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INTERNATIONAL REVIEW

INTERNATIONAL CIVIL AVIATION ORGANIZATION

THE LEGAL COMMITTEE—ITS ORGANIZATION AND WORKING METHODS

BY RENÉ H. MANKIEWICZ†

The ICAO Legal Committee differs in many aspects from other ICAO committees and commissions. While the members of the Air Navigation Commission are appointed by the Council of ICAO from persons nominated by Member States¹ and committees of the Council are composed of Representatives of Member States elected by the Council,² the Legal Committee is open to membership by all Contracting States, represented by legal experts of their own choosing. Moreover, as a successor to CITEJA,³ which was an autonomous international committee, the Legal Committee of ICAO is not a subsidiary body of the Council but "a permanent Committee of the Organization."⁴ It does not, however, have the same independence as its predecessor because the cost of its meetings and the composition and emoluments of the ICAO Legal Bureau, the Committee's Secretariat, are determined by the ICAO Assembly when adopting the ICAO budget. In addition, the Council exercises a certain control over the work of the Legal Committee by approving the general work program established by the Committee and determining the agenda, place, and time of the meetings of the Committee and its subcommittees.⁵

According to paragraph 2 of its constitution, adopted by the First Session of the ICAO Assembly, the Legal Committee has the following duties and functions:

- (a) to advise the Council on matters relating to the interpretation and amendment of the Convention on International Civil Aviation, referred to it by the Council;
- (b) to study and make recommendations on such other matters relating to public international air law as may be referred to it by the Council or the Assembly;

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¹ Convention on International Civil Aviation, 7 Dec. 1944, art. 56, 61 Stat. 1180, T.I.A.S. No. 1591 (effective 4 April 1947).

² Article 4(d) of the Chicago Convention, note 1 *supra*; and Rules 14, 17, and 18 of the Rules of Procedure for the Council, ICAO Doc. 7559/3.

³ Comité International Technique d'Experts Juridique Aériens.

⁴ Constitution of the ICAO Legal Committee, para. 1, ICAO Doc. 7669 LC/139.

⁵ *Id.* at para. 5.

(c) by direction of the Assembly or the Council, or on the initiative of the Committee and subject to the prior approval of the Council, to study problems relating to private air law affecting international civil aviation, to prepare drafts of international air law conventions and to submit reports and recommendations thereon;

(d) to make recommendations to the Council as to the representation at sessions of the Committee of non-Contracting States and other international organizations, as to the co-ordination of the work of the Committee with that of other representative bodies of the Organization and of the Secretariat and also as to such other matters as will be conducive to the effective work of the Organization.⁶

Since its inception in 1947, the Legal Committee has produced the final drafts of the following conventions: Convention on the International Recognition of Rights in Aircraft (Geneva, 1948); Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (Rome, 1952); Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air, Performed by a Person Other Than the Contracting Carrier (Guadalajara, 1961); Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963); and the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 (The Hague, 1955). Subjects of high priority on its present work program are: a draft convention on aerial collisions, study of the revision of the Rome Convention, study of the increase of the limits of liability established by The Hague Protocol, and study of the liability of air traffic control services.⁷

During the year 1965 a study of the organization and working methods of the Legal Committee was undertaken by a Working Group of the ICAO Council. The Working Group had been established by the Council in November 1964 when certain Representatives on the Council had questioned the efficiency of the Legal Committee on the ground that several conventions prepared by that Committee had not been ratified by a great number of Contracting States and that the work of the Legal Committee at its Fifteenth Session (Montreal, September 1964) on the Draft Convention on Aerial Collisions had met with strong opposition within the Committee.⁸

The Working Group made various recommendations regarding such items as composition and officers of the Committee, basic principles to be followed in the preparation of draft conventions, establishment and maintenance of the Committee's work program, procedure for the preparation of draft conventions, informal consultations, and the special role of the ICAO Legal Bureau. These recommendations, together with the report⁹ thereon, were submitted by the Council to the Fifteenth Session

⁶ *Id.* at para. 2.

⁷ See Report of the Legal Commission, 15th Session of the Assembly, ICAO A15-WP/131 P/21 (Agenda Item 32).

⁸ See Minutes of the Meeting of the Council, ICAO Doc. 8446, C/954.

⁹ ICAO A15-WP/23 LE/4 and C-WP/4160.

of the ICAO Assembly which in turn referred the question to its Legal Commission.

Some members of the Working Group had proposed that the Legal Committee become "a body of limited membership, having its permanent seat in Montreal" and "a truly permanent body like the Air Navigation Commission"; they believed that the Committee could thereby better "increase and coordinate its work and insure continuity of the work. . . ." The members of such re-organized Committee would be elected by the Council from candidates proposed by the Contracting States and should be representative of the various legal systems. This proposal had been opposed within the Council Working Group and did not find favor with the Legal Commission¹⁰ which unanimously decided that the Legal Committee should continue to remain open to Representatives of all Contracting States and that there is no need for the Committee to have a permanent seat in Montreal. The Legal Commission also found that the constitution and rules of procedure of the Legal Committee were sufficiently flexible to permit efficient organization of the Committee's work. However, the Commission recommended two improvements. First, it recommended that the Committee should elect its chairman and vice-chairman at the beginning of each session, instead of at the end, the persons so elected to take office immediately and to hold office for the next two sessions (rather than for only one session). Second, the Commission recommended that, in order to expedite the work of the Legal Committee and to provide the Council with additional information about draft conventions, the following new rule be introduced in the Committee's Rules of Procedure:

Each Subcommittee established by the Legal Committee to study a draft convention shall include in its report an assessment of the measure of agreement reached and capable of being reached between States upon the problems under consideration, together with an expression of opinion whether the subject is ripe for study by the Legal Committee. That part of the report shall be submitted to the Council as well as to the Legal Committee.¹¹

At the present time these reports are submitted only to the Legal Committee although the Council takes cognizance thereof when deciding on the agenda and place and time of meetings of the Legal Committee or its subcommittees. If this amendment is adopted by the Legal Committee, which is the master of its Rules of Procedure (amendments being subject to approval by the Council only if they affect the relationship of the Committee with other bodies of the Organization or with States or other Organizations), it will increase the Council's control over the Committee's work. Indeed, if the Council, having studied the report of the Subcommittee, finds that there is no reason to pursue the question examined by the Subcommittee, it may amend the Legal Committee's work program and perhaps disapprove future meetings of that Subcommittee.

¹⁰ See Minutes of the 4th to 7th meetings of the Legal Commission, ICAO A15-WP/202 LE/6, and the Report of the Commission, ICAO A15-WP/131 P/21.

¹¹ See the proposal of the Representative of the United Kingdom, ICAO A15-WP/108 LE/7.

The Working Group established by the Council had also formulated certain basic principles to be followed in the preparation of draft conventions. The relevant procedure is presently determined by Assembly Resolution A7-6¹² and the Rules of Procedure of the Legal Committee.¹³ According to that Resolution, a draft convention considered by the Legal Committee as a final draft shall be transmitted to the Council which may take such action as it sees fit "including the circulation of the draft to Contracting States and to such other States and international organizations as it may determine." The draft must be submitted to States at least six months before the opening of the diplomatic conference called for the adoption of the draft. The date and place of the conference is determined by the Council which "may invite . . . any non-Contracting States whose participation is considered desirable, and decide whether such participation carries the right to vote."

The Legal Commission did not suggest any change in the present rules governing preparation and adoption of draft conventions. However, it "examined with interest the various principles which the Working Group of the Council had suggested." The Commission found that "some of these principles were in fact followed by the Legal Committee and that, therefore, it was unnecessary to direct the Committee to follow them." In addition, it found other principles suggested by the Working Group unacceptable on their merits or, in some cases, as being too rigid. The Commission finally adopted the following statement regarding the procedure for the preparation of draft conventions, noting that it is the same as the existing procedure with some minor changes:¹⁴

Procedure for the Preparation of Draft Conventions

1. As a first step, the Legal Bureau would continue, as at present, to collect documentation (national laws, case law, doctrine, technical and economic information) in relation to subjects in Part A of the work programme of the Legal Committee. The Committee would then, with the aid of the Legal Bureau, prepare a summary of the essential problems on which a decision is required in order to facilitate the work of the Committee.

1.1 The next step would be for the Legal Committee to refer the subject for study either to a rapporteur or to a subcommittee, or to both, as the Committee considers appropriate.

1.1.1 Under Rule 12¹⁵ of the Rules of Procedure of the Legal Committee, the number of members of a subcommittee is left for determination by the Committee or its Chairman, depending on whether the subcommittee is established during a session of the Committee, or between sessions. Although no change is recommended in Rule 12, it is, nevertheless, considered that

¹² ICAO Doc. 7670 Vol. I.

¹³ ICAO Doc. 7669 LC/139.

¹⁴ ICAO A15-WP/131 P/21.

¹⁵ Rule 12 (Establishment of Sub-Committees):

(a) The Committee may establish, on a permanent or temporary basis, such Sub-Committees as may be deemed necessary to carry out its work.

(b) If, in the opinion of the Chairman of the Committee, it is necessary between sessions to establish any special Sub-Committee, the Chairman may do so and appoint members to serve until the next session of the Committee.

(c) Each Sub-Committee shall be charged with only one subject or group of related subjects.

the membership of a subcommittee should not be too large. The most important criterion to be applied in making appointments to a subcommittee is the contribution which a member can bring to the work of the subcommittee, although, no doubt other considerations would be involved in such appointments, *e.g.*, the achievement of geographical representation and linguistic distribution as well as the balancing of legal systems.

1.1.2 At this same stage (see paragraph 1.1 above), the Legal Bureau or the rapporteur, if one is appointed, should prepare for the subcommittee and circulate to its members an analysis of the problems raised by the subject to be studied.

1.1.2.1 The rapporteur or the subcommittee may request, through the Secretary General, from States and international organizations views or other information on these problems.

1.1.3 The rapporteur or subcommittee would then prepare a report for submission to the Legal Committee. This report, in addition to including a discussion of the subject under study, and, where appropriate, a draft convention, could raise questions for decision by the Committee.

1.1.4 The report so prepared would normally be circulated to Contracting States and international organizations and, if necessary, to representative bodies of ICAO for comment.

1.2 The next stop would be for the Legal Committee to consider the report and draft convention which were prepared by the subcommittee and the comments which may have been received from States or other bodies.

1.2.1 The Legal Committee would, at this stage, refer back to the subcommittee, with an indication of the Committee's views, a text which requires additional work by the subcommittee on a specific problem or problems or which, though appearing to have little chance of acceptance by States for the time being, nevertheless showed possibilities of successful completion in the future.

1.2.2 At the same time, if further views of the Contracting States and international organizations were required, they could be elicited by the Legal Committee, through the Secretary General, and placed before the subcommittee.

1.3 The final step would be for the Legal Committee to discuss the draft convention revised by the subcommittee.