



LC/36

International Civil Aviation Organization

LEGAL COMMITTEE

36TH SESSION

Montréal, 30 November to 3 December 2015

REPORT

1. Place and Duration

1.1 The 36th Session of the Legal Committee was held at Montréal from 30 November to 3 December 2015. The Chairman of the Legal Committee, Mr. Terry Olson (France), presided over the Session.

2. Opening addresses

2.1 The meeting was declared open by **the Chairman of the Legal Committee. The First Vice-President of the Council**, Mr. Englebert Zoa Etundi, welcomed all delegates and observers on behalf of the Council, its President and the Secretary General. He recalled that from its inception, ICAO had relied on the Committee to provide it with legal advice for its activities and to enable it to meet its objectives under the *Convention on International Civil Aviation*. While several previous sessions of the Legal Committee mainly focused on the drafting of one or more international air law treaties, it was not the expectation of this Session to prepare any new protocol or convention. However, it did not by any means imply that the work of the current Session was less significant. It was a highly demanding task for the Committee to examine the contemporary legal issues, with a view to promoting safety and security of international civil aviation.

2.3 The First Vice-President recalled that with regard to acts or offences of concern to the international aviation community and that are not covered by existing air law instruments, as recently as last year, a new protocol had been adopted to amend the *Convention on Offences and Certain Other Acts Committed on Board Aircraft*. The Committee will be informed of the follow-up work in the Task Force on Legal Aspects of Unruly Passengers, to update the guidance material consequential to the new protocol.

2.4 He noted that conflicts of interest was for discussion by the Committee, and that the overall objective of work on this item was to consider the development of ICAO rules or guidance in order to assist member States on measures to be used to detect, avoid, mitigate and/or manage conflicts of interest within their national framework. For this purpose, a survey had been undertaken by the ICAO Secretariat, the report on which was for discussion by the Committee.

2.5 At its last Session the Committee took the view that legal issues may arise in the implementation of Article 83 *bis* by some member States. To deal with this situation an Article 83 *bis* Task Force was established in 2014, which had made excellent progress. It is assisting the Secretariat with the development of a Manual to update the guidance on Article 83 *bis* and has proposed recommendations to the Committee, including the establishment of a web-based registration system for Article 83 *bis* agreements.

2.6 Remotely piloted aircraft (RPAS), as a new component of the civil aviation system, may present myriad technical and operational issues arising from the removal of the pilot from the aircraft. A preliminary study concerning the liability issue of RPAS had been undertaken by the Secretariat, for consideration by the Committee.

2.7 The First Vice-President expressed his high expectations for the work of the Legal Committee on these and the other items of the agenda, including the legal framework relating to CNS/ATM systems, promotion of the ratification of international air law instruments, and determination of the status of an aircraft. He placed great confidence in the Legal Committee in the fulfillment of its tasks. Following this meeting, the Council will consider the results and decide on the future course of work.

2.8 The Chairman expressed his thanks to the First Vice-President for his clear and concise remarks. He then paid tribute to the memory of Ms. Hilma Hitula who passed away on 17 April 2015. He

recalled that Ms. Hitula had been a legal practitioner and a leading female professional serving on several statutory boards of Namibian public companies. She was a senior lawyer in the Namibian Directorate of Civil Aviation, staunchly advocating the goals of civil aviation regulation in Namibia and was elected the 4th Vice-Chairperson of the Legal Committee at its 35th Session. Her warm personality and high-level professional skills were well known in ICAO and elsewhere. In memory of Ms. Hitula the Legal Committee observed a minute of silence.

3. **Agenda and Working Arrangements**

3.1 The Committee agreed with the provisional agenda shown in LC/36-WP/1-1. The agenda of the Session as adopted can be found at **Appendix A** to this Report.

3.2 The working papers considered by the Committee are listed by agenda items in **Appendix B** to this Report.

3.3 The action taken by the Committee in respect of each item is reported on separately in the Report. The material is arranged according to the numerical sequence of the agenda items considered by the Committee.

4. **Meetings**

4.1 The Committee held six meetings, all of which were held in open sessions.

4.2 The Secretary of the Committee was Mr. J.V. Augustin, Director of the Legal Affairs and External Relations Bureau. Dr. J. Huang, Senior Legal Officer, Mr. B. Verhaegen, Senior External Relations and Legal Officer and Mr. A. Jakob, Senior Legal Officer were Deputy Secretaries. Messrs A. Opolot and C. Petras as well as Ms. M. Weinstein, Legal Officers, and Ms. D. Brookes, Legal Associate, were Assistant Secretaries. Other officials of the Organization also provided services to the Committee.

5. **Representation of States and International Organizations**

5.1 Sixty-one Member States and nine international organizations were represented by 134 representatives and observers at this Session of the Legal Committee. The names of the representatives and observers appear in **Appendix C** to this Report.

6. **Records of Proceedings**

6.1 The Committee decided that in application of Rule 45 of its Rules of Procedure, the minutes of the 36th Session need not be prepared.

Agenda Item 2: Consideration of the General Work Programme of the Legal Committee**Acts or offences of concern to the international aviation community and not covered by existing air law instruments**

2:1 This agenda item was discussed on the basis of LC/36-WP/2-1, presented by the Secretariat. The working paper recalled that when the Diplomatic Conference held under the auspices of ICAO adopted on 4 April 2014 the *Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Montréal Protocol of 2014), it also adopted a Resolution which urges the Council of ICAO to request the Secretary General to update ICAO Circular 288 (*Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers*) to include a more detailed list of offences and other acts, as well as to make consequential changes to the Circular arising from the adoption of the Protocol. Pursuant to this resolution, a Task Force on Legal Aspects of Unruly Passengers was established, which held its first meeting in September 2015.

2:2 The Chairperson of the Task Force, Mrs. M. Polkowska (Poland), provided a progress report of the Task Force to the Legal Committee. Among other things, the Task Force decided to maintain the list of offences in the Circular as it is, as the list is sufficiently comprehensive to cover the unruly behaviour that takes place on a daily basis. The Task Force also established three drafting groups respectively led by Singapore, Kenya and Finland for different chapters in the new guidance material.

2:3 Many delegations praised the work of the Task Force. One delegation noted that the adoption of the Montréal Protocol of 2014 may present implications to the current ICAO Assembly Resolution relating to the unruly passengers and call for its amendment. The delegation emphasized that if the Assembly could not update its resolution in the session of 2016, it should be done in the following Assembly session. The Secretariat explained that whether a draft Assembly Resolution on this subject could be presented in 2016 would depend upon the completion of the work of the Task Force.

2:4 One delegation requested that the guidance material would take into account of the fact that the Tokyo Convention of 1963 would remain in effect for those parties that have not ratified the Montréal Protocol of 2014. Another delegation suggested that the guidance material should not only cover the acts on board aircraft in flight but should also cover certain acts on the ground, giving an example where the passengers refused to leave the aircraft after landing. The Secretariat explained that the provisions of Montréal Protocol of 2014 apply when the external door of an aircraft is closed. When the door is open, the acts on board aircraft are subject to the national law of the State of the airport where the aircraft lands.

2:5 The Chairman summarized the discussion, and the Committee agreed, by stating that the Task Force should be congratulated for its work, and encouraged to complete its task.

Consideration of Guidance on Conflicts of Interest

2:6 The Secretariat introduced LC/36-WP/2-2 which reported on the results of the online survey on conflicts of interest in civil aviation to which 43 States responded. It was established from the survey that most States that responded have in place a framework dealing with conflicts of interest (COI) which they consider to be effective. Furthermore, the paper concluded that it was useful for all States to have such a framework given the prevalence of COI situations in the civil aviation activities of States. It was recommended to develop and present an Assembly Resolution to promote awareness of potential conflicts of interest in civil aviation and the need for States to take measures to avoid or mitigate risks from COIs to aviation safety and security.

