, telecommunications, environmental surveillance, mapping and agriculture.

1.2 The world's first case of a civilian killed in a RPA accident occurred on October 3rd, 2006, when B-Hunter, the European peacekeeping force's surveillance RPA, crashed due to deficiencies of two engines.

1.3 As the number of RPAs rapidly increases, similar civil damages are bound to occur. Recorded RPA accident rates have been far above the accident rates of piloted aircraft.

1.4 RPA accidents have been attributed to a variety of factors such as human error, mechanical defect, transmission failures, environmental factors and GPS jamming.

2. ICAO ACTIVITIES

2.1 The first official discussion on RPAs was held at the first meeting of the 169th session of ICAO Council on April 12th, 2005. The Air Navigation Commission requested a discussion on UAV operations in civil airspace.

2.2 In 2007, an Unmanned Aircraft System Study Group (UASSG) was assembled to embark on legislative efforts toward international cooperation, the development of regulation and manuals, technical specifications and the Standards and Recommended Practices (SARPs).

2.3 On March 3rd, 2011, Cir 328 (Unmanned Aircraft System: UAS) was published, providing guidelines for the institutional use of civil aviation authorities, so that internationally consistent regulations might be implemented in consideration of individual Member State's circumstances.

2.4 On November 17th, 2011 at the Air Navigation Commission 188th-6 meeting, international standards for UAV affiliated regulations were approved to be examined and added to Annex 2 (Rules of the Air) and Annex 7 (Aircraft Nationality and Registration Marks).

3. DISCUSSION

3.1 During the above-mentioned ICAO activities taken for RPA operation, liability for RPA accidents has not been discussed. Such a case can only be applied to the Montreal Convention (1999) and the Rome Convention (2009) amongst the Legal Frameworks of ICAO.

3.2 The Montreal Convention (1999) establishes a two-tier liability system for fatalities and injuries resulting from a plane crash. In this system, strict liability is adopted for damages of up to 100,000 SDR (113,100 SDR updated on December 31st, 2009). For damages exceeding 100,000 SDR, liability is based on the presumed fault of the carrier, therefore placing the burden of proof on the carrier.

3.3 For protection of passengers and air carriers, the Montreal Convention (1999) further introduces and mandates liability insurance for all carriers.

3.4 However, the Montreal Convention (1999) was conceived and implemented mainly to protect air passengers, and is thus not applicable to RPA accidents, where primary concern lies with third party victims on the surface.

3.5 On May 31st, 2004, in order to modernize the Rome Convention (2009), a special research group was formed under the leadership of the ICAO Legal Committee and began the amendment process. After several meetings, the ICAO Legal Committee agreed to separate the issues of terrorism from accidental crashes and produced two draft Conventions: the Draft Convention on Compensation for Damage Caused by Aircraft to Third Parties; and the Draft Convention on Compensation for Damage Caused by Aircraft to Third Parties, in case of Unlawful Interference.

3.6 This Convention classifies strict liability into ten subdivisions by the plane's maximum take-off gross weight and also drastically raises the maximum amount to 700,000,000 SDR.

3.7 Despite the fact that the Rome Convention (2009) was adopted on May 2nd, 2009 at a diplomatic meeting hosted by ICAO, it is yet to be put into effect. Implementation of the Convention has been suspended due to the conflict between developed countries and developing countries surrounding the Fund for Compensation for International Civil Aviation specified by the Draft Convention on Compensation for Damage Caused by Aircraft to Third Parties, in case of Unlawful Interference. Consequently the Liability System of the Rome Convention (2009) to RPA crashes is also rendered inapplicable.

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