



WORKING PAPER

LEGAL COMMITTEE – 36TH SESSION

(Montréal, 30 November to 3 December 2015)

Agenda Item 2: Consideration of the General Work Programme of the Legal Committee

SAFETY ASPECTS OF ECONOMIC LIBERALIZATION AND ARTICLE 83 *BIS*

(Presented by the Secretariat)

1. INTRODUCTION

1.1 Article 83 *bis* of the *Convention on International Civil Aviation* (the Convention) entered into force on 20 June 1997. The corresponding Protocol to the Convention (Doc 9318) is in force for the 166 States parties to it as of 1 October 2015. Article 83 *bis* makes provision for the transfer of certain functions and duties normally incumbent on the State of Registry to the State of Operator, in the case of lease, charter or interchange of an aircraft or similar arrangement. Article 83 *bis* is an umbrella provision, and it does not entail the automatic transfer of the functions and duties. This means that it is a discretionary and flexible option available to those that ratify it, but unless functions and duties are clearly reassigned by a specific transfer agreement between the States concerned, they continue to rest with the State of Registry. Article 83 *bis* also establishes the limits of the responsibilities which are transferable: the agreement can cover only the duties attached to Articles 12, 30, 31 and 32 a) of the Convention.

2. BACKGROUND

2.1 At its 184th Session the Council requested the Secretariat to include the subject “Safety aspects of economic liberalization and Article 83 *bis*” as a new item in the revised General Work Programme of the Legal Committee.

2.2 At the 35th Session of the Legal Committee the Secretariat introduced a Working Paper on the subject (LC/35-WP/3-2-Revised), which reported on the various difficulties States encounter in implementing Article 83 *bis* and the assistance that has been provided by ICAO in such cases. Reference was made to ICAO Circular 295- *Guidance on the Implementation of Article 83 bis of the Convention on International Civil Aviation* (Cir 295 LE/2) issued in 2003. The Legal Committee established a Working Group to review the safety aspects of economic liberalization and Article 83 *bis*. The Report on the 35th Session of the Legal Committee (C-WP/14034) attaches the Report of the Working Group, as endorsed by the Committee, as Appendix B. The Report sets out the view that there are no legal issues per se with the language of Article 83 *bis*; however, consequential legal issues may arise in the implementation of Article 83 *bis* due to a lack of understanding of some member States as to the application of Article 83 *bis* and the nature of leasing. The Report recommended that a task force be formed in this regard. The Council, at its 199th Session on 14 June 2013 (C-DEC 199/11) endorsed that recommendation. The Article 83 *bis* Task Force (83 *bis* TF) was established in September 2014, following a State Letter (IND/14/9) dated 31 July 2014 seeking the nomination of experts.

3. **ESTABLISHMENT OF THE ARTICLE 83 *BIS* TASK FORCE AND THE SCOPE OF ITS WORK**

3.1 In line with the recommendation of the Working Group, as endorsed by the Legal Committee and the Council, State Letter IND/14/9 informed that the 83 *bis* TF would assist the Secretariat in revising ICAO Circular 295 on some key questions which could help to better educate Member States on the proper application of Article 83 *bis*. Secondly, taking into account that ICAO does not have the legal authority to conduct substantive review of these agreements, the 83 *bis* TF would consider possible options to enhance their timely registration such as through an interactive web-based registry where States upload agreements themselves electronically.

3.2 The deliverables of the 83 *bis* TF were set out to be:

- a) Recommendations for revisions to ICAO Circular 295; and
- b) Identification of options to be considered by ICAO as alternatives to the current registration system, possibly web-based.

3.3 Experts from 12 member States (Canada, Chile, Finland, France, Ireland, Morocco, Russia, Saudi Arabia, South Africa, Turkey, United Kingdom and United States) as well as three international organizations (Aviation Working Group, European Union and International Air Transport Association) participated in one or more of the meetings of the 83 *bis* TF. The expert from Canada, Mr. John Thachet, was elected to act as the Chairman and the expert from Ireland, Mr. Brian Skehan, was elected as Vice-Chairman. The 83 *bis* TF has met three times: in Montreal from 15 to 16 September 2014; in Dublin from 23 to 27 March 2015; and in Bermuda from 8 to 11 September 2015. In the intervening periods the Task Force carried on with its work remotely through email.