2:7 The United States, while introducing LC/36-WP/2-7, stated that its main purpose was to communicate interest in continuing the work on conflicts of interest. Scenarios such as civil aviation administrations (CAAs) with an oversight body upon which industry representatives sat or CAAs making public statements indicating their mission to support or improve the economic situation of national carriers were cited as posing possible risks to independent regulation. Provisions such as disclosure requirements and recusal from regulatory decisions were cited as examples of mitigating measures that could be put in place. In this regard the United States expressed enthusiastic support for the proposal to develop an Assembly Resolution on the subject of conflicts of interest.

2:8 The Committee's attention was drawn to additional ICAO provisions on COI in the form of a Standard contained in Annex 19 - *Safety Management*, in particular paragraph 3.2, which read together with paragraph 3.3 in Appendix 1, requires States to establish and implement a safety oversight system ensuring that personnel performing safety oversight functions are provided with guidance that addresses ethics, personal conduct and the avoidance of actual or perceived conflicts of interest in the performance of official duties. The Secretariat highlighted Universal Safety Oversight Audit (USOAP) results showing that since the relevant protocol question was introduced in 2012, 9 out of 16 States audited had established a mechanism to avoid perceived or potential conflict of interest of inspectorate staff.

2:9 Several delegations expressed appreciation to the Secretariat for the excellent work on the report including the considerable effort that went into the survey. One delegation expressed that the survey provided a valuable opportunity for the respondents to closely examine and take stock of the measures available in their State to deal with COI and commended it as a useful tool for States that had not already done so to reply.

2:10 All delegations who took the floor supported the proposal to develop and present an Assembly Resolution and many delegations expressed their willingness to contribute or sponsor such a Resolution. One delegation while expressing support for the proposal for an Assembly Resolution highlighted the need to take into account the level of development and resources available to States in prescribing measures for COI.

2:11 The need in some cases to draw a balance between the particular circumstances of States and the risks posed by COI as expressed in paragraph 4.4 of the Secretariat Working Paper was emphasized by one delegation. It was deemed important that in doing so a realistic and pragmatic approach is adopted that acknowledges the existence of COI situations that may not be automatically eradicated in some cases while taking appropriate steps to manage them so that they pose no risks to aviation safety and security. Another delegation drew the Committee's attention to the need to address organizational conflict of interest in light of dealings between various governmental agencies responsible respectively for regulation and providing aviation services.

2:12 In summing up the Chairman noted that the survey had generated a reasonable response rate and that States in their deliberations at the Committee had indicated their continuing interest in work on the subject. It was noted further that there was a desire to address other forms of COI such as organizational conflicts of interest in arrangements between various public and private agencies involved in civil aviation. In addition consideration should be given to the specific circumstances of States in determining preventive or mitigating measures on COI available to them. The following next steps were identified in continuing work on the item: (a) Interested States will prepare and present to the Assembly a resolution that urges States to develop a legal framework and cooperate in order to share their best practices in dealing with COI and the Secretariat would provide assistance requested in this regard; and (b) States that have not already done so are encouraged to respond to the COI survey that remains open online and to provide ICAO with additional information, including legislative and regulatory texts. At the same time the Secretariat will collate information from States concerning their best practices particularly on i) separation of

responsibilities and authorities between regulatory and state-owned service providers; ii) the movement of individuals between jobs in the regulatory and regulated entities; and iii) performance of regulatory duties by seconded or designated staff of the regulated entities. The Secretariat would also collate the rules and guidance material available within ICAO on this subject.

Safety aspects of economic liberalization and Article 83 bis

2:13 The Committee then turned to LC/36-WP/2-3 presented by the Secretariat. The paper recalled that at its 35th Session the Legal Committee recommended that a task force be formed; this was endorsed by the Council. The Article 83 *bis* Task Force was consequently established in September 2014, the deliverables of which were: recommendations for revisions to ICAO Circular 295 and identification of options to be considered by ICAO as alternatives to the current registration system, possibly web-based.

2:14 The Secretary thanked Ireland as well as the United Kingdom and the civil aviation authorities of Bermuda for facilitating this work on Article 83 *bis* by generously hosting Task Force meetings, and further thanked the Task Force members as a whole for their hard work and swift achievements. The Task Force delivered recommendations to the Secretariat for the publication of a Manual to update Circular 295, the main features of which were presented in Section 4 of the paper, as well as five recommendations to the Legal Committee which were found in section 5. It was indicated that a consolidated draft text of the Manual should be ready around April 2016 for review by the Task Force Members and other peer review, with a view to submitting the Manual for approval of the Secretary General by the end of Summer 2016, and publication possibly in Fall 2016.

2:15 The Recommendations to the Committee were introduced by the Chair of the Task Force, Mr. J. Thachet of the Canadian delegation. As regards the proposed amendment to the applicable Council's Rules to allow swift registration and publication of Article 83 *bis* agreements through an interactive web-based system, he indicated that it was believed that the Secretariat and the Council could consider whether there would be efficiencies to extend such on-line registration system to other aeronautical agreements and arrangements; this point was supported by some delegations. On the fifth recommendation calling for ratification of Article 83 *bis* by States not yet parties thereto, he was pleased to inform the Committee that Chad had very recently ratified the Protocol. In closing, Mr. Thachet thanked the ICAO Secretariat composed of staff from the Legal Affairs and External Relations Bureau (LEB), Air Navigation Bureau (ANB) and Air Transport Bureau (ATB), and indeed all the members of the Task Force, for its successful outcomes and the great team-spirit that prevailed during its proceedings.

2:16 In the ensuing discussions, there was general support and appreciation expressed for the work accomplished by the Task Force and its very productive outcome which surpassed expectations and further demonstrated efficient multidisciplinary collaboration including among various ICAO Bureaus. Several delegations opined that the new Manual would definitely assist States in overcoming the difficulties faced in implementing Article 83 *bis*, one of them drawing attention to the proposal for a template for an Article 83 *bis* agreement summary, as well to the importance of a Chapter on Training of inspectors. One delegation, supported by others, recommended that the Secretariat should organize dedicated workshops and seminars or briefings during appropriate meetings, on the guidance to be offered in the new Manual to come.

2:17 The delegations also generally expressed strong support for the five recommendations. The second recommendation on an interactive web-based registration and publication system for Article 83 *bis* agreements was overwhelmingly endorsed, considering the swift transfers of aircraft under leasing nowadays. One delegation mentioned the advantage of a cost-benefit analysis of any new web-based registration system. One delegation suggested that the Secretariat should consider resorting to the PKD technology already available and used through ICAO for authentication purposes. With reference to ICAO

projects such as the Aircraft Registration and the Air Operator Certificate systems, one observer proposed that any web-based Article 83 *bis* registration system should certainly be linked to other systems through ICAO, allowing access to reliable registration and AOC data from all ICAO Member States. This observer's proposal was supported in principle by two delegations according to Rule 31 a) of the Rules of Procedure. These two delegations called for further investigation and information on this topic. The Secretariat provided an update on the said aircraft registration database, currently hampered by the fact that many States had still not authorized access to their data. In this connection, one delegation offered a suggestion, although not directly related to this item, that consideration should eventually be given by the Secretariat to amend Annex 7 to the Chicago Convention so as to provide States with international rules governing de-registration of aircraft.

2:18 Special support was expressed by several delegations for the third recommendation on a new Standard in Annex 6 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, the same way as for the air operator certificate.

2:19 On the fourth recommendation, one delegation required further clarification on the issue of general aviation. The Secretariat explained that since the notion of State of the Operator was intrinsically linked to the issuance of the Air Operator Certificate in case of commercial air transport, a review of Parts II and III of Annex 6 would be required to identify the best way to address transfer of oversight responsibility for general aviation operations, hence catering for transfers under Article 83 *bis*. On the same recommendation, one delegation, supported by another, proposed modifications to the last sentence so as to better reflect the fact that some of the current Annex 6 requirements could not practically apply to remotely piloted aircraft.

