



**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**

**ITEM 7) DETERMINATION OF THE STATUS OF AN AIRCRAFT – CIVIL/STATE**

(Presented by the United States)

**1. INTRODUCTION**

1.1 Because this item was supported by a number of Council Member States, the United States did not object to its inclusion in the Work Programme of the Legal Committee. The Working Paper presented by Poland, Bulgaria, the Czech Republic, Cyprus, Greece, Lithuania, Romania, Slovakia, Slovenia, and Hungary, “State/Civil Aircraft Definition and its Impact on Aviation,” LC/36-WP/2-6, however, *assumes* the Committee will support “three objectives” and invites the Committee to consider how to achieve them. The objectives do not just call for formulating a consensus definition of “state aircraft.” They extend to “establishing more precise criteria for qualification” of state aircraft and “rules by the International Aviation community for determining the aircraft status *for each flight or flight series* (emphasis added)”.

**2. DISCUSSION**

2.1 We do not support these objectives. At a minimum, the Committee should consider whether to embrace the objectives before considering whether or how to attempt to achieve them.

2.2 We also caution against any efforts to regulate state aircraft through ICAO, because the Chicago Convention is “not . . . applicable to state aircraft.” Art. 3(a).

2.3 Moreover, considering past experience, it is very unlikely that the Committee could arrive at a consensus definition of “state aircraft,” much less produce guidance that would materially alter Member State practice in this area. The excellent study produced in 1994 by the Legal and External Affairs Bureau (LEB), A37-WP/80, has stood the test of time. It is unlikely that the considerable manpower required to repeat the study would materially add to its marshalling of facts and conclusions or significantly alter its recommendations. The Legal Committee, in its 29th Session, ICAO Doc 9630, took no action and it would be likely to reach the same result after any new study is carried out.

2.4 Finally, the LEB is severely stretched to carry out its support for the several items on the Work Programme that the Organization considers to be more important.

**3. CONCLUSION**

3.1 The Committee is invited to recommend that the item “Determination of the Status of an Aircraft – Civil/State” continue at its current level of importance.

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