



THIRTY-NINTH PLENARY (TRIENNIAL) SESSION

(Videoconference, 12 July 2021)

Agenda item 4: Presentation of the Focal Point reports

REPORT ON ECAC ACTIVITIES ON LEGAL MATTERS

(Presented by the Executive Secretary of ECAC)

SUMMARY

This paper presents the report of the activities in 2019-2021 on legal matters, as delivered by the ECAC Legal Task Force.

ACTION TO BE TAKEN

The Plenary Session is invited to note the main achievements in the legal field for the period 2019-2021.

Introduction

1. ECAC activities in the legal field mainly support the various activities of the organisation and aim to promote expertise on legal issues in ECAC Member States and to strengthen understanding of legal issues addressed in international fora. The ECAC Legal Task Force is instrumental in the delivery of activities in this field, and of the 2019-2021 Work Programme on legal matters, approved by Directors General during the previous Triennial Session (ECAC/36, Strasbourg, 10-11 July 2018).

2. In addition to the normal work programme, matters related to the legal and administrative separation of ECAC from ICAO and the onsequences for ECAC's administrative processes, and the longer-term legal status of the organisation, all generated substantial activities in the legal field.

Implementation of the 2019-2021 Work Programme

3. The 2019-2021 Work Programme on legal matters includes the following key objectives and expected deliverables:

- To support understanding on legal aspects of topics of common interest to aviation community within ECAC:
 - Exchange of views and experiences on current and future legal issues of interest to ECAC Member States is promoted.
 - Legal opinion is provided to Directors General on matters relating to the interpretation and amendment of the ECAC Constitution, the legal status of ECAC and its relationship with other international organisations.
 - Advice is given on legal aspects of ECAC activities, on request from the ECAC Secretariat or ECAC working groups.
 - Legal aspects and implications of international aviation developments (e.g. RPAS, digitalisation) are discussed and legal opinion provided to Directors General, when appropriate.
- To promote pan-European priorities and positions in international meetings:
 - Legal issues relevant to the work of ICAO are discussed with a view of facilitating and supporting the participation of ECAC Member States in the legal work of ICAO (e.g. ICAO Assembly 2019) as well as coordinating ECAC common positions, where possible and appropriate.
 - Follow up actions to decisions adopted at international meetings is ensured. In particular for the signature and ratification of international legal instruments (e.g. amendments to Articles 50(a) and 56 of the Chicago Convention).

4. The ECAC Legal Task Force, which was established in 1996, has the mandate to examine all relevant legal issues and to develop proposals on various legal aspects related to the role and various activities of ECAC.

5. In line with the aforementioned work programme, the ECAC Legal Task Force has focused its efforts since 2019 on completing the assigned objectives and achieving important results, which has supported ECAC activities in other fields of civil aviation. Inter alia, the ECAC Legal Task Force contributed significantly to the following activities:

- Supporting ECAC's organisational developments and the administrative transition from ICAO to EUROCONTROL. Tasks have included e.g. the review of the ECAC Constitution, the review of the draft agreement with EUROCONTROL in 2019/2020, the development of a proposal for a personal data protection policy and procedures

for ECAC activities, consideration of elements for an analysis on the evolution of ECAC's legal status and reviews of existing ECAC-ICAO cooperation agreements.

- Contributing to the 40th session of the ICAO Assembly (24 September – 4 October 2019), by the review of papers with legal relevance (e.g. to the European papers submitted relating to legal matters as well as cross-domain papers, inter alia, on WP/107 "Support to ICAO No Country Left Behind Initiative" and WP/86 "New Entrants"), the development of high-level key messages for the Legal Commission. While no European papers were submitted in the legal field, Europe expressed its support for ICAO's work and leading role in this area. Promoting the ratification of international instruments for a solid international legal framework for civil aviation was a key objective for this Assembly. In follow-up, the ECAC Legal Task Force discussed the outcomes on legal matters (e.g. international legal issues relating to global navigation satellite systems (GNSS)" and work related to international legal aspects of unmanned aircraft operations) from the 40th Session of the ICAO Assembly and the meetings of the ICAO Legal Committee.
- Closely following the activity of the ICAO Legal Committee and follow up on specific issues since its last meeting in September 2018, including the ICAO Working Group for the Review of the ICAO Rules for the Settlement of Disputes, Global Aviation Safety Oversight System Programme and the related CALex virtual exchange.
- Examining the current status of the Multilateral Agreement on Commercial Rights of Non-scheduled Air Services in Europe (30 April 1956), also known as the Paris Agreement of 1956, and in particular its interpretation and application in ECAC Member States.
- Providing legal advice on issues requested by Directors General and other ECAC groups, such as providing legal advice on the draft cooperation arrangement with Kazakhstan and the amendments to the Common Evaluation Process of Security Equipment (CEP) Handbook in 2020 and the review of the draft cooperation agreement between ECAC and ACI EUROPE, which was signed in December 2019.
- Contributing to several written consultations, e.g. regarding the legal definition of relief flights in relation to the COVID-19 crisis, on national practices related to laser attacks.

Protocols to amend the Chicago Convention

6. The Protocol of Amendment to Article 50(a) provides for an increase in the size of the Council from thirty-six (36) members to forty (40), while the Protocol of Amendment to Article 56 provides for an increase in the membership of the Air Navigation Commission from nineteen (19) to twenty-one (21). By Assembly Resolutions A39-5 and A39-7, respectively, and underlined by Resolution A40-28, the ICAO Assembly recommends to all States to ratify most urgently these Protocols.

7. In this regard, ECAC regularly issues requests for information from Member States to monitor the status of ratification of the two Protocols amending Article 50 (a) and Article 56 of the Convention on International Civil Aviation in ECAC Member States.

8. To date, thirty-five (35) ECAC Member States have ratified the Protocols as of end of July 2020, and nine (9) have initiated the ratification process. The Protocols will enter into force on the date of deposit of the 128th instrument of ratification. Globally, sixty (60) ICAO Contracting States have deposited their ratification instrument with ICAO.

9. In accordance with its Terms of Reference, the ECAC Legal Task Force monitors progress on the ratification of international legal instruments, and information is available on their dedicated website. Progress is also continuously followed up by the ECAC Secretariat, including letters at the beginning of 2020 reminding ECAC Member States of the importance of ratifying these protocols. This came with the offer of support to ECAC and regional sister organisations' Member States to complete the ratification process of the two Protocols, to be provided by legal experts from ECAC Legal Task Force and directly involved in this topic, who would be able to share their experience with their counterparts in other States. No requests for such support have been received so far.

Action to be taken

10. The Plenary Session is invited to note the main achievements in the legal field for the period 2019-2021.

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