2:20 In summing up the debate, the Chairman stated that it was the overwhelming opinion of the Committee that this item on its general work program had been handled in a very professional and expedited manner, offering a real solution adhered to by the civil aviation community. He concluded that the Committee had approved the five recommendations, as amended as regards the first and the fourth ones (*see the final text of the recommendations in Appendix E*) and that the Secretariat was encouraged to familiarize States with the guidance in the new Manual once published, on the occasion of the forthcoming 39th Session of the Assembly or during other meetings as appropriate.

Study of legal issues relating to remotely piloted aircraft

2:21 The Secretariat presented LC/36-WP/2-4, to which was appended a study undertaken by the Secretariat to ascertain the adequacy and efficacy of the existing liability framework for remotely piloted aircraft system (RPAS) integration. The study noted that remotely piloted aircraft (RPA) are simply one type of unmanned aircraft, and all unmanned (pilotless) aircraft, whether remotely piloted, fully autonomous, or combinations thereof, are subject to the provisions of the Chicago Convention and its Annexes. The overall conclusion of the study was that although the propagation of RPAS will likely expose a new evidentiary landscape relating to how the international regime for liability would be applied to RPAS operations and operators, the regime in its current state is legally adequate to accommodate RPAS technology.

2:22 The Secretariat's presentation of the paper was then followed by another Secretariat presentation on the technical work of ICAO related to RPAS. Upon conclusion of a number of questions and answers on the technical work of ICAO as regards RPAS, a question was raised on insurance requirements. Since LC/36-WP/2-4 had concluded that the existing international treaties on liability were applicable to RPAS, the Secretary referred the Committee to the specific provisions of the treaties dealing with insurance requirements, to wit: Article 50 of the 1999 Montréal Convention; Article 15 of the

1952 Rome Convention; Article 9 of the 2009 Montréal General Risks Convention; and Article 7 of the 2009 Montréal Unlawful Interference Compensation Convention.

2:23 The Secretariat study was lauded as excellent by several members of the Committee, and generally characterized as thorough and comprehensive. However, one delegate in particular believed there were still issues relating to the liability regime that merited further deliberation, noting, for example, that the 2009 General Risks and Unlawful Interference Compensation Conventions defined an “aircraft in flight” based upon the opening and closing of the aircraft’s external doors and that such a definition might not encompass all RPAS. Nevertheless, the vast majority of delegates expressed their unqualified support for the report’s analysis and conclusions, while also expressing their appreciation for the presentations made by the Secretariat.

2:24 The Committee’s overall satisfaction with the work of the Secretariat notwithstanding, a number of delegates noted that legal aspects of RPAS operations other than liability still might need to be addressed and so favored maintaining the “Study of Legal Issues Relating to Remotely Piloted Aircraft” as an item on the work programme of the Committee. One delegate further averred that though its State already had in place all-encompassing national regulations on RPAS, including extensive provisions addressing even very small craft commonly referred to as “drones”, they were interested in the views of other States and favored a questionnaire to collect information on the national regulations of other States. The proposal for a questionnaire was supported by a significant number of other delegates, several of whom advocated it be used as a means to identify the specific international legal problems that RPAS integration was presenting for States. One delegation also stressed the importance of ensuring the Committee’s future work on RPAS takes into account technical developments and industry needs through coordination with the RPAS Panel.

2:25 The Chairman, in summarizing the discussion of Agenda item 2.4, identified three main conclusions reached by the Committee. First, the Committee unanimously concluded that the item should remain on its work programme. Second, the Committee concluded that the matter of the adequacy and efficacy of the international liability regime had been rightly addressed by the Secretariat study, however, other aspects of RPAS operations of an international nature, such as operations over the high-seas, cross-border operations, and changes in possession/control of the RPA during international flight necessitated continued consideration of an international framework. Third, there was broad support on the Committee for a questionnaire to States, both as a means of gathering information on national legislation for comparative purposes, and as a means to identify the international issues that are in play (that is, what are the problems that national legislation cannot solve). The Chairman proposed that the questionnaire might be sent out during the next semester, and invited States to submit recommendations to the Secretariat on how to shape the content of the questionnaire.

Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), and the regional multinational organisms, of the establishment of a legal framework

2:26 The Committee noted LC/36-WP/2-5 presented by the Secretariat, which stated that there had been no major activities within ICAO relating to this item, and the Secretariat would continue to observe and to monitor, as necessary, the relevant activities.

Promotion of the ratification of international air law instruments

2:27 The Committee noted LC/36-WP/2-5 presented by the Secretariat, which contains a report concerning the status of ratifications of international air law instruments adopted under the auspices of ICAO and the ongoing efforts to expedite such ratifications.

2:28 The Republic of Korea then presented LC/36-IP/2 – *Revisiting the International Air Services Transit Agreement of 1944 (Transit Agreement)*. The paper called for a fresh look at the *Transit Agreement*, considering changes over the past seventy years in terms of limitations to sovereignty over airspace, with the *United Nations Convention on the Law of the Sea (1982)* and the *1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies* (“Outer Space treaty”), as well as air transport policies moving towards open skies, changes in international politics or environmental concerns requiring the use of the shortest routes. In concluding, the paper submitted that ICAO should continue to call for universal adherence to the *Transit Agreement*, which was noted by the Committee.

Determination of the status of an aircraft – civil/state

2:29 Regarding Agenda Item 2-7, Poland presented LC/36-WP/2-6 which recalled the 1993 ICAO Secretariat Study on Civil/State Aircraft and stated that there are three specific objectives related to civil/state aircraft or possible unusual (mixed) character of aircraft in flights operated in international air navigation, namely: (a) the definition of Civil/State aircraft; (b) “[establish] more precise qualifications for civil, state, or mixed character of aircraft and flights operated for unusual purposes”; and (c) “ensure the recognition of the relevant rules by the International Aviation community for determining the aircraft status for each flight or flight series (who is competent to take such decision, how such determination has to be identified and notified to the parties concerned if flight planning rules are not sufficient).” The Legal Committee was invited to express its opinion on the possibility of achieving the above described objectives without amending the Convention.

2:30 The United States presented LC/36-WP/2-8 which questioned the desirability of the objectives outlined in LC/36-WP/2-6, and recalled that the Chicago Convention is, by the terms of Article 3(a), “not applicable to state aircraft.” Further noting the previous difficulty to arrive at a consensus definition of “state aircraft”, as well as the fact that “...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”, the paper recommended that the agenda item “Determination of the Status of an Aircraft – Civil/State” remain on the Committee’s Work Programme at its current priority level.

2:31 A group of delegations voiced support for clarifying the definition of “state aircraft” contained in Article 3 of the Chicago Convention and establishing a criteria to determine the status of an aircraft or flight as civil or state, not by amending the Convention, but rather by amending one or more of its Annexes. The lack of uniform practice in classifying civil/state aircraft had created certain difficulties. For instance, aircraft used to carry detainees were considered by some States as civil aircraft, but they were in fact State aircraft which should not enter into territory of another State without the explicit consent of the latter. Accordingly, they favored the establishment of a working group or task force to advance the work on these matters. Another group of delegations, recognized the challenges that the current classification of “civil/state aircraft” presents, but in consideration of LEB’s limited resources, favored retaining the item on the agenda of the Legal Committee for continued work during its 37th Session.

2:32 The majority of interventions, however, expressed support for the idea of sending out a survey or questionnaire to Member States, as a means of ascertaining their positions and practices. Such survey or questionnaire would be most useful for determining what specific challenges States have due to the current legal regime relative to civil/state aircraft.

