



ICAO

International Civil Aviation Organization

Legal Committee 37th Session

Montréal, 4-7 September 2018

Report

Published by authority of the Secretary General

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REPORT OF THE 37TH SESSION OF THE LEGAL COMMITTEE

Letter of Transmittal

To: President of the Council

From: Chairman of the Legal Committee

I have the honour to submit, in accordance with Rule 46 of the *Rules of Procedure of the Legal Committee*, the Report of the 37th Session of the Legal Committee.

A handwritten signature in black ink, appearing to read 'Terry Olson', with a long horizontal stroke extending to the right.

Terry Olson

Paris, 30 October 2018

LEGAL COMMITTEE – 37TH SESSION

(Montréal, 4 – 7 September 2018)

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1. Place and Duration

1.1 The 37th Session of the Legal Committee was held in Montréal from 4 to 7 September 2018. 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 President of the Council, Dr. Olumuyiwa Benard Aliu**, welcomed all delegates and observers and appreciated the large number of participants from both Member States and Observers. He emphasized the importance of the Legal Committee and the work conducted in the legal field, underlining the fact that ICAO relied for more than 70 years on the advice, studies and recommendations of the Committee in the fulfillment of the objectives of the Organization. He reiterated the important role the Legal Committee has played in the adoption of some twenty-four international air law instruments and averred that a number of them, particularly those related to international aviation security, now belong to the most widely accepted treaties in the international community. He stated that the current work of the Committee is expected to focus on issues of great importance to the aviation community with a high impact on both the safety and security of international civil aviation.

2.2 The President drew the attention of the participants to the first item on the General Work Programme, the study of legal issues relating to remotely piloted aircraft systems – ‘RPAS’, emphasizing the rapid development of this industry.

2.3 Dr. Aliu noted that conflicts of interest in aviation was also for discussion by the Committee, pointing out the fact that conflicts of interest is a cross-cutting issue that concerns all aspects of aviation activities and therefore calls for a multidisciplinary approach. Mention was made of Assembly Resolution A 39-8, which urges States to establish a framework on conflicts of interest that applies to civil aviation activities.

2.4 “Acts or offences of concern to the international aviation community not covered by existing air law instruments” was presented by the President of the Council as the third item on the General Work Programme. He encouraged the Member States to ratify the Protocol adopted in 2014 amending the *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, commonly known as the Tokyo Convention, as only eight more ratifications are needed for the Protocol to enter into force. As far as the activity of the Task Force on Legal Aspects of Unruly Passengers is concerned, the President informed the Committee that it will be presented with a progress report which will cover aspects related to the draft Manual on the Legal Aspects of Unruly and Disruptive Passengers.

2.5 As regards the item dealing with Article 21 of the Chicago Convention, the President recalled that the item was added during the 39th Session of the Assembly which led to the establishment of the Article 21 Task Force. He noted that the Committee will be presented with a progress report concerning the work of the Task Force for consideration.

2.6 Mention was also made of the other items on the Work Programme, including “Safety aspects of economic liberalization and Article 83 *bis*”. As regards the item “Promotion of the ratification of international air law instruments”, the President recommended to all States which have not yet done so to ratify most urgently the two Protocols amending Articles 50 (a) and 56 of the Chicago Convention, respectively.

2.7 Recalling that Article 84 of the Chicago Convention mandates the Council to settle disputes between Contracting States, the President noted that the relevant *Rules for the Settlement of Differences* were only once amended in 1975; in this respect the Committee will be invited to consider a working paper on the review of said Rules.

2.8 Lastly, Dr. Aliu mentioned that the Committee would also be invited to consider emerging legal issues relating to cyber-safety/security and sub-orbital flights with a view to facilitating that ICAO remains at the forefront of new development in the field of international air law.

2.9 Noting that ICAO Member States and the Council had high expectations regarding the outcome of the Committee's deliberations, the President advised that the results of the work would be reported to the Council, and to the Assembly which will meet in Montreal in one year's time.

2.10 The President recognized the remarkable work of the Chairman of the Legal Committee, Mr. Terry Olson, who was chairing his last Session of the Legal Committee, and conveyed his deepest appreciation for Mr. Olson's remarkable patience, keen intellect and outstanding leadership.

2.11 The Chairman expressed his thanks to the President for his clear and concise remarks about the work of the Legal Committee as well as for the appreciation expressed. Further on, the Chairman invited the Secretary General of ICAO to address the Committee.

2.12 Dr. Fang Liu, Secretary General, also welcomed all the participants and stressed the importance of the work the Committee undertook for international aviation. She extended her deepest appreciation for the work of the Chairman and expressed her trust in the Committee's ability to successfully complete its work in the following days.

2.13 Upon suggestion by the delegation of the United States, the Committee observed a minute of silence in order to pay tribute to Dr. Michael Milde, the former Director of the Legal Bureau of ICAO and former Director of the Institute of Air and Space Law at McGill University.

3. **Agenda and Working Arrangements**

3.1 In presenting the provisional Agenda shown in LC/37-WP/1-1, the Chairman informed the Committee that item 6 would be renumbered as item 7 and that new item 6 would be named 'Any other business' so as to accommodate three additional topics, namely (1) cyber safety and security, (2) settlement of differences and (3) space flights. With this addition, the Agenda was adopted and can be found at **Appendix A** to this Report.

3.2 Following a query by one delegation, the Chairman explained that the report of the Legal Committee will be submitted to the Council for its consideration with a view to determining the work of the Legal Commission for the upcoming Assembly.

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

3.4 The action taken by the Committee in respect of each item is reported on separately in the Report.

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 Dr. Jiefang Huang, Director of the Legal Affairs and External Relations Bureau. Mr. Benoit Verhaegen, Senior External Relations and Legal Officer and Mr. Arie Jakob, Senior Legal Officer were Deputy Secretaries. Mr. Christopher Petras and Mr. Andrew Opolot, Legal Officers, as well as Mr. John Thachet, Ms. Marla Weinstein, Mr. Mohamed Mansoor Al-Raqaisi, Mr. Yaw Nyampong, Mr. Ali Hashem, Mrs. Diana Brookes, Mr. Silverio Espinola and Mrs. Soaran Paun Pop were Assistant Secretaries. Other officials of the Organization also provided services to the Committee.

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

5.1 Seventy Member States and eight international organizations were represented by 170 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 37th Session need not be prepared.