4. **REVISED GUIDANCE**

4.1 **Format: a Manual**

4.1.1 The 83 *bis* TF opined that Circular 295 should not be replaced by another circular but updated in the form of a Manual, which is the category of ICAO document used for providing guidance and information concerning aspects of aeronautical activity. The 83 *bis* TF assisted the Secretariat in developing a draft Manual to be approved under the authority of the Secretary General upon finalization, after last review by the Task Force. The salient features of the draft Manual are presented for the information of the Legal Committee, as follows.

4.2 **Key terms and concepts**

4.2.1 The Manual will expand on the definition of terms and description of concepts, including on different types of leases as well as additional terms such as general aviation and the notion of operator, consistent with existing ICAO definitions. In this regard, the Manual will focus on cases where the State of Registry is different from the State of the Operator through arrangements which for commercial operations in fact result in two basic situations: either dry- or wet lease of aircraft.

4.3 **Suitability of Article 83 *bis***

4.3.1 The Manual will provide guidance that the usage of Article 83 *bis* is recommended mostly in situations of long term dry leases. While acknowledging that wet leases, charters and

interchanges are in theory amenable to Article 83 *bis* agreements, the Task Force was of the view that dry leases were best suited for Article 83 *bis* purposes; unless short term leases were repetitive (e.g. recurrent seasonal leases), they may not be suitable for an Article 83 *bis* agreement.

4.4 **Flow Chart and packages**

4.4.1 The Manual will provide a flow chart setting out the references in the Annexes which correspond to the provisions mentioned in Article 83 *bis* as a possible basis for transfer of responsibilities (Articles 12, 30, 31 and 32a)), thereby clarifying which specific duties and functions of the State of Registry are candidates for such transfers. The Manual will further give guidance on the categories of responsibilities that may be transferred in different circumstances as well as examples of linkages between transferable ‘packages’ of duties and functions. The draft flow chart is set out at **Appendix A**.

4.5 **Negotiation, content and signature of Article 83 *bis* Agreements**

4.5.1 Comprehensive guidance will be provided on the negotiation, content and authority to sign Article 83 *bis* agreements, through a step-by-step description of the entire process, from evaluation of the legal frameworks and mutual initial and continuous safety assessments, to the return of transferred duties and functions back to the State of Registry, emphasizing the need for effective liaison between the State of Registry and the State of the Operator.

4.6 **Template for an Article 83 *bis* Agreement Summary**

4.6.1 To provide necessary clarity on transfers for the benefit of all stakeholders, the Manual will include a template for an Article 83 *bis* Agreement Summary. Such Summary should be used for the following three purposes: 1) As a cover page of the Article 83 *bis* Agreement, to assist the parties to determine with certainty the scope of their agreed transfer; 2) To facilitate registration with, and publication by ICAO of the agreements, allowing for enhanced clarity of the information published; 3) To be carried on board aircraft concerned so as to facilitate verifications by ramp inspectors. The draft template for an Article 83 *bis* Agreement Summary is set out at **Appendix B**.

4.7 **Training of safety inspectors**

4.7.1 The Manual will provide guidance on ramp and other inspections of aircraft operated under Article 83 *bis* agreements, with dedicated guidelines for the training of inspectors. In this connection, the *Manual of Procedures for Operations, Inspection, Certification and Continued Surveillance* (Doc 8335) will also be amended to provide detailed guidance (including checklists) on the ramp inspections of such aircraft.