2:33 The Chairman, in summarizing the discussion of Agenda Item 2-7, took note of the sense of some delegates that the Chicago Convention's definition of "state aircraft" has become outdated, insofar as some types of aircraft/flights no longer fit exactly into the categories of military, police, or custom services. Some problems were also encountered by airports and air navigation service providers in trying to ascertain the civil/state status of an aircraft in order to collect relevant charges. However, he also noted that there had been a significant number of delegates calling for the development of specific criteria for determining the status of an aircraft/flight as civil/state when, in fact, the 1993 ICAO Secretariat Study on Civil/State Aircraft already provides this.

2:34 With this said, the Chairman enumerated four areas of consensus among the members of the Committee: (1) safety and security requirements impacting civil aviation are preeminent; (2) there is no need to amend Article 3 a) and b) of the Chicago Convention; (3) the "Determination of the Status of an Aircraft – Civil/State" should remain on the Committee's Work Programme; and (4) the 1993 Secretariat Study is excellent and should serve as the basis for of the Committee's review and continued work on this issue. The Chairman further specified two matters with respect to which there was no consensus, namely: (1) the need for or desirability of an official ICAO interpretation of Article 3 b); and (2) the need for or desirability of amendments to the Annexes of the Convention to address the matter. In conclusion, the Chairman suggested that the creation of a working group or task force, while not totally excluded, was perhaps premature prior to the results of LEB's review of the 1993 Study that had been directed by the Council. He further proposed that considering LEB's limited resources, the Committee generally agreed that a questionnaire inquiring about the practical problems caused by the classification of "civil/state aircraft" should be sent out *before* LEB's review of the 1993 Study is undertaken to aid in narrowing the scope of the review. LEB should make its best efforts to i) send the questionnaire in summer 2016; and ii) complete its review and analysis of the study before the Committee's next session.

Agenda Item 3: Review of the General Work Programme of the Legal Committee

3:1 Consideration of this agenda item was based on LC/36-WP/3-1 and LC/36-WP/3-2, presented by the Secretariat.

3:2 LC/36-WP/3-2 informed the Legal Committee that when the Council decided to convene this session of the Committee, it agreed to sensitize the Legal Committee on the legal aspects of commercial space flights during consideration of Agenda item 3.

3:3 The deliberations of the Legal Committee centered around the issue whether the legal aspects of commercial space flights should be included in the General Work Programme of the Legal Committee. In response to the question whether ICAO had been requested to do any specific work in this area, the Air Navigation Bureau indicated that there was no such request as stake holders were still waiting for commercial space flights to mature.

3:4 Based on the information that the emerging suborbital space tourism industry is still in its nascent phase, a group of delegations believed that engaging into any legal work in this area would be premature. To date, there is no indication that suborbital flights cannot be accommodated by air traffic in national air space. Aviation safety and airspace management are not affected. As there is already a long list of items in the legal programme of ICAO, the Organization's limited resources should not be consumed at this stage for future issues which have no present impact. Accordingly, this group of delegations did not agree to include the item in the General Work Programme of the Legal Committee.

3:5 A second group of delegations held the view that ICAO should take a proactive role in this respect. It was recalled that two years earlier, when RPAS was included in the General Work Programme of the Legal Committee, there was not as high a degree of enthusiasm for the subject as is demonstrated today. Likewise, several years from now, the perspective on commercial space flights could be completely different. Yet, at this stage, many legal issues remained to be resolved. Issues related to air traffic management, liability, and insurance, arising out of the transit of suborbital flights in the vast area of airspace, from an elevation of 20,000 meters to an elevation of 100 km, may present challenges. Accordingly, this group believed that ICAO should play a leadership role in this area, and the item should be included in the General Work Programme of the Legal Committee going forward.

3:6 A few delegations proposed, as a compromised solution, to include in the General Work Programme an item under the umbrella title of "emerging legal issues", which may include the issues of commercial space flights. In this way, it may sensitize the civil aviation community for future work, without burdening the current work programme.

3:7 The Chairman indicated that the practice of ICAO tends to require a more precise statement of the items in the work programme, and that such a vague notion may not warrant the approval of the Council.

3:8 He summarized that a clear majority considered it premature to include the legal aspects of commercial space flights in the General Work Programme of the Legal Committee. When commercial space flights become more frequent in the future, there may be a need to revisit the relevant legal issues. In the meantime, the Secretariat may monitor any new developments by seminars and other activities in different fora. The Committee agreed with the summary of the Chairman and decided not to include this item in the General Work Programme of the Legal Committee at this time.

3:9 The Committee then considered LC/36-WP/3-1, presented by the Secretariat.

3:10 One delegation, supported by another, queried whether it would be appropriate to move item 3 (Safety aspects of economic liberalization and Article 83 *bis*) to a lower priority given the successful work which had been carried out on this topic by the Task Force. One of these delegations suggesting to remove this item altogether but requested guidance from the Secretariat in this respect. The request for guidance was echoed by two other delegations. In relation to this point, the Secretary explained that the working papers and the information contained therein provided full transparency and a sound basis for the Committee to draw its own conclusions on the Work Programme.

3:11 Noting that the Committee had decided to advance two topics by means of questionnaires, two delegations proposed to raise the priority of these items, one of these delegations additionally suggesting to raise the priority of item 6 (Promotion of the ratification of international air law instruments), with a view to strengthening the emphasis for the need to ratify recently concluded air law instruments. Another delegation did not share the view that the issue of questionnaires should necessarily be tied to a re-prioritization of the respective items. In this context, a number of delegations sought an indication regarding the timing of the issuance of the questionnaires. The Secretariat advised that the questionnaire on the topic of RPAS would be sent out during the spring of 2016 and that the questionnaire regarding civil/state aircraft would be sent out during the summer of 2016. In relation to item 5 dealing with CNS/ATM systems, one observer sought clarification from the Chairman if the lack of substantive discussion the previous day prejudiced in any way the consideration of this item by the Committee under this agenda item. The Chairman remarked that the outcome of the previous day's deliberations were without prejudice. The issue of keeping this item on the Work Programme and fixing its order of priority remains open.

3:12 Taking into account what had been conveyed by the Secretary and in view of the work accomplished under item 1 (Acts or offences of concern to the international aviation community and not covered by existing air law instruments) and item 3 (Safety aspects of economic liberalization and Article 83 *bis*), one delegation proposed their deletion. In relation to this proposal, the Chairman, as regards item 1, remarked that although much work had been done, the work of the Task Force on Legal Aspects of Unruly Passengers is still ongoing, and that it is scheduled to meet in Geneva next March. He suggested therefore to retain this item; similarly, as regards item 3, work was not completed inasmuch as that the whole revamped system of registration of agreements still needed to be put into effect.

3:13 One delegation, supported by two other delegations, proposed to re-prioritize the items as follows: item 5 to become item 3; item 2 to become item 1; item 3 to become item 7; item 4 to become item 2; item 6 to become item 4; and item 7 to become item 5. Another delegation associated itself with the proposal but suggested to place current item 5, dealing with CNS/ATM, to item 7, given the lack of substantive developments on this topic as reflected in working paper LC/36-WP/2-5. In response to this latter proposal, one delegation sought information from the Secretariat regarding the historical context behind this item and shared the opinion that work should commence, even with higher priority. In relation to this point, the Secretary explained that the subject had been placed before the Legal Committee as early as 1988, that substantive work had been undertaken by a Panel comprised of legal and technical experts for several years, and that two resolutions pertaining to this topic had been adopted by the Assembly, to wit, A37-22 (Appendix F) and A32-19. The Secretary informed the Committee that additional information on this topic would be forthcoming if deemed necessary.

3:14 After having been provided by the Secretary with a recap of the historic evolution within the work programme of item 5 dealing with CNS/ATM, the Committee continued its consideration of LC/36-WP/3-1. In this context, the Chairman remarked that the work programme ought to be regarded as a

living document which is permanently evolving and that it was ultimately for the Council and the Assembly to take a decision in this respect and make adjustments to the programme as they saw fit. Decisions by the Committee as regards the work programme would thus not be expected to be definitive but rather subject to various iterations.