Agenda Item 2: Consideration of the General Work Programme of the Legal Committee**Study of legal issues relating to remotely piloted aircraft**

2:1 The Secretariat presented LC/37-WP/2-1, to which was appended a summary of the results of the State responses to the Remotely Piloted Aircraft Systems (RPAS) Legal Survey distributed to Member States on 29 August 2016, the aim of which was to gather information on national RPAS legislation, and to identify potentially relevant international legal issues. The paper concluded that based on the analysis of the results of the Survey, it appeared to the Secretariat that there were currently no international legal issues that urgently needed to be addressed through the development of new treaties or protocols, although the Legal Committee was invited to evaluate whether there were other legal issues that needed to be considered. The paper also drew attention to work by the Secretariat on a proposal to amend Annex 2 to give a blanket authorization to certain unmanned aircraft systems (UAS) operations over the high-seas in order to bring them legally and, safely within the ambit of the Convention.

2:2 China introduced LC/37-WP/2-2 co-sponsored by Italy, Israel and Turkey, which invited the Committee to establish an Unmanned Aircraft System Task Force or Working Group to address legal challenges related to the international operation of RPAS/UAS. The Committee then turned to LC/37-WP/2-5, which was presented by the Czech Republic and co-sponsored by France, Hungary and Poland concerning the applicability of the Chicago Convention and Standards and Recommended Practices (SARPs) with respect to smaller RPAS/UAS as well as with respect to the nature of the authorization required under Article 8 of the Chicago Convention.

2:3 The United States presented LC/37-WP/2-8 which recommended an approach for ICAO and States to enable expanded UAS operations over the high seas, in order to accommodate their continued integration into the aviation sector. The United States indicated that an acceptable solution to the shortfall in existing provisions in this area was identified in paragraph 5.3 of the Secretariat paper.

2:4 The United Arab Emirates introduced LC/37-IP/4 which discussed some legal implications with respect to the introduction of unmanned aerial taxis and called for their inclusion in the study relating to UAS.

2:5 The Committee also benefitted from a Secretariat presentation on the technical work of ICAO related to RPAS, including that of the Remotely Piloted Aircraft Systems Panel (RPASP) and its working groups.

2:6 In the ensuing discussions, while there was acknowledgment that the analysis of the Survey results by the Secretariat had been thorough and informative, there was a strong expression of interest by many States in identifying potentially relevant international legal issues related to unmanned (pilotless) aircraft, as well as concerns raised by some States about the scope, application, and relevance of the Chicago Convention and other international air law instruments in this regard. On the scope of future work, a number of delegations expressed the view that it should not entail amendment of the Chicago Convention or other international air law instruments, including the existing definition of “aircraft” contained in Annex 7 to the Convention. Other delegations, however, expressed support for consideration of the interpretation or applicability of certain provisions of current international air law Conventions with regard to RPAS/UAS, more specifically Article 8 of the Chicago Convention and the Annex 7 definition of “aircraft”. Other areas proposed for consideration included the application of the concept of nationality to RPAS/UAS, the use of RPAS/UAS for transporting cargo and passengers, insurance, and regulatory oversight.

2:7 Many delegations mentioned the very rapid development of RPAS/UAS and the need, as far as possible, for the Committee's work to keep pace with those developments. There were varying views as to what form the body tasked with this further legal work should take. A number of delegations proposed the establishment of a working group or task force that would have clear and defined deliverables and a specific time-frame; the formation of a study group that would have more flexibility to address emerging issues was also proposed.

2:8 Several delegations drew the Committee's attention to ICAO's on-going work in this area and, in particular, that of the RPASP, and emphasized the need for the Committee's efforts to complement this on-going work, with a few delegations going further and proposing that the proposed working group should align and coordinate its work with that of the RPASP. A further suggestion was made that the working or study group could be composed of both legal and technical experts.

2:9 In summarizing the discussion, the Chairman took note that this item had generated interest from a large number of delegations and that the discussions had covered a wide range of subjects. He further noted that all delegations had highlighted the need for the Committee's future legal work related to RPAS to be closely coordinated with other ICAO bodies working on this topic, such as ANB and LEB, in order to avoid the duplication of efforts. He stressed that this method will allow for a synergy between the technical work and the legal approach. The Chairman also emphasized that, at this stage, a significant number of delegations did not foresee the need for any amendment to the Chicago Convention, nor for the development of a new international air law instrument with respect to RPAS/UAS.

2:10 In order to advance the Committee's work under this item, and as proposed by several delegations, the Chairman suggested that the Committee establish a working group which will have the mandate to examine legal issues related to RPAS, including those discussed in the papers presented under this item. The Chairman proposed that a small group be established to develop the terms of reference of the working group, for their approval by the Plenary. There being no objections with respect to this proposed approach, a small group made up of nine States (Argentina, China, Czech Republic, France, Indonesia, Nigeria, Russian Federation, United States and United Arab Emirates) was established, taking into account geographical representation.

2:11 Under the Chairmanship of the delegate of Argentina, the small group met three times over the course of the next 24 hours before the item was resumed later in the Session, with the presentation of draft *Terms of Reference* (TOR) for the *Working Group to Address International Legal Aspects of Unmanned (Pilotless) Aircraft Operations and Integration into Civil Aviation*. Following consideration, the Committee approved the TOR as amended (see final text in Appendix D).

Consideration of guidance on conflicts of interest

2:12 The Secretariat introduced Paragraph 2 of LC-37-WP/2, Revision No. 1 highlighting that since the 36th session of the Legal Committee held in December 2015, the ICAO Assembly in 2016 adopted Resolution A39-8 which established the future work of the Organization on the topic of conflicts of interest in civil aviation (COI). As part of the work, the Secretariat has developed a compilation of ICAO provisions which is attached to the working paper as Appendix A (*ICAO Guidance on Conflicts of Interest in Civil Aviation*). Given that the COI provisions are prevalent in three Annexes and several ICAO manuals, continuous monitoring of changes in these publications and periodic revisions would be needed to ensure that the compilation remains up-to-date. The compilation of ICAO provisions on COI will be made available through the ICAO website. Regarding further work such as the collection, analysis, dissemination and promotion of best practices addressing COI, the Secretariat indicated that this may not be achieved until

further funding from States including voluntary contributions becomes available. Finally, it was noted that Assembly Resolution A39-8 mandates the Legal Committee to keep the issue of COI under regular review.

2:13 Most delegations supported keeping this item on the work programme of the Legal Committee as it requires continuous attention given the recurring nature of the issue and the importance of providing assistance to States to formulate appropriate policies and enact legislation with reference to the best practices in the field of COI. A number of delegations highlighted the fact that many States with low level of aviation activity would require assistance to develop measures to manage or mitigate COI situations that may be not be avoidable in light of the particular circumstances of a State. In that regard, the need to prioritize allocation of resources to the work on COI was emphasized. One delegation suggested that many States have mechanisms to deal with COI and ICAO could provide a platform through which they could share their experience with other States. Another delegation observed that with regard to staffing constraints, States could draw on resources available at regional safety oversight organizations to augment local capacity instead of using industry operators. Many delegations also requested that the compilation of ICAO provisions on conflicts of interest in civil aviation be published in all ICAO working languages.