5. **RECOMMENDATIONS TO THE COMMITTEE**

5.1 The Task Force on Article 83 *bis* makes the following recommendations for consideration of the Legal Committee:

- a) “That ICAO amends its Council’s *Rules for Registration with ICAO of Aeronautical Agreements and Arrangements* (Doc 6685) so as to provide for possible registration of aeronautical agreements through an interactive web-based system using a user friendly electronic platform, in particular to allow for swift registration and publication of Article 83 *bis* agreements”.¹
- b) “That ICAO, for safety, enforceability and efficiency purposes, establishes such an interactive web-based registration and publication system as soon as practicable to facilitate timely registration of Article 83 *bis* agreements, and amendments thereto, as well as their immediate publication. The system could usefully be linked to other ICAO databases containing pertinent safety information on registration of aircraft and Air Operator Certificates. Interested parties are urged to offer to ICAO their cooperation and support for the development of such a system”.
- c) “That ICAO, in parallel with the development of a web-based registration and publication system, considers amending Annex 6 to the Chicago Convention to include a Standard requiring that a certified true copy in paper or electronic format of a Summary of the Article 83 *bis* Agreement be carried on board aircraft while the agreement is in force, along with related amendments to Annex 6 regarding the air operator certificate and other documentation. Annex 6 should also refer in this respect to the Agreement Summary which should be provided for purposes of registration of Article 83 *bis* agreements”.
- d) “That ICAO clarifies the notions of the Operator and of the State of the Operator in the context of general aviation with reference to Annex 6 Part II and III, section 2, and considers amending relevant Standards to cater for the transfer of responsibilities from the State of Registry under Article 83 *bis*. ICAO should also explore the applicability of Article 83 *bis* to Aerial Work aircraft and Remotely Piloted Aircraft Systems considering that current Annex 6 requirements do not apply to those aircraft”.
- e) “That, in line with Assembly Resolution A23-3, the ICAO Secretary General urges Member States not parties to the Protocol on Article 83 *bis* to ratify it as soon as possible and complete necessary changes to their national law, with a view to maximizing the efficiency of operations of aircraft subject to Article 83 *bis*. Pending such ratification and changes, the States concerned should be urged not to prevent the operations of such aircraft in their airspace for this reason and to provide related information on their policies and practices”.

6. ACTION BY THE COMMITTEE

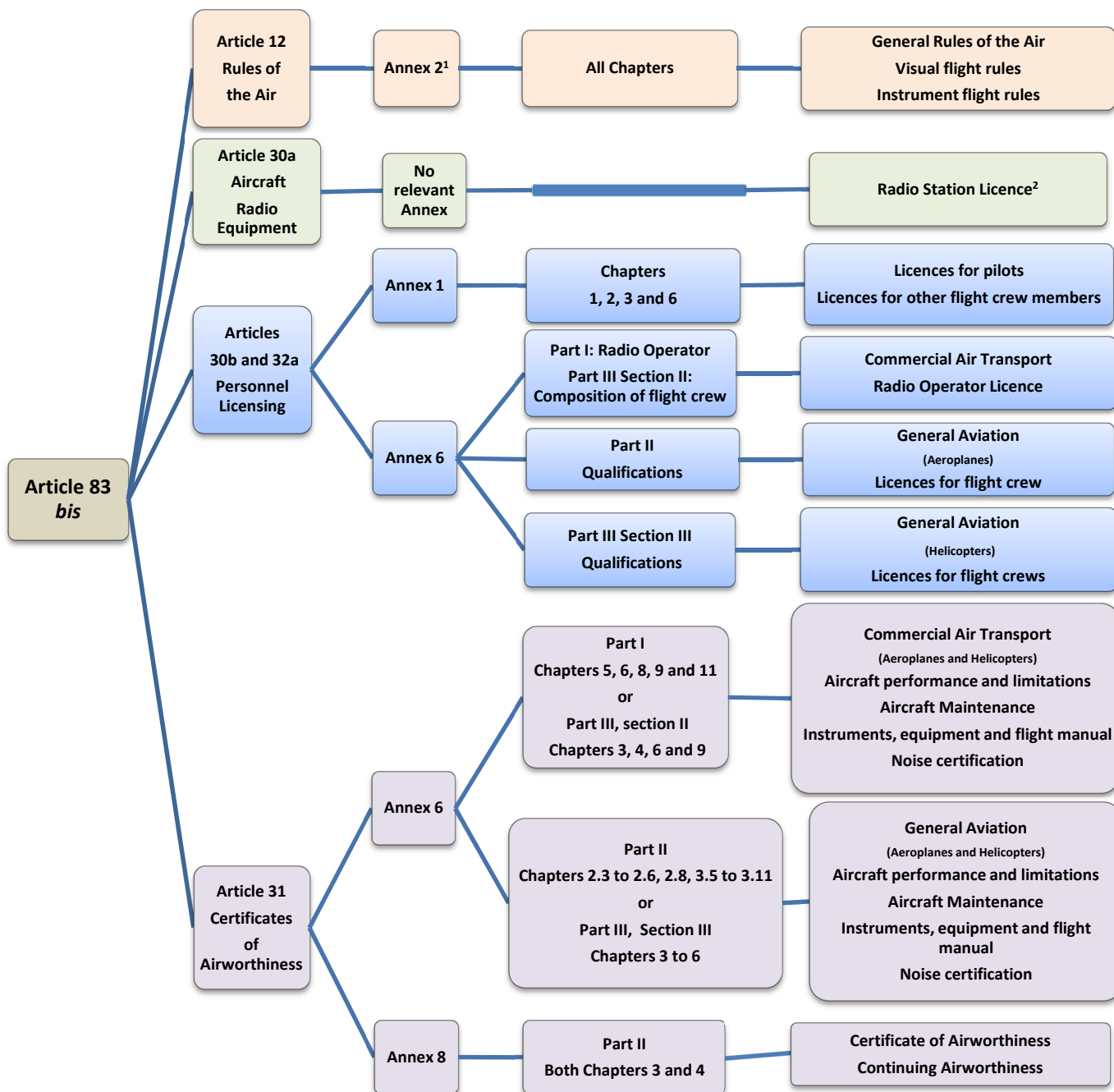
6.1 The Committee is invited to note the information in paragraphs 1 to 4 and to acknowledge the progress made by the 83 *bis* TF.