3:15 The Chairman emphasized that just because an item was assigned a lower priority it would not mean that it would be overlooked; to the contrary, as illustrated by what had been accomplished as regards the item on consideration of guidance on conflicts of interest (which was assigned priority No. 5 at the last session of the Committee), work on items could advance significantly irrespective of their priority on the work programme. The Chairman also recalled that additional items had been placed on the work programme since the last session of the Committee (study of issues relating to remotely piloted aircraft, determination of the status of an aircraft - civil/state), and that in relation to these items work had been carried out in an effective manner. The Chairman expressed the view that the priority of items should logically reflect the interest a particular item had generated in the debate of the Committee. On the basis of the foregoing and what had been expressed previously in relation to the items dealing with acts or offences and Article 83 *bis*, respectively, the Chairman proposed, and the Committee unanimously endorsed, the following re-prioritization of items: item 4 to become item 1; item 2 to remain as is; item 1 to become item 3; item 5 to become item 4; item 7 to become item 5; item 6 to remain as is; item 3 to become item 7. While recording that the aforementioned re-prioritization had obtained the consensus within, and approval by, the Committee. The Chairman, on account of interventions made at this juncture by several delegations, further proposed that the programme could be re-considered, if necessary, following the Committee's consideration of LC/36-WP/8-1. In relation to the item dealing with the promotion of the ratification of air law instruments, one delegation recalled the importance of ratification of both the Montreal Convention of 1999 and the 2010 Beijing instruments.

3:16 As a result of the abovementioned discussion, and following consideration of LC/36-WP/8-1, the work programme of the Committee has been established as follows:

- 1) Study of legal issues relating to remotely piloted aircraft;
- 2) Consideration of guidance on conflicts of interest;
- 3) Acts or offences of concern to the international aviation community and not covered by existing air law instruments;
- 4) Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), and the regional multinational organisms, of the establishment of a legal framework;
- 5) Determination of the status of an aircraft – civil/state;
- 6) Promotion of the ratification of international air law instruments; and
- 7) Safety aspects of economic liberalization and Article 83 *bis*.

Agenda Item 4: Review of the Agenda of the Legal Commission of the 39th Session of the Assembly

4.1 The Secretariat presented LC/36-WP/4-1 which sets out the agenda items and notes for the Legal Commission of the 39th Session of the ICAO Assembly which will be held from 27 September to 7 October 2016. The Council at its third meeting during the 205th Session on 12 June 2015 considered the Draft Provisional Agenda for the 39th Session of the Assembly and decided to refer the agenda items and notes to the Legal Committee for consideration during its 36th Session and report to the Council. The agenda and accompanying notes cover four items which are standard subjects normally included in the agenda of the Legal Commission in the previous sessions of the Assembly.

4.2 The Committee confirmed Agenda Items L1 (Annual Reports of the Council to the Assembly for 2013, 2014 and 2015), L2 (Work programme of the Organization in the legal field), L3 (Consolidated statement of continuing ICAO policies in the legal field) and L4 (Other issues to be considered by the Legal Commission) and corresponding notes for inclusion in the Draft Provisional Agenda of the 39th Session of the Assembly.

Agenda Item 5: Amendment of the Rules of Procedure of the Legal Committee

5:1 The Secretariat introduced LC/35-WP/5-1 which presented two proposals for amendment of the *Rules of Procedure of the Legal Committee* (Doc 7669). The first proposal was to amend Rule 6 to provide that when the Chairman resigns or otherwise becomes unable to serve for the remainder of his term, the First Vice-Chairman shall become the Chairman, and the other Vice-Chairmen shall be advanced to the precedence higher than their current level; and that when the office of a Vice-Chairman is vacated during the term which cannot be filled by way of succession, the Committee shall elect a Vice-Chairman to that office for the unexpired portion of the term. The second proposal was to amend Rule 44 to add the Chinese language to the existing five other languages used by the Committee for the reasons stated at paragraph 3.1 of the working paper.

5:2 The Chairman then called for comments concerning the proposed amendments. Given that all delegations who spoke on the proposed amendments to Rule 44 fully endorsed their adoption, the Chairman declared the Rule 44 amendments **adopted**.

5:3 With regard to Rule 6, some of the delegations who spoke supported the amendments in their entirety citing them as very sensible and practical proposals which would allow the slate of officers to duly meet their responsibilities. One delegation, although supporting the amendments in principle, expressed some concern with the proposed changes to Rule 6 (d) in that a Vice-Chairman who would become Chairman by way of succession during the first session of a term could in theory chair up to four sessions in a row should he be elected as Chairman in the succeeding term. Two other delegations shared this concern. Another delegation expressed the view that a sufficient safeguard against this eventuality could be addressed by way of the election for the succeeding term.

5:4 The Chairman, in noting the abovementioned concern with regard to the office of the Chairman, and considering the extended length in between Committee sessions in recent years, decided to suspend further discussion of this item pending receipt of revised wording to Rule 6 (d) which he requested from the concerned delegation.

5:5 This item resumed later in the session with the presentation by South Africa of Flimsy No. 1 which is attached as **Appendix E**. The Flimsy contains additional wording for Rule 6 (d) to address the concern expressed at paragraph 5:3. As there was no objection to the wording proposed, the Chairman declared all amendments to Rule 6 **adopted** by the Committee.

Item 6 to be inserted

Agenda Item 7: Date, place and agenda of the 37th Session of the Legal Committee

7:1 The Committee then turned to LC/36-WP/7-1 which was presented by the Secretariat. At the request of the Chairman, it was indicated that in practice the Committee would meet every second year, unless any additional meeting would be required on an urgent basis, and that the scheduling of the next session was usually left for the decision by the Council. With reference to paragraph 2 of the paper, it was further clarified that provision was made for a Diplomatic Conference in 2018 as a place holder for budgetary purposes, in case the progress of any item in the General Work Programme of the Legal Committee would require so but that no Diplomatic Conference was envisaged to date. In conclusion, the Committee agreed to defer to the Council the decision on the date, place and agenda of the 37th Session of the Legal Committee.

Agenda Item 8: Any other business

8:1 Brazil presented LC/36-WP/8-2 which focused on the final part of Article 12 of the Chicago Convention. The presenter conveyed that whereas States shared an almost uniform definition of what constitutes a violation, the Chicago Convention was silent about setting guidelines on how to promote the prosecution of violations. As a result, States tended to adopt their own domestic law. The delegation cited as an example of the consequences for the lack of a common ground as regards procedures the tendency to ignore minor violations which was compounded by the costs and lack of timeliness of a notification of a violation. Similarly, the absence of effective mechanisms of cooperation between States prevented the report of violations of a State from being efficiently enforced in the State of the operator. This constituted a real safety concern. The delegation stated that similar concerns had been voiced during the Second High Level Safety Conference of 2015. The presenter invited the Committee to take note of this particular challenge and to take any action it deemed necessary, including the conduct of a survey.

8:2 Two delegations articulated their appreciation for this working paper and expressed the view that possible mechanisms on how to improve or remedy the situation should be considered by the Committee. One of these delegations remarked that it was not uncommon for the Civil Aviation Authority of its State to encounter contraventions committed by foreign air carriers, for example in the area of dangerous goods that were mislabeled or remained undeclared. Said delegation further stated that effective exchanges of information regarding enforcement actions taken were at times hampered by language challenges. Some guidance by ICAO existed in the form of the Manual of Procedures for Operations Inspection, Certification and Continued Surveillance (Doc 8335). Another delegation expressed the view that the matter came down to technical and procedural issues; said State also encountered from time to time non-compliance issues such as the operation of an aircraft outside the assigned altitude. The method of notification of a violation by means of a formal State letter destined for the State of the foreign operator was perceived as an obstacle for a timely notification. This latter delegation thus welcomed a mechanism which facilitated the transmission of real-time information as regards infractions with a view to enabling the State of the operator to better monitor compliance with safety regulations by its carriers.