2:14 In summarizing the discussion, the Chairman noted that there was support to retain this item on the work programme of the Legal Committee. Also, the Secretariat informed that the compilation of ICAO COI provisions would be available in all ICAO working languages in due course. With regard to concerns about the different circumstances of States, the Chairman recalled paragraph 2 (a) of Assembly Resolution A39-8 which invites States to balance their particular circumstances and ability to fulfil their oversight obligations with addressing the risks to aviation safety and security posed by COI. Delegations were invited to work with their relevant authorities and Members of the Council in order to facilitate the allocation of resources for the remaining work on COI.

Acts or offences of concern to the international aviation community and not covered by existing air law instruments

2:15 The Chairperson of the Task Force on Legal Aspects of Unruly Passengers, Mr. John Thachet (Canada), presented LC/37-WP/2-3, which contained a progress report of the work undertaken to update the guidance material currently in ICAO Circular 288, and referred the Committee to the draft of the updated material in the Appendix to the paper (available in English only), which the Task Force recommended to be published in the form of a manual. The Task Force maintained the view that the list of offences in the Circular is sufficiently comprehensive to cover most unruly and disruptive behaviour on board aircraft, subject to it being updated in the Model Legislation to align with the provisions introduced by the Montréal Protocol of 2014, especially Article 15 *bis*. The Chairperson referred to the consequential changes in the draft Manual associated with the new jurisdictional bases introduced by the Protocol, and noted the recommendation to establish a criminal legislation repository to address the difficulties posed by Article 3, paragraph 2 *ter*, with regard to how authorities in the State of landing could know that certain behavior which constitutes an offence in its State is also an offence in the State of the operator, and how it can be assured that the obligation of the State of landing to “consider” the offence is met. He also referred to the introduction of guidance on an administrative sanctions regime to facilitate more expeditious resolution of incidents, and the recommendation that a survey be conducted enquiring from States as to what sanctions they have established to deal with unruly and disruptive passengers. It was also recommended to review the approach on use of the terms “unruly” and “disruptive” with a view to alignment among ICAO publications. Most of the delegations which spoke expressed appreciation to the Task Force and its Chairpersons for their hard work preparing the guidance material, and supported the recommendations in the working paper, including the changing of the form of the guidance from a circular

to a manual. One delegation, supported by several others, proposed that the abovementioned criminal legislation repository be provided in the form of links to the ICAO website, which would minimize the need for the Organization to continuously collect legislation from States.

2:16 The Latin American Air and Space Law Association (ALADA) introduced LC/37-WP/2-9, which invited the Committee to support the recommendations of the Task Force, and to take note of concerns as to: the use of the terminology “unruly and disruptive”, “insubordinados o perturbadores” in the Spanish text of the Montréal Protocol of 2014, which it found is more descriptive of misbehaviour in the armed forces/law enforcement, preferring the term “indisciplined/disorderly” “indisciplinados” as applied to passengers; extending the application of the draft Manual to the pre-boarding area and to questionable behaviour of crew members against passengers; alignment of terminology amongst ICAO publications beyond Annex 17, for example Annex 9; and more explicit mention in the Manual to mandatory administrative sanctions for minor offences and acts. A number of delegations, in supporting this paper, also underlined the importance that the Manual be published in all ICAO working languages. Other delegations believed that the terminology should be consistent with the text of the Protocol.

2:17 In the discussion, the enforcement against unruly and disruptive behaviour and the need to protect the passengers’ rights were both emphasized. One delegation stressed the enforcement power of States under Article 3, paragraph 3 of the Tokyo Convention. Several delegations strongly endorsed fast track administrative sanctions for minor offences, and supported the Task Force’s recommendation that a survey be circulated in this regard, with one delegation noting that the Latin American Civil Aviation Commission (LACAC) had circulated such a survey for States in that region in 2017. With reference to LC/37-IP/2, the delegation of China described its country’s credit management measures to deal with unruly and disruptive behaviour. Several delegations noted the usefulness of these measures relating to no-fly lists and the Secretariat indicated its intention to conduct a follow-up study.

2:18 In response to comments and questions raised by the delegations, the Chairperson of the Task Force clarified certain issues.

- a) With respect to the form of the guidance material, a manual was chosen instead of a circular because it is easier to update given that this is an emerging area. It was reminded that Circular 288 remains relevant for those States which do not ratify the Protocol.
- b) It has been the practice of ICAO for the Secretary General to approve circulars and manuals, and this is reflected in the wording of the Resolution of the 2014 Diplomatic Conference; the Council will be apprised of the Committee’s discussion on the draft Manual’s contents in the report of this Session, and could therefore make its observations before it is finalized by the Secretary General.
- c) With respect to the issue of the draft Manual making reference to unruly/disruptive behaviour in the pre-boarding area, the Tokyo Convention as amended by the Montréal Protocol of 2014 applies to acts or offences committed on board the aircraft and therefore, any reference to the application of jurisdiction to the pre-boarding area would be beyond its scope. A State’s national legislation would apply in the pre-boarding area.
- d) As regards to the statement of one delegation that the Task Force went against the Resolution of the 2014 Diplomatic Conference as it did not provide a more detailed list of offences, the Chairperson explained that lengthy discussions were held in the Task Force on whether to update the list, and it was unanimous among all participants to maintain the list from the Circular, as it sufficiently covered most of the unruly and

disruptive behaviour on board the aircraft. The Task Force kept the list at this level so that it does not restrict the power of a State to introduce into its national legislation any other offence or prohibited act relating to unruly or disruptive behaviour.

- e) With respect to the draft Manual dealing with unruly and disruptive behaviour on the part of the crew, as well as passengers, Article 15 *bis* of the Protocol encourages States to initiate legal proceedings against “any person”, the term “person” covering both passengers and crew. Model legislation in the Manual is consistent with Article 15 *bis* as it also uses the term “person”.
- f) On ALADA’s suggestion to replace the terminology “unruly and disruptive behaviour” in the draft Manual with “indiscipline” or “disorderly”, the Task Force had several discussions regarding the terms “unruly”, “disruptive”, and “unruly and disruptive” behaviour, and decided to follow the terminology of Article 15 *bis* of the Protocol, given that deviating from that terminology may dilute its true intent and could generate confusion amongst States when drafting national legislation or when legal proceedings are initiated.

2:19 The Chairman of the Legal Committee, in summing up this item, thanked the Chairperson and Task Force members, as supported by the Secretariat, for their work. He noted that the Chairperson provided a clear and elaborate presentation which clarified the issues raised in the Committee.