6.2 The Committee is invited to endorse the recommendations of the 83 *bis* TF set out in paragraph 5 for follow-up by the Council.

¹ This recommendation is to be considered within the mandate of the Task Force, i.e. to allow on-line registration and publication of 83 *bis* agreements. There are two main types of agreements which are registered by ICAO: Article 83 agreements, mostly bilateral air transport agreements for the exchange of traffic rights; and Article 83 *bis* agreements. ICAO has registered in total 5262 Article 83 agreements and 365 Article 83 *bis* agreements. For this year, as of 27 October, the figures are 39 and 23 respectively.

APPENDIX A

Articles and Annexes of the Chicago Convention under which responsibilities may be transferred in whole or in part from the State of Registry to the State of the Operator



¹ See also the Notes in Annex 6, Part I, 3.1.3; Part II, 2.1.1.3 or 3.3.1.3 and Part III, Section II, paragraph 1.1.4 and Notes 1 and 2 in Part III, Section III, 1.1.1.

² Issued by the appropriate national authority in accordance with ITU radio regulations.

APPENDIX B

SUMMARY OF ARTICLE 8S BIS AGREEMENT FOR THE PURPOSE OF REGSISTRATION OF THE AGREEMENT AND CARRYING ON BOARD THE AIRCRAFT

Title of the Agreement:	
State of Registry & Focal Point:	
State of the Operator & Focal Point:	
Date of signature ¹	By State of Registry:
	By State of the Operator:
Date of entry into force ¹ :	
[Duration/Expiry date ¹ :]	
Languages of the Agreement:	
ICAO Registration No. (if available)	
Umbrella Agreement (if any) with ICAO Registration number:	

Chicago Convention	ICAO Annexes affected by the transfer to the State of the Operator of responsibility in respect of certain functions and duties		
Article 12: Rules of the Air	Annex 2	Yes	All chapters
		No	
Article 30a: Aircraft radio equipment	Radio Station Licence	Yes	
		No	
Articles 30b and 32a: Personnel Licensing	Annex 1 and	Yes	Chapters 1, 2, 3 and 6.
	----- Annex 6 Part I: Radio Operator or Part III, Section II: Composition of the flight crew, and/or Part II, or Part III, Section III: Qualifications	No	Specify:
Article 31: Certificates of Airworthiness	Annex 6 Part I or Part III, Section II	Yes	Specify:
		No	
	Annex 6 Part II or Part III, Section III	Yes	Specify:
		No	
	Annex 8 Part II, Chapters 3 and 4	Yes	Specify:
		No	

Aircraft affected by the transfer of responsibilities to the State of the Operator					
Aircraft make, model, series	Nationality & Registration marks	Serial No	AOC # (Commercial Aviation)	Lease/Charter/Interchange From date ¹	Lease/Charter/Interchange To date ¹

¹ (dd/mm/yyyy)