8:3 In his summary on this topic, the Chairman remarked that delegates only had a limited time to consider the working paper, which rendered many States unable to take a firm decision on this matter at this juncture. He articulated that the paper had generated a degree of interest by several States which should be conveyed to the appropriate bodies of ICAO, in order to permit them to deepen their thinking on this matter as appropriate.

8:4 The Committee then considered LC/36-IP/1 presented by the Secretariat and LC/36-WP/8-1 presented by the Netherlands. IP/1 and its attachment recalled that following the downing of Malaysia Airlines Flight 17 (MH17), a Special Group to Review the Application of ICAO Treaties Relating to Conflict Zones was established and met from 13 to 14 July 2015. The Group concluded, *inter alia*, that at this stage, it had not identified any need to amend the Chicago Convention, while not excluding that such revisions might be necessary in future. The Council endorsed the conclusions of the Group and agreed to bring them to the attention of the Legal Committee for information purposes.

8:5 WP/8-1 referred to the Final Report on the investigation of MH17, released by the Dutch Safety Board on 13 October 2015. The Report called for stricter definition of States responsibilities related to the safety of their airspace and referred to the need to amend the Chicago Convention and its annexes. The Netherlands stated that as the Final Report was released after the conclusions of the Special Group mentioned above, the Legal Committee is requested to take into consideration in its deliberations whether reconsideration of these conclusions is necessary.

8:6 A number of delegations supported WP/8-1, and proposed to include the matter discussed therein in the General Work Programme of the Legal Committee. One delegation deplored the loss of 298 lives and emphasized the need to prevent its recurrence. It recalled that while the Council referred the conclusions of the Special Group to this Committee for information purposes, one should be mindful of other decisions of the Council to remain seized of the matters relating to MH17 and take a series of measures to improve the safety of civil aviation. Another delegation referred to its earlier proposal to the Council to consider a possible amendment to the Chicago Convention in order to eliminate or minimize risks in conflict zones for civil aviation. It urged the international community to act before a new tragedy happens with more loss of life. One delegation specifically mentioned the need to amend Article 9 of the Chicago Convention in order to close the gap concerning the obligation to close airspace over conflict zones.

8:7 A number of other delegations offered sincere condolences for the tragedy of MH-17 and expressed strong concern for aviation safety. They mentioned that holistic work has been carried out or is under way in ICAO, including the establishment of web repository for conflict zones, amendments to Annexes to the Chicago Convention, and the development or revision of guidance material. As the Council had already endorsed the conclusions of the Special Group, a number of delegations indicated it would be premature to include in the work programme the item relating to amendment to the Chicago Convention, before the work carried out in other areas is completed. One delegation referred to the difficulty for an island State to close its airspace, as it would bloc its access to the outside world. It was also noted that the recommendation of the Dutch Safety Board concerning States responsibilities were addressed to the Member States of ICAO, and States may take their own initiative to propose an amendment to the Chicago Convention if they deem necessary, without the involvement of the Legal Committee.

8:8 One delegation, referring to the ICAO web repository, informed the Committee that there were 67 messages in the repository involving 14 States, among which 11 had lodged protests. This demonstrated the need for improvement of the system.

8:9 The Chairman noted the high interest of delegations for this sensitive legal, political, and technical matter. He indicated that the issue before the Committee was not whether the Chicago Convention should be amended, but whether the General Work Programme of the Legal Committee should be changed, taking into account the recommendations in the Final Report released by the Dutch Safety Board. He reminded the Committee of the clear message transmitted by the Council that the matter was brought to the attention of the Committee “for information purposes”. While there was a division of opinions in the Committee, the Chairman did not sense that the majority would favour the inclusion of this item in the work programme. As a middle-ground approach, he suggested that the Committee note that a number of work items, such as amendments of Standards and Recommended Practices, are still going on in ICAO. Pending the results of this work, the Committee could advise the Council about its availability and willingness to assist. If the Council, based on new information provided, including the Final Report of the Dutch Safety Board, decides that the assistance of the Legal Committee is needed, then the work may be carried out following the regular procedure of ICAO. The Committee agreed with this suggestion.

APPENDIX A**AGENDA****Item 1: Adoption of the Agenda**

Note: Rule 11 a) of the *Rules of Procedure of the Legal Committee* (Doc 7669-LC/139/5) provides: “The Committee shall fix the final agenda of the session at its first meeting.”

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

Note: The Committee will consider reports on items in its General Work Programme:

- 1) Acts or offences of concern to the international aviation community and not covered by existing air law instruments;
- 2) Consideration of Guidance on Conflicts of Interest;
- 3) Safety aspects of economic liberalization and Article 83 *bis*;
- 4) Study of legal issues relating to remotely piloted aircraft;
- 5) Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), and the regional multinational organisms, of the establishment of a legal framework;
- 6) Promotion of the ratification of international air law instruments; and
- 7) Determination of the status of an aircraft – civil/state.

Item 3: Review of the General Work Programme of the Legal Committee

Note: The Committee will determine its General Work Programme, with an indication of priority of items, for submission to the Council for approval.

Item 4: Review of the Agenda of the Legal Commission of the 39th Session of the Assembly

Note: Pursuant to a decision of the Council on 12 June 2015 at the 3rd meeting of its 205th Session, the Legal Committee is requested to review the agenda of the Legal Commission of the 39th Session of the Assembly.

Item 5: Amendment of the Rules of Procedure of the Legal Committee

Note: The Committee will consider to amend Rule 44 to add the Chinese language to the existing five other languages used by the Committee. The Committee will consider whether it shall amend Rule 6 to the effect that when the Chairman or Vice Chairman of the Committee resigns or otherwise becomes unable to serve for the remainder of his/her term, the officer next in line shall succeed his/her position, and other remaining officers shall, in their respective turn, be advanced to the precedence higher than his or her current level. The Committee may also consider whether or not to adopt a rule to the effect that it may fill any vacant office of Vice-Chairman after the afore-mentioned advance(s).

Item 6: Election of the Vice-Chairmen of the Committee

Note: Depending on the decision of the Committee on Item 5, the Committee may also decide to fill any vacant office of Vice-Chairman.

Item 7: Date, place and agenda of the 37th Session of the Legal Committee

Note: The Committee will consider the date, place and provisional agenda of its next session, in the light of the decisions it will have taken during the 36th Session.

Item 8: Any other business

Item 9: Report on work done at the Session

APPENDIX B**LIST OF WORKING PAPERS AND OTHER DOCUMENTS**

AGENDA ITEM	WORKING PAPER NO.	TITLE	PRESENTED BY
1	LC/36-WP/1-1	Provisional Agenda	Secretariat
1	LC/36-WP/1-2	Note on Documentation and Working Arrangements	Secretariat
2	LC/36-WP/2-1	Acts or offences of concern to the international aviation community and not covered by existing air law instruments	Secretariat
2	LC/36-WP/2-2	Consideration of Guidance on Conflicts of Interest	Secretariat
2	LC/36-WP/2-3	Safety aspects of economic liberalization and Article 83 <i>bis</i>	Secretariat
2	LC/36-WP/2-4	Study of legal issues relating to remotely piloted aircraft	Secretariat
2	LC/36-WP/2-5	Consideration of other items on the General work programme of the Legal Committee – covers “Consideration, with regard to CNS/ATM systems including global navigation satellite systems (GNSS), and the regional multinational organisms, of the establishment of a legal framework”; “Promotion of the ratification of international air law instruments”; and “Determination of the status of an aircraft – civil/state”	Secretariat
2	LC/36-WP/2-6	State/Civil Aircraft Definition and its Impact on Aviation	Poland, Bulgaria, The Czech Republic, Cyprus, Greece, Lithuania, Romania, Slovakia, Slovenia, Hungary
2	LC/36-WP/2-7	Consideration of Guidance on Conflicts of Interest	United States
2	LC/36-WP/2-8	Item 7) Determination of the Status of an Aircraft – Civil/State	United States
3	LC/36-WP/3-1	Review of the General Work Programme of the Legal Committee	Secretariat