2:20 In view of the support of a large number of delegations, the Committee decided to recommend that:

- a) The guidance material updating ICAO Circular 288 be in the form of a manual to be approved by the Secretary General, taking into account the comments of the Council, if any;
- b) The Organization establish a repository of States’ criminal legislation on unruly and disruptive passenger offences with the links to Member States’ relevant websites;
- c) A survey be conducted by the Secretariat enquiring from States as to what administrative sanctions or comparable regimes they have established to deal with unruly and disruptive passengers; and
- d) The Organization review the approach on use of the terms “unruly” and “disruptive”, with a view to alignment among ICAO publications.

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

2:21 The Secretariat introduced LC/37-WP/2 relating to agenda item 2-4, underlining the fact that the issue of CNS/ATM systems including GNSS has been on the work programme of the Legal Committee since 1994; however the Committee had not carried out any substantive work on this item over the last decade. Therefore, the Committee was invited to consider two options with regard to the future status of this item. The first option would be to remove the subject from the General Work Programme of the Legal Committee. As a second option, the Legal Committee was invited to identify legal issues to be dealt with under this subject, with the view to achieving tangible results.

2:22 Several delegations voiced support for the removal of the item from the Legal Committee's General Work Programme, stating that no progress has been achieved and citing that no concrete proposals were made to justify its retention. One delegation noted that while the Council of ICAO has instructed the Legal Committee to review the current wording of the item to better reflect progress registered in the technological field, such as on global flight tracking, the emphasis was on the technical aspects, rather than on legal issues. Another delegation, while reserving its position on the options presented, requested clarification, with respect to paragraph 3.1 of the working paper as to whether the two proposed options were in line with the Council's instructions to the Committee.

2:23 The Secretariat, while recalling references to the Global Air Navigation Plan and to the global tracking initiatives, noted that it was up to the Legal Committee to determine the institutional and legal issues to be addressed in this regard.

2:24 The Chairman deferred the discussions on this item and requested the delegations to give further consideration to the two options presented with the view to determining the final approach to be taken when considering under Agenda item 3 on the future General Work Programme.

2:25 Upon resuming the discussions, several delegations expressed strong support for retaining the item on the work programme. It was stressed that given the forthcoming ICAO Thirteenth Air Navigation Conference which will address satellite based navigation and future deliberations on its outcomes at the 40th Session of the Assembly it may be appropriate for the Committee to remain seized of the matter. It was the view of several delegations that the wording of this item needed to be reformulated in view of the Council's instruction to the Committee. A number of delegations pointed out that the Legal Commission, at the 40th Session of the Assembly, would also have an opportunity to review this item further, taking into account any new developments in that area.

2:26 One delegation suggested "Study of international legal issues relating to global navigation satellite systems (GNSS)" as new wording for this item to better capture the intent of not revisiting issues that have been addressed but instead to respond to potential emerging legal issues as they may arise in deliberations in other ICAO fora such as the forthcoming Air Navigation Conference. Taking into account the intervention by another delegation that cited the absence of a clear problem statement as a point for reflection, the Chairman was mindful of the sentiment that prevailed for not prematurely establishing a study group under this item. The Committee agreed to maintain this item as reworded on its work programme, on the understanding that further decisions regarding future work on this item needed to await the Council's directions as they develop.

Determination of the status of an aircraft – civil/State

2:27 The Secretariat presented the State responses to the questionnaire that was distributed on 1 November 2016 (State Letter LE 4/50 – 16/86), the aim of which was to inquire about the practical problems States may have faced due to the classification of "Civil/State aircraft".

2:28 The Committee observed that 47 of the 55 responses did not raise any issues or express any concerns with respect to the determination of the status of an aircraft as civil/State. Of the eight States that did raise issues or concerns, only three went so far as to call for an amendment to Article 3 of the Chicago Convention, while three others advocated the adoption by ICAO of an interpretation of Article 3 b) along the lines of that proposed in the 1993 Secretariat Study on Civil/State Aircraft (1993 Study), which sought to simplify the determination of the status an aircraft as civil/state and provide criteria for determining whether an aircraft is used in military customs and police services. The remaining two States

raised issues that can best be categorized as operational or implementation-related.

2:29 On the basis of the survey, the Committee decided to:

- a) note the continued relevance of the opinions and recommendations in the 1993 Study relative to the issue of the determination of the status an aircraft as civil/State, which would be made available to States in a more accessible way;
- b) recommend to the Council that States be encouraged to cooperate with each other to address operational issues related to civil/State aircraft status and/or share best practices for implementation of Article 3 b), whether through direct consultations or the utilization of appropriate ICAO forums or regional groups; and
- c) remove the item “Determination of the status of an aircraft – Civil/State” from the General Work Programme of the Legal Committee.

Promotion of the ratification of international air law instruments

2:30 The Secretariat introduced Paragraph 5 of LC/37-WP/2, Revision No. 1, 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. The Secretariat encouraged States to ratify, in particular, the 2016 Protocols amending, respectively, Articles 50 (a) and 56 of the *Convention on International Civil Aviation* (Chicago Convention).

2:31 All of the delegations who took the floor fully supported the efforts in promoting ratification of international air law instruments. Most of these delegations agreed that the international community should be encouraged to ratify air law instruments for the purposes of uniformity in international air law, with a number of them pointing out their governments’ recent ratifications, or intended ratifications, of air law instruments, most notably the 2016 Protocols, the Beijing instruments of 2010, and the Montréal Protocol of 2014.

2:32 Three delegations highlighted the challenges associated with the internal legislative process to ratify treaties, with one delegation citing the importance of continuous regional seminars to promote ratification, and of sharing knowledge at the national level.

2:33 One delegation proposed that a State letter be issued informing of States’ obligations to register with ICAO aeronautical agreements under Articles 81 and 83 of the Chicago Convention.

2:34 The co-chair for the Preparatory Commission for the Establishment of the International Civil Aviation Compensation Fund (PCIF) noted the work of the Preparatory Commission established pursuant to Resolution No. 2 of the 2009 Diplomatic Conference, relating to the Establishment of the International Civil Aviation Compensation Fund of the *Convention on Compensation for Damage to Third Parties, Resulting From Acts of Unlawful Interference Involving Aircraft*. Pursuant to this Resolution, the Preparatory Commission was established to set up the International Civil Aviation Compensation Fund so that it would be operational by the time the Convention enters into force. It was envisaged that more details on the Commission’s work could be made available at the next session of the Committee.

2:35 In summing up, the Chairman echoed the Committee’s support for the Secretariat’s work in

promoting ratification, and took particular note of the large number of ratifications since the 36th Session, emphasizing the increased momentum of ratifications as instruments came close to coming into force. The Chairman urged those States that had signed the Beijing instruments to consider completing the process by ratifying them, in view of the continuing terrorist threat to civil aviation.