AGENDA ITEM	WORKING PAPER NO.	TITLE	PRESENTED BY
3	LC/36-WP/3-2	Commercial Space Flights	Secretariat
4	LC/36-WP/4-1	Review of the Agenda of the Legal Commission of the 39th Session of the Assembly	Secretariat
5	LC/36-WP/5-1	Amendment of Rules 6 and 44 of the Rules of Procedure	Secretariat
6	LC/36-WP/6-1	Note on the Election	Secretariat
7	LC/36-WP/7-1	Date, place and agenda of the 37th Session of the Legal Committee	Secretariat
8	LC/36-WP/8-1	Recommendations MH17 Final Report	The Netherlands
8	LC/36-WP/8-2	Common Guidelines on Article 12 of Chicago Convention Enforcement of Violations Committed by Foreign Air Carriers	Brazil
9	LC/36-WP/9-1	Report on work done at the Session	

OTHER DOCUMENTATION

AGENDA ITEM	INFORMATION PAPER	TITLE	PRESENTED BY
2	LC/36-IP/2	Revisiting the International Air Services Transit Agreement of 1944 (Transit Agreement)	Republic of Korea
8	LC/36-IP/1	The Council Decision Relating to the Outcome of the Meeting of the Special Group To Review The Application of ICAO Treaties Relating To Conflict Zones (SGRAIT-CZ)	Secretariat

APPENDIX C**LIST OF PARTICIPANTS**

State/Organization	Participant Name	Role	Job Title
AUSTRALIA	JOHN REID	Chief Delegate	First Assistant Secretary
	TOBIAS HANSON	Delegate	
AUSTRIA	VERONIKA LOBLICH	Delegate	Legal Advisor
AZERBAIJAN	ALASKAR ABDULLAYEV	Chief Delegate	
BAHAMAS	KENIA NOTTAGE	Delegate	Consultant
BELGIUM	ANNE-CLAIRE DUPAYS	Delegate	Legal adviser
	FRANKIE DECKERS	Delegate	Legal Advisor
BOTSWANA	DAVID FANI	Delegate	Corporate Secretary
BRAZIL	CLESO FONSECA	Chief Delegate	Head of Legal Department
	DIOGO ARBIGAUS	Alternate to Chief Delegate	Technical Manager
	MAURO CHAVES	Advisor	Head of Legal Department
BURKINA FASO	LUCIE OUANGRAWA		Technical Advisor
	MOUMOUNI DIEGUIMDE	Delegate	Ambassador, Permanent Representative of Burkina Faso
CAMEROON	ENGLEBERT ZOA ETUNDI	Chief Delegate	Permanent Representative
CANADA	JOHN THACHET	Chief Delegate	Legal Counsel
CHAD	SOULEYMAN YAYA AZAIN	Delegate	Chef Division Affaires Juridiques et Coopérations Internationales
CHILE	ALVARO LISBOA	Delegate	
	DAVID DUEÑAS	Delegate	
	JAIME BINDER	Delegate	
	PAULINA RADRIGAN MENDOZA	Delegate	Fiscal
CHINA	BAOJIA ZHANG	Delegate	
	HE LIU	Delegate	
	RENGANG GUO	Delegate	
	YUE CAI		
COLOMBIA	ALBERTO MUÑOZ-GOMEZ	Chief Delegate	ICAO COUNCIL / Representante de Colombia ante la OACI
	EDGAR BENJAMIN RIVERA FLOREZ	Delegate	

CONGO	ANATOLE TSHIMANGA KANYANGA	Delegate	
	KITENGE RAMAZANI LASSYRY		
	ROMÉO MAKAYA BATCHI	Chief Delegate	Directeur du Transport Aérien
CUBA	CRESPO FRASQUIERI MIRTA MARINA	Delegate	Representante Permanente de Cuba ante la OACI
	SÁNCHEZ AGUERO ADYS	Delegate	Asesora Legal
	VÁZQUEZ GONZÁLEZ MERCEDES	Chief Delegate	Jefa del Departamento de Asesoría Legal
CZECH REPUBLIC	TEREZIE SMEJKALOVA	Chief Delegate	Legal Officer
	TOMAS PUSTINA	Alternate to Chief Delegate	Senior Legal Officer
DENMARK	MARTIN STREIT NISSEN	Delegate	
DOMINICAN REPUBLIC	ANA LUISA GONZALEZ	Delegate	
	CARLOS VERAS	Alternate to Chief Delegate	Permanent Representative of the Dominican Republic to ICAO
	JESUS A. SANTOS	Delegate	
	JOSE VALDEZ	Chief Delegate	
	YOHARA CARABALLO	Delegate	Lawyer
ECUADOR	ALEXANDRA PATRAS	Advisor	Administrative Assistant
	IVAN ARELLANO	Delegate	Alternate Representative to ICAO
EGYPT	ASHRAF SAAD	Delegate	General Manager Of Airport Security
	YEHIA AHMED	Delegate	General Manager
EQUATORIAL GUINEA	JACINTO NZO ONA MBA	Delegate	
	MARCIANO OBIANG AYONG ELO	Delegate	
	SILVANO ONDO EDJANG BIYE	Delegate	
FINLAND	SUSANNA METSALAMPI	Chief Delegate	Head of Department
FRANCE	CATHERINE BAFLAST	Delegate	
	ERIC RISSE		
	TERRY OLSON	Chief Delegate	Conseiller d'Etat
	VALÉRIE PERNOT- BURCKEL		
GAMBIA	ELLEN MANGA	Delegate	Legal Services Manager

GERMANY	ULRICH SCHWIERCZINSKI	Chief Delegate	Permanent Representative of the Federal Republic of Germany on the Council of ICAO
GREECE	EKATERINI NASSIKA	Chief Delegate	Representative
	ELPIDA KORYFIDOU	Alternate to Chief Delegate	Alternate Representative
	ILIANA ANDRITSOU	Delegate	Alternate Representative
GUINEA	JESUS ELA ABEME		
I.R. IRAN	HASSANALI SHAHBAZILAR	Delegate	Alternate Representative I.R. of Iran to ICAO
IRELAND	BRIAN SKEHAN	Delegate	Assistant Director Airworthiness
	NICHOLAS BUTTERFIELD	Delegate	
ISRAEL	RENANA SHAHAR	Chief Delegate	the Legal Advisor
ITALY	ANTONINO BARDARO	Alternate to Chief Delegate	Alternate Representative
	GIOVANNA DI GIANDOMENICO	Delegate	Lawyer
JAMAICA	MARVA GORDON	Delegate	General Counsel
JAPAN	MASAKAZU ISHII	Delegate	Alternate Representative of Japan on the Council of ICAO
	NAOKO UEDA	Chief Delegate	Representative of Japan on the Council of ICAO
KUWAIT	BADER AL-MUBARAK	Chief Delegate	
LEBANON	SOULEIMAN EID	Chief Delegate	Alternate Representative of Lebanon
MALAYSIA	YONG HENG LIM	Delegate	Representative of Malaysia
MALI	AISSATA TRAORE	Delegate	Director of Air Transport
MEXICO	DIONISIO MENDEZ	Chief Delegate	
	DULCE MARIA VALLE ALVAREZ	Delegate	Alternate Representative
MOROCCO	AZIZ BOULMANE	Delegate	Alternate Representative
NAMIBIA	GORDON ELLIOTT	Delegate	National Senior Legal officer
NETHERLANDS	TEUN MULLER	Delegate	Adviser Security/Dangerous goods
NIGERIA	ANASTASIA GBEM	Delegate	Legal Adviser
	CHRISTIAN IMUENTINYAN ERHABOR	Delegate	

	EMMANUEL CHUKWUMA	Delegate	
	ILITRUS AHMADU		
	SULEIMAN LIMAN	Delegate	Legal adviser
PHILIPPINES	ANALIZA DOFITAS	Delegate	Division Chief III-RSDD,RSD
	DEO DEOCAMPO	Delegate	Assistant Director General II
POLAND	MALGORZATA POLKOWSKA	Chief Delegate	Representative of the Republic of Poland on the Council of ICAO
	MATEUSZ KOTLINSKI	Delegate	Senior Specialist
PORTUGAL	CARLA SIMÕES	Chief Delegate	Legal Adviser on the Litigation and Registration Department
REPUBLIC OF KOREA	JAE WOON LEE	Advisor	Adjunct Professor
	JIHYE MOON	Alternate to Chief Delegate	2nd Secretary
	JIN HUR	Chief Delegate	Permanent Representative
	MYONGIL KANG	Alternate to Chief Delegate	Alternate Representative
RUSSIAN FEDERATION	DMITRY SHIYAN	Delegate	Chief, International Treaties Division
	VICTORIA GONCHAROVA	Delegate	
SAUDI ARABIA	ABDULRAHMAN SHIEKH	Delegate	
	HAZIM ABUDAOWD	Delegate	Representative of Saudi Arabia on the Council
	YAHYA Z.D. AL HIJAZI		
SINGAPORE	SIEW HUAY TAN	Delegate	Director (Legal)
	VINESH WINODAN		
SOUTH AFRICA	LEVERS MABASO		ACTING CHIEF DIRECTOR: AVIATION SAFETY, SECURITY, ENVIRONMENT AND SEARCH AND RESCUE
	MMANARE EVELYN MAMABOLO		
	SIPHO SKOSANA	Delegate	
SWEDEN	HELENE JANSSON SAXE	Delegate	Alternate Representative of Norway on the Council
	JOHNNY ANDERSSON	Delegate	Legal Adviser
SWITZERLAND	LAURENT NOEL	Delegate	
TANZANIA	PAUL MAKELELE	Advisor	LEGAL ADVISER

	RAPHAEL BOKANGO	Chief Delegate	Representative of Tanzania to ICAO
THAILAND	KITIWAN KHANTITRIRAT	Delegate	
	MISS NITIYA ARIYA		
TURKEY	ALI RIZA COLAK	Chief Delegate	Ambassador, Permanent Representative
	EMIN ERTOP	Alternate to Chief Delegate	Alternate Representative
	YILDIRIM YILLIKCI	Advisor	Senior advisor
UGANDA	JOSEPH JOEL OKWALINGA	Delegate	Manager Legal Services
UNITED ARAB EMIRATES	NADIA ALMAAZMI	Delegate	
UNITED KINGDOM	DAVID BROWITT	Chief Delegate	Lawyer, Aviation Team
UNITED STATES OF AMERICA	MICHAEL B. JENNISON	Delegate	Assistant Chief Counsel for International Affairs and Legal Policy
	PETER BLOCH	Alternate Chief Delegate	Deputy Assistant General Counsel
	TARIA BARRON	Delegate	Attorney
URUGUAY	CARLOS AMADO DIAZ	Chief Delegate	representative of Uruguay
	LUIS GIORELLO	Delegate	
	ROBERTO PERDOMO PROTTI		
Total for Member State and Government officials	121		
International Air Transport Association (IATA)	LESLIE MACINTOSH	Delegate	
Aviation Working Group (AWG)	JEFFREY WOOL		
European Civil Aviation Conference (ECAC)	PATRICIA REVERDY	Delegate	DEPUTY EXECUTIVE SECRETARY OF ECAC
Civil Air Navigation Services Organisation (CANSO)	EUGENE HOEVEN	Chief Observer	Director, ICAO & Industry Affairs

Agency for Air Navigation Safety in Africa and Madagascar (ASECNA)	MANAGA BAMBA SANKARA	Chief Delegate	Chef du Cabinet du Directeur General
	CHARLES KOUADIO KANGA	Advisor	RVNAT
	MAKAN FOFANA	Observer	Responsable Affaires Juridiques et Assurances
Central American Aviation Safety Agency (COSECNA)	RITA NUÑEZ	Observer	Legal Management
International Union of Aerospace Insurers (IUAI)	GILES KAVANAGH	Advisor	Partner
	NEIL SMITH	Delegate	Secretary General
European Organization for the Safety of Air Navigation	PETER TANNHÄUSER	Chief Observer	Head Legal Service
African Civil Aviation Commission (AFCAC)	PETER AMALEBOBA	Observer	Legal Counsel
International Law Association (ILA)	MATHIEU VAUGEOIS	Chief Observer	Attorney
Total for International Organizations	13		
	HENRY DEFALQUE	Participant	Technical Officer, Licensing and Operations
	MIGUEL MARIN	Participant	A/C/OPS
	PHILIP DAWSON	Participant	Consultant
Total for ICAO Staff	3		
	ALI HAGHDOUST	Participant	Student
	HODJAT KHADJAVI	Participant	
	MARIOS SERETIS	Participant	
	MATCHTELD CAMBRIDGE		
	PAUL DEMPSEY	Participant	
Total for General Public/Industry	5		
TOTAL Participants for this event	142		

APPENDIX D**LIST OF RECOMMENDATIONS FOR CONSIDERATION BY THE COUNCIL
REGARDING ARTICLE 83 *bis***

The Legal Committee makes the following recommendations for consideration by the Council:

- 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 Article 83 *bis* agreements through an interactive web-based system using a user friendly electronic platform, to allow for swift registration and publication of such agreements. Recognizing that the Task Force had a mandate to examine Article 83 *bis* registrations, it nevertheless believes that the Secretariat and the Council could consider whether there would be efficiencies to extend the on-line registration system to other aeronautical agreements and arrangements.
 - 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 some of the current Annex 6 requirements cannot practically 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.
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APPENDIX E

International Civil Aviation Organization

WORKING PAPERLC/36
Flimsy No. 1
1/12/15
English only**LEGAL COMMITTEE – 36TH SESSION**

(Montréal, 30 November – 3 December 2015)

Agenda item 5: Amendment of the Rules of Procedure of the Legal Committee**RULES OF PROCEDURE**

(Presented by South Africa)

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SECTION III – OFFICERS

Rule 6*Chairman and Vice-Chairmen*

- a) The Committee shall elect at the end of every second session, from among the representatives of States, a Chairman and the First, Second, Third and Fourth Vice-Chairmen. Such officers shall hold office from the time of adjournment of the session when they were elected until the end of the session during which their successors are duly elected. Subject to Rule 6 (d), they shall not be eligible for re-election for the next succeeding term for the same position.
- b) If the office of the Chairman or any of the offices of the Vice-Chairmen are vacated during the term, the next Vice-Chairman in line shall automatically succeed to the vacated office for the unexpired portion of the term.
- c) If the office of a Vice-Chairman is vacated during the term which cannot be filled in the manner described in Rule 6 (b), the Committee shall, at the end of the first session following the vacancy, elect from among the representatives of States, a Vice Chairman to fill the vacant office for the unexpired portion of the term.
- d) Individuals serving as officers for the unexpired portion of a term pursuant to Rules 6 (b) and (c) shall not be precluded from re-election for the next succeeding term for the same position; provided that in no event shall an individual serving as Chairman for the two sessions of the current term be eligible for re-election for the next succeeding term for the same position.

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