Safety aspects of economic liberalization and Article 83 bis

2:36 The Committee turned to LC/37-WP/2-7 presented by the Secretariat. The paper informed that the Manual on the Implementation of Article 83 *bis* of the Convention on International Civil Aviation (Doc 10059) had been published in 2017, and that at its 207th Session the Council accepted the five recommendations on Article 83 *bis* approved at the 36th Session of the Legal Committee. The Chairman warmly congratulated all those that had been involved in this fruitful work, which had been undertaken in a spirit of cooperation. The main legal tasks under this item having been completed, the Committee decided to remove the item from the Work Programme (see paragraph 3:5).

Implementation of Article 21 of the Chicago Convention

2:37 The Secretariat introduced LC/37-WP/2-6 which provided an overview of the work done on the item “Implementation of Article 21 of the Chicago Convention”. It was recalled that following the addition of the item to the work programme by the Assembly during its 39th Session in 2016, a survey had been carried out by the Secretariat to which 59 States responded. A Task Force had also been established which held two meetings in Montreal. The paper presented the main conclusions of the Task Force for the Committee’s consideration.

2:38 France, while introducing LC/37-WP/2-4 co-sponsored by Switzerland, Ukraine, Italy, Hungary, Poland and Finland, stated that its main purpose was to promote the need for more transparency and consistency in implementing Article 21 of the Chicago Convention. In this regard, France expressed strong support for the work of the Task Force and urged the Committee to closely follow the development by the Secretariat of the Aircraft Registration Network (ARN) as a possible long-term solution to assist member States to fulfil their obligations under Article 21 and also to consider as an interim solution the draft model certificate of de-registration of aircraft which was presented in the Appendix to LC/37-WP/2-4.

2:39 The Committee took note of LC/37-IP/3, presented by Indonesia. The paper urged the Committee to support the development by the Secretariat of the ARN which could serve as a means to increase Member States’ compliance with the obligations in Article 21 of the Chicago Convention. Further, the paper called upon the Secretariat to develop the ARN as a user friendly system which could provide benefits to Member States and facilitate their compliance with Article 21.

2:40 The Chairperson of the Article 21 Task Force, Ms. Susanna Metsälampi (Finland), took the floor to explain the work done and outcomes achieved in the first two meetings of the Task Force. It was observed that from a purely legal perspective, there is some ambiguity with respect to the information to be exchanged pursuant to Article 21. There are different meanings of the concept of ownership of aircraft across different States, a situation which is amplified by Article 19 of the Convention which permits each State to register aircraft in accordance with its national laws and regulations. The main challenge for the Task Force was to find a common understanding of such concepts in light of the different practices followed in different States. To this end, the Task Force considered the model certificate of de-registration and the ARN as tools that could be further developed and used in enhancing the implementation of Article 21. The need to complement and synergize with the work of other relevant bodies in ICAO, such as

the Cross-Border Transferability (XBT) Task Force, was also identified and emphasized. The Chairperson of the Task Force expressed gratitude to all members of the Task Force for their active participation and to the members of the Secretariat for their unqualified dedication to the work.

2:41 While expressing support in principle for transparency and consistency in the sharing of aircraft registration, ownership and control data between States, two delegations indicated that their national laws would currently not permit them to provide all the information specified in the model certificate of de-registration as presented, and that strict compliance with the model certificate may require legislative changes in those States. Having experienced several difficulties in accessing and obtaining information from the current ICAO Aircraft Registry System (ARS), one delegation welcomed the establishment of the new ARN system to replace the ARS. Another delegation enquired whether a model certificate of registration of aircraft and corresponding guidance material aimed at harmonizing registration processes could be developed by the Secretariat. In response, the Secretariat indicated that a model certificate of registration of aircraft is already provided for as a Standard in Annex 7 – Aircraft Registration and Nationality Marks and is widely used by many States. It was further indicated that it would be difficult for the Secretariat to develop guidance material aimed at harmonizing aircraft registration systems around the globe as this would contravene the principle of Article 19 of the Convention.

2:42 A few delegations expressed the view that the work of the Article 21 Task Force could not be completed in isolation. To this end, it was proposed that the proposals contained in LC/37-WP/2-4 and LC/37-WP/2-6 be shared with the XBT Task Force, the Airworthiness Panel and any other relevant bodies in ICAO to give room for further development and to offer more flexibility in the approach to this issue. It was further proposed that the work of the Article 21 Task Force should not be finalized at this session of the Legal Committee. The foregoing proposals were supported by an observer who expressed the view that while the first part of the model certificate of de-registration was acceptable, the second part would require further refinement in order to make it more relevant to States. In the same vein, the Secretariat also proposed that the recommendation in paragraph 4 c) of LC/37-WP/2-4 be slightly modified so that the model certificate of de-registration could be submitted to any relevant technical body in ICAO rather than just the XBT Task Force for purposes of further refinement and enhancement. The proposal was accepted by France on behalf of all the other delegations who co-sponsored and supported LC/37-WP/2-4.

2:43 The Chairman, in summarizing the discussion of Agenda item 2.8, identified three main conclusions reached by the Committee. First, the Committee unanimously supported, appreciated and was generally satisfied with the work done and the outcomes achieved by the Article 21 Task Force, including the model certificate of de-registration in principle and the ARN. Second, most delegations expressed the view that there is no contradiction between the development of the ARN and the development of the model certificate of de-registration. Third, while there was broad support for the model certificate of de-registration, a few delegations were of the view that due to the specificity of their domestic legal frameworks, they would have challenges in complying with the requirements set out in the said model certificate especially in the second part thereof. In this context, the Chairman observed that the model certificate is provided for guidance only and States are not expected to change their national laws and regulations governing the registration and de-registration of aircraft. States would be encouraged to provide as much information as possible using the model certificate. The Chair also indicated that the development of the model certificate is an ongoing process and that the XBT Task Force, the Airworthiness Panel and other relevant bodies of ICAO would work collaboratively to further develop the model certificate before it is sent to States for consultation.

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

3:1 The Secretariat introduced LC/37-WP/3-1 on the review of the General Work Programme of the Legal Committee.

3:2 Taking into account the deliberations of the Committee during its current Session, the Chairman proposed and the Committee agreed that: item 1 (Study of legal issues relating to remotely piloted aircraft); item 2 (Consideration of guidance on conflicts of interest); item 3 (Acts or offences of concern to the international aviation community and not covered by existing air law instruments); item 6 (Promotion of the ratification of international air law instruments) and item 8 (Implementation of Article 21 of the Chicago Convention) be kept in the Committee's Work Programme.

3:3 The Chairman presented the Committee's decision to delete item 5 (Determination of the status of an aircraft – civil/State) from the Work Programme, and recalled the decisions taken under agenda item 6 (Any other business) to include the item "Consideration of the adequacy of existing international air law instruments in addressing cyber threats against civil aviation" and the item "Review of the ICAO Rules for the Settlement of Differences" into the Work Programme.

3:4 As regards item 1, one delegation proposed to reformulate the item in order to align it with the Terms of Reference of the Committee's working group on the international legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation. There being no objections with respect to this proposal, item 1 was reformulated accordingly, to read: "International legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation".

3:5 With respect to item 7 (Safety aspects of economic liberalization and Article 83 *bis*), the Chairman noted that a great amount of work has been accomplished and submitted that the item may be deleted, which would nevertheless not prejudice the Committee being informed of the developments on the future registry's operation. In the view of one delegation the work on this item was not considered to be completed given, in particular, that the online registration system of 83 *bis* agreements was not yet in operation. The Secretariat explained that the main legal tasks under this item have indeed been carried out and that both the Committee and Member States would be briefed once the new registry system was in place. The Committee then decided to remove this item from its Work Programme.

3:6 The item "Study of international legal issues relating to global navigation satellite systems (GNSS)" was retained in the Work Programme (see paragraph 2:26).

3:7 Upon suggesting a possible prioritization of the items on the Work Programme, the Chairman emphasized that the priority order would not preclude any advancement of the work on an item which has been assigned a lower priority, nor strictly dictate the sequence under which an item would be advanced. He recalled that, work on the item "Implementation of Article 21 of the Chicago Convention" had advanced quickly, despite the fact that these items were initially included to the work programme with a low priority.

3:8 As a result of the above-mentioned considerations as well as the decisions taken under agenda item 6, the Chairman proposed, and the Committee unanimously endorsed, that the work programme be established as follows:

1. International legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation;
2. Review of the ICAO Rules for the Settlement of Differences;
3. Consideration of guidance on conflicts of interest;
4. Consideration of the adequacy of existing international air law instruments in addressing cyber threats against civil aviation;
5. Acts or offences of concern to the international aviation community and not covered by existing air law instruments;
6. Promotion of the ratification of international air law instruments;
7. Implementation of Article 21 of the Chicago Convention; and
8. Study of international legal issues relating to global navigation satellite systems (GNSS).

Agenda Item 4: Election of the Chairman and Vice-Chairmen of the Committee

4:1 On the basis of LC/37-WP/4-1 and in conformity with Rule 6 a) of its Rules of Procedure of the Legal Committee (Doc 7669-LC/139/6), the Committee proceeded to the election of its Chairman and of its First, Second, Third and Fourth Vice-Chairmen.

4:2 Ms. S.H. Tan (Singapore) was elected as Chairman. She was nominated by the delegation of France; this nomination was seconded by Canada, China, Uganda and South Africa.

4:3 The delegation of the United States nominated the First, Second, Third and Fourth Vice-Chairmen; these nominations were seconded by Indonesia, Cuba, Kenya and Qatar. Accordingly, the following candidates were elected: Mr. N. Luongo (Argentina) as First Vice-Chairman, Ms. S. Metsälampi (Finland) as Second Vice-Chairman, Ms. E. Manga (The Gambia) as Third Vice-Chairman and Mr. B. AL Mubarak (Kuwait) as Fourth Vice-Chairman. All officers were elected by acclamation.

4:4 The Committee expressed its warm and deep appreciation for the work of Mr. T. Olson and the guidance he had provided to the Committee during his tenure as Chairman.

Agenda Item 5: Date, place and agenda of the 38th Session of the Legal Committee

5:1 The Committee considered this item on the basis of LC/37-WP/5-1, presented by the Secretariat. At the request of the Chairman, it was indicated that in practice the Committee would meet every second year, and that the scheduling of the next session was usually left for the decision by the Council. The Committee then agreed to defer to the Council the decision on the date, place and agenda of the 38th Session of the Legal Committee.

Agenda Item 6: Any other business**International Air Law Courses**

6:1 The Secretariat presented LC37-IP/1 which provided an overview of the international air law course developed by the ICAO's Global Aviation Training (GAT) Office in coordination with the Legal Affairs and External Relations Bureau. The paper highlighted the content of the course as well as its objective to enable representatives of Civil Aviation Administrations, airports and air navigation service providers to support their organization in the implementation of international air law. It was also noted since its launched in 2017, the course has been delivered in all ICAO regions and attended by more than 180 participants

6:2 A number of delegations expressed their appreciation to the GAT Office for the development of this course and emphasized its great value in providing information to participants on various aspects of international air law, including international air law treaties. Among these delegations, one highlighted the cost associated with the course. It also hoped that the course could be offered in languages other than English in order to encourage broader participation.

6:3 In response, it was mentioned that the ongoing process of recruiting instructors in all ICAO regions may allow for the reduction of the cost associated with the course. It was also mentioned that translation of the course in other ICAO working languages was being considered.

6:4 The Chairman congratulated the Secretariat for the development of the course and called upon delegates to join in efforts for its promotion.

Cyber safety and cyber security

6:5 The Secretariat briefed the Committee about the work conducted by the Secretariat Study Group on Cybersecurity (SSGC), and the conclusions of the ICAO Europe, Middle East and Africa Summit – Cybersecurity in Civil Aviation, that took place in Bucharest, Romania, from 7 to 9 May 2018. It was pointed out that, already dating back to 2010, the international community was cognizant of the emerging threat in this respect, when the 2010 Beijing Diplomatic Conference considered the definition of 'air navigation facilities' (to include signal, data, information or systems necessary for the navigation of the aircraft). Nevertheless, the Secretariat stated that threats could materialize against other facilities, such as computer reservation systems. The Committee was invited to consider the possibility of inclusion of this issue on its Work Programme.

6:6 Several delegations and one observer expressed the view that cyber security and safety should be given full and proper consideration and supported the idea to include the issue on the Work Programme of the Committee.

6:7 The Chairman, in summarizing the discussions of this agenda item, concluded that there was consensus among the members of the Committee to include the legal aspects related to cyber security and safety on the General Work Programme of the Committee. The Committee received a brief by Mr. Sylvain Lefoyer, Deputy Director of Aviation Security and Facilitation on the work of the SSGC. Upon consideration of Flimsy No. 2, which contained a wording proposal for the new item to read "Consideration of the adequacy of existing international air law instruments in addressing cyber threats"; the Committee

recognized that it was necessary to better reflect the potential addressee of the “threats”. As a result of the discussions, the Committee decided to include the item “Consideration of the adequacy of existing international air law instruments in addressing cyber threats against civil aviation” in the Work Programme.

Review of the Rules for the Settlement of Differences

6:8 The Committee then considered LC/37-WP/3-2, presented by the Secretariat. It was recalled that ICAO Doc. 7782/2 (*the ICAO Rules for the Settlement of Differences*) which was initially adopted in 1957 had only been amended once in 1975 to include Russian as a working language.

6:9 All delegations who took the floor expressed strong support for the inclusion of the item in the work programme while several delegations additionally proposed the establishment of a Working Group of the Committee to address the item and indicated their willingness to participate in such Working Group if established. Some delegations were of the view that the ICAO Rules should be modernized in light of the fact that the Rules of Court of the International Court of Justice (ICJ) upon which the ICAO Rules were initially modeled have been subsequently revised. In this context, several delegations echoed that, with its political and judicial roles, the Council of ICAO is unique and therefore different from the ICJ, whose role is purely judicial. Therefore, while questioning the appropriateness of aligning the ICAO Rules exclusively to the ICJ Rules, a few delegations pointed out that it would also be important to consider aligning the ICAO Rules with best practices.

6:10 One delegation expressed the view that the ICAO Rules need to be workable and clear while several other delegations proposed that the review of the ICAO Rules should not focus exclusively on introducing amendments to the current set of rules but should also consider the development of new and innovative mechanisms to facilitate the settlement of differences in a timely, expeditious and transparent fashion.

6:11 On the basis of the various interventions made by delegations the Chairman proposed that the item “Review of the ICAO Rules for the Settlement of Differences” be added to the work programme of the Committee. The Chairman, acting pursuant to Rule 15 of the Rules of Procedure for the Legal Committee, further proposed the establishment of a Working Group of the Committee whose members would be nominated by the next Chairman of the Committee in consultation with the President of the Council. The Chairman noted that any revised rules would not apply to currently pending disputes but to future disputes brought before the Council. The Committee agreed with the summary of the Chairman and decided to recommend to the Council to include this item in the work programme and also to establish a Working Group of the Committee to address the item.

Space Flights

6:12 The Secretariat introduced the item of space flights and recalled that the 36th Session of the Legal Committee considered premature to include an item on legal aspects of commercial space flights in its General Work Programme. It was decided that when commercial space flights become more frequent in the future, there may be a need to revisit the relevant legal issues. It was also recalled that the last Session of the Legal Committee tasked the Secretariat to monitor any new developments by participation in seminars and other activities in different fora. The Secretariat confirmed that collaboration and exchange of information with the United Nations Office for Outer Space Affairs (UNOOSA) occurred on a regular basis. The Secretariat nevertheless mentioned that since the Committee’s last session, there had been no substantive progress which would warrant specific action by the Committee.

6:13 Referring to recent activities by UNOOSA, one delegation averred that new information regarding legal issues pertaining to sub-orbital flights and high altitude operations were expected to become available later in the year. Another delegation cited the development of spaceports in its State and, in light of this, proposed to add the item to the Work Programme.

6:14 The Chairman took note of the comments as well as the proposition to include this item in the Work Programme of the Committee. He proposed to defer consideration of this item in order to allow for further consultations among delegations.

6:15 Upon resuming the discussions, three delegations reiterated that it was still too early at this stage to add the item to the Work Programme and for the Committee to undertake any legal work on it. Instead, these delegations were of the view that the Committee should give consideration to the work carried out on this topic in other fora. A few delegations, on the other hand, were of the view that the subject deserved consideration by the Committee in light of the new developments in the area. These delegations therefore proposed that the item be included in the Work Programme with a limited scope focusing on civil and commercial space flights. One delegation also supported the inclusion of the item in the Work Programme, provided that it would not interfere with the work currently undertaken by UNOOSA. While supporting the inclusion of the item in the Work Programme, an observer highlighted that space flights was a growing industry and that, in order to protect the safety record of civil aviation, the Committee should act proactively to advance legal solutions in that area.

6:16 In summing up, the Chairman emphasized that the practice of the Legal Committee has been to include new items in its Work Programme only when such inclusion was supported by a clear majority or when there was consensus in favour thereof within the Committee. The Chairman noted that none of the abovementioned two criteria had been met and therefore the Committee was not in a position to add the item to its Work Programme at this Session. Nevertheless, the Chairman stressed that the Committee would not be preempted from giving further consideration to this topic at its next Session. For this purpose, the Chairman invited States who have an interest to submit working papers for consideration by the 38th Session of the Committee. The Secretariat indicated that a monitoring report on this item will be presented for consideration to the Committee at its next Session.

Concluding Remarks

6:17 The Chairman-elect Ms. S. Tan (Singapore) expressed her thanks to all Delegations who supported her candidacy and mentioned that it was an honour and a privilege for her to serve as the first woman to be elected Chairman of the Legal Committee. She thanked the outgoing Chairman for the significant contributions he had made to the work of the Legal Committee during his tenure as Chairman and expressed the hope that the Government of France would continue to make him available to participate in the future work of the Committee. While observing that the election of every new Chairman represents change for the Legal Committee, the Chairman-elect reassured the Committee that the change she wishes to bring about will not be disruptive. She expressed gratitude and appreciation to the current Vice-Chairmen of the Committee for their work.

6:18 In his closing remarks, the outgoing Chairman observed that this election constituted a historic milestone for the Legal Committee as it not only marked the election of the first woman as Chairman but also the election of the first Chairman from East Asia. He also highlighted the fact that for the first time ever a majority of the elected Officers of the Legal Committee were women. The outgoing

Chairman recalled the importance of diversity in the work of the Legal Committee. He stressed that even though Delegates came from different legal traditions and spoke different languages, respect for diversity had ensured that the quality of the work of the Committee remained consistently high, and that harmonious relations were maintained within the Committee. He remarked that during his tenure he was always fascinated to discover and to learn more about the inner workings of the Organization, in particular its soft law, which he considered to be one of the most developed and best implemented by States. He mentioned further that as Chairman of the Legal Committee he was deeply committed to the cause of multilateralism, which he believed still remained essential and paramount for the development of international law. The outgoing Chairman thanked all the Officers of the Legal Committee who served with him during his tenure as Chairman as well as the officials of the Secretariat and all Delegates who attended this Session of the Committee.

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/139/6) 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) 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;
- 7) Safety aspects of economic liberalization and Article 83 *bis*; and
- 8) Implementation of Article 21 of the Chicago Convention.

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: Election of the Chairman and Vice-Chairmen of the Committee

Note: Rule 6 of the Rules of Procedure of the Legal Committee provides: “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. They shall not be eligible for re-election for the next succeeding term for the same position.”

Item 5: Date, place and agenda of the 38th 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 37th Session.

Item 6: Any other business

Item 7: Report on work done at the Session

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

AGENDA ITEM	WORKING PAPER NO.	TITLE	ORIGINATOR
1	LC/37-WP/1-1	Provisional Agenda	Secretariat
1	LC/37-WP/1-2	Note on Documentation and Working Arrangements	Secretariat
2	LC/37-WP/2	<p>Consideration of Other Items on the General Work Programme of the Legal Committee</p> <p>Consideration of guidance on conflicts of interest</p> <p>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</p> <p>Determination of the status of an aircraft – civil/State</p> <p>Promotion of the ratification of international air law instruments</p>	Secretariat
2	LC/37-WP/2-1	Remotely Piloted aircraft Systems Legal Survey (RPAS)	Secretariat
2	LC/37-WP/2-2	Establishing UAS Task Force/Working Group within the Legal Committee (RPAS)	China & Italy
2	LC/37-WP/2-3	Acts or offences of concern to the international aviation community and not covered by existing air law instruments	Chairperson of the Task Force on Legal Aspects of Unruly Passengers and the Secretariat
2	LC/37-WP/2-4	Implementation of Article 21 of the Chicago Convention	France, Switzerland, Ukraine, Italy, Hungary, Poland & Finland
2	LC/37-WP/2-5	Clarification of Applicability of the Chicago Convention And SARPS to Certain Categories of RPAS/UAS	Czech Republic, France, Hungary & Poland
2	LC/37-WP/2-6	Implementation of Article 21 of the Chicago Convention	Secretariat
2	LC/37-WP/2-7	Safety Aspects of Economic Liberalization and Article 83 <i>bis</i>	Secretariat

AGENDA ITEM	WORKING PAPER NO.	TITLE	ORIGINATOR
2	LC/37-WP/2-8	Study of legal issues relating to remotely piloted aircraft (RPAS)	United States
2	LC/37-WP/2-9	Acts or Offences of Concern to The International Community and not Covered by Existing Air Law Instruments	ALADA
3	LC/37-WP/3-1	Review of the General Work Programme of the Legal Committee	Secretariat
3	LC/37-WP/3-2	Review of the Rules for the Settlement of Differences	Secretariat
4	LC/37-WP/4-1	Note on the Election	Secretariat
5	LC/37-WP/5-1	Date, place and agenda of the 38th Session of the Legal Committee	Secretariat

OTHER DOCUMENTATION

AGENDA ITEM	INFORMATION PAPER	TITLE	PRESENTED BY
2	LC/37-IP/1	International Air Law Course	Secretariat
2	LC/37-IP/2	Introduction to the Credit Management Measures of CAAC	China
2	LC/37-IP/3	Supporting an Aircraft Registration Network in Complying Article 21 of the Chicago Convention	Indonesia
	LC/37-IP/4	Study of Legal Issues Relating to Remotely Piloted Aircraft	United Arab Emirates

APPENDIX C**LIST OF PARTICIPANTS**

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**International Federation of Air Line Pilots' Associations
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Wheeler J.

**Latin American Association of Air and Space Law
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Donato M.

North Atlantic Treaty Organization (NATO)

Kaiser S. A.

APPENDIX D**TERMS OF REFERENCE****WORKING GROUP TO ADDRESS INTERNATIONAL LEGAL ASPECTS
OF UNMANNED (PILOTLESS) AIRCRAFT OPERATIONS
AND INTEGRATION INTO CIVIL AVIATION**

Recognizing ICAO's two-part approach to unmanned (pilotless) aircraft regulation, whereby the Organization, mainly through the Air Navigation Bureau (ANB) working in collaboration with the Legal Affairs and External Relations Bureau (LEB), and with support from the Remotely Piloted Aircraft Systems Panel (RPASP) and various other groups of experts, as appropriate, is developing the regulatory framework necessary for remotely piloted aircraft systems (RPAS) to conduct international Instrument Flight Rules (IFR) operations in controlled airspace and aerodromes, while facilitating harmonization of national regulations on other unmanned aircraft systems (UAS), which remain outside of the international IFR framework;

Considering that during the 37th Session of the Legal Committee (Montréal, 4-7 September 2018) and further to the relevant survey conducted by the Secretariat, there was a strong expression of interest by many States in identifying potentially relevant international legal issues related to unmanned (pilotless) aircraft, as well as concerns raised by some States about the scope, application, or relevance of the Chicago Convention and other international air law instruments in this regard;

Considering further the decision consequently taken by the Legal Committee to create a Working Group to address international legal aspects of unmanned (pilotless) aircraft operations and integration into civil aviation;

Considering further the Committee's directions that this Working Group (a) coordinate closely with ANB and LEB, so that its work is consistent and achieves synergy with the ongoing work of the Organization and the RPASP on unmanned (pilotless) aircraft regulation; (b) consider, as appropriate, other potentially relevant work being done at national, regional, and international levels, such as that of the Joint Authorities for Rulemaking on Unmanned Systems (JARUS), among others; and (c) keep pace with technological and market developments by giving priority to formulating legal solutions that do not entail lengthy procedural processes, as appropriate;

The 37th Session of the Legal Committee, pursuant to Rule 15 of the *Legal Committee Rules of Procedure* (Doc. 7669-LC/139/6), approved the following *Terms of Reference* for this Working Group:

1. OBJECTIVE

1.1 Consider international legal issues relating to unmanned (pilotless) aircraft operations and integration into civil aviation and, in coordination with ANB and LEB, identify possible solutions within the framework of the Organization's on-going work for the further consideration of the Legal Committee.

2. SCOPE OF WORK

2.1 The task of the Working Group will be to consider the following areas:

- a. Legal measures to support implementation of the international regulatory framework necessary for remotely piloted aircraft systems (RPAS) to conduct international Instrument Flight Rules (IFR) operations in controlled airspace and aerodromes being developed by ICAO with the support of the RPASP;
- b. International legal issues related to other unmanned (pilotless) aircraft system (UAS) operations identified by States, to include concerns about the scope, application, or relevance of the Chicago Convention or other international air law instruments in this regard;
- c. International legal issues arising as a result of newly emerging unmanned (pilotless) aircraft technologies, systems, applications, etc. (e.g., high altitude operations, unmanned aerial taxis, and carriage of cargo and related liability concerns).
- d. As appropriate, assess the need to reinterpret or amend the existing international air law instruments or to adopt a new instrument related to legal aspects of unmanned (pilotless) aircraft; and
- e. Formulate recommendations, including possible solutions to the Legal Committee, which will then determine whether or what (if any) further action should be taken.

3. OUTPUTS AND REPORTING REQUIREMENTS

3.1 The Working Group will meet at least once (but no more than 3 times) per year, but no more than 2 times per year in a year in which the Legal Committee is also meeting.

3.2 The Working Group meetings will be scheduled to coincide with meetings of the RPASP, so as to promote consistency and synergy with the Organization's on-going regulatory work, as well as to avoid unnecessary expenditure of resources and/or duplication of efforts by, for example, facilitating the availability of technical expertise to the Working Group.

3.3 The Secretariat will assist the Working Group in preparation of its meetings and reports; reports will be coordinated with the Secretariat prior to finalization.

3.4 The Secretariat will prepare and present a Working Paper on the reports of the Working Group to the Legal Committee.

— END —

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